

A photograph of the United States Capitol building in Washington, D.C., showing the large white dome and the classical columns of the portico. The sky is clear and blue.

AMERICAN RESCUE PLAN STATE & LOCAL FISCAL RECOVERY FUND

**ELIGIBLE USES FOR
LOST REVENUE &
WATER AND SEWER**

KEY HIGHLIGHTS OF THE GUIDANCE

1. Final Rule is effective April 1, 2022, but local governments can take advantage of flexibility prior to that date
2. Allows local governments to use up to \$10 million of ARPA Recovery Funds as “loss revenue” for the provision of general government services without needing to use the Treasury revenue loss formula
3. Improves revenue loss calculation formula **to include utility revenue and liquor store sales, at option of local governments**
4. Clarifies eligible use of funds for capital expenditures and written justification for certain projects
5. **Presumes certain populations were “impacted” and “disproportionately impacted” by the pandemic** and therefore are eligible to receive a broad range of services and support
6. Streamlines options for premium pay, by **broadening the share of eligible workers who can receive premium pay**
7. Authorizes re-hiring of local government staff, either at or above pre-pandemic levels
8. Allows Recovery Funds to be used for modernization of cybersecurity, including hardware and software
9. Broadens eligible use of funds for water and sewer projects to include culvert repair, dam and reservoir rehabilitation
10. **Broadens eligible broadband infrastructure investments to ensure better connectivity to broader populations**

REPORTING REQUIREMENTS

On January 7, Treasury released the Project and Expenditure Report and User Guide.

- **The following local governments are required to submit a Project and Expenditure Report the Treasury by January 31, 2022:**
 - Local governments with populations that **exceed 250,000 residents** (referred to as Tier 1 recipients by Treasury)
 - Local governments with a population **below 250,000 residents yet received more than \$10 million** in Recovery Funds (referred to as Tier 2 recipient by Treasury)
- **The Project and Expenditure Report will cover the period between March 3, 2021, and December 31, 2021**, and requires the reporting of project, obligations and expenditure data, subaward data, as well as certain required programmatic data
- Local governments with **populations below 250,000 residents and received less than \$10 million** in Recovery Funds, **are not required to submit** a report by January 31, 2022
 - First reporting deadline is now **April 30, 2022**, and annually afterwards

ILLUSTRATION ONLY OF ***SAMPLE*** ALLOWABLE USES OF RECOVERY FUNDS, PER U.S. TREASURY GUIDANCE



Support Public Health Response

Fund COVID-19 mitigation efforts, medical expenses, behavioral healthcare, and certain public health and safety staff



Replace Public Sector Revenue Loss

Use funds to provide government services to the extent of the reduction in revenue experienced due to the pandemic



Water and Sewer Infrastructure

Make necessary investments to improve access to clean drinking water and invest in wastewater and stormwater infrastructure



Address Negative Economic Impacts

Respond to economic harms to workers, families, small businesses, impacted industries, and the public sector



Premium Pay for Essential Workers

Offer additional support to those who have and will bear the greatest health risks because of their service in critical infrastructure sectors



Broadband Infrastructure

Make necessary investments to provide unserved or underserved locations with new or expanded broadband access

DECODING *THE LANGUAGE* OF THE GUIDANCE

Throughout the Final Rule, U.S. Treasury uses various **key words** that are important to understand in determining the eligible use of funds.

- “Should” and “must” = **Mandatory** reporting, use and compliance
- “May” and “encourage” = Allows local **discretion**
- Proportional & Reasonable

REPLACING LOST REVENUE

Local governments can use Recovery Funds to provide government services, up to the amount of revenue loss experienced. Under the Final Rule, local governments now have two options:

KEY NEW FEATURES IN FINAL RULE

1. NEW \$10 MILLION REVENUE LOSS ALLOWANCE

- Local governments can allocate up to \$10 million of their total Recovery Fund allocation to spend on government services
- Local governments can still calculate actual revenue loss through the Treasury formula
- Simplifies reporting requirements for local governments using the standard \$10M standard allowance
- Approximately 70% of counties are now eligible to invest the entirety of allocated Recovery Funds in general government services
- More than 26,000 NEUs can invest their total allocation in the lost revenue category.

2. IMPROVEMENTS TO THE REVENUE LOSS FORMULA

- General revenue now includes utility revenue and liquor store revenue, at the discretion of the local government
- Local governments can choose to calculate revenue loss on a fiscal year **or** calendar year basis – *must pick & stay with 1 option*
- Local governments must adjust actual revenue totals for the effect of tax cuts/increases adopted after January 6, 2022
- Revenue loss growth rate changed from 4.1% to 5.2%

REPLACING LOST REVENUE

Local governments may use “lost revenue” for **general government services up to the *revenue loss* amount**, whether that be the standard allowance amount (\$10 million) or the amount calculated using Treasury’s formula:

- **Government services generally include any service traditionally provided by a government**, unless Treasury has stated otherwise
- **Common examples** include, but are not limited to:
 - Construction of schools and hospital
 - Road building and maintenance, and other infrastructure
 - Health services
 - General government administration, staff and administrative facilities
 - Environmental remediation
 - Police, first responders and other public safety services (including purchase of fire trucks and police vehicles)

RECOVERY FUNDS USED TO REPLACE “REVENUE LOSS” ARE MORE FLEXIBLE AND MAY BE USED FOR A BROAD RANGE OF GOVERNMENT SERVICES, PROGRAMS AND PROJECTS OUTSIDE OF TYPICAL ELIGIBLE USES OF RECOVERY FUNDS UNDER THE INTERIM RULE. HOWEVER, REVENUE RECOUPMENT CANNOT BE USED FOR RAINY DAY FUNDS OR DEBT SERVICES

REPLACING LOST REVENUE

KEY TAKEAWAYS

- Local governments have two options to calculate revenue loss:
 1. Up to \$10 million of ARPA allocation
 2. Calculate revenue loss with Treasury formula
- If you previously declared “\$0” for revenue loss in the Interim Report, you are allowed to update this number in the first Project and Expenditure Report
- If you are declaring revenue loss, you may abide by the reporting requirements within the Project and Expenditure Report’s “revenue loss” category

REPLACING LOST REVENUE

Local governments may use “lost revenue” for **general government services up to the *revenue loss amount***, whether that be the standard allowance amount (\$10 million) or the amount calculated using Treasury’s formula:

HOWEVER, the **following activities are NOT an eligible use** of a local government’s “revenue loss” allowance:

- Extraordinary contribution to a **pension fund**
- **Debt service** payment, including Tax Anticipation Notes (TANs)
- Rainy day or **reserve account**
- **Settlement agreement, judgment, consent decree or judicially confirmed debt** (*with limited exceptions*)
- **Activity that conflicts with the purpose of the American Rescue Plan Act statute** (e.g. uses of funds that conflict with COVID-19 mitigation practices in line with CDC guidance and recommendations)
- **Violations of Award Terms and Conditions or conflict of interest requirements** under the Uniform Guidance

DEFINING INELIGIBLE EXPENSES

The Final Rule maintains the Interim Final Rule's restriction on use with additional clarification.

1

PENSION FUNDS

- Final Rule clarifies that prohibition of “extraordinary contributions” to pension funds applies to all recipients except for Tribal governments

2

OTHER RESTRICTIONS

- Funding debt service, legal settlements or judgements
- Deposits to rainy day funds or financial reserves
- Clarifies additional restrictions that apply, including that:
 - Uses of funds may not undermine COVID-19 mitigation practices in line with CDC guidance
 - Uses of funds may not violate Uniform Guidance conflict of interest requirements and other laws

3

NET REDUCTION IN REVENUE (STATES & TERRITORIES)

- Final Rule maintains that IFR's prohibition on states and localities for using Recovery Funds to directly or indirectly offset reduction in net tax revenue

WATER AND SEWER INFRASTRUCTURE

Local governments can use to make a broad range of water and sewer infrastructure investments.

KEY NEW FEATURES IN FINAL RULE

1. NEW ELIGIBLE WATER AND SEWER PROJECTS

- Under the IFR, eligible projects were aligned with those under EPA's Clean Water State Revolving Fund and Drinking Water State Revolving Fund
- **Final Rule provides additional eligible projects**, including:
 - Broader set of lead remediation projects (i.e. faucets, fixtures and internal plumbing in schools and childcare facilities)
 - Culverts
 - Residential wells
 - Certain dams and reservoirs (related to drinking water)

WATER AND SEWER INFRASTRUCTURE

Local governments can use Recovery Funds to make a broad range of investments in water and sewer infrastructure. The Final Rule provides additional categories for eligible water and sewer projects.

NEW ELIGIBLE WATER & SEWER PROJECTS UNDER FINAL RULE	
<ul style="list-style-type: none">• Culvert repair• Resizing, and removal, replacement of storm sewers, and additional types of stormwater infrastructure• Infrastructure to improve access to safe drinking water for individual served by residential wells, including testing initiatives, and treatment/remediation strategies that address contamination• Dam and reservoir rehabilitation if primary purpose of dam or reservoir is for drinking water supply and project is necessary for provision of drinking water	<ul style="list-style-type: none">• Broad set of lead remediation projects eligible under EPA grant programs authorized by the Water Infrastructure Improvements for the Nation (WIIN) Act, including:<ul style="list-style-type: none">— Lead testing— Installation of corrosion control treatment— Lead service line replacement— Water quality testing, compliance monitoring, and remediation activities (i.e. replacement of internal plumbing and faucets and fixtures in schools and childcare facilities)

WATER AND SEWER INFRASTRUCTURE

Fiscal Recovery Funds payments may be used by recipients to make necessary investments in water and sewer infrastructure. The rule provides wide latitude to identify investments in water and sewer infrastructure that are of the highest priority for your own community. Eligible uses are aligned with the U.S. Environmental Protection Agency's Clean Water State Revolving Fund (CWSRF) or the Drinking Water State Revolving Fund (DWSRF).

CLEAN WATER SRF:

- Federal-state partnership that provides communities low-cost financing for a wide range of water quality infrastructure projects
- States are responsible for the operation of their CWSRF program
- States may provide loans, refinancing, purchasing, or guaranteeing local debt and purchasing bond insurance

DRINKING WATER SRF:

- Federal-state partnership to help ensure safe drinking water. DWSRF provides financial support to water systems and to state safe water programs
- States are responsible for the operation of their DWSRF program
- Like CWSRF, the DWSRF provides loans, refinancing, purchasing, guaranteeing local debt and purchasing bond insurance

CLEAN WATER SRF

CWSRFs fund a wide range of water infrastructure projects. Eleven types of projects are eligible to receive CWSRF assistance:

- 1. Construction of publicly owned treatment works**

Assistance to any municipality or inter-municipal, interstate, or state agency for construction of publicly owned treatment works (as defined in CWA section 212)

- 2. Nonpoint source**

Assistance to any public, private, or nonprofit entity for the implementation a state nonpoint source pollution management program, established under CWA section 319

- 3. National estuary program projects**

Assistance to any public, private, or nonprofit entity for the development and implementation of a conservation and management plan under CWA section 320

- 4. Decentralized wastewater treatment systems**

Assistance to any public, private, or nonprofit entity for the construction, repair, or replacement of decentralized wastewater treatment systems that treat municipal wastewater or domestic sewage

CLEAN WATER SRF

5. **Stormwater**

Assistance to any public, private, or nonprofit entity for measures to manage, reduce, treat, or recapture stormwater or subsurface drainage water

6. **Water conservation, efficiency, and reuse**

Assistance to any municipality or inter-municipal, interstate, or state agency for measures to reduce the demand for publicly owned treatment works capacity through water conservation, efficiency, or reuse

7. **Watershed pilot projects**

Assistance to any public, private, or nonprofit entity for the development and implementation of watershed projects meeting the criteria in CWA section 122

8. **Energy efficiency**

Assistance to any municipality or inter-municipal, interstate, or state agency for measures to reduce the energy consumption needs for publicly owned treatment works

9. **Water reuse**

Assistance to any public, private, or nonprofit entity for projects for reusing or recycling wastewater, stormwater, or subsurface drainage water

CLEAN WATER SRF

10. Security measures at publicly owned treatment works

Assistance to any public, private, or nonprofit entity for measures to increase the security of publicly owned treatment works

11. Technical assistance

Assistance to any qualified nonprofit entity, to provide technical assistance to owners and operators of small- and medium-sized publicly owned treatment works to plan, develop, and obtain financing for CWSRF eligible projects and to assist each treatment works in achieving compliance with the CWA

DRINKING WATER SRF

DWSRFs fund a wide range of drinking water infrastructure projects. Six categories of projects are eligible to receive DWSRF assistance. These categories and examples of projects within them are:

1. **Treatment:** Projects to install or upgrade facilities to improve drinking water quality to comply with SDWA regulations
2. **Transmission and distribution:** Rehabilitation, replacement, or installation of pipes to improve water pressure to safe levels or to prevent contamination caused by leaky or broken pipes
3. **Source:** Rehabilitation of wells or development of eligible sources to replace contaminated sources
4. **Storage:** Installation or upgrade of finished water storage tanks to prevent microbiological contamination from entering the distribution system
5. **Consolidation:** Interconnecting two or more water systems
6. **Creation of new systems:** Construct a new system to serve homes with contaminated individual wells or consolidate existing systems into a new regional water system

OTHER WATER AND SEWER PROJECTS

- The rule explicitly lists building or upgrading facilities and transmission, distribution and storage systems, including the replacement of lead service lines as an eligible use of recovery funds
- Recipients may use recovery funds to construct publicly owned treatment infrastructure, manage and treat stormwater or subsurface drainage water, facilitate water reuse and secure publicly owned treatment works
- Recipients may use funds 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
- Recovery funds may be used to address climate change by taking steps to address potential sources of pollution and preventing those pollutants from reaching drinking water sources. Eligible projects may reduce the energy required to treat drinking water

OTHER WATER AND SEWER PROJECTS

- Treasury encourages recipients to consider green infrastructure investments to improve resilience and the effects of climate change
 - Stormwater runoff
 - Water pollution
 - Flood control projects
- Green infrastructure projects that support stormwater system resiliency could include rain gardens that provide water storage and filtration benefits and green streets, where vegetation, soil and engineered systems are combined to direct and filter rainwater from impervious surfaces
- In cases of natural disaster, recipients may use recovery funds to provide relief, such as interconnecting water systems or rehabilitating existing wells during an extended drought

Get in Touch!

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