

Kentucky Association of Counties

# American Rescue Plan Act

Updated November 17, 2021

# KACo resources for county officials



## ARP County Resource Page

# ARP overview and county allocations

- **Amount of allocation:** Kentucky counties direct allocation: \$867.8 million
- **Administration:** Direct distribution from U.S. Treasury
- **Timeline:** Distributed in two parts: half now, half one year after receiving first tranche.
- **Population-based:** County allocation based on 2019 population estimates – available on [www.kaco.org](http://www.kaco.org)
- **Cities:** Cities also receiving direct allocation, but allocation model is different from counties for entitlement communities.
- **State:** The state receiving separate direct allocation: about \$2.1 billion

# American Rescue Plan Overview

- **U.S. Treasury guidance is still being finalized**
- **May 10** – Treasury issued an Interim Final Rule, FAQs and a fact sheet for the Coronavirus State and Local Fiscal Recovery Fund, established under the American Rescue Plan Act (ARP)
- **June 8** – Treasury released an updated FAQ document
- **July 16** – Deadline to submit comments on Treasury’s Interim Final Rule

# American Rescue Plan Overview

- Treasury is in the process of reviewing the over 1,000 public comments in response to the Interim Final Rule (IFR)
- Treasury expects its review of comments to continue into the fall. Therefore, the Final Rule will not be published until this fall or after.
- Until Treasury adopts a Final Rule and the Final Rule becomes effective, the IFR is, and will remain, binding and effective. This means that counties can and should rely on the IFR to determine whether uses of funds are eligible under the Recovery Fund.
- Funds used in a manner consistent with the Interim Final Rule while the Interim Final Rule is effective will not be subject to recoupment

# American Rescue Plan Caveats

- **Caution** and **patience** is encouraged
- Counties have until **Dec. 31, 2024** to obligate funds and all funds must be expended and all work performed and completed by **Dec. 31, 2026**
- Most counties in Kentucky have applied for and received their first distribution of funds.

# How to certify for recovery funds

## U.S. Treasury has opened the portal for counties to request Recovery Funds

- To receive funds, a county must request funds through this portal

The screenshot shows the U.S. Department of the Treasury website. The header includes the Treasury logo and the text 'U.S. DEPARTMENT OF THE TREASURY'. Below the header is a navigation bar with links for 'ABOUT TREASURY', 'POLICY ISSUES', 'DATA', 'SERVICES', and 'NEWS', along with a search icon. A breadcrumb trail reads: 'HOME > POLICY ISSUES > COVID19 ECONOMIC RELIEF > ASSISTANCE FOR STATE, LOCAL, AND TRIBAL GOVERNMENTS > STATE AND LOCAL FISCAL RECOVERY FUND'.

The main content area features a 'POLICY ISSUES' sidebar on the left with categories: 'COVID19 Economic Relief' (sub-categories: Assistance for American Families and Workers, Assistance for Small Businesses), 'Assistance for State, Local, and Tribal Governments' (sub-category: State and Local Fiscal Recovery Fund), and 'Request Funding' (sub-categories: Tribal Governments, Non-Entitlement Units).

The central section is titled 'Coronavirus State and Local Fiscal Recovery Funds'. It contains the text: 'The American Rescue Plan will deliver \$350 billion for eligible state, local, territorial, and Tribal governments to respond to the COVID-19 emergency and bring back jobs.' Below this is another paragraph: 'The Coronavirus State and Local Fiscal Recovery Funds provide a substantial infusion of resources to help turn the tide on the pandemic, address its economic fallout, and lay the foundation for a strong and equitable recovery.'

On the right side, there are two prominent blue buttons: 'REQUEST FISCAL RECOVERY FUNDS' and 'RECEIVE COVID-19 RELIEF UPDATES'. A blue arrow points to the 'REQUEST FISCAL RECOVERY FUNDS' button. Below these buttons is a list of links: 'Interim Final Rule', 'Fact Sheet', 'FAQs', 'Quick Reference Guide', 'Press Release', 'Tribal Government Information', and 'Non-Entitlement Unit Information'.

# Reporting Requirements – Interim Report

- Counties must submit an Interim Report by August 31, 2021 or within 60 days after first receiving funding if the recipient’s date of award is between July 15, 2021 and October 15, 2021.

**Table 2: Reporting requirements by recipient type**

| Tier | Recipient   | Interim Report   | Project and Expenditure Report  | Recovery Plan Performance Report  |
|------|---|--|---|---|
| 1    | States, U.S. territories, metropolitan cities and counties with a population that exceeds 250,000 residents                       | By August 31, 2021 or 60 days after receiving funding if funding was received by October 15, with expenditures by category | By January 31, 2022, and then 30 days after the end of each quarter thereafter <sup>9</sup> | By August 31, 2021 or 60 days after receiving funding, and annually thereafter by July 31 <sup>10</sup> |
| 2    | Metropolitan cities and counties with a population below 250,000 residents which received more than \$10 million in SLFRF funding |  |   | Not required  |
| 3    | Tribal Governments which received more than \$30 million in SLFRF funding   |  | By April 30, 2022, and then annually thereafter <sup>11</sup>                               |   |
| 4    | Tribal Governments which received less than \$30 million in SLFRF funding   |  |   |   |
| 5    | Metropolitan cities and counties with a population below 250,000 residents which received less than \$10 million in SLFRF funding |  |   |   |
| 6    | NEUs  | Not required   |   |   |



# Reporting FAQ - Interim

## **Q. If a county has not spent any ARP funds, do they have to submit the Interim Report?**

- **Yes.** If a county has not incurred any obligations or expenditures by July 31, 2021 they should submit a report showing \$0.

## **Q. If a county did not receive their ARP funds by July 15, 2021, do they have to submit the Interim Report?**

- Yes, but they have an extended deadline. If a county did not receive funds by July 15, 2021, they must submit an Interim Report within 60 days of receiving funds.

## **Q. Do counties have to report their lost revenue calculation in the Interim Report?**

- Treasury understands that some entities have not yet completed their revenue replacement calculations, and in order to complete the Interim Report under these circumstances you can use the best available estimate (or put zero if no estimate is available) in the required revenue replacement fields for now. You will have an opportunity to update it in subsequent reporting and Treasury will not interpret zero in the Interim Report as final.

# Reporting FAQ - Interim

## **Q. Can records be edited or updated after submission of the Interim Report?**

- No changes will be allowed after the initial submission. Any updates will be captured when the first Project and Expenditure Report is submitted.

## **Q. Is there a penalty for not submitting timely records?**

- A record of late reporting could lead to a finding of non-compliance, which could result in development of a corrective action plan, or other consequences.

# Reporting Requirements – Project/Expenditure Report

- Counties which receive more than \$10 million must submit their first Project and Expenditure Report by January 31, 2022.
  - Must submit quarterly thereafter.
  - The first report will cover the period from March 3, 2021 to December 31, 2021.

**Table 2: Reporting requirements by recipient type**

| Tier | Recipient   | Interim Report   | Project and Expenditure Report  | Recovery Plan Performance Report  |
|------|---|--|---|---|
| 1    | States, U.S. territories, metropolitan cities and counties with a population that exceeds 250,000 residents                       | By August 31, 2021 or 60 days after receiving funding if funding was received by October 15, with expenditures by category | By January 31, 2022, and then 30 days after the end of each quarter thereafter <sup>9</sup> | By August 31, 2021 or 60 days after receiving funding, and annually thereafter by July 31 <sup>10</sup> |
| 2    | Metropolitan cities and counties with a population below 250,000 residents which received more than \$10 million in SLFRF funding |  |   | Not required  |
| 3    | Tribal Governments which received more than \$30 million in SLFRF funding   |  | By April 30, 2022, and then annually thereafter <sup>11</sup>                               |   |
| 4    | Tribal Governments which received less than \$30 million in SLFRF funding   |  |   |   |
| 5    | Metropolitan cities and counties with a population below 250,000 residents which received less than \$10 million in SLFRF funding |  |   |   |
| 6    | NEUs  | Not required   |   |   |

# Reporting Requirements – Project/Expenditure Report

- Counties which receive less than \$10 million must submit their first Project and Expenditure Report by April 30, 2022.
  - Must submit annually thereafter.
  - The first report will cover the period from March 3, 2021 to March 31, 2022.

**Table 2: Reporting requirements by recipient type**

| Tier | Recipient   | Interim Report   | Project and Expenditure Report  | Recovery Plan Performance Report  |
|------|---|--|---|---|
| 1    | States, U.S. territories, metropolitan cities and counties with a population that exceeds 250,000 residents                       | By August 31, 2021 or 60 days after receiving funding if funding was received by October 15, with expenditures by category | By January 31, 2022, and then 30 days after the end of each quarter thereafter <sup>9</sup> | By August 31, 2021 or 60 days after receiving funding, and annually thereafter by July 31 <sup>10</sup> |
| 2    | Metropolitan cities and counties with a population below 250,000 residents which received more than \$10 million in SLFRF funding |  |   | Not required  |
| 3    | Tribal Governments which received more than \$30 million in SLFRF funding   |  | By April 30, 2022, and then annually thereafter <sup>11</sup>                               |   |
| 4    | Tribal Governments which received less than \$30 million in SLFRF funding   |  |   |   |
| 5    | Metropolitan cities and counties with a population below 250,000 residents which received less than \$10 million in SLFRF funding |  |   |   |
| 6    | NEUs  | Not required   |   |   |

# Reporting FAQ – Project/Expenditure Report

## **Q. Does the \$10 million threshold apply to funds received or the total allocation?**

- The reporting threshold is based on the total allocation expected, not the funds received as of the time of reporting.

## **Q. What are counties required to report in the Project and Expenditure Reports?**

- Counties are required to provide detailed information on the following: projects, expenditures, project status, project demographic distribution, subawards greater than \$50,000, Civil Rights compliance and required programmatic data.

## **Q. Can records be edited or updated after submission of the first Project and Expenditure Report?**

- Counties reporting quarterly: Updates should be provided in the next quarterly report.
- Counties reporting annually: Recipients will have an opportunity to provide updates at the next quarterly submission date, when the portal opens for quarterly submitters.

*\*Treasury will be releasing a User Guide soon with more information on submitting Project and Expenditure Reports.*

# Permitted uses of funds

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 Revenue Loss

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



## Premium Pay for Workers

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



## Address Negative Economic Impacts

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



## Water and Sewer Infrastructure

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



## Broadband Infrastructure

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

# Permitted use: support public health response



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

## Public health and safety payroll – caution: different than CARES

- Funds may be used for payroll/benefits for public, safety, public health, health care, human services and similar employees **only for the portion of the employee's time that is dedicated to responding to COVID-19.**
- Counties may consider public health/safety employees to be entirely devoted to mitigating/responding to COVID-19, and are fully recovered, **if the employee, or his/her operating unit or division, is primarily dedicated to responding to the COVID-19 public health emergency.**
- **Rehiring staff:** Treasury guidance permits the rehiring of public sector staff, including county employees, up to the pre-pandemic staffing level (based on employment as of Jan. 27, 2020). Counties may use Recovery Funds toward payroll, covered benefits, and other costs associated with rehiring public sector staff.

# Permitted use: address negative economic impacts



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

## Workers and families

- Assistance to unemployed workers and **job training**
- Food, housing, cash and other assistance to households (proportionate)
- Survivor's benefits for family members of COVID-19 victims

## Small business

- Loans and grants to mitigate financial hardship
- Loans, grants and in-kind assistance to implement
- COVID-19 prevention or mitigation tactics
- Technical assistance



# Permitted use: replace lost revenue



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

- May be used to provide government services to the extent of reduction in revenue experienced due to COVID-19
- Much less restrictive than other uses of ARP money
- Can be spent on eligible expenses incurred since **March 3, 2021**
- Must be calculated on an entity-wide basis
- Can be recalculated at four points in time: Dec. 31, 2020; Dec. 31, 2021; Dec. 31, 2022; and Dec. 31, 2023

# Permitted use: replace lost revenue

## **Q. What can a county do with its funding from revenue loss?**

- Counties can spend revenue loss funding on a variety of government services. Government services can include, but are not limited to, maintenance or pay-go funded building of infrastructure, including roads; modernization of cybersecurity, including hardware, software, and protection of critical infrastructure; health services; environmental remediation; school or educational services; and the provision of police, fire, and other public safety services.

# Permitted use: premium pay for workers



Offer additional support to essential workers who have and will bear the greatest health risks due to their service in critical infrastructure sectors

- May be used to provide premium pay (up to an additional **\$13/per hour**) to eligible workers performing essential work
- Up to total of **\$25,000 per employee**
- Treasury urges prioritizing low- and moderate-income persons
- May provide premium pay retroactively, dating to the start of the public health emergency on January 27, 2020

# Permitted use: premium pay for workers



Offer additional support to essential workers who have and will bear the greatest health risks due to their service in critical infrastructure sectors

- **Essential employee:** any work performed by an employee of a county
- **Essential work:** work involving regular in-person interactions or regular physical handling of items that were also handled by others
  - Telework performed from home NOT eligible for premium pay

# Permitted use: water and sewer infrastructure



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

The Interim Final Rule outlines eligible uses, allowing for a broad range of necessary investments. Eligible uses aligned to Environmental Protection Agency (EPA) project categories in the Clean Water State Revolving Fund (CWSRF) and the Drinking Water State Revolving Fund (DWSRF).

### **Clean Water State Revolving Fund (CWSRF) – types of eligible projects:**

- Construct, improve and repair wastewater treatment plants
- Control non-point sources of pollution
- Improve resilience of infrastructure to severe weather events
- Create green infrastructure
- Protect waterbodies from pollution

# Permitted use: water and sewer infrastructure



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

## **Drinking Water State Revolving Fund (DWSRF)**

- Assist communities in making water infrastructure capital improvements, including the installation and replacement of failing treatment and distribution systems
- Ensure compliance with applicable health and environmental safety requirements
- Address the most serious risks to human health
- Assist systems most in need on a per household basis

## **Other eligible uses**

- Stormwater runoff
- Water pollution
- Flood control
- Green infrastructure that support stormwater resiliency, including rain gardens and green streets

# Permitted use: broadband infrastructure



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

- **Unserved and underserved households:** Funds may be used to make necessary investments in broadband infrastructure aimed at “unserved or underserved” communities. Treasury defines unserved and underserved at speeds below 25 Mbps download and 3 Mbps upload
- **Eligible projects are expected to meet or exceed symmetrical upload and download speeds of 100 Mbps.** However, in instances where required speeds cannot be achieved (due of the geography, topography, or excessive costs), the affected project would be expected to meet or exceed 100 Mbps download with a minimum of 20 Mbps upload with scalability to a symmetrical minimum of 100 Mbps

# Best Practices

## Utilize Resolutions

**We recommend that counties enact resolutions for ARP funded projects**

- Provides a justification for why the project is an eligible use of ARP funds.
- Will be beneficial if the county is audited by Treasury in the future.

## Leverage other funding sources

**We recommend that counties leverage other ARP and non-ARP funding sources.**

- Broadband Deployment Fund (state) – requires a 50% match
- Economic Development Administration ARP grants
- Federal infrastructure bill – potential funding for broadband and water



# Frequently Asked Questions

## Administrative costs and third-party consultants

**Q. Can funds be put towards hiring an administrator and/or third-party consultant to handle/manage the funds for the county?**

- Yes - funds can be used towards payroll expenses and other costs associated with hiring an administrator and/or third-party consultant to handle/manage the funds.

## Interest-bearing accounts

**Q. Can funds be placed in an interest-bearing account?**

- Yes - funds can be put into an interest-bearing account. Interest is not restricted to the eligible uses of the Recovery Funds and does not have to be remitted back to Treasury.

## Procurement requirements

**Q. When spending these funds, do I have to follow county procurement requirements?**

- Yes – you must follow all adopted county procurement requirements when spending these funds.

# Frequently Asked Questions

## Procurement requirements

### Q. When spending these funds, do I have to follow county procurement requirements?

- Yes – you must follow all adopted county procurement requirements when spending these funds.

## Debt service

### Q. Can funds be used to pay for pre-existing debt?

- No - paying interest or principal on any outstanding debt instrument or paying fees or issuance costs associated with the issuance of new debt is not allowed.

## Roads and bridges

### Q. Can funds be used to pay for transportation infrastructure?

- Generally, no. General infrastructure spending outside of water, sewer and broadband investments is not permitted. Exception: funds calculated from lost revenue may be used for general government purposes, including roads and bridges.

# Frequently Asked Questions

## Response to Crime

**Q. How can I use recovery funds to prevent and respond to crime and support public safety in my community?**

- In all communities, recipients may use resources to rehire police officers and other public servants to restore law enforcement and courts to their pre-pandemic levels. Additionally, Funds can be used for expenses to address COVID-related court backlogs, including hiring above pre-pandemic levels, as a response to the public health emergency.
- In communities where an increase in violence or increased difficulty in accessing or providing services to respond to or mitigate the effects of violence, is a result of the pandemic they may use funds to address that harm.
- Recognizing the disproportionate impact of the pandemic on certain communities, a broader range of services are eligible in those communities than would otherwise be available in communities not experiencing a pandemic-related increase in crime or gun violence.

# Frequently Asked Questions

## Reduction in tax rates

**Q. I heard that if a county accepts ARP funding, they can't lower tax rates. What if my compensating property tax rate is less than my current tax rate – does that count?**

- We do not believe that approving the compensating rate, resulting in a reduction in the tax rate (but not a reduction in tax revenue) will affect your use of ARP funds. This is based on a two reasons:
  1. We believe that the ineligibility of funds to be used for tax cuts/a reduction in tax revenue only applies to states and territories – not counties.
  2. Even if the rule applied to counties, it is based on a reduction in net tax revenue (not tax rates) and would have to be a result of a change in law, regulation or administrative interpretation.

# Frequently Asked Questions

## Publicly Available Data

### **Q. Will the data on spending reported to Treasury be made publicly available?**

- Yes, Treasury will make the data submitted by recipients publicly available. The content and timing of release is still under development. Treasury encourages recipients to make their data directly available through their own websites.

## Back to Work Incentives

### **Q. Can counties use recovery funds to pay “back to work incentives”?**

- Yes. This assistance can include job training or other efforts to accelerate rehiring and thus reduce unemployment, such as childcare assistance, assistance with transportation to and from a jobsite or interview, and incentives for newly employed workers.

# Frequently Asked Questions

## Retained Assets

**Q. May a county retain a purchased asset if bought with recovery funds?**

- Yes, if the purchase was an eligible use of funds.

## Matching Requirements

**Q. Can recovery funds be used for non-federal matching requirements such as FEMA disaster assistance?**

- No. Recovery Funds are subject to pre-existing limitations in other federal statutes and regulations and may not be used as non-federal match for other federal programs whose statute or regulations bar the use of federal funds to meet matching requirements. Specifically, Recovery Funds cannot be used to match funds for FEMA programs, unless specifically made so.

# Frequently Asked Questions

## Outdoor Spaces

**Q. Are investments in improving outdoor spaces (e.g. parks) an eligible use of funds as a response to the public health emergency and/or its negative economic impacts?**

- Services provided to Qualified Census Tracts (QCTs) such as investments in parks, public plazas, and other public outdoor recreation spaces that may be responsive to the needs of disproportionately impacted communities by promoting healthier living environments and outdoor recreation and socialization to mitigate the spread of COVID-19.
- Many governments saw significantly increased use of parks during the pandemic that resulted in damage or increased maintenance needs. The Interim Final Rule recognizes that “decrease[s to] a state or local government’s ability to effectively administer services” can constitute a negative economic impact of the pandemic

# Frequently Asked Questions

## Court Backlogs

**Q. Would expenses to address a COVID-related backlog in court cases be an eligible use of funds as a response to the public health emergency?**

- The Interim Final Rule recognizes that “decrease[s to] a state or local government’s ability to effectively administer services,” such as cuts to public sector staffing levels, can constitute a negative economic impact of the pandemic.
- During the COVID-19 public health emergency, many courts were unable to operate safely during the pandemic and, as a result, now face significant backlogs. Court backlogs resulting from inability of courts to safely operate during the COVID-19 pandemic decreased the government’s ability to administer services.
- Therefore, steps to reduce these backlogs, such as implementing COVID-19 safety measures to facilitate court operations, hiring additional court staff or attorneys to increase speed of case resolution, and other expenses to expedite case resolution are eligible uses.



# Frequently Asked Questions

## Requirement to demonstrate individual impact

**Q. The Interim Final Rule States: 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. Are recipients required to demonstrate that each individual or business experienced a negative economic impact for that individual or business to receive assistance?**

- Not necessarily. The rule allows recipients to demonstrate a negative economic impact on a population or group and to provide assistance to households or businesses that fall within that population or group. In such cases, the recipient need only demonstrate that the household or business is within the population or group that experienced a negative economic impact. This includes assistance to households and small businesses as well as all individuals living within a Qualified Census Tract (QCT).

# Frequently Asked Questions

## Declaration of Emergency

**Q. In order to receive and use fiscal recovery funds, must a recipient government maintain a declaration of emergency relating to COVID-19?**

- No. Neither the statute establishing the recovery fund nor the Interim Final Rule requires recipients to maintain a local declaration of emergency relating to COVID-19

# Key dates

|                           |  |
|---------------------------|--|
| <b>January 27, 2020:</b>  | Declaration of the public health crisis  |
| <b>March 3, 2021:</b>     | Beginning of the Recovery Fund “covered period”  |
| <b>August 31, 2021:</b>   | Deadline to submit first Interim Report to U.S. Treasury ( <i>applies to all counties</i> )  |
| <b>August 31, 2021:</b>   | Deadline to submit first <i>Recovery Plan Performance Report</i> to U.S. Treasury ( <i>applies to counties with 250,000+ population only</i> ) |
| <b>January 31, 2022:</b>  | Deadline to submit first <i>Quarterly Project and Expenditure Report</i> ( <i>counties receiving more than \$10 million</i> )                  |
| <b>April 30, 2022:</b>    | Deadline to submit first <i>Quarterly Project and Expenditure Report</i> ( <i>counties receiving less than \$10 million</i> )                  |
| <b>December 31, 2024:</b> | Recovery Funds must be obligated (NOT incurred)  |
| <b>December 31, 2026:</b> | Recovery Funds must be spent and all work/performance must be completed  |

# Contact us with questions



[www.kaco.org](http://www.kaco.org)

**Jennifer Burnett**

[jennifer.burnett@kaco.org](mailto:jennifer.burnett@kaco.org)

**Rich Ornstein**

[rich.ornstein@kaco.org](mailto:rich.ornstein@kaco.org)

**Kayla Carter**

[kayla.carter@kaco.org](mailto:kayla.carter@kaco.org)