

## Latest Guidance on Tribal Funding Under ARPA Released by Treasury As of May 14, 2021

Following the approval of the American Rescue Plan Act (ARPA) in March 2021, the U.S. Department of the Treasury has now issued Interim Guidance on the distribution of Coronavirus State and Local Fiscal Recovery Funds (31 CFR Part 35). These funds are intended to help state, local, and tribal governments address economic impacts caused by the pandemic and assist with their recovery.

To help ensure that Tribes receive their full measure of the \$20 Billion allocated specifically to tribal governments (and meet all associated compliance rules), we are providing a summary of [31 CFR Part 35](#), below, that outlines the allocation methods, eligibility rules, and other important guidance that apply to Indian Country.

B = Billion; M = Million; K = Thousand

### Coronavirus State and Local Fiscal Recovery Funds – 31 CFR Part 35

#### 1. Allocation Methodology

\$1B will be divided equally among tribal governments and \$19B will be allocated according to a formula based on available tribal enrollment and employment data. These two payments will be made to tribal governments as follows:

- **First payment:** Includes (i) an amount in respect of the \$1 billion allocation that is to be divided equally among eligible tribal governments and (ii) each tribal government's pro rata share of the Enrollment Allocation.
- **Second payment:** Will be made in respect of the Employment Allocation after tribal governments confirm their 2019 employment numbers. In mid-May, tribal governments will receive a notification requesting that they log into the Treasury Submission Portal to confirm or amend their 2019 employment numbers previously submitted to Treasury in May 2020 in connection with the CARES Act Coronavirus Relief Fund.
- **Enrollment Formula (\$12.35 B):** Total enrollment for all tribes is combined, then the number of enrolled members of each tribe is divided by the total to determine the tribe's share.
- **Employment Formula (\$6.65 B):** A 3-step process – Step 1: Sum both Tribal and Tribal Entity Employment data. Step 2: Calculate non-zero annual average of the summed quarters one through four obtained in Step 1. Step 3: Calculate pro-rate share payment for each Tribal Government based on annual employment averages.
- **Deadline:** Tribes must submit through the Treasury Submission portal by May 24, 2021. Follow-up confirmation of enrollment numbers will be June 7, 2021. If Tribes miss this deadline, they will not be eligible for their distributions, according to Treasury.

#### 2. Eligible Uses for ARPA Funds

Below are eligible uses with respect to responding to COVID-19 and its negative economic impacts. Availability is March 3, 2021 to December 31, 2024.

- **Responding to COVID-19**
  - **Eligible Public Health Uses:** COVID-19 Mitigation & Prevention; Medical Expenses; Behavioral Healthcare; and Public Health and Safety Staff.
  - **Eligible Uses to Address Disparities in Public Health Outcomes:** Funding community healthcare workers; public benefit navigators assisting community members; housing services; remediation of hazards related to lead; and funding to community violence prevention programs.

- **Responding to Negative Economic Impacts**
  - **Eligible Uses for Impacts on Households and Individuals:** Assistance to Unemployed Workers; Deposits into State Unemployment Insurance Trust Funds; Assistance to Households.
  - **Eligible Uses for Impacts on Businesses:** Expenses to improve efficacy of economic relief programs; loans, grants and other assistance to small businesses and non-profits.
  - **Eligible Uses to Address the Exacerbation of Pre-existing Disparities:** Building Stronger Communities through Investment in Housing and Neighborhoods; Addressing Educational Disparities; and Promoting Healthy Childhood Environments.

### 3. Essential Workers

Those performing essential work during the COVID-19 public health emergency are eligible for premium pay when performing such work for the tribal government. Funds can also be used to provide grants to eligible employers that have eligible workers who perform essential work.

- Provide premium pay to essential employees, both directly and through grants to third-party employers.
- Prioritize low and moderate income workers.
- Key sectors: Healthcare; grocery and food services; education; childcare; sanitation; and transit.
- Funds available until September 30, 2023, with annual obligations for each fiscal year 2022 and 2023.
- Additive to a worker's wages.

### 4. Revenue Replacement

Funds may be used to replace revenue declines experienced by tribal governments to the extent that those revenues are utilized for general governmental services, as follows:

- Used to avoid cutbacks in governmental services.
- General Revenue should be generated from its underlying economy that would capture a range of different types of tax and other revenue to support government services.
- Revenue from tribal business enterprises must be included in general revenue.
- **Calculation of loss:** 3-year average vs. 4.1% counterfactual revenue as of December 31, 2020.

### 5. Necessary Investments in Water, Sewer or Broadband Infrastructure

These projects are to be carried out to produce high-quality infrastructure, avert disruptive and costly delays, and promote efficiency. Projects should use strong labor standards, including project labor agreements and community benefit agreements that offer wages at or above the prevailing rate, including local hiring provisions. Treasury will seek information from recipients on their workforce plans and practices related to these projects.

- **Water and Sewer**
  - Describes a broad range of project investments to improve access to clean drinking water and invest in wastewater and storm water infrastructure. Includes infrastructure for building or upgrading facilities and transmissions, distribution and /or storage systems. For water and sewer uses, those projects that are aligned with Environmental Protection Agency project categories for the Clean Water and Drinking Water State Revolving Funds.
- **Broadband**
  - Funds to provide unserved or underserved locations with new or expanded broadband access. Includes households and businesses that do not provide minimally acceptable speeds; projects that deliver reliable services with minimum 100 Mbps download/100 Mbps upload speeds unless impracticable; and the completion of broadband infrastructure through capital projects funds.

## 6. Restrictions

- **Deposits in Pension Funds:** No extraordinary deposits into pension funds are allowed for the purpose of reducing any accrued unfunded liability.
- **Offset Reduction in Net Tax Revenue:** Cannot use the funds to offset any reduction in tax revenue resulting from a change in law, regulation, or administrative interpretation during the covered period.
- **Other Restrictions:** Funds are subject to pre-existing limitations provided in other federal statutes; more specifically, tribes are not permitted to use the funds to offset Federal program shortfalls.

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