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Insights

American Rescue Plan Act Includes Money for State and Local Governments

March 31, 2021

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On March 11, 2021, President Biden signed the American Rescue Plan Act of 2021 (ARPA). The $1.9 trillion stimulus plan, the first major legislative achievement for the President, passed along party lines. In addition to provisions aimed at funding a national vaccination program, COVID-19 testing, tracing, and treatment programs, and making changes to employment regulations, the ARPA provides $350 billion in emergency funding to state and local governments. The funds will be distributed directly by the U.S. Treasury (Treasury) within 60 days of the enactment of the ARPA into law to be used for public safety, education, healthcare, and infrastructure needs.

Background

The ARPA is the most recent piece of federal legislation passed in response to the COVID-19 pandemic, following the March 2020 Coronavirus Aid, Relief, and Economic Security Act (CARES Act) and the December 2020 Consolidated Appropriations Act 2021 (CAP). However, unlike the CARES Act, which provided $150 billion in state and local aid but limited its use to direct pandemic response expenses (and provided no direct aid to small cities and counties), and the CAP, which included no state and local aid, the ARPA will provide $350 billion in payments to U.S. territories, states, and local and tribal governments to be used to address lost revenue and economic damage stemming from the pandemic.

Permissible Uses of Funds

ARPA funds may be used for the following purposes:

- to respond to the COVID-19 pandemic health emergency, or its negative economic impacts, including through assistance to households, small businesses, nonprofits, and impacted industries such as tourism, travel, and hospitality;
- to provide premium pay to essential workers of state or local governments or to provide grants to employers of essential workers (subject to certain limits on total premium pay);
- to provide government services to the extent of any revenue reduction resulting from the COVID-19 pandemic (relative to revenues collected in the most recent full fiscal year prior to the pandemic); or
- to make necessary investments in water, sewer, and broadband infrastructure.

Funds may not be used to make pension payments nor to offset revenue losses resulting from any tax cut, tax delay or tax rebate enacted after March 3, 2021. However, state and local governments may transfer funds to

private nonprofit groups, public benefit corporations involved in passenger or cargo transportation, and special-purpose units of state and local governments.

The Application Process and the Timing of Payment Distributions

The ARPA establishes two fiscal recovery funds and a capital projects fund. The Coronavirus State Fiscal Recovery Fund (State Fund) is a $219.8 billion fund to distribute money to states, the District of Columbia, tribal governments, and U.S. territories. State (and the District of Columbia) and territory applicants seeking a distribution from the State Fund must certify to Treasury that they will use any payment in compliance with the use of fun restrictions described above. Once Treasury receives the certification, it must make payment of the funds to the applicant within 60 days. However, under rules that will be detailed in upcoming guidance, Treasury is authorized to withhold up to one-half of the amount allocated to such applicant for a period of up to twelve months from the date the certification is provided, based on the unemployment rate in the state or territory. A second certification will be required before the withheld funds are released.

The $130.2 billion Coronavirus Local Fiscal Recovery Fund (Local Fund) will be split among “metropolitan cities,” “nonentitlement units of local government” (as each is defined under the Housing and Community Development Act of 1974), and counties. Applicants under the Local Fund will not be required to complete certifications. Instead, these funds will be distributed in two tranches, with 50% delivered by May 11, 2021 and the second tranche to be paid by March 11, 2022. Metropolitan cities and most counties will receive their distributions directly. Otherwise, funds will be sent to states for redistribution to the other municipalities (and counties that are not political subdivisions of a state). States must distribute funds to such recipients within 30 days of receiving a payment from Treasury. States that miss the deadline would have to pay back any undistributed funds. Distributions from the State Fund and the Local Fund may be used only to cover qualifying costs incurred by December 31, 2024.

Finally, in addition to the State Fund and the Local Fund, the ARPA provides $10 billion for the Coronavirus Capital Projects Fund (Capital Projects Fund). The Capital Projects Fund is available to allow states, territories, and tribal governments to carry out critical capital projects that directly enable work, education, and health monitoring in response to the COVID-19 pandemic. Each state will receive at least $100 million. Additional funds will be distributed to the states based on population metrics.

Additional guidance related to eligibility and distribution of funds under the ARPA is anticipated in the next few weeks from Treasury. Check back here for future alerts.

Krieg DeVault is committed to helping state and local governments during these unprecedented times. Look for additional alerts from Krieg DeVault as we review the more than 5,500 pages of the Act and consider its ramifications in the days ahead.

In the meantime, if you have any further questions, comments or concerns about the state and local government funding provisions, or other sections of the ARPA, please feel free to contact **David E. Corbitt**, **Kendall A. Schnurpel** or a member of the firm’s **Public and Municipal Finance** and **Governmental Affairs and Public Advocacy** Practices.

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