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MEMORANDUM

To: White House Office of Intergovernmental Affairs, U.S. Department of the Treasury
From: National Governors Association
Re: State Questions Regarding the Implementation of Funds Included in the American Rescue Plan

Thank you for requesting input on the usage of funds from the American Rescue Plan's Coronavirus State and Local Fiscal Recovery Funds. The National Governors Association (NGA) is submitting a list of questions from 28 states and territories concerning the use of funds.

A full list of additional questions collected from states is included at the end of this memorandum.

We look forward to further consultation and coordination with your offices.

1. What questions do your members have about the permissible uses of the funds?

- Will Treasury create a list of examples of eligible projects across different areas?
- Would replenishing state UI trust funds with State Fiscal Recovery Funds be an allowable use as they are with Coronavirus Relief Fund (CRF) dollars? Further does the restriction on using the State Fiscal Recovery "to directly or indirectly offset reduction in the net tax revenue of such State resulting from a change in law, regulation, or administrative interpretation during the covered period that reduces any tax or delays the imposition of any tax or tax increase", apply to state unemployment insurance taxes on employers? State unemployment insurance taxes are not deposited into State Treasuries but go directly to the state UI Trust Fund and are not able to be used by states for government services.
 - Asked by 6 states
- Will there be a contact that states can confer with before committing funding?
- How will the Treasury define "government service"? Will all work that a government performs be considered "government service"? Will work that the government typically contracts out to service providers be considered "government service"?
- Can funds received from the State Fiscal Recovery Fund be used to set up a revolving fund to assist State and local governments with financing projects related to water, sewer, or broadband infrastructure? Can funds be used to set up a revolving fund for other purposes (e.g. affordable housing, educational access)?
 - Asked by 4 states
- Can you provide examples of eligible use of fund for projects "to make necessary investments in water, sewer, or broadband infrastructure"? How will "water, sewer, or broadband infrastructure" be defined? How will Treasury define whether an investment/project/expense is "necessary"?
 - Asked by 3 states
- For eligible uses paragraph A, which seems intended to be similar to the Coronavirus Relief Funds from the CARES Act, would the Treasury Department provide for states to be able to use funds to assume that health and public safety workers such as state police and corrections officers are "substantially dedicated" and therefore fund their payroll and benefit costs as if they were fully dedicated to COVID-19 response? Or does paragraph B cover these expenses?
- What are the differences between permissible uses of CRF funds and these funds?
 - Asked by 3 states
- What period for incurred eligible costs will be covered by these funds? Can these funds be used for previously authorized but not as yet paid for projects?

- Asked by 2 states
- Do you foresee any requirement for non-entitlement communities who have a population overlap with a township be required to share their portion of funding with the township?
- What guidance does Treasury have to offer regarding multiple levels of government pursuing similar goals, such as economic supports or essential worker pay? Will Treasury's process include any incentive or mechanism for state-local coordination?
- How will "essential work" and "eligible workers" be defined as it relates to providing premium pay under the eligible uses of the American Rescue Plan Act ("Act")?
- Can these funds be used for match for other federal programs that require match (e.g. like drinking water, national guard facilities, Medicaid, FEMA disaster assistance)?
 - As an example, if the state increases Medicaid provider rates to respond to the public health emergency, can the ARP be used as the state match for Medicaid?
- Can these funds be placed in interest-bearing accounts?
- Will use of funds be limited only to revenues collected during the most recent full fiscal year prior to the pandemic, less the revenues for the fiscal years during the pandemic? (i.e., FY19 revenues – FY20/21 revenues = amount to be expended under this category)?
 - What will the calculation be?
- Regarding the "Capital Projects Fund", what is not eligible under "critical capital projects directly enabling work, education, and health monitoring, including remote options, in response to the public health emergency..."?
 - Can funds be used to reimburse for projects already completed or underway?
- Do the limitations provided in 602(c)(1)(C) limit the ability to utilize 602(c)(1)(A)'s language regarding "negative economic impacts" for government spending? e.g., if the State drew down its Rainy Day Fund for expenditures under current fiscal year, but the draw down was more than the revenues lost during the prior fiscal year due to the Pandemic, would refilling it be an appropriate use of a "cost incurred by the State to respond to the negative economic impacts" of the public health emergency?
- How will the purposes of responding to the "negative economic impact" of COVID-19 be defined? It would be helpful and preferable if guidance is at least as flexible as those in the final iteration of CARES Act guidance.
- Does there have to be a direct tie to "responding to or mitigating public health emergency", or will these funds be available for larger economic impact?
- Does the eligibility of responding to negative economic impacts of COVID-19 include funding to displace workers? What about costs incurred as a result of COVID-19 (e.g. burial costs, increased childcare costs...)?
- How is an impacted industry defined? All industries were impacted by COVID-19 in some regard.
- Does guidance promulgated for the Coronavirus Relief Fund of the CARES Act continue in force, and will it have any bearing on guidance for implementation of the American Rescue Plan Act?
- Can States use ARP funds to supplant CRF funding (or vice versa) based on flexibility?
- Are Fund payments to State, territorial, local, and tribal governments subject to the provisions of the Uniform Guidance applicable to grant agreements or are they "other financial assistance" under 2 CFR 200.40?
- How will the revenue reduction language work in practice?
- Please clarify what the benchmark will be utilized for determining revenue losses and what level of stratification the revenue loss test can be applied to. Is it aggregate revenues from all sources or loss from specific revenue sources, i.e. sales tax, fuel tax, etc.?
- Can these funds be used to cover revenue losses incurred due to conforming with the federal government on tax treatment/changes in CARES, CAA21, ARP21, i.e. PPP forgivable loans treatment and UI \$10,200 benefits?
- Can states use the State Fiscal Recovery Fund (SFRF) to directly compensate their general funds for tax expenditures that have increased due to federal stimulus (e.g., EITC and CDCC in ARP, PPP changes in CRRSA)? But for the federal stimulus in response to the pandemic, these expenditures would not have been incurred by the state.
 - Can they use the SFRF for other increased state tax expenditures related to pandemic recovery (e.g., new economic development tax credits enacted before the American Rescue Plan)?
- How will UST calculate "lost revenue" as states dedicate funds for "providing government services"? Are funds used to cover "lost revenue" available for general budget use?

- Is revenue loss accounted for by entity or by revenue item (e.g., would a city use its overall year-over-year revenue loss, or could it use the reduction in parking revenue)?
 - Are the taxes introduced for the first time during the period over which the “lost revenue” is calculated, carved out of the calculation?
- Can State’s use the state allocation to supplement the funding provided to local governments to address COVID-19 revenue loss impacts to services in excess of the federal formula funding?
- Will revenue loss for transportation be included?
- Is a legislative or policy change to reduce a tax that does not reduce net revenue allowed?
- What about Economic Tax Incentive Programs?
- One state is concerned that incentive programs for community and economic development could be considered an indirect offset to a reduction in net tax revenue. This state has requested flexibility on this issue.
- Can the state or local government use any of these funds for pre-development project for critical infrastructure (such as broadband and sewer programs)?
 - What about using the funds for infrastructure projects that are not specifically water, wastewater, or broadband?
- Can funds received from the State Fiscal Recovery Fund be transferred from a State or local government into an existing State Infrastructure Bank to finance eligible projects related to water, sewer, or broadband infrastructure?
- Infrastructure projects are critical to our ability to build resilience for COVID-19 and to respond, in some cases, to its immediate impacts. These projects can be funded in a variety of ways. Do states have to pay for these infrastructure projects directly or can they use State Revolving Funds and Infrastructure Banks?
 - Can funds be used to replace authorized-but-not-issued borrowing proceeds?
 - Can funds be used to pay for debt service on existing state or local water/sewer bonds?
- Can funds be distributed as low-interest loans for infrastructure or economic impact support (and if so, can the State maintain its lending operation with repaid funds after 12/31/2024)? This is in line with the purposes outlined in the Act and would allow states to stretch funds further.
 - Relatedly, how will Program Income be handled that might stem from American Rescue Plan (ARP) funded loans? Will ARP Program Income be subject to the same spending deadlines for the underlying funds?
- Can the state legislature backfill K-12 education funding deficits with state specific funds, or are the funds targeted directly at state education department intended for this purpose? Is it possible to use state specific funds and then replenish with education specific funding as the guidance is developed?
- Can a state or territory use ARP funds to cover deferred costs from the previous year?
- Is there any additional guidance on use of these funds for meeting the maintenance of effort requirements for education?
 - Asked by 2 states
- Are construction costs and capital expenditures related to water systems, sewer systems, and expansion of broadband services allowable uses of the funds? If so, what are the parameters around such expenditures?
- Current language states that funds cannot be used to “directly or indirectly offset a reduction in the net tax revenue...” It attempts to prevent states from using the federal dollars to subsidize state and local tax cuts. Further clarification on the “net tax revenue” would be helpful, specifically related to payments into a State’s Unemployment Trust Fund or attempts to fund a sales tax holiday.
- Is it possible for states receiving large allocations to coordinate with Treasury in advance of the disbursement? Could the payments be made in smaller increments as an ACH transfer (in order to relieve impacts on the Treasury Market in which states invest and on the states’ custodian banks)?
- Please confirm that state reporting on “funds” includes only payments made to the state under the American Rescue Plan Act, not all state funds.
- Please confirm that the state will not be required to coordinate with its smaller cities with respect to the smaller cities’ reporting requirements as a pass-through to “nonentitlement units of local governments.”
- Will Treasury allow “nonentitlement units of local governments” to certify that the total distributed does not exceed 75% of the most recent budget for the city as of January 27, 2020? Will the state be required, instead, to review documentation and provide verification that this requirement has been met?

2. Are there specific examples of desired spending that your members have raised?

- States are specifically interested in information on spending on:
 - Blight cleanup
 - Capital for infrastructure (e.g. roads, bridges, highways, water infrastructure projects co-located or associated with transportation corridors)
 - Capital improvements at higher educational institutions,
 - City landbank loss concerning lot sales cancelled contracts
 - Energy rebates, weatherization and alternative energy upgrade funding to households
 - Existing loans for infrastructure
 - Health care not otherwise specified
 - Job training center training and expansion
 - Loss of revenue from shuttered businesses
 - Medicaid matches
 - Park improvements
 - PFAS
 - Research on environmentally responsible resource development methods
 - Rental/home utility costs (e.g. payments or clearing of arrears for utility, water, Internet, gas, sewer)
 - Retirement buy-outs
 - Rural broadband deployment
 - Significant system upgrades or development of new systems to support state government programs
 - Small business grants
- One territory respondent stated that it “intends to spend a portion of these funds for the construction of a new hospital and public health facility, both of which were negatively impacted by COVID-19.” This territory went on to state that they “desire to use some funds toward hiring personnel to monitor public parks to ensure proper social distancing and other personnel for beautification efforts as we prepare for the reopening of tourism - our largest economic sector.”
- One state would like to be able to utilize these funds for workforce development programs including equipment and infrastructure at career and technical and adult education programs, community colleges, and other training programs, to support getting people back to work and long-term economic recovery.
- Allow economic assistance to Institutions of Higher Education (IHEs), including public IHEs, allowing for broad assistance in addressing direct COVID-related costs as well as replacement of lost tuition and fee revenues and clinical revenues for hospitals that are publicly- or state university-operated.
- Allow economic assistance to quasi-public entities that receive state budget support and which are impacted by the public health emergency, such as those involved with tourism, convention and entertainment venues, and other functions related to the leisure and hospitality sector, as well as those related to the transportation sector.
- Capital for business investment, especially in hard-hit sectors, and funding for innovation, food processing, manufacturing (like forest products/paper industry which has seen job losses related to this recession) is also needed for economic recovery.
- The public health emergency has illustrated the need for improved public health infrastructure. These funds, whether under the State Fiscal Recovery Fund or the Capital Projects Fund, should be used on public health infrastructure that can help the state respond to future pandemic, such as a new public health laboratory.
- May Act funds be transferred to state transportation agencies? Does water infrastructure include dams, harbors, seawalls, break walls, fish hatcheries and production facilities, and pollution control measures such as mitigation measures for agricultural run-off?
- Can State and Local Fiscal Recovery Fund monies be used to cover debt service costs from borrowing due to the Public Health Emergency (PHE)?
 - Could a government use to reduce other debt service costs if those revenues were impacted by the PHE (e.g., tolls, motor vehicle surcharges)?

3. What questions do your members have about the restrictions on the use of funds?

- Does the restriction on pension fund deposits apply to direct payroll contributions derived through regular fringe benefit rates?

- Given that funds cannot be used for pensions, does this also apply to all other retirement compensation?
- Besides the restrictions in the statute (e.g., pension funds), are there other expenditures that will be deemed ineligible, even if a state considers it a response to the Public Health Emergency (PHE)? May we assume that if there is not an explicit prohibition, that states have the discretion to use funds to respond to the PHE as they deem appropriate?
- What formula will be used to determine how far back Act funds can be used to replace lost revenues?
 - For example, are ARP funds only to be used to replace lost revenues between 2021 and 2024? Or could funds be used to replace lost revenues from 2020?
 - What limitations, if any, will be applied in guidance on transfers to “special-purpose units of state or local government?”
 - This question was raised by 4 states
- Within the restriction around using funds to support tax breaks, what about existing business incentive abatement programs? What about business support efforts that could be structured as targeted tax breaks? Will there be a time period for invalid uses?
- For eligible uses paragraph A, which seems intended to be similar to the Coronavirus Relief Funds from the CARES Act, would the Treasury Department provide for states to be able to use funds to assume that health and public safety workers such as state police and corrections officers are “substantially dedicated” and therefore fund their payroll and benefit costs as if they were fully dedicated to COVID-19 response? Or does paragraph B cover these expenses?
- If a state had already passed a tax cut prior to the passage of ARPA, will that count toward the prohibition on the use of funds restriction prohibiting tax cuts?
- Can the funding be used to avoid a tax increase rather than simply delaying it?
- Will administrative and/or indirect costs be considered allowable uses of these funds?
 - If so, will a cap on administrative costs be included in the guidance?
- Will there be limitations on using the funds for individual economic assistance? (i.e. income-based grants, proof of economic hardship due to COVID-19, etc.)
- Will loan programs be considered an allowable use?
- When defining “(C) for the provision of government services to the extent of the reduction in revenue of such State, territory, or Tribal government due to the COVID–19 public health emergency relative to revenues collected in the most recent full fiscal year of the State, territory, or Tribal government prior to the emergency;” we request the following:
 - “relative to” means a comparison in real rather than nominal dollars. Include common language - adjusts the FY2019 revenues for growth that was lost due to the pandemic influenced economic downturn.
 - “relative to” does not include revenue derived from tax increases adopted between FY 2019 and FY 2025, although it does include tax decreases as described in section c.2.A.
 - “revenue of such state. . .” means the state’s General Fund and/or any other fund of the state for which a reduction in revenue due to COVID-19 exists, except that the state may not change law, regulation, or administrative interpretation during the covered period that has the effect of shielding revenue from this comparison.
 - “revenue of such state. . .” shall be determined by the state and can include all own-source revenue, tax revenue, or any combination as determined by the state.
 - “revenue of such state. . .” is measured based on projected revenues (as of a date certain). This will give certainty to allocation plans crafted now rather than leading to uncertainty throughout the next several years.
- If the State reinstates previously laid off State employees with ARP Relief Funds, can funds be used to pay for the State’s portion of the employee’s retirement?
- Must funds be expended by the final user within the timeframe, or can they be deployed to a final user that spends them over a long period of time. i.e., could an endowment be set up for families who have lost frontline workers to COVID-19? Could existing endowments be expanded?
- In the CRF documentation, the standard is (effectively) if the signatory (Governor) believes the funds are being appropriately used under the guidance, they are. Will a similar standard be used?
- When comparing revenues between the most recent full state fiscal year and the current state fiscal year will Treasury take into account investment earnings on state reserve accounts and other amounts

not statutorily "available for appropriation" or will the comparison be limited to only those revenues "available for appropriation" and not the balances of reserve accounts?

- How will Treasury treat any interest earned on the funds?
- Can the state utilize this funding to offset revenue reductions experienced prior to the passage of ARP? For example state FY2019 is the base year referenced, can the state restore reserve balances used to offset the impact of revenue reductions experienced in state FY2020 or is this only available for revenue reductions in the current and future state fiscal years?
- May a state use the payments to reimburse state COVID-19 costs prior to the receipt of the payment? May these reimbursements be made for expenditures made since the beginning of the Public Health Emergency in March 2020?
- Is there a point in time at which the "reduction of revenue" must be calculated?
- What do "costs incurred" or "expenditures" mean for purposes of these funds? Are encumbrances sufficient? Does a good have to be received, project completed, or service provided to be considered an "incurred cost" or "expenditure"? Expenditures for infrastructure, in particular, may require a longer expenditure period.
- Will the restriction on state tax reductions apply to any tax rebates made under long standing constitutional or statutory provisions that automatically (either without an action by the legislature, or with a routine budget action by the legislature) make adjustments to state revenue that predate COVID-19?
- Does an "indirect" tax revenue increase apply to other actions that happen with state laws that govern tax proceeds such as automatic conformity to federal tax changes such as the exemption included in ARPA on the first \$10,200 of unemployment insurance benefits, child tax credits, EITC changes, or paycheck protection program? Is there different treatment of states that automatically conform versus states that must enact federal conformity changes in state law?
- Does this restriction apply only to general purpose tax revenues?

4. What concerns do your members have based on their experience deploying funding from the Coronavirus Relief Fund established by the CARES Act?

- Will the state be responsible for auditing how subrecipients spend any funds distributed to them?
 - This issue was raised by 2 states
- The Treasury Department guidance for the CARES Act changed frequently following its initial release. While we appreciate the willingness of the Department to refine and update its guidance as circumstances evolved, the changes in guidance often came without advanced notice, with little visibility regarding what prompted modifications, and resulted in unintended consequences. We hope that the Department will remain open to adjusting guidance as circumstances warrant, but ask that states be consistently and meaningfully engaged in that process as experts in local implementation.
 - This issue was raised by six states
- Ambiguous and often burdensome reporting requirements, coupled with technological limitations when attempting to upload requested data, were also cited as key concerns. Concerns about the ease and efficiency of entering information into the federal reporting portal
 - This issue was raised by 3 states
- Will Treasury program staff and Treasury OIG staff be issuing separate guidance and FAQs or will there just be a single source of guidance this time?
- For eligible uses paragraph A, which seems intended to be similar to the Coronavirus Relief Funds from the CARES Act, would the Treasury Department provide for states to be able to use funds to assume that health and public safety workers such as state police and corrections officers are "substantially dedicated" and therefore fund their payroll and benefit costs as if they were fully dedicated to COVID-19 response? Or does paragraph B cover these expenses?
- State Allocation of the Coronavirus Local Fiscal Recovery Fund: Will the State's allocation to towns and villages be prescribed by Treasury? If town allocations are prescribed, how are village allocations to be determined?
- Need to understand reporting and monitoring requirements in the first rounds of guidance as this can affect how we structure the accounting for these funds and distribution of funds. It would be helpful to know if as soon as possible if the reporting and monitoring requirements are going to be the same as for the CRF.

- Will this funding be part of the regular Compliance Supplement or are there plans for an ARP "Addendum" again this year? If so, can anything be done about the significantly delayed timing of the CARES Act Addendum?
- The interpretation of allowable costs.
- Timing of reporting. CRF turnaround was too quick (ARRA, too actually). Need time to close the monthly accounts, reconcile, and balance before we report.
- Most states operate on cash basis. The CRF had aspects of accruals. Adds significant complexity to reporting.
 - Retention period of 5 years is unusual; it's usually 3. Why not 3?
- Bandwidth, experience and timing for required federal compliance audits of municipalities
- Based on experience with the distribution of CARES Act funds to locals, we would encourage additional education efforts to local units of government on how the funds can be spent, and making sure they have enough resources to help distribute the funds.
- What set of rules will be applicable to the ARP funds? Part 200 Uniform Requirements? Or just pieces of the Uniform Requirements (similar to CRF)?

5. What concerns or questions do your members have about the timing of distributions?

- When will funds be distributed?
- Can states be given at least 24-hours notice before any amount of funds are deposited?
- The Secretary of the Treasury has the ability to tranche the funding. Will the Secretary exercise this authority, and, if so, what will the process look like?
 - Will all states be split into multiple tranches or will a quantitative metric be used?
 - If a metric, what metric (Unemployment rate, etc.)?
 - Will the states need to request a second tranche, or will it be based on quantitative factors, or both?
 - If there are multiple tranches, what date does "as of such date" refer to? Are we looking at the unemployment rate at the stated time period or at the date of the second tranche?
 - Does the Treasury have the ability to not pay out funds in their discretion from the second tranche or must all moneys be dispersed? What happens to funds that are not dispersed to states? Do they roll back to the Treasury? To other states?
- The Act provides that Treasury cannot distribute the second tranche of funds to local governments until at least 12 months after it provides the first tranche. What is Treasury's plan on the distribution of the second tranche to local governments?
- Will the non-entitlement community allocations distributed to state's come with the rest of the state's allocations or under a separate certificate of acceptance?
- In considering payment methods to non-entitlement communities, will the 30 days to distribute be based on when payments leave the state or the date entities receive payment?
- Will states have the flexibility to hold allocations to non-entitlement communities until a complete set of guidance is issued?
- Will there be separate guidance on treatment of interest earned on the non-entitlement community allocations prior to distribution?
- Nationwide, large direct payments/deposits could be an easy target for cyber criminals or corrupt banking insiders. Seems very risky to have that much cash spread out among thousands of banks nationwide with varying levels of cyber security in place.
- It would seem best to have more distributions in place in order subject to recipients performing reconciliations. A blend of cash up front and then future draws.
- Is there a plan to help States that expend all of their distributions in what they determined to be necessary and appropriate only to discover after the fact that the OIG and external auditors have a different consideration of necessary/appropriate and then disallow/question those expenditures? Most States are not in a financial position to easily repay that debt and Treasury offsets would be damaging to the State's non-CRF programs. Disallowances for the CRF and this program SHOULD NOT be subject to Treasury offsets.
- The passage of the American Rescue Plan Act occurred while the [redacted] State Legislature is in session. As a result, in our state, deployment of funds allocated could require significantly greater input from the Legislature compared to deployment of funds provided by the CARES Act. It is vital that the Treasury Department – and other departments – provide reliable guidance about how the American Rescue Plan Act funds can be accessed by states, and what they can be used for as early as possible,

and well before the regular session of our Legislature is required to adjourn on April 23, 2021. The sooner we can request Act funds and understand their potential uses, the more effectively our state can deliver aid to workers, families, and communities that need it.

6. Do you have suggestions as to how you would like to receive information about the funds?

- Utilization of the National Governors Association for persistent communication with Governors' Washington, D.C. representatives and, should it be appropriate, Governors-only forums.
- Advanced notice of when information and guidance will be announced is critical, as is a firm point of contact for who will be delivering this information and how they intend to do so.
- Public notice and direct communication with the Governor's office is desired.
- If iterative sources of guidance, keeping each source document or notating changes with prior and current language in documents would be helpful.
- To the extent possible, a contact at Treasury that could answer questions along the way and/or provide examples of approved programs in other states.
- Treasury should send regular emails with updates to any guidance documents or other pertinent information on the use of the funds. Treasury should also host periodic office hours or workshops to receive feedback and take questions for recipients.

7. What information do your members need in order to spend the resources most effectively?

- Solid and clear guidance over what are allowable costs.
 - States and territories have signaled they prefer guidance that provides the greatest flexibility to the state to spend the funds as the Governor best sees fit.
- How will any discretionary funds not expended and returned by a state be disposed? Will it reduce the deficit or be spread to other states?
- Since capital projects are new to this funding, will any additional provisions normally associated with these types of projects (Davis Bacon, NEPA, etc....) apply?
- Will funds be constrained by the same Single Audit rules as the CRF funds?
- Treasury should define simple, clear reporting and recordkeeping requirements before states begin spending money. Treasury should require no more than the current reporting and recordkeeping requirements for the CRF, and should look for ways to reduce them. States have developed systems for reporting on these funds and requiring entirely new requirements will be unnecessarily burdensome.
- Treasury management should consult with states and localities about the implementation of CRF reporting so that it can understand and learn from that process. A technical working session would be helpful so that Treasury does not repeat mistakes or unnecessarily create additional burdens.
- Treasury should clearly spell out, at the outset, which provisions of the Uniform Guidance apply to these funds. Relatedly, Treasury should confirm, clarify, and expand on the principle established in the CRF Guidance that organizations that receive payments to cover the negative economic impacts of COVID-19 are beneficiaries, not subrecipients, for purposes of the Uniform Guidance.
- Treasury should clarify the role of Treasury OIG in the administration of these new funds.
- The Act seems to allow jurisdictions with a population of over 50,000 but who do not receive direct Community Development Block Grant (CDBG) funding to choose whether they will apply for their ARP allocation through the state or Treasury. Is this a correct understanding or is there specific guidance on where these cities should apply for funding?
 - How will guidance address jurisdictions with a population of less than 50,000?
- What is required as a part of a recipient's certificate of need application to the Treasury?
 - What is needed as part of a recipient's certificate of need application if they elect to receive funds through a state?
- Treasury should calculate (and explain data source) for pass through amounts to local governments for reallocated "county" funds in those states that do not have county government.
- Is the State a pass-through for the local & county portions? What level of monitoring and review will the primary recipient have for pass through recipients?
 - Who will be responsible for allowable expenditures?
 - Who will be responsible for questioned costs?
 - Who will be responsible for auditing at the local and county level?

- Designated points of contact for questions, regularly scheduled calls, and clear timetables for when information will be released on guidance is needed.
 - In 2020, Treasury staff from relevant departments would make themselves available occasionally for calls with Governors' offices and other stakeholders to address questions about guidance that were both broad and granular in nature. We think this channel should be replicated and expanded. We also urge the Department to quickly establish an intergovernmental affairs (IGA) contact to handle regular communications with non-Congressional partners in a timely manner.
- Get guidance out quickly, but accurately. Changing guidance after announcing makes for complicated compliance.
- Simplified reporting requirements will help our local agencies direct their time and efforts to carry out the established programs. Some states and territories have expressed that the current reporting requirements are complex and take up much time from our local agencies.
- A liaison with knowledge of territorial allocation formulas and finances would especially be helpful due to the fact that the American Rescue Plan Act sets different formulas for calculating the allocation of funds for the territories in several categories and programs.
- Clarify final authority of guidance – US Treasury, Treasury OIG, IRS.
- Provide clear answers to questions from states, not restatements of the guidance, especially when it comes to questions of eligibility.
- Offer training over how to interpret the guidance in the area of allowability.
- It would be helpful to have available trainings posted to the UST website (or a specific website dedicated to this funding) over how to best support/justify an expenditure at the Subrecipient level.

9. What other aspects of the program or statute will your members most need additional clarity around?

- Exact amounts for the allocation of funds for the territories should be provided due to varying interpretations of how the amounts are derived or calculated.
- State roles and responsibilities, if any, when it comes to the sub allocations to non-entitlement communities (reporting, oversight, etc...)?
- How the Department intends to implement its certification, reporting, and oversight responsibilities. These are likely to be significantly more complicated compared to the CARES Act given the ambiguity around eligible uses and the many levels of government positioned to receive funds directly or indirectly.
- Will these funds be subject to the same or different reporting requirements as the Coronavirus Relief funds?
- Will States be responsible for compliance and reporting associated with Local Recovery Funds? Is State considered prime? Or will we be passthrough for convenience? This is a big deal for tracking, reporting, management, auditing, monitoring, etc. This would be a significant undertaking for an already overtasked entity. We would need additional people resources and probably a completely different reporting mechanism to maintain oversight and monitoring.
- Clarity over responsibility of debt when a subrecipient receives a finding regarding a disallowed or questioned cost. Any disallowances from CRF and this funding should not be subject to Treasury offsets.
- Guidance around uses for admin expenses, including Statewide Cost Allocation Plans
- Will these funds be issued under the same CFDA as the Coronavirus Relief Funds?
- Information about collateralization and investment of the funds between the time received and the time expended. Our state pools all funds, regardless of restraints, for banking simplicity. Any information about what can and cannot be done with funds, interest off funds, etc. would be useful (and needed in advance of the funding)
- Regarding other aspects of the statute, it is vital that federal departments and agencies proceed with all possible speed to provide guidance for elements of the American Rescue Plan Act. In 2020, the time necessary for release of implementation guidance varied widely from agency to agency, creating significant inconsistencies. We recognize every department is different and appreciate the challenge involved in implementing such a large statute, and simply ask that departments work as expeditiously as possible.
- Clear guidance on how Treasury will determine conformance with “for the provision of government services to the extent of the reduction in revenue of such State, territory, or Tribal government due to

the COVID-19 public health emergency relative to revenues collected in the most recent full fiscal year...prior to the emergency.”

- For example, if a state government can show a loss due to COVID-19 to their general fund of \$500 million, does this provision mean that this funding can be used to cover any government services up to that \$500 million level?
- How will funds be treated in regards to the IRS regulations on working capital financings (is there any chance that SFRS \$ would be included in the “available amounts” calculation?) or, because these funds are restricted in how they can be used, they are not considered “available amounts”?
- Ability to define revenue loss relative to pre-COVID forecast (or a standard growth rate if not available) for the period March 2020 through Dec 2024. We would not recommend a simple inflationary adjustment as that does not capture the economic growth that was anticipated.
- Maximum flexibility in defining "Respond to the public health emergency with respect to the Coronavirus Disease (COVID-19), or its negative economic impacts..."
- Maximum flexibility in excluding revenue increases from the restriction on directly or indirectly offsetting a tax reduction
- For eligible uses paragraph (C)—which establishes a Jan. 31, 2020, start date for revenue loss—coupled with the available funding through Dec. 31, 2024, mean that the eligible ‘reduction in revenue’ for a state is not limited to the difference between a state’s FY2020 and FY2019 revenues? Rather, are we correct to assume any state’s revenue losses since Jan. 31, 2020, (as compared to FY2019) are eligible?
- Revenue Loss Calculation Period: Does ARPA defines revenue loss based on most recent full fiscal year prior to the emergency? If so, this definition represents a consistent base period of time for 46 of the 50 states which use the July 1 – June 30 fiscal year. However, for the other 4 states, which use a different fiscal year, the calculation distorts the revenue loss experienced by that state relative to the other 46 states. For places where the State fiscal year ended March 31, this interpretation would entirely miss the impact of the 3 months of shutdown and the Federal tax filing delay (April, May, June) – which the other 46 states would all receive the maximum benefit of. If the letter of the statute is followed (12-month period ended March 31, 2019 compared to 12-month period ended March 31, 2020), then paragraph C revenue loss provision would provide no relief to the State.

NGA is also including the following direct responses and questions from states and territories:

State Respondent:

How broadly or narrowly the Administration responds to these questions will determine how broad or narrow these funds can be used. In terms of priorities, the first 2 questions are probably the most important in the near term.

1) Subparagraph (A) states as allowable "to respond to the public health emergency with respect to COVID 19 or its negative economic impacts, including assistance to households, small businesses, and nonprofits" Note that the language says "including" and not "limited to". Since infrastructure projects (construction, renovation, and rehabilitation) will create badly needed jobs both immediately (e.g., the building trades) and later in the form of whatever future economic activity might occur due to such infrastructure investment, would any such infrastructure project or investment that creates jobs qualify as responding to the negative economic impacts of the public health emergency?

2) Subparagraph (C) limits expenditures for regular "government services to the reduction in revenue of such State . . . due to the COVID-19 public health emergency relative to revenues collected in the most recent full fiscal year of the State . . . government prior to the emergency." The question is "Will Treasury guidance look to individual revenue categories or aggregate total revenue?" For example, our personal income tax is down \$175 million due to the pandemic, our corporate income tax is down \$68 million and our casino revenues down \$45 million, etc. But there are other sources of State revenue that have increased such as our corporate franchise tax or realty transfer tax revenues where the cause of the increase may not be specifically pandemic related. Bottom line is that aggregate revenues are higher today than in FY19 -- barely. Many states and local governments are in similar positions. Certainly every state or local government has some specific revenues that are down from fiscal year 2019, but many are net positive especially given how much economic growth had occurred in the first 8 months of fiscal year 2020 prior to the pandemic. To address this issue, it would be best if Treasury took the approach of limiting expenditures for regular government services to the reduction

in any single source of revenue of such State relative to the most recent fiscal year. However, should Treasury choose to define a reduction of revenue based on aggregate revenues of all types, they may want to think about differentiating between General Fund revenues and what we call Special Fund or enterprise revenues --i.e., revenues dedicated to a specific purpose under State or local ordinances that existed prior to the pandemic. This would cover things like our motor fuel tax dedicated to transportation, park entrance and camping fees dedicated to State Parks, licensing and permitting fees dedicated to running specific licensing agency operations, parking fees that cover the costs of a parking authority, electric and water utility fees that are pledged to the utility enterprise fund of a municipal government, etc. This approach would at least help any enterprise funded agencies and not penalize them for the possibility that some other revenue stream at a sister agency may have increased.

3) "Necessary investments in Water or Sewer infrastructure" should be defined as broadly as possible to include investments that promote clean water and resiliency from climate change impacts impacting tidal and other waterways and water sources. This would allow for investments beyond conventional pipes, wells and treatment plants to also allow for investments to cleanup waterways and brownfields that impact water resources, investments to prevent floodwaters and manage runoff, investments in open space and wetlands management, and other investments in waterway management (e.g., dredging).

4) For the Coronavirus Capital Projects Fund, does Treasury plan to fund this grant to each State with a simple certification that it will be used for its intended purposes similar to the certification required for the other funds?

5) How does the restriction language work regarding changes in taxes (rebates, credits, deductions, rate reductions)? It's clear that this language is intended to prevent any sort of direct use of the federal funds for tax reductions. However, if a state or local government decides to lower a tax or fee using its own source revenue, will that be deemed as an "indirect offset" ? Or will it only be deemed that way to the extent that a government plans to use the money "for the provision of government services to the extent of the reduction in revenue" relative to prior years. In other words, would the other 3 allowable uses for the fund (pandemic response, premium pay and infrastructure) be OK? Otherwise, the language would effectively seem to bar (or at least neuter) any reductions in tax until these federal funds are expended.

As with the CARES Act, it would be very helpful to know how Treasury is defining money "spent" regarding both the trigger for the second tranche as well as the final deadline.

Our preference would be that "spent" include funding committed to specific projects, as opposed to money actually transferred from a state account. Some of the eligible projects, like water, broadband, and community development, have long lead times and it would be helpful to be able to start projects a year or two from now knowing that we'll be able to keep the money in place when the project is completed.

State Respondent:

How will a state's unemployment rate be used to determine whether to withhold a portion of its CSFRF allocation? Are there going to be thresholds (for example, quartile ranking of states by unemployment rates) whereby a certain percentage of a state's CSFRF allocation is withheld?

CSFRF Use Category "A":

- CSFRF use category "A" is analogous in concept to the CRF under the CARES Act. As such, can states proceed with budget planning under the presumption that allowable CRF uses will be allowed under CSFRF use category "A"?
 - Repayment of UI advances from US Dept of Labor?
 - Payment of interest on UI advances?
 - Presumption of payroll costs for public health and public safety employees
- Will a time-period definition be imposed/established to determine how long the COVID-19 public health emergency lasts, such as duration of a state's emergency declaration? Or can states presume that it will be okay to use CSFRF monies under this use category until December 31, 2024.

- Would CSFRF use category “C” apply to actual revenue reductions in FY2020 and projected revenue reductions in FY2021, FY2022 and FY2023?
- Can a state utilize projected revenues at the time of budget passage to determine a “reduction in revenues”? If not, what is the appropriate point in time reference to make this determination? If the answer is actual revenues, then CSFRF use category “C” would be of limited assistance in FY2022 and FY2023 in terms of budget planning.
- Sec. 602(c)(1)(C) makes reference to “reduction in revenues of such State”. Is this reference to total general fund revenues or can it be interpreted to be general fund tax revenues only? Our state had a reduction in general fund tax revenues in FY2020 and projects a reduction in general fund tax revenues in FY2021 but total general fund revenues were greater in FY2020 and projected to be greater in FY2021 because of extraordinary non-tax revenue actions -- transfer of rainy day funds and excess special funds to the general fund; fund-type swaps; and a working capital borrowing.
- Do the CSFRF use category “C” monies need to be spent “for provision of government services”, or can these monies be transferred directly to the state’s general fund in the amount of qualifying revenue reductions?
 - If the monies need to be spent for provision of government services, then essentially the monies cannot be used to make up revenue reductions in FY2020.
 - Further, if the time reference to make a revenue reduction determination is actual revenues and the monies need to be spent, then states are in a Catch-22 situation with respect to CSFRF use category “C”.
- Can CSFRF use category “C” monies be used to eliminate a planned cost reduction action, such as statewide furloughs or reductions-in-force, in light of the answer to the preceding question?

CSFRF Tax Reduction Restrictions:

- Does the Sec. 602(c)(2)(A) restriction on tax reductions apply only to general fund taxes, or does it apply to non-general fund tax reductions as well?
- Would the repayment of UI advances from US Dept of Labor or any adjustments to a state’s UI laws that results in lower private employer UI contributions be considered a tax reduction under Sec. 602(c)(2)(A)?

ESSER Maintenance of Effort:

- Is it correct to assume that the terms “state support” and “State’s overall spending” refers to the state’s general fund?
- The denominator for computing the education spending proportions is based on executive budget general fund spending, or total general fund spending for the state?
- What is the definition of “spending” with respect to FY2017, FY2018 and FY2019? Would general fund appropriations for those years suffice? Or are actual general fund dollar expenditures made during the fiscal year required? Actual expenditures in our state include expenditures from current year appropriations as well as expenditures from prior year encumbrances, and expenditures from carryover appropriations of up to 5% of the previous year’s appropriations for our Department of Education.
- What is the definition of “support for” education with respect to FY2022 and FY2023? Is it general fund appropriations for those years? And the same would apply to overall spending?
- MOE compliance would be tested at what points in time? When the FY2022 and FY2023 appropriations are first made? When supplemental appropriations are made for FY2023? A post audit after the fiscal year is completed?

- Can “corrective” appropriations be made to bring the state into compliance if it is found to not be in compliance?
- What is the penalty for not being in compliance with the MOE requirement? Will there be a recoupment?
- Who is authorized to request a waiver from the MOE requirement? The Governor? The State Superintendent of Education?
- Are there going to be reporting requirements? Who is responsible for the reporting? The Governor? The State Superintendent of Education? Is the officer responsible for reporting also responsible for certifying compliance (if there is going to be a compliance certification)?

State Respondent:
Section 602

1. For purposes of section 602(b)(6)(A)(ii)(I):
 - a. Under what circumstances will the Secretary withhold a part of a state’s remainder allocation?
 - b. If part of the allocation is withheld, how will the split allocations be calculated? Will the allocation be split into two equal payments or will there be a different split?
 - c. Does this section allow the Secretary to withhold or split payment of a portion of a state’s base allocation provided in section 602(b)(3)(B)(i) or does it only apply to the remainder allocation under section 602(b)(3)(B)(iii)?
 - d. Does this section allow the Secretary to withhold part of the minimum allocation provided under section 602(b)(3)(C)(ii)(I)?
2. For purposes of section 602(b)(6)(A)(ii)(II):
 - a. Does the Treasury interpret this section to authorize the Secretary to withhold a portion of a state’s remainder allocation indefinitely if the state submits a second certification and any other information required? If so, under what circumstances?
3. For purposes of section 602(c)(1)(A):
 - a. What constitutes a “negative economic impact” of COVID-19?
4. For purposes of section 602(c)(1)(C):
 - a. How will a “reduction in revenue” be calculated?
 - b. What is the time period for the comparison?
 - c. Which types of revenues are included in the calculation?
5. For purposes of Does section 602(c)(1)(D):
 - a. What is the difference between “necessary” and unnecessary investments?
 - b. What are the definitions of “water...infrastructure”, “sewer...infrastructure”, and “broadband infrastructure”?
 - c. Other than being necessary and a permissible type of infrastructure project, are there any other limitations on the types of investments that can be made?
6. For purposes of Does section 602(c)(2)(A):
 - a. What does it mean to “indirectly offset” a revenue or tax reduction?
 - b. Does section 602(c)(2)(A) prohibit a state from adopting any tax reduction during the applicable period?
 - c. Is a state subject to section 602(c)(2)(A) for the entirety of the “covered period” or only until December 31, 2024?
 - d. Does section 602(c)(2)(A) prohibit a state from implementing a scheduled corporate tax rate reduction that was enacted into law in 2011?
 - e. Does section 602(c)(2)(A) prohibit a state from paying an automatic taxpayer refund to taxpayers that is mandated by state law and was enacted in 2011?

3/26/21 SFH Attachment 1
f. May a state use funds to cover state revenue losses due solely to federal tax reductions (e.g., PPP nontaxability, PPP business expenses deductions, NOL changes, etc.)?

7. For purposes of section 602(c)(2)(B):

a. May a state deposit state reserve funds in a pension fund if those reserve funds would have otherwise been used to provide government services (because of a revenue shortfall). This assumes the reserve funds will no longer be needed to cover the shortfall in revenue because the shortfall will be covered by Coronavirus State Fiscal Recovery funds provided by section 602.

8. For purposes of section 602(d)(1):

a. Who is considered an “authorized officer” of a state?

b. What does the term “requires” mean with respect to the certification by a state that it “requires the payment...to carry out the activities specified in subsection (c)”?

Section 603

1. What is the relationship between the State and the nonentitlement locals under section 603(b)(2):

a. Are the locals subrecipients of the State?

b. Does 2 CFR 200 apply to these distributions?

c. Our reading is that the State is merely a pass-through entity and does not have any further obligations after passing the funds onto the locals, is this correct? Is this consistent with 2 CFR 200?

d. 603(d) requires that nonentitlement locals provide reporting to the Secretary (along with metropolitan cities and counties). This provision does not mention the State having any role in reporting from locals, is that correct?

e. 603(e) provides that nonentitlement locals (along with metropolitan cities and counties) will have to repay the Secretary for any misused funds. This provision does not mention the State having any role in repayments from locals, is that correct?

f. If the State does have ongoing responsibilities with respect to the nonentitlement locals, what are they?

2. Distributions to the nonentitlement locals under section 603(b)(2)(C):

a. 602(d)(1) requires the State to sign a certification before receiving funds, but there does not appear to be a similar certification requirement for locals. Is this correct?

b. Does the State need to advise the locals of the permissible uses of the funds before they can be disbursed?

c. Can the State condition payment to the nonentitlement locals on the signing of a certification or impose other conditions?

d. Can the State, through legislation or other means, limit the use of funds received by locals?

e. Can the State provide incentives to locals to use the funds received in a particular manner?

3. Distribution calculation under 603(b)(2)(C)(i):

a. This provision requires: “IN GENERAL.—Not later than 30 days after a State receives a payment under subparagraph (B), the State shall distribute to each nonentitlement unit of local government in the State ...” Is there a list of the nonentitlement units of local government within the State that need to get distributions?

b. Section 603(g)(5) defines “NONENTITLEMENT UNIT OF LOCAL GOVERNMENT.—The term ‘nonentitlement unit of local government’ means a ‘city’, as that term is defined in section 102(a)(5) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(5))), that is not a metropolitan city.”

i. 42 USC 5302(a)(5) provides: “The term “city” means (A) any unit of general local government which is classified as a municipality by the United States Bureau of the Census or (B) any other unit of general local government which is a town or township and which, in the determination of the Secretary, (i)

possesses powers and performs functions comparable to these associated with municipalities, (ii) is closely settled, and (iii) contains within its boundaries no incorporated places as defined by the United States Bureau of the Census which have not entered into cooperation agreements with such town or township to undertake or to assist in the undertaking of essential community development and housing assistance activities.”

- c. Will the State receive a list of local governments that the Secretary directly disburses funds to and the amounts prior to the State having to make its distributions under section 603(b)(2)(C)(i)?
 - d. The State is required to make distributions to local units in “an amount that bears the same proportion to the amount of such payment as the population of the nonentitlement unit of local government bears to the total population of all the nonentitlement units of local government in the State, subject to clause (iii).” How does the State determine the total population of all the nonentitlement units? In particular, how does the State determine the population of overlapping local units, such as a township within a town or county?
 - e. Section 603(b)(4) provides: ““(4) CONSOLIDATED GOVERNMENTS.—A unit of general local government that has formed a consolidated government, or that is geographically contained (in full or in part) within the boundaries of another unit of general local government may receive a distribution under each of paragraphs (1), (2), and (3), as applicable, based on the respective formulas specified in such paragraphs.”
 - i. Does this mean a State may need to distribute to local units within a metropolitan city?
 - ii. Can there be multiple levels of subunits within nonentitlement units under subparagraph (2)?
 - f. If a distribution to a nonentitlement entity is capped by clause (iii), what does the State do with the amount of funds over the cap? Can the State distribute those extra funds to the other local nonentitlement entities or do they have to be returned to the Secretary?
4. Under section 603(b)(5), pro rata adjustment:
- a. Under what circumstances will the Secretary withhold a part of distribution to nonentitlement local units via the State?
 - b. If part of the allocation is withheld, how will the split allocations be calculated? Will the allocation be split into two equal payments or will there be a different split?
 - c. How should a State handle distributions to local units if there is a pro rata share withheld?
5. There is not a prohibition similar to section 602(c)(2)(A) in section 603, does this mean that locals can use funds to directly or indirectly offset a revenue or tax reduction?

State Respondent:

Questions on the State Fiscal Recovery Fund are centered around how US Treasury will define “to the extent of the reduction in revenue of such State...relative to revenues collected in the most recent fiscal year of the State prior to the emergency..”:

- States typically separate their tax revenues into the General Fund and a Transportation Fund. Some states also have a separate Education Fund. Will US Treasury allow states to implement this provision on a “by fund” basis, or will US Treasury require they combine the funds to determine the amount of reduction?
- The “revenues collected in the most recent fiscal year of the State prior to the emergency” will be fiscal year 2018-19. Will US Treasury allow states to measure each subsequent fiscal year’s revenues to the fiscal year 2018-19 comparison year?

Question on the use of funds to respond to the public health emergency:

- States want to be able to use funds for public safety and public health personnel expenditures, as they did with the Coronavirus Relief Fund.

State Respondent:**Treasury -- Subtitle M, Section 9901 - Coronavirus State and Local Fiscal Recovery Funds**

1. Are there any limitations at all on the use of revenue replacement funds once the amount of the shortfall has been certified?
2. Are water infrastructure investment projects limited to community water systems?
3. Are water diversion projects which are part of a state Master Plan allowable as a water infrastructure investment project?
4. Are investments for broadband purposes limited to infrastructure?
5. How robust will the federal reporting requirements be once the state starts spending ARP funds?
6. What level of detail is required for certification of funds by the U.S. Treasury?
7. What specifically is required of the states in distributing funds to non-entitlement units of local government?
8. Do states have any responsibility for funds passed through to non-entitlement unit of local government?
9. Does the capital projects fund extend to transportation infrastructure?
10. Is rolling conformity with the Internal Revenue Code considered a net tax reduction for purposes of the Act or would such revenue loss be attributable to an act of Congress? For example, the EIDL grants are excluded from gross income under the Act and state revenue agency issues guidance confirming grants are excluded from gross income for state tax purposes resulting in a reduction in state income tax. Would there be a prohibition to using ARP funds to replace the income tax reduction?

State Respondent:**CSFRF***Eligible Uses: Revenue Replacement*

- Describe the computation for revenue replacement. Does this computation include or exclude certain categories of revenue (Total tax revenue? Tax revenue categories? Non-tax revenue? Non-tax revenue types?)
 - Related: Does “the reduction in revenue of such State, territory, or Tribal government due to the COVID-19 public health emergency” refer to particular streams of revenue impacted by COVID (such as meals tax), or the aggregate of revenue streams impacted by COVID (but excluding taxes that were largely unaffected, such as capital gains), or the aggregate of all revenue collected?

Eligible Uses: Response to the Public Health Emergency Caused by COVID-19

- Are increased Medicaid costs, including higher caseloads, allowable as a response to the public health emergency or its negative economic consequences?

Eligible Uses: Water, Sewer, and Broadband Infrastructure

- In terms of the “water, sewer, and broadband infrastructure” eligible use, can these CSFRF funds be used to seed pooled revolving loan funds to fund subsidized loans to local units of government?

Eligible Uses: Premium Pay

- Should states expect guidance on to classify workers as essential for the purposes of premium pay or will this be entirely left up to the discretion of Governors?
- Will essential workers need to track their time specifically spent on COVID mitigation to qualify for premium pay?

Prohibition on Tax Reductions

- Can a state that indexes its Earned Income Tax Credit (EITC) to the federal EITC use CSFRF to offset the additional costs caused by the expansion of the federal EITC in ARPA?
- Can a state fund tax credits, for example for employer-run training programs or enhanced employee benefits, as an efficient means of allocating CSFRF federal funds without running afoul of the prohibition on use of funds for tax cuts?
- What is considered indirectly funding a tax cut with CSFRF funds? What revenue benchmark will be considered in determining that a state cut taxes?

- It appears that municipalities are not prohibited from reducing taxes under this legislation. If a state transfers funds to a municipality and they in turn reduce fees or taxes, is the state liable for that reduction in revenue?

Compliance Issues

- Will states be subject to the same provisions of the CFR that governed the Coronavirus Relief Fund (i.e. subrecipient monitoring)?
- Should states expect to receive specific guidance on which beneficiaries qualify as subrecipients and clarity on how to define relationships between transferees of these funds as they did under the CARES Act?
- What are the documentation requirements sufficient to demonstrate that aid to households, small businesses, nonprofits, or impacted industries such as tourism, travel, and hospitality are in response to the public health emergency?

CLFRF

Distribution of Funds to Nonentitlement Communities

- What restrictions will be placed on funds transferred from a county or nonentitlement unit of local government to a state? May the state treat the funds as though they were part of the initial CSFRF allocation?
- If a county or nonentitlement unit of local government transfers their allocation to a state, does the state become a subrecipient of that entity? What are the reporting requirements in that scenario?
- What are a state's responsibilities in distributing the CLFRF to nonentitlement units of local government? Must or should a state confirm understanding of eligible uses before disbursement or should the funding be distributed immediately according to formula? As the disbursing entity, what is the state's responsibility and liability in this process?
- What is the recommended procedure for coordinating water, sewer, and broadband projects? These are often coordinated at a state or regional level. May a state charge a county or nonentitlement unit of local government from their CLFRF allotment for projects that cross municipal or county lines? Put a different way, may a county or nonentitlement unit of local government deposit funds from the CLFRF in a state or regional fund to address water, sewer, and broadband projects?

Eligible Uses: Revenue Replacement

- How does the revenue replacement provision apply to local property taxes? More specifically, as property taxes in are split into [redacted] two "buckets" (the traditional 2.5% levy growth allowed and exempt "new growth") there may be municipalities that lost out on potential "new growth" revenue as a result of COVID-19 – does the revenue replacement provision of ARPA provide flexibility to allow replacement of anticipated revenue that was lost?
- Can specific streams of revenue (e.g. excise tax) be viewed in silos when calculating lost revenue? Or do all revenue streams for a municipality have to be examined in the aggregate when counting lost revenue (this is essentially a rewording of the same question listed above under CSFRF, but for the local side of the funding)?

Eligible Uses: Sewer, Water, and Broadband Infrastructure

- In terms of the "water, sewer, and broadband infrastructure" eligible use, are units of government allowed to fund ongoing maintenance efforts for these infrastructure types?

Compliance Issues

- What are the subrecipient management and monitoring responsibilities expected of the state, if any? In particular, what are the subrecipient management, monitoring, and reporting responsibilities expected of the state for units of local government that receive CLFRF through the state? Alternatively, if the state chooses to institute a monitoring and reporting framework of local CLFRF recipients, is that prohibited by federal law or guidance?
- Understanding that guidance is pending, does Treasury know yet whether local units of government will be required to submit reports via the same Grants Solutions system that states are required to use for the Coronavirus Relief Fund?

- Is use of the funding for direct payments to small businesses, seniors, and other adversely affected local taxpayers considered an ineligible tax cut, and therefore ineligible use?

OTHER- OUTSIDE CSFRF/ CLFRF – but relevant to state efforts

- Looking at section 9641 of ARPA, which establishes a credit against applicable employment taxes for employers who pay sick leave and offer job protection for COVID- related reasons, what does it mean for an employer to fail “to comply with any requirement of such Act (determined without regard to section 5109 thereof) with respect to paid sick time (as defined in section 5110 of such Act)”? Does that mean that in order to claim the credit, an employer must offer 10 days leave for qualifying reasons (prorated for part-time employees), at regular wages up to \$511 per day (or 2/3rds/\$200 per day for family leave) in order to qualify for the credit? Could an employer offer full time employees only 5 days’ leave with a maximum value of \$850, for example, and still claim the credit, provided they were otherwise compliant with provisions of EPSL?

State Respondent:

Coronavirus Capital Projects Fund Questions?

- For the Coronavirus Capital Projects Fund established in American Rescue Plan, can you please provide more information and examples about what projects would constitute “critical capital projects directly enabling work, education, and health monitoring, including remote options, in response to the public health emergency with respect to the Coronavirus Disease (COVID–19)”?
- Will State governments need to apply for grants directly to receive funding from the Coronavirus Capital Projects Fund? If so, what will that application process entail?
- Will a list of projects need to be provided in order for a State government to receive funding from the Coronavirus Capital Projects Fund?
- Can funds received from the Coronavirus Capital Projects Fund be transferred from a State government into an existing State Infrastructure Bank to finance eligible projects related to work, education, and health monitoring, including remote options, in response to the public health emergency with respect to the Coronavirus Disease (COVID–19)?
- Can funds received from the Coronavirus Capital Projects Fund be used to set up a revolving fund to assist State and local governments with financing projects related to work, education, and health monitoring, including remote options, in response to the public health emergency with respect to the Coronavirus Disease (COVID–19)?
- When do funds received from the Coronavirus Capital Projects Fund need to be expended and/or allocated by?

State Respondent:

- What are the infrastructure funding restrictions? Do we have to pay for projects directly or can we use State Revolving Funds and Infrastructure Banks?
- Can funds be used to replace authorized-but-not-issued borrowing (e.g., Portal Bridge)? What about planned but not issued borrowing (e.g., TTF, SDA)?
- Is stormwater included in the definition of water or sewer? How about “resiliency” related projects?
- Can funds be used to pay for debt service on existing water/sewer bonds at the state or local level?
- How will UST calculate “lost revenue” as we dedicate funds for “providing government services”? Are funds used to cover “lost revenue” available for general budget use or are those also dedicated in some capacity for emergency expenditures?
- Can State and Local Fiscal Recovery Fund \$ be used to cover debt service costs from emergency borrowing due to the Public Health Emergency (PHE)? Could a government use funds to reduce other debt service costs if those revenues were impacted by the PHE?
- Will substantially dedicated government payroll expenses be included in “covering costs related to the responding to the PHE”?
- Can we use funds to support USDE CRSSA MOE compliance?
- How will funds be treated in regards to the IRS regulations on working capital financings (is there any chance that SFRS \$ would be included in the “available amounts” calculation?)?

State Respondent

3/26/21 SFN Attachment 1
One state would like to use their state allocation to pay off federal unemployment insurance loans they have had to take out to continue paying out benefits, and want to advocate for that to be explicitly permitted in the guidance. Additionally, it would be helpful if states were allowed to utilize some of the funding to replenish the fund itself in addition to paying off the loans.

State Respondent

Receipt of funds:

- Certification of need for funds: statute language says that the Treasury shall provide to states no less than the minimum amount set in the law. However, it also says that the certifying official will certify that the State requires the funds in order to carry out the activities specified in the section. What constitutes “requires”? That is, will there be any qualifications for States that have not experienced a reduction in revenue and that have unreserved fund balances?
 - o What is the expected timing of this certification process?

Use of funds:

- Clarification on the restriction on the use of funds for pensions (“No State or territory may use funds made available under this section for deposit into any pension fund”): if these funds are used by a state or local to support payroll expenses, which would include retirement benefits, would that be considered a “deposit” into a pension fund? Or, a related question: the language says that these funds can be used for premium pay, but may states and locals use these funds to support general payroll for health and safety workers as CRF was allowed to support?
- If a State as a whole did not lose revenue, but some state-supported entities did (i.e. zoos, museums) can these funds be used to replace that lost revenue? Is this allowable even if the State has unreserved general funds that could be used to support those entities?
- Will the definition of “infrastructure” extend beyond water, sewer, and broadband to things like repair and renovation of State and local facilities?
- Will any restrictions be imposed on the use of fiscal recovery funds to respond to public health emergencies (e.g. assistance to households)? Will it be possible to fund existing assistance programs, such as ones set up using CRF or ERA, with these dollars?
- Have clear procurement and contracting rules and guidance, especially with regard to infrastructure and capital projects—with CRF, we had many questions about whether certain rules applied or didn’t apply.

Reporting:

- Will the non-entitlement local governments who receive the funds through the State be required to report directly to the Treasury, or will they report to the State?
- Treasury required CRF to be reported on at or above \$50,000 expenditures. Will a similarly granular level of reporting be required for these funds?
- If a state or local government transfers funds to nonprofits, will the nonprofits be required to report? What will the chain of reporting look like for those sub-recipients?
- The structure of reporting for CRF did not give a buffer between end of quarter to be reported on and the actual report. For example, we had to report on expenditures through Dec 30 by January 11, which is before any entities had closed their books on December. Would be preferable to take actual accounting practices into consideration and give at least a month lag between end of quarter and reporting on that quarter

Tax Reductions:

Section 9901 of the American Rescue Plan Act (ARP) restricts the use of state fiscal relief funds according to the following language:

(A) IN GENERAL. — A State or territory shall not use the funds provided under this section or transferred pursuant to section 603(c)(4) to either directly or indirectly offset a reduction in the net tax revenue of such State or territory resulting from a change in law, regulation, or administrative interpretation during the covered period that reduces any tax (by providing for a reduction in a rate, a rebate, a deduction, a credit, or otherwise) or delays the imposition of any tax or tax increase.

There are at least three possible ways to interpret the above language:

- Forbids any state tax cuts, at least until a state expends all its state fiscal relief funds awarded under ARP. According to NASBO, many states and public policy organizations are adopting this interpretation.
- Requires states to forfeit an amount of state fiscal relief funds equal to the net revenue impact of any tax cut with an effective date between March 3, 2021, and the end of the fiscal year after which a state has expended all fiscal relief funds (FFIS interpretation).
- Restricts the use of state fiscal relief funds to replace revenue declines (versus FY 2018-19 levels) caused by a change in state tax policy but otherwise permits tax cuts if the state allocates all fiscal relief funds for allowable purposes other than revenue replacement.

Guidance is needed to help states plan how best to provide relief to families and businesses affected by the economic fallout from the COVID-19 pandemic. State policymakers need answers to whether the following policy options are allowable under ARP:

- Does accepting state fiscal relief funds under ARP prevent all state tax reductions under all circumstances? If so, is there a specific end date for the restriction? Or is the restriction only in place until a state expends all state fiscal relief funds?
- If there are exceptions, would any of the following be acceptable?
 - Enacting broad-based tax reductions if state revenues would remain above FY 2018-19 levels (this would give the most flexibility to states),
 - Enacting broad-based tax reductions if a state clearly demonstrates that it has allocated all state fiscal relief funds to allowable uses other than state revenue replacement,
 - Providing stimulus payments to heavily affected industries, such as leisure and hospitality, based on tax data (as means of administrative efficiency – not to be construed as a refund), or
 - Providing stimulus payments to broad groups of people using income and other data from state and federal income tax forms.

State Respondent:

Regarding the definition of non-entitlement local governments in the American Rescue Plan and whether a state's townships qualify as a non-entitlement local government:

One state's Office of Budget and Management (OBM) looked at the federal bill and do not believe there is a set answer. It seems that the list of local governments that would receive funding under the American Rescue Plan Act is open to interpretation. The list currently circulating seems to rely on statutory interpretation as to whether townships possess powers and perform functions similar to municipalities.

The House version of the bill (2/24/2021) included the following definition for "nonentitlement unit of local government":

(3) NONENTITLEMENT UNIT OF LOCAL GOVERNMENT.—The term 'nonentitlement unit of local government' means a unit of general local government, other than a county, that is located in a nonentitlement area (as defined in section 102 of the Housing and Community Development Act of 1974 ([42 U.S.C. 5302](#))) of a State (as that term is defined in such section 102).

The original Section 102 definition of "unit of general local government" is substantially similar to the present-day text of 42 U.S.C. § 5302. For our purposes, however, the definition in both Section 102 and § 5302 is the same and defines "unit of general local government" to include "any city, county, town, township, parish, village, or other general purpose subdivision of a State." Thus, this definition would include townships in the original House version of the COVID bill.

The Senate version of the bill, the version actually enacted, altered the definitions. Under the Senate/final version, a "nonentitlement unit of local government" is defined as:

“(5) NONENTITLEMENT UNIT OF LOCAL GOVERNMENT.—The term ‘nonentitlement unit of local government’ means a ‘city’, as that term is defined in section 102(a)(5) of the Housing and Community Development Act of 1974 ([42 U.S.C. 5302\(a\)\(5\)](#))), that is not a metropolitan city.

Here, again, the present day 42 U.S.C. § 5302(a)(5) definition differs from the original in Section 102, but is defined as:

(5) The term “city” means (A) any unit of general local government which is classified as a municipality by the United States Bureau of the Census or (B) any other unit of general local government which is a town or township and which, in the determination of the Secretary, (i) possesses powers and performs functions comparable to these associated with municipalities, (ii) is closely settled, and (iii) contains within its boundaries no incorporated places as defined by the United States Bureau of the Census which have not entered into cooperation agreements with such town or township to undertake or to assist in the undertaking of essential community development and housing assistance activities.

Thus, whether a township falls into the definition of a “city” depends, in part, on whether the township possesses powers and performs functions comparable to municipalities. If so, it also requires such a determination by the Secretary of Housing and Urban Development.

In some states, Townships are created by statute and the entities are limited to only exercising the powers expressly conferred by statute or the powers necessarily implied by those express powers. For example, Townships are permitted by statute to provide police and fire protection, repair roads, provide waste disposal, and in some instances, to adopt a limited home rule government. To what extent these “powers” are sufficiently comparable to municipalities for purposes of the COVID bill, however, appears to be inconclusive.

Townships should be included in the local government allocation, and this state would appreciate guidance on this point.

State Respondent:

1. How will US Treasury decide if a state expenditure meets the threshold of a “state . . . shall only use the funds . . . to respond to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19) or its negative economic impacts”
 - a. Who determines if the expenditure is in response to the public health emergency?
 - b. Are activities to modernize public health infrastructure, including IT investments, in response to the COVID-19 emergency, or will US Treasury exclude those investments as being related to future public health emergencies?
2. How will US Treasury interpret the provisions related to revenues lost “due to the COVID-19 public health emergency relative to revenues collected in the most recent full fiscal year of the state, territory, or Tribal government prior to the emergency.”
 - a. Will this be specific to what each state considers its General Fund (each state counts different things), or will it be up to the state to determine which specific revenue streams have lost revenue?
3. Will it be up to the state to determine if an investment in water, sewer or broadband infrastructure is “necessary?”
4. Does the prohibition about deposits into pension funds apply only to lump sum deposits to pension funds, or will it also prohibit normal fringe benefit contributions from employees who may be covered by ARP?
 - a. As an example, if employee A is providing essential work related to the public health emergency and their salary is being reimbursed through the ARP, would this provision prohibit the normal pension contribution that is part of the employee’s compensation package?
5. If a state increases its Earned Income Tax Credit (EITC), but also increases other taxes to offset this increase, how will treasury determine if a state has “directly or indirectly offset a reduction in the net tax revenue of such State . . . from a change in law, regulation, or administrative interpretation during the covered period”
 - a. Do the net tax revenue adjustments only apply within the same type of tax?
 - i. As an example, if a state increases its EITC resulting in a personal income tax collection reduction of \$20 million, but it also increases beer and wine taxes to increase tax collections by \$30 million, will this violate the net tax reduction provisions?
 - ii. Does it matter if the tax changes are all deposited into the same fund (state General Fund), or if the net changes accrue across different state accounts?

6. Will the state and its subrecipients be able to charge an indirect rate to the ARP awards?
7. Will the ARP be considered federal financial assistance and subject to the Single Audit Act and reporting on the schedule of expenditures of federal awards?
8. If the state solely acts as a conduit to provide ARP moneys to local governments, can the state not be considered a pass-through entity as defined in Uniform Guidance? This would ease an administrative burden on states when they have no to little latitude on which entities receive ARP.
9. Will all or only a portion of ARP be subject to Uniform Guidance?
10. When can we expect guidance from the IRS on how it plans to administer the relief for taxpayers who received unemployment benefits in 2020 and have already filed?
11. With the changes contained in the ARP that impact tax year 2020 midseason, is there plans to extend the federal filing deadline of April 15th?
12. Will non-federal entities treat income on ARP advances as program income, similar to CRF advances?
13. Will there be dedicated federal personnel to respond timely to inquiries from non-federal entities on eligibility of costs?
14. If upon audit, it's determined that ARP was used for ineligible purposes, if other eligible costs are identified, could the ineligible costs be replaced with eligible ones?
15. Are there tax reductions that are not material to the provisions of the ARP and wouldn't need to be offset by other tax changes or reviewed by Treasury? For example, our state has static connections to the federal income tax code and updates these static connections during each legislative session. Sometimes these updated connections lower revenues, but rarely in a substantial way. Would these kinds of technical changes be subject to Treasury review and potential reimbursement of ARP funds if not offset?

State Respondent:

- We are curious about the timing of the payments, and the process for receiving the funds. Are the Coronavirus State Fiscal Recovery dollars coming all at once, or will US Treasury space out the payments over two, three, or even four years?
- How does US Treasury want states to submit the certifications required by Section 602(d)(1)? When can states submit their certifications, who can sign them, and where must we submit them? Will US Treasury establish an online form/system for the certifications?
- To the extent the funds have to offset revenue losses, we want to know more about how that calculation is supposed to be done. This question refers to the text in Section 602(c)(1)(C) added by Section 9901.
- There is \$10B set aside for "capital projects" (FFIS says \$287M for PA). What can that funding be used for, and how does it relate to funds being spent elsewhere (also potentially on capital projects) with these new federal dollars? We assume broadband would be a part of this.
- While states are prevented from using the funds to cut taxes or put lump sums into pension systems, can they be used to help re-pay UC loans to the feds?
- Can we use the funding to offset the same types/categories of health and safety costs related to COVID as we did with CRF?
- Certainly, the sooner we can get guidance the better (assuming it does not keep changing like what happened in 2020).
- What are local counties and municipalities supposed to/allowed to use their direct funding for? We do not want to establish duplicate aid programs.

State Respondent:

- Public Health and Public Safety Payroll Presumption:
Will Treasury maintain the existing permissible uses from the Coronavirus Relief Fund and, in particular, the public health and public safety payroll presumption? The purpose of the presumption

3/26/21 SFN Attachment 1
 was “to provide assistance to address increased expenses, such as the expense of hiring new personnel as needed to assist with the government’s response to the public health emergency and to allow recipients facing budget pressures not to have to lay off or furlough employees who would be needed to assist with that purpose.” Those same rationales apply to the new funds. Treasury should permit the presumption to remain in place through the entire state fiscal year following the fiscal year in which the public health emergency ends. Permitting the presumption to apply for this period recognizes the budget pressures that states will continue to face as they deal with the lingering fiscal impacts of the public health emergency.

- **Use of Funds for Economic Development:**
 Treasury should confirm that funds can be used for economic development activities, such as capital projects, worker training, etc., that are intended to encourage general economic activity to mitigate the negative economic impact of the pandemic.
- **Retroactive Uses:**
 Confirm that the funds can be used for costs, e.g. UI insurance benefits, paid prior to the date of the enactment of the Act.
- **Revenue Loss:** These funds may be used “for the provision of government services to the extent of the reduction in revenue of such State, territory, or Tribal government due to the COVID–19 public health emergency relative to revenues collected in the most recent full fiscal year of the State, territory, or Tribal government prior to the emergency.”
 - First, Treasury should interpret this provision to account for expected revenue growth by permitting states to apply a growth factor to the revenue collected in the most recent full fiscal year prior to the pandemic. This is consistent with the intent and language of the statute. The intent of this provision is to permit states to continue to deliver government services notwithstanding the negative impact of COVID on state revenues. Given the strong economy prior to the pandemic, most states – if not all – budgeted with the expectation that revenues would grow. Indeed, when the pandemic hit, most had budgets in place that balanced expenditures against reasonable anticipated growth in revenue. (NASBO could likely collect information on the average revenue growth anticipated pre-pandemic.) Considering that, for purposes of measuring revenue loss, Treasury should permit states to apply a reasonable expectation of revenue growth to the revenue collected in the most recent full fiscal year prior to the pandemic. That is consistent with the language of the statute because measuring revenue loss in that way constitutes measuring revenue loss “relative to the revenues collected in the most recent full fiscal year” pre-pandemic. This interpretation recognizes that states must have a concrete baseline for measuring revenue loss, while taking into account the real-world expectation that revenues were going to increase. Treasury should be flexible in permitting states to calculate anticipated but forgone revenue growth, so long as the methodology is reasonable.
 - Second, Treasury should give states great flexibility in determining revenue loss, so long as they choose reasonable method. For example, states should be able to:
 - Assess revenue loss on a cash basis, rather than an accrual basis. This will ensure equity between states who use different accounting methods by allowing all states to look at revenue loss on a cash basis. This would also enable states to offset the impact on their rainy-day funds, which many states had to use.
 - Choose which fiscal years to demonstrate revenue loss, e.g. FY 2020 or FY 2021.
 - Assess revenue loss on a revenue stream basis, and not on an aggregate basis. For example, states should be able to use the funds to replenish losses to specific revenue streams that are earmarked for programs or services (e.g. gas tax for transportation operations, court fees for victim assistance programs, etc.).

State Respondent:

Guidance

- a. Request that they issue one and only-one guidance with no changes or updates that have the effect of restricting what would otherwise be eligible.

- b. Similarly, request that the Treasury Office of Inspector General and the Office of the Treasury rely on one single set of guidance and do not issue separate guidance documents that must be read against each other and present possibility of inconsistency.
- c. Request that, if any changes or additional “clarifications” are issued that they only apply prospectively to costs incurred after the date of that guidance.

Example:

- 1. October updates to CRF guidance later applied a requirement that any investments in real property must be supported by additional documentation showing that temporary lease options were not reasonable. This had the effect of adding an additional documentation requirement to what a finding of “necessity” must be.
- d. Request that the guidance give full discretion to a Chief’s Executive determination of the necessity of an expense in order to provide economic relief or that such expense was necessary to respond to COVID. Documentation of a Chief Executive’s determination of necessity and the application of burdensome targeting restrictions slow the speed and scale at which these funds can be directed.
- e. States need, and should have, full latitude to designate the industries most affected in its jurisdiction, and in order to reach those industries quickly and efficiently, recipient states require flexibility in the manner and process of distribution Any oversight of this process should be limited and should not require states to process individualized business entity applications or otherwise create a new documentation process solely to comply with Treasury guidelines.

State Respondent:

How will Treasury address the direct/indirect tax reduction language? Specific additional questions related to the tax provision include:

- If a tax credit or other tax reduction is proposed prior to the federal act being signed would it be considered to not be related to the additional federal funds or, if enacted after the federal act was signed, will Treasury consider it to be a "direct or indirect" tax reduction related to the federal funds?
- If a state enacts overall tax increases in a budget bill or other legislation for a future year does that offset any tax decreases it may also enact in a budget bill or other legislation? Does it matter if tax increases occur in one piece of legislation and tax decreases occur in separate legislation if it affects the same tax and/or fiscal year?
- What is the timeframe considered from how a “tax reduction” is calculated? By tax year? State fiscal year? Federal fiscal year?
- Does the type of “tax reduction” matter? That is, are targeted tax reductions (e.g. Earned Income Tax Credit) different than across the board ones?
- Are reductions in all types of state taxes included here (income, sales, corporate, excise, utility, etc.)?
- Is adoption of any federal tax law changes that reduce state tax liabilities prohibited?
- Does the restriction on tax reductions also apply to local governments? If so, does that prevent the state from increasing state funding to local governments that may result in a reduction in local property taxes? And does local governments include school districts and technical college districts?
- Will any interest earned on the federal funds be required to be allocated to the federal funds and be subject to the same purposes and restrictions?
- For the nonentitlement communities to which the state will be required to distribute the federal funding, will the federal government provide the Census data or determine if it is not available? Will the states determine that and will there be more specific guidance on how to determine? Since the

most recent Census data won't be available until after the distribution must be done, so we go back to the 2010 data and then try to determine how to handle the annexations, etc.? Or can states use their internal population estimates that have been done since the last Census?

- What obligation, if any, does state government have with regard to local government decisions related to tax reductions?
- When is the start date for eligible expenditures? Will states be able to use ARP funds to pay for expenditures made prior to ARP's effective date?
- Will Treasury be using the same GrantSolutions reporting portal that was used for CRF? Will Treasury utilize the same level of data point reporting for ARP funding as it did for CRF reporting?
- Will the deadlines for reporting be the same as for CRF? When will the initial reporting period for ARP funding start?