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May 18, 2021

FEDERAL GUIDANCE FOR CORONAVIRUS FISCAL RECOVERY FUNDS

This memorandum summarizes the Interim Final Rule released by the U.S. Department of the Treasury (U.S. Treasury) on May 10, 2021,[1] which describes federal guidance for the Coronavirus State and Local Fiscal Recovery Funds established under the American Rescue Plan Act (ARPA).

ARPA provides $350.0 billion to state, local, territorial, and tribal governments through the Coronavirus State and Local Fiscal Recovery Funds (Fiscal Recovery Funds) for discretionary purposes to:

- Support urgent COVID-19 response efforts to continue to decrease spread of the virus and bring the pandemic under control;
- Replace lost public-sector revenue to strengthen support for vital public services and assist with job retention;
- Support immediate economic stabilization for households and businesses; and
- Address systemic public health and economic challenges contributing to the unequal impact of the pandemic on certain populations.

State and local governments in Kansas are allocated an estimated $2.6 billion from federal Fiscal Recovery Funds, which includes:

- $1.6 billion directly to state government from the State Fiscal Recovery Fund;
- $564.0 million directly to county governments from the Local Fiscal Recovery Fund;
- $251.6 million directly to nine metropolitan city governments from the Local Fiscal Recovery Fund; and
- $172.4 million indirectly to 616 non-entitlement city governments, to be distributed through state government.

1 86 *Federal Register* 26786; May 17, 2021; also see https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-funds

Allowable Uses of Fiscal Recovery Funds

The following describes general guidance for use of funds and provides non-exhaustive lists of examples referenced in the Interim Final Rule. Guidance generally applies to both State and Local Fiscal Recovery Funds. Funds will be subject to the terms and conditions of the agreement entered into by the U.S Treasury and respective state, county, or city governments (together, recipients).

Support the Public Health Response

Fiscal Recovery Funds may be used to address a range of public health needs related to COVID-19. Funds may support:

- Services and program to mitigate the spread of COVID-19, including:
  - COVID-19 testing, contact tracing, purchases of personal protective equipment, and vaccination;
  - Laboratory capacity and monitoring of COVID-19 variants;
  - Disease prevention and mitigation in congregate living facilities and schools; and
  - Capital investments in public facilities and structural modifications to meet pandemic operational needs. Such facilities may include public hospitals and health clinics.
- Services to address behavioral health needs exacerbated by the pandemic, including:
  - Mental health and substance use disorder treatment;
  - Crisis intervention, including hotlines; and
  - Outreach to promote access to health and social services.
- Payroll and covered benefits expenses for public health, healthcare, and public safety employees, to the extent of work involved in COVID-19 response. For public health and safety employees, recipients may use Fiscal Recovery Funds to cover the full payroll and benefits costs for those working in units or divisions primarily dedicated to COVID-19 response; and
- Expenses related to administering Fiscal Recovery Funds, which is considered part of the public health response.

Address Negative Economic Impacts Related to the Public Health Emergency

Fiscal Recovery Funds may be used for assistance to individuals and households, small businesses, and impacted industries, in addition to enabling governments to rehire public-sector staff. Funds may support:

- Assistance to workers and families, including aid to unemployed workers and job training, as well as aid to households experiencing food, housing, and financial insecurity. Funds may also support survivor benefits for families of COVID-19 victims;

- Small business assistance to address financial challenges related to the pandemic, and to make investments in COVID-19 mitigation measures, in the form of loans, grants, and counseling programs;

- Recovery of the tourism, travel, and hospitality sectors; and

- Rebuilding public-sector capacity by rehiring public-sector staff and replenishing unemployment insurance trust funds to pre-pandemic levels. Funds may also be used to enhance capacity to implement economic relief programs, with investments in data analysis, technology infrastructure, and impact evaluations.

Serving Communities and Families Impacted by COVID-19

Fiscal Recovery Funds may be used to support communities and families affected by the pandemic, particularly low-income and socially vulnerable communities. Funds may be used to:

- Address health disparities and the social determinants of health through funding for community health workers, public benefits navigators, remediation of lead hazards, and violence intervention programs;

- Provide investments in housing, such as services to address homelessness, affordable housing development, and housing vouchers;

- Address educational disparities through learning services, providing resources to high-poverty school districts, and educational services such as tutoring or afterschool programs as well as services to address social, emotional, and mental health needs; and

- Enable healthy childhood environments, including childcare, home visiting programs, and enhanced services for child welfare-involved families and foster youth.

Replace Public-sector Revenue Loss

Fiscal Recovery Funds may be used by state and local governments to replace revenue lost due to the COVID-19 pandemic for the provision of government services. Revenue is defined in a manner consistent with definition used for the U.S. Census Bureau's Annual Survey of State and Local Government, with certain changes, and includes actual tax revenues collected by a recipient from its underlying economy, as well as other types of charges to support government services. Current charges are defined as "charges imposed for providing current services or for the sale of products in connection with general government activities." It includes revenues such as public education institution, public hospital, and toll revenues. Miscellaneous general revenue comprises all other general revenue of governments from their own sources (*i.e.*, other than liquor store, utility, and insurance trust revenue), including rents, royalties, lottery proceeds, and fines. The Interim Final Rule excludes refunds and other correcting transactions, proceeds from issuance of debt or the sale of investments, and agency or private trust transactions. The definition of general revenue also excludes revenue generated by utilities and insurance trusts. In this way, the definition of general revenue focuses on sources that are generated from economic activity and are available to fund government services, rather than a fund or administrative unit established to account for and control a particular activity.

The Interim Final Rule establishes a methodology for calculating lost revenue. Recipients will determine the loss by comparing actual revenue collected to an alternative revenue level that could have been expected in the absence of the pandemic. Determining this alternative revenue level begins with actual revenue collected in the first full year prior to the pandemic (FY 2019) and projects forward at either the recipient's average annual revenue growth rate over the three fiscal years prior to the pandemic or a national average growth rate of 4.1 percent, whichever is higher.

The Interim Final Rule allows recipients to presume that any decrease in actual revenue relative to the alternative revenue level is due to the pandemic. Upon receiving Fiscal Recovery Funds, recipients may immediately calculate the loss in revenue that occurred in 2020 and deploy funds to address any shortfall. Recipients will have the opportunity to recalculate revenue loss at the end of each calendar year until December 31, 2024, to accommodate those entities that experience a lagged impact on revenues.

Once the loss in revenue has been determined, recipients have broad latitude to use this amount to support government services.

Premium Pay for Essential Workers

Fiscal Recovery Funds may be used to provide premium pay to eligible workers performing essential work during the COVID-19 pandemic. Premium pay is intended to compensate workers who faced elevated health risks and must be in addition to the worker's normal earnings. Premium pay may be up to $13 per hour in addition to current wages and an aggregate amount should not exceed $25,000 per eligible worker. Such pay may be offered retroactively.

The Interim Final Rule defines essential work as work involving regular in-person interaction or regular physical handling of items that were handled by others. Additionally, eligible workers are defined as those workers needed to maintain continuity of operations of essential critical infrastructure sectors and additional sectors as defined by the recipient's chief executive.

Premium pay may be provided directly, or through grants to private employers, to a broad range of essential workers who must be physically present at their work sites including, but not limited to:

- Staff at nursing homes, hospitals, and home-care settings;
- Workers at farms, food production facilities, grocery stores, and restaurants;
- Janitors and sanitation workers;
- Public health and safety staff;

- Cargo drivers, transit staff, and warehouse workers; and
- Child care providers, educators, and school staff.

Water and Sewer Infrastructure

Fiscal Recovery Funds may be used for necessary improvements to water and sewer infrastructure projects. Drinking water infrastructure projects may include building or upgrading storage and distribution systems, or replacement of lead service lines. Wastewater projects may include constructing publicly owned treatment infrastructure, managing subsurface drainage water, or facilitating water reuse.

Broadband Infrastructure

Fiscal Recovery Funds may be used to invest in broadband for areas lacking a wireline connection that reliably delivers minimum speeds of 25 Mbps download and 3 Mbps upload. Recipients are encouraged to prioritize projects that achieve last-mile connections to households and businesses. Generally, recipients should build broadband infrastructure that delivers services offering reliable 100 Mbps download and 100 Mbps upload speeds, unless impractical due to topography, geography, or financial cost.

Ineligible Uses of Fiscal Recovery Funds

The Interim Final Rule references several ineligible uses that include the following:

- States may not use Fiscal Recovery Funds to directly or indirectly offset a reduction in net tax revenue due to a change in law from March 3, 2021, through the last day of the fiscal year in which the provided funds were expended. States that implement tax cuts must demonstrate how such revenue reductions are offset by sources other than Fiscal Recovery Funds. If sufficient funds from other sources cannot be identified to cover the reduction in tax revenue, the amount in question must paid back to the U.S. Treasury. The Interim Final Rule recognizes three alternative methods to offset a reduction in tax revenue: organic growth, policies that raise other sources of revenue, or cuts in spending; and

- Recipients may not use funding to make deposits in a pension fund. A deposit is defined in this context as an extraordinary contribution to a pension fund for the purpose of reducing an accrued, unfunded liability.

The Interim Final Rule identifies other ineligible uses, including the debt service costs, legal settlements or judgments, and deposits in rainy day funds or financial reserves. Further, infrastructure projects outside water, sewer, and broadband investments, and amounts allocated for infrastructure under the revenue loss provision, are ineligible. Contributions to a state unemployment insurance trust fund are allowable only to restore the fund to its balance on January 27, 2020.

ARPA requires that states distribute Local Fiscal Recovery Funds to non-entitlement cities, generally defined as cities with a population below 50,000. States may not place additional conditions or requirements on distributions to these non-entitlement cities beyond those required in federal guidance. For example, states may not impose stricter limitations than permitted by federal guidance on a non-entitlement city's use of funds based on proposed spending plans or other policies. States may use Fiscal Recovery Funds for expenses related to distributing funds to non-entitlement cities, but such administrative expenses must be paid from the State Fiscal Recovery Fund.

Transparency

To facilitate transparency and accountability, the Interim Final Rule requires that state and local governments publicly report assistance provided to private-sector businesses, including in tourism, hospitality, and other impacted industries. Recipients should maintain records to demonstrate how businesses were affected by the pandemic and how aid provided relief. To further provide transparency, the U.S. Treasury will seek information from recipients regarding workforce plans and practices for infrastructure projects to promote on-time and on-budget delivery.

Timeline for Use and Reporting of Fiscal Recovery Funds

Fiscal Recovery Funds must be used for costs incurred during the period of March 3, 2021, to December 31, 2024. This means funds must be obligated during this period but delivery of goods or performance of service may occur until December 31, 2026. This allows recipients to complete project using obligated funds.

The U.S. Treasury will distribute funds directly to state, county, and metropolitan governments. Non-entitlement city governments will receive funding through state government. The U.S. Treasury states it intends to provide further guidance regarding distribution to non-entitlement cities in the coming weeks.

Counties and metropolitan cities will receive allocations in two tranches, with 50.0 percent provided in May 2021 and the balance provided 12 months later. In Kansas, state government will also receive its allocation in two tranches, with a similar 12-month interval.

States, counties, and metropolitan cities will be required to submit an interim report on August 31, 2021, followed by quarterly project and expenditure reports until December 31, 2026. For states, the interim report will include information related to distributions to non-entitlement cities. Quarterly reports will include financial data, information on contracts over $50,000, types of projects funded, and other information regarding utilization of funds. Non-entitlement cities will be required to submit annual reports directly to the U.S. Treasury.

States, metropolitan cities, and counties with a population exceeding 250,000 residents will be required to submit an annual Recovery Plan Performance report, which provides the public and the U.S. Treasury with information describing progress toward outcomes for the projects supported with Fiscal Recovery Funds. These reports must be posted on public websites.

Recoupment Process

Failure to comply with federal guidance may result in the recoupment of funds by the U.S. Treasury. The recoupment process begins with U.S Treasury notification to recipients identifying a violation and the amount to be recouped. If the recipient requests reconsideration of the violation, the request must be submitted to U.S. Treasury within 60 days of notification. The U.S. Treasury will consider such requests and notify the recipient as to whether the violation was affirmed or withdrawn, or if the recouped amount has been modified. Recouped amounts must be paid within 120 days of the final determination.

Coronavirus Capital Projects Fund

In addition to Fiscal Recovery Funds, the U.S. Treasury provides funding to states from the Coronavirus Capital Projects Fund (CCPF) to carry out capital projects that enable work, education, and health monitoring in response to the COVID-19 pandemic. Language released by the U.S. Treasury on May 10, 2021,[2] suggests the CCPF is intended to focus on connectivity, including broadband infrastructure. However, flexibility allows for states to support investments in other assets that meet critical needs highlighted by the pandemic. States must submit an application in the summer of 2021 with plans describing intended use consistent with guidance that is yet to be issued.

2 https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/capital-projects-fund