ARPA Updates

June 24, *2021*

Presented by

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As of June 24, 2021

- From Department of Treasury
- Guidance and Interim Rules issued 5/10
  - Mostly focused on how funds can be spent
- NEU specific guidance issued 5/25
- FAQ’s routinely updated –

https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-an
local-fiscal-recovery-funds

As of June 24, 2021

- From Division of Budget for NEUs
- Must accept or reject funds by **July 9, 2021**
- Visit https://app.budget.ny.gov/dc/Forms/LocalARPA
- Still don't know specific allocations

Funding Allocations

- 75% Funding Cap for NEUs
  - the amount of money an NEU receives cannot exceed 75% of your most recent total operating budget, including general funds and all other funds, as of January 27, 2020 (Sec 603 [2][C][iii]; Guidance p. 109; 31 CFR § 35.12)
  - Any amount in excess of 75% will be need to be returned to the Department of Treasury (Sec 603 [2][C][iv])
  - NYS will be responsible for complying with NEU 75% cap (Guidance p. 109; 31 CFR § 35.12)

Reporting Requirements

- Have to provide "periodic reports providing a detailed accounting of the uses of such funds [and]…any other information as the Secretary may require for the administration of this section." (sec 603[d])

- Treasury will issue further guidance on reporting requirements (Guidance p. 112)

Reporting Requirements

- Report requirements for metros (Guidance p. Sec VIII, p. 110-112)
  - One interim report (due 8/31/21)
    - Includes expenditures by category (revenue loss, infrastructure etc.) from the date of the award through 7/31/21
  - Quarterly Project and Expenditure Reports which includes:
    - Financial data
    - Information on contracts and awards over $50,000

Reporting Requirements

- Report requirements for metros (Guidance p. Sec VIII, p. 110-112)
  - Quarterly Project and Expenditure Reports cont:
    - Financial data
    - Information on contracts and awards over $50,000
    - Types of projects funded
    - "other information"
    - First quarterly report will cover two quarters (date of award through 9/30/31) and must be submitted by 10/31/21
    - Other quarterly reports will cover one quarter and are due 30 days after quarter ends

Reporting Requirements

- Report requirements for NEU's (Guidance p. Sec VIII, p. 110-112)
  - Must submit ANNUAL Project and Expenditure Reports through December 31, 2026
  - Initial report will cover period from date of award through September 30, 2021
  - Must be submitted to Treasury by 10/31/21
  - Submitted on 10/31 each yeah through 2026

General Considerations

- Funds can generally be used to cover allowable costs that were incurred March 3, 2021 or later

- Deadline to obligate funds is December 31, 2024

- Deadline to SPEND funds is December 31, 2026

How can funding be used?

1. To respond to the COVID-19 public health emergency or its negative economic impacts
2. To provide premium pay to essential workers
3. To cover loss of revenue to provide government services
4. To make necessary investments in water, sewer, and broadband infrastructure

How can funding be used?

- To respond to the COVID-19 public health emergency or its negative economic impacts including assistance to households, small businesses, and non-profits or to assist impacted industries such as tourism, travel and hospitality (Sec 603[c][1][A]; CFR § 35.6[b])

Respond to Public Health Emergency or its Negative Economic Impacts

Regs have list of eligible uses under this category (list is NOT exclusive) (CFR 35.6[b][1]-[12]) (Guidance Sec II[A] p. 12-44)

Really this one category can be broken down into three subcategories

- 1. Responding to COVID19 / Supporting Public Health Response
- 2. Addressing the negative economic impacts of COVID19
- 3. Assisting hardest hit communities

Respond to Public Health Emergency or its Negative Economic Impacts

<u>Responding to Public Health Emergency/Supporting Public Health</u>

1. Identify effect of COVID19 on public health (those already felt or those that night manifest over years)
2. Assess how proposed use of funds would respond to or address that effect (Guidance p. 17)

- COVID19 response and prevention (Guidance Sec II[A] p. 12-44)
  - Enforcement related expenses associated with COVID19 public health orders
  - Capital improvements to public facilities to meet pandemic operational needs
  - Expenses for PPE
  - Expenses to disinfect public areas in response to COVID19
  - Expenses for public communications related to vaccine programs
  - Expenses for improvement of ventilation system in public facilities

Respond to Public Health Emergency or its Negative Economic Impacts

<u>Responding to Public Health Emergency:</u>

- Payroll and benefits for public employees to the extent their time is spent mitigating or responding to COVID19
  - Need records like payroll and attestations from supervisors, or regular correspondence to demonstrate work on COVID19 response (Guidance Sec II[1] p. 20-21)
  - Public health and safety employees can be assumed to spend all their time responding to COVID19 (id.)
- Hiring Staff
  - Payroll, benefits, and costs associated with increasing number of employees to the level of staffing on 1/27/20

Respond to Public Health Emergency OR its Negative Economic Impacts

<u>Negative Economic Impacts Caused by Public Health Emergency</u> (Guidance p. 23-44)

- To determine whether a program or service not listed in regulations would be eligible to use in response to negative economic impact
  1. Assess whether service or program experienced economic harm from COVID19
  2. Would the planned use of funds respond to this economic harm?

- Response must be proportional and related

Respond to Public Health Emergency OR its Negative Economic Impacts

Negative Economic Impacts Caused by Public Health Emergency (Guidance p. 23-44)

- Assistance to small businesses and nonprofits
  - DON’T FORGET ABOUT NYS CONSTITUTION ARTICLE VIII SECTION 1 – PROHIBITION ON GIFTS AND LOANS
  - Not a violation of Art 8 Sec 1 if money to a private entity serves a proper public use, the public benefits overall, and the private benefit is incidental
  - OSC likes to see a local law and contract
  - Potential uses (?) volunteer firefighter, animal shelter, food bank
- Assistance to impacted industries or households

Respond to Public Health Emergency OR its Negative Economic Impacts

These hedgehogs want you to remember Article 8 Section 1

Respond to Public Health Emergency OR its Negative Economic Impacts

Assisting hardest hit communities – use funds to support additional eligible services

- What are hardest hit communities?
  - Within a qualified census tract (area designated by HUD in which 50% or more of households have an income less than 60% of the median gross income for the area or poverty level is 25% or greater)
  - To other areas or populations disproportionately impacted by pandemic (must support determination)

Respond to Public Health Emergency OR its Negative Economic Impacts

- Eligible services in hardest hit communities
  - remediation of lead paint or other lead hazards
  - Increase affordable housing development
  - Services to address homelessness
  - Evidence-based community violence intervention programs

Premium Pay to Essential Workers

2. To provide premium pay to workers performing essential work during the COVID–19 public health emergency (sec 603[c][1][B]; CFR § 35.6[c])

‘eligible workers’ = workers needed to maintain continuity of operations of essential critical infrastructure sectors

Premium Pay to Essential Workers

List of Essential Sectors

1. Healthcare
2. Public Health and Safety
3. Childcare
4. Education
5. Sanitation
6. Transportation

Town Board has discretion to add to this list so long as sectors considered critical to protect the health and well being of residents

Premium Pay to Essential Workers

- 'Essential Work' = work involving regular, in person interactions with the public or coworkers or regular physical handling of items that were also handled by others during the COVID19 Public Health Emergency (Guidance p. 47; CFR § 35.3)
- Essential work does NOT include telework performed from a residence (id.)
- Prioritize lower income eligible workers that perform essential work
- Can provide grants to third party employers with eligible workers performing essential work (e.g. contracting for janitorial services)

Premium Pay to Essential Workers

What does ‘premium pay’ mean?

- Up to $13 per hour paid to an eligible worker, <u>in addition to wages otherwise received</u>
  - <u>Funds cannot be used to pay base wage</u>
- Applies to all work performed by eligible worker during COVID19 public health emergency (i.e. going back to 1/27/20) (CFR § 35.2; Guidance p.50)
- Treasury encourages focusing on retroactive pay / performance (Guidance p. 50)

Premium Pay to Essential Workers

- Limitations on Amount of Premium Pay
  - Amount may not exceed $25,000 with respect to any single eligible worker (Sec 602[g])
  - If premium pay would increase wage above 150% of NYS's average annual wage for all occupations or their county's average annual wage, must provide a written justification to Treasury (CFR 35.6[c])
    - State and county wage defined by Bureau of Labor Statistics' Occupational Employment and Wage Statistics
  - What about limitations on raising salaries for elected officials … 😬

Recovering Lost Revenue to Provide Gov't Services

3. For the provision of government services to the extent of the reduction in revenue …due to the COVID–19 public health emergency relative to revenues collected in the most recent full fiscal year; (sec 603[c][1][C]; Guidance p. 51-61)

- Is there lost revenue
- If there is, what can I use funds on?

Recovering Lost Revenue to Provide Gov’t Services

Revenue Defined:

- “general revenue” - includes tax revenue and other types generated from underlying economy (fees, fines etc.)

- Does NOT include proceeds from debt issuance, sale of investments, revenue from utilities, or gov’t transfers between federal gov and local gov

- Revenue loss determined on an entity wide basis, must sum up all revenue streams

Recovering Lost Revenue to Provide Gov't Services

Calculating Revenue Loss: (Treasury will be creating a calculator to help with this)

- Measured 4 times: 12/31/20; 12/31/21; 12/31/22; 12/31/23

- Any decrease in revenue is considered COVID19 related, don't have to show decrease related to COVID (Guidance p. 57)

Recovering Lost Revenue to Provide Gov't Services

Calculating Revenue Lost: (CFR 35.6 [d])

- 1. Determine your base year revenue – that's all revenues collected in the last full fiscal year prior to 1/27/20 (i.e. what were your revenues in 2019)
- 2. Estimate your "counterfactual revenue" – i.e. imagine COVID19 didn't happen, what would your revenues be?
  - Can either use 4.1% to represent average annual growth or look at your last 3 years, if average annual growth higher than 4.1% use that
  - There is formula involving a little n... Parenthesis… one cat ear…
  - [(1+growth adjustment)^(n/12)]
  - n=months elapsed since base year to the calculation date

Recovering Lost Revenue to Provide Gov't Services

Calculating Revenue Lost: (CFR 35.6 [d])

- 3. Find out your actual revenue for the prior year

- 4. Counterfactual revenue minus actual revenue = lost revenue

Recovering Lost Revenue to Provide Gov't Services

What can you use lost revenue funding on?

- General government services
  - Broadly defined
  - Includes maintenance of infrastructure INCLUDING HIGHWAYS
  - Provision of police, fire, and other public safety
  - Building of infrastructure that would be funded using cash on hand
  - Modernization of cybersecurity

- NOT included
  - Expenses associated with debt not included
  - Satisfaction of judgments
  - Replenishing reserves

Water/Sewer/Broadband Infrastructure

4. To make necessary investments in water, sewer, or broadband infrastructure (sec 603[c][1][D])

Water/Sewer/Broadband Infrastructure

Water and Sewer eligible uses – basically if it's a project eligible under the EPA's Clean Water State Revolving Fund (CWSRF) or Drinking Water State Revolving Fund (DWSRF), it's an eligible use of ARPA money

- Includes projects like construct, improve, repair wastewater treatment plants, improve resiliency of infrastructure, replace lead service line, install or replace treatment and distribution systems
- Cybersecurity for systems

Water/Sewer/Broadband Infrastructure

Broadband Infrastructure

- Investments in broadband infrastructure must be made in unserved or underserved areas (no wireline that reliably delivers minimum speeds of 25Mbps download and 3Mbps upload)
- Prioritize achieving last mile connections
- Prioritize laying fiber optic cable
- Projects should deliver services that reliably deliver 100Mbps download and upload
- Prioritize support for broadband networks that are non-profits or co-operatives, less profit focused

Other Considerations

You CANNOT use it to cover pension funds (sec 603[c][2])

You CAN transfer money to

- **another unit of local government**
- **a special-purpose unit of State or local government** (sec 603[c][3])
- The State (sec 603[c][4])

If you transfer money to another entity (subrecipient) you are still responsible for ensuring the money is spent in accordance with allowable uses

Questions?