



American Rescue Plan Act

Coronavirus State and Local Fiscal Recovery Funds

(ARPA CSLFRF)

Legislative Fiscal Office January 2022

American Rescue Plan Act of 2021

- The American Rescue Plan Act (ARPA) was passed by Congress on March 11, 2021 creating various support programs for businesses, residents and local government.
- Nebraska is projected to receive about \$6 billion of ARPA funds. Much of these additional federal funds flow directly through existing programs and/or funding mechanisms that dictate the allocation of these new funds. There are 73 specific programs through which funds are distributed including the “Economic Impact Payments” which were the \$1400 checks sent to individuals.
- Another \$773 million is allocated directly to K-12 schools and higher education institutions each through a specific formula. This is the third installment of direct assistance, the first two through the CARES Act (March 2020) and Consolidated Appropriations Act PL 116-260 (December 2020).
- A total of \$1.8 billion is provided under the provisions of subtitle M of ARPA, **Coronavirus State and Local Fiscal Recovery Funds**. This consists of \$1.04 billion under the Coronavirus State Fiscal Recovery Fund (State allocation), \$663 million under the Coronavirus Local Fiscal Recovery Fund (\$287.2 million for cities, \$375.3 million counties), and \$128.7 million under the Coronavirus Capital Projects Fund.

ARPA Funding Allocations

Source for the “specific program” amounts is Federal Funds Information for States (FFIS) state funding spreadsheet version 31.

The remainder of this document will concentrate on the \$1.040 billion the state will receive through the **Coronavirus State Fiscal Recovery Fund** as these are the funds subject to allocation by the Legislature and Governor

Estimated ARPA Fund Allocations (FFIS updated 9/21/21)	Nebraska	US Total
Coronavirus State Fiscal Recovery Fund (State)	1,040,157,440	195,300,000,000
Coronavirus State Fiscal Recovery Fund (Territories & Trib	na	24,500,000,000
Coronavirus Local Fiscal Recovery Fund (Cities)	287,219,766	65,100,000,000
Coronavirus Local Fiscal Recovery Fund (Counties)	375,736,074	65,100,000,000
Coronavirus Capital Projects Fund (State, Territories & Tribal	128,740,178	10,000,000,000
Subtotal - State and Local	1,831,853,458	360,000,000,000
Elementary & Secondary School Emergency Relief Fund (ESSE)	546,290,147	121,974,800,000
Emergency Assistance to Non-Public Schools Program	18,618,767	2,750,000,000
Higher Education Emergency Relief Fund (HEERF)	208,292,309	36,021,881,801
Subtotal - Education	773,201,223	160,746,681,801
Economic Impact Payments (ARP)	2,395,029,000	389,928,923,000
Emergency Rental Assistance (ARP)	152,000,000	21,550,000,000
Child Care Stabilization Grants	143,093,320	23,975,000,000
Child Care and Development Block Grant (ARP)	89,286,484	14,960,830,000
Epidemiology and Lab Capacity for School Testing	58,263,420	10,000,000
State Small Business Credit Initiative (ARP)	56,234,176	10,000,000
Homeowner Assistance Fund	50,000,000	9,961,000,000
All other direct programs (68)	434,763,454	120,128,741,858
Subtotal - specific programs	3,382,748,507	580,524,417,959
ARPA Total (per FFIS)	5,987,803,188	1,101,271,099,760

Eligible Expenditures

- Responding to a Public Health Emergency
 - Public Health Responses for those impacted by the pandemic, including the general public;
 - Responses to negative economic impacts experienced as a result of the pandemic; and
 - Additional services, either as public health response or response to negative economic impacts, for disproportionately impacted communities.
- Replacing Public Sector Revenue
- Premium Pay for Essential Workers
- Infrastructure, including Water, Sewer, and Broadband

Ineligible Uses

States and territories may not use this funding to:

- Directly or indirectly offset a reduction in net tax revenue;
- Make a deposit to a pension fund;
- Fund debt service, make payments on legal settlements or judgments, or make deposits to rainy day funds or financial reserves;
- Match funds for other federal programs (as the non-federal or cost-share portion);
- Fund general economic development and/or workforce programs unless the program is responding to a specific negative impact; or
- Fund a general infrastructure or capital project unless it otherwise qualifies as an eligible use under the provisions related to (1) responding to the public health emergency; (2) water, sewer, and broadband investments, or (3) revenue loss.



Recoupment

Even with all of this guidance, the specific uses of the State Recovery Funds are still subject to much interpretation. In addition, ARPA contains a recoupment provision requiring repayment of any funds expended on any noncompliant purpose.

- Failure to comply with the restrictions on use contained in sections 602(c) and 603(c) of the Act may result in recoupment of funds
- Review based on quarterly reports; may respond to information provided by members of the public
- Treasury would notify recipient, who has opportunity to ask for reconsideration. Repayment required within 120 days of the initial notice.

1. Responding to the Public Health Emergency: Supporting Public Health Response

- **Support services and programs to contain and mitigate the spread of COVID-19, including:**
 - Vaccination programs, medical expenses, testing, contact tracing, isolation/quarantine, PPE, support for vulnerable populations, enforcement of public health orders, public communication, enhancement of health care capacity, support for congregate living facilities and schools, ventilation systems, certain capital expenditures for Covid-19 mitigation and treatment, etc.
- **Behavioral Health Care, including:**
 - Mental health treatment, substance misuse treatment, other behavioral health services, hotlines or warmlines, crisis intervention, and services/outreach to promote access to health and social services.
- **Preventing and Responding to Violence, including:**
 - Referrals to trauma recovery services for crime victims; community violence intervention programs; and in communities with increased gun violence, hiring law enforcement officers, enforcement efforts, and technology and equipment.

1. Responding to the Public Health Emergency: Disparate Impact of COVID-19

Impacted and **Disproportionately Impacted** populations are presumed eligible for certain types of programs and services.

- Populations experiencing unemployment, food or housing insecurity, or low- to moderate-income are presumed to be impacted.
- Populations in Qualified Census Tracts (QCTs), served by Tribal governments, and low-income households are presumed to be disproportionately impacted.

The Final Rule allows additional households to be designated as impacted based on eligibility for other federal aid programs.

Other populations (households, communities, businesses, nonprofits, etc.) can be designated as disproportionately impacted based on data, research, and analysis showing disproportionate impact.

Eligible Services

- **Impacted *and* Disproportionately Impacted Populations:**

- Food, housing, or emergency assistance;
- Cash assistance;
- Survivor's benefits;
- Internet access or digital literacy needs;
- Assistance applying for public benefits/services;
- Programs to mitigate the impacts of Covid-19 on childhood health or welfare, including childcare, early learning services, programs to provide home visits, and services for families in the child welfare system of foster youth;
- Programs addressing lost instructional time for students;
- Programs or services addressing housing insecurity, lack of affordable housing, or homelessness;
- Financial literacy programs;
- Access to health insurance; and
- Aid to unemployed workers, including job fairs or grants to businesses to hire underserved workers, and job training or other assistance to individuals currently employed but seeking better opportunities for economic advancement. This category also includes replenishing unemployment trust funds, subject to certain conditions.

- **Disproportionately Impacted Populations *only*:**

- Community health workers;
- Remediation of lead paint or lead hazards;
- Housing vouchers and assistance relocating to neighborhoods with higher levels of economic opportunity;
- Certain services for vacant or abandoned properties; and
- Programs to address educational disparities, including assistance to high-poverty school districts to advance equitable funding across districts, tutoring and after-school programs, summer education and enrichment, evidence-based services to address the academic, social, emotional, and mental health needs of students, access to a well-rounded education, well-prepared staff, integrated support services, and improvements and new construction of schools and educational facilities.

1. Responding to the Public Health Emergency: Addressing Negative Economic Impacts

- **Supporting small businesses (less than 500 employees)**
 - Loans or grant to mitigate financial hardship such a revenue declines or periods of business closure, by supporting payroll and benefits costs, costs to retain employees, mortgage, rent or utilities costs, and other operating costs;
 - Loans, grants or in-kind assistance to implement Covid-19 prevention and mitigation tactics; and
 - Technical assistance, counseling, or other services to assist with business planning needs.
 - For disproportionately impacted small businesses **only**, additional responses include certain capital investments, such as rehabilitation of commercial property or storefront improvement; business incubators; grants for start-ups; or additional operational support for microbusinesses.
- **Aid to Impacted Industries**
 - Tourism, travel, and hospitality are presumed eligible. Tribal development districts are also presumed eligible.
 - Two-step process to identify other eligible industries:
 - Define the substantive and/or geographic scope of the industry; and
 - Determine if the industry is “impacted.” Presumption of impact if employment loss of 8%.
 - If this is not met, the industry can be considered “impacted” if the totality of relevant major economic indicators demonstration the industry is experiencing comparable or worse economic impacts as the national tourism, travel, and hospitality industries at the time of the final rule, and that the impacts were due to Covid-19. Permissible to use quantitative or qualitative data.

1. Responding to the Public Health Emergency (continued)

- Restoring Public Sector Capacity

- Funds may be used to restore pre-pandemic employment levels adjusted for historic underinvestment in the public sector, provide additional funds for employees who experienced pay cuts or were furloughed, avoiding layoffs, providing worker retention incentives, and paying for ancillary administrative costs related to hiring.

- Program Evaluation, Data, and Outreach

- Funds may be used for program evaluation and evidence resources, data analysis resources, technology infrastructure, community outreach and engagement, and capacity building.

- Capital Expenditures

- Funds may be used for capital expenditures *if* eligible under this category as responding to public health or negative economic impact.
- Written justification required for all projects over \$1 million. Reporting varies.

Responding to the Public Health Emergency: How to Identify a Public Health or Negative Economic Impact

- What is the population (“class”) that experienced the impact?
- Did the identified class suffer a harm due to Covid-19?
 - (i.e. a loss of earnings or revenue)
- What was the magnitude of the harm?
 - What data is available to demonstrate the magnitude of the harm?
- Does the response address the identified harm or impact?
- Is the response reasonably related to the harm?
- Is the response reasonably designed to benefit the impacted population or industry?

2. Replacing Lost Public Revenue

- **Recipients may use SLFRF funds to replace lost revenue to provide services up to the amount of revenue loss.**
 - **Recipients have broad latitude to use funds to support government services under this category.**
- **Recipients may determine revenue loss by choosing between two options:**
 - A standard allowance of up to \$10 million in aggregate, not to exceed award amount; or
 - Calculating specific revenue loss each year using Treasury's formula, which compares actual revenue to an alternative representing what could have been expected to occur in the absence of the pandemic.

2. Replacing Lost Public Revenue (continued)

To calculate revenue loss:

- Calculate base revenue for the last full fiscal year prior to the public health emergency (FY 18-19);
- Calculate the counterfactual revenue for each fiscal year at either:
 - **(a) the recipient's average annual revenue growth rate over the three full fiscal years prior to the public health emergency; or**
 - **(b) 5.2% growth rate, the national average state and local revenue growth rate from 2015-18** (the latest available data).
- Revenue loss is the amount counterfactual revenue exceeds actual revenue.

General Revenue:

- Includes revenue from taxes, current charges (use fees, rental fees, etc.), miscellaneous general revenue, intergovernmental transfers between state and local governments (but not from the federal government)
- Excludes refunds and other correcting transactions, proceeds from issuance of debt or the sale of investments, agency or private trust transactions, and revenue generated by utilities and insurance trusts. Tribal governments may include all revenue from Tribal enterprises and gaming operations in the definition of General Revenue.
- **Is calculated on an entity-wide basis.** That means total revenue loss and not on a source-by-source basis.

3. Premium Pay

- **Recipients may use this funding to provide premium pay directly, or through grants to private employers,** to a broad range of essential workers who must be physically present at their jobs including, among others:
 - 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
 - Truck drivers, transit staff, and warehouse workers
 - Childcare workers, educators, and school staff
 - Social service and human services staff
- May be awarded up to \$13/hour, but may not exceed \$25,000 for any single worker.
- Eligible workers must be either (1) earning at or below 150% the state or county's average annual wage for all occupations, whichever is higher; or (2) not exempt from the Fair Labor Standards Act overtime provisions; or (3) written justification must be submitted detailing how premium pay is otherwise responsive to workers performing essential work during the public health emergency.
- May be applied retroactively

4. Infrastructure: Water and Sewer

- Aligns eligible projects with the range of projects that can be supported by the Environmental Protection Agency's Clean Water State Revolving Fund (CWSRF) and Drinking Water State Revolving Fund (DWSRF).
 - Eligible projects under CWSRF include construction of publicly-owned treatment works; nonpoint source pollution management; decentralized wastewater treatment systems; stormwater systems; water conservation, efficiency, and reuse measures; watershed pilot projects; energy efficiency measures for publicly-owned treatment works; water reuse projects; security measures at publicly-owned treatment works; and technical assistance to ensure compliance with the Clean Water Act.
 - Eligible projects under DWSRF include facilities to improve drinking water quality; transmission and distribution; new sources to replace contaminated drinking water or increase drought resilience; green infrastructure; storage of drinking water; purchase of water systems and interconnection of systems; and new community water systems.
- The Final Rule broadens eligibility to projects beyond CWSRF and DWSRF, including stormwater infrastructure, residential wells, lead remediation, and certain rehabilitation of dams and reservoirs, if "necessary."
 - "Necessary" investments are (1) responsive to an identified need to achieve an adequate minimum level of service; (2) a cost-effective means for meeting the need, taking into account alternatives; and (3) for investments that supply drinking water to meet populations growth, projected to be sustainable over its estimated useful life.
- Cannot be used as CWSRF or DWSRF match.

4. Infrastructure: Broadband

- Priority for projects to serve locations without 100/20 Mbps broadband service, but can define projects in areas of need, including areas with lack of access to reliable high-speed broadband connection, lack of affordable broadband, or lack of reliable service.
- Using these funds, projects should deliver services offering reliable 100 Mbps download and 100 Mbps upload speeds, unless impracticable due to topography, geography, or financial cost, in which case, projects can meet 100/20 Mbps speeds. In addition, recipients are encouraged to pursue fiber optic investments.
- Recipients must require the service provider for a broadband project that provides service to households to either:
 - Participate in the FCC's Affordable Connectivity Program; or
 - Provide access to a broad-based affordability program to low-income consumers that provides commensurate benefits.
- **Recipients may also use funds for modernization of cybersecurity**, including hardware, software, and protection of critical infrastructure, as part of provision of government services up to the amount of revenue lost due to the public health emergency

Considerations

Two important things the state will have to think about in allocating the CSFRF monies:

- (1) The language regarding the use of the funds is relatively vague and, some would argue, invites attempts to stretch the purpose for which funds are used. However improper use of the funds is subject to recoupment by the federal government.
- (2) While the time period for the use of these funds is basically 3 years to allocate and up to 5 years to expend, these are still one-time funds and will expire. Any on-going programs established will have to be funded with state sources. The longer time period under ARPA versus the CARES Act could tend to make it more likely to establish on-going programs.

Information Sources

Additional guidance on the use of the funds can be found on the Treasury Department website [Coronavirus State and Local Fiscal Recovery Funds](https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-funds) | U.S. Department of the Treasury especially in the following documents:

1. <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-funds>
2. Coronavirus State and Local Fiscal Recovery Funds: Overview of the Final Rule
 - <https://home.treasury.gov/system/files/136/SLFRF-Final-Rule-Overview.pdf>
3. Final Rule adopted by the Treasury Dept. Jan. 6, 2022, effective April 1, 2022
 - <https://home.treasury.gov/system/files/136/SLFRF-Final-Rule.pdf>