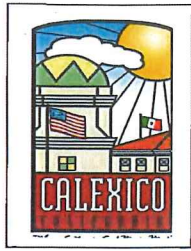


**AGENDA  
ITEM**

**12**



# AGENDA STAFF REPORT

**DATE:** March 16, 2022

**TO:** Mayor and City Council

**APPROVED BY:** Miguel Figueroa, City Manager *AK*

**PREPARED BY:** Miguel Figueroa, City Manager

**SUBJECT:** Discussion and Possible Action to Approve Proposed Spending Plan of American-Rescue Plan Act (ARPA) Funds for Eligible Projects

=====

**Recommendation (by Mayor Javier Moreno):**

Discussion and possible action to approve proposed spending plan of American-Rescue Plan Act (ARPA) funds for eligible projects.

**Background:**

On February 1, 2022, the City of Calexico hosted a public workshop presenting a proposed spending plan (Attachment "A") for ARPA funds. Councilmember Raul Ureña prepared an alternative spending plan (Attachment "B") that considered other proposed projects. The City of Calexico legal firm, Best, Best and Krieger (BBK), prepared a memorandum (Attachment "C") dated February 25, 2022, that assessed the proposed projects of the expenditure plans for compliance with the ARPA Final Rule issued by the U.S. Department of Treasury.

**Discussion:**

The memorandum prepared by BBK determined the eligible activities from the two specific spending plans. It is important to note that some of these activities will require further clarification/explanation to be in compliance with the ARPA Final Rule:

- Essential Worker Relief Program
- Emergency Response Equipment
- Update Traffic Patterns
- Airport Terminal Repair
- Indoor Ventilation/Filtration for City Facilities
- Recreation Infrastructure Projects
- Downtown Free WiFi Zone
- Free WiFi in Public Facilities
- Complete Downtown Rehabilitation

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- Wraparound Homeless Rehabilitation Services
- Outreach Specialist
- Library Infrastructure Project.
- Upgrade City Broadband Infrastructure
- Water/Sewer Replacement Projects

On January 4, 2022 the City Calexico City Council directed the City Attorney to create a resolution designating former city employees who performed essential work from March 2020 through June 2021 to be considered for premium pay based on hours worked similar to the compensation received by active city employees.

**Fiscal Impact:**

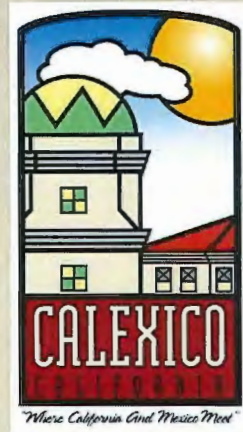
Available ARPA Balance, \$7,228,591.00.

**Attachments:**

- Attachment "A" – Public Workshop February 1, 2022 Spending Plan
- Attachment "B" – Alternative Spending Plan
- Attachment "C" – BBK Spending Compliance Memorandum

**ATTACHMENT "A"**

**PUBLIC WORKSHOP  
FEBRUARY 1, 2022 SPENDING**



**AMERICAN RESCUE PLAN ACT WORKSHOP**  
**TALLER DEL PLAN DE RESCATE AMERICANO**

**FEBRUARY 1, 2022**

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## **TOPICS/TEMAS**

- Approved Expenditures/Gastos Realizados
  - Final Rule Overview/Resumen del Reglamento Final
  - Proposed Use of ARPA Funds/Propuestas de Uso de los Fondos ARPA
  - Public Input/Comentarios del Publico
  - Next Steps/Siguientes Pasos
-

## **APPROVED EXPENSES/GASTOS REALIZADOS**

### **OCTOBER 6, 2021 - \$1,278,000**

- City Council adopted resolution approving the city's use of ARPA funds for the replacement of public safety vehicles and authorizing the issuance of a request proposal.
- Fire Department: Two (2) Fire Rescue Ambulances, Three (3) Utility Vehicles
- Police Department: Six (6) Ford Explorer Equipped Patrol Vehicles, Two (2) Pickup Trucks Equipped Patrol Vehicles

### **NOVEMBER 3, 2021 - \$1,020,396**

- City Council adopted a resolution approving the city's use of ARPA funds to provide up to \$7,000 per full time and par time eligible employee.
- At the approved date, eligible employees must be employed (active) full time and part time employees who worked between March 17, 2020, and June 30, 2021.

## EXPENSE SUMMARY/RESUMEN DE GASTOS

Unanticipated revenue allocation from the American Rescue Plan Act to the City of Calexico, \$9,526,987.00

Expenditures to Date	
10/6/21 Public Safety Vehicles	\$1,278,000.00
11/3/21 Premium Pay	\$1,020,396.00
<b>Current Balance</b>	<b>\$7,228,591.00</b>

# FINAL RULE OVERVIEW/RESUMEN DE REGLAMENTO FINAL

- On January 6, 2022, the U.S. Department of the Treasury issued the Final Rule to implement the Coronavirus State and Local Fiscal Recovery Funds program under the American Rescue Plan. The Final Rule takes effect April 1, 2022.
- Key Changes and Clarification Points – The Final Rule, compared to the Interim Final Rule (May 2021), delivers broader flexibility and greater simplicity in the program, responsive to feedback in the comment process.
- Eligible Use of Funds:
  - Replace lost public sector revenue, using this funding to provide government services up to the amount of revenue loss due to the pandemic.
  - Support the COVID-19 public health and economic response by addressing COVID-19 and its impact on public health as well as addressing economic harms to households, small businesses, nonprofits, impacted industries, and the public sector.
  - Provide premium pay for eligible workers performing essential work, offering additional support to those who have and will bear the greatest health risks because of their service in critical sectors.
  - Invest in water, sewer, and broadband infrastructure, making necessary investments to improve access to clean drinking water, to support vital wastewater and stormwater infrastructure, and to expand affordable access to broadband internet.

## **PROPOSED USE OF ARPA FUNDS/ PROPUESTAS DE USO DE LOS FONDOS ARPA**

- Priority is to find a nexus of the proposed use of ARPA funds with the City of Calexico Strategic Plan adopted on September 15, 2021.
- Key Objectives from Strategic Plan:
  - Develop mutually supportive environment of professionalism that encourages stakeholder partnerships, teamwork and supports city efforts to continually improve services.
  - Enhance all employee access to needed information to strengthen public services.
  - Streamline city development and administrative services to assist contractors.
- Proposed Uses – Alignment with Strategic Plan
  - Upgrades and modernization of information technology infrastructure on public facilities accessed by city employees, business owners and the general public that visits the City of Calexico.
  - Water and sewer infrastructure projects to complement the Capital Improvement Program that will promote development and investment for housing and business development.
  - Provide underserved sectors of our community with expanded broadband access.

## **PROPOSED USE OF ARPA FUNDS/ PROPUESTAS DE USO DE LOS FONDOS ARPA**

- The City of Calexico received the following proposals from Imperial Valley Equity & Justice Coalition, Calexico Needs Change and Calexico Union Against Corruption (email to City Manager 1/20/22):
  - Bonus Program for COVID-19 High-Risk Essential Workers (grocery store workers, warehouse workers, healthcare, and farmworkers)
  - Downtown Infrastructure for Essential Workers
  - Invest in Cooling Stations
  - Invest in Outreach Capacity to Increase Access to Assistance Programs
  - Psychiatric Emergency Response Team
  - Invest in a “Housing First” Pilot Program
  
- The City Manager’s Office received the following proposals from city employees:
  - Airport: Terminal Repair
  - Heber Park: Soccer Field, Basketball Court and Fencing
  - Rodriguez Park: Field/Park Lights, Tennis Court Resurfacing and Fencing
  - Kennedy Park: Park Lights and Parking Lot Resurfacing
  - Cordova Park: Soccer Field and Concession Stand
  - City Library: Parking Lot Lights and Parking Lot Resurfacing
  - City Community Center: Parking Lot Lights and Parking Lot Resurfacing
  - Downtown: Streetlight Infrastructure and Trash Bins
  - Emergency Response Equipment: ECG Monitors, Patient Gurneys and Communication System

## PROPOSED EXPENSE SUMMARY/RESUMEN DE GASTOS PROPUESTOS

Proposed Use	Cost	Balance
		\$7,228,591.00
Public Facilities I/T Upgrades	\$850,000	\$6,378,591
City Broadband Infrastructure	\$450,000	\$5,928,591
Indoor Ventilation/Filtration for City Facilities	\$650,000	\$5,278,591
Downtown Infrastructure	\$750,000	\$4,528,591
City Park Infrastructure	\$1,000,000	\$3,528,591
Library/Recreation Infrastructure Projects	\$350,000	\$3,178,591
Emergency Response Equipment	\$1,000,000	\$2,178,591
Water and Sewer Replacement Projects	\$1,000,000	\$1,178,591
Airport Terminal Repair	\$100,000	\$1,078,591
	<b>Remaining Funds</b>	<b>\$1,078,591</b>

# **PUBLIC INPUT / COMENTARIOS DEL PUBLICO**

## **NEXT STEPS**

- City Council consideration and approval of proposed use of ARPA funds scheduled for the City of Calexico Regular Meeting on February 16, 2022.

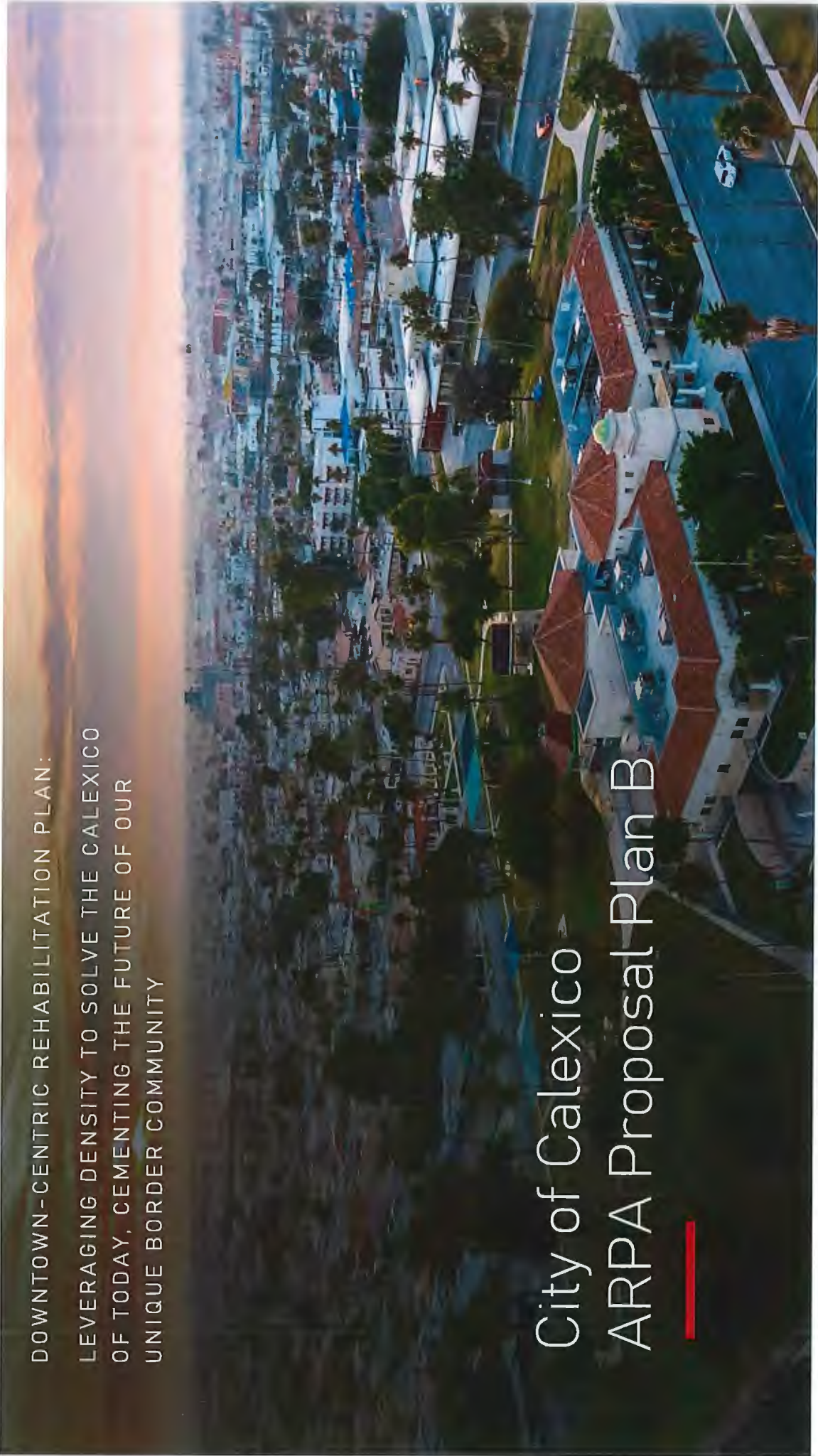
**ATTACHMENT "B"**

**ALTERNATIVE SPENDING PLAN**

DOWNTOWN-CENTRIC REHABILITATION PLAN:  
LEVERAGING DENSITY TO SOLVE THE CALEXICO  
OF TODAY, CEMENTING THE FUTURE OF OUR  
UNIQUE BORDER COMMUNITY

# City of Calexico ARPA Proposal Plan B

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# Proposed Budget

Proposed Use	Detail	Budget Estimate	Balance
			\$7,228,591
Complete Downtown Rehabilitation	<ul style="list-style-type: none"> <li>• Shade structures and plants</li> <li>• Seating/lounging/eating structures                             <ul style="list-style-type: none"> <li>• Additional Restrooms</li> </ul> </li> <li>• Water Stations. Drinking Fountain/ Bottle Refill                             <ul style="list-style-type: none"> <li>• Min. 1 Public Cooling Station</li> <li>• Beautification elements                                     <ul style="list-style-type: none"> <li>• Trash Bins</li> </ul> </li> </ul> </li> <li>• Establishment of Sanctioned Homeless Encampment and Safe Parking Lot</li> </ul>	\$3,000,000*	4,228,591
Essential Worker Relief Program	Direct Payment to essential workers: grocery, pharmacy, farmworkers, etc. (as defined by council)	\$1,000,000	\$3,228,591
Outreach Specialist	(1) Full-time for 3 years, Helps individuals and businesses navigate relief programs at all levels Works with SBDC to promote new post-pandemic business opportunities	\$180,000	\$3,048,591

# Proposed Budget

Proposed Use	Detail	Budget Estimate	Balance
Emergency Response Equipment	Fire/Ambulance	\$1,000,000	\$2,048,591
Public Facilities I/T Upgrades	Include a Downtown free Wi-Fi zone as priority for commercial/social growth Free Wi-Fi areas from public facilities as allowed by allotted funds	\$1,000,000*	\$1,048,591
City Broadband infrastructure	Capacity to support I/T and public Wi-Fi projects	\$450,000	\$598,591
Emergency Park Infrastructure	Park Restroom and Water Access	\$500,000	\$98,591

\*Denotes Adjustable Spending based on project scale

# Adjacent/Supporting Projects

Project	Supporting Agency/Department	Purpose & Description
<p>1<sup>st</sup> and 2<sup>nd</sup> Street Closure</p> <p>1<sup>st</sup>: from Rockwood to Heber</p> <p>2<sup>nd</sup> from Imperial to Heber</p>	<p>Planning and Public Works Departments – City of Calexico</p>	<ul style="list-style-type: none"> <li>• Creates pedestrian friendly downtown zone, reduces vehicle-pedestrian collisions. Less demand for ambulance by preventing collisions.</li> <li>• Improves Calexico public transit ridership. Complementary pedestrian space for incoming transit center, destination for future 2022 Calexico Microtransit Service users</li> <li>• As Transit Center establishes soon and serves more of the valley, public transit for work will become more viable. This incentivizes usage of pedestrian POE, cutting down on overall border-related car traffic going through the city and the entire County. Road maintenance savings for entire County down the road.</li> <li>• New commercial space for new/existing small and microbusiness. Creates Downtown Small/Microbusiness incubator zone, accessible for low-income people entering the market. Makes use of new sidewalk ordinances and blank canvas for new ordinance innovation.</li> <li>• De Facto Park Space with free public Wi-Fi. More space to use coverage so coverage is not wasted. More reason to stick around, more opportunities to shop, generate sales tax. Promote mental health through outdoor access. Gives people a place to socialize, relax.</li> <li>• More efficient Imperial/2<sup>nd</sup> street intersection. No traffic light needed, full flow with both lanes northbound. More efficient car traffic.</li> <li>• More efficient Imperial/2<sup>nd</sup> street intersection reduces emissions, good for climate. Setting up for greater public transit adoption also good for meeting Calexico's Climate Goals             <ul style="list-style-type: none"> <li>• Landing Space for Farmworkers/Cross-Border students</li> <li>• Space to implement Bloomberg Art Grant</li> </ul> </li> </ul>

# Adjacent/Supporting Projects

Project	Supporting Agency/Department	Purpose & Description
Wraparound Homeless Rehabilitation Services	Social Services, Behavioral Health, Public Health, Workforce Dev. – County of Imperial Supporting non-profit organizations	<ul style="list-style-type: none"> <li>• Will create a rehabilitation pathway out of the proposed transitional housing projects in the Downtown Plan</li> <li>• Density (having homeless together in one place) lowers cost of service to the County and allows us to innovate to solve the problem in a more permanent manner</li> <li>• Works in conjunction with existing and future Homekey Projects for next step transitional housing</li> </ul>
SBDC Reorganization under County	County of Imperial	<ul style="list-style-type: none"> <li>• Establish permanent SBDC office within City Hall to help formalize local businesses with new opportunities created under this plan</li> </ul>

**ATTACHMENT "C"**

**BBK SPENDING COMPLIANCE MEMORANDUM**

Bend OR  
(541) 382-3011  
Indian Wells  
(760) 568-2611  
Irvine  
(949) 263-2600  
Los Angeles  
(213) 617-8100  
Ontario  
(909) 989-8584



**BEST BEST & KRIEGER**  
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1800 K Street NW, Suite 725, Washington, D.C. 20006  
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Riverside  
(951) 686-1450  
Sacramento  
(916) 325-4000  
San Diego  
(619) 525-1300  
Walnut Creek  
(925) 977-3300  
Washington, DC  
(202) 785-0600

**Ana D. Schwab**  
(202) 370-5311  
ana.schwab@bbklaw.com

**CONFIDENTIAL  
ATTORNEY/CLIENT PRIVILEGE**

**Memorandum**

**To:** Miguel Figueroa  
City Manager  
City of Calexico

**From:** Ana D. Schwab

**Date:** February 25, 2022

**Re:** City of Calexico’s Proposed Spending Plan – Compliance with ARPA

**INTRODUCTION**

This memo provides a review of the City of Calexico's (“the City”) spending plan for compliance with the American Rescue Plan Act of 2021 (“ARPA”). The projects in the spending plan are classified as (1) eligible, (2) eligible if addressing public health or economic disparities, (3) requiring further clarification or explanation, and (4) ineligible. For projects that are not outright eligible, this memo provides guidance for how the City can strengthen compliance with ARPA and Treasury guidelines.

**ARPA SPENDING REQUIREMENTS**

The American Rescue Plan Act (“ARPA”) was signed into law in March 2021. ARPA contained a section, the Coronavirus State and Local Fiscal Recovery Fund (“SLFRF”), to provide monetary support to local governments to respond to, mitigate, and recover from the COVID-19 public health emergency. In May 2021, the U.S. Treasury released an Interim Final Rule providing further guidance on SLFRF. Under the Statute and Rule, there are six categories of eligible use:<sup>1</sup>

- i. Support for public health expenditures;
- ii. Address negative economic impacts caused by the public health emergency;

<sup>1</sup> American Rescue Plan Act of 2021, Pub. L. No. 117-2, § 603(c)(1); Coronavirus State and Local Fiscal Recovery Funds, 86 Fed. Reg. 26,786 (May 17, 2021) (codified at 31 C.F.R. Part 35) [hereinafter “Interim Final Rule”]; Coronavirus State and Local Fiscal Recovery Funds, 87 Fed. Reg. 4338, 4339 (January 27, 2022) {codified as of April 1, 2022 at 31 C.F.R. Part 35} [hereinafter “Final Rule”].



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- iii. Replace lost public sector revenue;
- iv. Provide premium pay to eligible workers;
- v. Invest in water, sewer, and broadband infrastructure.

ARPA Funds may be used for costs incurred after March 3, 2021 until December 31, 2024. ARPA Funds must be expended by December 31, 2026.<sup>2</sup>

The City has asked for a review of projects proposed in plans put forth by the City Manager and the Council.

**A. Support for public health expenditures**

The Interim Final Rule and Final Rule on the ARPA State and Local Fiscal Recovery Funds (“ARPA Funds”) can be used to address a broad range of public health needs related to the COVID-19 pandemic. When utilizing funds under this category, recipients must first identify a COVID-19 public health impact on an individual or class (i.e. group) and second, design a program that responds to the identified impact.<sup>3</sup> Treasury has provided a list of enumerated uses under this category. Treasury has also provided the ability for recipients to use funds under this category outside of the enumerated uses.<sup>4</sup> As this is pertinent to this section and Section B of this memorandum, the use beyond those enumerated is discussed in section F of this memorandum.

When expending funds under this category, there are four subcategories of eligible use: (1) COVID-19 mitigation and prevention; (2) Medical Expenses; (3) Behavior Healthcare (such as mental health treatment, substance use treatment, and other behavioral health services); and (4) Preventing and Responding to Violence (each of which has enumerated uses put forth by treasury).<sup>5</sup>

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<sup>2</sup> Final Rule at 4340.

<sup>3</sup> *Id.* at 4343.

<sup>4</sup> *Id.* at 4392-3; See also U.S. Treasury, *Coronavirus State & Local Fiscal Recovery Funds: Overview of the Final Rule*, pg. 32 (January 2022) [hereinafter “Overview of the Final Rule”].

<sup>5</sup> *Overview of the Final Rule*, pg. 14-15.



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Enumerated uses under COVID-19 mitigation and prevention:<sup>6</sup>

- ✓ Vaccination programs, including vaccine incentives and vaccine sites
- ✓ Testing programs, equipment and sites
- ✓ Monitoring, contact tracing & public health surveillance (e.g., monitoring for variants)
- ✓ Public communication efforts
- ✓ Public health data systems
- ✓ COVID-19 prevention and treatment equipment, such as ventilators and ambulances
- ✓ Medical and PPE/protective supplies
- ✓ Support for isolation or quarantine
- ✓ Ventilation system installation and improvement
- ✓ Technical assistance on mitigation of COVID-19 threats to public health and safety
- ✓ Transportation to reach vaccination or testing sites, or other prevention and mitigation services for vulnerable populations
- ✓ Support for prevention, mitigation, or other services in congregate living facilities, public facilities, and schools
- ✓ Support for prevention and mitigation strategies in small businesses, nonprofits, and impacted industries
- ✓ Medical facilities generally dedicated to COVID-19 treatment and mitigation (e.g., ICUs, emergency rooms)
- ✓ Temporary medical facilities and other measures to increase COVID-19 treatment capacity
- ✓ Emergency operations centers & emergency response equipment (e.g., emergency response radio systems)
- ✓ Public telemedicine capabilities for COVID-19 related treatment

Enumerated uses under Medical Expenses allow for ARPA Funds to be used for expenses to households, medical providers, or others that incurred medical costs due to the pandemic, including:<sup>7</sup>

- ✓ Unreimbursed expenses for medical care for COVID-19 testing or treatment, such as uncompensated care costs for medical providers or out-of-pocket costs for individuals
- ✓ Paid family and medical leave for public employees to enable compliance with COVID-19 public health precautions
- ✓ Emergency medical response expenses
- ✓ Treatment of long-term symptoms or effects of COVID-19

Enumerated uses under Behavioral Healthcare for services to the general public includes:<sup>8</sup>

- ✓ Prevention, outpatient treatment, inpatient treatment, crisis care, diversion programs, outreach to individuals not yet engaged in treatment, harm reduction & long-term recovery support
- ✓ Enhanced behavioral health services in schools
- ✓ Services for pregnant women or infants born with neonatal abstinence syndrome
- ✓ Support for equitable access to reduce disparities in access to high-quality treatment
- ✓ Peer support groups, costs for residence in supportive housing or recovery housing, and the 988 National Suicide Prevention Lifeline or other hotline services
- ✓ Expansion of access to evidence-based services for opioid use disorder prevention, treatment, harm reduction, and recovery
- ✓ Behavioral health facilities & equipment

<sup>6</sup> *Id.* at pg. 14.

<sup>7</sup> *Id.* at pg. 15.

<sup>8</sup> *Id.*

Enumerated uses under the Prevention and Response to Violence:<sup>9</sup>

- ✓ Referrals to trauma recovery services for victims of crime
- ✓ Community violence intervention programs, including:
  - Evidence-based practices like focused deterrence, with wraparound services such as behavioral therapy, trauma recovery, job training, education, housing and relocation services, and financial assistance
- ✓ In communities experiencing increased gun violence due to the pandemic:
  - Law enforcement officers focused on advancing community policing
  - Enforcement efforts to reduce gun violence, including prosecution
  - Technology & equipment to support law enforcement response

### **B. Address negative economic impacts caused by the public health emergency**

The Interim Final Rule and the Final Rule on the ARPA Funds can be used to provide direct assistance to households/communities, small businesses, nonprofits, and impacted industries.<sup>10</sup> Under each subcategory of eligible use, Treasury has provided an analysis of impact and disproportionately impacted for each as well as enumerated uses for the impacted and disproportionately impacted under each subcategory.<sup>11</sup> Treasury has also provided an additional subcategory to assist recipients with public sector capacity and workforce.<sup>12</sup>

#### **a. Assistance to Households and Communities**

Treasury presumes the following households are impacted by the pandemic:<sup>13</sup> low-or-moderate income households or communities, defined as those with (i) income at or below 300% of the Federal Poverty Guidelines for the size of the household based on the most recently published poverty guidelines or (ii) income at or below 65 percent of the area median income for the county and size of household based on the most recently published data.<sup>14</sup> Further, Treasury presumes a household or community is impacted if it has experienced unemployment, experienced increased food or housing insecurity, and qualify for Children’s Health Insurance Program (CHIP), Childcare subsidies through the Child Care Development Fund (CCDF) Program, or Medicaid. When providing affordable housing programs, a household or community is presumed impacted if it qualifies for the National Housing Trust Fund and Home Investment Partnership Programs. When providing services to address lost instructional time in K-12 schools, a household or community is presumed impacted if any student lost access to in-person instruction for a significant period of time.

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at pg. 12.

<sup>11</sup> *Id.*

<sup>12</sup> Final Rule at 4384.

<sup>13</sup> *Id.* at 4441, 4348.

<sup>14</sup> Treasury has created a tool for determining Low-and-Moderate Income households to be found at: <https://home.treasury.gov/system/files/136/SLFRF-LMI-tool.xlsx>



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Enumerated uses for impacted households and communities includes:<sup>15</sup>

- ✓ Food assistance & food banks
- ✓ Emergency housing assistance: rental assistance, mortgage assistance, utility assistance, assistance paying delinquent property taxes, counselling and legal aid to prevent eviction and homelessness & emergency programs or services for homeless individuals, including temporary residences for people experiencing homelessness
- ✓ Health insurance coverage expansion
- ✓ Benefits for surviving family members of individuals who have died from COVID-19
- ✓ Assistance to individuals who want and are available for work, including job training, public jobs programs and fairs, support for childcare and transportation to and from a jobsite or interview, incentives for newly-employed workers, subsidized employment, grants to hire underserved workers, assistance to unemployed individuals to start small businesses & development of job and workforce training centers
- ✓ Financial services for the unbanked and underbanked
- ✓ Burials, home repair & home weatherization
- ✓ Programs, devices & equipment for internet access and digital literacy, including subsidies for costs of access
- ✓ Cash assistance
- ✓ Paid sick, medical, and family leave programs
- ✓ Assistance in accessing and applying for public benefits or services
- ✓ Childcare and early learning services, home visiting programs, services for child welfare-involved families and foster youth & childcare facilities
- ✓ Assistance to address the impact of learning loss for K-12 students (e.g., high-quality tutoring, differentiated instruction)
- ✓ Programs or services to support long-term housing security: including development of affordable housing and permanent supportive housing
- ✓ Certain contributions to an Unemployment Insurance Trust Fund<sup>4</sup>

Treasury presumes the following households and communities are disproportionately impacted.<sup>16</sup> Low-income households and communities, defined as those with (i) income at or below 185 percent of the Federal Poverty Guidelines for the size of its household based on the most recently published poverty guidelines or (ii) income at or below 40 percent of area median income for its county and size of household based on the most recently published data. Further, Treasury presumes a household or community as disproportionately impacted if it is in a Qualified Census Tract, if they qualify for Temporary Assistance for Needy Families (TANF); Supplemental Nutrition Assistance Program (SNAP); Free and Reduced-Price Lunch (NSLP) and/or School Breakfast (SBP) programs, Medicare Part D Low-Income Subsidies, Supplemental Security Income (SSI), Head Start and/or Early Head Start, Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), Section 8 Vouchers, Low-Income Home Energy Assistance Program (LIHEAP), and Pell Grants. For services to address educational disparities, Treasury will recognize Title I eligible schools as disproportionately impacted and responsive services that support the school generally or support the whole school as eligible, receiving services provided by Tribal governments, or residing in the U.S. territories or receiving services or these governments.

<sup>15</sup> Overview of the Final Rule, pg. 18.

<sup>16</sup> Final Rule at 4348-9, Overview of the Final Rule, pg. 19.



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Enumerated uses for disproportionately impacted households and communities includes:<sup>17</sup>

- ✓ Pay for community health workers to help households access health & social services
- ✓ Remediation of lead paint or other lead hazards
- ✓ Primary care clinics, hospitals, integration of health services into other settings, and other investments in medical equipment & facilities designed to address health disparities
- ✓ Housing vouchers & assistance relocating to neighborhoods with higher economic opportunity
- ✓ Investments in neighborhoods to promote improved health outcomes
- ✓ Improvements to vacant and abandoned properties, including rehabilitation or maintenance, renovation, removal and remediation of environmental contaminants, demolition or deconstruction, greening/vacant lot cleanup & conversion to affordable housing<sup>7</sup>
- ✓ Services to address educational disparities, including assistance to high-poverty school districts & educational and evidence-based services to address student academic, social, emotional, and mental health needs
- ✓ Schools and other educational equipment & facilities

**b. Assistance to Small Businesses**

Treasury has defined a small business as one that has no more than 500 employees, or if applicable, the size standard in the number of employees established by the Small Business Administration for the industry in which the business concern or organization operates and is a small business concern as defined in section 3 of the Small Business Act (which includes, among other requirements, that the business is independently owned and operated and is not dominant in its field of operation).<sup>18</sup>

Treasury presumes a small business is impacted if it experienced a decrease in revenue or gross receipts; financial insecurity; increased costs; capacity to weather financial hardship; or challenges covering payroll, rent or mortgage, and other operating costs.<sup>19</sup> Recipients may utilize other factors it deems appropriate and in line with the statute, rules, and accompanying guidance to determine if a small business is impacted. Enumerated assistance to an impacted small business includes loans or grants to mitigate financial hardship, such as support for payroll and benefits, costs to retain employees, and mortgage/rent/utility, and other operating costs; and technical assistance counseling, or other services to support business planning.<sup>20</sup>

Treasury presumes a small business is disproportionately impacted if is operating in a qualified census tract, operated by a Tribal government or on Tribal lands, or is operating in a U.S. Territory.<sup>21</sup> Enumerated assistance to a disproportionately impacted small business includes: rehabilitation of commercial properties, storefront improvements, and façade improvements; technical assistance, business incubators and grants for start-up or expansion costs for small businesses; or support for microbusinesses including financial, childcare, and transportation costs.<sup>22</sup>

<sup>17</sup> *Overview of the Final Rule*, pg. 20.

<sup>18</sup> Final Rule at 4377.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Overview of the Final Rule*, pg. 22.



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**c. Assistance to Nonprofits**

Treasury defines an eligible nonprofit as one who is a 501(c)(3) or a 501(c)(19) tax exempt organization.<sup>23</sup>

Treasury presumes a nonprofit is impacted when considering the following factors: decreased revenue (i.e. from donations and fees); financial insecurity; increased costs (i.e. uncompensated increases in service need); capacity to weather financial hardship; or challenges covering payroll, rent or mortgage, and other operating costs.<sup>24</sup> Recipients may utilize other factors it deems appropriate and in line with the statute, rules, and accompanying guidance to determine if a small business is impacted. Enumerated assistance to impacted nonprofits include: loans or grants to mitigate financial hardship; or technical or in-kind assistance or other services that mitigate negative economic impacts of the pandemic.<sup>25</sup>

Treasury presumes a nonprofit is disproportionately impacted if it operates in a qualified census tract; is operated by a Tribal government or on Tribal lands; or operates in a U.S. territory.<sup>26</sup> Assistance to disproportionately impacted nonprofits is at the discretion of the recipient as long as the assistance is related and reasonably proportional to addressing the disproportionate impact.<sup>27</sup>

**d. Assistance to Impacted Industries**

Treasury does not provide a distinction of impacted or disproportionately impacted industries. Recipients have the ability to define an impacted industry, either narrowly or broadly, but is encouraged to define it narrowly and discrete industries for assistance.<sup>28</sup> Treasury states that if the industry is in the travel, tourism, or hospitality industries (including Tribal development districts, then the industry is deemed impacted.<sup>29</sup> If the industry is not one of the previous categories, the industry may be considered impacted if it experienced at least eight percent employment loss from pre-pandemic levels or the industry is experiencing comparable or worse economic impacts as the national tourism, travel, and hospitality industries as of the date of the final rule, based on the totality of economic indicators or qualitative data, and if the impacts were generally due to the COVID-19 public health emergency.<sup>30</sup>

Assistance under this category is limited to businesses, attractions, and Tribal development districts that were operating prior to the pandemic and were affected by the required closures and other efforts to mitigate the COVID-19 pandemic.<sup>31</sup> Enumerated assistance to impacted industries

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<sup>23</sup> Final Rule at 4381.

<sup>24</sup> *Id.* at 4450.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 4380.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 4381.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 4382.

<sup>31</sup> *Id.* at 4381.

are: aid to mitigate financial hardship, such as supporting payroll costs, lost pay and benefits for returning employees, support of operations and maintenance of existing equipment of facilities; technical assistance, counseling, or other services to support business planning; COVID-19 mitigation and infection prevention measures.<sup>32</sup>

**e. Public Sector Capacity and Workforce**

Treasury has included public sector capacity and workforce as an eligible use under the negative economic impact category.<sup>33</sup> Recipients are able to use ARPA funds for three eligible areas to increase capacity and workforce: (i) public safety, public health, and human services staff; (ii) government employment and rehiring public sector staff; and (iii) effective service delivery.<sup>34</sup>

The use of ARPA Funds for public safety, public health, and human services staff allows recipients to cover payroll and covered benefits for this category of workers, limited to the portion of the employee's time spent responding to the COVID-19 public health emergency. The Final Rule lays out specific guidelines for the types of employees that would qualify under each category.<sup>35</sup>

Under this subcategory, recipients may use ARPA Funds to hire government employees up to pre-pandemic levels; provide additional funds for employees who experience pay cuts or were furloughs; to avoid layoffs; provide worker retention incentives; and pay for ancillary administrative costs related to hiring, support, and retention.<sup>36</sup>

Lastly, under this subcategory, Treasury permits recipients to use ARPA Funds to address effective service delivery. The use of these funds may be used to improve efficiency of public health and economic programs through tools such as program evaluation, data, outreach, and administrative needs caused or exacerbated by the pandemic.<sup>37</sup>

**C. Replace lost public sector revenue**

ARPA allows recipients to utilize ARPA Funds to replace lost public sector revenue.<sup>38</sup> To determine the amount permissible under this category, recipients have two options: (i) elect the standard allowance of \$10 million or (ii) calculate actual revenue loss at four distinct points in time.<sup>39</sup> Once a decision is made on which method a recipient is utilizing, the selection is in place for the entirety of the program.

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<sup>32</sup> *Overview of the Final Rule*, pg. 25.

<sup>33</sup> Final Rule at 4383.

<sup>34</sup> *Id.* at 4387.

<sup>35</sup> *Id.* at 4384.

<sup>36</sup> *Id.* at 4386.

<sup>37</sup> *Id.* at 4388-9.

<sup>38</sup> *Id.* at 4339.

<sup>39</sup> *Overview of the Final Rule*, pg. 9.

If a recipient chooses the standard allowance, the amount is \$10 million, no more. However, the amount may be less if the recipient's total award was less. The recipient may elect the standard allowance, and utilizing this category up to the amount of recipient's award.<sup>40</sup>

If recipient elects to calculate actual revenue loss at four points in time, the recipient is to calculate the actual lost revenue at four points in time – either the end of each calendar year or the end of the recipient's fiscal year, then the recipient is to utilize the formula provided in the Interim Final Rule:<sup>41</sup>

(1) Identify revenues collected in the most recent full fiscal year prior to the public health emergency (i.e., last full fiscal year before January 27, 2020), called the base year revenue.

(2) Estimate counterfactual revenue, which is equal to base year revenue  $[(1 + \text{growth adjustment})^{(n/12)}]$ , where n is the number of months elapsed since the end of the base year to the calculation date, and growth adjustment is the greater of 4.1 percent and the recipient's average annual revenue growth in the three full fiscal years prior to the COVID-19 public health emergency.

(3) Identify actual revenue, which equals revenues collected over the past twelve months as of the calculation date.

(4) The extent of the reduction in revenue is equal to the counterfactual revenue less actual revenue. If actual revenue exceeds counterfactual, the extent of the reduction in revenue is set to zero for that calculation date.

For either election, the enumerated use is general government services.<sup>42</sup> General government services are considered “generally any service traditionally provided by a government, including construction of roads and other infrastructure, provision of public safety and other services, and health and education services.”<sup>43</sup> This includes, but is not limited to: construction of schools and hospitals; road building and maintenance and other infrastructure; health services; general government administration, staff, and administrative facilities; environmental remediation; provision of police, fire, and other public safety services.<sup>44</sup>

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<sup>40</sup> Final Rule at 4402-3.

<sup>41</sup> U.S. Department of Treasury, Coronavirus State and Local Fiscal Recovery Funds, 31 CFR § 35, II, C; *See also Overview of the Final Rule*, pg. 9.

<sup>42</sup> *Overview of the Final Rule*, pg. 9.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

**D. Provide premium pay to eligible workers**

To acknowledge the heightened risk essential workers perform and performed, recipients may utilize ARPA Funds to provide these essential workers premium pay.<sup>45</sup> The Final Rule provides a list of eligible workers for this category, while also broadening the list of eligible workers who can receive premium pay without a recent justification.<sup>46</sup> Those eligible receive premium pay in addition to wages or compensation and may be done in installments or lump-sums.<sup>47</sup> Premium pay may be up to \$13/hour and may not exceed \$25,000 for any single worker during the program.<sup>48</sup>

There are three steps a recipient must undertake when utilizing this category:<sup>49</sup>

(1) Identify an eligible worker. Eligible worker is defined as one who is “needed to maintain continuity of operations of essential critical infrastructure sectors.” In addition to the list provided by Treasury, the chief executive of the recipient may designate additional non-public sectors as critical “so long as doing so is necessary to protecting the health and wellbeing of the residents.” The list of eligible workers from Treasury is:

- |  |   |
|--|---|
| ✓ Health care  | ✓ State, local, or Tribal government workforce  |
| ✓ Emergency response   | ✓ Workers providing vital services to Tribes  |
| ✓ Sanitation, disinfection & cleaning  | ✓ Educational, school nutrition, and other work required to operate a school facility           |
| ✓ Maintenance  | ✓ Laundry   |
| ✓ Grocery stores, restaurants, food production, and food delivery                      | ✓ Elections   |
| ✓ Pharmacy   | ✓ Solid waste or hazardous materials management, response, and cleanup                          |
| ✓ Biomedical research  | ✓ Work requiring physical interaction with patients   |
| ✓ Behavioral health  | ✓ Dental care   |
| ✓ Medical testing and diagnostics  | ✓ Transportation and warehousing  |
| ✓ Home and community-based health care or assistance with activities of daily living   | ✓ Hotel and commercial lodging facilities that are used for COVID-19 mitigation and containment |
| ✓ Family or child care   |   |
| ✓ Social services  |   |
| ✓ Public health  |   |
| ✓ Mortuary   |   |
| ✓ Critical clinical research, development, and testing necessary for COVID-19 response |   |

(2) Verify the worker performs/performed essential work. To be essential work, the work must be in person (no telework permitted) and it involves either regular, in-person interactions with patients, the public or coworkers of the individual performing the work or regular physical handling of items that were

<sup>45</sup> Final Rule at 4396-7.

<sup>46</sup> *Id.* at 4339.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Overview of the Final Rule*, pg. 35-6.



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handled by, or are to be handled by patients, the public, or coworkers of the individual performing the work.

(3) Confirm the premium pay responds to the eligible worker's eligible work during the COVID-19 public health emergency. Recipient may provide premium pay without a written justification if: (i) the eligible worker is earning (with premium pay) at or below 150 percent of their residing state or county's average annual wage for all occupations, as defined by the Bureau of Labor Statistics' Occupational Employment and Wage Statistics, whichever is higher, on an annual basis; or (ii) eligible worker receiving premium pay is not exempt from the Fair Labor Standards Act overtime provisions.<sup>50</sup>

Premium pay may not be used to reimburse the recipient for premium pay or hazard pay already given to the worker. Further, a volunteer may not be an eligible worker. Lastly, elected officials may not receive premium pay.<sup>51</sup>

**E. Invest in water, sewer, and broadband infrastructure**

Recipient may utilize ARPA Funds for eligible water, sewer, and broadband investments.<sup>52</sup> Water and sewer projects are eligible if they are eligible for the Clean Water State Revolving Loan Fund and the Drinking Water State Revolving Loan Fund.<sup>53</sup> In addition, the Final Rule permits the use of funds for stormwater infrastructure, residential wells, lead remediation, and certain rehabilitations of dams and reservoirs if it is found to be necessary, as defined by the final rule.<sup>54</sup> Necessary is defined by the Final Rule as (1) responsive to an identified need to achieve or maintain an adequate minimum level of service, which may include a reasonable projection of increased need, whether due to population growth or otherwise, (2) a cost-effective means for meeting that need, taking into account available alternatives, and (3) for investments in infrastructure that supply drinking water in order to meet projected population growth, projected to be sustainable over its estimated useful life.<sup>55</sup>

The Final Rule expands the use of funds for broadband infrastructure.<sup>56</sup> There are three steps a recipient must undertake when utilizing funds for broadband infrastructure: (i) identify an eligible area for investment; (ii) design a project to meet high-speed technical standards; and (iii) require enrollment in a low-income subsidy program.<sup>57</sup>

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<sup>50</sup> *Id.* pg. 36.

<sup>51</sup> Final Rule at 4400.

<sup>52</sup> *Id.* at 4339.

<sup>53</sup> *Overview of the Final Rule*, pg. 37-8.

<sup>54</sup> *Id.*

<sup>55</sup> Final Rule at 4408.

<sup>56</sup> *Id.* at 4339.

<sup>57</sup> *Id.* at 4418.



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An eligible area for investment is one without access to a reliable wireline 100 Mbps download and 20 Mbps upload, additional areas may be identified as those with lack of access, lack of affordable broadband, and/or lack of reliable service.<sup>58</sup> When pursuing a project outside of the 100/20 parameters, the recipient must ensure that the funds are used to address an identified need for an additional broadband investment that is not met by existing federal or state funding commitments and also ensure the funds will not be used for costs that will be reimbursed by other federal or state programs.<sup>59</sup>

A recipient must require providers of an ARPA broadband project to household to participate in the FCC’s Affordable Connectivity Program or provide access to a broad-based affordability program to low-income consumers that provides benefits similar to the FCC’s Affordable Connectivity Program.<sup>60</sup>

**F. Uses beyond those enumerated**

As discussed in Section A and Section B of this memorandum, Treasury has provided enumerated uses for the public health expenditure and negative economic impact categories, and for uses beyond those enumerated, Treasury has provided a framework for recipients:<sup>61</sup>

Step	1. Identify COVID-19 public health or economic impact	2. Design a response that addresses or responds to the impact
Analysis	<ul style="list-style-type: none"> <li>Can identify impact to a specific household, business or nonprofit or to a class of households, businesses or nonprofits (i.e., group)</li> <li>Can also identify disproportionate impacts, or more severe impacts, to a specific beneficiary or to a class</li> </ul>	<ul style="list-style-type: none"> <li>Types of responses can include a program, service, or capital expenditure</li> <li>Response should be related and reasonably proportional to the harm</li> <li>Response should also be reasonably designed to benefit impacted individual or class</li> </ul>

When utilizing ARPA Funds beyond an enumerated use, recipients must ensure that the use is reasonably proportional and related to the identified impact. Treasury has defined reasonably proportional as “the scale of the response compared to the scale of the harm, as well as the targeting of the response to beneficiaries compared to the amount of the harm experienced.”<sup>62</sup>

<sup>58</sup> *Id.*

<sup>59</sup> *Overview of the Final Rule*, pg. 39.

<sup>60</sup> Final Rule at 4418.

<sup>61</sup> *Overview of the Final Rule*, pg. 32.

<sup>62</sup> *Id.* pg. 34.



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**G. Capital expenditures**

The ARPA Final Rule states that a capital expenditure project “must be related and reasonably proportional to the pandemic impact identified and reasonably designed to benefit the impacted population or class.”<sup>63</sup> The below identifies when a written justification is or is not required for a capital expenditure.<sup>64</sup>

<b>If a project has total capital expenditures of</b>	<b>and the use is enumerated by Treasury as eligible, then</b>	<b>and the use is beyond those enumerated by Treasury as eligible, then</b>
Less than \$1 million	No Written Justification required	No Written Justification required
Greater than or equal to \$1 million, but less than \$10 million	Written Justification required but recipients are not required to submit as part of regular reporting to Treasury	Written Justification required and recipients must submit as part of regular reporting to Treasury
\$10 million or more	Written Justification required and recipients must submit as part of regular reporting to Treasury	

**H. Restriction on the use of funds**

ARPA Funds may not be used by deposit into any pension fund; to service debt or replenish financial reserves; to satisfy a settlement or judgment (unless the settlement requires recipient to provide a service or incur other costs that are an eligible use of ARPA funds, then the funds may be used for that); and may not use the funds for projects that conflict with the purpose of ARPA and its accompanying guidance – for example programs or conditions that may worsen the public health crisis.<sup>65</sup>

<sup>63</sup> 31 C.F.R. § 35.6(b)(1)(ii).

<sup>64</sup> *Overview of the Final Rule*, pg. 30.

<sup>65</sup> *Id.*, pg. 41-2.



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ANALYSIS OF CITY'S SPECIFIC SPEND-PLAN

(1) Eligible

- **Essential Worker Relief Program**

This would be eligible if done within the parameters of the premium pay eligible use category of ARPA.<sup>66</sup>

- **Emergency Response Equipment**
- **Update Traffic Patterns**
- **Airport Terminal Repair**

These would be eligible if done as general government services, utilizing the lost revenue category.<sup>67</sup>

(2) Eligible if Addressing Public Health or Economic Disparities

- **Indoor Ventilation/Filtration for City Facilities**

This may be an eligible expense if it is addressing public health and a response, mitigation, and prevention of COVID-19.<sup>68</sup>

- **Recreation Infrastructure Projects**

This may be an eligible expense if it is addressing a negative economic impact for disproportionately impacted communities.

- **Downtown Free WiFi Zone**

- **Free WiFi in Public Facilities**

This is an eligible expense if the broadband connection is for those who are disproportionately negatively impacted by the COVID-19 public health emergency. It would be important for use under this category for the City to document how the use aligns with the statute and Final Rule and their intentions.

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<sup>66</sup> 31 C.F.R. § 35.6(c).

<sup>67</sup> 31 C.F.R. § 35.6(d).

<sup>68</sup> Final Rule at 4350.

**(3) Requiring Further Clarification or Explanation**

- **Complete Downtown Rehabilitation including pedestrian friendly downtown zone and new commercial space for new/existing small and microbusinesses**

This may be an eligible expense but the specific actions under this broad category would need to be identified.

Treasury enumerated an eligible use in disproportionately impacted communities includes the development of “neighborhood features that promotes improved health and safety outcomes, such as parks, green spaces, recreational facilities, sidewalks, pedestrian safety features like crosswalks, projects that increase access to health foods, streetlights, neighborhood cleanup, and other projects to revitalize space.”<sup>69</sup>

Of particular note, Treasury states that general infrastructure development, including street or road construction, remains generally ineligible and as such sidewalks and pedestrian safety should be the prominent component of use under this category. Treasury acknowledges that construction may be ancillary to the prominent, but that specifically “a project that predominantly involves street construction or repair to benefit vehicular traffic would be ineligible.”<sup>70</sup>

Treasury recognizes that vacant or abandoned properties leads to an increase in public health disparities and higher rates of crime.<sup>71</sup> Therefore, Treasury permits the following: (i) rehabilitation, renovation, maintenance, or costs to secure vacant or abandoned properties to reduce their negative impact; (ii) costs associated with acquiring and securing legal title of vacant or abandoned properties and other costs to position the property for current or future productive use; (iii) removal and remediation of environmental contaminants or hazards from vacant or abandoned properties, when conducted in compliance with applicable environmental laws or regulations; (iv) demolition or destruction of vacant or abandoned buildings (including residential, commercial, or industrial buildings) paired with greening or other lot improvements as part of a strategy for neighborhood revitalization; (v) greening or cleanup of vacant lots, as well as other efforts to make vacant lots safer for the surrounding community; (vi) conversion of vacant or abandoned properties to affordable housing; (vii) inspection fees and other administrative costs incurred to ensure compliance with applicable environmental laws and regulations for demolition, greening, or other remediation activities.<sup>72</sup>

As noted above, there are specific uses that are enumerated for assistance to small businesses in disproportionately impacted communities, which may be a component of this section. With more specifics from the City, this may be an eligible use.

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<sup>69</sup> *Id.* at 4373.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.* at 4374.

<sup>72</sup> *Id.*



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- **Wraparound Homeless Rehabilitation Services**

This may be an eligible expense under the addressing negative economic impact on impact communities category. Since this use is not enumerated, the City will need to perform a non-enumerated use analysis. To understand whether or not the use would be enumerated, it is important to get a more specific plan for this use.

- **Outreach Specialist**

The Final Rule allows for the City to bolster public sector capacity and ability to deliver services. In order to determine the eligibility, it is important to understand the full time employment levels of the City pre-pandemic and how this role would or would not fit in.

- **Library Infrastructure Project**

In order to determine the eligibility of this spend-plan, more specifics of this specific item is required.

- **Upgrade City Broadband Infrastructure**

In order to determine the specific eligibility category for this item, some more specifics are required. If the infrastructure is to assist the city in providing services there is the ability for the City to utilize ARPA funds. If there is another purpose, it may still be eligible, but more specifics are required.

- **Water/Sewer Replacement Projects**

As long as the water/sewer replacement projects are Clean Water State Revolving Loan Fund or Drinking Water State Revolving Loan Fund eligible than this would qualify.<sup>73</sup> As describe above, if the project is not eligible in the SRF programs, it may be eligible if it fits under the expanded definition. Without knowledge of the specific projects sought to be done under this category, more analysis cannot be provided.

#### **(4) Ineligible**

Based on the information provided by the City of Calexico, each proposed project has an opportunity to be eligible at this time.

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<sup>73</sup> 31 C.F.R. § 35.6(e).



### CONCLUSION

Based on a review of the American Rescue Plan Act, the Interim Final Rule, the Final Rule, and the accompanying guidance, the following projects would be eligible for use of ARPA Funds:

- Essential Worker Relief Program
- Emergency Response Equipment
- Update Traffic Patterns
- Airport Terminal Repair

Based on a review of the American Rescue Plan Act, the Interim Final Rule, the Final Rule, and the accompanying guidance, the following projects would be eligible for use of ARPA Funds provided the City makes finding that the projects are designed to address public health and/or economic disparities:

- Indoor Ventilation/Filtration for City Facilities
- Recreation Infrastructure Projects
- Downtown Free WiFi Zone
- Free WiFi in Public Facilities

The following projects require further clarification or explanation to determine eligibility:

- Complete Downtown Rehabilitation including pedestrian friendly downtown zone and new commercial space for new/existing small and microbusinesses
- Wraparound Homeless Rehabilitation Services
- Outreach Specialist
- Library Infrastructure Project
- Upgrade City Broadband Infrastructure
- Water/Sewer Replacement Projects

Thank you for the opportunity to assist the City with this matter. Should the City have any additional questions or would like to review any of the above further, please do not hesitate to let us know.

Ana D. Schwab