PRESENTED BY THE NATIONAL ASSOCIATION OF COUNTIES

OVERVIEW OF U.S. TREASURY FINAL RULE FOR ARPA FISCAL RECOVERY FUND

MARCH 22, 2022

SUBMIT YOUR COMMENTS AND QUESTIONS TO NACo

COVID-19 RECOVERY CLEARINGHOUSE

In a major victory for America's counties, the State and Local Coronavirus Fiscal Recovery Funds legislation, part of the American Rescue Plan Act, was signed into law by President Biden on March 11. The legislation includes $65.1 billion in direct, flexible aid to every county in America, as well as other crucial investments in local communities.

Overview of U.S. Treasury's Final Rule for ARPA Fiscal Recovery Fund

Explore NACo's overview of U.S. Treasury's Final Rule for the State and Local Coronavirus Fiscal Recovery Fund.

ACCESS ANALYSIS

State & Local Fiscal Recovery Funds

Find Treasury guidance, FAQs, NACo's analysis and more

LEARN MORE

Untold Stories

Join us in highlighting how counties are making incredible differences in the lives of our residents through the American Rescue Plan Act

LEARN MORE

Local Government ARPA Investment Tracker

The Local Government ARPA Investment Tracker, powered by NACo, Brookings Metro and National League of Cities provides a detailed local investment picture of American Rescue Plan Act funding

ACCESS TRACKER

COVID-19 Recovery Clearinghouse (naco.org)

How Can We Help?

Use the form below to ask a question, and NACo staff will respond via email. Please also explore our curated resources, including guidance, FAQs and more:

- Lastest Resources
- NACo Recovery Fund FAQs
- Your County's ARP Allocation
- NACo ARPA Analysis

ASK A QUESTION

Share Your Story

How is your county responding to the coronavirus pandemic and driving the recovery in your community. Use the form below to share how your county is using federal relief funds with NACo.

For resources to share your story with local media **click here**.

SHARE YOUR STORY

NATIONAL ASSOCIATION of COUNTIES NACo

TOP 10 HIGHLIGHTS OF RECOVERY FUND FINAL RULE

1. **Final Rule is effective April 1, 2022,** but counties can take advantage of new provisions prior to the effective date

2. **Allows counties to use up to $10 million standard allowance, or an enhanced 5.2% growth factor under Treasury's formula, as *revenue loss* for the provision of general government services**

3. **Clarifies eligible use of funds for capital expenditures** and requires written justification for projects above $1M cost

4. **Presumes certain populations were "impacted" and "disproportionately impacted" by the pandemic** and therefore are eligible to receive a broad range of services and support – *designed to minimize administrative burden*

5. **Streamlines options for premium pay** by broadening the share of eligible workers who can receive premium pay

6. **Authorizes re-hiring of local government staff,** either at or above pre-pandemic levels

7. Allows Recovery Funds to be used for **modernization of cybersecurity,** including hardware and software, and expands broadband infrastructure invests

8. Broadens **water and sewer projects** to include storm water, culvert repair, dam and reservoir rehabilitation

9. Recovery Funds may be **deposited into interest-bearing accounts,** with earned interest allowed for general county use

10. Recovery Funds shall comply with **federal "Uniform Guidance" or 2 CRF Part 200**

DECODING ***THE LANGUAGE*** OF THE FINAL RULE

Throughout the Final Rule, along with related FAQs and fact sheets, U.S. Treasury uses several ***key words*** that are important to understand in determining the eligible use of funds. *Please be sure to read the Final Rule, FAQs and Guidance.*

KEY WORDS TO WATCH

- **SHALL** = Mandatory county actions for reporting, use and compliance
- **MAY** = Allows county discretion
- **ENCOURAGE / SHOULD** = Treasury preference only (NOT REQUIRED)
- **"REASONABLY PROPORTIONAL", "RELATED" AND "CONSISTENT" are key words**

Overview of U.S. Treasury's Final Rule for ARPA Fiscal Recovery Fund

Recovery Funds are reported across four major categories of eligible uses to address the broad range of public health and negative economic challenges caused or exacerbated by the COVID-19 emergency.

1. **Public sector revenue:** Provide general government services up to the amount of *revenue loss,* either using the standard allowance (up to $10M) or Treasury's revenue loss formula
2. **Public health and economic response:** Address, mitigate and respond to COVID-19 public health impacts, along with its negative economic harms
3. **Premium pay for essential workers:** Offer additional compensation for workers, including the county government workforce, who bear the greatest health risks because of their service in critical sectors
4. **Water, sewer and broadband infrastructure:** Invest in critical water and sewer projects (including stormwater and culverts), along with high-speed broadband infrastructure

FUNDAMENTALS OF *REVENUE LOSS* ALLOWANCE

Counties may use Recovery Funds to provide general government services, up to the amount of *revenue loss* experienced using one of two approaches. Under the Final Rule, **counties may now use one of the two options:**

KEY NEW FEATURES IN FINAL RULE

1. **NEW STANDARD ALLOWANCE OF UP TO $10 MILLION FOR REVENUE LOSS**

   A. Counties may allocate up to $10 million of their total Recovery Fund allocation to spend on general government services

   — Simplifies reporting requirements for counties using the standard $10M standard allowance

   — 2,137 counties (70%) are now eligible to invest the entirety of their Recovery Fund allocation for general gov't services

   OR **B.** Counties may still calculate actual revenue loss using the Treasury formula – *but must pick & stay with 1 of the 2 options*

2. **IMPROVEMENTS TO TREASURY'S REVENUE LOSS FORMULA**

   - Revenue loss **growth rate enhanced from 4.1% to 5.2% each year** as the new standard default allowance for the formula
   - General revenue now includes **utility revenue and liquor store** revenue, *at the discretion of the county*
   - Counties may choose to calculate revenue loss on a **fiscal year OR calendar year** basis – *must pick & stay with 1 option*
   - Counties shall adjust actual revenue totals for the effect of **tax cuts/increases adopted after January 6, 22**

FUNDAMENTALS OF *REVENUE LOSS* ALLOWANCE

KEY TAKEAWAYS

- **Counties have two options to calculate *revenue loss*:**

  1. **Standard allowance** of up to $10 million, **OR**
  2. **Calculate *annual revenue loss*** with Treasury formula, using a **new, enhanced minimum default growth rate of 5.2% per year or calculate the actual differential for your county** *(additional information on revenue loss formula on next page)*

- **If your county previously declared “$0” for revenue loss in the Interim Report,** the county may change and update this number in the first Project and Expenditure Report

- **If your county is declaring revenue loss,** you **must still abide** by the reporting requirements within the Project and Expenditure Report’s “revenue loss” category
  - ***All Recovery Funds must still be tracked using the federal ID# – 21.07 – and managed separately from the county “general fund account”***

NACo applauds the flexibility under Treasury’s Final Rule that allows counties to use up to $10 million in ARPA Recovery Funds for the provision of government services

FUNDAMENTALS OF *REVENUE LOSS* ALLOWANCE

U.S. Treasury's guidance establishes new methodology to calculate lost revenue.

Recipients have two options to calculate lost revenue:

- Recipients shall compute the extent of reduction in revenue by comparing **actual revenue to a counterfactual trend** representing what could have plausibly been expected to occur in the absence of the COVID-19 pandemic

- For purposes of measuring revenue growth in the counterfactual trend, recipients may use a **growth adjustment of either:**

  1. **5.2% per year** (based on the national average of state and local revenue growth),

  OR

  2. The **recipients average annual revenue growth over the last three full fiscal years** prior to the COVID-19 pandemic

Recipients **may choose the higher of the two options** when determining the **growth adjustment figure** for the county

FUNDAMENTALS OF *REVENUE LOSS* ALLOWANCE

Counties may use *revenue loss* for **general government services up to the *revenue loss* amount**, whether using the standard allowance (up to $10 million) or the amount calculated using Treasury's formula for each eligible year:

- **Government services generally include any service traditionally provided by a government,** unless Treasury has stated otherwise **(WARNING - See next slide for list of prohibitions!)**

- **Common examples** include, but are not limited to:
  - Construction of schools and hospital
  - Road building and maintenance, and other infrastructure
  - Health services
  - General government administration, staff and administrative facilities
  - Environmental remediation
  - Police, first responders and other public safety services (including purchase of fire trucks, police vehicles and other equipment)
  - Other general government services

RECOVERY FUNDS USED TO REPLACE "REVENUE LOSS" ARE MORE FLEXIBLE AND MAY BE USED FOR A BROAD RANGE OF GOVERNMENT SERVICES, PROGRAMS AND PROJECTS OUTSIDE OF TYPICAL ELIGIBLE USES OF RECOVERY FUNDS UNDER THE FINAL RULE. HOWEVER, REVENUE RECOUPMENT **SHALL NOT BE USED FOR RAINY DAY FUNDS, DEBT SERVICES, AND EXTRAORDINARY PENSION CONTRIBUTIONS**

FUNDAMENTALS OF *REVENUE LOSS* ALLOWANCE

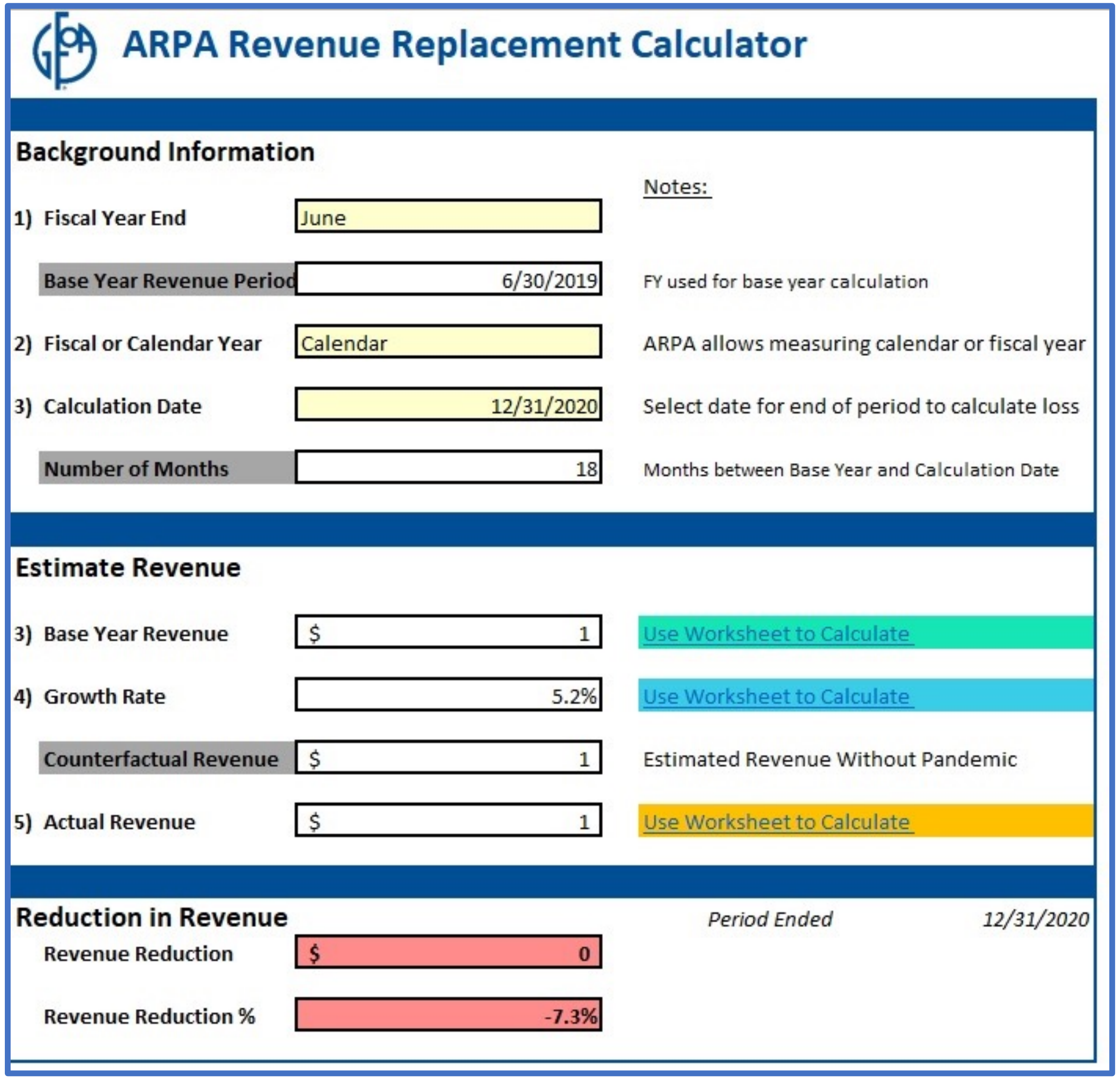
Counties may use *revenue loss* for **general government services up to the *revenue loss* amount**, whether that be the standard allowance amount ($10 million), or the amount calculated using Treasury's formula:

HOWEVER, the following activities are NOT an eligible use of a county's "revenue loss" allowance:

- Extraordinary contribution to a **pension fund**
  - **Does not apply to pension contributions that are part of regular payroll contributions for employees whose wages and salaries are an eligible use of Recovery Funds**
- **Debt service** payment, including Tax Anticipation Notes (TANs)
- Rainy day or **reserve account**
- **Settlement agreement, judgment, consent decree or judicially confirmed debt** *(with limited exceptions)*
- **(NEW) Activity that conflicts with the purpose of the American Rescue Plan Act statute** (e.g. uses of funds that conflict with COVID-19 mitigation practices in line with CDC guidance and recommendations)
- **Violations of Award Terms and Conditions or conflict of interest requirements under the Uniform Guidance**

NACo-GFOA
REVENUE LOSS CALCULATOR

- Updated calculator reflects Final Rule improvements to Treasury's *revenue loss* formula
- Tool allows counties to more easily calculate *revenue loss* for each year


ARPA Revenue Replacement Calculator

Background Information

		Notes:
1) Fiscal Year End	June	
Base Year Revenue Period	6/30/2019	FY used for base year calculation
2) Fiscal or Calendar Year	Calendar	ARPA allows measuring calendar or fiscal year
3) Calculation Date	12/31/2020	Select date for end of period to calculate loss
Number of Months	18	Months between Base Year and Calculation Date

Estimate Revenue

3) Base Year Revenue	$ 1	Use Worksheet to Calculate
4) Growth Rate	5.2%	Use Worksheet to Calculate
Counterfactual Revenue	$ 1	Estimated Revenue Without Pandemic
5) Actual Revenue	$ 1	Use Worksheet to Calculate

Reduction in Revenue

		Period Ended	*12/31/2020*
Revenue Reduction	$ 0		
Revenue Reduction %	-7.3%		

PUBLIC HEALTH & NEGATIVE ECONOMIC IMPACTS

KEY NEW FEATURES IN FINAL RULE

1. **ENUMERATED ELIGIBLE USES**
    - Significantly expands or clarifies presumed eligible uses, including:
        - **All categories:** Capital expenditures & applicable standards
        - **Impacted households:** Affordable housing, childcare, early learning services and services to address learning loss during the pandemic ARE ELIGIBLE in all impacted communities
        - **Disproportionately impacted households:** Certain community development and neighborhood revitalization activities are now presumed eligible for disproportionately impacted communities
        - **Disproportionately impacted small businesses:** Broader set of business supports, such as rehabilitation of storefronts and business incubators, are now presumed eligible for this category

The Final Rule provides a list of expanded eligible uses and defines those **impacted & disproportionately impacted populations** that are presumed eligible

PUBLIC HEALTH & NEGATIVE ECONOMIC IMPACTS

KEY NEW FEATURES IN FINAL RULE

1. **AID TO IMPACTED INDUSTRIES**
   - Clarifies **how to designate** an impacted industry
   - Clarifies **eligible uses** to impacted industries
2. **PUBLIC SECTOR CAPACITY**
   - Allows re-hiring of county staff to **pre-pandemic levels, OR**
   - Adjusted level **up to 7.5%** above pre-pandemic baseline
   - Support for staff retention, avoiding layoffs and funds for furloughed workers
3. **CAPITAL EXPENDTIURES**
   - Eligible projects **must respond to pandemic and be proportional to impact**
   - Required written justification for projects **above $1M expenditure**

Counties may use funds for other aspects of **health and economic response**

NEGATIVE ECONOMIC IMPACTS

NATIONAL ASSOCIATION of COUNTIES NACo®

ASSISTANCE TO HOUSEHOLDS

Counties may use funds to respond to negative economic impacts of the pandemic on households and communities.

IMPACTED HOUSEHOLDS

Impacted households are those that have experienced an impact from the COVID-19 pandemic.

Treasury presumes the following are **impacted households**:

- **Low-and-moderate income households** (at or below 300% Federal Poverty Guidelines or 65% of Average Middle Income) (I.e. $65,880)
- **Households experiencing unemployment, or food/housing insecurity**
- **Households that qualify for certain federal programs,** such as CHIP and childcare subsidies **(NEW)**

DISPROPORTIONATELY IMPACTED HOUSEHOLDS

Disproportionately impacted households are those that have experienced a disproportionate impact from the COVID-19 pandemic.

Treasury presumes that the following households are **disproportionately impacted**:

- **Low-income households,** defined as those at or below 185% of FPG or 40% of AMI (I.e. $40,626) **(NEW)**
- Households located in a **Qualified Census Tracts**
- Households receiving services from **Tribal governments**
- Households residing in the **U.S. territories or receiving services from territorial governments (NEW)**
- Households that qualify for **certain federal programs,** such as TANF, SSI and WIC **(NEW)**

NEGATIVE ECONOMIC IMPACTS

NATIONAL ASSOCIATION of COUNTIES NACo®

ASSISTANCE TO HOUSEHOLDS

Counties may use funds to respond to negative economic impacts of the pandemic on households and communities.

IMPACTED HOUSEHOLDS

All impacted households are eligible for uses that respond to the impact. Eligible uses include:

- Food assistance
- Re-employment and job training
- Rent, mortgage or utility assistance
- Cash assistance
- Health insurance coverage expansion
- Paid sick & family leave
- Financial services for unbanked and underbanked
- Affordable housing development and permanent supportive housing
- Childcare, early learning & addressing learning loss for students

DISPROPORTIONATELY IMPACTED HOUSEHOLDS

Disproportionately impacted households are eligible for uses that respond to the impact & the disparities that led to the disproportionate impact. Additional eligible uses include:

- Addressing health disparities (I.e. community health workers, lead remediation, health facilities)
- Investments in neighborhoods to promote health outcomes
- Addressing education disparities (I.e. enhanced funding to high-poverty schools & educational facilities)
- Improvements to vacant and abandoned property
- Housing vouchers and assistance relocating to neighborhoods with higher economic opportunity

NEGATIVE ECONOMIC IMPACTS

ASSISTANCE TO SMALL BUSINESSES

Treasury defines a small business, in general, as having no more than 500 employees, is independently owned and operated, and is not dominant in its field of operation.

IMPACTED

SMALL BUSINESSES

- Decreased revenue or gross receipts
- Financial insecurity
- Increased costs **(NEW)**
- Capacity to weather financial hardship
- Challenges covering payroll, rent or mortgage and other operating costs
- Other reasonable factors determined by the county

DISPROPORTIONATELY IMPACTED

SMALL BUSINESSES

- Small business operating in **Qualified Census Tracts**
- Small businesses operated by **Tribal governments or on Tribal lands**
- Small businesses operating in **U.S. territories**

NEGATIVE ECONOMIC IMPACTS

ASSISTANCE TO SMALL BUSINESSES

Treasury outlines potential types of assistance for small businesses under this specific category.

ELIGIBLE USES TO SUPPORT IMPACTED SMALL BUSINESSES

- **Loans or grants** to mitigate financial hardship (I.e. support payroll and benefits, costs to retain employees, and mortgage, rent, utility and other operating costs
- **Technical assistance,** counseling, or other services to support business planning
- **WARNING: For loans, please refer to Treatment of Loans section for additional Treasury guidance**

ELIGIBLE USES TO SUPPORT DISPROPORTIONATELY IMPACTED SMALL BUSINESSES

- **Rehabilitation** of commercial properties, storefront improvements and façade improvements
- **Technical assistance,** business incubators and grants for start-up or expansion costs for small businesses
- **Support for microbusinesses,** including financial, childcare and transportation costs

NEGATIVE ECONOMIC IMPACTS

ASSISTANCE TO NONPROFITS

Treasury defines a nonprofit as 501(c)(3) (charitable) and 501(c)(19) (veteran) tax-exempt organizations.

IMPACTED NONPROFITS

- Decreased **revenues**
- Financial **insecurity**
- Increased **costs** (I.e. uncompensated services)
- Capacity to weather **financial hardship**
- Challenges covering payroll, rent or mortgage and other **operating costs**

ELIGIBLE USES INCLUDED

- **Loans or grants** to mitigate financial hardship
- **Technical or in-kind assistance** or other services that mitigate *negative economic impacts* of the pandemic

DISPROPORTIONATELY IMPACTED NONPROFITS

- Nonprofits operating in **Qualified Census Tracts**
- Nonprofits operating in **Tribal governments**
- Nonprofits operating in **U.S. territories**

ELIGIBLE USES INCLUDED

- **Responses that are related and reasonably proportional** to addressing disparities that led to disproportionate impacts

NEGATIVE ECONOMIC IMPACTS

AID TO IMPACTED INDUSTRIES

- **The Final Rule states that an industry may be designated as "impacted":**
  1. If the industry is in the travel, tourism or hospitality sectors, the industry is presumed impacted
  2. If the industry is outside of travel, tourism or hospitality sectors, the industry is impacted if:
     - The industry **experienced at least 8 percent employment loss from pre-pandemic levels**, **OR**
     - The industry is **experiencing comparable or worse economic impacts as the tourism, travel and hospitality industries** as of the date the Final Rule is published (12/6/2021)

- **Recipients (I.e. counties) have flexibility to define industries**

- Aid **shall** only be provided to businesses and attractions that were **operating prior to the pandemic and affected by required closures** (Note: This is different than aid to small businesses, including those start-up businesses impacted by the COVID-19 pandemic)

RESTORE AND SUPPORT PUBLIC SECTOR CAPACITY

Counties may use Recovery Funds to restore and bolster <u>public sector capacity,</u> with the goal of supporting the public sector's ability to deliver critical COVID-19 services.

1. **Cover payroll and covered benefits** for existing public safety, public health, health care, human services and similar employees of a recipient government **<u>(WARNING: ARP Recovery Funds have different rules than the CARES Act!)</u>**
2. Rehire public sector staff to **pre-pandemic levels <u>OR</u> above pre-pandemic levels with a 7.5 percent growth allowance**
3. Support and retain public sector workers:
   - **Provide additional funding for employees who experienced pay reductions** or were furloughed
   - **Maintain current compensation levels** to prevent layoffs
   - **Provide worker retention incentives,** including reasonable increases in compensation (**<u>shall be additive</u>** to an employee's regular compensation and **<u>shall be</u>** less than 25 percent of the rate of base pay for an individual and no more than 10 percent for a group)
   - **Cover administrative costs** associated with hiring, support and retention programs
4. **Provide effective service delivery** (including cleanup of county services backlogs, program evaluations, and technology upgrades)

RESTORE PUBLIC SECTOR CAPACITY

PUBLIC SAFETY, PUBLIC HEALTH AND HUMAN SERVICES STAFF

Payroll and related benefits for public safety, public health, health care, human services and similar employees of a recipient government *(See definitions of eligible employees below)* **(NOTE that ARP Recovery Funds have different rules for payroll support than the CARES Act!)**

PUBLIC SAFETY STAFF

- Police officers
- Sheriffs/deputy sheriffs
- Firefighters
- Emergency medical responders
- Correctional and detention officers
- Dispatchers and supervisor personnel that directly support public safety staff

PUBLIC HEALTH STAFF

- Employees involved in providing medical, physical or mental health services (i.e. medical staff in schools, prisons, etc.)
- Laboratory technicians, medical examiners, morgue staff
- Other support services essential for patient care
- Employees of public health departments

HUMAN SERVICES STAFF

- Employees providing or administering social services and public benefits
- Child welfare services employees
- Child, elder or family care employees

Chief county elected official may also designate other county employees for payroll support based on the Treasury criteria

RESTORE PUBLIC SECTOR CAPACITY

GOVERNMENT EMPLOYMENT AND REHIRING PUBLIC SECTOR STAFF

Counties have **two options to restore pre-pandemic employment**:

1. **Hire back county pre-pandemic FTE positions that existed on January 27, 2020**

OR

2. **Hire above the county's pre-pandemic level of up to 7.5 percent above pre-pandemic baseline.** If a county wants to hire above pre-pandemic baseline, it must complete the following steps:
   - Identify the county's FTE level on January 27, 2020
   - Multiply the pre-pandemic baseline by 1.075 (***adjusted pre-pandemic baseline***)
   - Identify county's budgeted FTE level on March 3, 2021 (***actual number of FTEs***)
   - Subtract the ***actual number of FTEs*** from the ***adjusted pre-pandemic baseline*** to determine number of FTEs that can be covered
   - ***County is NOT required to hire for the same exact roles that existed pre-pandemic***

RESTORE PUBLIC SECTOR CAPACITY

EFFECTIVE SERVICE DELIVERY

Recovery Funds may be used to **improve the efficacy of public health and economic programs**.

- **Support program evaluation, data and outreach through:**
  - **Program evaluation** and evidence resources
  - **Data analysis resources** to gather, assess, share and use data
  - **Technology infrastructure** to improve access to and user experience of government IT systems
  - **Community outreach** and engagement activities

- **Administrative needs:**
  - **Backlogs** caused by shutdowns (I.e. court case backlogs)
  - **Technology infrastructure** to adapt government operations to pandemic
    - Video-conferencing software, data and case management systems are illustrated as examples

NACo applauds the clarification that Recovery Funds may be used towards expenses to address court case backlogs caused by court case closures during the pandemic

CAPITAL EXPENDITURES

Counties may use Recovery Funds for capital expenditures that respond to the public health and negative economic impacts of the pandemic.

- **Projects shall be related to public health and/or negative economic impacts** and be **proportional** to the pandemic impact identified
- ***No pre-approval*** is required or provided for capital expenditures
- To ensure the expenditure is eligible, **counties are required to write a written justification for capital expenditures** equal to or greater than $1 million, which includes the following:
    1. **Description of harm or need** to be addressed (i.e. number of individuals)
    2. Explanation of **why the capital expenditure is appropriate** (i.e. why existing resources are inadequate)
    3. **Comparison of proposed capital expenditure project** against at least two alternative capital expenditures and why the proposed capital expenditure is superior

Counties are required to write a written justification for capital expenditures **equal to or greater than $1 million**

CAPITAL EXPENDITURES

Counties may use Recovery Funds for capital expenditures that respond to the public health and negative economic impacts of the pandemic.

COST OF CAPITAL EXPENDITURE PROJECT	USE IS ENUMERATED BY TREASURY AS ELIGIBLE	USE IS BEYOND THOSE ENUMERATED BY TREASURY AS ELIGIBLE
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 <u>but</u>** county does not need to submit as part of regular periodic reporting	**Written justification required <u>and</u>** county shall submit as part of regular periodic reporting to Treasury
$10 million or more	**Written justification required <u>and</u>** county shall submit as part of regular periodic reporting	

NOTE:

These written justification requirements for capital expenditures **<u>do NOT apply</u> to capital expenditures funded with revenue loss funds**

CAPITAL EXPENDITURES

EXAMPLES OF ***ELIGIBLE*** CAPITAL EXPENDITURE PROJECTS	EXAMPLES OF ***INELIGIBLE*** CAPITAL EXPENDTIURE PROJECTS
• Schools • Childcare facilities • Medical facilities generally dedicated to COVID-19 treatment and mitigation (i.e. ICUs, emergency rooms, etc.) • Temporary medical facilities • Emergency operation centers • Behavioral health facilities • Affordable housing and permanent supportive housing • Primary care clinics, hospitals • Improvements to vacant/abandoned properties	• Construction of **new** correctional facilities • Construction of **new** congregate facilities • Construction of convention centers, stadiums and other larger capital projects intended for general economic development **WARNING:** SEE NEXT SLIDE FOR U.S. TREASURY'S RATIONALE FOR USING ALTERNATIVES TO NEW CONSTRUCTION OF CORRECTIONAL AND CONGREGATE FACILITIES!

REMINDER:

These prohibitions do **NOT** apply to a county's use of ***revenue loss*** for general government services!

PREMIUM PAY

Counties may provide premium pay (up to $13 per hour & capped at $25K per individual) to eligible workers performing <u>essential work</u>, either in public sector roles or through grants to third-party employers.

<u>KEY NEW FEATURES IN FINAL RULE</u>

1. **ADDITIONAL STREAMLING OF PREMIUM PAY**
   - **Under the Interim Final Rule,** counties were required to submit a written justification for workers not listed on the Treasury eligibility list
   - **Final Rule** permits counties to award premium pay to workers that are normally eligible for overtime pay/compensation under the Fair Labor Standards Act **<u>WITHOUT</u>** submitting a written justification
2. **CLARIFICATION ON TYPES OF ELIGIBLE PREMIUM PAY**
   - Clarifies that premium pay may be provided in installments or lump sums (i.e. monthly, quarterly, etc.)
   - Premium pay may be awarded to hourly, part-time or salaried or non-hourly workers – ***and it must <u>not</u> supplant normal or overtime pay***
   - Volunteers shall **<u>not</u>** be eligible for premium pay

Under the Final Rule, premium pay **may still be retroactive** and may only be provided to **eligible workers that are performing essential work** (in person and/or regular physical handling of items)

PREMIUM PAY

The Final Rule outlines three steps for determining premium pay eligibility:

1. **Any work performed by an employee of the state, local or tribal government, among others**

2. **Verify that the eligible worker performs essential work including risk of COVID exposure**
   - Work involving **regular in-person interactions** or regular physical handling of items also handled by others
   - Worker would **NOT** be engaged in essential work ***if telework performed from a residence***

3. **Confirm premium pay responds to workers performing essential work during the public health emergency**
   - Eligible worker receiving premium pay is earning (with premium pay included) **at or below 150 percent of their residing state or county's average annual wage for all occupations**
   - Eligible worker receiving premium pay is **not exempt from the FLSA overtime provisions**
   - If worker does not meet any of the above, *county shall submit written justification detailing how the premium pay is responsive to workers performing essential work during the pandemic*

WATER AND SEWER INFRASTRUCTURE

Counties may use Recovery Funds for a broad range of water, sewer and stormwater infrastructure investments.

KEY NEW FEATURES IN FINAL RULE

NEW ELIGIBLE WATER AND SEWER PROJECTS

- Under the Interim Final Rule, eligible projects were aligned, *for simplicity to determine the presumed eligible use of Recovery Funds,* with the authorized uses authorized under EPA's Clean Water State Revolving Fund and Drinking Water State Revolving Fund

- **Final Rule also provides <u>additional eligible projects</u>,** including:
  - Broader set of **lead remediation projects** (I.e. faucets, fixtures and internal plumbing in schools and childcare facilities)
  - **Culvert repair**
  - **Residential wells**
  - **Certain dams and reservoirs** (related to drinking water)

NACo applauds the U.S. Treasury for expanding the definition to include storm water, culvert repair and other important county-owned infrastructure

WATER AND SEWER INFRASTRUCTURE

NATIONAL ASSOCIATION of COUNTIES NACo®

Counties may use Recovery Funds to make a broad range of investments in water and sewer infrastructure. The Final Rule provides additional categories for eligible water and sewer projects including stormwater.

NEW ELIGIBLE WATER & SEWER PROJECTS UNDER FINAL RULE

- **Culvert** repair
- Resizing, and removal, replacement of storm sewers, and additional types of **stormwater infrastructure**
- Infrastructure to improve access to **safe drinking water** for individual served by residential wells, including testing initiatives, and treatment/remediation strategies that address contamination
- **Dam and reservoir rehabilitation** if primary purpose of dam or reservoir is for **drinking water supply** and project is necessary for provision of drinking water

- **Broad set of lead remediation projects** eligible under EPA grant programs authorized by the Water Infrastructure Improvements for the Nation (WIIN) Act, including:
  - **Lead testing**
  - Installation of **corrosion control treatment**
  - **Lead service line** replacement
  - **Water quality** testing, compliance monitoring, and remediation activities (I.e. replacement of internal plumbing and faucets and fixtures in schools and childcare facilities)

BROADBAND INFRASTRUCTURE

The Final Rule **broadens eligible broadband infrastructure investments** to ensure better connectivity for residents.

KEY NEW FEATURES IN FINAL RULE

1. **BROADENS BROADBAND INFRASTRUCTURE FLEXIBILITY**
    - Under the Interim Final Rule, counties were required to invest in households and businesses without reliable wireline 25 Mbps download/3 Mbps upload speeds
    - **Final Rule allows counties to invest in locations without reliable wireline 100 Mbps download/20 Mbps upload speeds**

2. **CYBERSECURITY**
    - Under the Final Rule, counties may use funds for modernization of cybersecurity for existing and new broadband infrastructure, including modernization of hardware and software

Final Rule allows counties to invest in locations without reliable wireline 100 Mbps download / 20 Mbps upload speeds

BROADBAND INFRASTRUCTURE

The Final Rule also includes the **following clarifications** on broadband projects:

1. **IDENTIFY AN ELIGIBLE AREA FOR INVESTMENT**
   - Counties are **encouraged** to prioritize projects that are designed to **serve locations without access to reliable wireline** 100 Mbps download/20 Mbps upload speeds
   - Beyond the threshold, **counties have broad flexibility to define need in a community.** Examples of need include:
     - Lack of **access** to a reliable high-speed broadband connection
     - Lack of **affordable** broadband
     - Lack of **reliable** service
2. **DESIGN A PROJECT TO MEET HIGH-SPEED TECHNICAL STANDARDS**
   - Projects are required to meet or exceed 100 Mbps download/100 Mbps upload (with flexibility for 100 Mbps/20 Mbps upgrades in more limited scenarios)
3. **REQUIRES ENROLLMENT IN LOW-INCOME SUBSIDY PROGRAM**
   - Must offer FCC's Affordable Connectivity Program (ACP) or provide access to broad-based affordability program to low-income consumers as part of the project

Beyond the threshold, counties have broad flexibility to define need in a community

FEDERAL "DAVIS-BACON" & "NEPA" REQUIREMENTS FOR INFRASTRUCTURE PROJECTS

1. **National Environmental Policy Act (NEPA): NEPA does not apply to Treasury's administration of Recovery Funds.** A project supported with Recovery Funds may still be subject to NEPA review ***if it is also funded by another federal financial assistance program with a NEPA requirement***

2. **Davis-Bacon Act:** Davis-Bacon Act requirements for prevailing wage rates **do not apply to projects funded solely** with Recovery Funds, *except for construction projects in the District of Columbia*
   - **HOWEVER, counties may be subject to the requirements of the Davis-Bacon Act when Recovery Funds are used on a construction project in conjunction with funds from another federal program that requires enforcement and compliance of the Davis-Bacon Act**

NON-FEDERAL MATCH AND COST SHARE REQUIREMENTS

REVENUE LOSS ALLOCATION	NON-REVENUE LOSS ALLOCATION
• Funds available under the **"revenue loss" eligible use category** may be used **to meet the non-federal cost share or matching requirement** of other federal programs (I.e. EPA's Drinking Water SRF and Clean Water SRF, FEMA Disaster Relief Fund, Economic Development Administration, etc) • **However, Recovery Funds shall NOT be used for the non-federal share of a state's (or county's) Medicaid and CHIP programs, even under the "revenue loss" category**	• **Recovery Funds beyond those under the "revenue loss" category shall NOT be used as the non-federal match or cost-share requirement** of other federal programs ***unless*** specifically provided for by federal statute • Specific federal programs outlined under the new *Infrastructure Investments and Jobs Act,* especially the Bureau of Reclamation and certain broadband deployment programs, allow Recovery Funds to be used as non-federal match and local cost share requirements

DEFINING INELIGIBLE EXPENSES

The Final Rule maintains the Interim Final Rule's restriction on use *with additional clarifications:*

1

PENSION FUNDS

- Final Rule clarifies that prohibition of "extraordinary contributions" to pension funds applies to all recipients *except for Tribal governments*
- **Does not apply to pension contributions that are part of regular payroll contributions for employees whose wages and salaries are an eligible use of Recovery Funds**

2

OTHER RESTRICTIONS ON DEBT SERVICE, RAINY DAY FUNDS AND LEGAL SETTLEMENTS

- Funding debt service, legal settlements or judgements
- Deposits to rainy day funds or financial reserves

3

NET REDUCTION IN REVENUE (STATES & TERRITORIES)

- **Final Rule maintains the prohibition on states and territories** for using Recovery Funds to *directly or indirectly* offset a reduction in **net** tax revenue

4

ADDITIONAL CLARIFICATION ON COMPLIANCE WITH OTHER FEDERAL REQUIREMENTS

- Uses of funds **shall not** undermine COVID-19 mitigation practices in line with CDC guidance
- Uses of funds **shall not** violate Uniform Guidance conflict of interest requirements and other laws

REPORTING AND COMPLIANCE REQUIREMENTS

- QUARTERLY **PROJECT AND EXPENDITURE REPORTS:** The following recipients are required to submit a quarterly Project and Expenditure Report to Treasury **by April 30, 2022:**

    - Recipients with populations that **exceed 250,000 residents** (referred to as a Tier 1 recipient)
    - Recipients with a population **below 250,000 residents yet received more than $10 million** in Recovery Funds (referred to as a Tier 2 recipient)

- ANNUAL **PROJECT AND EXPENDITURE REPORTS:** The following recipients are required to submit an annual Project and Expenditure Report to Treasury **by April 30, 2022:**

    - Recipients with **populations below 250,000 residents and received less than $10 million** in Recovery Funds only need to submit this report annually after the first reporting deadline in April, 2022

- RECOVERY PERFORMANCE PLAN: **All recipients with a population that exceeds 250,000 residents** are also required to publish and submit an **annual** Recovery Plan performance report throughout the entire period of performance

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