



# AFSCME Facts

## **Federal Guidance on the \$350 Billion in State and Local Government Direct Aid In the American Rescue Plan May 11, 2021**

On May 10, 2021, the U.S. Treasury Department (Treasury) released its first official guidance on the distribution, uses and other requirements for the American Rescue Plan's \$350 billion in flexible, direct aid to states, territories, cities, counties and certain other governmental entities. The state aid is provided through the Coronavirus State Fiscal Recovery Fund, and the local assistance is provided through the Coronavirus Local Fiscal Recovery Fund. This fact sheet provides an overview of this new guidance, referred to as the Interim Final Rule, and related information.

### **DISTRIBUTION OF STATE AND LOCAL AID**

#### **How much does each government get?**

Treasury has now allocated funding for each state, territory, county and metropolitan city (i.e., cities with populations of 50,000 or greater) according to the terms of the American Rescue Plan. You can find the allocations for each of these governments by clicking on these hyperlinks:

- [State Allocations](#). (\$195.3 billion total)
- [Territory Allocations](#). (\$4.5 billion total)
- [County Allocations](#). (\$65.1 billion total)
- [Metropolitan City Allocations](#). (\$45.57 billion total)

***Smaller Cities and Towns:*** Funding for smaller cities and towns (\$19.53 billion total) will first go to state governments to allocate by population. Treasury has released a [list of total state-by-state allocations for these governments](#). Called non-entitlement units of local government in the new law, these are cities with populations under 50,000 that are classified as municipalities or generally have powers and perform functions comparable to those associated with municipalities and meet certain other requirements.

A distribution to a non-entitlement unit of local government cannot be greater than 75% of the government's most recent budget as of January 27, 2020. When distributing this money, states cannot place additional conditions or requirements beyond what is provided for in the American Rescue Plan. States also cannot offset any debt owed by a local government against this payment. These limits on states also apply to distributions of the county funding to local governments described immediately below.

***States Without County Governments:*** If your state does not have county governments, the amounts listed at the county allocations link will first go to the state government for it to distribute the money to local governments within each county.

### **How do governments get their recovery funds?**

States, territories, counties and metropolitan cities receive their Coronavirus State and Local Fiscal Recovery Funds directly from Treasury. To receive this aid, these governments must submit a request to Treasury through its website. Details on how to submit a request and the information a government will be required to provide can be found on Treasury's [Request Funding page](#). Generally, a requesting government is required to provide its identifying information, a point of contact, fund transfer information and a signed certification. In the latter, the government certifies that it requires the payment to carry out the purposes of the new law (described below under "Eligible Uses of State and Local Aid") and will comply with the requirements of the new law.

Smaller cities and towns (i.e., non-entitlement units of local government) will receive their Coronavirus State and Local Fiscal Recovery Funds from their state governments. These local governments do not apply to Treasury to receive their funds. Treasury has provided more information for these governments at its [Coronavirus State and Local Fiscal Recovery Funds for Non-Entitlement Units page](#). States will be considered to have requested their share of funding for non-entitlement units of local government when they submit a request for state funding.

### **When do governments get their recovery funds?**

Treasury has indicated that it expects to quickly distribute funding to states, territories, tribes, counties and metropolitan cities after they submit their requests and certifications and their identities have been verified. Once all required information has been submitted, identity verification takes approximately four business days. Funds are then transferred one business day after a government receives notice that the verification process is complete.

**States:** Generally, states will receive their full allocation in a single distribution. For a state with an unemployment rate on its certification date that is less than two percentage points above its unemployment rate in February 2020, however, Treasury will hold back 50% of their allocation. According to Treasury, [29 states](#) would have been subject to this split-payment requirement if they had submitted their certifications on May 10. Whether a state receives a split payment will depend on its actual unemployment rate when it submits its request and certification. Territories receive a single payment regardless of what has happened with their unemployment rates.

The held-back amount will be distributed 12 months after the state submitted its initial request and certification. To receive this second payment, a state must submit 30 days in advance a new certification and any required reports it has not yet provided.

**Local Governments:** Local governments will receive funds in two payments, with 50% provided beginning in May 2021 and the balance delivered approximately 12 months later.

According to Treasury, it plans to issue additional guidance about distributions to non-entitlement units of local government and will begin making those payments to states after it releases that guidance. Following receipt of this funding from Treasury, each state is required to distribute these funds to its non-entitlement units within 30 days unless granted an extension by Treasury.

## ELIGIBLE USES OF STATE AND LOCAL AID

### What recovery fund uses are included in responding to the COVID-19 public health emergency?

Recovery funds may be used to meet and address public health needs, including measures to counter the spread of COVID-19, provide care to those impacted by the virus, and programs or services that address disparities in public health that have been exacerbated by the pandemic. To assess whether additional uses would be eligible under this category, state and local governments should identify an effect of COVID-19 on public health, including immediate effects or effects that may manifest over months or years, and assess how the use would respond to or address the identified need.

The Interim Final Rule identifies a non-exclusive list of eligible uses of funding to respond to the COVID-19 public health emergency, including:

- ***COVID-19 Mitigation and Prevention.*** Vaccination programs; medical care; testing; contact tracing; support for isolation or quarantine; support for vulnerable populations to access medical or public health services; public health surveillance (e.g., monitoring case trends, genomic sequencing for variants); enforcement of public health orders; public communication efforts; enhancement to health care capacity, including through alternative care facilities; purchases of personal protective equipment; support for prevention, mitigation or other services in congregate living facilities (e.g., nursing homes, incarceration settings, homeless shelters, group living facilities) and other key settings like schools; ventilation improvements in congregate settings, health care settings or other key locations; enhancement of public health data systems; other public health responses; and capital investments in public facilities to meet pandemic operational needs, such as physical plant improvements to public hospitals and health clinics or adaptations to public buildings to implement COVID-19 mitigation tactics.
- ***Behavioral Health Care.*** Mental health treatment, substance misuse treatment, other behavioral health services, hotlines or warmlines, crisis intervention, overdose prevention, infectious disease prevention and services or outreach to promote access to physical or behavioral health primary care and preventative medicine.
- ***Public Health and Safety Staff.*** Payroll and covered benefits expenses for public safety, public health, health care, human services and similar employees, to the extent that their services are devoted to mitigating or responding to the COVID-19 public health emergency.
- ***Expenses to Improve the Design and Execution of Health and Public Health Programs.*** Planning and analysis in order to improve programs addressing the COVID-19 pandemic, including through use of targeted consumer outreach, improvements to data or technology infrastructure, impact evaluations and data analysis.
- ***Disparities in Public Health Outcomes.*** A program, service or other assistance that is provided in a Qualified Census Tract, that is provided to households and populations living in a Qualified Census Tract, that is provided by a Tribal government or that is provided to

other households, businesses or populations disproportionately impacted by the COVID-19 public health emergency, such as:

- Programs or services that facilitate access to health and social services.
- Programs or services that address housing insecurity, lack of affordable housing or homelessness.
- Programs or services that address or mitigate the impacts of the COVID-19 public health emergency on education.
- Programs or services that address or mitigate the impacts of the COVID-19 public health emergency on childhood health or welfare.

**What recovery fund uses are included in responding to the negative economic impacts of the COVID-19 public health emergency?**

Recovery funds may be used to address an economic harm resulting from or exacerbated by the public health emergency. In considering whether a program or service would be eligible under this category, state and local governments should assess whether there has been an economic harm, such as loss of earnings or revenue, that resulted from the COVID-19 public health emergency and whether the use would respond or address this harm. While economic impacts may either be immediate or delayed, assistance or aid to individuals or businesses that did not experience a negative economic impact from the public health emergency would not be an eligible use under this category.

The eligible use must “respond to” the identified negative economic impact. Responses must be related and reasonably proportional to the extent and type of harm experienced. Uses that bear no relation or are grossly disproportionate to the type or extent of harm experienced would not be eligible uses. Where there has been a negative economic impact resulting from the public health emergency, state and local governments have broad latitude to choose whether and how to use recovery funds to respond to and address the negative economic impact.

The Interim Final Rule identifies a non-exclusive list of eligible uses of funding that respond to the negative economic impacts of the public health emergency, including:

- ***Hiring State and Local Government Staff.*** Payroll, covered benefits and other costs associated with rehiring state and local government staff up to the number of employees employed on Jan. 27, 2020.
- ***Assistance to Unemployed Workers.*** Assistance, including job training, for individuals who want and are available for work, including those who have looked for work sometime in the past 12 months or who are employed part time but who want and are available for full-time work.
- ***Contributions to State Unemployment Insurance Trust Funds.*** Contributions to an unemployment trust fund up to the level required to restore the fund to its balance on Jan. 27, 2020, or to pay back advances received for the payment of benefits between Jan. 27, 2020, and the date the Final Interim Rule is published.
- ***Small Businesses and Nonprofits.*** Loans, grants, in-kind assistance, technical assistance or other services.

- ***Assistance to Households.*** Food assistance; rent, mortgage or utility assistance; counseling and legal aid to prevent eviction or homelessness; cash assistance; emergency assistance for burials, home repairs, weatherization or other needs; internet access or digital literacy assistance; and job training to address negative economic or public health impacts experienced due to a worker's occupation or level of training.
- ***Aid to Impacted Industries.*** Aid to tourism, travel, hospitality and other impacted industries. For example, assistance to implement COVID-19 mitigation and infection prevention measures to enable safe resumption of tourism, travel and hospitality services; including improvements to ventilation, physical barriers or partitions, signage to facilitate social distancing, provision of masks or personal protective equipment, or consultation with infection prevention professionals to develop safe reopening plans.
- ***Expenses to Improve Efficacy of Economic Relief Programs.*** Administrative costs associated with improving the efficacy of state and local government programs addressing the COVID-19 public health emergency, including through use of data analysis, targeted consumer outreach, improvements to data or technology infrastructure and impact evaluations.
- ***Survivor's Benefits.*** Benefits for the surviving family members of individuals who have died from COVID-19, including cash assistance to widows, widowers or dependents of individuals who died of COVID-19.

### **What are the requirements for the use of recovery funds to provide premium pay?**

State and local governments may use recovery funds to provide premium pay directly, or through grants to private employers, to a broad range of eligible workers performing essential work during the COVID-19 public health emergency.

Eligible workers include those needed to maintain continuity of operations of essential critical infrastructure. Examples include any work performed by an employee of state, local or tribal government; staff at nursing homes, hospitals and home care settings; workers at farms, food production facilities, grocery stores and restaurants; janitors and sanitation workers; truck drivers, transit staff and warehouse workers; public health and safety staff; childcare workers, educators and other school staff; providers of home- and community-based health care or assistance with activities of daily living; and social service and human services staff. State and local officials may also designate workers in additional sectors as critical to protect the health and well-being of their residents. Additional examples are provided in the new rule.

To receive premium pay, an eligible worker must perform or have performed essential work. The Interim Final Rule defines essential work as work involving regular in-person interactions or regular physical handling of items that were also handled by others and that is not performed while teleworking from a residence.

Premium pay of up to \$13 per hour and capped at a maximum of \$25,000 per eligible worker in addition to wages or remuneration the worker otherwise receives is permitted. The Interim Final Rule emphasizes the need for state and local governments to prioritize premium pay for lower income workers. Premium pay that would increase a worker's total pay above 150% of the greater

of the state or county average annual wage requires specific justification for how it responds to the needs of these workers. In addition, state and local governments may use recovery funds to offer retroactive premium pay, recognizing that many essential workers have not yet received additional compensation for work performed. Staff working for third-party contractors in eligible sectors are also eligible for premium pay.

**What are the requirements for the use of recovery funds to prevent reductions in government services due to lost revenue?**

State and local governments facing budget shortfalls may use recovery funds to replace lost general revenue and avoid cuts to government services. General revenue includes money that is received from tax revenue, current charges and miscellaneous general revenue. It *excludes* refunds and other correcting transactions, proceeds from issuance of debt or the sale of investments, agency or private trust transactions and intergovernmental transfers from the federal government, including transfers made pursuant to the American Rescue Plan. General revenue does not include revenues from utilities.

The Interim Final Rule establishes a methodology to calculate lost general revenue by comparing actual revenue to an alternative representing what could have been expected to occur in the absence of the pandemic. Analysis of this expected trend begins with the last full fiscal year prior to the public health emergency, and state and local governments may use a growth adjustment of the greater of 4.1% per year or their average annual revenue growth over the three full fiscal years prior to the public health emergency. The 4.1% option represents the national average state and local revenue growth rate from 2015–18 (the latest available data). Any reduction in actual revenue relative to the expected trend is presumed to be due to the COVID-19 public health emergency. That is, governments are not asked to show that a revenue loss was caused by the emergency.

State and local governments must calculate the reduction in general revenue using information as of Dec. 31, 2020; Dec. 31, 2021; Dec. 31, 2022; and Dec. 31, 2023 (each, a calculation date) and following each calculation date. The recalculation points are intended to support state and local governments that experience a lagged impact of the crisis on revenues. Once a shortfall in revenue is identified, state and local governments have broad latitude to use recovery funds to support government services up to the amount of lost revenue.

**What are the requirements for the use of recovery funds for investments in water, sewer or broadband infrastructure?**

State and local governments may use recovery funds to invest in necessary improvements to water and sewer infrastructures, including projects that address the impacts of climate change. Funds may be used to invest in drinking water infrastructure projects. This includes building or upgrading facilities and transmission, distribution and storage systems, including the replacement of lead service lines. State and local governments may also use funds to invest in wastewater infrastructure projects, including constructing publicly owned treatment infrastructure, managing and treating stormwater or subsurface drainage water, facilitating water reuse and securing publicly owned treatment works.

The Interim Final Rule aligns types of eligible projects with the wide range of projects that can be supported by the Environmental Protection Agency's Clean Water State Revolving Fund and Drinking Water State Revolving Fund. State and local governments retain substantial flexibility to identify those water and sewer infrastructure investments that are of the highest priority for their own communities. The Interim Final Rule also encourages, but does not require, state and local governments to ensure that water, sewer and broadband projects use strong labor standards, including project labor agreements and community benefits agreements that offer wages at or above the prevailing rate and include local hire provisions.

Investments in broadband should be made in areas that are currently unserved or underserved with projects that deliver services offering reliable 100 Mbps download and upload speeds, unless impracticable due to topography, geography, or financial cost.

### **Can fiscal recovery funds be used by states to pay for tax cuts?**

*States* are prohibited from using recovery funds to directly or indirectly offset a reduction in net tax revenue due to a change in law from March 3, 2021, through the last day of the fiscal year in which the funds provided have been spent. States would have to compare receipts to their 2019 levels adjusted for inflation to determine if they have cut taxes. Fiscal year 2019 was chosen as the starting year for the baseline because it is the last full fiscal year prior to the COVID-19 public health emergency. If states cut taxes, they will have to file an annual report detailing how much the tax cut cost and how it was financed from sources other than recovery funds — for example, by enacting policies to raise other sources of revenue or spending cuts or through economic growth. “Indirectly” financing tax cuts occurs if a state cuts spending on a program and then replaces that money with recovery funds while also cutting taxes. If recovery funds have been used to offset tax cuts, the amount used for this purpose must be paid back to the Treasury.

If a state's revenues exceed the 2019 baseline or if a tax cut amounts to less than 1% of the baseline, it will be exempt from the rules. States may cut taxes on jobless benefits or move their tax-filing period. Income tax changes that simply conform with federal changes (including those to conform to recent changes in federal taxation of unemployment insurance benefits and taxation of loan forgiveness under the Paycheck Protection Program) are also permissible.

### **Can fiscal recovery funds be used for pension funds?**

State and local governments are prohibited from using recovery funds for “deposit into any pension fund.” Pension fund means a defined benefit plan and does not include a defined contribution plan. The Interim Final Rule defines “deposit” in this context to refer to an extraordinary payment into a defined benefit pension fund for the purpose of reducing an accrued, unfunded liability. More specifically, recovery funds cannot be used to make a payment into a defined benefit pension fund if both the payment reduces a liability incurred prior to the start of the COVID-19 public health emergency and the payment occurs outside the recipient's regular timing for making such payments. A “deposit” is therefore distinct from a “payroll contribution,” which occurs when employers make payments into defined benefit pension funds on regular intervals, with contribution amounts based on a pre-determined percentage of employees' wages and salaries.

If an employee's wages and salaries are an eligible use of recovery funds, state and local governments may treat the employee's covered benefits as an eligible use of recovery funds. Covered benefits include costs of all types of leave (vacation, family-related, sick, military, bereavement, sabbatical, jury duty); employee insurance (health, life, dental, vision); retirement (pensions, 401(k)); unemployment benefit plans (federal and state); workers' compensation insurance; and Federal Insurance Contributions Act taxes (which includes Social Security and Medicare taxes).

**Are there any other restrictions on the use of fiscal recovery funds?**

Recovery funds are subject to pre-existing limitations provided in other federal statutes and regulations and may not be used as non-federal match for other federal programs whose statute or regulations bar the use of federal funds to meet matching requirements. For example, recovery funds may not be used to satisfy the state share of Medicaid.

Fiscal recovery funds also must not be used to fund debt service, legal settlements or judgments or to make contributions to rainy day funds or similar financial reserves. General infrastructure spending is not covered as an eligible use outside of water, sewer and broadband investments or above the amount allocated under the revenue loss provision.

**OTHER REQUIREMENTS**

**During what time period must a government use the money?**

This funding may only be used for costs incurred from March 3, 2021, through Dec. 31, 2024. Further, the government must pay for those incurred costs by Dec. 31, 2026.

A cost is incurred if the government recipient has incurred an obligation by Dec. 31, 2024. An obligation means an order placed for property and services and entering into contracts, subawards and similar transactions that require payment.

**What happens to unused money?**

A government must return to Treasury any funds not obligated by Dec. 31, 2024, and any funds not expended to pay for those obligations by Dec. 31, 2026.

**What happens if a government violates any of the restrictions on the use of this money?**

If a government misuses any of this funding by expending it for purposes that are outside the eligible uses or in violation of the prohibitions described above, Treasury will recoup, or reclaim, the misused amounts. Treasury can identify any violations of the eligible use limitations or the prohibition against depositing funds into a pension fund at any time prior to Dec. 31, 2026, and then recoup it.

Separate rules apply to violations arising out of the use of funds to directly or indirectly offer a reduction in the net tax revenue of a state or territory. Annually, a government must calculate and report any amounts used in such a violation. Treasury will calculate the recoupment amount as the lesser of the calculated revenue reduction or the amount of funds received.



Treasury's new guidance lays out a process for it to notify governments of any amount subject to recoupment, provide an explanation of recoupment amounts and reconsider the amounts subject to recoupment, at the election of the government recipient. A government must repay these amounts within 120 calendar days of receiving a recoupment notice or, in the case of a government that asks for reconsideration of the recoupment amounts, within 120 calendar days of receiving Treasury's decision.

### **What reporting requirements apply to funding recipients?**

Recipients are required to file three different kinds of reports regarding their use of Coronavirus State and Local Fiscal Recovery Funds:

- ***Interim Report:*** All governments, except non-entitlement units of local government, are required to submit one interim report covering the period from the date funds are received until July 31, 2021, and providing a summary of expenditures by category.
- ***Quarterly Project and Expenditure Reports:*** State, territorial, metropolitan city, county and tribal governments submit quarterly reports that include financial data, information on contracts and subawards over \$50,000, types of projects funded and other information about that government's use of funds. The first report will cover two quarters from the award date to Sept. 30, 2021. Non-entitlement units of local government will file annual project and expenditure reports, with the first covering the period through Sept. 30, 2021.
- ***Recovery Plan Performance Reports:*** States, territories, metropolitan cities and counties with a population over 250,000 will submit annual recovery plan performance reports that include descriptions of the projects funded and information on the performance indicators and objectives of each award. The first report will cover the period ending July 31, 2021. Subsequent reports will cover each 12-month period from July 1 to June 30, starting with the period beginning July 1, 2021.

### **What requirements apply to money a recipient transfers or grants to other governments or private parties?**

In any agreement a government enters into with other parties relating to these funds, a government must provide for compliance with the American Rescue Plan Act, Treasury's new and any future rules governing the use of these funds and any other applicable federal guidance.

## **GETTING MORE INFORMATION**

### **Where can I find Treasury's recently issued guidance on the uses of this funding?**

Treasury issued formal rules governing the use of Coronavirus State and Local Fiscal Recovery Funds. Those [rules are available here](#). The rules are at pages 129 – 151 and are preceded by a discussion of the issues considered by Treasury in developing them and a request for comments on the rules.

Treasury also has provided the following general resources:

- [WEBSITE: Coronavirus State and Local Fiscal Recovery Funds](#)

- [FAQs: Coronavirus State and Local Fiscal Recovery Funds Frequently Asked Questions](#)
- [FACT SHEET: The Coronavirus State and Local Fiscal Recovery Funds Will Deliver \\$350 Billion for State, Local, Territorial, and Tribal Governments to Respond to the COVID-19 Emergency and Bring Back Jobs](#)
- [QUICK REFERENCE GUIDE: Coronavirus State and Local Fiscal Recovery Funds](#)

### **How were the funding amounts allocated to each government determined?**

You can find the methodologies used to calculate the amounts allocated to each specific government by clicking on the following hyperlinks:

- [State Allocation Methodology.](#)
- [Territory Allocation Methodology.](#)
- [County Allocation Methodology.](#)
- [Metropolitan City Allocation Methodology.](#)
- [Non-Entitlement Unit of Local Government Allocation Methodology.](#)

### **Where can I find more information about funds for smaller cities and towns?**

Treasury has provided more information for these governments at its [Coronavirus State and Local Fiscal Recovery Funds for Non-Entitlement Units web page](#). Treasury soon will be releasing more guidance about the distribution of funding to these governments.

### **Has the federal government released any information about the \$10 billion Coronavirus Capital Projects Fund?**

Created as an additional source of funding on top the \$350 billion Coronavirus State and Local Fiscal Recovery Funds, the Coronavirus Capital Projects Fund was created to provide funding to states, territories and tribal governments to carry out capital projects directly enabling work, education and health monitoring in response to the COVID-19 public health emergency. Treasury has announced that it will begin accepting applications for these funds during the summer of 2021 and applicants will be required to provide a plan describing how they intend to use these funds. Treasury will issue guidance for the use of these funds before it begins accepting applications. You can find additional information about this funding on Treasury's [Capital Projects Fund web page](#).