



March 18, 2021

The Honorable Janet Yellen
Secretary
U.S. Department of Treasury
1500 Pennsylvania Avenue, N.W.
Washington, DC 20220

Dear Secretary Yellen,

As the national representative of America's 3,069 county governments, we are writing today to provide feedback and recommendations on the Coronavirus State and Local Fiscal Recovery Fund (Recovery Fund), outlined in the *American Rescue Plan Act*.

We understand the historic nature of this legislation and the massive undertaking associated with it. Therefore, counties stand ready to work with you as partners to ensure the successful implementation and execution of the Recovery Fund. We appreciate the opportunity to engage with your team as part of the intergovernmental process and share the common goal of successful implementation of the Recovery Fund to ensure the health and wellbeing of our nation's residents and the economic vitality of our local communities.

Counties led the way when it came to investing CARES Act Coronavirus Relief Fund (CRF) dollars in both fiscally responsible and innovative ways to keep our residents healthy and our communities safe and vibrant. NACo commissioned an independent assessment of the CRF, innovative investments and the effectiveness of the administration of the funds. This study, conducted by the National Academy of Public Administration (NAPA), identifies key policy recommendations for direct funding programs to counties, which can now be applied to the administration of the Recovery Fund.

To further support the Biden-Harris Administration's implementation efforts on the Recovery Fund, NACo surveyed our membership to identify outstanding questions on eligible uses, desired spending of and implementation of the Recovery Fund. As of today, we have received responses from hundreds of counties across the country.

Our members are eager to effectively use the Recovery Fund to invest in their communities. In response to our survey, NACo received numerous questions about the implementation of the Recovery Fund. We outlined and summarized these questions in this letter and also provide more details in the Appendix (second attachment).

An overwhelming number of respondents indicated that the most helpful information the White House and U.S. Treasury could provide to counties to help us effectively spend this new aid is guidance on the allowable use of funds.

- **Capital investment projects:** While the CRF aided certain sectors impacted by the pandemic including health care, schools and housing, its lack of flexibility ultimately limited our ability to implement projects and services that would have benefited our residents and communities. Counties request clarification on whether capital improvement projects beyond water, sewer and broadband are

included as an eligible expense. These vital community infrastructure projects include but are not limited to: Emergency management and public safety facilities, public health related infrastructure improvements, transportation infrastructure and services, projects for economic development and purchasing or remodeling of public facilities. By making capital investment projects an allowable expense, the American Rescue Plan will allow us to meet the needs of our residents as we continue to fight the pandemic. Additionally, we respectfully request that such capital projects no longer be subject to the current restriction under CRF guidance that requires a lifetime of defined CRF eligible uses.

- **Lost revenue and local government budget cycles:** As outlined in the American Rescue Plan, Recovery Funds can be used for government services to the extent of the reduction in revenue of such county due to the COVID-19 public health emergency relative to revenues collected in the most recent full fiscal year of the county prior to the emergency. There are two main issues: 1) Clarity on the definition of “revenue” since counties receive general tax revenue, user fees, federal and state grants, intergovernmental revenue transfers, lawsuit settlements, and other sources of income, and 2) Provide more details on how counties will determine their baseline fiscal year to determine their eligible revenue reduction calculations, especially since state and local governments use a range of start dates for their fiscal years.
- **Covered period for eligible use of funds:** The American Rescue Plan did not define “covered period” beyond states applying premium pay to eligible workers. Specifically, counties request clarification on the timeline for recapturing reduced revenue and whether it dates to the start of federal public health emergency declaration of March 1, 2020? Similarly, is March 1, 2020 also the baseline date for counties to determine their most recent full fiscal year?
- **Definition of broadband:** Beyond the language included in the American Rescue Plan for broadband, survey respondents requested additional clarification on this term and potential permissible expenses. Specifically, counties request that broadband eligible expenses are not limited to investments in underserved areas, and do not supplant federal and state grants or loans. Furthermore, counties request clarification on whether broadband extends beyond tangible infrastructure to include planning for communities that need to expand (or develop) their connectivity footprints outside of existing networks. In addition to the infrastructure itself, counties believe that cybersecurity training and testing of such infrastructure should be an eligible expense. Use of the Recovery Fund for their cybersecurity-related expenses will allow counties to better protect their networks, reduce fraudulent behavior, and create resiliency in new systems as many county employees continue to telework. Providing clarification on the definition of “broadband” in the American Rescue Plan will also ensure the Recovery Fund will strengthen broadband equity and support all citizens across our nation’s counties.
- **Aid to impacted industries:** Given that COVID-19 continues to have a substantial impact on tourism, counties request clarification on the eligible expenses associated with this language included in the American Rescue Plan. Specifically, NACo members inquired about using funds to expand, upgrade or maintain tourism facilities (i.e. fairgrounds, campgrounds, customer service center, roads and bridges, fencing). Furthermore, counties request clarification on whether Recovery Funds can be used toward lost revenue due to declines in tourism. This clarification will ensure counties will be able to support essential facilities and services for our residents.

- **Administrative costs to monitor, track and manage the Recovery Fund:** To assist counties in distributing, tracking and reporting Recovery Fund dollars to the U.S. Treasury, counties request clarification on whether Recovery Funds can be used to hire and cover payroll costs for administrator(s), as well as use Treasury funds for audit compliance. Specifically, new personnel would maintain records and effectively manage the fund on behalf of the county to ensure compliance with Congressional intent and U.S. Treasury guidance. Beyond using funds for new personnel, counties requested clarification on whether funds may be used to purchase new software to enhance our ability to track these new dollars in the more efficient and effective way.
- **Assistance to households:** Under the CARES Act, counties can provide assistance to individuals and families directly impacted by a loss of income due to COVID-19 via a county-run program. Beyond aiding households through an already established program, counties request clarification on whether Recovery Funds can be used to allocate direct payments to households via the county to ensure swift payments. This would not only benefit individuals in the household, but also landlords who are experiencing financial hardship because of the COVID-19 pandemic.
- **Premium pay:** Members requested clarification on the definition and limitations on premium pay for essential workers. Specifically, what is the definition of “essential work” and “eligible workers” as outlined in the American Rescue Plan.

In addition to permissible use of funds, counties requested clarification on expenses not explicitly outlined in the American Rescue Plan, but are still COVID-19-related critical response programs and services.

- **Purchasing/updates to software equipment:** Counties asked whether purchasing or upgrading local government software is a permissible expense. Updating local governments’ software will ensure residents are able to telework, participate in distance learning, support critical healthcare services, as well as many other local government functions.
- **Education and schools:** Along with sharing a tax base with local school boards and providing complementary services to local students, counties often play a role in supporting and funding K-12 schools and community colleges. Counties request clarification on how Recovery Funds may be used to ensure safe re-openings and continued operations of schools.
- **Purchasing of equipment:** To ensure counties have a strong ongoing response to COVID-19’s impacts, we urge the U.S. Treasury to allow local governments to purchase equipment and make other necessary investments that will protect the health and safety of our residents. These purchases include but are not limited to: Vehicles for public health and safety activities, generators, body bags, morgue and medical examiner facilities, shelters, quarantine facilities and HVAC/air filter upgrades.

Counties support reasonable practical guardrails included in the American Rescue Plan. County leaders are prudent stewards of public dollars and share the administration’s goals for successful implementation of the Recovery Fund. However, for counties to efficiently and effectively allocate this critical aid, we respectfully recommend the following for implementation:

- **Create a centralized office for Recovery Fund best practices and stakeholder engagement:** To ensure robust intergovernmental consultation and collaboration among federal, state and local partners, counties urge the U.S. Treasury to standup a centralized office that will be responsible for communicating with entities receiving Recovery Funds. This office would work with state and local

government representatives to quickly answer questions regarding Recovery Fund implementation and collect information on investment best practices from recipients.

- **Provide timely Recovery Fund reporting requirements guidance:** Months after the CRF was established, U.S. Treasury Office of Inspector General (OIG) released guidance on reporting requirements for the CRF. The delay in releasing reporting requirements was ineffective as many counties had already set up specific systems to track their expenditures. This resulted in counties reworking reporting documentation to meet the requirements of OIG, which is both a costly and timely process. Counties request that reporting requirements guidance be provided simultaneously with the disbursement of Recovery Funds as it will allow recipients to track expenses appropriately. Furthermore, counties urge that U.S. Treasury policy and OIG teams coordinate with one another ahead of releasing guidance.
- **Avoid overly burdensome Recovery Fund reporting requirements:** Once funds are distributed, counties across the country will move to aggressively distribute funds to sub-recipients to support the needs of our residents and communities. Reporting requirements are often overly burdensome, taking extra time and money away from program implementation and end-users. Counties request that the Recovery Fund reporting requirements strike a better balance of ensuring legal compliance and appropriate stewardship of taxpayer dollars, with practical and timely reports and audits. Efficient, streamlined reporting, including the allowance of electronic filings, will ultimately make the Recovery Fund more successful.
- **Provide a clear reporting structure and investment category definitions:** To help support efficiency of county resources while planning fund expenditures and reporting fund expenditures, and to support the evaluation of program impact during and at the end of the funding period, counties request clear expenditure categories and definitions within reporting requirements. The Pandemic Response Oversight Committee (PRAC) should work closely with the U.S. Treasury in the design phase of the county reporting requirements to ensure expenditure definitions in reporting are clear and align with county expenditure planning and financial tracking. The efficient tracking of investment categories will mitigate increased county costs and facilitate effective analysis on how the funds are invested.

Despite some deficiencies outlined above, there are many aspects of the CRF implementation that U.S. Treasury should maintain for the Recovery Fund including:

- **Public health and public safety payroll and benefits:** Under the CARES Act, counties can use CRF dollars to cover the full payroll costs for public health and public safety employees “substantially dedicated” to addressing and mitigating the impact of the COVID-19 pandemic at the community level. We urge the U.S. Treasury to adopt this guidance under the American Rescue Plan. Additionally, counties urge that reporting requirements for these payroll and benefits costs not be overly burdensome (i.e. counties are able to cover the full payroll and benefits (except pensions) of these employees without unreasonable documentation). Furthermore, counties urge U.S. Treasury to include hazard pay as a permissible expense, similar to the CRF guidance.
- **Interest bearing accounts:** Under the CARES Act, recipients can deposit CRF payments into an interest-bearing account and future investments can be used to covered eligible expenditures included in U.S. Treasury guidance. To ensure counties can meet the continued need of our residents and communities as we address the impacts of the COVID-19 pandemic, we urge the U.S. Treasury to adopt this

guidance under the American Rescue Plan. To achieve the shared goals of properly managed Recovery Funds, the funds should be allowed to maximize interest earnings whenever possible while always following all recognized cash-management standards and best practices. Any technical services that are required to achieve these liquidity management guidelines should be an allowable expense of the Recovery fund or interest earnings. Further, all interest generated should enjoy the same permissible use guidelines as the original Recovery Fund dollars, thus increasing and expanding the overall economic impact of the American Rescue plan.

- **Unemployment insurance costs:** Under the CARES Act, counties can use CRF payments for unemployment insurance costs. An extension of this guidance would support counties given our role as a major employer of more than 3.5 million Americans.
- **Allocation report for Recovery Fund recipients:** While NACo has released our own unofficial, preliminary county allocation estimates based on the American Rescue Plan for Fund recipients, we also understand that, under the law, Treasury must reconcile the overall allocations for states, territories, tribes, counties, and municipalities. We urge Treasury officials to consult with NACo about the intricacies of America's counties, parishes, and boroughs across the states. We also encourage Treasury to publish updated, official allocation estimates early in the process to assist our county and other municipal leaders with budget and program design planning.

America's counties have been engaged in our nation's response to COVID-19 since the earliest days and providing counties with the flexible, essential financial resources is the surest way to see that our nation's preparedness and responsivity continues. As intergovernmental partners, we look forward to working with the administration to implement the historic Coronavirus State and Local Fiscal Recovery Fund.

On behalf of our membership, we sincerely appreciate the opportunity to provide input, as essential intergovernmental partners, prior to the development of the Rescue Fund guidance. We look forward to maintaining an open dialogue throughout the implementation of this historic federal investment in our local counties. We are committed to making sound investments that help our nation mitigate, respond and recover from this unprecedented national pandemic.

Thank you again for the opportunity to comment and for your continued hard work and leadership during these challenging times.

With respect,

A handwritten signature in black ink that reads "Matthew D. Chase". The signature is written in a cursive style with a large, looping initial "M".

Matthew D. Chase
Executive Director and CEO
National Association of Counties

AMERICAN RESCUE PLAN'S CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUND: NACo MEMBERSHIP QUESTIONS

What questions do your members have about the permissible uses of the funds?

Economic impacts including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel and hospitality.

- Can funds be used for economic development activity, such as small business assistance programs and attraction/retention activities?
- Can you clarify what "assistance" to households, small businesses and nonprofits can entail?
- Would affordable housing projects qualify as a permissible use of funds?
- Can we use funds for implementing any locally run programs replicating those included in various stimulus packages (I.e. housing counseling services since funding for that program will not be distributed to local governments)?

Provide government services to the extent of the reduction in revenue

- How will revenue loss and reduction be measured? Will it be based on total revenues in the county or based on individual revenue streams?
- Does "reduced revenues due to Covid-19" also mean reduced interest earnings?
- Can counties use funds to buy down the levy?
- Can the funds counties receive be used to pay down bonds?
- Can we use the funds on lost revenue and COVID-19 expenses from places such as the County Conference Center, campgrounds, county courthouse, county jail and sheriff department?
- If a county received less funding in either of the tax revenue sources for highway funding (maintenance and operation) can the American Rescue funding be use of offset the fiscal decline of funding (Under paragraph "C" in the bill)?
- Can we use these funds to waive taxes or fees owed by a citizen or business – for example waiving our 2021 restaurants licensing fee?
- Is it just direct pension payments that are prohibited, or are indirect regular pension payments using actuarially determined rates (that are the same across the whole government) related directly to wages being charged to ARP funding?

Broadband and other infrastructure investments

- What are examples of covered investments in water, sewer or broadband infrastructure?
- Would we be able to use the American Rescue Plan funds as co-funding to support other projects that improve our sewer/water infrastructure?
- Can this money be used to update a county's data and online infrastructure where they host the county's website along with all county data?

Transferring funds to other entities

- Can we transfer funds from one county to another? For example, if one county suffered tremendous revenue losses, which the aid does not begin to replace, and a neighbor is whole and looking to be helpful.
- If funds are transferred to other entities (as allowed by the Act, Sec. 603 (c)(3)), do those entities need to follow the same guidelines for expending the money as the county would?
- The state has a fund for counties to "lease purchase" road machinery equipment. Could a county transfer funding to a state fund managed by our DOT to pay off their leases?
- Are funds transferable from cities-towns-villages to the county for a joint project?

Essential workers, benefits and premium pay

- There is a mention of premium pay to essential workers. Can one county develop levels of essential workers?
- Can we provide a One-Time Covid Hazard pay bonus to eligible individuals (staying within the not to exceed amounts) instead?

Are there specific examples of desired spending that your members have raised?

Bridges, buildings, roads

- Can the funds be used for county road and bridge infrastructure?
- Can the funding be used to purchase road or construction equipment?
- Can funds be used to build, repair or improve buildings?
- Can we use the funds for unexpected expenses for capital projects because of delays in construction directly related to COVID (increase in days, generator rentals, etc.)?

Debt servicing and financial management

- Can some of the money be used to pay off outstanding debt/bonds from a large capital project done prior to Covid?
- Can we use funds to pay down our retirement system's unfunded liabilities?
- Can the funds be used to create a revolving loan fund for affected businesses?

Education costs

- Can we use funds for the re-education of displaced workers?

Emergency services

- Can fund be used for emergency communications system upgrades?
- Can funds be used for vehicles for public safety such as ambulances?
- Can funds be used for small capital projects, particularly for emergency management, including generator switches, replenishment of PPE, vehicles and for a position to develop and track a county Emergency Operations Plan?
- May funds be used to enhance, remodel, expand, construct emergency operations space for vaccine or testing clinics?

Medical & health expenses

- Can the funds be used to reimburse for COVID-19 sick leave not covered in FFCRA in 2020?
- Could the money be used for mental health programs?
- Can we use the funds to pay for EMS and Ambulance Service upgrades, such as a new ambulance and health safety upgrades to our facilities?
- Can we use funds to improve the medical area in our county jail?
- Would improving radio/communications systems for first responders qualify under “(A) to respond to the public health emergency with respect to the Coronavirus Disease 2019”?

Parks, recreation, tourism

- Can the money be passed along to an entity whose primary function is to promote tourism?
- Does "aid to impacted industries" include investing in public infrastructure that has historically created benefits for businesses in industries like tourism? (i.e., expanding or creating regional parks to promote tourism in parts of a county).
- Can funds be spent on Community Improvements for Economic Development projects - specifically outdoor, socially distanced activities?

Payroll and benefits

- Will we receive reimbursement for salaries of first responders similar to what was allowed under the CARES Act?
- Will funds cover payroll for new county employees to handle increased need for service?
- Despite current state laws, can counties pay essential workers hazardous pay?
- Can funds be utilized to pay salaries or raises of public safety personnel or county employees?

State funding

- Will these funds be able to be used to offset reduced State Aid if our State has held back 20% of our usual State Funding for mandated programs, and does not release it?
- Are state aid cut impacts, and dealing with them, a permissible use of funds?

What questions do your members have about the restrictions on the use of funds?

- Does the ARP legislation say anything with regards to state authority over the funds given to counties? Treasury Guidance should clarify that the states cannot reduce state funds to local governments.

What concerns do your members have based on their experience deploying funding from the Coronavirus Relief Fund established by the CARES Act?

- Please avoid what happened with the CARES Act in which guidance evolved and changed constantly. Please keep it simple with the understanding that almost anything is ultimately fungible.
- Can we use any of these funds to hire an administrator to keep up with the funds and provide the required reports to the treasury department?

What concerns or questions do your members have about the timing of distributions?

- Since the funding is distributed in two tranches, does that mean the county will do one plan in 2021 and then another plan in 2022 for the second tranche?
- Would there be a process in which entities could send a plan for use of funding and anticipated costs to receive pre-approval prior to expending the funds? This would allow for proper authorization.
- Can we spend the second tranche of funds before they are paid to us or is that disallowed? If so, would interest on debt issued in advance of the second tranche funding be an allowable expense?
- How long will it take to receive the funds, and what information will the county need to supply the Treasury in order to receive funds?

Do you have suggestions as to how you would like to receive information about the funds?

- **Create a centralized office for Recovery Fund best practices and stakeholder engagement:** To ensure robust intergovernmental consultation and collaboration among federal, state and local partners, counties urge the U.S. Treasury to standup a centralized office that will be responsible for communicating with entities receiving Recovery Funds. This office would work with state and local government representatives to quickly answer questions regarding Recovery Fund implementation and collect information on investment best practices from recipients.
- **Consistent and timely updates on Recovery Fund guidance:** We recommend that, whenever Recover Fund guidance or other important information is released, the U.S. Treasury host national calls with recipients. While email communication is appreciated, it does not allow for widespread distribution of information or the opportunity to ask questions. Ongoing national calls or “listening sessions” would benefit both parties as new guidance is developed and released.

What information do your members need in order to spend the resources most effectively?

NACo posed this question directly to our members using a multiple-choice format, and we received the below responses from over 200 counties:

Information about timing of distributions	89
Allowable use of funds	221
Best practices for spending funds	150
Reporting requirements	191
Limitations on use of funds	202
Other aspects of the overall American Rescue Plan	47

What can U.S. Treasury do to be most helpful to recipients throughout implementation?

Clarification of terms

- In paragraph Section 603(c)(1)(B), is the term "essential work" defined? It would be helpful to understand the guard rails and limitations intended for Section 603(c)(1)(D) as well.
- Can Treasury better define "economic recovery" in terms of allowable use of funds?
- Are funds to be primarily used to supplement existing funding, or can it be used to supplant funding as well?
- Clarification on funds for health departments as being separate from county funding. Will counties be responsible for funding health departments or will other funding cover that mostly?
- Will there be restrictions on "brick and mortar" type projects?
- Can you give some examples of what are "special purpose unit of local government"?
- What is the intent of the term of "necessary investments"?
- What is the definition of "premium pay" in Section 603(c)(1)(B)?
- How will the "provision of government services" be defined? Will this include capital projects that were halted due to a lack of revenue because of the pandemic?
- Can we have clarification on what is and is not an acceptable capital investment project?

What other aspects of the program or statute will your members most need additional clarity around?

- May the funds be used for monitoring, audit and administration of the funds?
- How can we use the funds for vaccine distribution and public transit?
- When will reporting requirements become available from Treasury regarding these funds?
- Can these funds retroactively be applied to fund requests that were denied under FFCRA?
- Specific accounting requirements for tracking the funding would be helpful
- What other opportunities are in the bill, outside of the direct financial deposit to each county, that we may be able to take advantage of to the benefit of our county?
- Is there going to be a "hotline" or submission form for us to contact the Treasury Department on a case-by-case basis before any of the funds are spent?