NATIONAL ASSOCIATION of COUNTIES NACo®

NACo LEGISLATIVE UPDATE:

OVERVIEW OF TREASURY'S FISCAL RECOVERY FUND GUIDANCE

JULY 1, 2021

TABLE OF CONTENTS

1. How to register on U.S. Treasury's portal and request Recovery Funds
2. New essential resources and guidance from U.S. Treasury
   - Interim final rule
   - Fact sheet
   - FAQs
   - Quick reference guide
   - County Recovery Fund allocations
3. Key Use of Funds and Reporting Dates
4. Key *Terms of Art* used in the Interim Rule
5. Defining eligible and ineligible uses
   - Support the public health response
   - Address negative economic impacts
   - Replace republic sector revenue loss
   - Broadband, water and sewer infrastructure
6. New FAQs with new Treasury guidance
7. Reporting requirements

DEPARTMENT OF THE TREASURY

31 CFR Part 35

RIN 1505-AC77

Coronavirus State and Local Fiscal Recovery Funds

AGENCY: Department of the Treasury

ACTION: Interim Final Rule

SUMMARY: The Secretary of the Treasury (Treasury) is issuing this Interim Final Rule to implement the Coronavirus State Fiscal Recovery Fund and the Coronavirus Local Fiscal Recovery Fund established under the American Rescue Plan Act.

DATES: *Effective date:* The provisions in this Interim Final Rule are effective [____], 2021. *Comment date:* Comments must be received on or before [____], 2021.

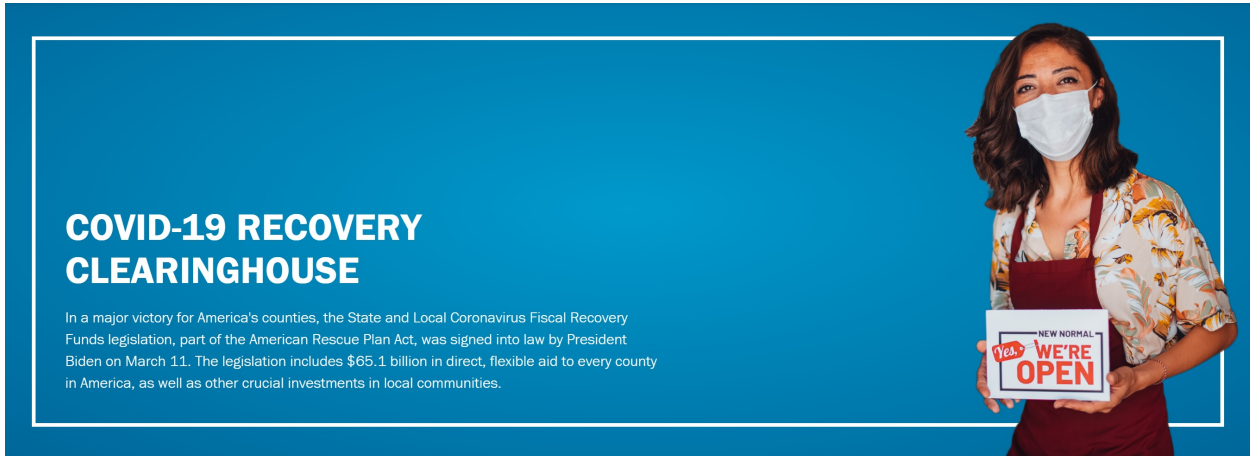
ADDRESSES: Please submit comments electronically through the Federal eRulemaking Portal: *http://www.regulations.gov* [(if hard copy, preferably an original and two copies to the [Office of the Undersecretary for Domestic Finance], Attention: [Name], Room [####] MT, Department of the Treasury, 1500 Pennsylvania Avenue, NW, Washington, DC 20220. Because postal mail may be subject to processing delay, it is recommended that comments be submitted electronically.] All comments should be captions with "Coronavirus State and Local Fiscal Recovery Funds Interim Final Rule Comments." Please include your name, organization affiliation, address, email address and telephone number in your comment. Where appropriate, a comment should include a short executive summary (no more than [#] single-spaced pages).] In general, comments received will be posted on *http://www.regulations.gov* without change, including any business or personal information provided. Comments received, including attachments and other supporting materials, will be part of the public record and subject to public

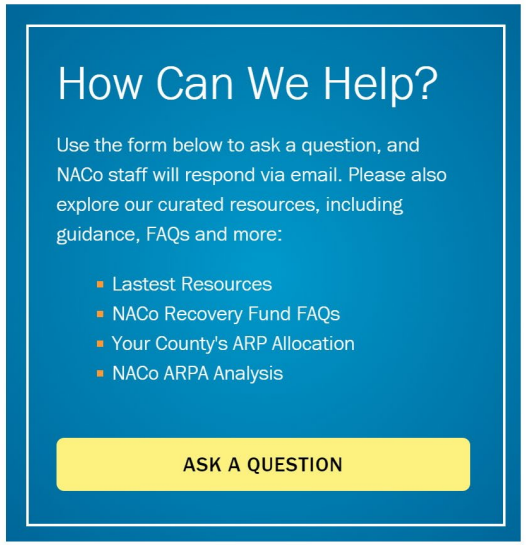
QUICK TAKE ON NEW TREASURY RECOVERY FUND

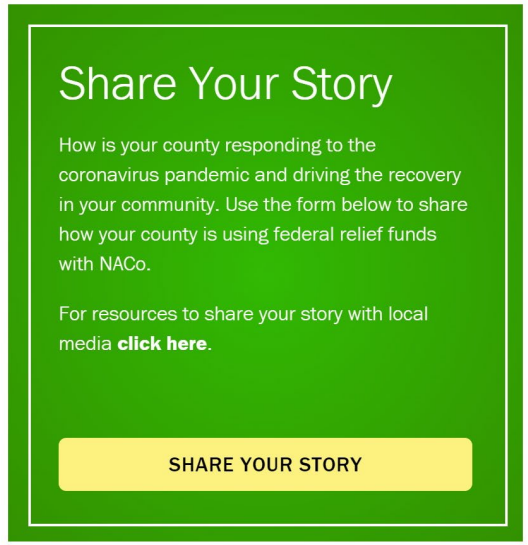
- **Historic investment of $65.1 billion in new direct federal aid** for our nation's counties
- **Broad flexibility** in use of funds, *yet be aware of limitations*
  - Public health
  - Economic recovery
  - Revenue loss *(most flexible)*
  - Broadband, water and sewer infrastructure
  - Payroll and benefits, including premium pay, for county workforce
- **Unanswered questions**, although Treasury is working thru FAQ process and rulemaking
- Opportunity to **comment on the Interim Final Rule** by July 16, 2021

- Interim final rule
- Fact sheet
- FAQs
- Reporting requirements (NEW)
- Quick reference guide
- County Recovery Fund allocations

U.S. TREASURY: **"MUST READ"** RESOURCES







[COVID-19 Recovery Clearinghouse (naco.org)]

NACo RESOURCES & MEMBER SUPPORT

THEMES OF MOST COMMON QUESTIONS… MAY WE?

- **Payroll support** for county workforce
- **Capital improvements**
  - Public health
  - Broadband
  - Jail upgrades/replacement
  - Courthouse/facility upgrades
  - Roads and bridges
  - Stormwater improvements
- **Lost revenue** recoupment
  - Entity-wide vs. per revenue stream
- **Property tax** relief
- **Non-federal match** *(ineligible use)*

- **Interest bearing** accounts *(eligible use)*
- **Pension** fund deposits
- **Rainy day** funds *(ineligible use)*
- **Debt service** payments *(ineligible use)*
- **Address county court backlogs**
- **Special purpose districts** & localities
- **Compliance** and audit costs
- **Reporting** deadlines and requirements
- **State Maintenance of Effort** with county aid

ILLUSTRATION ONLY OF ***SAMPLE*** ALLOWABLE USES OF RECOVERY FUNDS, PER U.S. TREASURY INTERIM FINAL RULE, GUIDANCE AND FAQs

Support Public Health Response

Fund COVID-19 mitigation efforts, medical expenses, behavioral healthcare, and certain public health and safety staff

Replace Public Sector Revenue Loss

Use funds to provide government services to the extent of the reduction in revenue experienced due to the pandemic

Water and Sewer Infrastructure

Make necessary investments to improve access to clean drinking water and invest in wastewater and stormwater infrastructure

Address Negative Economic Impacts

Respond to economic harms to workers, families, small businesses, impacted industries, and the public sector

Premium Pay for Essential Workers

Offer additional support to those who have and will bear the greatest health risks because of their service in critical infrastructure sectors

Broadband Infrastructure

Make necessary investments to provide unserved or underserved locations with new or expanded broadband access

DECODING *THE LANGUAGE* OF THE GUIDANCE

Throughout the Interim Final Rule, along with 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 pages 130-150 of the Interim Final Rule, FAQs and Guidance.

INTERIM FINAL RULE VS. FAQs

- **SHALL** = Mandatory reporting, use and compliance
- **MAY** = Allows local/county discretion
- **Encourage / Should** = Treasury preference only (NOT REQUIRED)
- **Proportional & Consistent**

DEFINITIONS (PG. 130)

- Covered benefits
- Covered period
- Eligible workers
- General revenue
- Pension fund

DECODING THE TREASURY RULES AND GUIDANCE

1. Treasury's Fiscal Recovery Fund was established to help turn the tide on the pandemic, address its economic fallout and lay the foundation for a strong and equitable recovery
2. Broad flexibility to help those disproportionately impacted by the COVID-19 pandemic
3. Use of recouped "lost revenue" is much more flexible than other Recovery Fund eligibility
4. Funds may cover costs from March 3, 2021 through December 31, 2024, *with exception for premium pay to Jan. 2020*
5. No deadline for counties to certify (i.e. apply) for the Funds… ***although risk of congressional action on clawback***
6. Recovery Funds can be deposited into interest-bearing accounts*, with general govt. purpose use of interest*
7. Important differences between CARES Act Coronavirus Relief Fund (CRF) and ARP Fiscal Recovery Fund, ***especially for county employee payroll support***
8. Recovery Funds may not be used as non-federal match, unless specifically authorized by other federal program
9. Allows re-hiring local government staff to pre-pandemic levels
10. Counties may use Recovery Funds for *routine* pension costs of employees only
11. Counties may use Recovery Funds to invest in water, sewer and broadband infrastructure projects

KEY DATES RELATED TO THE RECOVERY FUND

- **January 27, 2020:** Declaration of the public health crisis
- **March 3, 2021:** Beginning of the Recovery Fund "covered period"
- **July 16, 2021:** Deadline to comment on U.S. Treasury's *Interim Final Rule* on Recovery Fund
- **August 31, 2021:** Deadline to submit first Interim Report to U.S. Treasury
- **August 31, 2021:** Deadline to submit first *Recovery Plan Performance Report* to U.S. Treasury
  - Applies to COUNTIES ABOVE 250,000 POPULATION ONLY
- **October 31, 2021:** Deadline to submit first *Quarterly Project and Expenditure Report*

  - Counties receiving ***more than $5M must submit reports quarterly***

  - Counties receiving ***less than $5M must submit reports annually***
- **December 31, 2024:** Recovery Funds must be *obligated*
- **December 31, 2026:** Recovery Funds must be spent & *all work / performance must be completed*

NEW REPORTING UPDATES

Treasury released new guidance on June 17 for county reporting requirements:

- **Interim Report:** Due by August 31, 2021, the Interim Report requires **all counties** to report programmatic data for spending between March 3 and July 31, 2021

- **Project and Expenditure Report:** These reports require project and expenditure data for awards and sub-awards, demographic information for each project, and other programmatic data

  - Initial Project and Expenditure Report is **due October 31, 2021**
    - ✓ For counties with **awards above $5 million**, project and expenditure reports are **due *quarterly***
    - ✓ For counties with **awards under $5 million**, project and expenditure reports are **due *annually***

- **Recovery Plan Performance Report**:
  - Only required for counties with **populations over 250,000 residents**
  - **Required to be published annually** on the county website and provided to Treasury
  - **Contain detailed project performance data,** including information on efforts to improve equity and engage communities
  - Recovery Plan Performance Report is **due August 31, 2021**, followed by annual submission

U.S. TREASURY: REPORTING PRINCIPLES

Treasury released new reporting guidance that focuses on:

- **Accountable:** Requires program and performance reporting to build public awareness, increase accountability, and monitor compliance of eligible uses. Counties are required to account for every dollar spent and provide detailed information on how funds are used.

- **Transparent:** Those recipients receiving the largest amount of funds will be required to publicly post a detailed Recovery Plan Performance Report each year so the public is aware of how funds are being used and outcomes are being achieved. In addition, Treasury will provide comprehensive public transparency reports using the project and expenditure reports that recipients are required to provide.

- **User friendly:** Reporting has improvements requested by recipients of CARES Act funding, including deadlines 30 days after the close of the reporting period (versus 10 days in CARES), streamlined requirements for smaller funding recipients, and increased availability of bulk upload capabilities.

- **Focused on Recovery:** Reporting guidance addresses the Biden administration's priority areas for an equitable economic recovery, including provisions that prioritize equity, focus on economically distressed areas, support community empowerment, encourage strong labor practices, and spotlight evidence-based interventions.

UPDATED FAQ DOCUMENT

Treasury released updated FAQ documents on Tuesday, June 8

FAQ UPDATE

1. Recovery Funds can be used to **cover costs of consultants** to assist with managing and administering the funds
2. Recovery Funds can be used to **establish public jobs programs** (I.e. subsidized employment, combined education and on-the-job training, job training to accelerate rehiring or address negative economic impacts
3. Clarification on **revenue loss language** (audited financial data, county data versus Census Bureau data)
4. Flexibility for **costs incurred by March 3, 2021**, for public health response/negative economic impacts, premium pay, revenue loss and water, sewer and broadband projects
5. **New CFDA number – 21.027** – for Recovery Fund tracking
6. Counties do not need approval from Treasury to determine whether an **investment in water, sewer or broadband** project is eligible under the Recovery Fund IFR

Counties may establish public jobs programs, including incentives to accelerate re-hiring

UPDATED FAQ DOCUMENT

Treasury released updated FAQ documents on Thursday, June 17 for broadband investments:

JUNE 17 FAQ UPDATE – BROADBAND INVESTMENTS

1. **Provide service to unserved or underserved households or businesses means prioritizing deployment of infrastructure** that will bring service to households or businesses that are not currently serviced by a wireline connection that reliably delivers at least 25 MPS download speed and 3 MBS of upload speed
   - These unserved or underserved do NOT need to be the only ones in the service area funded by the project
2. Project may have a holistic approach that provides services to wider area in order, for example, to **make the ongoing service of unserved or underserved households or businesses more economical to sustain into the future**
3. **Clarifies definition of "reliably" meet or exceed broadband speed threshold**
4. **Allows "middle mile" projects** that help achieve last-mile connections by leveraging the middle-mile network

NEW FAQ GUIDANCE CLARIFIES THAT COUNTIES MAY INVEST IN "MIDDLE MILE" PROJECTS THAT HELP ACHIEVE LAST-MILE CONNECTIONS BY LEVERAGING THE MIDDLE-MILE NETWORK

UPDATED FAQ DOCUMENT

Treasury released updated FAQ documents on June 24:

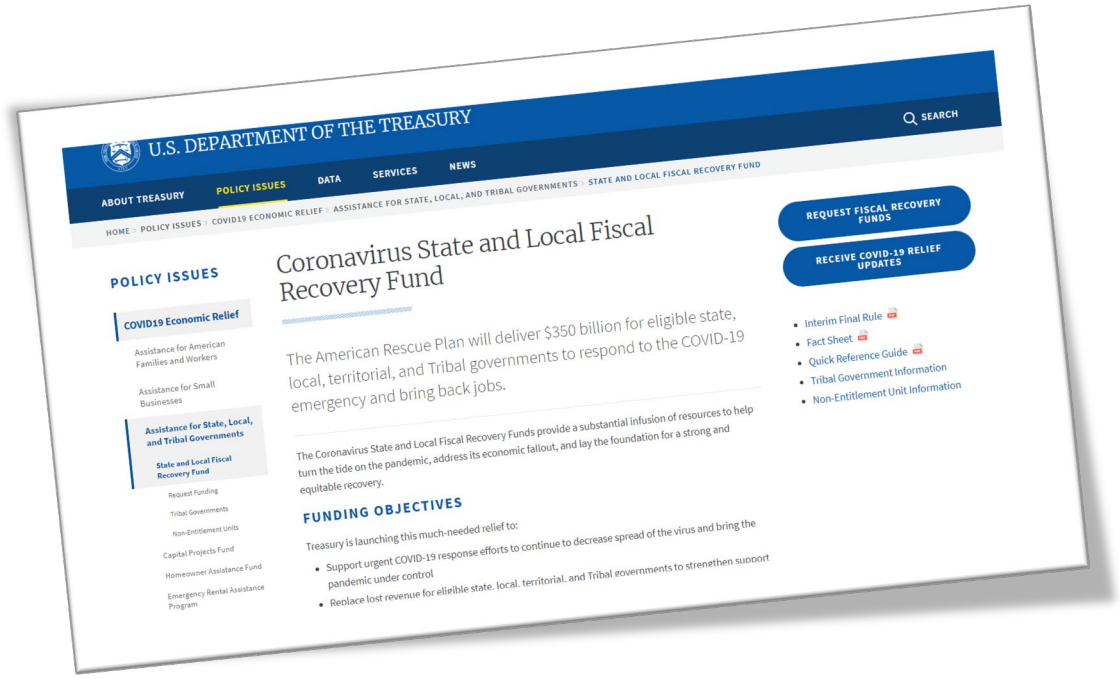
1. **Assistance to households or businesses:** negative impact at the "population or group level"
2. **Investments in outdoor spaces:**
   - Qualified Census Tracts (QCT) and other populations, households and **areas disproportionately impacted**
   - Services for stronger neighborhoods & communities, **esp. health disparities & social determinants of health**
   - **Enhance outdoor spaces** (e.g. restaurant patios) and the **built environment** (e.g. façade improvements)
   - Counties may also use funds for **parks and recreation**
3. **Expedite court case backlog cleanup** including COVID safety measures, hiring court staff/attorneys & other costs
4. **Assistance for small business startups**
5. **Definition of revenue *excludes* all federal funds** *including state transfers of federal funds to counties*
6. **Respond to increased violence and crime during to the pandemic**
7. **Pre-project development of water, sewer and broadband projects,** including broadband mapping

HOW TO CERTIFY FOR RECOVERY FUNDS

U.S. Treasury released certification guidance and opened the portal for counties to request Recovery Funds

Prior to requesting Recovery Funds, counties should complete the following steps immediately:

1. Ensure your county has a DUNS number
2. Ensure your county has an active SAM registration
3. Gather payment information:
   - Entity Identification Number (EIN), name and contact information
   - Name and title of an authorized representative of the county (I.e. chief elected official)
   - Financial institution information (e.g., routing and account number, financial institution name and contact information)



HOW TO CERTIFY FOR RECOVERY FUNDS

U.S. Treasury **opened the portal** for counties to request Recovery Funds.
To receive Recovery Funds, **a county must request funds through this portal.**

CLICK HERE

To access the portal and request Recovery Funds from the U.S. Treasury, click here.

If you are having issues with the new U.S. Treasury portal, email covidrelieffitsupport@treasury.gov.

SUPPORT **PUBLIC HEALTH RESPONSE**

1	**COVID-19 MITIGATION & CONTAINMENT**	• A broad range of services and programming that are needed to contain COVID-19, including using funds for vaccine incentive programs
2	**MEDICAL EXPENSES**	• Provide care and services to address COVID-19 public health needs, risks presented by new variants and long-term effects of the virus
3	**BEHAVIORAL HEALTHCARE**	• New or enhanced state and local government services that may be needed to meet mental health, substance use and other behavioral health needs
4	**PUBLIC HEALTH & SAFETY STAFF**	• Responding to the public health and negative economic impacts COVID-19 and requires additional human resources

ADDRESS **NEGATIVE ECONOMIC IMPACTS**

1 **WORKERS & FAMILIES**

- Assistance to unemployed workers and job training
- Food, housing, cash and other assistance to households (proportionate)
- Survivor's benefits for family members of COVID-19 victims

2 **SMALL BUSINESS**

- Loans and grants to mitigate financial hardship
- Loans, grants and in-kind assistance to implement COVID-19 prevention or mitigation tactics
- Technical assistance

3 **PUBLIC SECTOR**

- Rehire staff
- Replenish state unemployment insurance funds
- Administer economic relief programs

4 **IMPACTED INDUSTRIES**

- Tourism, travel and hospitality
- Other similarly affected sectors

PROVIDE EQUITY-FOCUSED SERVICES

1 ADDRESSING HEALTH DISPARITIES

- Community health workers and public benefits navigators
- Remediation of lead paint and other lead hazards
- Community violence intervention programs

2 HOUSING & NEIGHBORHOODS

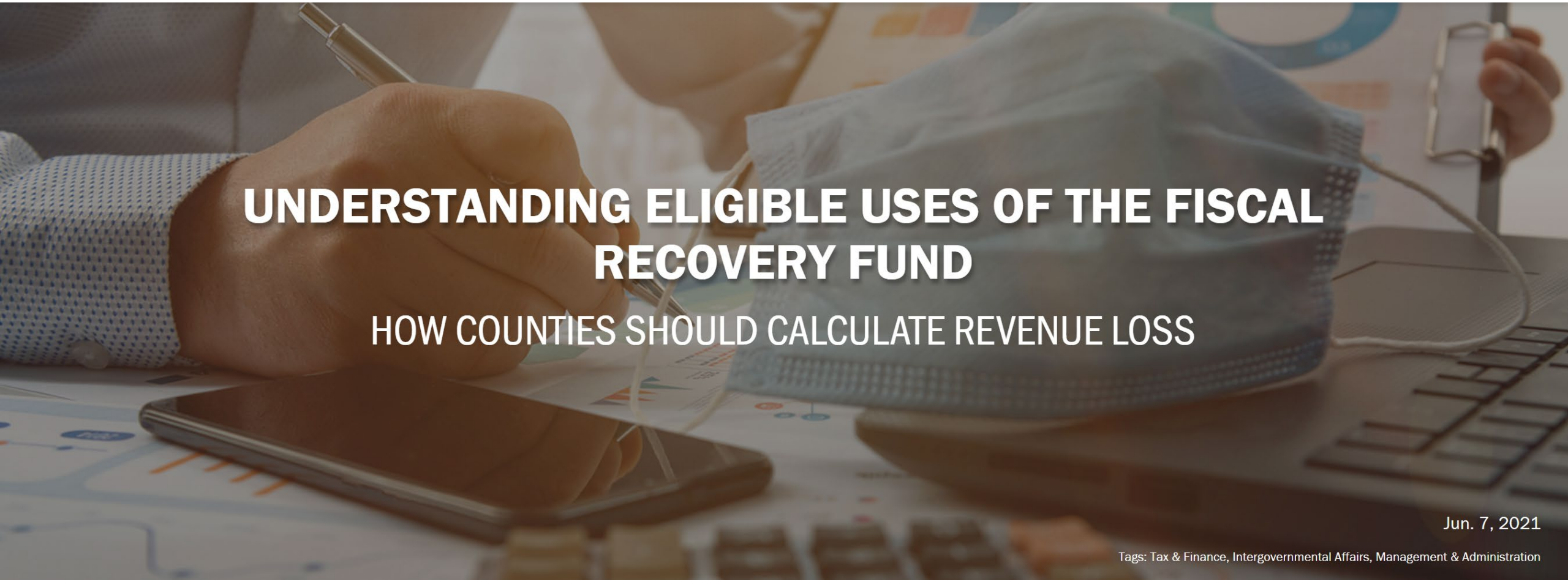
- Services to support individuals experiencing homelessness
- Affordable housing development
- Housing vouchers, residential counseling, navigation assistance

3 EDUCATIONAL DISPARITIES

- New or expanded early learning services
- Expanded resources for high-poverty school districts
- Educational services like tutoring and afterschool programs

4 PROMOTING HEALTHY CHILDHOOD & ENVIRONMENTS

- New and expanded high quality childcare
- Home visiting programs for families with young children
- Services for child welfare-involved families and foster youth



UNDERSTANDING ELIGIBLE USES OF THE FISCAL RECOVERY FUND

HOW COUNTIES SHOULD CALCULATE REVENUE LOSS

Jun. 7, 2021

Tags: Tax & Finance, Intergovernmental Affairs, Management & Administration

REPLACE LOST REVENUE

Recovery Funds may be used to provide government services to the ***extend of reduction*** in revenue experienced due to COVID-19:

- **Recipients may use funds to support governments services,** which include, **but are not limited to:**
  - Maintenance of infrastructure or pay-go spending for building new infrastructure, including roads
  - Modernization of cybersecurity, including hardware, software and protection of critical infrastructure
  - Health services
  - Environment remediation
  - School or educational services
  - Police, first responders and other public safety 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 INTERIM RULE. **HOWEVER, REVENUE RECOUPMENT CANNOT BE USED FOR RAINY DAY FUNDS OR DEBT SERVICES**

REPLACE LOST REVENUE

- **Recipients should calculate the extent of the reduction in revenue as of four points in time:**
  - December 31, 2020 | December 31, 2021 | December 31, 2022 | December 31, 2023
- **Definition of base year revenue:** Recipient's general revenue for the most recent full fiscal year prior to the COVID-19 public health emergency (January 27, 2020)
- **Definition of general revenue:** Based on Census Bureau's definition and includes revenue from taxes, current charges, miscellaneous general revenue, intergovernmental transfers between state and local governments
  - **Excludes** refunds and other correction transactions proceeds from issuance of debt or the sale of investments, agency or private trust transactions and revenue generated by utilities, intergovernmental transfers from the federal government *(federal transfers made to a state/locality)*
- **Recipients should calculate revenue on an entity-wide basis,** rather than source-by-source basis
- **Recipients cannot use pre-pandemic projections** as a basis to estimate the reduction in revenue

REPLACE LOST REVENUE

Recipients have two options to calculate lost revenue:

- Recipients will compute the *extent of reduction in revenue* by comparing actual revenue to a counterfactual trend representing *what would have 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 <u>of either</u>:**

1. **4.1% per year** (based on the national average of state and local revenue growth 2015-18)

   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 their growth adjustment figure

NACo-GFOA Lost Revenue Calculator

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)	Calculation Date	12/31/2020	
	Number of Months	18	Months between Base Year and Calculation Date

Estimate Revenue

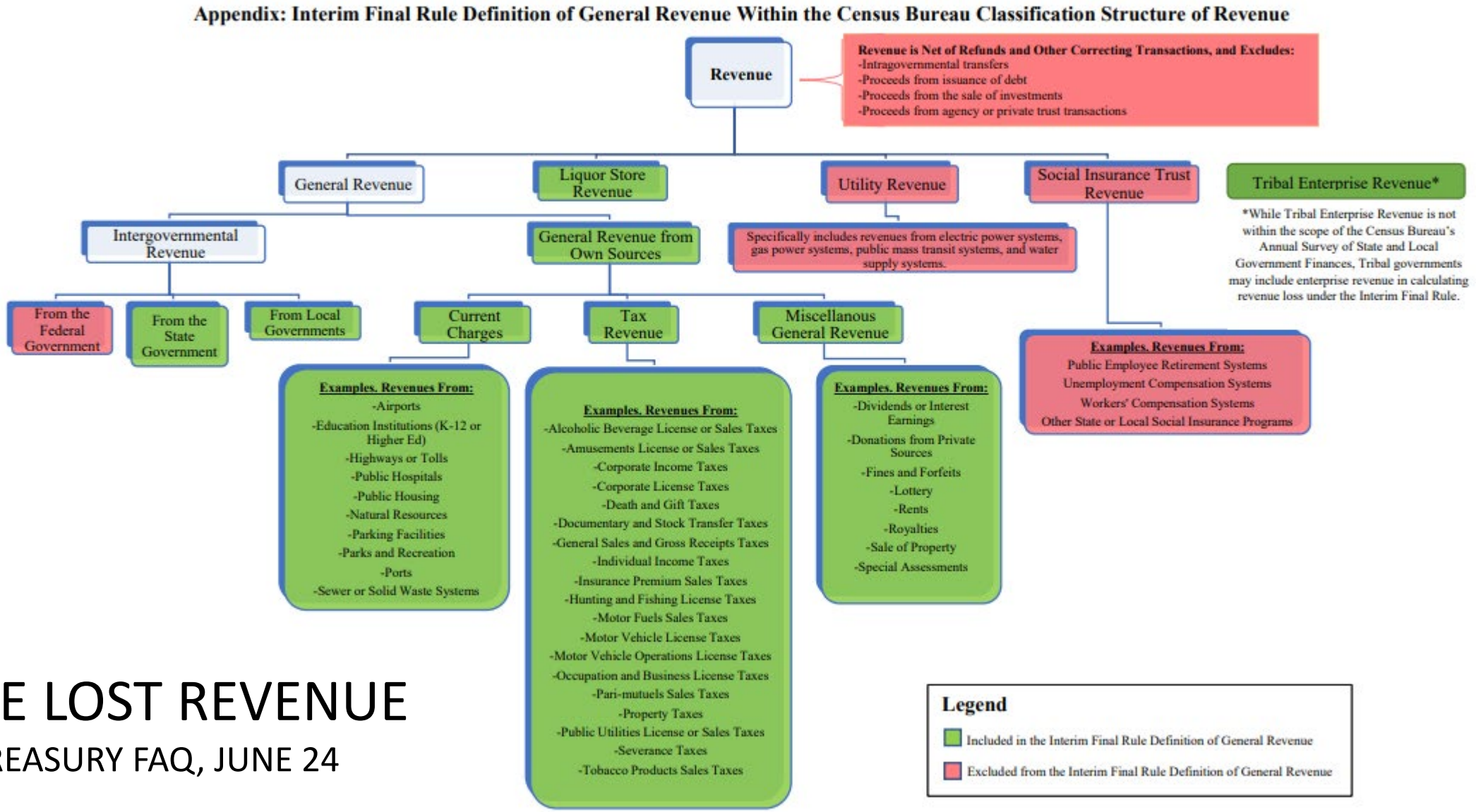
3)	Base Year Revenue	$ 1	Use Worksheet to Calculate
4)	Growth Rate	4.1%	Use Worksheet to Calculate
	Counterfactual Revenue	$ 1	Estimated Revenue Without Pandemic
5)	Actual Revenue	$ 1	Use Worksheet to Calculate

Reduction in Revenue

Fiscal Year Ended *12/31/2020*

Revenue Reduction	$ 0
Revenue Reduction %	-5.8%

AS OF JUNE 24, 2021



REPLACE LOST REVENUE

PER NEW TREASURY FAQ, JUNE 24

PUBLIC HEALTH & PUBLIC SAFETY EMPLOYEE PAYROLL

ARPA FISCAL RECOVERY FUND (PG. 20)

- Recovery Funds may be used for payroll/benefits for **public safety, public health, health care, human services and other similar employees**
- Recovery Funds may be used to support the payroll/benefits **for the portion of the employee's time that is dedicated to responding to COVID-19**
- Counties may consider public health/safety employees to be entirely devoted to mitigating/responding to COVID-19 and are fully recovered, **if the employee, or his/her operating unit or division, is primarily dedicated to responding to the COVID-19 public health emergency**

CARES ACT CRF (PG. 4187)

- As a matter of administrative convenience in light of the emergency nature of this program, **a State, territorial, local, or Tribal government may presume that payroll costs for public health and public safety employees are payments for services substantially dedicated to mitigating or responding to the COVID–19 public health emergency,** unless the chief executive (or equivalent) of the relevant government determines that specific circumstances indicate otherwise
- **All costs of such employees may be covered** using payments from the Fund for services

PREMIUM PAY FOR ESSENTIAL EMPLOYEES

Counties may provide premium pay (up to $13/per hour) to eligible county workers performing essential work during the COVID-19 emergency *or to provide grants to third-party employers with eligible workers who perform(ed) essential work*

Essential employees are defined as:

- **Any work performed by an employee of the 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
- Social service and human services staff

Essential work is defined as:

- Work involving regular in-person interactions or regular physical handling of items that were also handled by others
- A worker would NOT be engaged in essential work and, accordingly may not receive premium pay, for telework performed from a residence

Other provisions related to premium pay:

- Premium pay **may be retroactive** before March 3, 2021
- Counties have discretion to designate additional sectors
- Additional reporting requirements in certain cases *including higher wage workers and grants to third-party employers*

WATER & SEWER INFRASTRUCTURE

Counties may invest Recovery Funds for **water and sewer** infrastructure upgrades

- **Eligible uses aligned to Environmental Protection Agency (EPA) project categories** in the:
  - Clean Water State Revolving Fund (CWSRF)
  - Drinking Water State Revolving Fund (DWSRF)
- Improvements to infrastructure, such as building or upgrading facilities and transmission, distribution and storage systems *(additional guidance to be released at later date)*
- Each recipient may review IFR and decide how to invest funds
  - ***No pre-approval is required by Treasury/EPA***

To determine eligibility for water and sewer investments, review the list of program criteria for the Environmental Protection Agency's Clean Water State Revolving Fund (CWSRF) and the Drinking Water State Revolving Fund (DWSRF)

BROADBAND INFRASTRUCTURE

Counties may invest Recovery Funds in broadband projects:

- Targets to support households and businesses that ***do not*** deliver 25 Mbps download/3 Mbps upload

- Fund projects that deliver reliable services – minimum 100 Mbps download/100 Mbps upload speed – *unless impracticable due to geography, topography, or excessive costs*

- Complement broadband investments made by states through the ARPA Capital Projects Funds

JUNE 17 FAQ UPDATE –

BROADBAND INVESTMENTS

1. **Provide service to unserved or underserved households or businesses means prioritizing deployment of infrastructure** that will bring service to households or businesses that are not currently serviced by a wireline connection that reliably delivers at least 25 MPS download speed and 3 MBS of upload speed
    - These unserved or underserved do NOT need to be the only ones in the service area funded by the project
2. Project may have a holistic approach that provides services to wider area in order, for example, to **make the ongoing service of unserved or underserved households or businesses more economical to sustain into the future**
3. **Clarifies definition of "reliably" meet or exceed broadband speed threshold**
4. **Allows "middle mile" projects** that help achieve last-mile connections by leveraging the middle-mile network

DEFINING **INELIGIBLE** EXPENSES

1 PENSION FUNDS

- Funding cannot be used for deposits into defined benefit pension funds…However, Treasury defines a "deposit" as an extraordinary contribution to a pension fund for the purpose of reducing an accrued, unfunded liability
- **Recipients may use funds for routine payroll contributions to pensions of employees whose wages and salaries are an eligible use**

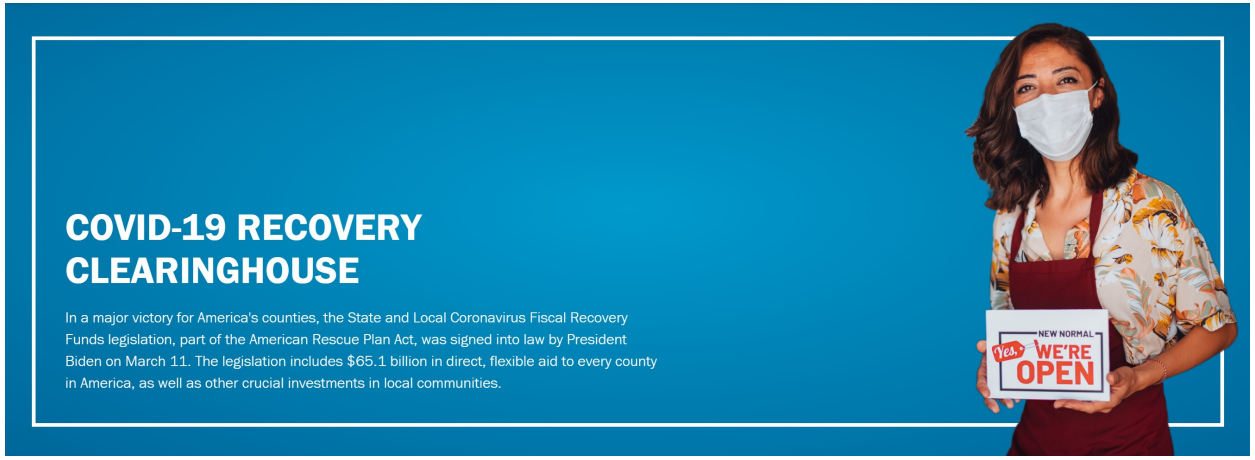
2 OTHER RESTRICTIONS

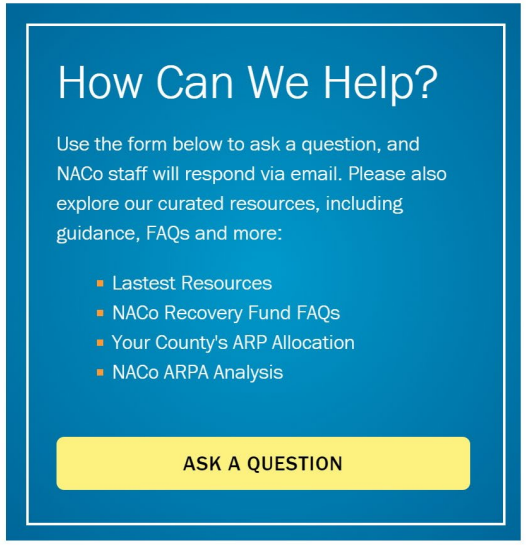
- Prohibits funding of debt service payments, legal settlements or judgements
- No deposits into rainy day funds or financial reserves
- Non-federal match requirement (I.e. EDA & Medicaid) *& be sure to read the latest FEMA guidance*
- President's current directive allows FEMA to pay 100% federal funding for the COVID-19 related eligible activities, dating back to the beginning of the pandemic declaration on January 2020 through Sept. 30, 2021

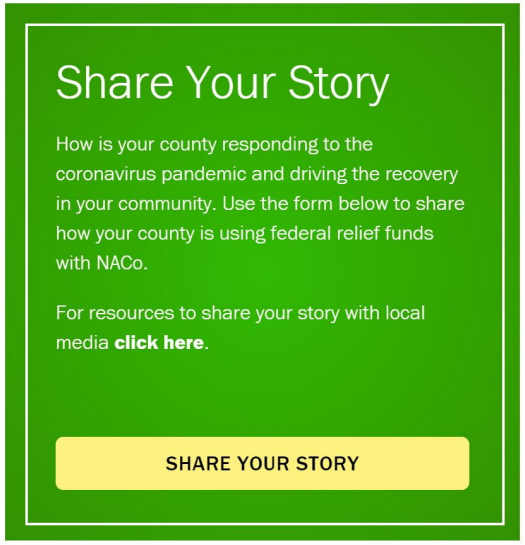
3 NET REDUCTION IN TAX REVENUE (LIMITED TO STATES & TERRITORIES)

- If a state or territory has a reduction in net tax revenue, they must demonstrate how they paid for the tax cuts from source other than the Recovery Fund

NACo RESOURCES & MEMBER SUPPORT







2021 NACo ANNUAL HYBRID CONFERENCE

GAYLORD NATIONAL RESORT & CONVENTION CENTER, PRINCE GEORGE'S COUNTY, MD | JULY 9-12

STRONGER COUNTIES. STRONGER AMERICA.

National Association of Counties
660 North Capitol Street, N.W. | Suite 400
Washington, D.C. 20001
202.393.6226 • www.NACo.org

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