



The American Rescue Plan Act

Jacob A. German
Barnes & Thornburg LLP

Overview of ARPA

- Significant increase in government expenses since pandemic began.
- Section 602 and 603 of ARPA establishes the Coronavirus Local Fiscal Recovery Fund to help respond to and contain the impact of COVID-19.
 - Sections 602 and 603 contain the same eligible uses. Section 602 establishes a fund for States, territories, and Tribal governments; and section 603 establishes a fund for metropolitan cities, nonentitlement units of local government, and counties.
- \$65.10 billion in aid going to eligible counties.
- \$1.3 billion going to Indiana counties.
 - Refer to Appendix A for breakout.

Overview – Permissible Uses

- Public health and economic impacts
- Premium pay for essential workers
- Replacing lost public sector revenue
- Investments in infrastructure
 - Water
 - Sewer
 - Broadband

Overview – Exclusions

- Section 603(2) - No metropolitan city, nonentitlement unit of local government, or county may use funds made available under this section for deposit into any pension fund.
- Lost revenue recoupment shall not be used for “rainy day” or reserve funds, or debt service payments.
- Recovery funds may not be used as non-federal match, unless specifically authorized by the underlying/source federal program.
 - However, local communities may use their funds to match other state and local government allocations of Treasury ARPA Recovery Funds, if used within the local community.

Public Health and Economic Impacts

- Supports public health responses by funding COVID-19 mitigation efforts, medical expenses, behavioral health care and certain local community public health, public safety, human services and other related staff.
- Addresses negative economic impacts to workers, families, small businesses, impacted industries, and rehiring of public sector workers.
- Funds must respond to “the disease itself or the harmful consequences of the economic disruptions resulting from or exacerbated by the COVID-19 public health emergency.”
- Qualifying programs or services must respond to the COVID-19 public health emergency. When assessing such programs or services:
 - First, identify a need or negative impact of the COVID-19 public health emergency; and
 - Second, identify how the program, service, or other intervention addresses the identified need or impact.

Public Health and Economic Impacts – Examples

Services and programs to contain and mitigate the spread of COVID-19, including:

- ✓ Vaccination programs
- ✓ Medical expenses
- ✓ Testing
- ✓ Contact tracing
- ✓ Isolation or quarantine
- ✓ PPE purchases
- ✓ Support for vulnerable populations to access medical or public health services
- ✓ Public health surveillance (e.g., monitoring for variants)
- ✓ Enforcement of public health orders
- ✓ Public communication efforts
- ✓ Enhancement of healthcare capacity, including alternative care facilities
- ✓ Support for prevention, mitigation, or other services in congregate living facilities and schools
- ✓ Enhancement of public health data systems
- ✓ Capital investments in public facilities to meet pandemic operational needs
- ✓ Ventilation improvements in key settings like healthcare facilities

Public Health and Economic Impacts – Examples (cont.)

Services to address behavioral healthcare needs exacerbated by the pandemic, including:

- ✓ Mental health treatment
- ✓ Substance misuse treatment
- ✓ Other behavioral health services
- ✓ Hotlines or warmlines
- ✓ Crisis intervention
- ✓ Services or outreach to promote access to health and social services

Payroll and covered benefits expenses for public health, healthcare, human services, public safety and similar employees, to the extent that they work on the COVID-19 response. For public health and safety workers, recipients can use these funds to cover the full payroll and covered benefits costs for employees or operating units or divisions primarily dedicated to the COVID-19 response.

Public Health and Economic Impacts – Examples (cont.)

- Addressing the negative economic impacts :

Delivering assistance to workers and families, including aid to unemployed workers and job training, as well as aid to households facing food, housing, or other financial insecurity. In addition, these funds can support survivor's benefits for family members of COVID-19 victims.

Supporting small businesses, helping them to address financial challenges caused by the pandemic and to make investments in COVID-19 prevention and mitigation tactics, as well as to provide technical assistance. To achieve these goals, recipients may employ this funding to execute a broad array of loan, grant, in-kind assistance, and counseling programs to enable small businesses to rebound from the downturn.

Speeding the recovery of the tourism, travel, and hospitality sectors, supporting industries that were particularly hard-hit by the COVID-19 emergency and are just now beginning to mend. Similarly impacted sectors within a local area are also eligible for support.

Rebuilding public sector capacity, by rehiring public sector staff and replenishing unemployment insurance (UI) trust funds, in each case up to pre-pandemic levels. Recipients may also use this funding to build their internal capacity to successfully implement economic relief programs, with investments in data analysis, targeted outreach, technology infrastructure, and impact evaluations.

Premium Pay for Essential Workers

- Can be provided essential workers in the community that have faced, and continue to face, the greatest health risks due to their service.
 - *Essential work* = work involving regular in-person interactions or regular physical handling of items that were also handled by others.
- Section 603(g)(2): essential workers are those needed to maintain continuity of operations of essential critical infrastructure sectors and additional sectors designated as critical.
 - The chief executive officer of a metropolitan city, nonentitlement unit of local government, or county may designate sectors as critical.
 - These sectors must protect the health and well-being of the residents of their metropolitan city, nonentitlement unit of local government, or county.

Premium Pay for Essential Workers – Examples

- ❑ 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

Premium Pay for Essential Workers (cont.)

- Section 603(g)(6): Offers additional compensation, up to \$13 per hour in additional wages.
 - Amounts may not exceed \$25,000 for a single eligible worker.
- Should prioritize low- and moderate-income persons (additional justification needed for workers above 150 percent of the residing state's average annual wage).
- May provide retroactively, dating back to the start of the public health emergency on January 27, 2020.
- May be provided to third-party employers.

Replacing Lost Public Sector Revenue

- This provision allows a much broader use of funds.
- Provides funds to government services to the extent of the reduction in revenue experienced during the pandemic.
- *Revenue* includes taxes, current charges, miscellaneous general revenue, and intergovernmental transfers between state and local governments.
- *Government services* includes (but not limited to):
 - Maintenance or pay-go funded building of infrastructure, including roads;
 - Modernization of cybersecurity, including hardware, software, and protection of critical infrastructure;
 - Health services;
 - Environmental remediation;
 - School or educational services; and
 - Provision of police, fire, and other public safety services.

Replacing Lost Public Sector Revenue (cont.)

- Reduction in revenue is based on comparing actual revenue to the expected revenue with no pandemic.
 - Based on the expected trend by taking the last full fiscal year prior to the public health emergency (ex. January 27, 2020) and projecting forward with either:
 - (a) the recipient's average annual revenue growth over the three full fiscal years prior to the pandemic; or
 - (b) 4.1 percent (the national average of state and local revenue growth rate from 2015-2018).
 - *Actual revenue* = revenues collected over the past 12 months of the calculation date.
- Avoid cuts to government services and government staff.

Investments in Infrastructure

- Makes necessary investments in water, sewer, and broadband infrastructure.
- Includes investing in improving access to clean drinking water, in wastewater and stormwater infrastructure, and in providing underserved or underserved locations with new or expanded broadband access.
- Does not include other general economic development and infrastructure projects (ex. road construction, bridge repairs, etc.).
 - Such projects must be funded through a local government’s lost revenue replacement allowance.
 - **Note:** S. 3011/H.R. 5735, if passed, would add flexibility to transportation infrastructure projects. More on this in a later slide.

Investments in Infrastructure: Water and Sewer

- Aligns eligible projects with those that qualify through the Environmental Protection Agency's (EPA), Clean Water State Revolving Fund (CWSRF), and Drinking Water State Revolving Fund (DWSRF).
- Examples of projects:
 - Stormwater runoff;
 - Water pollution;
 - Flood control; and
 - Green infrastructure that support stormwater resiliency, including rain gardens and green streets.

Investments in Infrastructure: Water and Sewer (cont.)

- Examples of CWSRF projects are those to:
 - Construct, improve, and repair wastewater treatment plants;
 - Control non-point sources of pollution;
 - Improve resilience of infrastructure to severe weather events;
 - Create green infrastructure; and
 - Protect waterbodies from pollution.
- Examples of DWSRF fund uses:
 - Assist communities in making water infrastructure capital improvements, including the installation and replacement of failing treatment and distribution systems;
 - Ensure compliance with applicable health and environmental safety requirements;
 - Address the most serious risks to human health; and
 - Assist systems most in need on a per household basis according to State affordability criteria.

Other Project Examples

- ❖ Small business grant programs.
- ❖ Support to tourism industry.
- ❖ Non-profit organization grants.
- ❖ Household assistance program.
- ❖ Low income housing development.
- ❖ Promoting enhanced public safety response.
- ❖ PPE and cleaning services.
- ❖ Cybersecurity.
- ❖ Renovations to local government buildings to mitigate the spread of COVID-19.
- ❖ Investments in COVID-19 testing and vaccine administration.
- ❖ Grants for behavioral and mental health service providers.
- ❖ Support for projects related to better health outcomes.
- ❖ Support for projects related to early childhood development.

Compliance

- Funds must be incurred by December 31, 2024 and expended by December 31, 2026.
 - Costs for projects incurred by the recipient State, territorial, local, or Tribal government prior to March 3, 2021 are not eligible.
 - Treasury’s Interim Final Rule provides that “*incurred*” has the same meaning given to “*financial obligation*” in 2 CFR § 200.1.
 - *Financial obligations* = when referencing a recipient's or subrecipient's use of funds under a Federal award, means orders placed for property and services, contracts and subawards made, and similar transactions that require payment. 2 CFR § 200.1.
- Quarterly (or Annual) Reporting Requirement: *Project and Expenditure Report*
 - Counties that received more than \$10 million in SLFRF funding: due by January 31, 2022, and then 30 days after the end of each quarter thereafter.
 - Counties that received less than \$10 million in SLFRF funding: due by April 30, 2022, and then annually thereafter.

Potential Changes: S. 3011/H.R. 5735

- For America's counties, this bill would bring:
 - \$27 billion in new infrastructure flexibility for county ARPA Recovery Funds.
 - \$17 billion in flexibility to carry out U.S. Treasury-defined "government services".
- Allow local governments to allocate up to \$10 million in ARPA Recovery Funds for the provision of government services without being required to calculate revenue loss.
- Allow \$10 million (or 30 percent) of a local government's ARPA Recovery Fund allocation to be used for infrastructure-related activities authorized under existing federal surface transportation laws or a Community Development Block Grant project.
- Allow ARPA Recovery Funds to provide emergency relief from natural disasters and their negative economic impacts, including temporary emergency housing, food assistance, financial assistance for lost wages, or other immediate needs.

Programmatic Updates and Q&A

Contact Information

Jacob A. German

Barnes & Thornburg LLP

11 South Meridian Street

Indianapolis, IN 46204

Jacob.German@btlaw.com

(317) 231-7538 (direct)

(317) 979-2645 (cell)

Appendix A-1 – By the Numbers, Indiana

| County | Allocation |
|--------------------|--------------|
| Adams County | \$6,949,263 |
| Allen County | \$73,674,384 |
| Bartholomew County | \$16,273,089 |
| Benton County | \$1,699,196 |
| Blackford County | \$2,283,854 |
| Boone County | \$13,177,707 |
| Brown County | \$2,931,444 |
| Carroll County | \$3,934,685 |
| Cass County | \$7,320,646 |
| Clark County | \$22,978,777 |
| Clay County | \$5,093,899 |
| Clinton County | \$6,293,126 |
| Crawford County | \$2,054,458 |
| Daviess County | \$6,478,041 |
| DeKalb County | \$8,444,509 |
| Dearborn County | \$9,606,637 |
| Decatur County | \$5,158,774 |
| Delaware County | \$22,169,386 |
| Dubois County | \$8,300,967 |
| Elkhart County | \$40,079,320 |

| County | Allocation |
|-------------------|--------------|
| Fayette County | \$4,487,293 |
| Floyd County | \$15,251,978 |
| Fountain County | \$3,175,019 |
| Franklin County | \$4,420,475 |
| Fulton County | \$3,879,715 |
| Gibson County | \$6,537,866 |
| Grant County | \$12,774,857 |
| Greene County | \$6,200,474 |
| Hamilton County | \$65,654,674 |
| Hancock County | \$15,183,218 |
| Harrison County | \$7,869,564 |
| Hendricks County | \$33,080,915 |
| Henry County | \$9,317,999 |
| Howard County | \$16,033,204 |
| Huntington County | \$7,093,582 |
| Jackson County | \$8,591,353 |
| Jasper County | \$6,519,025 |
| Jay County | \$3,969,453 |
| Jefferson County | \$6,275,450 |
| Jennings County | \$5,387,199 |

| County | Allocation |
|-------------------|---------------|
| Johnson County | \$30,722,086 |
| Knox County | \$7,107,956 |
| Kosciusko County | \$15,433,397 |
| LaGrange County | \$7,694,555 |
| LaPorte County | \$21,344,456 |
| Lake County | \$94,301,324 |
| Lawrence County | \$8,812,591 |
| Madison County | \$25,167,259 |
| Marion County | \$187,358,746 |
| Marshall County | \$8,985,074 |
| Martin County | \$1,991,914 |
| Miami County | \$6,898,567 |
| Monroe County | \$28,830,982 |
| Montgomery County | \$7,446,707 |
| Morgan County | \$13,691,662 |
| Newton County | \$2,716,228 |
| Noble County | \$9,273,712 |
| Ohio County | \$1,141,150 |
| Orange County | \$3,816,005 |
| Owen County | \$4,039,962 |

Appendix A-2 – By the Numbers, Indiana

| County | Allocation |
|--------------------|--------------|
| Parke County | \$3,289,814 |
| Perry County | \$3,723,354 |
| Pike County | \$2,406,418 |
| Porter County | \$33,096,066 |
| Posey County | \$4,938,897 |
| Pulaski County | \$2,399,425 |
| Putnam County | \$7,298,697 |
| Randolph County | \$4,790,887 |
| Ripley County | \$5,501,605 |
| Rush County | \$3,220,665 |
| Scott County | \$4,637,050 |
| Shelby County | \$8,688,084 |
| Spencer County | \$3,938,570 |
| St. Joseph County | \$52,799,014 |
| Starke County | \$4,466,509 |
| Steuben County | \$6,719,479 |
| Sullivan County | \$4,014,711 |
| Switzerland County | \$2,088,256 |
| Tippecanoe County | \$38,018,646 |
| Tipton County | \$2,942,321 |

| County | Allocation |
|--------------------|------------------------|
| Union County | \$1,370,157 |
| Vanderburgh County | \$35,244,730 |
| Vermillion County | \$3,010,305 |
| Vigo County | \$20,790,877 |
| Wabash County | \$6,020,610 |
| Warren County | \$1,605,379 |
| Warrick County | \$12,236,623 |
| Washington County | \$5,445,664 |
| Wayne County | \$12,797,195 |
| Wells County | \$5,496,166 |
| White County | \$4,681,531 |
| Whitley County | \$6,597,109 |
| Total | \$1,307,654,622 |