

Coronavirus Fiscal Recovery Fund Guidance

Distribution of Funds to Non-Entitlement Units of Local Government

On May 25, the U.S. Treasury issued a guidance to states regarding the distribution of funds to non-entitlement units of local government. This memorandum summarizes how states and non-entitlement units of local government are to distribute, receive, and report the funds from the Coronavirus Local Fiscal Recovery Fund.

The American Rescue Plan Act of 2021 (ARPA) appropriates \$19.53 billion to small cities defined in the legislation as “non-entitlement units of local government” (NEUs).¹ NEUs are local governments typically serving populations of less than 50,000, and include cities, villages, towns, townships, or other types of local governments.

NEUs will receive their ARPA payments through their state governments. States will receive funds in two tranches, with the Second Tranche payment to be received no earlier than 12 months after the received date of the First Tranche payment.²

As of May 24, 2021, States may request funds from the U.S. Treasury through the Treasury Submission Portal. States that have made requests should expect to receive their First Tranche for distribution to their NEUS within a few days of submission.³

Under Treasury’s Interim Final Rule (IFR), regulations providing guidance on how ARPA funds can be used, States may not impose additional conditions or requirements on distributions to NEUs. NEUs are required to follow the rules and conditions in ARPA, the IFR, and Treasury’s guidance.⁴

¹ Guidance On Distribution Of Funds To Non-Entitlement Units Of Local Government, U.S. Department of Treasury (hereinafter “NEU Guidance”), 1.

² NEU Guidance, 1.

³ <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-fund/non-entitlement-units>

⁴ NEU Guidance, 6.



Prior to Distribution

Prior to distributing funds to NEUs, States will need to request their fund allocation from Treasury and complete the following steps:

- Request the payment of the Local Fiscal Recovery Funds for distribution to the NEUs;
- Identify eligible NEUs, following the guidance provided by Treasury;
- Calculate the initial allocations to each NEU based on the proportion of the population in the NEU in relation to the total population of all NEUs within that State;
- Establish a process for NEUs to submit requests for payments;
- Receive requests for payments from NEUs;
- Determine whether the “75 percent cap” applies utilizing a top-line of the NEU’s submitted reference budget; and
- Process requests to transfer to the State from NEUs who decline funding.

Treasury is suggesting that States assign each NEU a unique “NEU Recipient Number” starting with the two letter State abbreviation followed by four numeric digits (e.g., AZ0231). NEUs should retain its NEU Recipient Number as an identifying number for the lifecycle of the program, including for reporting purposes.⁵

Allocation and Distribution

When ARPA was passed, initial estimates of funds for NEUs were provided by Congress. However, Treasury has not made specific allocations each NEU. Treasury has left the determination of final numbers to the States based on a provided formula. States are to identify eligible NEUs by using the guideline list with names and populations estimates for each local government categorized by State, based on data from the Bureau of the Census.⁶ This can be found on Treasury’s website. The formula is as follows:

$$\frac{\text{Total population of the NEU}}{\text{Total Population of all eligible NEUs}} \times \text{Aggregate state NEU payment}$$

A State is required to allocate and distribute the Local Fiscal Recovery Fund payment to each NEU in the State as follows: an amount that bears the same proportion to the amount of such payment as the population of the NEU bears to the total population of all the NEUs in the State.⁷

States must make an initial fund distribution to NEUs no later than 30 days after receiving a payment from Treasury.⁸ If a State faces an “excessive administrative burden” and cannot distribute the funds within 30 days, the State must submit a certification in writing that it is unable to distribute the funds

⁵ NEU Guidance, 5.

⁶ NEU Guidance, 2.

⁷ NEU Guidance, 1.

⁸ NEU Guidance, 6.

#NLCDelivers

within the 30-day window and requests an extension. Treasury will then grant the state a 30-day extension of the deadline for distributing funds, which means NEUs may receive their allocated funds within 60 days, rather than 30 days, of the State receiving its Local Fiscal Recovery Fund distribution.⁹

75 Percent Cap

States must determine if the “75 percent cap” applies. The NEU’s total award is capped at 75 percent of its annual total operating budget, including the general fund and other funds, in effect as of January 27, 2020.¹⁰

NEUs will need to submit a top-line total of its reference budget, which will need to be certified by an authorized representative of the NEU. If a NEU does not adopt a formal budget, States may allow the NEU to certify its most recent annual total expenditures as of January 27, 2020 instead of a reference budget. States will then compare the total allocation to the NEU with the provided reference budget. If an NEU’s total allocation is more than the 75 percent cap, then the State must return the amount of the allocation in excess to Treasury.¹¹

If an NEU Declines Funds

An NEU may decline its allocation and transfer those funds to the State. Treasury will consider this a cancellation of the award from the eligible NEU. If the NEU chooses to decline the funds, the NEU must provide a signed notice to the State stating it declines the funds. However, if the NEU does not provide a notice of decline, then it will remain legally obligated for the use of funds and the reporting on the usage of such funds.¹²

Second Tranche

The Second Tranche of funds will be issued to the States between Spring and Summer 2022. The payment will come no earlier than 12 months after the date on which the First Tranche of funds was paid to the State. Treasury will provide more information on the Second Tranche closer to its distribution period.

Reporting Requirements

Treasury will provide additional guidance to NEUs for their reporting requirements. NEUs are required to report to Treasury on the use of funds. The first report is due to Treasury by October 31, 2021. NEUs will be asked to provide¹³:

⁹ NEU Guidance, 6.

¹⁰ NEU Guidance, 5.

¹¹ NEU Guidance, 5.

¹² NEU Guidance, 5.

¹³ NEU Guidance, 8.

#NLCDelivers

- NEU Recipient Number (a unique identification code for each NEU assigned by the State to the NEU as part of the request for funding)
- Copy of signed award terms and conditions agreement
- Copy of signed assurances of compliance with Title VI of the Civil Rights Act of 1964
- Copy of actual budget documents validating the top-line budget total provided to the State as part of the request for funding

Note: This summary has been prepared by Best, Best & Krieger LLP

If you have general questions about the Coronavirus State and Local Fiscal Recovery Funds, please email the U.S. Department of Treasury at SLFRP@treasury.gov or call 844-529-9527.

The information contained here is not legal advice. It will be subject to change based on updates from the U.S. Department of the Treasury, and any recipients should confirm applicability to their specific situation.