# American Rescue Plan: Local Fiscal Recovery Funds

## U.S. Treasury Final Rule Issued January 6

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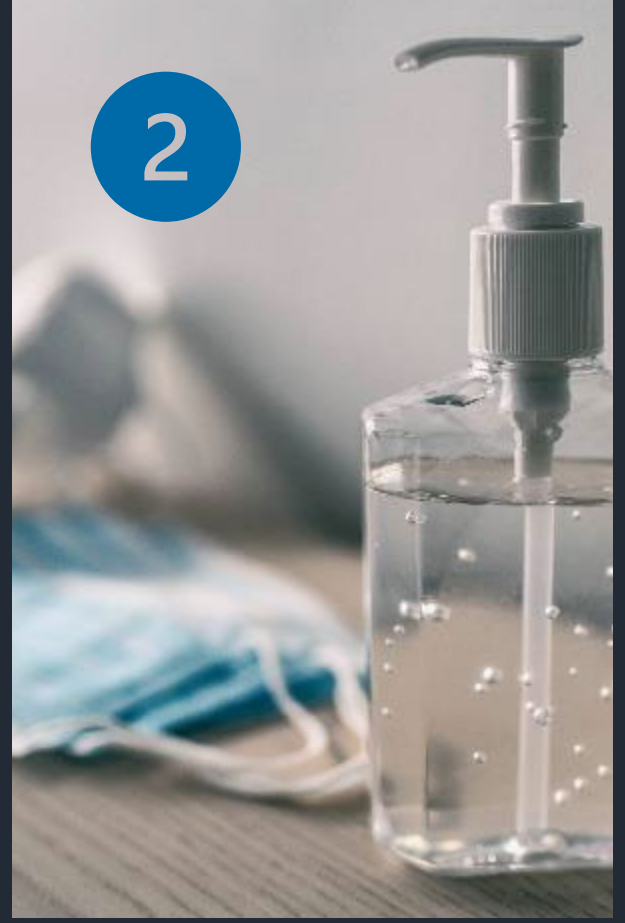
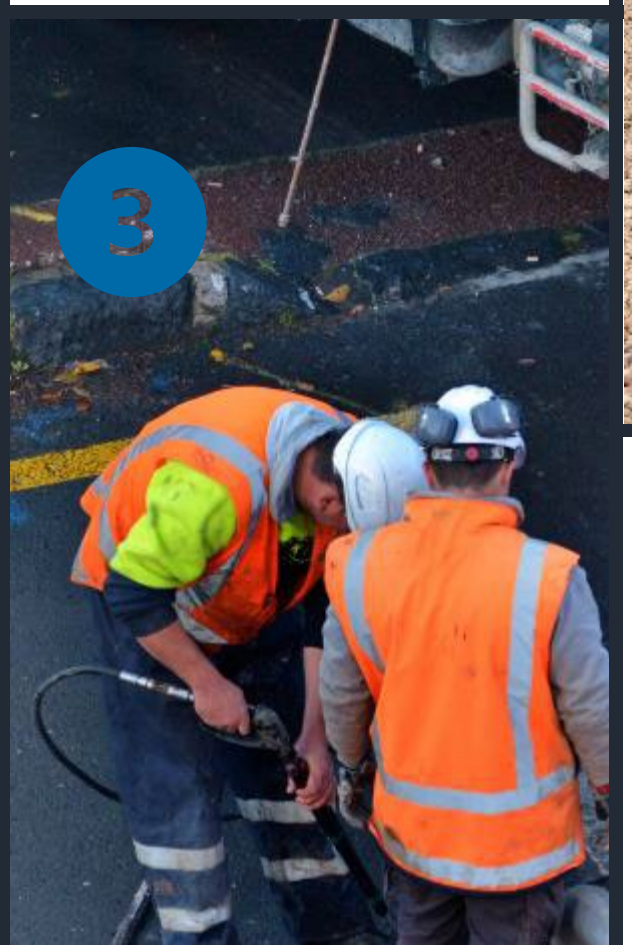
# 1 Lost Public Sector Revenue





# Lost Public Sector Revenue

## Cities can choose one of the following to determine loss of revenue:

- Calculate counterfactual revenue at four points in time compared to revenues collected in FY 2019.
- **NEW – Cities can assume a revenue loss of up to $10 million, not to exceed the total allocation, through the period of performance.**

All but six cities – Ashland, Bowling Green, Covington, Lexington, Louisville, and Owensboro – have total allocations of less than $10 million.

Those with less than $10 million may use their **entire LFRF allocation** toward government services, which are not necessarily connected to COVID response.

# Government Services: any service traditionally provided by a government.

- Road building and maintenance, and other infrastructure
- ***NEW – General government administration, staff, and administrative facilities***
- Environmental remediation
- Health services
- Provision of police, fire, and public safety services (including purchase of fire trucks and police vehicles)

Restrictions on Use section applies to all uses of funds, including those potentially considered as government services.

Government services do not include financing expenses, debt service, legal judgments, consent decrees, or depositing into rainy day funds.

# Calculator

The six cities with allocations greater than $10 million will use the calculation created by Treasury:

- Compare actual revenue at four points in time to base year revenue (FY 2019).
- **NEW** – Cities can use an annual growth of 5.2% instead of 4.1% as indicated in the IFR.
- **NEW** – Cities can use fiscal year comparisons instead of calendar year comparisons as long as they are consistent.
- **NEW** – Cities may include all utility revenue, instead of just sewer, in the revenue loss calculation.
- **NEW** – Cities must adjust actual revenue totals for the effect of tax rate cuts and/or increases occurring after January 6, 2022.

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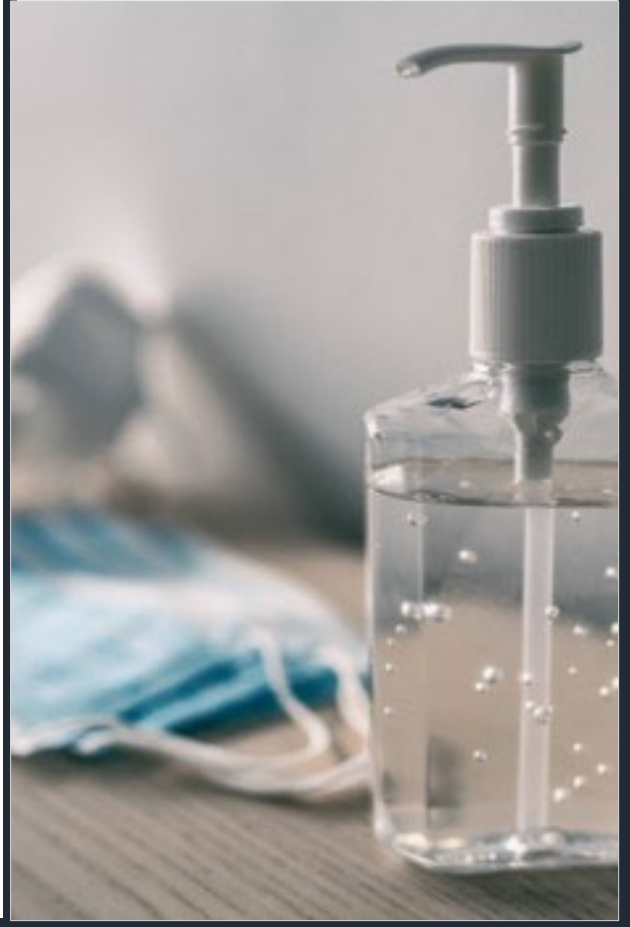
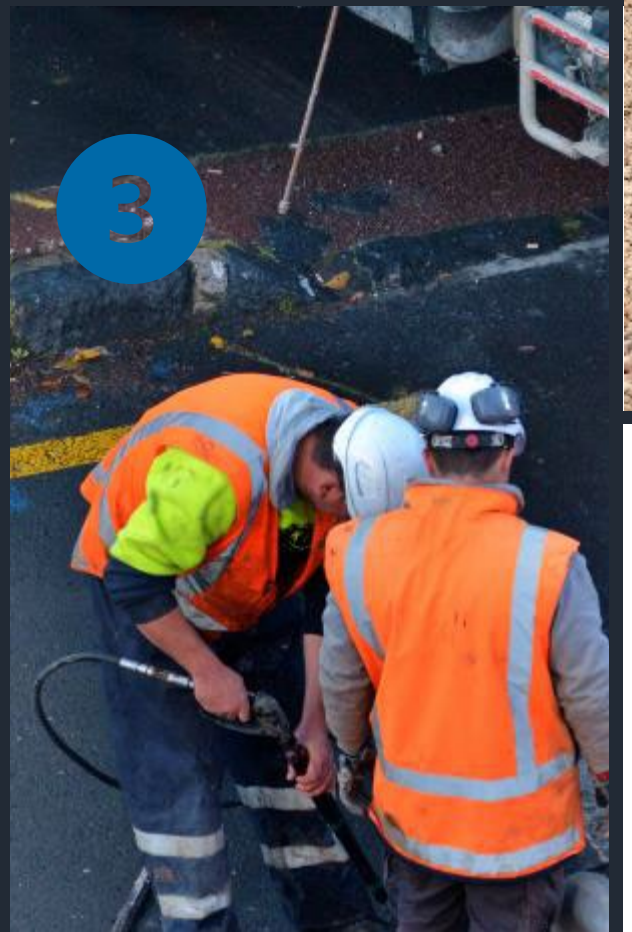
1 Lost Public Sector Revenue



2 Public Health and Economic Response




# COVID-19 Mitigation and Prevention

## Eligible Uses

- Vaccination programs, including incentives and sites
- Public communication efforts
- Medical supplies and personal protective equipment (PPE)
- Ventilation system installation and improvement
- **NEW** – Transportation to reach vaccination or testing sites
- **NEW** – Emergency response equipment (e.g., response radio systems)
- **NEW** – Prevention and treatment equipment (e.g., ventilators and ambulances)
- Support for prevention or mitigation strategies for:
  - Congregate living facilities
  - **NEW** – Public facilities
  - **NEW** – Schools
  - **NEW** – Small businesses
  - **NEW** – Nonprofits
  - **NEW** – Impacted industries

# Medical Expenses

Funds may be used for expenses to households, medical providers, or others that incurred medical costs due to the pandemic, including:

- NEW – Paid family and medical leave for public employees to comply with COVID-19 precautions
- NEW – Unreimbursed expenses for medical care for COVID-19 testing or treatment
- NEW – Emergency medical response expenses
- Treatment of long-term symptoms or effects of COVID-19

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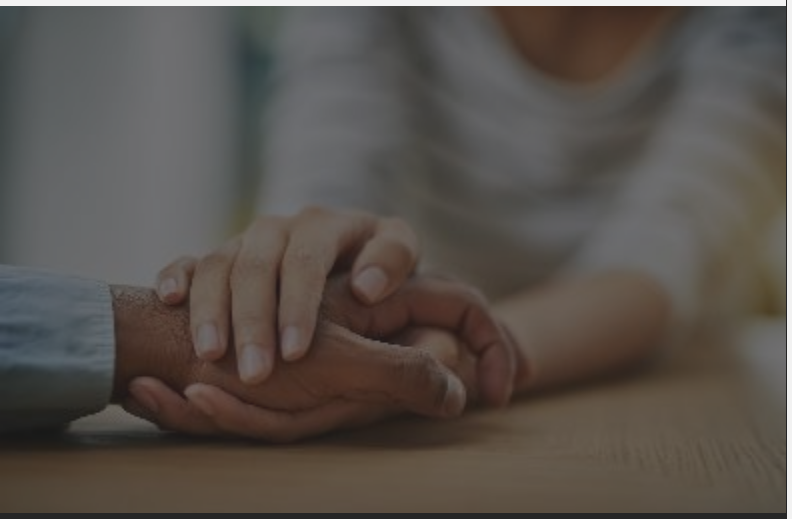
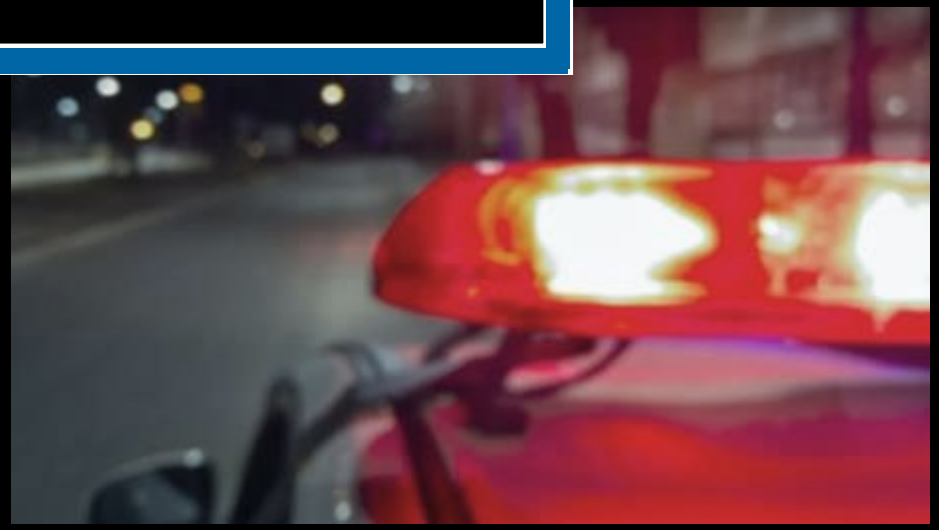
# Behavioral Health Care



## Eligible Uses:

- **NEW** – Expansion of access to evidence-based services for opioid use disorder prevention, treatment, harm reduction, and recovery
- **NEW** – Enhanced behavioral health services in schools
- **NEW** – Services for pregnant women or infants born with neonatal abstinence syndrome
- **NEW** – Peer support groups, costs for residence in recovery housing, and suicide prevention hotline services
- Behavioral health facilities and equipment
- Prevention, outpatient treatment, inpatient treatment, crisis care, diversion programs, and more.

# Preventing and Responding to Violence



**Cities may use funds to respond to violence through:**

- Referrals to trauma recovery services for crime victims
- Community violence intervention programs, such as evidence-based practices like focused deterrence and wraparound services

**Cities may use funds to respond to increased gun violence through:**

- Advancing community policing
- Enforcement efforts to reduce gun violence
- Technology and equipment to support law enforcement response

# Economic Response: Assistance to Households

Treasury presumes the following households and communities are impacted by the pandemic:

- Low- or moderate-income households or communities
- **NEW** – Households at or below 300% of the Federal Poverty Guidelines (FPG); or
- **NEW** – Households at or below 65% of the area median income (AMI) for the county and household size
- **NEW** – Can presume households earning below $65,880 annually or communities with a median income below this level are impacted by the pandemic
- Households that experienced unemployment; faced increased food or housing insecurity; or qualify for Medicaid, child health insurance, or child care subsidies

# Economic Response: Assistance to Households

Treasury presumes the following households and communities are impacted by the pandemic:

- NEW – When providing affordable housing programs, households that qualify for:

  National Housing Trust Fund; and

  Home Investment Partnerships Program

- NEW – When providing services to address lost instructional time in K-12 schools, any student who lost access to in-person instruction for a significant period of time

# Eligible projects for households and communities

- Food and assistance to food banks
- Emergency housing assistance
- **NEW** – Health insurance coverage expansion
- Benefits for surviving family members who died from COVID-19
- Job and workforce assistance
- **NEW** – Financial services to unbanked or underbanked
- Burials, home repair, and home weatherization
- Cash assistance
- **NEW** – Internet access and digital literacy, including public wi-fi networks and free wi-fi in public housing communities
- **NEW** – Paid sick, medical, and family leave
- Assistance for applying for public benefits or services
- Childcare and early learning services, home visiting programs, child welfare-involved services
- **NEW** – Assistance to address learning loss for K-12 students
- **NEW** – Long-term housing security, including affordable housing and permanent supportive housing

# Disproportionately Impacted Households and Communities

Treasury presumes the following households and communities are disproportionately impacted by the pandemic:

- Low-income households or communities
  - **NEW** – Income at or below 185% of the Federal Poverty Guidelines (FPG) for the size of the household
  - **NEW** – Income at or below 40% of the area median income (AMI) for the county and size of household
  - **NEW** – Can presume that household earning below $40,626 annually or a community with a median income below this level is impacted by the pandemic
- Households in Qualified Census Tracts (QCTs)
- **NEW** – Households that qualify for certain federal benefits, such as Medicaid, welfare, SNAP, free and reduced-price lunch, etc.

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# Eligible Projects for disproportionately impacted households and communities

- Pay for community health workers to help households access health and social services
- Remediation of lead paint or other lead hazards
- Primary care clinics, hospitals, health services, medical equipment
- Housing vouchers and assistance relocating to neighborhoods with higher economic opportunity
- Investments in neighborhoods to promote improved health outcomes
- **NEW** – Improvements to vacant and abandoned properties, including rehabilitation, maintenance, renovation, and conversion to affordable housing
- Services to address educational disparities
- Schools and other educational equipment and facilities

# Impacted Small Businesses

Cities can identify small businesses impacted by the pandemic, and measures to respond, in many ways:

- Decreased revenue or gross receipts
- Financial insecurity
- **NEW** – Increased costs
- Capacity to weather financial hardship
- Challenges covering payroll, rent or mortgage, and other operating costs


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# Impacted Small Businesses

Assistance to impacted small businesses includes the following:

- Loans or grants to mitigate financial hardship
  - Supporting payroll and benefits
  - Costs to retain employees
  - Mortgage, rent, utility, and other operating costs
- Technical assistance, counseling, or other services to support business planning


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# Disproportionately Impacted Small Businesses

## Treasury presumes that small businesses operating within a Qualified Census Tract (QCT) are disproportionately impacted by the pandemic

Assistance to disproportionately impacted small businesses include:

- NEW – Rehabilitation of commercial properties, storefront improvements, and façade improvements
- NEW – Technical assistance, business incubators, and grants for start-up or expansion costs for small businesses
- NEW – Support for microbusinesses, including financial, childcare, and transportation costs

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# Assistance to Nonprofits

Cities can identify nonprofits impacted by the pandemic – and measures to respond – in many ways, including:

- Decreased revenue (e.g., from donations and fees)
- Financial insecurity
- **NEW** – Increased costs (e.g., uncompensated increases in service need)
- Capacity to weather financial hardship
- Challenges covering payroll, rent or mortgage, and other operating costs

# Assistance to Nonprofits

## Can Include:

Loans or grants to mitigate financial hardship

Technical or in-kind assistance or other services that mitigate negative economic impacts of the pandemic

**NEW** – Must operate as a 501(c)(3) or 501(c)(19) [veterans] tax-exempt organization

**NEW** – Nonprofits operating within a Qualified Census Tract (QCT) can receive appropriate responses that are related and reasonably proportional to address disproportionate impacts.

# Aid to Impacted Industries

Two main ways an industry can be designated as "impacted":

1. Travel, tourism, or hospitality sector
2. A different industry that:
   - **NEW** – Experienced at least 8% employment loss from pre-pandemic levels; or
   - **NEW** – Experiencing comparable or worse economic impacts as tourism, travel, and hospitality industries as of April 1, 2022, based on economic indicators and whether they are generally due to the COVID-19 public health emergency

Treasury encourages cities to define narrow and discrete industries eligible for aid.

# Aid to Impacted Industries


- May only be provided to support businesses or attractions operating prior to the pandemic and affected by required closures and other efforts to contain the pandemic
- Should be broadly available to all businesses within the impacted industry and should go toward operational expenses first

Eligible Projects:

- Aid to mitigate financial hardship, such as payroll costs, lost pay and benefits for returning employees, support of operations and maintenance of existing equipment and facilities
- Technical assistance, counseling, or other services to support business planning
- COVID-19 mitigation and infection prevention measures

# Public Safety, Health, and Human Services Staff

**Public Safety:**

- Police officers
- Firefighters and EMS responders
- Correction and detention officers
- Dispatchers and supervisor personnel supporting public safety staff

**Public Health:**

- Employees providing medical or other physical or mental health services
- Lab technicians, medical examiners, and other support services
- Public health department employees

**Human Services**

- Employees providing or administering social services and public benefits
- Child welfare services employees
- Child, elder, or family care employees

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# Public Safety, Health, and Human Services Staff

## Time Spent on COVID-19 Response

- Share of employees' time spent responding to COVID-19 is eligible
- Can assume employees who spend more than half their time responding as 100% coverable
- Must periodically reassess the determination but do not need to track staff hours
- Payroll and covered benefits are eligible for LFRF dollars for the portion of time spent on COVID-19 response

*Cities will likely have few employees who fully qualify under these provisions.*

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# Government Employment and Rehiring Public Sector Staff

## Restoring Pre-Pandemic Employment

- Hire back employees for pre-pandemic positions:
  - **NEW** – May hire employees for the same positions that existed on January 27, 2020, but were unfilled or eliminated as of March 3, 2021
  - May cover payroll and benefits for these positions through December 31, 2024
- Hire above pre-pandemic baseline or have flexibility in positions:
  - **NEW** – May hire employees for any position up to 7.5% above the city's pre-pandemic baseline of full-time equivalent (FTE) employees
  - Must have begun employment on or after March 3, 2021
  - May cover payroll and benefits for these positions through December 31, 2024

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# Government Employment and Rehiring Public Sector Staff

## Retaining Public Sector Workers

- **NEW** – Provide additional funding for employees who experienced pay reductions or were furloughed, less unemployment benefits received
- **NEW** – Maintain current compensation levels to prevent layoffs
- **NEW** – Provide worker retention incentives, including reasonable compensation increases
  - Less than 25% base pay for an individual or less than 10% for a group or category of employees

***NOTE: Must still be tied to performance, not an unauthorized bonus based on Kentucky Constitution § 3***

# Government Employment and Rehiring Public Sector Staff


## Effective Service Delivery

LFRF money may be used to improve the efficacy of public health and economic programs through:

- ✓ Program evaluation and evidence resources
- ✓ Data analysis resources
- ✓ Technology infrastructure
- ✓ Community outreach and engagement
- ✓ Hiring staff, consultants, or technical assistance

LFRF money can address administrative needs, including:

- ✓ Administrative costs for programs responding to the public health emergency and its economic impact, including non-LFRF programs
- ✓ Administrative needs caused or exacerbated by the pandemic, such as increased repair/maintenance needs and technological needs to adapt government operations to the pandemic

# Capital Expenditures

| If a project has total capital expenditures of: | The use is enumerated by Treasury as eligible | The use is not enumerated by Treasury as eligible |
|---|---|---|
| **Less than $1 million** | No written justification required | No written justification required |
| **$1 million or greater but less than $10 million** | Written justification required, but cities are not required to submit as part of regular reporting | Written justification required, and cities must submit as part of regular reporting |
| **$10 million or more** | Written justification required, and cities must submit as part of regular reporting | |

# Capital Expenditures

**NEW** – Written justification includes:

- Description of the harm or need to be addressed
- Explanation of why a capital expenditure is appropriate
- Comparison of proposed capital project against at least two alternative capital expenditures and demonstration of why the proposed expenditure is superior

**NEW** – Treasury presumes the following capital projects are ineligible:

- New correctional facilities as a response to an increase in crime
- New congregate facilities to decrease spread of COVID-19 in the facility
- Convention centers, stadiums, or other projects for general economic development or to aid impacted industries

Strong labor standards are encouraged, but federal prevailing wages do not apply unless required by another federal program.

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# Non-Enumerated Framework

| Step | 1. Identify COVID-19 public health or economic impact | 2. Design a response addressing or responding to the impact |
|---|---|---|
| **Analysis** | • Identify impact to a specific household, business, or nonprofit or to a group of these; or<br>• Identify disproportionate impacts, or more severe impacts, to a specific beneficiary or group | • Can include a program, service, or capital expenditure;<br>• Should be related and reasonably proportional to the harm; and<br>• Should be reasonably designed to benefit impacted individual or group |

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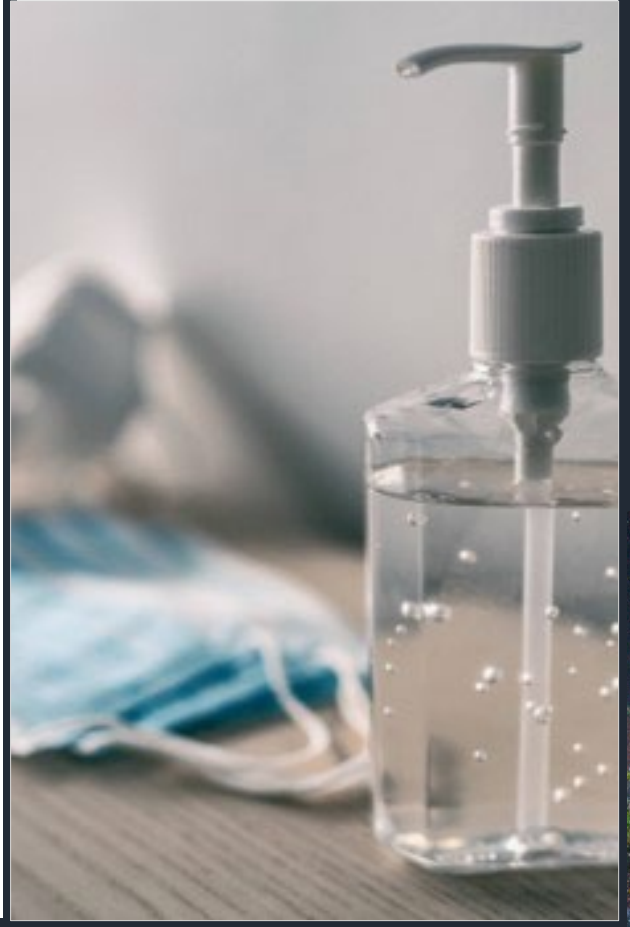
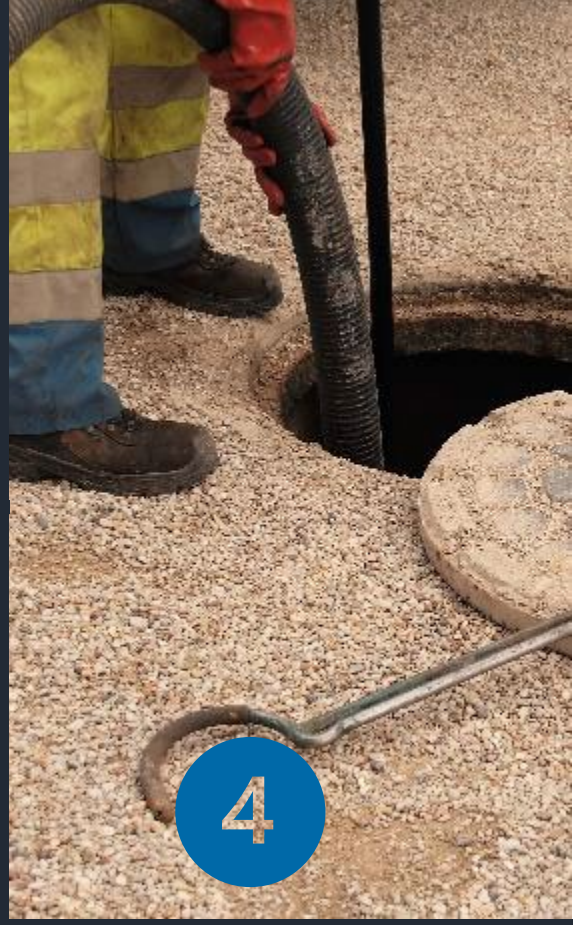


3 Provide Premium Pay for Eligible Workers



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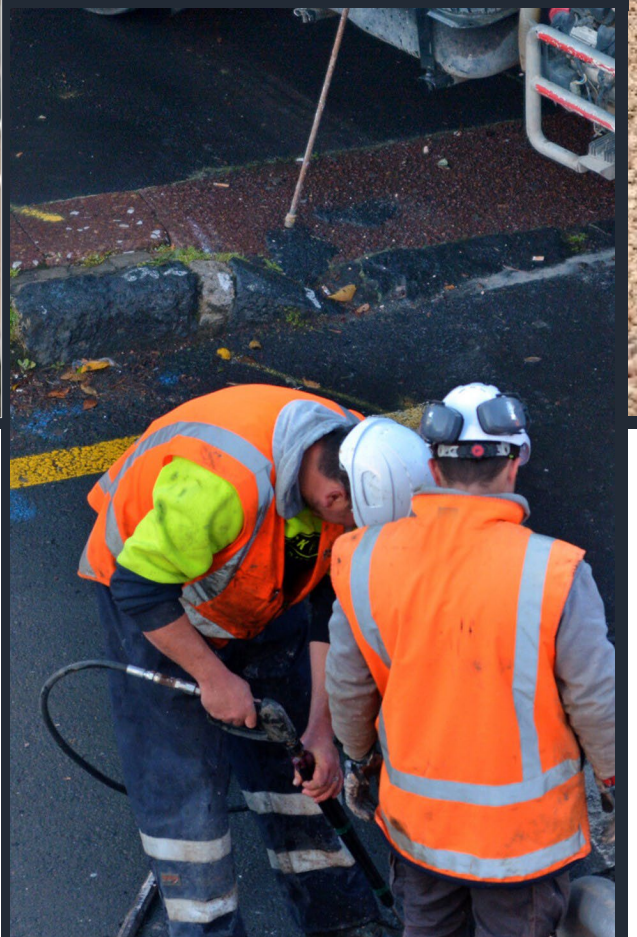
2 Public Health and Economic Response



# Premium Pay

May provide up to $13/hour, not to exceed $25,000 during the LFRF performance period, for eligible workers performing essential work

- Includes all local government workers and many more categories than outlined in the IFR
- Excludes teleworking from a residence and must involve either:
  - Regular in-person interactions with coworkers or others; or
  - Regular physical handling of items handled by coworkers or others
- **NEW** – Written justification is required if employee makes 150% or more of average annual wages or is exempt from FLSA overtime provisions
- **NEW** – Premium pay cannot be paid to volunteers

# Premium Pay:
# Can we provide onetime bonuses to city employees?

- Neither ARPA nor state law allows cities to provide bonuses to city employees or elected officials.

- Amounts calculated for back pay can be paid in a lump sum; however, premium pay must be based on an <u>hourly rate of pay</u>, which means overtime and pay-related benefits are also affected.

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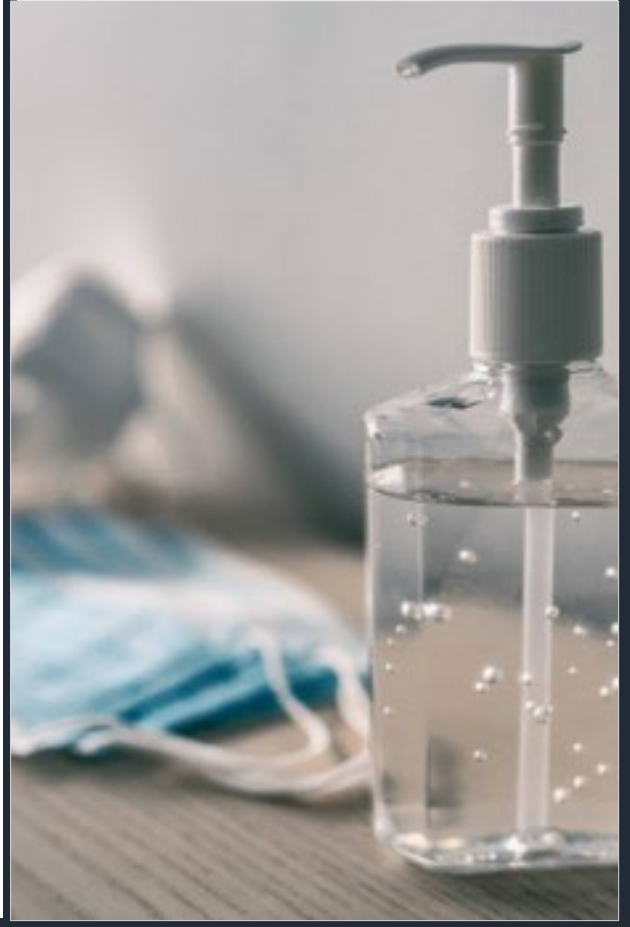

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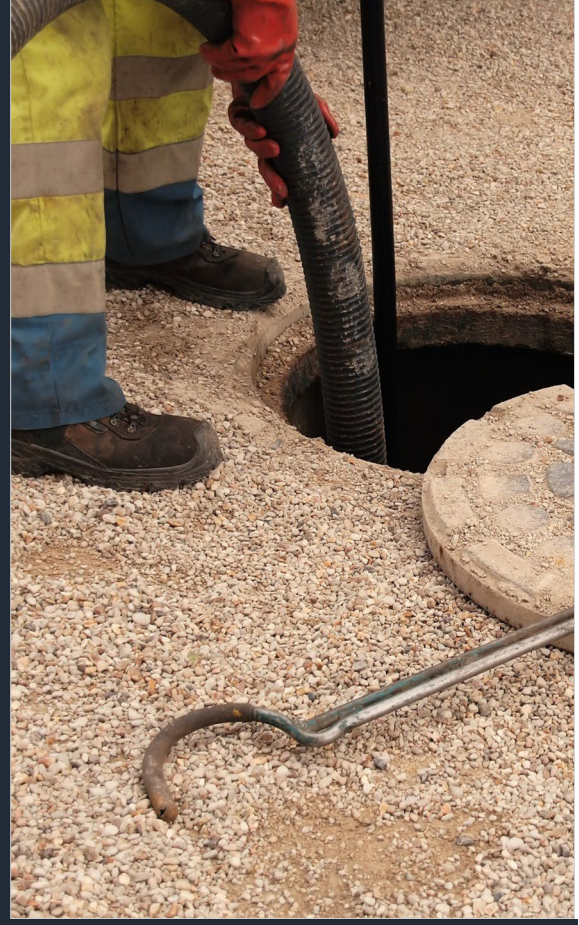

2 Public Health and Economic Response

4 Invest in Water, Wastewater, or Broadband

# Water and Sewer

Projects must still conform to requirements of the EPA's Drinking Water State Revolving Fund (DWSRF) or Clean Water State Revolving Fund (CWSRF)

- **NEW** – LFRF money may be used for additional stormwater projects, including culvert repair, resizing, and removal; replacement of storm sewers; and additional stormwater infrastructure
- **NEW** – Other projects are eligible dealing with wells, dams, reservoirs, and lead remediation
- **NEW** – DWSRF- and CWSRF-eligible projects are presumed to be necessary investments; however, cities will still need to consider cost-effectiveness and sustainability

# Broadband

- **NEW** – Cities should prioritize projects designed to serve locations without access to reliable 100/20 Mbps broadband service, but they can invest in other areas with identified needs (e.g., affordability, reliability, etc.)

Projects should meet or exceed symmetrical 100 Mbps download and upload speeds unless impractical; then should be at least 100/20 Mbps service

**NEW** – The service provider must either participate in the FCC's Affordable Connectivity Program (ACP) or provide access to a broad-based affordability program to low-income consumers like ACP

LFRF money may cover modernization of cybersecurity for all new and existing broadband infrastructure, including both hardware and software

# Restrictions on Use


## Cities cannot use their LFRF money to:

- Pay for debt service or financing expenses
- Replenish financial reserves (e.g., rainy day fund)
- Satisfy obligations under a settlement agreement, judgment, consent decree, or debt restructuring
- Violate existing federal, state, or local laws; regulations; or the intent, terms, and conditions of ARPA

# Program Administration

- Funds must be used for costs incurred on or after March 3, 2021
- Costs must be obligated by December 31, 2024, and expended by December 31, 2026
- Cities may transfer funds to subrecipients to carry out eligible uses on behalf of the city
- **NEW** – Cities can provide loans for otherwise eligible uses, but loan programs have special rules
- **NEW** – Only the portion of revenue loss can go toward federal match requirements of other programs, although each program has its own rules
- Cities can use LFRF money to cover both direct and indirect administrative costs associated with the program

# Financial Management

Cities should ensure the following:

- Timely, accurate reporting
- Fund accounting
- Effective internal control over cash, property, and other assets
- Budgetary control
- Written cash management procedures
- Written procedures to determine cost allowability

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Must follow the Uniform Guidance outlined in 2 CFR 200 and state and local procurement/public-purpose spending requirements

Single audit required for cities in fiscal years in which a city has more than $750,000 in total federal fund expenditures from all sources

Records must be retained for at least five years after all funds have been either expended or returned to Treasury

# Reporting

| Tier | City | Project and Expenditure Report | Recovery Plan Performance Report |
|---|---|---|---|
| 1 | Lexington, Louisville | By January 31, 2022, then 30 days after the end of each quarter | Annually by July 31 |
| 2 | Ashland, Bowling Green, Covington, Owensboro | | Not required |
| 3 | - [tribal] | | |
| 4 | - [tribal] | By April 30, 2022, then annually thereafter | |
| 5 | Elizabethtown, Henderson, Hopkinsville | | |
| 6 | All other Kentucky cities | | |

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# Reporting

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Even if cities did not spend any ARPA money through March 30, 2022, you still must submit a report by April 30 stating that no funds have been expended.

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# Future Dates

**1 April 2022**

Final rule effective date

- Can implement early
- Treasury won't enforce IFR if expenditures align with final rule

**May 2022**

Entitlement communities receive second tranche

**July 2022**

Non-entitlement communities receive second tranche

**31 December 2024**

End of period of performance unless funds obligated for a project

**31 December 2026**

End of project completion period

# Questions?

## American Rescue Plan: Local Fiscal Recovery Funds


- Contact:
- J.D. Chaney, KLC Executive Director/CEO
- 800-876-4552


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