



LEGISLATIVE ANALYSIS FOR COUNTIES: STATE, LOCAL, TRIBAL AND TERRITORIAL FISCAL RECOVERY, INFRASTRUCTURE AND DISASTER RELIEF FLEXIBILITY ACT

BY ERYN HURLEY | NOVEMBER 2, 2021

On December 23, the U.S. Congress enacted the bipartisan State, Local, Tribal, and Territorial Fiscal Recovery, Infrastructure, and Disaster Relief Flexibility Act <<https://naco.sharefile.com/d-sa63d22383766472b92d496c80782d78c>> as an amendment to the Fiscal Year (FY) 2023 omnibus appropriations bill. The amendment, which was championed by Senators John Cornyn (R-Texas) and Alex Padilla (D-Calif.) provides additional flexibility for the \$350 billion Coronavirus State and Local Fiscal Recovery Fund (Recovery Fund) authorized under the American Rescue Plan Act (ARPA), including infrastructure, community development, and disaster response. It will also provide the U.S. Treasury with much-needed resources to assist counties in deploying recovery funds.

Counties have supported this bill and advocated for its passage since it was first introduced and passed the U.S. Senate by unanimous consent in October 2021. NACo sent a letter to congressional leadership <<https://www.naco.org/resources/state-territory-and-local-leaders-urge-congress-include-bipartisan-american-rescue-plan>> urging swift passage of the bill as part of a year-end spending package.

Counties nationwide will now be able to use a total of over \$27 billion for new transportation and infrastructure projects, over \$17 billion for government services and ARPA funds to respond to the impacts of natural disasters and invest in Community Development Block Grant (CDBG)-eligible projects. The amendment additionally expands eligibility of consolidated city-county governments to receive payments from the ARPA Local Assistance and Tribal Consistency Fund (LATCF).

This analysis provides an overview of key provisions included in the Cornyn/Padilla amendment and how they will impact county governments.

VIEW YOUR COUNTY'S ARPA FLEXIBLE FUND ALLOCATION UNDER S. 3011

ACCESS ALLOCATION ESTIMATES <[HTTP://WWW.NACO.ORG/RESOURCES/FEATURED/FISCAL-RECOVERY-FUND-FL-EXIBILITY](http://www.naco.org/resources/featured/fiscal-recovery-fund-fl-exibility)>

KEY HIGHLIGHTS

- Permits counties to invest the greater of \$10 million or 30 percent of their total ARPA Fiscal Recovery Fund allocation on new infrastructure-related and natural disaster response activities and Community Development Block Grant projects
- Codifies the standard allowance included in the US Department of Treasury's Final Rule that allows counties to invest up to \$10 million for the provision of government services without having to go through a complicated "revenue loss" calculation
- Expands eligibility to receive payments from the Local Assistance and Tribal Consistency Fund (LATCF) to include consolidated city-county governments
- Unlocks administrative funds for the US Department of the Treasury to continue working with counties to implement this historic investment
- The bill does not increase spending and does not place mandates on how counties can spend their Recovery Funds
- Requires the US Department of Treasury and US Department of Transportation secretaries to report to Congress on the use of relief funds to ensure accountability
- Clarifies existing allocations set aside at the US Department of Treasury for tribal governments and ensures they receive funding delayed by legal barriers over the last year
- Allows a county that received less than \$10 million in ARPA Recovery Funds to consider the entire allocation as flexible for use toward a broad range of infrastructure projects outlined in the legislation
- ARPA Recovery Funds will still need to be obligated by December 31, 2024, and expended by September 24, 2026

OVERVIEW OF PROVISIONS

The Recovery Fund, which NACo helped develop and strongly advocated for its passage, is a historic investment in our nation's counties. These funds provide direct, flexible aid for every county, parish and borough in America.

The legislation strengthens the Recovery Fund in the following ways, which ensures our nation's recovery COVID-19 continues:

1. Allows Counties to Use ARPA Recovery Funds for Transportation and Infrastructure Projects

The bill would allow counties to use the greater of \$10 million or 30 percent of their ARPA Recovery Fund allocation for a wide variety of transportation infrastructure projects, including:

ELIGIBLE TRANSPORTATION & INFRASTRUCTURE PROJECTS

National Highway Performance Program

Bridge Investment Program

Surface Transportation Block Grant Program

Metropolitan Transportation Planning

Highway Safety Improvement Program

Congestion Mitigation and Air Quality Improvement Program

Territorial and Puerto Rico Highway Program

National Highway Freight Program

Rural Surface Transportation Grant Program

Carbon Reduction Program

PROTECT Program

Alternative Fueling Infrastructure

Federal Lands Transportation Program

Federal Lands Access Program

RAISE Grant Program

ADHS Program

Urbanized Area Formula Grants

Formula Grants for Rural Areas

State of Good Repair Grants

Grants for Buses and Bus Facilities

National Culvert Removal, Replacement, and Restoration Program

Community Development Block Grant

Bridge Replacement, Rehabilitation, Preservation, Protection, and Construction Program

Tribal Transportation Program

Counties would also be able to use Recovery Funds under this section to meet local match requirements for the following:

- Nationally Significant Freight and Highway Projects Program
- Transportation Infrastructure Finance Improvement Act (TIFIA) Loan Program – in addition to satisfying the TIFIA local match requirement, these funds could also be used to repay a TIFIA loan
- Fixed Guideway Capital Investment Grant Program
- National Infrastructure Project Assistance (new competitive program for which counties would be directly eligible if the program is established through the enactment of the *Infrastructure Investment and Jobs Act* <<https://www.naco.org/resources/legislative-analysis-counties-infrastructure-investment-jobs-act>> (H.R. 3684)

Notably, counties would be prohibited under this section from using ARPA Recovery Funds for operating expenses.

In response to the U.S. Department of Treasury's Interim Final Rule for the Recovery Fund, NACo strongly urged <https://www.naco.org/sites/default/files/documents/NACo_Comments_on_Treasury_Recovery_Fund%20IFR.pdf> that eligible use of funds should be expanded to include a broad range of capital investment projects, including transportation and infrastructure projects.

2. Allows Counties to Use ARPA Recovery Funds for Government Services

The bill would allow counties to consider up to \$10 million of their ARPA Recovery Fund allocation as if it were "lost revenue" that could be used toward the provision of government services, as defined by the U.S. Department of Treasury's Interim Final Rule, including but not limited to:

- Maintenance of infrastructure
- Pay-go funded construction of infrastructure, such as roads (pay-go refers to "paying-as-you-go" or utilizing current revenue rather than borrowing against it, ex. by issuing a bond)
- Modernization of cybersecurity, including hardware, software and protection of critical infrastructure
- Healthcare services
- Environmental remediation
- School or educational services
- Provision of police, fire and other public safety services

Counties would not be allowed to use these funds towards the following:

- Rainy day/reserve funds
- Legal settlements
- Pension obligations
- Debt payments

The provision would assist smaller counties in complying with program requirements.

3. Flexibility to Use ARPA Funds for Programs Authorized Under the Community Development Block Grant Program

In addition to using Recovery Funds for new transportation and infrastructure projects, S. 3011 would allow counties to use funds to invest in projects authorized under the Community Development Block Grant (CDBG) program. As with transportation and infrastructure projects, counties may use up to \$10 million or 30 percent, whichever is greater, of their total Recovery fund allocation for these activities.

If a county decides to use Recovery Funds for projects authorized under CDBG, the activities must meet the requirements put forth under title I of the Housing and Community Development Act of 1974, which established the CDBG program.

In response to the US Department of Treasury's Interim Final Rule for the Recovery Fund, NACo strongly urged <https://www.naco.org/sites/default/files/documents/NACo_Comments_on_Treasury_Recovery_Fund%20IFR.pdf> that CDBG expenditures be included as eligible uses of Recovery Funds.

The CDBG program provides critical funding to counties to improve local communities and serve our most vulnerable residents. Counties utilize the flexibility of CDBG funds to support projects that meet their local priorities in addressing community and economic development, housing, water and infrastructure and human service needs while creating jobs through the expansion and retention of businesses.

4. Clarifies Implementation of the Local Assistance and Tribal Consistency Fund

As part of the State and Local Fiscal Recovery Fund, the ARPA authorized the \$2 billion Local Assistance and Tribal Consistency Fund (the Fund), which provided \$1.5 billion in direct funds to revenue share (i.e., public lands) counties.

S. 3011 would make important clarifications to the implementation of the Fund by:

- Reducing the full amount of direct funding to counties eligible to receive an allocation under the Fund by 1 percent, to \$742.5 million per year for Fiscal Years (FYs) 2022 and 2023 and directs the remaining \$7.5 million per year to US territorial governments.
- Defining an “eligible revenue share county” qualifying for direct county aid under the Fund as the same counties as those qualifying for annual Payment in Lieu of Taxes (PILT) payments, thus ensuring these funds will go exclusively to public lands counties
- Lays out special criteria for payment distribution to towns rather than counties in those states where counties have limited governmental functions
- Disbursing funds for Alaska boroughs to the state, which will then be distributed to local governments based on the formula that NACo is assisting the US Treasury to develop

5. Flexibility to Use Funds for Natural Disaster Response

The bill would allow counties to use ARPA Recovery Funds toward emergency relief services to address natural disasters or the negative economic impacts of natural disasters, including temporary emergency housing, food assistance, financial assistance for lost wages, or other immediate needs.

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