

# Federal Advocacy **BRIEF**

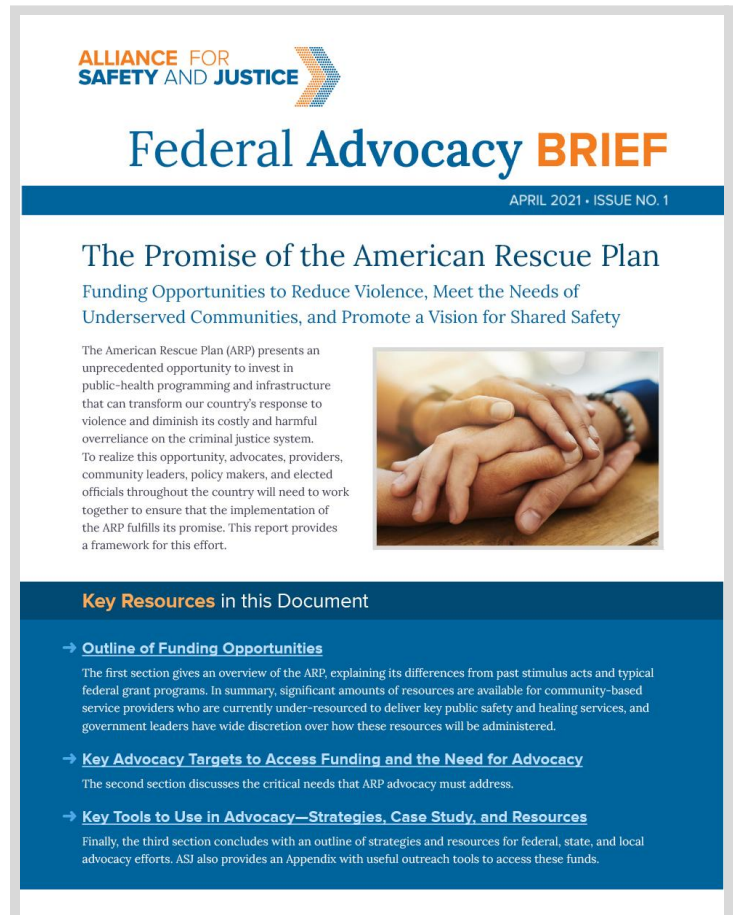
JUNE 2021 • ISSUE NO. 2

## The American Rescue Plan:

### Seven key takeaways that show how State and Local Fiscal Recovery Funds can support innovative safety policies and programs

In this federal brief, the Alliance for Safety and Justice (“ASJ”) breaks down the U.S. Department of the Treasury’s Final Interim Rule (“Interim Rule”). The Interim Rule provides guidance to state and local governments regarding their administration of the \$350 billion allocated in the American Rescue Plan’s (ARP) State and Local Fiscal Recovery Funds (“Recovery Funds”). This brief is intended to help advocates, providers, community leaders, policy makers, and elected officials use the Recovery Funds to support communities negatively impacted by the COVID-19 pandemic.

In summary, as we reported in [The Promise of the American Rescue Plan](#), the Recovery Funds present an unprecedented opportunity for states and local governments to invest in public-health programming and infrastructure that can transform our country’s response to violence and diminish its costly and harmful over reliance on the criminal justice system. The Interim Rule offers more guidance on how policymakers and advocates can work with state and local governments to provide resources and assistance communities need to address the harm caused or exacerbated by the COVID-19 pandemic.



The thumbnail shows the cover of the 'Federal Advocacy BRIEF' for April 2021, Issue No. 1. The title is 'The Promise of the American Rescue Plan' with the subtitle 'Funding Opportunities to Reduce Violence, Meet the Needs of Underserved Communities, and Promote a Vision for Shared Safety'. It features the ASJ logo and a photograph of hands clasped together. Below the title, it lists 'Key Resources in this Document' with three bullet points: 'Outline of Funding Opportunities', 'Key Advocacy Targets to Access Funding and the Need for Advocacy', and 'Key Tools to Use in Advocacy—Strategies, Case Study, and Resources'.

## Seven Key Takeaways from the Interim Rule:

1. **Recovery Funds can be used to invest** in research and evaluation capacities and infrastructure to support more effective and evidence-informed systems of prevention and care.
2. **State and local governments have significant flexibility** to work with communities to use Recovery Funds to address immediate and long-term public health and negative economic impacts caused or exacerbated by the pandemic.
3. **The Interim Rule formulates a two-part test** to determine eligibility for Recovery Funds to support interventions that address the pandemic's public health emergency and its negative economic impacts.
4. **The Interim Rule outlines presumptively eligible public health expenses** to help low-income communities that are Qualified Census Tracts.
5. **Non-governmental public health and social service essential workers** who “faced or face heightened risks due to the character of their work” during the pandemic may be eligible for premium pay in addition to their current income.
6. **State and local governments can use Recovery Funds** to address documented, pandemic-related revenue shortfalls that support the provision of government services, which could include services such as Crime Victim Compensation or reentry assistance.
7. **Recovery Funds must be obligated by December 31, 2024.**

The Interim Rule can be found on the Federal Register's [website](#). When quoting from the Interim Rule, the brief will hyperlink to the paragraph or section in which the text appears. The ARP State Recovery Fund allocations can be found [here](#). ARP Local Recovery Fund allocations for metropolitan cities can be found [here](#), and allocation for counties can be found [here](#). For more information on ARP Recovery Fund allocations, see the Treasury's [Coronavirus State and Local Fiscal Recovery Funds webpage](#).

## Key Takeaways

### *1. Recovery Funds can be used to invest in research and evaluation capacities and infrastructure to support more effective and evidence-informed systems of prevention and care.*

COVID-19 has exacerbated long-standing concentrated disadvantages that affect many communities, from high rates of violence to a chronic lack of living wage jobs and supportive services. While state and local governments have long supported programming to address these problems, they often do not have the capacities to use data and research to plan, implement, and evaluate their interventions.

The ARP can help governments address this gap by investing in research and evaluation capacities and infrastructure. To ensure that federal resources are used effectively to respond to the pandemic's public health crisis and economic impact, the Interim Rule states that recipients ["may use payments from the Fiscal Recovery Funds to engage in planning and analysis in order to improve programs addressing the COVID-19 pandemic, including through use of targeted consumer outreach, improvements to data or technology infrastructure, impact evaluations, and data analysis."](#)

### *2. State and local governments have significant flexibility to work with communities to use Recovery Funds to address immediate and long-term public health and negative economic impacts caused or exacerbated by the pandemic.*

The Interim Rule provides examples and conditions of eligibility for state and local governments to use as guidance in administering Recovery Funds. Before outlining these factors, it is important to emphasize two themes that should guide state and local Recovery Fund decision-making.

First, the Interim Rule emphasizes that ["within the eligible use categories . . . governments have flexibility to determine how best to use payments from the Fiscal Recovery Funds to meet the needs of their communities and populations"](#) (emphasis added).

And second, the Interim Rule articulates a broad conception of harm that Recovery Funds should address. Grounded in the social determinants of health, this conception of harm refers to ["the social and environmental conditions that affect health outcomes, specifically economic stability, health care access, social context, neighborhoods and built environment, and education access."](#) Within this framework, the Interim Rule encourages recipients to use Recovery Funds to address short and potential long-term harms that the pandemic has caused or exacerbated. For example, recipients could provide services related to increases in domestic violence or offer summer enrichment programs to youth who struggled to participate in virtual learning over the last year.

Moreover, the Interim Rule expects state and local governments to address harms inflicted not merely upon individual people or households, but also upon communities. Recognizing that ["the public health and economic impacts of the pandemic have fallen most severely on communities and populations disadvantaged before it began,"](#) the Interim Rule further ["encourages recipients to consider funding uses that foster a strong, inclusive, and equitable recovery, especially uses with long-term benefits for health and economic outcomes."](#)

As state and local governments determine how to use their Recovery Funds, these two points are essential. They point to the fact that the ARP not only encourages, but in many ways expects governmental recipients to work with communities disproportionately impacted by the pandemic to identify and shape the assistance they need.

### *3. The Interim Rule formulates a two-part test to determine eligibility for Recovery Funds to support interventions that address the pandemic’s public health emergency and its negative economic impacts.*

The ARP establishes four categories of eligible uses for Recovery Funds:

1. [To respond to the public health emergency or its negative economic impacts](#), including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality;
2. [To respond to workers performing essential work](#) during the COVID-19 public health emergency by providing premium pay to eligible workers;
3. [For the provision of government services](#) to the extent of the reduction in revenue due to the COVID-19 public health emergency relative to revenues collected in the most recent full fiscal year prior to the emergency; and
4. [To make necessary investments](#) in water, sewer, or broadband infrastructure.

Of these four categories, the two prongs of the first category—responding to the pandemic’s “public health emergency” and its “negative economic impact”—have the greatest potential to support a wide range of services and assistance for communities in crisis.

To determine whether and how Recovery Funds can be used to support an intervention to address the pandemic’s public health emergency or its negative economic impacts, it must satisfy two basic conditions: [“first, \[it must\] identify a need or negative impact of the COVID-19 public health emergency and, second, \[it must\] identify how the program, service, or other intervention addresses the identified need or impact.”](#)

To further assist state and local governments in determining how they can address the pandemic’s public health or negative economic impacts, the Interim Rule provides a non-exhaustive list of eligible programs and interventions. Assuming the two basic conditions of eligibility described above are met, the Interim Rule notes that the following kinds of expenses are [eligible public health responses](#):

- [Medical and behavioral health care services](#), including [“health treatment, substance misuse treatment, other behavioral health services, hotlines or warmlines, crisis intervention, overdose prevention, infectious disease prevention, and services or outreach to promote access to physical or behavioral health primary care and preventative medicine.”](#)

Similarly, the Interim Rule lists the following kinds of expenses as [eligible expenses to support economic recovery](#):

- [Assistance to unemployed workers](#), such as job training programs; assistance to households, including food and cash assistance; and assistance to small businesses and nonprofits, such as, [“loans or grants to mitigate financial hardship such as declines in revenues or impacts of periods of business closure.”](#)

- **A special note on cash transfers:** The Interim Rule states “cash transfers must be reasonably proportional to the negative economic impact they are intended to address.” The Interim Rule further states that governments “may assume a household or population suffered a negative economic impact from the pandemic and is therefore eligible for cash assistance if they [meet any of these three conditions:] they were unemployed, experienced increased food or housing insecurity or is low-or moderate-income.”

Along with the above exemplary programs, the Interim Rule encourages state and local governments to give special attention to low-income communities. Recognizing the pandemic's disproportionate impact on these communities, the Interim Rule lists three different kinds of comprehensive interventions for state and local governments to focus on:

- “Building Stronger Communities through Investments in Housing and Neighborhoods.” including supportive housing services, affordable housing development, and housing vouchers,
- “Addressing Educational Disparities” by supporting initiatives like summer tutoring and enrichment programs, and
- “Promoting Healthy Childhood Environments” through funding services like “enhanced services for child welfare-involved families and foster youth to provide support and training on child development, positive parenting, coping skills, or recovery for mental health and substance use challenges.”

See the [Section 35.6](#) of the Interim Rule for a complete list of examples of eligible uses for Recovery Funds.

#### *4. The Interim Rule outlines presumptively eligible public health expenses to help low-income communities that are Qualified Census Tracts.*

While all ARP-eligible interventions must identify and address the pandemic's negative economic or public health impacts, the Interim Rule advises that state and local governments should presume that certain expenses are “responsive to the public health impacts of the pandemic” in Qualified Census Tracts (QCTs). QCTs are low-income jurisdictions identified by the U.S. Department of Housing and Urban Development (HUD) that have “50 percent of households with incomes below 60 percent of the Area Median Gross Income or have a poverty rate of 25 percent or more.”<sup>1</sup> HUD's map of 2020-21 QCTs can be found [here](#).

In clear language that is worth directly quoting, the Interim Rule states that governments may presume eligibility for “payments from the Fiscal Recovery Funds [in QCTs] to facilitate access to resources that improve health outcomes, including services that connect residents with health care resources and public assistance programs and build healthier environments, such as:

- Funding community health workers to help community members access health services and services to address the social determinants of health;
- Funding public benefits navigators to assist community members with navigating and applying for available Federal, State, and local public benefits or services;

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<sup>1</sup> See U.S. Department of Housing and Urban Development, “Income Limits.” Retrieved from <https://www.huduser.gov/portal/datasets/il.html>.



- [Housing services to support healthy living environments and neighborhoods](#) conducive to mental and physical wellness;
- [Remediation of lead paint or other lead hazards](#) to reduce risk of elevated blood lead levels among children; and
- [Evidence-based community violence intervention programs](#) to prevent violence and mitigate the increase in violence during the pandemic.”

*5. Non-governmental public health and social service essential workers who “faced or face heightened risks due to the character of their work” during the pandemic may be eligible for “premium pay” in addition to their current income.*

One of the Recovery Fund’s four expense categories is dedicated to supporting essential workers with premium pay. The Interim Rule clarifies the ARP’s definition and outlines a process for state and local governments to provide premium pay in the form of additional income to essential workers who have provided or currently provide health, public health, and social services during the pandemic. In many states, street violence interventionists, victim service providers, and reentry workers were deemed to be essential workers and could therefore be eligible for extra income based on their work during the pandemic.

Below are two general questions that can help determine if workers are eligible for premium pay above and beyond their normal income, and a process that state and local governments can use to administer an essential worker premium pay program.

**Is the essential work eligible for premium pay?**

The Interim Rule defines essential workers as workers that are 1) designated as essential by their state or local jurisdictions’ executive, and/or 2) dedicated to the ARP’s definition of “workers needed to maintain continuity of operations of essential critical infrastructure” by supporting services like public health, safety, childcare, social services, and human services.

The Interim Rule further clarifies that essential workers are eligible to receive additional pay for essential work only if their work involved or involves “[regular in-person interactions or regular physical handling of items that were also handled by others](#)” and “[faced or face heightened risks due to the character of their work](#).” Essential workers who worked remotely are not eligible for additional pay under the ARP. As the ARP’s premium pay is intended to assist frontline workers, many of whom receive low to moderate incomes, the Interim Rule encourages state and local governments to “[prioritize compensation of those lower income eligible workers](#).”

**Second, if workers are eligible for premium pay, how much extra income can they receive in recognition of their service?**

The Interim Rule establishes the limits of premium pay. As the ARP mandates, the Interim Rule states that eligible essential workers may receive up to “[\\$13 per hour in addition to wages or remuneration the worker](#)

otherwise receives and in an aggregate amount not to exceed \$25,000 per eligible worker.”<sup>2</sup> To be clear: this amount is “entirely additive to a worker’s regular rate of wages and other remuneration and may not be used to reduce or substitute for a worker’s normal earnings.” Treasury not only notes that premium pay may be “retrospective,” it also “encourages recipients to prioritize providing retrospective premium pay where possible, recognizing that many essential workers have not yet received additional compensation for work conducted over the course of many months.”

### **How State and Local Governments Can Administer Premium Pay Programs**

To ensure that eligible essential workers receive premium pay in recognition for their service during the pandemic, the Interim Rule states that governments may pay essential workers directly or “provide grants to third party employers.” such as nonprofit social service organizations, to pay their workers who qualify for this additional income.

## *6. State and local governments can use Recovery Funds to address documented, pandemic-related revenue shortfalls that support the provision of government services, which could include services such as Crime Victim Compensation or reentry assistance.*

Due to the pandemic, the revenues that many state and local governments use to provide support services have declined. This includes revenues for essential programs such as Crime Victim Compensation and services for justice-involved people.

As mandated by the ARP, the Interim Rule states that state and local governments can use Recovery Funds to make up for these shortfalls, “to the extent of the reduction in revenue experienced due to the COVID-19 public health emergency.” For more guidance on precisely how state and local governments must calculate funds to make up for revenue shortfalls, see the Interim Rule, Supplementary Information, Section II, C. “Revenue Loss.”

## *7. Recovery Funds must be obligated by December, 31 2024.*

The ARP mandates that state and local government recipients can use Recovery Funds for “costs incurred” by December 31, 2024 with the period of performance ending on December 31, 2026. The Interim Rule clarifies that “costs incurred” means that government recipients have until the last day of 2024 to obligate Recovery Funds. In federal grant making, “obligate” has a clear definition. As [grants.gov](https://www.grants.gov), the go-to public resource for federal grants, explains, “obligations means orders placed for property and services, contracts and subawards made, and similar transactions during a given period[.]”

In other words, even if the benefits of an eligible ARP expense extend through the end of 2026, Recovery Funds can potentially pay for it if the relevant agreements are fully completed by December 31, 2024.

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<sup>2</sup> The Interim Rule further states that if premium pay “would increase a worker’s total pay above 150 percent of their residing state’s average annual wage for all occupations” or “their residing county’s average annual wage, as defined by the Bureau of Labor Statistics’ Occupational Employment and Wage Statistics, whichever is higher, on an annual basis.” the state or local governments must submit to the Treasury and make publicly available “written justification of how the premium pay or grant is responsive to workers performing essential worker during the public health emergency.”

## *Conclusion*

For more information on the ARP, including analysis of approximately \$150 million of discretionary behavioral health and human service funding opportunities, please see ASJ's April 2021 report, [The Promise of the American Rescue Plan: Funding Opportunities to Reduce Violence, Meet the Needs of Underserved Communities, and Promote a Vision for Shared Safety.](#)



**Alliance for Safety and Justice (ASJ)**

is a national organization that aims to win new safety priorities in states across the country, and brings together diverse crime survivors to advance policies that help communities most harmed by crime and violence.

*This project was made possible, in part, by grants from*

**TheJoyceFoundation**

 **Arnold  
Ventures**

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**SAFETY AND JUSTICE**

