

ARPA Eligible Use Categories Based on Descriptions in the Treasury's 2022 Overview of Final Rule Document

(Draft prepared for the Chester ARPA Committee by Michael Cressman on February 9, 2022)

Introduction

The U.S. Department of the Treasury (Treasury) released a document called “**Coronavirus State & Local Fiscal Recovery Funds: Overview of the Final Rule**” in January 2022. This Treasury document will be referred to as the Overview of the Final Rule Document (OFRD) in this summary of Eligible Use Categories, which has been prepared for use by the Chester ARPA Committee.

ARPA stands for the American Rescue Plan Act (ARPA), which includes a State and Local Fiscal Recovery Funds (SLFRF) program. The town of Chester (the Town) is a recipient of funds (a total of \$1,246,840) through the ARPA-SLFRF program and can spend its ARPA money for things considered to be “Eligible Uses” as described in the OFRD and other Treasury documents.

There are four Eligible Use Categories described in the OFRD which deal with:

- A) Replacing lost public sector revenue and using it to provide government services
- B) Responding to the public health and economic impacts of COVID-19
- C) Providing premium pay for eligible workers performing essential work and
- D) Undertaking water, sewer and broadband internet projects.

Although the Town has some flexibility in choosing how to spend its ARPA money, it should be recognized that the Town would have to return money to the government if an auditor decides that the Town spent ARPA money for projects that were not actually eligible for ARPA funding.

Summary of each ARPA Eligible Use Category

A: Replacing Lost Public Sector Revenue

Funding can be used to pay for government services “traditionally provided by a government” (things like infrastructure maintenance or public safety services).

The Town could use all or part of its total amount of ARPA funding in this Eligible Use Category. Treasury will not require the Town to explain how use of funds in this category are in response to the COVID-19 pandemic. However, criteria for what Treasury considers to be “traditionally provided by a government” were not explicitly defined in the OFRD.

B: Responding to Public Health and Economic Impacts of COVID-19

This Category has six Subcategories which are:

- Public Health
- Assistance to Eligible Households
- Assistance to Eligible Small Businesses
- Assistance to Eligible Nonprofits
- Aid for Impacted Industries
- Restoring Public Sector Capacity

The Town would need to describe a negative COVID-19 impact and design a “response” that is “reasonably proportional” to the level of impact for projects undertaken using ARPA funds.

C: Providing Premium Pay to Workers performing Essential Work

Treasury provided a list of types of “eligible workers” and defines types of “essential work” in the OFRD.

D: Water/Sewer/Broadband Infrastructure Projects

Treasury identified projects under EPA’s Clean Water State Revolving Fund (CWSRF) and EPA’s Drinking Water State Revolving Fund (DWSRF) as eligible for ARPA funding. A list of other eligible projects is provided in the OFRD.

Additional Details for Each Eligible Use Category

A: Replacing Lost Public Sector Revenue

The level of funding that can be used in this Eligible Use Category can be determined in one of two ways. The easiest (and probably the preferred) way would be to elect a “**standard allowance**” which, for Chester, could be either 1) the total amount of ARPA funds provided to the Town (\$1,246,840) or 2) some portion of the total (for example, 50% of the total, which

would be \$623,420). The other option would require calculation of actual revenue lost during the COVID-19 pandemic according to a formula articulated in OFRD.

Treasury stated that the Replacing Lost Public Sector Revenue Eligible Use Category is 1) the most flexible of the four Eligible Uses Categories and 2) allows for the most streamlined reporting and compliance requirements. The Town would not have to explain how it decided that the use of funds in this category was in response to negative impacts of COVID-19 or explain how the amount of money used for a specific project was “reasonably proportional” to the degree of negative impact. In other words, it seems that Treasury is saying that the overall ARPA-SLFR program was put in place in the federal government’s response to the negative impacts of COVID-19 and that the amount of money that Chester got via ARPA was reasonably proportion to the level of impact experienced by the Town.

Treasury also stated that funds in this category can be used for government services and “generally include any service traditionally provided by a government, unless Treasury has stated otherwise.” Examples of eligible uses that Treasury identified within this category include 1) road maintenance 2) other infrastructure projects 3) general government administration, staff and administrative facilities 4) environmental remediation and 4) provision of police, fire, and other public safety services (including purchase of fire trucks and police vehicles).

Restrictions on use of funds in this category (which are applicable in all Eligible Use Categories) include offsetting a reduction in net tax revenue, deposits into pension funds, use of funds for debt service, settlements and judgements or replenishing financial reserves.

See OFRD p. 9-11 for additional information.

B: Responding to Public Health and Economic Impacts

This eligible use category has six subcategories (public health, assistance to households, assistance to small businesses, assistance to nonprofits, aid to impacted industries, public sector capacity). In general, to identify eligible uses for funds in this category, the Town would need to 1) identify a COVID-19 public health impact on an individual or class (group) and 2) design a program that responds to that impact. **Treasury stated that the level of funding for projects that fall into this eligible use category must be “reasonably proportional to the harm identified and reasonably designed to benefit those impacted.”**

To provide simple, clear eligible uses of funds that meets this standard, Treasury gave a list of uses considered to be in response to pandemic impacts and indicated that some populations can be presumed to have been “**impacted**” or “**disproportionately impacted**” by COVID-19 and thus eligible to receive assistance through ARPA funding.

While the same eligibility standards apply to all uses of funds in this Eligible Use Category, there are nuances that need to be recognized within each subcategory (public health, assistance to households, assistance to small businesses, assistance to nonprofits, aid to impacted industries and public sector capacity).

Public Health Response Subcategory

Eligible uses of funds in this subcategory include 1) payment for COVID-19 mitigation and prevention efforts 2) payments to households, medical providers or others that incurred medical costs due to the pandemic 3) payment for behavioral/mental health/substance abuse treatment services 4) payments related to efforts to prevent and respond to violence.

See OFRD p. 14-15 of for additional information.

Assistance to Households Subcategory

Treasury provided definitions of households considered to be **“Impacted”** (see OFRD p. 17) or **“Disproportionately Impacted”** (see OFRD p. 19) and thus eligible to receive assistance, including cash assistance, from the Town through ARPA.

Briefly, **“Impacted households”** are those with: 1) low- or -moderate income (either at or below 300% of the Federal Poverty Guideline level or at or below 65% of Middlesex County median income), 2) households who experienced unemployment, increased food or housing insecurity and 3) households who qualify for the Children’s Health Insurance Program, Childcare Subsidies through the Childhood Development Program or Medicare.

“Disproportionately Impacted Households” are those with: 1) low -income (at or below 185% of Federal Poverty Guideline level or at or below 40% of the Middlesex County median income) and 2) households that qualify for certain federal benefits such as SNAP.

Treasury enumerated a list of projects that the Town could undertake using ARPA money (see OFRD p. 18); examples on the list include 1) food assistance 2) rental or mortgage assistance 3) assistance paying delinquent taxes and 4) programs, devices and equipment for digital literacy including costs for internet access. The Town could also provide assistance to eligible households in the form of cash. It should be recognized, however, that the level of funding for projects that fall into this eligible use subcategory must be “reasonably proportional to the harm identified and reasonably designed to benefit those impacted.”

Treasury also provided a list of projects that the Town could undertake in its response to disproportionately impacted households and communities (for example, payment for community health workers to help households access health & social services). Although

Treasury gave specific information relevant to identification of a “disproportionately impacted” household, they did not make it clear what a “disproportionately impacted” community actually is. Recognizing this uncertainty, it seems unlikely that the town of Chester, in its entirety, would be considered to be a “disproportionately impacted community.”

Assistance to Small Businesses Subcategory

The Town could use ARPA funds to support “**Impacted**” small businesses (businesses with no more than 500 employees). In selecting to support a business, the Town could use factors such as 1) decreased revenue 2) financial insecurity 3) increased costs 4) capacity to weather financial hardship and/or challenges covering payroll, rent or mortgage and other operating costs.

It seems likely that a case could be made for most businesses in Chester to be “impacted” based on the criteria provided by Treasury. In contrast, no business operating in Chester would meet Treasury criteria for a “disproportionately impacted” small business.

See OFRD p. 21-22 for additional information.

Assistance to Nonprofits Subcategory

The Town could give ARPA funds to nonprofits that it considers to be “impacted” provided that the nonprofit is a 501(c)(3) or 501(c)(19) tax-exempt organization. The Town can consider a nonprofit to be “impacted” if it experienced decreased revenue, financial insecurity, increased costs, capacity to weather financial hardship and/or challenges covering payroll, rent or mortgage and other operating costs in its decision to designate an eligible nonprofit as a “subrecipient” of its ARPA funds.

See OFRD p. 21 for additional information.

Aid to Impacted Industries Subcategory

Treasury considers industries in the travel, tourism and hospitality sectors as being impacted by the pandemic. Other industries can be considered “impacted” by as defined on p.24 of the OFRD. There are no definitions for a disproportionally impacted industry in Treasury’s ARPA-SLFRF documents.

Treasury advises that if, for example, the Town wanted to use ARPA funds to support restaurants, that it should support all restaurants, not just certain ones to avoid potential conflicts of interest.

See OFRD p. 24-25 for additional information

Restoring Public Sector Capacity Subcategory

Public safety, Public Health and Human Services Staff: The Town could use ARPA funds for payroll and covered benefits for “eligible staff” such as police officers, firefighters, emergency medical responders, employees of public health departments or human services staff (employees providing or administering social services and public health benefits or child, elder or family care employee). The Town would need to assess the portion of time that an eligible staff member spent on COVID-19 pandemic activities. This could be done simply by asking staff what % of their time was spent as a result of COVID-19.

Government employment and rehiring public sector staff: The town could rehire employees for positions that existed prior to January 27, 2020 but were unfilled or eliminated as of March 3, 2021. The Town could also utilize ARPA money to pay for new staff to a level that is 7.5% higher than the pre-pandemic level. In other words, if the Town had a budgeted position for 1.0 Full Time Equivalent (FTE), it could increase the number of FTE’s to 1.075.

See OFRD p. 26-27 for additional detail.

Effective Service Delivery: The Town could use funds to improve the efficacy of public health and economic programs through tools like program evaluation, data, and outreach as well as to address administrative needs caused or exacerbated by the pandemic.

See OFRD p. 28-29 for additional detail.

Framework for Other Eligible Uses in this Category: A framework that provides guidance to Towns who want to use funds for projects not “enumerated” in the Treasury document is also provided. This would require 1) identification of a public health or economic impact and the 2) design of a response that addresses the impact. The Town could identify impacts at either the individual or class level. If identification is at the individual level, the Town would need to retain documentation supporting the impact the individual experienced. Fulfilling requirements for “Other Eligible Uses” is more complicated from an administrative perspective.

See OFRD p. 32-34 for additional information.

C: Premium Pay for Eligible Workers Performing Essential Work

If the Town decides to use ARPA funds to provide premium pay to eligible workers it must first 1) identify “eligible workers” then 2) verify that an eligible worker is performing “essential

work” then 3) figure out how much additional pay an eligible worker performing essential work can get. The OFRD provides examples of this on p. 35-37.

Although the process defined in the OFRD seems straightforward, deciding who should or who shouldn't get ARPA money for premium pay seems tricky, particularly when conflicts of interest considerations are taken into account.

D: Water/Sewer/Broadband Infrastructure Category

The Town could use ARPA funds to make “necessary” investments in water & sewer infrastructure. Treasury indicated that eligible projects that can be undertaken include projects eligible under EPA's Clean Water Revolving Fund (CWSRF) or its Drinking Water State Revolving Fund (DWSRF). Treasury also provided a list of “eligible projects” that could be undertaken if considered “necessary.” Treasury cited culvert repair, replacement of storm sewers, infrastructure to improve access to safe drinking water and dam or reservoir rehabilitation as types of eligible projects and gave a definition of what “necessary” within the context of eligibility for ARPA funding.

Information relevant to this category is on p. 37-39 of the OFRD.

Overall ARPA Eligible Use Summary

The Town has flexibility in terms of its use of ARPA funds. However, projects eligible for funding under ARPA must be in response to the COVID-19 pandemic, represent a reasonably designed response and have a cost that is reasonably proportional to the harm caused by the pandemic. Treasury identified several ways to reduce the administrative burden associated with the Compliance and Reporting Guidelines relevant to the ARPA-SLFR program. The Chester ARPA Committee should keep this in mind when considering proposals for ARPA funding.