

Final rule simplifies, broadens township use of ARPA funds

Townships' ability to put American Rescue Plan Act (ARPA) dollars to use in their communities was clarified—and greatly broadened and simplified—under the final rule announced by the U.S. Department of Treasury in early January.

More than 98% of Michigan townships applied to access their allocation of State and Local Fiscal Recovery Funds (SLFRF) through ARPA, which allows millions of dollars to flow into local communities. In total, **townships will receive more than \$500 million in federal coronavirus relief money.** All townships have received their first “tranche” (portion) of the funds from the Michigan Department of Treasury. The second tranche will be distributed by Treasury “no later than 12 months after delivery of the first half of the allocation.” In addition, as nonentitlement units of government (NEUs)—municipalities less than 50,000 in population, so all but eight of Michigan’s largest townships—most townships also have received or will receive a supplemental, equitable disbursement of those funds that had been allocated to NEUs that declined or did not request the funding.

For months, local officials have been wondering and considering—and MTA has fielded questions on—exactly how townships can put these funds to use. And **we finally have the answers.**

New ‘standard allowance’ makes it easy

Under the final rule, there remain four broad spending categories under which townships may spend their ARPA dollars. Perhaps the greatest (and surely most appreciated) change is in the “Revenue Loss” category—a new “standard allowance,” up to \$10 million, that townships (and all recipients) can elect to take to use the funds for “government services.” Previously, most general government services or projects could only be funded if the township could project or demonstrate “revenue loss” as defined in the ARPA and prior interim final rule. Now, under the final rule, **recipients that select the new “standard allowance may use that amount—in many cases their full award—for government services, with streamlined reporting requirement,”** without having to demonstrate any “revenue loss.”

Because all but one Michigan township has an allocation less than \$10 million, this means that **your township can elect to use its full allocation for general township services, projects**



and uses. We know that most townships have wanted clear guidance, and to be able to use their ARPA funds for “normal” Michigan township needs—that may or may not have any connection with the COVID pandemic. This new \$10 million “standard allowance” allows just that.

During a Q&A webinar that MTA hosted shortly after the final rule was released (which you can watch on www.michigantownships.org/covidrelief.asp), participants filled the question-and-answer feed with questions about whether various expenditures were allowable uses under ARPA. As long as the expenditure is lawful for townships and not prohibited by ARPA, the simple answer is, yes. There is no way that we can list every possible use for ARPA funds. However, among the most frequent uses cited during the Q&A and asked of MTA—which would be considered allowable uses under ARPA—are:

- Township hall and facility construction, renovations and expansions
- Township facility equipment, systems and upgrades, including ventilation, security systems and features, parking lot paving, etc.
- Emergency services vehicles, and purchases for public safety departments such as personal protection equipment and turnout gear
- Cemetery maintenance or expansion
- Township maintenance vehicles
- Parks and recreation facilities, maintenance, expansion, etc.
- Computer equipment
- Road projects
- Recycling services
- Outdoor lighting
- Election equipment, including ballot dropboxes
- Feasibility studies
- Matching funds for non-federal programs

The key concept to remember is that, like all township expenditures, your **ARPA funds must be used for an expenditure that is lawful for townships** under state statute. If it is not a lawful expenditure for your township (that is expressly stated or fairly implied by Michigan law), you cannot spend your ARPA funds on it. This can be confusing, as information from U.S. Treasury is broad guidance for the entire nation, and what is lawful in one state may not be lawful in another. As a result, the U.S. Treasury guidance lists certain allowable expenditures, such as assistance to small businesses or donations to nonprofit organizations, that are not allowable for Michigan townships. To help guide our member townships, **MTA has created a Michigan-specific ARPA uses resource**, which is available on our ARPA webpage.

As MTA Staff Attorney Catherine Mullhaupt explained lawful expenditures during the MTA Q&A, “It’s like ‘Simon Says,’ the old playground game,” she said. “Can you find where ‘Simon Says’ in state statute that townships may spend money?” You can find additional guidance on lawful expenditures for townships via the “Index of Topics” under



The final rule has brought greater clarity for how townships can use American Rescue Plan funds, including for “government services.” Townships can now turn to the question of how to best put the relief dollars to use in their community.

the “Answer Center” on the member side of www.michigan-townships.org. Townships should also discuss any questions on whether an expenditure is lawful with their legal counsel. (It is also important to note that ARPA does specifically prohibit some uses for the funds, including contributions to rainy day funds and pensions. We explore prohibitions on ARPA uses further on page 22.)

Using the standard allocation option, your township will not need to prove “revenue loss” to use the funds for government services under the “revenue loss” category. This change means that townships no longer need to use the revenue loss calculators and complex calculations to determine revenue loss over a four-year period. If your township chooses not to use the standard allocation and would like to use the calculators to project revenue loss, you may still do so (calculators are available on MTA’s ARPA webpage).

In addition, we continue to hear from townships that they do not believe that their township has lost revenue due to the pandemic. For ARPA purposes, it is assumed that all communities have experienced or will experience revenue loss as a result of the ongoing COVID-19 public health crisis. **With the new standard allocation option, you do not need to prove revenue loss, and can simply put the dollars to use in your community.**

As Mullhaupt stated during the MTA Q&A, “This makes life easier.”

Additional uses under the final rule

While “revenue loss” may be a likely category under which many townships use their ARPA funding, due to its new simplified nature under the final rule, townships can, and may choose to, also use their funds under the three additional broad allowable use categories. Changes in the final rule streamline and broaden these categories as well.

1) COVID-19 eligible expenditures or negative economic impact

Expenditures under this category must be in response to COVID-19 itself, or to the consequences of economic disruptions that are a result of or exacerbated by the pandemic. This can include purchases personal protective equipment, installing or upgrading township facility ventilation systems, improved sanitation, or reconfiguring workspaces, for example.

The final rule broadened this use to note that municipalities can pay expenses of providing paid sick and paid family and medical leave to township employees to enable compliance with COVID-19 public health precautions, such as if an individual or their family member is in quarantine or sick with COVID. Note that a township is not required to offer this, but it is now an option and can be paid for with ARPA funds.

This use category also now allows communities to restore and bolster public sector staff capacity, for those communities that had to furlough or let staff go, or left positions unfilled. While the interim final rule had indicated the funds could be used to restore employment to pre-pandemic levels, under the final rule, funds can be used to hire up to 7.5% above the “pre-pandemic baseline.” In addition, it can be used to fund employees who experienced pay reductions, for maintaining current compensation levels to prevent layoffs and for worker retention incentives, including pay increases.

2) Premium pay for essential employees

Township essential workers were—and continue to be—critical in keeping our communities safe, and ensuring ongoing local services and operations throughout the pandemic. ARPA allows townships to offer premium pay to these workers—but there had been questions about just who was eligible to receive such payments. The final rule both streamlines and offers clarity on options for providing premium pay, by broadening which workers are eligible while maintaining a focus on lower-income and frontline essential workers.

The final rule shares three qualifiers to help determine which type of worker qualifies for premium pay:

- 1) Eligible workers are those in critical infrastructure sectors.
- 2) Essential work involves regular **in-person** interactions or physical handling of items handled by others.
- 3) Pay must respond to worker needs and serve workers who earn at or below 150% of their state or county’s average annual wage and are not exempt from the

Fair Labor Standards Act (FLSA) overtime rules. A township may also provide written justification for how the premium pay meets worker needs.

In its overview of the final rule, **U.S. Treasury provided a non-exhaustive list of various sectors that include workers eligible for premium pay**, including:

- ✓ local government workforce
- ✓ emergency response
- ✓ elections

Elections was newly added under the final rule, and helps to answer a frequent question received by MTA as to whether election workers qualify for premium pay. We can now definitively say, yes. (Note that this would be considered additional compensation and be counted toward tax-withholding thresholds for election worker pay.)

Beyond the listing provided in the overview, the “chief executive (or equivalent)” of the township may designate additional non-public sectors as critical so long as doing so is necessary to protecting the health and wellbeing of the residents, according to the overview. It is our opinion, that under this provision, that the chief executive or equivalent would be referring to the township supervisor or a fully authorized superintendent in a charter township. Any expenditure would still have to be approved by the township board. It should also be noted that elected and appointed officials **cannot** receive premium pay, as they are exempt from overtime under the FLSA. MTA has additional guidance about premium pay, and how your township can make decisions on who receives it, on our ARPA webpage.

The pay can be flexibly awarded up to \$13 per hour in installments, or a lump sum, to hourly, part-time or salaried/non-hourly workers. The pay can be provided retroactively for work performed at any time since the start of the pandemic.

3) Water, Sewer and Broadband Infrastructure

While townships that wish to spend all or a portion of their ARPA funding on specific infrastructure projects may do so under the “standard allocation” option, some may also elect to do so under the final allowable uses category for “necessary investments” in water, sewer and broadband infrastructure. As noted in the final rule, changes significantly broaden eligible broadband infrastructure investments to address challenges with broadband access, affordability and reliability, and adds additional eligible water and sewer infrastructure investments, including a broad range of lead remediation and stormwater management projects. The final rule also eliminated a previous requirement in the interim final rule that projects be unlikely to be made using private sources of funds. This is significant for Michigan townships because Michigan law emphasizes some private sector partnerships in providing broadband.

The pandemic further highlighted the need for access to high-speed broadband internet for work, education, civic participation and healthcare—and the lack of access in many areas throughout our state and country. Many townships may be interested in using their funds to invest in broadband infrastructure, to help boost access at township facilities and increase cybersecurity, among others. Under the final rule,

Key resources to read and review

As townships consider how to use their American Rescue Plan Act (ARPA) funds, and look ahead toward the April 30 deadline for the first “Projects and Expenditures” report (see page 22 for more on reporting), there are resources, guides and webinars that can help prepare your township and answer questions. You can find each of the resources below on MTA's ARPA webpage, www.michigantownships.org/covidrelief.asp.

MTA resources

- MTA Fact Sheet: “How Can Townships Use American Rescue Plan Act Funds?”
- “MTA Q&A” webinar, Your Questions Answered on Final ARPA Rule

U.S. Treasury resources

- Project Expenditure and Report User Guide
- Non-Entitlement Unit Supporting Documents User Guide
- Compliance and Reporting Guidance
- Final Rule Overview
- Final Rule
- Project and Expenditure Report webinar
- Account Creation and Login webinar
- User Roles webinar



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Coalition seeks statewide transformational change

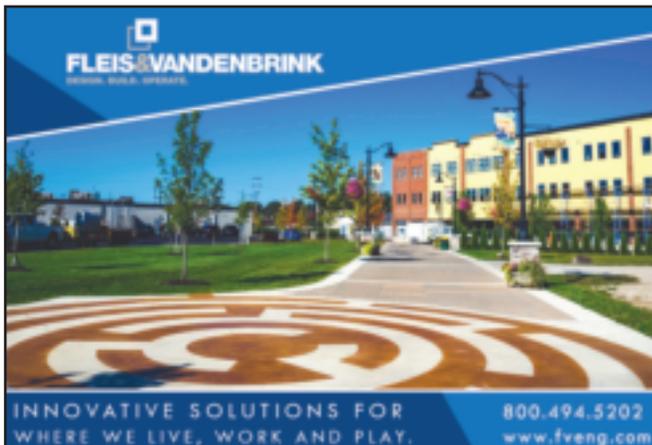
MTA is part of the statewide Coalition for a Strong and Prosperous Michigan, comprised of 40 organizations and individuals supporting a comprehensive proposal to leverage the state's nearly \$6 billion in unrestricted federal American Rescue Plan Act (ARPA) funding.

From *Rescue to Prosperity: A Roadmap to Michigan's Future* (www.miroadmap.com) presents a roadmap to invest the ARPA resources. The plan is designed to revive and strengthen the state's economy, make Michigan attractive for talent, and support thriving communities now and into the future.

The plan focuses the state's ARPA resources in a coordinated fashion across five key areas: infrastructure, fiscal health, thriving communities, public health and safety, and a strong economy. Recognizing the tremendous need for direct investment across multiple sectors, the goal is to maximize the one-time ARPA dollars while leveraging other resources to amplify and sustain future returns to help build a path forward for Michigan residents, businesses and communities. And given the fact that many communities will receive limited ARPA funds, limiting match requirements in multiple areas is also recommended.

The coalition represents a diverse mix of businesses, government organizations, local elected leaders and statewide associations. The aim is to advance a plan detailing the most impactful and strategic ways to invest Michigan's ARPA funding for future growth and prosperity. The coalition presents a bold vision to build Michigan's future that capitalizes on the economic value of thriving communities, advances equity, builds community wealth, supports entrepreneurship, prioritizes the need for talent, and spurs business development.

MTA, along with other coalition members, is working with the Legislature and administration as they appropriate the federal funds through various supplemental appropriations. We encourage our members to seek support from your legislators to maximize investment of these one-time funds and provide transformational change for our communities across the state.



when designing a broadband project, recipients must identify an eligible area for investment (such as an area with lack of access to reliable or affordable high-speed broadband), and ensure the project meets high-speed technical standards. There are additional requirements to address the affordability needs of low-income consumers in accessing broadband networks funded by the ARPA funds.

A note about Qualified Census Tracts—ARPA also allows some additional flexibility in funding uses for communities that are part of a Qualified Census Tract (QCTs), to help provide assistance to vulnerable communities, including low-income populations, that may have been disproportionately impacted by the pandemic. A listing of townships with QCTs is available on www.michigantownships.org/covidrelief.asp.

What you *can't* use the funds on

As noted previously, there are some restrictions on the use of ARPA funds, even though they are lawful expenditures for townships. Because they are expressly prohibited by the act, **townships cannot spend the funds on the following:**

- contributions to rainy day funds and similar financial reserves that constitute savings for future spending needs
- to offset a reduction in taxes
- debt service or replenishing financial reserves
- funding retirement plans or other post-employment benefits
- payment of settlements or judgement
- matching funds to federal funding

Up next: reporting

The first "Project and Expenditure Report" deadline remains April 30, 2022. Under the final rule, NEUs and seven of Michigan's "metropolitan city" recipient townships must file one report per year through Dec. 31, 2026 (one Michigan "metropolitan city" township with an allocation more than \$10 million must file quarterly; the interim final rule had required all metropolitan cities to file reports quarterly). The first report period will cover March 3, 2021, through March 31, 2022. Subsequent annual reports will cover the calendar year, and continue to have an April 30 deadline.

U.S. Treasury has released a new "Project and Expenditure Report User Guide" that outlines detailed information on submitting the report via Treasury's online portal (which is separate and different than the state Treasury portal townships used to apply for the funds). Because federal reporting is likely new to many townships, **all townships are urged to begin preparing now**, including reviewing the user guide and designating the person or people responsible for completing the reports and necessary information. The user guide notes that three roles—account administrator, point of contact and authorized representative—are needed for

reporting, but the township can choose to appoint one person for all three roles or designate individuals for multiple roles. Each person designated for reporting roles must complete necessary registrations at login.gov (if your township does not already have an ID.me account), which allows the designated individual(s) to access the reporting portal.

The reporting user guide, which you can view and download from www.michigantownships.org/covidrelief.asp, includes step-by-step images and instructions to walk you through the reporting system. **Your township should act now to:**

- ✓ designate the individual (or individuals) now who will be responsible for the reporting
- ✓ review the user guide and other resources
- ✓ complete the necessary registrations

Some key things to keep in mind as the reporting deadline nears:

- **You do not need to know by April 30 how your township intends to spend your ARPA allocation.** According to the new guidance document, if your township has not incurred any obligations or expenditures for the funds, “Recipients should submit a report showing no (\$0) obligations or expenditures have yet been incurred.”
- Regardless of whether your township has made any decisions about its ARPA allocations, **all townships must complete the reporting by the April 30 deadline.**
- If your township opts to choose the “standard allowance” option under the “Revenue Loss” category of uses, you can indicate this in the reporting. You will then be asked whether any funds were used to make a deposit into a pension fund (which is prohibited) and to provide an explanation of how the funds, if any, were allocated to government services.
- For the first report *only*, townships must submit a copy of budget documents for how they calculated their top-line budget during the initial application process, along with copies of the signed Awards and Conditions and Title VI documents included with the application materials.

If a township has expended any funds by March 31, you will need to complete additional information, depending on the expenditure category, project, completion status, etc. As explained in the user guide, the information required varies by the expenditure categories (for example, revenue loss or premium pay). While the guidance does not provide a great detail about the narrative a township must provide when funds are expended, it does provide an example for the description of “government services” under the revenue loss category, which is a fairly brief description. The guidance reads, “For example, a recipient with \$100 in revenue replacement funds available could indicate that \$50 were used for personnel costs and \$50 were used for pay-go building of sidewalk infrastructure.”

IMPORTANT: Your township’s SAM.gov registration must be active for the reporting, and the SAM.gov registration must be renewed annually. This is free of charge; townships do not need to pay a fee for this registration.

Townships may wish to work with their auditor or a certified public accountant on the federal reporting requirement. A listing of firms available to work with townships appears below. ARPA funds can be used to cover any costs for legal or auditor consultants that assist with your township reporting. Watch our publications, website and social media for any additional reporting resources as they become available.

Recording, audits and record-keeping

By the end of 2021, all NEUs had received or were in the process of receiving their first ARPA allocation from the state Department of Treasury. As those funds are received, it is important that townships understand how to record the amount, which is outlined in Michigan Department of Treasury Numbered Letter 2021-3. According to the number letter, **townships should use the revenue account 528—Other Federal Grants of the Uniform Charter of Accounts for recording the receipt of the funding.** The letter then notes, that “It is acceptable to point off this account if desired.”

When this revenue would be recorded depends on several items for each township, including fiscal year-end and when the grant has been officially executed. No funds may be accrued back to a fiscal year that ended before March 11, 2021, the date ARPA became law. No revenue may be recorded until both of the following occur: 1) an award has been executed and 2) eligible expenditures are incurred. Townships should record these transactions (both revenues and expenditures) within the funds that applicable expenditures were incurred. “ARPA funds are restricted based on the nature of the applicable fund,” the letter noted.

Auditor and CPA firms available to assist with ARPA reporting

Baird, Cotter and Bishop, PC, Cadillac
231-775-9789 | tmulder@bcbcpa.com
www.bcbcpcpa.com

Plante Moran, Ann Arbor
734-302-6901 | arpaquestions@plantemorancpa.com
www.plantemorancpa.com

Schulze Oswald Miller & Edwards, PC, Alpena
989-354-8707 | kristy@somecpa.com
www.somecpa.com

Siegfried Crandall, Grand Rapids
800-876-0979 | dvelduhuizen@scpro.net
www.siegfriedcrandall.com

Walker, Fluke & Sheldon, PLC, Hastings
269-945-9452 | rsprague@wfscpas.com
www.wfscpas.com

Yeo & Yeo, PC, Saginaw
989-793-9830 | jamriv@yeoandyeo.com
www.yeoandyeo.com

cover story

Refer to the letter, available on both MTA's ARPA page and www.michigan.gov/arpa, for examples of fund-based financial statement journal entries, including when funds are received and expenditures are incurred or when expenditures are not incurred.

Audits—While NEU funds are received through the state, they are “pass-through” federal grant dollars and may be subject to the Single Audit Act, which is a comprehensive audit of all the township's federal financial assistance programs. However, this special compliance audit of the use of the funds, and the internal controls over those expenditures, is required when a township expends more than \$750,000 in total federal funds. The majority of allocations for NEU townships are less than this amount, and would not be subject to audit.

Record-keeping—According to a National Association of Towns and Townships *Special Report on Eligible Uses of American Rescue Plan Funds*, financial records and supporting documents must be kept for five years after all funds are expended.

Take your time

While the ARPA final rule does not take effect until April 1, U.S. Treasury has indicated that any funds used while the interim final rule is in effect are in compliance, and that recipients can take advantage of the final rule flexibility prior to its effective date.

ARPA funds continue to represent an opportunity for townships to put the dollars to use in a way that will best benefit their community. So, **while the final rule greatly simplified how townships can use the money, there is still no need to rush to a decision.** The original timeframe for obligation and spending remains: the money must be “obligated” by the end of 2024, and fully spent by the end of 2026. Funds can be used for costs incurred from March 3, 2021, through Dec. 31, 2024 (premium pay can be retroactive to Jan. 27, 2020). If a township does not expend all of its ARPA funds by Dec. 31, 2026, it must return them to the federal government. However, with the \$10 million standard allocation option, we see no reason that all townships cannot put their full funding to use by that time.

These decisions must be made through your township's usual budget process, but you can also take it one step further and garner public input and broadly consider how this once-in-a-lifetime funding can be best put to use in your township. You do not have to act quickly. Townships can take time to assess the areas of greatest need, acquire input from residents and other stakeholders, and act on projects and services that can have an impactful effect on your community.

We know that questions will remain as townships continue to make decisions and work their way through the reporting process. MTA will continue to provide insights, advice and updates on how to do just that, as townships continue to lead and serve in the pandemic recovery.

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