Strengthening State and Local Economies in Partnership with Nonprofits:

Principles, Recommendations, and Models for Investing Coronavirus State and Local Fiscal Recovery Funds

Governments Can Use ARPA Funds to Partner with Nonprofits in Two Broad Ways

The first question a state or local public official might ask is whether governments are authorized to use their allocations of ARPA Coronavirus State and Local Fiscal Recovery Funds (CSLFRF) to support charitable nonprofits and their work in communities. The answer from Congress and the Treasury Department alike is an emphatic: **Yes**. Governments at all levels are empowered both to (1) provide direct assistance to charitable nonprofits as ***beneficiaries*** to address the impact of the pandemic on their organizations, AND (2) hire charitable nonprofits as ***subrecipients*** to provide services to others.

Nonprofits as Beneficiaries

Congress specified multiple times in Section 9901 of the American Rescue Plan Act that state, local, Tribal, and territorial governments may use their allocations of the $350 billion in Coronavirus State and Local Fiscal Recovery Funds to provide "assistance to households, small businesses, ***and nonprofits***, or to aid impacted industries" (emphasis added). In brief, governments may use these federal funds to respond to pandemic needs, fill revenue shortfalls among state and local governments, and support the organizations, communities, and populations hit hardest by the COVID-19 crisis.

Coronavirus State and Local Fiscal Recovery Fund Allocation
Source: U.S. Treasury: Assistance for State, Local, and Tribal Governments

Type	Amount ($ billions)
States & District of Columbia	$195.3
Counties	$65.1
Metropolitan Cites	$45.6
Tribal Governments	$20.0
Territories	$4.5
Non-entitlement Units of Local Government	$19.5

But what does that mean for charitable organizations that suffered many of these losses during the pandemic and continue to provide services on behalf of governments to households, businesses, and impacted industries? After initially generating confusion on this question in its interim set of instructions, the Treasury Department Final Rule (effective April 1, 2022) and Overview of the Final Rule go to extraordinary lengths to provide clarity on nonprofit eligibility. The Overview to the Final Rule summarizes the general rule concerning the assistance governments can provide to nonprofits utilizing Coronavirus State and Local Fiscal Recovery Funds:

> Nonprofits have faced significant challenges due to the pandemic's increased demand for services and changing operational needs, as well as declines in revenue sources such as donations and fees. Nonprofits eligible for assistance are those that experienced negative economic impacts or disproportionate impacts of the pandemic and meet the definition of "nonprofit"—specifically those that are 501(c)(3) or 501(c)(19) tax-exempt organizations.[1]

The Final Rule and the Overview make clear that governments may utilize these funds to provide direct assistance to "**Impacted Nonprofits**,"[2] which includes those that have experienced:

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

Treasury also acknowledges a second category of charitable organizations – those it labels "**Disproportionately Impacted Nonprofits**," a term that refers to nonprofits that Treasury presumes are eligible for CSLFRF relief without further analysis. The three categories are (1) nonprofits operating in Qualified Census Tracts,[3] (2) nonprofits operated by Tribal governments or on Tribal lands, and (3) nonprofits operating in U.S. Territories.

The Treasury Department provides a non-exhaustive list of examples of authorized uses. For instance, governments may bring unemployment systems back to pre-pandemic levels by depositing the funds into unemployment trust funds and paying off unemployment insurance loans from the U.S. Department of Labor. These actions will alleviate burdens on nonprofit and for-profit employers contributing to the state UI system of increased taxes. States may also use the funds to cover the unemployment costs of reimbursing employers, including certain nonprofits and local governments, not otherwise covered by the federal government since the onset of the pandemic.[4]

Specific to nonprofits, governments may provide assistance in the form of grants or loans to mitigate financial hardship, as well as technical or in-kind assistance or other services that mitigate economic impacts of the pandemic. Previous guidance from the Treasury Department provided the following examples:

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[1] Overview to the Final Rule, Department of Treasury, Jan. 6, 2022, page 23.

[2] Final Rule at page 4380; Overview at 23.

[3] The Final Rule states at page 4342 that "Qualified Census Tracts" are "neighborhoods with persistent poverty."

[4] Overview at 18; Statement Regarding Compliance with the Coronavirus State and Local Fiscal Recovery Funds Interim Final Rule and Final Rule, Department of Treasury, Jan. 6, 2022, page 3.

- Payroll and benefits costs
- Employee retention
- Mortgage, rent, utilities assistance
- Social distancing requirements
- Enhanced cleaning
- Vaccination, testing, or contact tracing programs
- Technical assistance, counseling, or other services to assist with business planning needs

Nonprofits as Service Providers

In addition to the many "impacted nonprofits" and "disproportionately impacted nonprofits" eligible for direct assistance as "beneficiaries," all charitable organizations may also be hired to provide services to others as "subrecipients" of CSLFRF funds. Governments, referred to in the Final Rule as "recipients," can transfer – via grant or contract – funds to nonprofits to carry out eligible uses on behalf of those governments. The Final Rule makes clear, "a nonprofit need not have experienced a negative economic impact in order to serve as a subrecipient."[5] And correcting earlier misperceptions by some local governments, Treasury states that "the Department does not require or have a preference as to the payment structure for recipients that transfer funds to subrecipients (e.g., advance payments, reimbursement basis, etc.)."[6] This last point is important for operational integrity and organizational sustainability: **governments may make advance payments to nonprofit subrecipients; officials are not required to insist on service first and reimbursement later**.

What types of services are envisioned here? The Treasury Department is currently updating its Frequently Asked Questions to provide further guidance, but earlier FAQs are instructive in identifying services performed by nonprofits that respond to the "negative economic impacts of the pandemic." These include:[7]

- Food assistance
- Childcare and early learning services
- Counseling and legal aid to prevent eviction or homelessness
- Emergency assistance
- Housing security
- Job training and workforce development
- Internet access or digital literacy assistance
- Disparate impact of COVID-19 on certain populations and geographies.

As shown by these examples, charitable nonprofits can be both the *recipient of assistance* and the *provider of assistance* to others on behalf of governments.

[5] Final Rule, Treasury Department, Jan. 27, 2022, 87 Fed. Reg. at 4380.

[6] Final Rule at 4379, footnote 230.

[7] Overview at page 18.