MURPHY HESSE TOOMEY & LEHANE LLP
Attorneys at Law

Municipal Alert
March 31, 2021

The American Rescue Plan Act's Aid Allocations to State, Local Governments, and Schools

On March 11, 2021, President Biden signed the American Rescue Plan Act ("ARPA") which provides for a $1.9 trillion economic stimulus package. State and local governments, and also many educational entities, will receive substantial funding. Having endured the last year of the global COVID-19 pandemic, both states and local governments, as well as schools, have experienced unexpected expenses, losses in revenues, and budgetary burdens. The purpose of this Client Alert is to explain generally how funds from the ARPA relief aid have been designated to alleviate those COVID-19-related challenges.

a. $350 billion in State and Local Government Funding

ARPA earmarks $350 billion for state, local, and tribal governments and U.S. territories. ARPA addresses government shortfalls due to COVID-19 by directly aiding local governments. Compared to the previous stimulus packages, ARPA more than doubles the $150 billion allocated to state and local government in the Coronavirus Aid, Relief and Economic Security (CARES) Act from March 2020. Under the CARES Act's Coronavirus Relief Fund, most of that $150 billion was allocated to the states based on their populations, but large local governments with populations of over 500,000 (cities and counties) had the option to receive funds directly from the Treasury Department. The Consolidated Appropriations Act of 2021, signed into law on December 27, 2020, did not include direct relief for state and local governments.

ARPA is different from past stimulus packages and COVID-related laws, not only in the amount of money allotted to state and local governments, but how that money is allocated. Most of such money has been designated into two Coronavirus Fiscal Recovery Funds: **a state fund that will receive $219.8 billion** in funding and a **local government fund that will receive $130.2 billion** in funding.

Phone (617) 479-5000 Fax (617) 479-6469
www.mhtl.com

Municipal Alert
March 31, 2021

<table>
<tr><th>Coronavirus State Fiscal Recovery Fund</th><th>Coronavirus Local Fiscal Recovery Fund</th></tr>
<tr><td>Under the Coronavirus State Fiscal Recovery Fund, the Secretary of the Treasury will make the following payments:

The bulk of this Fund ($195.3 billion) is split among the States (including D.C.)

Of that money $25.5 billion will be divided equally among each state (and D.C.)
An additional $1.25 billion is appropriated to D.C.
The remainder of that money (around $168.55 billion) will be distributed based on the proportion of each state’s (and DC’s) share of total unemployed workers for the three-month period of October 2020 to December 2020.

$4.5 billion is appropriated and payable for the U.S. territories; and,
$20 billion is made payable to Tribal governments

Usage of these funds requires certain certifications and periodic reporting requirements, to be determined by the Secretary of the Treasury</td>
<td>The Local Fiscal Recovery Fund provides for payments to Metropolitan Cities, Counties, and “Nonentitlement” Units of Local Government.

Metropolitan Cities[1] are entitled to share $45.57 billion in direct payment aid from the Secretary of the Treasury. The Secretary will apportion the aid based on the fund allocation formula laid out in the Housing and Community Development Act of 1974; and,
Nonentitlement Units of Local Government[2] are entitled to share $19.53 billion in payments made from the Treasury to individual states <u>and then</u> distributed by individual states. Each jurisdiction will receive population-adjusted payments based on such jurisdiction’s share of the state population. The amount received is not to exceed 75 percent of its most recent budget for the nonentitlement unit of local government as of January 27, 2020.
Counties are entitled to share $65.1 billion in direct payment aid from the Secretary of the Treasury, which is divided depending on their proportion of the U.S. population. There are special rules for urban counties and counties that are not units of general local government.

Payments to metropolitan cities, states (on behalf of the Nonentitlement Units of Local</td></tr>
</table>

[1] Generally speaking, these are cities that consist of over 50,000 people.
[2] Generally speaking, these are municipalities of fewer than 50,000 people.

Phone (617) 479-5000 Fax (617) 479-6469
www.mhtl.com

	Government), and Counties will be made in a two-tiered "tranche" payment system. The first tranche amount will be paid within 60 days of ARPA becoming law and the second of which will be paid not earlier than 12 months after the date on which the first tranche amount is paid.

Usage of the monies are limited to being used for the following purposes:

1. to respond to the public health emergency with respect to the Coronavirus Disease 2019 (COVID–19) 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 of such unit of government that are performing such essential work, or by providing grants to eligible employers that have eligible workers who perform essential work;
3. for the provision of government services to the extent of the reduction in revenue of such unit of government due to the COVID–19 public health emergency relative to revenues collected in the most recent full fiscal year of the unit of government prior to the emergency; or
4. to make necessary investments in water, sewer, or broadband infrastructure.

***No recipient entity may use these funds for deposit into any pension fund.*

Under these two funds, transfer authority is acceptable for the following transfers:

Coronavirus State Fiscal Recovery Fund	**Coronavirus Local Fiscal Recovery Fund**
A State, territory, or Tribal government recipient of funds may transfer funds to (*as defined by ARPA*): private non-profits, or Tribal organizations, or public benefit corporations.	Metropolitan Cities, Counties, and Nonentitlement Units of Local Government: • may transfer funds to (*as defined by ARPA*): private non-profits, or public benefit corporations, or a special unit of State or local government; or, • may transfer funds to the State in which the entity is located.

Phone (617) 479-5000 **Fax (617) 479-6469**
www.mhtl.com

In addition to the Coronavirus State Fiscal Recovery Fund and the Coronavirus Local Fiscal Recovery Fund, ARPA creates the **Coronavirus Capital Projects Fund**, which allocates $10 billion to States, territories, and Tribal governments "to carry out critical capital projects directly enabling work, education, and health monitoring, including remote options, in response to the public health emergency." It also creates a **Local Assistance and Tribal Consistency Fund** for eligible "revenue sharing counties"[3] and tribal governments to use $2 billion in funds (subject to reporting requirements) for any governmental purpose other than a lobbying activity.

b. <u>School Funding</u>

Over $122 billion will go to K-12 public schools primarily to assist in the safe return to in-person learning and to address learning loss. Of the $122 billion, $800 million will go to support the education of homeless children. The remaining amount will be allocated in the form of a grant to each State education agency. Each State in turn is required to allocate, in the form of sub-grants, not less than 90% of the grant funds awarded to the State to local educational agencies, including certain charter schools. This funding is appropriated for the fiscal year 2021 and the funding will remain available through September 30, 2023.

At least 20% of the funds received by each school district must address learning loss from the COVID-19 pandemic through "evidenced-based intervention", such as by implementing summer enrichment programs, extended day, comprehensive after-school programs, or extended school year programs. The remaining portion of funds may be used for a wide range of purposes. The Act lists over 18 allowable uses, including "any activity authorized by the Elementary and Secondary Education Act of 1965, any activity authorized by the Individuals with disabilities Education Act (IDEA), coordination of preparedness and response efforts to COVID-19, activities to address the needs of low-income students, students with disabilities, and minorities, purchasing education technology, providing mental health services to students, providing personal protective equipment for teachers and support staff, school facility updates and repairs to reduce risk of virus transmission and exposure to environmental health hazards, developing strategies to implement public health protocols, and "other activities" that are necessary to maintain the operation and continuity of services and continuing to employ existing staff. Schools that receive this funding must develop and make publicly available within 30 days of

[3] "Revenue Sharing Counties" are those counties as determined by the Secretary of Treasury that are independent of any other unit of state or local government, and which are the "principal provider" of government services for the area within its jurisdiction, and for which – again as determined by the Secretary of the Treasury – there is a negative revenue impact due to implementation of a Federal program or changes to such program.

Phone (617) 479-5000 **Fax (617) 479-6469**
www.mhtl.com

receipt a plan for the safe return to in-person instruction and continuity of services and must seek and take public comment into account in the development of such plan.

In addition to the above funding, $2.75 billion is allocated for certain non-public schools that enroll a significant percentage of low-income students, and over $39 billion has been allocated for institutions of higher education.

Given the size of the above-allocations and the complexity of some parts of Act, guidance or regulations are expected which may provide additional insight into allowable uses administration of these funds. Local governments and schools are encouraged to speak with legal counsel to address any questions related to the use or allocation of this funding. Additional alerts and information will be forthcoming as additional information become available.

This Client Alert was prepared by Brendan Collins and Blair Wigney and reviewed with Kier Wachterhauser and Andy Waugh. If you have any questions about this issue, please contact Kier Wachterhauser or Andy Waugh or the attorney responsible for your account, or call (617) 479-5000.