

AMERICAN RESCUE PLAN ACT

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AMERICAN RESCUE PLAN
CODIFIED: 43 USC 603

- Funds shall only be used to cover costs incurred [beginning March 3, 2021 through December 31, 2024](#) for the 4 eligible categories;
- Funds *may not* be used for deposit into any pension fund.
- Funds *may* be transferred to a private nonprofit organization (an organization in which no member, founder, contributor or individual benefits from the earnings, has a voluntary board, has an accounting system or designated fiscal agent, and practices nondiscrimination), a public benefit corporation involved in the transportation of passengers or cargo, or a special-purpose unit of State or local government.
- Funds *may* be transferred to the State of Ohio.

ELIGIBLE USES
4 PRIMARY CATEGORIES

1. Respond to the public health emergency or its negative economic impacts;
2. Premium Pay to essential workers
3. Revenue Loss – provision of government services; and
4. Investments in water, sewer, or broadband infrastructure.

AMERICAN RESCUE PLAN: TIMELINE

- Funds must be used to cover "costs incurred" by the recipient between March 3, 2021, and December 31, 2024
 - Funds may be used to provide assistance for economic harm experienced by households, businesses and individuals prior to March 3, 2021, including: rental arrears, premium pay, revenue loss, investments in water, sewer and broadband relating to the COVID-19 public health emergency
- Funds must be obligated by December 31, 2024
- Funds must be expended by December 31, 2026

CATEGORY 1: RESPONDING TO THE COVID-19 PANDEMIC

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Permissible Uses:

<ul style="list-style-type: none"> ▪ COVID-19 Mitigation and Prevention ▪ Medical Expenses ▪ Behavioral Health Care ▪ Public Health and Safety Staff ▪ Expenses to Improve the Design and Execution of Health and Public Health Programs ▪ Assistance to Unemployed or Underemployed Workers 	<ul style="list-style-type: none"> ▪ Assistance to Households – rental assistance, utility assistance, etc ▪ Small Businesses and Non-profits – grants, rental assistance, lost revenue, overhead costs, ▪ Rehiring Government Staff ▪ Aid to Impacted Industries – tourism, hotels, bars and restaurants ▪ QCTs – Qualified Census Tract
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IMPERMISSIBLE USES

Impermissible Uses under this Category:

- General infrastructure
- General economic development or workforce development.
- Contributions to rainy day funds, fees or insurance costs associated with the issuance of new debt
- Satisfaction of any obligation arising out of a settlement agreement or judgment

“TEST” FOR DETERMINING WHETHER EXPENDITURE FITS IN THE FIRST CATEGORY

Step	1. Identify COVID-19 public health or economic impact	2. Design a response that addresses or responds to the impact
Analysis	<ul style="list-style-type: none"> • Can identify impact to a specific household, business or nonprofit or to a class of households, businesses, or nonprofits (i.e., group) • Can also identify disproportionate impacts, or more severe impacts, to a specific beneficiary or to a class 	<ul style="list-style-type: none"> • Types of responses can include a program, service, or capital expenditure • Response should be related and reasonably proportional to the harm • Response should also be reasonably designed to benefit impacted individual or class
Simplifying Presumptions	<ul style="list-style-type: none"> • Final Rule presumes certain populations and classes are impacted and disproportionately impacted 	<ul style="list-style-type: none"> • Final Rule provides non-exhaustive list of enumerated eligible uses that respond to pandemic impacts and disproportionate impacts

**SIMPLIFYING PRESUMPTIONS
HOUSEHOLDS AND POPULATIONS PRESUMED ELIGIBLE**

Presumption Eligibility: Impacted and Disproportionately Impacted Households and Communities:

Household or population that

- experienced unemployment,
- experienced increased food or housing insecurity
- is low- or moderate-income
- Populations, Households, Non-profits or Businesses located in a QCT or served by Tribal Governments

(Final Rule p. 4345, 4347)

This is not an exhaustive list

Final Rule pp. 4347-4385 contains full discussion of eligibility presumptions and other enumerated eligible uses

SIMPLIFYING PRESUMPTIONS
QUALIFIED CENSUS TRACT (QCT)

Qualified Census Tract (QCT)

- **Definition:** 50 percent of households with incomes below 60 percent of the Area Median Gross Income (AMGI) or have a poverty rate of 25 percent or more.
- **HUD Website: Presumed eligible uses in QCT areas:**
 - Funding community health workers to help community members access health services and services to address the social determinants of health;
 - 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

SIMPLIFYING PRESUMPTIONS
LOW- TO MODERATE-INCOME

- **"Low Income":**
 - (i) income at or below 185 percent of the Federal Poverty Guidelines (FPG) for the size of its household based on the most recently published poverty guidelines by the Department of Health and Human Services (HHS) or
 - (ii) income at or below 40 percent of the Area Median Income (AMI) for its county and size of household based on the most recently published data by the Department of Housing and Urban Development (HUD)
 - **"Moderate Income"**
 - (i) income at or below 300 percent of the FPG for the size of its household based on the most recently published poverty guidelines by HHS or
 - (ii) income at or below 65 percent of the AMI for its county and size of household based on the most recently published data by HUD
 - May measure based on individual household or geographic population as a whole
 - For individual households, consider actual household size; for population, presume a household of 3
- Treasury Dept Website: [Treasury Dept Tool for Determining LMI Household](#)

SIMPLIFYING PRESUMPTIONS:
IMPACTED HOUSEHOLDS

- Treasury will recognize a household as impacted if it otherwise qualifies for any of the following programs:
- Children's Health Insurance Program (CHIP)
 - Childcare Subsidies through the Child Care and Development Fund (CCDF) Program
 - Medicaid
 - National Housing Trust Fund (HTF), for affordable housing programs only
 - Home Investment Partnerships Program (HOME), for affordable housing programs only
- Disproportionately impacted households. Treasury will recognize a household as disproportionately impacted if it otherwise qualifies for any of the following programs:
- Temporary Assistance for Needy Families (TANF)
 - Supplemental Nutrition Assistance Program (SNAP)
 - Free and Reduced-Price Lunch (NSLP) and/or School Breakfast (SBP) programs
 - Medicare Part D Low-income Subsidies
 - Supplemental Security Income (SSI)
 - Head Start and/or Early Head Start
 - Special Supplemental Nutrition Program for Women, Infants, and Children (WIC)
 - Section 8 Vouchers
 - Low-income Home Energy Assistance Program (LIHEAP)
 - Pell Grants
 - For services to address educational disparities, Treasury will recognize Title I eligible schools

**SIMPLIFYING PRESUMPTIONS:
PRESUMED ELIGIBLE USES**

- Vaccination programs
- medical care
- testing
- contact tracing
- support for isolation or quarantine
- supports for vulnerable populations to access medical or public health services
- public health surveillance (e.g., monitoring case trends, genomic sequencing for variants);
- enforcement of public health orders
- public communication efforts;
- enhancement to health care capacity, including through alternative care facilities
- purchases of personal protective equipment
- support for prevention, mitigation, or other services in congregate living facilities (e.g., nursing homes, incarceration settings, homeless shelters, group living facilities) and other key settings like schools
- ventilation improvements in congregate settings, health care settings, or other key locations
- enhancement of public health data systems and other public health responses
- capital investments in public facilities to meet pandemic operational needs, such as physical plant improvements to public hospitals and health clinics or adaptations to public buildings to implement COVID-19 mitigation tactics.

**SIMPLIFYING PRESUMPTIONS:
PRESUMED ELIGIBLE USES – CAPITAL IMPROVEMENTS**

- COVID-19 testing sites and laboratories, and acquisition of related equipment
- Improvements or construction of COVID-19 vaccination sites;
- Improvements or construction of medical facilities generally dedicated to COVID-19 treatment and mitigation (e.g., emergency rooms, intensive care units, telemedicine capabilities for COVID-19 related treatment);
- Expenses of establishing temporary medical facilities and other measures to increase COVID-19 treatment capacity, including related construction costs;
- Acquisition of equipment for COVID-19 prevention and treatment, including ventilators, ambulances, and other medical or emergency services equipment;
- Improvements to or construction of emergency operations centers and acquisition of emergency response equipment (e.g., emergency response radio systems);
- Installation and improvements of ventilation systems; Costs of establishing public health data systems, including technology infrastructure;
- Adaptations to congregate living facilities, including skilled nursing facilities, other long-term care facilities, incarceration settings, homeless shelters, residential foster care facilities, residential behavioral health treatment, and other group living facilities, as well as public facilities and schools (excluding construction of new facilities for the purpose of mitigating spread of COVID-19 in the facility); and
- Mitigation measures in small businesses, nonprofits, and impacted industries (e.g., developing outdoor spaces).


**SIMPLIFYING PRESUMPTIONS:
PRESUMED ELIGIBLE USES**

- **Recipient may presume class or category within own territory presumed harmed by pandemic**
 - Example: data may show that local restaurants experienced loss of revenue in a certain region, and therefore the restaurants in that region may be presumed eligible
- **Paid Sick Leave**
 - Creating, expanding, or financially supporting paid sick, medical, or family leave programs for employees for COVID-19 related absences
 - Creating a sick leave program for COVID-19 related absences may extend to part-time employees or other employees not generally entitled to paid sick leave
- **Aid to Impacted Industries**
 - Aid to tourism, travel, and hospitality, and other impacted industries
 - Test for other impacted industries: experienced employment loss of at least 8% based either on employers own data or US Bureau of Statistics data for the industry

CATEGORY 1 - USES OUTSIDES THE PRESUMPTIONS

- (1) Recipient must demonstrate the need through documentation
- (2) Recipient must demonstrate the expenditure appropriately and proportionally responds to the need created by the pandemic
- Capital expenditures are not presumed to be reasonably proportional to identified harm
 - Recipients may still pursue capital expenditures, but must have supporting documentation if the project is not one of the enumerated uses listed in the Final Rule

**CATEGORY 2:
PREMIUM PAY**



CATEGORY 2: PREMIUM PAY

- **Purpose:** The purpose of the premium pay is to allow recipients to remunerate essential workers for the elevated health risks faced during the public health emergency. This section is intended to respond to workers performing essential work if it addresses heightened risk to workers who must physically be present at a jobsite and the costs associated with illness were hardest to bear financially.
- **Definition:** *work involving regular in-person interactions or regular physical handling of items that were also handled by others.*
- **Telework:** Telework is expressly excluded
- **Emphasis:** The Interim Final Rule emphasizes the need for recipients to prioritize premium pay for lower income workers

PREMIUM PAY ANALYSIS

1. **Identify an "eligible" worker.** Eligible workers include workers "needed to maintain continuity of operations of essential critical infrastructure sectors."
 1. Public sector employees are presumed to be eligible
2. **Verify that the eligible worker performs "essential work,"** meaning work that:
 1. Is not performed while teleworking from a residence; and
 2. Involves either:
 1. regular, in-person interactions with patients, the public, or coworkers of the individual that is performing the work; or
 2. regular physical handling of items that were handled by, or are to be handled by, patients, the public, or coworkers of the individual that is performing the work.
3. **Confirm that the premium pay "responds to" workers performing essential work during the COVID-19 public health emergency.**

RESPONDING TO WORKERS PERFORMING ESSENTIAL WORK

Three ways to meet this requirement:

1. Eligible worker receiving premium pay is earning (with the premium included) at or below 150 percent of their residing state or county's average annual wage for all occupations on an annual basis; or
2. Eligible worker receiving premium pay is not exempt from the Fair Labor Standards Act overtime provisions; or
3. If neither above are met, must submit written justification to Treasury detailing how the premium pay is responsive. May include a description of the essential worker's duties, health, or financial risks faced due to COVID-19, and why the recipient determined that the premium pay was responsive. Treasury anticipates that recipients will easily be able to satisfy the justification requirement for front-line workers, like nurses and hospital staff.

PREMIUM PAY

- Must be paid in addition to wages already received by employee
- May be provided retroactively for work already performed by essential workers following the onset of the COVID-19 pandemic.
- Any third-party employers of essential workers are eligible.
- May be awarded to hourly, part-time, or salaried or non-hourly workers.
- May be awarded in installments or lump sums (e.g., monthly, quarterly, etc.)
- May not use funds to reimburse itself for premium pay or hazard pay already received by the worker,
- May not be paid to volunteers (*this does not include volunteer firefighters*).

PREMIUM PAY: ELECTED OFFICIALS NOT ELIGIBLE

- Premium pay not available to elected officials
- Compensation for elected officials set by statute and cannot be exceeded
- In-term increases not available
 - Ohio Constitution, Article II, Section 20
- However, as discussed below, under the Revenue Loss category, ARPA funds may be used to cover the cost of an increased salary resulting from the ARPA funds pushing the Township into the next bracket set forth in R.C. 505.24 and 507.09

**CATEGORY 3:
REVENUE LOSS**

DETERMINING REVENUE LOSS

Recipients must choose one of the two options and cannot switch between these approaches after an election is made.

1. Recipients may elect a "standard allowance" of \$10 million to spend on government services through the period of performance.
2. Recipients may calculate their actual revenue loss according to the formula articulated in the final rule.

CATEGORY 3: CALCULATING REVENUE LOSS

- **General Revenue:** includes revenues collected and generated from underlying economy, and also captures a range of tax revenues. Recipients should sum across all revenue streams to minimize the burden and present a more accurate representation of the overall impact. Need not rely on financial reporting. Includes intergovernmental transfers between State and Local governments.
- **Excludes:** revenue generated by utilities and insurance trusts; all intergovernmental transfers from the Federal government.
- **Calculation of Loss:** Comparison of actual revenue to a counterfactual trend representing what could have been expected to occur in the absence of the pandemic. May use a growth adjustment of either 4.1 percent per year or the recipient's average annual revenue growth over the three fiscal years prior. Should be calculated on an entity-wide basis.
- **Time Period:** Recipients are permitted to calculate the extent of reduction in revenue as of four points in time: December 31, 2020; December 31, 2021; December 31, 2022; and December 31, 2023. This approach recognizes that some recipients may experience lagged effects of the pandemic on revenues.

CATEGORY 3: CALCULATING REVENUE LOSS

Utility Revenue Excluded from Calculating Revenue Loss

- **Utility Revenue Defined:** “[g]ross receipts from sale of utility commodities or services to the public or other governments by publicly-owned and controlled utilities.” This includes revenue from operations of publicly-owned and controlled:
 - (1) water supply systems (2) electric power systems
 - (3) gas supply systems (4) public mass transit systems
- **All Commercial Activity Included:** Except for these four (4) types of utilities, revenues from all commercial-type activities of a recipient's government (e.g., airports, educational institutions, lotteries, public hospitals, public housing, parking facilities, port facilities, sewer or solid waste systems, and toll roads and bridges) are covered by the Interim Final Rule's definition of "general revenue."

CATEGORY 3: CALCULATING REVENUE LOSS

Formula for Calculating Reduction in Revenue:

- A reduction in a recipient's General Revenue equals:
 - $\text{Max} \{ (\text{Base Year Revenue} * (1 + \text{Growth Adjustment})^n) - \text{Actual General Revenue}_t ; 0 \}$
 - Where:
 - *Base Year Revenue* is General Revenue collected in the most recent full fiscal year prior to the COVID-19 public health emergency.
 - *Growth Adjustment* is equal to the greater of 4.1 percent (or 0.041) and the recipient's average annual revenue growth over the three full fiscal years prior to the COVID-19 public health emergency.
 - *n* equals the number of months elapsed from the end of the base year to the calculation date.
 - *Actual General Revenue* is a recipient's actual general revenue collected during 12-month period ending on each calculation date.
 - Subscript *t* denotes the calculation date.

CATEGORY 3: CALCULATING REVENUE LOSS

- **Reduction in Revenue Presumed:** Recipients do not need to prove that the reduction was a direct result of the COVID-19 public health emergency. If use of the formula reveals a diminution in actual revenue, the presumption is the reduction was the result of the COVID-19 public health emergency.
- **May Not Rely on Pre-Pandemic Projections:** Treasury is disallowing use of projections to demonstrate reduced revenue.
- **Estimating Revenue Shortfall:** Recipients may use their average annual revenue growth rate in the three full fiscal years prior to the public health emergency for use in the formula.
- **Data Used:** Recipients should use their own data sources to calculate general revenue. Where audited data is not available, recipients are not required to obtain audited data. Treasury expects all information submitted to be complete and accurate.

CATEGORY 3: STANDARD ALLOWANCE

- New option under Final Rule
- Treasury presumes that up to \$10 million in revenue has been lost due to the public health emergency and recipients are permitted to use that amount (not to exceed the award amount) to fund "government services." The standard allowance provides an estimate of revenue loss that is based on an extensive analysis of average revenue loss across states and localities, and offers a simple, convenient way to determine revenue loss, particularly for SLFRF's smallest recipients.
- All recipients may elect to use this standard allowance instead of calculating lost revenue using the formula below, including those with total allocations of \$10 million or less. Electing the standard allowance does not increase or decrease a recipient's total allocation.

CATEGORY 3: STANDARD ALLOWANCE

Funds may be used for government services up to the revenue loss amount, whether that be the standard allowance amount or the amount calculated using the above approach. Government services generally include any service traditionally provided by a government, unless Treasury has stated otherwise. Government services is the most flexible eligible ARPA use category, and funds are subject to streamlined reporting and compliance requirements.

Common examples include:

❖ Construction of schools and hospitals	❖ Health services
❖ Road building and maintenance, and other infrastructure	❖ Environmental remediation
❖ General government administration, staff, and administrative facilities	❖ Provision of police, fire, and other public safety services (including purchase of fire trucks and police vehicles)

REVENUE LOSS - PROHIBITED USES

Prohibited Use of Funds:

- Paying interest or principal on outstanding debt
- Replenishing rainy day or other reserve funds
- Paying settlements or judgments would not be considered provision of a government service
- Offset a reduction in net tax revenue
- Deposit into pension funds
- Subawards to other entities (FAQ 13.13)

STANDARD ALLOWANCE - REVENUE LOSS

- Standard Allowance provides significantly more flexibility for smaller recipients
- Still requires documentation funds spent on provision of government services
 - May not simply transfer funds to a department for general department use
 - May not comingle funds
- If Township has previously enacted a resolution relating to calculating revenue loss, the prior resolution will need to be rescinded

STANDARD ALLOWANCE - REVENUE LOSS

- Every appropriation of ARPA funds requires documentation
- Best practice:
 - Adopt the standard allowance
 - Thereafter, every time ARPA funds are used on a project, there must be a corresponding resolution that references the original resolution that adopted the standard allowance
 - Example: If a Township adopted the Standard Allowance by way of Resolution 22-1, every time the Township spends ARPA funds, it must pass a resolution stating that ARPA funds are being used for the performance of traditional government functions and refers back to Resolution 22-1

REVENUE LOSS – COMMON EXPENDITURES

- Purchase of vehicles for Township Departments
 - Road department vehicles
 - Fire Department trucks or ambulances
 - Police vehicles
- Purchase of equipment for Township Departments
- Administrative facility or equipment upgrades
 - Restroom facilities
 - HVAC systems
 - Computers and software
 - Roof repairs
- Township park improvement or expansion
 - Installation of new courts or athletic fields
 - Installation or improvement of trails
 - Installation or improvement of lighting
 - Installation or improvement of restroom facilities
 - Playgrounds
 - Parking lots
- Road repair improvements
- Stormwater management projects
- Acquisition of property for building or park expansion

CATEGORY 4: WATER, SEWER, AND BROADBAND INFRASTRUCTURE

WATER & SEWER INFRASTRUCTURE

Water and Sewer

- **Eligible Uses:** Generally aligns with types or categories of projects that would be eligible for financial assistance through the:
 - Clean Water State Revolving Fund (CWSRF) or
 - Drinking Water State Revolving Fund (DWSRF).
- Interim Final Rule also refers to the [EPA's Drinking Water](#) guidance for categories of eligible projects
- **Stormwater management infrastructure regardless of whether water quality benefit**

WATER & SEWER INFRASTRUCTURE

Stormwater Management Infrastructure

- **Eligibility:** Per the EPA's Overview of Clean Water State Revolving Fund Eligibilities,
 - Can transfer funds to a water district to be used for Township benefit
 - Extension of sewer
 - Final Rule has eliminated the water quality benefit requirement
- **Road Repairs and Upgrades:** Road repairs and upgrades are eligible so long as they are **components of and directly related to** an eligible water or sewer project or infrastructure project.
 - Example: a recipient could use Funds to repair or re-pave a road following eligible sewer repair work beneath it.

WATER & SEWER INFRASTRUCTURE

CWSRF Eligible Projects:

- Stormwater Management
 - Nonpoint Source of Pollution (NPS) controls – identify sources of pollution in runoff water and identifying plants to prevent the polluted runoff water from reaching water sources
 - Gray Infrastructure: controls for flooding, sediment controls
 - Green Infrastructure: green roofs, green streets, green walls, infiltration basins, permeable pavement, replacement of gray infrastructure with green infrastructure
- Landfills & Contaminated Sites: clean up and restoration

BROADBAND INFRASTRUCTURE

Broadband Infrastructure

- **Eligible projects:** Projects must reliably deliver minimum speeds of 100 Mbps download and 100 Mbps upload. In cases where it is impracticable due to geography, topography, or financial cost to meet those standards, projects must reliably deliver at least 100 Mbps download speed, at least 20 Mbps upload speed, and be scalable to a minimum of 100 Mbps download speed and 100 Mbps upload speed.
- **Goal:** Prioritizing deployment of infrastructure that will bring service to households or businesses that are not currently serviced by a wireline connection that reliably delivers at least 25 Mbps download speed and 3 Mbps of upload speed. Businesses refers to all non-residential use, including schools or libraries.
 - Unserved or underserved households or businesses need not be the *only* households or businesses in the service area receiving funds so long as the project's target encompasses that goal.
- **Cybersecurity:** Modernization of cybersecurity, including hardware, software, and protection of critical infrastructure, as part of provision of government services up to the amount of revenue lost due to the public health emergency.
- **Digital Literacy Training:** digital literacy training and other programs that promote access to the Internet

BROADBAND INFRASTRUCTURE

Broadband Infrastructure:

- **Middle-mile Projects:** Funds may be used for "middle-mile" projects but Treasury Dept has put emphasis on projects that achieve "last-mile connections"
 - "Middle Mile:" the network connection between the last mile and greater Internet. For instance, in a rural area, the middle mile would likely connect the town's network to a larger metropolitan area where it interconnects with major carriers
 - "Last-Mile Connections:" the final leg of a connection between a service provider and the customer
- Prioritize support for broadband networks owned, operated by, or affiliated with local governments, non-profits, and co-operatives—providers with less pressure to turn profits and with a commitment to serving entire communities.

OTHER ELIGIBLE USES: PUBLIC SAFETY
WORKING TO REDUCE AND RESPOND TO INCREASED VIOLENCE DURING THE COVID-19 PUBLIC HEALTH EMERGENCY

- All communities: rehiring police officers and other public servants to restore law enforcement and courts to their pre-pandemic levels
- Communities Facing Increased Gun Violence or Difficulty Accessing Services to Mitigate Violence
 - Hiring law enforcement officials – even above pre-pandemic levels – or paying overtime where the funds are directly focused on advancing community policing strategies in those communities experiencing an increase in gun violence associated with the pandemic
 - Community Violence Intervention (CVI) programs, including capacity building efforts at CVI programs like funding and training additional intervention workers
 - Additional enforcement efforts to reduce gun violence exacerbated by the pandemic, including prosecuting gun traffickers, dealers, and other parties contributing to the supply of crime guns, as well as collaborative federal, state, and local efforts to identify and address gun trafficking channels
 - Investing in technology and equipment to allow law enforcement to more efficiently and effectively respond to the rise in gun violence resulting from the pandemic
- Such expenditure of funds must be related and reasonably proportional to extent and type of harm experienced

RESTRICTIONS ON USE

- **OFFSET A REDUCTION IN NET TAX REVENUE**
 - May not use funds to directly or indirectly offset a reduction in net tax revenue resulting from a change in law, regulation, or administrative interpretation beginning on March 3, 2021, through the last day of the fiscal year in which the funds provided have been spent.
- **DEPOSITS INTO PENSION FUNDS**
 - Treasury defines a "deposit" as an extraordinary contribution to a pension fund for the purpose of reducing an accrued, unfunded liability.
- **No debt service or replenishing financial reserves**
- **No satisfaction of settlements and judgments**
 - Satisfaction of any obligation arising under or pursuant to a settlement agreement, judgment, consent decree, or judicially confirmed debt restructuring in a judicial, administrative, or regulatory proceeding is itself not an eligible use.

FEDERAL PROCUREMENT STANDARDS

Uniform Guidance, 2 C.F.R. Part 200 applicable to all ARPA funds

- Subpart A – Definitions
- Subpart B – General Provisions
 - Conflict of Interest Policy – 200.112
- Subpart C – Pre-Federal Award Requirements and Contents of Federal Awards
- Subpart D – Post Federal Award Requirements (only partially applicable to Revenue Loss funds)
- Subpart E – Cost Principles (only partially applicable to Revenue Loss funds)
- Subpart F – Audit Requirements

See Treasury Dept FAQ 13.15

SUBPART D – PROVISIONS APPLICABLE TO REVENUE LOSS FUNDS

- 200.300 Statutory and national policy requirements.
- 200.302 Financial management.
- 200.303 Internal controls.
- 200.328 Financial reporting.
- 200.329 Monitoring and reporting program performance.
- 200.334 Retention requirement for records
- 200.335 Requests for transfer of records.
- 200.336 Methods for collection, transmission, and storage of information.
- 200.337 Access to records.
- 200.338 Restrictions on public access to records.
- 200.339 Remedies for noncompliance.
- 200.340 Termination.
- 200.341 Notification of termination requirement.
- 200.342 Opportunities to object, hearings, and appeals.
- 200.343 Effects of suspension and termination.
- 200.344 Closeout
- 200.345 Post-closeout
- 200.346 Collection of amounts due

SUBPART D – PROVISIONS NOT APPLICABLE TO REVENUE LOSS FUNDS

Provisions of Subpart D that NOT applicable to funds used as Revenue Loss:

- 200.301 Performance Measurement
- 200.304 to 200.327
 - This excludes all disposition requirements (200.311, 200.313, 200.314, and 200.315)
 - Purchases made under revenue loss therefore do NOT need to follow federal procurement standards (aka competitive bidding requirements)
 - Also excludes the federal procurement standards (200.317-200.327)
 - Purchases made under the revenue loss category are exempt from disposition requirements which call for a reporting on the sale of any assets that were purchased with ARPA funds
- 200.331-333 Subrecipient performance standards
 - Not applicable because subgrants not available under revenue loss

SUBPART E – PROVISIONS APPLICABLE TO ALL REVENUE LOSS FUNDS

- 200.400(a) – (e) – Policies of assuming responsibilities for funds
- 200.403 (a), (c), (d), (g) and (h) – Factors affecting allowability of costs
- 200.404 (e) – reasonable costs

FEDERAL PROCUREMENT: RECOMMENDED POLICY PURPOSE

Application of Policy. This policy applies to contracts for purchases, services, and construction or repair work funded with ARPA funds. The requirements of this Policy also apply to any subrecipient of the funds. All ARPA-funded projects, loans, grants, and sub-grants, whether funded in part or wholly, are subject to the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for federal awards (Uniform Guidance or "UG") codified at 2 C.F.R. Part 200 unless otherwise directed in writing by the federal agency or state pass-through agency that awarded the funds.

Compliance with Federal Law. All procurement activities involving the expenditure of federal funds must be conducted in compliance with the Procurement Standards codified in 2 C.F.R. § 200.317 through § 200.326 unless otherwise directed in writing by the federal agency or state pass-through agency that awarded the funds. All applicable local, state, and federal procurement requirements will be followed when expending federal funds. Should the state of Ohio have more stringent requirements, the most restrictive requirement shall apply so long as it is consistent with state and federal law.

Contract Award. All contracts shall be awarded only to the lowest responsive responsible bidder possessing the ability to perform successfully under the terms and conditions of the contract in compliance with state and federal law.

No Evasion. No contract may be divided to bring the cost under bid thresholds or to evade any requirements under this Policy or state and federal law.

Contract Requirements. All contracts paid for in whole or in part with ARPA funds shall be in writing. The written contract must include or incorporate by reference the provisions required under 2 C.F.R. Part 200, Appendix II. (See Article VII).

Approval and Modification. The administrative procedures contained in this Policy are administrative and may be changed as necessary at the staff level to comply with state and federal law.

Settlement of Issues Arising Out of Purchase. The Entity is responsible for the settlement of all contractual and administrative issues arising out of procurements and shall use good administrative practices and sound business judgment.

FEDERAL PROCUREMENT: RECOMMENDED POLICY GENERAL STANDARDS AND PROCEDURES

Necessity – Avoid Duplicative Items. Purchases must be necessary to perform the scope of work and must avoid acquisition of unnecessary or duplicative items.

Use of Federal Excess and Surplus Property. Best practice is to consider use of federal excess and surplus property prior to buying new items when feasible and less expensive.

Use of Intergovernmental Agreements and Cooperative Purchasing. Strategic sourcing should be considered with other departments and/or agencies who have similar needs to consolidate procurements and services to obtain better pricing.

Clear Specifications. All solicitations must incorporate a clear and accurate description of the technical requirements for the materials, products, or services to be procured, and shall include all other requirements which bidders must fulfill and all other factors to be used in evaluating bids or proposals. Technical requirements must not contain features that restrict competition.

Notice of Federal Funding. All bid solicitations must acknowledge the use of federal funding for the contract. In addition, all prospective bidders or offerors must acknowledge that funding is contingent upon compliance with all terms and conditions of the funding award.

Compliance by Contractors. All solicitations shall inform prospective contractors that they must comply with all applicable federal laws, regulations, executive orders, and terms and conditions of the funding award.

Fixed Price. Solicitations must state that bidders shall submit bids on a fixed price basis and that the contract shall be awarded on this basis unless otherwise provided for in this Policy. Cost plus percentage of cost contracts are prohibited. Time and materials contracts are prohibited in most circumstances. Time and materials contracts will not be used unless no other form of contract is suitable and the contract includes a "Not to Exceed" amount. A time and materials contract shall not be awarded without express written permission of the federal agency or state pass-through agency that awarded the funds.

Use of Brand Names. When possible, performance or functional specifications are preferred to allow for more competition leaving the determination of how to reach the required result to the contractor. Brand names may be used only when it is impractical or uneconomical to write a clear and accurate description of the requirements. When a brand name is listed, it is used as reference only and "or equal" must be included in the description.

Lease versus Purchase. Under certain circumstances, it may be necessary to perform an analysis of lease versus purchase alternatives to determine the most economical approach.

FEDERAL PROCUREMENT: RECOMMENDED POLICY
GENERAL STANDARDS AND PROCEDURES

Minority Business, Women's Business. Steps to be taken to comply with federal requirements to ensure that minority and women owned businesses and enterprises (M/WBE) are used when possible, include, but are not limited to:
• Placing qualified M/WBE on solicitation lists;
• Assuring M/WBE are solicited whenever they are potential sources;
• Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small businesses and M/WBE;
• Establishing delivery schedules, when feasible, to encourage M/WBE participation
• Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.
Documentation. Documentation detailing history of procurement must be maintained, including the procurement method used, contract type, basis for contractor selection, price sources solicited, public notices, cost analysis, bid documents, addenda, amendments, contractor's responsiveness, notice of award, copies of notices to unsuccessful bidders or offerors, record of protests or disputes, bond documents, notice to proceed, purchase order, and contract.
Cost and Price Analysis. A cost or price analysis is required all procurements exceeding \$50,000. A cost analysis requires evaluating the separate cost elements, including profit, and a price analysis requires evaluation of total price. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals and to be negotiated as a separate element in the cost analysis. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.
Contract Requirements. All contracts must be written and incorporating the provisions referenced in Section II.E of this Policy.
Contractor Oversight. Oversight of the contractor is required to ensure that contractor is performing in accordance with the contract terms, conditions, and specifications.
Open Competition. Solicitations shall be prepared in a way to be fair and provide open competition. The procurement process shall not restrict competition by imposing unreasonable requirements on bidders, including but not limited to unnecessary supplier experience, excessive or unnecessary bonding, specifying brand names without allowing for "or equal" products, or other unnecessary requirements that have the effect of restricting competition.
Geographic Preference. No contract shall be awarded on the basis of a geographic preference unless permitted by the US.
Property. 2 C.F.R. 200.320-315 will be followed for the acquisition and disposition of real property and equipment purchased with MPPA funds.
Domestic Preference. Will, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States.

FEDERAL PROCUREMENT:
MICRO-PURCHASE

Micro-purchase: Less than \$10,000 shall be procured using the Uniform Guidance "micro-purchase" procedure (2 C.F.R. § 200.320(a)(1)) or comparable Ohio law, whichever is more restrictive:
1. The contract may be awarded without soliciting pricing or bids if the price of the goods or services is considered to be fair and reasonable.
2. To the extent practicable, purchases must be distributed among qualified suppliers.
Increasing the Micro-Purchase Threshold:
• Entity may increase micro-purchase threshold up to \$50,000 to be consistent with Ohio law pursuant 2 C.F.R. 320(a)(1)(iv)
• Must be done by way of resolution
• Must be renewed annually

FEDERAL PROCUREMENT:
SMALL PURCHASE

Small Purchases: \$10,000 (unless self-certified to higher micro purchase threshold) but less than \$250,000; shall be procured using the UG "small purchase" procedure (2 C.F.R. § 200.320(a)(2)) as follows:
1. Obtain price or rate quotes from an "adequate number" of qualified sources;
• This can be done informally
• Entity may contact various providers and obtain informal quotes
• Key is documentation
2. Cost or price analysis is not required;
3. Award the contract on a fixed-price basis (a not-to-exceed basis is permissible for service contracts where obtaining a fixed price is not feasible);
4. Award the contract to the lowest responsive qualified source.

**FEDERAL PROCUREMENT:
LARGE PURCHASE**

Large Contracts – Sealed Bid: exceeds \$250,000 shall be procured using one of two procedures:
 (1) "sealed bid" procedure, or
 (2) competitive proposal method.

Sealed bid (2 C.F.R. § 200.320(b)(1)) will be used for publicly solicited for a firm fixed-price contract; preferred method for procuring construction.

Competitive Proposal (2 C.F.R. § 200.320(b)(2)) will be used for a fixed-price or cost-reimbursement type contract is awarded

**FEDERAL PROCUREMENT:
LARGE PURCHASE – SEALED BID**

Conditions for Sealed Bid:

1. Cost or price analysis conducted prior to bidding;
2. A complete, adequate, and realistic specification or purchase description is available;
3. Two or more responsible bidders are willing and able to compete effectively for the business; and
4. The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

Procedures:

1. Complete specifications must be made available to all bidders.
2. Publicly advertise the bid solicitation for a period of time sufficient to give bidders notice of opportunity to submit bids.
 - a. The advertisement must state the date, time, and location of the public bid opening, and indicate where specifications may be obtained.
3. All bids will be opened at the time and place prescribed in the invitation for bids, and must be opened publicly;
4. Awarded in writing to lowest responsive and responsible bidder.
 - a. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest.
 - b. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of.
 - a. Any or all bids may be rejected if there is a sound documented reason.

**FEDERAL PROCUREMENT:
LARGE PURCHASE – COMPETITIVE PROPOSAL**

Large Contracts – Competitive Proposal: exceeds \$250,000 "competitive proposal" procedure (2 C.F.R. § 200.320(b)(2)) will be used for a fixed-price or cost-reimbursement type contract is awarded. Generally used when conditions for sealed bid are not appropriate.

1. Request for proposal (RFP) will be publicized;
2. RFP will identify all evaluation factors and their relative importance;
3. RFP will be solicited from an adequate number of qualified offerors;
4. Any response to RFP will be considered to the maximum extent practical;
5. Will evaluate RFPs based upon written method for conducting technical evaluations of RFP's received; and
6. Contract will be awarded to most responsible bidder whose RFP is most advantageous, which price and other factors identified in RFP.

**FEDERAL PROCUREMENT –A/E SERVICES
MICRO-PURCHASE**

Specific Procedures for Architectural and Engineering Services

Micro-threshold: Contracts less \$50,000 may be selected through the "direct selection" process available in R.C. 153.71:

1. Select a most qualified single design professional or firm from those who have submitted statement of qualifications in the preceding year; and
2. Negotiate contract to include fair and reasonable fee agreement.

**FEDERAL PROCUREMENT –A/E SERVICES
SMALL-PURCHASE**

Small Contracts: Contracts more than \$50,000 and less than \$250,000 shall follow Ohio's Qualifications-Based Selection (QBS) policy, as set forth in R.C. 153.65-153.73:

1. Publicize Requests for Qualifications (RFQ) which is to include:
 - a. Description of project sufficiently detailed to allow for adequate RFQ;
 - b. Project budget and anticipated funding;
 - c. Anticipated project schedule;
 - d. Specific services to be provided by the architect or engineer;
 - e. Deadline; and
 - f. Cannot require RFQ to include fee or estimate.
2. Evaluate the statements of qualifications submitted by interested engineers and architects and – using a specific set of scoring criteria – rank them in order of their qualifications for the project at hand; and
3. Negotiate a contract, including scope of services and fee, with the most highly ranked professional:
 - a. If unable to negotiate a contract with the most highly ranked, notify said firm in writing of termination and begin negotiations with the next most highly ranked.

**FEDERAL PROCUREMENT –A/E SERVICES
LARGE-PURCHASE**

Large contracts: Contracts more than \$250,000 shall be procured using the Uniform Guidance "competitive proposal" procedure (2 C.F.R. § 200.320(b)(2)(v)) as follows:

1. Publicly advertise a Request for Qualifications (RFQ) to solicit qualifications from qualified firms;
 - a. Price (other than unit cost) shall not be solicited in the RFQ.
 - b. Geographical location may be selection criteria (2 C.F.R. 200.339(c)).
2. Identify the evaluation criteria and relative importance of each criteria (the criteria weight) in the RFQ;
3. Proposals must be solicited from an "adequate number of qualified sources";
4. Must have a written method for conducting technical evaluations of proposals and selecting the best qualified firm;
5. Consider all responses to the publicized RFQ to the maximum extent practical;
6. Evaluate qualifications of respondents and select the most qualified firm;
7. Once a firm is selected, negotiate fair and reasonable compensation. If negotiations are not successful, repeat negotiations with the second-best qualified firm;
8. Award the contract to best qualified firm with whom fair and reasonable compensation has been successfully negotiated.

Limitations:

1. Competitive proposal method for selecting A/E services can only be used for architectural and engineering professional services
2. Cannot be used for other services even if those services can be performed by architectural and engineering firms (such as general consulting services)

**FEDERAL PROCUREMENT
NONCOMPETITIVE PROPOSALS**

Procurement by noncompetitive proposals for purchases over the micro-purchase threshold are permitted only when one or more of the following apply:

- **Sole Source.** Item is available from only one source. The justification for and lack of available competition for the item shall be documented.
- **Emergency.** Sole source procurement permitted when there is a public emergency, which exists when the time required to act in accordance with regular procurement procedures would endanger life or property.
- **Inadequate Competition.** When competition is determined to be inadequate after attempts to solicit bids from a number of sources as required under this Policy does not result in a qualified winning bidder.
- **Federal Contract.** A contract may be awarded without competitive bidding when the purchase is made from a federal contract available on the U.S. General Services Administration schedules of contracts.
- **Awarding Agency Approval.** A contract may be awarded without competitive bidding with the express written authorization of the federal agency or state pass-through agency that awarded the federal funds so long as awarding the contract without competition is consistent with state law.

**FEDERAL PROCUREMENT
CONFLICTS OF INTEREST**

Agency Conflicts of Interest. In addition to the prohibition against self-benefiting from a public contract under R.C. 2921.42 and 2921.43, no officer, employee, or agent of the recipient may participate directly or indirectly in the selection, award, or administration of a contract supported by a federal award if he or she has a real or apparent conflict of interest. A real or apparent conflict exists when any of the following parties has a financial or other interest in or receives a tangible personal benefit from a firm considered for award of a contract:

1. the employee, officer, or agent involved in the selection, award, or administration of a contract;
2. any member of his or her immediate family;
3. his or her partner; or
4. an organization which employs or is about to employ any of these parties

Any officer, employee, or agent with an actual, apparent, or potential conflict of interest as defined in this policy shall report the conflict to his or her immediate supervisor. Any such conflict shall be disclosed in writing to the federal award agency or pass-through entity in accordance with applicable Federal awarding agency policy.

**FEDERAL PROCUREMENT
CONTRACT REQUIREMENTS**

- **Remedy provisions** – applies to all contracts exceeding \$250,000.
- **Termination Clause** – applies to all contracts exceeding \$10,000.
- **Equal Employment Opportunity** – applies to all construction contracts.
- **Contract Work Hours and Safety Standards Act** - applies to contracts in excess of \$100,000 that involve the employment of mechanics or laborers.
- **Rights to Inventions Made Under a Contract or Agreement** - applies to contracts with small businesses or nonprofits for the performance of experimental, developmental or research work.
- **Clean Air Act and the Federal Water Pollution Control Act** - applies to contracts exceeding \$150,000.
- **Debarment** – applies to all contracts.
- **Byrd Anti-Lobbying Amendment** - applies to contracts exceeding \$100,000.
- **Recovered Materials** – applies to purchases of items which cost \$10,000 or more during the course of a fiscal year.
- **Domestic Preference** – applies to all contracts.
- **Prohibition on Contracting for Covered Telecommunications Equipment or Services** – applies to all contracts

BEST PRACTICES

- Resolution for every expenditure, no matter how small the amount
- Standard Allowance:
 - Adopt standard allowance by way of resolution
 - For every purchase thereafter, refer back to original resolution adopting standard allowance
- Other categories:
 - Document, document, document!
 - Recommend entity obtain a legal opinion from their local law director or solicitor outlining the basis for the eligibility of the purchase
 - If no legal opinion, recommend the agency outline the documentation used and basis for their purchase
- Grants
 - Recommend sub-grant agreement outlining the amount, the basis, as well as all the requirements set forth in the Uniform Guidance
- Contracts
 - Attach a standard addendum for all contracts containing the requirements set forth in Uniform Guidance
