



# **ARPA Updates**

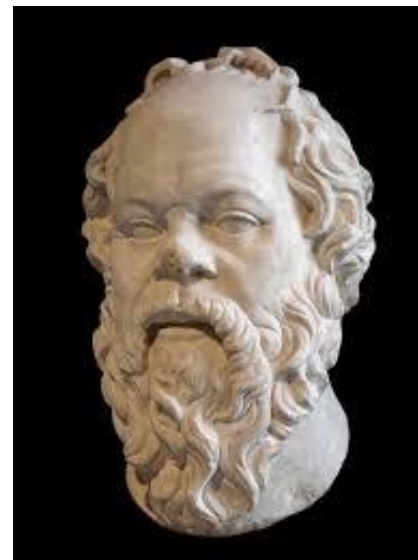
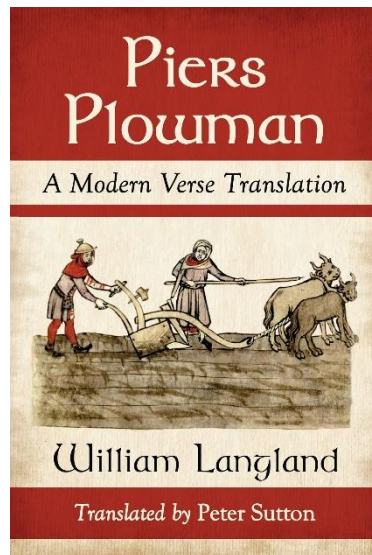
**May 20, 2021**  
***Legislation at Lunch***

*Presented by*

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# Topics for Today

- ARPA Basics
- Guidance and Interim Rules
  - Mostly focused on how funds can be spent
- Lots of things we still don't know!



# Citation Key

603 = Amendments to Social Security

Law made by ARPA

Guidance = Treasury Guidance issued as  
of 5/10

CFR – Interim Rules as of 5/10

NEU



# How Do I Access Funding?

## Metro City:

- As of May 10<sup>th</sup>, can go to Treasury website to request allocation
- Will be asked to provide following info:
  - Jurisdiction name/address, taxpayer ID, DUNS number and SAM.gov account
  - Authorized representative name, title and email
  - Contact person name, title, and email
  - Fund transfer information – financial institution, address, phone number, routing and account number
  - Completed certified document (signed by authorized rep)



# How Do I Access Funding?

NEU:

- Will be asked to provide following info:
  - DUNS number
  - Authorized representative name, title and email
  - Fund transfer information – financial institution, address, phone number, routing and account number
  - NEU's DO NOT NEED SAM ACCOUNT
- Waiting for further guidance and information



# How Do I Access Funding?

EVERYONE needs a DUNS number – if you do not have one, are not sure, or have any questions

- Visit <https://fedgov.dnb.com/webform/>
- Call 1-866-705-5711



# How Are Funds Distributed?

Metropolitan – funds received directly from  
Treasury (Sec 603[7][A])

NEU– money delivered to NYS, then NYS  
delivers to towns (id.) more on that...



# How is Funding Distributed?

Funding delivered in two tranches

- First tranche will be distributed “to the extent practicable”; 50% of allocated amount (sec 603[g][3])
  - Metro – 60 days from bill signed 5/10 money available – 5/10/21 (sec 603[7][A])
  - NEU – 60 days from bill signed the money will go to NYS or later...6/9/21 maybe 7/9/21 or later if state asks for extension (sec 603[7][A])





# How is Funding Distributed?

## NEUs cont...

- No less than 30 day after NYS gets money, it has to distribute to NEU (sec 603 [b][2][C][i])
- **HOWEVER**, state can apply for a 30 day extension which the Treasury will give (sec 603[b][2][C][ii][I])
- State can apply for **ANOTHER** 30 day extension which Treasury *might* grant if state submits a reasonable plan for when money will be distributed (sec 603[b][2][C][ii][I-II])



# How is Funding Distributed?

Nonentitlement communities cont...

- If State fails to make payments on time (including extension) State will be fined the undistributed amount (Treasury will take it out of state ARPA funds) (sec 603[b][2][D])
- State has no authority to withhold any or all of ARPA funds intended for NEU for debt purposes or place any conditions on requirements on distribution (CFR § 35.12 [c][d])



# How is Funding Distributed?

## Second Tranche!

- Same deal with metro getting from Treasury, NEU go through state
- Will be distributed “no earlier than 12 months after the date on which the First Tranche Amount is paid to the city, State, or county” (sec 603[b][7][B])



# Funding Allocations

- Metropolitan cities – Treasury Secretary used modified CDBG funding formula. Specific methodology info available on Treasury website (Sec 603[b][1][B])
- NEUs– for **ESTIMATE** basically add up the population of all NEUs in NYS, if your town’s population makes up 3% of that, you’re **estimated** to get 3% of the **estimated** \$825 million allocated for NY NEUs (Sec 603[b][2][C][i])



# Funding Allocations

- **75% Funding Cap for NEUs**
  - the amount of money an NEU receives cannot exceed 75% of your most recent total operating budget, including general funds and all other funds, as of January 27, 2020 (Sec 603 [2][C][iii]; Guidance p. 109; 31 CFR § 35.12)
  - Any amount in excess of 75% will be need to be returned to the Department of Treasury (Sec 603 [2][C][iv])
  - NYS will be responsible for complying with NEU 75% cap (Guidance p. 109; 31 CFR § 35.12)



# Funding Allocations

## What about villages?

- Still waiting for more info from Treasury
- **POTENTIAL** for how villages will be dealt with:
  - If you have a village(s) in your town, look at the amount estimated amount of funding allocated to your town. If 30% of the town's entire population resides in the village, anticipate 30% of the town's estimated funding should go to the village

**HEDGE HEDGE HEDGE – this is not set in stone**



# Reporting Requirements

- Have to provide “periodic reports providing a detailed accounting of the uses of such funds [and]...any other information as the Secretary may require for the administration of this section.” (sec 603[d])
- Treasury will issue further guidance on reporting requirements (Guidance p. 112)



# Reporting Requirements

- Report requirements for metros (Guidance p. Sec VIII, p. 110-112)
  - One interim report (due 8/31/21)
    - Includes expenditures by category (revenue loss, infrastructure etc.) from the date of the award through 7/31/21
  - Quarterly Project and Expenditure Reports which includes:
    - Financial data
    - Information on contracts and awards over \$50,000



# Reporting Requirements

- Report requirements for metros (Guidance p. Sec VIII, p. 110-112)
  - Quarterly Project and Expenditure Reports cont:
    - Financial data
    - Information on contracts and awards over \$50,000
    - Types of projects funded
    - “other information”
    - First quarterly report will cover two quarters (date of award through 9/30/31) and must be submitted by 10/31/21
    - Other quarterly reports will cover one quarter and are due 30 days after quarter ends



# Reporting Requirements

- Report requirements for NEU'S (Guidance p. Sec VIII, p. 110-112)
  - Must submit ANNUAL Project and Expenditure Reports through December 31, 2026
  - Initial report will cover period from date of award through September 30, 2021
  - Must be submitted to Treasury by 10/31/21
  - Submitted on 10/31 each year through 2026



# General Considerations

- Funds can generally be used to cover allowable costs that were incurred March 3, 2021 or later
- Deadline to obligate funds is December 31, 2024
- Deadline to SPEND funds is December 31, 2026



# How can funding be used?

1. To respond to the COVID-19 public health emergency or its negative economic impacts
2. To provide premium pay to essential workers
3. To cover loss of revenue to provide government services
4. To make necessary investments in water, sewer, and broadband infrastructure



# How can funding be used?

- To respond to the COVID-19 public health emergency or its negative economic impacts including assistance to households, small businesses, and non-profits or to assist impacted industries such as tourism, travel and hospitality (Sec 603[c][1][A]; CFR § 35.6[b])



# Respond to Public Health Emergency or its Negative Economic Impacts

Regs have list of eligible uses under this category (list is NOT exclusive) (CFR 35.6[b][1]-[12]) (Guidance Sec II[A] p. 12-44)

## Responding to Public Health Emergency:

- COVID19 response and prevention (Guidance Sec II[A] p. 12-44)
  - Enforcement related expenses associated with COVID19 public health orders
  - Capital improvements to public facilities to meet pandemic operational needs
  - Expenses for PPE
  - Expenses to disinfect public areas in response to COVID19
  - Expenses for public communications related to vaccine programs
  - Expenses for improvement of ventilation system in public facilities

# Respond to Public Health Emergency or its Negative Economic Impacts

## Responding to Public Health Emergency:

- Payroll for public employees to the extent their time is spent mitigating or responding to COVID19
  - Need records like payroll and attestations from supervisors, or regular correspondence to demonstrate work on COVID19 response (Guidance Sec II[1] p. 20-21)
- Hiring Staff
  - Payroll, benefits, and costs associated with increasing number of employees to the level of staffing on 1/27/20



# Respond to Public Health Emergency OR its Negative Economic Impacts

## Negative Economic Impacts Caused by Public Health Emergency (Guidance p. 23-44)

- To determine whether a program or service not listed in regulations would be eligible for fund use
  1. Assess whether service or program experienced economic harm from COVID19
  2. Would the planned use of funds respond to this economic harm?
- Response must be proportional and related





# Respond to Public Health Emergency OR its Negative Economic Impacts

## Negative Economic Impacts Caused by Public Health Emergency (Guidance p. 23-44)

- Assistance to small businesses and nonprofits
  - DON'T FORGET ABOUT NYS CONSTITUTION ARTICLE VIII SECTION 1 – PROHIBITION ON GIFTS AND LOANS
  - Not a violation of Art 8 Sec 1 if money to a private entity serves a proper public use, the public benefits overall, and the private benefit is incidental
  - OSC likes to see a local law and contract
  - Potential uses (?) volunteer firefighter, animal shelter, food bank
- Assistance to impacted industries or households



# Respond to Public Health Emergency OR its Negative Economic Impacts



These hedgehogs want you to remember Article 8 Section 1

# Respond to Public Health Emergency OR its Negative Economic Impacts

## Negative Economic Impacts Caused by Public Health Emergency (Guidance p. 23-44)

- Address disproportionate impact on hardest hit communities – use funds to support additional eligible services
- What are hardest hit communities?
  - Within a qualified census tract (area designated by HUD in which 50% or more of households have an income less than 60% of the median gross income for the area or poverty level is 25% or greater)
  - To other areas or populations disproportionately impacted by pandemic (must support determination)

# Respond to Public Health Emergency OR its Negative Economic Impacts

## Negative Economic Impacts Caused by Public Health Emergency (Guidance p. 23-44)

- Eligible services in hardest hit communities
  - remediation of lead paint or other lead hazards
  - Increase affordable housing development
  - Services to address homelessness
  - Evidence-based community violence intervention programs

# Premium Pay to Essential Workers

2. To provide premium pay to workers performing essential work during the COVID–19 public health emergency (sec 603[c][1][B]; CFR § 35.6[c])

‘eligible workers’ = workers needed to maintain continuity of operations of essential critical infrastructure sectors and additional sectors that the local CEO may designate as critical to protect the health and well-being of residents

# Premium Pay to Essential Workers

- ‘Essential Work’ = work involving regular, in person interactions with the public or coworkers or regular physical handling of items that were also handled by others during the COVID19 Public Health Emergency (Guidance p. 47; CFR § 35.3)
- Essential work does NOT include telework performed from a residence (id.)

# Premium Pay to Essential Workers

What does 'premium pay' mean?

- Up to \$13 per hour paid to an eligible worker, in addition to wages otherwise received
  - Funds cannot be used to pay base wage
- Applies to all work performed by eligible worker during COVID19 public health emergency (i.e. going back to 1/27/20 (CFR § 35.2; Guidance p.50)
- Treasury encourages focusing on retroactive pay / performance (Guidance p. 50)

# Premium Pay to Essential Workers

- Limitations on Amount of Premium Pay
  - Amount may not exceed \$25,000 with respect to any single eligible worker (Sec 602[g])
  - If premium pay would increase wage above 150% of NYS's average annual wage for all occupations or their county's average annual wage, must provide a written justification to Treasury (CFR 35.6[c])
    - State and county wage defined by Bureau of Labor Statistics' Occupational Employment and Wage Statistics
  - What about limitations on raising salaries for elected officials ... 😬



# Recovering Lost Revenue to Provide Gov't Services

3. For the provision of government services to the extent of the reduction in revenue ...due to the COVID-19 public health emergency relative to revenues collected in the most recent full fiscal year; (sec 603[c][1][C]; Guidance p. 51-61)
  - Is there lost revenue
  - If there is, what can I use funds on?

# Recovering Lost Revenue to Provide Gov't Services

## Revenue Defined:

- “general revenue” - includes tax revenue and other types that are available to fund gov't services (fees, fines etc.)
- Does NOT include proceeds from debt issuance, sale of investments, revenue from utilities, or gov't transfers between federal gov and local gov
- Can sum up multiple different revenue streams (e.g. lost justice court revenue and lost revenue from a closed ice rink would be added together)
- (Guidance p. 54-55)

# Recovering Lost Revenue to Provide Gov't Services

## Calculating Revenue Loss:

- Measured 4 times: 12/31/21; 12/31/22; 12/31/23;  
12/31/24
- Any decrease in revenue is considered COVID19 related, don't have to show decrease related to COVID (Guidance p. 57)

# Recovering Lost Revenue to Provide Gov't Services

## Calculating Revenue Lost: (CFR 35.6 [d])

- 1. Determine your base year revenue – that's all revenues collected in the last full fiscal year prior to 1/27/20 (i.e. what were your revenues in 2019)
- 2. Estimate your “counterfactual revenue” – i.e. imagine COVID19 didn't happen, what would your revenues be?
  - Can either use 4.1% to represent average annual growth or look at your last 3 years, if average annual growth higher than 4.1% use that
  - There is formula involving a little n... Parenthesis... one cat ear...
  - $[(1 + \text{growth adjustment})^{(n/12)}]$
  - n=months elapsed since base year to the calculation date

# Recovering Lost Revenue to Provide Gov't Services

Calculating Revenue Lost: (CFR 35.6 [d])

- 3. Find out your actual revenue for the prior year
- 4. Counterfactual revenue minus actual revenue = lost revenue

# Recovering Lost Revenue to Provide Gov't Services

What can you use lost revenue funding on?

- General government services
  - Broadly defined
  - Includes maintenance of infrastructure **INCLUDING HIGHWAYS**
  - Provision of police, fire, and other public safety
  - Building of infrastructure that would be funded using cash on hand
  - Modernization of cybersecurity
- NOT included
  - Expenses associated with debt not included
  - Satisfaction of judgments
  - Replenishing reserves

# Water/Sewer/Broadband Infrastructure

4. To make necessary investments in water, sewer, or broadband infrastructure (sec 603[c][1][D])

# **Water/Sewer/Broadband Infrastructure**

Water and Sewer eligible uses – basically if it's a project eligible under the EPA's Clean Water State Revolving Fund (CWSRF) or Drinking Water State Revolving Fund (DWSRF), it's an eligible use of ARPA money

- Includes projects like construct, improve, repair wastewater treatment plants, improve resiliency of infrastructure, replace lead service line, install or replace treatment and distribution systems
- Cybersecurity for systems



# Water/Sewer/Broadband Infrastructure

## Broadband Infrastructure

- Investments in broadband infrastructure must be made in unserved or underserved areas (no wireline that reliably delivers minimum speeds of 25Mbps download and 3Mbps upload)
- Prioritize achieving last mile connections
- Prioritize laying fiber optic cable
- Projects should deliver services that reliably deliver 100Mbps download and upload
- Prioritize support for broadband networks that are non-profits or co-operatives, less profit focused

# Other Considerations

You CANNOT use it to cover pension funds (sec 603[c][2])

You CAN transfer money to

- another unit of local government
- a private nonprofit organization (meeting certain requirements - like they have to have an all volunteer board)
- a public benefit corporation involved in the transportation of passengers or cargo,
- **a special-purpose unit of State or local government** (sec 603[c][3])
- **The State** (sec 603[c][4])

# Questions?

