



117TH CONGRESS  
1ST SESSION

## S. 3011

II

To amend title VI of the Social Security Act to allow States and local governments to use coronavirus relief funds provided under the American Rescue Plan Act for infrastructure projects, improve the Local Assistance and Tribal Consistency Fund, provide Tribal governments with more time to use Coronavirus Relief Fund payments, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 19, 2021

Mr. CORNYN (for himself, Mr. PADILLA, Mr. WYDEN, Ms. MURKOWSKI, Mrs. MITCHELL, Mr. KELLY, Mr. KENNEDY, and Mrs. SILAHEEN) introduced the following bill; which was read twice, considered, read the third time, and passed

## A BILL

To amend title VI of the Social Security Act to allow States and local governments to use coronavirus relief funds provided under the American Rescue Plan Act for infrastructure projects, improve the Local Assistance and Tribal Consistency Fund, provide Tribal governments with more time to use Coronavirus Relief Fund payments, and for other purposes.

1 Be it enacted by the Senate and House of Representa-  
2 tives of the United States of America in Congress assembled,

# NACo LEGISLATIVE ANALYSIS:

## STATE, LOCAL, TRIBAL AND TERRITORIAL FISCAL RECOVERY, INFRASTRUCTURE AND DISASTER RELIEF FLEXIBILITY ACT (S. 3011)



OCTOBER 26, 2021

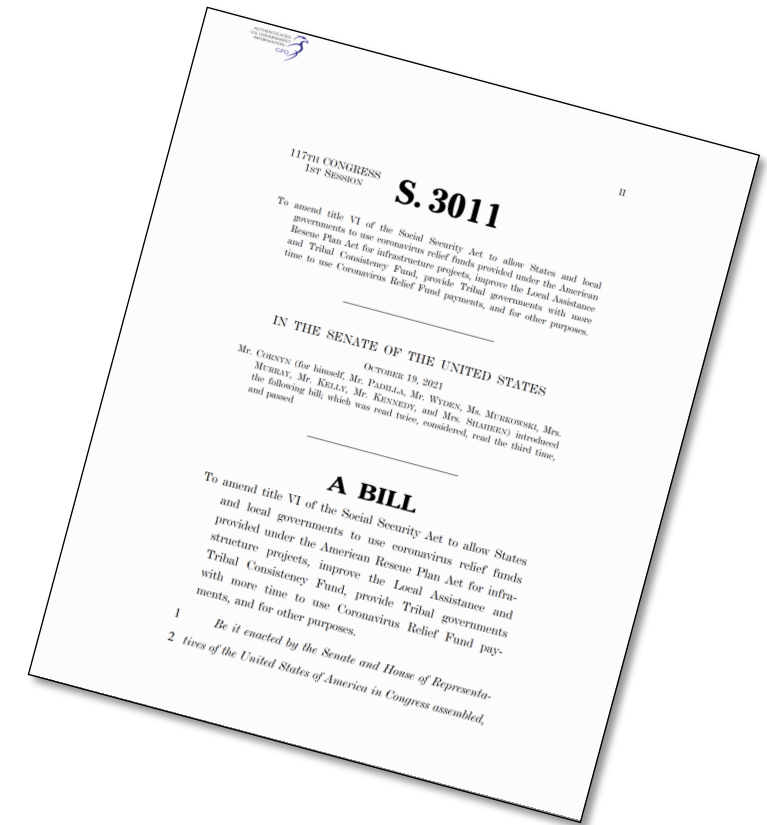
## S. 3011: State, Local, Tribal and Territorial Fiscal Recovery, Infrastructure, and Disaster Relief Flexibility Act

### BACKGROUND:

- Sens. Padilla (D-Calif.) and Cornyn (R-Texas), along with six primary co-sponsors, spearheaded the passage of S. 3011, ***with unanimous bipartisan support***, in the U.S. Senate on Oct. 19, 2021

### ACTION NEEDED NOW:

- Urge your U.S. House members to pass S. 3011 now



## **S. 3011:** State, Local, Tribal and Territorial Fiscal Recovery, Infrastructure, and Disaster Relief Flexibility Act

The Senate-passed legislation would impact America's counties in three major ways:

- 1. Allows increased flexibility for the use of Treasury ARP county dollars, including for eligibility under:**
  - Federal surface transportation infrastructure projects (including non-federal match requirements)
  - Provision of government services (consistent with Treasury's rules and guidance for ARP county aid)
  - HUD Community Development Block Grant (CDBG) program
  - Emergency relief from natural disasters, including negative economic impacts of natural disasters
- 2. Modifies eligibility for public lands counties under ARP's Local Assistance and Tribal Consistency Fund**
  - Clarifies an "eligible revenue share county" is the same as Payment-in-Lieu-of-Taxes (PILT) counties
  - Redirects \$15M (or 1%) from the original \$1.5B for public lands "revenue share" counties to U.S. territories
- 3. Directs unclaimed Treasury ARP dollars for federal deficit reduction**

## S. 3011: State, Local, Tribal and Territorial Fiscal Recovery, Infrastructure, and Disaster Relief Flexibility Act

For America's counties, enactment of S. 3011 would mean over...

**\$27 billion**

in **new infrastructure flexibility** for county  
ARPA Recovery Funds

**\$17 billion**

in flexibility to carry out U.S. Treasury-defined  
“government services”

## S. 3011: State, Local, Tribal and Territorial Fiscal Recovery, Infrastructure, and Disaster Relief Flexibility Act

Specific provisions on Treasury ARP flexibility for counties:

### 1. Cap on infrastructure flex allowance:

- **Greater of \$10M or 30%** of a county's total Treasury ARP allocation
- County would need to comply with ***existing rules*** under the specific federal program
- Previous Treasury ARP set asides for water, wastewater and broadband projects ***remain unrestricted***
- Funds must be obligated by Dec. 31, 2024 and spent by **Sept. 30, 2026** (vs Dec. 31 under IFR)

### 2. Allowance for government services:

- **Up to \$10M of a county's total Treasury ARP allocation** may be used for "government services" as defined under Treasury's guidelines
- **Excludes use** for rainy day/reserve funds, legal settlements, pension obligations and debt payments
- **Still awaiting clarification** if this is an additional \$10M *above* a county's pre-existing "lost revenue" calculation

## S. 3011: State, Local, Tribal and Territorial Fiscal Recovery, Infrastructure, and Disaster Relief Flexibility Act

The bill would allow counties to use the greater of \$10 million or 30 percent of their Treasury ARP Recovery Fund allocation for a wide variety of transportation infrastructure projects, including:

### ELIGIBLE TRANSPORTATION & INFRASTRUCTURE PROJECTS

- **National Significant Freight and Highway Projects**
- National Highway Performance Program
- Bridge Investment Program
- Surface Transportation Block Grant Program
- Metropolitan Transportation Planning
- Highway Safety Improvement Program
- Congestion Mitigation and Air Quality Improvement Program
- Territorial and Puerto Rico Highway Program
- National Highway Freight Program
- Rural Surface Transportation Grant Program
- Carbon Reduction Program
- PROTECT Program
- Alternative Fueling Infrastructure
- Tribal Transportation Program
- Federal Lands Transportation Program
- Federal Lands Access Program
- RAISE Grant Program
- Appalachian Development Highway System (ADHS)
- **TIFIA Program (including repayment of TIFIA loans)**
- Urbanized Area Formula Grants
- **Fixed Guideway Capital Investment Grants**
- Formula Grants for Rural Areas
- State of Good Repair Grants
- Grants for Buses and Bus Facilities
- National Culvert Removal, Replacement, and Restoration
- Community Development Block Grant
- Bridge Replacement, Rehabilitation, Preservation, Protection, and Construction Program

**YELLOW  
INDICATES  
FLEXIBILITY  
TO USE  
ARP  
COUNTY  
DOLLARS  
AS  
NON-FEDERAL,  
LOCAL MATCH  
FOR THIS  
SPECIFIC  
FEDERAL  
PROGRAM**

\* Also includes **new National Infrastructure Project Assistance** as proposed in pending federal infrastructure package

## S. 3011: State, Local, Tribal and Territorial Fiscal Recovery, Infrastructure, and Disaster Relief Flexibility Act

The legislation would also allow counties to invest Treasury ARP dollars for projects that are eligible under **HUD's Community Development Block Grant (CDBG) program**:

| General Categories                                | Eligible Activities  |
|---|--|
| Planning, Administrative and Technical Assistance | <ul style="list-style-type: none"> <li>comprehensive planning and related activities;</li> <li>administrative costs associated with carrying out the requirements of the program, as well as other HUD programs;</li> <li>provision of technical assistance to public or nonprofit entities;</li> <li>payment of the non-federal share of other federal grant programs;</li> <li>development and implementation of energy conservation and use strategies.</li> </ul>  |
| Public works and public facilities                | <ul style="list-style-type: none"> <li>acquisition and rehabilitation of real property that may be used for public works, open space acquisition, historic preservation, or other public purposes;</li> <li>acquisition, construction, reconstruction, or installation of public works, public facilities, neighborhood facilities, senior centers, centers for the handicapped, recreation facilities, and street lights;</li> <li>removal of architectural barriers to the elderly and handicapped.</li> </ul> |

| General Categories  | Eligible Activities  |
|---|--|
| Economic Development and Neighborhood Revitalization      | <ul style="list-style-type: none"> <li>payment to for-profit entities in support of economic development;</li> <li>assistance to neighborhood-based organizations, including community development corporations, in support of economic development, housing assistance; or neighborhood revitalization activities;</li> <li>assistance, including loans and grants, to non-profit entities in acquiring real property, or acquiring or rehabilitating public facilities, site improvements, utilities, or commercial and industrial facilities and improvements;</li> <li>micro-lending;</li> <li>brownfield redevelopment;</li> <li>creation of revolving loan funds.</li> </ul> |
| Public Services   | <ul style="list-style-type: none"> <li>public services (limited to no more than 15% of an entitlement community or state's annual allocation).</li> </ul>  |
| Housing related activities                                | <ul style="list-style-type: none"> <li>rehabilitation of housing owned and occupied by low and moderate income persons;</li> <li>repair of housing units acquired through tax foreclosures;</li> <li>assistance to facilitate homeownership among low- and moderate-income persons;</li> <li>housing services, including counseling, in connection with the HOME program;</li> <li>lead-based paint abatement.</li> </ul>  |
| Acquisition, demolition, and disposition of real property | <ul style="list-style-type: none"> <li>Acquisition of real property;</li> <li>disposal of real property;</li> <li>code enforcement in deteriorated or blighted areas;</li> <li>clearance, demolition, and rehabilitation and renovation of privately and publicly owned buildings, including closed public schools.</li> </ul>   |

## S. 3011: State, Local, Tribal and Territorial Fiscal Recovery, Infrastructure, and Disaster Relief Flexibility Act

The legislation would make important clarifications to the \$2 billion Local Assistance and Tribal Consistency Fund, **including the original \$1.5 billion in direct funds for public lands counties:**

1. Reduces the full amount of direct funding to counties eligible to receive an allocation under the Fund by 1 percent or \$15M over two years
2. Defines an “eligible revenue share county” qualifying for direct county aid under the Fund as the same counties as those qualifying for annual PILT payments
3. Lays out special criteria for payment distribution to towns, rather than counties, in those states where counties have limited governmental functions
4. Disburses funds for Alaska boroughs to the state, which will then be distributed to local governments based on the U.S. Treasury



# UPDATE FROM U.S. TREASURY

**On October 10, U.S. Treasury released a statement on the progress of the Recovery Fund Final Rulemaking:**

- U.S. Treasury reviewing **over 1,000 public comments** in response to the Interim Final Rule (IFR)
- Currently **expect a final rule to be delayed** until later this fall or early 2022
- Until Treasury a Final Rule becomes effective, ***the Interim Final Rule (IFR) remains binding and effective***
- **Funds used in a manner consistent during the Interim Final Rule period** will ***not*** be subject to recoupment
- **Counties may use the IFR to interpret** whether their use of funds meet the criteria of what is eligible
- **Counties may also consider FAQs issued by Treasury** to help assess whether a project or service would be an eligible use of Coronavirus State and Local Fiscal Recovery Funds

# NEW REPORTING UPDATE FROM U.S. TREASURY

**On October 1, U.S. Treasury released a *revised* reporting schedule for Recovery Fund recipients:**

- Due to feedback gathered during the Interim Report and Recovery Plan Performance Report process, **Treasury is revising the deadline for the submission of the first Project and Expenditure Report**
- **Project and Expenditure Reports will now be due on January 31, 2022** and will cover the period between award date and December 31, 2021. *This is a change from the previously communicated October 31, 2021 due date for the Project and Expenditure Report*
- **Further instructions will be provided at a later date**, including updates to existing guidance as well as a user guide to assist recipients to gather and submit the information through U.S. Treasury's Portal

ILLUSTRATION ONLY OF ***SAMPLE*** ALLOWABLE USES OF RECOVERY FUNDS,  
PER U.S. TREASURY GUIDANCE



**Support Public Health Response**

Fund COVID-19 mitigation efforts, medical expenses, behavioral healthcare, and certain public health and safety staff



**Replace Public Sector Revenue Loss**

Use funds to provide government services to the extent of the reduction in revenue experienced due to the pandemic



**Water and Sewer Infrastructure**

Make necessary investments to improve access to clean drinking water and invest in wastewater and stormwater infrastructure



**Address Negative Economic Impacts**

Respond to economic harms to workers, families, small businesses, impacted industries, and the public sector



**Premium Pay for Essential Workers**

Offer additional support to those who have and will bear the greatest health risks because of their service in critical infrastructure sectors



**Broadband Infrastructure**

Make necessary investments to provide unserved or underserved locations with new or expanded broadband access

# KEY HIGHLIGHTS OF THE U.S. TREASURY GUIDANCE

1. ARP Fiscal Recovery Fund was established to help turn the tide on the pandemic, address its economic fallout and lay the foundation for a strong and equitable recovery
2. Funds may cover costs from March 3, 2021 - December 31, 2024; *Performance must be completed by Dec. 31, 2026*
3. There is no deadline for counties to certify for the Recovery Funds
4. Broad flexibility to help those disproportionately impacted by the COVID-19 pandemic
5. Recovery Funds can be distributed into interest-bearing accounts
6. Understand the important differences between CARES Act Coronavirus Relief Fund (CRF) and ARP Fiscal Recovery Fund, especially for county employee payroll support
7. Use of recouped “lost revenue” is more flexible than other Recovery Fund eligibility
8. Recovery Funds may not be used as non-federal match, unless specifically authorized
9. Re-hiring local government staff to pre-pandemic levels
10. Counties may use Recovery Funds for routine pension costs of employees
11. Counties may use Recovery Funds to invest in certain critical infrastructure projects

# REPORTING REQUIREMENTS

Treasury released new guidance on June 17 for county reporting requirements:

- **Interim Report:** Due by August 31, 2021, the Interim Report requires **all counties** to report programmatic data for spending between March 3 and July 31, 2021
- **Project and Expenditure Report:** These reports require project and expenditure data for awards and sub-awards, demographic information for each project, and other programmatic data
  - **Initial Project and Expenditure Report is due JANUARY 31, 2022**
    - For counties with **awards above \$5 million**, project and expenditure reports are **due quarterly**
    - For counties with **awards under \$5 million**, project and expenditure reports are **due annually**
- **Recovery Plan Performance Report:**
  - Only required for counties with **populations over 250,000 residents**
  - **Required to be published annually** on the county website and provided to Treasury
  - **Contain detailed project performance data**, including efforts to improve equity and engage communities
  - Recovery Plan Performance Report is **due August 31, 2021**, followed by annual submission

# UPDATED FAQ DOCUMENT

Treasury released an updated FAQ document Tuesday, June 8

1. Recovery Funds can be used to cover costs of consultants to assist with managing and administering the funds
2. Recovery Funds can be used to establish public jobs programs (I.e. subsidized employment, combined education and on-the-job training, job training to accelerate rehiring or address negative economic impacts, child care assistance, transportation assistance)
3. Clarification on revenue loss language (audited financial data, county data versus Census Bureau data)
4. Flexibility for costs incurred by March 3, 2021, for public health response/negative economic impacts, premium pay, revenue loss and water, sewer and broadband projects
5. New CFDA number – 21.027 – Counties should update systems and reporting to reflect final CFDA number for Recovery Fund
6. Counties do not need approval from Treasury to determine whether an investment in water, sewer or broadband project is eligible under the Recovery Fund IFR

# UPDATED FAQ DOCUMENT

Treasury released updated FAQ documents on Thursday, June 17 for broadband investments:

## **JUNE 17 FAQ UPDATE – BROADBAND INVESTMENTS**

1. Provide service to unserved or underserved households or businesses means 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 MPS download speed and 3 MBS of upload speed
  - These unserved or underserved do NOT need to be the only ones in the service area funded by the project
2. Project may have a holistic approach that provides services to wider area in order, for example, to make the ongoing service of unserved or underserved households or businesses more economical to sustain into the future
3. Clarifies definition of “reliably” meet or exceed broadband speed threshold
4. Allows “middle mile” projects that help achieve last-mile connections by leveraging the middle-mile network



# UPDATED FAQ DOCUMENT

[Treasury released updated FAQ documents on June 24:](#)

1. **Assistance to households or businesses:** Negative impact at the “population or group level”
2. **Investments in outdoor spaces:**
  - Qualified Census Tracts (QCT) and other populations, households and areas disproportionately impacted
  - Services for stronger neighborhoods & communities, esp. health disparities & social determinants of health
  - Enhance outdoor spaces (e.g. restaurant patios) and the built environment (e.g. façade improvements)
  - Counties may also use funds for parks and recreation
3. **Expedite court case backlog cleanup** including COVID safety measures, hiring court staff/attorneys & other costs
4. **Assistance for small business startups**
5. **Definition of revenue *excludes* all federal funds *including state transfers of federal funds to counties***
6. **Respond to increased violence and crime** during to the pandemic
7. **Pre-project development of water, sewer and broadband projects**, including broadband mapping



# UPDATED FAQ DOCUMENT

Treasury released updated FAQ documents on July 14:

1. Allows for Recovery Funds to be used to **support nonprofit and private organizations**
2. **Provides clarification on revenue loss provision** and exclusion of utilities revenue
3. **Allows recipients pool funds for regional projects** (I.e. county can transfer to a neighboring county and/or work with state and local partners to invest Recovery Funds)
4. Provides clarification on use of Recovery Funds to **make loans or extensions of credit for small businesses and infrastructure projects**
5. Clarification on whether recipients can fund projects with both Recovery Funds and other sources of federal funding (dependent on project eligibility)
6. Allows recipients to use Recovery Funds to **build or upgrade broadband connections to schools and libraries**
7. **Clarification around Davis-Bacon Act** – Requirements do not apply to projects funded solely with Recovery Funds except those undertaken by the District of Columbia

**Allows  
recipients  
to pool  
funds for  
regional  
projects**



**STRONGER COUNTIES. STRONGER AMERICA.**

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