

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: March 16, 2022

SUBJECT: American Rescue Plan – Adoption of Policies and Procedures

PRESENTER: Amy Brantley, Assistant County Manager
Russ Burrell, County Attorney
Samantha Reynolds, Finance Director

ATTACHMENTS: Yes

1. Tab 3 – Eligible Projects
2. Tab 7 – Records Retention

SUMMARY OF REQUEST:

The Final Rule for the American Rescue Plan was issued on January 6, 2022. That final rule contains a number of regulations that local governments must follow when expending Federal Funds, including a variety of policies and procedures. Staff is in the process of developing those policies and procedures, and will bring those to the Board for adoption once finalized.

Attached are required policies that have been drafted, and reviewed by Finance and the County Attorney. The Board is requested to review the policies drafted by Staff, and adopt them as presented.

BOARD ACTION REQUESTED:

The Board is requested to review the draft policies and procedures, and adopt them as presented.

Suggested Motion:

I move the Board adopt the Federal Award Policies on Records Retention as presented.



Federal Awards Eligible Projects



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ELIGIBLE PROJECTS

The US Department of the Treasury issued its Final Rule regarding use of American Rescue Plan Act (ARPA) funds on January 6, 2022. This rule identifies permissible uses of ARPA funding and other procedures which must be followed by entities receiving ARPA funds. Local government entities who received ARPA funding must allocate monies no later than December 31, 2024 and disburse all funding no later than December 31, 2026. Failure of an entity to expend all funds by December 31, 2026 will result in forfeiture of ARPA funds.

ARPA funds may be used for projects within the following categories of expenditures:

1. Support public health expenditures, by funding COVID-19 mitigation efforts, medical expenses, behavioral healthcare, and certain public health and safety staff.
2. Address negative economic impacts caused by the public health emergency, including economic harms to workers, households, small businesses, impacted industries, and the public sector.
3. Replace lost public sector revenue, using this funding to provide government services to the extent of the reduction in revenue experienced due to the pandemic.
4. Provide premium pay for essential workers, offering additional support to those who have borne and will bear the greatest health risks because of their service in critical infrastructure sectors.
5. Invest in water, sewer, and broadband infrastructure, making necessary investments to improve access to clean drinking water, support vital wastewater and stormwater infrastructure, and to expand access to broadband internet.

Any proposal received by Henderson County must clearly articulate which applicable provision applies to the suggest project. The US Treasury's Final Rule may be found at <https://home.treasury.gov/system/files/136/SLFRF-Final-Rule.pdf>. An overview of the final rule may be found at <https://home.treasury.gov/system/files/136/SLFRF-Final-Rule-Overview.pdf>. Employees or any applicant seeking ARPA funding should review each document prior to submitting a proposal.

In addition to being an ARPA eligible project, the County must also determine if the project has State Law Authority. Counties do not have the "constitutional capacity to empower themselves in the absence of state legislative action. The mere lack of any prohibition on any specific local government is not sufficient to allow that action; it must be grounded upon some sort of legislative authorization."¹

¹ County and Municipal Government in North Carolina, Second Edition 2014, pg. 4



The Expenditure Categories (EC) listed below must be used to categorize each project for reporting purposes. The term “Expenditure Category” refers to the detailed level (e.g., 1.1 COVID-10 Vaccination). When referred to as a category (e.g., EC 1) it includes all Expenditure Categories within that level.

1: Public Health	
1.1	COVID-19 Vaccination ^
1.2	COVID-19 Testing ^
1.3	COVID-19 Contact Tracing
1.4	Prevention in Congregate Settings (Nursing Homes, Prisons/Jails, Dense Work Sites, Schools, etc.) *
1.5	Personal Protective Equipment
1.6	Medical Expenses (including Alternative Care Facilities)
1.7	Capital Investments or Physical Plant Changes to Public Facilities that respond to the COVID-19 public health emergency
1.8	Other COVID-19 Public Health Expenses (including Communications, Enforcement, Isolation/Quarantine)
1.9	Payroll Costs for Public Health, Safety, and Other Public Sector Staff Responding to COVID-19
1.10	Mental Health Services*
1.11	Substance Use Services*
1.12	Other Public Health Services
2: Negative Economic Impacts	
2.1	Household Assistance: Food Programs* ^
2.2	Household Assistance: Rent, Mortgage, and Utility Aid* ^
2.3	Household Assistance: Cash Transfers* ^
2.4	Household Assistance: Internet Access Programs* ^
2.5	Household Assistance: Eviction Prevention* ^
2.6	Unemployment Benefits or Cash Assistance to Unemployed Workers*
2.7	Job Training Assistance (e.g., Sectoral job-training, Subsidized Employment, Employment Supports or Incentives)* ^
2.8	Contributions to UI Trust Funds
2.9	Small Business Economic Assistance (General)* ^
2.10	Aid to Nonprofit Organizations*
2.11	Aid to Tourism, Travel, or Hospitality
2.12	Aid to Other Impacted Industries
2.13	Other Economic Support*^
2.14	Rehiring Public Sector Staff
3: Services to Disproportionately Impacted Communities	
3.1	Education Assistance: Early Learning* ^
3.2	Education Assistance: Aid to High-Poverty Districts ^
3.3	Education Assistance: Academic Services* ^
3.4	Education Assistance: Social, Emotional, and Mental Health Services* ^
3.5	Education Assistance: Other* ^
3.6	Healthy Childhood Environments: Child Care* ^
3.7	Healthy Childhood Environments: Home Visiting* ^
3.8	Healthy Childhood Environments: Services to Foster Youth or Families Involved in Child Welfare System* ^
3.9	Healthy Childhood Environments: Other* ^



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3.10	Housing Support: Affordable Housing* ^
3.11	Housing Support: Services for Unhoused Persons* ^
3.12	Housing Support: Other Housing Assistance* ^
3.13	Social Determinants of Health: Other* ^
3.14	Social Determinants of Health: Community Health Workers or Benefits Navigators* ^
3.15	Social Determinants of Health: Lead Remediation ^
3.16	Social Determinants of Health: Community Violence Interventions* ^
4: Premium Pay	
4.1	Public Sector Employee
4.2	Private Sector: Grants to Other Employers
5: Infrastructure	
5.1	Clean Water: Centralized Wastewater Treatment
5.2	Clean Water: Centralized Wastewater Collection and Conveyance
5.3	Clean Water: Decentralized Wastewater
5.4	Clean Water: Combined Sewer Overflows
5.5	Clean Water: Other Sewer Infrastructure
5.6	Clean Water: Stormwater
5.7	Clean Water: Energy Conservation
5.8	Clean Water: Water Conservation
5.9	Clean Water: Nonpoint Source
5.10	Drinking water: Treatment
5.11	Drinking water: Transmission & Distribution
5.12	Drinking water: Transmission & Distribution: Lead Remediation
5.13	Drinking water: Source
5.14	Drinking water: Storage
5.15	Drinking water: Other water infrastructure
5.16	Broadband: "Last Mile" projects
5.17	Broadband: Other projects
6: Revenue Replacement	
6.1	Provision of Government Services
7: Administrative	
7.1	Administrative Expenses
7.2	Evaluation and Data Analysis
7.3	Transfers to Other Units of Government
7.4	Transfers to Non-entitlement Units (States and territories only)

*Denotes areas where recipients must identify the amount of the total funds that are allocated to evidence-based interventions (see Use of Evidence section above for details)

^Denotes areas where recipients must report on whether projects are primarily serving disadvantaged communities (see Project Demographic Distribution section above for details)



LIMITATIONS ON EXPENDITURES

Congress enacted several specific limitations on all ARP/CSLFRF monies, including revenue replacement funds. Any government entity which uses ARPA funds for these prohibited uses will be forced to repay ARPA funds received. Project proposals which fall into one of the above categories will not be considered.

A local government is PROHIBITED from:

- Using ARP/CSLFRF funds to offset a reduction in net tax revenue;
- Using ARP/CSLFRF funds to make a deposit into a pension fund that constitutes an extraordinary payment of an accrued, unfunded liability (Note that routine contributions as part of a payroll obligation for an eligible project are ok.);
- Using ARP/CSLFRF funds to borrow money or make debt service payments;
- Using ARP/CSLFRF funds to replenish rainy day funds or fund other financial reserves;
- Using ARP/CSLFRF funds to satisfy an obligation arising from a settlement agreement, judgment, consent decree, or judicially confirmed debt restricting in a judicial, administrative, or regulatory proceeding (There is an exception to this prohibition if the settlement or judgment requires the local government to provide services to respond to the COVID-19 public health emergency or its negative economic impacts or to provide government services, then the costs of those otherwise ARP/CSLFRF-eligible projects are allowed.);
- Using ARP/CSLFRF funds for a project that includes a term or condition that undermines efforts to stop the spread of COVID-19 or discourages compliance with recommendations and guidelines in CDC guidance for stopping the spread of COVID-19;
- Using ARP/CSLFRF funds in violation of the conflict-of-interest requirements imposed by the award terms. Specifically, the award terms require that a local government “agree it must maintain a conflict-of-interest policy consistent with 2 C.F.R. Sect. 200.318(c), and that such conflict-of-interest policy is applicable to each activity funded under this award. [Local governments] and subrecipients must disclose in writing to Treasury or the pass-through agency, as appropriate, any potential conflict of interest affecting the awarded funds in accordance with 2 C.F.R. Sect. 200.112.”
- Using ARP/CSLFRF for any expenditure that would violate other applicable federal, state, and local laws and regulations. A local government must stay within the contours of its state law authority and follow federal and state law budgeting, financial management, contracting, reporting, document retention, auditing, and other compliance requirements. And a local government must follow all other applicable state and federal laws. In the supplemental information to the Final Rule, US Treasury specifically mentions the Uniform Guidance, federal environmental laws, and federal civil rights and nondiscrimination requirements as examples.



ELIGIBLE PROJECT REVIEW PROCESS

All project proposals shall be submitted to the County Manager' Office and the Finance Department for review. Representatives from each Office shall conduct a preliminary review to determine if the project falls into a permissible ARPA use as defined in the "Eligible Projects" section above. Proposals shall, at a minimum, include the following:

- a brief description of the project which clearly identifies the specific permissible use under ARPA;
- estimated total costs by cost;
- a description of practices and procedures which the applicant, employee, subgrantee, and/or contractor assigned to the project will implement to ensure compliance with all aspects 2 CFR 200 (Uniform Guidance); and
- an estimated project timeline including completion date.
- Along with a general review of project eligibility and conformance with other governing board management directives, the Assistant Finance Director or Purchasing Agent must review estimated costs for specific allowable cost requirements, budget parameters, indirect rates, fringe benefit rates, and those activities/costs that require pre-approval by the US Treasury.

If a proposed project includes a request for an unallowable cost, the Finance Department will return the proposal to the requesting party for review. Once a proposed project budget is pre-approved by the County Manager and the Finance Department, the project will be presented to the Board of Commissioners for final approval. No ARPA funds may be allocated to a particular project without prior approval by the Board of Commissioners.

Following approval, staff responsible for implementing the project must conform actual obligations and expenditures to the pre-approved project budget. Changes in project budgets must be approved by the Board of Commissioners. Any delay in projected project completion date shall be communicated to the County Manager and Finance Director as soon as practically possible.



Federal Awards Records Retention



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RECORDS RETENTION

The Coronavirus Local Fiscal Recovery Funds (“CSLFRF”) Award Terms and Conditions and the Compliance and Reporting Guidance set forth the U.S. Department of Treasury’s (“Treasury”) record retention requirements for the American Rescue Plan (ARP)/CSLFRF award.

Purpose

The purpose of this policy is to establish that Henderson County will follow Treasury’s record retention requirements as it expends CSLFRF pursuant to the APR/CSLFRF award. Accordingly, notwithstanding Henderson County’s current Records Retention and Disposition Schedule found in Tab 14 of the Henderson County Administrative Manual, Henderson County agrees to the following:

- Retain all financial and programmatic records related to the use and expenditure of CSLFRF pursuant to the ARP/CSLFRF award for a period of five (5) years after all CLFRF funds have been expended or returned to Treasury, whichever is later.
- Retain records for real property and equipment acquired with CSLFRF for five years after final disposition.
- Ensure that the financial and programmatic records retained sufficiently evidence compliance with section 603(c) of the Social Security Act “ARPA,” Treasury’s regulations implementing that section, and guidance issued by Treasury regarding the foregoing.
- Allow the Treasury Office of Inspector General and the Government Accountability Office, or their authorized representatives, the right of right of timely and unrestricted access to any records for the purpose of audits or other investigations.
- If any litigation, claim, or audit is started before the expiration of the 5-year period, the records will be retained until all litigation, claims, or audit findings involving the records have been resolved.

Covered Records

For purposes of this policy, records are information, regardless of physical form or characteristics, that are created, received, or retained that evidence Henderson County’s expenditure of CSLFRF funds on eligible projects, programs, or activities pursuant to the ARP/CSLFRF award and compliance with section 603(c) of the Social Security Act, Treasury’s regulations implementing that section, and guidance issued by Treasury regarding the foregoing.

Records that shall be retained pursuant to this policy include, but are not limited to, the following:

- Financial statements and accounting records evidencing expenditures of CSLFRF for eligible projects, programs, or activities.



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- Documentation of rationale to support a particular expenditure of CSLFRF (e.g., expenditure constitutes a general government service);
- Documentation of administrative costs charged to the ARP/CSLFRF award;
- Procurement documents evidencing the significant history of a procurement, including, at a minimum, the rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for contract cost or price;
- Subaward agreements and documentation of subrecipient monitoring;
- Documentation evidencing compliance with the Uniform Guidance property management standards set forth in 2 C.F.R. §§ 200.310-316 and 200.329;
- Personnel and payroll records for full-time and part-time employees compensated with CSLFRF, including time and effort reports; and
- Indirect cost rate proposals

Storage

Henderson County's records must be stored in a safe, secure, and accessible manner. Wherever practicable, such records should be collected, transmitted, and stored in open and machine-readable formats.

Departmental Responsibilities

Any department or unit of Henderson County, and its employees, who are responsible for creating or maintaining the covered documents in this policy shall comply with the terms of this policy. Failure to do so may subject Henderson County to civil and/or criminal liability. Any employee who fails to comply with the record retention requirements set forth herein may be subject to disciplinary sanctions, including suspension or termination.

The Finance Director is responsible for identifying the documents that Henderson County must or should retain and arrange for the proper storage and retrieval of records. The Finance Director shall also ensure that all personnel subject to the terms of this policy are aware of the record retention requirements set forth herein.

Reporting Policy Violations

Henderson County is committed to enforcing this policy as it applies to all forms of records. Any employee that suspects the terms of this policy have been violated shall report the incident immediately to that employee's supervisor. If an employee is not comfortable bringing the matter up with the supervisor, the employee may bring the matter to the attention of the County Manager, Assistant County Manager or Finance Director. Henderson County prohibits, any form of discipline, reprisal, intimidation, or retaliation for reporting incidents of inappropriate conduct of any kind, pursuing any record destruction claim, or cooperating in related investigations.

Questions About the Policy

Any questions about this policy should be referred to the Finance Director at 828-697-4821.