

ULSTER COUNTY OFFICE OF THE COMPTROLLER

March S. Gallagher, Esq.
Comptroller



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MEMORANDUM

Date: October 27, 2021

To: David Donaldson, Legislative Chairman
Tracey Bartels, Legislative Vice-Chair
Kenneth Ronk, Legislative Minority Leader

Cc: Ulster County Legislative Members
Patrick Ryan, County Executive
Burt Gulnick, Commissioner of Finance

From: March Gallagher, Comptroller

Re: Additional flexibility in use and reporting for ARPA funding available

Based on the review of recent guidance related to ARPA funding, the County Comptroller's Office has identified that Ulster County may apply to recognize a minimum of \$8 million of the ARPA allocation as "public sector revenue loss" for 2020 freeing a substantial portion of the funding from the strict ARPA eligibility and reporting requirements and providing much more flexibility in the use of the funds.

The analysis was made after reviewing the U.S. Treasury regulations, guidance from National Association of Counties, New York State Association of Counties, and the Government Finance Officers Association (which published an ARPA lost revenue calculator). These findings have been communicated to the Department of Finance and the County Executive's Office and they have agreed to pursue the implementation of the lost revenue calculation to be filed as a part of the County's next ARPA filing in January of 2022.

While the Treasury, Congress, State Comptroller, and other professional bodies continue to release new guidance, we feel it is essential that decision makers and the public alike remain aware of the potential funding that is available to our local communities and for what uses those funds are eligible.

The calculation assumes a minimum 4.1% revenue growth rate from the actual revenues of the 2019 base year. The 2020 actual revenues are compared to the calculated growth rate revenue and anything less is considered revenue loss. Current estimates suggest the figure will be significantly more when the lost revenue calculation is conducted again for years 2021, 2022 and 2023 using a compounded 4.1% growth rate from the 2019 base year as directed by U.S. Treasury regulation.

The American Rescue Plan Act created a funding stream for Ulster County totaling \$34.5 million, paid to the County in two payments. Ulster County received \$17.2 million on June 14, 2021, which represented the first of two installments of this funding. The funding received is eligible for spending on costs related to responding to the public health emergency and to address negative economic impacts resulting from the pandemic.

The Treasury issued its Final Interim Rule on May 17, 2021, which further clarified what uses were eligible for spending.

Sections 602(c)(1) and 603(c)(1) provide that funds may be used:

- To respond to the public health emergency or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality;
- To respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers;
- 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 prior to the emergency; and
- To make necessary investments in water, sewer, or broadband infrastructure.

The Treasury also included in its final rule a calculation for lost revenues, which would allow the County to simplify the reporting for a portion of this funding while increasing the flexibility on its uses. The Final Rule states: "The Interim Final Rule gives recipients broad latitude to use funds for the provision of government services to the extent of reduction in revenue."

By utilizing the lost revenue calculation, a large portion of the County's available ARPA funds can be used to address lost revenues first, alleviating the restrictions for usage and eliminating the liability on the County's balance sheet. In summary, the amount recognized as lost revenue goes from reserved fund balance to unassigned as revenue and would be immediately recognizable without the strict ARPA eligibility and use requirements. Those funds could then be used for any governmental services which include a broad range of expenditures with the exception of pension fund payments, debt service, or increasing reserves.

Government services include but are not limited to:

- Maintenance or pay-go funded building of infrastructure, including roads
- Modernization of cybersecurity, including hardware, software, and protection of critical infrastructure
- Healthcare services
- Environmental remediation
- School or educational services
- Provision of police, fire, and other public safety services

Additionally, on October 19, 2021 the United States Senate unanimously passed bill S. 3011 the “State, Local, Tribal, and Territorial Fiscal Recovery, Infrastructure, and Disaster Relief Flexibility Act” to provide additional flexibility in the spending of ARPA funds. This act states that governments can exempt from restrictions the greater of \$10 million or the lost revenue calculated for the provision of government services. Any unspent ARPA funding can then be utilized for investment in infrastructure, including CDBG eligible projects, for up to an additional \$10 million or 30% of the funding received.

When the Comptroller’s Office identified the potential for the County to use the lost revenue calculation in the County’s ARPA filing, we immediately notified the County’s Budget Department of the potential benefits of reporting the lost revenues. The Executive and his staff are working diligently to complete the calculation and plan to report the maximum amount of lost revenues allowable on the County’s next filing in January 2022. Based on current estimates, more than half of the County’s first installment of ARPA funding will qualify, greatly reducing the limitation on its uses. Once the later year calculations are made it is possible that the majority, if not all the funds, will qualify as lost revenues.

As the Chief Audit Officer of the County, the Comptroller’s Office has the responsibility to certify the availability of funds for expenditures and to report regularly to the County Legislature on the financial condition of the County. See Ulster County Charter §C-57(D) and (I). We share this information with the Legislature now to ensure that you have all relevant information as you move into making decisions on the 2022 budget and the appropriation of ARPA funds. This memorandum seeks to address the expenditure eligibility and reporting requirements for anticipated purposes of ARPA funds not the policy implications of the proposed uses.