


The American Rescue Plan Act (ARPA)

Guidance for counties, cities, towns and governmental units




©2021. Massachusetts Office of the Inspector General • www.mass.gov/ig • @MassOIG

1

Disclaimer

- Specific questions about your ARPA/federal compliance should be directed/verified by contacting your legal counsel, external auditor/CPA or the federal granting agency.
- Although the information presented today may assist you, please note that ARPA guidance is changing routinely. You are responsible for compliance.




©2021. Massachusetts Office of the Inspector General • www.mass.gov/ig • @MassOIG

2

The MA Office of the Inspector General

- 40 years old
- First state-level OIG in the United States
- Watchdog agency with mission to prevent and detect fraud, waste and abuse of public funds
- Broad mandate




©2021. Massachusetts Office of the Inspector General • www.mass.gov/ig • @MassOIG

3




The MA Office of the Inspector General


- What do we do?
 - Investigations, reviews, referrals
 - Training (MCPPO)
 - Technical assistance (Chapter 30B hotline, compliance reviews, Bulletin, advisories)
 - Embedded units: state police, DOT, EOHHS

 ©2021. Massachusetts Office of the Inspector General • www.mass.gov/ig • @MassOIG 4

4




ARPA Overview

 ©2021. Massachusetts Office of the Inspector General • www.mass.gov/ig • @MassOIG 5

5

What is the American Rescue Plan Act (ARPA)?


- Federal Act intended to bring about economic and public health recovery from COVID-19.
 - Appropriates funds to federal departments for grant programs;
 - Continues earlier aid programs; and
 - Creates state and local fiscal recovery funds.

 ©2021. Massachusetts Office of the Inspector General • www.mass.gov/ig • @MassOIG 6


6

What is the American Rescue Plan Act (ARPA)?

- Remember – you may be eligible for grants directly from the federal government in addition to money from State and Local Fiscal Recovery Funds.
- Check with legal counsel.


 ©2021. Massachusetts Office of the Inspector General • www.mass.gov/ig • @MassOIG 7

7



State and Local Fiscal Recovery Funds


Section 9901 of ARPA

 ©2021. Massachusetts Office of the Inspector General • www.mass.gov/ig • @MassOIG 8


8

State and Local Fiscal Recovery Funds

- State Fiscal Recovery Fund: \$5.3 Billion
 - Some of this has already been spent. The legislature will soon begin appropriating the remaining \$4.8 billion, some to local government.
- Local Fiscal Recovery Fund: \$3.4 Billion
 - Most municipalities have fewer than 50,000 residents so are considered Non-Entitlement Units (NEUs) and should have received or should expect to receive notice or funds from the Department of Revenue.

 ©2021. Massachusetts Office of the Inspector General • www.mass.gov/ig • @MassOIG 9

9



Eligible Uses of Funding

State and Local Fiscal Recovery Funds

©2021. Massachusetts Office of the Inspector General • www.mass.gov/ig • @MassOIG 10

10

What are the rules?

- Fiscal Recovery Funding may be used:
 1. 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;
 2. To respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers.

©2021. Massachusetts Office of the Inspector General • www.mass.gov/ig • @MassOIG 11

11

What are the rules?


- Fiscal Recovery Funding may be used:
 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 prior to the emergency; and
 4. To make necessary improvements in water, sewer, or broadband infrastructure.

©2021. Massachusetts Office of the Inspector General • www.mass.gov/ig • @MassOIG 12

12

What are the rules?

- Recipients may **not**:
 - Deposit funds into any pension fund; or
 - Directly or indirectly offset a reduction in the net tax revenue of the State or territory resulting from a change in law, regulation or administrative interpretation.


 ©2021. Massachusetts Office of the Inspector General • www.mass.gov/ig • @MassOIG 13

13

Responding to the Public Health Emergency

To assess if a program or service responds to the public health emergency, recipients should:

- (1) identify an effect of COVID-19 on public health, including either or both of immediate effects or effects that may manifest over months or years; and
- (2) assess how the use would respond to or address the identified need.


 ©2021. Massachusetts Office of the Inspector General • www.mass.gov/ig • @MassOIG 14

14

Responding to the Public Health Emergency

Non-exhaustive List of Eligible Public Health Uses


- COVID-19 Mitigation and Prevention
- Medical Expenses
- Behavioral Health Care
- Public Health and Safety Staff
- Expenses to Improve Design and Execution of Health and Public Health Programs

 ©2021. Massachusetts Office of the Inspector General • www.mass.gov/ig • @MassOIG 15

15

Examples

- Bergen County, New Jersey, will use funds for mobile vaccination clinics to remove barriers to vaccine access.
- Jackson County, Missouri, will use funds to employ supplemental staff to conduct daily testing, contact tracing and vaccination efforts for residents.
- New York City has dedicated funds to preventative measures in congregate settings.
- Phoenix Arizona, is investing in PPE.


 ©2021. Massachusetts Office of the Inspector General • www.mass.gov/ig • @MassOIG 16

16

Responding to Economic Impacts of the Public Health Emergency

To assess if a program or service responds to the economic impacts of the public health emergency, recipients should:

- (1) consider whether an economic harm exists; and
- (2) identify how the program, service, or other intervention addresses the identified need or impact.


 ©2021. Massachusetts Office of the Inspector General • www.mass.gov/ig • @MassOIG 17

17

Responding to Economic Impacts of the Public Health Emergency

Non-exhaustive List of Eligible Economic Impact Uses

- Assistance to Unemployed Workers
- Assistance to Households
- Expenses to Improve Efficacy of Economic Relief Programs
- Assistance to Small Businesses and Non-profits
- Rehiring State, Local and Tribal government staff (up to pre-pandemic levels)
- Aid to Impacted Industries

 ©2021. Massachusetts Office of the Inspector General • www.mass.gov/ig • @MassOIG 18

18

Examples

- Snohomish County, Washington, plans to fund programs to provide dislocated workers with job training to enter high-demand occupations.
- North Las Vegas, Nevada, has allocated funds to provide technical supports to low-moderate income women and minority entrepreneurs.
- City of Wichita, Kansas, plans to use funds to fill vacant government positions and has already begun recruitment efforts.
- Austin, Texas, plans to invest in a comprehensive program to support unhoused persons in securing housing.



19

Non-eligible Uses

- A **general** infrastructure project (unless project responded to specific pandemic public health need or specific negative economic impact from the pandemic). Pay-go infrastructure is allowable if the funds used make up for the loss of government revenue, and water, sewer and broadband infrastructure is allowable.
- Contributions to rainy day funds, financial reserves or similar funds
- Satisfaction of any obligation arising from a settlement agreement, judgment, consent decree, or judicially confirmed debt restructuring plan in a judicial, administrative, or regulatory proceeding (except to the extent the judgment or settlement requires the provision of services that would respond to the COVID-19 public health emergency)



20

Premium Pay

- Fiscal Recovery Funds may be used by recipients to provide premium pay to **eligible workers** performing **essential work**. Such workers include:
 - staff at nursing homes, hospitals, and home care settings;
 - workers at farms, food production facilities, grocery stores, and restaurants;
 - janitors and sanitation workers
 - truck drivers, transit staff, and warehouse workers;
 - public health and safety staff
 - childcare workers, educators, and other school staff; and
 - social service and human services staff.



21

Who are eligible workers?

- **Eligible workers** are “those workers needed to maintain continuity of operations of essential critical infrastructure sectors and additional sectors as [the Governor] may designate as critical to protect the health and well-being of the residents of their State ...”
- These sectors include: healthcare, public health and safety, childcare, education, sanitation, transportation, and food production and services.



22

What is essential work?

- **Essential work** is defined as work involving regular in-person interactions or regular physical handling of items that were also handled by others.
- A worker is not engaged in essential work, and accordingly may not receive premium pay, for telework performed from a residence.



23

Premium Pay


- Premium Pay is defined as “an amount up to \$13 per hour in addition to wages or remuneration the worker otherwise receives and in an aggregate amount not to exceed \$25,000 per eligible worker.”
- The IFR provides that premium pay or grants using fiscal recovery funds should prioritize lower income eligible workers.



24

Premium Pay: Other Rules


- If Premium Pay would increase a worker’s total pay above 150% of the worker’s resident state average annual wage for all occupations, or county average annual wage (whichever is higher), on an annual basis the recipient must provide Treasury and make publicly available a written justification of how the premium pay is responsive to workers performing essential work during the pandemic.
- Premium Pay **must be entirely additive to a worker’s regular rate**, and remuneration may not be used to reduce or substitute a worker’s normal earnings.

 ©2021. Massachusetts Office of the Inspector General • www.mass.gov/ig • @MassOIG 25

25

Revenue Loss


- Recipients may use fiscal recovery funds for the provision of government services to the extent of the reduction in revenue experienced due to the COVID-19 public health emergency.
- This is measured relative to the revenue collected in the most recent full fiscal year prior to the emergency. In calculating revenue, recipients should sum across all revenue streams covered by the definition of “general revenue,” taken from the Census Bureau’s Annual Survey of State and Local Government Finances.

 ©2021. Massachusetts Office of the Inspector General • www.mass.gov/ig • @MassOIG 26

26

Revenue Loss

- The definition of general revenue excludes:
 - refunds and other correcting transactions;
 - proceeds from issuance of debt or the sale of investments
 - agency or private trust transactions
 - revenue generated by utilities and insurance trusts
 - Intergovernmental transfers from the federal government (intergovernmental transfers from State and local governments are included though (except for those made pursuant to CRF or FRF))


 ©2021. Massachusetts Office of the Inspector General • www.mass.gov/ig • @MassOIG 27

27



Calculation of Loss

- Recipients are required to compute the extent of the reduction in revenue by looking at the last full fiscal year prior to January 27, 2020, and multiplying that amount by a growth adjustment of either 4.1% per year, or the recipient's average annual growth over the 3 full fiscal years prior to the pandemic, whichever is higher. This is referred to as "counterfactual revenue" in the IFR.
- Then recipients should identify actual revenue received over the last 12 months as of the calculation date.
- The extent of the reduction of revenue is equal to the counterfactual revenue minus actual revenue.
- Recipients should make this calculation as of December 31 of 2020, 2021, 2022 and 2023.


 ©2021. Massachusetts Office of the Inspector General • www.mass.gov/ig • @MassOIG 28

28

Government Services

Includes:

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


 ©2021. Massachusetts Office of the Inspector General • www.mass.gov/ig • @MassOIG 29

29

Government Services

Does **not** include:

- Satisfaction of any obligation arising under or pursuant to a settlement agreement, judgment, consent decree or judicially confirmed debt restructuring (except if the judgment or settlement requires provision of government services)
- Replenishing financial reserves (e.g., rainy day or other reserve funds)


 ©2021. Massachusetts Office of the Inspector General • www.mass.gov/ig • @MassOIG 30

30

Investments in Infrastructure

Recipients may use Fiscal Recovery Funds for investments and improvements to existing infrastructure in:


- Water
- Sewer
- Broadband

 ©2021. Massachusetts Office of the Inspector General • www.mass.gov/ig • @MassOIG 31

31

Water and Sewer Infrastructure


- Clean Water State Revolving Fund (310 CMR 44)
 - Construct, improve, and repair wastewater treatment plants.
 - Control non-point sources of pollution.
 - Improve resilience of infrastructure to severe weather events.
 - Create green infrastructure.
 - Protect waterbodies from pollution.

 ©2021. Massachusetts Office of the Inspector General • www.mass.gov/ig • @MassOIG 32

32

Water and Sewer Infrastructure


- Drinking Water State Revolving Fund (310 CMR 45)
 - Assist communities in making water infrastructure capital improvements including the installation and replacement of failing treatment and distribution systems.

 ©2021. Massachusetts Office of the Inspector General • www.mass.gov/ig • @MassOIG 33

33

Water and Sewer Infrastructure


- Other eligible uses:
 - Building or upgrading facilities and transmission, distribution and storage systems, including the replacement of lead service lines
 - Consolidating or establishing drinking water systems
 - Managing potential sources of pollution from reaching sources of drinking water
 - Certain effort address climate change such as measures to conserve and reuse water or to reduce energy consumption of public water treatment facilities
 - Green infrastructure projects that support stormwater system resiliency, including rain gardens (providing water storage and filtration benefits), and green street, (where vegetation, soil and engineered systems are combined to direct and filter rainwater)

 ©2021. Massachusetts Office of the Inspector General • www.mass.gov/ig • @MassOIG 34

34

Broadband Infrastructure


- Eligible investments in broadband are those that
 1. are designed to provide services meeting adequate speeds; and
 2. are provided to unserved and underserved households and businesses
- Eligible projects are expected to be designed to deliver, upon project completion, service that reliably meets or exceeds symmetrical upload and download speeds of 100 Mbps.
- In instances where it's not practicable because of geography, topography, or excessive costs, 100 Mbps download speeds, and 20-100 Mbps upload speeds. These project should be scalable.

 ©2021. Massachusetts Office of the Inspector General • www.mass.gov/ig • @MassOIG 35

35

Broadband Infrastructure

- The Interim Final Rule treats users as being unserved or underserved if they lack access to a wireline connection capable of reliably delivering at least minimum speeds of 25 Mbps download and 3 Mbps upload
- Households and businesses lacking this level of access are generally not viewed as being able to originate and receive high-quality voice, data, graphics, and video telecommunications.


 ©2021. Massachusetts Office of the Inspector General • www.mass.gov/ig • @MassOIG 36

36



ARPA Prohibitions

- No deposits into pension funds
- No offsets of reductions of net tax revenue resulting from changes in law, regulation or administrative interpretation during the covered period.


 ©2021. Massachusetts Office of the Inspector General • www.mass.gov/ig • @MassOIG 37

37

Timeline

Expenses must be:

- incurred after March 3, 2021
- obligated by December 31, 2024
- completed by December 31, 2026.

 ©2021. Massachusetts Office of the Inspector General • www.mass.gov/ig • @MassOIG 38

38



Non-Compliance

 ©2021. Massachusetts Office of the Inspector General • www.mass.gov/ig • @MassOIG 39

39

Oversight Agencies

- **Federal:** Special Inspector General for Pandemic Recovery, U.S. Treasury Department, federal inspectors general, Government Accountability Office
- **State:** Federal Funds Office, Division of Local Services, State Auditor's Office, Office of the Inspector General, Office of the Attorney General, Comptroller
- **Private:** Audit firms



40

What if you don't comply?

- Federal government may recoup funds that were improperly used.
- You will be notified you're in violation.
- Can request reconsideration of violation within 60 calendar days.
- Amounts subject to recoupment must be paid within 120 calendar days of final notice.



41

Transferring Funds


- You can transfer funds to constituent units of government, as well as to private entities
- You, as the initial recipient, are still responsible for monitoring and reporting to treasury on the use of the funds.
- All subrecipients are bound by the same eligibility requirements as applied to the initial recipient.




42

Reporting Requirements

- Metro cities (over 50,000 population) are required to submit **quarterly** project and expenditure reports.
- Non-entitlement Units of government (under 50,000 population) are required to submit **annual** project and expenditure reports
- These include information about: types of projects funded, other information about how recipient funds are used.


 ©2021. Massachusetts Office of the Inspector General • www.mass.gov/ig • @MassOIG 43

43



Single Audit


2 CFR Part 200

 ©2021. Massachusetts Office of the Inspector General • www.mass.gov/ig • @MassOIG 44

44

Single Audit

- The Single Audit is an organization-wide financial statement and federal awards' audit of a non-federal entity that expends \$750,000 or more in federal funds in one year. It is intended to provide assurance to the Federal Government that a non-federal entity has adequate internal controls in place and is generally in compliance with program requirements.
- Conducted by the independent CPA firm.

 ©2021. Massachusetts Office of the Inspector General • www.mass.gov/ig • @MassOIG 45

45

What is an audit?


- Examines an entity's financial records, accounts, business transactions, accounting practices and internal controls
- Provides independent assurance that financial statements are presented fairly and comply with generally accepted accounting principles
- Reviews internal controls
- Safeguards assets
- Ensures financial statement reliability
- Promotes operational efficiency
- Encourages compliance with management's directives

 ©2021. Massachusetts Office of the Inspector General • www.mass.gov/ig • @MassOIG 46

46

What is an audit?


- Appraisal of entity's financial status
- Assets and liabilities
- Presents auditor's educated assessment of community's financial position
- Management Letter explains "findings"
- Preserves integrity of public finance functions

 ©2021. Massachusetts Office of the Inspector General • www.mass.gov/ig • @MassOIG 47

47

Single Audit


- An audit that also adds a specific review of federal fund expenditures based on the federal "compliance supplement." Specific audit testing and process reviews that must be included in the annual audit.

 ©2021. Massachusetts Office of the Inspector General • www.mass.gov/ig • @MassOIG 48

48

Examples of Single Audit Compliance

- Check that no contracts were made with suspended or debarred parties.
- Test a sample of procurements to ascertain if the state's laws and procedures were followed and that the policies and procedures used were the same as for non-federal funds
- Verify that the entity has written standards of conduct that cover conflicts of interest and govern the performance of its employees engaged in the selection, award, and administration of contracts


 ©2021. Massachusetts Office of the Inspector General • www.mass.gov/ig • @MassOIG 49

49

State Law

- M.G.L. c. 44, s. 42, requires completed audits to be filed with DLS


Section 42. Whenever a city, town or district causes an audit of its accounts or the accounts of separate departments to be made by a firm or person of its own selection, the city, town or district clerk shall immediately, upon the employment of such firm or person, file the name and address with the director, and such firm or person shall, within 10 days after making the report of the audit and recommendations to the city, town or district, file a certified copy thereof with the director.

 ©2021. Massachusetts Office of the Inspector General • www.mass.gov/ig • @MassOIG 50

50

State Law


- M.G.L. c. 71, s. 16A, requires a regional school district to undergo an annual independent financial audit

 ©2021. Massachusetts Office of the Inspector General • www.mass.gov/ig • @MassOIG 51

51

Best Practices


- Use same auditor for 3 to 5 years for greater continuity
- Potentially reduce costs in initial years
- After 5-8 years, engage in competitive selection process and consider audit firm rotation after each contract, or rotation of senior engagement staff at the same firm if preferred
- New auditor brings fresh perspective

 ©2021. Massachusetts Office of the Inspector General • www.mass.gov/ig • @MassOIG 52

52

Procurement


- Although CPA services are exempt under Chapter 30B ...
- If you will use federal funds to pay for these services, then you must use a competitive selection process.

 ©2021. Massachusetts Office of the Inspector General • www.mass.gov/ig • @MassOIG 53

53

Best Practices


- Make audit a public record
- Respond to each finding in management letter
- Outline corrective action plans
- Work with auditor to uncover root causes of deficiencies
- Issues should be resolved as soon as possible

 ©2021. Massachusetts Office of the Inspector General • www.mass.gov/ig • @MassOIG 54

54

Best Practice

- Even if not subject to single audit or other requirements, best practice is to have periodic audits or other reviews for accountability and risk reduction.

 ©2021. Massachusetts Office of the Inspector General • www.mass.gov/ig • @MassOIG 55

55



Does M.G.L. c. 30B still apply?


Yes!

 ©2021. Massachusetts Office of the Inspector General • www.mass.gov/ig • @MassOIG 56

56

Chapter 30B and Federal Law


- Federal regulations require local jurisdictions to apply state and local procurement laws for federally funded procurements.
- Therefore, **Chapter 30B applies.**
- If Chapter 30B conflicts with federal law, follow federal law.

 ©2021. Massachusetts Office of the Inspector General • www.mass.gov/ig • @MassOIG 57

57

Example of Conflicts


- Federal procurement policy does not recognize any state/local exemptions or exceptions.
- Must use competition for all purchases under \$250K. Formal bidding for over \$250K
- Chapter 30B methods are acceptable as competitive
- Use appropriate Chapter 30B method for otherwise exempt items
- Sole source requires additional federal compliance rules

 ©2021. Massachusetts Office of the Inspector General • www.mass.gov/ig • @MassOIG 58

58

Chapter 30B


- Chapter 30B and public records law, municipal finance law, open meeting law, and other state requirements apply unless federal rules are more stringent. Then must follow federal rules
- If unsure about procurement, then bid.

 ©2021. Massachusetts Office of the Inspector General • www.mass.gov/ig • @MassOIG 59

59

State Contracts and Cooperative Contracts


- Most state contracts based on a bid would be compliant with federal rules. If based on an “application”, they may not be. Need to check with OSD
- If OSD contract user guide requires you to get quotes from three vendors, you must do so to be compliant with federal rules
- Cooperative contracts also compliant if based on competition

 ©2021. Massachusetts Office of the Inspector General • www.mass.gov/ig • @MassOIG 60

60

Collaborative Contracts

- Two or more jurisdictions
- Compliant if follow Chapter 30B
- Can be for supplies OR services where cooperative contracts are only for supplies


 ©2021. Massachusetts Office of the Inspector General • www.mass.gov/ig • @MassOIG 61

61

How to be compliant?

- Plan
- Plan
- Plan

• Don't act the last minute. Decide what your needs are and what you need to do to meet them.

 ©2021. Massachusetts Office of the Inspector General • www.mass.gov/ig • @MassOIG 62

62




Resources

 ©2021. Massachusetts Office of the Inspector General • www.mass.gov/ig • @MassOIG 63


63

Resources

- U.S. Treasury Fiscal Recovery Fund Guidance: <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-funds>
- MA Office of the Inspector General: www.mass.gov/ig
- Federal Funds Office: <https://www.mass.gov/covid-related-federal-funds>


 ©2021. Massachusetts Office of the Inspector General • www.mass.gov/ig • @MassOIG 64

64



Questions?

Thank you!

 ©2021. Massachusetts Office of the Inspector General • www.mass.gov/ig • @MassOIG 65

65
