



Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

September 24, 2021

Ronald B. Gordon, Jr.
State Court Administrator
Catherine J. Dupont
Deputy Court Administrator

MEMORANDUM

TO: Members of the Budget and Fiscal Management Committee

FROM: Ron Gordon and Cathy Dupont

RE: ARPA Funds

In this memorandum we provide recommendations for both the FY21-22 and FY22-23 requests for American Rescue Plan Act of 2021 (“ARPA”) funding. We base these recommendations on (1) reviews of the Department of the Treasury’s Coronavirus State and Local Fiscal Recovery Funds Final Interim Rule (“Final Interim Rule”); (2) reviews of the Department of the Treasury’s Coronavirus State and Local Fiscal Recovery Funds Frequently Asked Questions as of July 19, 2021 (“FAQs”); and (3) conversations with staff members in GOPB who have oversight of the distribution of ARPA funds and who are charged with reporting on expenditures of those funds to the federal government.

FY21-22 ARPA Requests

We recommend the Budget and Fiscal Management Committee (“BFMC”) forward all FY21-22 ARPA requests to the Judicial Council with a recommendation that the Judicial Council approve immediate expenditure of funds for those projects. The Legislature has appropriated funds for these projects and the Governor’s Office of Planning and Budget (“GOPB”) has given its final approval for expenditure of funds for these projects. Because there has been some uncertainty about the eligibility of these projects, the Judicial Council is waiting for an internal legal opinion indicating that the projects are eligible before authorizing expenditure of the appropriated funds. Because of the urgency of beginning work on these projects and the current demands on and workload of our General Counsel’s Office, we ask that the BFMC and Judicial Council accept this memorandum in lieu of a legal opinion from the General Counsel’s Office.

**The mission of the Utah judiciary is to provide an open, fair,
efficient, and independent system for the advancement of justice under the law.**

We have a high level of confidence that the FY21-22 ARPA requests are eligible expenses under ARPA and the Final Interim Rule and will be eligible under the final guidelines that will be released by the Department of the Treasury. We believe all FY21-22 ARPA requests are eligible under the category of expenses listed in ARPA that “respond to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19) or its negative economic impacts.” 42 U.S.C. § 802(c)(1)(A).

The Final Interim Rule identifies 12 non-exclusive types of expenditures under this category of eligibility, including “COVID-19 response and prevention.” 31 CFR § 35.6(b)(1). The Final Interim Rule further identifies 18 non-exclusive examples of COVID-19 response and prevention expenditures. The examples share a common purpose of implementing measures to mitigate the spread of COVID-19. Though the projects contained within the FY21-22 ARPA requests are not specifically identified in the non-exhaustive list of examples, the FY21-22 ARPA requests do share the common purpose of implementing measures to mitigate the spread of COVID-19. Specifically, the FY21-22 ARPA requests reduce the number of people present in a courthouse by implementing alternative ways to transact court business and participate in court proceedings; and decrease public health risks involved with handling evidence by implementing technology solutions. These measures are consistent with and equally important as the listed examples.

FAQ 2.19 provides further support for the FY21-22 ARPA requests.

During the COVID-19 public health emergency, many courts were unable to operate safely during the pandemic and, as a result, now face significant backlogs. Court backlogs resulting from inability of courts to safely operate during the COVID-19 pandemic decreased the government’s ability to administer services. Therefore, steps to reduce these backlogs, such as implementing COVID-19 safety measures to facilitate court operations, hiring additional court staff or attorneys to increase speed of case resolution, and other expenses to expedite case resolution are eligible uses.

GOPB relied upon this FAQ 2.19 in authorizing the expenditure of ARPA funds for senior judges to help address the jury trial backlog. Though FAQ 2.19 addresses only court backlogs, the FAQ is helpful by simply identifying the work of courts as something that can be eligible even though the Final Interim Rule does not specifically mention courts.

It is reasonable to conclude that other expenditures by courts that are necessary to respond to and prevent COVID-19 are eligible. By applying the language in FAQ 2.19 to other operations of the courts, we believe there is a high likelihood that expenses made by the Judiciary to implement COVID-19 safety measures to mitigate the spread of COVID-19 are eligible expenses under the category of “respond to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19) or its negative economic impacts.”

The Final Interim Rule also permits expenditure of funds for the “provision of government services to the extent of a reduction in the recipient’s general revenue.” 31 CFR § 35.6(d). Though we do not rely on this category, GOPB noted their ability to use this category as a safety net. They have calculated the state’s

general revenue loss to exceed \$1 billion and can authorize expenditure of ARPA funds for a wide range of COVID-19-related government services under this category.

We recommend the BFMC forward the FY21-22 ARPA requests to the Judicial Council with a recommendation that the Judicial Council approve immediate expenditure of funds for those projects.

FY22-23 ARPA Requests

We recommend that the BFMC forward the FY22-23 ARPA requests, the nine new funding requests considered during its September 16 and 23, 2021 meetings, to the Judicial Council with a recommendation that the Judicial Council approve submitting those requests to GOPB and the Legislature for their consideration during the FY23 budgeting process.

We have a high level of confidence that some of these requests are eligible. We are less certain about others. However, the Judiciary can make a good faith argument for all FY22-23 ARPA requests. GOPB recommends forwarding all FY22-23 ARPA requests as soon as possible so the requests can be considered in the early stages of the FY22-23 budgeting process.

Because all requests make reasonable eligibility arguments and because we can reevaluate these requests when the Department of the Treasury releases final guidelines, we recommend forwarding all FY22-23 ARPA requests to the Judicial Council.