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Summary of COVID Relief Provisions of Interest to Public Power in the Consolidated Appropriations Act, 2021, and the American Rescue Plan Act, 2021

On December 27, 2021, President Donald Trump signed into law the Consolidated Appropriations Act, 2021 (CAA)(Public Law No. 116-260). On March 11, 2021, President Joseph Biden signed into law the American Rescue Plan Act of 2021 (ARP)(Public Law No. 117-2). The CAA, a \$2.6 trillion end-of-the-year bill, included roughly \$900 billion in COVID relief (most of which was reprogrammed funds from the CARES Act enacted in March). The \$1.9 trillion ARP provided COVID-related direct aid to individuals, state and local governments, and businesses.

What follows is a summary (organized by section of each act) of the relief-related provisions of interest to public power. While many of the provisions from both bills could be of indirect benefit to public power – such as an extension of unemployment benefits from which customers may use to pay their utility bills – this summary is focused on utility-specific provisions.

The text of the CAA is available [here](#). A division-by-division summary of the appropriations provisions is [here](#). A division-by-division summary of the coronavirus relief provisions is [here](#). A division-by-division summary of the authorizing matters is [here](#).

The text of the ARP is available [here](#). A section-by-section summary of the act is available [here](#).

THE CONSOLIDATED APPROPRIATIONS ACT, 2021 (PUBLIC LAW NO. 116-260)

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DIVISION N – ADDITIONAL CORONAVIRUS RESPONSE AND RELIEF

Title II—Assistance to Individuals, Families, and Businesses

Subtitle A – Unemployment Insurance

Chapter 1 – Continued Assistance to Unemployed Workers

Subchapter I – Extension of CARES Act Unemployment Provisions

Section 202. Extension of Emergency Unemployment Relief for Governmental Entities and Nonprofit Organizations.

The CAA extends through March 14, 2021, a provision in the CARES Act that amended the Families First Coronavirus Response Act to provide federal support to cover 50 percent of the costs of unemployment benefits for employees of state and local governments and non-profit organizations. This provision was superseded by a further amendment in the ARP (discussed below).

Department of Labor guidance to state workforce agencies explaining the implementation of this program under the CARES Act, CAA, and ARP amendments can be found [here](#).

Title III - Continuing the Paycheck Protection Program and Other Small Business Support

Section 311: Paycheck Protection Program Second Draw Loans.

This section creates a second loan from the Paycheck Protection Program, called a “PPP second draw” loan for smaller and harder-hit businesses, with a maximum loan amount of \$2 million. To receive a Paycheck Protection Program loan under this section, eligible entities must:

- Employ not more than 300 employees;
- Have used or will use the full amount of their first PPP; and
- Demonstrate at least a 25 percent reduction in gross receipts in the first, second, or third quarter of 2020 relative to the same 2019 quarter.
- The bill also provides applicable timelines for businesses that were not in operation in Q1, Q2, and Q3, and Q4 of 2019.

Borrowers of a PPP second draw loan would be eligible for loan forgiveness equal to the sum of their payroll costs, as well as covered mortgage, rent, and utility payments, covered operations expenditures, covered property damage costs, covered supplier costs, and covered worker protection expenditures incurred during the covered period. The 60/40 cost allocation between payroll and non-payroll costs to receive full forgiveness continues to apply.

Information about the second draw loan program can be found [here](#).

Section 323: Commitment Authority and Appropriations

CAA appropriates an additional \$285 billion for PPP, bringing total appropriations for program to \$807 billion. The new law extended the time of the program to March 31, 2021. (The PPP Extension Act signed into law on March 30, 2021, further extends that deadline through May 31, 2021.)

Information about PPP loans in general can be found [here](#).

Section 324: Grants for Shuttered Venue Operators.

CAA authorizes \$15 billion for the Small Business Administration to make grants to live venue operators or promoters, theatrical producers, live performing arts organization operators, museum operators, motion picture theatre operators, or talent representatives who demonstrate a 25 percent reduction in revenues. \$2 billion of these funds are set aside for venues with no more than 50 full-time employees. Grants shall be used for specified expenses such as payroll costs, rent, utilities, and personal protective equipment.

Guidance from the Small Business Administration about the program can be found [here](#).

Title V – Banking

Subtitle A — Emergency Rental Assistance

Section 501. Emergency Rental Assistance.

The bill appropriates \$25 billion through Treasury to provide to state and local government entities, including \$400 million for U.S. territories and \$800 million for Native Americans, Alaska Natives, and Native Hawaiians (with the District of Columbia treated as a state). Funds were required to be allocated to state and local governments (“grantees”) within 30 days of enactment. Eligible households are defined as renter households who: (1) have a household income not more than 80 percent of area median income (AMI); (2) have one or more household members who can demonstrate a risk of experiencing homelessness or housing instability; and (3) have one or more household members who qualify for unemployment benefits or experienced financial hardship due, directly or indirectly, to the pandemic. Assistance would be prioritized for renter households whose incomes do not exceed 50 percent of AMI, as well as renter households who are currently unemployed and have been unemployed for 90 or more days. Financial assistance provided under this section is non-taxable for households receiving such assistance.

Information about the program from the U.S. Department of Treasury can be found [here](#).

Title X – Miscellaneous

Section 1001. Coronavirus Relief Fund Extension.

Extends the date by which state and local governments must make expenditures with CARES Act Coronavirus Relief Fund awards from December 30, 2020, to December 31, 2021.

Treasury guidance on CRF can be found [here](#).

DIVISION FF-OTHER MATTERS

TITLE X—Bankruptcy Relief

Section 1001. Bankruptcy Relief.

(h) TERMINATION OF UTILITY SERVICES.— This subsection amends section 366 of the Bankruptcy Code to prohibit a utility from discontinuing utility services to an individual debtor so long as the individual debtor pays the utility company for services rendered in the twenty-day post-filing period and continues to make all other post-petition utility payments, even if the individual debtor has not otherwise provided the utility company with adequate assurance of payment. This provision sunsets in one year on December 27, 2021.

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**THE AMERICAN RESCUE PLAN ACT OF 2021
(PUBLIC LAW NO. 117-2)**

Sec. 2911. Funding for the Low Income Home Energy Assistance Program (LIHEAP)

An additional \$4.5 billion in funding will be provided for LIHEAP. Under the act, half of that new funding will be allocated based on LIHEAP’s “old formula” (calculated largely on number of heating degree days) and half on the “new formula” (which incorporates both heating and cooling degree days in its calculations). As you can see from the chart below, Congress has seesawed between favoring one formula over the other in recent legislation. To help understand what the practical effect is on LIHEAP funding for your state, please see the attached spreadsheet providing state-by-state estimates of LIHEAP allocations for fiscal year (FY) 2021, including \$3.7 billion appropriated in the CAA and the \$4.5 billion provided under ARP.

LIHEAP Funding under the Act and Other Recent Laws						
	Old Formula		New Formula		Total	
CARES Act	\$225,000,000	25%	\$675,000,000	75%	\$900,000,000	100%
Consolidated Appropriations, 2021	\$2,990,304,000	80%	\$760,000,000	20%	\$3,750,304,000	100%
American Rescue Plan	\$2,250,000,000	50%	\$2,250,000,000	50%	\$4,500,000,000	100%

For more information about LIHEAP, please see the U.S. Department of Health and Human Services [site](#).

Sec. 3201. Emergency Rental Assistance

An additional \$21.55 billion was added to the \$25 billion appropriated for the Emergency Rental Assistance Program created under the CAA (discussed above). Eligibility requirements for the additional funding are the same as for the original bill as are approved uses (including for utility payments) (see above). The \$25 billion allocated by CAA is available through December 31, 2021. ARP funds are available through September 30, 2027.

For more information see: <https://home.treasury.gov/policy-issues/cares/emergency-rental-assistance-program>.

Sec. 3206. Homeowner Assistance Fund

This section allocates \$9.961 billion to create a new Homeowners Assistance Fund. These funds can be used to help homeowners with mortgage payments and utility bills. Funds will be allocated to states based on unemployment and the total number of mortgagors with mortgage payments that are more than 30 days past due, or mortgages in foreclosure. Eligibility requirements for the program are different than for LIHEAP and the Emergency Rental Assistance Program. Specifically, at least 60 percent of funding must go to homeowners having incomes equal to or less than 100 percent of the area median income for their household size or equal to or less than 100 percent of the median income for the United States. Relief is limited to owner-occupied households and each state will determine how much can go toward utility bills.

Funds will be administered by the Treasury Department and are available for use through September 30, 2025.

Information about the program from the Treasury Department can be found [here](#).

Sec. 9012. Extension of Emergency Unemployment Relief for Governmental Entities and Nonprofit Organizations

This section further extends a CARES Act provision that provides a 50 percent subsidy for costs incurred by governmental employers who provide unemployment benefits on a reimbursable basis, rather than via tax contributions. The CAA extension through March 31 (discussed above), remains in effect, while the ARP increases the subsidy to 75 percent beginning after March 31. The subsidy will remain available through September 6, 2021, at the 75 percent rate.

Department of Labor guidance to state workforce agencies explaining the implementation of this program under the CARES Act, CAA, and ARP amendments can be found [here](#).

Sec. 9641. Payroll Credits

The bill provides an extension and expansion of the paid sick and emergency family leave tax credits created in the Families First Coronavirus Response Act of 2020. Because the requirement to provide such leave has expired, the bill is providing payroll tax credits for employers who voluntarily provide paid leave through the end of September 2021. It also expands eligibility to state and local governments that provide this benefit. Because of the parliamentary constraints of budget reconciliation legislation, however, credits to employers will only be available prospectively from March 31, 2021, through September 30, 2021. Additionally, in contrast to payroll tax credits authorized in 2020, which were authorized as a credit against Old-Age, Survivors, and Disability Insurance (OASDI) taxes, this credit will be against Hospital Insurance (HI) taxes. Additionally, the bill increases the amount of wages for which an employer may claim the paid family credit in a year from \$10,000 to \$12,000 per employee. Paid sick time and paid family leave credits could be claimed for leave taken to obtain a COVID-19 vaccine or to recover from an injury, disability, illness, or condition related to a COVID-19 immunization.

Guidance from the Internal Revenue Service is available [here](#).

Subtitle M – Coronavirus State and Local Fiscal Recovery Funds

The bill provides an additional \$350 billion in additional funds to the \$150 billion appropriated for the Coronavirus Relief Fund in the CARES Act. This \$350 billion is split into two buckets:

- \$219.8 billion will be appropriated to the Coronavirus State Fiscal Recovery Fund, and
- \$130.2 billion will be appropriated to the Coronavirus Local Fiscal Recovery Fund.

The allocation of grants under these two programs will be quite complicated, but is described in sections 602 and 603 described below. Treasury guidance relating to these programs can be found [here](#).

Sec. 602. Coronavirus State Fiscal Recovery Fund

- \$195.3 billion will be allocated to the 50 states and D.C., mostly allocated based on share of unemployed individuals in the last quarter of 2020 with a minimum of \$500 million allocation per state;
- \$4.5 billion will be allocated to the U.S. territories of the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa; and
- \$20 billion will be allocated to tribal governments.

To receive the funds described in this section, a state, territory, or tribal government must provide to the Secretary of the Treasury a certification specifying that the government requires the federal assistance to effectively carry out pandemic response and mitigation activities consistent with the requirements of the permitted uses of the funds. The Secretary of the Treasury will be required to make payments within 60 days of receiving a state, territory, or tribal government's certification.

Recipient governments can use funds only:

- To respond to or mitigate the COVID-19 emergency or its negative economic impacts; to cover costs incurred as a result of the emergency;
- To replace revenue lost, delayed, or decreased as a result of the emergency, as determined based on revenue projections as of January 27, 2020; or
- To address the negative economic impacts of the emergency.

Recipient governments will be permitted to transfer funds to private nonprofit organizations, public benefit corporations involved in the transportation of passengers or cargo, a special-purpose unit of state or local government, or a multi-state entity involved in the transportation of passengers or cargo.

Sec. 603. Coronavirus Local Fiscal Recovery Fund

\$45.57 billion will be allocated for metropolitan cities, distributed pursuant to the formula used to administer the Community Development Block Grant (CDBG) program, modified to replace "all metropolitan cities" with "all metropolitan areas."

\$19.53 billion will be reserved for non-entitlement units of local government, generally defined as those with fewer than 50,000 inhabitants. The Secretary of the Treasury will be required to transmit payments to states within 60 days of enactment, and states will be required to transmit payments to non-entitlement units of local government within 30 days of receipt. This provision will ensure that non-entitlement units of local government receive payments under this act as expeditiously as practicable. States will have no discretionary authority to change the amount of, or attach additional requirements to, such payments. Payments will be distributed by the state to non-entitlement units of local government based on proportionate population, but not to exceed 75 percent of the most recent budget for the non-entitlement unit of government as of January 27, 2020. Of any amount above this cap, half will be retained by the state and half will be reallocated to other non-entitlement units of local government in the state.

\$65.1 billion will be allocated to make payments directly to counties of the 50 states, D.C., and the

territories, distributed proportionate to population. Urban counties will receive at least the amount they will receive if the sum were distributed to metropolitan cities and urban counties according to the CDBG formula. Funds for counties that are not units of general local government will be paid to the state to be distributed to cities proportionate to their population.

To receive the funds described in section 603, a local government county or metropolitan city must provide to the Secretary of the Treasury a certification specifying that the government requires the federal assistance to effectively carry out pandemic response and mitigation activities consistent with the requirements of the permitted uses of the funds.

Recipient governments are permitted to use funds only to respond to or mitigate the COVID-19 emergency or its negative economic impacts; to cover costs incurred as a result of the emergency; to replace revenue lost, delayed, or decreased as a result of the emergency, as determined based on revenue projections as of January 27, 2020; or to address the negative economic impacts of the emergency. Recipient governments are permitted to transfer funds to private nonprofit organizations, public benefit corporations involved in the transportation of passengers or cargo, a special-purpose unit of state or local government, or a multi-state entity involved in the transportation of passengers or cargo.

In addition to these funds, the law creates a new \$10 billion Coronavirus Capital Projects Fund (CCPF) for “critical capital projects directly enabling work, education, and health monitoring, including remote options, in response to the public health emergency with respect to the Coronavirus Disease.” To implement this fund, Treasury is required to establish a process of applying for grants within 60 days of enactment.

The CCPF will provide:

- \$100 million for each state, the District of Columbia, and Puerto Rico;
- \$100 million split equally between the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Marshall Islands, Micronesia, and Palau; and
- \$100 million split equally between tribal.

The remaining \$4.7 billion will be distributed to states, the District of Columbia, and Puerto Rico as follows:

- 50% based on population;
- 25% based on rural population; and
- 25% based on household income that is below 150% of the poverty line.

The Treasury Department has not yet provided guidance related to Coronavirus State Fiscal Recovery Fund and the Coronavirus Local Fiscal Recovery Fund.

For more information, please contact:

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