



**ADVISORY MEMORANDUM  
AMERICAN RESCUE PLAN ACT (ARPA) OF 2021  
PUBLIC LAW 117-2 (H.R. 1319)  
March 31, 2021**

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**Introduction.** The American Rescue Plan Act (ARPA) of 2021, Public Law 117-2 (H.R. 1319), signed into law by President Biden on March 11, 2021, will provide \$219.8 billion to states, territories, local governments, and tribal nations, out of which more than \$31.2 billion is targeted for Native communities (tribal nations, families, and servicing federal agencies).

**Historic Funding for Tribal Nations.** Passage of ARPA is historic in many respects. It represents the single, largest infusion of resources into Indian Country in the history of the United States by providing \$31.2 billion in targeted funding for tribal nations and Native communities. It includes billions of dollars in additional funding in the areas of economic impact payments, increased SNAP benefits, Paycheck Protection Programs (PPP), Economic Impact Disaster Loans (EIDL), etc. It provides tribal nations with greater flexibility in deciding how to deploy funds to meet their needs. It cuts the red tape so tribal nations do not have to divert limited COVID-19 response efforts to seek federal grant funding sources and comply with burdensome grant requirements. The \$20.0 billion in ARPA is twice as much as the initial CARES Act (Pub. L. 116-136) Coronavirus Relief Fund (CRF) allocation.

**KIVA Summary/Advisory.** On March 12, 2021, KIVA issued a Summary of ARPA, identifying funding allocations for major program areas that directly impact tribal nations, including: (1) Tribal Relief Fund (\$20.0 billion); (2) Indian Health Service (\$6.094 billion); (3) Bureau of Indian Affairs (\$900.0 million); (4) HUD-Office of Native American Programs (\$750.0 million); (5) Native American Languages; and (\$20.0 million); (6) Bureau of Indian Education (\$850.0 million); and (7) American Indian Native Hawaiian and Alaska Native Education (\$190.0 million).

In this Advisory Memorandum we bring focus to the \$20.0 billion Tribal Relief Fund (TRF) and recommend ways tribal nations might use these one-time funds to address critical capital improvement needs. We also reiterate the funding sectors we covered in the Summary Memorandum of March 12, 2021 for easy reference. We include important information on compliance requirements that you need to know.

**1. Section 9901 – Subpart M – Coronavirus State and Local Fiscal Recovery Funds.** ARPA, in section 9901, creates a \$20.0 billion Tribal Relief Fund (TRF) to remain available through December 31, 2024, with the first \$1.0 billion to be distributed equally among tribal nations within 60 days of enactment of the law (around May 10, 2021); and the remaining \$19.0 billion will be distributed using a formula to be determined by the U.S. Treasury, in consultation

with tribal nations. The first tranche of the TRF, when distributed equally, will help small tribes to receive an equal share of base funding that could help in addressing costly infrastructure and other emergency needs.

**Use of Funds.** The CARES Act, (Pub. L. 116-136), provided emergency relief funding for the country to respond directly to the COVID-19 pandemic. The intent of this legislation, ARPA, then is to help states, territories, local governments, and tribal nations to cover unexpected costs of having to respond to the COVID-19 pandemic; and to help offset the resulting economic impacts such as reductions or loss of revenues; and addressing capital improvement needs.

**Authorized Use Categories.** ARPA provides that tribal nations can use the funds to help pay for long overdue investments in broadband, clean water, and sewer infrastructure projects, and to provide “premium pay” to essential public workers, as follows:

- (A) Respond to 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;
- (B) To respond to workers performing essential work during COVID-19 by providing premium pay to eligible workers that are performing such essential work, or by providing grants to eligible employers that have eligible workers who perform essential work;
- (C) For the provision of government services to the extent of the reduction in revenues of such State, territory, or Tribal government due to the COVID-19 public health emergency relative to revenues collected in the most recent full fiscal year of the State, territory, or Tribal government prior to the emergency; or
- (D) To make necessary investments in water, sewer, or broadband infrastructure.

Indian Country was hard hit by the pandemic partly due to the isolation factor, inadequate infrastructure, lack of or limited grocery stores, limited access to hospitals and clinics, limited water supply, limited housing and overcrowding, and the lack of internet. Tribal enterprises were forced to shut down causing loss of pay and some even lost their jobs. Some enterprises may never reopen. Tribal offices without access to the internet could not allow employees to telework; and services to tribal members were disrupted or were not available.

ARPA provides tribal nations with some latitude to address the impacts and shortcomings so long as the use of funds fall within the four authorized categories above. It also grants additional time for use of these funds, during the covered period beginning March 3, 2021 through December

31, 2024. The 60-day fund distribution timeframe gives tribal nations time to prioritize their needs, make plans and prepare to start on projects once funds are distributed.

## **2. Title XI – Committee on Indian Affairs.**

**(A) Section 1101 – Indian Health Service.** ARPA, in section 1101(a), provides funding of \$6,094,000,000 to the Indian Health Service to remain available until expended, of which \$5,484,000,000 is for carrying out the Transfer Act of 1954, the Indian Self-Determination & Education Assistance Act, Indian Health Care Improvement Act, and Title II and III of Public Health Services Act, of which –

- 1) \$2,000,000,000 is for lost reimbursements under the Indian Health Care Improvement Act third party billing;
- 2) \$500,000,000 is for additional health care services provided through the & Purchased/Referred Care and other related services;
- 3) \$140,000,000 is for information technology and IHS electronic health records system.
- 4) \$84,000,000 is for maintaining operations of the Urban Indian health programs;
- 5) \$600,000,000 for COVID-19 is for distributing, administering, and tracking vaccine-related services;
- 6) \$1,500,000,000 is for detection, diagnosis, tracing, monitoring COVID-19 infections; mitigating the spread of COVID-19, and related activities.
- 7) \$240,000,000 is to establish, expand & sustain public health workforce to respond to COVID-19;
- 8) \$420,000,000 is for mental health and substance abuse prevention, and treatment services;
- 9) \$600,000,000 is for lease, purchase, construction, alternation, renovation, or equipping health facilities to respond to COVID-19; and
- 10) \$10,000,000 is to provide for potable water delivery.

- Amounts specified above are to be made available to restore funds that were incurred to prevent, prepare for, and respond to COVID-19 since the declaration of the public emergency (January 31, 2020); and ending on the date of enactment of ARPA.

- Funds made available to tribal nations and tribal organizations under Indian Self-Determination & Education Assistance Act are one-time funds; and are not part of the recurring funds under section 106 of Pub. L. 93-638; and shall only be used for the stated purposes under this Act.

**(B) Section 11002 - Bureau of Indian Affairs.** ARPA, in section 11002(a), provides the Bureau of Indian Affairs \$900,000,000 to remain available until expended, pursuant to the Snyder Act of 1921, of which –

- 1) \$100,000,000 for tribal housing improvement;
- 2) \$772,500,000 for tribal government services, public safety and justice, social services, child welfare assistance, and for other related expenses;
- 3) \$7,500,000 for related federal administrative costs and oversight; and
- 4) \$20,000,000 to provide and deliver potable water.

- Funds appropriated under this section shall be excluded from the calculation of funds received by tribal governments that participate in the “Small and Needy” program.

- Funds made available to tribal nations and tribal organizations under Indian Self-Determination & Education Assistance Act are one-time funds; and are not part of the recurring funds under section 106 of Pub. L. 93-638; and shall only be used for the stated purposes under this Act.

**(C) Section 11003 – Housing Assistance and Supportive Services Programs for Native Americans.** ARPA, in section 11003(a), provides the Housing and Urban Development –

- 1) Office of Native American Programs, \$750,000,000 to remain until September 30, 2025, under title I of the Native American Housing Assistance and Self-Determination Act of 1996, under title VIII of NAHASDA, and under section 106(a) of the Housing and Community Development Act of 1974, of which -

a. \$450,000,000 is for Native American Housing Block Grants under title I of NAHASDA using the same funding formula used in fiscal year 2021;

b. \$5,000,000 is for grants under title VIII of NAHASDA for Native Hawaiians;

c. Funds made available as provided above are available for use during the period the program is impacted by COVID-19; and may be used to provide rental assistance for Native Hawaiians on and off Native Hawaiian homelands;

d. Amounts made available shall be used to cover COVID-19 related costs incurred after January 21, 2020; and

e. Any amounts made available under this paragraph which are accepted and voluntarily returned, or otherwise recaptured for any reason shall be used to fund grants under this section.

- Amounts made available shall be used, as necessary, to cover or reimburse allowable costs to prevent, prepare for, and respond to coronavirus that are incurred by a recipient, including for costs incurred after January 21, 2020.

- Amounts made available under this paragraph which are not accepted are voluntarily returned, or otherwise recaptured for any reason shall be used to fund grants under the following paragraph.

2) Indian Community Development Block Grants of \$280,000,000 are available under title I of the Native American Housing and Community Development Act of 1974, subject to:

a. Amounts used must be used for emergencies that constitute imminent threat to health and safety and are designed to prevent, prepare for, and respond to coronavirus.

b. Not to exceed 20% of any grant made with funds made available for planning and management development and administration.

- Funds to be used for necessary costs for COVID-19 related purposes incurred after January 21, 2020.

- Indian tribes may use up to 100% of any grant from amounts made available under this section for COVID-19 related expenses.

3) Technical Assistance. \$10,000,000 are available for technical assistance to Indian tribes, Indian housing authorities, tribal designated housing entities, and recipients under title VIII of NAHASDA.

4) Other Costs. \$5,000,000 shall be available for administrative costs to oversee and administer this section including information technology and financial reporting and other costs.

**(D) Section 1004 – Preservation and Maintenance of Native American Languages.** ARPA amends section 816 of the Native American Programs Act of 1974 and provides \$20,000,000 to remain available until expended to carry out section 803(g) of the Act to authorize the Secretary to award grants to entities eligible to receive these grants for Native American Language Preservation and Maintenance Programs within 180 days after the effective date of ARPA.

**(E) Section 11005 - Bureau of Indian Education.** ARPA provides \$850,000,000 to remain available until expended; and to be allocated not more than 45 days after the enactment of ARPA by the Bureau of Indian Education, for programs and activities operated or funded by the Bureau of Indian Education, for Bureau-funded schools, and for tribal colleges or universities.

**(F) Section 11006 – American Indian, Native Hawaiian, and Alaska Native Education.** ARPA provides \$190,000,000 to remain available until expended for awards to be determined by the Secretary of Education, not more than 180 calendar days after enactment of ARPA, of which –

1) \$20,000,000 for awards for tribal education agencies for activities authorized under section 6121(c) of the Elementary and Secondary Education Act of 1965;

2) \$85,000,000 for awards to eligible entities under section 6205(a)(3) of the Elementary and Secondary Education Act of 1965; and

3) \$85,000,000 for awards to eligible entities under section 6304(a)(1) of the Elementary and Secondary Education Act of 1965.

**3. Federal Oversight Mechanism.** In addition to the Secretary of U.S. Treasury, the CARES Act created three new federal oversight mechanisms which may continue under the ARPA, as follows:

**(A) Pandemic Response Accountability Committee (PRAC);**

- (B) Special Inspector General for Pandemic, Recovery (SIGPAR);
- (C) Congressional Oversight Commission; and
- (D) Funding agencies will have their own monitoring mechanisms.

**4. Reporting Requirements.** The U.S. Department of the Treasury is the lead agency under the CARES Act and has primary oversight and monitoring responsibility on the use of CARES Act funds. This role may continue under ARPA. ARPA requires that recipients provide periodic reports to include an accounting of: (A) the use of funds by such State, territory, or Tribal government, including, in the case of a State, territory, all modifications to the State's or territory's tax revenue sources during the covered period; and (B) such other information as the Secretary may require for the administration of this section.

(A) **Quarterly Reporting.** The U.S. Treasury issued several memoranda requiring prime recipients to submit quarterly reports on their use of CRF using the GrantSolutions portal. This reporting requirement may continue under ARPA. Reports submitted by prime recipients will be provided to the Pandemic Responsibility Accountability Committee (PRAC) for monitoring.

The records retention period under the CARES Act is five years, as opposed to the normal three-year federal records retention period. The same records retention period may apply to ARPA.

(B) **Single Audit Act.** In addition to the quarterly reporting requirement, use of CRF and ARPA funds will be subject to the Single Audit Act; and a unique Catalog of Federal Domestic Assistance (CFDA) identifier may be assigned to ARPA funds. Single Audit Reports are due nine (9) months after the end of the recipients' fiscal year. The Office of Management & Budget may issue an Audit Compliance Supplement as it did for the CARES Act audits.

**5. Recoupment and Unallowable Expenditures.** Any use of ARPA funds not in compliance with the statutorily authorized uses may be deemed unallowable costs and considered to be a debt to U.S. Treasury. And any funds not expended by the end of the covered period (December 31, 2024, or any extensions), will be subject to recoupment by the U.S. Treasury.

**In Conclusion.** This Advisory Memorandum only presents highlights of Public Law 117-2, the American Rescue Plan Act of 2021 (ARPA), with a focus on programs that have direct impact on tribal nations and their federal servicing agencies. Funds to be made available to tribal nations are one-time funds, most of which are available through December 31, 2024, but certain programs

have funding availability beyond 2024, or are available until expended. The first tranche (\$1.0 billion) of Tribal Relief Funds should be distributed to tribal nations by May 10, 2021; with the remaining \$19.0 billion to be distributed later under a distribution methodology to be determined by the U.S. Treasury.

Tribal Relief Funds (section 9901 program funds) may be distributed directly to tribes, while section 11000 program funds will first be allocated to the servicing agencies for later distribution to tribal nations and placed in existing or new federal awards.

ARPA provides a prime opportunity for tribal nations to address their capital and infrastructure improvement needs such as development of water delivery systems, sewer systems, broadband projects; and funds to address the economic impacts under the COVID-19 pandemic. Tribal nations should also be mindful that the Biden Administration and Congress are contemplating a significant infrastructure stimulus legislation to address the Nation's infrastructure needs. When passed this legislation may provide much needed funding for projects like road construction and improvement, bridge construction, broadband, waterway improvement projects, school facilities construction or improvement, detention center construction or improvement, clinics, and hospitals, etc. In this regard, we advise tribal nations to identify their needs, begin preparations; and be prepared once the stimulus legislation is approved.

Should you have any questions, please do not hesitate to contact us at: [info@kivainstitute.com](mailto:info@kivainstitute.com), or our toll-free telephone number at: 1-866-202-5482. Thank you. You may share this Advisory Memorandum with your colleagues.

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