



FED-PP-02: ARPA FUNDING RECOUPMENT

COMMITTEE RECOMMENDATION: ADOPT

PROPOSED POLICY: SUPPORT legislation to prohibit the U.S Department of Treasury from recouping previously awarded funds for projects and services that have been certified as complete, for at least three years, which will be 2029.

SUPPORT the implementation of a statute of limitations for the remediation and recoupment of funds directly allocated to Counties under the American Rescue Act.

BACKGROUND: On March 11, 2021, President Biden signed the American Rescue Plan Act of 2021 into law. The American Rescue Plan Act, specifically the Coronavirus State and Local Fiscal Recovery Funds (SLFRF), provided historical investments for Florida's counties to respond to the COVID-19 pandemic and its effects. Among many allowable uses, the Act helped those most in need, including providing affordable housing assistance, loans to small business owners, aid to Florida's crucial tourism industry, governmental services impacted by reduced revenue, and many key infrastructure investments, such as water, sewer, and broadband.

The \$1.9 trillion package is intended to combat the COVID-19 pandemic, including the public health and economic impacts. As part of the \$362 billion in federal fiscal recovery aid for state and local governments, \$65.1 billion is provided in direct aid to counties and \$65.1 billion to all municipalities. In addition, the American Rescue Plan Act allocated hundreds of billions of dollars for public health and vaccines, assistance for vulnerable populations, education and housing stabilization, economic recovery assistance and direct assistance for families and individuals.

As it states in the State and Local Fiscal Recovery Fund Final Rule, the U.S. Department of Treasury Secretary has the power to recoup these funds according to Sections 602(e) and 603(e) of the Social Security Act.

In 2018, FAC along with the National Association of Counties, collaborated on a successful campaign to implement a three-year statute of limitations for the de-obligation of previously awarded public assistance for natural disasters. This provision could be used as a reference for this initiative.

ANALYSIS: Under the Final Rule, funds must be obligated by December 31, 2024, and expended by December 31, 2026. Recipients of the funds must comply with the requirements and eligible uses under the Final Rule. Additionally, recipients must comply with mandatory periodic reports to U.S. Treasury. If funds are found in violation of the Final Rule, the recipient is



subject to remediation and recoupment. Recoupment is defined as the recovery or collection of money that was previously unduly paid out.

As noted, Sections 602(e) and 603(e) of the Social Security Act allow the Secretary to recoup funds used in violation of the Social Security Act. If a potential violation is identified, Treasury will provide the recipient with an initial written notice of the amount along with an explanation of the amount. The said, a recipient has 60 calendar days following the recoupment notice to submit a request for reconsideration containing any information it believes supports its use of funds. Within 60 calendar days of receipt of the request for reconsideration, the recipient will receive notice of the Secretary's decision to affirm, withdraw, or modify the recoupment notice.

Recoupment of SLFRF funds past a certain timeframe or years after completion of a project, could lead to similar problems faced by Florida counties with de-obligation under the Robert T. Stafford Disaster Act. The purpose of this proposal is to prevent years of remediation and recoupment obligations and to have a reasonable timeframe for Florida's counties to handle outstanding issues with the SLRF funds.

FISCAL IMPACT: The recoupment of expended American Rescue Plan Act funds will be fiscally detrimental to all Counties across the nation.

FAC STAFF NOTES:

- FAC 2022 Policy Conference
 - FED-PP-02 was recommended for adoption by the committee.

- The Final Rule recoupment provision:
 - The Remediation and Recoupment provision in the Final Rule is located on page 374-378. Please note, that the recipient may submit a request for reconsideration concerning any amounts identified in a notice provided by Treasury. Treasury retains the ability to expediate or extend timelines on any adjunction or pre-adjudication process pursuant to s.35.4(b) of the final rule.
 - Treasury has clarified that a recipient must invoke and exhaust the procedures available under s.35.10 of the final rule prior to seeking judicial review of a recoupment decision.

The Final Rule:

<https://home.treasury.gov/system/files/136/SLFRF-Final-Rule.pdf>

- Past recoupment debacles: The Robert T. Stafford Disaster Relief Act
 - Funds were provided under the Robert T. Stafford Disaster Relief Act. Primarily driven by the 2004-2005 hurricanes.
 - More than \$130 million was scheduled to be de-obligated from local entities that were impacted by severe storms during the last 10 years. For example,

- DeSoto county faced de-obligations totaling \$1.154 million from recovery work that occurred nearly a decade ago.
- Just to name a few of the other counties impacted by the de-obligations of disaster funds: Miami-Dade (14 million), Broward County (17 million), Collier County (11 million)
 - A few challenges faced under the de-obligations under the Stafford Act included:
 - Recoupment was detrimental to a county's total budget without preparation or notice;
 - Difficult to provide backed up documents for projects that were sometimes 7 years old within a period of days or face de-obligation;
 - Unreasonable timelines and arbitrary deadlines; and
 - Frustrations existed with FEMA's appeal process and the number of different staff interactions and FEMA's failure to comply with the mandatory appeal response timelines.
 - [The Robert T. Stafford Disaster Relief Act, as amended. May 2021.](#)
- Past FAC Statements:
 - Since 2015, FAC and its member counties sought a change to the Robert T. Stafford Disaster Relief and Emergency Assistance Act that amended the 3-year statute of limitations on de-obligations from the close of the disaster declaration to the close of an actual project. This statute of limitations language promoted by FAC passed the U.S. House of Representatives three times, dating back to 2016 and legislation was filed by Senator Nelson and Rubio.
 - FAC's response to the de-obligation of previously awarded public assistance for natural disasters included letters with partnership organizations (FLC, NACo) to FEMA and members of Congress (U.S. Senate). Additionally, FAC provided written comments to FEMA on s.705 of the Stafford Act.
 - A policy regarding FEMA de-obligations was adopted in 2016-2017 FAC Legislative Program: **Federal Disaster Assistance: SUPPORT** legislation that prohibits the Federal Emergency Management Agency (FEMA) from de-obligating from counties previously awarded disaster funds for projects that have been certified complete by the state for at least three years.
 - Staff Recommendation: Adopt & work with the National Association of Counties, Florida League of Cities, the Florida Congressional Delegation, and other partnerships to develop a campaign (letters, public comments) like that of the FEMA relief money before counties run into similar de-obligation issues with the U.S. Department of Treasury.
 - Legislation Response to FEMA De-obligation: *The Disaster Recovery Reform Act of 2018*
 - The Disaster Recovery Reform Act of 2018 (DRRA) established statutes of limitation for the recoupment of federal assistance provided to individuals and households, and to PA Applicants. DRRA s.1216 (b) established a three-year statute of limitations on FEMA's ability to recoup IHP assistance received more than three years before FEMA provided notice of intent to recoup the funds. The



Act included provision to “ensure that FEMA initiates any collection actions as quickly as possible...and provide more certainty to individuals recovering from disasters.”

- Additionally, the DRRRA Section 1216(c) changed the start of the three-year statute of limitations so that recovery payments could not be initiated “after the date that is 3 years after the date of transmission of the final expenditure report for project completion” rather than the final expenditure report for the disaster or emergency.
- Prior to DRRRA, FEMA could potentially recoup funding from projects completed and closed because the disaster was still open.
- The Disaster Recovery Reform Act of 2018 (DRRA): Implementation Updates for Select Provisions: <https://crsreports.congress.gov/product/pdf/R/R46776/3>

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ASSIGNED COMMITTEE: FED

BOARD SUPPORT: Yes

UNFUNDED MANDATE: No

PROTECTIVE OF HOME RULE: Yes