NATIONAL TAXPAYERS UNION

March 1, 2022

The Honorable Carolyn Maloney
Chair, House Committee on Oversight and Reform
2125 Rayburn House Office Building
Washington, D.C. 20515

The Honorable James Comer
Ranking Member, House Committee on Oversight and Reform
2105 Rayburn House Office Building
Washington, D.C. 20515

Dear Chair Maloney, Ranking Member Comer, and Members of the Committee:

On behalf of National Taxpayers Union (NTU), the nation's oldest taxpayer advocacy organization, I write to you in regards to your hearing, "From Recession to Recovery: Examining the Impact of the American Rescue Plan's State and Local Fiscal Recovery Funds."[1] NTU and its sister organization, NTU Foundation, have had numerous concerns with the passage, implementation, and federal monitoring of the $350 billion Coronavirus State and Local Fiscal Recovery Funds (SLFRF) program under the American Rescue Plan Act (ARPA), and we welcome this opportunity to share our analysis and recommendations with you ahead of your hearing.

As you well know, the SLFRF comprised a major portion of ARPA, which the Congressional Budget Office (CBO) estimates raised federal deficits by $1.844 trillion from fiscal years (FYs) 2021 through 2031.[2] SLFRF funding under ARPA totaled $362 billion, making up nearly one in every five dollars of ARPA's deficit impact.[3]

Nearly 54 percent of the state and local government funding, or over $195 billion, went to state governments specifically, adding to $139 billion provided to state governments a year prior under the bipartisan Coronavirus Aid, Relief, and Economic Security (CARES) Act.[4] All in all, Congress sent state governments a little over $334 billion in the course of just one year,[5] with few strings attached.

**<u>NTU Concerns With SLFRF and Accompanying Regulations</u>**

Before Congress passed ARPA, NTU warned lawmakers that their proposal would send state governments far more deficit-financed dollars than they needed at the time, as some states were experiencing unexpected revenue increases and unemployment declines at that stage in the pandemic.

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[1] House Committee on Oversight and Reform. "From Recession to Recovery: Examining the Impact of the American Rescue Plan's State and Local Fiscal Recovery Fund." February 2022. Retrieved from: https://oversight.house.gov/legislation/hearings/from-recession-to-recovery-examining-the-impact-of-the-american-rescue-plan-s (Accessed February 24, 2022.)
[2] Congressional Budget Office. "Estimated Budgetary Effects of H.R. 1319, American Rescue Plan Act of 2021." March 10, 2021. Retrieved from: https://www.cbo.gov/publication/57056 (Accessed February 24, 2022.)
[3] *Ibid*; see Detailed Tables, Table 9, Subtitle M.
[4] Congressional Research Service (CRS). "The American Rescue Plan Act, Section 9901— The Coronavirus State Fiscal Recovery Fund." May 11, 2021. Retrieved from: https://crsreports.congress.gov/product/pdf/IN/IN11665 (Accessed February 24, 2022.)
[5] *Ibid*; NTU calculations based on CRS data.

Our research found that just $6 billion to $16 billion in funding to the states would have been more appropriate than the $195 billion Congress appropriated in ARPA.[6] We added that lawmakers should not seek to fill projected FY 2022 budget gaps at the state level, given the highly uncertain fiscal trajectory facing both state governments and the federal government writ large, and that Congress should focus narrowly on urgent budget gaps from the immediately prior and current fiscal years (FYs 2020 and 2021 at the time):

> "What we hope to demonstrate with this analysis, though, is that $200 billion for state governments alone is far too much at this point in time and at this moment in the COVID-19 crisis and recovery. In particular, lawmakers should not seek to fill anticipated FY 2022 state budget gaps or revenue shortfalls now, given the high degree of uncertainty over state budget pictures for the upcoming fiscal year. Instead, lawmakers should focus on making the state governments struggling most with the pandemic whole from current losses. That may require a fraction of the $200 billion outlined in the current COVID-19 relief package."[7]

Even earlier, NTU joined a coalition letter organized by the R Street Institute that asked lawmakers at minimum to commit to full transparency in providing state aid, and to base any funding directed to state governments on actual revenue losses rather than mere projections.[8]

Unfortunately, lawmakers supporting ARPA did not heed the warnings of NTU and others. This new $195 billion pot of federal funding to state governments passed into law in March 2021. Per Congressional guidance in the law, Treasury broke up funding for many of the states into two tranches, one sent to states in May 2021 and the other to be sent no later than 12 months after the first tranche (i.e., no later than May 2022).[9] Payments to states remain available through the end of 2024 and can be used on projects completed through the end of 2026, which is likely to be well beyond the scope of the worst health and economic effects of the pandemic.

Since passage of ARPA, Treasury has proposed regulations regarding the use of state government funding under ARPA. Our research arm, National Taxpayers Union Foundation (NTUF), has written extensively on at least two major restrictions that lawmakers and/or Treasury officials have sought to attach as conditions for all 50 states receiving ARPA funds:

1. The statute governing state government funding under ARPA prohibits funds from "directly or indirectly offset[ing] a [state's] reduction" in "net tax revenue," which NTUF's Joe Bishop-Henchman has pointed out could restrict state governments from enacting ***any*** tax reductions for the next several years.[10] Several states have launched legal challenges to this provision, but Bishop-Henchman pointed out in

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[6] Lautz, Andrew. "COVID Bill Proposes Nearly $200 Billion for States. They May Only Need $6-16 Billion." NTU, March 4, 2021. Retrieved from: https://www.ntu.org/publications/detail/covid-bill-proposes-nearly-200-billion-for-states-they-may-only-need-6-16-billion
[7] *Ibid*.
[8] Bydlak, Jonathan. "Coalition Letter: federal response to state and local budget strain caused by COVID-19." R Street Institute, July 6, 2020. Retrieved from: https://www.rstreet.org/2020/07/06/coalition-letter-federal-response-to-state-and-local-budget-strain-caused-by-covid-19/ (Accessed February 24, 2022.)
[9] CRS. "The American Rescue Plan Act, Section 9901— The Coronavirus State Fiscal Recovery Fund." May 11, 2021. Retrieved from: https://crsreports.congress.gov/product/pdf/IN/IN11665 (Accessed February 24, 2022.)
[10] Bishop-Henchman, Joe. "NTU Requests Clarification on State Tax Provision in American Rescue Plan." NTU Foundation, April 7, 2021. Retrieved from: https://www.ntu.org/foundation/detail/ntu-requests-clarification-on-state-tax-provision-in-american-rescue-plan

January of this year that Treasury's final regulations on the matter – also published in January 2022 – appear to make no major changes from the interim final rule issued in 2021.[11]

2. Bishop-Henchman has also pointed out that, starting on April 1, 2022, final Treasury regulations prohibit states that use ARPA funds to restore unemployment insurance (UI) trust funds from taking any "action to reduce [UI] benefits available to unemployed workers by changing…average weekly benefit amounts or the number of weeks of benefits payable" through 2024.[12]

NTU remains concerned that Treasury's final regulations governing state use of ARPA funds 1) refuse to recognize tax relief as a legitimate form of fighting the pandemic, supporting families and businesses, and building a strong recovery; and 2) place a straitjacket on states' flexibility to adjust UI programs as the pandemic and economy change, even if those states have good intentions in using ARPA dollars to replenish depleted UI trust funds.

## Questionable State ARPA Spending, Soaring Budget Surpluses

Unfortunately, in the months since the passage of ARPA we have seen federal dollars spent by states in a number of questionable ways. According to a tracker maintained by the National Conference of State Legislatures (NCSL), states have announced over $1.4 billion in funding for dozens of arts, culture, and tourism initiatives.[13] This is not a partisan matter, with states currently led by Democrats and states currently led by Republicans announcing funding for stadiums, marketing, golf courses, zoos, movie theaters, museums, and aquariums.[14] NTU does not intend to suggest that all of these projects are completely unworthy of public support at the federal, state, or local levels, but we question the urgency of devoting federal funds to arts and tourism initiatives when the federal government is running a $30 trillion debt.[15]

Even beyond funding specific to arts and tourism, potentially wasteful state government uses of federal funds abound in NCSL's data, including:

- $10 million for a drone program in Alaska;
- $72,000 to two cities' Little Leagues in Connecticut;
- $1.5 million for swimming lessons in Connecticut;
- Over $6 million to state police in Oregon for vehicle purchases, lab equipment, and forensic services;
- $250 million in Virginia funding prioritized for the hospitality and tourism industries;
- $70 million in Wisconsin for the state's lodging industry; and
- Nearly $250 million for marketing campaigns in several states.[16]

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[11] Bishop-Henchman, Joe. "Treasury Adopts Final Rule Explaining What State Tax Cuts Are OK Under ARPA Provision." NTU Foundation, January 7, 2022. Retrieved from: https://www.ntu.org/foundation/detail/treasury-adopts-final-rule-explaining-what-state-tax-cuts-are-ok-under-arpa-provision

[12] Bishop-Henchman, Joe. "States Have Until April 1 to Use UI Funds Without New Federal Conditions." NTU Foundation, February 9, 2022. Retrieved from: https://www.ntu.org/foundation/detail/states-have-until-april-1-to-use-ui-funds-without-new-federal-conditions

[13] National Conference of State Legislatures (NCSL). "ARPA State Fiscal Recovery Fund Allocations." 2022. Retrieved from: https://app.powerbi.com/view?r=eyJrIjoiMmQ2NDRiNDYtN2NkZC00OTE2LThjYzQtYjAzNTE2ZDRjZWFiIiwidCI6IjM4MmZiOGIwLTRkYzMtNDEwNy04MGJkLTM1OTViMjQzMmZhZSIsImMiOjZ9 (Accessed February 25, 2022.)

[14] *Ibid*.

[15] U.S. Department of the Treasury. "Debt to the Penny." 2022. Retrieved from: https://fiscaldata.treasury.gov/datasets/debt-to-the-penny/debt-to-the-penny (Accessed February 25, 2022.)

[16] NCSL. "ARPA State Fiscal Recovery Fund Allocations." 2022. Retrieved from: https://app.powerbi.com/view?r=eyJrIjoiMmQ2NDRiNDYtN2NkZC00OTE2LThjYzQtYjAzNTE2ZDRjZWFiIiwidCI6IjM4MmZiOGIwLTRkYzMtNDEwNy04MGJkLTM1OTViMjQzMmZhZSIsImMiOjZ9 (Accessed February 25, 2022.)

It should be noted, of course, that the arguably wasteful spending examples cited above make up just a small portion of total federal funding to state governments under ARPA. But the scale and scope of the SLFRF guarantee that federal funds will be put to questionable or wasteful projects, rather than urgent and desperately needed priorities at the state level that would not otherwise be funded.

A government watchdog, the Treasury Office of the Inspector General (OIG), provided states with 18 categories for submitting information on their use of federal funds under SLFRF's predecessor, the CARES Act Coronavirus Relief Fund (CRF). The plurality of funding ($10.4 billion) was categorized under a generic, "all of the above" distinction titled, "Items Not Listed Above," followed by "Payroll for Public Health and Safety Employees" ($9.2 billion), "Economic Support" ($8.9 billion), "Public Health Expenses" ($8.0 billion), and 14 other more specific categories.[17]

Of additional concern is that one of the four broad categories of projects that states can spend ARPA dollars on includes broadband infrastructure. This overlaps considerably with subsequent spending authorized by Congress in the bipartisan infrastructure law passed in the fall of 2021. The new law authorizes the federal government to send $65 billion in "large grants" to states "to pay for internet improvements."[18]

Another major concern with the SLFRF is that federal funds are being sent to states that currently have healthy budget surpluses and low unemployment rates. The five largest recipients of combined CRF and SLFRF funding have been California ($36.5 billion), Texas ($23.8 billion), New York ($17.9 billion), Florida ($14.7 billion), and Illinois ($11.6 billion).[19]

All five recently projected budget surpluses of billions of dollars – or, in the case of California, tens of billions of dollars:

- Last month, California forecast a budget surplus of anywhere from $45 billion to $68 billion;[20]
- In November, Texas forecast a $12 billion surplus and $12.5 billion available in "rainy day" funding;[21]
- New York forecast a $6 billion surplus in January;[22]

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[17] Pandemic Response Accountability Committee (PRAC). "See how recipients are spending $150 billion from the Coronavirus Relief Fund." January 6, 2022. Retrieved from: https://www.pandemicoversight.gov/data-interactive-tools/data-stories/see-how-recipients-are-spending-150-billion-coronavirus-relief-fund (Accessed February 25, 2022.)

[18] Willcox, James K. "Infrastructure Law Includes $65 Billion for Improving Internet Access." *Consumer Reports*, Updated November 15, 2021. Retrieved from: https://www.consumerreports.org/internet/infrastructure-bill-includes-65-billion-for-internet-access-a6861027212/ (Accessed February 25, 2022.)

[19] PRAC. "State and local governments spent $150B. Then got $350B more. Follow the money." November 4, 2021. Retrieved from: https://www.pandemicoversight.gov/data-interactive-tools/data-stories/state-and-local-governments-spent-150b-then-got-350b-more-follow-money (Accessed February 25, 2022.)

[20] Bloom, Tracy; and Zavala, Ashley. "California's budget surplus may be up to $23 billion more than previous projection." KTLA, February 21, 2022. Retrieved from: https://ktla.com/news/california/californias-budget-surplus-may-be-as-much-as-23-billion-bigger-than-previous-projection/ (Accessed February 25, 2022.)

[21] Ramsey, Ross. "Analysis: A swelling Texas treasury gives 2022 hopefuls room for big ideas." *The Texas Tribune*, November 22, 2021. Retrieved from: https://www.texastribune.org/2021/11/22/texas-election-budget-surplus/ (Accessed February 25, 2022.)

[22] Gaetano, Chris. "NYS Presents FY 2023 Budget, Benefiting From Unexpected Surplus." NYS Society of CPAs, January 18, 2022. Retrieved from: https://www.nysscpa.org/news/publications/the-trusted-professional/article/nys-presents-budget-benefiting-from-unexpected-surplus-011822 (Accessed February 25, 2022.)

- Florida had an estimated $7 billion "general revenue surplus" as of December;[23] and
- Even Illinois, with perpetual fiscal challenges, projected a $1.7 billion surplus for the current fiscal year just last month.[24]

All five states also had unemployment rates between 4.4 percent and 6.5 percent as of December 2021, anywhere from 0.4 percentage points to 2.6 percentage points lower than those states' unemployment rates in January 2021.[25] While some workers and families are no doubt still struggling from the economic impacts of the pandemic, it is clear that the labor market and unemployment outlook for the country is much better than it was at this time last year. This raises questions about states that would commit new ARPA funding in 2022 to employment or labor initiatives.

## NTU Oversight and Reform Recommendations

NTU believes that the Committee – and Congress broadly – can take several steps to exercise better oversight of ARPA state funding and also correct some of the legislative and regulatory mistakes that have become clearer with the passage of time:

- **Eliminate restrictions on provision of tax relief by states that receive ARPA funds**: Congress should eliminate the statutory provision in ARPA that purports to prohibit states from reducing taxes for the next several years. Several current legislative proposals would accomplish this, including the State Tax Freedom Act (H.R. 2189) from House Ways and Means Ranking Member Kevin Brady (R-TX) and 27 cosponsors;[26] the State Fiscal Flexibility Act from Senate Finance Ranking Member Mike Crapo (R-ID) and 11 cosponsors;[27] and the Let States Cut Taxes Act (H.R. 2002 and S. 730) from Rep. Dan Bishop (R-NC), Sen. Mike Braun (R-IN), 55 House cosponsors,[28] and 19 Senate cosponsors.[29]
- **Allow states the flexibility to adjust their UI programs, even if they used ARPA dollars to shore up ailing UI trust funds**: Congress should step in and roll back the Treasury Department's restrictions – issued in final regulations effective April 1, 2022 – that could prevent states from adjusting their UI programs as the pandemic and economy shift in the months and years ahead. As noted above, NTUF's Joe Bishop-Henchman outlined the issue in an analysis published last month.[30]

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[23] Florida Politics. "Takeaways from Tallahassee — Budget booster." December 11, 2021. Retrieved from: https://floridapolitics.com/archives/479602-takeaways-from-tallahassee-budget-booster/ (Accessed February 25, 2022.)
[24] NBC Chicago. "Read Gov. Pritzker's Full 2022 State of the State and Budget Address." February 2, 2022. Retrieved from: https://www.nbcchicago.com/news/local/read-gov-pritzkers-full-2022-state-of-the-state-and-budget-address/2747166/ (Accessed February 25, 2022.)
[25] Barnes, Zaak. "State Unemployment Rates | December 2021." NCSL, January 25, 2022. Retrieved from: https://www.ncsl.org/research/labor-and-employment/state-unemployment-update.aspx (Accessed February 25, 2022.)
[26] Congress.gov. "H.R. 2189 - State Tax Freedom Act." Introduced March 26, 2021. Retrieved from: https://www.congress.gov/bill/117th-congress/house-bill/2189/ (Accessed February 25, 2022.)
[27] Congress.gov. "S. 743 - State Fiscal Flexibility Act of 2021." Introduced March 15, 2021. Retrieved from: https://www.congress.gov/bill/117th-congress/senate-bill/743/ (Accessed February 25, 2022.)
[28] Congress.gov. "H.R. 2002 - Let States Cut Taxes Act." Introduced March 18, 2021. Retrieved from: https://www.congress.gov/bill/117th-congress/house-bill/2002 (Accessed February 25, 2022.)
[29] Congress.gov. "S. 730 - Let States Cut Taxes Act." Introduced March 11, 2021. Retrieved from: https://www.congress.gov/bill/117th-congress/senate-bill/730/ (Accessed February 25, 2022.)
[30] Bishop-Henchman, Joe. "States Have Until April 1 to Use UI Funds Without New Federal Conditions." NTU Foundation, February 9, 2022. Retrieved from: https://www.ntu.org/foundation/detail/states-have-until-april-1-to-use-ui-funds-without-new-federal-conditions

- **Remove broadband infrastructure as an eligible expense**: Since the bipartisan infrastructure law includes $65 billion in federal funding for broadband – specifically, federal grants to states[31] – state governments should not be permitted to use ARPA funding for broadband infrastructure. Lawmakers could amend subparagraph D of Sec. 602(c)(1) of the Social Security Act, as amended by Section 9901 of ARPA, to read "to make necessary investments in water or sewer infrastructure."[32]
- **Prohibit funding on projects whose primary purpose is state or local government economic marketing and tourism**: States should not be able to spend federal funds on marketing campaigns that are not credibly tied to urgent needs or priorities (i.e., states could still develop public health marketing campaigns, but should not be able to promote tourism).
- **Require monthly or quarterly reports from states receiving payments, not just "periodic" reports as required under current law**: Lawmakers, government watchdogs, and taxpayers need a regular accounting of how states are spending ARPA funds. Congress should amend the statute, specifically paragraph 2 of Sec. 602(d) of the Social Security Act, as amended by Section 9901 of ARPA, to require "monthly" or "quarterly" reports from states to the Secretary of Treasury.[33]
- **Add an explicit reporting requirement that states report progress on obligated funds and disbursed funds under ARPA**: Lawmakers and taxpayers should also have a handle on which ARPA funds have been obligated by states (i.e., committed but not actually spent) and which funds have been disbursed (i.e., actually sent to payees). Congress should conduct robust oversight on ARPA-funded projects that are being proposed well after the most severe public health and economic effects of the pandemic subside, as this will be a period when ARPA spending at the state level may become most wasteful or unnecessary.
- **Add a requirement that the Treasury Department report monthly or quarterly, and in a public fashion, on federal funds obligated (and disbursed) by states, and on any funds required to be repaid to Treasury under the statute**: There is no current language in the statute requiring Treasury to regularly share updates with the public on state spending under ARPA.[34] Congress should add such a requirement, and should also disclose when (and why) state ARPA funds are recouped by Treasury under Sec. 602(e) of the Social Security Act, as amended by Section 9901 of ARPA.[35]

NTU appreciates the Committee's consideration of our analysis, and our oversight and reform recommendations. Should you have any questions or feedback, I am at your service.

Sincerely,

Andrew Lautz
Director of Federal Policy

CC: Member of the House Committee on Oversight and Reform

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[31] Willcox, James K. "Infrastructure Law Includes $65 Billion for Improving Internet Access." Consumer Reports, Updated November 15, 2021. Retrieved from: https://www.consumerreports.org/internet/infrastructure-bill-includes-65-billion-for-internet-access-a6861027212/ (Accessed February 25, 2022.)
[32] Section 9901 of PL 117-2. "American Rescue Plan Act of 2021." March 11, 2021. Retrieved from: https://www.congress.gov/117/plaws/publ2/PLAW-117publ2.pdf#page=224 (Accessed February 25, 2022.)
[33] Section 9901 of PL 117-2. "American Rescue Plan Act of 2021." March 11, 2021. Retrieved from: https://www.congress.gov/117/plaws/publ2/PLAW-117publ2.pdf#page=225 (Accessed February 25, 2022.)
[34] *Ibid*; see page 221.
[35] *Ibid*; see page 225.