

CITIES AND TOWNS BULLETIN

AND UNIFORM COMPLIANCE GUIDELINES ISSUED BY STATE BOARD OF ACCOUNTS

September 2021

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UPCOMING TRAINING OPPORTUNITIES

Our training opportunities for the remainder of the year start with our monthly SBOA webinar on September 22, 2021. On November 8, 2021, SBOA will present at the ILMCT Annual Conference in Evansville. We'll have our final monthly webinar of the year on December 15, 2020.

For October, SBOA will be at the AIM Ideas Summit in French Lick October 6-7, 2021. We will have our Resource Table available the first day and will also be available to speak with you in a more casual setting on the second day.

AMERICAN RESUCE PLAN – NON-ENTITLEMENT UNITS

As cities and towns have begun to receive their first distribution of American Rescue Plan Act (ARPA) money, the Indiana Finance Authority has developed a webpage for non-entitlement units with useful information and links to other content. If you have questions regarding your ARPA distributions, please visit <https://www.in.gov/ifa/coronavirus-state-and-local-fiscal-recover-funds-american-rescue-plan-act-of-2021/>

If you have questions regarding the non-entitlement payment process, please email COVID-19@ifa.in.gov. For other inquires, including questions on eligible expenditures, please visit [Treasury's State & Local website](#) or email SLFRP@treasury.gov.

ARPA WEBINARS FROM U.S. TREASURY

On June 17, 2021, U.S. Treasury released the Compliance and Reporting Guidance for the State and Local Fiscal Recovery Fund Program. The guidance provides additional detail and clarification for each recipient's compliance and reporting responsibilities and will provide for an equitable economic recovery with provisions that ensure accountability, transparency, and user friendliness.

Following the release of this reporting guidance, the U.S. Treasury hosted a series of informational webinars for recipients. Recordings of these webinars, along with the accompanying slides, are now available on the [Treasury website](#). The U.S. Treasury encourages recipients to view the webinars that correspond with their population and award amount as reporting requirements vary by jurisdiction size and funding amount.

ARPA PROJECT & EXPENDITURE REPORTING

All recipients of State and Local Fiscal Recovery Funds (SLFRF) through the American Rescue Plan Act are required to submit Project and Expenditure Reports.

Quarterly Reporting

Metropolitan cities that received more than \$5 million in SLFRF funding are required to submit quarterly Project and Expenditure Reports (Quarterly Report). The initial Quarterly Report will cover two calendar quarters from the date of award to September 30, 2021 and must be submitted to the U.S. Treasury by October 31, 2021. Subsequent Quarterly Reports will cover one calendar quarter and must be submitted to the U.S. Treasury within 30 calendar days after the end of each calendar quarter. Quarterly Reports are not due concurrently with applicable annual reports. Those metropolitan cities receiving less than \$5 million in SLFRF funding and all non-entitlement units (NEUs) are not required to submit quarterly reports.

Annual Reporting

Metropolitan cities that receive less than \$5 million in SLFRF funding and all NEUs are required to submit annual Project and Expenditure Reports (Annual Reports). The initial Annual Report will cover from the date of award to September 30, 2021 and must be submitted to the U.S. Treasury by October 31, 2021. Subsequent Annual Reports will cover one calendar year and must be submitted to Treasury by October 31.

More information on SLFRF compliance and reporting guidance can be found here <https://home.treasury.gov/system/files/136/SLFRF-Compliance-and-Reporting-Guidance.pdf>

ARPA APPROPRIATIONS

The appropriation process for the ARPA Fund is the same as for any home-ruled fund as defined by the Department of Local Government Finance (DLGF). IC 6-1.1-18-5(d) states "A political subdivision may make an additional appropriation without approval of the department of local government finance if the additional appropriation is made from a fund that is not described under subsection (b). However, the fiscal officer of the political subdivision shall report the additional appropriation to the department of local government finance." It is our audit position that the ARPA Fund is a "fund that is not described under subsection (b)."

ARPA APPROPRIATIONS (continued)

To use ARPA funds in 2021, follow the additional appropriation process in IC 6-1.1-18 which is described in the DLGF Memorandum, *Additional Appropriation Submission, Department Review Procedures, and Other Related Topics*, dated February 5, 2021. Additional appropriation procedures for home-ruled funds require public notice, a public hearing, and reporting to the DLGF. The ARPA fund is considered a home-ruled fund for DLGF purposes. Here is a link to the DLGF Memorandum: <https://www.in.gov/dlgf/files/210205-Van-Dorp-Memo-Additional-Appropriation-Submissions.pdf>

To use ARPA money in 2022, it is our understanding that the ARPA money should be included in the normal budgeting process, including the advertisement and adoption of appropriation.

If you have any further questions on the budget or appropriation process for ARPA money, please contact your local DLGF budget representative.

REPORTING CYBERSECURITY INCIDENTS

IC 4-13.1-2-9 became effective July 1, 2021, and requires all cities and towns to report cybersecurity incidents within 2 business days of discovery to the Indiana Office of Technology (IOT). The statute allows IOT to share anonymous attack information to warn others and provides an overview of cybersecurity attacks.

To learn more about the cybersecurity incident reporting law, including what a cybersecurity incident is, which attacks must be reported, and how to report, please visit <https://www.in.gov/cybersecurity>. Reporting incidents can be made here <https://on.in.gov/1169>

Each city and town must designate a “point of contact” person. To sign up the contact person for your unit, please visit <https://public.govdelivery.com/accounts/INIOT/signup/26666>

HANDGUN PERMIT FEE REVENUE REPLACEMENT GRANT

The Indiana Criminal Justice Institute (ICJI) has released information on the new Law Enforcement Training Grant program, established by House Enrolled Act (HEA) 1001, to conduct training and purchase supplies and training materials. This program is available to replace lost revenue from the elimination of the handgun permit fee from IC 35-47-2-3.

HEA 1001 appropriated \$3.5 million for the State’s 2021-22 fiscal year and \$3.5 million for the 2022-23 fiscal year. HEA 1010 provides that funds distributed by ICJI to a law enforcement agency in a fiscal year may not exceed the amount that the law enforcement agency received from fees collected pursuant to IC 35-47-2-3 during calendar year 2020.

In order to determine the maximum award amount that your law enforcement agency may qualify for in law enforcement training funds, ICJI requires a certification of the revenue collected pursuant to IC 35-47-2-3. A city or town may certify its calendar year 2020 revenue collected by visiting www.in.gov/cji and selecting the “Law Enforcement Training” link found on the ICJI homepage. The certifying official will need to complete the required text boxes and upload a letter certifying the amount of funds collected.

If you have any questions related to this request, please contact ICJI at policetraining@cji.in.gov or by phone at (317) 232-1233.

CONFLICT OF INTEREST FORMS

The legal requirement for filing disclosures of conflict of interest can be found in the IC 35-44.1-1-4. If you have any questions regarding this law or disclosure, we recommend consulting your attorney for legal advice.

Persons required to file this disclosure with the State Board of Accounts are to do so through Gateway. A form available for use can be downloaded at <https://forms.in.gov/Download.aspx?id=8264>

Once the form has been completed, scan it as a pdf and upload it through Gateway at this link: https://gateway.ifionline.org/sboa_coi/. If the Conflict of Interest is on multiple pages, all pages must be in one file, in order, and in the correct orientation so that it is readable.

TRANSFER OF APPROPRIATIONS

IC 6-1.1-18-6 provides a city or town council may approve the transfer of money from one major budget classification to another within a department or office if the transfer is determined to be necessary, does not require the expenditure of more money than the total amount set out in the budget as finally determined, and the transfer is approved at a regular public meeting and by proper ordinance or resolution.

The transfer may be made without notice and without the approval of the Department of Local Government Finance.

HOME RULE

All cities and towns have home rule powers as set out in IC 36-1-3. The following should be considered when exercising such powers.

Policy

The policy of the state is to grant units all the powers that they need for the effective operations of government as to local affairs.

Expressed Limits of Home Rule

The Home Rule law contains a number of expressed provisions that preclude, limit, or condition the exercise of powers under Home Rule.

First, there are two general limits. A unit may not do anything that is:

1. expressly denied by the state constitution or state law (for example, a unit could not prescribe a penalty for an action that violates state law or impose jail time as a penalty for violation of a local ordinance).
2. expressly granted to another entity (counties, for instance could not take over functions or usurp powers vested by law in municipalities, townships, etc.).

HOME RULE (continued)

In addition, there are other powers of a more specific character that units still may not exercise in the absence of authorization by state law. These include:

1. The power to condition or limit its civil liability, except as expressly granted by statute.
2. The power to prescribe the law governing civil actions between private persons.
3. The power to impose duties on another political subdivision, except as expressly granted by statute.
4. The power to impose a tax, except as expressly granted by statute.
5. The power to impose a license fee greater than that reasonably related to the administrative cost of exercising a regulatory power.
6. The power to impose a service charge or user fee greater than that reasonably related to reasonable and just rates and charges for services.
7. The power to regulate conduct that is regulated by a state agency, except as expressly granted by statute.
8. The power to prescribe a penalty for conduct constituting a crime or infraction under statute.
9. The power to prescribe a penalty of imprisonment for an ordinance violation.
10. The power to prescribe a penalty of a fine as follows:
 - A. More than ten thousand dollars (\$10,000) for the violation of an ordinance or a regulation concerning air emissions adopted by a county that has received approval to establish an air program under IC 13-17-12-6.
 - B. For a violation of any other ordinance:
 - (i) More than two thousand five hundred dollars (\$2,500) for a first violation
 - (ii) More than seven thousand five hundred dollars (\$7,500) for a second or subsequent violation of the ordinance, other than traffic or parking violations.
11. The power to invest money, except as expressly granted by statute.
12. The power to order or conduct an election, except as expressly granted by statute.
13. The power to adopt or enforce an ordinance described in section IC 36-1-3-8.5.
14. The power to take any action prohibited by section IC 36-1-3-8.6.
15. The power to dissolve a political subdivision, except: (A) as expressly granted by statute; or (B) if IC 36-1-8-17.7 applies to the political subdivision, in accordance with the procedure set forth in IC 36-1-8-17.7.
16. After June 30, 2019, the power to enact an ordinance requiring a solid waste hauler or a person who operates a vehicle in which recyclable material is transported for recycling to collect fees authorized by IC 13-21 and remit the fees to: (A) a unit; or (B) the board of a solid waste management district established under IC 13-21.

Additional limitations are discussed in IC 36-1-3-11, IC 36-1-3-11.2, IC 36-1-3-11.4, IC 36-1-3-12, and IC 36-1-3-13.

HOME RULE (continued)

When Should Home Rule Powers Be Used?

A unit may exercise its Home Rule powers whenever it is “necessary or desirable” to exercise any power, perform any function, provide any service – and create the structural elements or procedures to do so – and:

1. the laws and constitutions of the state and federal governments do not expressly or implicitly prohibit or preempt it from doing so; and
2. state law does not already provide for exercising the power, providing the service, or performing the function, or state law does provide for the foregoing but does not mandate any procedures to follow in implementing it.

How Are Home Rule Powers Exercised?

The bodies that must pass the appropriate authorizing ordinances are:

1. in the case of a town, the town council;
2. in the case of a city, the city council;
3. in the case of Indianapolis/Marion County, the city-county council.

The ordinance authorizing the exercise of a new power, the performance of a new function, or the provision of a new service under the authority of the Home Rule law should be adopted according to the same rules and procedures generally applicable to the adoption of ordinances by the local legislative body. Although it is not a specific requirement, it would be advisable to state in the preamble or digest of the ordinance (not in the body of the ordinance itself) that Home Rule powers vested in the unit’s government by IC 36-1-3 are being exercised so that the source of authority will be clear in the event that the action is questioned.

AUDIT REQUESTS

IC 5-11-1-25) requires the State Board of Accounts to examine all cities and towns at times determined by the State Board of Accounts, but not less than once every four years using risk based examination criteria. Examinations must be conducted annually for cities and towns that require annual audits due to (a) the receipt of federal financial assistance in an amount that subjects the city/town to a federal audit, (b) continuing disclosure requirements, or (c) as a condition of a public bond issuance. This examination responsibility is in addition to all other governmental and not-for-profit entities that we must examine or for which we have oversight responsibilities.

We frequently receive requests for audits due to a variety of reasons. However, due to the above noted workload, we generally are unable to immediately respond to requests for special examinations of cities and towns.

It should be noted if any official suspects or has reason to believe funds are missing or are being taken, the State Board of Accounts is to be notified in accordance with IC 5-11-1-27 and State Examiner Directive 2015-6 and we will make an assessment if immediate action is required.

All requests should set out the reason(s) for such requests.

MOTOR VEHICLE HIGHWAY ACCOUNT
APPROVED USES OF DISTRIBUTIONS BY CITIES AND TOWNS

IC 8-14-1-5 limits the use of city and town Motor Vehicle Highway Account distributions to “their highways.” IC 8-14-1-1(3) defines the term “highways” to include “roadway, rights of way, bridges, drainage structures, signs, guard rails, protective structures in connection with highways, drains, culverts, and bridges and the substructure and superstructure of bridges and approaches thereto and streets and alleys of cities or towns.”

Motor Vehicle Highway Account Distributions are allocated to cities and towns and can be used for the items noted in IC 8-14-1-5(a). For funds distributed to a city or town from the motor vehicle highway account, the city or town shall use at least fifty percent (50%) of the money for the construction, reconstruction, and preservation of the city's or town's highways. State Examiner Directive 2018-2 authorized and required cities and towns to account for the restricted MVH money in sub-fund #203 – Motor Vehicle Highway Restricted

Expenditures of Motor Vehicle Highway Distributions must have been budgeted and appropriated in the same manner as required for expenditure of general property tax revenues.

IC 8-14-1-3 provides for a penalty for misapplication of Motor Vehicle Distributions.

LOCAL ROAD AND STREET ACCOUNT
APPROVED USES OF DISTRIBUTIONS BY CITIES AND TOWNS

IC 8-14-2-5 states: “Money from the local road and street account shall be used exclusively by cities, towns, and counties for:

1. engineering, land acquisition, construction, resurfacing, maintenance, restoration, or rehabilitation of both local and arterial road and street systems;
2. the payment of principal and interest on bonds sold primarily to finance road, street, or thoroughfare projects;
3. any local costs required to undertake a recreational or reservoir road project under IC 8-23-5; or
4. the purchase, rental or repair of highway equipment.”

IC 8-14-2-7 only applies to towns in Marion County and states: “An included town under IC 36-3-1-7 may transfer surplus allocated monies to the town general fund from the local road and street account if those monies have not been allocated or expended within the previous twenty-four (24) months.”

Our audit position is the legislative intent seems to be for local road and street account distributions to be used only for direct expenses incurred in the construction, reconstruction, or maintenance of arterial and local roads and streets in cities and towns. This would prohibit the use of such funds for building construction or for such indirect costs as administrative salaries or supplies, goods, or materials not used directly for one of the aforementioned purposes.

Local road and street account distributions must be budgeted and appropriated prior to expenditure in the same manner as property tax revenues.

CUMULATIVE CAPITAL IMPROVEMENT FUND – USES
(Cigarette Tax Distributions)

IC 6-7-1-31.1 provides the fiscal body of each city and town shall, by ordinance or resolution, establish a cumulative capital improvement fund. The general uses of CCI can be found in IC 6-7-1-31-1(a). We would highlight IC 6-7-1-31.1(a)(9), which permits CCI to be used “for any governmental purpose for which money is appropriated by the fiscal body of the city or town.”

Money in the CCI fund does not revert to the General fund. However, we would not take audit exception to a city or town transferring, by ordinance or resolution, CCI money to its General fund as per IC 6-7-1-31.1(c).

The Attorney General in Official Opinion No. 1, dated May 25, 1965, held a city or town existing at the time of the last preceding U.S. decennial census continues to share in the cigarette tax distribution on this basis and not on the basis of any subsequent U.S. Census Bureau special census

Official Opinion No. 15 also states a city or town coming into existence after the last preceding U.S. decennial census is entitled to share in the cigarette tax distributions.

COMPENSATION – WAIVER OF BY TOWN OFFICERS

IC 36-5-3-6 provides an elected town officer may waive the officer’s compensation for any year by filing a notice that satisfies the following:

1. The notice is in writing.
2. The notice states in substance all of the following:
 - A. The position held by the town officer.
 - B. The calendar year covered by the notice.
 - C. That the town officer waives compensation.
 - D. That the town officer understands that the notice is irrevocable beginning January 1 of the year covered by the notice.
3. The notice is signed by the town officer who wants to waive compensation.

A town officer who wants to waive compensation must file the notice with the town clerk-treasurer before January 1 of the year covered by the notice. The notice filed is irrevocable beginning January 1 of the year covered by the notice.

A town officer who files a notice:

1. is not entitled to compensation for duties performed in the year covered by the notice; and
2. may not be paid compensation for duties performed in the year covered by the notice.

For the purposes of waiving salary, “compensation” means the total of all money paid to an elected town officer for performing duties as a town officer, regardless of the source of funds from which the money is paid. The term also includes all employee benefits paid to a town officer, including life insurance, health insurance, disability insurance, retirement benefits, and pension benefits.

ASSIGNMENT OF WAGES

IC 22-2-6-1(a) provides any direction given by an employee to an employer to make a deduction from the wages to be earned by said employee, after said direction is given, shall constitute an assignment of wages of the employee. Any assignment of the wages of an employee is valid only if it's in (a) writing, (b) signed by the employee personally, (c) by its terms revocable at any time by the employee upon written notice to the employer, and (d) agreed to in writing by the employer.

A wage assignment can be made to pay for any of the items listed in IC 22-2-6-2(b).

COURT COSTS – WHEN DEFENDANT IS NOT LIABLE FOR

IC 34-28-5-5 regarding court costs provides a defendant against whom a judgment is entered is liable for costs. Costs are part of the judgment and may not be suspended except under IC 9-30-3-12. Whenever a judgment is entered against a person for the commission of two (2) or more civil violations (infractions or ordinance violations), the court may waive the person's liability for costs for all but one (1) of the violations. This does not apply to judgments entered for violations constituting Class D infractions or Class C infractions for unlawfully parking in a space reserved for a person with a physical disability under IC 5-16-9-5 or IC 5-16-9-8.

If a judgment is entered for a violation constituting (a) a Class D infraction, (b) a Class C infraction for unlawfully parking in a space reserved for a person with a physical disability under IC 5-16-9-5 or IC 5-16-9-8, or (c) in favor of the defendant in any case, the defendant is not liable for costs.

Class D Infractions include seatbelt violations under IC 9-19-10 and IC 9-19-11 and stray dog violations under IC 15-20-1-4.

HAZARDOUS MATERIALS CLEANUP COSTS

IC 36-8-12.2 regarding hazardous material cleanup costs provides a fire department imposing a charge for hazardous materials cleanup costs may bill the responsible party for the total value of the assistance provided, as determined from the State Fire Marshal's schedule of service charges issued under IC 36-8-12-16(h).

Money collected must be deposited in the general fund or hazardous materials response fund of the city or town that established the fire department under IC 36-8-2-3 or IC 36-8-13-3 and may be used only for the following:

1. Purchase of supplies and equipment used in providing hazardous materials emergency assistance.
2. Training for members of the fire department in skills necessary for providing hazardous materials emergency assistance.
3. Payment to persons with which the fire department contracts to provide services related to the hazardous materials emergency assistance provided by the fire department.

A fire department may not bill for services provided that duplicate services provided by another governmental entity.

The responsible party billed for services may elect to reimburse the fire department by providing replacement materials that are of equal or greater value than those expended by the fire department in responding to the emergency.

HAZARDOUS MATERIALS CLEANUP COSTS (continued)

A fire department that imposes a service charge and maintains an action for reimbursement under IC 13-25-6-5 may recover all costs of the action, including attorney's fees.

A responsible party is subject to a penalty for failure to pay the full amount of a charge made within sixty (60) days after the issuance of the bill for payment by the fire department. The amount of the penalty is ten percent (10%) of the amount of the charge that remains unpaid on the due date.

SALARIES – UTILITY SERVICE BOARD MEMBERS

Because IC 8-1.5-3-3(f) requires the ordinance establishing a utility service board to provide for the salaries, if any, to be paid to the members, any such increases in salaries in subsequent years would require an amendment to such ordinance by the common or town council.

MUNICIPAL UTILITIES – GENERAL QUESTIONS

The following questions are questions received frequently. We are listing our audit position in response to these inquiries.

1. **Question:** Does a city or town which owns and operates its own waterworks have the right to correct a water bill that is erroneous?

Answer: Yes. Once a decision has been reached, all board actions should be documented and recorded in that body's minutes.

2. **Questions:** May a city or town compromise a water bill even if it is not erroneous?

Answer: While IC 36-1-4-17 allows a city or town to compromise an amount of money owed to a city or town, the city or town should comply with the provisions of the rate ordinances adopted for its utilities.

3. **Question:** Is a city or town that owns and operates its own sewage works required to assess a lien pursuant to IC 36-9-23-32 once the sewer charges become delinquent?

Answer: We believe that the provisions of IC 36-9-23-32 and IC 36-9-23-33 must be followed.

4. **Question:** Does the 10% delinquent fee referred to in IC 36-9-23-31 constitute a monthly penalty for a delinquent bill or is it a one-time penalty?

Answer: We believe the 10% delinquent penalty is a one-time charge assessed against fees as they become delinquent.



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MEMORANDUM

TO: Counties, Cities, Towns
FROM: Debbie Gibson, CPA, CFE Director of Audit Services
RE: Interest Earned on ARPA Funds
DATE: June 15, 2021 Updated July 8, 2021

We have received several inquiries regarding the earning of interest on money received from the Coronavirus Local Fiscal Recovery Fund established by the American Rescue Plan Act (ARPA). We have formulated the following answers based on information received from the U.S. Department of the Treasury (Treasury). At the time of the June 15 issuance of this memo the 2nd question below had not been addressed by the Treasury. The Treasury publication Compliance and Reporting Guidance: State and Local Fiscal Recovery Funds, Version 1.1 has since been issued and brought clarification. We have modified the answer to the 2nd question to reflect this clarification.

[Are we required to put the ARPA payments from the Local Fiscal Recovery Fund into an interest-bearing account and remit the interest to the Treasury?](#)

No. Coronavirus Local Fiscal Recovery Fund payments made by Treasury to local governments are not subject to the requirement of 2 CFR 200.305(b)(8)–(9) to maintain balances in an interest-bearing account and remit payments to Treasury.

Coronavirus Local Fiscal Recovery Fund payments made by Treasury are not subject to the requirement of the Cash Management Improvement Act and Treasury's implementing regulations at 31 CFR part 205 to remit interest to Treasury. (U.S. Treasury Q & A as of June 10, 2021, Question 10.3)

[May we put the payments from the Local Fiscal Recovery Fund into an interest-bearing account and, if so, how should the interest be posted?](#)

According to Treasury publication Compliance and Reporting Guidance: State and Local Fiscal Recovery Funds, Version 1.1, "State and Local Fiscal Recovery Fund payments made to recipients are not subject to the requirements of the Cash Management Improvement Act and Treasury's implementing regulations at 31 CFR part 205 or 2 CFR 200.305(b)(8)-(9). As such, recipients can place funds in interest-bearing accounts, do not need to remit interest to Treasury, and are not limited to using that interest for eligible uses under the SLFRF award."

Based on this guidance, interest earned on these funds may be posted in accordance with IC 5-13-9-6 to the General Fund or other fund designated by the fiscal body by resolution or the written investment policy of the unit. Interest on investments should not be added automatically to the investment. Instead, interest on investments should be paid to the governmental unit at each maturity date and posted to the appropriate fund.

[Can this money be comingled with other County/City/Town money on deposit?](#)

Yes. You may comingle with other county/city/town money on deposit.

§200.305 Federal payment (7)(i) provides: "The Federal awarding agency and pass-through entity must not require separate depository accounts for funds provided to a non-Federal entity or establish any eligibility requirements for depositories for funds provided to the non-Federal entity. However, the non-Federal entity must be able to account for funds received, obligated, and expended."

If you have any further questions, please contact us at:

Counties: Counties@sboa.in.gov

Cities/Towns: Cities.Towns@Sboa.in.gov

DG/SG