LARRY HOGAN
Governor

BOYD K. RUTHERFORD
Lieutenant Governor

Maryland
DEPARTMENT OF BUDGET
AND MANAGEMENT

DAVID R. BRINKLEY
Secretary

MARC L. NICOLE
Deputy Secretary

August 19, 2021

The Honorable Bill Ferguson
President of the Senate
H-107 State House
Annapolis, MD 21401-1991

The Honorable Adrienne A. Jones
Speaker of the House
H-101 State House
Annapolis, MD 21401-1991

The Honorable Guy Guzzone
Chairman
Senate Budget and Taxation Committee
3 West Miller Senate Building
Annapolis, MD 21401-1991

The Honorable Maggie McIntosh
Chair
House Committee on Appropriations
121 House Office Building
Annapolis, MD 21401-1991

Dear Ladies and Gentlemen:

The following details provide an update to the General Assembly on the State's implementation of the agreed upon spending plan for the State Fiscal Relief Fund (SFRF) as well as steps the State is taking to distribute funding to non-entitlement units (NEUs) of government who received funding through the American Rescue Plan (ARP).

Overview

The ARP became law on March 11, 2021, and includes many provisions that provide funding to Maryland through existing federal programs. In addition, ARP created the SFRF which will provide Maryland $3.7 billion in federal funding. The SFRF may be used for the following purposes:

- Support urgent COVID-19 response efforts to continue to decrease spread of the virus and bring the pandemic under control;
- Support immediate economic stabilization for households and businesses;
- Address systemic public health and economic challenges that have contributed to the inequal impact of the pandemic on certain populations; and,
- Replace lost public sector revenue to strengthen support for vital public services and to help retain jobs.

Working together, the General Assembly and Governor Hogan reached an agreement on how to spend the approximately $3.7 billion that the State was projected to receive. Supplemental Budget #5 was introduced by Governor Hogan on March 31, 2021, and reflected appropriations for many of the agreed upon items. At the time of Supplemental Budget #5's introduction, there were questions as to whether certain items would be considered eligible spending under the ARP.

On May 17, 2021, Treasury adopted an Interim Final Rule that further clarified aspects of the ARP and provided further guidance on specific categories of spending, expenditure reporting requirements, and other issues. In addition to the Interim Final Rule, Treasury issued a "Frequently Asked Questions" (FAQ) document that has been updated four times through June 23, 2021. The FAQ further clarifies questions asked by State and Local governments about the eligible uses of the SFRF and the various reporting requirements. Finally, Treasury released a compliance and reporting guidance document on June 17, 2021, that has detailed guidance on the information that the State will need to report each quarter on expenditures over $50,000 and specific performance reporting that will be required annually by July 31.

Changes in the Amount of Funding and Tax Loss Provision

As shown in Exhibit 1, when the plan was created in March it totaled $3,895,181,631, based upon original estimates of expected federal aid. The ARP legislation indicated that ARP funds could not be used for a tax reduction and at the time it was thought the passage of Chapter 40 of 2021 would lower the amount of available SFRF by $133 million.

Based upon the recent guidance that has been put forward by Treasury, it is the opinion of DBM that the State does NOT need to reduce its overall allocation by $133 million due to the Chapter 40 tax cut. Under the guidance, if the tax cut is a *de minimis* amount (calculated as 1% of the baseline of revenues of FY 19) then a state does not need to worry about reducing its allocation. For context, the revenues that Treasury is allowing states to use more than just the General Fund, but in FY 19 General Fund revenues totaled $18.4 billion, so 1% of that amount is $184 million, well above the amount of the tax loss. In addition, the guidance states that if there is revenue growth each year, indexed by inflation, then a state would not lose funding.

While it is good news that the SFRF will not be reduced by Chapter 40, the final amount of funding identified by Treasury for Maryland is $3,717.2 million, $178 million less than originally anticipated. The agreed upon spending plan totaled $3,762.2 million, which is $45 million more than Maryland has received. However, as discussed later, there are ways to address this difference.

Exhibit 1
$ in millions

Original Plan	$3,895.2
Less Tax Loss	-133.0
Total Spend Plan	3,762.2
Actual Allocation	$3,717.2
Difference	($45.0)

Revenue Loss Provision

State and local governments can do a calculation of what revenue growth was compared to what it would have been absent COVID. The difference between these two figures is the amount of spending that Maryland can claim under the revenue loss provision. This calculation is done once a year and the first calculation is as of December 30, 2020. The Treasury rule for the calculation is complex and DBM is working with the Bureau of Revenue Estimates to finalize the calculation. Under the revenue provision, the State has broad latitude in how it spends the money and there is no provision that prohibits the supplementation of spending. In other words, General Fund savings can be created by using the SFRF with no penalty.

ARP Guidance Issues and Solutions

As previously noted, Treasury has issued several subsequent updates to the original FAQ document that have further clarified the Final Rule. The largest issue with the agreed upon spending plan is that the guidance is quite explicit that spending prior to March 3, 2021, is not an eligible use. The agreed upon plan has several items that support spending that occurred prior to this date. These items include:

- $250 million from the Rainy Day Fund used for Governor Hogan's Maryland Strong: Economic Recovery Initiative;
- $177.8 million in economic impact payments to individuals as part of the RELIEF Act;
- $174.8 million in funding to offset the revenue loss tied to the Education Trust Fund from the closure of casinos and reduced capacity in FY 20 and FY 21; and
- $140 million in Temporary Assistance for Needy Families funding tied to increased caseloads in the Temporary Cash Assistance Program.

Following is a discussion of each of the items and a solution to meet the intent of the plan.

1. Rainy Day Funds for Economic Recovery: The Governor announced the Maryland Strong: Economic Recovery Initiative in the fall of 2020 and two different amendments were processed for this spending. While the spending that agencies reflected in the accounting system is an eligible use under the ARP, it occurred before March 3, 2021. In addition, the guidance is clear that SFRF funding CANNOT be deposited into a reserve fund.

   As previously noted, one of the categories of eligible spending under the SFRF is tied to revenue loss. This provides a great deal of flexibility in how the SFRF can be spent.

   - **DBM proposes that the FY 22 or 23 budget identify a $250 million fund swap using SFRF under the revenue provision in lieu of General Funds. The freed up General Funds would then revert to fund balance.**

2. Economic Impact Payments: The RELIEF Act (CH 39 of 2021) provided $177.8 million in economic impact payments to individuals. In an effort to get this money out to individuals as soon as possible, checks were sent out immediately upon enactment of the bill, which was prior to the March 3, 2021 date. Thus, the spending is not an eligible use of the SFRF.

- **DBM proposes using $177.8 million of Coronavirus Relief Funds (CRF) that are available as a result of the Biden Administration announcing in January that Federal Emergency Management Agency (FEMA) Public Assistance eligible expenses are 100% reimbursable by the federal government.** The CRF had been used to provide the 25% match that was required for FEMA expenditures, but since the match is now 100% there is additional CRF available that can be used to cover this expense.

3. Education Trust Fund Backfill: Due to the closures and reduced capacity of casinos, the Education Trust Fund (ETF) was short approximately $174.8 million across two fiscal years. The Administration's Budget Reconciliation and Financing Act as introduced authorized the use of marketplace facilitator revenue to offset this loss of revenue. The plan as agreed upon during the Session was to use the SFRF instead of the marketplace facilitator revenue to offset the shortfall. However, given that the revenue loss and expenditures occurred prior to March 3, 2021, this is not an allowable use. Revenues to the ETF have exceeded the estimate for FY 22, reducing the shortfall from the $174.8 million assumed.

    - **Using the revenue provision, DBM recommends that in the FY 23 budget a similar BRFA recommendation be introduced to use the marketplace facilitator revenue to offset the shortfall in the ETF. In addition, DBM recommends that funding from the Blueprint Fund be reduced by an equal amount in FY 23. These two actions would cover the shortfall in the ETF and preserve funding in the Blueprint Fund as intended.**

4. Temporary Cash Assistance (TCA): The TCA program experienced increased enrollment as a result of COVID-19. The agreed upon plan would have saved $140 million in Temporary Assistance for Needy Families for the increased caseload going back to the beginning of COVID-19 in March 2020. Again, spending prior to March 3, 2021, is not an eligible use of the SFRF.

    - **DBM recommends that the Department of Human Services (DHS) use $50 million of SFRF to cover eligible TCA expenses in FY 21. In FY 22, DHS will use SFRF to cover an additional $90 million in eligible TCA expenses such that a total of $140 million is saved as originally intended.**

Based upon its review of the plan and guidance, DBM has a number of other recommendations.

1. Additional COVID-Related Spending: The current plan does not assume any additional spending on COVID-19 vaccinations or increased expenditures tied to potential variants or a difficult flu season.
    - Given the uncertainties with potential variants or what federal government support may look like, **DBM recommends setting aside $50 million of SFRF for any potential COVID-related costs tied to the fall/winter and future vaccination efforts. This funding is available given that the $177.8 million in economic assistance payments will be paid using CRF instead of SFRF.**

2. Administrative Costs: DBM indicated during Session that additional support was required to implement and report on the costs of the SFRF to Treasury**. In addition, given the State's role in assisting NEUs in verifying their funding amounts and the technical assistance required, DBM recommends setting aside funding for the administration of the SFRF.**

3. Transportation Spending: The agreed upon plan included funding for transportation. The rules and guidance for the SFRF are clear that transportation is not an eligible use of funds. **However, using the revenue loss provision, the State can provide additional funding for transportation needs.**

Non-Entitlement Units of Government

Local governments are eligible to receive funding through the ARP. Counties can receive funding directly from the federal Treasury. Non-entitlement units of government, or municipalities in Maryland, are also eligible to receive funding. Funding for the NEUs flows through the State, with DHCD distributing the money to NEUs.

DBM has hired a contractor to assist in its effort to distribute the correct amount of funding to all eligible NEUs who want funding. A website has been created to provide information to NEUs on the process for application, the information required, and a form that NEUs can fill out to receive funding. The funding for NEUs is provided in two tranches with the first tranche being distributed now and the second tranche a year from now. The website provides information on payments to NEUs that have already occurred.

It is important to note that NEUs are eligible for funding in an amount up to 75% of their budget. DBM has been working with NEUs to make sure that the 75% threshold is not exceeded. Any money above the 75% threshold will be returned to the Federal Treasury. Following are a few related statistics:

- Maryland received the NEU funding from Treasury on June 21, 2021. Per Treasury rules, the State has 30 days from that date to distribute the funds. The State has requested an extension.

- As of June 24, 2021, 125 of the 148 NEUs have completed the Google Form provided by DBM where financial information, a point of contact, and other required information can be shared.

- To date, three NEUs have elected not to take their share of funding, meaning their funding totaling approximately $1.5 million will go to the State.

- While DBM is still working through the 75% calculation and verifying the information submitted by the NEUs, there are several NEUs with allocations that appear to exceed the 75% threshold.

DBM has worked closely with the Maryland Municipal League (MML) to coordinate information and communication to the NEUs. In addition, a DBM representative attended the MML conference in Ocean City in June to make a presentation on the process. DBM will continue to work with the NEUs to provide technical assistance through outside support.

Conclusion

Moving forward DBM will continue to provide updates and information to the General Assembly on the status of ARP spending. Our current efforts are devoted to completing an interim report to Treasury on the broad parameters of the agreed upon spending plan and the performance report that are required on August 31, 2021. DBM will share the performance report and interim report with the General Assembly. In addition, the State is required to publicly post its performance plan online.

I trust this information is helpful as we continue to process the latest information and guidance from the Treasury.

Sincerely,

David R. Brinkley
Secretary

cc: Ms. Sally Robb, Chief of Staff, Senate President
Ms. Alexandra M. Hughes, Chief of Staff, House Speaker
Ms. Victoria L. Gruber, Executive Director, DLS
Mr. David C. Romans, Fiscal Coordinator, DLS
Mr. Marc Nicole, Deputy Secretary, Department of Budget and Management