



Legislative Fiscal Bureau

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TO: Senator Janet Bewley
Room 206 South, State Capitol

FROM: John Gentry and Noga Ardon

SUBJECT: Allowable Use of Funding under the State Fiscal Recovery Fund

This memorandum provides information on the use of State Fiscal Recovery Fund (SFRF) monies under the American Rescue Plan Act of 2021 (ARPA). Specifically, you asked if such funding could be used to award a loan of up to \$50,000,000 to the Consolidated Cooperative for the purchase of the Verso Paper Mill in the City of Wisconsin Rapids, as proposed in 2021 Assembly Bill 367 (AB 367), as introduced.

The federal Department of the Treasury issued an Interim Final Rule implementing the SFRF and guidance as to its allowable uses. Treasury's Interim Final Rule and guidance lists one of the allowable uses as "assistance to small businesses," described as: "[a]ssistance to small businesses, including loans, grants, in-kind assistance, technical assistance or other services, that responds to the negative economic impacts of the COVID-19 public health emergency." Thus, a loan or a grant to directly support a small business impacted by COVID-19 would qualify as an allowable use. However, in order to be considered an eligible use of the funds under this category, a program must be designed to directly respond to economic harm caused by the public health emergency. Treasury's Interim Final Rule states that, in order to be considered an eligible use of the funds, the use

"must be designed to address an economic harm resulting from or exacerbated by the public health emergency. In considering whether a program or service would be eligible under this category, the recipient should assess whether, and the extent to which, there has been an economic harm, such as loss of earnings or revenue, that resulted from the COVID-19 public health emergency and whether, and the extent to which, the use would respond or address this harm."

Treasury would have the final word on whether a loan to the Consolidated Cooperative for the purchase of the Verso Paper Mill, as introduced under AB 367, would be considered an eligible use of the funds. If such a loan were determined to be an ineligible use of the funds, Wisconsin would be required to repay to Treasury the amount expended on the ineligible use.

It should also be noted that a loan or a grant to a third party, such as the Consolidated Cooperative, to purchase another company's distressed assets is not directly discussed in the rule or guidance. For this reason, it is unclear whether the proposed loan would be an allowable use of SFRF funding. Under AB 367 as introduced, WEDC would effectively be in charge of determining whether a loan could be made in accordance with federal law. AB 367 could be further amended to specifically require WEDC to make a determination whether the loan is a permissible use of funding under federal law. Further, the bill could be amended to require WEDC to account for the assets purchased with the loan and to require Consolidated Cooperative to pledge those assets as collateral in order to reduce the risk to the state of repaying SFRF funds.

Assuming that a loan to the Consolidated Cooperative were a qualifying use of SFRF monies, the timing given to the state to expend SFRF under federal law may complicate matters. Funds received from the SFRF must be expended or obligated by December 31, 2024. Thus, amounts repaid to the state would be available to be re-spent until that date. Likewise, payments received after that date could not be expended during the covered period and thus would need to be repaid. Therefore, to the extent the terms of the loan issued under AB 367 would call for the recipient organization to repay the loan after 2024, the Treasury guidance would likely consider the outstanding principal due and owing to be unexpended for purposes of repayment. Because the state would recover such payments only after 2024, it may be the case that the state would be responsible for repaying all unexpended amounts back to Treasury at that time.

We hope this information is helpful. Please contact us with further questions.

JG/NA/lb