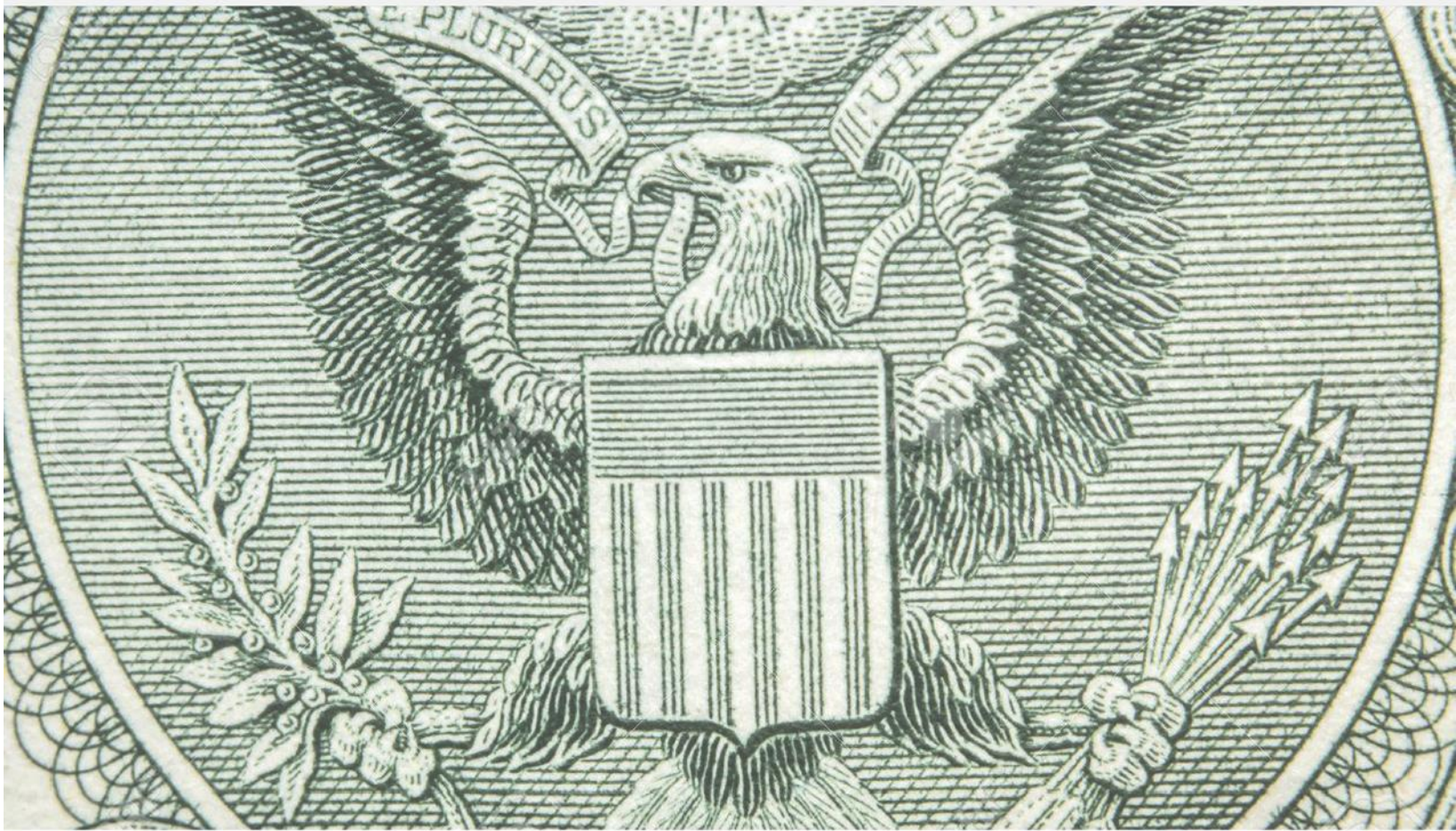


The Great Debate: Who has the Authority to Spend Federal Stimulus Funds?



An unprecedented amount of federal funds has flowed to states over the past year and a half as the U.S. combats the coronavirus pandemic. Those funds allowed states to provide necessary protective gear for frontline workers, give hazard pay to essential employees, provide schools with the tools they need for remote learning and many other programs to mitigate the wide-ranging effects of the virus on Americans' daily lives. The funds have also affected the state budget process and in some cases strained relationships between executive and legislative branches.

Many states were in the middle of legislative sessions and the budget process when the pandemic was declared in March 2020. Large sectors of the economy were shut down, states were scrambling to understand the effect the fallout would have on their revenues and economies, and as a safety measure many legislatures paused sessions or adjourned early to avoid in-person gatherings.

In the midst of this chaos, Congress passed the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) in late March, which included \$150 billion in coronavirus relief funds for state, local and tribal governments to allocate within guidance established by the U.S. Treasury Department.

Authority over the Coronavirus Relief Funds

Questions and some tension immediately arose between legislative and executive branches in the states about who had the authority to direct those funds. According to a budget process report from the National Association of State Budget Officers, governors have the authority to spend unanticipated federal funds in more than half the states. This is especially true when legislatures are not in session. In addition, governors typically have some immediate spending authority during a state of emergency, which were swiftly declared across the country. As a result, governors in most states were given fairly wide discretion in how to spend the coronavirus relief funds. Even Michigan, which arguably has strong legislative authority to allocate all state and federal funds, gave the governor temporary powers to allocate coronavirus relief funds while the legislature was unable to meet.

There were, however, some challenges to governors' authority over coronavirus relief funds. In April 2020, the New Hampshire legislature sued the governor for using a law that gives the governor authority to act during a crisis to create an executive office of Emergency Relief and Recovery, which would decide how to allocate federal emergency relief funds. The legislature argued another law took precedence, which authorizes the governor to expend necessary funds during an emergency, but only with the advice and consent of the Legislative Fiscal Committee. A judge ultimately dismissed the lawsuit for lack of standing.

Mississippi's governor planned to allocate the state's coronavirus relief funds, arguing that the pandemic was similar to a hurricane or other natural disaster that requires immediate executive action. However, the Mississippi legislature met briefly and passed a law giving them jurisdiction over those funds, arguing the state constitution gives the legislature the power to appropriate funds.

Authority to Allocate State Fiscal Recovery Funds

Tensions over who has the authority to spend federal funds are again rising in many states in the wake of the American Rescue Plan Act (ARPA) passage. The ARPA established the state fiscal recovery fund, which will provide \$350 billion in flexible aid to state, county, city and tribal governments. The coronavirus relief funds included in the 2020 CARES Act had to be spent by December of 2020, so a sense of urgency existed to spend the funds as soon as possible, giving governors leverage in the debate

over authority. Funds in the State Fiscal Recovery Fund included in the American Rescue Plan must be obligated by 2024 and spent by 2026, giving states more time to prioritize projects, providing more opportunity to allocate funds.

Most legislatures were also in session when the ARPA was passed, and some legislatures have taken the opportunity to propose or enact restrictions on governor's emergency powers, or their authority specifically over the State Fiscal Recovery Fund.

Some examples include:

Connecticut

Connecticut [HB 6555](#) directs the governor to submit a proposal for the using the ARPA funds, and then gives the legislature the opportunity to make recommendations. Use of the funds must ultimately be authorized by the general assembly. The bill also directs the governor's office to prepare a report detailing how previous funds from the CARES Act were spent. The governor signed the bill into law in March.

Indiana

Indiana's legislature passed [HB 1123](#), expanding legislative authority in an emergency. The bill allows the legislature to call themselves into a 40-day special session during an emergency. The bill also gives lawmakers more authority to spend unanticipated federal funds when the legislature is in session. Governor Eric Holcomb vetoed the bill, but his veto was overridden by the legislature.

Kentucky

The legislature passed [HB 192](#), the state's appropriation bill for the upcoming fiscal year. The legislature included language prohibiting the governor from spending any of the federal funds from the American Rescue Plan without legislative approval. The governor used his line-item veto authority on the section, but the legislature overrode the veto.

Oklahoma

In Oklahoma, the legislature passed [HB 2932](#), which prohibits executive branch entities from spending federal funds in a manner that "will or likely will lead to increased demand for state-appropriated funds or any other state funds," unless authorized by the legislature. The governor allowed the bill to become law without his signature.

As legislatures plan special sessions to allocate funds from the state fiscal recovery fund, and governors lay out their proposals, it is likely we will see more conflict in the coming months. In the end, the authority to allocate federal funds is coming down to each state's interpretation of its constitutional and statutory provisions that outline authority over unanticipated federal funds, authority to spend during a state of emergency and sometimes, what laws supersede others.