



ALABAMA APPLESEED CENTER for LAW & JUSTICE

July 16, 2021

Office of the Undersecretary of Domestic Finance
Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220
Submitted via Regulations.gov

RE: Comments on Interim Final Rule Regarding Coronavirus State and Local Fiscal Recovery Funds, Regulation Identifier No.: 1505-AC77 (Docket ID: TREAS-DO-2021-0008); 86 Fed. Reg. 26786 (May 17, 2021)

We are grateful for the opportunity to comment on the Department of Treasury's interim final rule to implement the Coronavirus State Fiscal Recovery Fund and the Coronavirus Local Fiscal Recovery Fund established under the American Rescue Plan Act. Alabama Appleseed Center for Law and Justice ("Appleseed") is composed of scholars and lawyers dedicated to conducting rigorous and independent research on the impact of the criminal justice system on low-income justice-involved individuals. Our research has included in-depth analysis of the impact that COVID-19 and government responses have had on special populations located in the state of Alabama,¹ the role of diversion programs within the state,² and the impact of fines and fees and other justice-related debt on Alabamians.³

As is further explained below, justice-involved Alabamians are a disproportionately impacted group that was further disadvantaged as a result of the pandemic. Thus, we are seeking guidance not found in the Interim Rule concerning the eligible use of funds for programs and supports to aid this demographic. Specifically, we would appreciate clarity on whether relief funds may be used to assist justice-involved individuals obtain re-entry support, participate in diversion programs, and pay back fines and fees is permissible. In addition, in response to the questions posed in the Interim Rule, Appleseed submits the following comments:

¹ Leah Nelson and Eli Tylicki, *Flattened: How the COVID-19 pandemic knocked financially insecure Alabamians on their backs and widened the racial prosperity gap*, (2020),

<https://www.alabamaappleseed.org/wp-content/uploads/2020/12/Alabama-Appleseed-Covid-Report-Flattened.pdf>

² Leah Nelson, *In Trouble: How the promise of diversion clashes with the reality of poverty, addiction, and structural racism in Alabama's justice system*, (2020),

<https://www.alabamaappleseed.org/wp-content/uploads/2020/02/Alabama-Appleseed-Diversion-Report-2020-web.pdf>

³ Leah Nelson, *Under Pressure: How fines and fees hurt people, undermine public safety, and driver Alabama's racial wealth gap*, (2018),

<https://www.alabamaappleseed.org/wp-content/uploads/2018/10/AA1240-FinesandFees-10-10-FINAL.pdf>; *See also*

Leah Nelson and Eli Tylicki, *Flattened: How the COVID-19 pandemic knocked financially insecure Alabamians on their backs and widened the racial prosperity gap*, (2020),

<https://www.alabamaappleseed.org/wp-content/uploads/2020/12/Alabama-Appleseed-Covid-Report-Flattened.pdf>

Question 1: Are there other types of services or costs that Treasury should consider as eligible uses to respond to the public health impacts of COVID–19? Describe how these respond to the COVID–19 public health emergency.

Response: Individuals re-entering society following incarceration should be considered a population disproportionately impacted by the pandemic. Funds should be permitted for use in re-entry housing, job-training, addiction treatment, transportation, health care, public benefits navigators, and case management. In addition, it should be permissible for fiscal recovery funds to be used to aid individuals in obtaining access to participate in and complete diversion programs.

COVID exacerbated the serious problems with violence, lack of medical and mental health care, and sanitation already present in Alabama’s prison system, which is currently being sued by the United States Department of Justice for systemwide Eighth Amendment violations.

Approximately 7,000 to 8,000 individuals each year exit this prison system and return to their communities. Yet COVID reduced already threadbare educational and rehabilitative programs available within the prison system and ended family visits – a lifeline of support for incarcerated people. Simply put, an already unconstitutional prison system, according to the Department of Justice, was unable to respond to the needs of more than 25,000 Alabamians during COVID. In the coming months and years, thousands of these individuals will be eligible for parole or release. This is a population with pre-existing social vulnerabilities magnified by the pandemic. This is also a population that has experienced disparities in public health outcomes and negative economic impacts from COVID-19. For example, more than 1,660 incarcerated Alabamians contracted COVID.

Unfortunately, many returning citizens are indigent with little family support and rely on congregate care facilities and homeless shelters for housing, which have also been adversely impacted by COVID. These new relief funds provide an opportunity to strengthen re-entry services and infrastructure that could serve thousands of vulnerable Alabamians. Additionally, Alabama’s prison population is 54 percent Black, in a state that is only 26% Black. Investing in re-entry is an investment in equity, as the majority of returning citizens are Black Alabamians.

With regard to using recovery funds for diversion programs, the past 15 months left many Alabamians financially and emotionally drained. Though illness and death directly attributable to the novel coronavirus have been the most immediately apparent public health consequences of the pandemic, they are not the only ones. According to the Alabama Department of Public Health, 980 Alabamians died from drug overdoses in 2020, an increase of 27% over 2019.⁴ To the extent that an increase in overdose deaths is evidence of an increase in substance use, this would suggest that Alabama’s substance use epidemic worsened during the pandemic.

Many people with substance use disorder will at some point face arrest and prosecution in connection with their illness. Some of them will be offered the opportunity to participate in a

⁴ Mary Sell, “Stats: Drug overdose deaths increased significantly in 2020,” Alabama Daily News (July 12, 2021). <https://www.aldailynews.com/stats-drug-overdose-deaths-increased-significantly-in-2020/>

pre-adjudication diversion program such as drug court, successful completion of which will permit them to avoid a felony conviction and also to get treatment to begin managing their addiction. Drug courts reduce the harm of criminalization of addiction and also help people who are ready to benefit from treatment access the services they require.

However, these programs are not free. In Alabama, costs range from jurisdiction to jurisdiction, but they typically run at least \$1000, often much more. People who participate in drug court may be required to pay up-front fees or monthly fees, on top of which they may have to pay evaluation and other fees plus fees each time they are called to have their urine screened. While drug courts do not formally exclude indigent Alabamians, the fees and costs associated with them prohibit many financially insecure individuals from participating. Alabama Appleseed found that about 20% of people we surveyed in 2018 and 2019 reported being unable to participate in a diversion program because they did not have the money to pay, and about the same amount reported they were forced to drop out of a diversion program because they could not afford to keep up with costs.⁵

The pandemic has worsened the financial circumstances of Alabamians who were already financially insecure, with those in the lowest quartile of earnings being disproportionately likely to lose their jobs between Jan. 2020 and May 2021.⁶ Because Black Alabamians are over-represented in that bottom quartile of earners,⁷ they experienced job and earnings loss even more disproportionately. At the same time, overdose deaths within Alabama's Black community rose about 60% from 2019 to 2020, while the rate of overdose deaths among white Alabamians rose only slightly.⁸ This indicates a growing problem with drug use within a community that is disproportionately policed and criminalized – and therefore more likely to require the relief afforded by drug court – but perversely less likely to be able to afford to participate in them.

Drug courts can reduce the harms that substance use disorder visits on individuals, families, and communities and act as a safety valve that relieves pressure on Alabama's horrifically overcrowded, violent, and drug-infested prisons.⁹ The benefits they offer are already inequitably distributed and less available to the communities which need them most. Permitting the use of

⁵ Leah Nelson, *In Trouble: How the promise of diversion clashes with the reality of poverty, addiction, and structural racism in Alabama's justice system*, p.22 (2020),

<https://www.alabamaappleseed.org/wp-content/uploads/2020/02/Alabama-Appleseed-Diversion-Report-2020-web.pdf>

⁶ <https://www.tracktherecovery.org/>

⁷ Leah Nelson and Eli Tylicki, *Flattened: How the COVID-19 pandemic knocked financially insecure Alabamians on their backs and widened the racial prosperity gap*, p. 19 (2020),

<https://www.alabamaappleseed.org/wp-content/uploads/2020/12/Alabama-Appleseed-Covid-Report-Flattened.pdf>

⁸ Roy S. Johnson, "Opioid overdose deaths rise among Blacks; one Birmingham mother an inspiring model for recovery," *AL.com* (May 30, 2021).

<https://www.al.com/news/2021/05/opioid-overdose-deaths-rise-among-blacks-one-birmingham-mother-an-inspiring-model-for-recovery.html>

⁹ The U.S. Department of Justice is currently suing the Alabama Department of Corrections for alleged Eighth Amendment violations. *See* "Justice Department Files Lawsuit Against the State of Alabama for Unconstitutional Conditions in State's Prisons for Men," Department of Justice (Dec. 9, 2020).

<https://www.justice.gov/opa/pr/justice-department-files-lawsuit-against-state-alabama-unconstitutional-conditions-states>

Fiscal Recovery Funds to allow qualified individuals to pay for drug court would do much to remedy this inequity and address Alabama's growing substance use disorder epidemic.

Question 5: Are there other types of services or costs that Treasury should consider as eligible uses to respond to the negative economic impacts of COVID-19? Describe how these respond to the COVID-19 public health emergency.

Response: *Fiscal recovery funds should be used to help pay down legal financial obligations.*

By one definition, legal financial obligations (LFOs) including fines, fees, court costs, and restitution are a form of revenue for the state. But as experienced by the debtors who owe them, they are a form of punishment – one that carries collateral consequences that have been exacerbated by the financial impact of the pandemic. Relieving debtors of the burden of LFOs and their collateral consequences would mitigate the harms the pandemic visited disproportionately on Alabama's most vulnerable and financially insecure communities, including and especially its Black residents.

In normal times, roughly 83% of Alabamians who owe LFOs forego basic necessities like rent, medicine, utilities, or car payments in order to service their debt to the state.¹⁰ They do this because they are desperate to stay out of jail, which is a consequence about 50% of financially insecure Alabama debtors face when they are unable to pay.¹¹

Failure to pay LFOs increased in Alabama during the pandemic.¹² This was likely caused by two pandemic-related factors: first, loss of income due to pandemic-induced un- and underemployment made it impossible for debtors to stay current on their LFOs; second, unexpected costs for things like food and digital devices for children who would otherwise have received those things at school (or not needed them because of school).

The use of Fiscal Recovery Funds for things like rent (to prevent evictions) has been found acceptable because homelessness is dangerous for the people who experience it. So too is incarceration, which is a likely outcome for debtors who are arrested on warrants related to failure to pay or failure to appear at court hearings connected to their nonpayment of LFOs.¹³ While the negative economic impacts of COVID-19 on LFOs is discussed further in response to Question 8, Appleseed contends that similar to the way that rent-assistance programs have been deemed permissible, so too should LFO-payment assistance programs.

¹⁰ Leah Nelson, *Under Pressure: How fines and fees hurt people, undermine public safety, and driver Alabama's racial wealth gap*, p. 31 (2018),

<https://www.alabamaappleseed.org/wp-content/uploads/2018/10/AA1240-FinesandFees-10-10-FINAL.pdf>

¹¹ *Id.* p. 33

¹² Brian Lyman, "As COVID-19 closes courts, Alabama prosecutors face collapse in revenues," *Montgomery Advertiser* (Apr. 30, 2020).

<https://www.montgomeryadvertiser.com/story/news/2020/04/30/covid-19-closes-courts-alabama-prosecutors-face-collapse-revenues/3052219001/>

¹³ See Connor Sheets, "How do you make them pay?": Locked up in Alabama for debt," *AL.com* (July 13, 2020).

<https://www.al.com/news/2021/07/how-do-you-make-them-pay-one-alabama-county-jails-people-for-months-over-d ebts-they-cant-afford-to-pay.html>

Question 8: Are there other services or costs that Treasury should consider as eligible uses to respond to the disproportionate impacts of COVID–19 on low-income populations and communities? Describe how these respond to the COVID–19 public health emergency or its negative economic impacts, including its exacerbation of pre-existing challenges in these areas.

Response: As partially explained in response to Questions 1 & 5, COVID-19 relief funds should assist justice-involved communities with: (1) receiving re-entry support; and (2) paying legal financial obligations including fines and fees.

As an organization that works with formerly incarcerated people, Appleseed has seen firsthand the challenges of re-entering society from incarceration. Without direct support from our organization, many of the people we serve would have experienced homelessness following incarceration. Homelessness and the desperation it produces can lead to joblessness, recidivism, and negative economic impacts on both communities and individuals. In seeking to fund “evidence-based community violence intervention programs,” re-entry services should be considered.

Additionally, we know many formerly incarcerated people return to already poverty-stricken and disadvantaged neighborhoods, further impacted by the pandemic. Investing in re-entry would help strengthen these struggling neighborhoods by preparing returning citizens to be productive and contributing neighbors and family members, rather than a drain on already-scarce resources.

With regard to legal financial obligations (LFOs), which were briefly discussed in response to Question 5, in addition to facing incarceration, many debtors lose their driver’s licenses when they are unable to pay LFOs. This makes it difficult for them to get to work or otherwise go about their lives in a state where public transportation is virtually nonexistent in all but a few densely populated urban areas.¹⁴

Even in normal times, the collateral consequences of LFOs are disproportionately visited on financially insecure Alabamians because they are more likely to fall behind on payment plans than people who have ready access to wealth. COVID-19 dealt financially insecure Alabamians who owe LFOs a double blow because, during the pandemic, it was workers who earned the least who were most likely to lose their jobs as a result of the pandemic. According to data collected by Opportunity Insights Economic Tracker, Alabama workers in the bottom quartile of earnings (those earning less than \$27,000 a year) saw a 10.8% drop in employment rates as of May 5, 2021, compared to a 16.4% increase among high wage workers and a 13.6% increase among middle-wage workers as compared to Jan. 15, 2020.¹⁵

¹⁴ Leah Nelson, *Under Pressure: How fines and fees hurt people, undermine public safety, and driver Alabama’s racial wealth gap*, p. 33 (2018),

<https://www.alabamaappleseed.org/wp-content/uploads/2018/10/AA1240-FinesandFees-10-10-FINAL.pdf>

¹⁵ <https://www.tracktherecovery.org/>

It is worth stating that Black workers comprise about 25% of workers in the lowest quartile of earners but only 19% of Alabama's workers, meaning that Black workers were disproportionately likely to work the type of low-paying jobs that evaporated during the pandemic.¹⁶ At the same time, Black Alabamians are more likely than their neighbors and peers to owe LFOs because they face criminal convictions (for which LFOs are a punishment and consequence) at a higher rate than white Alabamians.¹⁷

For all these reasons, Alabama Appleseed contends that it should be permissible to use Fiscal Recovery Funds to pay off outstanding legal financial obligations, thus freeing the debtors who owe them from the onerous and even dangerous collateral consequences of indebtedness. Any funds granted for this purpose should be carefully tracked to ensure that outstanding warrants faced by people whose debts are cleared via Fiscal Recovery Funds are cleared. And, to prevent the state from improperly enriching itself through the windfall of Fiscal Recovery Funds, driver's license reinstatement fees should be waived for individuals whose drivers licenses were suspended as a result of unpaid LFOs during the relevant period of time (perhaps March 13, 2020 through today's date) and whose LFOs are paid off through Fiscal Recovery Funds. Such waivers should be a condition of permitting the state of Alabama to use Fiscal Recovery Funds to pay off LFOs.

Question 9: The interim final rule includes eligible uses to support affordable housing and stronger neighborhoods in disproportionately impacted communities. Discuss the advantages and disadvantages of explicitly including other uses to support affordable housing and stronger neighborhoods, including rehabilitation of blighted properties or demolition of abandoned or vacant properties. In what ways does, or does not, this potential use address public health or economic impacts of the pandemic? What considerations, if any, could support use of Fiscal Recovery Funds in ways that do not result in resident displacement or loss of affordable housing units?

Response: Affordable housing is one of the greatest needs of formerly incarcerated returning citizens. Thus, efforts to use housing-related relief funds to support affordable housing for this disproportionately affected community ought to be deemed permissible.

We recommend that any rules regarding affordable housing be extended to include housing specifically for justice-involved individuals. Often individuals with felony records are prevented from accessing public housing, such as Section 8. Because housing is critical to re-entry and the economic stability of neighborhoods with large numbers of returning citizens, this population of people ought to be included in any efforts to bolster affordable housing for communities disproportionately impacted by COVID-19.

Conclusion

¹⁶ Leah Nelson and Eli Tylicki, *Flattened: How the COVID-19 pandemic knocked financially insecure Alabamians on their backs and widened the racial prosperity gap*, p. 19 (2020), <https://www.alabamaappleseed.org/wp-content/uploads/2020/12/Alabama-Appleseed-Covid-Report-Flattened.pdf>

¹⁷ Per the U.S. Census Bureau, Alabama's population is about 27% Black. However, its jail and prison populations are roughly 55% Black, reflecting a disparity in criminalization, <https://www.prisonpolicy.org/profiles/AL.html>

For the aforementioned reasons, we request that the Department of Treasury assert that the use of COVID-19 relief funds to assist justice-involved individuals obtain re-entry support, participate in diversion programs, and pay back fines and fees is permissible. Thank you for your consideration. Should you have any questions, please direct your correspondence to Carla Crowder via carla.crowder@alabamaappleseed.org.

Respectfully submitted,

A handwritten signature in black ink that reads "Carla Crowder". The signature is written in a cursive, flowing style.

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