



DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C.

January 14, 2022

Jason Mistlebauer  
Governor's Office of Strategic Planning and Budgeting  
1700 West Washington St.  
Phoenix, AZ 85007

Dear Mr. Mistlebauer:

Thank you for your letter dated November 4, 2021 regarding two programs that the State of Arizona has established with payments from the Coronavirus State and Local Fiscal Recovery Funds ("SLFRF").

Your letter was in response to Deputy Secretary Adeyemo's letter dated October 5, 2021 in which Treasury requested information regarding how the State of Arizona intended to remediate the issues identified in its Education Plus-Up Grant Program and COVID-19 Educational Recovery Benefit Program. Your response provided information about Arizona's rationale for these programs but did not describe any plans for remediation of the issues identified with the programs.

The school programs use SLFRF funds and impose conditions on participating in or accepting a service that undermine efforts to stop the spread of COVID-19 and discourage compliance with evidence-based solutions for stopping the spread of COVID-19. The Education Plus-Up Grant Program requires grantees to distribute funds to schools that do not require the use of face coverings. The COVID-19 Educational Recovery Benefit Program is available only to families if the student's current or prior school requires the use of face coverings during instructional hours and on school property.

The purpose of the SLFRF funds is to mitigate the fiscal effects stemming from the COVID-19 public health emergency, including by supporting efforts to stop the spread of the virus.<sup>1</sup> The Centers for Disease Control and Prevention (the "CDC") recommends universal masking indoors by all students, staff, teachers, and visitors to K-12 schools.<sup>2</sup> CDC guidance also recommends that schools should use multiple, layered prevention strategies, including masks, limiting class

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<sup>1</sup> To that end, the Interim Final Rule permits SLFRF funds to be used for a range of COVID-19 mitigation strategies, including face coverings, vaccination programs, and improved ventilation. The Final Rule, which was issued on January 6, 2022, further clarifies how SLFRF funds may be used, including that a recipient may not use SLFRF funds for a program, service, or capital expenditure that includes a term or condition that undermines efforts to stop the spread of COVID-19.

<sup>2</sup> Centers for Disease Control and Prevention, "Guidance for COVID-19 Prevention in K-12 Schools," Updated Jan. 13, 2022, <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/k-12-guidance.html>.

sizes, and cohorting, to reduce the risk of transmission among students and school workers.<sup>3</sup> By discouraging families and school districts from following this guidance, the conditions referenced above undermine efforts to stop the spread of COVID-19. Accordingly, these school programs as currently structured are ineligible uses of SLFRF funds.

In addition to the school programs' ineligibility for SLFRF funds due to the face covering-related conditions, we also have concerns about other aspects of the design of these programs, including as it relates to the objective of benefitting low-income families and students, as represented in your November 4 letter. Our compliance program would welcome the opportunity to discuss these concerns with your office.

Treasury is committed to working with recipients to take advantage of the many eligible uses and great flexibility available under the SLFRF program in response to the COVID-19 public health emergency. To further support use of SLFRF funds, the Interim Final Rule established, and the Final Rule maintains, a broad and non-exclusive list of eligible uses of funds that respond to the public health emergency, including interventions to address learning loss, mental health challenges, and support safe reopening of schools. The Interim Final Rule and Final Rule also include a number of eligible uses that address the needs of disproportionately impacted communities.

To address the concerns described above with respect to the school program conditions related to facial coverings, the State of Arizona must (i) redirect SLFRF funds to eligible uses or (ii) remediate the issues with the Education Plus-Up Grant Program and the COVID-19 Educational Recovery Benefit Program by redesigning the programs to eliminate any elements that are inconsistent with the purpose and requirements of the SLFRF program. Failure to take either step within sixty (60) calendar days may result in Treasury initiating an action to recoup SLFRF funds used in violation of the eligible uses. Treasury may also withhold funds from the State of Arizona's second tranche installment of SLFRF funds until Treasury receives information that confirms that the issues described above have been adequately addressed.

To discuss further, please contact me at SLFRP@Treasury.gov.

Sincerely,

Kathleen B. Victorino  
Deputy Chief Compliance Officer (Acting)  
US Treasury Office of Recovery Programs

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<sup>3</sup> Centers for Disease Control and Prevention, "Know What to Expect at Your Child's K-12 School or Early Care and Education Program," Updated Nov. 10, 2021, <https://www.cdc.gov/coronavirus/2019-ncov/groups/expect-school-child-care.html>.