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COMMISSIONER

July 15, 2021

Office of the Undersecretary of Domestic Finance  
Department of the Treasury  
1500 Pennsylvania Avenue NW  
Washington, DC 20220

**SUBMITTED VIA: [www.regulations.gov](http://www.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)*

To Whom It May Concern:

I am writing on behalf of the Alabama Department of Corrections (ADOC) to pose questions about and to provide comments concerning the disproportional impact of COVID-19 on correctional systems and incarcerated populations raised by Department of Treasury (Treasury) in the *Interim Final Rule Regarding Coronavirus State and Local Fiscal Recovery Funds* (Interim Rule). As is further explained below, the incarcerated population – comprised largely of those who would already be included as part of a disproportionately impacted group – were further disadvantaged by the nature of their congregational living situation during the pandemic. Therefore, ADOC seeks clarity and additional guidance not found in the Interim Rule concerning the eligible use of funds for correctional systems and incarcerated populations. To avoid any further confusion or ambiguity and to “foster a strong, inclusive, and equitable recovery ... with long-term benefits for health and economic outcomes,”<sup>1</sup> ADOC respectfully requests that Treasury consider the following questions and comments.

1. Given that the demographics of a majority of the incarcerated population qualify as disproportionately impacted, what other findings must a recipient make in order to determine that incarcerated persons have been disproportionately impacted by the COVID-19 pandemic? To what extent must they be disproportionately impacted, or is that determination left to the discretion of the recipient?
2. Are infrastructure projects designed to respond to long-term health impacts of the COVID-19 public health emergency (i.e., replacing or enhancing infrastructure with better medical/mental health spaces, including celled beds, increasing spaces dedicated for education and programming activities,

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<sup>1</sup> 86 Fed. Reg. 26796 (May 17, 2021).

technologies to enhance remote learning, etc.) eligible uses of funds even if they are not completed prior to the expiration of the national public health emergency?

3. In response to specific questions posed in the Interim Rule, ADOC submits the following comments:

Question 7: *What are the advantages and disadvantages of using Qualified Census Tracts and services provided by Tribal governments to delineate where a broader range of eligible uses are presumed to be responsive to the public health and economic impacts of COVID-19? What other measures might Treasury consider? Are there other populations or geographic areas that were disproportionately impacted by the pandemic that should be explicitly included?*

Response:

Incarcerated persons should be explicitly considered a disproportionately impacted group, particularly given the social vulnerability of the population. The Interim Rule provided that, "...although the pandemic's impacts have been widespread, both the public health and economic impacts of the pandemic have fallen most severely on communities and populations disadvantaged before it began. *Low-income communities, people of color, and Tribal communities have faced higher rates of infection, hospitalization, and death, as well as higher rates of unemployment and lack of basic necessities like food and housing. Pre-existing social vulnerabilities magnified the pandemic in these communities, where a reduced ability to work from home and, frequently, denser housing amplified the risk of infection.* Higher rates of pre-existing health conditions also may have contributed to more severe COVID-19 health outcomes."<sup>2</sup> (emphasis added). The Alabama incarcerated population shared many of these similarities. The same severe public health and economic impacts of the COVID-19 pandemic have befallen its similarly situated ADOC population.

In support of this determination, we offer the following information:

The typical incarcerated person within the ADOC system comes from a *low socio-economic* background with *limited education*, and often has a prior history of substance abuse (estimated 75-80% of incarcerated persons) and/or mental illness. Over half of the in-house population are persons of color. 46% of ADOC's population self-reported having less than a 12<sup>th</sup> grade education. Once incarcerated, *nearly all incarcerated persons would be deemed to be indigent*, and would remain so until his/her release. (Currently, 80% of ADOC's incarcerated persons have less than \$1,000 in his/her Inmate Trust Fund.) Most incarcerated persons would, therefore, be part of the class described in the Interim Rule even prior to incarceration. These disadvantages were further exacerbated by the communal living situation.

The realities of a congregate living situation posed a very unique set of circumstances for the prison system, and placed incarcerated persons at a heightened risk compared to other populations. Complete social distancing of the entire incarcerated population - with 82% of ADOC's current infrastructure consisting of an open-bay dorm structure with bunk beds- is a physical impossibility. Although social distancing was not entirely possible, the ADOC took immediate, effective, and costly efforts, in accordance with CDC

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<sup>2</sup> *Id.* at 26787 (citations omitted).

guidelines for correctional facilities, and implemented a number of preventative and containment measures including, but not limited to, providing PPE, the addition of sanitation stations, creating separate quarantine and intake dorms, and increasing the number of meal times to decrease the number of incarcerated persons in the cafeteria at one time. Perhaps some of the most effective efforts were aimed at limiting movement throughout the system. Incarcerated person transfers between facilities became a rarity, group educational and recreational programs were reduced, visitation from friends and family members were halted, and volunteers and other non-essential personnel were barred from entering the facility.

These efforts, while largely successful, were not without unintended consequences. Much like the social and mental health consequences noted in the Interim Rule as a result of various stay-at-home orders, incarcerated persons were likewise – and even more so – affected.

- Incarcerated persons, like everyone else, had their daily lives upended. Routines were suddenly changed; meal times were now spread out even earlier (sometimes breakfast was served at 3:00 am). Movement throughout the facility was limited. And normal “jobs,” like attending classes, were closed. Like everyone else, the uncertainty of the pandemic caused anxiety and fear of the unknown. Now imagine that, by nature of your incarceration, you had little to no control over the number of people you came in close contact with every day and that many of your decisions were made by someone else. Logically, incarceration during the pandemic caused an extra layer of strain on the population than persons who enjoyed more freedoms.
- Maintaining relationships with family is important to an incarcerated person’s social well-being and has a direct correlation to a reduction in recidivism. Even though ADOC partnered with its communications vendor to provide free phone calls to its incarcerated person population and pushed to implement a video visitation system to help foster these relationships, it still is not a substitute for in-person visits with loved ones. To date, in-person visitation for family has not been reinstated.
- Many of ADOC’s programs, from Substance Abuse Programming, to religious services by volunteers, to educational and vocational services through Alabama’s Community College System, were (and to some extent remain) stalled during the pandemic. Many of these programs were operated by non-essential personnel or volunteers and/or could not be safely supported using social distancing guidelines due to a lack of infrastructure, either spacing or bandwidth to support remote learning. A few comparisons to pre-pandemic levels reveal the following<sup>3</sup>:
  - Offenders receiving GED down 47%
  - Offenders receiving vocational certificates down 29%
  - Offenders completing drug treatment down 43%
  - Offenders completing reentry programs down 51%

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<sup>3</sup> Future enrollment within educational and vocational programming has also decreased from years past, which may be largely attributed to a lull in recruitment and programming efforts due to the COVID-19 pandemic.

- Unemployment for the incarcerated persons was 100%. In order to prevent the introduction and spread of the disease, in accordance with CDC guidelines, the ADOC ceased all work release programs to avoid exposure from the community from the incarcerated persons assigned to work release. As a result, incarcerated person gross salaries earned from Work Release Program decreased by \$11.3 Million (a 43% decrease from the year prior). This had multiple negative effects. First, incarcerated persons were not able to use those monies to pay for restitution or court costs or as a savings account for their release. Second, work release participants no longer had an income to visit the canteen, resulting in a loss of revenue to the ADOC, the State for taxes, and the canteen vendor. Finally, the ADOC was not able to recoup monies relating to the individual's incarceration (as is allowed by statute) – resulting in less monies to spend on other services.

The true impact on the ultimate safety of communities and recidivism rates remains to be seen. Because approximately 95% of ADOC's incarcerated person population will re-enter society, efforts to ensure a successful transition into society and reduce recidivism is not just a prison issue, but a community issue. For these reasons, the incarcerated person population should be included in Treasury's presumption that certain types of services are eligible uses of funds to address disparities in public health outcomes and the negative economic impact of the COVID-19 public health emergency when provided in a correctional facility or to incarcerated populations.

*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:

ADOC requests Treasury to consider as eligible uses of funds infrastructure projects in the following topical areas to respond to the disproportional impacts of COVID-19 on correctional systems and incarcerated populations: (1) delivery of healthcare (medical and mental-health services); (2) increased cell spacing to enhance social distancing and control and spread of COVID-19; (3) recreation/exercise; (4) education; and (5) workforce training for incarcerated populations. The Interim Rule is silent on these types of infrastructure projects. The list of eligible uses currently included in the Interim Rule centers on educational needs for minors and other resources for "households" or "businesses." Indeed, a correctional facility operates like a separate township with a largely indigent population. ADOC provides basic social services, anywhere from religious activities, to education (particularly GED), to wastewater treatment. Each housing unit effectively a "household;" each canteen a "business."

A list of eligible infrastructure projects for correctional systems and incarcerated populations would help provide clarity and certainty regarding use of eligible funds by ADOC to provide support to COVID-19 measures, lessening the disparity. Each of the proposed infrastructure projects related to the delivery of healthcare, increase of celled beds, recreation/exercise, education, and workforce training are responsive to the negative public health and economic impacts associated with COVID-19, both presently within the system and which have yet to be fully realized in the community, as well as



pre-existing challenges experienced by correctional systems and incarcerated population that were exacerbated by COVID-19.

The average age of ADOC's facilities is over 43 years old, and while many have expanded, most have exceeded, in the past, the original design capacity. Because of this, medical and mental health care and programming space is limited in many of ADOC's facilities. With better, enhanced, and/or extended infrastructure, ADOC would have the ability to provide better medical and mental health care, and adequate space for healthcare staffing, both of which can assist the ADOC in better responding to the public health emergency. Infrastructure improvements will provide larger areas for programming including, but not limited to, work force development, GED, and other education programs that can be safely done in a group setting while practicing social distancing. Additional recreational or exercise space could also be enhanced to encourage both physical health as well as encourage outside recreation, thereby reducing risk of infection.<sup>4</sup> Infrastructure to increase the number of celled beds will allow for better social distancing and will provide a less dense "household"; thereby lessening the risk of infection. Finally, better infrastructure will allow for enhanced bandwidth capabilities, encouraging remote learning to wider portions of the incarcerated person population or enhanced telehealth capabilities.

The effect of the pandemic on ADOC's correctional system is ongoing, and will be felt by the incarcerated population much longer than that of the "free world" population. For example, while masks are no longer mandated on a State level, because social distancing is still not possible inside the prisons, masks are still required in the institutions. Only limited attorney visitation is allowed, and the facilities currently remain closed to family visitation and most volunteer organizations. The ADOC's education partner has worked hard to provide a remote learning experience, but the technology infrastructure limits the number of incarcerated persons that can benefit at one time. Simply put, not only do the demographics indicate a disproportionately impacted population, the current infrastructure of ADOC's facilities hindered the State's ability to provide for social distancing, leading to a decrease in the number of governmental services able to be rendered during the pandemic. It will take several months, if not years, before the correctional system is back to "normal" and operating at pre-pandemic functionality, due to its limited infrastructure.

ADOC submits these comments are consistent with Treasury's statement that "[t]he Fiscal Recovery Funds provide resources to not only respond to the immediate harms of the pandemic, but also to mitigate its longer-term impact in compounding the systemic public health and economic challenges of disproportionately impacted populations."<sup>5</sup> In its current iteration, the Interim Rule may omit eligible uses of funds to address significant disparities associated with a correctional system and/or for incarcerated populations—one of the most socially vulnerable populations. From ADOC's perspective, any ambiguity associated with the Interim Rule should be clarified and additional guidance provided for correctional systems and incarcerated populations to ensure ADOC realizes the benefit and full use of State Fiscal Recovery Funds.

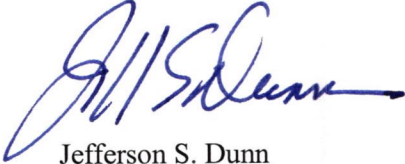
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<sup>4</sup> The second wave that affected the Southern portion of the United States, as indicated in the Interim Rule, occurred during the summer, when increased temperatures and humidity lend themselves to staying indoors.

<sup>5</sup> *Id.* at 26796.

Should you have any questions or desire information in support of our request that incarcerated populations be included as populations presumed to be disproportionately impacted by the COVID-19 public health emergency, please reach out to Carrie Ellis McCollum, ADOC General Counsel, at [carrie.mccollum@doc.alabama.gov](mailto:carrie.mccollum@doc.alabama.gov) or (334) 353-3885.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. S. Dunn", with a stylized flourish at the end.

Jefferson S. Dunn  
Commissioner