

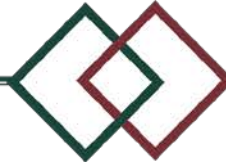


Guidance on State and Local Fiscal Recovery Funds (as of 8/31/21)

Joey Knofczynski and Jeff Mehlhaff



Final Allocation of Funds



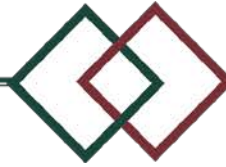
- South Dakota will receive up to **\$974,478,793**
- Rapid City will receive up to **\$13,024,994**
- Sioux Falls will receive up to **\$25,415,071**
- All other South Dakota cities will receive up to a total of **\$65,246,504**
- South Dakota counties will receive up to a total of **\$171,834,638**
- In total, **South Dakota will receive up to \$1.25 billion from the State and Local Fiscal Recovery Funds**

Timeline for Use of Funds



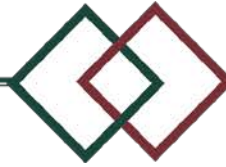
- Funds must be obligated by December 31, 2024, but the period of performance will be through December 31, 2026
- May not be used to cover costs incurred before March 3, 2021
 - But can go towards projects started before that date to cover only those costs incurred after
- **South Dakota applied for funding on August 20, 2021**

Eligible Uses of Funds



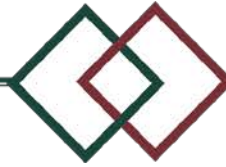
- The same expenses allowable under the CARES Act are also allowable under ARPA with the exception of expenses related to tax-anticipation notes
 - Does not matter if the use is not explicitly mentioned in the Interim Final Rule
- Funds must be used to “respond to” the COVID-19 pandemic in some way

Eligible Uses of Funds



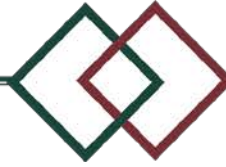
- General categories of uses include:
 1. Supporting public health expenditures
 2. Addressing negative economic impacts
 3. Replacing lost public sector revenue
 4. Providing premium pay for essential workers
 5. Investing in water and sewer infrastructure
 6. Investing in broadband infrastructure

Eligible Uses of Funds



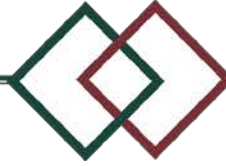
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Supporting Public Health Expenditures



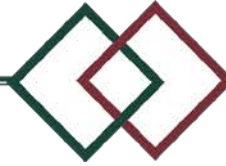
- Funding COVID-19 mitigation efforts
 - Includes vaccination programs, medical care, testing and contact tracing, public health surveillance and communication efforts, support for congregate living facilities and schools (including ventilation enhancements), and enhancement of public health data systems
- Covering medical expenses
- Improving behavioral healthcare services (where behavioral health needs were exacerbated by the pandemic)
 - Includes mental health treatment, substance misuse treatment, hotlines or warmlines, and crisis intervention

Supporting Public Health Expenditures



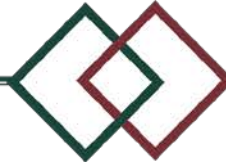
- Providing payroll and covered benefits for certain public health and safety staff (if they are "**primarily**" dedicated to responding to the COVID-19 pandemic)
 - Includes employees that provide medical and other health services, employees of public health departments, employees providing or administering social services or public benefits, police officers, sheriffs, firefighters, emergency medical responders, and correctional officers
 - Standard has become stricter; can only replace general funds with federal funds **when an employee is spending more than 50% of their time responding to the pandemic**

Eligible Uses of Funds



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Addressing Negative Economic Impacts



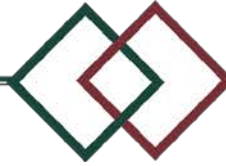
- Delivering assistance to workers and families
 - Includes providing cash assistance, food assistance, rent or mortgage assistance, utility assistance, back to work incentives, and job training
 - Should consider whether a household has experienced a negative impact from the pandemic, although **low- to moderate-income households are presumed to have been affected**
 - The amount of cash assistance provided to an individual should be similar to what they received in the form of federal stimulus checks
- Supporting small businesses facing financial challenges due to the pandemic
 - Includes loans or grants for payroll and benefits, retaining employees, mortgage costs, rent costs, utilities costs, vaccination programs, and testing programs

Addressing Negative Economic Impacts



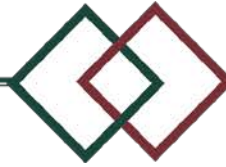
- Helping hard-hit industries recover, particularly tourism, travel, and hospitality
 - Includes assistance to enable safe resumption those services
 - For industries other than tourism, travel, and hospitality, should consider the extent of the negative economic impact (should look for at least a 17% decline in employment or a 24% decline in revenue)
- Rebuilding the public sector workforce
 - Includes funding for rehiring up to the pre-pandemic staffing level and deposits into the UI Trust Fund up to the pre-pandemic level

Eligible Uses of Funds



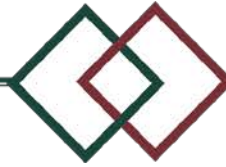
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Replacing Public Sector Revenue



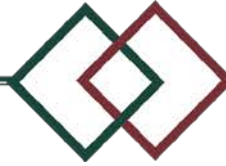
- Providing government services to the extent of a reduction in revenue experienced due to the pandemic
 - Revenue replacement is only available if actual revenue grows at rate of less than 4.1% per year starting fiscal year 2019
 - South Dakota grew its revenue **13.28%** from fiscal year 2020 to fiscal year 2021
 - Revenue replacement could be available through 2023 if needed

Eligible Uses of Funds



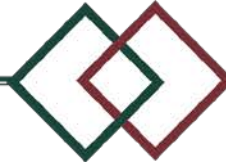
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Providing Premium Pay to Essential Workers



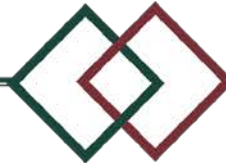
- Offering grants to essential workers either directly or via third-party employers
 - Essential workers include public health and hospital staff, nursing home and home-care staff, farm workers, grocery store staff, restaurant staff, janitors, sanitation workers, truck drivers, warehouse workers, childcare workers, school staff, and social services and human services staff
 - Essential work must involve regular in-person interactions or regular physical handling of items also handled by others
- Premium pay can be up to \$13 per hour not to exceed \$25,000 per eligible worker
 - Must be **entirely additive** to a worker's regular rate of wages

Eligible Uses of Funds



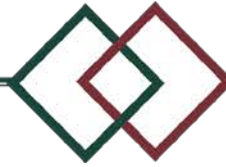
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Investing in Water and Sewer Infrastructure



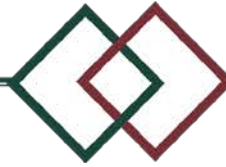
- Making necessary investments to improve access to clean drinking water and supporting vital wastewater and stormwater infrastructure
 - Necessary investments are those designed to provide an adequate minimum level of service and unlikely to be made using private sources of funds
 - Eligible water and wastewater infrastructure projects are aligned with Clean Water State Revolving Fund (CWSRF) and Drinking Water State Revolving Fund (DWSRF) allowable uses

Investing in Water and Sewer Infrastructure



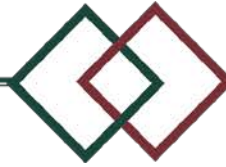
- The CWSRF supports a wide range of water infrastructure projects:
 - Construction of publicly owned treatment works
 - Eligible projects include primary and secondary treatment, advanced treatment, sewer system, combined sewer overflow correction, and climate resilience
 - **Intended for capital projects, including construction activities and equipment and land purchases**
 - Cannot fund ongoing operation and maintenance activities under this category
 - Nonpoint source (NPS) pollution management program projects
 - South Dakota has several [NPS projects](#)
 - National estuary program (NEP) projects
 - South Dakota has no NEP projects

Investing in Water and Sewer Infrastructure



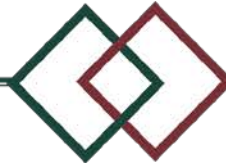
- Decentralized wastewater treatment systems
 - Eligible projects include fixing existing systems, construction/installation of new systems, costs associated with the establishment of a responsible management entity, and septage treatment works and pumper trucks to support proper maintenance
- Management/reuse of wastewater, stormwater, or drainage water
 - Eligible projects include gray infrastructure (pipes, storage, treatment systems) and green infrastructure (riparian buffers, rainwater collection, infiltration basins)
- Water conservation, efficiency, and reuse
 - Eligible projects are those that reduce the demand for publicly owned treatment works capacity through reduced water consumption

Investing in Water and Sewer Infrastructure



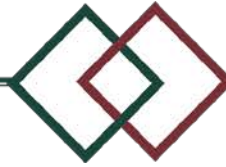
- Watershed pilot projects
 - May only be done by a municipality
- Improved energy efficiency of treatment works
 - Eligible projects include those that reduce the amount of thermoelectric energy used, either through reduced energy consumption or use of renewable energy sources
- Security measures at treatment works
 - Eligible projects include upgrading, repairing, or installing fencing, security cameras, security lighting, and motion detectors
- Technical assistance for treatment works
 - May only be done by a nonprofit

Investing in Water and Sewer Infrastructure



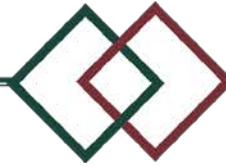
- The DWSRF similarly supports drinking water infrastructure projects:
 - Installing or upgrading facilities to improve drinking water quality
 - Rehabilitating, replacing, or installing pipes to improve water pressure to safe levels
 - Rehabilitating wells or developing eligible sources to replace contaminated sources
 - Installing or upgrading finished water storage tanks
 - Interconnecting two or more water systems
 - Constructing a new system to serve homes with contaminated individual wells or consolidating existing systems into a new regional water system

Investing in Water and Sewer Infrastructure



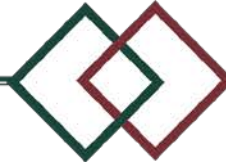
- DWSRF projects do **not** include:
 - Construction or rehabilitation of dams
 - Purchasing of water rights, unless the water rights are owned by a system to be purchased for consolidation
 - Construction or rehabilitation of reservoirs, except for those that are part of the treatment process
 - Projects needed primarily for fire protection
 - **Projects needed primarily to serve future population growth**

Eligible Uses of Funds



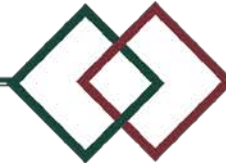
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Investing in Broadband Infrastructure



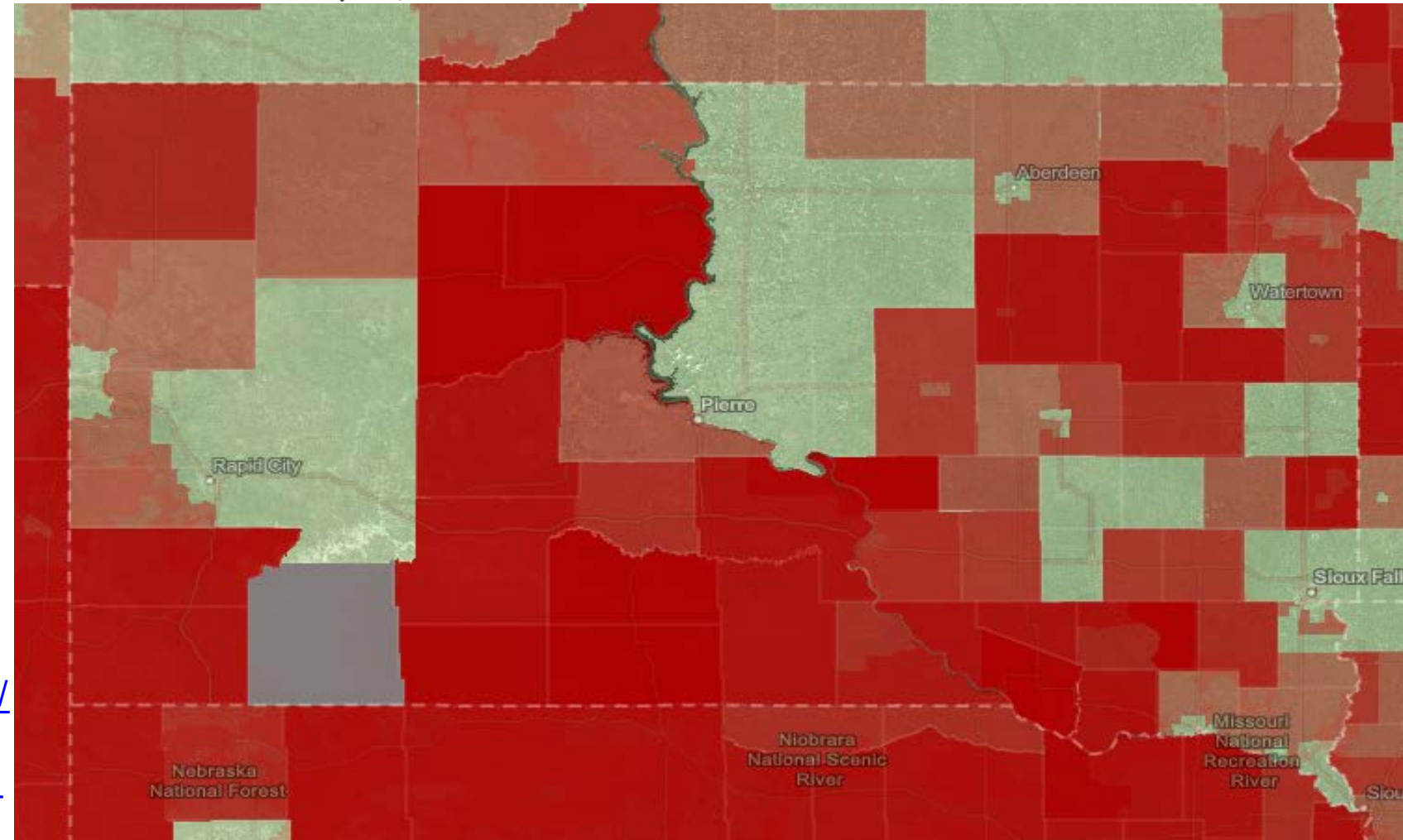
- Expanding access to broadband internet
 - Eligible projects are expected to deliver upon completion service has **100 mbps download and 100 mbps upload speeds**
 - If geography, topography, or excessive costs do not allow for those speeds, the project would be expected to deliver **100 mbps download and 20 mbps upload speeds** and be scalable to 100 mbps upload speeds
 - Eligible projects are also expected to focus on locations that are unserved or underserved (less than 25 mbps download and 3 mbps upload speeds)

Investing in Broadband Infrastructure



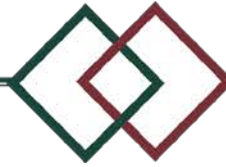
Indicators of Need

- Usage - 75% or More of Devices Connect to Microsoft Updates/Services via Fixed Broadband Download Speeds below 25 Mbps (County Level) ...
- Speed Tests - M-Lab Median Speeds Fixed Broadband Below 25/3 Mbps (County Level) ...
- Speed Tests - Ookla Median Speeds Fixed Broadband Below 25/3 Mbps (Census Tract Level) ...
- American Community Survey - 25% or More of Households Report No Internet Access (Census Tract Level) ...
- American Community Survey - 25% or More of Households Report No Computer, Smartphone or Tablet (Census Tract Level) ...
- FCC Form 477 - No Provider Reports Consumer Fixed Broadband Services at 25/3 Mbps (Census Block Level) ...



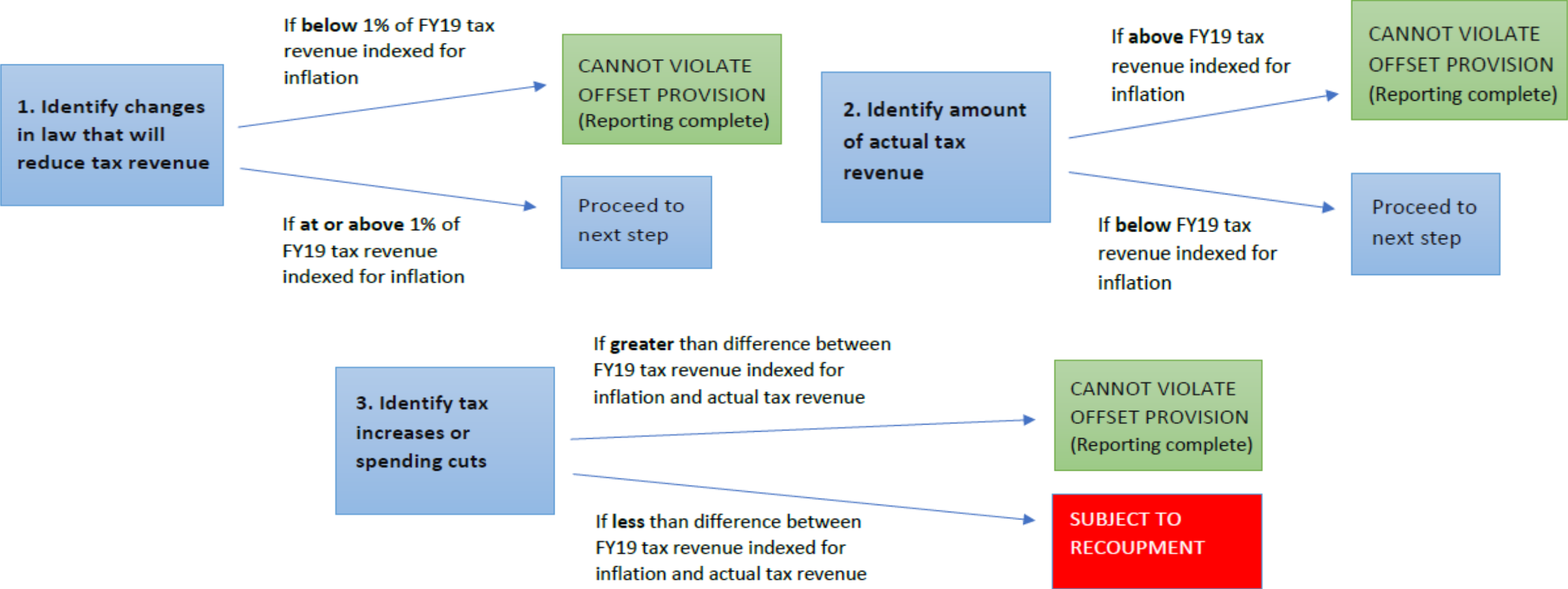
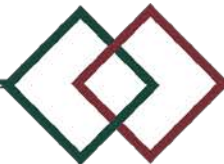
<https://broadbandusa.maps.arcgis.com/apps/webappviewer/index.html?id=ba2dcd585f5e43cba41b7c1ebf2a43d0>

Ineligible Uses of Funds

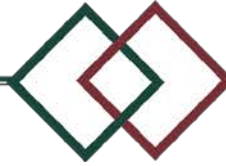


- State governments may not use this funding to directly or indirectly offset a reduction in net tax revenue due to a change in law from March 3, 2021 through the last day of the fiscal year in which the funds provided have been spent
 - If, in the current fiscal year, a state **cuts taxes at a level less than 1% of fiscal year 2019 tax revenue** (indexed for inflation) or **has an annual tax revenue greater than that in fiscal year 2019** (indexed for inflation), then it will not have violated this offset provision

Ineligible Uses of Funds



Ineligible Uses of Funds



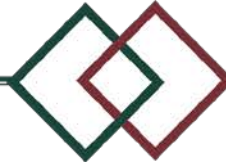
- Several states have sued the Department of Treasury to make this offset provision unenforceable:
 - Ohio v. Yellen (No. 1:21-cv-181)
 - On July 1, a judge [granted](#) Plaintiff's motion for a permanent injunction against the Treasury
 - Arizona v. Yellen (No. 2:21-cv-514)
 - On July 22, a judge denied Plaintiff's motion for an injunction and dismissed the case for lack of standing
 - **Order was appealed**
 - Missouri v. Yellen (No. 4:21-cv-376)
 - On May 11, a judge denied Plaintiff's motion for an injunction and dismissed the case for lack of ripeness
 - **Order was appealed**

Ineligible Uses of Funds



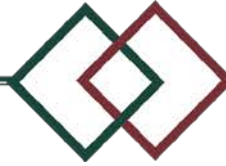
- West Virginia v. U.S. Department of the Treasury (No. 7:21-cv-465)
 - South Dakota is a plaintiff in this case
 - On July 14, the judge denied Plaintiff's motion for a preliminary injunction, but allowed the case to move forward
- Kentucky v. Yellen (No. 3:21-cv-17)
 - A motion for summary judgment was filed by Plaintiffs on June 23, and a motion to dismiss was filed by Defendant on July 21
- Texas v. Yellen (No. 2:21-cv-79)
 - No case progress available

Ineligible Uses of Funds



- Neither state nor local governments may use this funding to make a deposit to a pension fund
- Neither state nor local governments may use this funding to provide contributions to rainy day funds, financial reserves, or similar funds
 - Also, they may not use it to satisfy any obligation arising under or pursuant to a settlement agreement, judgment, consent decree, or judicially confirmed debt restructuring plan
- General infrastructure projects beyond those involving water, sewer, and broadband are not eligible uses unless the project in question responds to a specific pandemic-related public health need or a specific negative economic impact of the pandemic

Transferring Funds



- State governments and local governments may transfer their funding to other constituent units of government or private entities
 - Local governments may transfer funding to their state government
- The original recipient remains responsible for monitoring and overseeing the subrecipient's use of funding
 - Only exception is local governments transferring funds to their state government (as long as the transfers are reported to the Treasury)