Equity In Brief

E PLURIBUS UNUM

Volume 3

Safeguarding Equity with Stimulus Funding

A Practical Guide for Policy Makers

By Donnie Charleston, Director of Policy & Advocacy

As was the case with the Great Recession in 2008, this current economic downturn has impacted communities of color, rural communities, and disinvested communities the hardest. As we move forward with the recovery from the past year and a half, it's time that we turn our attention to how our state and local governments can meet the challenge of fostering a sustainable and equitable recovery for all.

Since the spring of 2020, Congress has authorized \$5 trillion in stimulus funding and \$500 billion for state and local governments.[1] This funding has been doled out to states to aid the pandemic response in the wake of severe declines in state and local government revenues, which was exacerbated by the need for greater spending to counter the impacts of the pandemic. States and municipalities spent tremendous sums for public health needs, public safety, safety net program needs, and associated programming costs.

During the 2008 recession, the nation saw a federal fiscal response in the form of the American Recovery and Reinvestment Act, which authorized billions in State Fiscal Stabilization Fund (SFSF) dollars to contend with a global economic catastrophe. However, in the ensuing years, there were some problematic issues that emerged as those funds were depleted.

Officials in state and local governments resorted to a range of unsustainable budgetary actions that resulted in tremendous fiscal cliffs across a number of states (massive falloffs in funding for state programs after the federal funds were expended). The underlying budgeting strategies included a mix of funding long-term initiatives with short-term money, and shifting state dollars away from programs preferring to use federal dollars instead. In doing so, officials placed themselves in a financial bind.

---

[1] While this represents the direct funding to states and taxpayers, the federal government has undertaken a number of fiscal measures to address the pandemic including monetary policy adjustments, regulatory policy changes, housing policies and other measures. For a summary see: Investopedia – US COVID 19 Stimulus and Relief.

For states that didn't experience a rapid economic rebound, the prospect of budget cuts became increasingly likely. States enacted tax cuts that were aimed at stimulating their economies. However, funding these tax cuts meant steep cuts to education and other services. Five years after the recession ended, state and local funding in education, public health, public safety, along with healthcare and other programs were underfunded relative to their 2008 levels. In some states, there are already debates emerging regarding supplantation and siphoning of federal funds. To avoid a repeat of the past, it is imperative that we arm local elected leaders with a set of actionable strategies for guarding against shortchanging the communities hit hardest by the pandemic.

A CHECKLIST OF ACTION ITEMS

Review Your State or Local History of Stimulus Funding

- Review funding strategies, state level allocation formulas, and budgeting mechanisms from the American Recovery and Reinvestment Act (ARRA) for potential clues about how the current stimulus may play out

- Review state pass thru formulas from the prior recession, current formulas, as well as city and county budgets for past stimulus funding strategies

Identify Accountability Tools

- Examine your state's general statutes and constitution to identify any available tools for addressing supplantation or other violations of budgeting mandates

- Review the stimulus accountability tools put in place by other states for possible adoption in your state or community

- Consult with your state's auditor or local ombudsman to determine their level of oversight regarding the management of stimulus funds

Know the Rules

- Familiarize yourself with the specifics of the different stimulus plans as they apply to what your state or locality can or can't do

- Monitor your state's progress, and its economic benchmarks so that you can anticipate future budget actions that would run counter to maintaining equitable funding

Fiscal Infrastructure

- Examine reports and the data reporting requirements of program areas to determine if they are collecting and reporting the necessary information to assess equity outcomes/progress

- Institute the necessary data reporting where agencies are falling short

A LOOK AT PATTERNS FROM THE GREAT RECESSION AND AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA) FUNDING

While the past is not prologue, examining the patterns of funding during the Great Recession may provide a window into what can be expected. Budgeting is a complex process, and leaders at all levels have become adept at navigating federal programs. Some actions walk right up to the line of supplantation without crossing it, while other actions are blatantly questionable. Some of these activities can often be rightly classified as "federal funds maximization." However, the crucial question is – what is the ultimate destination of the newly "freed up" state or local funds? Are they directed towards the same budgetary area (e.g. child services), or do other initiatives that sit outside the realm of those negatively impacted by the pandemic become the beneficiary?

For example, two common methods of federal funds maximization are reclassifying expenditures as meeting Maintenance of Effort (MOE) classification when they previously weren't classified as such and relabeling expenditures so that they become eligible for a match. This pattern has been studied extensively in block grant programs like TANF, matching grant programs like Medicaid, and education funding.

Reviewing past budgets and identifying shifts in program funding from one funding stream to another can reveal indicators of possible concern. For example, if a foster care program funded with state dollars was not previously identified as a state's MOE commitment, but after the receipt of stimulus it shifts to being categorized as MOE spending, you should take note. While legal, it may result in a future falloff in funding when federal funds run out and that program needs to be funded with state dollars once again.

Action Steps

- Pull your state budget documents going back to 2007, the year before the Great Recession, to see where historical allocations were made for each individual program area, and identify the source of those funds (whether state or federal). Moreover, because so many program areas are still underfunded relative to where they were before the 2008 recession, this may be the best starting point.

- Trace your funding distributions from the state to the local level for ARRA funding (for all funds not dictated by federal allocation schedules). Examine any formulas used for allocations of those funds and compare it to current stimulus allocation plans. Past economic performance from the prior recession may illuminate possible roadblocks to recovery for the current recession, which can inform deliberations regarding what's appropriate for the current context. It's worth noting that advocates should conduct this same level of review for local (municipal and county) budgets as well.

Tools

- Your state's Consolidated Annual Financial Report (CAFR) is a good starting point. These reports detail a state's consolidated financial statement, which includes a schedule of federal financial assistance, sorted by state and federal agency. Ballotpedia collects CAFRs for each state dating from 2008 to 2019.

IDENTIFY OR ESTABLISH PENALTIES FOR VIOLATIONS

Recipients of federal funding are subject to audits and monitoring by federal agencies to ensure that entities abide by non-supplanting provisions, which regulate how federal dollars are spent in order to prevent the replacement of state/local funding with federal funds. These provisions are common in federal programming. However, due to the complexities of state finance systems, it can be very difficult to uncover violations. Moreover, defining a true violation is dependent upon how the non-supplanting provision is written in federal policy. State and local leaders who are invested in ensuring the equitable use of federal funding should push for the use of formal audits to monitor the use of funds. This can be written directly into funding bills. Ideally, those auditors should exist outside of an agency's hierarchy. This can be done through a State Auditor's office, or through a formal state board with the requisite authority to obtain documentation and other information.

More importantly, in the case of supplanting state funding, it should be spelled out how violations will be handled. For example, in 2017 the Oklahoma State Board of Equalization determined the legislature had supplanted education funding with lottery funding. With the establishment of the state's lottery system, the state's constitution was amended to include language specifying that in the event that supplanting is uncovered, "the Legislature shall not make any appropriations for the ensuing fiscal year until an appropriation in that amount is made to replenish the trust fund" (from Article X, Section 41.D of the Oklahoma Constitution). This forced the Legislature to cover the supplantation gap.

Action Steps

- Look at your state's constitution or general statutes for any already established measures for addressing violations of supplanting activities. And consult your legal expert (city attorney, attorney general's office, or legislative legal arm) for their opinion on how and when the measure can be applied.

- Consult with your state's auditor's office, local ombudsman, or other relevant entity to determine their scope of oversight regarding these matters.

- Look at examples from other states to see if it is possible to institute those models of accountability in your state or locality.

Tools

- Oklahoma's constitutional language may be a good starting point for those considering the instituting their own system of accountability.

- Local officials and advocates should also familiarize themselves with the ins and outs of government auditing. The Institute of Internal Auditors offers a primer on public auditing, which is a good starting point.

- The National Conference of State Legislatures (NCSL) has collected information for all 50 states on how states have created new structures to monitor the expenditure of stimulus funds.

KNOW THE RULES

To hold your institutions accountable, it is critically important to know the rules set forth by the federal government guiding the use of stimulus funds. The Maintenance of Effort provision of the Coronavirus Aid, Relief, and Economic Security (CARES) Act stipulates that states will maintain support for K-12 and higher education *"at least at the levels of such support that is the average of such State's support for elementary and secondary education and for higher education provided in the 3 fiscal years preceding the date of enactment of this Act."*

However, there are major holes in this provision. By using a 3-year average, the federal government allows for states to actually have lower provisions of funding for those states that have made graduated or higher investments in years 2 and 3 of that time span. Leaders should take care to monitor how those calculations are being made by their states, and the resulting allocations. Additionally, capital improvements are excluded from the calculation, thus making it more likely that those line items can be cut by states.

The American Rescue Plan (ARP) Act includes a provision that prevents states from using Coronavirus State and Local Fiscal Recovery Funds (CSFRF) funds to "directly or indirectly offset a reduction in the net tax revenue of such State" resulting from "a change in law, regulation, or administrative interpretation" that reduces "any tax" or delays the imposition of any tax or tax increase. It's noteworthy that in separate lawsuits at least 19 states, including 8 southern states (Louisiana, Mississippi, Texas, West Virginia, Alabama, Arkansas, Florida, and South Carolina), have filed suit against the federal government alleging that the tax condition exceeds Congress's authority. While the suit rests on the interpretation of the Spending Clause in the U.S. Constitution, arguably it is an attempt to continue a pattern of leveraging federal funding to keep state and local taxes low. This pattern is evident across a number of states, in particular those in the South and some in the Midwest. And in the South in particular, this practice is grounded in Reconstruction era practices, and the years immediately following, whereby states deliberately limited the tax exposure of white citizens who opposed funding educational and other services for Black communities. State and local governments instituted budgetary practices like property tax limitations (because the overwhelming amount of taxed property was owned by white residents and not Black residents), and the imposition of regressive tax systems that institutionalized the underinvestment of Black communities and low wealth communities.

Depending on how it is instituted, funding a tax decrease vis-à-vis stimulus funding in the current context would essentially be a continuation of that practice – using federal funds to cover pandemic-related services while ensuring that wealthier households and corporations that did not suffer the same ill effects from the pandemic receive a financial benefit. While the U.S. Department of the Treasury has made some adjustments to address the concerns of these states, these lawsuits are still in progress. There is considerable debate concerning the potential of these suits to prevail. Nonetheless, if successful these suits could pose a considerable threat to the ability to deliver on the promise of the stimulus as a remedy for those hardest hit by the pandemic.

Action Steps

- Research the specific parameters spelled out in the CARES Act and the ARP Act, and look to see if your state has signed on to the lawsuits mentioned above.

- Monitor your state's economic progress. Pay close attention to employment numbers, Medicaid spending, and most importantly the revenue projections. These indicators will give you early signs of how your state's budget is shaping up, and what policy makers may be thinking.

Tools

- This Congressional Research Service report is a good starting point to begin to understand the complexities of the law surrounding this issue.

- NCSL regularly compiles revenue reports using revenue information for each state and has a dedicated focus on COVID-19 budgeting.

- The Urban Institute publishes quarterly reports on state revenues and compiles data highlighting each state's economic performance.

- The U.S. Bureau of Labor Statistics compiles monthly employment numbers for each state.

INSTITUTING FISCAL INFRASTRUCTURE ACCOUNTABILITY TO TRACK SPENDING

Across a number of programmatic areas, there is currently an increased focus on data and accountability, but not all systems are equal in that regard. It is imperative that advocates ensure that a school system's financial data infrastructure is capable of providing the necessary information to identify inequities and any questionable budgetary actions.

As mentioned above, stimulus funds have very specific MOE provisions for education funding. States and localities are required under the Every Student Succeeds Act (ESSA) to have in place accountability systems and data reporting for measuring academic outcomes at the student and school system level. The stimulus act will be a test of these systems and their ability to act as systems of accountability for addressing issues of educational equity. A few things to note in tracking the expenditure of funds include:

Contextualized Data

Teasing out how stimulus funds are being distributed and whether they are directed towards activities that are equity driven requires having contextualized data. Funding allocations should be tracked with reference to actual school needs and school performance, with an eye on student performance during the pandemic. Moreover, those calculations should be informed by relative differences between schools that show how students and schools perform with respect to their actual starting points. Decisions should also be driven by explanatory data that shows what drives spending across schools. Simply equalizing funding between schools ignores the fact that low-performing and low-wealth schools may require greater resources than other schools in the same system. Asking that data be submitted with this context, and asking hard questions of system data providers is an important and necessary towards safeguarding equity in educational expenditures.

Resource Equity

Ideally financial data should be tracking not just raw allocations in school funding to systems, but also data should be capable of tracking actual resource equity. That means that in the provision of stimulus funding, leaders should be asking whether and how funds are being allocated towards other dimensions of resource equity including: teacher quality and diversity, school leadership quality, instructional time and attention, student supports and intervention, and high quality early learning among a number of dimensions.

Action Steps

- Review the data reporting requirements for the relevant agencies receiving funding to determine if the necessary data is being collected. For education in particular, review your state's ESSA State Plan to determine exactly what your fiscal accountability infrastructure looks like and whether it collects the necessary data. This may be an opportune time to push for improvements to your data systems.
- Look at past reports generated for local authorities by your local educational system and other program areas to see if they are producing reports that address the elements mentioned above.

- It may also be a good time to examine your state's funding formulas, in education and other areas, to assess how well it's meeting equity objectives.

Tools

- The Education Trust provides a suite of resources advocates and local official can use to understand how their state stacks up in meeting equity.

- EdBuild has a 50-state overview of funding formula structures that includes information on local and state funding contributions.

CLOSING

This guide focuses on safeguarding the use of stimulus funding to ensure that you have the necessary funds available to make decisions regarding how to address the challenges your community faces. This is just one step in the process of equitable budgeting.

Equitable budgeting is a complex endeavor that requires serious commitment. For each individual program area there are a number of resources available to inform decision-making regarding how best to spend funds. A few notable resources that could be helpful regarding research-informed uses for driving equitable systems include primers on: K-12 education, public health, higher education, and early childhood system. For a global primer, the Racial Equity Alliance provides a great starting place for understanding what equitable budgeting practices looks like from beginning to end. Below we offer a set of equity budgeting principles that can serve as a guide for policy makers at all levels.

Budgeting Principles

- Budget with the objective of community benefit

- Align short-term considerations with long-term community needs

- Make a commitment to transparency and accessibility in all budgeting processes

- Commit to the participation and inclusion in the budgeting process, particularly of those communities impacted by budgeting decisions

- Make a commitment to quality and independent audits

- Adhere to comprehensive budget accounting that provides clarity for how monies move across budget areas and through an entity