March 31, 2021

Ms. Janet Yellen
Secretary of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

RE: American Rescue Plan provision on state revenue maintenance

Dear Secretary Yellen:

We write in support of the maintenance-of-effort provision of H.R. 1319, the American Rescue Plan, and specifically to recommend ways in which the Treasury Department's forthcoming guidance on that provision can ensure that its intent is fully realized. We urge the Treasury Department to ensure that the provision is clearly applied to localities and to economic development tax incentives.

Specifically, at Subtitle M, Sec. 602, concerning fiscal recovery funds, under Requirements, the Plan provides that:

> *''(2) FURTHER RESTRICTION ON USE OF FUNDS.—*
> *(A) IN GENERAL.—A State or territory shall not use the funds provided under this section or transferred pursuant to section 603(c)(4) to either directly or indirectly offset a reduction in the net tax revenue of such State or territory resulting from a change in law, regulation, or administrative interpretation during the covered period that reduces any tax (by providing for a reduction in a rate, a rebate, a deduction, a credit, or otherwise) or delays the imposition of any tax or tax increase.*

We wholeheartedly support the intent of this provision—to ensure that Rescue Plan funds are spent to end the pandemic, spur a rapid economic recovery, and provide direct relief to struggling families. And we want to be sure that Treasury's forthcoming guidance on the provision accurately and fairly anticipates some foreseeable interpretive matters.

First: maintenance-of-effort requirements are nothing new in either federal or state budgeting, especially in health care and education. This Rescue Plan provision simply extends their use to protect state and local budgets more thoroughly. Given the Rescue Plan's size and scope, this is entirely appropriate.

Second: given that many of the Rescue Plan's funding streams will flow to *local* governments and that Subtitle M's name is "Coronavirus State *and Local* Fiscal Recovery Funds" [emphasis added], we hope that Treasury's guidance will clearly bind this safeguard to local-government actions which result in the loss of revenue.

Because transfers from state governments comprise a large share of local-government income, protecting state revenue levels by themselves makes no sense if local governments remain free to undermine their revenue bases (and thereby create new state costs that could in turn use up Rescue Plan dollars). Property taxes are the largest local revenue source, and their prospects are already fragile in many localities where commercial real estate vacancy rates are high (both because of the rise of e-commerce before and during the pandemic and because of so many retail and hospitality-establishment closures). Now, the revenue hits some cities will suffer due to property tax assessment appeals is an unknown, yet real fiscal risk.

Public education funding shows how *local* actions cause *state* expenses. When states equalize per-student funding, they begin with each school district's tax base and then compute how much is needed to "top off" the district to meet the state's per-student equity goal. In such computations, many states exclude properties that have been given tax abatements and/or calculate using only small contributions from properties within tax increment financing (TIF) districts. This creates higher state costs topping off school districts in high-abating/high-TIF localities.

Third: we want to ensure that the forthcoming guidance explicitly covers economic development incentives, per the Plan's reference to tax credits, rebates, and deductions. Since 2015, when the Governmental Accounting Standards Board (GASB) issued Statement No. 77 on Tax Abatement Disclosures, tax-based incentives have been deemed so financially salient to state and local government finances that they are the only form of tax expenditure ever codified for public reporting by GASB.

States and localities need the fiscal discipline the Rescue Plan intends. Spending on costly, company-specific "megadeals" (such as Foxconn, Tesla, and Amazon's HQ2, all of which required state enactments as well as local revenue losses) did not subside in the mid-to-late 2010s despite the nation's robust economic growth and record-low post-war unemployment rates.

Indeed, Good Jobs First will soon document that public school districts nationwide lost 13 percent more revenue to corporate tax abatements in FY 2019 than in FY 2017—again despite the nation's very strong economy in that time span.

Imposing a brief moratorium through 2024 on new state and local economic development tax giveaways will help create a calming "cease-fire" atmosphere, supporting legislators in more than a dozen states who have introduced bills to create an interstate compact to ratchet down the "economic war among the states." Indeed, in 2019, Kansas and Missouri signed the first legally binding "cease-fire" agreement in U.S. history, agreeing to stop using state funds for interstate job piracy in the Kansas City metropolitan area.

Left to their own devices, states are unfortunately prone to doing what New Jersey did last fall: despite a deep, protracted incentives scandal, it did not abandon the "buffalo hunting" school of economic development. Instead, it doubled down, authorizing a new raft of giveaways that could cost the state $14 billion in just seven years. We hope that Treasury will examine such pandemic-period actions to determine whether they contradict the Rescue Plan's revenue safeguard.

Of course, the Rescue Plan's maintenance-of-effort provision will not stop states or localities from committing such costly mistakes if they are intent upon erring. But it will ensure that, going forward, such a profligate state action will not be funded by taxpayers in the other 49 states.

Finally: having an effective guidance is critical because states, territories and localities have many critical needs that will be ameliorated by Rescue Plan funds but still require steady sub-national investments. The most recent data from the National Center for Education Statistics shows that: 22 states have still not restored per-pupil education spending levels to pre-Great Recession levels; 33 states still have higher student-teacher ratios; and 49 states have higher student-librarian ratios. Nationally, tuition rates at state colleges and universities are 31 percent higher than they were in 2007-2008 (after inflation).[1]

Post-pandemic, in addition to the many costs of making schools safer this school year, education experts foresee additional costs of thousands of dollars per student per year for several years to help those students, set back by as many as eight months of interrupted learning, to recover their achievement trajectories.[2]

The American Society of Civil Engineers raised its tally of the nation's cumulative infrastructure deficit from $3.6 trillion in 2013 to $4.6 trillion in 2017. It noted that because the federal government has not raised its gasoline tax since 1993, fully 37

[1] National Center for Education Statistics, "Tuition costs of colleges and universities" from Digest of Education Statistics, 2018 (NCES 2020-009) Chapter 3.

[2] See for example, Education Resource Strategies, "The Cost of Covid: Understanding the full financial impact of COVID-19 on schools and districts," January 2021.

states have chosen to raise their own fuel charges and yet roads still get a "D" from ASCE. This is no time to let states backslide on their infrastructure commitments.[3]

Simply put, states are well-guided to avoid revenue cuts as they emerge from the deepest, most abrupt jobs recession of our lifetimes, in which more than one million regular and gig workers per week *continue* to file initial Unemployment Insurance claims, as they have now for 51 of the last 52 weeks.

We strongly urge the Treasury Department to ensure that its guidance on the American Rescue Plan's maintenance-of-effort provision is clearly applied to localities and to economic development tax incentives.

Sincerely,

Good Jobs First

Louisiana Budget Project

National Education Association

American Economic Liberties Project

People's Action

International Brotherhood of Teamsters

Economic Policy Institute

Public Citizen

Bold ReThink

Michigan League for Public Policy

Service Employees International Union

Institute for Local Self-Reliance

American Federation of Teachers

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[3] American Society of Civil Engineers, "A Comprehensive Assessment of America's Infrastructure: 2021 Report Card."