

Brian Lee

From: Chris Brown <cbrown@atcog.org>
Sent: Tuesday, December 07, 2021 12:36 PM
To: Judge Brian Lee
Subject: FW: ARPA Funds to Cities and Counties

Hi Judge,

Below is what came back from TARC and NADO. They have not seen or heard of any text that would require vaccination or other mandates with regards to the ARPA funding. They are keeping their ear to the ground, and do communicate with NACo on these types of issues. Let me know if you hear anything different or more specific.

Thank you,

Chris Brown

Ark-Tex Council of Governments

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From: Mirielle Burgoyne <MBurgoyne@nado.org>
Sent: Wednesday, December 1, 2021 11:31 AM
To: Chris Brown <cbrown@atcog.org>; Ginny Lewis Ford <glewisford@txregionalcouncil.org>; Joe McKinney <jmckinney@nado.org>
Subject: RE: ARPA Funds to Cities and Counties

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Hi Chris,

Thanks for reaching out! I completely agree with your assessment in the last email you sent below.

To the best of my knowledge, the "hidden mandate" concern is not entirely legitimate. It may be a misinterpretation of existing federal guidance, or an overly broad linkage of separate sources of guidance.

For example, the Treasury-administered *Coronavirus State and Local Fiscal Recovery Fund* dollars – the ARPA funds going directly to cities and counties – **can be** used for vaccination-related activities (i.e. vaccine distribution, vaccine incentive programs) but I am **not** aware of any hidden mandates **requiring** vaccination or masking of officials or citizens in tandem with the administration of these funds. I have read the interim rule and have not seen anything in the guidance of this nature.

Separately, the Biden Administration has issued some Executive Orders that include vaccine mandates for **federal workers** and **federal contractors**. In theory, this could perhaps become important in cases where a city or county is using a contractor and paying the contractor with federal funds (Treasury/ARPA funds or otherwise). In other words, depending on decisions that cities/counties are making on how to use the Treasury funds, there *could potentially* be an interaction of these separate sources of guidance. Even so, my understanding is that the **contractor** would be the party responsible for following federal rules/orders about vaccination and masking (not the city or county).

If others you've reached out to respond in a way that is significantly different from my understanding, please let me know! As always, NADO can't provide legal advice, this is just my best understanding.

Some sources linked below if you're looking for additional detail.

TREASURY GUIDANCE

Sources of federal guidance that dictates the rules for the Treasury-administered State and Local Fiscal Relief Fund (city and county relief funds)

- Treasury State and Local Fiscal Recovery Fund – interim final rule:
<https://home.treasury.gov/system/files/136/FRF-Interim-Final-Rule.pdf>
- Treasury State and Local Fiscal Recovery Fund FAQ: FAQs:
<https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf>

BIDEN EXECUTIVE ORDERS

Separately, here are some Biden Administration Executive Orders related to vaccination/masking:

- Biden administration Executive Order which includes vaccination requirements for **federal employees**:
<https://www.whitehouse.gov/briefing-room/presidential-actions/2021/09/09/executive-order-on-requiring-coronavirus-disease-2019-vaccination-for-federal-employees/>
- Biden administration Exec Order mandating that “federal contractors” or those who hold “contract-like instruments” must comply with the “Safer Federal Workforce Task Force Guidance” which does include vaccine and masking provisions
 - Exec Order: <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/09/09/executive-order-on-ensuring-adequate-covid-safety-protocols-for-federal-contractors/>
 - Safer Federal Workforce Task Force Guidance: <https://www.saferfederalworkforce.gov/new/>

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From: Ginny Lewis Ford <glewisford@txregionalcouncil.org>

Sent: Tuesday, November 30, 2021 9:18 PM

To: Chris Brown <cbrown@atcog.org>; Joe McKinney <jmckinney@nado.org>; Mirielle Burgoyne <MBurgoyne@nado.org>

Subject: RE: ARPA Funds to Cities and Counties

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Judge,

I'll leave the research on the federal bill reading to the NADO team but I've not heard anything like this to date. Our Attorney General is definitely contesting federal vaccine mandates of any type in court. See some recent examples below. He's also involved in activity related to Ben & Jerry's, Google, & Meta/Facebook.

November 16, 2021 | Press Release

Paxton Files Lawsuit Against Biden Administration's Vaccine Mandate for Healthcare Workers

Attorney General Ken Paxton filed a lawsuit against the Biden Administration challenging its "Vaccine Mandate Rule."

November 15, 2021 | Press Release

Paxton Files Motion to Stop Biden's Vaccine Contractor Mandate

Attorney General Ken Paxton filed a motion for a temporary restraining order and preliminary injunction to stop President Biden's unlawful vaccine mandate against federal contractors

I have not seen the documents that local governments are being asked to sign before accepting funds or upon acceptance, have you? It would be interesting to see the language in those as well. Boilerplate and terms might tell us more.

Stay well and I will keep digging around.

Best Regards,

Ginny Lewis Ford
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