



Tribal Consultation Summary Coronavirus State and Local Fiscal Recovery Funds 2023 Obligation Interim Final Rule

Introduction

In accordance with Treasury's consultation policy, Treasury held a [Tribal Consultation](#) on the Coronavirus State and Local Fiscal Recovery Funds (SLFRF) [Interim Final Rule](#) (2023 Obligation IFR) published in the *Federal Register* on November 20, 2023. The 2023 Obligation IFR amends the definition of "obligation" set forth in Treasury's regulations at 31 CFR 35.3 to provide additional flexibility to Tribal governments and other recipients. The 2023 Obligation IFR also clarifies that the statutory obligation deadline of December 31, 2024, applies to recipients, not to subrecipients and contractors, and provides guidance on the circumstances under which contracts and subawards entered into prior to the obligation deadline may be amended or replaced after the obligation deadline has passed.

Specific questions posed by Treasury to Tribal governments can be found in the [Dear Tribal Leader Letter](#) published November 9, 2023. The consultation was held virtually on November 29, 2023, to maximize Tribal participation across Indian Country. Approximately 90 attendees joined the consultation. The deadline for submission of written comments was December 22, 2023. Treasury received eight written comments.

Pursuant to Treasury's Tribal consultation policy, Treasury is providing this summary of the feedback received in the Tribal consultation and the federal response to this feedback. Tribes and other recipients should refer to the full text of Treasury's Frequently Asked Questions (FAQs) for guidance regarding the use of SLFRF funds.

Broad Feedback

1. Tribal Self-Governance in Implementing SLFRF

Commenters emphasized that Treasury should promote Tribal self-governance when issuing guidance regarding compliance with the requirement that costs be incurred by December 31, 2024. Commenters expressed that, like other governments, Tribes exercise sovereignty and self-governance by establishing budget policies and practices that align with their recovery and economic goals. In particular, workforce investments with SLFRF funds have been a significant focus for many Tribes. Commenters recommended that Treasury respect a Tribe's sovereignty by deferring to Tribal policies and procedures.

Federal Response: Treasury recognizes that SLFRF is a historic opportunity for Tribal governments. Treasury appreciates Tribal leader participation in the Tribal consultation and carefully considered each comment letter. The [Frequently Asked Questions](#) (FAQs) released on March 29, 2024 includes a newly added section in response to the Tribal consultation and comment letters submitted on the initial Obligation IFR. The new guidance includes an FAQ that addresses Tribal concerns specifically (see FAQ 17.23). Treasury will continue its discussions with Tribes as it works on closeout guidance.

2. Change in the Definition of "Obligation"

Commenters noted that Tribal planning for the use of SLFRF has been underway since the interim final rule was adopted in May 2021 and that Tribal budget cycles for SLFRF are often dictated by community need, fiscal year, or Tribal law and are not uniform across Indian Country. Commenters expressed their belief that before the 2023 Obligation IFR, FAQ 13.17 had provided a more flexible interpretation of the method by which the funds could be obligated.

The majority of commenters explained that not being able to use SLFRF to continue covering administrative and payroll costs after 2024 would pose significant issues for Tribes as they seek to carry out their SLFRF implementation plans, particularly given the limited amount of time left before the obligation deadline.

Federal Response: In response to these comments, Treasury issued the additional FAQs to provide additional clarity and flexibility regarding how Tribal governments and other recipients can meet the obligation deadline of December 31, 2024. For example, Treasury confirmed in FAQ 17.6 that an interagency agreement meeting certain conditions will constitute a transaction requiring payment similar to a contract or subaward. Additionally, as clarified in FAQ 17.7, recipients may consider themselves to have obligated funds to maintain certain personnel costs for personnel whose salary may be paid under an eligible use of SLFRF funds through December 31, 2026, for any position that existed and was filled by December 31, 2024.

3. Change in the Deadline for Administrative Expenditures

The 2023 Obligation IFR requires recipients to submit to Treasury by April 30, 2024, estimates for administrative expenditures that will be made in 2025 and 2026 related to requirements under federal law or regulation or a provision of the SLFRF award terms and conditions. Commenters noted that the April 30, 2024, deadline for submitting estimates for administrative expenditures creates a significant hurdle and provides insufficient time for an accurate calculation.

Commenters also stated that the April 30, 2024, date imposes unnecessary and unreasonable burdens that will disproportionately impact Tribes with limited staffing capacity. A commenter further expressed that this estimation requirement will lead Tribes to overestimate administrative expenditures and thereby lead Tribes to return unspent funds. Commenters recommended aligning the administrative expenditure estimate deadline with the statutory deadline of December 31, 2024.

Federal Response: The Obligation IFR provided that the legal and administrative estimate would be due to Treasury in the Project and Expenditure Report by April 30, 2024. Treasury understands that Tribal governments have unique resource constraints that differ from those of other governments. The new FAQs provide that Tribal governments that received an SLFRF award of over \$30 million should report the expenditure estimate by the July 31, 2024, quarterly Project and Expenditure Report. Tribal governments that received an SLFRF award under \$30 million should report their expenditure estimate by the April 30, 2025 annual Project and Expenditure Report. Additionally, FAQ 17.13 clarifies that if costs to cover legal and administrative requirements are lower than the original estimate provided to Treasury, the recipient may use any unexpended funds attributable to the original estimate for other eligible uses of SLFRF funds obligated before December 31, 2024.

Tribal Responses to Consultation Questions

1. The 2023 Obligation IFR provides new guidance that costs to satisfy administrative and other legal requirements applicable to the SLFRF program after the obligation deadline of December 31, 2024, has passed may be allowable with justification.

a. What other ways does your Tribe expect to incur administrative and other costs apart from those listed in the 2023 Obligation IFR?

Commenters provided examples of costs they expect to incur in addition to the types of administrative costs explicitly listed in the 2023 Obligation IFR, including, among other things, costs related to the purchase of office supplies, office rent, internet and phone services, meetings and travel, Tribal vehicle fuel and leases, costs to comply with Tribal

government specific laws, such as cultural monitoring, rights-of-way, training, and consultant services. These added expenditures support the work of personnel in charge of administrative and compliance costs in various ways but were not listed in the 2023 Obligation IFR.

Federal Response: Treasury recognizes that Tribal governments face complex legal and other constraints that local governments do not. For example, the Secretary of the Interior must approve nearly all land-use transactions. These unique situations increase the legal, administrative, and personnel costs for SLFRF funded projects. In response to commenters, Treasury has clarified the types of legal and administrative costs that may be covered using SLFRF funds. Please see FAQ 17.10 for more information.

b. With regard to payroll and benefits, personnel costs necessary to comply with administrative requirements and closeout are allowable after December 31, 2024, with justification.

1. What established practices and policies does your Tribe follow to account for payroll for individuals involved in program closeout?

Commenters explained the processes that govern payroll for Tribal employees and provided examples of Tribal government payroll practices. For example, once Tribe-wide salaries are obligated across the fiscal period for filled positions by an action of the Tribal Council, the salaries become an encumbrance. Payroll period schedules are set well into the future to accommodate a fiscal year of data, which provides an accurate budget of salaries for filled positions for the year. According to the commenters, payroll funds obligated may not be utilized for any other purpose.

Commenters recommended that payroll costs for personnel working within certain central support services or doing programmatic work in one of the SLFRF-eligible use categories be presumed as allowable. Commenters shared that requiring contracts or subawards to continue payroll will result in adverse consequences to the delivery of services and be more costly. One commenter stated that it has 96 employees in 19 different departments funded with SLFRF and that, without more flexibility in Treasury's guidance, it would need to terminate the positions after 2024.

Federal Response: In response to these comments, Treasury issued FAQ 17.7, which provides that Treasury will consider a recipient to have incurred an obligation with respect to personnel costs for an employee through December 31, 2026, to the extent the employee is serving in a position that was established and filled prior to December 31, 2024. Further, to address Tribal consultation comments on personnel turnover, the newly added FAQ 17.7 provides guidance on addressing turnover of personnel and reorganizing positions for filled positions by the obligation deadline of December 31, 2024.

2. What questions, comments, or recommendations does your Tribe have regarding payroll for employees who are not assigned to program closeout activities?

Commenters emphasized that converting employees to independent contractors would impose additional costs and compliance risk. To address program personnel obligations, commenters recommended that Treasury provide that a Tribe following its established policies and practices regarding payroll will be considered to have obligated funds for payroll.

Federal Response: In response to comments, Treasury has issued FAQ 17.7, which provides that Treasury will consider a recipient to have incurred an obligation with respect to personnel costs for an employee through December 31, 2026, to the extent the employee is serving in a position that was established and filled prior to December 31, 2024. Additionally, Treasury is clarifying that SLFRF funds can be used to pay personnel costs between January 1, 2025 and December 31, 2026 pursuant to an interagency agreement meeting certain conditions, as discussed in FAQ 17.6.

2. New guidance is provided in the 2023 Obligation IFR regarding contract and subaward amendments and replacements.

- a. The 2023 Obligation IFR makes clear that contract amendments to increase obligations after December 31, 2024, is not permissible. What comments or questions does your Tribe have regarding the implementation of this requirement?
- b. The 2023 Obligation IFR provides specific situations where a recipient may, after December 31, 2024, use SLFRF funds to replace a contract or subaward entered into prior to December 31, 2024. Are there situations that are not identified in the criteria that your Tribe has comments about?

Commenters emphasized that most Tribal governments are located in rural areas where access to basic services is often limited and that contractors capable of undertaking projects intended to support infrastructure improvements and maintenance are few and far between. Commenters expressed that a lack of sufficient vendors frequently results in contract change orders and amendments that alter the work and contract sum. These added costs exacerbate the high material and labor costs for infrastructure projects that SLFRF funds are available to be used for in Tribal communities.

Federal Response: Treasury acknowledges that some Tribes lack consistent and reliable access to basic infrastructure, such as clean drinking water, wastewater, and broadband. Moreover, Treasury understands that while SLFRF allows investment in these areas, factors such as a lack of reliable vendors, disruptions to supply chain systems, and other external factors pose risks to Tribal projects requiring contracts.

Based on Tribal consultation and comments received on this topic, Treasury has provided guidance in the newly added FAQs 17.16 and 17.17 regarding increased costs as an update to the discussion in the Obligation IFR.

A commenter shared a particular contracting situation that it said impacts the 39 Tribal governments in Oklahoma. As described in the comment letter, construction materials are taxed in Oklahoma. For a Tribal government to receive a state tax exemption on materials, it must pay for the materials directly. It is further outlined in the comment letter that if the Tribe has a project contract in place by the obligation deadline of December 31, 2024, the invoices for the materials must still be paid directly by the Tribe. Due to fluctuations in prices and the timing of projects, construction material invoices would not be known by December 31, 2024. The commenter proposes that Tribes should be able to create a subrecipient relationship with a Tribal entity to procure goods to be able to qualify for favorable treatment under state tax law.

Federal Response: Treasury acknowledges that Tribes in Oklahoma face unique challenges with regards to state taxation. The FAQs do not specifically address this situation.

3. What other questions or comments, if any, do Tribal governments have regarding the 2023 Obligation IFR?

Recoding SLFRF to Eligible Expenditures: Commenters expressed the need to have the ability to reallocate unexpended funding to eligible costs that were obligated by December 31, 2024. Commenters explained that other Federal programs permit reallocation of funds when a project or contract is under budget.

Federal Response: With respect to comments on funds that were obligated as of the deadline but ultimately not expended on an eligible activity, Treasury understands the commenters to be referring to the practice of reclassifying excess funds to eligible expenditures. FAQ 17.19 was added to clarify that recipients may reclassify the SLFRF funds from the original activity to another project that would be eligible under the SLFRF program rules, including the requirement that the recipient incurred an obligation by December 31, 2024, to expend funds on the activity. For example, a contractor awarded to build Tribal housing may perform work under-budget, thereby freeing up previously obligated funds.

Obligating Program Income and Interest: Other commenters requested clarification as to the application of the obligation deadline to program income and interest earned on funds. Commenters shared that earned program income from SLFRF-eligible projects was enacted to defray program costs and a commitment to the future of the program. Commenters expressed that the 2023 Obligation IFR does not address how program income earned should be obligated after December 31, 2024. Related, a commenter asked Treasury to confirm that income earned on SLFRF is considered unrestricted and is not subject to the terms of the SLFRF and its obligation deadline.

Federal Response: Treasury added FAQ 17.21 to explain that recipients may use program income earned after December 31, 2024, in one of four ways.

- First, program income may cover the cost of eligible uses of SLFRF funds for which the recipient incurred an obligation by December 31, 2024, such as a workforce training program funded with the general fund.
- Second, program income may pay for permissible upward cost adjustments in contracts or subawards, including replacement contracts and subawards, as described in FAQs 17.16 and 17.17.
- Third, program income may cover expenses that are necessary to meet certain legal and administrative requirements, as described in the Obligation IFR and FAQ 17.10.
- Fourth, program income may cover personnel costs obligated by December 31, 2024, as described in FAQ 17.7.

Treasury has already addressed the question regarding income earned in the [SLFRF Compliance and Reporting Guidance](#).

Obligating Revenue Replacement Funds: A commenter emphasized the need for clarification as to how Tribes must demonstrate that they complied with the obligation deadline in the case of revenue loss funds under reporting category 6.1 Provision of Government Services (Revenue Replacement).

Federal Response: Treasury agrees with Tribes that clear guidance is critical to satisfy the obligation requirement for revenue loss funds and for other SLFRF eligible use categories. Treasury added FAQ 17.15 to provide clarity that all SLFRF funds under any eligible use category are subject to the obligation requirements.