



# State and Local Fiscal Recovery Funds Obligation Interim Final Rule Tribal Government Fact Sheet

March 29, 2024

The State and Local Fiscal Recovery Funds (SLFRF) program, authorized in the American Rescue Plan, allocates \$20 billion for Tribal governments to support their response to and recovery from the COVID-19 public health emergency. In November 2023, Treasury issued an Interim Final Rule (the [Obligation IFR](#)) to address recipients' questions and comments regarding the definition of obligation. The Obligation IFR revised the definition of "obligation" for the SLFRF program to give additional flexibility and clarity to recipients to support their use of SLFRF funds.

After carefully considering feedback through [Tribal consultation](#) held on November 29, 2023 and written comments from Tribal governments, the U.S. Department of the Treasury has published new [FAQs](#) in Section 17: Obligation to respond to inquiries and provide clarity on certain provisions of the Obligation IFR.

## Obligation Deadline

The Obligation IFR does not alter the existing SLFRF obligation or expenditure deadlines. Tribal governments and other recipients must obligate SLFRF funds, including SLFRF funds in the revenue loss category, by December 31, 2024, and expend obligated funds by December 31, 2026 (with the exception of projects under the Surface Transportation projects and Title I eligible use categories, for which funds must be expended by September 30, 2026). In addition, the Obligation IFR does not alter the eligible use categories described in the [2022 Final Rule](#) and the [2023 Interim Final Rule](#).

## Legal and Administrative Costs After 2024

Under the Obligation IFR, Tribal governments and other recipients are considered to have incurred an obligation by December 31, 2024, with respect to a requirement under federal law or regulation or a provision of the SLFRF award terms and conditions to which the recipient becomes subject as a result of receiving or expending SLFRF funds.

Under this provision, a recipient may use SLFRF funds to cover costs, including personnel costs, related to:

1. Reporting and compliance requirements, including subrecipient monitoring (as discussed further below);
2. Single Audit costs;
3. Record retention and internal control requirements;
4. Property standards;
5. Environmental requirements, including applicable requirements of the National Environmental Policy Act, section 106 of the National Historic Preservation Act, the Archaeological Resources Protection Act of 1979, and the Native American Graves Protection and Repatriation Act; and
6. Civil rights and nondiscrimination requirements.

This is not an exhaustive list of requirements under federal laws or regulations or the SLFRF award terms and conditions to which recipients may be subject as a result of receiving or expending SLFRF funds. For example, Tribal governments building out water lines on trust lands may incur costs related to cultural monitoring or rights-of-ways consent that are necessary to comply with a requirement under a federal law or regulation.

Eligible costs related to reporting and compliance requirements, including personnel costs, include monitoring the activities of a subrecipient to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward, and that subaward performance goals are achieved.

## Reporting Legal and Administrative Costs

A Tribal government may submit to Treasury an estimate of SLFRF funds that it will use to cover the legal and administrative costs discussed above. Tribal governments are not required to submit estimates for all administrative costs associated with their projects. Rather, they must submit such estimates if they want to cover such legal and administrative costs. See FAQ 17.11.

Tribal governments that are allocated more than \$30 million in SLFRF funding should report their estimate for relevant legal and administrative costs in the July 31, 2024 quarterly Project and Expenditure Report. Tribal governments that were allocated less than \$30 million in SLFRF funding should report their estimate for relevant legal and administrative costs by April 30, 2025, in their Project and Expenditure Report covering the period from April 1, 2023 to March 31, 2024.

## Indirect Cost Rate

The Obligation IFR clarifies that Tribes that receive an approved indirect cost rate agreement from the National Business Center or the de minimis rate of 10 percent of modified total direct costs pursuant to 2 CFR 200.414(f) may continue to charge their negotiated indirect cost rate agreement, after December 31, 2024, through December 31, 2026.

## Payroll

The FAQs clarify that Treasury considers 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. Accordingly, funds may be used to cover such personnel costs if doing so would fall within the scope of an eligible use of SLFRF, such as payroll costs for employees overseeing an Elder Nutrition Program or overseeing an eligible affordable housing project.

## Application of Obligation Deadline to Subrecipients

The Obligation IFR clarified, and the FAQs confirm, that subrecipients are not subject to the December 31, 2024, obligation deadline. The obligation deadline applies to the recipient of SLFRF funds. Neither subrecipients nor contractors need to take additional steps to obligate SLFRF funds after entering into a subaward or contract with the recipient.

## Tribal Government Interagency Agreements

The FAQs clarify that Treasury considers an interagency agreement between a particular Tribal government's units (including the Tribal Council), departments, agencies, or other instrumentalities of a Tribe to constitute an obligation for purposes of the SLFRF rule if the agreement satisfies one of the following conditions:

- it imposes conditions on the use of funds by the agency, department, or part of government receiving funds to carry out the program;
- it governs the provision of funds from one agency, department, or part of government to another to carry out an eligible use of SLFRF funds; or
- it governs the procurement of goods or services by one agency, department, or part of government from another

and the agreement also satisfies each of the following conditions:

- it sets forth specific requirements, such as a scope of work and project deliverables;
- it is signed by the parties to the agreement, or otherwise evidences that each party has assented to the agreement; and

- it does not disclaim any binding effect or state that it does not create rights or obligations.

For purposes of FAQ 17.23, a unit of a Tribal government includes an enterprise organized under Tribal law if the Tribe treats that enterprise as a unit, department, agency, or other instrumentality of the Tribe. In addition, a corporation formed under section 17 of the Indian Reorganization Act or section 3 of the Oklahoma Indian Welfare Act would be considered a unit, department, agency, or other instrumentality of the Tribe for purposes of FAQ 17.23.

## **Procurement of Tribal Government Interagency Agreements**

For purposes of the SLFRF program, the procurement standards of 2 CFR Part 200 (the Uniform Guidance) do not apply to an agreement between units, departments, agencies, or other instrumentalities of a Tribe discussed above. The procurement requirements of the Uniform Guidance would need to be followed by the Tribal unit, department, agency, or other instrumentality of a Tribe with respect to the procurement of material, equipment, and supplies from outside vendors.

The procurement standards in the Uniform Guidance do not apply to funds spent under the revenue loss eligible use category. In cases in which the procurement standards apply to a Tribal government's entry into a contract, note that noncompetitive procurement is permissible under the Uniform Guidance in certain circumstances, including if an item is only available from a single source, or if after solicitation of a number of sources, competition is determined inadequate. See 2 CFR 200.320(c).

## **Contract Change Orders, Contingencies, and Amendments**

In general, Tribal governments and other recipients cannot re-obligate funds or obligate additional SLFRF funds after the obligation deadline of December 31, 2024. However, if a contract entered into by December 31, 2024, expressly provides for change orders or contract contingencies, the recipient may use SLFRF funds to cover increased costs attributable to such change orders or contract contingencies. Such increased costs are not considered new obligations but are instead attributable to a preexisting obligation to accommodate the change or contingency.

Additionally, recipients may cover the cost of amendments to contracts if the amended contract is within substantially the same scope and for substantially the same purpose as the contract that was incurred by December 31, 2024. This flexibility is consistent with recipients' ability to terminate a contract for convenience and to use SLFRF funds for costs associated with change orders and contingencies that are contemplated by their contracts and subawards.

Tribal governments should consult the [2022 Final Rule](#), [2023 Interim Final Rule](#), [Obligation IFR](#), and the full FAQs to learn more about the Obligation IFR, and the compliance and reporting requirements, which can be found on [SLFRF website](#). For further inquiries, please send questions related to SLFRF to [SLFRF@treasury.gov](mailto:SLFRF@treasury.gov).