U.S. DEPARTMENT OF THE TREASURY

State and Local Fiscal Recovery Funds: Obligation Interim Final Rule (IFR) Webinar

November 2023

Section 1: Program Background

The State and Local Fiscal Recovery Funds (SLFRF) Program

- The State and Local Fiscal Recovery Funds (SLFRF) program, authorized by the American Rescue Plan, delivers $350 billion to states, territories, localities, and Tribal governments, to respond to the COVID-19 pandemic and build a strong, resilient, and equitable recovery.

- Treasury has dispersed 99.99% of SLFRF funds to more than 30,000 recipients.

- Recipients may use SLFRF funds for projects in seven eligible use categories. For more information on the eligible uses, please see the:
  - 2022 Final Rule
  - Overview of the 2022 Final Rule
  - 2023 Interim Final Rule
  - Overview of the 2023 Interim Final Rule

Additional information can be found at Treasury.gov/SLFRF

Timeline for Use of SLFRF Funds

Funds may be used for costs incurred from **March 3, 2021** for the eligible uses described in the **2022 Final Rule,** and **December 29, 2022** for the eligible uses described in the **2023 Interim Final Rule**

Funds *for most eligible uses* must be **expended by December 31, 2026**

Funds must be **obligated by December 31, 2024**

Funds for Title I projects and Surface Transportation projects must be **expended by September 30, 2026**

Section 2: Obligation IFR

Summary of Obligation IFR

On November 9, 2023, Treasury released a new interim final rule to address recipients' questions regarding the definition of "obligation" and to provide related guidance and clarifications.

- **The Obligation IFR provides information regarding:**
  - Revision to the definition of "obligation" at 31 CFR 35.3
  - Application of the obligation deadline (December 31, 2024) to subrecipients
  - Amending or replacing contracts and subawards after the obligation deadline

- **The Obligation IFR does not:**
  - Alter the eligible use categories, including how recipients may use funds under the revenue loss eligible use category
  - Alter the obligation and expenditure deadlines for the SLFRF program

I. Revision to the Definition of Obligation: Background

- Sections 602 and 603 of the Social Security Act provided that SLFRF funds may only be used to cover **costs incurred** by December 31, 2024.

- In the 2022 Final Rule, Treasury implemented this statutory requirement by providing that a **cost is considered incurred if a recipient has incurred an obligation** for the cost by December 31, 2024.

- Treasury **defined "obligation" as "an order placed for property and services and entering into contracts, subawards, and similar transactions that require payment.**" This definition is based on the *Uniform Guidance* definition of "financial obligations."

I. Revision to the Definition of Obligation

Definition of "Obligation"

Continues to mean…

An order placed for property and services and entry into contracts, subawards, and similar transactions that require payment.

And now also means…

Incurring an obligation by December 31, 2024, in connection with 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 funds.

Key Update

A recipient may use SLFRF funds to cover the costs of meeting the following:

- **Reporting and compliance requirements**
- **Single Audit costs**
- **Record retention and internal control requirements**
- **Property standards**
- **Environmental compliance requirements**
- **Civil rights and nondiscrimination requirements**

I. Revision to the Definition of Obligation: Reporting

Overview of How-to Estimate and Report Expenditures

- **Step 1** — Determine the amount of SLFRF funds the recipient estimates it will use to cover such expenditures
- **Step 2** — Document a reasonable justification for this estimate
- **Step 3** — Report that amount to Treasury by April 30, 2024, with an explanation of how the amount was determined
- **Step 4** — Report at award closeout the final amount expended for these costs.

Prior to the April 2024 reporting period, Treasury will update the SLFRF *Compliance and Reporting Guidance* to reflect the additional reporting requirements.

I. Revision to the Definition of Obligation: Clarifications

- Treasury considered some recipients' comments to revise the rule to define "costs incurred" by reference to recipient appropriation, budget, or allocation processes, and explains that this approach would not provide a standard that could be applied consistently across recipients.
- Recipients may continue to charge their current negotiated indirect cost rate or use the de minimis rate of 10 percent pursuant to 2 CFR 200.414(f) after December 31, 2024, through December 31, 2026.

Case Study #1: Reporting/Compliance Personnel

Definition of Obligation

→ **Case example**: A recipient has hired additional finance, contracting and reporting staff whose payroll is funded with SLFRF funds to manage the compliance of SLFRF-funded projects. The recipient's established internal policies and procedures obligate personnel costs when the work is performed.

→ **Question**: Can the recipient incur these costs between January 1, 2025, and December 31, 2026?

→ **Response**: Yes. The Obligation IFR amends the definition of obligation to include requirements under federal law or regulation or a provision of the SLFRF award terms and conditions. This includes the cost of meeting reporting and compliance requirements. To use SLFRF funds for these costs, recipients must estimate these costs and report them to Treasury by April 30, 2024.

Case Study #2: Definition of Obligation

Definition of Obligation

→ **Background**: In 2022, a recipient's legislative body approved the proposed appropriation of all of the recipient's SLFRF award funds.

→ **Question**: Does this appropriation meet Treasury's revised definition of obligation?

→ **Response**: No, the appropriation does not provide a standard that could be applied consistently across recipients.

Case Study #3: Program Personnel

Definition of Obligation

→ **Background**: A recipient is using SLFRF funds to provide mental health services to residents impacted by the pandemic. The recipient has hired eight full-time employees funded by SLFRF to implement the program, including social workers to deliver mental health services and case management. The recipient's established internal policies and procedures obligate personnel costs when the work is performed.

→ **Question**: Can this recipient incur these personnel costs between January 1, 2025 and December 31, 2026?

→ **Response**: If a recipient's established practices and policies obligate personnel costs when the work is performed, the recipient should follow the established practice for SLFRF personnel costs. In this example, the recipient's own internal policies and procedures would **not** allow the recipient to obligate personnel costs beyond 2024.

Case Study #4: Indirect Costs

Definition of Obligation

- → **Background**: A recipient calculates indirect costs after the end of FY 2024 based on the recipient's NICRA applied to eligible expenditures in that year. This process cannot be completed until the recipient's expenditures are final. For 2024-2026, this won't occur until after the obligation deadline of December 31, 2024.
- → **Question**: Can this recipient charge indirect costs for 2024, 2025 and 2026?
- → **Response**: The Obligation IFR clarifies that to the extent that recipients have been covering expenses of personnel and other related administrative expenses needed to comply with administrative and other legal requirements under their current indirect cost rate, recipients may continue to do so.

II. Application of Obligation Deadline to Subrecipients

- The obligation deadline applies to the recipient of SLFRF funds, and a cost is considered to have been incurred once a recipient enters into a subaward or contract that obligates the recipient to cover that cost.
- Subrecipients are not subject to the December 31, 2024, obligation deadline.
- Subrecipients and contractors do not need to take additional steps to obligate funds after entering into a subaward or contract with the recipient.

Case Study #5: Subrecipients

Application to Sub-recipients

- → **Background**: A recipient has awarded a contract to a subrecipient to provide services for unhoused persons. The contract was executed in 2023 and ends on December 31, 2026.
- → **Question**: Does the subrecipient need to take any additional actions to meet the obligation deadline after executing the contract with the recipient?
- → **Response**: No – the subrecipient does not need to take any additional actions to obligate funds.

III. Amendment and Replacement of Contracts or Subawards

Recipients cannot re-obligate funds or obligate additional SLFRF funds after the obligation deadline of December 31, 2024

However, after the obligation deadline, if the contract or subaward was entered into prior to December 31, 2024, **recipients may replace the contract or subaward under these circumstances**:

1. *The recipient terminates the contract or subaward because of the contractor or subrecipient's default, the contractor or subrecipient goes out of business, or the recipient determines that the contractor or subrecipient will not be able to perform under the contract or carry out the subaward.*

2. *The recipient and contractor or subrecipient mutually agree to terminate the contract or subaward for convenience.*

3. *The recipient terminates the contract or subaward for convenience if the contract or subaward was not properly awarded, there is clear evidence that the contract or subaward was improper, the recipient documents the determination that it was not properly awarded, and the original contract or subaward was entered into by the recipient in good faith.*

Case Study #6: Contractor Issue

Amendment and Replacement of Contracts or Subawards

- **Background**: A recipient has awarded a contract for a capital expenditure. In March 2025, the contractor ceases business unexpectedly. The project is only 50% completed. The recipient wants to enter into a new contract with a different contractor to complete the project.
- **Question**: Can the recipient enter into a new contract after the obligation deadline with a new contractor to complete this project?
- **Response**: Treasury is clarifying that after December 31, 2024, recipients are permitted to replace a contract or subaward entered into prior to December 31, 2024, under specific circumstances, which include contractor default or the contractor or subrecipient goes out of business

Case Study #7: Obligation after December 31, 2024

Amendment and Replacement of Contracts or Subawards

- → **Background**: A recipient has obligated all of its SLFRF funds by December 31, 2024. In the recipient's Single Audit in June 2025, the auditor identifies issues with a project. To ensure SLFRF funds are spent in compliance with all requirements, the recipient removes the project from its pool of SLFRF funds. The recipient has identified a new use of funds that can be expended by December 31, 2026; however, the recipient is not certain that the funds can be moved to the new project.
- → **Question**: How can the recipient re-obligate funds?
- → **Response**: Recipients cannot re-obligate funds to a new project after 2024 that does not meet the obligation deadline, such as a new project that does not yet have an order placed for property and services or entered into a contract, subawards, and similar transaction that requires payment.

Obligation IFR: Summary

Revision to the definition of "obligation" at 31 CFR 35.3

- » Under the Obligation IFR, the definition of obligation is unchanged but a recipient is also considered to have incurred an obligation by December 31, 2024, when recipients incur costs related to the legal and administrative requirements of the SLFRF award funds
- » Recipient appropriation, budget, or allocation processes would not provide a standard that could be applied consistently across recipients related to the definition of obligation
- » Recipients can continue to charge indirect cost rates to SLFRF throughout the period of performance

Application of the obligation deadline (December 31, 2024) to subrecipients

- » Subrecipients are not subject to the obligation deadline. The obligation deadline applies to the recipient of SLFRF funds

Amending or replacing contracts and subawards after the obligation deadline

- » In general, recipients cannot re-obligate funds or obligate additional funds after the obligation deadline
- » However, after the obligation deadline, for a contract or subaward that was entered into prior to December 31, 2024, recipients are permitted to replace the contract or subaward if one of three situations occur, as outlined in the Obligation IFR

Section 3: Public Comment

Public Comment Period

- The IFR was submitted for publication on November 9, 2023 and will become effective when published. That will also begin the 30-day comment period. You may submit comments (1) electronically through the Federal eRulemaking Portal: http://www.regulations.gov or (2) by mail to:

  Office of Recovery Programs
  Department of the Treasury
  1500 Pennsylvania Avenue NW
  Washington, D.C. 20220

- All comments should be captioned "Coronavirus State and Local Fiscal Recovery Funds Obligation Interim Final Rule Comment." Please also include your:
  - Name
  - Organization affiliation
  - Address
  - Email address
  - Telephone number

- In general, comments received will be posted on http://www.regulations.gov without change, including any business or personal information provided. Comments received, including attachments and other supporting materials, will be part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Section 4: Q&A

Thank you.

For More Information about SLFRF:

Please visit Treasury's State & Local website at www.treasury.gov/SLFRF

For Media Inquiries:

Please contact the U.S. Treasury Press Office at (202) 622-2960

For General Inquiries:

Please email SLFRF@treasury.gov