

U.S. DEPARTMENT OF THE TREASURY

State and Local Fiscal Recovery Funds: New Obligation FAQs Tribal Webinar



Disclaimer

This presentation is designed to give an overview for Tribal governments on the State and Local Fiscal Recovery Funds (SLFRF) new Section 17: Obligation within the Frequently Asked Questions. This presentation is for educational purposes. It should not be construed as legal advice or a statement of binding policy guidance from Treasury.

For more information about the SLFRF program, please see <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-funds>.



Tribal Consultation

- Treasury held a Tribal consultation on November 29, 2023 on the Obligation Interim Final Rule. Some of the primary themes were:
 - How to to cover payroll costs in FY25 and FY26
 - Whether interagency agreements or MOUs between departments and Tribal enterprises counted as an obligation
 - Flexibility to cover contract cost increases
 - Clarification on program income earned after the obligation deadline
- Treasury released the newly added *Section 17* in the [SLFRF FAQs](#) to provide additional clarifications.



Today's Agenda

- Background on the new obligation FAQs, in *Section 17* of the SLFRF FAQs
- Overview of how to meet the obligation deadline of 12/31/2024, including clarifications of pathways in the new FAQs
 - Overview of how a Tribe may use funds to cover personnel costs for an employee through December 31, 2026
 - Overview of how certain interagency agreements within a Tribe can be considered to be an obligation
 - Overview of certain contract cost increases that may be covered after the obligation deadline

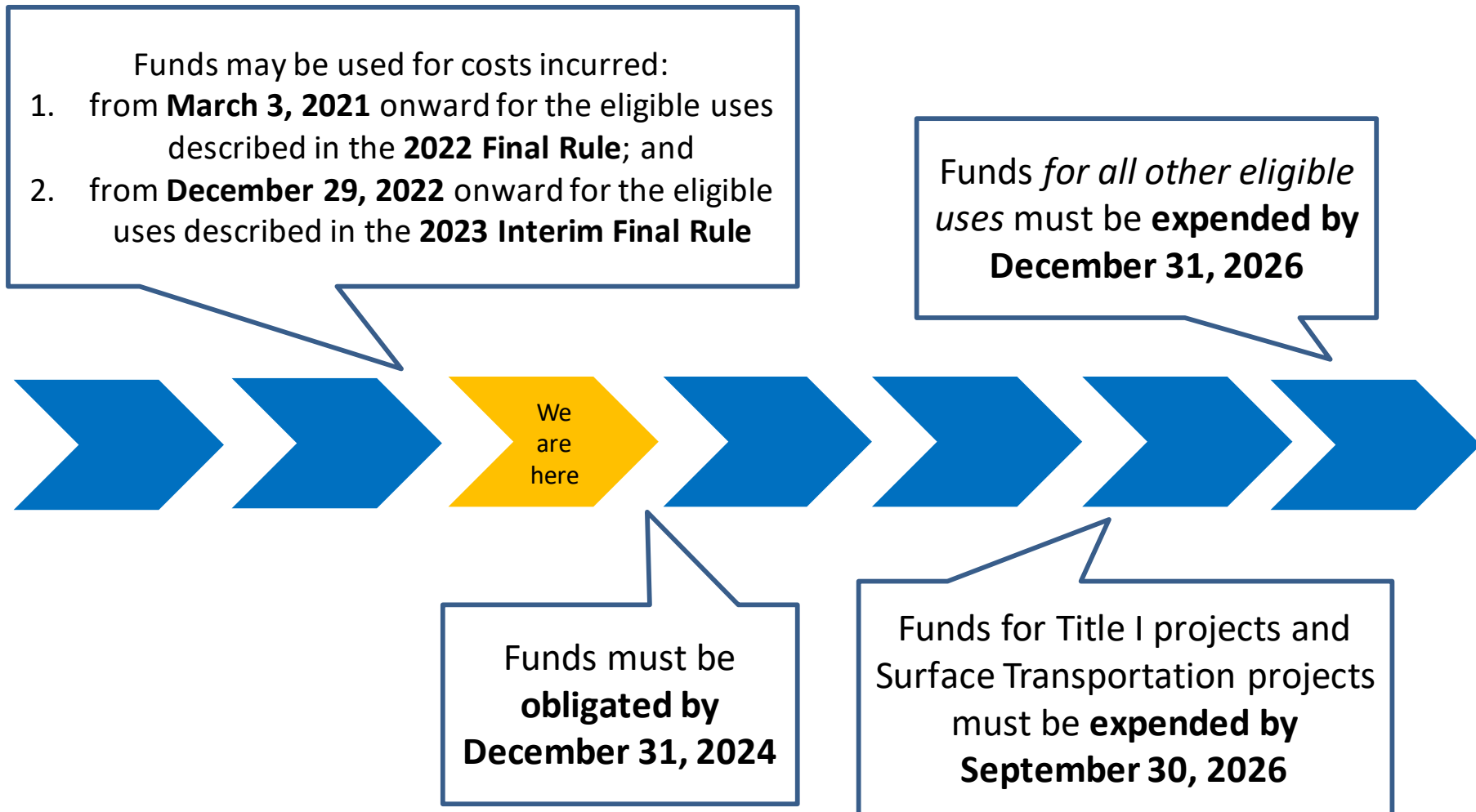


About the New FAQs

- The new FAQs contain three important clarifications:
 1. Treasury considers an interagency agreement to constitute an obligation if the agreement meets certain conditions
 2. Treasury considers a recipient to have incurred an obligation for personnel costs for an employee if the employee is serving in a position that was established and filled prior to the obligation deadline (12/31/2024).
 3. Treasury is clarifying how recipients may cover cost increases for contracts that were entered into prior to the obligation deadline, but have cost increases after the obligation deadline has passed.
- Treasury has also extended the deadline for recipients to report their cost estimates for certain legal and administrative requirements to 7/31/2024 for quarterly reporters and 4/30/2025 for annual reporters and clarified that the estimate is not mandatory.
- There are no changes to the obligation or expenditure deadlines.



Timeline for Use of SLFRF Funds



Section 1: Obligation Definition



What is an obligation?

- Treasury implemented the statutory requirement that SLFRF funds may only be used to cover costs incurred by December 31, 2024, by providing that a cost is considered incurred if a recipient has incurred an **obligation** 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.”
- The Obligation IFR amended the definition of “obligation” and provided additional guidance.
- In *Section 17* of the SLFRF FAQs, Treasury has provided further guidance and clarification about what constitutes an obligation.
 - Similar transactions that require payment include certain interagency agreements (17.6) and payroll expenses (17.7)



What is an obligation?

An obligation is:

1. **An order placed for property and services and entry into contracts, subawards, and similar transactions that require payment, which may include:**
 - An order placed for property or services
 - Contract
 - Subaward
 - Similar transactions that require payment, which may include
 - Certain interagency agreements (including MOUs) (see FAQs **17.6** and **17.23**)
 - Under certain circumstances, payroll expenses for recipients' employees (see FAQ **17.7**)
2. **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.**



An obligation is NOT:

- A Tribal resolution, adopted budget or budget amendment
- An appropriation of SLFRF funds
- An executive order
- A written or oral intention to enter into a contract
- A grant of legal authority to enter into a contract
- Claiming funds under the revenue loss category
- Moving SLFRF funds to a general fund as revenue loss but not further establishing an obligation with those funds by 12/31/2024



Case Study #1: Are budgets or resolution an obligation?

Definition of Obligation

Case example: A Tribal council passed an SLFRF project plan budget via resolution, which outlines exactly how SLFRF funds are to be used.

Question: Has the Tribe obligated its SLFRF funds?

Response: No. A resolution, budget and/or appropriation authority for SLFRF funds is not considered an obligation. The Tribe will need to obligate its funds through at least one of the following mechanisms and report the project(s) in their Project and Expenditure report due January 31, 2025 (quarterly reporters) or April 30, 2025 (annual reporters):

- An order placed for property or services
- Contract
- Subaward
- Transactions similar to contracts and subawards that require payment, such as:
 - Interagency agreements (see FAQ 17.6)
 - Personnel costs (see FAQ 17.7)
- Compliance with certain administrative and legal requirements of the SLFRF program (see FAQ 17.10)



Do subrecipients have an obligation deadline?

- No. See **FAQ 17.18**.
- The obligation deadline applies to the recipient of SLFRF funds. A cost is considered to have been incurred once a recipient enters into a subaward that obligates the recipient to cover that cost.
- Subrecipients are not subject to the December 31, 2024, obligation deadline.
- Beneficiaries are not subject to the obligation deadline, either.
- Subrecipients and contractors do not need to take additional steps to obligate funds after entering into a subaward or contract with the recipient.



Are revenue loss funds automatically obligated?

- **No.** See **FAQ 17.15**.
- All SLFRF funds under any eligible use category are subject to the obligation requirements – including funds used under the revenue loss category.
- This means that, when a recipient uses funds to provide government services, those funds must be obligated via one of the pathways discussed on slide 9.
- If a recipient is utilizing revenue loss to pay for government services, the recipient must report the use as project(s) under expenditure category 6.1.
- Recipients must enter a project description for any project entered under 6.1. Revenue loss project descriptions must summarize the project in sufficient detail to provide an understanding of the major activities that will occur. Descriptions should establish what the project seeks to accomplish and should include enough information to make clear how the recipient determined the project's eligibility.



Section 2: Payroll Expenses



Personnel Costs in 2025 and 2026

- Treasury will consider a recipient to have incurred an obligation to use funds to cover personnel costs for an employee through December 31, 2026, **if the employee is serving in a position that was established and filled prior to December 31, 2024.**
- Personnel costs must be expended in connection with an eligible use of SLFRF. Examples:
 - Tribal government employees carrying out an Elder Nutrition Program
 - Tribal government employees developing broadband projects
 - Housing Authority employees overseeing contracts to build affordable housing
- Eligible personnel costs include:
 - All salaries and wages
 - Covered benefits (including leave, insurance, and retirement expenses)
 - Payroll taxes
- See **FAQ: 17.7** for more information.



Can a recipient replace or rearrange personnel after the obligation deadline?

- **Yes.** If the position was established and filled by December 31, 2024, a recipient may **replace** the employee in that position. The replacement does not need to be immediate.
- Recipients may also **reorganize** positions within the scope of an eligible SLFRF project after December 31, 2024.
 - Example: if an eligible project employs ten job training specialists on December 31, 2024, it is permissible for the Tribe to use funds to cover payroll for one of those training specialists who is promoted to be a supervisor, so long as there are no more than ten positions covered through SLFRF funds in total.
- Recipients **may not** use funds to cover any **new** positions created after December 31, 2024.



Case Study #2: Payroll costs increase after obligation deadline

Payroll Increase

- **Case example:** A Tribe submitted a report to Treasury estimating \$100,000 in SLFRF payroll costs in 2025 and 2026. However, in 2025, due to an increase in the cost of living, Tribal council feels it is necessary to raise wages and staff costs have unexpectedly increased. The Tribe would like to consider an additional \$50,000 in SLFRF funds obligated for payroll costs.
- **Question:** Can the Tribe increase its estimated payroll obligation to \$150,000? If so, how?
- **Response:** Yes. Eligible personnel costs for employees in positions created and filled by December 31, 2024, are considered obligated, and that amount may be adjusted based on compensation in effect at the time of payment. A Tribe may raise the salaries of employees in those positions. However, a Tribe may not create new positions for the project after the obligation deadline. Treasury will update the Compliance and Reporting Guidance with additional information about how to report these funds.
- **Relevant FAQs:** 17.7 and 17.8



Case Study #3: Payroll costs are lower than estimated

Over- estimating Costs

- **Case example:** A Tribe submitted a report to Treasury estimating \$200,000 in SLFRF payroll costs in 2025 and 2026. However, due to the completion of the food distribution project ahead of schedule, only \$150,000 is needed for payroll expenses in those years.
- **Question:** Can the Tribe use the unexpended \$50,000 attributable to the estimate for another project?
- **Response:** Yes. The Tribe may expend the \$50,000 for another eligible use of SLFRF funds. That eligible use must meet all the requirements of SLFRF, including the requirement to incur an obligation for that project by December 31, 2024. For example, the Tribe could apply those funds to a project for which the Tribe entered into a contract by December 31, 2024 and for which it used the Tribe's general fund.
- **Relevant FAQs:** 17.8 and 17.19



Section 3: Estimated Expenses



When would a recipient submit cost estimate(s) to Treasury?

- There are three separate kinds of estimates, which are for:
 - payroll costs to be expended in 2025 and 2026.
 - certain administrative and legal costs to be expended in 2025 and 2026 (or for award closeout).
 - costs to cover contract change order and contingencies.
- Recipients are **not required** to report an estimate of these expenses. But they may benefit from doing so if:
 - They plan to use SLFRF funds for such costs, and want to ensure that those funds are not returned to Treasury as unobligated, **AND**
 - Those funds are not reported to Treasury as obligated through another project (such as a contract or interagency agreement).
- Estimates submitted to Treasury prior to the obligation deadline will ensure that those funds are treated as obligated. Therefore, the recipient will be able to spend SLFRF funds on the relevant expenses in 2025 and 2026.



What legal and administrative costs are eligible for purposes of this provision?

- As explained in the Obligation IFR and our previous webinar, certain legal and administrative costs are considered obligated as a result of receiving or expending SLFRF funds.
- These include:
 - Reporting and compliance requirements, including subrecipient monitoring
 - Single Audit costs;
 - Record retention and internal control requirements;
 - Property standards; and
 - Environmental requirements.
- If these costs are not reported as obligated through another project, recipients can submit to Treasury an estimate of those anticipated costs to ensure that the funds can be retained after the obligation deadline and used for those purposes in 2025 and 2026.
- See **FAQs 17.10 through 17.13** for more information.



Summary of Estimate Options

Personnel Cost Estimate	Admin & Legal Cost Estimate
BOTH: <u>Not mandatory</u> . Option is available to ensure funds are treated as obligated.	
<p><u>Submission Deadline:</u></p> <ul style="list-style-type: none"> • 1/31/2025 (Tribes with awards over \$30 million - quarterly reporters) • 4/30/2025 (Tribes with awards under \$30 million - annual reporters) 	<p><u>Submission Deadline:</u></p> <ul style="list-style-type: none"> • 7/31/2024 (Tribes with awards over \$30 million - quarterly reporters) • 4/30/2025 (Tribes with awards under \$30 million - annual reporters) <p>(extension from previous deadline)</p>
BOTH: Requires reasonable justification for estimate(s) and report to Treasury.	
<p>BOTH: No penalty for inaccurate estimate(s) if the initial estimate(s) were reasonable.</p> <ul style="list-style-type: none"> • If actual expenses are greater than amount estimated, the recipient can reclassify funds from other SLFRF projects, use program income, or use non-SLFRF sources, to pay for those expenses. • If actual expenses are lower than the amount estimated, recipients can reclassify funds to other eligible uses of SLFRF funds obligated before December 31, 2024. 	
Explanation: FAQs 17.7 and 17.8	Explanation: FAQs 17.11, 17.12 and 17.13

Note: See FAQ 17.6 for explanation of estimates for costs to cover contract change orders and contingencies.



Case Study #4: Estimating certain legal and administrative costs

Legal & Admin Cost Estimate

- **Case example:** A Tribe plans to hire an auditor to conduct a Single Audit that will include SLFRF funds. The Single Audit will be conducted in 2025 and the Tribe has not yet selected an auditor.
- **Question:** Can the Tribe use SLFRF funds to pay this auditor?
- **Response:** Yes. Tribes and other recipients that expend more than \$750,000 in federal funds in a fiscal year are subject to the Single Audit requirements(2 CFR Part 200, Subpart F). The Tribe should (1) determine the amount of SLFRF funds estimated for these expenses, (2) document a reasonable justification for this estimate, (3) report that amount to Treasury with an explanation of how the amount was determined, and (4) report at award closeout the final amount expended for these costs.
- **See FAQs:** 17.10 through 17.13



Section 4: Interagency Agreements



Does an interagency agreement (IAA) count as an obligation?

- **Yes**, if it meets certain conditions.
- An interagency agreement finalized by 12/31/2024 can be used to obligate funds that a government agency will expend in 2025 and 2026.
- Eligible interagency agreements include memoranda of understanding (MOU) or agreement (MOA). The interagency agreement must meet these conditions:

<u>ONE</u> requirement from Column A:	<u>ALL</u> requirements from Column B:
Imposes conditions on the use of funds by recipient agency, department, or part of government	Has specific requirements (e.g., scope of work)
Governs provision of funds from one agency, department, or part of government to another	Is signed by the parties or evidences assent of parties
Governs the procurement of goods or services	Does not disclaim binding effect or state that it doesn't create rights or obligations

- See FAQs **17.6** and **17.23** for more information.



Case Study #5: Who can an interagency agreement be between?

Parties to Interagency Agreement

- **Case example:** The Tribal council has made SLFRF funds available to the social services department to cover the operational costs of an elder care program through December 31, 2026. The Tribal council has entered into an agreement with the social services department under which the social services department agrees to perform and complete in a satisfactory and proper manner the scope of work specified in accordance with the SLFRF award terms and conditions.
- **Question:** Would this interagency agreement constitute an obligation?
- **Response:** Yes, if the interagency agreement meets the conditions outlined in FAQ 17.6.
- **Relevant FAQ:** 17.6



Are agreements specifically between units of a Tribal government considered an obligation for purposes of SLFRF?

- **Yes**, if it meets certain conditions. For purposes of SLFRF, Treasury considers an interagency agreement between a Tribal government's units (including the Tribal Council), departments, agencies, or other instrumentalities of a Tribe to constitute an obligation if it meets the conditions set forth in FAQ 17.6.
- A unit of a Tribal government includes:
 - Department, agency, Housing Authority, or other instrumentality of the Tribe
 - Enterprise organized under Tribal law if the Tribe treats the enterprise as a unit, department, agency, or other instrumentality of the Tribe
 - Section 17 Corporation
 - Section 3 Corporation
- See FAQ: 17.23



Do federal procurement requirements apply to interagency agreements between units of the Tribal government?

- **No.** 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.
- 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.
- See FAQ: 17.23



Case Study #6: Can a Tribe execute an interagency agreement with an enterprise?

Parties to Interagency Agreement

Case example: The Tribe is building low-income housing to address housing shortages on the reservation. The Tribe has a tribally-chartered construction company that can both carry-out the project and create jobs for Tribal citizens. The Tribal council has entered into an agreement with the construction company to perform and complete in a satisfactory and proper manner the scope of work specified in accordance with the SLFRF award terms and conditions.

Question: Would this agreement constitute an obligation?

Response: Yes, if the agreement meets the conditions outlined in FAQ 17.6 and the construction company is a unit of a Tribal government as described in FAQ 17.23.

See FAQs: 17.6 and 17.23



Section 5: Modifying Contracts



What Flexibilities Exist for Contracts after the Obligation Deadline has Passed?

Change orders for an existing contract

- Tribes can fund change orders—including cost adjustments—if the contract or agreement includes a provision allowing for the change order in question. A Tribe can also fund a cost increase with SLFRF if the cost increase is permitted under a contingency clause in the contract or agreement.
 - See FAQ: 17.16.

Amend an existing contract

- Tribes may amend existing contracts after the obligation deadline, so long as the amended contract is within substantially the same scope and for substantially the same purpose as the original contract. If those requirements are met, SLFRF funds may be used to cover cost increases contained in the amended contract.
 - See FAQ: 17.16.



What Flexibilities Exist for Contracts after the Obligation Deadline has Passed?

Replace an existing contract

- As explained in the obligation IFR, Tribes may replace a contract after the obligation deadline under one of three circumstances:
 - 1) Contract terminated due to business default, closure, or inability to perform
 - 2) Mutual agreement to terminate
 - 3) Recipient termination for convenience when contract was not properly awarded
- The replacement contract must be within substantially the same scope and for substantially the same purpose as the original contract. In that case, recipients may use SLFRF funds to cover increased costs of the replacement contract or subaward.
 - See FAQ 17.17
- Tribes may reclassify funds from another SLFRF project to pay for any such modifications. See FAQ 17.19. Tribes will also be able to submit an estimated cost for change orders before the obligation deadline is met. Additional information on submitting estimates will be provided in future webinars and reporting guidance.



Case Study #7: Can SLFRF fund change orders?

Change Orders

- **Case Example:** A Tribe is investing \$1 million in SLFRF funds for a broadband infrastructure project that will continue to be constructed in 2025 and 2026. However, in 2025 its discovered that the project needs to be updated via change order and the total cost is now \$1.5 million.
- **Question:** Can the Tribe use SLFRF funds to cover the cost of the change order?
- **Response:** Change orders and contingencies are allowed if the contract entered into by December 31, 2024 expressly provides for change orders or contract contingencies.
- **See FAQ:** 17.16



Case Study #8: Contractor Issue

Replacement of Contracts or Subawards

- **Case Example:** A Tribe awarded a contract for a surface transportation project. In March 2025, the contractor goes out of business unexpectedly. The project is only 50% completed. The Tribe must enter into a new contract with a different contractor in order to complete the project.
- **Question:** Can the Tribe enter into a new contract after the obligation deadline with a new contractor to complete this project?
- **Response:** Yes, so long as the new contract is within substantially the same scope and for substantially the same purpose as the original contract.
- **See FAQ:** 17.17



Section 6: Other Relevant FAQs for Tribal Governments



Other FAQs of Importance to Tribal Governments

- **Indirect Cost Rate**
 - See FAQ: 17.10
 - Recipients may continue to charge their current negotiated indirect cost rate agreement established with their federal cognizant agency or the de minimis rate of 10 percent of modified total direct costs pursuant to 2 CFR 200.414(f), after December 31, 2024, through December 31, 2026.
- **Program Income**
 - See FAQ: 17.21
 - Program income earned after 12/31/2024 can be expended in four ways:
 - 1) Cover the cost of eligible uses of SLFRF for which the Tribe incurred an obligation by 12/31/2024
 - 2) Pay for permissible upward cost adjustments in contracts or subawards, including replacement contracts and subawards
 - 3) Cover expenses necessary to meet certain legal and administrative requirements
 - 4) Cover personnel costs obligated by 12/31/2024



Q&A



Thank you.



For More Information about SLFRF:

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

For Media Inquiries:

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