State and Local Fiscal Recovery Funds: Obligation IFR Quick Reference Guide

This Quick Reference Guide provides an overview of the Obligation Interim Final Rule (Obligation IFR) for informational purposes and is intended as a brief summary.

INTRODUCTION

The Coronavirus State and Local Fiscal Recovery Funds (SLFRF), established by the American Rescue Plan, delivers $350 billion to state, local, territorial, and Tribal governments to support the response to and recovery from the COVID-19 public health emergency.

In November 2023, Treasury issued the Obligation IFR to address recipients' questions and comments regarding the definition of obligation. The Obligation IFR revises the definition of "obligation" in Treasury's implementing regulations for the SLFRF program and provides related guidance to give additional flexibility and clarity to recipients to support their use of SLFRF funds.

The Obligation IFR does not alter the existing SLFRF obligation or expenditure deadlines. Recipients must obligate SLFRF funds 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. Recipients seeking information about whether a specific project may be an eligible use of SLFRF funds should reference the rules, along with the Overview of the 2022 Final Rule and the Overview of the 2023 Interim Final Rule.

Below is a summary of the Obligation IFR. Recipients should refer to the Obligation IFR for a complete description of the definition of obligation and associated requirements.

AMENDMENT TO THE DEFINITION OF "OBLIGATION" AT 31 CFR 35.3

Under the revised definition of "obligation," the term continues to mean an order placed for property and services and entry into contracts, subawards, and similar transactions that require payment. Under the Obligation IFR, a recipient is also 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.

Accordingly, under the second part of the definition of obligation set out above, a recipient may use SLFRF funds to cover costs related to:

1. Reporting and compliance requirements, including subrecipient monitoring
2. Single Audit costs
3. Record retention and internal control requirements
4. Property standards
5. Environmental compliance requirements
6. Civil rights and nondiscrimination requirements

To take advantage of the additional flexibility to cover the costs of meeting these requirements, the Obligation IFR lists the information that a recipient must submit to Treasury regarding estimates of SLFRF funds that it will use to cover administrative and compliance related expenditures. Treasury will update the *SLFRF Compliance and Reporting Guidance* to reflect recipients' additional reporting regarding these estimated amounts.

The Obligation IFR also clarifies that recipients may continue to charge their current negotiated indirect costs 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. Additionally, the Obligation IFR states that 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.

APPLICATION OF OBLIGATION DEADLINE TO SUBRECIPIENTS

Subrecipients are not subject to the December 31, 2024 obligation deadline. 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. Neither subrecipients nor contractors need to take additional steps to obligate SLFRF funds after entering into a subaward or contract with the recipient.

AMENDMENT AND REPLACEMENT OF CONTRACTS AND SUBAWARDS

In general, recipients cannot re-obligate funds or obligate additional SLFRF funds after the obligation deadline of December 31, 2024. For instance, if a contractor makes a change order request after December 31, 2024, that necessitates a contract amendment, the recipient would not be permitted to obligate additional SLFRF funds to the project because the obligation deadline would have passed. However, after the obligation deadline, recipients are permitted to replace a contract or subaward that was entered into prior to December 31, 2024 under the following 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 (for example, if the contractor was not eligible to receive the contract), 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.

Treasury will update the *SLFRF Compliance and Reporting Guidance* for recipients to report any contract or subaward replacements after the December 31, 2024, obligation deadline.