

U.S. DEPARTMENT OF THE TREASURY

State and Local Fiscal Recovery Funds: New Obligation FAQs Webinar

May 2024



Today's agenda

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



Background on new obligation FAQs

- In 2023 Treasury issued an Interim Final Rule (“IFR”) to amend the definition of “obligation” and to provide additional clarification for recipients
- Treasury received over 100 comment letters on the IFR. Some of the primary themes were:
 - How to cover payroll costs in FY25 and FY26
 - Whether MOUs between departments counted as an obligation
 - Flexibility to cover contract cost increases
- Treasury has released FAQs to provide additional clarifications on these items in FAQs **Section 17**.
<https://home.treasury.gov/system/files/136/SLFRF-Final-Rule-FAQ.pdf>



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 (12/31/24)
 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 7/31/24 for quarterly reporters and 4/30/25 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

Funds may be used for costs incurred:

1. from **March 3, 2021** onward for the eligible uses described in the **2022 Final Rule**; and
2. from **December 29, 2022** onward for the eligible uses described in the **2023 Interim Final Rule**

Funds for all other 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 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 **FAQ 17.6**)
 - 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:

- An adopted budget or budget amendment
- An appropriation of SLFRF funds
- An executive order
- A resolution
- 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 12/31/24



Case Study #1: Are budgets an obligation?

Definition of Obligation

- **Case example:** A city council has passed its FY24 budget, which outlines exactly how SLFRF funds are to be used.
- **Question:** Has the city obligated its SLFRF funds?
- **Response:** No. A budget and/or appropriation authority for SLFRF funds is not considered an obligation. The city will need to obligate its funds through at least one of the mechanisms outlined on slide 8/below 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.
- Subrecipients and contractors do not need to take additional steps to obligate funds after entering into a subaward or contract with the recipient.



Aren't 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 7.
- 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:
 - State employees developing broadband projects
 - County 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 recipient 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 recipient submitted a report to Treasury estimating \$100,000 in SLFRF payroll costs in 2025 and 2026. However, in 2025, due to a new collective bargaining agreement, staff costs have unexpectedly increased. The recipient would like to consider an additional \$50,000 in SLFRF funds obligated for payroll costs.
- **Question:** Can the recipient 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 recipient may raise the salaries of employees in those positions. However, a recipient 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 recipient submitted a report to Treasury estimating \$5 million in SLFRF payroll costs in 2025 and 2026. However, due to the completion of a project ahead of schedule, only \$4 million is needed for payroll expenses in those years.
- **Question:** Can the recipient use the unexpended \$1 million attributable to the estimate for another project?
- **Response:** Yes. The recipient may expend the \$1 million for another eligible use of SLFRF funds. That eligible use must meet all the requirements of SLFRF, including the requirement that the recipient incur an obligation for that project by December 31, 2024. For example, the recipient could apply those funds to a project for which the recipient entered into a contract by December 31, 2024 and for which the recipient originally used local funds.
- **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 orders 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;
 - Environmental requirements; and
 - Civil rights and nondiscrimination 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.	
<u>Submission deadline:</u> <ul style="list-style-type: none"> • 1/31/2025 (quarterly reporters) • 4/30/2025 (annual reporters) 	<u>Submission deadline:</u> <ul style="list-style-type: none"> • 7/31/2024 (quarterly reporters) • 4/30/2025 (annual reporters) (extension from previous deadline)
BOTH: Requires reasonable justification for estimate(s) and report to Treasury.	
BOTH: No penalty for inaccurate estimate(s) if the initial estimate(s) were reasonable. <ul style="list-style-type: none"> • If actual expenses are greater than amount estimated, 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. 	
<u>Explanation:</u> FAQs 17.7, 17.8	<u>Explanation:</u> FAQs 17.11, 17.12, 17.13

Note: see FAQ 17.16 for explanation of estimates for costs to cover contract change orders and contingencies.



Case Study #4: Estimating certain legal & administrative costs

Legal & Admin Cost Estimate

- **Case example:** A recipient plans to hire an independent auditor to conduct a Single Audit that will include SLFRF funds. The Single Audit will be conducted in 2025 and the recipient has not yet selected an independent auditor.
- **Question:** Can the recipient use SLFRF funds to pay this independent auditor?
- **Response:** Yes. Single Audit costs are considered obligated because they stem from a federal requirement which the recipient became subject to as a result of receiving SLFRF funds. The recipient should (1) determine the amount of SLFRF funds the recipient estimates it will use 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.
- **Relevant 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 agreements include memoranda of understanding (MOU) or agreement (MOA). The 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 **FAQ 17.6** for more information.



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

Parties to Interagency Agreement

- **Case example:** A county commissioner has authority over the disposition of federal financial assistance available to the county. The commissioner wants to create an MOU between her office and the county's Department of Education for local community colleges to provide pre-apprenticeship training for local workers disproportionately impacted by the COVID-19 pandemic.
- **Question:** Would this MOU constitute an obligation?
- **Response:** Yes, if the MOU meets the conditions outlined in FAQ 17.6 and explained on the prior slide.
- **Relevant FAQ:** 17.6



Case Study #6: Can an existing MOU be used to obligate SLFRF funds?

Existing MOU

- **Case example:** A county board has an existing MOU in place to provide social services to several cities within its jurisdiction using SLFRF funds. The MOU has a clear scope of work and creates clear obligations for those cities.
- **Question:** Does the existing MOU permit the county to report the funds for the project as obligated so that SLFRF funds may be used to cover program costs expended in 2025 and 2026?
- **Response:** Yes, so long as the MOU meets the requirements previously listed, was entered into on or after March 3, 2021, and the services are SLFRF-eligible expenses. It may also be possible to modify the MOU before the obligation deadline to meet the necessary requirements.
- **Relevant FAQ:** 17.6



Section 5: Modifying Contracts



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

Change orders for an existing contract

- Recipients can fund change orders—including cost adjustments—with SLFRF if the contract or agreement includes a provision allowing for the change order in question. A recipient 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

- Recipients 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**.

Replace an existing contract

- As explained in the obligation IFR, recipients 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. See FAQ **17.17**. In that case, recipients may use SLFRF funds to cover increased costs of the replacement contract or subaward.

Recipients may **reclassify funds** from another SLFRF project to pay for any such modifications. See FAQ 17.19. Recipients 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.



Summary of Contract Flexibilities

	Why would a recipient use this?	When can a recipient use this?	Restrictions
Change order or contingency	Cost increase or other reason anticipated in contract.	Contract expressly provides for the option.	Only restrictions in contract and Uniform Guidance.
Amend contract	Recipient wants to retain same contractor, but needs to make unanticipated changes.	Whenever the contract permits, including after the obligation deadline has passed.	Amended contract must be within substantially the same scope and for substantially the same purpose as the original contract.
Replace contract	Recipient wants to terminate contract and use a new contractor.	One of three circumstances in Obligation IFR (including mutual agreement to terminate for convenience).	Replacement contract must be within substantially the same scope and for substantially the same purpose as the original contract.



Case Study #7: Can SLFRF be used to fund change orders?

Change Orders

- **Case example:** A city is using \$1 million in SLFRF funds to build affordable housing 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 city use SLFRF funds to cover the cost of the change order?
- **Response:** Change orders and contingencies are allowed IF they were contemplated in the original contract. In this case, the City's contract included standard change order processes and language and thus they may use SLFRF funds for the increased cost.
- **Consideration:** Do your contracts speak to the possibility of a change order? There is still time to update them ahead of the obligation deadline.
- **Relevant FAQ:** 17.16



Case Study #8: Contractor Issue

Replacement of Contracts or Subawards

- **Case Example:** 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:** Yes, so long as the new contract is within substantially the same scope and for substantially the same purpose as the original contract.
- **Relevant FAQ:** 17.17



Section 6: Q&A



Recap

- Treasury has released FAQs to provide additional clarifications on how to meet the obligation deadline of December 31, 2024. These FAQs explain:
 - That Treasury considers an interagency agreement to constitute an obligation if the agreement meets certain conditions
 - That 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 (12/31/24)
 - 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 7/31/24 for quarterly reporters and 4/30/25 for annual reporters.
- These FAQs can be found in the SLFRF FAQs in the new **Section 17**.

<https://home.treasury.gov/system/files/136/SLFRF-Final-Rule-FAQ.pdf>



Thank you.



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