

**Government Finance Officers Association  
National Association of State Auditors, Comptrollers and Treasurers  
National Association of State Budget Officers  
National League of Cities**

September 14, 2023

By Electronic Mail

Ms. Veronica Soto  
Acting Director, State and Local Fiscal Recovery Funds  
United States Treasury  
Department of Recovery Programs  
Room 3326  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

**Re: SLFRF Guidance**

Dear Ms. Soto:

The above organizations representing state and local governments nationwide are writing to request expeditious and clear guidance in several areas concerning the State and Local Fiscal Recovery Fund (SLFRF) established by the American Rescue Plan Act (ARPA) of 2021. Specifically, we request clear guidance from the U.S. Treasury on the following three points:

1. the definition of obligation with respect to payroll costs for compliance, monitoring, oversight, reporting, and auditing incurred and paid between 12/31/2024 and 12/31/2026;
2. the period of performance for audit costs incurred and paid after 12/31/2026; and
3. the ability to swap eligible costs, incurred during the period of performance but not claimed, after the 12/31/2024 obligation deadline.

While we appreciate the ongoing interaction with Treasury staff and Treasury's efforts to establish flexible policies and guidance, we remain increasingly concerned that existing guidance is subject to varying interpretations and previous guidance given for the Coronavirus Aid, Relief, and Economic Security Act's (CARES Act) Coronavirus Relief Fund (CRF) does not apply to the SLFRF.

**1. Administrative Payroll Costs Incurred and Paid after Obligation Deadline**

The most pressing issue for state and local governments concerns the term "obligation." We commend Treasury for its quest to provide flexible guidance on this point; however, questions remain regarding the definition of obligation as stated by Treasury in its frequently asked questions (FAQ) document. While we have discussed this issue with Treasury

previously, state and local governments require more specific guidance so they can ensure SLFRF funds are obligated by the deadline in the manner intended by Treasury.

Regarding the definition of obligation with respect to “similar transactions that require payment,” SLFRF FAQ 13.17 reads:

*As stated in the final rule, obligation means “an order placed for property and services and entering into contracts, subawards, and similar transactions that require payment.” See 31 CFR 35.3. As contemplated by this definition, Treasury recognizes that recipients may obligate funds through means other than contracts or subawards, for example, in the case of payroll costs. In these circumstances, recipients must follow state or local law and their own established practices and policies regarding when they are considered to have incurred an obligation and how those obligations are documented. For example, a recipient may have incurred an obligation even though the recipient and its employee may not have entered into an employment contract.*

While some state and local governments may have a policy document clarifying when a government is considered to have made an obligation, many governments may not have the authority to establish such policies on the necessary timeline within their constitutional/statutory environment. For example, a state may have a biennial budget covering only fiscal years 2024 and 2025. The FY 2026 budget may not even be presented until after the obligation deadline of 12/31/2024. This means SLFRF payrolls would need to be obligated prior to any legislative authorization for the positions that are affected and would occur prior to any funding commitment. Most states have either constitutional or statutory prohibitions on incurring obligations without legislative authorization. Additionally, some governments obligate future fiscal years within contracts. Other governments enter into multi-year contracts but obligate funds only for the current fiscal year. Those contracts generally contain fiscal funding non-appropriation clauses that provide an “out” if a future legislature fails to appropriate money for the obligation. Unfortunately, those policies may not exist for personnel/payroll costs. Further, most governments do not “obligate,” as defined by Treasury, for personnel/payroll costs, in their own internal government accounting systems.

Examples of obligations could include, but are not limited to:

- A recipient's legislative body approving a plan or resolution on how to spend its ARPA award;
- A recipient's ARPA-eligible subrecipient agreement executed prior to 12/31/2024, including when the distribution of funds by the subrecipient is after 12/31/2024, but before 12/31/2026. This would include program staff and the program would be concluded by 12/31/2026;
- Payroll costs for ARPA-eligible services rendered by a recipient's employee, including administrative services, after 12/31/2024, and before 12/31/2026;
- Payroll costs for audit-related and financial reporting work provided by a recipient's employee through the full reporting cycle of the grant; and

- A recipient's internal memorandum of understanding or directive that would be executed prior to 12/31/2024, between departments to implement ARPA-funded programs through 21/31/2026.

## **2. Audit Costs Incurred and Paid After the Expenditure Deadline**

Audit costs incurred and paid after the expenditure deadline of 12/31/2026, should be addressed in the same manner as they were in previous guidance for CRF under the CARES Act. CRF specifically allowed costs for audits occurring past the period of performance; however, no such guidance is given for the SLFRF. CRF guidance provides:

*“To the extent a cost is incurred by December 31, 2021, for an eligible use consistent with section 601 of the Social Security Act and Treasury’s guidance, a necessary administrative compliance expense that relates to such underlying cost may be incurred after December 31, 2021. Such an expense would include, for example, expenses incurred to comply with the Single Audit Act and reporting and recordkeeping requirements imposed by the Office of Inspector General. A recipient with such necessary administrative expenses, such as an ongoing audit continuing past December 31, 2021, that relates to Fund expenditures incurred during the covered period, must report to the Treasury Office of Inspector General by the quarter ending September 2022 an estimate of the amount of such necessary administrative expenses.” (Page 4186 Federal Register / Vol. 86, No. 10 / Friday, January 15, 2021 / Notices)*

## **3. Swapping Eligible Expenses After the Obligation Deadline**

Language similar to CRF guidance concerning swapping of eligible costs would provide flexibility to state and local governments to successfully meet the goals of the program and to administer the SLFRF. Vendor availability, specifically in the broadband area, is becoming extremely problematic. If funds are already obligated and the vendor cannot perform the service in time to meet the deadline, can a government swap this obligated amount to another obligated project, such as sewer? The excerpt for the CRF provided below was considered as authority to replace potentially noncompliant expenses with other eligible expenses that were incurred during the period of performance but not otherwise claimed for reimbursement. We believe a similar FAQ provided for the SLFRF could assist governments in addressing issues such as vendor availability.

*CRF FAQ # 86. If Treasury OIG determines that a prime recipient has failed to comply with 601(d) of the Social Security Act, it has the authority to recoup the amount of funds used in violation of the subsection. Is there an appeal process for prime recipients if Treasury OIG makes such a determination? Yes. There are opportunities for a prime recipient to appeal a determination of noncompliance by the Treasury OIG, both before and after the covered period ends on December 31, 2021.*

*a. Before December 31, 2021 If the Treasury OIG makes a determination, before December 31, 2021, that a certain amount of CRF proceeds were not used in accordance with 601(d) of the Social Security Act (42 U.S.C. 801(d)), the prime*

*recipient would need to either recover such funds and redeploy them for COVID-19 related expenditures or demonstrate that other eligible expenses incurred during the covered period of March 1, 2020 through December 31, 2021 would qualify as allowable.*

*b. After December 31, 2021 If the Treasury OIG makes a determination, after December 31, 2021, that a certain amount of CRF proceeds were not used in accordance with 601(d) of the Social Security Act (42 U.S.C. 801(d)), the Treasury OIG may (1) seek recoupment of funds, or (2) allow the prime recipient to demonstrate that other eligible expenses incurred during the covered period of March 1, 2020 through December 31, 2021, would qualify as allowable. (Department of the Treasury Office of Inspector General Coronavirus Relief Fund Frequently Asked Questions Related to Reporting and Recordkeeping\_(Revised), dated March 2, 2021 <https://oig.treasury.gov/sites/oig/files/2021-03/OIG-CA-20-028R.pdf>)*

Additionally, we believe Treasury should allow a state or locality to contract with a new vendor should a contracted vendor be unable to complete the project. For example, after 12/31/2024, should a Vendor 1 be unable to complete an obligated project, the state or locality would be allowed to contract with Vendor 2 after 12/31/24 for the original project.

We appreciate Treasury's attention to these important matters and are pleased to discuss any of these issues in greater detail. State and local governments continue to make the appropriate funding decisions within the parameters set forth by Treasury. Additional and timely guidance would assist governments as they continue to strive to meet the intended purpose of the Coronavirus SLFRF statute.

Please feel free to reach out to any of our representatives in Washington should you have any questions or desire additional information.

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