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Less Than One Year Left to Obligate Your ARPA Funds!

For many local governments and state agencies, the direct influx of cash made available through the American Rescue Plan Act's (ARPA) State and Local Fiscal Recovery Funds (SLFRF) program has been an incredible boom. However, all good things must come to an end, and ARPA is no exception. One of ARPA's most critical requirements is that recipients must obligate all SLFRF funds by December 31, 2024. With this important deadline looming at year-end, the U.S. Department of the Treasury published an [Interim Final Rule](#) (the "Obligation IFR") in late 2023 to provide recipients with additional clarity and guidance regarding what it means to "obligate" funds by the December 31, 2024 deadline. This article summarizes five key provisions of the Obligation IFR.

1. Passing a budget or ARPA spending plan does not obligate funds; instead, recipients must place orders or enter into contracts by December 31, 2024.

The Obligation IFR maintained the core definition of "obligate" to include an "order placed for property and services and entry into contracts, subawards, and similar transactions that require payment." In an explanatory webinar, the Treasury Department explicitly stated that incorporating an SLFRF spending plan in a budget or passing legislation *does not* obligate those funds, and such funds would be subject to recoupment by the Treasury. Recipients must still award a contract or subaward for all SLFRF funds before the December 31, 2024 deadline.

2. Recipients are prohibited from amending or replacing contracts or subawards after 2024, with a few narrow exceptions.

As a general rule, recipients may not obligate additional funds or re-obligate funds after the deadline, even in the case of a change order occurring after December 31, 2024. However, recipients may replace a contract or subaward after 2024 if one of the following conditions are met:

- (1) The recipient terminates the contract or subaward due to the contractor's or subrecipient's default, the contractor or subrecipient goes out of business, or the recipient determines the contractor or subawardee will not be able to perform the work.
- (2) The recipient *and* the contractor or subrecipient agree to terminate the contract or subaward for convenience.
- (3) The recipient terminates the contract or subaward for convenience because (a) the contract or subaward was not properly awarded, (b) there is clear evidence of the improper contract or subaward, (c) the recipient documents its determination the contract or subaward was improper, and (d) the recipient entered into the original contract or subaward in good faith. A contract is considered to be entered into in good faith if the recipient followed standard procurement or subaward practices and the contract or subaward was not entered into for the purpose of evading the December 31, 2024 deadline.

Recipients should maintain documents justifying their decision to be submitted in future reports. The Treasury will provide updated guidance to address how recipients report replacement contracts or subawards at a later date. A recipient that enters into a replacement contract or subaward must still expend those funds prior to the respective expenditure deadline.

3. Recipients may use SLFRF funds for ARPA administrative compliance after 2024.

The Treasury was sympathetic to expenses tied to complying with requirements a recipient incurred due to receiving or spending ARPA funds, especially since compliance efforts likely need to continue after 2024 until all funds are spent. Thus, the Obligation IFR

finds a recipient sufficiently obligates payments for complying with requirements associated with a recipient's ARPA funds, even if those compliance costs are paid after December 31, 2024. The Obligation IFR addresses specific types of compliance costs to include:

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

In order to take advantage of this additional flexibility, recipients must (1) estimate how much SLFRF funds are needed to cover these compliance expenses, (2) document a reasonable justification for the estimate, (3) report this amount and an explanation of how the estimate was developed to the Treasury by April 30, 2024, and (4) report the final amount expended at award closeout. Any estimated funds not expended by December 31, 2026, will be recouped. Outside of administrative compliance costs, all other uses of SLFRF funds must still be obligated through a contract, subaward, or similar document by the end of this year.

4. Subrecipients are not required to obligate subawards by this deadline.

The Obligation IFR determined that subrecipients are not bound by this deadline as long as recipients make their subawards before December 31, 2024. However, subrecipients must still expend their funds by December 31, 2026.

5. SLFRF funds not obligated by December 31, 2024 will be recouped by the Treasury.

Treasury will issue future guidance on closeout procedures and returning unobligated funds. In addition, SLFRF funds must be expended by December 31, 2026, with the exception of funds for

Title I projects and surface transportation projects, which have a unique expense deadline of September 30, 2026.

In sum, the Treasury's Obligation IFR provides much-needed clarifications on how recipients can obligate their SLFRF funds to meet this year's looming deadline. If any recipients, subrecipients, or contractors need assistance navigating these requirements, they can contact the authors or any member of Frost Brown Todd's [Public Finance Practice Group](#).

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