

Strategies for Obligating State and Local Fiscal Recovery Funds (SLFRF)

The U.S. Treasury’s (“Treasury”) State and Local Fiscal Recovery Fund (“SLFRF”) program's period of performance requires recipients to obligate awarded funds by December 31, 2024, and expend funds by December 31, 2026.¹ In November 2023, Treasury issued the 2023 Obligation Interim Final Rule (“Obligation IFR”), expanding the definition of ‘obligation’ for SLFRF implementation.² On March 29, 2024, Treasury released additional guidance through an update to their SLFRF Frequently Asked Questions (“FAQ”) document, offering recipients additional flexibility to reassign SLFRF funds from an original intended use to other eligible uses after the obligation deadline.³ This document provides cities with an overview of the revised FAQs and tangible strategies they can take to obligate their SLFRF funds by the obligation deadline.

General Strategies

Program Spending

- ❑ **Conduct a Reallocation Analysis:** Identify projects that will start or continue beyond 2024. For projects that have not started, initiate program design discussions to build an implementation plan for priority projects.
- ❑ **Assess Subrecipient and Contractor Performance:** Though subrecipients and contractors are not subject to the obligation deadline⁴, cities should leverage compliance monitoring to track performance metrics, evaluate project risks, resolve implementation challenges, and determine if funds will likely be returned. Identify any contracts and subawards that may require or benefit from an extension and issue that extension prior to December 2024.
- ❑ **Assess Internal Capacity to Execute Existing Projects:** Identify gaps in delivery for existing projects and determine if additional capacity is needed to execute. For projects with anticipated delays or increased costs, determine if the project could benefit from execution by a contractor, subrecipient, or another internal department. If additional support is not a viable option and there is a high risk of not obligating or spending funds by Treasury deadlines, consider re-scoping the project or reprogramming funds to other projects.
- ❑ **Evaluate Project Performance:** Under-performing projects, including those that have underspent or have an unsustainable burn rate, should be prioritized and evaluated for reallocation to other eligible uses. Identify high-risk projects and determine if they are projected to meet project milestones.

¹ Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions (as of March 29, 2024) – FAQ #6.10, available at: <https://home.treasury.gov/system/files/136/SLFRF-Final-Rule-FAQ.pdf>.

² *Ibid.*, p.1.

³ *Ibid.*, p.1.

⁴ *Ibid.*, FAQ #17.18.

Project-Specific Strategies

- ❑ **Evaluate Procurement Needs:** Identify projects that require procurement before December 2024. Coordinate with procurement staff to evaluate feasibility to procure goods and services by the obligation deadline.
- ❑ **Assess Infrastructure Projects:** Evaluate infrastructure projects to identify if project milestones will be met and consider reallocating funds for delayed projects. Initiate conversations with project stakeholders, partners, and funding agencies for projects with blended or braided funding.
- ❑ **Evaluate Funds Used to Make Loans and Contributions to Revolving Loans:** Track repayments of outstanding principal and interest amounts (e.g. “program income”), estimate projected program income that will be received prior to the end of the period of performance, and identify how program income will be used for other eligible uses.
- ❑ **Ensure Revenue Loss Funds are Included in Obligation Decisions:** Funds reclassified to the revenue replacement expenditure category must still meet the obligation deadline.⁵

Strategies Related to Recent SLFRF FAQ Updates

Contract Replacements, Amendments, and Contingencies

In limited instances, such as a contractor going out of business, mutual termination, or improper procurement, cities may replace or amend contracts (including interagency agreements), so long as those contracts were in place *before* December 31, 2024.⁶

- ❑ **Evaluate the Status of Current Contracts:** Evaluate the necessity of replacing or amending existing contracts in advance of the December 2024 deadline.
- ❑ **Ensure Contracts Contain Contingency Language:** Amend contract language to allow for change orders or contract contingencies to account for cost increases through the period of performance.
- ❑ **Establish New Contracts for Planned Projects:** For projects that have not started, establish subawards, including contracts, agreements, and/or MOUs before December 2024.

Remember ⁷
<ul style="list-style-type: none">• Any replacement contract or contract amendment must be in alignment with the scope and purpose of the original contract.• Maintain documentation justifying any contract replacements or amendments. Treasury may request this in the future.

⁵ *Ibid.*, FAQ #17.15.

⁶ *Ibid.*, FAQ #17.17.

⁷ *Ibid.*, FAQ #17.17.

Interagency Agreements

Under the expanded definition of a “obligation” under the SLFRF program, Treasury considers an interagency agreement, including an agreement in the form of a memorandum of understanding (MOU), to constitute a “transaction requiring payment,” similar to a contract or subaward, and therefore an obligation for purposes of the SLFRF.⁸

- ❑ **Use Interagency Agreements to Obligate Internal Costs:** Create or update existing interagency agreements in advance of the December 2024 deadline to obligate funds for internal projects. Doing so may yield changes that will enhance a city’s spending flexibility beyond 2024 (particularly, for personnel costs emanating from these agreements).

Remember ⁹	
<p>Interagency Agreements, at minimum, should satisfy three (3) requirements:</p> <ul style="list-style-type: none"> • Sets forth specific requirements – e.g., scope of work and project deliverables; AND • Jointly executed by all parties to the agreement; AND • Does not disclaim any binding effect or state that it does not create rights or obligations. 	<p>They must <i>also</i> satisfy one (1) of the following conditions:</p> <ul style="list-style-type: none"> • Impose conditions on the use of funds by the agency/department or part of government receiving funds to carry out the program; OR • Govern the provision of funds from one agency/department or part of government to another to carry out an eligible use of SLFRF funds; OR • Govern the procurement of goods or services by one agency/department or part of government from another.

Legal & Administrative Costs

Allowable legal and administrative costs include reporting and compliance requirements, Single Audit Costs, record retention and internal control requirements, property standards compliance, environmental compliance requirements, and civil rights nondiscrimination requirements.¹⁰ The deadline to report these estimates for quarterly reporters is January 31, 2025, and April 30, 2025, for annual reporters.¹¹

- ❑ **Identify Legal and Administrative Costs for Each Project:** Review each project individually to identify if there will be legal and administrative costs after 2024 associated with the project, including subrecipient monitoring and closeout.
- ❑ **Estimate Legal and Administrative Costs:** Develop a process to collect estimates and projections from entities administering projects. Estimate personnel costs needed to satisfy

⁸ *Ibid.*, FAQ #13.17.

⁹ *Ibid.*, FAQ #17.6.

¹⁰ *Ibid.*, FAQ #17.10.

¹¹ *Ibid.*, FAQ #17.8.

legal and administrative requirements through the SLFRF period of performance and closeout at the project level and across the SLFRF award.

Personnel Costs

Personnel costs may be covered through December 31, 2026, provided that the role was established and filled *before* December 31, 2024.¹²

- ❑ **Establish and Fill Positions by December 31, 2024:** Maintain updated lists of personnel whose salaries, fringe benefits, and/or payroll taxes are funded with SLFRF dollars.¹³
- ❑ **Use Interagency Agreements to Obligate Internal Personnel Costs:** Personnel costs emanating from an interagency agreement may be covered through December 31, 2026, provided that the role was established and filled *before* December 31, 2024.¹⁴
- ❑ **Disaggregate Legal and Administrative Costs from Project Personnel Costs:** Ensure that personnel estimates related legal and administrative requirements and personnel estimates for project costs are disaggregated in the Project Expenditure Report, and that they each include cost escalations.

Use of Excess Funds After December 31, 2024

Generally, excess funds (including cost savings realized due to project underspending and program activities determined as ineligible) may be reclassified from their original use to a different eligible use, so long as they were obligated by December 31, 2024.¹⁵ Treasury has yet to specify if recipients will be able to report new projects after the obligation deadline.

- ❑ **Use Excess Project Funds to Cover Personnel and Legal and Administrative Costs:** After December 31, 2024, excess project funds and program income may be used to cover personnel costs and legal and administrative costs.¹⁶
- ❑ **Use Excess Personnel Estimates and Legal and Administrative Estimates to Cover Project Costs:** After December 31, 2024, excess funds from personnel and legal and administrative estimates may be used to cover other eligible uses, provided they were obligated by the December 2024 deadline.¹⁷

¹² *Ibid.*, FAQ #17.7.

¹³ *Ibid.*, FAQ #17.7.

¹⁴ *Ibid.*, FAQ #17.15.

¹⁵ *Ibid.*, FAQ #17.19.

¹⁶ *Ibid.*, FAQ #17.19.

¹⁷ *Ibid.*, FAQ #17.13.