



County Executive

Ann Edwards

**Governmental Relations and
Legislative Officer**

Elisia De Bord

County of Sacramento

Board of Supervisors

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December 20, 2023

Office of Recovery Programs
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Submitted via regulations.gov

**Re: Sacramento County's Comments on Coronavirus State and Local
Fiscal Recovery Funds Obligation Interim Final Rule,**
TREAS-DO-2023-0013-0001

Dear Ms. Milano:

On behalf of the Sacramento County Board of Supervisors and as a member of Government Finance Officers Association (GFOA), I write in support of GFOA's comments submitted in response to the interim final rule (IFR) to amend the definition of "obligation" set forth in the Treasury Department's regulations with respect to the Coronavirus State Fiscal Recovery Fund and the Coronavirus Local Fiscal Recovery Fund (CSLFRF) established under the American Rescue Plan Act of 2021.

As a prime recipient of CSLFRF, the timing to distribute these funds is critical. The County, like other local jurisdictions, has processes and procedures for annual operating budgeting cycle, paired with annual reconciliation for spending and an annual audit window, that could be disrupted by different timing and sequences for reconciliation of financial information to Treasury.

The resolution GFOA requested from Treasury has not been addressed by this IFR, which impacts Sacramento County. As direct recipients of CSLFRF, GFOA's prime recipient members, including the County, work to ensure effective spending of the ARPA funds to achieve legislative intent. However, when establishing the final "expenditure" deadline for the spending of ARPA funds two years after the "obligation" deadline presents a unique challenge for prime recipients. State and local governments' policy objectives of spending in an operating budget window of one year does not accommodate a two-year spend window. Offering prime recipients workable flexibility would allow prime recipients to spend accordingly and with impact in their communities.

The differences in timing between local government administration and Treasury's general administration of the program (both in timing of rule development and in reporting and compliance sequencing) has been challenging for the administration of this program. Introducing such a comprehensive shift of local ARPA administration as a result of this IFR causes a significant obstacle in closeout compliance and guidance.

GFOA's comments in a September 2023 letter¹ to Treasury's Office of Recovery Programs, along with state and local industry partners, requested more specific guidance on the definition of "obligation". Many state and local governments have varieties of policies and procedures that determine when a government has obligated funds. GFOA suggested that one example of an obligation could include "a recipients internal memorandum of understanding or directive that would be executed prior to December 31, 2024, between departments to implement ARPA-funded programs through December 31, 2026." In the Obligation IFR, Treasury offers specific guidance, but it does not create greater flexibility for governments that do not have their own policies.

The following section directly responds to the question posed by the Obligation IFR – *What are the advantages and disadvantages of the change made by this interim final rule to the definition of "obligation"?*

IFR Advantages

The County appreciates Treasury's attention to the complexities presented in operationally addressing program funded positions. The County appreciates clarification with respect to payroll costs for compliance, monitoring, oversight, reporting, and auditing incurred and spent between 12/31/2024 and 12/31/2026.

IFR Disadvantages

1. The primary disadvantage to prime recipients is that the Obligation IFR does not revise the rule to define "costs incurred" by reference to recipient appropriation, budget, or allocation processes. This means that direct recipients may never be able to satisfy the definition of obligation as it relates to SLFRF dollars, despite following state or local law, or their own policies. Prior to the issuance of the Obligation IFR, the projects were satisfied, and the funding was obligated. Under the proposed Obligation IFR, circumstances of funding due to the new definition of "obligation" is uncertain. FAQ #13.17 of Treasury's own [Final Rule: Frequently Asked Questions](#) notes:

Treasury recognizes that recipients may obligate funds through means other than contracts or subawards...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 document. For example, a recipient may have incurred an obligation even though the recipient and its employee may not have entered in an employment contract.

¹ <https://www.gfoa.org/materials/letter-requesting-guidance-concerning-slfrf>

The new guidance effectively renders 13.17 void. Many direct recipients have referred to 13.17 and utilized state and local laws and policies to determine whether they have incurred an obligation. To comply with the proposed IFR, prime recipients would be forced to follow Treasury's more limiting definition.

2. For payroll/personnel costs, it is problematic that the Obligation IFR does not allow for program/project support staff funded by SLFRF dollars to be treated similarly to staff who fall under the revised definition of assisting in *meeting requirements under federal law or regulation or a provision of the SLFRF award terms and conditions*. Specifically problematic is the clause "when work was performed." This essentially means recipients may have to lay off program/project support staff before the December 31, 2024 deadline since they will fail to meet the definition of obligation for any work performed in 2025 and 2026. Program staff could be doing things like monitoring contract performance, which is just as important as reporting and legal compliance to ensure the success of SLFRF funded projects and programs. Allowing for the pre-obligation of these payroll costs or creating a formula similar to what was done for general revenue loss to address any misconceptions about different methodologies being used to calculate pre-obligation of salaries.
3. The IFR creates a disparity between direct recipients and subrecipients, as subrecipients are given far greater flexibility on meeting the obligation deadline whereas direct recipients are hindered in the use of funds. For example, as discussed in the second bullet point, subrecipients do not face the same constraints for paying program staff that direct recipients do for work after December 31, 2024.
3. The April 30, 2024 deadline for expenditure estimates creates a significant hurdle in recipients being able to utilize the advantage in the amendment to the definition of obligation announced in the Obligation IFR, articulated above. The requirement that to use SLFRF funds to cover some administrative and legal requirements after the obligation deadline has passed estimates must be submitted to Treasury by April 2024 leaves insufficient time for fund recipients to calculate accurate estimates. This obstacle is exacerbated by the lack of experience and training in providing these estimates and being able to secure only broad estimates by the deadline. In addition, due to the changing guidance and short timeframe given to direct recipients to react and make adjustments based on the Obligation IFR, and the understanding that more changes may have to be made after the Final Rule comes out, we would appreciate more time for recipients to respond to the April 2024 deadline for cost estimates. Considering the calculation of program income, if it is higher than what you calculated, what is the amount to be returned to Treasury.
4. There are other points of confusion in the new IFR. For example, in contract management, which is a major consideration for capital projects using CSLFRF funds, there is still some confusion about contingency funds to prepare for the

2024-2026 window. Are contingency funds considered obligated? Although it was described in several preparation webinars that "obligation" does not include change orders that were not included in the original contract, but never answered the question of how to account for contingency funds.

Consequences for Recipients

Due to the disadvantages discussed above, recipients will experience direct, negative consequences as a result of the Obligation IFR. The language from the IFR that is particularly concerning includes:

To take advantage of this additional flexibility, recipients must (1) determine the amount of SLFRF funds the recipient estimates it will use to cover such expenditures, (2) document a reasonable justification for this estimate, (3) report that amount to Treasury by April 30, 2024, with an explanation of how the amount was determined, and (4) report at award closeout the final amount expended for these costs.

In response to suggestions from recipients, Treasury considered whether "costs incurred" could be defined by reference to a standard other than "obligation." However, for the reasons discussed above, the revised definition of "obligation" provides the best and most reasonable interpretation of the statutory requirement for recipients to incur costs by December 31, 2024. For example, some recipients recommended that Treasury revise the rule to define "costs incurred" by reference to recipient appropriation, budget, or allocation processes. This approach would not provide a standard that could be applied consistently across recipients. Further, as noted above, Congress, in the amendments made by the 2023 CAA with respect to the SLFRF program, has confirmed the definition of "costs incurred" by reference to the obligation of funds.

Under the proposed changes to the definition of obligation, the Sacramento County would potentially be required to end as many as 13 established projects, totaling more than \$18 million, by December 31, 2024, due to program/project support staff costs not being recognized by Treasury as an eligible expense through December 31, 2026. These projects provide critical public health, mental health services, and housing services to several impacted and disproportionately impacted populations impacted by the COVID-19 pandemic including low and very-low-income residents, the unhoused, and youth in the foster care system. Additionally, the changes proposed under the Obligation IFR significantly increase the risk that the County may need to remit to Treasury a portion of the 10 percent of our total SLFRF award, or \$30.1 million, the Sacramento County Board of Supervisors have allocated to ensure adequate implementation and administrative oversight of the County's use of CSFLRF funds.

In summary, the IFR, though it does clarify the definition of obligation with respect to some payroll costs, creates significant obstacles for direct recipients being able to utilize SLFRF funds through the December 31, 2026, spending deadline. Addressing the disadvantages articulated above will allow recipients to meaningfully

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spend their funds through December 31, 2026. Thank you for your consideration. Please feel free to contact me at (916) 874-4627 or deborde@sacounty.gov.

Sincerely,



Elisia De Bord

Governmental Relations and Legislative Officer