



U.S. Treasury’s Obligation Interim Final Rule

Last Updated November 30, 2023

Resources:

[State and Local Fiscal Recovery Funds: Obligation IFR Quick Reference Guide](#)

[U.S. Treasury Webinar Slides on Obligation Interim Final Rule](#)

[Submit a public comment to Treasury on the Obligation IFR](#)

Background:

- Original issue stemmed from interpreting Congress’ intent in the American Rescue Plan Act (ARPA) that SFRF is only “to cover costs incurred by the State, territory, or Tribal government, by December 31, 2024.”
- What does "costs incurred" mean here, when ARPA allows expenditures through December 31 of 2026?
- In 2021 Treasury adopted an Interim Final Rule (Final in 2022) that "cost incurred" only needs to be an "Obligation" to pay under a new definition (similar to but not uniform guidance).
- In November 2023, the U.S. Department of the Treasury released a new interim final rule regarding the definition of “Obligation,” expanding its definition.
- Public comment period is open through December, 20, 2023.

Definitions

2021/22 SLFRF Final Rule definition of “Obligation” at 31 CFR 35.3	2023 new Interim Final Rule definition of “Obligation” at 31 CFR 35.3 adds a sentence, and IFR also adds interpretive guidance
<p><i>Obligation</i> means an order placed for property and services and entering into contracts, subawards, and similar transactions that require payment.</p>	<p><i>Obligation</i> means an order placed for property and services and entering into contracts, subawards, and similar transactions that require payment. <u>An obligation also means a requirement under federal law or regulation or provision of the award terms and conditions to which a recipient becomes subject as a result of receiving or expending funds.</u></p>



Primary takeaways:

- Subrecipients and contractors are not subject to the obligation deadline once the subaward is in place.
- 2025-2026 Administrative costs are “obligations”
 1. Reporting and compliance requirements, including subrecipient monitoring
 2. Single Audit costs
 3. Record retention and internal control requirements
 4. Property standards
 5. Environmental compliance requirements
 6. Civil rights and nondiscrimination requirements
- Contracts or subawards may be replaced after December 31, 2024 only if:
 - Recipient determines the subawardee or contractor is in default, out of business, or unable to perform
 - Mutual agreement to terminate for convenience
 - Recipient determines in good faith that there was ineligibility, impropriety, or defective process
 - Note: change orders after 2024 are not allowed.

Impacts on State Agencies & Unanswered Questions

Are state administrative compliance costs eligible obligations in 2025-26, especially for revenue replacement projects with reduced federal regulatory compliance requirements?

At what point are revenue replacement projects (for "government services") obligated, when they are not federal subawards? Guidance refers specifically to "subrecipients" and "contractors" but are these "similar transactions that require payment?"

Is there a way to structure project documentation to allow for 2025-26 adjustments, for variations in cost and performance? Does the termination for convenience guidance open this door?

Next steps:

State agencies can submit public comments to US Treasury through December 20, 2023.

Send comments by Friday December 15 to jon.williams@osbm.nc.gov for consolidation.