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WITH YOU WHEN IT COUNTS

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March 11 marked the second anniversary of the signing of the American Rescue Plan Act (ARPA), and with that milestone we're reminded that direct Coronavirus State and Local Fiscal Recovery Fund (CSLFRF) recipients have less than two years to obligate those funds and less than four years to fully expend them.

At this time, we are unsure whether the U.S. Department of the Treasury plans to issue any extensions to the December 31, 2024, deadline. So, to err on the side of caution and avoid potential required returns of CSLFRF allocations, recipients will need to develop contingencies in the event they are unable to completely obligate expenditures by the end of 2024.

Witt O'Brien's believes it is not too early to start the CSLFRF planning process for January 1, 2025 and beyond. This document will offer suggestions to help set up your jurisdiction for success to fully utilize allocated funds given the current interpretation of the Treasury's Final Rule and other guidance documents.

Per the Final Rule FAQs, the Treasury is using the Code of Federal Regulations (CFR) definition of obligation for incurred expenses which is "an order placed for property and services and entering into contracts, subawards, and similar transactions that require payment.[1]"

The Treasury, through the Final Rule, has made it clear that it believes direct CSLFRF recipients have more than enough time to obligate (December 31, 2024) and expend (December 31, 2026) their allocations. Given the federal government landscape, we believe direct recipients should not be looking for any extensions to be issued or an alignment of the dates to that December 31, 2026 date.

Our specific concern for CSLFRF direct recipients is that unlike the Treasury's Coronavirus Relief Fund that was a part of the Coronavirus Aid, Relief, and Economic Security (CARES) Act—which aligned obligation and expenditure dates so direct recipients could make adjustments up to the last minute to fully capture their allocations—CSLFRF direct recipients will need to plan for contingencies if any obligations do not completely materialize and fully expend their budgeted amounts after December 31, 2024 given the differing obligation and expenditure dates. By doing this, direct recipients will still be positioned to fully expend their allocations and not be required to return any of their CSLFRF allocations to the Treasury as they did not take into account the inability to re-obligate unexpended funding after December 31, 2024.

Below are some suggestions to address this situation. In each case, this will be an over-obligation of your jurisdiction's CSLFRF allocation:

- First, evaluate your remaining obligations and expenditures to determine any funding at risk of not being expended by December 31, 2026. Once you have that total amount, evaluate those projects which could utilize additional funding. From there, issue and execute amendments to those agreements on or before December 31, 2024, with new language around their increased award amounts that clearly states this additional funding is contingent on the inability of other recipients and projects not fully expending their allocations. As they are either not needed or firmed up, your jurisdiction can issue another amendment for the appropriate action.
- Not all direct recipients will feel comfortable with the above given their capacity. Therefore, another suggestion is the utilization of the Treasury's own understanding of the uniqueness of each direct recipient as:

> 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.[2]

[1] eCFR:: 31 CFR 35.3 -- Definitions.

In this instance, your jurisdiction needs to make sure this is the same understanding and practice used with all of its obligations—not simply for this exercise. Additionally, document the obligation with pertinent details such as the date of the obligation, amount of the obligation, and purpose of the obligation, etc.

- The last suggestion is to fully calculate your jurisdiction's Revenue Replacement (revenue loss) in order to allocate expenditures to this category as needed to fully capture your allocation. Also, depending on your jurisdiction's level of detail in reporting its Revenue Replacement, if not a lump sum of the revenue loss encompassing all expenditures, you may want to create placeholder Revenue Replacement "projects" so you can allocate to them as needed to fully capture your allocation (if needed) after the December 31, 2024 deadline.

All of the outcomes from these suggestions can be reported to the Treasury as appropriate during your jurisdiction's Project and Expenditure reporting cycle. In planning for these actions and the reporting, it is suggested to wait until one of the two last reporting cycles before the end of the obligation period, reporting dates of October 31, 2024 or January 31, 2025. For those on an annual reporting cycle, the reporting date for your jurisdiction would be April 30, 2025. Again, the obligation would have had to happen by December 31, 2024. We know from earlier reporting periods that some direct recipients had over-obligated their allocations, although their reports were submitted and accepted by the Treasury. These direct recipients have since corrected them.

Witt O'Brien's is hopeful that the Treasury will provide further guidance on this matter, but it might come too late in the timeline for your jurisdiction to follow its requirements. Therefore, it is never too soon to start to plan for this and figure out whether one of these suggestions works—or perhaps there are other options available to your jurisdiction to fully capture its CSLFRF allocation through the end of December 31, 2026. Witt O'Brien's is available to discuss this matter further with you.

[2] Final Rule FAQ 13.17