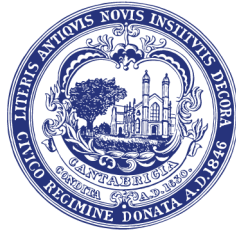


Megan B. Bayer
Acting City Solicitor

Elliott J. Veloso
First Assistant City Solicitor



Assistant City Solicitors
Paul S. Kawai
Sean M. McKendry
Diane O. Pires
Kate M. Kleimola
Sydney M. Wright
Evan C. Bjorklund
Franziskus Lepionka
Andrea Carrillo-Rhoads

Public Records Access Officer
Seah Levy

CITY OF CAMBRIDGE

Office of the City Solicitor
795 Massachusetts Avenue
Cambridge, Massachusetts 02139

March 4, 2024

Yi-An Huang
City Manager
Cambridge City Hall
795 Massachusetts Avenue
Cambridge, MA 02139

Re: *Communication Regarding American Rescue Plan Act's ("ARPA") Definition of "Obligation."*

Dear Mr. Huang:

This is in response to your request for guidance on the Coronavirus State and Local Fiscal Recovery Fund's (through ARPA) definition of "obligation" as it relates to the deadline by which the City of Cambridge (the "City") must expend funds allocated to selected ARPA programs. You have asked the Law Department to evaluate whether ARPA funds can be expended after December 31, 2024, or must be obligated and expended before December 31, 2024.

Based on the U.S. Department of the Treasury's ("Treasury") definition of "obligation" relative to expenditures in the guidance in effect in 2022, the needs and preferences of the City to disperse funds to subrecipients in a timely fashion, and the opinions of the City's financial consultant, including but not limited to opinions concerning the Treasury's definition of "liquidate"¹, the City has been requiring that ARPA funds are obligated and expended by December 31, 2024.

In November of 2023, the Treasury published the Obligation Interim Final Rule² ("IFR") and Obligation IFR Quick Reference Guide³, which further clarified the definition of "obligation"

¹ The Treasury's April 2022 Coronavirus State and Local Fiscal Recovery Funds ("SLFRF") Compliance Supplement (<https://home.treasury.gov/system/files/136/21.027-SLFRF-2022-Compliance-Supplement.pdf>) states in relevant part: "Auditors should also test that recipients did not incur and apply to their award any new costs during the period beginning December 31, 2024 and ending on December 31, 2026. During this two-year period, recipients are only permitted to liquidate all obligations they incurred by December 31, 2024." This quoted text was omitted from the Treasury's 2023 SLFRF Compliance Statement.

² https://home.treasury.gov/system/files/136/Obligation_Interim_Final_Rule_2023.pdf

³

https://home.treasury.gov/system/files/136/Obligation_Interim_Final_Rule_Quick_Reference_Guide_2023.pdf

in the Treasury's implementing regulations for the SLFRF program. Under the revised definition of "obligation," the term continues to mean "an order placed for property and services and entry into contracts, sub-awards, and similar transactions that require payment." This guidance from the Treasury clarifies that recipients must obligate SLFRF funds by December 31, 2024. If so obligated, the funds can be expended by December 31, 2026, except for projects under the "Surface Transportation" and "Title I" (e.g., CDBG projects) eligible use categories, which require funds be expended by September 30, 2026.

Accordingly, as long as ARPA funds are obligated by December 31, 2024, the City and subrecipients may expend funds past December 31, 2024. However, the concern with obligating funds by December 31, 2024, but not requiring that they be expended until December 31, 2026 is that if there is a change in circumstances necessitating an amendment to the contract (including scope of services or budget) after December 31, 2024 and a project is not able to use the funds, the City may no longer have an opportunity to grant those funds elsewhere. Presently, Treasury guidance does not outline how recipients can reallocate these funds after December 31, 2024 and only states that funds not timely obligated and expended are to be returned to the Treasury. Therefore, the City may want to consider doing so only after evaluating projects on a case-by-case basis to ensure the project will be able to expend the funds so the City can ensure expenditure of as much of the City's ARPA allotment as possible.

Please let us know if you have any questions.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Megan B. Bayer".

Megan B. Bayer
Acting City Solicitor