

Congress of the United States

Washington, DC 20515

December 20, 2023

Secretary Janet Yellen
U.S. Department of The Treasury
1500 Pennsylvania Ave, NW
Washington, D.C. 20220

Re: Concerns with 2023 SLFRF Interim Final Rule: Obligation defined by Contract

Dear Secretary Yellen,

Under Republican Leadership in the House, Democrats have had to collectively turn our attention to ensuring the efficient and effective implementation of the landmark legislation we passed in the last Congress, including the American Rescue Plan Act (ARPA). We are writing to express our concerns with the 2023 Coronavirus State and Local Fiscal Recovery Funds (SLFRF) Interim Final Rule. In particular, we are concerned with the potential impact that the new definition of “obligation” will have on local governments with regard to the December 31st, 2024 deadline for the local obligation of funds.

The SLFRF delivered \$350 billion to state, local, and Tribal governments across the country to help them recover from the impacts of the COVID-19 pandemic. These funds represented some of the largest ever direct federal investments in our municipalities and tribes. Understanding that funds only needed to be obligated by the end of 2024 and spent by the end of 2026, local governments have taken precautions when crafting their ARPA spending plans to ensure that they were putting the funds towards the projects which would have the greatest impacts on their communities. As a result, some have yet to put a spending plan before their city council or select board to vote to obligate the funds. Many who received local legislative approval for their spending plans considered these funds to be obligated and have been in no rush to reach contracts for the execution of these approved projects, with three years left to spend the funds. In fact, the Obligation Final Rule explained that the U.S. Treasury Department considered whether obligation could be satisfied by “recipient appropriation, budget, or allocation processes.” While Treasury ultimately decided against this increased flexibility, this demonstrates that it was aware of existing confusion regarding the definition of “obligation” amongst state, local, and tribal government recipients.

By defining obligation as, “An order placed for property and services and entry into contracts, subawards, and similar transactions that require payment,” we understand that the 2023 Interim Final Rule would require local governments to reach contracts with labor and equipment providers to execute all of the approved infrastructure projects within the next year. This is particularly concerning for the smaller municipalities who have still yet to finalize ARPA spending plans. Additionally, our municipal partners who have already approved a complete

spending plan have told us that they have been purposely waiting to put their projects out to bid because limited local contractors and supply chain issues have driven up bid prices for these projects. Under this new definition for obligation, municipalities across the country would be forced to go out to bid within the next year, further flooding local markets and raising bid prices to the point that the amounts of ARPA approved by their local legislative bodies may no longer be enough to complete the projects. This definition would effectively require that local governments choose between paying the higher bid prices or losing the funds.

The concerns raised in this letter apply not only to the municipalities and tribes in the districts we have the honor to represent, but to those throughout the country. However, there is another way forward. We urge Treasury to implement a final rule that enables SLFRF recipients to achieve the obligation requirement through an appropriation, budget, or allocation process. This will allow recipients the time they need to spend these funds. We feel that this administrative rule change will ensure that the ARPA funds are implemented effectively and with the intended impact of the law. As such, we respectfully request that Treasury consider the concerns and proposed solution raised in this letter during the review period for the 2023 SLFRF Interim Final Rule.

Sincerely,



Lori Trahan
Member of Congress



Josh Gottheimer
Member of Congress



Ruben Gallego
Member of Congress



Rashida Tlaib
Member of Congress



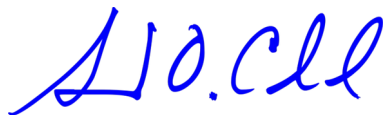
Stephen F. Lynch
Member of Congress



James P. McGovern
Member of Congress



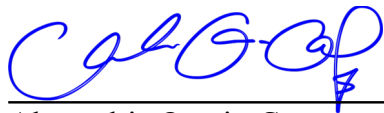
Daniel T. Kildee
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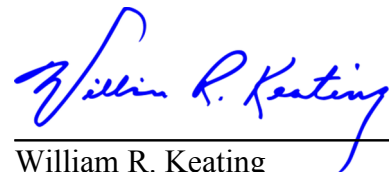
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Frank Pallone, Jr.
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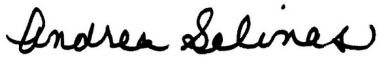
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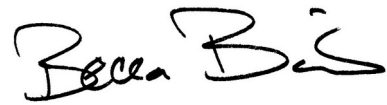
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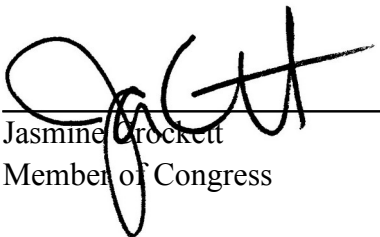
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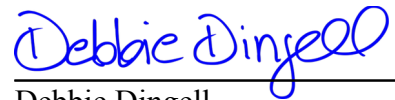
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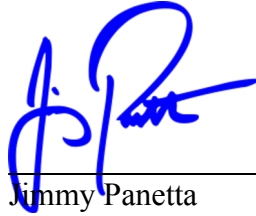
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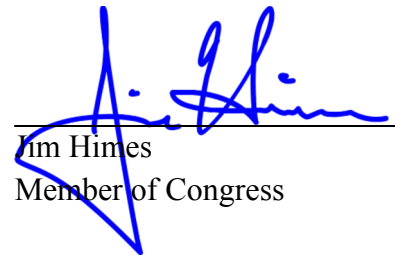
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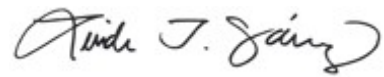
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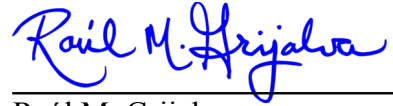
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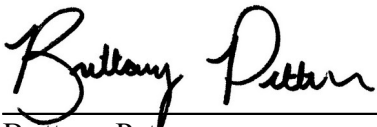
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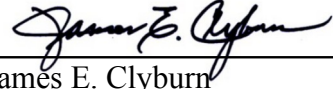
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