Applicability of Federal Requirements to Vermont State Fiscal Recovery Fund Projects

v. 2.0

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Contents

This document summarizes the applicability of key federal requirements to Vermont's use of SFR based on federal requirements outlined in the final rule and supporting Treasury publications.

Final Rule Guidance

Per Treasury's final rule § 35.9: "A recipient must comply with all other applicable Federal statutes, regulations, and Executive orders, and a recipient shall provide for compliance with the American Rescue Plan Act, this subpart, and any interpretive guidance by other parties in any agreements it enters into with other parties relating to these funds."[1]

The summary table below outlines the general applicability of key federal requirements to Vermont's SFR uses. This list is non-exhaustive. It captures federal statutes and requirements explicitly outlined in the Treasury final rule and Uniform Guidance.

Federal Requirement	Is the federal requirement generally applicable to Vermont's SFR uses?	
	Yes	No
Davis-Bacon Act*		✗
National Environmental Policy Act		✗
Cash Management Improvement Act		✗
Section 106 of the National Historic Preservation Act		✗
Uniform Guidance	✓	
Domestic Preference	✓	
Cost Principles	✓	
Subrecipient Monitoring/Management	✓	
Procurement Standards**	✓	
Privacy Act	✓	
Civil Rights Compliance	✓	
Single Audit Requirements	✓	

** While Davis-Bacon does not generally apply to Vermont's SFR projects, state prevailing wage requirements and an alternative set of labor reporting requirements may apply to certain high-cost SFR infrastructure projects. Please see the section below regarding the Act for additional detail.*

***While the Uniform Guidance requires recipients to adopt formal procurement methods consistent with its requirements, it does not, on its face, require the use of qualifications-based procurement for architectural or engineering services (i.e., the Brooks Act). And while the Guidance's domestic preference requirements are applicable, the Buy America Preference requirements from the Infrastructure Investment and Jobs Act do not apply.*

[1] Coronavirus SFR Treasury Final Rule, Federal Register, Vol. 87, No. 18, Rules and Regulations (Jan. 27, 2022) (the "Final Rule"), p. 4453.

Davis-Bacon Act

The Davis-Bacon Act does **not** apply to projects funded solely with SFR awards, but an alternative set of federal labor reporting requirements regarding prevailing wages and project labor planning apply to SFR-funded infrastructure projects with total projected costs over $10 million.[2]

SFR FAQ 6.15: "Are eligible water, sewer, and broadband infrastructure projects, eligible capital expenditures under the public health and negative economic impacts eligible use category, and eligible projects under the revenue loss eligible use category subject to the Davis-Bacon Act?

The Davis-Bacon Act requirements (prevailing wage rates) do not apply to projects funded solely with award funds from the SLFRF program, except for SLFRF-funded construction projects undertaken by the District of Columbia. The Davis-Bacon Act specifically applies to the District of Columbia when it uses federal funds (SLFRF funds or otherwise) to enter into contracts over $2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works. Recipients may be otherwise subject to the requirements of the Davis-Bacon Act when SLFRF award funds are used on a construction project in conjunction with funds from another federal program that requires enforcement of the Davis-Bacon Act. Additionally, corollary state prevailing-wage-in-construction laws (commonly known as "baby Davis-Bacon Acts") may apply to projects. Please refer to FAQ #4.8 concerning projects funded with both SLFRF funds and other sources of funding.

Treasury has indicated in its final rule that it is important that capital expenditure projects and necessary investments in water, sewer, or broadband infrastructure be carried out in ways that produce high-quality infrastructure, avert disruptive and costly delays, and promote efficiency. Treasury encourages recipients to ensure that capital expenditure projects and water, sewer, and broadband projects use strong labor standards, including project labor agreements and community benefits agreements that offer wages at or above the prevailing rate and include local hire provisions, not only to promote effective and efficient delivery of high-quality infrastructure projects, but also to support the economic recovery through strong employment opportunities for workers. Using these practices in projects may help to ensure a reliable supply of skilled labor that would minimize disruptions, such as those associated with labor disputes or workplace injuries.

Treasury has also indicated in its reporting guidance that recipients will need to provide documentation of wages and labor standards for infrastructure projects over $10 million, and that that these requirements can be met with certifications that the project is in compliance with the Davis-Bacon Act (or related state laws, commonly known as "baby Davis-Bacon Acts") and subject to a project labor agreement. Please refer to the Reporting and Compliance Guidance for more detailed information on the reporting requirement." [3]

[2] In addition, while beyond the scope of this guidance related to federal requirements, Vermont Act 83 of 2022 mandates certain living wage requirements for projects allocated more than $200,000 in SFR funding. For further information, please see the State Fiscal Recovery Fund Process and Policy Guidance, Appendix 4.

[3] Coronavirus State and Local Fiscal Recovery Funds, Final Rule: Frequently Asked Questions, v2.0 (July 27, 2022) (the "Final Rule FAQ"), pp. 41-42.

SFR Compliance and Reporting Guidance—for infrastructure projects over $10 million (in Expenditure Category 5):

"For projects over $10 million (based on expected total cost):

a. A recipient may provide a certification that, for the relevant project, all laborers and mechanics employed by contractors and subcontractors in the performance of such project are paid wages at rates not less than those prevailing, as determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the "Davis-Bacon Act"), for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State (or the District of Columbia) in which the work is to be performed, or by the appropriate State entity pursuant to a corollary State prevailing-wage-in-construction law (commonly known as "baby Davis-Bacon Acts"). If such certification is not provided, a recipient must provide a project employment and local impact report detailing:

    - The number of employees of contractors and sub-contractors working on the project;
    - The number of employees on the project hired directly and hired through a third party;
    - The wages and benefits of workers on the project by classification; and
    - Whether those wages are at rates less than those prevailing.

    Recipients must maintain sufficient records to substantiate this information upon request.

b. A recipient may provide a certification that a project includes a project labor agreement, meaning a pre-hire collective bargaining agreement consistent with section 8(f) of the National Labor Relations Act (29 U.S.C. 158(f)). If the recipient does not provide such certification, the recipient must provide a project workforce continuity plan, detailing:

    - How the recipient will ensure the project has ready access to a sufficient supply of appropriately skilled and unskilled labor to ensure high-quality construction throughout the life of the project, including a description of any required professional certifications and/or in-house training;
    - How the recipient will minimize risks of labor disputes and disruptions that would jeopardize timeliness and cost-effectiveness of the project;
    - How the recipient will provide a safe and healthy workplace that avoids delays and costs associated with workplace illnesses, injuries, and fatalities, including descriptions of safety training, certification, and/or licensure requirements for all relevant workers (e.g. OSHA 10, OSHA 30);
    - Whether workers on the project will receive wages and benefits that will secure an appropriately skilled workforce in the context of the local or regional labor market; and
    - Whether the project has completed a project labor agreement.

c. Whether the project prioritizes local hires.

d. Whether the project has a Community Benefit Agreement, with a description of any such agreement."[4]

National Environmental Policy Act (NEPA)

NEPA does **not** apply to projects that are solely funded by SFR.

SFR FAQ 6.3: "Does the National Environmental Policy Act (NEPA) apply to eligible infrastructure projects?

NEPA does not apply to Treasury's administration of the funds, including funds expended under the revenue loss, public health and negative economic impacts, and water, sewer, and broadband infrastructure eligible use categories. Projects supported with payments from the funds may still be subject to NEPA review if they are also funded by other federal financial assistance programs or have certain federal licensing or registration requirements."[5]

Non-federal Matching Requirements

Generally, SFR funds used under the revenue loss eligible use category may be used to satisfy non-federal matching requirements. SFR funds used under any other eligible use category may not be used to satisfy non-federal matching requirements, except as discussed further below.[6]

SFR FAQ 4.6: "May recipients use funds to satisfy non-federal matching requirements?

Funds available under the revenue loss eligible use category (sections 602(c)(1)(C) and 603(c)(1)(C) of the Social Security Act) generally may be used to meet the non-federal cost-share or matching requirements of other federal programs. However, note that SLFRF funds may not be used as the non-federal share for purposes of a state's Medicaid and Children's Health Insurance Programs (CHIP) because the Office of Management and Budget has approved a waiver as requested by the Centers for Medicare & Medicaid Services pursuant to 2 CFR 200.102 of the Uniform Guidance and related regulations.

If a recipient seeks to use SLFRF funds to satisfy match or cost-share requirements for a federal grant program, it should first confirm with the relevant awarding agency that no waiver has been granted for that program, that no other circumstances enumerated under 2 CFR 200.306(b) would limit the use of SLFRF funds to meet the match or cost-share requirement, and that there is no other statutory or regulatory impediment to using the SLFRF funds for the match or cost-share requirement.

SLFRF funds beyond those that are available under the revenue loss eligible use category may not be used to meet the non-federal match or cost-share requirements of other federal programs, other than as specifically provided for by statute. As an example, the Infrastructure Investment and Jobs Act provides that SLFRF funds may be used to meet the non-federal match requirements of authorized

[4] Coronavirus State and Local Fiscal Recovery Funds Compliance and Reporting Guidance, v. 4.1 (June 17, 2022) (the "SFR Reporting Guidance"), p. 31.
[5] Final Rule FAQ, p. 38.
[6] Final Rule FAQ, p. 31.

Bureau of Reclamation projects and certain broadband deployment projects. Recipients should consult the final rule for further details if they seek to utilize SLFRF funds as a match for these projects."[7]

SFR FAQ 6.2: "May recipients use funds as a non-federal match for the Clean Water State Revolving Fund (CWSRF) or Drinking Water State Revolving Fund (DWSRF)?

Per FAQ #4.6, SLFRF funds available for the provision of government services, up to the amount of the recipient's reduction in revenue due to the public health emergency (the revenue loss eligible use category), may be used to meet the non-federal cost-share or matching requirements of other federal programs, including the CWSRF and DWSRF programs administered by the EPA. Per FAQ #4.9, loans funded under the revenue loss eligible use category may be deemed expended at the point of disbursement. Thus, recipients using SLFRF funds available under revenue loss for non-federal matching requirements for the DWSRF or CWSRF may consider funds expended at the point the recipient makes the deposit into the State Revolving Funds. Recipients using SLFRF funds available under revenue loss should log projects under expenditure category 6.2.

As further noted in FAQ #4.6, SLFRF funds beyond those that are available under the revenue loss eligible use category may not be used to meet the non-federal match or cost-share requirements of other federal programs, other than as specifically provided for by statute. Recipients using funds under the eligible use category for water and sewer infrastructure may not use funds as a state match for the CWSRF and DWSRF."[8]

Funding from Multiple Federal Sources

If multiple funding sources are used part of a project that is also receiving SFR funding, the SFR restrictions would apply to the entire project. However, if SFR and other funds are used for distinct projects, each project would need to comply with applicable requirements of its own funding source.

SFR FAQ 4.8: "May recipients fund a project with both ARPA funds and other sources of funding (e.g., blending, braiding, or other pairing funding sources), including in conjunction with financing provided through a debt issuance?

Generally, yes, provided that the costs are eligible costs under each source program and are compliant with all other related statutory and regulatory requirements and policies, including restrictions on use of funds.

The recipient must comply with applicable reporting requirements for all sources of funds supporting the SLFRF projects.

Recipients may source funding for a project in multiple ways, including, but not limited to, the following:

- Using funds available under the revenue loss eligible use category for non-federal match (see FAQ #4.6)
- Pooling funds for a joint project with another SLFRF recipient (see FAQ #4.7)

[7] Final Rule FAQ, pp. 31-32.
[8] Final Rule FAQ, pp. 37-38.

- Transferring funds to a subrecipient to finance a project that also uses other sources of funding
- Blending or braiding SLFRF funds with other sources of government funding, including debt issuance, to pursue a project

Localities may also transfer their funds to the state through section 603(c)(4) of the Social Security Act, which will decrease the locality's award and increase the state award amounts. Note that using a recipient blending and braiding funds in conjunction with other sources of funding is distinct from using funds for non-federal match. In the case of non-federal match, the recipient would be using SLFRF funds to satisfy cost-sharing or matching requirements in order to qualify for another source of federal funding, while blending and braiding refers to using multiple sources of funding for complementary purposes.

If the entirety of a project is funded with SLFRF funds, then the entire project must be an eligible use. The use of funds would be subject to the deadline on obligating funds no later than December 31, 2024 and expending funds no later than December 31, 2026. If a project is only partially funded with SLFRF funds, then the portion of the project funded must be an eligible use and the SLFRF funds must also be obligated by December 31, 2024 and expended by December 31, 2026. In either case, recipients must be able to, at a minimum, determine and report to Treasury on the amount of SLFRF funds obligated and expended and when such funds were obligated and expended.

SLFRF funds may not be used to fund the entirety of a project that is partially, although not entirely, an eligible use under Treasury's final rule. However, SLFRF funds may be used for a smaller component project that does constitute an eligible use, while using other funds for the remaining portions of the larger planned project that does not constitute an eligible use. In this case, the ''project'' for SLFRF purposes under this program would be only the eligible use component of the larger project. For example, a recipient government may use SLFRF funds to subsidize the production of affordable housing units as a response to the pandemic and its negative economic impacts and use other funds to build other parts of a larger development that contains these affordable units."[9]

Cash Management Improvement Act

SFR payments are **not** subject to the Cash Management Improvement Act.

SFR FAQ 10.1: "Are recipients required to remit interest earned on SLFRF payments made by Treasury?

No. SLFRF payments made by Treasury to states, territories, and the District of Columbia are not subject to the requirement of the Cash Management Improvement Act and Treasury's implementing regulations at 31 CFR part 205 to remit interest to Treasury. SLFRF payments made by Treasury to local governments and Tribes are not subject to the requirements of 2 CFR 200.305(b)(8) and(9) to maintain SLFRF award funds in an interest-bearing account and remit interest earned above $500 on such payments to Treasury. Moreover, interest earned on SLFRF award funds is not subject to program restrictions. Finally, states may retain interest on payments made by Treasury to the state for distribution to NEUs that is earned before funds are distributed to NEUs, provided that the state

[9] Final Rule FAQ, pp. 32-33.

adheres to the statutory requirements and Treasury's guidance regarding the distribution of funds to NEUs. Such interest is also not subject to program restrictions.

Among other things, states and other recipients may use earned income to defray the administrative expenses of the program, including with respect to NEUs."[10]

Section 106 of the National Historic Preservation Act (NHPA)

"Section 106 of the NHPA does not apply to Treasury's administration of SLFRF funds, including funds expended under the revenue loss, public health and negative economic impacts, and water, sewer, and broadband infrastructure eligible use categories. Projects supported with payments from the funds may still be subject to Section 106 of the NHPA if they involve participation from other federal agencies, including funding from other federal financial assistance programs, or are subject to receipt of approvals from other federal agencies."[11]

Uniform Guidance

Per Treasury's SFR Compliance and Reporting Guidance, "the SLFRF awards are generally subject to the requirements set forth in the Uniform Guidance [2 CFR Part 200]. In all instances, your organization should review the Uniform Guidance requirements applicable to your organization's use of SLFRF funds, and SLFRF-funded projects. Recipients should consider how and whether certain aspects of the Uniform Guidance apply."[12]

SFR FAQ 13.1: "What provisions of the Uniform Guidance for grants apply to these funds? Will the Single Audit requirements apply?

Most of the provisions of the Uniform Guidance (2 CFR Part 200) apply to this program, including the Cost Principles and Single Audit Act requirements. Recipients should refer to the Assistance Listing[13] for detail on the specific provisions of the Uniform Guidance that do not apply to this program."[14]

SFR FAQ 13.2: "Do federal procurement requirements apply to SLFRF?

Yes. The procurement standards for federal financial assistance are located in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR 200.317 through 2 CFR 200.327 and apply to procurements using SLFRF funds. Pursuant to 2 CFR 200.317, recipients that are non-state entities, such as, metropolitan cities, counties, non-entitlement units of local government, and Tribes must comply with the procurement standards set forth in 2 CFR 200.318, through 2 CFR 200.327, when using their SLFRF award funds to procure goods and services to carry out the objectives of their SLFRF award. States, the District of Columbia, and U.S. Territories must follow their own procurement policies pursuant to 2 CFR 200.317, as well as comply with the procurement standards set forth at 2 CFR 200.321 through 2 CFR 200.323, and 2 CFR 200.327 when using their SLFRF award funds to procure goods and services to carry out the objectives of their SLFRF award. See also SLFRF Award Terms and Conditions.

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[10] Final Rule FAQ, p. 45.
[11] Final Rule FAQ, p. 43.
[12] SFR Reporting Guidance, p. 7.
[13] Assistance Listing: Coronavirus State and Local Fiscal Recovery Funds. Accessed July 18, 2022.
[14] Final Rule FAQ, p. 48.

Recipients are prohibited from using SLFRF funds to enter into subawards and contracts with parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs. See 2 CFR 200.214.

Moreover, a contract made under emergency circumstances under the Coronavirus Relief Fund (CRF) cannot automatically be transferred over to SLFRF. These programs are subject to different treatment under the Uniform Guidance. Under the CRF program, recipients are permitted to use their own procurement policies to acquire goods and services to implement the objectives of the CRF award. Under the SLFRF program, recipients are required to follow the procurement standards set out in 2 CFR Part 200 (Uniform Guidance) pursuant to the SLFRF Award Terms and Conditions executed by the recipients in connection with their SLFRF awards."[15]

SFR FAQ 13.12: "Does COVID-19 and the national emergency qualify as "exigency" as a special circumstance under 2 CFR 200.320 (c) in which a noncompetitive procurement can be used? If so, may a contract utilizing this special circumstance have a term that extends beyond the national emergency? For example, may a County execute a contract (without going through a competitive solicitation) immediately with a contractor to provide services with a term through the end of 2024, relying upon this special circumstance?

The COVID-19 public health emergency does not itself qualify as a "public exigency or emergency" under 2 CFR 200.320 (c). In other words, a recipient may not justify a noncompetitive procurement simply on the basis that the procurement is conducted during the public health emergency or that the project is in response to the public health emergency.

Instead, the recipient must make its own assessment as to whether in the case of a particular project there is a public exigency or emergency that "will not permit a delay resulting from publicizing a competitive solicitation."[16]

Subpart Applicability

The Assistance listing for the State Fiscal Recovery Fund provides information on the applicability of specific Uniform Guidance policy requirements. The following sections of the Uniform Guidance apply, with certain caveats outlined below: [17]

- Subpart B, General provisions
- Subpart C, Pre-Federal Award Requirements and Contents of Federal Awards
- Subpart D, Post-Federal Award Requirements
- Subpart E, Cost Principles
- Subpart F, Audit Requirements

For 2 CFR Part 200, **Subpart C**, the following provisions **do not** apply:

[15] Final Rule FAQ, pp. 48-49.
[16] Final Rule FAQ, p. 52.
[17] Assistance Listing: Coronavirus State and Local Fiscal Recovery Funds. Accessed July 18, 2022.

- 2 CFR § 200.204 (Notices of Funding Opportunities);
- 2 CFR § 200.205 (Federal awarding agency review of merit of proposal);
- 2 CFR § 200.210 (Pre-award costs); and
- 2 CFR § 200.213 (Reporting a determination that a non-Federal entity is not qualified for a Federal award).

For 2 CFR Part 200, **Subpart D**, the following provisions **do not** apply:

- 2 CFR § 200.305(b)(8) and (9) (Federal Payment)
- 2 CFR § 200.308 (revision of budget or program plan);
- 2 CFR § 200.309 (modifications to period of performance); and
- 2 CFR § 200.320 (c)(4) (noncompetitive procurement).

The following additional requirements apply:

- 2 CFR Part 25, Universal Identifier and System for Award Management;
- 2 CFR Part 170, Reporting Subaward and Executive Compensation Information; and,
- 2 CFR Part 180, OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Non-procurement).

Appendix II to 2 CFR Part 200

2 CFR § 200.327 states that non-Federal entities' contracts must contain the applicable provisions described in Appendix II - Contract Provisions for Non-Federal Entity Contracts Under Federal Awards. Please refer to 2 CFR 200, Appendix II for additional detail on the applicability of the federal provisions below to State contracts:

- Equal Employment Opportunity
- Contact Work Hours and Safety Standards Act
- Rights to Inventions Made Under a Contract or Agreement
- The Clean Air Act
- The Federal Water Pollution Control Act, as amended
- Byrd Anti-Lobbying Amendment
- Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act
- Prohibition on certain telecommunications and video surveillance services or equipment as described in 2 CFR § 200.216

Domestic Preference

For procurement, states should follow the Uniform Guidance's Domestic Preference requirements listed at 2 CFR § 200.317. However, the more stringent requirements of the Build America, Buy America Act do not apply unless SFR funds are used in conjunction with funds for which that Act's requirements are triggered.

2 CFR § 200.317 Procurements by States

"When procuring property and services under a Federal award, a State must follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will comply with §§ 200.321, 200.322, and 200.323 and ensure that every purchase order or other contract includes any clauses required by § 200.327. All other non-Federal entities, including subrecipients of a State, must follow the procurement standards in §§ 200.318 through 200.327."

2 CFR § 200.322 Domestic Preferences for Procurement

"(a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

(b) For purposes of this section:

(1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber."

SFR FAQ 6.18: "Do the Buy America Preference requirements for infrastructure projects apply to awards made under the SLFRF program?

Awards made under the SLFRF program are not subject to the Buy America Preference requirements set forth in section 70914 of the Build America, Buy America Act included in the Infrastructure Investment and Jobs Act, Pub. L. 117-58."[18]

SFR FAQ 6.19: "Do the Buy America Preference requirements for infrastructure projects apply to SLFRF-funded projects if they are supplemented with funding from other federal financial assistance programs?

Infrastructure projects funded solely with SLFRF award funds are not subject to the Buy America Preference requirements set forth in section 70914 of the Build America, Buy America Act included in the Infrastructure Investment and Jobs Act, Pub. L. 117-58. SLFRF recipients may be otherwise subject to

[18] Final Rule FAQ, p. 43.

the Buy America Preference requirements when SLFRF award funds are used on an infrastructure project in conjunction with funds from other federal programs that require compliance with the Buy America Preference requirements. Recipients are advised to consult with the other federal agencies administering federal financial assistance that is being blended or braided with SLFRF funds regarding the applicability of the Buy America Preference requirements."[19]

Cost Principles

Subpart E of the Uniform Guidance is a comprehensive set of "principles [that] must be used in determining the allowable costs of work performed by the non-Federal entity under Federal awards. These principles also must be used by the non-Federal entity as a guide in the pricing of fixed-price contracts and subcontracts where costs are used in determining the appropriate price."[20]

It includes definitions of reasonable costs (Section 200.404), allocable costs (200.405), and direct and indirect costs (200.413 and 200.414, respectively). Recipients spending SFR funds on contractors and/or internal administrative costs should ensure their internal procedures and any outward-facing agreements comply fully with this subpart.

Administrative Costs

Treasury's Compliance and Reporting Guidance provides specific guidelines for charging administrative costs in a manner consistent with the requirements of Subpart E of the Uniform Guidance:

"Recipients may use funds for administering the SLFRF program, including costs of consultants to support effective management and oversight, including consultation for ensuring compliance with legal, regulatory, and other requirements. Further, costs must be reasonable and allocable as outlined in 2 CFR 200.404 and 2 CFR 200.405. Pursuant to the SLFRF Award Terms and Conditions, recipients are permitted to charge both direct and indirect costs to their SLFRF award as administrative costs as long as they are accorded consistent treatment per 2 CFR 200.403. Direct costs are those that are identified specifically as costs of implementing the SLFRF program objectives, such as contract support, materials, and supplies for a project. Indirect costs are general overhead costs of an organization where a portion of such costs are allocable to the SLFRF award such as the cost of facilities or administrative functions like a director's office. Each category of cost should be treated consistently in like circumstances as direct or indirect, and recipients may not charge the same administrative costs to both direct and indirect cost categories, or to other programs. If a recipient has a current Negotiated Indirect Costs Rate Agreement ('NICRA') established with a Federal cognizant agency responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals, then the recipient may use its current NICRA. Alternatively, if the recipient does not have a NICRA, the recipient may elect to use the de minimis rate of 10 percent of the modified total direct costs pursuant to 2 CFR 200.414(f)."[21]

[19] Final Rule FAQ, p. 43.
[20] 2 CFR 200.401.
[21] SFR Reporting Guidance, pp. 8-9.

Subrecipient Monitoring & Management

Subrecipients are pass-through entities that receive SFR funds in order to distribute benefits to end users, retaining discretion to determine eligibility for a program with a public purpose.[22] "Recipients are accountable to Treasury for oversight of their subrecipients in accordance with 2 CFR 200.332, including ensuring their subrecipients comply with… [all] applicable federal statutes, regulations, and reporting requirements."[23] Recipients should accordingly ensure strict compliance with the detailed compliance and monitoring requirements of 2 CFR 200.332 when managing subrecipient relationships.

Formal Procurement Methodology & the Brooks Act

While 2 CFR 200.320 outlines the requirements of formal procurement methodologies that recipients and subrecipients must follow, it does not, in and of itself, mandate the use of qualifications-based procurement methodology for obtaining architectural or engineering services.[24] As the Final Rule does not mention qualifications-based procurement either, the Brooks Act does not appear to apply to SFR procurements.

Protected Personally Identifiable Information (PII) & the Privacy Act

In accordance with Uniform Guidance (including but not limited to, sections 200.303 and 200.338) and the Privacy Act of 1974 (5 U.S.C. § 552a),[25] the recipient is required to "take reasonable measures to safeguard protected personally identifiable information and other information the Federal awarding agency or pass-through entity designates as sensitive or the non-Federal entity considers sensitive consistent with applicable Federal, State, local, and tribal laws regarding privacy and responsibility over confidentiality."[26]

Civil Rights Compliance

Per the SFR Compliance and Reporting Guidance, "Recipients of Federal financial assistance from the Treasury are required to meet legal requirements relating to nondiscrimination and nondiscriminatory use of Federal funds. Those requirements include ensuring that entities receiving Federal financial assistance from the Treasury do not deny benefits or services, or otherwise discriminate on the basis of race, color, national origin (including limited English proficiency), disability, age, or sex (including sexual orientation and gender identity), in accordance with the following authorities: Title VI of the Civil Rights Act of 1964 (Title VI) Public Law 88-352,[27] 42 U.S.C. 2000d-1 et seq., and the Department's implementing regulations, 31 CFR part 22; Section 504 of the Rehabilitation Act of 1973 (Section 504),[28] Public Law 93-112, as amended by Public Law 93-516, 29 U.S.C. 794; Title IX of the Education Amendments of 1972 (Title IX),[29] 20 U.S.C. 1681 et seq., and the Department's implementing regulations, 31 CFR part 28; Age Discrimination Act of 1975, Public Law 94-135, 42 U.S.C. 6101 et seq., and the Department

[22] 2 CFR 200.331(a).
[23] SFR Reporting Guidance, p. 4.
[24] 2 CFR 200.320(b).
[25] Privacy Act of 1974.
[26] 2 CFR 200.303.
[27] Title VI of the Civil Rights Act of 1964.
[28] Section 504 of the Rehabilitation Act of 1973.
[29] Title IX of the Education Amendments of 1972.

implementing regulations at 31 CFR part 23.

In order to carry out its enforcement responsibilities under Title VI of the Civil Rights Act, Treasury will collect and review information from recipients to ascertain their compliance with the applicable requirements before and after providing financial assistance. Treasury's implementing regulations, 31 CFR part 22, and the Department of Justice (DOJ) regulations, Coordination of Non-discrimination in Federally Assisted Programs, 28 CFR part 42, provide for the collection of data and information from recipients (see 28 CFR 42.406). Treasury may request that recipients submit data for post-award compliance reviews, including information such as a narrative describing their Title VI compliance status." [30]

Single Audit Requirements

Per the SFR Compliance and Reporting Guidance, "Recipients and subrecipients that expend more than $750,000 in Federal awards during their fiscal year will be subject to an audit under the Single Audit Act and its implementing regulation at 2 CFR Part 200, Subpart F regarding audit requirements."[31]

The Final Rule FAQs note "For information related to Single Audit requirements specifically, please refer to the Compliance Supplement materials[32] released by the Office of Management and Budget."[33]

[30] SFR Reporting Guidance, p. 12.
[31] SFR Reporting Guidance, p. 12.
[32] Office of Federal Financial Management, Resources and Other Information ("Compliance Supplement materials"). Accessed July 18, 2022.
[33] Final Rule FAQ, p. 45.