

Applicability of Federal Requirements to Vermont State Fiscal Recovery Fund Projects

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Contents

Interim Final Rule Guidance.....	2
Davis-Bacon Act	2
National Environmental Policy Act (NEPA)	4
Nonfederal Matching Requirements	4
Cash Management Improvement Act.....	5
Uniform Guidance.....	5
Domestic Preference.....	7
Protected Personally Identifiable Information (PII) and the Privacy Act.....	8
Civil Rights Compliance	8

This document summarizes the applicability of key federal requirements to Vermont’s use of SFR, based on federal requirements outlined in the Interim Final Rule and Treasury FAQs.

Interim Final Rule Guidance

Per Treasury’s Interim Final Rule § 35.9: “Compliance with applicable laws. 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 Interim Final Rule and Uniform Guidance.

Federal Requirement	Is the federal requirement generally applicable to Vermont's SFR uses?	
	Yes	No
Davis-Bacon Act*		x
National Environmental Policy Act		x
Cash Management Improvement Act		x
Uniform Guidance	✓	
Domestic Preference	✓	
The Privacy Act (PII)	✓	
Civil Rights Compliance	✓	

* While Davis-Bacon does not generally apply to Vermont’s SFR projects, an alternate set of labor requirements applies to SFR infrastructure projects over \$10 million. Please see sections below for additional detail.

Davis-Bacon Act

The Davis-Bacon Act does **not** apply to projects funded solely with SFR awards, but an alternative set of labor requirements apply to SFR-funded infrastructure projects over \$10 million.

SFR FAQ 6.17: “Are eligible infrastructure projects 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 CSFRF/CLFRF program, except for CSFRF/CLFRF-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 (CSFRF/CLFRF 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 CSFRF/CLFRF 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 4.10 concerning projects funded with both CSFRF/CLFRF funds and other sources of funding.

Treasury has indicated in its Interim Final Rule that it is important that necessary investments in water, sewer, or broadband infrastructure be carried out in ways that produce high-quality infrastructure, avert

¹ Federal Register, Vol. 86, No. 93, May 17, 2021, Rules and Regulations (p. 26823).

disruptive and costly delays, and promote efficiency. Treasury encourages recipients to ensure that 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 construction 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, page 21, for more detailed information on the reporting requirement.”²

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

“For projects over \$10 million:

- 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.¹⁹ 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;
 - How the recipient will minimize risks of labor disputes and disruptions that would jeopardize timeliness and cost-effectiveness of the project; and
 - How the recipient will provide a safe and healthy workplace that avoids delays and costs associated with workplace illnesses, injuries, and fatalities;

² Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, July 19, 2021 (p. 33).

- 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.”³

National Environmental Policy Act (NEPA)

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

SFR FAQ 6.4: “Does the National Environmental Policy Act (NEPA) apply to eligible infrastructure projects?”

NEPA does not apply to Treasury’s administration of the Funds. 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.”⁴

Nonfederal Matching Requirements

SFR may not be used as non-federal match for other Federal programs whose statute or regulations bar the use of Federal funds to meet matching requirements.

SFR FAQ 4.4: “May recipients use funds to satisfy nonfederal matching requirements under the Stafford Act? May recipients use funds to satisfy nonfederal matching requirements generally?”

Fiscal Recovery Funds are subject to pre-existing limitations in other federal statutes and regulations and may not be used as non-federal match for other Federal programs whose statute or regulations bar the use of Federal funds to meet matching requirements. For example, expenses for the state share of Medicaid are not an eligible use. For information on FEMA programs, please see [here](#).”⁵

Examples of ineligible uses of SFR for matching requirements: state share of Medicaid, state share of CWSRF and DWSRF (see FAQ below from Treasury).

SFR FAQ 6.3: “May recipients use funds as a non-federal match for the Clean Water State Revolving Fund (CWSRF) or Drinking Water State Revolving Fund (DWSRF)?”

Recipients may not use funds as a state match for the CWSRF and DWSRF due to prohibitions in utilizing federal funds as a state match in the authorizing statutes and regulations of the CWSRF and DWSRF.”⁶

³ Coronavirus State and Local Fiscal Recovery Funds Guidance on Recipient Compliance and Reporting Responsibilities, June 24, 2021 (p. 21).

⁴ Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, July 19, 2021 (p. 28).

⁵ Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, July 19, 2021 (p. 19).

⁶ Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, July 19, 2021 (p. 28).

Cash Management Improvement Act

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

SFR FAQ 10.3: “Are recipients required to remit interest earned on CSFRF/CLFRF payments made by Treasury?”

No. CSFRF/CLFRF 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. CSFRF/CLFRF payments made by Treasury to local governments and Tribes are not subject to the requirement of 2 CFR 200.305(b)(8)–(9) to maintain balances in an interest-bearing account and remit payments to Treasury. Moreover, interest earned on CSFRF/CLFRF payments 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 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.”⁷

Uniform Guidance

Per Treasury’s SFR Compliance and Reporting Guidance, “the SLFRF awards are generally subject to the requirements set forth in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR Part 200 (the ‘Uniform Guidance’). 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.”⁸

SFR FAQ 9.3: “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 for detail on the specific provisions of the Uniform Guidance that do not apply to this program. The Assistance Listing will be available on beta.SAM.gov.⁹

⁷ Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, July 19, 2021 (p. 38).

⁸ Coronavirus State and Local Fiscal Recovery Funds Guidance on Recipient Compliance and Reporting Responsibilities, June 24, 2021 (p. 6).

⁹ Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, July 19, 2021 (p. 36).

2 CFR Policy Requirements

The [Assistance listing](#) for the State Fiscal Recovery Fund provides information on the applicability of 2 CFR policy requirements, summarized below.¹⁰

The following 2 CFR policy requirements apply:¹¹

- 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

Single Audit Requirements. 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.

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

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

Additional 2 CFR Policies

The following 2 CFR Policy 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).

¹⁰ Coronavirus State and Local Fiscal Recovery Funds Guidance on Recipient Compliance and Reporting Responsibilities, June 24, 2021 (p.2).

¹¹ Assistance Listing: Coronavirus State and Local Fiscal Recovery Funds (<https://sam.gov/fal/7cecfdef62dc42729a3fdcd449bd62b8/view>), Oct 29, 2021.

Appendix II to 2 CFR Part 200

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 Domestic Preference requirements under Uniform Guidance 2 CFR § 200.317.

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.”

Protected Personally Identifiable Information (PII) and 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), 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.”¹²

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, 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), 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), 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 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.”¹³

¹² Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, §200.303.

¹³ Coronavirus State and Local Fiscal Recovery Funds Guidance on Recipient Compliance and Reporting Responsibilities, June 24, 2021 (p. 11).