



GUIDE TO REPORTING AND COMPLIANCE OBLIGATIONS

WEST VIRGINIA ARPA BROADBAND INVESTMENT PLAN SUBRECIPIENTS

WEST VIRGINIA DEPARTMENT OF ECONOMIC DEVELOPMENT

OFFICE OF BROADBAND

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Guide to Reporting and Compliance Obligations for West Virginia ARPA Broadband Investment Plan Grant Recipients

This Guide to Reporting and Compliance Obligations for West Virginia ARPA Broadband Investment Plan Grant Recipients covers three different programs administered by the West Virginia Department of Economic Development, Office of Broadband (WVDED). These programs are the GigReady Incentive Program (GigReady), the Line Extension Advancement and Development Program (LEAD), and the Major Broadband Project Strategies Program (MBPS).

This document was developed in cooperation with the West Virginia Broadband Enhancement Council and Tilson Technology Management, Inc. This document is intended as a guide, not as a substitute for a thorough knowledge of state and Federal laws and regulations referenced in this document. This document may be updated to more fully incorporate requirements. In the event of any discrepancy, Federal regulations will prevail. The Grantee is responsible for compliance with the most current and stringent of any applicable local, State or Federal law or regulation(s).

The WVDED does not discriminate on the basis of age, race, color, religion, sex, national origin, familial status or disability in the admission, access to, treatment of, or employment in, its Federally assisted programs or activities.

For more information, visit <https://broadband.wv.gov>, or call the WVDED at 304-558-2234.

A Note on Sources of Funds

Under the American Rescue Plan Act (ARPA), the US Department of Treasury has implemented two different funding sources for broadband infrastructure projects: 1.) The State and Local Fiscal Recovery Fund (SLFRF) program; and 2.) The Capital Projects Fund Program. Grantees are responsible for being aware which source of funds applies to the Grantee's award. While some requirements of the programs are similar, these programs are separate and may have different requirements regarding eligibility and reporting and compliance, as detailed below. In particular, while detailed reporting requirements and a final rule have been published for the SLFRF program, such detailed compliance requirements have not yet been published for the CPF program.

Responsibilities – Recipients and Subrecipients

Subrecipients (municipal and county governments, non-profits, and private entities) receive subawards from the Recipient (the State) to carry out a Project. Subrecipients/grantees must comply with statutory/regulatory requirements and terms and conditions of award. Subrecipients must provide the WVDED with any and all information requested by the WVDED, so that it may report to the Treasury on subrecipient's/grantee's use of grant funds.

Subaward definition

An award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity (PTE). It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. A subaward may be provided

through any form of legal agreement, including an agreement that the pass-through entity considers a contract.¹

Access to Subrecipient Records

Recipients and subrecipients/grantees must maintain records and financial documents for five years after all funds expended or returned.²

Subrecipient must permit the Pass-Through Entity (WVDED, Office of Broadband) and auditors access to subrecipient's records and financial statements as necessary.³

SAM.gov Registration Requirement

In addition to the requirements above, subrecipients/grantees must have an active registration with the System for Award Management (SAM) (<https://www.sam.gov>).⁴

Enforcement Action for Noncompliance⁵

Enforcement action measures may be taken against noncompliant subrecipients by recipients/PTE's, including requests from Recipients/WVDED, Office of Broadband that Grantees remediate any deficiencies.

Eligible and Ineligible Costs

While informed by the Federal Uniform Guidance⁶ grantees must follow the WVDED's published list of eligible and ineligible costs, depending on which program the grantee is participating in as follows.⁷ If an eligible or ineligible cost is unique to a particular program, it is noted prior to that item. Eligible project activities and costs include:

1. Network and access equipment costs;
2. Outside plant costs;
3. Reasonable make-ready and one-time pole licensing costs, excluding recurring pole attachment payments;
4. Equipment shelter, land, site preparation, and site restoration costs;
5. Customer premises equipment: Funding only covers up to the network demarcation point (e.g., NID or ONT);
6. Professional services: Includes engineering and project management costs involved in designing and constructing the proposed project;
7. Testing;

¹ Uniform Guidance, 2 CFR §200.1.

² See Grant Disbursement Agreement, Section 9.02(a,c) (Record Retention).

³ 2 CFR §200.332(a)(5), Uniform Guidance.

⁴ SLFRF Treasury Compliance and Reporting Guidance, (June 10, 2022), p.12.

⁵ See §200.339 Uniform Guidance for further information.

⁶ Subpart E of 2 CFR 200; as well as 48 CFR §31.2 for private entities.

⁷ GigReady Program Procedures (pgs. 4-6); LEAD program procedures (pgs. 2-4); MBPS Program Procedures, (pgs. 2-4). Program procedures are located at broadband.wv.gov. **Error! Hyperlink reference not valid.**

8. For the GigReady and MBPS programs, tower costs, including the construction of new towers (where required infrastructure does not exist) and costs involved with structural changes to existing towers;
9. Other upfront costs: Includes any other upfront costs not covered in other categories, such as site preparation, permits, required licenses, sales tax applicable to new equipment purchases, shipping and warehousing expenses, and miscellaneous minor material; and
10. Long-term leases, defined as leases for a duration longer than 1 year, of facilities required to provide broadband service on the proposed project.

Internal labor costs incurred as part of eligible project activities are only reimbursable up to the proportion of employees' time spent exclusively on project activities during the period for which reimbursement is sought. When seeking reimbursement, applicants must submit such costs as line-items and provide supporting documentation for the expense. Supporting documentation shall include time spent by each employee on project activities, total time spent by each employee during the period for which reimbursement is sought, and an hourly cost that may include employee salary, itemized payroll taxes and benefits. Indirect costs are not reimbursable.

Costs that appear excessive and/or without justification and costs not considered eligible will not be reimbursed.

Ineligible costs include:

1. Internal administrative activities;
2. Fundraising activities;
3. Computers or office equipment;
4. Vehicles;
5. Equipment owned or leased by the customer, including routers and modems, and any other costs beyond the network interface point,
6. Operating expenses,
7. Expenses incurred prior to the date of the grant award announcement;
8. For GigReady and MBPS, acquisition of spectrum licenses;
9. Short-term operating leases;
10. Payment of interest or principal on outstanding debt instruments, or other debt service costs;
11. Fees or issuance costs associated with the issuance of new debt;
12. Satisfaction of any obligation arising under or pursuant to a settlement agreement, judgment, consent decree, or judicially confirmed debt restructuring plan in a judicial, administrative, or regulatory proceeding; or

13. To support or oppose collective bargaining.⁸

Expenditures on ineligible costs cannot be used as match. Projects must primarily serve Targeted addresses. Facilities that are needed to deliver last-mile broadband service to Targeted addresses and incidentally cover non-Targeted addresses are reimbursable, but expenditures solely to benefit non-Targeted addresses are not reimbursable. Customer drops, installations, and equipment at non-Targeted addresses are not eligible for reimbursement.

Allowable Costs

In addition to State requirements, grantees must comply with Federal requirements related to allowed costs. While conformance with State requirements will generally result in conformance with Federal requirements, grantees must comply with any additional applicable Federal requirements or prohibitions, even when not specifically required by the State.

Reasonable Costs – Factors (For-profit/private Entities)⁹

Specific to for-profit private subrecipients, factors affecting whether a cost is reasonable or not include:

- Whether it is the type of cost generally recognized as ordinary and necessary for the conduct of the contractor's business or the contract performance;
- Generally accepted sound business practices, arm's length bargaining, and Federal and State laws and regulations;
- The contractor's responsibilities to the Government, other customers, the owners of the business, employees, and the public at large; and
- Any significant deviations from the contractor's established practices¹⁰

Reasonable Costs – Factors (non-for-profit/local government entities)

For non-profit/government entities, reasonable cost factors to consider are¹¹:

- Whether the costs are those of a type generally recognized as ordinary and necessary for the operation of the Subrecipient/Grantee or the proper and efficient performance of the Federal award;
- The restraints or requirements imposed by such factors as: sound business practices; arm's-length bargaining; Federal, State, local, tribal, and other laws, and regulations; and Terms and conditions of the Federal award
- Market process for comparable goods or services for the geographic area

⁸ This does not affect the ability to use funds to comply with 41 C.F.R. 60-1.4.

⁹ 48 CFR 31.2

¹⁰ 48 CFR 31.201-3.

¹¹ 2 CFR §200.404.

- Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the subrecipient.
- Whether the non-profit/government entity Subrecipient/Grantee significantly deviates from its established practices and policies regarding the incurrence of costs.

Allocable Costs – Factors (Private/For-Profit Entities)¹²

For for-profit/private entity Grantees, threshold considerations for whether the costs are allocable to a Federal award are if it:

- Is incurred specifically for the contract;
- Benefits both the contract and other work, and can be distributed to them in reasonable proportion to the benefits received; or
- Is necessary to the overall operation of the business, although a direct relationship to any particular cost objective cannot be shown.

Allocable Costs – Factors (non-profit/government Entities)¹³

Costs are allocable to a particular Federal award or other cost objective if the goods or services involved are chargeable or assignable to that Federal award or cost objective in accordance to relative benefits received. The standard is met if the cost:

- Is incurred specifically for the Federal award;
- Benefits both the Federal award and the other work of the Subrecipient/Grantee, and can be distributed in proportions that may be approximated using reasonable methods; and
- Is necessary to the overall operation of the Subrecipient/Grantee entity and is assignable in part to the Federal award in accordance with the principles of this subpart (Cost Principles).
- Any costs allocable to a particular Federal award may not be charged to other Federal awards. However, this prohibition would not preclude the non-Federal entity from shifting costs that are allowable under two or more Federal awards in accordance with existing Federal statutes, regulations, or the terms and conditions of the Federal awards.
- **Direct Cost allocation principles:** If a cost benefits two or more projects or activities in proportions that can be determined without undue effort or cost, the cost must be allocated to the projects based on the proportional benefit. If a cost benefits two or more projects or activities in proportions that cannot be determined, then the costs may be allocated or transferred to benefited projects on any reasonable documented basis.

¹² 48 CFR §31.201-4.

¹³ Uniform Guidance, §200.405.

- **Cost Accounting Standards (CAS):** If the contract is subject to cost accounting standards, costs must be allocated to the contract pursuant to the Cost Accounting Standards. If CAS is applicable, allocation of costs in accordance with CAS takes precedence over the allocation provisions above.

Costs Reimbursed by Other Federal/State Funding Streams

If considering deploying broadband to locations where there are existing enforceable Federal or State funding commitments for wireline service at speeds of at least 100 Mbps download and 20 Mbps upload speed, subrecipients should ensure that neither CPF nor SLFRF funding will be used for costs that will be reimbursed by these other Federal or State funding stream(s).¹⁴

Policy Regarding Projects Co-Incident with Other Existing Federal/State Commitments

In situations where proposed ARPA-funded project areas overlap or touch upon project areas where there are existing federal or state broadband infrastructure funding commitments, The Office of Broadband will evaluate such instances on a case-by-case basis, as described below.

The WV Office of Broadband will consider funding projects which are incident to or which share equipment or facilities with areas funded by other federal programs, subject to certain requirements. In areas where there is an existing enforceable federal or state funding commitment for service that meets or exceeds 100 Mbps download by 20 Mbps upload, grantees must ensure that ARPA funded projects address an identified need for additional broadband investment that is not met by these existing federal or state commitments. Grantees must also ensure that ARPA funds will not be used for costs that will be reimbursed by the other federal or state funding streams absent a demonstration that each of its projects provides additional public benefits and that the additional public funding used for deployment of projects to those areas is justified. The Office of Broadband will consider funding a reasonable and proportional share of equipment and facilities used in common between projects upon a request of the applicant and submission of the combined costs of the common network elements, with a proposed cost share. Cost sharing must also remain consistent with the requirements of other federal programs. Grantees may use all available state and federal datasets in making this justification.

Restrictions on Uses of SLFRF Funds¹⁵

The following uses of SLFRF funds by Subrecipients are already largely excluded under the State's program procedures, however the following Federal restrictions shall apply regardless:

- SLFRF funds may not be deposited into a pension fund;
- SLFRF funds may not be used to offset a reduction in net tax revenue caused by recipient's change in law, regulation, or administrative interpretation;
- SLFRF funds may not be used as non-Federal match where prohibited; and
- SLFRF funds may not be used directly to service debt, satisfy a judgment, or contribute to a "rainy day" fund

¹⁴ Treasury Capital Projects Fund Guidance (September 2021), p.4, and SLFRF Final Rule at p.298.

¹⁵ SLFRF Final Rule, (January 27, 2022), pgs. 9-10.

Funds Must Be Used for Eligible Purposes¹⁶

Recipients and subrecipients must maintain procedures for obtaining information to show beneficiary/subrecipient/contractor eligibility, including a valid SAM.gov registration.

Procurement Requirements – All Grantees

Related to documentation required in the Grantee's Grant Agreement with the WVDED, Office of Broadband, WVDED grantees will be required to provide their procurement policy as part of its evidentiary materials list (Exhibit C to the Grant Agreement). All grantees shall supply their procurement guidelines to the Office of Broadband as part of Step One to the Notice to Proceed Process, as described later in this guidance document.

In addition, the WVDED will require grantees to provide documentation of procedures used to procure any subcontractors associated with the awardees' project.

Conflicts of Interest¹⁷

As per the Grantee's Grant Agreement with the WVDED, neither the Grantees nor its officers or members, employees, or subgrantees may have an interest nor shall they acquire any interest, direct or indirect which would conflict or compromise in any manner the performance of services.

Also as part of its Agreement with the WVDED, the Grantee shall periodically question its officers, members and employees concerning such interests and report in detail to the WVDED if it discovers any such interest. Grantees will also establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal gain.

Transactions with Affiliated Business Entities or Relatives:

Also as per the Grant Agreement, Subrecipients/Grantees must make a full disclosure in writing to the WVDED of any corporation, partnership, sole proprietorship, or other business entity of any kind which is a wholly or partially owned entity of the Grantee or whose relatives supply goods or services to Grantee or work for or provide services to Grantee.

Strong Practices in Construction

In general, Treasury encourages Subrecipients/Grantees to ensure Capital Projects incorporate strong labor standards, including labor agreements and local hire provisions that offer wages at or above the prevailing rate and include local hire provisions. Federal Davis-Bacon Act prevailing wage rate requirements do not apply to projects funded solely by the Capital Projects Fund (CPF) program or the State and Local Fiscal Recovery Program (SLFRF). If, however, CPF or SLFRF funds are used in conjunction with another source of funds which requires Davis-Bacon Act compliance, then the project may be subject to compliance with the Davis-Bacon Act.

¹⁶ Treasury SLFRF Compliance and Reporting Guidance, Version 4.0 (June 10, 2022), p. 9.

¹⁷ 2 CFR §200.318(c).

Quarterly Project and Expenditure Labor Reporting Requirements – Projects Above Certain Thresholds

The following reporting requirements apply to Grantees for SLFRF-funded projects over \$10 million in expected total cost, and for CPF-funded projects receiving \$5 million or more in CPF funding based on expected total cost:

1. Grantees 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 Grantee 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. (As determined by US Secretary of Labor in accordance with subchapter IV of chapter 31 of Title 40, United States Code (“Davis-Bacon Act”))
- Grantees must maintain sufficient records to substantiate this information upon request.

2. In addition, Grantees 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 the above 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.

3. Grantees will also report on whether the project prioritizes local hires.

4. Grantees will report on whether the project has a **Community Benefit Agreement**, with a description of any such agreement.

Completion for Construction

Whether funded by Capital Projects Funds (CPF) or State and Local Fiscal Recovery funds (SLFRF), depending on the program the grantee is participating in, as outlined in the Program Procedures and the Grant Disbursement agreement between Grantees and projects must reach completion within a certain timeframe.

For LEAD projects, construction must be able to be completed and ready to serve customers within 12 months from award; this may be extended up to an additional 6 months for delays not caused by the Grantee. Customer drops at targeted addresses requesting new service are eligible for reimbursement within 24 months of award;

For MBPS and GigReady projects, Construction must be able to be completed and ready to serve customers within 24 months from award; this may be extended up to an additional 6 months for delays not caused by the Grantee. Customer drops at targeted addresses requesting new service are eligible for reimbursement within 24 months of award.

Reporting Requirements

Grantees shall submit Quarterly Project and Expenditure Reports through the ZoomGrants platform, including the data listed in Exhibit H (Quarterly Project and Expenditure Report), attached to grantee's Grant Agreement. As this information is due from the State to the Treasury within 30 days following the end of the quarter, Grantees must submit these reports to the State prior to that time. As such, the WVDED, Office of Broadband will require that subrecipients provide Quarterly Reports no later than five (5) business days following the end of the quarter to the WVDED, Office of Broadband, in accordance with the following schedule:

Report	Year	Quarter	Period Covered	Due Date
1	2022	1	January 1 - March 31	April 7, 2022
2	2022	2	April 1 - June 30	July 8, 2022
3	2022	3	July 1 - September 30	October 7, 2022
4	2022	4	October 1 - December 31	January 6, 2023
5	2023	1	January 1 - March 31	April 7, 2023
6	2023	2	April 1 - June 30	July 10, 2023
7	2023	3	July 1 - September 30	October 6, 2023
8	2023	4	October 1 - December 31	January 8, 2024
9	2024	1	January 1 - March 31	April 5, 2024
10	2024	2	April 1 - June 30	July 8, 2024
11	2024	3	July 1 - September 30	October 7, 2024
12	2024	4	October 1 - December 31	January 8, 2025

In general, Quarterly Reports cover the following information about awarded projects:

- General information identifying the report (date, quarter ending)
- Completion status
- Gross Revenues from Federal funding
- Key metrics of the project (miles of plant; addresses passed)
- Project Timelines
- Service of targeted addresses/speeds
- Types of addresses served (residential/business)
- Charges for service
- Program income
- Expenditure information
- Project accomplishments and key milestones
- Project progress/status
- Compliance of project with applicable Federal/State labor laws

This information is likely subject to be updated as Treasury releases further guidance in the coming months.

State Broadband Reporting Requirements

Subrecipients that receive any State or Federal moneys, and which have used that money to install infrastructure used for broadband services, must provide information the WVED, Office of Broadband on an annual basis.¹⁸ In particular, and in accordance with W.Va. Code §31G-1A-3, awardees must agree to provide information about broadband availability, pricing, and speeds. Address-level reporting will be required immediately for grant-funded projects but may be deferred for non-grant funded projects to

¹⁸ WV Code, §31G-1A-3(d).

allow coordination with the already-launched Federal Communications Commission Digital Opportunity Data Collection initiative.¹⁹

Oversight/Monitoring

As specified in its Grant Agreement with the WVDED, Grantees shall fully cooperate and assist the WVDED and its authorized representatives deemed necessary and appropriate by the WVDED.

Audits

For-profit entities/subrecipients that receive SLFRF subawards are not subject to Single Audit requirements. However, they are subject to other audits as deemed necessary by authorized governmental entities, including Treasury, the US Government Accountability Office (GAO), the Pandemic Response Accountability Committee (PRAC), and the Treasury's Office of Inspector General (OIG).²⁰ For-profit, private grantees shall cooperate with the WVDED and the US Department of Treasury with respect to any audit of the Department's programs or this award. Further, as agreed to in its Grant Distribution Agreement with the WVDED, grantees must review, understand, and comply with the State accountability requirements of WV Code §12-4-14.

WV Grant Transparency and Accountability Act (WV Code §12-4-4)

Both private, for-profit Grantees, as well as non-Federal entity Grantees, must comply with the WV State Grant Transparency and Accountability Act (WV Code §12-4-14). Under the Act,

- Any grantee receiving one or more State grants (defined as funding provided by a State spending unit regardless of the original source) in the amount of \$50,000 or more in the aggregate in a State's fiscal year shall file with the grantor and the State Auditor a report of the disbursement of the State grant funds.
- **EXCEPTIONS:** When the grantor causes an audit, the audit is performed using generally accepted government auditing standards (GAAP), and a copy is available for public inspection, then no report is required to be filed.
- If funds are Federal pass-through funds subject to the Single Audit Act, such funds are not considered "State grants"
- If Grantees receive a State grant in an amount less than \$50,000, or if no report is required as detailed above, then Grantees must file with the grantor and State Auditor a sworn statement of expenditures made under the grant.
- The above applies as well to any subgrantee receiving money from a grantee who was awarded a State grant.
- "Report" means an engagement, such as an agreed-upon procedures engagement or other attestation engagement, performed and prepared by a certified public accountant

¹⁹ <https://docs.fcc.gov/public/attachments/DA-22-182A1.pdf>

²⁰ Treasury SLFRF Compliance and Reporting Guidance, (Version 4.0, June 10, 2022) p. 12, footnote 5.

to test whether State grants were spent as intended. The term “report” does not mean a full-scope audit or review of the person receiving State funds.

- Reports and sworn statements of expenditures required shall be filed within two years of the end of the grantee’s fiscal year in which the disbursement of State grant funds by the grantor was made. The report shall be made by an independent certified public accountant at the cost of the grantee. State grant funds may be used to pay for the report if the applicable grant provisions allow. The scope of the report is limited to showing that the State grant funds were spent for the purposes intended when the grant was made.

Affordable Connectivity Plan (ACP) Participation Requirements

Federal Broadband Program Participation Requirement²¹

Service providers for completed Capital Projects Fund (CPF) BB infrastructure Projects and State and Local Fiscal Recovery Fund (SLFRF) projects must participate in Federal programs providing low-income consumers subsidies on BB internet access services. Recipients must require the service provider for a completed broadband infrastructure investment project that provides service to households to participate in the Federal Communications Commission’s (FCC) Affordable Connectivity Program (ACP).

Matching Funds Requirements

For LEAD and MBPS recipients, matching funds must be spent by applicant prior to reimbursement by grant funds. Match must be spent on allowed expenditures.

Compliance with Applicable Laws

Subrecipients/grantees are responsible for complying with all applicable Federal, Tribal, and State laws.

National Defense Authorization Act

Investments in capital projects must be carried out in ways that comply with applicable Federal laws, including the 2019 National Defense Authorization Act (NDAA).²²

Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment²³

In particular, Subrecipients are prohibited from obligating or expending loan or grant funds to procure or obtain, extend a contract to procure or obtain, or enter into a contract to procure or obtain equipment, services, or systems that use “covered telecommunications equipment” produced by:

- Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);

²¹ GigReady Program Procedures (pgs. 8-9); LEAD program procedures (p. 7; MBPS Program Procedures, (p.7). Program procedures are located at <https://broadband.wv.gov/>.

²² Capital Projects Fund Treasury Guidance (September 2021), p. 4, citing Uniform Guidance (2 CFR Part 200), §200.216.

²³ See §200.471 Uniform Guidance, citing §200.216 of the same and Public Law 115-232 §889.

- Video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- Telecommunications or video surveillance services provided by such entities or using such equipment.
- Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the FBI, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a foreign country.

Civil Rights Compliance²⁴

Subrecipients 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 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.

As agreed to in its Grant Distribution Agreement with the WVDED, the Subrecipient/Grantee shall comply with all Federal and State laws, rules and regulations that prohibit any unlawful discrimination or violations of civil rights. These include but are not limited to:

- Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color or national origin;²⁵
- Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination on the basis of sex;²⁶
- Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicaps;²⁷
- The Age Discrimination Act of 1975, as amended, which prohibits discrimination on the basis of age;²⁸
- The Drug Abuse Office and Treatment Act of 1972, as amended, relating to nondiscrimination on the basis of drug abuse;²⁹

²⁴ Capital Projects Fund Treasury Guidance (September 2021), p.19-20; Treasury SLFRF Guidance, (Version 4.0, June 10, 2022) p. 12.

²⁵ P.L. 88-352.

²⁶ 20 U.S.C. §§1681 - 1683, and 1685-1686.

²⁷ 29 U.S.C. §794.

²⁸ 42 U.S.C. §§6101-6107.

²⁹ P.L. 92-255.

- The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism;³⁰
- Sections 523 and 527 of the Public Health Service Act of 1912, as amended, relating to confidentiality of alcohol and drug abuse patient records;³¹
- Title VIII of the Civil Rights Act of 1968, as amended, relating to nondiscrimination in the sale, rental or financing of housing;³²
- Any other nondiscrimination provisions in the specific statute(s) under which application for Federal and State assistance is being made; and
- The requirements of any other nondiscrimination statute(s) which may apply to this grant. The Grantee shall insert a similar provision in all subcontracts and subawards for activities covered under its Grant Agreement.

Treasury's implementing regulations,³³ and the Department of Justice (DOJ) regulations, Coordination of Non-discrimination in Federally Assisted Programs, provide for the collection of data and information from Recipients.³⁴ In order to carry out its reporting responsibilities to the Treasury under Title VI of the Civil Rights Act, the State will collect and review information from subrecipients/grantees to ascertain their compliance with the applicable requirements before and after providing financial assistance.

Among the information which Treasury will request of Recipients, and which may in turn be requested of subrecipients are as follows:³⁵

- (1) The manner in which services are or will be provided by the program in question, and related data necessary for determining whether any persons are or will be denied such services on the basis of prohibited discrimination;
- (2) The population eligible to be served by race, color and national origin;
- (3) Data regarding covered employment, including use or planned use of bilingual public-contact employees serving beneficiaries of the program where necessary to permit effective participation by beneficiaries unable to speak or understand English;
- (4) The location of existing or proposed facilities connected with the program, and related information adequate for determining whether the location has or will have the effect of unnecessarily denying access to any persons on the basis of prohibited discrimination;
- (5) The present or proposed membership, by race, color and national origin, in any planning or advisory body which is an integral part of the program;

³⁰ P.L. 91-616.

³¹ 42 U.S.C. §§290 dd-3 and 290 ee-3.

³² 42 U.S.C. §§3601 et seq.

³³ 31 C.F.R. part 22.

³⁴ See 28 C.F.R. 42.406.

³⁵ Per 28 CFR 42.406(a-c).

(6) Where relocation is involved, the requirements and steps used or proposed to guard against unnecessary impact on persons on the basis of race, color or national origin.

Notices to Proceed

Step One - Notice to Proceed with Exempt Activities

The WVDED requires grantees to complete a number of requirements prior to WVDED's issuing first, a Notice to Proceed with Exempt Activities; and second, a Notice to Proceed with Construction. Prior to making any eligible expenditures, grantees must obtain the Notice to Proceed with Exempt Activities. To do so, and as documented in the Grant Distribution Agreement with the WVDED, a Subrecipient/Grantee must provide each of the items in Exhibit C to the Grant Agreement (Request for Approval of Evidentiary Materials) to the Office of Broadband, and if complete to the satisfaction of the WVDED, the Office of Broadband will issue a Notice to Proceed with Exempt Activities. The items in the Request for Approval are as follows:

1. Signed Grant Agreement with the WVDED;
2. Grantee Debarment Review form submittal (www.sam.gov)
3. Proof of Establishment of a Project Bank Account
4. Grantee's completion of the Treasury's Environmental Checklist/Questionnaire (Exhibit D to the Grant Agreement)
5. Presentation of the Grantee's Financial Management System and Record Retention Policy
6. Copy of Grantee's Procurement Policies and Procedures, Internal Controls, and compliance with federal labor standards, if applicable
7. Legally Binding Agreements between Grantee and any Private Partners and/or Subcontractors, Including Organizational Governance for public private partnerships
8. Presentation of Grantee's Audit Compliance Plan, if applicable
9. Conflict of Interest Certification, if applicable
10. Grantee's Certificate of Review of Division of Highways (WVDOH) Fiber Optic Guidelines (Exhibit E to Grant Agreement)
11. Any Additional Federal Law Requirements (Exhibit F to Grant Agreement)

Once all items above have been provided by the Grantee to the satisfaction of the WVDED, the Grant Agreement will be executed fully.

Once the Notice to Proceed with Exempt Activities is issued by the WVDED, Office of Broadband, the Grantee may begin pre-construction activities, and spend its pledged match on such "soft cost" items as engineering functions, permit applications/right-of-way practices, and logistical efforts may take place.

Step Two - Notice to Proceed with Construction

After issuance of the Notice to Proceed with Exempt Activities (Step One above), but prior to requesting a Notice to Proceed with Construction, the Grantee shall submit its engineered design to the WVDED. At this stage, the Grantee may request grant funds for pre-construction activities if the required match is already spent. In general, this second Notice to Proceed will not be issued until the WVDED receives from the Grantee copies of West Virginia Division of Highways (WVDOH) permitting and other applicable

permits and clearances, including, Dig Once Notifications as applicable, pole attachment agreements, and WVDOT permit applications and applicable bonds.

Given that WVDOT's review only includes work in the Right-of-way, if a Grantee project involves work on private property or property outside of the right-of-way, the Grantee must also provide evidence of any required easements or clearances as well. NOTE: Grantees may only request grant funds for construction **after** receiving the Notice to Proceed with Construction.

Construction Compliance Requirements

Federal Environmental Law Compliance

Projects funded by Capital Projects Fund must comply with all applicable Federal environmental laws.³⁶

Environmental Checklist

Subrecipients/Grantees shall use the form in the Exhibit D to the Grant Agreement with WVDE (also attached as an Appendix C to this compliance guide) to determine whether certain environmental laws apply to its projects. This checklist is available at the Treasury's Capital Projects Fund Website (<https://home.treasury.gov/system/files/136/CPF-Environmental-Questionnaire.pdf>).

As for particular Federal environmental laws, the Treasury has provided some discussion of their applicability as follows:

NEPA (National Environmental Policy Act)

Generally, NEPA does not apply to SLFRF or Capital Projects Funded Projects.³⁷ However, Projects supported by payments from the SLFRF or Capital Projects Fund may be subject to NEPA review if they are also funded by or otherwise involve actions from other Federal programs or agencies.

National Pollutant Discharge Elimination System (NPDES)

Under the Clean Water Act, discharges of pollutants through a conveyance/point source into a navigable water require an NPDES permit.³⁸ In most cases, NPDES permitting under the Clean Water Act will not be applicable to broadband infrastructure projects.

Solid Waste Disposal Act³⁹

Subrecipients or grantees that are State agencies or local agencies of a political subdivision of a State and its contractors must comply with §6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.

³⁶ Generally, Capital Projects that do not involve construction activities will not be subject to federal environmental review requirements.

³⁷ See Coronavirus SLFRF Final Rule FAQ Treasury guidance (April 2022, Item 2.21, p. 17, and Capital Projects Fund Guidance, p. 18, September 2021).

³⁸ <https://www.epa.gov/npdes/npdes-permit-basics>. This requirement is not likely applicable to broadband infrastructure projects, but recipients must complete the Treasury's environmental checklist to determine applicability to their project.

³⁹ Referenced in the Procurement of recovered materials compliance section of the Uniform Guidance. 2 CFR §200.323.

Requirements of 6002 include:

- Procuring only items designated in EPA Guidelines (40 CFR Part 247) that contain the highest percentage of recovered materials practicable where purchase price of the item exceeds \$10,000 or value of the quantity acquired during the preceding fiscal year exceeded \$10,000;
- Procuring solid waste management services in a manner that maximizes energy and resource recovery; and
- Establishing an affirmative procurement program for procurement of recovered materials identified in EPA guidelines

In addition to the above environmental laws which may apply to projects, the following Federal environmental laws listed on the Treasury's checklist/questionnaire may also apply. These are including but not limited to:

- The Endangered Species Act
- Clean Water Act
- Clean Air Act
- The National Historic Preservation Act
- Resource Conservation and Recovery Act (RCRA)
- Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)
- Wild and Scenic Rivers Act
- Safe Drinking Water Act
- Farmland Protection Policy Act
- Executive Order 11988 – Floodplain Management
- Executive Order 11990 – Wetland Protection
- Executive Order 12898 – Environmental Justice

State Permitting Requirements

Subrecipients and grantees are responsible for complying with all applicable permitting requirements. While the West Virginia Division of Highways jurisdiction and permitting process will likely apply to the majority of broadband infrastructure projects within the State in public rights-of-way, to the extent that other political subdivisions (i.e. county or municipal) have jurisdiction/ownership of part of a right-of-way, grantees are required to comply with any underlying county or municipal permitting/siting requirements.⁴⁰

Permitting Requirements for Buried Installations in Rights-of-Way⁴¹

Grantees are required to demonstrate compliance with the General Guidelines for Fiber Optic Permitting with the WVDOH right-of-way, provided as Exhibit E to the Grant Agreement before the

⁴⁰ Because these requirements are location-dependent, it is the responsibility of the subrecipient to ensure that they comply with the underlying jurisdictional permitting requirements on a case-by-case basis.

⁴¹ WV Code, §17-2E-3

Department will issue a notice to proceed. Further, underground installations in the WVDOH right-of-way are subject to the State's Dig Once Policy.⁴²

Use of Rights-of-Way – ROW Agreements

Before obtaining a permit for construction/installation of a facility in a right-of-way owned or controlled by the WV Division of Highways, the entity seeking to install such facilities must enter into an Agreement with the Division.⁴³ The Agreement shall⁴⁴:

- Specify terms and conditions for renegotiation of the agreement;
- Set forth maintenance requirements for each facility;
- Be nonexclusive;
- Be for a term not exceeding 30 years; and
- Provide for in-kind contribution⁴⁵

The West Virginia Division of Highways utility manual contains the WVDOH's regulations, requirements, and conditions for performing work in a right-of-way.⁴⁶

MM-109 Encroachment Permit

A form MM-109 Encroachment Permit Form is required for broadband installations in the Division of Highways right-of-way.⁴⁷ Typically, a signed permit form must be mailed or delivered by permittees along with any plans, drawings, or specifications to the District/County Permit Office where the work will be performed as part of this permitting process for work in rights-of-way under the Division of Highway jurisdiction.⁴⁸

SM-6 Encroachment Bond Form

In addition, an SM-6 Encroachment Bond form is also required as part of the Division of Highways permitting process.⁴⁹ Once printed, the applicant and the surety company must sign on page one. All signatures on the first page are to be notarized on page two. A power of attorney form should accompany the bond form.

Dig Once Policy⁵⁰

If applying for permits to construct and install telecommunications facilities in the Division of Highways right-of-way, the applying carrier/utility must notify by email the Office of Broadband and all other

⁴² W.Va. Code Section 17-2E-5.

⁴³ WV Code, §17-2E-3(a)

⁴⁴ WV Code §17-2E-3(b)(2)

⁴⁵ WV Code §17-2E-6

⁴⁶ https://transportation.wv.gov/highways/engineering/files/ACCOMMODATION_OF_UTILITIES.pdf

⁴⁷ <https://transportation.wv.gov/highways/maintenance/Pages/EncroachmentPermits.aspx>

⁴⁸ Information on district offices can be found here:

<https://transportation.wv.gov/HIGHWAYS/DISTRICTS/Pages/default.aspx>.

⁴⁹ <https://transportation.wv.gov/highways/engineering/files/SM-6%20BOND.pdf>

⁵⁰ WV Code §17-2E-5

telecommunications carriers on record with the council of the application. The other carriers will then have 15 calendar days to notify the applicant carrier of their interest in sharing the applicant's trench.⁵¹

NOTE: The above WVDOH agreement, permitting, and joint use requirements only apply to underground installations in rights-of-way and do not apply to relocation/modification of existing telecommunications facilities in a right-of-way, nor do they apply to aerial telecommunications facilities or associated equipment in a right-of-way.⁵²

In addition to the above requirements, the West Virginia Public Service Commission is in the process of finalizing rules for resolution of trench sharing disputes and abandoned facilities, as well as the transfer of facilities on utility poles.⁵³

National Historic Preservation Act– Section 106 Review⁵⁴

Under the National Historic Preservation Act, Federal agencies, and any tribal, State, or local government that assumes Federal agency responsibilities, is required to consider the effects of agency action on potential cultural resources.

The Section 106 Process includes the following steps:⁵⁵

- Initiation of the Section 106 Process;
- Identification of historic properties;
- Assessment of adverse effects;
- Resolution of adverse effects;
- Failure to resolve adverse effects;
- Coordination with NEPA;
- Advisory Council on Historic Preservation review of section 106 compliance;
- Special requirements for protecting National Historic Landmarks;
- Documentation standards;
- Emergency situations;
- Post-review discoveries

⁵¹ WV Code, §7-2E-5(a)

⁵² WV Code §17-2E-3

⁵³ See West Virginia Public Service Commission Case No. 21-0532-T-E-CTV-GI, A proceeding on the Commission's own motion to initiate a general investigation for the purpose of establishing a task force to make recommendations regarding rules for resolution of trench sharing disputes and abandoned facilities and transfer of facilities on utility poles. November 15, 2021.
<http://www.psc.state.wv.us/scripts/orders/ViewDocument.cfm?CaseActivityID=568672&Source=Docket>.

⁵⁴ 16 U.S.C. 470 et seq.

⁵⁵ 36 CFR Part 800. See also <https://www.ecfr.gov/current/title-36/chapter-VIII/part-800/subpart-B?toc=1>

Coordination With State Historic Preservation Office (SHPO)

In West Virginia, subrecipients will consult the State Historic Preservation Office (SHPO) to comply with the Section 106 process.⁵⁶

Subrecipients are to include the following information in their WVSHPO submittal:⁵⁷

SHPO Requirements - General Information regarding the project:

- Is the project a new submission or supplemental information related to a previous submission?
 - a. Project Name
 - b. Federal Agency (if applicable)
 - c. Federal Agency Contact Person (Name, street address, phone number, email)
 - d. State Agency (if applicable)
 - e. State Agency Contact Person (Name, street address, phone number, email)
 - f. Project Contact Person (individual(s) knowledgeable of project activities). (name, street address, phone number, Email)
 - g. Project street address, city, county, zip code
 - h. Project Location
 - i. Project Description
 - j. Project photographs
 - k. Date of Construction

SHPO Requirements - Identification of Cultural Resources

- Recipients and subrecipients must provide any information regarding the following within or adjacent to the project area:
 - a. Known archeological sites
 - b. Cemeteries
 - c. Structures
 - d. Historic Structures or Districts
- **Photographs:** If there is a standing structure within or adjacent to your project area, the State Historic Preservation Office asks that you provide photographs.
 - If there are structures 50 years or older within your project area or if within the line of sight of the project, you may be asked by SHPO to an WV Historic Property Inventory Form.⁵⁸

⁵⁶ <https://wvculture.org/agencies/state-historic-preservation-office-shpo/review-and-compliance-section-106-review/>

⁵⁷ <https://wvculture.org/wp-content/uploads/2021/03/Section106checklist2014.pdf>

⁵⁸ Forms and instructions located at <http://www.wvculture.org/shpo/forms.html>

- For information regarding National Register Listings, see <http://www.wvculture.org/shpo/nr.html>

Filing of Information with SHPO

The required SHPO Section 106 Review Information can be mailed to:

**Review and Compliance Staff
State Historic Preservation Office
WV Division of Culture and History
1900 Kanawha Boulevard East
Charleston, WV 25305**

Process – Timing

The Office has 30 days to review a project and any missing information may delay review.

Recoupment

Failure to comply with the compliance and reporting obligations under the Program may result in recoupment of funds per Treasury guidance.⁵⁹

Internal Controls

Grantees should develop/implement internal controls to ensure that funding decisions are eligible uses of funds, with determinations documented. These internal control requirements include:

- Establishing and maintaining internal control managing Federal award in compliance with Federal statutes, regulations;
- Compliance with US Constitution, Federal statutes, regulations, and terms & conditions of the Federal awards;
- Evaluation and monitoring compliance with statutes, regulations and the terms and conditions of the Federal awards;
- Grantees must take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings
- Taking reasonable measures to safeguard protected personally identifiable information and other information the Treasury or State Recipient designates as sensitive, or the grantee considers sensitive

Additional Requirements Applicable to Grantees Other than Private, For-Profit Organizations

NOTE: In general, except where otherwise noted, references to the Uniform Guidance (2 CFR 200) apply only to non-Federal entities, defined as a State, local government, Indian tribe, Institution of Higher Education (IHE), or nonprofit organization that carries out a Federal award as a recipient or subrecipient.

⁵⁹ Coronavirus SLFRF Interim Final Rule (May 17, 2021), p.26811.

As such, where the term, “non-Federal entity” is used, it is referring to the entities listed above, and does not refer to private, for-profit subrecipients/grantees.

Contract Work Hours/ Safety Standards⁶⁰

All non-Federal entity contracts made by subrecipients/grantees in excess of \$100,000 involving mechanics or laborers must include a provision for compliance with certain provisions of the Contract Work Hours and Safety Standards Act, 40 USC 3702 and 3704, as supplemented by the Dept. of Labor regulations (29 CFR Part 5).

Audits

For Grantees other than private, for-profit subrecipients, Subpart F – Uniform Guidance Audit Requirements implementing the Single Audit Act, shall apply.⁶¹ Subrecipients must comply with all audit requirements (as required by Uniform Guidance Subpart F, see attached Appendix A below) when subrecipient’s Federal awards during fiscal year equal or exceed threshold in §200.501 (\$750,000). For a summary of the Uniform Guidance Audit Requirements, please refer to the attached Appendix A. The full Treasury Audit requirements section can be referred to in 2 CFR §200.500-§200.520.⁶²

As outlined in the Grant Agreement with the WVDED, non-Federal entity Grantees are responsible for procuring and arranging for annual audits and must follow applicable general procurement standards (2 CFR Section 200.318 through 200.327. Grantees will further comply with the Federal requirements of 2 CFR 200 Subpart F as may be applicable; the State accountability requirements of WV Code §12-4-14; and the Grantee Audit Certification and Federal Expenditure Disclosure (GACFED) requirements referenced within Exhibit I of the Grantee’s Grant Agreement.

In its SLFRF and CPF Compliance Supplements, Treasury has identified a Matrix of Compliance Requirements which apply to these programs.⁶³ Auditors must identify the compliance requirements subject to the audit for the relevant program and then determine which are likely to have a direct and material effect on the federal program of the auditee.

Treasury has developed an alternative approach which is available for SLFRF Grantees that would otherwise not be required to undergo an audit if it were not for their SLFRF-funded Treasury award.⁶⁴ Under its authority 2 CFR section 200.102(a), OMB is authorizing the use of an alternative compliance examination engagement in accordance with the Government Accountability Office’s Government Auditing Standards in lieu of a full single audit or program-specific audit as required per 2 CFR 200, Subpart F. The alternative approach along with the criteria for eligible recipients are detailed in the Part 4 – Section IV, “Other Information” section of assistance listing 21.027 – Coronavirus State and Local

⁶⁰ See 2 CFR 200 (Uniform Guidance) Appendix II.

⁶¹ 2 CFR §200.500 et seq. (Uniform Guidance) and Appendix A summary.

⁶² See also OMB Compliance Supplements for audits of Federal Funds and related guidance (<https://www.whitehouse.gov/omb/office-federal-financial-management/>) and Federal Audit Clearinghouse (<https://facweb.census.gov/uploadpdf.aspx>) for examples and single audit submissions.

⁶³ See 2022 SLFRF Compliance Supplement, April 2022, p. 4-21.027-4 (<https://home.treasury.gov/system/files/136/21.027-SLFRF-2022-Compliance-Supplement.pdf>), and 2022 CPF Compliance Supplement, April 2022, p. 4-21.029.3 (<https://home.treasury.gov/system/files/136/21.029-CPF-2022-Compliance-Supplement.pdf>)

⁶⁴ 2022 SLFRF Compliance Supplement, April 2022, p. 8-VII-5 (Appendix VII)

Recovery Funds.⁶⁵ Eligibility to use the alternative approach is limited to Grantees that expend \$750,000 or more in federal awards during the Grantee's fiscal year, and which meet **both** of the criteria below:

- 1.) Grantee's total SLFRF award is at or below \$10 million; and
- 2.) Other federal funds the Grantee expended (not including their SLFRF award funds) are less than \$750,000 during the Grantee's fiscal year.

Equipment and Real Property Management⁶⁶

In general, Equipment and real property acquired under this program must be used for the originally authorized purpose, and any equipment and real property acquired under the SLFRF program will vest in the Subrecipient/Grantee.

Real Property

As specified and agreed to in the Grantee's Grant Agreement with the State, non-Federal entity Grantees must comply with the property standards as set forth in the Uniform Guidance.⁶⁷ Title to real property acquired with Treasury award funds vests in the Subrecipient/Grantee acquiring that real property.⁶⁸ It must be used for the originally authorized purpose as long as needed for that purpose. The Treasury may require the Grantee to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with a Federal award.⁶⁹ When that real property is no longer needed, the subrecipient must get disposition instructions from the Federal awarding agency (Treasury) or the pass through entity (WVDED, Office of Broadband). Some possible options include the recipient retaining title after compensating the Treasury; selling the property and compensating the Treasury; or transferring title to the Treasury or a third party approved by the Federal awarding agency.

Equipment⁷⁰

Title to equipment acquired with Treasury award funds will vest upon acquisition in the non-Federal entity Subrecipient/Grantee, provided that the subrecipient uses the equipment for the authorized purposes of the project during the period of performance, or until the property is no longer needed for the purposes of the project; the awardee does not encumber the property without approval of the Treasury or the WVDED, Office of Broadband (Recipient); and provided that the grantee uses the equipment in the program or project for which it was acquired as long as needed for the original program/project.

⁶⁵ 2022 SLFRF Compliance Supplement at p. 4-21.027-10 et seq.

⁶⁶ Uniform Guidance, Subpart D, §§200.311, 200.313.

⁶⁷ 2 CFR 200.310-200.316.

⁶⁸ 2 CFR 200.311 and 2 CFR 200.313.

⁶⁹ 200 CFR 200.316.

⁷⁰ 2 CFR 200.313.

Management Requirements⁷¹

Subrecipients/grantees must maintain property records that include the following information:

- Description of the property;
- A serial number or other identification number;
- The source of funding for the property (including the FAIN (Federal Award ID number)),
- Who holds title to the property;
- The acquisition date;
- Cost of the property;
- The percentage of Federal participation in project costs;
- Location;
- Use and condition of the property;
- Any ultimate disposition data, including:
 - Date of disposal, and
 - Sale price of the property
- Physical Inventory - A physical inventory must be taken and results reconciled with the property records at least once every two years.
- Control System – Must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property, and any loss/damage/theft must be investigated.
- Adequate Maintenance - Procedures must be developed to keep the property in good condition
- Sale - If the Subrecipient/Grantee is required to sell the property→ proper sales procedures must be established to ensure the highest possible return

Disposition of Equipment Requirements⁷²

When original or replacement equipment acquired under a Treasury award is no longer needed for the original project or program or for other activities currently or previously supported by the Treasury, except as otherwise provided in Federal statutes, regulations, or Federal awarding agency disposition instructions, the Subrecipient/Grantee must request disposition instructions from the Treasury if required by the terms and conditions of the Federal award. Disposition of the equipment will be made as follows, in accordance with Treasury disposition instructions:

- Items of equipment with a current per unit fair market value of \$5,000 or less may be retained, sold, or otherwise disposed of with no further responsibility to the Federal awarding agency.
- Items of equipment with a current per-unit fair market value in excess of \$5,000 may be retained by the Subrecipient/Grantee or sold. The Treasury is entitled to an amount

⁷¹ Uniform Guidance, §200.313(d).

⁷² Uniform Guidance, §200.313(e).

calculated by multiplying the current market value or proceeds from sale by the Federal awarding agency's percentage of participation in the cost of the original purchase. If the equipment is sold, the Treasury may permit the Subrecipient/Grantee to deduct and retain from the Federal share \$500 or ten percent of the proceeds, whichever is less, for its selling and handling expenses.

- The Subrecipient/Grantee may transfer title to the property to the Federal Government or to an eligible third party provided that, in such cases, the Subrecipient/Grantee must be entitled to compensation for its attributable percentage of the current fair market value of the property.
- In cases where the Subrecipient/Grantee fails to take appropriate disposition actions, the Federal awarding agency may direct the grantee to take disposition actions.

Procurement⁷³

When procuring property or services with Federal funds, subrecipients/grantees other than for-profit, private grantees must follow procurement standards as outlined in the Uniform Guidance. For a summary of the Uniform Guidance Procurement requirements (2 CFR §§200.318-200.327), please see the attached summary in Appendix B.

Program Income Requirements⁷⁴

Non-Federal entity subrecipients/grantees should calculate, document, and record the organization's "program income".⁷⁵

Program income includes but is not limited to:

- Income from fees for services performed;
- Use or rental of real or personal property acquired under Federal awards; and
- Principal and interest on loans made with Federal award funds

Program income excludes:

- Interest earned on advances of Federal funds, rebates, credits, discounts; or
- Interest on rebates, credits, or discounts
- **Governmental Revenues.** Taxes, special assessments, levies, fines unless specifically identified in the Federal award or Federal regulations as program income (Uniform Guidance §200.307(c))

⁷³ Per Uniform Guidance, §§200.317-200.327—see attached Appendix B for summary of the Uniform Guidance Procurement Guidelines.

⁷⁴ See §200.307 Uniform Guidance for more detail on this requirement.

⁷⁵ SLFRF Treasury Compliance and Reporting Guidance (Version 4.0, June 10, 2022), p. 10.

- **Property.** Proceeds from the sale of real property, equipment, or supplies are not program income.

In recent guidance related to SLFRF awards, Treasury has stated that recipients may add program income to the Federal award. Further under Treasury guidance, any program income generated from SLFRF funds must be used for the purposes and under the conditions of the Federal award.⁷⁶

Additionally, for CPF-funded grantees, Treasury has also stated that it encourages grantees to use program income to defray program costs where appropriate.⁷⁷

⁷⁶ Per 2 CFR 200.307, and Coronavirus State and Local Fiscal Recovery Funds, Final Rule: Frequently Asked Questions as of April 27, 2022, FAQ #13.11.

⁷⁷ Coronavirus Capital Projects Fund Compliance and Reporting Guidance For States, Territories, and Freely Associated States, *Draft for Public Comment, May 2022*, p.13)

Appendix A – Summary of Uniform Guidance Audit Requirements Subpart F

Subpart F – Audit Requirements (Uniform Guidance) (2 CFR §200.500 et seq.)

Applicability

Non-Federal entity Recipients and subrecipients that expend \$750,000 or more during non-Federal entity's fiscal year in Federal awards must have a single or program-specific audit. Non-Federal Entities are defined as a State, local government, Indian tribe, Institution of Higher Education (IHE), or nonprofit organization that carries out a Federal award as a recipient or subrecipient. As such, for-profit entities that receive SLFRF subawards are not subject to Single Audit requirements. However, they are subject to other audits as deemed necessary by authorized governmental entities, including Treasury, the GAO, and Treasury's OIG.⁷⁸

Types

Single Audit

- **Single Audits** – Must be conducted in accordance with §200.514.⁷⁹

Program Specific Audit

- **Program-specific Audit:** when auditee expends Federal awards under only one program (excluding R&D), and the Federal program's statutes, regulations, or terms and conditions of the Federal award do not require a financial statement audit of the auditee, the auditee may elect to have a program-specific audit conducted.⁸⁰

Exemptions from Audit Requirements

If a non-Federal entity expends less than \$750,000 during that non-Federal entity's fiscal year in Federal awards is exempt from Federal audit requirements for that year, except as noted in §200.503. However, records must be made available for review or audit.

Auditee Definition

Auditees may be a recipient, subrecipient, and contractor simultaneously. Federal awards expended as a recipient or subrecipient are subject to audit. Payments for goods or services provided as a contractor are not Federal awards.⁸¹

⁷⁸ Treasury SLFRF Guidance, p. 11, footnote 8.

⁷⁹ 2 CFR §200.501(b).

⁸⁰ See Uniform Guidance (2 CFR §200.507) for detail on program-specific audits.

⁸¹ See §200.331 of Uniform Guidance for determining whether payments constitute Federal award or payment for goods/services.

Auditee Responsibilities - Contractors

Compliance for Contractors. Generally, auditee's responsibility is just to ensure that contractor is responsible for program compliance. When procurement transaction relate to a major program, scope of the audit must include determining whether transactions are in compliance with Federal statutes, regulations, and terms and conditions of Federal awards.

Pass-Through Entity (PTE) Responsibilities - For Profit Subrecipients

Pass-through entities are responsible for establishing requirements, as necessary, to ensure compliance by for-profit subrecipients. An agreement with for-profit subrecipient must describe applicable compliance requirements. (Methods include pre-award audits, monitoring during agreement, post-award audits)⁸²

When is the Federal award Expended?

Must be based on when the activity related to the Federal award occurs.⁸³

Relation to other Audit Requirements

An audit conducted in accordance with this part must be in lieu of any financial audit of Federal awards which a non-Federal entity is required to undergo under any other Federal statute or regulation.⁸⁴

Audit Frequency

Audits required by this part must be performed annually, unless otherwise required by State, local, tribal constitution/statute.⁸⁵

Auditee Responsibilities⁸⁶

Auditees are responsible for:

- Procuring/arranging for an audit⁸⁷
- Preparing appropriate financial statements, including schedule of expenditures of Federal awards,⁸⁸
- Following up and taking corrective action on audit findings, including preparation of a summary schedule of prior audit findings and corrective action plan (see §200.511(b) and (c),
- Providing the auditor with access to personnel, accounts, books, records, and other information needed

⁸² See also §200.332, Uniform Guidance.

⁸³ Uniform Guidance, §200.502.

⁸⁴ §200.503.

⁸⁵ §200.504.

⁸⁶ §200.508

⁸⁷ See §200.509

⁸⁸ See §200.510

Auditor Selection⁸⁹

In selecting an auditor, the Auditee must follow Uniform Guidance Procurement standards (See attached summary of Uniform Guidance Procurement Standards, Appendix B below).⁹⁰ In requesting proposals for audit services, objectives/scope of audit must be made clear and non-Federal entity must request copy of audit organization's peer review report. In addition, the Auditee must make efforts to utilize small business, minority-owned firms, and women's business enterprises under §200.321.

Restrictions on Auditors – Indirect Cost Proposals

If an auditor prepares an indirect cost proposal or cost allocation plan, it may not also be selected to perform the audit when indirect costs recovered by auditee exceed \$1 million.

Federal Auditors

Federal auditors may perform all or part of the work under this part.

Auditee Requirements - Financial Statements⁹¹

The Auditee must prepare a financial statement reflecting:

- Financial Position,
- Results of operations/changes in net assets,
- Cash Flows for fiscal year audited (where appropriate)
- Financial statements must be for the same organizational unit and fiscal year that is chosen to meet this part
- Non-Federal entity-wide financial statements may also include departments, agencies, and other organizational units that have separate audits in accordance with §200.514(a) and prepare separate financial statements

Auditee Requirements - Schedule of Expenditures of Federal Awards

The Auditee must also prepare a schedule of expenditures of Federal awards for the period covered by the auditee's financial statements which must include the total Federal awards expended.⁹²

The Minimum Schedule requirements are as follows:

- A list of individual Federal programs by Federal Agency,
- For Federal awards received as a subrecipient, the name of the Pass-through Entity and ID number assigned by the PTE.
- Provide total Federal Awards expended for each individual Federal program and Assistance Listings Number (ALN) or other ID number if ALN is not available
- Include total amount provided to subrecipients from each Federal program

⁸⁹ §200.509

⁹⁰ See Appendix B summary as well as Uniform Guidance §§200.317-200.327 for full requirements.

⁹¹ §200.510

⁹² §200.502

- For loan/loan guarantee programs, identify in notes to schedule the balances outstanding at the end of the audit period.⁹³ In addition, include the total Federal awards expended for loan/loan guarantee programs in the schedule.
- Inclusion of notes that describe significant accounting practices used in preparing schedule, and note whether or not auditee elected to use 10% de minimis cost rate under §200.414

Auditee Follow-up Requirements⁹⁴

The Auditee is responsible for follow-up and corrective action on all audit findings. Auditee must prepare a summary schedule of prior audit findings. The Auditee must also prepare a corrective action plan for current year audit findings.⁹⁵

Audit Report Submission⁹⁶

The audit must be completed and data collection and reporting package submitted within the earlier of 30 calendar days after receipt of auditor's report(s), or nine months after the end of the audit period. If due date falls on Saturday, Sunday, or Federal holiday, reporting package is due next business day.

Public Inspection/Confidentiality

Auditees must make copies available for public inspection unless restricted by Federal statutes or regulations. Auditees/auditors must ensure their parts of reporting package do not include protected personally identifiable information.

Collection of Audit Information

The Federal Audit Clearinghouse (FAC) is the repository for audit reporting packages and the data collection form.

Required Data

The auditee must submit data elements via the Federal Audit Clearinghouse (FAC) Internet Data Entry System.⁹⁷

Signed Statement

A senior level representative of the auditee (e.g. state controller, director of finance, CEO, or CFO) must sign a statement to be included as part of data collection stating:

⁹³ §200.502(b)

⁹⁴ §200.511

⁹⁵ See §200.511(b) and (c) of the Uniform Guidance for more detail on summary schedule and corrective action plan requirements.

⁹⁶ §200.512

⁹⁷ <https://facides.census.gov/Account/Login.aspx>

- a. Auditee complied w/ requirements of this part,
- b. Data were prepared in accordance with this part,
- c. The reporting package does not include protected personally identifiable information, and
- d. The information included in its entirety is accurate and complete; and
- e. That the FAC is authorized to make the reporting package and form publicly available on a website.

EXCEPTION: If auditee is Indian tribe or tribal organization, they have the option of not including the authorization in the statement (e) above for the FAC to make the reporting package and form publicly available on a website. If this option is exercised, auditee is responsible for submitting reporting package directly to any pass-through entities through which it has received a Federal award.

NOTE: Unless restricted by Federal statute or regulation, if auditee opts not to authorize publication, it must make copies available for public inspection

Auditor Responsibilities

Using data elements below, auditor must complete applicable data elements of the data collection form and must sign a statement indicating:

- The source of the information included in the form,
- The auditor's responsibility for the information,
- That the form is not a substitute for the reporting package in paragraph (c) of this section, and
- That the content of the form is limited to the collection of information prescribed by OMB

Audit Reporting Package Requirements

Reporting Package Must include:

- (1) Financial statements and schedule of expenditures of Federal awards discussed in §200.510(a) and (b);
- (2) Summary schedule of prior audit findings discussed in §200.511(b);
- (3) Auditor's reports discussed in §200.515; and
- (4) Corrective action plan (§200.511(c))

Auditee Submission Requirements

Submission to FAC. Auditee must electronically submit to the FAC: (1) the data collection form, and (2) the reporting package

Requests for Management Letters issued by Auditor. If Federal Agency of pass-through entity requests, auditees must submit a copy of management letters issued by auditor

Report Retention - Auditees

Report retention requirements. Auditees must keep one copy of the data collection form and one copy of the reporting package on file for three years from date of submission to the FAC.

Auditor Requirements⁹⁸

General

Audit must be conducted in accordance with GAGAS (Generally Accepted Government Auditing Standards). The Auditor must make determination that auditee statements are presented fairly as well as schedule of expenditures is stated fairly.

Auditors must report significant deficiencies or material weakness in accordance with §200.516, assess related control risks and consider whether additional compliance tests are required because of ineffective internal control.

Compliance. In addition to GAGAS, auditor must determine whether auditee complied with Federal statutes, regulations, and terms and conditions of Federal awards

Audit follow-up. Auditor must follow up on prior audit findings, assess reasonableness of summary schedule of prior audit findings prepared by auditee under §200.511(b) and report any material misrepresentations of status

Data Collection Form. As required by §200.512(b)(3), auditor must complete and sign specified sections of the data collection form.

Auditor Reporting Requirements⁹⁹

Auditor reports can be in a different form than provided in this section but must state that audit was conducted in accordance with this part and include:

1. Financial Statements
2. Report on internal control over financial reporting and compliance
3. A report on compliance for each major program and a report on internal control over compliance
4. A schedule of findings and questions costs which must include:
 - (1) A summary of the auditor's results, which must include:
 - (i) Type of report auditor issued on whether FS audited were prepared in accordance with GAAP;
 - (ii) internal control were disclosed by the of financial statements;

⁹⁸ Uniform Guidance §§200.514-200.521.

⁹⁹ See Uniform Guidance §200.515 for additional details on the below requirements.

- (iii) A statement as to whether audit disclosed any noncompliance that is material to the financial statements of the auditee;
- (iv) Where applicable, a statement about whether significant deficiencies or material weaknesses in internal control over major programs were disclosed by audit

Additional Requirements for Auditors¹⁰⁰

- **§200.516 – Audit Findings** (For Detailed requirements for Auditor in a schedule of findings and questioned costs)
- **§200.517 – Audit Documentation**
- **§200.518 – Major Program Determination**
- **§200.519 – Criteria for Federal Program Risk**
- **§200.520 – Criteria for a Low-Risk Auditee**
- **§200.521 – Management Decision**

Pass-through Entities Requirements

Pass-through entities (Definition: non-Federal entities that provide subawards to a subrecipient to carry out part of a Federal program): Under §200.332(d), the PTE must be responsible for issuing a management decision for audit findings that relate to Federal awards it makes to subrecipients.

- Time Requirements: The Federal awarding agency or PTE responsible for issuing a management decision must do so within 6 months of acceptance of the audit report by the FAC. The auditee must initiate and proceed with corrective action as rapidly as possible and corrective action should begin no later than upon receipt of the audit report.
- Reference numbers. Management decisions must include the reference numbers the auditor assigned to each audit finding in accordance with §200.516(c)

¹⁰⁰ Refer to relevant Uniform Guidance sections listed for detail on these requirements.

Appendix B – Summary of Uniform Guidance Procurement
Requirements (2 CFR §200.317-§200.327)

Procurement Requirements (Uniform Guidance)(2 CFR §200.317-200-327)

General

NOTE: The following procurement requirements (2 CFR 200.317-200.327) apply only to non-Federal Entities, defined as a State, local government, Indian tribe, Institution of Higher Education (IHE), or nonprofit organization that carries out a Federal award as a recipient or subrecipient. As such, they are inapplicable to private, for-profit subrecipients/grantees.

Procurement – Competition Requirements¹⁰¹

All procurement transactions for acquisition of property or services required under a Federal award must be conducted in a manner providing full and open competition.

Contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements.

A non-Federal entity must have written procedures for procurement transactions and ensure that all solicitations:

- Have clear and accurate description of technical req's for material/product/service to be procured; and
- Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals

Procurement - Methods¹⁰²

Informal Procurement

If the value of the procurement for property or services under a Federal award does not exceed the “simplified acquisition threshold” (SAT) or a lower threshold→formal procurement methods are not required.¹⁰³

Formal Procurement

Sealed bid processes and publicized proposal requests are required as well as public advertisement are required unless a non-competitive procurement is allowed.¹⁰⁴

Non-Competitive Procurements

Recipients may conduct non-competitive procurements under the Uniform Guidance if:

¹⁰¹ Uniform Guidance §200.319.

¹⁰² §200.320

¹⁰³ See Uniform Guidance, §200.1 for definition of Simplified Acquisition Threshold.

¹⁰⁴ Uniform Guidance §200.320(c)

- The Item in question is below the micro-purchase threshold;
- The Item is only available from a single source;
- Public exigency/emergency doesn't permit delay; OR
- After solicitation of a number of sources, competition is determined inadequate

Contracting with Small, Minority-Owned, and Women-owned Businesses¹⁰⁵

Non-Federal entities must take several affirmative steps in the procurement process, as detailed in the Uniform Guidance For Federal Awards, in particular:

- Placing small, minority, and women's businesses on solicitation lists,
- Assuring that small, minority, and women's businesses are solicited whenever they are potential sources,
- When economically feasible, dividing requirements into smaller tasks/quantities to permit maximum participation by s/m/w businesses,
- Establishing delivery schedules where a requirement permits, which encourage participation by s/m/w businesses,
- Using services/assistance of the Small Business Administration and the Minority Business Development Agency of Dept. of Commerce; and
- Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps (1-5 above)

Domestic Preferences for Procurements¹⁰⁶

To the greatest extent practicable, non-Federal entity recipients should provide preference for purchase, acquisition, use of goods, products, or materials produced in the United States. The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products.

Procurement of Recovered Materials¹⁰⁷

Non-Federal entities that are state agencies or local agencies of a political subdivision of a state and its contractors must comply with §6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.

Requirements of 6002 include:

- Procuring only items designated in EPA Guidelines (40 CFR Part 247) that contain the highest percentage of recovered materials practicable where purchase price of the item exceeds

¹⁰⁵ Uniform Guidance, §200.321.

¹⁰⁶ Uniform Guidance, §200.322.

¹⁰⁷ Uniform Guidance, §200.323

\$10,000 or value of the quantity acquired during the preceding fiscal year exceeded \$10,000;

- Procuring solid waste management services in a manner that maximizes energy and resource recovery; and
- Establishing an affirmative procurement program for procurement of recovered materials identified in EPA guidelines

Contract Cost and Price¹⁰⁸

Costs – In General

Non-Federal entities must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. In addition, non-Federal entities must make independent estimates before receiving bids or proposals and must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. Consideration must be given to:

- The complexity of the work to be performed,
- The risk borne by the contractor,
- The contractor's investment,
- The amount of subcontracting,
- The quality of its records of past performance, and
- Industry profit rates in the surrounding geographical area for similar work

Estimated Costs

Estimated Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under Subpart E of the Uniform Guidance.¹⁰⁹ A non-Federal entity may reference its own cost principles that comply with the Federal cost principles.

Costs Plus Percentage of Construction - Prohibited

Cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

¹⁰⁸ Uniform Guidance §200.324.

¹⁰⁹ Refer to Uniform Guidance §200.400 et seq.

Review by Federal Awarding Agencies or Pass-Through Entities¹¹⁰

Non-Federal entity recipients must make certain items available upon request by the Federal Awarding Agency or Pass-Through Entity:

- Technical Specifications on proposed procurements where requested;
- Pre-procurement review, procurement documents, requests for proposals (RFPs), independent cost estimates.
 - **EXCEPTION from pre-procurement review:** If non-Federal entity requests and receives certification of its procurement system by the Federal awarding agency, or self-certifies its own system with written assurances to the Federal agency citing specific policies, procedures, regulations, or standards, and has its system available for review.

State Procurement Requirements for non-Federal Entities

- **Architect/Engineer Contracts** – Public grantees shall procure services in accordance with Chapter 5G of the WV State Code, and be in compliance with Uniform Guidance (2 CFR 200.318-200.327)
- **Construction Contracts** - Public grantees are required to procure construction contracts in accordance with either Ch.5, Art. 22B or applicable state multiphase procurement statutes, and be in compliance with federal regulations Uniform Guidance (2 CFR 200.318-200.327)
- **For projects with an estimated value over \$25,000**, Grantees shall solicit sealed bids for all construction-related contracts or supplies
- **Transactions under \$25,000** whether construction-related contracts, supplies, or professional services should be procured in a manner that provides maximum open and free competition and files are to be maintained to document such activities.

NOTE: Any attempts by the Grantee to segregate the Project into sections in order to circumvent competitive procurement may be cause for termination of its Grant Agreement with the WVDED.

- **For required public bids**, notice shall be published as a Class II legal advertisement by the Grantee in the newspaper with the largest circulation serving the general area within a period of fourteen consecutive days with at least an interval of six full days within such period between the date of the first publication and the date of the second publication preceding the final date of submitting bids.
- The Grantee shall have available upon request for review by the WVDED or its designated representative, bid documents and other evidence of compliance with these procedures. The resolution of bid and contract disputes is the responsibility of the Grantee.

¹¹⁰ Uniform Guidance §200.325.

Bonding Requirements¹¹¹

As otherwise required by law, a grant that requires the contracting or subcontracting for construction or facility improvements under \$25,000 shall provide for the Grantee to follow local or State requirements relating to bid guarantees, performance bonds, and payment bonds provided that the Grantee's and State's interest is adequately protected and that such contracts can be executed in a timely manner; otherwise, bonding requirements shall be the same as for contracts exceeding \$25,000. Consistent with 2 CFR 200.326 and *W.Va. Code* § 5-22-1(c), if a contract or subcontract exceeds \$25,000, the minimum bonding and insurance requirements shall be as follows:

For construction/facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold (SAT), either the State or the Federal awarding agency will make a determination that the Federal interest is adequately protected by the non-Federal entity's bonding policy/requirements. If this determination is not made, the minimum requirements must be:

- A bid guarantee from each bidder equivalent for 5% of the bid price.
 - Bid guarantee must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
- A performance bond on the part of the contractor for 100% of the contract price.
- A payment bond on the part of the contractor for 100% of the contract price.

Contract Provision Requirements for non-Federal Entity Grantees¹¹²

NOTE: The contract provision requirements in the Uniform Guidance (Appendix II to 2 CFR 200) apply only to non-Federal Entities, defined as a State, local government, Indian tribe, Institution of Higher Education (IHE), or nonprofit organization that carries out a Federal award as a recipient or subrecipient. As such, they are inapplicable to private, for-profit subrecipients/grantees.

Under the Uniform Guidance there are a number of contract provision requirements for recipients and the entities they contract with under Federal awards, including:

- **Breach/remedies.** If a contract is for more than the simplified acquisition threshold (SAT), it must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate;

¹¹¹

Uniform Guidance, §200.326.

¹¹² Uniform Guidance, §200.327 and Appendix II to Part 200.

- **Termination.** Contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including manner it will be effected and basis for settlement.
- **Equal Employment Opportunity clause requirement¹¹³**
- **Davis-Bacon Act Provision Requirement¹¹⁴.** When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include provision for compliance with Davis-Bacon Act. (See Appendix II to Uniform Guidance for details¹¹⁵)
- **Contract Work Hours and Safety Standards Act.** All contracts awarded by non-Federal entity in excess of \$100,000 that involve mechanics or laborers must include provision for compliance with the Act (See Appendix II of Uniform Guidance for further details).
- **Rights to Inventions Made Under a Contract of Agreement.**¹¹⁶
- **Clean Air Act and Federal Water Pollution Control Act.** Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act and the Federal Water pollution Control Act. Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- **Debarment and Suspension.** A contract award must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM) (<https://www.sam.gov>).
- **Byrd Anti-Lobbying Amendment.** Contractors that apply or bid for an award exceeding \$100,000 must file the required certification.¹¹⁷
- **Procurement of Recovered Materials.** Non-Federal entities that are state agencies or agencies of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.¹¹⁸

¹¹³ See 2 CFR 200 (Uniform Guidance) Appendix II for details.

¹¹⁴ Davis-Bacon federal prevailing wage rate requirements do not apply to projects funded solely by the Capital Projects Fund or State and Local Fiscal Recovery fund programs unless funds are used in conjunction with other federal source of funds which does require compliance with Davis-Bacon.

¹¹⁵ Contract Provisions for Non-Federal Entity Contracts Under Federal Awards (Uniform Guidance)

¹¹⁶ See Appendix II of Uniform Guidance for details.

¹¹⁷ See Uniform Guidance, Appendix II for more detail on contents of certification

¹¹⁸ See §200.323 Uniform Guidance for more detail on this requirement.

- **Prohibition on certain Telecommunications and Video Surveillance Services or Equipment**¹¹⁹
- **Domestic Preferences for Procurements.** Non-Federal entity should, to the greatest extent practicable under a Federal award provide preference for US-produced materials/products—these requirements must be included in all subawards and contracts¹²⁰

Procurement Recordkeeping Requirements

The non-Federal entity must maintain records sufficient to detail the history of procurement, including but not limited to:

- Rationale for method of procurement;
- Selection of contract type;
- Contractor selection or rejection; and
- Basis for the contact price

¹¹⁹ See §200.322 Uniform Guidance for more detail on this requirement.

¹²⁰ See §200.322 Uniform Guidance

Appendix C – Capital Projects Fund Environmental Checklist

Treasury's Coronavirus Capital Projects Fund Environmental Checklist

This is a reference document that lists environmental laws that may apply to any eligible project. The following questions will aid entities in identifying the environmental laws that may apply; however, the entity must perform the proper due diligence to ensure their project complies with all applicable laws. Additionally, recipients must retain records, permits, and documentation necessary to evidence compliance with all environmental requirements.

FEDERAL LAWS

Component Guidance and Application to Receive Federal Financial Assistance Page 32

1.1 NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

The National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 et seq.) provides a national policy that encourages “productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man...” The NEPA requires that all Federal agencies use a systematic, interdisciplinary approach for protection of the human environment; this approach will ensure the integrated use of the natural and social sciences in any planning and decision-making that may have an impact upon the environment. The NEPA also requires the preparation of a detailed Environmental Impact Statement (EIS) on any major Federal action that may have a significant impact on the environment.

1) Will the proposed activity be under the permitting authority of any Federal agency?

Yes No

2) Will the proposed activity receive Federal assistance (other than Coronavirus Capital Projects Fund funding)?

Yes No

3) Will the proposed activity be subject to any Federal regulatory decision or approval?

Yes No

4) Has a NEPA or NEPA-like review been independently prepared for this proposed eligible activity or is a NEPA review underway?

Yes No

If the answer to any of these questions is “yes,” contact the relevant Federal agency or agencies for further guidance on environmental compliance. Additional information concerning NEPA can be found at: <https://ceq.doe.gov/>.

1.2. COASTAL ZONE MANAGEMENT ACT (CZMA)

Capital Projects Fund grant applications may be subject to the review provisions of Section 307 of the Coastal Zone Management Act (CZMA) and implementing regulations 15 C.F.R. Part 930. Questions as to the applicability of the CZMA consistency provisions should be directed to the Office of Ocean and

Coastal Resource Management/Coastal Services Center within the National Oceanic and Atmospheric Administration. A Federal consistency determination or certification may be required from the state coastal zone management program, based on the following questions:

1) Will the proposed activity occur in or near the state designated coastal zone (<http://coastalmanagement.noaa.gov/mystate/docs/StateCZBoundaries.pdf>)?

Yes No

2) Is the activity likely to have reasonably foreseeable effects on any land or water use or natural resource of the designated coastal zone?

Yes No

If the answer to either of these questions is “yes,” contact the State Coastal Zone Management Program (<https://coast.noaa.gov/data/czm/consistency/media/state-fc-contacts.pdf>) for further guidance on Federal consistency requirements in your state. Additional information on Federal consistency can be found at: <https://coast.noaa.gov/czm/consistency/>.

1.3 ENDANGERED SPECIES ACT (ESA)

Section 7 of the Endangered Species Act (ESA) imposes a duty on Federal agencies to ensure their actions are not likely to adversely affect threatened or jeopardize the continued existence of any species listed as threatened or endangered, or that would result in the destruction or adverse modification of the critical habitat of a listed species. A Section 7 consultation may be required if a threatened or endangered species or critical is present.

1) Will the proposed activity occur in proximity to threatened or endangered species or critical habitat as defined by the ESA and under the jurisdiction of the National Marine Fisheries Service (NMFS) (<https://www.fisheries.noaa.gov/species-directory/threatened-endangered>) or the U.S. Fish and Wildlife Service (USFWS) (<https://www.fws.gov/endangered/>)?

Yes No

2) Will the proposed activity potentially affect threatened or endangered species or critical habitat as defined by the ESA and under the jurisdiction of National Marine Fisheries Service (NMFS) or U.S. Fish and Wildlife Service (USFWS)?

Yes No

If the answer to either of these questions is “yes,” contact the regional office of USFWS (<http://www.fws.gov/offices/>) and/or NMFS (<https://www.fisheries.noaa.gov/contact-directory/regional-offices>) to determine if consultation is required. Most consultations are conducted informally with the Federal agency or a designated non-Federal representative. Non-Federal representatives may be involved in the informal consultation process and may request and receive species lists, prepare the biological assessment, and provide information for the formal consultation. However, the USFWS requires the action agency to designate formally the non-Federal representative in writing. Moreover, the ultimate responsibility for Section 7 obligations remains with the action agency.

Additional information concerning Section 7 consultations can be found in the Endangered Species Act Consultation Handbook at: <http://www.fws.gov/policy/m0002.html>.

1.4 MAGNUSON – STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT (MSA)

The Magnuson-Stevens Fishery Conservation and Management Act (MSA) is the primary law that governs marine fisheries managements in U.S. Federal waters. Consultation with the NMFS may be required if Essential Fish Habitat (EFH) is present where project activity will occur. The trigger for EFH consultation is a Federal agency's determination that an action or proposed action, funded, authorized, or undertaken by that agency may adversely affect EFH.

1) Will the proposed activity occur in proximity to EFH as identified by the nearest Regional Fishery Management Council (<https://www.habitat.noaa.gov/apps/efhmapper/>)

Yes No

2) Will the proposed activity potentially adversely affect EFH?

Yes No

If the answer to either of these questions is “yes,” contact the nearest regional office of the NMFS (<https://www.fisheries.noaa.gov/contact-directory/regional-offices>) or Regional Fishery Management Council (<http://www.fisherycouncils.org/>) to determine if consultation is required. Additional information concerning EFH can be found at: <https://www.fisheries.noaa.gov/national/habitat-conservation/essential-fish-habitat>. Information about consultations can be found in the Essential Fish Habitat Consultation Guidance at: <https://www.fisheries.noaa.gov/national/habitat-conservation/consultations-essential-fish-habitat#the-consultation-process>.

1.5 MARINE MAMMAL PROTECTION ACT (MMPA)

The Marine Mammal Protection Act prohibits actions that may result in take of any marine mammal. Taking is defined as “to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal.” Any Agency actions with the potential to take a marine mammal require consultation with NMFS (for seals, sea lions, whales, dolphins, and most marine mammals) or FWS (sea otters, polar bears, walruses, manatees, and dugongs) following a process similar to ESA Section 7 consultation.

1) Will the proposed activity occur in proximity to any known marine mammals (<https://www.fisheries.noaa.gov/species-directory>)?

Yes No

2) Will the proposed activity likely result in the take of a marine mammal?

Yes No

If the answer to either of these questions is “yes,” contact the nearest regional office of NMFS (<https://www.fisheries.noaa.gov/contact-directory/regional-offices>) to determine if a permit is required. Additional information concerning marine mammal permits can be found at: <https://www.fisheries.noaa.gov/insight/understanding-permits-and-authorizations-protected-species> and <https://apps.nmfs.noaa.gov/index.cfm>.

1.6 CLEAN WATER ACT (CWA)

A separate type of permit is required to dispose of dredge or fill material in the Nation's waters, including wetlands. Authorized by Section 404 of the Act, this permit program is administered by the U.S. Army Corps of Engineers (USACE), subject to and using environmental guidance from the Environmental Protection Agency (EPA). Some types of activities are exempt from permit requirements, including certain farming, ranching, and forestry practices that do not alter the use or character of the land; some construction and maintenance; and activities already regulated by States under other provisions of the Act.

A permit may be required from the USACE for the disposal of dredge or fill material in the nation's waters, including wetlands.

1) Will the proposed activity result in any disposal of dredge or fill material to the nation's waters or wetlands?

Yes No

If the answer to this question is "yes," contact the Regulatory Program of the nearest District Office of the USACE

(<http://www.usace.army.mil/Locations.aspx>) for further guidance on Section 404 permits.

A Water Quality Certification (Section 401) is required for activities that may result in a discharge into navigable waters, including wetlands, watercourses, and natural or man-made ponds. A National Pollution Discharge Elimination System (NPDES) permit may also be required for such discharges.

1) Will the proposed activity result in any discharge to navigable waters?

Yes No

If the answer to this question is "yes," contact your State water quality agency for additional guidance. Additional information concerning Section 401 or NPDES requirements can be found at:
<https://www.epa.gov/cwa-401/overview-cwa-section-401-certification> and
<https://www.epa.gov/npdes/npdes-permit-basics>.

1.7 CLEAN AIR ACT (CAA)

Clean Air Act (CAA), 42 U.S.C §§ 7409, 7410, 7502-7514, 7571-7574, requires establishment of National Ambient Air Quality Standards (NAAQS) and designation of areas based on achievement of these standards. It also requires preparation of a State Implementation Plan for Air Quality (SIP). In Section 176(c) of the CAA, Federal agencies must demonstrate that their actions conform to these SIPs (or the Tribal or Federal equivalent of a SIP). The CAA also requires emission limits to be controlled and regulated through permit requirements set by States or Tribes. Special conditions may be required on projects that could affect air quality.

1) Will the proposed activity result in any direct or indirect emissions within a non-attainment area (<https://www.epa.gov/green-book>)?

Yes No

If the answer to this question is “yes,” contact the nearest State air quality agency (<http://www.4cleanair.org>) for further guidance on determining conformity with the State implementation plan.

1.8 NATIONAL HISTORIC PRESERVATION ACT (NHPA)

Pursuant to 54 U.S.C. § 300101, the National Historic Preservation Act (NHPA) establishes Federal government policy with regards to historic preservation. Section 106 of NHPA (54 U.S.C § 306108) requires that “the head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or Federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking shall, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, take into account the effect of the undertaking on historic properties; and afford the Advisory Council on Historic Preservation a reasonable opportunity to comment with regard to such undertaking.” Special conditions may be required on projects that could affect historic resources.

1) Will the proposed activity occur near property listed or eligible for listing in the National Register of Historic Places (<https://www.nps.gov/subjects/nationalregister/index.htm>), or near property otherwise protected by section 106 of the

National Historic Preservation Act (<http://www.nps.gov/history/local-law/nhpa1966.htm>) or a similar State Preservation Act?

Yes No

If the answer to this question is “yes,” contact the U.S. Advisory Council on Historic Preservation (<http://www.achp.gov>), or your State historic preservation office (<http://www.ncshpo.org/>) for further guidance concerning compliance requirements.

1.9 COASTAL BARRIER RESOURCE ACT (CBRA)

The Coastal Barrier Resources Act (CBRA) of 1982 (16 U.S.C. 3501 et seq.) protects undeveloped coastal barriers and related areas by prohibiting direct or indirect Federal funding that might support development in these areas. The act lists exceptions to the limitations on Federal expenditures and financial assistance within the CBRS. No exception may be implemented, however, without first consulting with the FWS.

1) Is the proposed activity located on an undeveloped coastal barrier designated by the Coastal Barriers Resources Act (<http://www.fws.gov/cbra/>)?

Yes No

If the answer to this question is “yes,” contact the nearest Regional Office of USFWS (<http://www.fws.gov/where>) for further guidance.

1.10 RIVERS AND HARBORS ACT

Section 10 of the Rivers and Harbors Act of 1899 requires authorization from the Secretary of the Army, acting through the Corps of Engineers, for the construction of any structure in or over any navigable water of the United States. The law applies to any dredging or disposal of dredged materials, excavation,

filling, rechannelization, or any other modification of a navigable water of the United States, and applies to all structures, from the smallest floating dock to the largest commercial undertaking. A permit may be required from the USACE if the proposed activity involves any work in, over, or under navigable waters of the United States.

1) Will the proposed activity involve any work (including structures) that will occur in, over or under navigable waters of the United States?

Yes No

If the answer to this question is “yes,” contact the Regulatory Program of the nearest District Office of the USACE

(<http://www.usace.army.mil/Locations.aspx>) for further guidance on Section 10 permits. The USACE can authorize activities by a standard individual permit, letter-of-permission, nationwide permit, or regional permit. The USACE will make the determination on what type of permit is needed.

1.11 RESOURCE CONSERVATION AND RECOVERY ACT (RCRA)

The Resource Conservation and Recovery Act (RCRA) gives EPA the authority to control hazardous waste from cradle to grave. This includes the generation, transportation, treatment, storage, and disposal of hazardous waste. A RCRA permit may be required from the EPA or designated State agency for the long-term storage, treatment, or disposal of hazardous materials or petroleum products.

1) Will the proposed activity include the long-term storage of hazardous materials or petroleum products?

Yes No

If the answer to this question is “yes,” contact the nearest RCRA Regional Office of the EPA or State authorized agency

(<https://www.epa.gov/hwgenerators/links-hazardous-waste-programs-and-us-state-environmental-agencies>) for further guidance on RCRA compliance.

1.12 COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA)

The Comprehensive Environmental Response, Compensation, and Liability Act -- otherwise known as CERCLA or Superfund -- provides a Federal "Superfund" to clean up uncontrolled or abandoned hazardous-waste sites as well as accidents, spills, and other emergency releases of pollutants and contaminants into the environment. Special provisions and requirements may apply if the proposed activity involves a Superfund site (<http://www.epa.gov/superfund/sites/index.htm>).

1) Will the proposed activity involve a known Superfund site (<https://www.epa.gov/superfund/search-superfund-sites-where-you-live>)?

Yes No

If the answer to this question is “yes,” contact the nearest Regional Office of the EPA (<https://www.epa.gov/aboutepa/regional-and-geographic-offices>) for further guidance on CERCLA requirements.

1.13 WILD AND SCENIC RIVERS ACT

The Wild and Scenic Rivers Act prohibits Federal support for actions such as the construction of dams or other instream activities that would harm the free-flowing condition, water quality, or outstanding resource values of a designated Wild and Scenic River. Designation of a river neither does nor inherently prohibit development. "The Act purposefully strives to balance dam and other construction at appropriate sections of rivers..."

1) Is the proposed activity located on a designated Wild and Scenic River
(<http://www.rivers.gov/index.php>)?

Yes No

If the answer to this question is "yes" contact the nearest Regional Office of the USFWS
(<http://www.fws.gov/where>) for further guidance.

1.14 SAFE DRINKING WATER ACT (SDWA)

The Safe Drinking Water Act (SDWA) authorizes the EPA to set national health-based standards for drinking water to protect against both naturally-occurring and man-made contaminants that may be found in drinking water. EPA, States, and water systems then work together to make sure that these standards are met. A permit may be required if the proposed activity will involve underground injection which may impact drinking water sources.

1) Will the proposed activity involve underground injection which may impact drinking water sources?

Yes No

If the answer to the question is "yes," contact the nearest State drinking water or underground injection control program (<https://www.epa.gov/uic>). For more information see:
<http://water.epa.gov/lawsregs/guidance/sdwa/>.

1.15 FARMLAND PROTECTION POLICY ACT (FPPA)

The Farmland Protection Policy Act (FPPA) is intended to minimize the impact Federal programs have on the unnecessary and irreversible conversion of farmland to nonagricultural uses. It assures that to the extent possible Federal programs are administered to be compatible with State, local units of government, and private programs and policies to protect farmland. For the purpose of FPPA, farmland includes prime farmland, unique farmland, and land of statewide or local importance. Farmland subject to FPPA requirements does not have to be currently used for cropland. It can be forest land, pastureland, cropland, or other land, but not water or urban built-up land. For more information, visit: <https://www.nrcs.usda.gov/wps/portal/nrcs/main/national/landuse/fppa/>.

1) Is the proposed activity for new construction, acquisition of undeveloped land or change in use of land or property?

Yes No

If the answer to the question is "no," the FPPA does not apply. If the answer to the question is "yes," to determine any necessary next steps, contact the local National Resource Conservation Service District

Conservationist

(https://www.nrcs.usda.gov/wps/portal/nrcs/detail/soils/contactus/?cid=nrcs142p2_053951).

EXECUTIVE ORDERS

Executive Orders (E.O.) are directives from the President of the United States to Federal agencies and officials.

2.1 E.O. 11988, as amended by E.O. 13690 – Floodplain Management

E.O. 11988 requires Federal agencies to avoid, to the extent possible, the long and short-term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct and indirect support of floodplain development wherever there is a practicable alternative. To this effect, an 8-step process must be followed for projects that may have potential impacts to or within floodplains (https://emilms.fema.gov/is_0253a/groups/74.html). On January 30, 2015, in amending and building upon E.O. 11988, the President issued E.O. 13690, establishing Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input. Order 13690 and the associated Federal Flood Risk Management Standards (FFRMS) reinforce the important tenets and concepts articulated in Order 11988. When avoiding the floodplain is not

possible, E.O. 13690 calls for agencies to make efforts to improve the resilience of communities as of Federal actions. Importantly, Order 13690 established a new standard against which Federal agencies are to evaluate the potential impacts of flooding on Federal investments, the FFRMS. This standard set a higher vertical elevation and a greater horizontal extent to the floodplain to be considered.

1) Is the proposed activity located in a designated floodplain or have the potential to affect or be affected by a floodplain on a National Flood Insurance Program map:
(<https://msc.fema.gov/portal/home>)?

Yes No

If the answer to this question is “yes,” contact the nearest Regional Office of the Federal Emergency Management Agency

(<http://www.fema.gov/regional-operations>) for further guidance.

2.2 E.O. 11990 – WETLAND PROTECTION

This E.O. requires agencies to minimize the destruction, loss, or degradation of wetlands, and to preserve and enhance the natural beneficial values of wetlands. Similar to E.O. 11988, the 8-step process is followed to consider how actions affect wetlands.

1) Is any portion of the proposed activity in wetlands?

Yes No

If the answer to this question is “yes,” provide documentation in the grant application demonstrating that: (1) there is no practicable alternative, and (2) the proposed activity includes all practicable measures to minimize harm to wetlands.

2.3 E.O. 12898 – ENVIRONMENTAL JUSTICE

This E.O. requires that "each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations." Thus, as appropriate, analysis of environmental justice concerns should be integrated during the review process.

1) Will the proposed activity have disproportionately high and adverse human health or environmental effects on minority or low-income populations?

Yes No

If the answer to this question is "yes," see the Council on Environmental Quality website for further guidance on Environmental Justice: <https://ceq.doe.gov/nepa-practice/justice.html>, <https://ceq.doe.gov/docs/ceq-regulations-and-guidance/regs/ej/justice.pdf>, and https://www.epa.gov/sites/default/files/2016-08/documents/nepa_promising_practices_document_2016.pdf

2.4 E.O. 13089 – CORAL REEF PROTECTION

This E.O. requires that any actions that are authorized or funded by Federal agencies not degrade the condition of coral reef ecosystems.

1) Will the proposed activity involve a coral reef ecosystem or National Marine Sanctuary (<http://sanctuaries.noaa.gov>)?

Yes No

If the answer to this question is "yes," contact the National Oceanic and Atmospheric Administration Coral Reef Conservation Program (<http://www.coralreef.noaa.gov>) for further guidance. Additional information regarding E.O. 13089 can be found at: <https://www.govinfo.gov/content/pkg/FR-1998-06-16/pdf/98-16161.pdf>.

2.5 E.O. 13112 – INVASIVE SPECIES

This E.O. requires agencies to prevent the introduction of invasive species and provide for their control.

1) Will the proposed activity have the potential to introduce or cause the spread of an invasive species? For more information on invasive species, see <https://www.invasivespeciesinfo.gov/>.

Yes No

If the answer to this question is "yes," provide documentation demonstrating that the benefits of the activity clearly outweigh the potential harm caused by invasive species, and that all feasible and prudent measures to minimize risk of harm will be taken in conjunction with the actions.

2.6 E.O. 13186 – RESPONSIBILITIES OF FEDERAL AGENCIES TO PROTECT MIGRATORY BIRDS

This E.O. requires the incorporation and promotion of migratory bird conservation considerations into all agency activities.

1) Is the proposed activity likely to occur during a time of the year when migrating birds are in the vicinity? For more information on migratory birds, see <http://www.fws.gov/migratorybirds>.

Yes No

If the answer to this question is “yes,” contact the nearest Regional Office of the U.S. Fish and Wildlife Service

(<http://www.fws.gov/where>) for further guidance. Additional information regarding E.O. 13186 can be found at: <https://www.fws.gov/birds/policies-and-regulations/administrative-orders/executive-orders.php>.

Appendix D – Fiber Optic Permitting Within WVDOH RW General Guidelines for Office of Broadband

FIBER OPTIC PERMITTING WITHIN WVDOH RW

GENERAL GUIDELINES FOR OFFICE OF BROADBAND

OCTOBER 19, 2021

These guidelines will apply to any project that will include installation of fiber optic lines by any Utility within any Division of Highways right-of-way. Utilities are expected to follow the provisions described within the current WVDOH Manual entitled *Accommodation of Utilities on Highway Right of Way and Adjustment and Relocation of Utility Facilities on Highway Projects*, June 2007.

GENERAL CONDITIONS

- Only fiber optic lines are permitted to longitudinally occupy any Controlled Access (CA) Right-of-way (RW) and those installations are subject to the following conditions:
 - Utility conforms with the provisions of the Telecommunications Act of 1996
 - such fiber optic lines are to be installed underground, and are not to be installed within the median
 - no poles or aerial installations within CA RW are permitted
- Aerial or buried perpendicular crossings of CA RW with a utility (fiber optic or other) may be permissible but entry/exit points are to be outside CA RW
- Utility is responsible for identifying location of any other utilities within project installation area and for any coordination necessary with any other utility
- Any municipal, County, State or Federal permits, approvals, or fees are responsibility of Utility
 - Municipal fees (such as B&O) may be applicable to project even if fiber optic installation (aerial or underground) is solely within WVDOH RW within municipal boundary
 - Installation (aerial or underground) of fiber optic line solely within WVDOH RW but also within boundary of Federal lands may require additional approval of Federal agency
- Utility is responsible for obtaining from each landowner any necessary approval to enter or work within any property outside WVDOH RW
- Any proposed **Microtrenching** must be approved by WVDOH - Central Office
 - this type of trench can be of concern due to lack of compaction, allowing water to infiltrate beneath the pavement, potentially causing voids and/or sinkholes—backfill/compaction procedure details must be provided
 - creates difficulty for WVDOH maintenance work due to shallowness of the line and inability to place warning tape 18" below finished grade, as required

MAINTENANCE BOND

- Utility required to provide to the District a \$75,000 Maintenance Bond prior to submission of initial Utility Permit within that District
 - to be kept current by Utility
 - covers all maintenance work within any County within that District by that Utility
 - Utility required to post separate Maintenance Bond for each District in which Utility seeking permit
 - Separate Maintenance Bond necessary for each type of utility installation by same Utility
 - must be current at time WVDOT would release any construction bond to Utility
- Any entity (private company, municipality, co-operative, etc.) proposing to install fiber optic line within WVDOT RW will be required to have separate Maintenance Bond on file with each District

ENVIRONMENTAL CLEARANCE (NEPA DOCUMENT)

- Utility should anticipate that at least a Categorical Exclusion (CE) document will be necessary for each project affecting CA RW or a route within the Federal-Aid Highway System
- Entire project routing (including non-WVDOT routes or other property) may be considered by FHWA to be single project with respect to environmental document
- If any part of installation is physically within boundary of a Federally owned property (even if installation solely within WVDOT RW), project may require an Environmental Assessment (EA) document
- Utility responsible for coordination with, and providing to WVDOT documentation of such coordination with Federal agencies, e.g., US Fish and Wildlife Service, US Army Corps of Engineers (if boring under or working within jurisdictional water), US Forest Service, National Park Service, US Military
- Utility coordinates with State Historic Preservation Office (SHPO) and if necessary, Tribal Nations consultations must go through FHWA
- WVDOT prepares/issues final environmental document provided by the Utility
- No construction to be undertaken until environmental clearance issued by WVDOT

UTILITY PERMIT SUBMISSION

- Completed MM-109 submitted to District with appropriate plans
 - One (1) full-size, printed set of Plans
 - A PDF or other electronic/digital set of Plans
- Construction/performance Bond submitted to District
 - Bond amount is either 5 percent of estimated project cost or minimum \$100,000
 - Bond issued in name of permittee
 - Release by WVDOT of construction bond does not occur for at least one year from date of WVDOT acceptance of work performed under terms of the permit, and Utility must

have on file a current Maintenance Bond at the time WVDOT might release construction bond

- For **Aerial Installations** (new poles, attachment to existing poles, overloading), minimum information/details needed within Plans
 - Map showing route(s), termini, project limits, location
 - Aerial image (e.g., Google Earth) of project area
 - Offset distance (center of pole from centerline of roadway)
 - Pole information
 - Coordinates
 - Pole Number
 - Pole Owner
 - Profiles
 - WVDOT right-of-way along roadway
 - Traffic control plan for construction/installation, and for maintenance if applicable
 - Street name/closest physical address to project
- For **Trenching and Sawcut** Installations, minimum information/details needed within Plans
 - Map showing route(s), termini, project limits, location
 - Aerial image (e.g., Google Earth) of project area
 - Distance from centerline of roadway
 - Distance behind guardrail, if appropriate
 - Existing WVDOT drainage structures
 - Handhole information
 - Location(s)
 - Dimensions/details
 - Depth of handhole lid beneath ground surface
 - WVDOT right-of-way along roadway
 - Trenching/sawcut details
 - Depth
 - Width
 - Backfill, compaction process to be utilized to close trench after installation
 - Verification that installation is outside pavement
 - Traffic control plan for construction/installation, and for maintenance if applicable
- For **Boring** Installations, minimum information/details needed within Plans
 - Map showing route(s), termini, project limits, location
 - Aerial image (e.g., Google Earth) of project area
 - Existing WVDOT drainage structures
 - Bore information
 - Location(s)
 - Depth(s)
 - Bore pit locations/details
 - Handhole information

- Location(s)
 - Dimensions/details
 - Depth of handhole lid beneath ground surface
- WVDOT right-of-way along roadway
- Traffic control plan for construction/installation, and for maintenance if applicable
- For any proposed **Bridge attachment**, Utility provides to WVDOT:
 - Map showing route(s), termini, project limits, location
 - Aerial image (e.g., Google Earth) of project area
 - Detailed alternatives analysis comparing options reviewed, with proposed justification indicating why bridge attachment is felt to be only reasonable/feasible alternative (see Utility Manual)
- If WVDOT approves a **Bridge attachment**, then minimum information/details needed within Plans
 - Map showing route(s), termini, project limits, location
 - Aerial image (e.g., Google Earth) of project area
 - Details for method of attachment to Bridge (no welding permissible)
 - Proposed location of conduit to be installed along Bridge
 - detail to assure the installation will not adversely affect WVDOT bridge inspections or maintenance
 - Utility to provide a schedule for Utility's inspection (e.g., annually) of bridge at areas of attachment and of the conduits to ensure no issues (such as rusting) with Bridge at attachment areas
 - Conduit details (inside and outside diameters, type of material, etc.)
 - Details concerning manner in which conduit will transition from ground (approaches) to Bridge
 - Traffic control plan for construction/installation, for inspection of bridge attachment areas and conduits, and if applicable, for maintenance

INSPECTION

- Utility installation inspection costs will be charged to Utility/Permittee
 - assume minimum cost of \$600/day for inspection cost by WVDOT
 - assume minimum cost of \$1200/day for inspection cost by WVDOT consultant

