

State of New Hampshire

# Desk Reference for New Hampshire Recipients of Local Fiscal Recovery Funds: Complying with Federal Uniform Guidance

New Hampshire Governor's Office for Emergency Relief and Recovery

The purpose of this desk reference is to summarize federal Uniform Guidance requirements<sup>1</sup> that are applicable to New Hampshire local governments that received Coronavirus Local Fiscal Recovery Funds (LFRFs) as established by the American Rescue Plan Act (ARPA). The scope of this desk reference does not cover other ARPA funding streams such as the Capital Projects Fund that classify NEUs solely as subrecipients and not prime recipients of funds.

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<sup>1</sup> To access the complete guidance, copy and paste this link into your web browser:  
<https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200?toc=1>

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## Definitions and Background

### What is a Non-Entitlement Unit of government (NEU)?

Non-entitlement units of government (NEUs) are **local governments typically serving populations of less than 50,000.**<sup>2</sup> A New Hampshire local city/town government meeting this population threshold that has received Coronavirus Local Fiscal Recovery Funds (LFRFs) is an NEU.

### What is a Prime Recipient?

A **prime recipient** is an organization that receives grant funding directly from a grantor (such as the federal government). Prime recipients are responsible for ensuring that the grant funding they receive is used appropriately and following grant guidelines provided by the grantor. Even though NEUs received their LFRF funding from the state, for the purposes of LFRF funds the federal government considers NEUs **prime recipients**.

### How can NEUs spend LFRF?

As prime recipients of LFRF, NEUs are responsible for determining how they want to spend the funds within the allowed uses published by Treasury in the [Final Rule](#) and other [LFRF guidance](#). Treasury will not pre-approve specific projects, and the state is specifically prohibited from approving/disapproving NEU uses of LFRF funds. **NEUs need to determine how they want to use the funds.** After deciding on one or many eligible projects, it's then best practice for the NEU to write a memo describing the project and explaining why the NEU believes that it is an eligible use of the funding. An **expenditure category (EC)** is a grouping of types of projects, created by Treasury, which are allowable uses of LFRF. All projects which are funded through LFRF must be placed into an expenditure category.

Expenditure Category 6: Revenue Replacement consists of one subcategory for the provision of government services to the extent of the reduction in prime recipient revenue. In LFRF guidance, Treasury indicated that all LFRF recipients of award amounts **less than \$10 million** could elect to use their total award amount for revenue replacement to fund the provision of government services. In New Hampshire, all NEUs have received less than \$10 million in LFRF funding, this means that your entire LFRF fund amount falls under the "Revenue Replacement" category.

**All NEUs are strongly encouraged to allocate their entire LFRF award to EC 6: Revenue Replacement, as it allows for the broadest eligible uses and the most streamlined compliance and reporting requirements.** Revenue Replacement funds can be used for the provision of government services, which is defined very broadly and encompasses most of the normal expenses your NEU faces, either on an ongoing basis or as part of special initiatives. In fact, Treasury defines revenue replacement to, "generally include any service traditionally provided by a government, including construction of roads and other infrastructure, provision of public safety and other services, and health and educational services."<sup>3</sup>

Note that any project eligible under another EC (other than Revenue Replacement) is also eligible under Revenue Replacement. You do not have to categorize a project in another EC just because an EC specific to that activity exists—you may categorize it as Revenue Replacement to simplify your compliance and reporting requirements. **If an NEU strongly wishes to categorize projects outside of the Revenue Replacement EC, please contact GOFERR for more information.**

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<sup>2</sup> Defined in section 603(g)(5) of the Social Security Act, as added by section 9901 of the American Rescue Plan Act of 2021.

<sup>3</sup> Coronavirus State and Local Fiscal Recovery Funds: Final Rule Overview. Page 9.  
<https://home.treasury.gov/system/files/136/SLFRF-Final-Rule-Overview.pdf>

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### How can NEUs **NOT** spend LFRF?

While Treasury allows NEUs to spend LFRF on a broad range of expenses, there are a few uses of LFRF which are explicitly prohibited. The ineligible uses for LFRF are as follows:

- Recipients may not pay down debt or pay interest on debt with LFRF money, including debt taken out to partially fund an LFRF project.
- Recipients may not deposit LFRF money into pension funds.
- Recipients may not use LFRF money to offset a reduction in net tax revenue resulting from a change in law, regulation, or administrative interpretation.
- Recipients may not use LFRF money to undermine COVID-19 mitigation practices in line with CDC guidance and recommendations.
- Recipients may not use LFRF money for any settlements and judgements.

### What is Uniform Guidance and how does it apply to LFRF funds?

The *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, known as the “**Uniform Guidance**,” is the set of federal rules (administrative requirements, cost principles, and audit guidelines) that apply to federal money. NEUs are responsible for following certain parts of Uniform Guidance and agreed to be bound by it when signing their agreements prior to receiving LFRF funds. NEUs are responsible for familiarizing themselves with these requirements. In addition, NEUs should review the most up-to-date versions of the Treasury’s guidance on LFRF funding. This guidance can be found on [Treasury’s website](#).

How Uniform Guidance applies to LFRF funds depends on the expenditure category that an NEU is using for their LFRF project. As a reminder, in January 2022, Treasury released guidance that allowed all recipients of less than \$10 million to allocate their entire award into the Revenue Replacement expenditure category. In July, Treasury updated its guidance on the requirements associated with Revenue Replacement funds, waiving many of the requirements of Uniform Guidance for projects in the Revenue Replacement category. ***All NEUs are strongly encouraged to allocate their entire LFRF award to EC 6: Revenue Replacement, as it allows for the broadest eligible uses and the most streamlined reporting and compliance requirements.***

## Uniform Guidance for EC 6: Revenue Replacement Projects

On July 27, 2022 Treasury released updated [Frequently Asked Questions \(FAQs\)](#)<sup>4</sup> that included substantial changes to the applicability of Uniform Guidance to the use of LFRF funds reported under the revenue loss expenditure category. **Most importantly, Treasury established that projects funded under EC 6 – Revenue Replacement do not carry a federal purpose and therefore cannot give rise to a subrecipient relationship.**

In short, subparts A, B, C and F still apply in their entirety, while only certain provisions of subparts D and E still apply to the revenue replacement expenditure category. In general, Subparts A through C do not provide substantive requirements applicable to the NEUs use of LFRF. Subpart F, Audit Requirements, do result in some requirements that apply to NEUs. The impacts of these changes are described in more detail in the table below.

Subparts A, B, C and F contain some parts that are less often discussed in recipient’s use of funds. Requirements of these subparts include:

Table 1: Uniform Guidance Subparts which APPLY to NEUs	
Subpart A – Acronyms and Definitions - 200.0 – 200.1	Subpart A contains acronyms used throughout the Uniform Guidance and definitions of significant terms used in subsequent subparts.
Subpart B – General Provisions - 200.100 – 200.113	Subpart B contains extensive background information and rules necessary to the implementation of the Uniform Guidance. It also includes breakdown of which portions of the Uniform Guidance are applicable to different types of awards, contracts, and subcontracts.
Subpart C – Pre-Federal Award Requirements and Contents of Federal Awards – 200.200 – 200.216	Subpart C contains rules and requirements for program planning, announcement, application, and award processes.
Subpart F – Audit Requirements – 200.500 – 200.520	Subpart F contains rules and regulations for the auditing of non-federal entities expending federal awards.  <b>NEUs must comply with federal single audit rules which require any non-federal entity which spends \$750,000 or more of federal money during a fiscal year must have a single audit conducted.</b>

In addition to the entirety of Subparts A, B, C, and F outlined above, certain provisions of Subpart D & E apply. Please see the table below for the specific provisions of Subpart D & E that **still apply** to revenue loss funds. Note that as applicable, these requirements may apply to both the NEU as the prime recipient and to any entity that the NEU works with to administer an LFRF-funded project (e.g., a contractor).

<sup>4</sup> Coronavirus State and Local Fiscal Recovery Fund (SLFRF) Final Rule Frequently Asked Questions. 13.14, p. 53 <https://home.treasury.gov/system/files/136/SLFRF-Final-Rule-FAQ.pdf> (July 27, 2022)

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Table 2: Uniform Guidance Subpart D & E provisions that DO apply to SLFRF revenue loss funds	
Subpart D Post Federal Award Requirements	
200.300 Statutory and national policy requirements	Requirements that awards must be administered in compliance with the US Constitution, federal law, and public policy. NEUs are responsible for ensuring compliance.
200.302 Financial management	Recipients must expend and account for federal awards in accordance with their own laws and procedures. NEUs must document how they have spent LFRF, how they have followed their own procurement rules and any other relevant procedures.
200.303 Internal controls	NEUs must maintain internal controls to ensure compliance with federal law and award conditions, respond to non-compliance, and protect personal identifiable information and other sensitive information.
200.328 Financial reporting	Requirements for the frequency with which the federal awarding agency collects financial information and the content of that information. <b>This requirement will be satisfied by the NEU's annual report to the Treasury.</b>
200.329 Monitoring and reporting program performance	NEUs are responsible for oversight of federal award supported activities. Requirements for the content and frequency of performance reports. Authorization for federal awarding agency to waive performance reports. <b>As with 200.328 above, this requirement will be satisfied by the NEU's annual report to the Treasury.</b>
Record Retention and Access (2 C.F.R. 200.334 – 200.338) <ul style="list-style-type: none"> <li>• 200.334 Retention requirements for records.</li> <li>• 200.335 Requests for transfer of records.</li> <li>• 200.336 Methods for collection, transmission, and storage of information.</li> <li>• 200.337 Access to records.</li> </ul>	<ul style="list-style-type: none"> <li>• NEUs are subject to a 5-year retention period for all records pertaining to LFRF. Provisions for extension of retention period.<sup>5</sup></li> <li>• Procedure for transfer of records with long-term retention value to federal custody. <b>If the federal government requests certain records, the NEU is responsible for providing them.</b></li> <li>• Records should be kept and transmitted in an open, machine-readable format. <b>Keeping records in an electronic format such as Microsoft Word, Excel, or PDF is advisable.</b></li> </ul>

<sup>5</sup> Note that Uniform Guidance actually prescribes a minimum of a 3-year retention period but since the LFRF award terms and conditions are stricter than the Uniform Guidance, NEUs must comply with the guidance for the federal award.

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<ul style="list-style-type: none"> <li>200.338 Restrictions on public access to records.</li> </ul>	<ul style="list-style-type: none"> <li>The federal awarding agency maintains a right to access all NEU records. Review of records should only very rarely disclose the name of the victim of a crime. Federal right of access lasts as long as the records are maintained, even beyond the 3-year retention period. <b>The Treasury may look at your records as long as you have them.</b></li> <li>The federal awarding agency may not limit public access to records, except for personal identifiable information or confidential records exempt from FOIA. FOIA only applies to records which has been transferred to federal custody. <b>An NEU should assume that LFRF records will be publicly accessible.</b></li> </ul>
<b>Subpart E- Cost Principles</b>	
200.400(a) - (c), and (e) Policy guide	NEUs are responsible for administering the award through sound management practices and in keeping with all agreements, objectives, terms and conditions. NEUs have a responsibility for employing whatever form of organization or management techniques will best administer the award. The cognizant agency for indirect costs is responsible for ensuring that cost principles are applied consistently. <b>NEUs must ensure that award money is properly managed and accounting practices are applied consistently.</b>
200.403(a), (c), (d), (g), and (h) Factors affecting allowability of costs	Costs must be necessary and reasonable and be consistent with applicable policies and procedures. Costs allocation should be consistent, adequately documented, and incurred during the approved budget period, absent a waiver to the contrary. <b>NEUs must ensure that all costs are properly documented and happened during the approved period.</b>
200.404(e) Reasonable costs	Deviation from established practices should be considered in determining the reasonableness of costs. <b>NEUs must ensure that costs do not exceed reasonable expectations (e.g., purchasing a single new car at the cost of \$8 million would be unreasonable).</b>

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As noted above, all NEUs are strongly encouraged to allocate their entire LFRF award to EC 6: Revenue Replacement, as it allows for the broadest eligible uses and the most streamlined reporting and compliance requirements. The table below outlines the requirements of Uniform Guidance which apply explicitly to NEUs *only* as the prime recipient of funds. **These requirements would not pass down to any entity the NEU works with to assist with the administration of an LFRF-funded project** spent under EC 6: Revenue Replacement.

Table 3: Uniform Guidance Provisions that <i>explicitly</i> apply <i>only</i> to prime recipients of LFRF revenue loss funds	
200.339 – 200.343 Remedies for noncompliance	<ul style="list-style-type: none"> <li>• Remedies for non-compliance, including additional terms and conditions, withholding funds, and termination of award.</li> <li>• Procedure for termination of an award.</li> <li>• Requirements for notice of termination to the NEU.</li> <li>• Objection, hearing and appeal process.</li> <li>• Costs resulting during or after suspension or termination are not allowable unless authorized.</li> </ul>
200.344 Closeout	Procedures and requirements for the closeout of federal awards.
200.345 Post-closeout adjustments and continuing responsibilities	The closeout of a federal award does not affect certain continuing requirements, including audit requirements, property management, and record retention. Closeout to not limit the right of the federal awarding agency or pass through entity to disallow costs and recovery funds on the basis of later review.
200.346 Collection of amounts due	Procedures for collecting funds paid to the NEU in excess of amount entitled to.



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The July 27 updated FAQs included substantial changes to the applicability of Uniform Guidance to the use of LFRF funds reported under the revenue loss expenditure category. The table below are the requirements that were **explicitly waived** for projects under EC 6: Revenue Replacement.

Table 4: Uniform Guidance Subpart D Provisions that DO NOT apply to the use of SLFRF revenue loss funds	
200.301 Performance Management	Requirement that the federal awarding agency must measure the recipient's performance.
200.304 Bonds	Authorization for the federal awarding agency to include a provision on bonding or insurance under certain circumstances.
200.305 Federal payment	Requirements and procedures for disbursement of a federal award to an NEU.
200.306 Cost sharing or matching	Requirements and procedures surrounding shared costs or matching funds.
200.307 Program Income	Requirements surrounding use of income earned from a federal award.
200.308 Revision of budget and program plan	Requirements and procedures surrounding revision of budget and program plans for federal awards.
200.309 Modifications to period of performance	Requirements and procedures surrounding modifications to Period of Performance for federal awards.
200.310 – 200.316 Property standards	Requirements surrounding insurance coverage, real property, federally-owned and exempt property, equipment, supplies, intangible property, and property trust relationship. <i>This includes all requirements arising from federal interests in real property or equipment. Please see Section 2 below for more details on this change.</i>
200.317 – 200.327 Procurement Standards	Standards for procuring property and services under a federal award.
200.330 Reporting on Real Property	Requirement that NEUs submit reports at least annually on status of real property in which the Federal Government retains an interest.
200.331 – 200.333 Subrecipient monitoring and management	Monitoring and management standards and requirements for pass through entities providing a subaward of federal award to a subrecipient.

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## Best Practices

### *Review Federal Grant Guidance from Treasury*

This desk reference is meant to provide NEUs with an overview of the compliance requirements associated with LFRF funds. However, it should not serve as a substitute for reviewing the applicable federal grant guidance located [here](#).

### *Establish Internal Controls*

NEUs should also consider what internal controls exist or can be developed to ensure consistency and compliance with the LFRF rules and requirements. The work to review the guidance and develop internal controls should take place before grant spending begins, to ensure that the right systems and processes are in place from day one.

### *Receiving Entity Evaluation and Monitoring*

NEUs as prime recipients, are responsible for “vetting” the entities they give money to. NEUs should ensure that the entities receiving LFRF funds is capable of carrying out the project as required. Prime recipients must also continually monitor those receiving LFRF funds to ensure that they are following the requirements of the agreement or contract. This may include reviewing financial records, ensuring that written policies are followed, and performing site visits.

### *Establish and follow Procurement Rules*

NEUs should have documented procurement procedures in place and should follow those procurement procedures when spending LFRF funds. Even if the procurement rules in Uniform Guidance do not apply (if the project is reported under EC 6: Revenue Replacement), it is still best practice to conform to local procurement rules. If the project is reported under another EC then Uniform Guidance procurement rules apply. For all contract procurements, NEUs must follow established conflict of interest standards to forestall personal financial or other interests that might exert undue influence on an employee, officer, or agent participating in the award or administration of a contract.

### *When in Doubt, Reach Out*

The Governor’s Office for Emergency Relief and Recovery serves as a resource and can be contacted in case of questions throughout the lifecycle of the ARPA-LFRF funds.

To connect with the GOFERR office regarding questions and concerns, please reach out via the inquiry request [located here](#).

**REMINDER: the contents of this Desk Reference only apply to projects that are funded with EC 6: Revenue Replacement. If a project is allocated to another expenditure category, all sections of Uniform Guidance apply and must be followed by the NEU. This is not recommended for NEUs.**