**Using the Coronavirus State and Local Fiscal Recovery Funds Model Addendum:**

**Purpose, Usage, Questions and Answers**

***Purpose of the Model Addendum***

This Model Addendum (“*Addendum*”) is intended for use by units of local government in North Carolina that have received payments from the Coronavirus State Fiscal Recovery Fund (“*State Fiscal Recovery Fund*”) or Coronavirus Local Fiscal Recovery Fund (“*Local Fiscal Recovery Fund*” and, together with the State Fiscal Recovery Fund, the “*Fiscal Recovery Funds*”) established under Sections 602 and 603, respectively, of the Social Security Act, as added by Section 9901 of the American Rescue Plan Act of 2021, Pub. L. No. 117-2 (“*ARPA*”).

The U.S. Department of the Treasury (“*Treasury*”) has stated in its Interim Final Rule, recently released Final Rule, and Compliance and Reporting Guidance that, with few exceptions, the procurement standards contained in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards ([2 C.F.R. Part 200](https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200?toc=1)) (the “*Uniform Guidance*”) apply when a recipient or subrecipient of Fiscal Recovery Funds uses these monies to purchase goods or services.[[1]](#footnote-2) Among other things, the procurement standards in the Uniform Guidance ([2 C.F.R. §§ 200.317– 200.327](https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-D/subject-group-ECFR45ddd4419ad436d/section-200.327)) require recipients and subrecipients to include certain clauses in Fiscal Recovery Fund supported contracts to purchase goods or services.[[2]](#footnote-3) Separately, the Local Fiscal Recovery Fund Award Terms and Conditions executed by each recipient unit of local government also require the inclusion of certain clauses in these contracts.[[3]](#footnote-4)

This Addendum addresses (1) contract clauses required by the procurement standards in the Uniform Guidance, (2) contract clauses required by the Local Fiscal Recovery Fund Award Terms and Conditions, and (3) recommended contract clauses that may assist a unit in satisfying statutory and regulatory requirements applicable to the expenditure of Fiscal Recovery Funds. A unit should use this Addendum in consultation with legal counsel, as both interpretations of these requirements and a particular unit’s views on proper risk allocation or contract drafting may differ.

The Addendum assumes (1) a unit of local government is a “recipient” or a “subrecipient” of monies from the Fiscal Recovery Funds, (2) the unit is using these funds to pay for the cost of a good or service to carry out an eligible use under ARPA, and (3) the unit and a contractor have entered into a separate written agreement that governs the terms of payment and delivery of the goods or services.[[4]](#footnote-5) **The Addendum does not include any clauses that may be required under North Carolina law**.

***Questions and Answers***

This section answers several questions that the users of the Addendum may have.

*Question #1*:Should a unit use this Addendum as a subaward agreement to govern a transfer of Fiscal Recovery Funds to a subrecipient?

Answer: No.

Recipients of Fiscal Recovery Funds may “transfer” these funds to other governmental or nonprofit organizations where both ARPA and North Carolina law authorize a transfer.[[5]](#footnote-6) Under ARPA and applicable federal grant regulations, the transferee of these funds will be a “subrecipient” that has received a “subaward”—and a recipient must enter into a subaward agreement with that subrecipient to govern the transaction.

Under the Uniform Guidance, a “contract” is distinct from a “subaward”.[[6]](#footnote-7) The Addendum only addresses required provisions for the former type of agreement, not the latter.[[7]](#footnote-8)

*Question #2*: Should our unit modify the Addendum prior to use?

Answer: Yes.

The Addendum contains footnotes (each labeled “*Note to Draft*”) that explain why the Addendum contains specific clauses. Units should review and remove these explanatory footnotes in consultation with legal counsel when finalizing an addendum for a particular contract supported by Fiscal Recovery Funds.

*Question*: #3: Does the Addendum contain all contract clauses described in 2 C.F.R. § 200.327 and Appendix II to 2 C.F.R. Part 200?

Answer: Almost. The Addendum does not contain: (1) a contract clause addressing “administrative, contractual, or legal remedies in instances where contractors violate or beach contract terms” (required under Appendix II, § (A) for contracts exceeding the Simplified Acquisition Threshold); or (2) a contract clause addressing “termination for cause and for convenience by the non-Federal entity[,] including the manner by which it will be effected and the basis for settlement.”

Each of these clauses will differ based upon the type of contract involved and the operating procedures in a given unit. Each unit should consult legal counsel to develop appropriate terms.[[8]](#footnote-9) The Addendum contains all other clauses required by 2 C.F.R. Part 200, Appendix II that are applicable to Fiscal Recovery Funds (but see Question #4 below).

*Question #4*:Appendix II, § (D) requires “all prime construction contracts in excess of $2,000” to include a provision for compliance with the Davis-Bacon Act and associated regulations promulgated by the Department of Labor. Why does the Addendum not contain provisions requiring compliance with the Davis-Bacon Act?

Answer: See Footnote #6 of the Addendum.

*Question #5:* Which clauses in the Addendum are mandatory and which are recommended?

The table below provides a reference guide and the source of any requirement or recommendation. This table should be read in conjunction with the footnotes in the Addendum.

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| --- | --- | --- | --- | --- |
| Section  Number | Title of Section | Is Inclusion Mandatory or Recommended?[[9]](#footnote-10) | | Source of Requirement or Recommendation[[10]](#footnote-11) |
| I | Definitions | N/A | N/A | |
| II | Equal Employment Opportunity | Mandatory | Appendix II, § (C) | |
| III | Copeland Anti-Kickback Act | Mandatory | Appendix II, § (D) | |
| IV | Contract Work Hours and Safety Standards Act | Mandatory | Appendix II, § (E) | |
| V | Rights to Inventions Made Under a Contract or Agreement | Mandatory[[11]](#footnote-12) | Appendix II, § (F) | |
| VI | Clean Air Act and Federal Water Pollution Control Act | Mandatory | Appendix II, § (G) | |
| VII | Debarment and Suspension | Mandatory | Appendix II, § (H) | |
| VIII | Byrd Anti-Lobbying Amendment | Mandatory | Appendix II, § (I) | |
| IX | Procurement of Recovered Materials | Mandatory | Appendix II, § (J);  2 C.F.R. § 200.323. | |
| X | Prohibition on Contracting for Covered Telecommunications Equipment or Services | Mandatory | Appendix II, § (K);  2 C.F.R. § 200.216. | |
| XI | Domestic Preferences for Procurement | Mandatory | Appendix II, § (L);  2 C.F.R. § 200.322 | |
| XII | Solicitation of Minority and Women-Owned Business Enterprise | Mandatory  (if Subcontracts are to be let) | 2 C.F.R. § 200.321(b)(6). | |
| XIII | Access to Records | Recommended | Local FRF Award Terms, § 4; 2 C.F.R. § 200.334 | |
| XIV | Conflicts of Interest; Gifts and Favors | Recommended | Local FRF Award Terms, § 8; 2 C.F.R. § 200.318(c)(1) | |
| XV | Assurances of Compliance with Title VI of the Civil Rights Act of 1964 | Mandatory | Local FRF Award Terms / Assurances of Compliances § 5 | |
| XVI | Other Non-Discrimination Statutes | Recommended | Local FRF Award Terms, § 9(c) | |
| XVII | Miscellaneous | Recommended | FRF Award Terms, §§ 17-18 | |
| XVIII | Conflicts and Interpretation | Recommended | N/A | |

*Question #6:* Can a unit use a “short form” of these provisions?

Answer: Likely not. While counsel might assist in shortening some of these provisions, a blanket incorporation of “all provisions required by Appendix II to 2 C.F.R. Part 200” or “all provisions required by the Fiscal Recovery Fund Award Terms and Conditions” is not a best practice. A “short form” may fail to adequately notify contractors which terms actually apply and may increase the risk that either the unit or the contractor fails to take required actions.

The Federal Transit Administration (“*FTA*”), in addressing the obligation of FTA grantees to include required clauses in third-party procurement contracts, has noted that “[i]t is not acceptable to simply reference [FTA’s Master Award Agreement with grantees] and leave contractors the responsibility to decide which statutes and regulations apply to that particular contract.”[[12]](#footnote-13) Similarly, it is unlikely that Treasury has a favorable view of “short form” contract provisions that incorporate all statutory or regulatory requirements that *may* be applicable to a particular contract supported by Fiscal Recovery Funds. In December 2021, the Office of Management and Budget specifically indicated that auditors should check Fiscal Recovery Fund-supported contracts for the inclusion of applicable contract clauses contained in 2 C.F.R. Part 200, Appendix II.[[13]](#footnote-14) Given the specific direction given to auditors and potential confusion generated by a blanket incorporation of “all applicable terms and conditions”, units should use the Addendum to develop standard terms and conditions that can be used for Fiscal Recovery Fund supported contracts.

*Question #7:* If a unit desires to make a “micro-purchase” of goods or services from a qualified contractor, must it enter into a written contract with such contractor containing clauses from the Model Addendum?

Answer: Units of local government may, on a non-competitive basis, use Fiscal Recovery Funds to acquire supplies or services when the aggregate amount of such purchase does not exceed the “micro-purchase threshold”.[[14]](#footnote-15) As of November 12, 2020, a unit of local government in North Carolina expending federally awarded funds subject to the procurement standards in the Uniform Guidance must “determin[e] and documen[t] an appropriate micro-purchase threshold based on internal controls, an evaluation of risk, and its documented procurement procedures.”[[15]](#footnote-16) Generally, that threshold is $10,000 (as identified in the Federal Acquisition Regulation (48 C.F.R. Part 2, Subpart 2.1) unless a unit self-certifies a “higher threshold consistent with state law” or receives federal authorization to set an alternative micro-purchase threshold that exceeds $50,000.[[16]](#footnote-17)

In non-binding guidance, the U.S. Chief Financial Officers’ Council has stated that a non-Federal entity may use a purchase-card or charge card to make a micro-purchase, as long as the entity has documented and approved procedures for such purchases.[[17]](#footnote-18) Such a purchase is still a “contract” for purposes of the Uniform Guidance procurement standards. Therefore, a unit using Fiscal Recovery Funds to pay for such a contract still may have an obligation under 2 C.F.R. § 200.327 and Appendix II to 2 C.F.R. Part 200 to include in those contracts the clauses specified in Appendix II to 2 C.F.R. Part 200. In these cases, a unit may consider placing the required clauses on its website, stating that such provisions govern any electronic transactions into which the unit enters using Fiscal Recovery Funds. Alternatively, a unit could avoid purely electronic payment and ensure that a contractor executes a purchase order containing the terms required by the Addendum.

*Question #8*: What is the purpose of Attachment 1? Is it part of the Addendum?

Answer: See Footnote #16 of the Addendum. If a contract amount exceeds $100,000, a unit should collect the certification from the contractor. If the contractor intends to let any subcontracts exceeding $100,000, the contractor also should collect this certification from subcontractors holding these subcontracts.

*Question #9*:If a unit has used other forms of Federal financial assistance and developed clauses to use for contracts supported by such assistance, will those clauses suffice for contracts supported by Fiscal Recovery Funds?

Answer: Maybe. Units of local government in North Carolina use Federal financial assistance to fund procurement costs in a wide variety of contexts.[[18]](#footnote-19) Many units have sought reimbursement from the Federal Emergency Management Agency’s (“FEMA”) Public Assistance Program for the costs of purchasing goods or services qualifying as “emergency protective measures”. Other units have received grants or loans from, among other federal entities, the Environmental Protection Agency, the Department of Agriculture, the Economic Development Administration, the Department of Housing and Urban Development, the Department of Justice, or the Federal Transit Administration.

The universe of federal laws and regulations potentially applicable to a unit of local government’s expenditures of Federal financial assistance from these agencies is massive. And despite the promulgation of the Uniform Guidance, it is not the case that a uniform set of regulations governs the expenditure of all funds originating from a federal source. Instead, as local government staff across North Carolina have learned in recent months, the rules applicable to federal grants originate in a wide range of federal statutes, regulations, financial assistance agreements, and agency guidance. And the rules that govern other federal grant programs may not apply to the expenditure of Fiscal Recovery Funds. Units and counsel should consider rules applicable to Fiscal Recovery Funds rather than those that may be applicable to other federal grant programs (e.g., FEMA Public Assistance authorized under the Stafford Act, Pub. L. No. 93-288, as amended).

Units also should be aware that the OMB revised the Uniform Guidance in August 2020.[[19]](#footnote-20) Among other things, those revisions resulted in the addition of two new required contract clauses. The Addendum addresses these clauses in Section X and Section XI.

*Question #10*: Will these clauses be effective for the entirety of the period of performance for ARPA Fiscal Recovery Funds (i.e., through December 31, 2026)?

Maybe. Units should remain cognizant that Treasury continues to release additional compliance guidance governing the expenditure of Fiscal Recovery Funds, and may modify or exclude certain contract clauses contained in the Model Addendum.

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**THE MODEL ADDENDUM IS AN EXPLANATORY TEMPLATE THAT SHOULD BE REVIEWED BY LEGAL COUNSEL PRIOR TO ITS USE.**

**THE MODEL ADDENDUM DOES NOT CONSTITUTE LEGAL ADVICE, NOR IS AN ATTORNEY-CLIENT RELATIONSHIP CREATED BY ITS USE.**

**FOOTNOTES (LABELED “NOTE TO DRAFT”) SHOULD BE REMOVED PRIOR TO INCLUSION IN ANY CONTRACT.**

**IF YOU HAVE ANY COMMENTS, PLEASE CONTACT CONNOR CREWS AT THE UNC SCHOOL OF GOVERNMENT**

**(**[**CCREWS@SOG.UNC.EDU**](mailto:CCREWS@SOG.UNC.EDU)**; 919-962-1575).**

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**CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUNDS ADDENDUM**

This **CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUNDS ADDENDUM** (this “*Addendum*”) is entered into by and between [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_][[20]](#footnote-21), a [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_][[21]](#footnote-22) (“*Contractor*”), and [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_][[22]](#footnote-23), a [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_][[23]](#footnote-24) (“*Unit*”), and forms an integral part of the Contract (as defined in Section I hereof).

**RECITALS**

**WHEREAS**, Unit has received, either as a Recipient or Subrecipient (as each such term is defined in Section I hereof) a payment from the Coronavirus State Fiscal Recovery Fund (“*State Fiscal Recovery Fund*”) or Coronavirus Local Fiscal Recovery Fund (“*Local Fiscal Recovery Fund*” and, together with the State Fiscal Recovery Fund, the “*Fiscal Recovery Funds*”) established pursuant to Sections 602 and 603, respectively, of the Social Security Act, as added by Section 9901 of the American Rescue Plan Act of 2021, Pub. L. No. 117-2 (“*ARPA*”); and

**WHEREAS**, Unit intends to pay, in part or in whole, for the cost of the Contract (as defined in Section I hereof) using monies received from the Fiscal Recovery Funds; and

**WHEREAS**, in using such funds, Unit must comply with the terms of ARPA, regulations issued by the U.S. Department of the Treasury governing the expenditure of monies distributed from the Fiscal Recovery Funds (including, without limitation, the Interim Final Rule (86 Fed. Reg. 26,786 (May 17, 2021) and Final Rule (87 Fed. Reg. 4,338 (Jan. 27, 2022)), the Award Terms and Conditions applicable to the Fiscal Recovery Funds, and such other guidance as the U.S. Department of the Treasury has issued or may issue governing the expenditure of monies distributed from the Fiscal Recovery Funds (collectively, the “*Regulatory Requirements*”); and

**WHEREAS**, pursuant to the Regulatory Requirements, Unit must comply with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury has determined or may determine are inapplicable to the Fiscal Recovery Funds; and

**WHEREAS**, pursuant to 2 C.F.R. § 200.327, Unit must include within the Contract applicable provisions described in Appendix II to 2 C.F.R. Part 200, each of which is contained in this Addendum; and

**WHEREAS**, Unit shall not enter into the Contract or make any distributions of funds to Contractor using monies from the Fiscal Recovery Funds absent Contractor’s agreement and adherence to each term and condition contained herein.

**NOW THEREFORE**, Contractor and Unit do mutually agree as follows:

**AGREEMENTS**

1. ***Definitions***. Unless otherwise defined in this Addendum, capitalized terms used in this Addendum shall have the meanings ascribed thereto in this Section I.
   1. “*ARPA*” shall mean the American Rescue Plan Act of 2021, Pub. L. No. 117-2, as amended.
   2. “*Administering Agency*” shall have the meaning specified in 41 C.F.R. § 60-1.3.
   3. “*Applicant*” shall have the meaning specified in 41 C.F.R. § 60-1.3, which is provided here for ease of reference: (“An applicant for Federal assistance involving a construction contract, or other participant in a program involving a construction contract as determined by regulation of an administering agency. The term also includes such persons after they become recipients of such Federal assistance.”).
   4. “*Construction Work*” shall have the meaning specified in 41 C.F.R. § 60-1.3, which is provided here for ease of reference: (“[T]he construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.”).
   5. “*Contract*” shall mean the legal instrument by which Unit, as a Recipient or Subrecipient, shall purchase from Contractor property or services needed to carry out a project or program under a Federal award, and of which this Addendum shall constitute an integral part.
   6. “*Contractor*” shall mean the entity named as “Contractor” in this Addendum that has received a Contract from Unit.
   7. “*Federally Assisted Construction Contract*” shall have the meaning specified in 41 C.F.R. § 60-1.3, which is provided here for ease of reference: (“[A]ny agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the government of the United States of America for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work..”).
   8. “*Government*” shall have the meaning specified in 41 C.F.R. § 60-1.3, which is provided here for ease of reference: (“[T]he government of the United States of America.”).
   9. “*Laborer*” or “*Mechanic*” shall have the meaning specified in 29 C.F.R. § 5.2(m), which is provided here for ease of reference (“The term laborer or mechanic includes at least those workers duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. The term laborer or mechanic includes apprentices, trainees, helpers, and, in the case of contracts subject to the Contract Work Hours and Safety Standards Act, watchmen or guards. The term does not apply to workers whose duties are primarily administrative, executive, or clerical, rather than manual. Persons employed in a bona fide executive, administrative, or professional capacity as defined in part 541 of [Title 40 of the United States Code] are not deemed to be laborers or mechanics. Working foremen who devote more than 20 percent of their time during a workweek to mechanic or laborer duties, and who do not meet the criteria of [Title 40 of the United States Code], are laborers and mechanics for the time so spent.”).
   10. “*Recipient*” shall mean an entity that receives a Federal award directly from a Federal awarding agency. The term does not include subrecipients or individuals that are beneficiaries of an award.
   11. “*Subcontract*” shall mean any agreement entered into by a Subcontractor to furnish supplies or services for the performance of this Contract or a Subcontract. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.
   12. “*Subcontractor*” shall mean an entity that receives a Subcontract.
   13. “*Subrecipient*” shall mean an entity that receives a subaward from a pass-through entity to carry out part of a Federal award; but does not include an individual that is a beneficiary of such award. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.
   14. “*Tier*” shall have the meaning indicated in 2 C.F.R. Part 180 and illustrated in 2 C.F.R. Part 180, Appendix II.
2. ***Equal Employment Opportunity[[24]](#footnote-25)***
   1. If this Contract is a Federally Assisted Construction Contract exceeding $10,000, during the performance of this Contract, Contractor agrees as follows:
      1. Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
      2. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
      3. Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee’s essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor’s legal duty to furnish information.
      4. Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers’ representatives of the Contractor’s commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
      5. Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
      6. Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
      7. In the event of Contractor’s noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or Federally Assisted Construction Contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
      8. Contractor will include the portion of the sentence immediately preceding paragraph (a)(i) of this Section II and the provisions of paragraphs (a)(i) through (a)(viii) in every Subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each Subcontractor or vendor. The Contractor will take such action with respect to any Subcontract or purchase order as the Administering Agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

Unit further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the Unit so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

* + 1. Unit agrees that it will assist and cooperate actively with the Administering Agency and the Secretary of Labor in obtaining the compliance of Contractors and Subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency’s primary responsibility for securing compliance.
    2. The Unit further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a Contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon Contractors and Subcontractors by the Administering Agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the Unit agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.
  1. If this Contract is not a Federally Assisted Construction Contract exceeding $10,000, the provisions of Section I(a) of this Contract shall not apply.

1. ***Copeland “Anti-Kickback” Act******[[25]](#footnote-26)***
   1. Contractor and any Subcontractors performing work under the Contract shall comply with 18 U.S.C. § 874. Unit shall report all suspected or reported violations to the U.S. Department of the Treasury.[[26]](#footnote-27)
2. ***Contract Work Hours and Safety Standards Act***[[27]](#footnote-28)
   1. *Overtime Requirements.* No Contractor or Subcontractor contracting for any part of the Contract work which may require or involve the employment of Laborers or Mechanics shall require or permit any such Laborer or Mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such Laborer or Mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
   2. *Violation; Liability for Unpaid Wages; Liquidated Damages*. In the event of any violation of the clause set forth in Section [IV(a)] (*Overtime Requirements*) above, Contractor and any Subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and Subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual Laborer or Mechanic, including watchmen and guards, employed in violation of the clause set forth in Section [IV(a)] (*Overtime Requirements*) above, in the sum of $27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in Section [IV(a)] (*Overtime Requirements*) above.
   3. *Withholding for Unpaid Wages and Liquidated Damages*. The Unit shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by Contractor or Subcontractor under any such contract or any other federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or Subcontractor for unpaid wages and liquidated damages as provided in Section [IV(b)] (*Violation; Liability for Unpaid Wages; Liquidated Damage*s) of this section.
   4. *Subcontracts*. Contractor or Subcontractor shall insert in any Subcontract the clauses set forth in Sections IV(a) through IV(d) and also a clause requiring the Subcontractors to include these clauses in any lower tier Subcontracts. Contractor shall be responsible for compliance by any first tier Subcontractor or lower tier Subcontractor with the clauses set forth in Sections IV(a) through IV(d).
   5. *Payroll and Records.* Contractor or Subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the Contract for all Laborers and Mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Records to be maintained under this provision shall be made available by Contractor or Subcontractor for inspection, copying, or transcription by authorized representatives of the Department of the Treasury and the U.S. Department of Labor, and Contractor or Subcontractor will permit such representatives to interview employees during working hours on the job.
   6. *Exceptions*.None of the requirements of Section [IV] of this Addendum shall apply if this Contract is (1) a Contract for (i) transportation by land, air, or water; (ii) the transmission of intelligence, (iii) the purchase of supplies or materials or articles ordinarily available in the open market, or (iv) in an amount that is equal to or less than $100,000.[[28]](#footnote-29)
3. ***Rights to Inventions Made Under a Contract or Agreement***[[29]](#footnote-30)
   1. The Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for “Government Purposes”, any subject data or copyright described below.[[30]](#footnote-31) “Government Purposes,” means use only for the direct purposes of the Government. Without the copyright owner’s consent, the Government may not extend its Federal license to any other party.
      1. Any subject data developed under the Contract, whether or not a copyright has been obtained; and
      2. Any rights of copyright purchased by Contractor using Federal assistance funded in whole or in part by the Department of the Treasury.
   2. Unless the Department of the Treasury determines otherwise, a Contractor performing experimental, developmental, or research work required as part of this Contract agrees to permit the Department of the Treasury to make available to the public, either the Department of the Treasury’s license in the copyright to any subject data developed in the course of the Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.
   3. Unless prohibited by North Carolina law, upon request by the Government, Contractor agrees to indemnify, save, and hold harmless the Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under the Contract. Contractor shall be required to indemnify the Government for any such liability arising out of the wrongful act of any employee, official, or agent of the Contractor.
   4. Nothing contained in this clause shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
   5. Data developed by the Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying Contract is exempt from the requirements herein, provided that the Contractor identifies those data in writing at the time of delivery of the Contract work. The Contractor agrees to include these requirements in each Subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.
   6. For the purposes of this Section V, “subject data” means “recorded information, whether or not copyrighted, and that is delivered or specified to be delivered as required by the Contract.” Examples of “subject data” include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses or other similar information used for performance or administration of the Contract.”
4. ***Clean Air Act and Federal Water Pollution Control Act[[31]](#footnote-32)***
   1. *Clean Air Act*.Contractor agrees to comply with all applicable standards, orders and regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 *et seq.* Contractor agrees to report each violation to Unit and understands and agrees that Unit will, in turn, report each violation as required to the U.S. Department of the Treasury and the appropriate Environmental Protection Agency Regional Office. Contractor agrees to include these requirements in each Subcontract exceeding $150,000 financed in whole or in part with Federal assistance provided by the U.S. Department of the Treasury.
   2. *Federal Water Pollution Control Act.* Contractor agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 *et seq.* Contractor agrees to report each violation to Unit and understands and agrees that Unit will, in turn, report each violation as required to assure notification to the U.S. Department of the Treasury and the appropriate Environmental Protection Agency Regional Office. Contractor agrees to include these requirements in each Subcontract exceeding $150,000 financed in whole or in part with Federal assistance provided by the U.S. Department of the Treasury.
5. ***Debarment and Suspension***[[32]](#footnote-33)
   1. Due to its receipt of Fiscal Recovery Funds, Unit is a participant in a nonprocurement transaction (defined at 2 C.F.R. § 180.970) that is a covered transaction pursuant to 2 C.F.R. § 180.210 and 31 C.F.R. § 19.210. Therefore, this Contract is a lower-tier covered transaction for purposes of 2 C.F.R. Part 180 and 31 C.F.R. Part 19 if (1) the amount of this Contract is greater than or equal to $25,000 (2 C.F.R. § 180.220(b)(1); 31 C.F.R. § 19.220(b)(1)), (2) the Contract requires the consent of an official of the Department of the Treasury (2 C.F.R. § 180.220(b)(2); 31 C.F.R. § 19.220(b)(2)), or (3) this Contract is for federally-required audit services (2 C.F.R. § 180.220(b)(3); 31 C.F.R. § 19.220(b)(3)).[[33]](#footnote-34)
   2. **If this Contract is a covered transaction as set forth in Section [VII(a)] above, Contractor hereby certifies as of the date hereof that each of Contractor, Contractor’s principals (defined at 2 C.F.R. § 180.995), and the affiliates (defined at 2 C.F.R. § 180.905) of Contractor and Contractor’s principals are not excluded (defined at 2 C.F.R. § 180.935) and are not disqualified (defined at 2 C.F.R. § 180.935). If any of the foregoing persons are excluded or disqualified and the Secretary of the Treasury has not granted an exception pursuant to 31 C.F.R. § 19.120(a), (1) this Contract shall be void, (2) Unit shall not make any payments of Federal financial assistance to Contractor, and (3) Unit shall have no obligations to Contractor under this Contract.**
   3. Contractor must comply with 2 C.F.R. Part 180, Subpart C, and 31 C.F.R. Part 19, and must include a requirement to comply with these regulations in any lower-tier covered transaction it enters into.[[34]](#footnote-35) This certification is a material representation of fact relied upon by Unit and all liability arising from an erroneous representation shall be borne solely by Contractor
   4. If it is later determined that Contractor did not comply with 2 C.F.R. Part 180, Subpart C and 31 C.F.R. Part 19, in addition to remedies available to Unit, the Government may pursue available remedies, including but not limited to suspension and/or debarment.
6. ***Byrd Anti-Lobbying Amendment******[[35]](#footnote-36)***
   1. Contractor certifies to Unit, and Contractor shall cause each Tier below it to certify to the Tier directly above such Tier, that it has not used and will not use Federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. Contractor shall, and shall cause each Tier below it, to disclose any lobbying with non-Federally appropriated funds that takes place in connection with obtaining any Federal award. Such disclosures (to be set forth on Standard Form-LLL contained in 31 C.F.R. Part 21, Appendix B) shall be forwarded from Tier to Tier up to the Unit who will in turn forward the certification(s) to the U.S. Department of the Treasury. Contractor shall cause the language of this Section [VIII(a)] to be included in all Subcontracts. This certification is a material representation of fact upon which Unit has relied when entering into this Contract and all liability arising from an erroneous representation shall be borne solely by Contractor.
   2. **Contractors that bid or apply for a contract exceeding $100,000 (including this Contract, if applicable) also must file with Unit the Certification in Attachment 1 to this Addendum, which is attached hereto and incorporated herein.**
   3. **Contractor also shall cause any Subcontractors with a Subcontract (at any Tier) exceeding $100,000 to file with their Tier above it the Certification in Attachment 1 to this Addendum, which is attached hereto and incorporated herein.**
7. ***Procurement of Recovered Materials[[36]](#footnote-37)***
   1. Section IX(b) shall apply if (1) this Contract involves the purchase of an item designated by the Environmental Protection Agency (“*EPA*”) in 40 C.F.R. Part 247 that exceeds $10,000, or (2) the total value of such designated items acquired during the Unit’s preceding fiscal year exceeded $10,000.
   2. In the performance of the Contract, Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired (1) competitively within a timeframe providing for compliance with the Contract performance schedule, (2) meeting Contract performance requirements; or (3) at a reasonable price. Information about this requirement, along with the list of EPA-designated items, is available at EPA’s Comprehensive Procurement Guidelines website, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>. Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.
8. ***Prohibition on Contracting for Covered Telecommunications Equipment or Services [[37]](#footnote-38)***
   1. *Definitions*.Unless otherwise defined in this Contract, capitalized terms used in this Section IX shall have the meanings ascribed thereto in this Section IX(a):
      1. “*Backhaul*” means intermediate links between the core network, or backbone network, and the small subnetworks at the edge of the network (e.g., connecting cell phones / towers to the core telephone network). Backhaul can be wireless (e.g., microwave) or wired (e.g., fiber optic, coaxial cable, Ethernet).
      2. “*Covered Foreign Country*” means the People’s Republic of China.
      3. “*Covered Telecommunications Equipment or Services*” means: (a) telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities); (b) for the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, 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); (c) telecommunications or video surveillance services provided by such entities or using such equipment; or (d) 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 Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a Covered Foreign Country.
      4. “*Critical Technology*”[[38]](#footnote-39) means (1) defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations; (2) items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled (i) pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or (ii) for reasons relating to regional stability or surreptitious listening; (3) specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities); (4) nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material); (5) select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or (6) emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).
      5. “*Interconnection Arrangements*” means arrangements governing the physical connection of two or more networks to allow the use of another’s network to hand off traffic where it is ultimately delivered (e.g., connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources.
      6. “*Roaming*” means cellular communications services (e.g., voice, video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high.
      7. “*Substantial or Essential Component*” means any component necessary for the proper function or performance of a piece of equipment, system, or service.
      8. “*Telecommunications Equipment or Services*” means telecommunications or video surveillance equipment or services, such as, but not limited to, mobile phones, land lines, internet, video surveillance, and cloud services.
   2. *Prohibitions*.
      1. Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232 and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after August 13, 2020, from obtaining or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.
      2. Unless an exception in Section X(c) applies, Contractor and any Subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds (including, without limitation, Fiscal Recovery Funds) received from a Federal government to:
         1. Procure or obtain any equipment, system, or services that uses Covered Telecommunications Equipment or Services as a Substantial or Essential Component of any system, or as Critical Technology of any system;
         2. Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses Covered Telecommunications Equipment or Services as a Substantial or Essential Component of any system, or as Critical Technology of any system;
         3. Enter into, extend, or renew contracts with entities that use Covered Telecommunications Equipment or Services as a Substantial or Essential Component of any system, or as Critical Technology as part of any system; or
         4. Provide, as part of its performance of this Contract, any Subcontract, or any other contractual instrument, any equipment, system, or service that uses Covered Telecommunications Equipment or Services as a Substantial or Essential Component of any system or as Critical Technology as part of any system.
   3. *Exceptions*.
      1. This clause does not prohibit Contractor or Subcontractors from providing—
         1. A service that connects to the facilities of a third-party, such as Backhaul, Roaming, or Interconnection Agreements; or
         2. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.
      2. By necessary implication and regulation, the prohibitions also do not apply to:
         1. Covered telecommunications equipment that:
            1. Are not used as a Substantial or Essential Component of any system; and
            2. Are not used as Critical Technology of any system.
         2. Other telecommunications equipment or services that are not considered Covered Telecommunications Equipment or Services.
   4. *Reporting Requirement*
      1. In the event Contractor identifies covered Telecommunications Equipment or Services used as a Substantial or Essential Component of any system, or as Critical Technology as part of any system, during Contract performance, or Contractor is notified of such by a Subcontractor at any tier or by any other source, Contractor shall report the information in paragraph [(d)(2)] of this Section X to Unit, unless elsewhere in this Contract are established procedures for reporting the information.
      2. Contractor shall report the following information to Unit pursuant to paragraph (d)(1) of this Section X:
         1. Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.
         2. Within 10 business days of submitting the information in paragraph (d)(2)(i) of this Section: any further available information about mitigation actions undertaken or recommended. In addition, Contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.
   5. *Subcontractor*. Contractor shall cause to be inserted the substance of this Section X, including this paragraph (e), in all Subcontracts and other contractual instruments relating to the performance of this Contract.
9. ***Domestic Preferences for Procurements[[39]](#footnote-40)***
   1. As applicable, and to the extent consistent with law, Contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products or materials Produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other Manufactured Products. Contractor shall cause any Subcontractors to include the requirements of this Section XI in any Subcontracts.
   2. For purposes of this Section XI, the following terms shall mean:
      1. “*Produced in the United States*” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coating, occurred in the United States.
      2. “*Manufactured Products*” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.
10. ***Solicitation of Minority and Women-Owned Business Enterprises[[40]](#footnote-41)***
    1. If Contractor intends to let any Subcontracts, Contractor shall (1) place qualified small and minority businesses and women’s business enterprises on its solicitation lists; (2) assure that small and minority businesses, and women’s business enterprises are solicited whenever they are potential sources; (3) divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women’s business enterprises; (4) establish delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women’s business enterprises; (5) use the services and assistance, as appropriate, of the Small Business Administration, the Minority Business Development Agency of the Department of Commerce, and the North Carolina Office for Historically Underutilized Businesses.
    2. For the purposes of Section XII(a), an entity shall qualify (1) as a “minority business” or “women’s business enterprise” if it is currently certified as a North Carolina “historically underutilized business” under N.C. Gen. Stat. § 143-128.4(a), and (2) as a “small business” if it is independently owned and operated and is qualified under the Small Business Administration criteria and size standards at 13 C.F.R. Part 21. [[41]](#footnote-42)
11. ***Access to Records***[[42]](#footnote-43)
    1. Contractor agrees to provide Unit, the U.S. Department of the Treasury, the Treasury Office of Inspector General, the Government Accountability Office, and the Comptroller General of the United States, or any of their authorized representatives access to any records (electronic and otherwise) of Contractor which are directly pertinent to this Contract to conduct audits or any other investigation. Contractor agrees to permit any of the foregoing parties to reproduce such records by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
    2. Contractor agrees to retain all records covered by this Section XIII through December 31, 2031.
12. ***Conflicts of Interest; Gifts & Favors[[43]](#footnote-44)***
    1. Contractor understands that (1) Unit will use Fiscal Recovery Funds to pay for the cost of this Contract, and (2) the expenditure of Fiscal Recovery Funds is governed bythe [*Conflict of Interest Policy*] of the Unit, the Regulatory Requirements (including, without limitation, 2 C.F.R. § 200.318(c)(1)), and North Carolina law (including, without limitation, N.C. Gen. Stat. § 14-234(a)(1) and N.C. Gen. Stat. § 14-234.3(a)).
    2. Contractor certifies to Unit that as of the date hereof, to the best of its knowledge after reasonable inquiry, no employee, officer, or agent of Unit involved in the selection, award, or administration of this Contract (each, a “*Covered Individual*”), nor any member of a Covered Individual’s immediate family, nor a Covered Individual’s partner, nor an organization (including Contractor) which employs or is about to employ a Covered Individual, has a financial or other interest in or has received a tangible personal benefit from Contractor. Should Contractor obtain knowledge of any such interest or any tangible personal benefit described in the preceding sentence after the date hereof, Contractor shall promptly disclose the same to Unit in writing.
    3. Contractor certifies to Unit that it has not provided, nor offered to provide, any gratuities, favors, or anything of value to an officer, employee, or agent of Unit. Should Contractor obtain knowledge of the provision, or offer of any provision, of any gratuity, favor, or anything of value to an officer, employee, or agent described in the preceding sentence after the date hereof, Contractor shall promptly disclose the same to Unit in writing.
13. ***Assurances of Compliance with Title VI of the Civil Rights Act of 1964******[[44]](#footnote-45)***
    1. Contractor and any Subcontractor, or the successor, transferee, or assignee of Contractor or any Subcontractor, shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury’s Title VI regulations, 31 C.F.R. Part 22, which are herein incorporated by reference and made a part of this Contract. Title VI also includes protection to persons with “Limited English Proficiency” in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury’s Title VI regulations, 31 C.F.R. Part 22, and herein incorporated by reference and made a part of this Contract.[[45]](#footnote-46)
14. ***Other Non-Discrimination Statutes***. Contractor acknowledges that Unit is bound by and agrees, to the extent applicable to Contractor, to abide by the provisions contained in the federal statutes enumerated below, and any other federal statues and regulations that may be applicable to the expenditure of Fiscal Recovery Funds:
    1. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;
    2. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;
    3. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury’s implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and
    4. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto
15. ***Miscellaneous***
    1. ***Increasing Seat Belt Use in the United States***. Pursuant to Executive Order 13043, 62 Fed. Reg. 19216 (Apr. 18, 1997), Unit encourages Contractor to adopt and enforce on-the-job seat belt policies and programs for its employees when operating company-owned, rented or personally owned vehicles.
    2. ***Reducing Text Messaging While Driving***. Pursuant to Executive Order 13513, 74 Fed. Reg. 51225 (Oct. 6, 2009), Unit encourages Contractor to adopt and enforce policies that ban text messaging while driving.
16. ***Conflicts and Interpretation***. To the extent that any portion of this Addendum conflicts with any term or condition of the Contract expressed outside of this Addendum, the terms of this Addendum shall govern.

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**CONTRACTOR:**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**UNIT:**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**ATTACHMENT 1**

**TO**

**CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUNDS ADDENDUM**

**APPENDIX A, 31 C.F.R. PART 21 – CERTIFICATION REGARDING LOBBYING**

The undersigned certifies, to the best of the undersigned’s knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit [Standard Form-LLL, “Disclosure Form to Report Lobbying,”](https://images.federalregister.gov/EC21OC91.002/large.png) in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
4. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31 of the U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

The Contractor, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, certifies and affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature of Contractor’s Authorized Official

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name and Title of Contractor’s Authorized Official

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date

1. *See* [Coronavirus State and Local Fiscal Recovery Funds, 86 Fed. Reg. 26,786, 26,811 (May 17, 2021)](https://www.govinfo.gov/content/pkg/FR-2021-05-17/pdf/2021-10283.pdf) (hereinafter Interim Final Rule) (“As provided for in the award terms, payments from the Fiscal Recovery Funds as a general matter will be subject to the provisions of the Uniform administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR Part 200) (the Uniform Guidance)[.]”); [Coronavirus State and Local Fiscal Recovery Funds, 87 Fed. Reg. 4,338, 4,375 (Jan. 27, 2022)](https://www.govinfo.gov/content/pkg/FR-2022-01-27/pdf/2022-00292.pdf) (hereinafter Final Rule) (“Recipients must comply with the applicable requirements of the Uniform Guidance regarding procurement, contract, and conflicts of interest and must follow the applicable laws and regulations in their jurisdictions.”); [U.S. Department of the Treasury, Compliance and Reporting Guidance: State and Local Fiscal Recovery Funds, Version 2.1 8 (Nov. 15, 2021)](https://home.treasury.gov/system/files/136/SLFRF-Compliance-and-Reporting-Guidance.pdf) (hereinafter Compliance and Reporting Guidance) (“Recipients are responsible for ensuring that any procurement using SLFRF funds, or payments under procurement contracts using such funds are consistent with the procurement standards set forth in the Uniform Guidance at 2 CFR 200.317 through 2 CFR 200.327, as applicable.”). [↑](#footnote-ref-2)
2. *See* [2 C.F.R. § 200.327](https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-D/subject-group-ECFR45ddd4419ad436d/section-200.327) (“The non-Federal entity’s contracts must contain the applicable provisions described in appendix II to this part.”); [Appendix II to 2 C.F.R. Part 200](https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/appendix-Appendix%20II%20to%20Part%20200). [↑](#footnote-ref-3)
3. [Local Fiscal Recovery Fund Award Terms and Conditions](https://home.treasury.gov/system/files/136/NEU_Award_Terms_and_Conditions.pdf), § 8 (hereinafter Local FRF Award Terms); [State Fiscal Recovery Fund Award Terms and Conditions](https://home.treasury.gov/system/files/136/Financial-Assistance-Agreement-States-and-Territories.pdf), § 8. [↑](#footnote-ref-4)
4. As used here, the term “contractor” means an entity that receives a “contract.” *See* [2 C.F.R. § 200.1](https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-A/subject-group-ECFR2a6a0087862fd2c/section-200.1) (defining “contractor” as “an entity that receives a contract as defined in this section”); *id.* (defining “contract” as “a legal instrument by which a recipient or subrecipient purchases property or services needed to carry out the program or project under a Federal award.”). [↑](#footnote-ref-5)
5. *See generally* [*Kara Millonzi, American Rescue Plan Act of 2021: Local Government Authority to Expend Their Allocations*, Coates’ Canons: NC Local Gov’t Law (Apr. 5, 2021)](https://canons.sog.unc.edu/american-rescue-plan-act-of-2021-local-government-authority-to-expend-their-allocations/). [↑](#footnote-ref-6)
6. When a recipient or subrecipient makes a disbursement of Federal award monies subject to the provisions of the Uniform Guidance, it must determine on a case-by-case basis whether the transferee of those funds is a “contractor” or a “subrecipient”. *See* [2 C.F.R. § 200.331](https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-D/subject-group-ECFR031321e29ac5bbd/section-200.331). One commentator has explained this determination process as examining “how benefit flows.” Robert M. Lloyd, A Practical Guide to Federal Grants Management – From Solicitation to Audit 246 (3d ed. 2020). In a “contract” relationship, the benefit of federal grant funds flows “up”—a non-Federal entity purchases goods or services for its *own* use to carry out the purposes of the Federal award. In a “subaward” relationship, the benefit of federal grant funds flows “down”—a non-Federal entity acts much like a Federal agency and distributes funds that a third party uses to itself carry out the purposes of the Federal award. [↑](#footnote-ref-7)
7. [2 C.F.R. § 200.332](https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-D/subject-group-ECFR031321e29ac5bbd/section-200.332) addresses required provisions for subaward agreements. [↑](#footnote-ref-8)
8. The Federal Transit Administration has developed sample clauses addressing the clauses required by § (A) and § (B) of Appendix II to 2 C.F.R. Part 200. *See* [Federal Transit Administration, Best Practices Procurement & Lessons Learned Manual, FTA Report No. 0105 A-69-78 (2016)](https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/funding/procurement/8286/fta-best-practices-procurement-and-lessons-learned-manual-2016.pdf). [↑](#footnote-ref-9)
9. For purposes of this table, a “mandatory” clause means that the clause (as drafted in the Addendum) should be included in a “contract” supported by Fiscal Recovery Funds. A “mandatory” clause, by its terms, still may not apply in a particular scenario if the clause’s language does not trigger its application. For example, Appendix II, § (C) requires that, “*[e]xcept as otherwise provided under 41 C.F.R. Part 60*, all contracts that meet the definition of ‘federally assisted construction contract’ [as defined in [41 C.F.R. § 60-1.3](https://www.ecfr.gov/current/title-41/subtitle-B/chapter-60/part-60-1/subpart-A)] must include the equal opportunity clause provided under 41 C.F.R. Part 60[.]” 41 C.F.R. Part 60 applies only to federally assisted construction contracts in excess of $10,000. *See* [41 C.F.R. § 60-4.1](https://www.ecfr.gov/current/title-41/subtitle-B/chapter-60/part-60-4/section-60-4.1). Section II of the Addendum is drafted to limit the scope of this provision to federally assisted construction contracts in excess of $10,000—and it need not be removed. [↑](#footnote-ref-10)
10. All references to “Appendix II” are to Appendix II to 2 C.F.R. Part 200. All references to the “FRF Award Terms” are to the Local FRF Award Terms. [↑](#footnote-ref-11)
11. *But see* Footnote 10. [↑](#footnote-ref-12)
12. *See* Federal Transit Administration, Contract Clauses Frequently Asked Questions (last updated Oct. 21, 2015), <https://www.transit.dot.gov/funding/procurement/third-party-procurement/contract-clauses>. [↑](#footnote-ref-13)
13. [Office of Mgmt. & Budget, 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements, 6 Fed. Reg. 68533, 68533 (Dec. 3, 2021)](https://www.cfo.gov/assets/files/2021-26238%20Federal%20Register%20Notice%20-%202021%20Compliance%20Supplement%20Addendum%201%2012%2003%2021.pdf); *see also* [Office of Management and Budget, 2021 Addendum 1 Compliance Supplement Assistance Listing 21.027, Coronavirus State and Local Fiscal Recovery Funds](https://adminliveunc.sharepoint.com/sites/UGContractReview/Shared%20Documents/General/,https:/www.cfo.gov/assets/files/Treasury%20SLFRF%20Compliance%20Supplement%20Addendum%201%20PDF.pdf). [↑](#footnote-ref-14)
14. *See* [2 C.F.R. § 200.320(a)(1)(ii)](https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-D/subject-group-ECFR45ddd4419ad436d/section-200.320). [↑](#footnote-ref-15)
15. *Id.* § 200.320(a)(1)(iii). [↑](#footnote-ref-16)
16. For additional detail about the “self-certification” of a micro-purchase threshold exceeding $10,000, see [Connor Crews, *Raising the Federal Micro-Purchase Threshold: Self-Certification for Units of Local Government in North Carolina*, Coates’ Canons: NC Loc. Gov’t Law (Apr. 23, 2021)](https://canons.sog.unc.edu/2021/04/raising-the-federal-micro-purchase-threshold-self-certification-for-units-of-local-government-in-north-carolina/). [↑](#footnote-ref-17)
17. [U.S. Chief Financial Officers’ Council, *2 CFR Frequently Asked Questions*, Q-90 (May 23, 2021)](https://www.cfo.gov/assets/files/2CFR-FrequentlyAskedQuestions_2021050321.pdf). [↑](#footnote-ref-18)
18. “Federal financial assistance” is defined by regulation. *See* [2 C.F.R. § 200.1](https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-A/subject-group-ECFR2a6a0087862fd2c/section-200.1) (defining “Federal financial assistance” to include, among other things, grants, loans, loan guarantees, cooperative agreements, and direct appropriations). [↑](#footnote-ref-19)
19. [Guidance for Grants and Agreements, 85 Fed. Reg. 49,506 (Aug. 13, 2020)](https://www.govinfo.gov/content/pkg/FR-2020-08-13/pdf/2020-17468.pdf). [↑](#footnote-ref-20)
20. **Note to Draft**: Insert legal name of contractor (e.g., “ABC Industries, Inc.”). [↑](#footnote-ref-21)
21. **Note to Draft**: Insert type of legal entity (e.g., “a Delaware corporation”). [↑](#footnote-ref-22)
22. **Note to Draft**: Insert legal name of unit of local government (e.g., “Town of Coatesville”). [↑](#footnote-ref-23)
23. **Note to Draft**: Insert type of legal entity (e.g., “a municipal corporation of the State of North Carolina”). [↑](#footnote-ref-24)
24. **Note to Draft**: This provision satisfies 2 C.F.R. Part 200, Appendix II (hereinafter Appendix II), § (C). It contains the equal opportunity clause provided under [41 C.F.R. § 60-1.4(b)](https://www.ecfr.gov/current/title-41/subtitle-B/chapter-60/part-60-1/subpart-A/section-60-1.4). The clause applies only to federally assisted construction contracts (as defined in [41 C.F.R. § 60-1.3](https://www.ecfr.gov/current/title-41/subtitle-B/chapter-60/part-60-1/subpart-A/section-60-1.3)) that exceed $10,000. Section I contains certain definitions from 41 C.F.R. § 60-1.3 relevant to these provisions. [↑](#footnote-ref-25)
25. **Note to Draft**: Under Appendix II, § (D), “[w]hen required by Federal program legislation, all prime construction contracts in excess of $2,000 awarded by non-Federal entities must included a provision for compliance with the Davis-Bacon Act ([40 U.S.C. 3141-344](https://uscode.house.gov/view.xhtml?req=(title:40%20section:3141%20edition:prelim)%20OR%20(granuleid:USC-prelim-title40-section3141)&f=treesort&edition=prelim&num=0&jumpTo=true), and [3146-3148](https://uscode.house.gov/view.xhtml?hl=false&edition=prelim&req=granuleid%3AUSC-prelim-title40-section3146&f=treesort&num=0&saved=%7CKHRpdGxlOjQwIHNlY3Rpb246MzE0MSBlZGl0aW9uOnByZWxpbSkgT1IgKGdyYW51bGVpZDpVU0MtcHJlbGltLXRpdGxlNDAtc2VjdGlvbjMxNDEp%7CdHJlZXNvcnQ%3D%7C%7C0%7Cfalse%7Cprelim)), as supplemented by Department of Labor regulations ([29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction](https://www.ecfr.gov/current/title-29/subtitle-A/part-5)”).” This Addendum does not contain a provision requiring Contractor to comply with the Davis-Bacon Act or its associated regulations. The Davis-Bacon Act, by its own terms, applies only to construction contracts to which the United States of America or the District of Columbia is a party. *See* [41 U.S.C. § 3142(a)](https://uscode.house.gov/view.xhtml?path=/prelim@title40/subtitle2/partA/chapter31/subchapter4&edition=prelim). Congress must act separately to extend coverage of the Davis-Bacon Act to construction contracts entered into by non-Federal entities receiving Federal financial assistance (e.g., a federal grant or loan),. *See* [Dep’t of Lab. Field Operations Handbook (hereinafter DOL Handbook), § 15b00(a)](https://www.dol.gov/agencies/whd/field-operations-handbook/Chapter-15#B15b00). (“[I]f a statute authorizes assistance but does not include either directly or by reference a [Davis-Bacon Related Act (“DBRA”)] labor standards clause, the DBRA does not apply.”). Treasury has indicated that Davis-Bacon Act requirements (prevailing wage rates) do not apply to projects funded solely with monies distributed from the Fiscal Recovery Funds other than those undertaken by the District of Columbia. *See* [U.S. Dep’t of the Treasury, Coronavirus State and Local Fiscal Recovery Funds Interim Final Rule: Frequently Asked Questions as of January 2022, § 6.17](https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf) (hereinafter FAQs”); [Coronavirus State and Local Fiscal Recovery Funds, 87 Fed. Reg. 4,338, 4,431 (Jan. 27, 2022)](https://www.govinfo.gov/content/pkg/FR-2022-01-27/pdf/2022-00292.pdf) (hereinafter Final Rule) (noting that despite a general requirement to “comply with . . . federal, state, and local background laws, including environmental laws”, certain statutes will not apply “unless explicitly stated, including, *e.g.*, . . . the Davis-Bacon Act”). Treasury’s response in the FAQs and the Final Rule is consistent with ARPA’s text, as the statute does not expressly or indirectly require Fiscal Recovery Fund recipients or subrecipients to abide by the Davis-Bacon Act. *Compare* Pub. L. No. 117-2 *with* [American Reinvestment and Recovery Act of 2009, Pub. L. No. 111-5, Div. A, § 1606](https://www.congress.gov/111/plaws/publ5/PLAW-111publ5.pdf) (“Notwithstanding any other provision of law . . . , all laborers and mechanics employed by contractors or subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to this Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code.”). If a unit uses Federal financial assistance other than monies distributed from the Fiscal Recovery Funds to pay for the cost of the Contract, the Davis-Bacon Act may apply. *See* FAQs § 6.17; *see also* DOL Handbook,§ 15b00(b) (“In situations where a product is funded under a number of federal statutes, DBRA applies to the project if any one of the statutes authorizing a portion of the financial assistance requires payment of DBA wages.”). [↑](#footnote-ref-26)
26. **Note to Draft**: Section III satisfies the requirements of Appendix II, § (D) relating to the Copeland “Anti-Kickback” Act. Section III requires Contractor and any Subcontractors to comply with the core provision of the Copeland Anti-Kickback Act, which criminalizes “induc[ing] any person employed in the construction, prosecution, completion or repair of any public building, public work, or building or work financed in whole in part by . . . grants from the United States, to give up any part of the compensation to which he is entitled under his contract of employment.” [18 U.S.C. § 874](https://www.govinfo.gov/content/pkg/USCODE-2010-title18/pdf/USCODE-2010-title18-partI-chap41-sec874.pdf). Section III does not require the Contractor to comply with weekly payroll reporting requirements pursuant to [41 U.S.C. § 3145](https://www.govinfo.gov/content/pkg/USCODE-2011-title40/pdf/USCODE-2011-title40-subtitleII-partA-chap31-subchapIV-sec3145.pdf) and [29 C.F.R. Part 3](https://www.ecfr.gov/current/title-29/subtitle-A/part-3). 29 C.F.R. Part 3 applies to “*any contract which is subject to Federal wage standards* and . . . is for the construction, prosecution, completion, or repair of public buildings, public works or buildings or works financed in whole or in part by loans or grants from the United States.” [29 C.F.R. § 3.1(a)](https://www.ecfr.gov/current/title-29/subtitle-A/part-3/section-3.1) (emphasis added). The term “Federal wage standards” likely applies to prevailing wage standards established by the Davis-Bacon Act. *See* [DOL Handbook, § 15a04(d)](https://www.dol.gov/agencies/whd/field-operations-handbook/Chapter-15#B15a04) (noting that the “Anti-Kickback” provision applies to any federally-funded or assisted contract except contracts for which the only assistance is a loan guarantee” and that “29 CFR 3 . . . applies only to payroll deductions made under contracts subject to federal wage standards”). The Federal Emergency Management Agency (“FEMA”) also notes that “[w]here the Davis-Bacon Act does not apply, neither does the Copeland ‘Anti-Kickback’ Act.” Federal Emergency Management Agency, [FEMA Contract Provisions Guide, Navigating Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards (June 2021)](https://www.fema.gov/sites/default/files/documents/fema_contract-provisions-guide_6-14-2021.pdf) (hereinafter FEMA Contract Guide), 15. While FEMA provides no support for this statement, 29 C.F.R. § 3.1(a) can be read to limit the application of 29 C.F.R. Part 3 to contracts subject to prevailing wage standards under the Davis-Bacon Act. [↑](#footnote-ref-27)
27. **Note to Draft:** Treasury stated in the Final Rule that a contract in excess of $100,000 supported by Fiscal Recovery Funds that involves the employment of mechanics and laborers “must include a provision for compliance with certain provisions of the [Contract Work Hours and Safety Standards Act, 40 U.S.C. 3702 and 3704](https://uscode.house.gov/view.xhtml?req=granuleid%3AUSC-prelim-title40-chapter37&edition=prelim), as supplemented by Department of Labor regulations ([29 CFR Part 5](https://www.ecfr.gov/current/title-29/subtitle-A/part-5)).”  [Final Rule at 4,393 (general capital expenditures), 4,409 (water, sewer, or broadband infrastructure)](https://www.govinfo.gov/content/pkg/FR-2022-01-27/pdf/2022-00292.pdf) . The legal basis for Treasury’s application of the Contract Work Hours and Safety Standards Act (“CWHSSA”) to a recipient’s expenditure of Fiscal Recovery Funds is not clear. CWHSSA applies, in part, to a “contract for work financed at least in part by . . . grants from . . . the [federal government] or an agency or instrumentality *under any federal law providing wage standards for the work*.” [40 U.S.C. 3701(b)(1)(B)(iii)](https://www.govinfo.gov/content/pkg/USCODE-2011-title40/pdf/USCODE-2011-title40-subtitleII-partA-chap37-sec3701.pdf). Interpreting this provision, the Department of Labor has stated that “coverage on federally assisted contracts does not exist unless the particular statute under which the loans or grants are authorized contains wage standards, directly or by reference.” [DOL Handbook § 15i01(a)](https://www.dol.gov/agencies/whd/field-operations-handbook/Chapter-15#B15i00). ARPA does not directly or by reference impose wage standards on the expenditure of Fiscal Recovery Funds. Therefore, Treasury’s requirement in the Final Rule seems to extend beyond the statutory scope of CWHSSA. A recipient or subrecipient of Fiscal Recovery Funds still may want to include these provisions out of an abundance of caution. [↑](#footnote-ref-28)
28. **Note to Draft**: These are statutory exceptions to CWHSSA’s scope. *See* [40 U.S.C. § 3701(b)(3)(A)](https://www.govinfo.gov/content/pkg/USCODE-2011-title40/pdf/USCODE-2011-title40-subtitleII-partA-chap37-sec3701.pdf). [↑](#footnote-ref-29)
29. **Note to Draft**: Appendix II, § (F) states that if a “federal award meets the definition of ‘funding agreement’ under [37 C.F.R. § 401.2(a)](https://www.ecfr.gov/current/title-37/chapter-IV/part-401/section-401.2) . . . and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the . . . performance of experimental, developmental, or research work under that ‘funding agreement’, the recipient or subrecipient must comply with the requirements of [37 C.F.R. Part 401](https://www.ecfr.gov/current/title-37/chapter-IV/part-401?toc=1) . . . and any implementing regulations issued by the awarding agency.” A “funding agreement” under 37 C.F.R. § 401.2(a) includes any “grant . . . entered into between any Federal agency . . . and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government.” The term “contractor” encompasses federal grantees. It is not clear that assistance agreements between the U.S. Department of the Treasury and recipients of Fiscal Recovery Funds constitute “funding agreements” within the meaning of 37 C.F.R. § 401.2(a), as they do not expressly contemplate the “performance of experimental, developmental, or research work”. The Department of the Treasury has not directly addressed this question in any regulations implementing 37 C.F.R. Part 401 and no case law directly interprets the meaning of the phrase. This clause is derived from a model clause developed by the Federal Transit Administration. *See* [Federal Transit Administration, Best Practices Procurement & Lessons Learned Manual, FTA Report No. 0105 A-69-78 (2016)](https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/funding/procurement/8286/fta-best-practices-procurement-and-lessons-learned-manual-2016.pdf). [↑](#footnote-ref-30)
30. **Note to Draft**: Pursuant to [2 C.F.R. § 200.315(b)](https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-D/subject-group-ECFR8feb98c2e3e5ad2/section-200.315), a Federal awarding agency “reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use [work that is subject to copyright, or for which ownership was acquired, under a Federal award] for Federal purposes, and to authorize others to do so.” Further, 2 C.F.R. § 200.315(c) states that the “Federal Government has the right to (1) obtain, reproduce, publish, or otherwise use the data produced under a Federal award; and (2) authorize others to receive, reproduce, or otherwise use such data for Federal purposes.” The Department of the Treasury has not indicated that 2 C.F.R. § 200.315 does not apply to the expenditure of Fiscal Recovery Funds. [↑](#footnote-ref-31)
31. **Note to Draft:** Section VI satisfies the requirements of Appendix II, § (G). [↑](#footnote-ref-32)
32. **Note to Draft**: Section VII satisfies the requirements of Appendix II, § (H) and § 9(b)(iv) of the [Local Fiscal Recovery Fund Award Terms and Conditions](https://home.treasury.gov/system/files/136/NEU_Award_Terms_and_Conditions.pdf) (hereinafter Local FRF Award Terms). § 9(b)(iv) requires recipients and subrecipients of monies from the Fiscal Recovery Funds to include a “term or condition in all lower tier covered transactions (contracts and subcontracts described in [2 C.F.R. Part 180, subpart B](https://www.ecfr.gov/current/title-2/subtitle-A/chapter-I/part-180/subpart-B)) that the award is subject to [2 C.F.R. Part 180](https://www.ecfr.gov/current/title-2/subtitle-A/chapter-I/part-180/subpart-B) and Treasury’s implementing regulation at [31 C.F.R. Part 19](https://www.ecfr.gov/current/title-31/subtitle-A/part-19).” [↑](#footnote-ref-33)
33. **Note to Draft:** A contract between a recipient or subrecipient of Fiscal Recovery Funds and a prime contractor is a lower-tier procurement transaction and is a “covered transaction” for purposes of [2 C.F.R. Part 180](https://www.ecfr.gov/current/title-2/subtitle-A/chapter-I/part-180/subpart-B) and [31 C.F.R. Part 19](https://www.ecfr.gov/current/title-31/subtitle-A/part-19) if one or more of the conditions in [2 C.F.R. § 180.220(b)](https://www.ecfr.gov/current/title-2/subtitle-A/chapter-I/part-180/subpart-B/section-180.220) and [31 C.F.R. § 19.220(b)](https://www.ecfr.gov/current/title-31/subtitle-A/part-19/subpart-B/section-19.220) applies. Section VII(a) sets forth these conditions. Prior to entering into a “covered transaction”, a recipient or subrecipient must “verify” that the counterparty is not excluded or disqualified. *See* [2 C.F.R. § 180.300](https://www.ecfr.gov/current/title-2/subtitle-A/chapter-I/part-180/subpart-C/section-180.300); [31 C.F.R. § 19.300](https://www.ecfr.gov/current/title-31/subtitle-A/part-19/subpart-C/subject-group-ECFR17b3886c0d43454/section-19.300). This verification may occur by (1) checking [System for Award Management (“SAM”) exclusions](https://sam.gov/content/home); (2) collecting a certification from the lower-tier counterparty; *or* (3) adding a clause or condition to the covered transaction with the lower-tier counterparty. Section VII(b) acts as both a certification and a condition. Separately, the procurement standards in the Uniform Guidance only allow recipients and subrecipients to award contracts to “responsible” contractors (*see* [2 C.F.R. § 200.318(h)](https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-D/subject-group-ECFR45ddd4419ad436d/section-200.318)) and checking the SAM.gov exclusions system can demonstrate a good faith attempt to comply with this requirement. [↑](#footnote-ref-34)
34. **Note to Draft**: [2 C.F.R. § 180.220(c)](https://www.ecfr.gov/current/title-2/subtitle-A/chapter-I/part-180/subpart-B/section-180.220) provides that a “subcontract” is also a “covered transaction” if (1) “[i]t is awarded by a participant in a procurement transaction under a nonprocurement transaction of a Federal agency that extends the coverage of [2 C.F.R. § 180.220(b)(1)] “to additional tiers of contracts . . . ; and (2) [t]he value of the subcontract is expected to equal or exceed $25,000.” Unlike implementing regulations adopted by several other federal agencies (e.g., the Department of Health and Human Services), the Department of Treasury’s implementing regulations do not expressly extend the coverage of 2 C.F.R. § 180.220(b)(3) to lower-tier subcontracts *under* covered nonprocurement transactions. *Compare* [2 C.F.R. § 376.220](https://www.ecfr.gov/current/title-2/subtitle-B/chapter-III/part-376/subpart-B/section-376.220) (“In addition to the contracts covered under 2 C.F.R. § 180.220(b), this part also applies to all lower tiers of subcontracts under covered nonprocurement transactions, as permitted under the OMB guidance at 2 C.F.R. § 180.220(c).”) *with* [31 C.F.R. § 19.220(b)](https://www.ecfr.gov/current/title-31/subtitle-A/part-19/subpart-B/section-19.220). Even though the Treasury implementing regulations do not extend coverage to subcontracts described in 2 C.F.R. § 180.220(b)(3), the language of § 9(b)(iv) of the Local FRF Award Terms may extend coverage to these subcontracts. *See* *supra* Note 13 (noting that § 9(b)(iv) of the Local FRF Award Terms and Conditions require including a “term or condition in all lower-tier covered transactions (contracts and subcontracts described in 2 C.F.R Part 180, subpart B) that the award is subject to 2 C.F.R. Part 180 and Treasury’s implementing regulation at 31 C.F.R. Part 19.”). Section VII gives effect to this requirement. [↑](#footnote-ref-35)
35. **Note to Draft**: Section VIII satisfies the requirements of Appendix II, § (I) and § 9(b)(vii) of the of the [Local](https://home.treasury.gov/system/files/136/NEU_Award_Terms_and_Conditions.pdf) FRF Award Terms. § 9(b)(vii) of the Local FRF Award Terms requires recipients and subrecipients of monies from the Fiscal Recovery Funds to abide by [31 C.F.R. Part 21](https://www.ecfr.gov/current/title-31/subtitle-A/part-21), which implements the provisions of the Byrd Anti-Lobbying Amendment ([31 U.S.C. § 1352](https://www.govinfo.gov/content/pkg/USCODE-2010-title31/pdf/USCODE-2010-title31-subtitleII-chap13-subchapIII-sec1352.pdf)). The statute and Treasury’s implementing regulations prohibit recipients of Federally appropriated funds from using those funds to lobby federal agencies or Congress to obtain, extend, or modify an award of Federal funds. *See* [31 U.S.C. § 1352(a)(1)](https://www.govinfo.gov/content/pkg/USCODE-2010-title31/pdf/USCODE-2010-title31-subtitleII-chap13-subchapIII-sec1352.pdf); [31 C.F.R. § 21.100(a)](https://www.ecfr.gov/current/title-31/subtitle-A/part-21/subpart-A/section-21.100). They also require Treasury grant recipients to (1) certify that the recipient has not made and will not make any prohibited payment of Federal grant funds ([31 U.S.C. § 1352(b)(2)(A)](https://www.govinfo.gov/content/pkg/USCODE-2010-title31/pdf/USCODE-2010-title31-subtitleII-chap13-subchapIII-sec1352.pdf); [31 C.F.R. § 21.110(a)(1) and (b)(1)](https://www.ecfr.gov/current/title-31/subtitle-A/part-21/subpart-A/section-21.100) (for grants exceeding $100,000)) and (2) disclose any payments made for lobbying services in connection with a Federal grant even if paid for with non-Federal funds ([31 U.S.C. § 1352(b)(2)(B)](https://www.govinfo.gov/content/pkg/USCODE-2010-title31/pdf/USCODE-2010-title31-subtitleII-chap13-subchapIII-sec1352.pdf); [31 C.F.R. § 21.110(a)(1) and (b)(1)](https://www.ecfr.gov/current/title-31/subtitle-A/part-21/subpart-A/section-21.100) (for grants exceeding $100,000)). These certification and disclosure requirements *extend* to any contractor or subcontractor that receives federal grant funds where the cost of a contract or subcontract exceeds $100,000. *See* 31 C.F.R. § 21.110(d)(2). Recipients and subrecipients (and the contractors and subcontractors of each) of monies from Fiscal Recovery Funds must obtain a certification from the Tier immediately below it where the cost of such a contract or subcontract exceeds $100,000. A recipient, contractor, or subcontractor receiving a certification need not forward a certification to a higher Tier—but each must forward any disclosure forms (on Standard Form-LLL) to the Tier immediately above. *See* 31 C.F.R. § 21.110(e). [↑](#footnote-ref-36)
36. **Note to Draft**: Section VIII satisfies the requirements of Appendix II, § (J) and 2 C.F.R. § 200.323. [↑](#footnote-ref-37)
37. **Note to Draft**: Section IX satisfies the requirements of Appendix II, § (K) and 2 C.F.R. § 200.216. On August 13, 2020, the Office of Management and Budget (“OMB”) published revisions to the Uniform Guidance that, among other things, prohibit recipients and subrecipients of federal grant funds from obligating or expending such funds to procure equipment or systems using equipment made by certain Chinese manufacturers. *See* [Guidance for Grants and Agreements, 85 Fed. Reg. 49,506, 49,543 (Aug. 13, 2020) (promulgating 2 C.F.R. § 200.216)](https://www.govinfo.gov/content/pkg/FR-2020-08-13/pdf/2020-17468.pdf). These revisions implement [Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232](https://www.congress.gov/115/plaws/publ232/PLAW-115publ232.pdf) (hereinafter NDAA for FY2019). Appendix II, § (K) states simply “see[2 C.F.R. § 200.216](https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-C/section-200.216)”—and 2 C.F.R. § 200.216 does not expressly require federal grant recipients or subrecipients to include a clause in procurement contracts. Nonetheless, some federal agencies (including FEMA) have interpreted § (K) to require the inclusion of a contract clause in grant-supported contracts. *See, e.g.*, Federal Emergency Management Agency, [FEMA Policy #405-143-1](https://www.fema.gov/sites/default/files/documents/fema_prohibitions-expending-fema-award-funds-covered-telecommunications-equipment-services.pdf), *Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim)* (Nov. 24, 2020) (hereinafter FEMA Covered Telecom Policy). FEMA has released a sample clause, which mirrors the clause contained in the Federal Acquisition Regulation (“FAR”). *See* [48 C.F.R. 52.204-25](https://www.ecfr.gov/current/title-48/chapter-1/subchapter-H/part-52/subpart-52.2/section-52.204-25). While the FAR is not applicable to procurement by non-Federal entities using federal grant funds, it can provide helpful drafting guidance for some grantee contract clauses. Units receiving distributions of Fiscal Recovery Funds, as recipients or subrecipients, should include this clause in all supported contracts. [↑](#footnote-ref-38)
38. **Note to Draft**: The FEMA Covered Telecom Policy drew relevant definitions from the FAR, but did not expressly incorporate the definition of “critical technology” in 48 C.F.R. § 52.204-25(a). The definition used in this Section is derived from the FAR, which mirrors the definitions contained in the NDAA for FY 2019. *See also* Section 1703 of Title XVII, Pub. L. No. 115-232; 50 U.S.C. § 4565(a)(6)(A). [↑](#footnote-ref-39)
39. **Note to Draft**: Section X satisfies the requirements of Appendix II, § (L) and 2 C.F.R. § 200.322. Among other things, OMB’s 2020 revisions to the Uniform Guidance encourage recipients and subrecipients of federal grant funds to provide a purchasing preference for the goods, products, or materials produced in the United States. *See* [2 C.F.R. § 200.322](https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-D/subject-group-ECFR45ddd4419ad436d/section-200.322). The use of the term “should” rather than “must” in the new regulation indicates that imposition of a domestic preference is not required, but suggested. *See* [2 C.F.R. § 200.101(b)(1)](https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-B/section-200.101) (“Throughout this part when the word ‘must’ is used it indicates a requirement. Whereas, use of the word “should” or “may” indicates a best practice or recommended approach rather than a requirement and permits discretion.”). [2 C.F.R. § 200.322(a)](https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-D/subject-group-ECFR45ddd4419ad436d/section-200.322) mandates the inclusion of its requirements in “all contracts and purchase orders for work or for products under [an] award.” The clause, as drafted in this Section XI, also requires the inclusion of these requirements in any subcontracts necessary to complete the Contract. The U.S. Department of the Treasury has not released any guidance on the extent to which recipients or subrecipients of Fiscal Recovery Funds should provide a preference for domestically made products in contracts supported by Fiscal Recovery Funds. Recipients and subrecipients should be mindful that the use of federal monies other than Fiscal Recovery Funds may trigger domestic preference requirements in other federal laws or regulations. *See, e.g.*, [49 C.F.R. 661.5(a)](https://www.ecfr.gov/current/title-49/subtitle-B/chapter-VI/part-661/section-661.5) (subject to limited exceptions, prohibiting the obligation of any Federal monies by the Federal Transit Administration unless all iron, steel, and manufactured products used in the funded project are “produced in the United States”). [↑](#footnote-ref-40)
40. **Note to Draft**: Section XII addresses the requirements of [2 C.F.R. § 200.321](https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-D/subject-group-ECFR45ddd4419ad436d/section-200.321), which requires recipients and subrecipients of federal grant funds, when entering into any contract subject to the federal procurement standards in [Subpart D of 2 C.F.R. Part 200](https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-D?toc=1) to take “all necessary affirmative steps to assure that minority businesses, women’s businesses, and labor surplus area firms are used when possible.” 2 C.F.R. § 200.321(a). The regulation lists those affirmative steps and also mandates that a non-Federal entity require its prime contractors to take these steps should the prime contractor let any subcontracts. *See* 2 C.F.R. § 200.321(b)(6). These affirmative steps apply to all contracts let with federal grant funds are not limited to contracts for construction or repair work. While the Uniform Guidance does not expressly require inclusion of this clause, it could assist a recipient or subrecipient in demonstrating that it required a prime contractor to take the affirmative steps. [↑](#footnote-ref-41)
41. **Note to Draft**: [2 C.F.R. § 200.321](https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-D/subject-group-ECFR45ddd4419ad436d/section-200.321) does not expressly or by reference define “minority business”, “women’s business enterprise”, or “small business.” Treasury has not released any interpretative guidance of these definitions for purposes of the Fiscal Recovery Funds. In another context, FEMA has accepted the definitions of these terms set forth in state and local laws and regulations. *See* [Federal Emergency Management Agency, Procurement Disaster Assistance (PDAT) Field Manual: Procurement Information for FEMA Award Recipients and Subrecipients (FM-207-21-0002) (Oct. 2021) (hereinafter FEMA PDAT Field Manual](https://www.fema.gov/sites/default/files/2020-07/fema_procurement-disaster-assistance-PDAT_field-manual.pdf)) § 2 (“Definitions for Socioeconomic Firms”). North Carolina law contains a definition of “historically underutilized business” that tracks definitions of “minority business” and “women’s business enterprise” contained in federal law. *Compare* [N.C. Gen. Stat. § 143-128.4(a)](https://www.ncleg.net/enactedlegislation/statutes/html/bysection/chapter_143/gs_143-128.4.html) (defining “historically underutilized business”) *with* [13 C.F.R. § 124.103](https://www.ecfr.gov/current/title-13/chapter-I/part-124/subpart-A/subject-group-ECFR4ef1291a4a984ab/section-124.103), [13 C.F.R. § 124.102](https://www.ecfr.gov/current/title-13/chapter-I/part-124/subpart-A/subject-group-ECFR4ef1291a4a984ab/section-124.104), and [13 C.F.R. § 124.105](https://www.ecfr.gov/current/title-13/chapter-I/part-124/subpart-A/subject-group-ECFR4ef1291a4a984ab/section-124.105) (collectively defining “minority business”). North Carolina law does not define “small business” in a procurement preference—and this definition is taken from the FEMA PDAT Field Manual. [↑](#footnote-ref-42)
42. **Note to Draft**: Section XIII(b) satisfies the requirements of § 4 of the Local FRF Award Terms and [2 C.F.R. § 200.334](https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-D/subject-group-ECFR4acc10e7e3b676f/section-200.334). Under § 4(a), recipients of distributions of Local Fiscal Recovery Funds must “maintain records and financial documents sufficient to evidence compliance with section 603(c) of [ARPA], Treasury’s regulations implementing that section, and guidance issued by Treasury regarding the foregoing”—and, under § 4(c), a recipient must maintain these records for a period of five years after all funds have been expended or returned to Treasury, whichever is later. The Uniform Guidance requires non-Federal entities to maintain all “[f]inancial records, supporting documents, statistical records, and all other non-Federal entities pertinent to a Federal award” for *three* years unless otherwise notified by a Federal awarding agencies in writing. [2 C.F.R. § 200.334(b)](https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-D/subject-group-ECFR4acc10e7e3b676f/section-200.334). Recipients and subrecipients should consider the retention period of five years stated in the Award Terms and Conditions to constitute this written notification and should abide by this restriction. While inclusion of this clause is not required by the Uniform Guidance, it could assist a recipient or subrecipient in meeting the obligations discussed in this footnote. [↑](#footnote-ref-43)
43. **Note to Draft**: The Uniform Guidance prohibits employees, officers, and agents of non-Federal entities from participating in the selection, award, or administration of a contract supported by federal grant funds if they, any member of their immediate family, their partner, or an organization that does or is about to employ any of those individuals, has a financial interest in or has received a tangible personal benefit from a firm considered for a contract. *See* [2 C.F.R. § 200.318(c)(1)](https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-D/subject-group-ECFR45ddd4419ad436d/section-200.318). It also prohibits officers, employees, and agents of non-Federal entities from soliciting or accepting gratuities, favors, or anything of monetary value from contractors or subcontracts. *See* [*id.*](https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-D/subject-group-ECFR45ddd4419ad436d/section-200.318)Each recipient and subrecipient of Fiscal Recovery Funds must adopt and maintain written standards of conduct covering these conflicts of interest. *See id.*; *see also* Section 8 of the Local FRF Award TErms (“Recipient understands and agrees that it must maintain a conflict of interest policy consistent with 2 C.F.R. § 200.318(c) and that such conflict of interest policy is applicable to each activity funded under this award.”).While the Uniform Guidance does not require a contractor to make the certifications contained in Sections XIV(b) or XIV(c), securing these representations can act as an additional protection for a recipient or subrecipient. [↑](#footnote-ref-44)
44. **Note to Draft**: As a condition of receiving a distribution of monies from the Fiscal Recovery Funds, each recipient executed and submitted to the U.S. Department of the Treasury an [Assurances of Compliance With Civil Rights Requirements](https://home.treasury.gov/system/files/136/Title_VI_Assurances.pdf) (the “Assurances”). In the Assurances, recipients agreed to comply with Title VI of the Civil Rights Act of 1964, which prohibits exclusion from participation in, denial of the benefits of, or subjection to discrimination under programs and activities receiving federal financial assistance, of any person in the United States, on the basis of race, color, or national origin. *See* [42 U.S.C. § 2000d](https://www.govinfo.gov/content/pkg/USCODE-2008-title42/pdf/USCODE-2008-title42-chap21-subchapV.pdf); [31 C.F.R. § 22.5(a)](https://www.ecfr.gov/current/title-31/subtitle-A/part-22/section-22.5) (requiring an applicant for federal financial assistance to “contain, be accompanied by, or be covered by a specifically identified assurance from the applicant or recipient . . . that each program or activity operated by the applicant or recipient and to which these Title VI regulations apply will be operated in compliance with these Title VI regulations”). Treasury’s regulations, which mirror other federal implementing regulations, note that a recipient may not “directly *or through contractual arrangements*” take certain specified actions that violate Title VI. *See* [31 C.F.R. § 22.4(b)](https://www.ecfr.gov/current/title-31/subtitle-A/part-22/section-22.4) (emphasis added). To the extent that a contractor performs an “essential function” for a recipient or subrecipient of Fiscal Recovery Funds, Title VI may apply . *See generally* [U.S. Dep’t of Justice, Title VI Legal Manual](https://www.justice.gov/crt/fcs/T6manual5), § V.5 (noting the holding of the U.S. Court of Appeals for the Fifth Circuit in *Frazier v. Bd. of Trustees*, 765 F.2d 1278 (5th Cir. 1985) that Title VI may cover a grantee’s contractor that performs an ‘essential function’ for the recipient, making the contractor itself a recipient). [↑](#footnote-ref-45)
45. **Note to Draft**: Treasury’s regulations implementing Title VI of the Civil Rights Act of 1964 require the Department to “specify the extent to which . . . assurances will be required of [a] . . . recipient’s subgrantees, contractors, subcontractors, transferees, or successors in interest”—and Section 5 of the Assurances requires that recipients include the clause in Section XVI(a) in any “contract or agreement subject to Title VI and its regulations”. Section 5 of the Assurances requires that the recipient include this clause in “every contract or agreement subject to Title VI and its regulations”. For more information regarding the application of Title VI, see Note 25 above. [↑](#footnote-ref-46)