



**STATE OF VERMONT
OFFICE OF THE STATE AUDITOR**

To: Senator Michael Sirotkin, Chair, Committee on Economic Development
Re: Concerns about Potentially Impermissible Use of Federal Funds Proposed in S.263 – SLFRF and the Capital Investment Program
Date: March 9, 2022

“I wish we’d known about these issues *before* we spent the money.” I’ve heard variations of this sentiment from various auditees throughout my nine years as Vermont’s State Auditor. While pre-expenditure reviews are difficult in the legislative sphere – changes from one draft of a bill to another can substantially alter a program creating a moving target – there are instances when it is possible and especially important. Namely, when both the appropriations and program risks are significant.

This memo amplifies concerns I’ve shared with some legislators regarding the Administration’s proposal to award \$90 million of federal State and Local Fiscal Recovery Funds (SLFRF) to businesses and nonprofits for capital investments, \$10 million of which was already appropriated in Act 74 (2021). To state it plainly, the program design does not appear to comply with updated federal rules. Failure to address my office’s concerns will place Vermont at risk of appropriating tens of millions of dollars for ineligible uses. Either the award recipients or Vermont taxpayers could be forced to repay the federal government.

The most emergent crisis period for COVID-19 is behind us. Therefore, in light of the recent Final Rule requirements, additional due diligence and risk reduction is both warranted and possible even if it elongates the period needed to consider the initial applications for CIP.

Background: Vermont businesses and nonprofits have received \$3.4 billion in federal and state grants and low-interest loans to address economic harm caused by COVID-19. Another \$91 million of state grants to businesses and nonprofits was appropriated in Act 9 (2021) and Act 74 (2021) and an additional \$57 million of low-interest loans will be administered by the Vermont Economic Development Agency through U.S. Treasury’s State Small Business Credit Initiative.¹ The Administration is proposing another \$80 million of assistance to businesses in S.263 for the Capital Investment Program (CIP) and a newly conceived Grand List Enhancement Program (GLEP).

The Final Rule: The U.S. Treasury’s January 2022 Final Rule prohibits use of SLFRF for capital investments for the purpose of general economic development and makes it clear that large capital projects are generally not within the scope of an eligible use for addressing economic harm to small businesses.² Yet Act 74 (2021), the enabling legislation for CIP, and S.263, which proposes changes to CIP and establishes GLEP, both tout the benefits of general economic development to be gained from

¹ The State Small Business Credit Initiative is a federal program created as a response to the economic effects of the COVID-19 pandemic intended to strengthen state programs that support private financing to small businesses.

² “Large capital expenditures intended for general economic development or to aid the travel, tourism, and hospitality industries—such as convention centers and stadiums—are, on balance, generally not reasonably proportional to addressing the negative economic impacts of the pandemic, as the efficacy of a large capital expenditure intended for general economic development in remedying pandemic harms may be very limited compared to its cost.” Coronavirus State and Local Fiscal Recovery Funds Final Rule, Supplementary Information, Section II.4.b. Capital Expenditures.

providing grants to businesses for capital investment. In each program, the Administration's emphasis is on large capital projects.

Per the Agency of Commerce and Community Development's (ACCD) [interim report on CIP](#), the program goal is "to provide funding for transformational projects that will provide regions of the State the opportunity to attract and retain businesses, create jobs, and make capital investments...to promote economic growth." However well intentioned, this is not permitted by the Final Rule.

The application period for \$10 million of CIP appropriated in Act 74 ended before the release of the Final Rule. Based on the records available to the State Auditor's Office, ACCD has not requested information from applicants that is necessary to assess eligibility under the Final Rule, nor do we have any indication that ACCD has adjusted its grant processes to reflect Final Rule requirements.

The Final Rule established a limited list of capital expenditures that are presumed to address negative economic impacts of COVID-19 for certain small businesses, nonprofits, and households and are deemed eligible uses ("enumerated uses"). For example, development of affordable housing for households in a qualified census tract is presumed to be an eligible use of SLFRF.³ If ACCD believes CIP awards should be directed to this enumerated use, the Legislature may want to consider involving the State's affordable housing partners as this may be the most effective way to make decisions about investments in affordable housing. See Attachment II for the list of capital expenditures that are deemed enumerated uses by the Final Rule.

Outside the enumerated uses, the State is required to follow the framework established in the rule which makes clear that the State must:

- identify a beneficiary or class of beneficiaries that experienced a negative economic impact due to the pandemic, and
- design uses of funds that respond to the harm, benefit the beneficiaries that experienced it, and are related and reasonably proportional to that harm.

In other words, the following questions must be asked, and the answers documented:

- Who experienced harm from the COVID-19 public health emergency and to what extent?
- Does the proposed use of SLFRF address the harm identified and to what extent (e.g., is the response reasonably proportional to the harm)?

Neither Act 74 nor the current version of S.263 attend to these questions.

SAO reviewed publicly available information about ACCD's CIP grant process– the [Notice of Funding Opportunity](#), [application instructions](#), Capital Investment Program [application workflow](#), and a listing of Vermont's [qualified census tracts](#). None of these materials provide insight as to how ACCD is assessing economic harm and whether capital expenditures are an appropriate and proportional response.

³ Qualified census tract means any census tract which is designated by the Secretary of Housing and Urban Development, and for the most recent year for which census data are available on household income in such tract, either in which 50 percent or more of the households have an income which is less than 60 percent of the area median gross income for such year or which has a poverty rate of at least 25 percent. 26 U.S.C. 42(d)(5)(B)(ii)(I).

ACCD's December 2021 interim CIP report shows that nine of eighty-eight applicants are for childcare and housing projects while others are for projects in food and beverage manufacturing (10), hospitality and lodging (10),⁴ arts & culture (8), etc.⁵ However, ACCD did not include information about the economic harm(s) identified and the types of capital investments planned by the existing CIP applicant pool. As a result, I'm concerned that awards for capital expenditures will be unrelated to and not proportional to the harm experienced.

For example: a business that has experienced revenue declines due to labor shortages or supply chain issues requests a grant to expand its facilities. Investment in facility expansion doesn't appear to address the harm experienced and the revenue declines may not be proportional to the investment required to expand operations.

In addition, none of ACCD's materials indicate that applicants are required to provide information about previous assistance received, or that ACCD is using existing public information to gather this data and use it in its eligibility assessment. This is problematic because footnote 20 under the General Provisions: Structure and Standards section of the Final Rule indicates that expenses which have already been reimbursed through another federal program, are not reasonably designed to address a negative economic impact to a beneficiary.

For example: a business experienced COVID-19-related revenue declines totaling \$100,000, and subsequently received Federal and State COVID-19 financial assistance totaling \$100,000. The business applies to the CIP for a \$500,000 facility expansion.

SAO made numerous information requests of ACCD regarding its processes for assessing eligibility of the use of SLFRF for capital expenditures and any guidance that Guidehouse has provided. We also requested ACCD's State Revolving Fund (SRF) Questionnaire which is the form the State requires to be completed to document how intended uses are eligible under SLFRF and to address program risks, if any. Per the State's policies, the COVID-19 Financial Office's (CFO) approval of the SRF Questionnaire is required before CIP awards may be distributed.

ACCD did not answer SAO's questions about the processes being used to assess eligibility under the Final Rule, and SAO has not received the SRF Questionnaire which we understand is being revised to reflect the current program design. From an auditor's standpoint these non-responses are red flags. The Agency did send guidance they'd received from Guidehouse (see Attachment III), but it is general in nature. The Commissioner of Economic Development testified that Guidehouse had been consulted on specific applications, but the material provided to the SAO deals only with broad categories of proposed capital projects, which does not address the considerable nuance in the Final Rule.

Because of ACCD's continued focus on large capital projects and the lack of information about ACCD's grant process, I'm concerned there is significant risk that ACCD's intended awards to small businesses for capital investment are largely not eligible under the Final Rule. As significant federal and state assistance has already flowed to businesses and nonprofits in Vermont, there also is risk that CIP and GLEP awards will duplicate assistance previously received which further renders such projects ineligible.

See Attachment I for suggestions addressing the concerns and risks I've highlighted. In addition, we offer a straightforward CIP "pivot" alternative which would do away with nearly all program risk.

⁴ Tourism, travel, and hospitality are presumed impacted industries. Enumerated uses for impacted industries are limited to installation and improvements of ventilation systems and developing outdoor spaces. Other industries may be presumed impacted if employment losses or major economic indicators demonstrate the industry is experiencing comparable or worse economic impacts than the national tourism, travel, and hospitality industries. See Attachment II, Table 1, for details.

⁵ Table "CIP Application Projects by Type (as of 12/15/2021)," p. 9 of ACCD CIP Interim Report December 16, 2021.