THE ARRA AND SRF
QUESTIONS AND ANSWERS
Volume 1
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This document contains answers to questions posed by Regions and States regarding implementation of the American Recovery and Reinvestment Act of 2009. Questions regarding the Green Project Reserve and new cross-cutting requirements will be answered in subsequent volumes.

ADDITIONAL SUBSIDIZATION

- **Would a 100% grant make the project a federal undertaking? What are the specific requirements associated with awarding grants instead of principal forgiveness?**

If a state provides a grant using ARRA funds, the assistance agreement is considered to be a subgrant and is therefore subject to requirements for subgrants in 40 CFR Part 31. Additionally, the requirements apply to the project whether or not the project receives a 100% grant, or a 1% grant. It is the use of a grant that triggers the requirements.

- **Does the 50% for additional subsidization and 20% for the green project reserve apply to total funds the state receives before or after allowable set asides are taken?**

The 50% requirement associated with the additional subsidization reserve and the 20% for the green project reserve is based on the full amount of the capitalization grant received by the State.

- **Regardless of DWSRF set-asides taken, half of the total ARRA grant must given as additional subsidization? If a State receives a $20 million grant, $10 million must be given as additional subsidization?**

That is correct.

- **Would EPA consider defining "additional subsidization" to include interest subsidies below market?**

No. The law specifies that additional subsidization must be provided “in the form of forgiveness of principal, negative interest loans or grants”. Loans that have interest rates below market rate, down to zero percent interest, are a permissible and standard component of the SRF programs, and therefore do not represent “additional subsidization” as Congress specified it in the ARRA.

- **Can you explain the difference if we use the term principal forgiveness vs grant in our funding agreements?**

Funding agreements that include grant assistance are considered subgrants under EPA rules, and are subject to requirements in 40 CFR 31. Agreements that include principal forgiveness are not subject to those requirements. States may want to consider providing additional subsidization in the form of principal forgiveness to avoid imposing those additional regulatory requirements on recipients. EPA will provide additional information on the specific requirements that would apply to grants made by the states.

- **Typically, additional subsidization has been used for only disadvantaged communities based on MHI (only previously allowed in the DWSRF). It appears that States have the flexibility under ARRA to use whatever methodology they choose to dole out this grant money. Is this correct?**

Yes, under the language of ARRA, states have flexibility to use their own approach to award additional subsidization. However, conference report language states that "the Conferees expect the States to target, as much as possible, the additional subsidized monies to communities that could not otherwise afford an SRF loan." States may also decide to direct additional subsidization for "green" projects that may find it difficult to identify a source of repayment for loans.

- **Can a project be funded with 50% "normal" CWSRF funds and 50% ARRA funds with all of the ARRA funds being subsidy?**

Yes, this approach may allow ARRA funds provide an additional subsidy to more recipients.

- **Can we interpret the additional subsidization requirement to include loans that are below market rate but above 0%? Doesn't EPA allow this to be counted towards disadvantaged assistance in the DWSRF?**

For the purposes of reporting in the base DWSRF program (through DWNIMS), we do allow states to identify the total amount of loans it makes to recipients it deems as disadvantaged. However, in the base program EPA does not count the subsidy associated with interest rates that are greater than 0% towards the 30% limitation on use of the DWSRF grant for additional subsidization. In writing the ARRA, Congress specified the forms available to State to provide additional subsidization and did not include the subsidy associated with interest rates that are 0% or greater.

- **Can you describe "loan forgiveness" accounting entries? Is this done for each draw or at the end of the project?**

States will report the full amount to be forgiven as part of the loan agreement.

- **With regard to DWSRF set-asides, the 2% for technical assistance set-aside can go to systems that would receive additional subsidization. Can these funds be counted as part of the 50% subsidy?**

If assistance provided to eligible recipients under the set-asides was in the form of principal forgiveness, negative interest rates, or grants, then those funds could count towards the 50% minimum. For example, states may provide loans including principal forgiveness to small systems to project planning and design under the 2%. The state could count the amount forgiven towards the 50% requirement. However, funds used to pay for state staff, or to hire contractors to assist small systems, could not be used to count towards the 50%.

CASH MANAGEMENT

- **Is there a drop dead date to disburse all ARRA funds?**

There is no drop dead date for disbursements. Funds will be disbursed as construction costs are incurred and should be completed within the term of the grant period, which is generally no later than 7 years after award.

- **What is the final date for States to take disbursement?**

The September 30, 2010 deadline is EPA's deadline for obligating funds. The final date to take disbursement of awarded funds will be consistent with the end of the grant period associated with the grant award.

- **Why are funds related to costs for ARRA-funded projects to be drawn from ARRA grants only? Why not continue the current practice of First-in First-out?**

EPA will require project costs for ARRA-funded projects to be drawn from the ARRA grant. First-in First-out will not be allowed for these grants due to the need to track outlays and because these grants have specific timing and use requirements associated with them. Through those requirements, Congress also made clear that it intended identifiable ARRA funds to be the funds used for specific purposes and in specific time frames.

Note that the OMB guidance of February 18, 2009 includes the following Q&A,

> **4.2 Can agencies co-mingle Recovery Act and non-Recovery Act funds?** No. To maximize transparency of Recovery Act spending required by Congress and the Administration, agencies must not co-mingle Recovery Act funds with other funds in apportionment requests they prepare for OMB; SF 133 budget execution reports; or data feeds or reports they provide to Recovery.Gov. Within their financial systems, agencies must separately track apportionments, allotments, obligations, and expenditures related to Recovery Act funding. States may decide in some cases to

use Recovery Act funds in conjunction with other funds to complete projects, but they must separately track and report the use of Recovery Act funds for these projects.

- **Can 20% of the grant [associated with the green project reserve] be held through the SRF payment schedule?**

Although not required, a region can develop a payment schedule that reflects the hold-back per the grant condition in the final agreement. Regardless, in conformance with the grant condition, a state cannot draw funds associated with the 20% for non-green projects until they have been authorized to by the Region.

TIMELY USE AND REALLOTMENT

- **Where is the 120 day requirement for construction?**

The language setting a goal for using 50% of funds within 120 days of enactment is in the general provisions for the ARRA (section 1602). Note that it is a goal.

- **Do projects have to be "under contract OR construction" or "under contract AND construction" within a year of enactment?**

The provision is that projects be under contract or under construction. EPA is not interpreting the law as meaning that both criteria have to be met.

- **Does a binding commitment qualify as "under contract within a year"?**

No. The project must be under a contract for construction. The contracts are those between the assistance recipients and their contractors. The intent is that projects be initiated in a timely manner.

- **Will the intent of the law be met if a construction contract is awarded but the notice to proceed issued at a later date?**

The law requires that construction contracts be in place or that construction is underway by February 16, 2010. We recognize that there may be a lag between the contract and initiation of construction due to seasonal schedules. However, states should recognize that in addition to providing funds for water infrastructure, the intent of the ARRA funding is to get people to work, so any delays should be minimized.

- **Must priority rating systems be modified to include "points" for projects that will be under contract in 12 months?**

EPA does not intend for states to revise their priority rating systems. We believe that the intent of the provision can be met by using strong bypass procedures that reflect the ARRA's direction for early construction. States would apply bypass procedures to

review the readiness of projects to proceed, and vigorously moving those eligible projects that are ready forward for funding.

- **If all of a State's allotment is obligated prior to 2/17/2010 and a project is substantially below its estimated budget resulting in an actual expenditure below the full state allotment, will the state have the ability to direct those funds "under budget" to another project?**

As long as the state met the deadlines for entering into contracts or construction by February 17, 2010, they should have the ability to direct funds that are made available by projects coming in under budget to other projects.

- **Will a state certification that all projects are under construction at 12 months suffice, or will EPA require that 100% of the amount of the assistance agreement actually be under contract at 12 months?**

Congress specified in the law that "the Administrator shall reallocate … where projects are not under contract or construction within 12 months". Accordingly, the State will need to demonstrate that all project funding is under contract or construction to avoid deobligation of funds.

- **What about a segmented construction project where the first construction contract lasts 12 months and the second phase of the contract begins at the conclusion of the first contract. Can the second project be funded with the ARRA? This happens quite frequently in large projects that involve plants and collection systems where the second phase is dependent on completion of the first phase. In this case, the project is definitely under construction at 12 months but a portion may not yet be under contract at 12 months.**

The law states that projects must be under construction or contract within 12 months, regardless of whether it is associated with a segmented project or not. Projects or portions of projects that cannot meet these deadlines can be funded through the base SRF program. A State can use base SRF program funding for the portion or phase of a project that will not be under contract or construction within 12 months. It should be clear that a segmented project that is under construction is only under construction for that portion that is under contract, not for the entire project. Therefore, the second phase is neither under contract or construction.

- **Please explain the basis for the requirement that realloted funds must be used within 120 days. This does not appear in the ARRA; in fact ARRA allows funds to be available until September, 2010.**

While the law does not include a deadline for reallotted funds, EPA believes it is appropriate to require timely use of the funding. The 120 day deadline is consistent with other deadlines in the law and will allow EPA to carry out a second reallotment should it be necessary prior to losing authority to reobligate funding on September 30, 2010. This

requirement follows Congress' direction in Section 3(b) of the ARRA that "[t]he President and the heads of Federal departments and agencies shall manage and expend the funds made available in this Act so to achieve the purposes specified in [that section], including commencing expenditures and activities as quickly as possible consistent with prudent management."

- **If there is a reallotment, will 1% go 604b?**

The reallotment procedures for the CWSRF program do not allow for additional funding for the 604b program.

- **Please explain the provision regarding the formula for reallotment - what is the reallotment formula? What is the basis for this limitation?**

The only limitation on reallotment is that states that failed to meet the deadline, or that do not certify to EPA that additional funds will be under contract for construction within 120 days of reallotment, cannot receive funds made available through reallotment. This is consistent with existing EPA regulations on reallotment for states that fail to issue normal SRF grants during the two year period of availability, with the addition of the exceptional, ARRA-driven necessity for assistance recipients to place the reallotted funds under contract promptly.

- **How will the reallotment formula work?**

The formula will be adjusted to remove States that cannot participate and the percentages associated with them will be distributed among States that can participate in accordance with their relative allotment and with their certification to EPA that additional funds will be under contract for construction within 120 days of reallotment (as specified in the Guidance at V.F.2, p. 16). This is consistent with the procedures that programs have had in place since inception, with the addition of the exceptional, ARRA-driven necessity for assistance recipients to place the reallotted funds under contract promptly.

- **If CWSRF funds are returned from a state, can the DWSRF from the same state apply for additional funds?**

No, if funds are deobligated from a state, those funds will be added to other available funds for reallotment within the associated DWSRF or CWSRF programs. Note that a state may transfer funding between their CW and DWSRF programs, consistent with the 33% cap (based on DWSRF grant amount). However, all transferred funds must still meet the applicable deadlines and requirements.

- **What is the status of the 2007 DW Needs Survey and if available, will the new allocation percentages be used in reallocating unused funds?**

The 2007 Survey is being reviewed in preparation for final release. The allotment of ARRA funding will use the results from the 2003 survey which was valid for FY 2006-

2009 appropriations. The ARRA appropriation is considered supplemental FY 2009 funding. Under EPA's regulations, realloted funds use the same formula as was used to originally allot the funding, therefore the Agency expects to use the formula based on the 2003 survey results. The formula based on the 2007 survey will be used for FY 2010-2013 appropriations.

- **If a State's DWSRF allocation is realloted, does that affect CWSRF eligibility to receive realloted funds?**

The requirements apply to the individual SRF program. If a state fails to meet requirements in the DWSRF program, the CWSRF program would remain eligible for any reallotted CWSRF funding. Only the DWSRF program would not be eligible for any reallotted DWSRF funding.

- **Can funds received through the reallotment process be used for refinancing?**

There is no restriction on use of reallotted funds for refinancing. However, the limitation on refinancing costs under debt before October 1, 2008 would remain.

- **If funds are realloted, are those funds subject to the Additional Subsidization Reserve requirements and the Green Project Reserve requirements**

Yes. The funds that are transferred will have the same requirements relating to the additional subsidization and green project reserves tied to them. The State will have to certify that projects are available in an amended IUP to demonstrate that they will be able to direct funding accordingly.

SET-ASIDES

- **Can a State get pre-award costs for administration of their SRF?**

Yes, as with any grant, a State can claim preaward costs. The funding recommendation will allow costs to be claimed back to October 1, 2008.

- **Can the 4% set-aside be taken from the ARRA money first even if we have balances from prior years?**

Yes.

- **Will we be able to bank the administrative funds (4%)? If so, can we use these funds on other SRF grants and is there a limitation on the duration that funds can be banked?**

The 4% administration money will be treated similarly to that from other grants. States will be able to bank the authority associated with the 4% administrative set-aside.

- **For the 4% administrative set aside, when must the money must be spent, assuming projects will extend beyond 12 months that will need administration?**

States should handle the 4% the same as they currently handle such funds in their programs.

- **Can administrative funds be drawn from 2nd round funds? Is it true that the total amount drawn cannot exceed 4% no matter the source?**

This is correct for the CWSRF program because the 4% is a use of the Fund. For the DWSRF program, the state could bank authority but must take funds from a future grant, not from recycled funds.

- **Many states would argue that waiving the 10% match associated with the DWSRF state program management set-aside would preserve jobs.**

The law only waived matching requirements associated with the full cap grant. States can use other methods to meet the 10% match, including credit from expenditures in fiscal year 1993 and in-kind services.

- **Could you address the issue of pre-award costs for set-asides? We were told that for set-asides the normal 90 day rules comes into play not the October 1 date.**

For administration, States can go back to October 1, 2008 for pre-award costs as long their budget includes the costs and demonstrates that expenditures were made for purposes that support the ARRA in anticipation of funding.

- **Can States use set-aside money to assist water systems to prepare their eligible project for funding through another agencies' (i.e. USDA RD) stimulus funds if the assistance fits within the details/scope of the workplan?**

There is no requirement that technical or financial support to help systems prepare for funding receive funding from the SRF. However, if States choose to use set-aside funds for this purpose, they should support planning for projects to be built using ARRA funds. Likewise, if they coordinate project funding with the USDA, it should support the construction of ARRA projects.

- **The bill does not limit states use of the 10% set-aside. Can States continue to use these funds for capacity development activities?**

Yes, however, we encourage states to use set-aside funds to activities that support the purposes of ARRA (e.g., accelerating project development, green practices, sustainability). Unlike the capitalization grants which had their match waived, States will need to meet the matching requirements associated with use of the 10% set-aside.

- **Will ARRA allow the 2% set-aside to be used to help small systems in compliance with SDWA regulations?**

Yes, however we recommend that technical assistance directly supports the purposes of ARRA.

- **Do the 4%, 2%, and 10% set-aside funds count against the 50% additional subsidization requirement?**

Each of the DWSRF set-asides and required reserves are calculated against the full amount of the capitalization grant. For example, if a state receives $100 million, $4 million may be used for admin, $2 million for small system technical assistance, and $10 million for state program management. At least $50 million of the funding from the grant would have to be provided as additional subsidy and $20 million for "green" projects.

- **Does "under contract" for set-asides means covered by an approved workplan?**

Yes.

- **Is EPA going to take the full 1% allowed for oversight? If so, will it be divided between the two programs according to the respective appropriation amounts?**

EPA took the full 1%, or $20 million, for the DWSRF program. EPA took 0.775%, or $31 million, for the CWSRF program. The funds will be distributed among the regions and headquarters for management and oversight. Note that the Inspector General received $20 million in a separate appropriation to oversee EPA funding (of which the SRFs comprise the majority).

- **What is the basis for requiring expenditures of DWSRF set-asides by 9/30/11?**

The purpose of the ARRA is to move money quickly into the economy. The law allows EPA to take an administrative set-aside to manage the funds, with funds available through 9/30/11. We believe it is reasonable to apply the same logic to non-4% set-asides that may be taken from DWSRF grants. If a state cannot make timely use of set-aside funds, it can reserve the authority to take the amount of the unused set-asides and take them from a future grant, and would apply the actual ARRA funds to projects and activities that can be implemented quickly, consistent with the provisions of ARRA .

- **When are workplans covering DWSRF set asides due under ARRA? Should existing administrative and small system technical assisstance workplans link with ARRA workplans for continuity?**

EPA's ARRA Guidance states that "[w]orkplans for the small system technical assistance set-aside and the state program management set-aside will be developed and put into effect consistent with the grant conditions required by USEPA guidance for the ARRA." This condition will require that for all funds for DWSRF set-aside uses other for the 4%

set-aside used for administration, a contract or plan committing these funds will be in effect by February 17, 2010. To the extent possible, the workplans should build on existing workplans.

- **Can a State get pre-award costs for activities funded from DWSRF set-asides?**

Yes. If the State can document the costs incurred since October 1, 2008. A State will have to describe how the funds were used for purposes of Recovery.gov.

- **Can a State submit their workplans 90 days after award of the grant?**

Yes. The grant condition that EPA will require for award of the capitalization grant states that "The recipient agrees that for all funds for DWSRF set-aside uses other than any funds in the 4% set-aside used for administration, a contract or plan committing these funds will be in effect not later than February 17, 2010."

- **Is the 1:1 match associated with the 10% State program management waived?**

No, the law only waived the 20% match on the capitalization grant. EPA's 3/2/09 Guidance states "Because the only SDWA match waived by the ARRA is the section 1452(e) match, the 1:1 match required for State Program set-asides in section 1452(g)(2) is not waived and remains in force."

- **Does the State have to use 20% of their set-asides for green projects?**

The 20% green project reserve is calculated on the full amount of the capitalization grant. There are no requirements with respect to how the State meets that requirement, vis a vis through Fund projects or the set-asides. There may be activities that a State could fund through the set-asides that could count towards the green project reserve (e.g., energy audits, water loss audits and mitigation project designs for utilities).

IUPs AND GRANT AGREEMENTS

- **When will States receive capitalization allocation amounts?**

The allocation amounts have been posted to epa.gov/recovery and have been distributed to Regions for distribution to the States.

- **Will EPA provide a sample grant application to States to expedite the award process?**

EPA's grant guidance includes a sample IUP to help States understand what will be required. The guidance also outlines additional application needs. EPA is also providing tools to Regional grant program officers to help them expedite the processing of awards.

- **When will examples of Green projects and guidance be available for the DWSRF?**

Examples are provided in an attachment to the grant guidance.

- **Can a current IUP be amended instead of drafting a new IUP?**

A state can amend its IUP to include ARRA funds. A state may want to review its public review requirements to determine if they can be expedited to allow funding to move more quickly to projects.

- **Does the certification by the Governor have to specify the SRF funds or can it be a blanket certification for all ARRA funds?**

Under ARRA section 1607, a state is required to provide documentation of the Governor or state legislature's certification in order to receive a grant. As of March 13, 2009, 30 states and territories have posted a Governor's certifications at http://www.recovery.gov/?q=content/state-certifications. They have certified that the State would accept all the funds provided by ARRA (in other words, they did not distinguish among ARRA-funded programs), and the certifications have been sent either to the President or the Director of the Office of Management and Budget. EPA simply requires evidence that such certification has been made before a grant can be awarded.

- **Will a template be provided for the Governor's certification?**

EPA does not plan to provide a template for the Governor's certification. The legislative language provides the minimum elements required for the certification, and several of the certifications posted at recovery.gov essentially follow this language.

- **Since Tribes can apply directly to EPA for DW grants, will the Region have to develop a new IUP?**

EPA is planning to direct tribal ARRA funding through the Indian Health Service to expedite construction. Regions will be able to use their normal tribal SRF allotments to make competitive awards.

- **Do States need to have local recipients make certifications under section 1511?**

No, the project-by-project certification required by section 1511 – a general provision of the ARRA that is focused on transparency – must be made by the Governor or delegated State official. In the case of the SRF programs, EPA has determined that this is the appropriate level of certification because the States determine which infrastructure investments will receive ARRA funding. The grant agreement will include a grant condition to this effect, which will clarify the basis in the SRF program processes on which the certifications are made.

- **Is EPA required to award grants to States within 60 days?**

There are no requirements, but EPA is committed to approving the grants in a timely fashion – within 21 days of a final application. Note that grants are also subject to a mandatory White House notification, which occurs after EPA has cleared the grant for award. EPA encourages states to submit applications as soon as possible.

REPORTING

- **Will guidance be provided on how to estimate job creation?**

EPA is seeking guidance from OMB on how states should estimate job creation. We will provide additional information as it becomes available.

- **What is the timing for reports?**

EPA is asking states to enter data on an on-going basis so that the Agency can easily compile data to meet reporting requirements imposed by the law and related OMB guidance.

- **Will the reporting for DWSRF be similar to the benefits reporting system for CWSRF?.**

The programs have worked closely to ensure that their reporting systems are consistent. Although the base reporting programs have different fields that reflect the differences between the two programs, the new fields required by the ARRA are the same for both programs.

- **When will States have access to the new DWSRF tracking system?**

The systems will be available soon and webcasts will be scheduled to instruct users on how to use them.

- **Will the entry of the additional tracking requirements fulfill a State's obligation for federal stimulus project data entry?**

EPA's intent is that reporting through the SRF benefits reporting systems will fulfill the state's obligation under the ARRA.

CROSS CUTTERS

- **Can we bank cross-cutters?**

It would be inappropriate to allow the application of banked environmental cross-cutter compliance in ARRA for the first time in either SRF program, in light of Congress'

intention in section 1609 of the ARRA that agencies should not short-cut environmental review.

- **Does NEPA apply to grants?**

Subgrantees in the SRF program are subject to the state SERP, consistent with agreements funded through the SRF.

- **If Uniform Relocation Assistance requirements have been met, are easements and property acquisition eligible project costs if needed to begin construction?**

The law does not allow for ARRA assistance to be used for land acquisition or easements in the CWSRF program. Note that the CWSRF has a standing restriction on purchase of land or easements where not integral to the treatment process for the construction of treatment works. In the DWSRF program, where land acquisition occurs under the authority of SDWA section 1452(a)(2) and meets the requirements of that provision, costs would be eligible.

- **Does EPA have a debarment List?**

The Excluded Parties List System is at https://www.epls.gov/. The EPLS includes information regarding entities debarred, suspended, proposed for debarment, excluded or disqualified under the nonprocurement common rule, or otherwise declared ineligible from receiving Federal contracts, certain subcontracts, and certain Federal assistance and benefits.

- **Does the ARRA require projects be bid?**

Requirements related to bidding contracts (sec 1610) are limited to contracts entered into by executive agencies (e.g., EPA). It does not apply to State SRFs or recipients of assistance.

- **Will EPA provide suggested language that engineers could include in the specifications for E-verify?**

E-verify does not apply to ARRA-funded projects.

- **If a state already has a prevailing wage law, does Davis-Bacon have any particular relevance?**

As long as the State's requirements are equivalent to the Federal requirements, there should be no problem.

- **How is Davis Bacon applied to projects using force account?**

Davis Bacon does not apply to force account work. In some instances a Government agency (or a State or political subdivision thereof using Federal money) may perform construction work under what is generally known as "force account". In essence, this is a "do-it-yourself" type of action - the governmental agency receiving the grant decides not to contract out the work but actually performs it "in-house" with its own employees. Such work is not generally subject to DBRA because governmental agencies and States or their political subdivisions are not considered 'contractors" or "subcontractors" within the meaning of the D-B Act. However, any part of the work not done under "force account" but contracted out is subject to DBRA in the usual manner. {Source: DOL Field Ops Guide at http://www.dol.gov/esa/whd/FOH/FOH_Ch15.pdf}

- **How does DBE apply? Does it apply to engineering services?**

ARRA does not present any basis to apply DBE differently from what is normally done. If a project has already been designed without using the DBE steps, and the contracting entity subsequently decided to seek SRF assistance, the DBE rule does not require the earlier work to be redone in any way. However, going forward, the DBE rule does require all contracts entered into by the assistance recipient – for services related to the project or for construction of the project – to require the contractor(s) to take the necessary steps to seek DBE participation.

TRANSFERRING FUNDS

- **Can a State transfer ARRA funding from one SRF to the other?**

Yes, a State may transfer an amount equal to up to 33% of the State's DWSRF grant from the DWSRF to the CWSRF, or vice versa. The amount that can be transferred is based on the DWSRF allotment. Transferred funds carry the same requirements with respect to additional subsidization and targeting green projects. Additionally, there are specific steps that EPA and the State will need to take to transfer the federal funding in EPA's budget tracking system. A State that transfers funds close to the 12 month deadline for entering into contracts needs to ensure that it will be able to enter into contracts and/or construction in the receiving SRF by the end of that 12 month deadline.

- **If a State has already met its 50% minimum for additional subsidization and/or its 20% minimum for green projects, do any transferred funds have to meet those requirements in the receiving SRF?**

No. The transferred funds will carry any remaining percentage obligations associated with the donor funds at the time of the transfer. If a State has met its 20% requirement in the donor program, then the receiving program will not have to apply the same requirement. However, if the donor State had only met half of its requirement at the time of the transfer, the remaining half would have to be met by the receiving program.

LEVERAGING

- **Can ARRA funding be used for leveraging?**

Yes. In tracking requirements to meet the 50% minimum for additional subsidy, the 20% minimum for green projects, and the requirement to have 100% of funds in contracts and construction within 12 months, the State will identify projects that are equivalent to the amount of federal funding made available. For example, if a State receives $1 million and leverages to get proceeds of $3 million, it will direct $500k to subsidy, $200k to green projects, and have to ensure that $1 million in projects are under construction within 12 months.

MISCELLANEOUS

- **Are design-build projects allowed to be funded by ARRA funds? Is design allowance allowed?**

Design-build projects are eligible for assistance, as long as they are eligible in the state program. However, it is important to note that all projects must be under contract or construction by February 17, 2010.

- **Does the restriction on the purchase of land or easements apply to a consolidation project?**

No. The restriction on land or easements is on activities funded by the ARRA in the CWSRF program. The corresponding ARRA limitation on using assistance provided by the DWSRF for land acquisition is the bar on the use of ARRA funding for 1452k set-asides, including on land acquisition for source water protection, so acquisition of land in a project for consolidation is allowed.

- **Is there any priority consideration for projects that are more labor intensive?**

There are no federal ARRA requirements regarding preference for more labor intensive projects. A State may choose to consider it within its own program as a means to maximize job creation.

- **Can projects using force account work be funded?**

States can fund force account work as long as they are consistent with state requirements for such work. The ARRA is focused on creating and saving jobs, so the availability of funding could prevent job loss by making work available.

- **Can a project that is both green and disadvantaged count for both the Green Project Reserve (GPR) and receive additional subsidization?**

Yes, a project that receives additional subsidization under the 50% reserve can also be counted towards the 20% green project reserve if it qualifies as a "green" project. {Note that the additional subsidization reserve is distinct from the disadvantaged program

included in the DWSRF program, although a State may separately consider economic disadvantage in developing criteria for making determinations about additional subsidization.}

- **The conference report had the following wording "funds may be used to buy, refinance or restructure the debt obligations of eligible recipients only where such debt was incurred on or after October 1, 2008." Clarify if it's: "on or after October 1, 2008" or "prior to."**

Costs may only be refinanced if the initial debt for the project occurred after October 1, 2008. The goal of ARRA funding is job creation. Refinancing does not generate jobs; however, Congress did not want to penalize States and systems that may have started projects in anticipation of a stimulus bill.

- **Can a project that has already initiated construction using its own funds be funded by ARRA funds?**

Yes, however only those costs under debt incurred on or after October 1, 2008 can be refinanced. Remember that the intent of the ARRA funding is to not only provide funding for water infrastructure, but to also create jobs.

- **The refinancing limitation is for projects initiated after 10/1/2008. Does that mean that projects that begin construction after that date may be refinanced or does it include design and engineering expenses as well?**

EPA is reading the provision as applying to any costs under debt incurred on or after that date. Costs incurred prior to that date could be refinanced using normal SRF loans.

- **Is the restriction on refinancing for initial debt incurred prior to October 1, 2008 limited to debt tied to construction or to any costs (e.g., planning and design)?**

The provision applies to debt covering all costs. States can use their base SRF program to refinance costs that may have been incurred prior to October 1, 2008. States cannot however use ARRA funds to refinance debt incurred prior to October 1, 2008, even if the costs are incurred on October 1, 2008 or later. *(verified with OGC)*

- **Can a system receive reimbursement for pre-project costs such as planning and design even if such costs were incurred prior to October 1, 2008?**

~~No, a State can only receive reimbursement or refinance for debt that was incurred after October 1, 2008. A State can finance costs prior to that date using funding from its base SRF program.~~ Yes, self-financed costs for planning, design, and related necessary pre-construction costs, are reimbursable whether incurred before or after October 1, 2008 – because they were necessary to make the project shovel-ready – as long as no construction costs or debt obligations were incurred (e.g., signing a note and drawing down on the note), and no construction contracts were signed, prior to October 1, 2008.

Because ARRA provides that ARRA funds may be used to buy, refinance or restructure the debt obligations of eligible recipients only where such debt was incurred on or after October 1, 2008, ARRA funding can only be awarded when a construction project started on or after October 1, 2008. Thus, self-financed construction costs are only reimbursable if they were incurred on or after Oct. 1, 2008 ("in anticipation of ARRA").

- **Is ARRA an addition to the annual cap grant or is it considered a separate grant?**

The ARRA requirements apply to the amount of funds associated with the ARRA grant. However, the expectation is that states will provide their normal level of assistance, such that at the end of one year after the ARRA's enactment, the total value of projects funded will be roughly equal to the value of the ARRA grant plus the amount the state would normally fund by that time using funds available.

- **Can projects be split funded between the base SRF and the ARRA program?**

Yes, as long as the funding from each source is separately tracked and reported according to the requirements applicable to each source.

- **How can we have a loan with ARRA & regular SRF money? Would it have two loan agreements?**

Some states may make loans now that include federal and non-federal funding. The agreement would have to lay out the requirements associated with the assistance. A state may want to do two separate agreements if the work could be easily broken up in order to apply different requirements to each segment, but this is not required. However, the funding from each source must be separately tracked and reported according to the requirements applicable to each source. This is consistent with OMB's February 18, 2009 guidance, which states the following, "Federal agencies must instruct recipients covered by these reporting requirements that Recovery Act funds can be used in conjunction with other funding as necessary to complete projects, but tracking and reporting must be separate to meet the reporting requirements of the Recovery Act and this Guidance. "