



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

OFFICE OF
WATER

MEMORANDUM

SUBJECT: Reallocation Process for Funds Deobligated after February 17, 2010 under the
"American Recovery and Reinvestment Act of 2009"

FROM: *for* James A. Hanlon, Director
Office of Wastewater Management (4201M)

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Cynthia C. Dougherty, Director
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TO: Water Management Division Directors
Regions I - X

On February 17, 2009, President Obama signed into law the American Recovery and Reinvestment Act (ARRA). With your help, EPA was able to take the necessary step of obligating all of the Clean Water and Drinking Water State Revolving Fund (SRF) program resources. The next phase of implementation and moving projects to construction is now underway. This is the phase that brings needed jobs into the economy. The primary responsibility for implementation in this phase is with States, along with local water and wastewater utilities. In order to spur the expeditious use of these funds, Congress included in the ARRA a requirement that all SRF funds appropriated under ARRA be under contract or construction by February 17, 2010, or be subject to reallocation.

The purpose of this memorandum is to explain in detail the steps EPA will take to implement the ARRA reallocation provision in the event that one or more States does not meet this statutory requirement.

Step 1: Planning – Certified List of Projects

In order to be able to reallocate any available funds after February 17, it is necessary for EPA to assess not only the demand for additional funds, but the ability for States to award assistance agreements to recipients who can put additional funds into contracts or construction within 120 days by June 17, 2010.

As of December 22, 2009, 52.3% of funds appropriated for the CWSRF and 50.4% of funds appropriated for the DWSRF are on projects fully under contract. While States are working hard to place all ARRA funds under contract by February 17, we are planning for the

possibility of reallocation. Therefore, States wishing to participate in a possible reallocation of funds are instructed to provide to EPA Headquarters, no later than February 1, 2010, a certified list of eligible projects for which they will be able to sign assistance agreements and the recipients will be able to sign contracts for construction by June 17, 2010. The certified list must include the following:

1. Name of assistance recipient
2. Recipient's best estimate of total project cost that can be placed under contract by June 17, 2010
3. Project description
4. Estimated date of signed assistance agreement
5. Estimated date on which all reallocated funds for project will be in signed contracts
6. Signature of responsible official

The certified list must be received by February 1, 2010 by 1) fax to Jordan Dorfman at (202) 501-2346, 2) e-mailed PDF to dorfman.jordan@epa.gov, or 3) express mail delivery to Jordan Dorfman, EPA East Room 7309D, 1201 Constitution Avenue, NW, Washington, DC 20004.

Step 2: Deadline Certification

According to EPA Guidance issued on March 2, 2009, "each State must certify in writing, and forward to EPA, not later than March 1, 2010, that projects funded under its ARRA grant" met the deadline. In the case of DWSRF set-asides, an approved workplan for the set-aside amount taken is considered to be the equivalent of signed contracts for infrastructure funding. The responsible official must send a letter to EPA Headquarters certifying the following:

1. List of projects that received assistance agreements. For each project include:
 - a. Name of assistance recipient
 - b. Total ARRA funds obligated to the project through an assistance agreement
 - c. Date of assistance agreement
 - d. Amount of ARRA funds under contract by February 17, 2010
2. For the DWSRF, a list of set-asides taken, the amount taken, and the date of approval of the set-aside workplan. If any of the 4% Administration and Technical Assistance set-aside was used to provide technical assistance to public water systems, an approved workplan must be provided for that amount. If the amount set aside under the 4% Administration and Technical Assistance set-aside is used exclusively for administration of the DWSRF ARRA program, then no work plan is required (CFR 35.3540 (c)(1)). For the CWSRF, specify the amount of the 4% administrative allowance that the State is using.
3. The amount of ARRA funds obligated to the State not under contract nor accounted for under number 2 above.

4. A statement that all representations made in the certification, including the list of projects, amounts obligated, dates of assistance agreement, and amounts of ARRA funds under signed contracts, are true.
5. Signature of responsible official.

The certification must be received by March 1, 2010 by 1) fax to Jordan Dorfman at (202) 501-2346, 2) e-mailed PDF to dorfman.jordan@epa.gov, or 3) express mail delivery to Jordan Dorfman, EPA East Room 7309D, 1201 Constitution Avenue, NW, Washington, DC 20004.

Step 3: Assessment of Compliance

Beginning on March 2, 2010, EPA will assess the certifications submitted by the States. Any amount of ARRA funds identified as not under contract as of February 17, 2010, regardless of whether the funds are obligated by the State to a recipient through an assistance agreement, will be deobligated and reallocated.

Step 4: Deobligation

Following the determination of funds to be deobligated, EPA will immediately notify the State and begin the process of deobligating funds from ARRA grants.

Step 5: Reallotment

By March 8, EPA will issue allotment charts showing the amount allotted to each State that will receive additional ARRA funds. Reallotment will be determined according to the following process:

1. States that lose funds to reallotment will not be included in the reallotment.
2. The reallotment will be based on the same formula used for the initial allotment of ARRA funds to the extent that States have certified projects.
3. SDWA provides that for purposes of reallotment, the Administrator may reallocate 10% to Tribal projects. The Clean Water Act does not provide for reallotment to Tribes above the 1.5% already allocated to the Tribes.
4. States will receive no more than the amount dictated by the allotment formula or the amount in the certified assessment of needs submitted to EPA under Step 1, whichever is lower.
5. Any funds remaining will be further allotted to those States with certified needs greater than the amount dictated by the allotment formula.

The Office of Grants and Debarment will be issuing a memo on resolving any disputes that may arise as a result of the reallotment process.

Step 6: Amendment of Intended Use Plan (IUP)

In order to receive additional ARRA funds, each State identified in the allocation chart under Step 5 must amend its IUP. The amendment must list those projects to receive the additional funds. The list of projects must show the amount each project will receive. The IUP amendment must also contain an affirmative statement certifying that the additional funds will be under assistance agreements and under contract by June 17, 2010. A copy of the IUP amendment must be sent to EPA before funds will be obligated. The IUP must be received by EPA by April 26, 2010, or no additional funds will be obligated.

Step 7: Grant Amendment

In order to provide additional ARRA funds to qualifying States, EPA will amend existing ARRA grants. After receipt of an IUP amendment, and an application for additional funds, EPA will process a grant amendment in order to obligate any reallocated funds. These obligated funds must be under assistance agreements and under contract by June 17, 2010, subject to further reallocation in the event that date is missed, in the same manner as herein stated.

If you have any questions concerning the contents of this memorandum, you may contact us, or have your staff contact George Ames, Chief, State Revolving Fund Branch, Municipal Support Division, at (202) 564-0661, or Charles Job, Chief, Infrastructure Branch, Drinking Water Protection Division, at (202) 564-3941.

cc: SRF Coordinators
SRF Branch Chiefs