

The American Recovery & Reinvestment Act Q & A's

I. Program Administration

A. General

1. Q: **Do ARRA program funds have pre-award authority?**

A: Yes, FTA will extend pre-award authority to economic recovery program funds consistent with the program requirements of the applicable FTA program. ARRA funds administered under the requirements of Section 5307, Section 5311, or Fixed Guideway Modernization will have blanket pre-award authority from October 1, 2008, until September 30, 2010. There are two exceptions: the energy savings and tribal transit projects will have pre-award authority from the date that project selections are announced in the Federal Register. Economic recovery funds administered in accordance with the requirements of the Section 5309 Capital Investment Grant program (New/Small Starts) will have pre-award authority only for the stage approved up to that point. For example, upon approval to enter preliminary engineering, the grantee has pre-award authority to incur preliminary engineering costs. For more information, refer to the **FY 2009 Apportionments Notice** published in the Federal Register, December 18, 2008.

2. Q. **Is a local match required with use of ARRA funds?**

A. No local match is required except for the Capital Investment Grant Program.

3. Q: **Will the 50% of funds awarded during the 180-day period be tracked by program or by grantee?**

A: Neither. FTA will track the amount of funds obligated at the urbanized area and State level. Therefore, designated recipients and State DOTs should consider project readiness when making allocations. To determine the amount of funds that will be withdrawn the following computations must be made. Assume a UZA has been apportioned \$100,000 in FTA's Federal Register apportionment notice. First, 50% of the funds are held out of the calculation for the UZA or State, but must be obligated within a year of the Federal Register apportionment notice. In this case, the UZA or State keeps \$50,000 as step one. Second, we subtract from the second 50%, the amount that the UZA or State has successfully obligated into grants. In this case, the second half of the apportionment is \$50,000 minus \$30,000 that has been obligated into grants, leaving \$20,000 that will be pulled back by FTA for reallocation. The UZA still has \$50,000 (the first 50% of apportionment), available to be obligated on or before one year after the FTA Federal Register apportionment notice. If these funds are obligated in grants within one year, the UZA receives a total of \$80,000 in ARRA funds.

4. Q. **Will all current recipients of SAFETEA-LU Fixed Guideway Modernization funds receive ARRA Fixed Guideway Infrastructure Investment funds?**

A. No. Some areas do not meet the standard required to be included in the apportionment calculations under the Fixed Guideway Modernization (FGM) tiers for which ARRA funds are available. The \$750 million in FGM funds under AARA is not sufficient to fund all tiers of the FGM formula. The allotment of the funds to the tiers, in accordance with Section 5337, results in full funding of tiers 1, 2, and 3, and partial funding of tier 4, in the amount of \$169,100,000. FTA is not permitted to pro-rate the \$750 million over all of the FGM formula tiers. The first tier allocates specific amounts to designated areas. Funds allotted to tiers 2, 3, and 4 are apportioned using the 1997 standard.

If an area did not receive an FGM apportionment in 1997, it did not meet the 1997 standard and, thus, it is not eligible to be apportioned funds under tiers 2-4, unless that law specifies otherwise.

II. Pre-Grant Award

A. Eligibility

1. Q: How were the funding allocations announced?

A: The ARRA funding allocations for the Transit Capital Assistance (Urbanized Area Formula, Nonurbanized Area Formula and Growing States and High Density States) and Fixed Guideway Infrastructure Investment programs can be found in the March 5, 2009 Federal Register notice on <http://edocket.access.gpo.gov/2009/pdf/E9-4745.pdf>. Government-wide information is also available on <http://www.recovery.gov/>. A separate Federal Register notice on ARRA Capital Investment Grants program allocations will be published soon. The funds available for the Transit Capital Assistance (Public Transportation on Indian Reservations) and Energy Consumption and Greenhouse Emissions Reduction programs will be allocated on a discretionary basis. Federal Register notices announcing the availability of funds, soliciting project proposals and providing application procedures will also be published. FTA-specific information will continue to be posted on this website.

2. Q: Can a local agency combine ARRA funds and other sources to implement a project?

A: While each recipient must apply for a separate grant for each ARRA funding source, a single project may be funded with multiple funding sources, including economic recovery and other FTA formula and discretionary resources.

3. Q: Can grantees receive ARRA grants if the agency's ability to apply for FTA program funds is currently suspended?

A: Grantees that are currently in a fundable status to receive a grant under FTA programs will be eligible to receive ARRA funds. Grantees concerned about their status should contact their FTA regional office.

4. Q: What can ARRA funds be used for?

A: The law states that funds will be available for capital expenditures authorized under 49 U.S.C. 5302(a)(1), which describes eligible capital expenses. States may continue to use up to 15% of funds apportioned at the State level to administer the non-urbanized program on FTA's behalf.

5. Q: Are project administration costs eligible for funding?

A: Yes. ARRA funds can be used to fund the administrative costs directly associated with administering capital projects, including costs associated with reporting on project and grant status.

6. Q: What is the maximum amount of project administration costs for grants using ARRA funding?

A: Project administration costs must be directly associated with administering the capital project. While there is no cap, the costs must be allowable, reasonable, allocable, and in accordance with the applicable Costs Principles. Regional offices should use the same limits that are currently used for FTA grants. For further guidance on costs principles see 2 CFR part 225 for States and local governments, and 2 CFR part 230 for non-profit organizations.

7. Q: Can a grantee use ARRA funds to purchase vehicles if the agency's spare ratio will exceed the applicable standard?

A: A grantee wishing to use ARRA funds to purchase vehicles that would cause the grantee's fleet to exceed the applicable spare ratio requirements should contact their FTA regional office. FTA will consider approving exceptions to a spare ratio requirement if the request meets certain criteria, such as: the excess spare ratio would be temporary in nature, with it returning to within the 20 percent level within 2-3 years of delivery of the new vehicles, or whether the buses would "green" the fleet of the transit agency.

8. Q: Is the Capital Cost of Contracting an eligible expense?

A: Yes, capital costs associated with contracted services are eligible. The entire contract may or may not be eligible. The current capital costs of contracting guidance can be found in FTA's Capital Investment Program Guidance and Application Instructions Circular 9300.1B at http://www.fta.dot.gov/laws/circulars/leg_reg_8642.html

9. Q: Who will be eligible to receive ARRA funds?

A: ARRA funding will be made available to current recipients of: FTA's Urbanized Area Formula Program (49 U.S.C. section 5307); Formula Grants for Other Than Urbanized Areas Program (49 U.S.C. section 5311); Fixed Guideway Modernization Formula Program (49 U.S.C. section 5309); federally recognized tribes (49 U.S.C. section 5311(c) (1)); and Capital Investment Grants (49 U.S.C. section 5309)

10. Q: Can ARRA funds be used for operating expenses?

A: No. ARRA funds may be used only for capital expenses. The funds differ from the normal eligibility of FTA's Urbanized Area Formula program (Section 5307) for UZAs with less than 200,000 in population and Non-Urbanized Area Formula program (Section 5311), which can be used for operating expenses.

11. Q: Can ARRA funds be used for preventive maintenance activities?

A: Yes. Capital projects as defined by 49 U. S. C. 5302(a)(1) are eligible under the law, and preventive maintenance is included in the list of eligible capital expenditures.

12. Q: Can ARRA funds be used for preliminary engineering activities?

A: Yes. Capital projects, as defined by 49 U. S. C. 5302(a)(1), are eligible under the law. Specifically, 49 U.S.C. 5302(a)(1)(A) includes engineering and design work, location surveying, mapping, and right-of-way acquisition as eligible capital expenses.

13. Q: Can ARRA funds be used by State DOTs to administer the program?

A: Yes. States may continue to use up to 15% of funds apportioned at the State level to administer the program for non-urbanized areas on FTA's behalf.

14. Q: If a contract has already been signed and/or a bid awarded, can ARRA funds be used?

A: Yes, if local funds were used to advance a project under FTA's pre-award authority provision or a Letter of No Prejudice.

15. Q: If an FTA grantee receives ARRA funds from FHWA, can the funds be transferred to FTA?

A: Yes, if the funds are Surface Transportation Program funds.

16. Q: If funds are flexed from FHWA to FTA, when will the clock for the 50% of funds awarded during the 180 day period start?

A: When funds are transferred to FTA, they are recorded as an obligation by FHWA and stops the clock for FHWA withdrawal process. Although the clock does not start again when the funds come to FTA, we will monitor the implementation of these grants to make sure they are carried out with the intent of the law, which is recovery and reinvestment.

17. Q: Can FHWA funds transferred to FTA be used for operating?

A: No. FTA will follow current Surface Transportation Program transfer rules which say Federal highway and public transportation statutes include provisions that permit certain categories of funds to be used for either highway or transit purposes. Flexible fund programs include:

- (1) Surface Transportation Program (STP), 23 U.S.C. 133;
- (2) Equity Bonus Program, 23 U.S.C. 105;
- (3) Interstate Maintenance Program, 23 U.S.C. 119;
- (4) Highway Bridge Replacement and Rehabilitation Program, 23 U.S.C. 144;

- (5) National Highway System Program, 23 U.S.C. 104(c);
- (6) Substitute Highway Program, 23 U.S.C. 103(d); and
- (7) Congestion Mitigation and Air Quality Improvement (CMAQ) Program, 23 U.S.C. 149.

Although these Federal Highway Administration (FHWA) programs have intermodal flexibility, there are limitations on the uses of some funding. For example, recipients may not use STP funds for operating assistance on public transportation projects; however, recipients may use STP funds for any public transportation capital project.

18. Q: Can ARRA funds be used to substitute for money in an existing grant that has not been expended?

A: No. ARRA program funds cannot be used to replace funds already obligated in an existing FTA grant even if those funds have not been expended. ARRA funds can, however, be used to replace program funds identified in STIP and TIP but not yet awarded in a grant. Also, because FTA needs to segregate the funds being made available from ARRA legislation, agencies will need to apply for the ARRA funds in a new grant application.

B. Planning

1. Q: What actions do State DOTs and MPOs need to take, in coordination with transit agencies to ensure timely award and expenditure of funds?

A: Update Planning Documents. States and MPOs, in coordination with transit agencies, should conduct the transportation planning activities necessary for adding proposed ARRA program projects to plans, TIPs and STIPs. Planning tasks such as conducting public involvement, demonstrating fiscal constraint, and performing travel model runs and analyses prerequisite to making transportation air quality conformity determinations should take place now. This is necessary to ensure timely amendment of the documents to include ARRA projects and to award funds as soon as possible. This work should have already begun. If it has not, it should be started immediately.

In identifying and proposing additional projects for amendment into TIPs and STIPs, it is reasonable to assume ARRA program funds equivalent to a doubling of the current full-year amount of comparable FTA program funds – Sections 5307 Urbanized Area Formula program, 5309 Fixed-Guideway Modernization program, and 5311 Non-Urbanized Area Formula program. FTA has not determined how Capital Investment Grant Funding (New/Small Starts program in 49 U.S.C. 5309) will be allocated at this time. Once the necessary planning and air quality conformity work has been completed, MPOs and State DOTs may amend their plans, TIPs and STIPs. FTA, in coordination with FHWA, can make any necessary conformity findings on the amended plans and TIPs, and approve the STIP amendment requests.

Attainment and Nonattainment Conditions. If the project is in an area that is in attainment of air quality standards, the MPOs would take action and then submit the amended TIP to the State for incorporation into the STIP. The State would submit the amended STIP to FHWA/FTA for review and approval. With advance coordination among the parties, some of these items can be performed concurrently.

If the project is in an air quality nonattainment or maintenance area, the addition of activities or projects that are exempt from conformity could be accomplished as a simple amendment and would not necessitate a conformity determination. See List of Projects that are **Exempt from Air Quality Conformity**.

States and the MPOs should begin now to do the necessary planning work, such as model runs for the various scenarios; analysis work needed for conformity, if necessary; public involvement; and any other planning support work to get prepared. This preparatory technical work can be completed, and action taken to approve the necessary amendments along with conformity determination, if required.

Once the planning and any necessary conformity work has been completed, the MPO policy boards and State DOTs may amend their plans, TIPs and STIPs, and FTA, in coordination with FHWA, may make any necessary conformity determinations.

2. Q: Can State DOTs and MPOs count the recovery funds to demonstrate “fiscal constraint” in plans, TIPs, and STIPs?

A: Yes. Funds may be used to demonstrate fiscal constraint of plans, TIPs, and STIPs in areas that are in attainment, nonattainment, or maintenance of air quality standards. This special determination is analogous to the assumption of a continuing flow of Federal funds

3. Q: Can State DOTs and MPOs substitute or replace ARRA funds for FTA funds in projects currently programmed in the TIP and STIP?

A: Yes, funds may be used to advance projects that are in any current TIP and STIP. The re-programmed FTA funds must be used for another eligible project before the funds lapse. In contrast, grantees may not substitute ARRA funds for FTA funds that are currently obligated in a grant agreement. Also, because funds being made available from ARRA legislation need to be segregated, grantees will need to apply for ARRA funds in a new grant application.

4. Q: Can substitution of ARRA funds for FTA funds on projects programmed in the TIP and STIP be handled administratively?

A: Yes, provided that the action involves only a change in the source of the funds. The adopted amendment procedures governing your specific State or region should be consulted to determine what actions are eligible as administrative amendments to the TIP or STIP.

5. Q: Can ARRA funds be used to support non-federal projects not currently listed in plans, TIPs or STIPs?

A: Yes, provided that the non-federal projects are eligible activities for ARRA funding (i.e. capital assistance), that can be amended into plans, TIPs, and STIPs, and that compliance with applicable federal requirements such as the environmental review process required under NEPA, other environmental laws, and any additional applicable federal requirements can be expeditiously achieved.

6. Q: Can MPOs and States process TIP and STIP amendments to add ARRA-funded projects as “lump-sum” amounts?

A: It depends. Yes, if the term "lump-sum" refers to a "package" of individually identified projects proposed for amendment into TIPs and STIPs. In addition, in accordance with 23 CFR Part 450, Statewide and Metropolitan Transportation Planning, projects that are not considered to be of appropriate scale for individual identification in the TIP and STIP may be grouped by function, work type, and/or geographic area using the applicable classifications under 23 CFR 771.117(c) and (d) and/or 40 CFR part 93. The adopted amendment procedures governing your specific state or region should be consulted for guidance as to "lump sum" amendments requirements. A "lump-sum" dollar figure without a list of individual projects or indication of overall project “group” would not provide sufficient information for MPOs, States, and FTA/FHWA to approve amendments of TIPs and STIPs or track the use of ARRA funds.

7. Q: Can State DOTs and MPOs use ARRA funds to do transportation planning activities necessary to amend TIPs and STIPs in preparation for subsequent fund award?

A: Funding from the ARRA program is limited to capital program assistance, and transportation planning is not an eligible activity for the funds that will be made available to FTA. MPOs and States should utilize the planning funds programmed in existing Unified Planning Work Programs and State Planning and Research Programs to support their planning efforts.

8. Q: In preparing transportation improvement programs (TIPs) and statewide transportation improvement programs (STIPs), can MPOs and States assume the availability of additional ARRA funding (beyond the original February 17 apportionment) that could become available through redistribution of unobligated funds from other States that is scheduled to take place 180 days after the February apportionment?

A: No. The amount of unobligated ARRA funding that potentially will be redistributed among States, as well as the method for such a redistribution, will not be known until September 2009.

9. Q: Can FTA, jointly with FHWA, make conditional STIP approvals?

A: No. Conditional STIP approvals are not allowed under existing regulations. The planning regulations (23 CFR 450.218(b)) do allow FTA/FHWA to: approve the entire STIP; approve the STIP subject to certain corrective actions being taken; or under special circumstances, approve a partial STIP covering only a portion of the State. However, if States and MPOs complete the steps detailed above, FTA/FHWA can approve the STIP amendments immediately.

10. Q: What public review and comment activities do organizations need to undertake prior to receiving funds?

A: The public involvement and consultation provisions adopted and published by metropolitan and statewide transportation planning processes apply to planning and programming of projects supported with ARRA funds. The provisions outlined in MPO Participation Plans and documented public participation processes of States describe the locally agreed upon requirements for public review in the planning process, including the schedule and period of time for public input and comment that must be met. Additionally, public review and comment required by the environmental process must be undertaken.

11. Q: What actions do transit agencies need to take before applying for funds?

A: Planning Process. Projects must be included in the approved Statewide Transportation Improvement Program (STIP) and, in UZAs, the metropolitan transportation plan (Plan) and Transportation Improvement Program (TIP). Transit agencies should be working within their metropolitan or statewide transportation planning processes to ensure that their priority projects are included in those documents and made ready for grant award. Therefore, FTA strongly encourages transit agencies to reach out to Metropolitan Planning Organizations (MPO) or State Departments of Transportation (State DOT) to begin work as soon as possible to ensure that public transportation projects are included in approved plans, TIPs and STIPs, so that the projects are ready and available to advance to grant award, and to begin expending funds, as soon as possible.

Environmental Review. Environmental requirements that apply to projects – the National Environmental Policy Act (NEPA) and Section 4(f) of the Department of Transportation Act, among others – must be met. Areas should consider prioritizing projects that qualify as categorical exclusions or have completed or nearly completed NEPA in order to meet the anticipated timeframes for obligation of funds in the new legislation. To the extent that other environmental requirements apply and have not been satisfied, grantees should begin consulting with managers of affected resources at the earliest opportunity.

Projects with Incomplete Environmental Processes. A project for which a categorical exclusion or an environmental assessment is in the process of being prepared, but nearing completion, likely will qualify as a “quick-start” activity targeted for economic recovery investment. A project for which an environmental impact statement is nearing completion may qualify as a quick-start activity if a record of decision is expected to be executed shortly. In accordance with section 1609(b) of the Act, FTA staff will provide guidance on the most efficient course of action for completing the environmental process (including the National Environmental Policy Act (NEPA) process and other environmental requirements, such as section 106 of the National Historic Preservation Act and section 4(f) of the Department of Transportation Act, for any project that may qualify as a quick-start activity.

Grant Application Preparation. Grantees should be working on drafting an application for funding, including developing a budget and milestones for key activities.

12. Q: Will FTA consider approving grants before completion of the environmental process?

A: As a general rule, FTA does not award program funds in a grant until the NEPA process and review have been completed. Grantees with projects in the final stages of NEPA review should contact the appropriate FTA regional office for direction.

C. Section 1511 Certification

1. Q: Will FTA regions be required to verify the maintenance of effort certification prior to grant award?

A: Yes, section 1511 certification must be completed before grantees receive ARRA funds. The certifications are posted on DOT's website at: <http://testimony.ost.dot.gov/ARRAcerts/>. The FTA regions will verify that the posted certifications adequately include transit and that the projects applied for are included in the current TIP/STIP as amended.

III. Grant Development/Award

A. General

1. Q: Can a transit agency combine all ARRA funds into a single grant application?

A: No. Each grant recipient must apply for a separate grant for each ARRA program under which they are allocated funds.

2. Q: Can a transit agency amend an existing FTA grant to add the ARRA funds?

A: No. FTA program funds cannot be commingled with ARRA funds. Each grant recipient must develop a separate grant for each ARRA program from which it seeks funds.

3. Q: When will FTA consider apportioned funds as "obligated?"

A: For the purposes of the withdrawal provision, FTA will consider funds obligated on the date of grant award by FTA.

B. Department of Labor (DOL) Certification

1. Q: Is DOL certification required and can the process be streamlined?

A: Yes. The U.S. Department of Labor (DOL) will need to certify grants awarded using ARRA funds. In accordance with DOL's guidelines, grants subject to a referral may require up to 60 days to complete (29 CFR 215.3). To streamline the process, DOL intends to certify ARRA program funds consistent with its procedures for certifying the current comparable FTA program. Accordingly, ARRA programs that follow the requirements of 49 U.S.C. section 5307 or 49 U.S.C. section 5309 will be referred out if the grant contains new project activities. Grants for like-kind equipment or replacements will no longer need to be referred out to the unions before certification. Furthermore, ARRA programs that follow the requirements of 49 U.S.C. section 5311 will be certified based on the special warranty provision including grants to Indian tribes. Additionally, grantees may reduce processing time by responding immediately to DOL's requests related to your grants. FTA is working closely with DOL to identify additional ways to streamline the process and will post additional information as it becomes available.

2. Q: When can ARRA grants be assigned official TEAM application numbers and be submitted for DOL review?

A: ARRA grants should be assigned an official number as soon as the budget is developed and project details are sufficient to make an eligibility determination. Departing from FTA's standard grant procedures, FTA will allow ARRA grants to be assigned a number and submitted for DOL review before the completion of in-house

FTA reviews. Of course, all reviews must be satisfactorily completed before FTA can obligate any funds in a grant.

C. Transit Capital Assistance Urbanized Areas

1. Q: In UZAs with multiple direct FTA grant recipients, should the designated recipient notify FTA about the local allocation of funds?

A: Yes. Consistent with current practice under Section 5307, designated recipients in UZAs with multiple direct recipients should notify FTA, in writing, of the local allocation, or split of recovery funds.

2. Q: When will FTA require a supplemental agreement?

A: Consistent with current practice under Section 5307, a supplemental agreement will be required when a grant is awarded to a direct recipient in an urbanized area if that recipient is not the designated recipient.

3. Q: Will the Governor need to allocate funds to small urbanized areas under the Governor's apportionment (50,000–200,000 in population)?

A: Yes, consistent with current Section 5307 requirements for urbanized areas between 50,000 and 200,000. The Governor should notify FTA of any changes to the published allocations before any application of the small urbanized area is submitted for ARRA formula funds.

4. Q: Can grantees in small urbanized areas (pop. 50,000-200,000) apply for funding directly from FTA, or will States be required to apply for funds in these areas in a single consolidated grant?

A: ARRA funds allocated to the Governor for small urbanized areas (pop. 50,000-200,000) are subject to the requirements of Section 5307 and will be administered consistent with current practice. FTA will not require a consolidated grant for the urbanized areas of a State with populations less than 200,000. Once a Governor allocates recovery formula funds to each urbanized area between 50,000 and 200,000 in population (in accordance with Section 5307), then FTA will make grants directly to recipients in those areas.

5. Q: Will the section 5307 amounts include section 5340 funds?

A: Yes. The legislation identified 10% of the transit capital assistance funds to be distributed according to the section 5340 Growing States and High Density States formulas. These amounts are included in the amounts apportioned to the UZAs.

6. Q: Will the 1% for transit enhancements apply to ARRA funds administered under section 5307 for urbanized areas over 200,000 in population?

A: Yes, UZAs over 200,000 must spend 1 % of the area's Transit Capital Assistance funds on transit enhancements; however, only capital transit enhancement projects can be funded using ARRA funding.

7. Q: Will grantees be required to check the security static button in TEAM?

A: Yes. Consistent with the Section 5307 requirement, grantees must check the security static button in TEAM to confirm that the grantee will expend one percent or more of the Transit Capital Assistance funds for security purposes or that spending the one percent is not necessary at that time.

8. Q: Will Section 5307 transfer rules apply?

A: Yes, the transfer provisions of Section 5336(f) are applicable. (1) Funds can be transferred from small urbanized areas (under the Governor's apportionment) to nonurbanized areas after consultation with local officials and public transportation operators in each area that will lose the amount apportioned. (2) Funds from large urbanized areas may be transferred by the designated recipient to small urbanized areas. (3) The Governor may also use funds apportioned to small urbanized areas throughout the State at the beginning of the 90 day period before the funds lapse (available 90 days after ARRA Transit Capital Assistance allocations are published in the Federal Register).

9. Q: If Section 5307 funds can be transferred in accordance with 5336(f), what is the relationship with the reallocation process? Will the new grantee receive additional time to contract or spend resources?

A: No - funds must be obligated within the applicable timeframe.

10. Q: Will the section 5307 apportionment for a small urbanized area that qualifies for Small Transit Intensive Cities (STIC) formula funding, in FY 2009, include STIC funds?

A: No, the language in the ARRA directs that the formula not include 49 U.S.C. § 5307 (i)(1) and (j) that provide for a one percent takedown for STICs and the STIC formula.

11. Q: Since ADA services are an eligible capital activity, will this be limited to 10% of an urbanized area's ARRA funding?

A: Yes. The 10 percent limitation would apply. Section 5302(a)(1)(I) explicitly defines nonfixed route ADA paratransit as an eligible capital expense but only to the extent that the amount does not exceed 10% of the recipients annual formula apportionments under Section 5307 and 5311.

D. Transit Capital Assistance Nonurbanized Areas

1. Q: Will Section 5311 transfer rules apply?

A: Yes, in accordance with 5336(f)(2), the Governor may transfer formula funds apportioned to non-urbanized areas to supplement amounts apportioned to small urbanized areas under the Governor's apportionment.

2. Q: Will FTA approve ARRA nonurbanized formula grants that include funds in program reserve (Category C)?

A: No. Given the purposes of the ARRA to fund projects that are ready to go in order to get money into the economy quickly, FTA will not approve grants that set aside funds for projects to be determined later. Category C is inconsistent with the purposes of the ARRA and with the reporting requirements that require grantees to report on the status of implementation at the project level.

3. Q: Will FTA approve ARRA nonurbanized formula grants with programs of projects that include projects in Category B, where projects have been identified, but have not yet met all requirements to be eligible to draw-down funds.

A: States should ordinarily include only projects in Category A (ready to go). FTA will allow projects in Category B only if the State can show that all outstanding issues can be promptly resolved and that the projects are essentially ready to implement shortly after grant award.

4. Q: Can ARRA funds be used for capital intercity bus activities?

A: Yes, as stated in Section 5302(a)(1)(G) ARRA funds can be used for the construction, renovation, and improvement of intercity bus and intercity rail stations and terminals. (Note: The Federal Register notice published on March 5, 2009, inadvertently omitted intercity bus eligibility)

5. Q: Are states required to use 15% of formula funds allocated to non-urbanized areas for intercity bus?

A: States must use at least 15% of ARRA formula funds allocated to non-urbanized areas for intercity bus services. However, consistent with Section 5311 requirements, States can certify that intercity bus needs have been met after consultation.

6. Q: Can States use up to 15% of funds for program administration?

A: Yes, States may use up to 15% of formula funds allocated under the requirements of Section 5311 to cover State administrative expenses, at 100% Federal share.

E. Capital Investment Grants

1. Q: How will FTA distribute major capital investment funding provided by the ARRA legislation?

A: ARRA states that funding priority shall be given to New Starts and Small Starts projects currently in construction (which FTA interprets as projects with a Full Funding Grant Agreement (FFGA) or Project Construction Grant Agreement (PCGA)) or to projects able to obligate funds within 150 days of enactment. FTA is still determining how the ARRA funding will be distributed to New and Small Starts projects. The Act specifies that applicable Chapter 53 requirements apply. This would include the federal/local share provisions; it also means that only projects that have received acceptable project ratings in the New or Small Starts process are eligible for the funding.

2. Q: Will projects with existing FFGAs or PCGAs that receive ARRA funds still receive their FY09 apportionments?

A: FTA will provide projects with their FY09 apportionments as identified in the existing FFGAs or PCGAs, to the extent appropriated by Congress.

IV. Post-Award/Closeout/Oversight

A. Reporting Requirements

1. Q: Will the Financial Status Report and Milestone Progress Report reporting requirements for ARRA grants be different than current requirements?

A: Yes. Recipients of ARRA funds will be required to report not later than 10 days after the end of each calendar quarter. FTA will extract as much information as possible from grant information standard reports provided through the TEAM system. Supplemental reporting may be required to provide the contract and project level information.

2. Q: What is the definition of “infrastructure investments” for the purposes of Section 1512 reporting? Is it all capital such as bus purchases or Preventive Maintenance?

A: For the purposes of Section 1512, FTA considers all capital investments as “infrastructure” investments.

3. Q: Do MPO’s and/or Urbanized Area direct grantees have to submit a Section 1511 certification to DOT before FTA can award an ARRA grant?

A: No. DOT has determined that the FHWA/FTA joint planning requirements provide a robust process to ensure that projects have been properly reviewed and vetted and are an appropriate use of taxpayer dollars. Therefore, the Governor or his/her designee’s signature on the Section 1511 certification covers all highway and transit projects in a State under certain conditions.

In order for the Governor’s certification to satisfy the Section 1511 requirement for transit projects in urbanized areas, the certification must cite the TIP/STIP planning process as the basis for certifying that the projects have been properly reviewed and vetted and are an appropriate use of taxpayer dollars. The State must also provide a link to the public web posting the STIP that includes (or will include) any highway and transit project designated to receive ARRA funding.

U.S. DOT will ensure that the certifications received from the State are posted on DOT’s Recovery site at <http://www.dot.gov/>.

If the Governor’s certification includes only highway projects and not transit projects, or if the certification does not provide a link to the proposed transit projects included in the STIP for ARRA funding, it will be necessary for a direct recipient to submit an additional certification or project listing.

Secretary LaHood's letter to the Governors, dated February 27, 2009, which is posted on <http://www.dot.gov/> at the Recovery link, includes sample formats for the Section 1511 certification and two other certifications by the Governor.

4. Q: Do all grantees have to submit the certifications required by Section 1201(a) (Maintenance of Effort) and Section 1607 (accepting ARRA funds)?

A: No. These certifications are one-time certifications at the State level.

B. Grant Implementation

1. Q: Do FTA's Buy America requirements extend to ARRA funds?

A: Yes, Buy America requirements apply to ARRA funds because all of the provisions of 49 U.S.C. Chapter 53 apply. Therefore, an applicant, in carrying out a procurement financed with Federal assistance authorized under the ARRA must comply with applicable Buy America requirements in 49 U.S.C. 5323(j) and 49 C.F.R. Part 661.

2. Q: Will the states and UZAs be penalized if the vehicles are not delivered in time?

A: No.

C. Contracts and Procurement

1. Q: Can FTA allow progress payments on procurements?

A: Progress payments are made to the contractor only for costs incurred in the performance of the contract. The grantee must obtain adequate security for progress payments, which may include taking title, letter of credit or equivalent means to protect the grantee's interest in the progress payment. More discussion on this subject can be found in 4220.1F, Chapter III.

2. Q: Are there any changes to Federal procurement and contracting rules for grantees anticipated with these new ARRA funds?

A: Presently, FTA anticipates that existing U.S. DOT procurement and contracting regulations (found in 49 C.F.R. Part 18) and official guidance (found in FTA's Third Party Procurement Circular), including the Disadvantage Business Enterprise (DBE) program requirements will apply in full force to ARRA funded projects. U.S. DOT's Office of General Counsel has issued official guidance via an ARRA-specific DBE Question & Answer site to address issues raised by the ARRA legislation, express DOT's expectations, and delineate grantees' continued obligations and options as they advance grants.

3. Q: Are there ways that I can expedite contract delivery of the ARRA funds?

A: There are several opportunities that FTA grantees can take to expedite contract delivery of the ARRA funds, as well as any other FTA program funds. FTA's Best Practices Procurement Manual contains information on how transit agencies and other FTA grantees can partner with other grantees to do joint purchases of items such as rolling stock. For any other information on how to issue contracts using FTA funding, please go to FTA's Third Party Procurement web site where you can find an array of procurement resources, including a site-specific search engine and an extensive list of Frequently Asked Questions.

Grantees should identify any capital projects (such as bus garage repairs or renovations) for ARRA funds. Grantees can initiate any contracting (statement of work, purchase requests and independent cost estimates) actions, so that when the funding becomes available, timely contract awards can be made.

4. Q: Is piggybacking onto existing contracts allowed?

A: Yes. Piggybacking is permissible when the solicitation document and resultant contract contain an "assignability clause" that provides for the assignment of all or a portion of the specified deliverables as originally advertised, competed, evaluated and awarded. If the supplies were solicited, competed and awarded through the use of an indefinite-delivery-indefinite-quantity contract (IDIQ), then both the solicitation and

contract award must contain both a minimum and maximum quantity that represent the reasonably foreseeable needs of the party(s) to the solicitation and contract. If two or more parties jointly solicit and award an IDIQ contract, then there must be a total minimum and maximum. See Attachment 1 of FTA's Best Practices Manual for the Piggybacking Worksheet.

Grantees are encouraged to pursue any joint or cooperative procurements (including piggybacking) of vehicles across state lines. Grantees may place orders against existing State or local contracts. It is advantageous to use existing contract rights if appropriate assignability clauses are in place so that supplies or services can be quickly obtained.

5. Q: Can FTA permit "change orders" to existing Federal or non-Federal contracts?

A: Modifications to contracts are allowed based on the terms and conditions established at the time of award. As a general rule, the owner agency of a contract is the only entity permitted to "modify" or "change" that contract's terms and conditions. If the contract stipulates that a portion or portions may be modified, then user agencies are restricted to those instructions. Roles and responsibilities of recipients in modification and changes to contracts are discussed in FTA Circular 4220.1F, chapter VI.

6. Q: Can ARRA funding be added to projects/procurements that do not currently have Federal funding in them?

A: It depends on whether the contract is a State GSA schedule-type contract or whether it is a contract awarded by a local government grantee. If a State has a GSA schedule-type contract which does not conflict with FTA's procurement requirements (e.g., geographic preference), FTA allows grantees to incorporate FTA's required clauses and the execution of required certifications in State GSA schedule-type contracts when they first issue a purchase order against the contract; but FTA only permits this action in State GSA schedule-type contracts. For all other contracts, FTA has taken the position that grantees may not add Federal clauses and certifications to previously awarded locally-funded contracts of their own or of other grantees in order to fund these contracts with ARRA or FTA financial assistance.

7. Q: Is there any way that our contracting processing can be accelerated?

A: Grantees can use design/build and the flexibility to shorten bid times. In addition, you may want to look into setting up contracts that provide the kind of management services essential to moving a collection of projects, including financial management, procurement following Federal procedures, scheduling, cost control, design and construction management, and performance management reporting. This would not relieve a State or transit agency of responsibility for such activities.