

# American Recovery and Reinvestment Act

## Project Administration and Reporting Requirements for the State Revolving Fund Programs



A Practical Approach for Assistance Recipients

Version 3.0

Updated November 25, 2009

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Note: This handbook is updated as new information becomes available. Please check for revisions frequently.

# 1.0 Introduction



## Definition:

An **Assistance Recipient** is a municipality, community, non-profit organization, private enterprise, or other entity receiving ARRA funds through the State Revolving Fund for a water quality or water supply project.

## Action Items

- Instruct contractors to display whistleblower poster at the construction site

The American Recovery and Reinvestment Act of 2009 (ARRA) is providing much-needed assistance through the State Revolving Fund (SRF) programs to communities across the country. However, this assistance comes with several new Federal requirements which are unfamiliar to many assistance recipients. The United States Environmental Protection Agency (EPA) has produced this handbook to help SRF assistance recipients understand and efficiently comply with ARRA requirements.

This handbook provides assistance recipients with a comprehensive overview of ARRA requirements and the tools and information necessary to meet all requirements. It explains Buy American country-of-origin limitations and Davis-Bacon prevailing wage rate provisions. It also provides step-by-step instruction on assistance recipient reporting requirements, gathering acceptable and auditable documentation, and developing good business cases for green projects. This information will help assistance recipients organize and plan, accurately report, and avoid potential compliance pitfalls associated with the ARRA reporting process.

Each section details required compliance, documentation, and reporting, including definitions of terms and concepts, for a specific provision of ARRA. Each page also displays “action items” relevant to the requirements descri-

bed on that page, so that assistance recipients can track the steps important to ensuring compliance. Additionally, sample documentation and forms that may be used for tracking and reporting are attached in several appendices.

Although Federal ARRA requirements are applicable to every state, each SRF State Program Office (SPO) may have slightly different practices with regard to specific deadlines or required forms, so this handbook indicates areas where there may be state-specific variations. Assistance recipients are encouraged to contact the SPO for further instruction. **Appendix A** contains contact information for all relevant SPOs.

## A Note About Oversight:

The Office of Inspector General (“OIG”) is an independent office within EPA that helps the Agency operate more efficiently. The OIG will oversee EPA, State, and assistance recipients’ use of ARRA funds for SRF projects by conducting audits, investigations, and other reviews to ensure efficiency and to **prevent and detect fraud, waste, and abuse**. Assistance recipients, contractors and sub-contractors must allow the OIG access to the project site, project files, and employees.

ARRA law includes protections for whistleblowers who report possible waste, fraud and abuse of ARRA funds. Assistance recipients must require contractors to post the ARRA whistleblower poster (**Appendix B**) at the construction site, and check that it is posted during site inspections.

# 2.0 Buy American



## Action Items

- Instruct design engineer to spec American-made project components wherever possible
- Keep all documentation related to Buy American compliance on file

## 2.0 Complying with Buy American Requirements

Section 1605 of ARRA requires all iron, steel, and manufactured goods purchased for and incorporated into projects wholly or partially funded by ARRA to have been made in the United States, except where this is inconsistent with U.S. obligations under international agreements. A waiver process is provided for additional unavoidable exceptions to this requirement. Assistance recipients must keep documentation demonstrating compliance with Buy American provisions on file.

It is important for assistance recipients to consider the Buy American provisions throughout all project stages, including development of plans and specs, bidding, construction, and project closure. Design engineers often have a major role in ensuring that projects are bid according to Buy American requirements. Prime contractors, sub-contractors and vendors/suppliers also help assistance recipients meet Buy American obligations. Many construction vendors and suppliers are already familiar with the requirements of providing American-made goods, as several other Federal infrastructure programs have similar requirements.

Incorporating Buy American into the design process as early as possible helps minimize future delays related to Buy American compliance, which must often be resolved through change-order. The development of a flow chart identifying the prime contractor, the sub-contractor, as well as vendors and suppliers involved may help assistance recipients keep track of compliance.

**TIP!** Buy American compliance is best achieved from the **BOTTOM UP**. Engage players down the supply chain and get their participation early!

## 2.1 Applicability

Buy American provisions apply to iron, steel, and manufactured goods incorporated into the project, including those procured and installed prior to the receipt of ARRA funding. A manufactured good is defined as a component “brought to the construction site for incorporation into the building or work that has been processed into a specific form and shape, or combined with other raw material to create a material that has different properties than the properties of the individual raw materials.” Buy American requirements do not apply to sub-components of a domestically manufactured good, raw materials such as stone or concrete mix, or machinery used but not incorporated into construction. Also exempt from the requirements are materials used during construction but not permanently incorporated into the project, such as plywood pouring frames that are removed after pouring.

Buy American requirements do not apply if the application would be inconsistent with international trade agreements. This has limited applicability for SRF-funded projects, as only Boston, Chicago, Dallas, Detroit, Indianapolis, Nashville, and San Antonio are party to international agreements. Local governments are not party to U.S. federal government international agreements, including the North American Free Trade Agreement. Additionally, this waiver can only be granted for projects with a minimum cost of \$7.444 million. Assistance recipients who believe they are covered by this waiver should seek local legal counsel.

## Action Items

- Complete the STE to determine if any project components will require a Buy American waiver
- Keep a copy of the completed STE and any background documents on file

## 2.2 Making Substantial Transformation Determinations

To determine whether or not a manufactured good is American made, EPA has developed the Substantial Transformation Examination (STE) which consists of the questions in the chart shown in Figure 1. Although the STE checklist does require some subjective evaluations, it can be a useful guide for helping assistance recipients determine whether a manufactured good can be reasonably considered American-made. Assistance recipients should ensure that the manufacturer of the component being evaluated can provide a detailed explanation to support every “Yes” checkmark.

STE QUESTION	YES	NO
1. Were all of the components of the manufactured good manufactured in the United States, and were all of the components assembled into the final product in the US? <i>(If the answer is yes, then this is clearly manufactured in the US, and the inquiry is complete)</i>		
2. Was there a change in character or use of the good or the components in America? <i>(These questions apply to the product as a whole, not to individual components)</i> <ul style="list-style-type: none"> <li>• Was there a change in the physical and/or chemical properties or characteristics designed to alter the functionality of the good?</li> <li>• Did the manufacturing or processing operation result in a change of a product(s) with one use into a product with a different use?</li> <li>• Did the manufacturing or processing operation result in the narrowing of the range of possible uses of a multi-use product?</li> </ul> <b>** Any one bullet answered “yes” passes STE</b>		
3. Was(/were) the process(es) performed in the US (including but not limited to assembly) complex and meaningful? <ul style="list-style-type: none"> <li>• Did the process(es) take a substantial amount of time?</li> <li>• Was (/were) the process(es) costly?</li> <li>• Did the process(es) require particular high level skills?</li> <li>• Did the process(es) require a number of different operations?</li> <li>• Was substantial value added in the process(es)?</li> </ul> <b>** Any two bullets answered “yes” passes STE</b>		

Figure 1

The following examples DO NOT pass the STE:

- Cosmetic or surface changes (e.g., painting, lacquering, or cleaning)
- Steel pipes cut to length in the U.S. (with no other alterations)
- A valve kit with components manufactured in Korea, but assembled in the U.S. using simple, low-skill processes

Assistance recipients are ultimately responsible for substantial transformation determinations. However, since contractors, suppliers or manufacturers generally have more knowledge of the manufacturing process than assistance recipients, substantial transformation decisions may be delegated to the person most familiar with the product. Assistance recipients that delegate substantial transformation decisions should make sure they are comfortable with the decision-makers’ process, supporting documentation, and final decision.

## Action Items

- Include Buy American requirements in the bid solicitation
- Modify construction contract language to require compliance with Buy American and describe penalties for non-compliance
- Instruct prime contractor to collect Buy American certifications from all vendors
- Instruct prime contractor to provide copies of all Buy American supporting documentation
- Keep copies of Buy American supporting documentation in the project file and at the job site

## 2.3 Documentation

Assistance recipients must collect documentation of compliance with Buy American provisions from the prime contractor, sub-contractors, vendors, and suppliers, and keep this documentation together in a project folder.

There are several ways assistance recipients can ensure documentation is collected in a standardized form, when required. Assistance recipients are encouraged to incorporate specific language into contracts with vendors that includes penalties for non-compliance with Buy American requirements. This enables assistance recipients to legally set standardized parameters for what is considered acceptable documentation. Assistance recipients might also ask contractors, sub-contractors, vendors, and suppliers to sign a Letter of Understanding and Agreement clearly specifying the type of documentation that is acceptable for compliance, clear definitions of terms pursuant to ARRA, and schedules and timelines for submitting such documentation prior to procurement.

EPA indicates that forms of acceptable, auditable Buy American documentation may include the following:

- Invoices (with redactive pricing)
- Bills of Lading
- Shipping Manifests
- Country-of-Origin Marking and Labeling
- Cut Sheets (if country-of-origin information is specified)
- Photographs of Serial Numbers (or other reasonable ID) cross-referenced with Cut Sheets
- Certifications from Manufacturers/Suppliers

**TIP!** Additional assurance of compliance may be met by scheduling random materials checks at the job site or staging area where procured components are stored.

Many vendors and suppliers have certifications for their products readily available. It is good practice for the prime contractor to collect a certification for every component used in the project. Many manufacturers, vendors and suppliers are eager to prove compliance with Buy American. However, contractors and assistance recipients should always be sure to use reputable and trustworthy vendors, as there have been reports of vendors issuing misleading certifications. In addition, some well-intentioned vendors may not have a complete understanding of the ARRA-specific Buy American requirements. If there is any doubt as to the origin of a manufactured good, assistance recipients should ask the manufacturer to complete the Substantial Transformation Examination using specific and detailed answers.

## Action Items

- Ask the design engineer to note whether performance parameters will only be achievable with a specific foreign-made good
- Ask design engineer to keep detailed justification for design decisions that may require a waiver



## 2.4 The Waiver Process

If project plans require a component that is manufactured outside of the U.S., assistance recipients should request a waiver from EPA to allow the component to be included in construction. Waiver applications should be submitted as early as possible; ideally, before bidding takes place.

EPA can provide waivers exempting projects from Buy American provisions for any of the following three reasons:

1. The cost of the domestic materials would increase **entire project cost** by 25% or more.
2. A necessary project component is not produced or manufactured in the U.S. in reasonably available quantities or of a quality required by the project specs. These waivers, referred to as Availability Waivers, can be issued if it is determined that only a foreign manufactured good will meet the following project specifications:
  - Performance requirements
  - Physical characteristics
  - Timeliness of delivery

Availability Waivers will only be granted if an assistance recipient provides explicit detail regarding the unavailability of domestically manufactured goods, including assurance that plans, specifications, and bids did not unnecessarily preclude U.S.-manufactured goods.

3. The application of Buy American for a particular component is inconsistent with public interest.

## National (Categorical) Waivers

EPA has issued three National Waivers, which can be applied to any project when applicable:

- **Refinancing Waiver**

SRF ARRA-funded projects that secured original debt obligations between October 1, 2008 and February 17, 2009 are exempt from Buy American provisions. EPA determined that these assistance recipients obtained financing in anticipation of being refinanced through ARRA, but had, in good faith, lacked prior knowledge that Buy American provisions would be included in ARRA, so it is in the public interest to waive Buy American requirements for these projects.

- **Bid Waiver**

SRF ARRA-funded projects that first issued bid solicitations between October 1, 2008 and February 17, 2009 are exempt from Buy American provisions. EPA determined that these assistance recipients solicited bids in anticipation of receiving ARRA funding, but had, in good faith, lacked prior knowledge that Buy American provisions would be included in ARRA, so it is in the public interest to waive Buy American requirements for these projects.

- **De Minimis Waiver**

Assistance recipients may, at their discretion, exempt incidental, low-cost project components (of any origin) that comprise up to 5% of the total costs of materials used in a project from Buy American provisions. EPA determined that projects would be unnecessarily delayed if assistance recipients were required to seek domestic sources or

## Action Items

- Track de minimis project components and provide list and calculations to SPO
- Keep documentation for national waivers (dated financing agreement, dated bid, and/or de minimis spreadsheet) on file
- Conduct a reasonable search of the market to check whether comparable U.S.-made goods are available to substitute for foreign-made components
- Ask contractor and design engineer to help assemble supporting documentation for the waiver request
- Assemble a waiver request using the checklist in Appendix C as a guide

American requirements. However, assistance recipients must keep accurate records and inventories of the types and categories of items to which the waiver is to apply, as well as the calculation used to determine the value of components that can qualify under the waiver. Assistance recipients should be prepared to provide this information to the SPO upon request.

Assistance recipients with projects that qualify for a National Waiver do not need to apply to EPA for a waiver. However, the Federal Register notice for each National Waiver details documentation that assistance recipients are required to keep to prove eligibility for that waiver. Assistance recipients should keep a copy of the Federal Register notice and all required documentation on file when using a National Waiver.

**TIP!** The de minimis waiver may only be applied to incidental, low-cost project components. It may not be applied to a single project component that makes up 5% of the total materials cost.

## Project-Specific Waivers

Assistance recipients may also apply for a project-specific waiver under any of the three reasons a waiver may be granted. A waiver application must properly document cost differentials, comparisons between specifications of foreign-made and domestically manufactured goods, and a demonstration of any and all good faith efforts made on the part of the assistance recipient and its contractors to locate acceptable American-made components.

**Appendix C** contains the checklist EPA uses to ensure that waiver requests include complete and detailed supporting information. Assistance recipients can use this checklist as a guide while assembling a waiver request to confirm that all necessary elements are included. Assistance recipients should require contractors to assist in preparing necessary waiver requests. EPA has indicated that individual waiver application should incorporate the following:

- General product description of the iron, steel, or manufactured good for which a waiver is requested:
  - o Unit of measure
  - o Quantity required
  - o Cost
  - o Time of delivery or availability
  - o Location of the project
  - o Name and address of the proposed supplier
- Justification that identifies the basis for the application citing one (or more) of the qualifying reasons for exemption (cost, availability, or public interest).

**TIP!** Waivers are not guaranteed, so ALWAYS make sure the design engineer and contractors have a contingency plan in the event the waiver application is rejected!

## Action Items

- Submit waiver request and supporting documentation to the EPA Region
- Provide additional information as requested by EPA, if needed for the waiver review

- A written description of supporting details including:
  - o Technical basis for selecting the product
  - o Process used to identify and evaluate suppliers
  - o Rationale for decision

Complete applications should be submitted directly to the appropriate EPA Region, at [RegionXwaiver@epa.gov](mailto:RegionXwaiver@epa.gov), where X indicates the Region number (refer to **Appendix D** for a directory of email addresses for EPA Regions). It is recommended that assistance recipients copy their SPO on the waiver request email. If the Region determines an application is complete, it will be forwarded to a national contractor for technical review. After receiving concurrence from EPA Headquarters, the Region will approve or deny the waiver. Assistance recipients will be notified of the decision, and approved waivers will be published in the Federal Register. The review and determination process generally takes two weeks for complete applications.

**TIP!** <http://www.epa.gov/water/eparecovery/> lists project-specific waivers that have been approved by EPA. Project-specific waivers are always awarded on a case-by-case basis, and apply only to the ARRA project named in the Federal Register notice.

# 3.0 Davis-Bacon



## Action Items

- Use [www.dol.gov](http://www.dol.gov) to find wage determinations for the project location
- Include wage determinations in the bid solicitation
- Monitor [www.dol.gov](http://www.dol.gov) during the bid advertisement for changes in the wage rates
- Compare bidders to the Excluded Parties List at [www.epls.gov](http://www.epls.gov)

## 3.0 Complying with Davis-Bacon Requirements

Section 1606 of ARRA requires all mechanics and laborers employed on projects funded directly by or assisted in whole or in part with ARRA funds to be paid wages at no less than the locally prevailing rate, as determined by the U.S. Department of Labor (DOL). Contracts must include language that acknowledges this requirement.

DOL determines and publishes prevailing wage rates for all U.S. counties. DOL Regional offices can provide assistance recipients with help in determining how to apply Davis-Bacon to SRF ARRA projects. A list of Regional offices with contact information may be found online at:

<http://www.dol.gov/esa/contacts/whd/america2.htm#content>.

Additional Davis-Bacon and other prevailing wage information can be found online at:

<http://www.dol.gov/esa/whd/programs/dba/faqs.htm>.

## 3.1 Wage Determinations

Prior to issuing a request for bids or proposals, the assistance recipient must obtain wage determinations for the locality where the ARRA-funded project will take place. To find a wage determination for a project area, assistance recipients should access the Wage Determinations On-Line website at <http://wdol.gov/dba.aspx#0>, and input the state and county where the project will occur, as well as the construction type. Most ARRA projects will fall under the “Heavy” construction type, but assistance recipients should ask their consulting engineer if unsure. The website will generate a list of prevailing wages for the selected county, which should be included in all bid solicitations.

Assistance recipients or their engineers must monitor <http://wdol.gov/dba.aspx#0> while the bid remains open to ensure that the wage determination has not changed. If the wage determination changes more than 10 days before the bid opening date, the solicitation must be modified to reflect the new wage rate. Additionally, if the contract is not awarded within 90 days of bids closing, the wage determination must be updated with any changes that have occurred during that period. If the contract is awarded within 90 days, the original wage determination remains valid for the project for the entire contract.

If a wage determination is not available for the county in which construction will take place, or for a labor category expected to apply to the project, contact the SPO for guidance on the proper process for requesting a project-specific wage determination from DOL.

## 3.2 Debarment

Assistance recipients cannot knowingly award an ARRA construction contract to a contractor who has been debarred or suspended by the Federal government. During the bid evaluation period, assistance recipients should compare all bidders to the “Excluded Parties List” accessible at [www.epls.gov](http://www.epls.gov). Assistance recipients should make a note in the contract file that the selected bidder has been checked against the Excluded Parties List, and has not been debarred or suspended by the Federal government. Contractors are responsible for verifying the eligibility of sub-contractors.

## Action Items

- Include Davis-Bacon text in the bid solicitation
- Include wage determinations in the bid solicitation and all contracts
- Include Davis-Bacon poster requirement in the prime contract
- Include Davis-Bacon compliance language (Appendix F) in all contracts
- Include requirement for the prime to include wage determinations and posting requirements in all sub-contracts

### 3.3 Contracts

Assistance recipients should inform prime contractors and sub-contractors of Davis-Bacon requirements. EPA requires that the following text (or a variation thereof) be included in all bid solicitations, contracts, and sub-contracts:

**“The successful bidder will be required to conform to the wage requirements prescribed by the federal Davis-Bacon and Related Acts which requires that all laborers and mechanics employed by contractors and subcontractors performing on contracts funded in whole or in part Recovery Act appropriations in excess of \$2,000 pay their laborers and mechanics not less than the prevailing wage rates and fringe benefits, as determined by the Secretary of Labor, for corresponding classes of laborers and mechanics employed on similar projects in the area.”** (U.S. Department of Labor Wage and Hour Division May 29, 2009 Guidance).

The following items should also be included in the contract with the prime contractor:

- DOL wage determinations for the project type and location
- Requirement for sub-contractors to apply the same wage determinations
- Requirement for wage determinations and the Davis-Bacon poster (**Appendix E**) to be posted at all times by the contractor and sub-contractors at the work site in a prominent and accessible place
- The clauses included in **Appendix F**

Additionally, prime and sub-contractors must provide certifications with submitted bids agreeing to comply with Davis-Bacon requirements.

If the assistance recipient has already entered into a contract prior to receiving this guidance, it will be necessary to incorporate the wage determination retroactive to the beginning of the contract by change order. In such a case, the contractor must be compensated for any resulting increase in wages.

### 3.4 Davis-Bacon Reporting

Assistance recipients must collect certified payrolls for all contractors and sub-contractors every week. Contractors are responsible for coordinating the submission of sub-contractor payroll records. Certified payroll forms must provide the following information:

- Name of Contractor
- Name of Sub-contractor
- Project Location
- Project Contract Number
- Name of Employee
- Employee identification number (such as the last four digits of the Social Security Number)
- Job classification (descriptive of work actually performed by each laborer or mechanic)
- Weekly number of hours worked
- Hourly rate of pay
- Deductions made
- Actual wages paid

## Action Items

- Collect payroll records (WH-347) from prime contractor (W)
- Collect statement of compliance (WH-347) from prime contractor (W)
- Spot-check payroll records to ensure consistency with wage determinations (T)
- Submit Davis-Bacon Act Certification Form to SPO (as required)
- Conduct on-site compliance interviews (T)
- Complete interview form SF 1445 or HUD 11 (F)
- Check apprentice/trainee registrations (T)

W: Weekly

M: Monthly

T: At least twice

F: Keep on File

Contractors and sub-contractors must submit a copy of certified payrolls to the assistance recipient weekly. Optional form WH-347 (**Appendix G**) may be used to collect and report all of the information necessary for payroll reporting. To verify that contractors and sub-contractors are paying appropriate wage rates, assistance recipients should spot-check a representative sample of weekly payroll data at least twice during the project. Assistance recipients must keep this payroll on file for at least three years in the event that the Office of the Inspector General inspects the project.

For each payroll submitted to the assistance recipient, the contractor (or contractor payment supervisor) must also submit a signed statement of compliance. The certification form on the back side of WH-347 is suggested (**Appendix G**).

Assistance recipients must periodically submit an assurance to the SPO certifying that Davis-Bacon has been satisfied for each week employees are paid. The format, frequency, and deadlines for this requirement varies by state, so contact the SPO for more information (**Appendix A**)

### 3.5 Onsite Compliance Verification

Assistance recipients must also periodically interview a sample of employees on the project site to verify that contractors and sub-contractors are paying appropriate wage rates. Assistance recipients must conduct a minimum of two interviews: the first within two weeks of initial payroll submission, and the second two weeks prior to the completion date for the contract or sub-contract. An interview form such as Standard Form 1445 (**Appendix H**), HUD Form 11 or equivalent should be completed with every interview and kept on file. If the assistance recipient determines that there is a risk a contractor or sub-contractor is not complying with Davis-Bacon, they must conduct more frequent interviews until they are confident that the issue has been resolved. If any violations are discovered, the DOL Wage and Hour District Office should be contacted (see <http://www.dol.gov/esa/contacts/whd/america2.htm> to determine the appropriate office).

While assistance recipients (or their designated representatives) are at the project site conducting Davis-Bacon interviews, they should also verify that contractors and sub-contractors have the proper registrations and certifications for apprentices and trainees working on the project. Contractors are required to maintain all relevant registrations and certifications on file, and should be easily able to show these to the assistance recipient if necessary. Apprentice and trainee registration checks should be conducted on the same schedule as the employee interviews and payroll spot-checks: a minimum of twice during the project, and more often if deemed necessary by the assistance recipient.

**TIP!** Compliance interviews may be targeted to specific employees. However, they should be confidential, on-site, during working hours, and non-disruptive.

### 3.6 Davis-Bacon Wage Rate Guidelines

▶ The prevailing wage that must be paid to laborers and mechanics is the sum of the base rate and fringe rate pulled from <http://www.wdol.gov>, as shown in Figure 2

	Rates	Fringes
Operating Engineers:		
350 feet or more boom.....	\$ 25.20	10.08
500 feet or more boom.....	\$ 25.55	10.08
Forklift.....	\$ 22.60	10.08
Oiler.....	\$ 21.65	10.08
Side Boom Tractors and Forklift with extendable Boom.....	\$ 23.10	10.08

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Figure 2

▶ The prevailing wage (base rate + fringe) can be paid in any combination of base rate and bona fide benefit, as long as the base rate is at least the national minimum wage of \$7.25 per hour. For the sample prevailing wage shown in Figure 2, the following are examples of combinations that meet prevailing wages requirements:

- \$35.28 Base Rate + \$0.00 Fringe
- \$25.20 Base Rate + \$10.08 Fringe
- \$15.00 Base Rate + \$20.28 Fringe
- \$7.25 Base Rate + \$28.03 Fringe

▶ A mechanic or laborer who is doing several types of jobs on a work site must be paid the applicable prevailing wage for each hour (or the highest wage required among all the jobs). If a laborer does one hour of carpenter work each month, he must be paid at the carpenter rate for that hour.

▶ Davis-Bacon laws require laborers and mechanics to be paid wages on a weekly basis. A biweekly or monthly payroll does not meet Davis-Bacon requirements.

▶ If fringe benefits are paid as wages (or in cash), they must be paid weekly. If fringe benefits are paid in a bona fide benefits plan, they can be paid as rarely as quarterly (though they *may* be paid weekly).

▶ Fringe benefits that are not provided as part of a funded plan (e.g. vacation days, sick leave) require the employer to actively set aside or assign money to employees for those benefits as they are earned.

▶ When calculating the hourly value of fringe benefits provided for the entire year (e.g. health insurance), the average must be taken over all hours worked in a year, even if the employee worked part of the time on a project covered by Davis-Bacon requirements and part of the time on a project not covered by Davis-Bacon requirements. For example, if an employer pays \$2,000 into a health insurance fund for an employee that works 1,000 Davis-Bacon required hours and 1,000 non-Davis-Bacon required hours in that year, the hourly value of that health insurance benefit is \$1 an hour.

▶ For more information on the application of Davis-Bacon prevailing wage rates, including the calculation of fringe benefit contributions, see Chapter 15 of DOL Wage and Hour Division's Field Operations Handbook, available online at: [http://www.dol.gov/whd/FOH/FOH\\_Ch15.pdf](http://www.dol.gov/whd/FOH/FOH_Ch15.pdf).

# 4.0 Reporting



## Action Items

- Register for a DUNS number
- Collect basic project information for initial reporting
- Provide basic project information to the SPO as requested

## 4.0 Complying with Reporting Requirements

Section 1512 of ARRA requires the SPO to periodically report on the use of ARRA funds. Assistance recipients must therefore submit several types of information to the SPO, including general project information, jobs created and jobs retained data, as well as project completion status. Assistance recipients might consider hiring a third-party project manager to oversee and coordinate reporting efforts, which is an SRF-eligible expense. Some municipalities have used this approach with great success through a competitive RFP process and have rolled administrative costs associated with third-party ARRA reporting activities into their total project and loan costs.

### 4.1 Registration

Prior to receiving a binding commitment for financial assistance from the SPO, assistance recipients must fulfill registration requirements. Assistance recipients should begin the registration process early to ensure that reporting obligations can be met and ARRA funding is not delayed.

SRF programs require any applicant for ARRA funding to obtain a Data Universal Numbering System (DUNS) number from Dunn & Bradstreet. This nine-digit number identifies an organization within a specific industry sector, allowing the Federal government to develop sector-based information that is compared and contrasted with like industries in local, state and Regional format. This number will be required for assistance recipients to participate in the required reporting activities prescribed under ARRA.

If an assistance recipient already has a DUNS number, there is no need to register for a new one. Otherwise, a DUNS number is free and easy to obtain at: [http://www.dnb.com/US/duns\\_update/](http://www.dnb.com/US/duns_update/).

### 4.2 Initial Reporting Requirements

The first stage in required reporting includes a one-time submission of basic project information. Much of this information can be provided to the SPO at loan closing, while other data elements should be reported as the project progresses. The SPO may ask the assistance recipient to provide information such as:

- Assistance recipient's DUNS number
- Brief descriptive title of the project(s) or activity/activities funded in whole or in part with ARRA funds
- Brief description of the goals and objectives of the project
- Construction start date (actual date the first contract starts)
- Cumulative total cost of the infrastructure investment
- Sources and amounts of non-SRF funding for the project
- Total project cost (including non-ARRA portions)
- A description of the objective of the infrastructure investment
- DUNS number or name and zip code for all contractors or vendors receiving any payment greater than \$25,000
- Project completion date (actual date final contract is completed)

## Action Items

- Report FTEs for created or retained jobs, narrative description of employment impact, and project completion percentage to the SPO

One additional reporting requirement may apply to some assistance recipients. The names and compensation of assistance recipient's five most highly-compensated officers/executives must be reported if all three conditions below are met (see **Appendix I** for additional guidance):

- o Contracting entity received 80% or more of annual gross revenue from federal funding (not limited to ARRA) in prior FY; and
- o Federal gross revenue exceeds \$25M in prior FY; and
- o Compensation is not otherwise publicly disclosed (e.g., SEC or IRS filings)

**TIP!** Executive compensation requirements will in almost all cases not apply to SRF assistance recipients.

### 4.3 Quarterly Reporting Requirements

The second stage or required reporting includes quarterly submissions of employment and construction progress data. Quarterly reporting from assistance recipients allows the SPO to satisfy its own national level quarterly reporting requirements. Assistance recipients must provide regular reports on the following data elements:

1. Number of jobs created and retained for the project
2. Narrative description of the employment impact
3. Project completion percentage achieved during the reporting period

States have different processes and deadlines for collecting quarterly reporting data, so assistance recipients should talk to the SPO to find out the specific procedures used in their state. Note it is never the responsibility of assistance recipients to report on the employment impact on materials suppliers (called "indirect" jobs) or on the local community ("induced" jobs). See **Appendix J** for more detailed definitions of these terms.

Quarterly jobs reporting should include a brief narrative of types of jobs created or retained as well as an estimated number of each. The number of created or retained jobs should be expressed in terms of the "full-time equivalent" or FTE Calculation where:

$$\text{FTE} = \frac{\text{actual hours worked}}{\text{total hours in a full-time schedule}}$$

For instance, two full-time employees and one part-time employee working half days would be reported as 2.5 FTE in each report. Figure 2 demonstrates the FTE calculation for quarterly reporting for an ARRA project beginning construction in July 2009. This example assumes a traditional full-time schedule of 8 hours per day; however, **it is up to the contractor to define how many hours make up a full-time schedule**. Assistance recipients should contact the SPO to confirm the State's reporting procedures.

Period	3 <sup>rd</sup> Qtr 2009	4 <sup>th</sup> Qtr 2009	1 <sup>st</sup> Qtr 2010
(a) Full-Time Schedule	520	520	520
Full-Time Employee 1	520	520	520
Full-Time Employee 2	520	520	520
Part-Time Employee (half time)	260	260	260
Temporary Employee (520 hrs.)	0	520	0
(b) Total Hours Worked	1300	1820	1300
<b>Quarterly FTE (b/a)</b>	2.5	3.5	2.5

Figure 3

Some states require assistance recipients to report an estimate of jobs directly created or retained by the entire project (not just the ARRA-funded portion). Other states require the assistance recipient to pro-rate reported jobs according to the proportion of ARRA funds used in the project. To pro-rate jobs, assistance recipients should first identify the jobs for the entire project that have been created or retained due to ARRA funding. Then, it is necessary to calculate the proportion of ARRA funding used against the full funding for the project. Finally, assistance recipients should multiply the number of created and retained jobs by the proportion of project funding provided by ARRA in order to calculate the proportionate share of jobs. Figure 4 illustrates an example of this calculation for a project that receives half of its funding for the quarter through ARRA, and half from another source.

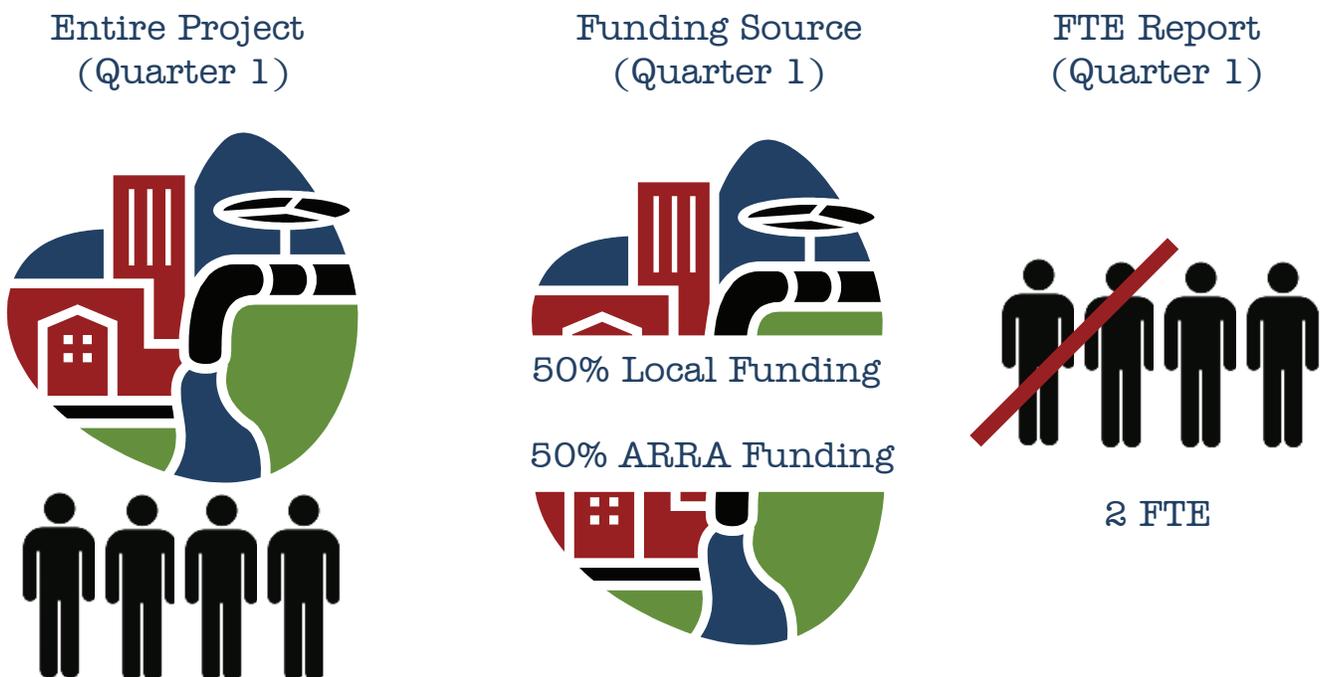


Figure 4

## Action Items

- Establish a system for collecting reporting data from contractors and sub-contractors
- Include reporting responsibilities, processes and timelines in all contracts



Paid leave may be included in work hour calculations. Most contractors and subcontractors will use timesheets or certified payrolls, which already must be collected weekly, to develop jobs data. It is important to collect auditable records.

It is not necessary to distinguish between created jobs and retained jobs for reporting purposes; a single aggregate number may be used. However, if desired, assistance recipients may use the Date of Hire (DOH) to determine whether jobs are created or retained for their own records. This can be based on either the date funds were awarded or the date Notice to Proceed was issued to the contractor. If an employee has a DOH prior to award or Notice to Proceed, then that job can typically be counted as retained. If the DOH falls after the date of award or Notice to Proceed, then that job is generally considered created. Assistance recipients should use their best judgment to estimate whether a job would have been created or retained in absence of the Recovery Act.

Assistance recipients must also submit a brief narrative describing the employment impact of the ARRA-funded project, consisting of a few sentences describing the impact of the project on the contractor and sub-contractors' workforces using general labor categories. Assistance recipients may choose to ask the contractor to write and submit this narrative along with quarterly FTE reports.

Assistance recipients have the responsibility for establishing procedures to avoid double-counting, and more generally, to ensure the accuracy of the

data they submit. It is good practice to formulate a standardized system for sub-contractors and contractors to report jobs data up the reporting chain. It is also recommended that assistance recipients include language in all contracts describing specific reporting responsibilities, processes, and timelines that contractors should follow, including the requirement that contractors collect relevant reporting information from sub-contractors. In order to prevent the SPO from receiving duplicate reporting submittals, assistance recipients are encouraged to coordinate with consulting engineers, who can gather relevant reporting information and documentation from multiple contractors and sub-contractors before submitting to the SPO.

Assistance recipients are encouraged to contact the SPO representative listed in **Appendix A** for guidance on the specific reporting format, forms, process and deadlines used by the state.

**TIP!** Much of the documentation containing information to sufficiently report on jobs created/retained is the same information required to substantiate Davis-Bacon Wage Requirements. Try to kill two birds with one stone!

# 5.0 Green Projects



## Action Items

- Consider “green” components that may be incorporated into the project design (if applicable)

## 5.0 Complying with Green Project Reserve Requirements

ARRA requires that each State SRF program direct at least 20% of its capitalization grant toward projects that address green infrastructure, water and/or energy conservation and efficiency, or other environmentally innovative activities. Assistance recipients who receive Green Project Reserve funds have several additional requirements to demonstrate that their project qualifies as green.

### 5.1 Categorical Green Project Reserve Eligibility

EPA considers several projects types as categorically qualified for Green Project Reserve funding. Categorically qualified projects must demonstrate at least a 20% savings in energy, an increase in water efficiency, or utilize green stormwater practices that demonstrate new or innovative approaches to sustainable water management. Categorically qualified Green Project Reserve projects can be sorted into four distinct categories:

- Water Efficiency Projects
- Energy Efficiency Projects
- Green Stormwater Infrastructure Projects
- Environmentally Innovative Projects

Because of the variance of hydrogeologic features, demographics, and environmental challenges in each State, the Green Project Reserve is not “one size fits all”. It is important that assistance recipients focus on locating green project opportunities that are applicable to that part of the country. For example, the mid-Atlantic States will have greater opportunity to implement green infrastructure and stormwater projects than those states in the Southwest, who will likely have numerous projects that focus on water re-use and recycling. The list of categorically green projects types provided in the EPA Guidance is designed to highlight a wide range of possibilities (**Appendix K**).

### 5.2 Other Green Reserve Eligibility

Other projects or portions of projects may qualify for the Green Project Reserve if a business case is submitted describing the green benefits of the project. Many SRF projects provide some water or energy efficiency benefits, but only projects where these green benefits are the project driver and primary motivator provide significant green benefit qualify for Green Project Reserve funding. Projects or project components that qualify will have the following characteristics:

- They provide substantial water or energy benefits/savings compared to the existing equipment or practice, and
- Water and energy efficiency savings are a substantial part of the justification for the project, and are not simply incidental benefits

Generally, projects that incorporate new centralized wastewater treatment processes, pipe repair and/or replacements to address water losses, SCADA systems, or lift station removal projects will all require a business case. While these projects are considered traditional, in certain cases a particularly significant reduction in energy usage or water savings would qualify the project for the Green Project Reserve.

## Action Items

- Ask the project engineer to develop a business case for inclusion in the green project reserve, if necessary

Other projects will only qualify for the Green Reserve if they include innovative or sustainable design. A project that incorporates stand-alone facultative ponds or lagoon systems does not qualify for the Green Project Reserve. However, if the project included the construction of an artificial wetland in addition to facultative treatment cells, the project would then qualify as green (due to environmental benefits such as mimicry of the natural hydrology cycle helping to maintain and restore water balance through infiltration and evaporation or by providing habitat for native flora and fauna).

Projects that incorporate the use of recycled materials may be considered environmentally innovative in limited and specific circumstances, and always require a business case. Projects that generate energy from biosolids are categorically eligible for the Green Project Reserve.

**TIP!** Green elements can be added to any project to increase green reserve eligibility. There are often many options available that transform a “traditional” project to a “green” project!

### 5.3 Developing Good Business Cases

In order for their project to qualify for Green Project Reserve funding, assistance recipients may be required to submit a business case. The SPO will inform assistance recipients if their proposed project requires the preparation of a business case. While there is no official template for business cases, EPA has issued “Guidance on Energy Efficient Business Case for Wastewater Pumping Systems (see **Appendix L**), which assistance recipients can follow when compiling data and structuring a business case.

The primary objective of a business case is to provide a succinct, complete report of a project’s green benefits that can quickly and easily be approved by EPA. It should be easy to read, well organized, and include the following elements:

- Quantitative and numerical data wherever possible
- Graphical representations, engineering plans and specs
- Detailed discussion of green project components
  - o What are they?
  - o What other alternatives were considered?
  - o Why were other alternatives not selected?
- Project costs

**TIP!** Typically, the project engineer will prepare a business case on behalf of an assistance recipient as they have the most intimate knowledge of the project design.

## Action Items

- Keep a copy of the final business case and all supporting documentation on file

Business cases will vary based on the complexity of a project, but must include both a technical and a financial analysis of green benefits. When beginning to build a business case, the following information should be gathered:

### Technical Analysis

- Information from maintenance or operations records, engineering studies, project plans, water loss audits, energy audits, etc.
- Drawings, engineering studies, information from suppliers, technical specifications for the components etc. as further back-up
- For energy and water efficiency projects, data, calculations and specifications demonstrating savings and showing that the selected equipment is of the highest efficiency suitable for the project (Note: if this calculation results in at least a 20% improvement, then the project will be **categorically qualified** for the Green Project Reserve):

$$\% \text{ Improvement in Energy Efficiency} = \frac{\text{kWh prior to upgrade} - \text{kWh after upgrade}^*}{\text{kWh prior to upgrade}}$$

- For already efficient facilities that are upgrading to the highest standard of efficiency, an explanation that additional savings were not feasible
- For help determining baseline efficiency standards for different types of projects and equipment, refer to energy efficiency standards set forth by professional engineering and manufacturers associations such as the National Electrical Manufacturers Association (NEMA)

### Financial Analysis

- Estimate of cost savings expected from the water or energy efficiency
- For stormwater or innovative projects, discuss costs and financial/environmental benefits
- Determination, using total project costs, that water and energy savings are a substantial part of the justification of the project
- Other information, such as payback periods or reductions in O&M expenses

Example of possible business case elements are provided in **Appendix M**.

## 5.4 The Business Case Review Process

The SPO performs the initial review for completed and submitted business cases. If it is determined that the business case includes all essential elements, the business case is forwarded to the appropriate EPA Regional Office. An established “green panel”, consisting of individual experts in various scientific, economic and environmental disciplines, will review, discuss, and ultimately vote on whether or not the proposed project should be designated “green”. This panel may request additional information, if necessary. Once a decision has been made, the Region will notify the SPO.

**TIP!** It is important that a copy of the final business case and all supporting documentation be kept on file by the assistance recipient in the event of an audit or inspection by the Office of the Inspector General.

\* Regions may also gauge efficiency improvements using current standard grade efficiencies as a benchmark

# 6.0 Summary



Now that this handbook has described the major requirements associated with the American Recovery and Reinvestment Act, assistance recipients are ready to proceed with ARRA SRF projects in a knowledgeable and responsible way. The staff at all SPOs are eager to help communities understand and implement ARRA requirements for their projects, so assistance recipients should not hesitate to ask for additional guidance. Figure 5 below summarizes the main steps detailed in this handbook in chronological order, providing a quick reference of the major action items necessary to implement an ARRA project. By following these basic steps, assistance recipients can be confident that their diligence is contributing to a transparent and accountable economic recovery effort!

Action	Timeframe	Page No.
Identify potential “green” components of the project*	Project development and design	16
Develop a green project business case*	Project development and design	17
Ask architect/engineer to spec American-made components	Project design	2
Complete the Substantial Transformation Examination	Project design	3
Ask architect/engineer to denote project components that may require a Buy American waiver	Project design	5
Apply for a DUNS number	Prior to loan closing	12
Register with the CCR	Prior to loan closing	12
Incorporate wage determinations into the bid	Bid advertisement	8
Include Buy American and Davis Bacon requirements in bid solicitations	Bid advertisement	4
Collect Buy American supporting documentation from contractors	Bid review	4
Check bidders on the Excluded Parties List	Bid review	8
Apply for a waiver to Buy American requirements *	Bid review	6
Include all ARRA requirements in the construction contract	Contract execution	4,9,15
Collect Buy American certifications from all vendors	Procurement	4
Track de minimis project components	Procurement	6
Collect job creation data from contractors	Notice to Proceed through project completion	13
Collect certified payroll and Davis-Bacon statement of compliance (Form WH-347) from contractors	Notice to Proceed through project completion	10
Submit Davis-Bacon Act Certification Form to SPO	First payroll submission through project completion	10
Conduct on-site Davis-Bacon compliance inspections	First payroll submission through project completion	10
Report job creation and project completion status to SPO	Loan agreement signed though final disbursement	13
Keep documentation of ARRA compliance in organized project files	Ongoing	

\*Note: These action items may not be required for all projects

Figure 5

## References

- City of Peoria, AZ. (2009). Personal Communication with Shawn Kreuzwiesner, City Engineer on July 17, 2009.
- Code of Federal Regulations. (April 1, 2009). Customs Duties. 19 CFR Part 177.
- Code of Federal Regulations. (July 1, 2009). Davis-Bacon and Related Acts Provisions and Procedures. 29 CFR Parts 1-5.
- Com Sense, Inc. (2009). Personal Communication with Mark Appleby, Federal Program Consultant on June 17, 2009.
- Executive Office of the President – Council of Economic Advisors. (2009). Estimates of Job Creation from the American Recovery and Reinvestment Act of 2009. Retrieved from [http://www.recovery.gov/sites/default/files/Jobs\\_Report\\_Final.pdf](http://www.recovery.gov/sites/default/files/Jobs_Report_Final.pdf) on June 13 2009.
- Frchetti Engineering, Inc.. (2009). Town of Georgetown, Colorado Green Project Reserve Business Case Requirements.
- Guerra, Cinthya. Investigator for the Department of Labor Employment Standards Administration, Wage and Hour Division. Davis-Bacon Training for SRF ARRA Recipients. Presented in Riverside, California on November 10, 2009.
- H.R.1 -111th Congress. (2009). American Recovery and Reinvestment Act of 2009. Pub. L. No. 111-5, Title VII; §1512(c )(3), 1605, 1606.
- Office of Management and Budget. (2009). Requirements for Implementing Sections 1512, 1605, and 1606 of the American Recovery and Reinvestment Act of 2009 for Financial Assistance Awards. Federal Register, Vol. 74 No. 77, Pages 18449 – 18463.
- Office of Management and Budget, (April 3, 2009). M-09-15, Updated Implementing Guidance for the American Recovery and Reinvestment Act of 2009 .
- Pulice Construction, Inc. (2009). Personal Communication with Mark Soyster, Vice President and Operations Manger of Alternative Project Delivery on June 17, 2009.
- U.S. Department of Labor, Employment Standards Administration Wage and Hour Division. (May 29, 2009). M-207-09 , Applicability of Davis-Bacon labor standards to Federal and federally-assisted construction work funded in whole or in part under provisions of the American Recovery and Reinvestment Act of 2009.
- U.S. Environmental Protection Agency, Office of Grants and Debarment. (2009). Tip Sheet for Registering with the Central Contractor Registration. Retrieved from <http://www.azwifa.gov/publications/ARRA/CentralContractorRegistrationTipSheet.pdf> on June 15, 2009.
- U.S. Environmental Protection Agency Office of Wastewater Management. (May 14, 2009). Energy Efficiency Business Case for Wastewater Pumping Systems for ARRA Green Project Reserve.
- U.S. Environmental Protection Agency Office of Wastewater Management (March 2, 2009). Memorandum regarding the Award of Capitalization Grants with Funds Appropriated by P.L. 111-5, the “American Recovery and Reinvestment Act of 2009”.
- U.S. Environmental Protection Agency Office of Wastewater Management. (April 28, 2009). Memorandum regarding the Implementation of Buy American provisions of P.L. 111-5, the “American Recovery and Reinvestment Act of 2009”.
- U.S. Environmental Protection Agency Office of Grants and Debarment. (July 10, 2009). Terms and Conditions for State Revolving Fund Capitalization Grants: Wage Rate Requirements Under Section 1606 of the American Recovery and Reinvestment Act.
- U.S. Environmental Protection Agency (October 1, 2009). Supplemental EPA Guidance on Measuring and Reporting Job Estimates.
- Virginia Municipal League. (2009). Federal Stimulus General Information Update. Retrieved from <http://www.vml.org/WNEW/WNFedStimPg.html> on June 13, 2009.
- Water Infrastructure Finance Authority of Arizona (WIFA). (2009). Davis-Bacon and Related Acts Guidance to Borrowers and Contractors. Retrieved from <http://www.azwifa.gov/publications/ARRA/DavisBaconGuidance.pdf> on June 13, 2009.