



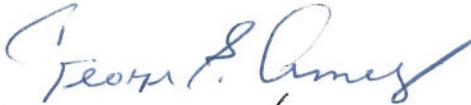
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUG 19 2013

OFFICE OF WATER

MEMORANDUM

SUBJECT: Questions and Answers on the Additional Subsidization and Green Project Reserve Provisions

FROM: George F. Ames, Chief
State Revolving Fund Branch 

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TO: State Revolving Fund Branch Chiefs
Regions I - X

This memorandum provides questions and answers (Q&As) on the additional subsidization and green project reserve (GPR) provisions of the fiscal year (FY) 2010 through 2013 appropriations acts affecting the Clean Water and Drinking Water State Revolving Fund (SRF) programs. In the event that additional subsidization and GPR provisions are included in subsequent appropriations, the Q&As will carry forward. The document includes answers to questions posed by the Regions and States regarding implementation of these provisions and will serve as documentation of policy decisions to ensure consistency across the nation.

The DWSRF program perspective is provided for several of the Q&As. This perspective, heavily informed by unliquidated obligations (ULO) experiences, supports moving all funds in a capitalization grant as quickly as possible into public health protection projects that are ready to proceed immediately to construction. This practice would result in the additional subsidy funds flowing to projects that are on the comprehensive project list for the associated year's appropriation.

Inquiries regarding the questions and answers should be directed to the respective program contacts for the Clean Water SRF (Kelly Tucker, 202/564-0608) and for the Drinking Water SRF (Kiri Anderer, 202/564-3134).

Attachment

Part A: Questions and Answers on the Additional Subsidy Requirement for the State Revolving Fund (SRF) Programs

Q1: Does funding for additional subsidy need to come directly from the capitalization grant?

A1: No. The additional subsidization requirement applies to SRF funds in an amount equal to the capitalization grant. Funding for additional subsidy projects may come from any monies in the SRF fund (e.g., capitalization grants, state match, interest earnings, repayments, and/or bond proceeds).

Q2: What is the time frame for meeting the additional subsidy requirement?

A2: The percentage requirement for additional subsidy is based on a single year's appropriation. The Intended Use Plan (IUP) must contain a description of the intended uses(s) of the additional subsidy and to the extent possible, should include a list of projects that will receive additional subsidy.

The additional subsidy requirement for a given year's appropriation is considered to be met when the minimum subsidy funds required have been disbursed. EPA strongly encourages the SRF programs to have the minimum subsidy funds required in executed assistance agreements in the federal fiscal year of the appropriation. However, for a number of reasons, this may not be possible to do. Thus, the agreements may be made either in the year of the appropriation providing the subsidy funds or the following year. For example, for the fiscal year (FY) 2012 appropriation, all funds used to meet the additional subsidy requirement for that appropriation should be in executed assistance agreements by the end of FY 2013.

Q3: What if the minimum subsidy funds required are not in executed assistance agreements by the end of the second year?

A3: If the minimum subsidy funds required are not in executed assistance agreements at the end of the second year, the Annual or Biennial Report for that year must contain a complete explanation of the reasons for the delay and provide a plan that identifies the project(s) that will use the remaining subsidy funds, along with milestones for each project showing the path to an executed assistance agreement. The Intended Use Plan for the following year should indicate the amount of additional subsidy from the previous year(s) that still must be provided to projects.

DWSRF Perspective: Because of unliquidated obligation concerns and in addition to reporting in the Annual or Biennial Report, the state must submit a letter to their Region explaining the reasons for the delay and outlining their plan. The plan should, in addition to what is mentioned above, also include an explanation of how the state intends to expeditiously commit any remaining additional subsidy funds to projects that are ready to proceed immediately to construction, outline how the money will be spent quickly to

avoid unliquidated obligations (ULOs), and specify what the state is going to do to resolve the issue of slow subsidy use permanently.

Q4: What if a project comes in under budget and the minimum subsidy required is not disbursed once construction is completed?

A4: EPA strongly encourages states to allocate an amount of subsidy greater than the minimum amount required to projects to allow for the potential that projects will come in under budget once construction is completed. If the minimum subsidy required is not disbursed once construction is completed on all projects, the state must allocate the remaining subsidy to another eligible project. The capitalization grant cannot be closed out until all terms and conditions are met, including disbursing the additional subsidy.

Q5: Does the IUP have to indicate which projects will receive additional subsidy?

A5: The IUP should include a list of projects that will receive additional subsidy. At a minimum, the IUP must contain a description of the intended use(s) of the additional subsidy and the criteria used to select projects.

DWSRF Perspective: For projects to receive additional subsidy for a given year's appropriation, they should be listed in that year's Project Priority List (PPL) in the IUP. At the least, they should be on the comprehensive project list included in that year's IUP, even if they were not originally above the proposed fundable line. For example, projects receiving additional subsidy for FY 2013 should be on the PPL or comprehensive list for the FY 2013 IUP.

States can ensure that there will be enough qualified projects to meet the minimum additional subsidy requirement by managing the distribution of subsidy so there is the ability to increase or decrease the number of projects receiving subsidy. For example, a state could consider revising the subsidy distribution as outlined in their IUP if the conditions are too narrow to solicit enough projects to meet the minimum additional subsidy requirement. To avoid this situation, some states include secondary distribution methods in their IUP that they can implement if not enough projects on the comprehensive project list meet the primary conditions they have established.

Q6: Can the additional subsidy requirement for a project be split between two fiscal years (i.e., the current fiscal year and a prior fiscal year)?

A6: Yes. States must report in the Annual or Biennial Report the amount of subsidy that is being counted toward each requirement. States may not count a project toward meeting the additional subsidy requirements of future appropriations.

DWSRF Perspective: The project should be included in the IUP for each year of appropriation that it is being applied to for the purpose of meeting the subsidy requirement. Where applicable, EPA encourages states to split the loan into multiple phases to enable project funding sooner and accelerate disbursement.

Q7: Can a project count toward meeting the additional subsidy and GPR requirements for different appropriations?

A7: Yes. States may count one project toward the additional subsidy requirement of the current fiscal year and the GPR requirement of the prior fiscal year and vice versa. States may not count a project toward meeting the additional subsidy requirements of future appropriations.

DWSRF Perspective: If the minimum subsidy funds required are in executed assistance agreements by the end of the following fiscal year, it is unlikely that this situation will occur.

Q8: What documentation is required to show that a state will meet the additional subsidy requirement?

A8: States must report all projects that received additional subsidy in their Annual or Biennial Report. The list of additional subsidy projects should include the assistance recipient, assistance amount and the amount and type of subsidy. The State should also indicate which capitalization grant the project is being applied to for the purpose of meeting the requirement. As executed assistance agreements are made the data should also be entered in CBR/PBR within the quarter in which they were signed. If changes occur in regard to subsidy recipient or dollar amount, States are strongly encouraged to update CBR/PBR as soon as possible. At a minimum, subsidy information must be updated by project completion.

Q9: If the amount of additional subsidy provided changes after the loan has been signed and the information entered into CBR/PBR, if/when should CBR/PBR be updated?

A9: Per the May 31, 2012 memo, if there is a significant change in the dollar amount (or which projects are receiving the subsidy), CBR/PBR should be updated as soon as possible. If it is only a minor change in the dollar amounts, CBR/PBR should be updated before the project is completed.

Q10: Can the capitalization grant be closed out before the State meets the minimum additional subsidy requirement?

A10: No. The capitalization grant cannot be closed out until all terms and conditions are met. If the subsidy requirement has not been met, for example if a project comes in under budget, then the state needs to find another project to give that subsidy to (or increase the amount of subsidy given to a project already receiving subsidy).

Q11: What if a state applies for their grant in the 2nd year?

A11: The same conditions apply as identified above. All funds used to meet the additional subsidy requirement for that appropriation should be in executed assistance agreements

by the end the year following appropriation. For example, if the FY 2012 capitalization grant is not awarded until FY 2013, subsidy assistance agreements should be executed by the end of FY 2013.

Q12: What if a state exceeds the additional subsidy requirement?

A12: If a state exceeds the additional subsidy requirement, the Region will issue a notice of noncompliance, and the state will have to follow the directives in the notice.

Q13: Can a state provide additional subsidy to a project using any remaining allowable amounts (below the maximum) from a capitalization grant that has since been closed out?

A13: No. Once a capitalization grant has been closed, any remaining subsidy that may have been allowable cannot be used at a later date.

Part B: Questions and Answers on the Green Project Reserve Requirement for the State Revolving Fund (SRF) Programs

Q1: Does funding for GPR projects need to come directly from the capitalization grant?

A1: No. The GPR requirement applies to SRF funds in an amount equal to the capitalization grant. Funding for GPR projects may come from any monies in the SRF fund (e.g. capitalization grants, state match, interest earnings, repayments, and/or bond proceeds).

Q2: What is the time frame for meeting the GPR requirement?

A2: The GPR requirement for a given year's appropriation is met when the minimum GPR funds required are in executed assistance agreements. EPA strongly encourages the SRF programs to meet the GPR requirement in the federal fiscal year of the appropriation. However, for a number of reasons, this may not be possible to do. Thus, the agreements may be made either in the year of the appropriation providing the GPR funds or the following year. For example, for the FY 2012 appropriation, all funds used to meet the GPR requirement for that appropriation should be in executed assistance agreements by the end of FY 2013.

In some cases, such as for planning/design/construction loans, the GPR amount may not be known at the time the assistance agreement is signed. In these cases, the GPR requirement is considered met once the planning and design phase is complete and the GPR amount is known and the minimum GPR amount has been allocated for all executed assistance agreements.

Q3: What if the minimum GPR funds required are not in executed assistance agreements by the end of the second year?

A3: Per the December 22, 2011 memo, "Modification to the State Revolving Fund Green Project Reserve Waiver Process," if a state makes a good faith solicitation effort in the development of its intended use plan (IUP) but is unable to identify eligible GPR projects in the amount specified by the capitalization grant, then the state will have satisfied the GPR requirement. A good faith solicitation must be open to all GPR eligible projects in each of the four GPR categories: green infrastructure, water efficiency, energy efficiency and environmentally innovative projects.

If a state has not made a good faith solicitation effort in the development of its intended use plan and is unable to meet the requirement by the end of the fiscal year following appropriation, then the Annual or Biennial Report for that year must contain a complete explanation of the reasons for the delay and provide a plan that identifies the project(s) that will use the remaining GPR funds, along with milestones for each project showing the path to an executed assistance agreement. The Intended Use Plan for the following year should indicate the amount of additional subsidy from the previous year(s) that still must be provided to projects.

States that have made a good faith solicitation effort and are unable to meet the requirement by the end of the fiscal year following appropriation may also document the reasons for the delay and provide a plan for meeting the requirement in the Annual or Biennial Report if they choose to do so.

For the DWSRF, GPR requirements may also be met through the targeting of funds that the state specified as set aside projects under the Small Systems, State Program Management and Local Assistance accounts. Guidance for DWSRF GPR was provided in Attachment 2 of the FY 2011 SRF procedures on May 20, 2011.

Q4: What if a project comes in under budget and the minimum amount of GPR funds are not disbursed once construction is completed?

A4: Projects may come in under budget and the full amount of GPR allocated may not be used. EPA strongly encourages states to allocate more than the minimum amount of GPR to projects in order to ensure that the additional subsidy requirement is met once all projects are completed. However, if a state allocates the minimum amount of GPR to projects and the minimum amount of GPR is not disbursed once construction is completed on all projects, the state is considered to have met the GPR requirement.

Q5: Does the IUP have to indicate which projects are GPR projects?

A5: For the CWSRF, and DWSRF when applicable, states must identify GPR projects in an amount equal to the required amount of their capitalization grant and/or make a good faith solicitation effort in the development of its IUP. For the DWSRF, set aside projects that are designated as GPR should also be identified in the IUP with the applicable funding amount. If the state is unable to identify GPR projects in an amount equal to the required amount of their capitalization grant and has not made a good faith solicitation effort at the time of grant award, then the grant award is conditioned that the state must

do so before it can take payment on the required GPR amount. Once the state demonstrates a good faith effort to solicit projects in each of the four GPR categories, if it is still unable to identify projects totaling at least the required amount of the capitalization grant, then it has satisfied the requirement. The state must document the GPR solicitation process and explain why GPR projects totaling the required amount of the capitalization grant were unable to be funded.

DWSRF Perspective: For projects to be designated as GPR for a given year's appropriation, they should be listed in that year's Project Priority List (PPL) in the IUP. At the least, they should be on the comprehensive project list included in that year's IUP, even if they were not originally above the proposed fundable line. For example, GPR projects for FY 2011 should be on the PPL or comprehensive list for the FY 2011 IUP.

Q6: Can the GPR requirement for a project be split between two fiscal years (i.e., the current fiscal year and a prior fiscal year)?

A6: Yes. States must report in the Annual or Biennial Report the amount of GPR that is being counted toward each requirement. States may not count a project toward meeting the GPR requirements of future appropriations.

DWSRF Perspective: The project should be included in the IUP for each year of appropriation that it is being applied to for the purpose of meeting the GPR requirement. Where applicable, EPA encourages states to split the loan into multiple phases to enable project funding sooner and accelerate disbursement.

Q7: Can a project count toward meeting the additional subsidy and GPR requirements for different appropriations?

A7: Yes. States may count one project toward the additional subsidy requirement of the current fiscal year and the GPR requirement of the prior fiscal year and vice versa. States may not count a project toward meeting the additional subsidy requirements of future appropriations.

DWSRF Perspective: If the minimum amount of GPR required is in executed assistance agreements by the end of the following fiscal year, it is unlikely that this situation will occur.

Q8: What documentation is required to show that a state will meet the GPR requirement?

A8: States must report all GPR projects in their Annual or Biennial Report. The list of GPR projects should include the assistance recipient, assistance amount, loan date, if applicable, and the amount and type of GPR. The State should also indicate which capitalization grant the project is being applied to for the purpose of meeting the requirement. As executed assistance agreements are made the data should also be entered in CBR/PBR, within the quarter in which they were signed. If changes occur in regard to GPR recipient or dollar amount, States are strongly encouraged to update CBR/PBR as

soon as possible. At a minimum, GPR information must be updated by project completion.

Q9: If the amount of GPR provided changes after the loan has been signed and the information entered into CBR/PBR, if/when should CBR/PBR be updated?

A9: Per the May 31, 2012 memo, if there is a significant change in the dollar amount (or which projects are receiving GPR), CBR/PBR should be updated as soon as possible. If it is only a minor change in the dollar amounts, CBR/PBR should be updated before the project is completed.

Q10: Can the capitalization grant be closed out before the State meets the minimum GPR requirement?

A10: If the state has made a good faith solicitation effort in the development of its intended use plan (IUP) but is unable to meet the minimum GPR requirement, the capitalization grant can be closed out.

If a state has not made a good faith solicitation effort, the capitalization grant cannot be closed out until all terms and conditions are met.

Q11: What if a state applies for their grant in the 2nd year?

A11: The same conditions apply as identified above. All funds used to meet the GPR requirement for that appropriation should be in executed assistance agreements by the end the year following appropriation. For example, if the FY 2012 capitalization grant is not awarded until FY 2013, GPR assistance agreements should be executed by the end of FY 2013.