



RESTORE Act

Frequently Asked Questions (FAQs)  
Relating to the Direct Component Program

*On February 12, 2016, the [RESTORE Act rule \(Treasury’s implementing regulations, 31 CFR Part 34\)](#) published by Treasury on December 14, 2015 became effective. The rule combines the comprehensive interim final rule and the Louisiana Parish Allocation Formula interim final rule, both of which were effective on October 14, 2014. On April 3, 2019, the [RESTORE Act final rule on administrative costs](#) was published in the Federal Register.*

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## GENERAL

### **Q1. Who may apply to receive funds under the Direct Component, administered by Treasury?**

- A.** The applicants eligible to receive funds under the Direct Component are specified in the RESTORE Act and Treasury's implementing regulations. The eligible applicants are the following:
- In Alabama, the Alabama Gulf Coast Recovery Council or such administrative agent as it may designate
  - In Florida, the Florida counties of Bay, Charlotte, Citrus, Collier, Dixie, Escambia, Franklin, Gulf, Hernando, Hillsborough, Jefferson, Lee, Levy, Manatee, Monroe, Okaloosa, Santa Rosa, Pasco, Pinellas, Sarasota, Taylor, Wakulla, and Walton
  - In Louisiana, the Coastal Protection and Restoration Authority Board of Louisiana through the Coastal Protection and Restoration Authority of Louisiana
  - In Louisiana, the Louisiana parishes of Ascension, Assumption, Calcasieu, Cameron, Iberia, Jefferson, Lafourche, Livingston, Orleans, Plaquemines, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne, and Vermilion
  - In Mississippi, the Mississippi Department of Environmental Quality
  - In Texas, the Office of the Governor or an appointee of the Office of the Governor

### **Q2. How can eligible applicants obtain a grant under the Direct Component program?**

- A.** Treasury periodically posts funding opportunity announcements (FOAs) for the Direct Component program, which include deadlines for the submission of grant applications on Grants.gov. Eligible applicants may submit grant applications through Treasury's online grants management system of record. Applications may be submitted through GrantSolutions.gov until August 31, 2022. Starting October 3, 2022, eligible applicants may submit grant applications through the RESTORE Act Grants Management System. Treasury awards grants to eligible applicants when their applications meet the requirements set forth in the FOA including the applicable requirements of the RESTORE Act, Treasury's implementing regulations at 31 CFR Part 34, and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR Part 200.



## TRUST FUND

### **Q3. How does Treasury determine the Gulf Cost Restoration Trust Fund (Trust Fund) allocations for the Direct Component?**

- A. The RESTORE Act equally distributes the allocations for the Direct Component among the five Gulf Coast states. Treasury's implementing regulations at 31 CFR §§ 34.302(b) and (c) specify the Direct Component allocation percentages available to each of the 23 Florida counties based on an allocation formula submitted by the disproportionately affected counties and a formula described in the RESTORE Act for the nondisproportionately impacted counties, respectively. 31 CFR § 34.302(e) specifies the allocation percentages available to each of the 20 eligible coastal parishes in Louisiana based on a formula described in the RESTORE Act.

### **Q4. How much money is currently available under the Direct Component for eligible applicants?**

- A. The Trust Fund Allocation Tables, located on Treasury's [RESTORE Act](#) website, specify the allocations that eligible applicants may use when preparing their grant applications. Periodically, Treasury posts new tables that include earned interest on the Trust Fund, any new deposits, and updated allocations available for distribution.

## MULTIYEAR IMPLEMENTATION PLAN (MULTIYEAR PLAN)

### **Q5. What is the purpose of the Direct Component multiyear plan?**

- A. The RESTORE Act and Treasury's implementing regulations direct state, county, and parish applicants to prepare multiyear plans that prioritize eligible activities for Direct Component funds, and to obtain broad-based participation from individuals, businesses, Indian tribes, and non-profit organizations as part of their multiyear plan preparation. State, county, or parish applicants may amend their accepted multiyear plans by following these same steps, including obtaining public input, prior to submitting their amended plans to Treasury. Interested parties may contact the appropriate state, county, or parish applicant to request that the applicant consider including its proposed activity in the applicant's initial or amended multiyear plan. Treasury reviews the applicant's initial or amended plan for completeness and compliance with the RESTORE Act and Treasury's implementing regulations. The forms for a multiyear plan are posted on Treasury's [RESTORE Act website](#).

### **Q6. Is there a deadline to submit multiyear plans?**

- A. No. Eligible applicants may submit an initial or amended multiyear plan at any time. However, other than planning assistance grants for the preparation of a multiyear plan, applicants may not apply for Direct Component grants until they submit and Treasury accepts their initial or amended multiyear plan

**Q7. What time period should eligible applicants cover in multiyear plans?**

- A. Eligible applicants have flexibility in setting the length of time covered in their multiyear plans. Applicants may prepare a plan that includes activities that could be undertaken with both a current Trust Fund allocation and estimated allocations arising from the April 2016 BP consent decree not yet deposited into the Trust Fund. However, Treasury may not award a project grant until sufficient deposits are available for distribution based on the amount of funds shown in the Gulf Coast Restoration Trust Fund Allocation Tables on Treasury's [RESTORE Act website](#).

**Q8. May eligible applicants prepare a multiyear plan incrementally or in phases?**

- A. Yes. Eligible applicants may prepare a multiyear plan incrementally (e.g., cover some of the eligible activities), and add new eligible activities later through amendments to their accepted multiyear plan. Applicants also may prepare a multiyear plan in phases (e.g., the plan may cover a limited period) with additional years and activities added later through amendments to their accepted multiyear plan. Applicants may choose to prepare an initial multiyear plan based on current available Trust Fund allocations, and later submit amendments based on estimated allocations arising from the April 2016 BP consent decree. Amendments to accepted multiyear plans that materially modify the multiyear plans will require a 45-day public and comment review process prior to submission to Treasury for review and acceptance.

**Q9. Are eligible applicants required to make their multiyear plans available for public review and comment prior to submitting them to Treasury?**

- A. Yes. Eligible applicants must make their multiyear plans available for public review and comment for at least 45 days, in a manner calculated to obtain broad-based participation from individuals, businesses, Indian tribes, and non-profit organizations, such as through public meetings, presentations in languages other than English, and postings on the Internet. Applicants will need to submit documentation (e.g., a copy of public notices) to demonstrate that their multiyear plan was available for review by the public for at least 45 days. As part of their multiyear plan submission to Treasury, applicants must describe in the Direct Component Multiyear Plan Narrative form the relevant issues raised by the public and describe how they addressed the public comments. Interested members of the public should contact their eligible state, county, or parish to obtain information about how the public may participate in the public engagement and outreach activities associated with preparation of the multiyear plan.

**Q10. What multiyear plan documents must applicants make available for public review and comment?**

- A. Eligible applicants must include the Treasury Direct Component Multiyear Plan Matrix and Direct Component Multiyear Plan Narrative forms, and a location map as part of the multiyear plan they release for public comment. Please note that if applicants prepare a more detailed multiyear plan in addition to these documents, it also must be released for public review and comment. The detailed multiyear plan,

including the Treasury forms, must be made available for 45 days for public review and comment, in a manner calculated to obtain broad-based participation from individuals, businesses, Indian tribes, and non-profit organizations.

**Q11. What documents must eligible applicants provide to Treasury when submitting multiyear plans?**

- A. Eligible applicants must include the Treasury Direct Component Multiyear Plan Matrix and Direct Component Multiyear Plan Narrative forms, and a location map as part of their multiyear plan submission to Treasury. Applicants also may prepare a more detailed multiyear plan encompassing a longer time frame and including a more comprehensive list of activities based on the current trust fund allocations and estimated allocations from the April 2016 BP consent decree. Please note that if applicants prepare more detailed multiyear plan documents in addition to the Treasury Multiyear Plan Matrix and Narrative forms, they must submit the detailed multiyear plan to Treasury.

**Q12. What is Treasury's process for reviewing an eligible applicant's initial or amended multiyear plan?**

- A. Treasury reviews initial and amended multiyear plans for completeness and conformity with the RESTORE Act and Treasury's implementing regulations. Treasury may need to request additional information to complete the review. After completing its review, Treasury notifies an applicant in writing that the applicant may begin to submit grant applications to fund activities listed on the accepted multiyear plan. Treasury posts on its website applicants' initial and amended multiyear plan documents, i.e., Direct Component Multiyear Plan Matrix, Direct Component Multiyear Plan Narrative, and location map. Applicants must make initial and amended multiyear plans accepted by Treasury available to the public on their websites or through other means designed to make the information accessible to the public.

**Q13. May eligible applicants submit applications for activities before submission and Treasury's acceptance of their multiyear plans?**

- A. No. Eligible applicants may submit applications for eligible Direct Component activities listed on their multiyear plans only after Treasury has accepted their multiyear plan. Likewise, applicants may submit applications for activities added to or materially modified in an amended multiyear plan only after Treasury has accepted the amended multiyear plan. A grant application for planning assistance funding for the preparation of multiyear plans is the only exception to this requirement.

**Q14. May eligible applicants apply for planning assistance funding to prepare multiyear plans, and under what funding opportunity announcement should they apply?**

- A. Yes. Eligible applicants may submit applications to Treasury for planning assistance funds for the preparation of multiyear plans. Applicants may apply under the Funding Opportunity Announcement – Direct Component Non-Construction Activities in Treasury’s online grants management system of record. Applicants should refrain from addressing questions in the application form that relate to the multiyear plan. The prerequisite to submit a multiyear plan prior to applying for a Direct Component grant does not apply when planning assistance funding is for preparation of the multiyear plan itself.

**Q15. What constitutes a material modification to a multiyear plan?**

- A. A material modification to a multiyear plan is: 1) a change to the scope or size of the activity included in the multiyear plan that affects outcomes and/or outputs, and/or 2) a change in the overall Direct Component funds included in the multiyear plan resulting from the addition of a new activity or a change to the scope or size of an existing activity.

Modifications to a multiyear plan that would not be material modifications are: 1) changes that do not affect the overall scope or objective of the multiyear plan activity, and 2) changes that do not increase funding for an accepted multiyear plan in order to add new activities or increase the scope of an existing activity or activities. Examples of non-material modifications to an accepted multiyear plan may include, but are not limited to:

- (1) Minor changes to the scope of a project including the outcomes or outputs (e.g., minor increases or decreases in the number of wetland acres restored),
- (2) Minor changes to an activity budget (e.g., due to an increase in the cost of materials), and
- (3) Changes in the proposed start date or end date of an activity.

An applicant should submit non-material modifications to an accepted multiyear plan with the next amended multiyear plan submitted for Treasury’s review and acceptance. If non-material modifications to an activity in an accepted multiyear plan are included in a grant application, Treasury will evaluate the application to determine if the modified activity continues to be a Direct Component eligible activity and does not exceed the recipient’s Direct Component allocation.

**Q16. Would a major increase to the total project costs due to inflationary pressures and cost escalation affecting the cost of materials and services constitute a material modification to an accepted multiyear plan?**

- A. An increase to the total Direct Component project costs due to inflationary pressures and cost escalation in materials and services that does not result in a change to the scope or size of the activity included in the accepted multiyear plan and does not substantially affect the outcomes or outputs would be a non-material modification to

the accepted multiyear plan. See FAQ #15 for more information on non-material modifications.

**Q17. Would the addition of third-party funds to cover the increased costs on an existing Direct Component funded project due to inflationary pressures and cost escalation in materials and services constitute a material modification to an accepted multiyear plan?**

- A. No. The addition of third-party funds to cover the increased costs on an existing Direct Component funded project due to inflationary pressures and cost escalation in materials and services that does not result in a change to the scope or size of the activity included in the accepted multiyear plan and does not substantially affect the outcomes or outputs would be a non-material modification to the accepted multiyear plan.

**Q18. Does a material modification to a multiyear plan require a 45-day public review and comment period and acceptance by Treasury?**

- A. Yes. Material modifications to an accepted multiyear plan are subject to all the applicable requirements for an initial multiyear plan, including the 45-day public review and comment period and acceptance by Treasury.

## **STATUTORY DEFINITIONS**

**Q19. How does the RESTORE Act define the Gulf Coast region?**

- A. Under the RESTORE Act, Gulf Coast region is defined as:
- (1) In the Gulf Coast States, the coastal zones defined under section 304 of the Coastal Zone Management Act of 1972 that border the Gulf of Mexico;
  - (2) Land within the coastal zones described in paragraph (1) of this definition that is held in trust by, or the use of which is by law subject solely to the discretion of, the Federal Government or officers or agents of the Federal Government;
  - (3) Any adjacent land, water, and watersheds, that are within 25 miles of the coastal zone described in paragraphs (1) and (2) of this definition; and
  - (4) All Federal waters in the Gulf of Mexico.

**Q20. How will Treasury determine if an activity will be carried out in the Gulf Coast region?**

- A. Treasury's implementing regulations explain that Direct Component activities are carried out in the Gulf Coast region when, in the reasonable judgment of the eligible applicant applying to Treasury for a grant, each severable part of the activity is primarily designed to restore or protect that geographic area. A state, county, or parish must demonstrate that the activity will be carried out in the Gulf Coast region when it applies for the grant.

**Q21. What are the eligible activities under the Direct Component?**

- A. The criteria for eligibility are described in Treasury’s implementing regulations at 31 CFR § 34.201. In general, the following projects, programs, and activities are eligible for funding under the Direct Component. Activities 1 through 7 must be carried out in the Gulf Coast region.
- 1) Restoration and protection of the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches and coastal wetlands of the Gulf Coast region
  - 2) Mitigation of damage to fish, wildlife, and natural resources
  - 3) Implementation of a federally-approved marine, coastal, or comprehensive conservation management plan, including fisheries monitoring
  - 4) Workforce development and job creation
  - 5) Improvements to or on State parks located in coastal areas affected by the Deepwater Horizon oil spill
  - 6) Infrastructure projects benefitting the economy or ecological resources, including port infrastructure
  - 7) Coastal flood protection and related infrastructure
  - 8) Planning assistance
  - 9) Administrative costs
  - 10) Promotion of tourism in the Gulf Coast region, including recreational fishing
  - 11) Promotion of the consumption of seafood harvested from the Gulf Coast region

**Q22. How does the RESTORE Act define best available science?**

- A. Under the RESTORE Act, best available science means science that maximizes the quality, objectivity, and integrity of information, including statistical information; uses peer-reviewed and publicly available data; and clearly documents and communicates risks and uncertainties in the scientific basis for such projects.

**Q23. What projects require a best available science determination?**

- A. The requirement to use best available science applies to natural resource protection or restoration projects regardless of the project’s Primary Direct Component Eligible Activity label. Applicants must consider the nature of the activity when determining whether this requirement applies. A best available science determination may be required for any of the eligible activities, depending on the objectives of the activity. Please contact the Office of Gulf Coast Restoration (OGCR) if there are questions about whether a specific project requires a BAS determination.

**Q24. How will Treasury evaluate a best available science determination?**

- A. Treasury will review applications to determine whether the best available science question has been answered fully and work with subject matter experts who will evaluate if the applicant’s determination is reasonable that the proposed project is based on best available science. The subject matter expert review will take approximately 2 - 3 weeks. Experts may request additional information or clarification

that Treasury will convey to the applicant. If necessary, subject matter experts will re-evaluate the project after receiving requested clarifications.

**Q25. Is a best available science determination still necessary if the project follows environmental compliance permit requirements?**

- A. Yes. The requirement to base natural resource protection and restoration projects on best available science is separate from environmental compliance requirements. Permit requirements may influence project's methods and should be referenced in the best available science determination; however, the applicant is responsible for demonstrating that the project is based on best available science.

**Q26. What information is required in a best available science determination?**

- A. Applicants must explain how the project's natural resource protection and/or restoration objectives and the proposed methods are based on best available science. Applicants also must summarize any risks or uncertainties associated with the project and explain how these risks will be mitigated.

Applicants are required to cite and describe peer-reviewed literature and/or publicly available data. The sources should be objective, methodologically sound and support the conclusion that the proposed scope of work is an effective way to achieve the stated objectives of the project, consistent with the RESTORE Act. Cited sources are expected to represent the main body of relevant literature, including sources with negative and/or inconclusive findings. Applicants are encouraged to provide documentation of current project site conditions, evidence that the proposed project will achieve the stated natural resource protection and/or restoration objective, and evidence that the project's methodology is based on peer-reviewed or public sources and aligned with achievement of the objective. Applicants also are encouraged to include any relevant design or planning documents, such as feasibility studies, permit requirements, design documents, design specifications, or design drawings, and to state clearly if certain methodological details are unknown but will be developed as part of the project.

**Q27. What types of risks, uncertainties, or mitigation actions should be addressed in a best available science determination?**

- A. Specific risks, uncertainties and mitigation actions will depend on the nature of the project. However, general categories of risks or uncertainties to consider include: potential negative impacts on natural resources, likely or potential reasons the project may not achieve its objective, the anticipated longevity of project benefits, risks described in cited sources, and uncertainties in the underlying science used to justify the project and/or methods. Mitigation actions may include: siting or design considerations, phasing projects, and/or monitoring and adaptive management.

**Q28. What sources are acceptable evidence for a best available science determination?**

- A. Under the RESTORE Act, peer-reviewed literature and publicly available data sets, such as those from state agencies, the U.S. Census Bureau, U.S. Fish and Wildlife Service, Environmental Protection Agency, and National Oceanic and Atmospheric Administration, are acceptable evidence for a best available science determination. If peer-reviewed literature or publicly available data sets are unavailable, alternative scientific information may be used, including design guidelines, design criteria, best management practices documents, and photographs or other baseline documentation of the project site.

Sources based on work conducted in regions outside the Gulf Coast may be cited as evidence; however, applicants must justify the relevance of the work by describing how findings are applicable to and methods will be adapted for conditions in the Gulf. Applicants are encouraged to consider differences in physical and biological factors, such as tides, salinity, wildlife, temperature or currents, between the source's study site and the Gulf.

**Q29. How should applicants cite sources in the best available science determination?**

- A. Sources should be cited parenthetically in the best available science determination, with a list of full citations provided at the end. Citations for peer-reviewed articles should include the author, publication date, article title, journal title, and volume and page numbers. Citations for non-peer-reviewed sources should also include the author, publication date, article title, journal title, and volume and page numbers, if applicable, as well as the date of access. Applicants are encouraged to provide PDFs of documents or links to websites, if necessary.

**Q30. Can a planning assistance grant include funds to develop best available science documentation?**

- A. Yes. Planning assistance grants can include funds to develop best available science documentation.

**Q31. Can Direct Component planning assistance funds be used to support activities related to the Comprehensive Plan or Spill Impact Components?**

- A. "Planning assistance" is defined in Treasury's implementing regulations at 31 CFR § 34.2 and includes three types of activities:
- 1) One-time preparations that will allow the recipient to establish systems and processes needed to review grant applications, award grants, monitor grants after award, and audit compliance with respect to eligible activities under 31 CFR § 34.201 in a Multiyear Implementation Plan or State Expenditure Plan;
  - 2) Data gathering, studies, modeling, analysis and other tasks required to prepare plans for eligible activities under 31 CFR §§ 34.201(a) through (i), including environmental review and compliance tasks and architectural and engineering studies;



- 3) Funding for the preparation and amendment of a Direct Component Multiyear Implementation Plan.

Direct Component planning assistance funds can be used to support some activities related to the Comprehensive Plan or Spill Impact Components in the following instances.

- **One-Time Preparations** – If an eligible entity has a project for one-time preparations, such as setting up a data management system to track grants and projects or developing policies and procedures to conform to 2 CFR Part 200, the entire activity may be eligible for Direct Component funding if the project is general in nature and does not have requirements that are unique to the Comprehensive Plan or Spill Impact Components. For example, a general project management system that can be used by a recipient regardless of which RESTORE Act component is funding the project would be eligible. However, if the system has unique requirements for elements unrelated to the Direct Component, Direct Component funding should not go towards unique program-specific requirements of the system.
- **Data Gathering, Studies, Modeling, Analysis** – If an eligible entity has a project that requires data gathering, studies, modeling, analysis, or other tasks such as engineering and design or environmental compliance prior to constructing or implementing the project, then the Direct Component could fund these types of planning activities, provided it is a Direct Component eligible activity under 31 §§ 34.201(a) through (i). Direct Component planning assistance funds could be used regardless of whether the project itself is constructed or implemented with Direct Component or other funds.
- **Planning Assistance for the Preparation of a Plan** – Direct Component funds may be used for the preparation or amendment of a Multiyear Implementation Plan. They may not be used for the preparation or amendment of a State Expenditure Plan or Comprehensive Plan Project.

## APPLICATION PROCESS

**Q32. Treasury released two funding opportunity announcements under the Direct Component. How does the eligible applicant determine which announcement applies to their proposed project if it requires several elements, such as land acquisition, planning and design and construction?**

- A. Treasury releases multiple types of funding opportunity announcements because different kinds of projects must meet different requirements. For example, land acquisition and construction projects have different requirements from planning projects, so that the applicant must submit applications under different funding opportunity announcements. Furthermore, the scope of work of a planning and design project will determine whether the applicant should submit the application under a

non-construction or construction funding opportunity announcement. Treasury staff is available to discuss applicants' specific application questions on a case-by-case basis.

**Q33. Do eligible applicants have live links to the grant applications and required forms and certifications?**

- A. Yes. Eligible applicants can obtain the grant applications and other forms and certifications through Treasury's online grants management system of record. Treasury posts the funding opportunity announcements in the online system. Once the applicant obtains a user account and selects a funding opportunity announcement, the applicant gains access to the applicable directions and forms. The Operational Self-Assessment and the multiyear plan forms may be found on Treasury's website in fillable form format.

**Q34. Should eligible applicants apply any specific criteria or metrics to projects?**

- A. Currently, there are no specific criteria or metrics required by Treasury, including for workforce development or job creation projects. When preparing any application for an eligible activity, an applicant will set milestones to demonstrate progress in completing the planned activity. An applicant also will establish performance measures that demonstrate progress toward reaching the stated objectives for the proposed activity and are outcome-oriented to the extent possible. As with all grant applications, Treasury reviews the reasonableness of applicants' submissions for conformity with the RESTORE Act and Treasury's implementing regulations.

**PRE-AWARD COSTS**

**Q35. What are pre-award costs?**

- A. Pre-award costs are defined in the OMB's Uniform Guidance at 2 CFR § 200.458.

"Pre-award costs are those incurred prior to the effective date of the Federal award directly pursuant to the negotiation and in anticipation of the Federal award where such costs are necessary for efficient and timely performance of the scope of work. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the Federal award and only with written approval of the Federal awarding agency."

Pre-award costs must be connected to an award for a specific eligible activity and be included in the award's approved scope of work and budget. All costs incurred before the Federal awarding agency makes the Federal award are at the recipient's own risk. Applicants considering incurring pre-award costs should contact Treasury as soon as possible.

### **Q36. How will Treasury evaluate pre-award costs?**

- A.** Treasury will consider reimbursement of pre-award costs only when an applicant demonstrates that 1) the costs were incurred directly pursuant to the negotiation and in anticipation of the award, and 2) the costs are necessary for the efficient and timely performance of the scope of work. Pre-award costs should be requested as part of an application for funding. The applicant must clearly describe the proposed pre-award costs in the scope of work and budget justification and provide a compelling justification as to why Treasury should approve the pre-award costs. Applicants must be able to provide documentation to evidence the costs through invoice, dated signed timesheets, contracts, etc. at the time of application for all pre-award costs incurred greater than 90 days prior to award or the requested start date of the award (see 2 CFR § 200.308 (e)(1)). Pre-award costs incurred less than 90 days prior to award may be requested post-award with documentation to evidence the costs. Treasury will use the following criteria, which are based on the RESTORE Act, Treasury's implementing regulations, and OMB's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards to evaluate pre-award costs:

#### **Eligible Costs**

- Were the costs incurred for a specific activity that is eligible for Direct Component funding?

#### **Costs Directly Pursuant to the Negotiation and in Anticipation of the Federal Award**

- Were the costs incurred directly pursuant to the negotiation of the specific Federal award and in anticipation of the Federal award?
- Pre-award costs should be preparatory in nature. Recipients may not complete a project and request reimbursement of costs incurred for the project as pre-award costs. All costs incurred before Treasury makes an award are at the applicant's risk. Treasury is not required to reimburse such costs if for any reason the applicant does not receive a grant or if the grant is less than anticipated and inadequate to cover such costs.

#### **Costs Necessary for Efficient and Timely Performance of the Scope of Work**

- Are the costs incurred necessary for the efficient and timely performance of the scope of work of the Federal award?

#### **Allowable Costs**

- Would the costs incurred have been allowable if they had occurred after the date of the specific Federal award?

#### **Written Approval of the Federal Awarding Agency**

- Did the applicant receive prior written approval of the Federal awarding agency for the pre-award costs? *A Federal awarding agency is authorized, at its option, to waive prior written approval in authorizing recipients to incur project costs 90 calendar days before the Federal awarding agency makes the Federal award. Expenses more than 90 calendar days pre-award require prior approval of the Federal awarding agency. (See 2 CFR § 200.308(e)(1)).*

**Q37. Are costs incurred in the preparation of a multiyear plan eligible for reimbursement as pre-award costs?**

- A. All applications for pre-award costs must meet the strict requirements of 2 CFR § 200.458. In addition to other requirements, applicants will need to submit a scope of work for the preparation of the multiyear plan and demonstrate that any costs incurred before the Federal award were necessary for the efficient and timely completion of that scope of work. As stated in funding opportunity announcements for the Direct Component, Treasury does not anticipate that any costs incurred prior to August 15, 2014, the publication date of the interim final rule, will meet these requirements. Treasury's implementing regulations specify elements for the multiyear plan. It is unlikely that applicants could have begun work necessary for the efficient and timely completion of the multiyear plan, and otherwise meet the applicable requirements in 31 CFR Part 34 and 2 CFR Part 200, before Treasury published criteria for the multiyear plan in the interim final rule that was effective October 14, 2014.

**DIRECT COMPONENT FINANCING**

**Q38. If an eligible entity plans to finance an eligible Direct Component project through a bond or other debt obligation and then seek reimbursement through a grant when anticipated BP funds are deposited in the Gulf Coast Restoration Trust Fund, when should the entity notify Treasury of its plans?**

- A. An eligible entity is encouraged to notify Treasury in advance whenever it plans to seek reimbursement of pre-award costs as part of a future grant application, including plans to incur a debt obligation to finance a project. The Direct Component multiyear plan provides an excellent opportunity for an eligible entity to communicate plans for projects and its intended use of Trust Funds to both the public and Treasury, including debt financing and the project timeframe.

Nothing prevents an eligible entity from issuing a bond or incurring a debt obligation to finance a project, or from seeking reimbursement for pre-award project costs under the RESTORE Act grant; however, an eligible entity engages in advance financing and incurs pre-award costs at its own risk. Treasury can only approve pre-award project costs that would have been allowable if incurred within a RESTORE Act grant. Treasury will provide written approval of pre-award costs only through a notice of award or other post-award notification.

Treasury staff is available to answer questions about the RESTORE Act, Treasury's implementing regulations, and the OMB's Uniform Administrative Requirements, Cost Principles, and Audit Requirements (Uniform Guidance).

**Q39. Are debt financing costs eligible for reimbursement, and if so, under what conditions?**

- A. If the project is for the acquisition, construction, or replacement of capital assets that would be used by the non-Federal entity in support of Federal awards, the debt financing costs may be allowable subject to the conditions set forth in 2 CFR § 200.449. The Uniform Guidance at 2 CFR § 200.1 defines “capital assets” as:

. . . tangible or intangible assets used in operations having a useful life of more than one year which are capitalized in accordance with Generally Accepted Accounting Practices (GAAP). Capital assets include:

- Land, building (facilities), equipment, and intellectual property (including software) whether acquired by purchase, construction, manufacture, lease-purchase, exchange, or through capital leases; and
- Additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations or alterations to capital assets that materially increase their value or useful life (not ordinary repairs and maintenance).

Thus, under 2 CFR § 200.449, debt financing costs to acquire, construct, or replace capital assets may be allowable, subject to 2 CFR §§ 200.449(c)—(g).

**Q40. May an eligible entity continue to receive reimbursement from Treasury for eligible debt financing costs associated with the construction of a Direct Component capital asset project even after the project is completed, as is possible under the Department of Transportation’s Grant Anticipation Revenue Vehicle (GARVEE) program?**

- A. No. The RESTORE Act does not provide authority for Treasury to pay for debt-financing costs after a project is completed, unlike some other federal assistance programs.

**Q41. Can Treasury award a Direct Component grant or provide written approval for pre-award costs to an eligible entity for an amount that exceeds its current Trust Fund allocation available for distribution, in anticipation of future BP deposits?**

- A. No. Federal law prohibits awarding or obligating amounts in excess of the amounts available for award. Treasury may not approve pre-award costs or make a grant to an eligible entity that exceeds the entity’s current Trust Fund allocation. An eligible recipient engages in pre-award project activities and incurs pre-award costs at its own risk.

**Q42. Are there considerations of which eligible entities should be aware when exploring whether to issue bonds for projects that would be reimbursed with Trust Funds?**

- A. An eligible entity will need to consider factors such as the cost of financing and the amount of time needed to complete a project when considering whether to issue a bond to fund a project for which it plans to later seek reimbursement from its Trust Fund allocation.

All grants awarded by Treasury under the RESTORE Act must comply with the RESTORE Act, Treasury’s implementing regulations, and applicable federal laws and regulations on grants, including the Uniform Guidance. We encourage eligible entities considering whether to issue bonds for projects for which they plan to seek reimbursement from the Trust Fund, to remain particularly aware of the following provisions in the Uniform Guidance:

- Costs incurred for interest on borrowed capital or the use of the eligible entity’s own funds, however represented, are unallowable (See 2 CFR § 200.449(a)). Financing costs (including interest) to acquire, construct, or replace capital assets, that would be used by the non-Federal entity in support of Federal awards, may be allowable, subject to conditions (See 2 CFR § 200.449(c)—(g)).
- If some or all of the work will be accomplished through a contract, the procurement standards of 2 CFR § 200.317—200.327, as applicable, must be met.
- Written approval from the Federal awarding agency is required for any costs incurred prior to the issuance of a grant award. Pre-award costs should be requested as part of an application for funding (See 2 CFR § 200.458).
- All of the costs for which an eligible entity plans to seek reimbursement must meet 2 CFR Part 200, Subpart E – Cost Principles of the Uniform Guidance.

**Q43. Before taking steps to finance a project, an eligible entity should notify OGCR about its plans to seek reimbursement of pre-award costs, including debt financing costs, through a future Direct Component grant. May an eligible recipient be reimbursed for project costs after a project is completed?**

- A. If an eligible entity has completed a project with its own funds, it may seek reimbursement as pre-award costs through an application for a Direct Component grant under the RESTORE Act. However, an eligible entity incurs pre-award costs at its own risk. All work funded with a grant awarded by Treasury under the RESTORE Act must comply with the RESTORE Act, Treasury’s implementing regulations, and applicable federal laws and regulations on grants, including the Uniform Guidance (see also FAQs #35 and #36 on Pre-Award Costs).

**Q44. How can an eligible recipient be reimbursed for project costs within a grant when the project is completed before sufficient funds are available in the Trust Fund for distribution?**

- A.** In cases where an eligible recipient combines its own funds as a voluntary non-federal share with allocated Direct Component funds in a grant, the recipient may be reimbursed for its non-federal share of eligible project costs during the period of performance by requesting a re-budget of costs from non-federal share to federal share. A recipient also may request that Treasury delay final closeout of an award to allow for further re-budgeting of costs from the non-federal share to the federal share. Upon full reimbursement, the award will be closed out.

**ELIGIBLE COSTS**

**Q45. Are the costs of meals and refreshments allowable costs under a RESTORE Act Direct Component grant?**

- A.** The costs of meals and refreshments may be allowable costs if provided as part of a conference as defined in the Uniform Guidance. The Uniform Guidance defines a conference as “a meeting, retreat, seminar, symposium, workshop or event whose primary purpose is the dissemination of technical information beyond the non-Federal entity and is necessary and reasonable for successful performance under the Federal Award.” 2 CFR § 200.432. A conference host must exercise discretion and judgment in ensuring that conference costs are appropriate, necessary, and managed in a manner that minimizes cost to the Federal award. If an applicant anticipates providing meals and refreshments at a conference, their budget justification and scope of work in their grant application should include information on it. In the rare instance where meals and refreshments are not included in an approved budget justification and scope of work, the recipient must request prior approval from Treasury. The request must include:

1. An estimated budget and a description of the meals and refreshments that are going to be provided at the conference.
2. A description of the purpose, agenda, location, length and timing for the conference.
3. An estimated number of participants in the conference and a description of their roles.

Treasury retains the discretion to make the final determination concerning the allowability of meals and refreshments at conferences.

**Q46. What are the requirements an applicant must meet in order to receive funding for an eligible lateral line project connecting individual private residences to the public sewer?**

- A. The connection of individual private residences to the public sewer system is not eligible for grant funding under the RESTORE Act Direct Component unless the wastewater laterals are “owned” by the recipient or subrecipient. The recipient or subrecipient could have ownership by fee simple title; by the issuance of an enforceable easement with right of access; or through suitable authority, such as an ordinance assuring right of access for such purposes as inspection, monitoring, building, operation, rehabilitation and replacement. The recipient or subrecipient must show it will be responsible for the operations and maintenance of the laterals for their estimated useful life. Additionally, the recipient or subrecipient may not transfer ownership of the laterals to any entity without written approval from Treasury. Treasury will require documentation showing the recipient’s ownership interest and may require that a Covenant of Purpose, Use and Ownership be recorded on the federal interest in the property.

**Q47. Are sewer connection fees eligible for funding under the RESTORE Act Direct Component?**

- A. The eligibility of connection fees for RESTORE Act funding is dependent upon their purpose. Because there is no uniform definition of “connection fees” and the term means different things in different jurisdictions, Treasury can only answer this question on a case-by-case basis.

**Q48. How does Treasury define the term “contingencies” as it relates to Direct Component grants?**

- A. Treasury defines the term “contingencies” the same way as the term is defined in the Uniform Guidance at 2 CFR § 200.433(a), which are amounts that are “part of a budget estimate of future costs which is associated with possible events or conditions arising from causes the precise outcome of which is indeterminable at the time of estimate, and that experience shows will likely result, in aggregate, in additional costs for the approved activity or project” and contingencies do not include “amounts for major project scope changes, unforeseen risks, and extraordinary events.”

Contingencies are funds allocated for uncertain or unexpected events and are commonly set aside in the planning phase of a project to serve as a safety net to better manage risks, mitigate delays, and achieve project goals. The purpose of contingencies is to also ensure efficient planning and preparation in the project design stage because changes in certain costs are anticipated when estimating preliminary costs (as opposed to simply increasing estimates without justification). In other words, contingencies can be thought of as cautionary funding for “known unknowns,” where the risk or potential problem is known but may or may not occur.



Contingencies must align with the cost principles and other requirements in the Uniform Guidance, be considered necessary and reasonable to accomplish project or program objectives successfully, and be verifiable from the entity's records. The Uniform Guidance at 2 CFR § 200.433(b) further specifies contingency "amounts must be estimated using broadly-accepted cost estimating methodologies, specified in the budget documentation of the Federal award, and accepted by the Federal awarding agency." See FAQ #48b for Treasury's definition of "broadly-accepted cost estimating methodologies."

**Q48a. Does Treasury allow contingencies in a proposed construction budget to accommodate the anticipated increases in construction costs due to cost escalation, inflationary pressures, or for other reasons?**

- A.** Effective 12/14/2023, Treasury will allow the inclusion of contingency costs in the budget for construction projects only provided that such costs comport with the requirements of 2 CFR § 200.433 and these FAQs. Allowable possible events or conditions for contingencies will largely depend on the nature of the project.

Contingencies are optional and should be specified in the initial budget documentation. The contingency request should be included in SF-424C, where the contingency line item (#13) cannot exceed 10% of the total project cost (#16). In addition, the recipient must provide sufficient justification based on broadly-accepted cost estimating methodologies for requested contingencies on the Direct Component Application Narrative for approval. The following items must be specified in line 18 of the Budget Justification: a list of probable events or conditions (e.g., cost overruns at bid opening, price of materials or interest rate increases, design errors, weather delays, the presence of hazardous materials, archaeological remains, underground utilities, or difficult soil or hydrologic conditions not known at the time the construction estimate was made), the probability of each event occurring, and the estimated cost impact of each event or condition. See FAQ #48b for Treasury's definition of "broadly-accepted cost estimating methodologies" and an example.

It is explicit in 2 CFR 200.433(a) that it is not permissible to have contingency costs for major project scope changes for a project. As such, additional contingency costs may not be included in monetary amendments to existing grants if contingency costs were included and approved in the initial budget. See FAQ #48c for how contingency costs can be added if not included in and/or approved in the initial budget.

Treasury retains the discretion to make the final determination concerning the allowability and approval of contingency costs based on the documentation provided to substantiate the proposed contingency costs. If the contingencies exceed 10% or are not approved by OGCR, OGCR encourages entities to explore the use of third-party funding as cost-share match, including local or other federal funds, such as award funds from the State and Local Fiscal Recovery Funds program. The cost-

share match must be documented in line (g) of the SF 424A form and follow OGCR’s cost-share match procedures. Please refer to FAQs #17 and #104 for guidance on adding third-party funds post-award to a Direct Component- funded project.

**Q48b. How does Treasury define the term, “broadly-accepted cost estimating methodologies” and how are they used to determine contingency costs?**

- A.** Treasury defines the term “broadly-accepted cost estimating methodologies” for budgeting contingency costs as documentation that:
- 1) Itemizes the various risks for which a contingency is budgeted (e.g., “cost overruns due to inflation,” “unmarked utility lines”);
  - 2) Provides an estimated probability of each respective event occurring that is based on past experience or publicly available data (e.g., for a cost overrun, an analysis showing the percentage of past bids that came in over the amount specified in the Requests for Proposal (RFP)); and,
  - 3) Provides the likely cost impact if the event does in fact occur, with the estimated likely cost impact based on detailed market research or historical trends (e.g., an analysis of the average percentage bids were over the opinion of probable costs for the recipient’s past projects, or a reference to an industry publication forecasting the increase in construction costs over the next year).

The analysis and assumptions underlying the estimates must be documented and provided in the Budget Narrative.

A contingency is equal to the sum of the estimated cost times its probability.

As an example, let’s say a recipient is applying for a Direct Component grant to fund a construction project to build a training academy. The total estimated construction project cost (line #16 on the SF-424C form) is \$6,500,000. Therefore, the total amount of contingencies requested cannot exceed \$650,000 (10% of the line #16 on the SF-424C form). The project’s milestone chart indicates that 12 months will pass from the time of the award to the RFP opening. The engineer uses historical data to determine that the entity’s construction costs rose 9% in the prior year for a similar building and assessed that for 80% of past projects, the bids came in over the probable opinion of cost. Therefore, the probability of a cost overrun due to inflation occurring is 80 percent, and the likely impact if it does occur is 9% of \$6,500,000. The contingency should therefore be shown as follows:

<b>Risk</b>	<b>Probability</b>	<b>Impact if it Does Occur</b>	<b>Contingency</b>
Cost overrun due to inflation	80%	585,000 (\$6,500,000 multiplied by 9%)	\$468,000

As supporting documentation for this contingency cost example, the entity would provide a spreadsheet showing the historical data supporting the estimate of 80%

probability and 9% historical inflation. Alternatively, the entity could provide citations to industry or other publications supporting these estimates.

**Q48c. If contingency costs were not included and/or approved in the initial budget, can contingencies be added?**

- A. Generally, contingency costs should be included in the initial budget. However, a recipient may submit a monetary amendment to add contingency costs to the budget post-award by following the normal amendment process. Treasury retains the discretion to make the final determination concerning the allowability and approval of contingency costs based on the documentation provided to substantiate the proposed contingency costs. See FAQs #48 and #48a for the requirements for contingency costs per 2 CFR § 200.433 and Treasury’s Guidance and FAQ #48b for the type of documentation required for contingency costs approval.

**Q48d. If contingency costs are approved, under what circumstances and when can the recipient access contingency funds?**

- A. The recipient can only draw down contingency funds from ASAP.gov when the specific event or condition for which there is a contingency has occurred. In such cases, the recipient must request prior approval from OGCR via RMGS to raise the maximum draw limit by the amount of the contingency, and OGCR has to approve this request before the recipient may draw down the contingency funds.

If the event or condition for which there is a contingency does not occur, the contingency amount associated with the event or condition will remain in ASAP.gov and will be de-obligated from the Direct Component grant at closeout.

**Q49. What is Treasury’s expectation regarding the level of detail required for the proposed budget of new awards and monetary amendments to existing awards for construction projects?**

- A. Effective 09/28/2023, Treasury will no longer process applications for new awards or monetary amendments to existing awards for construction projects without a detailed construction budget. The only exception to this requirement is when the application is for a new award that includes the planning, engineering, and design phase of the construction project, which will produce a detailed construction cost estimate. However, in cases where the award is for a phased construction project, Treasury will not consider any monetary amendment to such awards to add funds for the construction phase until sufficient planning, engineering, and design has occurred such that the applicant is able to provide a detailed construction budget.

The detailed construction budget should be the detailed construction cost estimate provided as the final deliverable from the design and engineering phase or, when the monetary amendment is requested as a result of a cost overrun during the bid process, a copy of the winning bidder’s cost proposal. Acceptable documentation may also include an opinion of probable cost prepared by an engineer if the level of detail is such that it provides a description of each item, the quantity required, and the unit

price, as well as a detailed breakdown of labor costs. Treasury will consider equivalent documentation at its discretion. An example of a construction budget that Treasury found sufficiently detailed can be found [here](#).

This change will ensure that the detailed construction costs budget estimates included in the application for new awards and monetary amendments to existing awards for construction projects reflect the decisions made during the engineering and design phase. This will also reduce the need for monetary amendments due to inaccurate or incomplete cost estimates.

## **CONSTRUCTION AND LAND ACQUISITION**

### **Q50. What is the recipient’s responsibility when real property is improved using Treasury’s RESTORE Act grant funds?**

- A.** The recipient is responsible for the administration, operation, and maintenance of the real property during its designated Estimated Useful Life. The recipient must use it for the authorized project purposes, during which time the recipient must not dispose of or encumber its title or other interests. Treasury retains an undivided equitable reversionary interest (the “federal interest”) in the real property improved, in whole or in part, with RESTORE Act Trust Funds for the Estimated Useful Life of the project.

### **Q51. How is real property defined?**

- A.** “Real Property” is defined in 2 CFR § 200.1 of the Uniform Guidance as “land, including land improvements, structures and appurtenances thereto, but excludes moveable machinery and equipment.”

### **Q52. How will the Estimated Useful Life be determined for Treasury-funded infrastructure?**

- A.** For all infrastructure funded by a Treasury grant under the RESTORE Act, the applicant will propose an Estimated Useful Life for the infrastructure in its grant application and document the method by which it determined the Estimated Useful Life. One accepted method would be to use the State’s standards for determining useful life of capital assets. Treasury’s issuance of the grant agreement will represent Treasury’s concurrence with the applicant’s proposed Estimated Useful Life.

### **Q53. What is the Estimated Useful Life of land?**

- A.** Land has an unlimited useful life.

### **Q54. What is “infrastructure” under Treasury’s implementing regulations?**

- A.** Infrastructure is a subset of real property and is a capital asset. Treasury’s implementing regulations at 31 CFR § 34.2 defines infrastructure as “the public facilities or systems needed to support commerce and economic development. . . [It] encompasses new construction, upgrades and repairs to existing facilities or systems,

and associated land acquisition and planning.” Such installations and facilities may include, but are not limited to:

- highways,
- airports,
- roads,
- buildings,
- transit systems,
- port facilities,
- railways,
- telecommunications,
- water and sewer systems,
- public electric and gas utilities,
- levees,
- seawalls,
- breakwaters,
- major pumping stations, and
- flood gates.

**Q55. How must the recipient document a federal interest in real property?**

- A. To document the federal interest in real property funded by a Direct Component grant, the recipient must perfect a Covenant of Purpose, Use, and Ownership (Covenant) by recording it in the real property records of the jurisdiction where the property is located, in accordance with local law. For construction of buildings and projects to improve real property, the federal interest must be recorded no later than the date construction and/or improvement work commences. When the award involves the acquisition of real property, the federal interest must be recorded at the same time of the real property acquisition. Treasury may require a copy of a title insurance, title report, or title opinion (by counsel licensed in the jurisdiction where the property is located) from the recipient demonstrating the validity, enforceability, and proper recording of the Covenant. Pursuant to the Covenant, the recipient must acknowledge that it holds title to the real property in trust for the public purposes of the financial assistance award, that real property has been acquired or improved with a Federal award, and that federal use and disposition conditions apply to the property. All recipients required to execute and record a Covenant or other notice of record and must provide Treasury with a copy of the recorded document displaying a recording stamp indicating where the document was recorded and the date on which it was recorded.

Treasury may approve of an alternative notice of record or waive the requirement to document the federal interest.

**Q56. What are the reporting requirements for Treasury-funded real property projects?**

- A. Pursuant to 2 CFR § 200.330 of the Uniform Guidance, the recipient must submit reports on the status of the real property annually to Treasury for the first three years

of its federal award and thereafter every five years until the end of the Estimated Useful Life or time of disposition, whichever is less. When real property is no longer needed for the originally authorized purpose, the recipient must obtain disposition instructions from Treasury, subject to 2 CFR § 200.311(c). For real property other than land, once the Estimated Useful Life of the real property has ended, the federal interest is extinguished and the federal government has no further interest in the real property.

**Q57. What type of appraisal is required by Treasury?**

- A. Treasury requires an appraisal that is a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information, as described in the Uniform Relocation Assistance and Real Property Acquisition Policies Act (Uniform Act), 42 USC § 4601(13), and the implementing regulation, 49 CFR § 24.2(a)(3).

The *Uniform Appraisal Standards for Federal Land Acquisitions* (UASFLA), also known as the “Yellow Book,” provide appraisal standards for federal land acquisitions and best practices for federally-funded land acquisition. The applicant’s appraisal should be conducted by a certified appraiser who is familiar with the UASFLA standards.

**Q58. What is the appraisal review conducted by Treasury?**

- A. Treasury contracts with a certified appraiser to review appraisals submitted by applicants and the appraisal reviews are conducted in accordance with the requirements set forth in 49 CFR § 24.104 and UASFLA. Specifically, 49 CFR § 24.104(a) requires that, “the Agency shall have an appraisal review process and, at a minimum: A qualified review appraiser (see § 24.103(d)(1) and appendix A, § 24.104) shall examine the presentation and analysis of market information in all appraisals to assure that they meet the definition of appraisal found in 49 CFR 24.103 and other applicable requirements, including, to the extent appropriate, the UASFLA, and support the appraiser’s opinion of value. The level of review analysis depends on the complexity of the appraisal problem.”

**Q59. What are the willing seller requirements for land acquisition?**

- A. The RESTORE Act and Treasury’s implementing regulations at 31 CFR § 34.803(f) requires that Direct Component funds may only be used for land acquisition from a willing seller. As such, applicants that have projects that include land acquisition must notify the property owner that the acquisition must be from a willing seller and obtain from the property owner a signed statement that identifies the owner as a willing seller. The applicant must submit the willing seller documentation to Treasury with its grant application for a land acquisition project.

**PROCUREMENT**

**Q60. May a contractor who enters into a contract with an eligible Louisiana parish or Florida county to prepare a multiyear plan and/or grant application compete for subsequent procurements related to that multiyear plan and/or grant application?**

- A. No. Consistent with 2 CFR § 200.319, to help ensure objective contractor performance and eliminate unfair competitive advantage, a contractor who prepares the multiyear plan and/or grant application, or develops the draft specifications, requirements, statements of work, and/or invitation for bids or request for proposals for the project grant may not compete for subsequent procurement contracts to implement that multiyear plan or project grant.

**Q61. What procurement procedures should states, counties, and parishes use?**

- A. States should follow state procurement procedures and as applicable, the procurement standards set forth in 2 CFR § 200.321 through 2 CFR § 200.323, and 2 CFR § 200.327 (see 2 CFR § 200.317). Counties and parishes should follow their own procurement procedures; however, the procedures followed by counties and parishes must be consistent with and conform to the procurement standards set forth in 2 CFR § 200.318 through 2 CFR § 200.327.

**Q62. When is it allowable for an eligible Louisiana parish or Florida county to hire/contract without competition?**

- A. For a non-Federal entity that is not a state, e.g., an eligible Louisiana parish or Florida county, all procurement transactions must be conducted in a manner providing full and open competition pursuant to 2 CFR § 200.319(a). The OMB's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards states at 2 CFR § 200.320(c):

Procurement by noncompetitive proposals may be used when one or more of the following circumstances apply:

- 1) The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold;
- 2) The item is available only from a single source;
- 3) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- 4) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or
- 5) After solicitation of a number of sources, competition is deemed inadequate.

**Q63. Are recipients required to comply with regulations regarding conflicts of interest related to procurement?**

- A. Yes. No employee, officer, or agent of a recipient may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. The recipient must maintain written standards of conduct, to include conflict of interest policies, governing the actions of its employees who are engaged in the award and administration of a contract. The written standards must provide for disciplinary actions to be applied for violations of such standards by its officers, employees, or agents. See 2 CFR § 200.318(c) for additional information on procurement standards.

**Q64. When does the applicant need to comply with the Davis-Bacon Act for grants awarded by Treasury under the RESTORE Act?**

- A. Davis-Bacon Act-related provisions apply to grants awarded by Treasury under the RESTORE Act in two situations:
- Davis-Bacon Act-related provisions are applicable for a construction project if it is for the construction of a project that can be defined as a “treatment works” in 33 USC 1292; and
  - Davis-Bacon Act-related provisions are applicable for a construction project regardless of whether it is a “treatment works” project when Direct Component award funds are used on a construction project in conjunction with federal financial assistance from another federal agency that requires enforcement of Davis-Bacon Act-related provisions.

**Q65. Where can the applicant go for more information on the Davis-Bacon Act as it may apply to the applicant?**

- A. Please contact your project officer at Treasury. Also, the Department of Labor (DOL) oversees the administration of Davis-Bacon Act-related provisions and has extensive information on the Davis-Bacon Act and Davis-Bacon Act-related provisions on the [DOL website](#).

**Q66. What are “treatment works”?**

- A. Pursuant to 33 USC 1292, the definition of treatment works means:
- 1) Any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature to implement 33 USC 1281 of the Federal Water Pollution Control Act, or necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment, and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any works, including the acquisition of the land that will be an integral part of the treatment process (including land used for the storage of treated wastewater in land treatment systems prior to land application) or is used for ultimate disposal of residues resulting from such treatment and



- 2) Any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste, including storm water runoff, or industrial waste, including waste in combined storm water and sanitary sewer systems.

Examples of “treatment works” projects funded with Direct Component grants to which Davis-Bacon Act requirements apply include but are not limited to the installation of or upgrades to:

- wastewater treatment plants and decentralized wastewater treatment systems;
- connections of lateral sewer lines from private residences or public properties to the public sewer;
- stormwater control systems, including stormwater ponds and outfalls;
- sewer systems; and
- water reuse systems.

However, for purposes of a Direct Component grant for the construction of a building that is not itself a treatment works, the connection of the building to an existing public sewer or septic system will not by itself make such a project a treatment works project.

Further, the installation of or improvements to a bathroom, such as a bathroom in a public building or a standalone bathroom in a public park, and the connection of the bathroom to an existing public sewer or septic system would not be considered a treatment works project.

Recipients should consult with Treasury regarding other projects that include work that may be within the definition of “treatment works.” Treasury will consider whether or not such elements are merely incidental to the primary purpose or purposes, as determined by Treasury, of the award.

In the case of a project that is determined to be a treatment works project, if the component of the project that constitutes a treatment works is addressed in a separate contract between the recipient (or subrecipient) and contractor or a separate task order under the contract, the recipient need only comply with the Davis-Bacon Act requirements with respect to that particular component. The recipient (or subrecipient, as applicable) will have to monitor the contractor’s compliance with the Davis-Bacon Act requirements applicable to that component, and the contractor will have to maintain documentation showing its compliance with respect to that component.

## **Buy America Requirements – General Questions**

### **Q67. What is the Build America, Buy America Act?**

- A. On November 15, 2021, President Biden signed into law the Infrastructure Investment and Jobs Act (“IIJA”), Pub. L. No. 117-58, which includes the [Build America, Buy](#)

[America Act \(the Act\)](#) that strengthens Made in America Laws and will bolster America’s industrial base, protect national security, and support high-paying jobs. Unless a waiver covering the project is in effect, the Act requires that no later than May 14, 2022, Treasury must ensure that grants for infrastructure projects made under the RESTORE Act, Direct Component program comply with the Buy America Preference requirements set forth in section 70914 of the Act by including it in the terms and conditions of each applicable award.

The Act requires the following Buy America Preference requirements:

- (1) All iron and steel used in the project are produced in the United States. This means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
- (2) All manufactured products used in the project are produced in the United States. This means the manufactured product was manufactured in the United States, and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
- (3) All construction materials are manufactured in the United States. This means that all manufacturing processes for the construction material occurred in the United States.

**Q68. What is “infrastructure” under the Build America, Buy America Act?**

- A.** The term “infrastructure” under the Act means public infrastructure projects including but not limited to the structures, facilities, and equipment for, in the United States, roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property.

Treasury is working with the OMB Made in America Office (MIAO) to identify, develop, and publish additional definitions to terms that further describe how Buy America Preference requirements apply to the RESTORE Act, Direct Component program. This includes identifying and listing RESTORE Act eligible activities that include construction but that do not qualify as “infrastructure” as defined by the Act. Definitions used in the Buy America Preference award term are available on the Treasury [RESTORE Act - Buy America Preference webpage](#).

**Q69. Does the Buy America Preference requirements set forth in section 70914 of the Build America, Buy America Act apply to Treasury’s RESTORE Act grant programs?**

- A. RESTORE Act, Direct Component grants for infrastructure projects as defined by the Act are required to comply with the Buy America Preference requirements set forth in section 70914 of the Act. The Buy America Preference requirements applies to all new Direct Component grants and monetary amendments to existing Direct Component grant for an infrastructure project made on or after May 14, 2022 unless a waiver covering the project is in effect. The Buy America Preference requirements do not apply to grants under the Centers of Excellence Research Grants Program.

**Q70. Does the Buy America Preference requirements apply to every Direct Component award that includes construction activities?**

- A. No. Prior to making an award, Treasury will determine whether funds from a particular award under the Direct Component program will be used to procure iron, steel, manufactured products, or construction materials for an infrastructure project as defined in section 70912(5) of the Act and OMB Memorandum M-22-11. If Treasury determines that no funds will be used to procure such items for an infrastructure project, then the Buy America Preference requirements will not apply to that award. See FAQs #78 and #79 for more specifics regarding the application of the Act to Direct Component-funded construction projects and the types of Direct Component projects that are not subject to the Buy America Preference requirements.

**Q71. Federal financial assistance that are for “pre and post disaster or emergency response expenditures” are exempt from the application of Buy America Preference requirements outlined in section 70914 of the Build America, Buy America Act. Does the Direct Component grants qualify for this “post disaster” exemption?**

- A. According to the OMB Memorandum M-22-11, “pre and post disaster or emergency response expenditures” exempt from the Buy America Preference requirements “consist of expenditures for financial assistance that are (1) authorized by statutes other than the Stafford Act, 42 U.S.C. §§ 5121 et seq., and (2) made in anticipation of or response to an event or events that qualify as an “emergency” or “major disaster” within the meaning of the Stafford Act, *id.* § 5122(1), (2).” Direct Component grants do not qualify for the “post disaster” exemption because the Deepwater Horizon oil spill was not a “major disaster” or “emergency” as determined by the President as provided in the Stafford Act at 42 USC § 5122(2).

**Q72. Do the Buy America Preference requirements apply to RESTORE Act grants which are made from the Gulf Coast Restoration Trust Fund not appropriated funds?**

- A. Yes. As stated in section II of OMB Memorandum M-22-11, the Buy America Preference requirements set forth in section 70914 applies to all federal financial assistance as defined in 2 CFR 200.1, “whether or not funded through IJJA-where funds are appropriated or otherwise made available and used for a project for infrastructure.” (see also section 70912(4)(A) of the Act).

**Q73. Are there resources for the Direct Component grant recipients and subrecipients to identify available construction materials that comply with Buy America Preference requirements?**

- A. Resources are in development. The Act directs OMB to issue guidance that will assist agencies as they apply the new Buy America Preference requirements. OMB must issue standards that define the term “all manufacturing processes” as it relates to construction materials. OMB sought input from the public concerning the Act’s requirement that any infrastructure projects funded with Federal financial assistance use only construction materials “produced in the United States.”

OMB has issued a [Request for Information](#) that sought input from the public concerning the Act’s requirement that any infrastructure projects funded with Federal financial assistance use only construction materials “produced in the United States.” Treasury will include links on the [RESTORE Act Buy America webpage](#) to any resources that are developed and published as a result of this request.

**Q74. Where can I find more information about Buy America Preference requirements?**

- A. OMB has established the [Made in America Office](#), which has provided more information about Buy America Preference requirements and waivers. This includes a presentation developed by OMB that guides the reader through the OMB Buy America Preference implementation guidance.

## **WHAT TRIGGERS BUY AMERICA PREFERENCE REQUIREMENTS**

**Q75. Would all funds proposed in the budget of a new Direct Component award for an infrastructure project, including third-party funds, be required to comply with the Buy America Preference requirements described in the Act?**

- A. Yes. The Buy America Preference requirements apply to all iron, steel, manufactured products, and construction materials purchased for the infrastructure project, even if it is funded by both Federal and non-Federal funds under one or more awards.

**Q76. Would the Buy America Preference requirements apply to an existing Direct Component award for infrastructure made before May 14, 2022, if the recipient requires additional third-party funds to cover actual construction costs that are higher than those estimated at the time of award?**

- A. No. The Buy America Preference requirements are only applicable if the recipient requests and is approved for a monetary amendment to its existing Direct Component award for an infrastructure project after May 14, 2022 and there is no waiver in effect for that project, or if the recipient supplements the infrastructure project with funding from another federal financial assistance award that is subject to the Buy America

Preference requirements set forth in section 70914 of the Act or other domestic procurement preference requirements.

**Q77. Would the Buy America Preference requirements apply to a monetary amendment to an existing Direct Component grant for an infrastructure project made after May 14, 2022 if the additional funds will be used to cover increased costs due to cost escalation and inflationary pressures for executed contracts and budgets for purchase of covered materials agreed upon prior to May 14, 2022?**

- A.** The Buy America Preference requirements will not apply to a monetary amendment to an existing Direct Component grant for an infrastructure project made after May 14, 2022, if a waiver is in effect at the time that Treasury obligates funds for the monetary amendment, or the additional requested Direct Component funds is not for the procurement of iron, steel, manufactured products, or construction materials for use on the infrastructure project. However, the Buy America Preference requirements will apply to the monetary amendment to an existing Direct Component grant for an infrastructure project if it is made after May 14, 2022 and there is no waiver in effect that covers the project, and the additional funds the recipient seeks are for the procurement of iron, steel, manufactured products, or construction materials for use on the infrastructure project.

**Q78. Would the Buy America Preference requirements apply to Direct Component grants for non-infrastructure activities (e.g., architectural design costs and administrative costs)?**

- A.** No. Buy America Preference requirements does not apply to non-infrastructure spending under an award that also includes an infrastructure project. The Buy America Preference is only applicable if the recipient is requesting Direct Component funds under a new award or an amendment to an existing award to purchase iron, steel, manufactured products, or construction materials for use on an infrastructure project.

**Q79. Does the Buy America Preference requirements apply to all Direct Component grants for construction or real property improvements?**

- A.** No. The Buy America Preference requirements only apply to Direct Component grants for infrastructure projects as defined in section 70912(5) of the Build America, Buy America Act and the Office of Management and Budget (OMB) memorandum, M-22-11 issued on April 18, 2022. Treasury will determine on a case-by-case basis whether the Buy America Preference requirements apply to construction or real property improvement projects that do not squarely fall within the definition of infrastructure as set forth in the Build America, Buy America Act and OMB memo M-22-11.

**Q80. Which types of Direct Component construction projects are not considered infrastructure as defined by the Build America, Buy America Act?**

Treasury has determined that construction projects whose primary purpose is to protect or restore the environment and/or recover natural ecosystem functions are not infrastructure as defined by the Act. Such projects are not subject to the Buy America Preference requirements outlined in the Act.

Examples of Direct Component restoration construction projects that Treasury would not generally consider to constitute infrastructure would include:

- Marsh restoration and creation;
- Dune restoration;
- Greenway trails;
- Blueway trails;
- Coral reef outplanting and nurseries; and
- Oyster reef restoration.

**Q81. Does the Buy America Preference requirements apply to Direct Component awards for infrastructure projects awarded prior to May 14, 2022?**

- A. No. The Buy America Preference requirements do not apply retroactively to Direct Component awards made prior to May 14, 2022. If in the future the costs of the project increase, requiring a change order to the contract, and a monetary amendment to an existing grant is warranted to purchase iron, steel, manufactured products, or construction materials for use on an infrastructure project, then the Buy America Preference requirements will apply to the award. See response to FAQs #75 and #76 for more detail about when the Buy America Preference applies to amendments to existing Direct Component grants.

## **WAIVERS FROM BUY AMERICA PREFERENCE REQUIREMENTS**

**Q82. Are there any general applicability waivers from application of the Buy America Preference requirements in effect for the RESTORE Act, Direct Component awards?**

- A. Treasury has a general applicability public interest adjustment period waiver from application of the Buy America Preference requirements in order to provide Treasury and the Direct Component recipients with a six-month adjustment period to develop policies and procedures for implementing the requirements. The waiver was finalized on July 13, 2022 and is effective from July 13, 2022 to January 12, 2023. The waiver is posted on the [RESTORE Act Buy America Preference webpage](#).

**Q83. What other general applicability waiver(s), if any, will Treasury propose?**

- A. Treasury has identified the need to request from OMB several additional general applicability waivers that Treasury proposes are in the public interest. These include, but are not limited to, a De Minimis waiver (project purchases below a de minimis threshold such as 5% of project costs up to some maximum); a Small Grants waiver (for projects below the simplified acquisition threshold, or other Agency-defined

limit); a Minor Components waiver (for miscellaneous minor components comprising no more than some minimum of the material total cost); and a Pipeline waiver (for projects that are through a design phase and in the implementation pipeline prior to enactment of the Act). Treasury will use the six-month adjustment period to develop and finalize additional waivers, publish them for public comments, and approve them.

Treasury has stood up a Working Group with Direct Component grant recipients that, among other activities, will work to identify, scope, and develop general applicability waivers. If you are interested in joining the Working Group, please contact the OGCR Policy Analyst, Bridget Cotti-Rausch ([bridget.cotti-rausch@treasury.gov](mailto:bridget.cotti-rausch@treasury.gov)) for more information.

**Q84. Will there be opportunities to expedite a waiver request in situations where delay would be injurious to the project?**

- A. In limited situations where there is an urgent need in an unforeseen and exigent circumstance, Treasury has the authority to waive the application of Buy America preference requirements without submitting the waiver for public comment and to OMB for their review and determination. Treasury will evaluate these requests on a case-by-case basis.

It is the intent of Treasury to implement the Buy America Preference requirements in such a way that increases domestic production but keeps projects moving. Treasury will consider, in a timely manner, a recipient's request for nonavailability waivers should the market research indicate that there is insufficient supply of a necessary material or if the timing of production is insufficient to satisfy the requirements of the project and meet project timelines. Treasury encourages RESTORE Act, Direct Component recipients to coordinate early with their subrecipients and contractors so that there is sufficient time to perform thorough market research to identify potential qualifying alternate items, products, or materials.

## **ADMINISTRATIVE COSTS**

**Q85. Is there a limitation on administrative costs under Direct Component awards?**

- A. Yes. A recipient may not use more than three percent of the grant funds received for administrative costs. Administrative costs are defined at 31 CFR § 34.2 as "indirect costs for administration incurred by the Gulf Coast states, coastal political subdivisions, and coastal zone parishes that are allocable to activities authorized under the Act. Administrative costs do not include indirect costs that are identified specifically with, or readily assignable to, facilities as defined in 2 CFR § 200.414." Costs borne by subrecipients and contractors do not count toward the three percent cap.

**Q86. May a recipient with an open grant in which indirect costs were capped under the grant-by-grant method submit a grant amendment to add funds or revise the**

**budget to increase the amount it receives for indirect costs for that grant under the aggregate method for calculating administrative costs?**

- A. Yes. A recipient of an open grant may submit a request to amend the grant to add funds or revise the budget to increase the amount for indirect costs for the project, not to exceed its approved indirect rate, provided it has sufficient funds in its administrative cost pool.

**Q87. How will a recipient know how much money is available in its administrative cost pool to pay for otherwise eligible indirect costs for its grants?**

- A. Treasury will periodically post to the RESTORE Act website the amount of funds each recipient has in its Direct Component administrative cost pool, in a manner similar to how Treasury posts periodic updates to the Trust Fund allocation tables on the RESTORE Act website.

**Q88. If a recipient does not expend all of its budgeted indirect costs by the time a grant is closed out, are the unused funds for indirect costs returned to the administrative cost pool?**

- A. Yes. Unused funds allocated for indirect costs for a project will be returned to a recipient's administrative cost pool when the grant is closed out. The process is similar to the deobligation of unused project funds and return to a recipient's Trust Fund allocation following the closeout of an award.

**Q89. May a recipient receive more funds for indirect costs for a grant than the amount they would receive under its Negotiated Indirect Cost Rate or de minimis rate if its administrative cost pool holds sufficient funds available to support such a request?**

- A. No. A recipient may not receive more funds for indirect costs in a grant than is allowed based on its Negotiated Indirect Cost Rate or de minimis rate for that grant, regardless of how much funding is available in its administrative cost pool.

**Q90. If a recipient lacks sufficient funds in its Direct Component administrative cost pool to cover the full amount of indirect costs on a grant, may it make up the shortfall by using funds available in its Spill Impact Component administrative cost pool?**

- A. No. Administrative cost pools are established by component and remain discrete. A shortfall in the administrative cost pool for one component may not be offset by using funds available in the administrative cost pool of another component.

**Q91. May a recipient choose to use less than the full amount of funding available in its administrative cost pool to pay for indirect costs on a grant?**

- A. Yes. A recipient is free to limit its recovery of indirect costs on any grant. A recipient has the discretion to use or not use any of the funds in the administrative cost pool for



a grant, or to use only a portion of the total amount to which it is entitled to pay for a project's indirect costs under a grant. A recipient may decide to limit its use of funds in its administrative cost pool on one grant in order to make sure the administrative cost pool has sufficient funds to cover its indirect costs on another grant. A recipient may never spend more than it has available in its administrative cost pool for indirect costs, but it is free to spend less for indirect costs than the amount available in its administrative cost pool.

**Q92. If a recipient lacks sufficient funds in its administrative cost pool at the time of application and award of a grant, may it later amend the grant to use funds subsequently deposited into the Trust Fund and available in its administrative cost pool?**

A. Yes. See the answers to questions in FAQs #85 and #86 above.

**Q93. May a recipient request reimbursement for indirect costs previously capped at 3% of a total award under the grant-by-grant method for a grant that has been closed?**

A. In limited circumstances, a recipient may request that Treasury reopen a closed grant to be reimbursed for indirect costs that were capped at 3% under the grant-by-grant method. Additionally, if a recipient is unable to recover the full amount of a grant's indirect costs due to insufficient funds in its administrative cost pool at the time the award is closed, a recipient may ask Treasury to reopen the award and seek full indirect cost recovery if and when its administrative cost pool holds sufficient funds. To minimize the burdensome process of opening closed grants, Treasury strongly encourages recipients to inform Treasury *prior to closeout* if they plan to later seek reimbursement of indirect costs for an award under the aggregate method once sufficient funds become available in their administrative cost pool.

**Q94. How does a recipient request to use the aggregate method for calculating administrative indirect costs?**

A. A recipient may request the use of the aggregate method for calculating administrative indirect costs by providing the following information with a new award application, amendment request, or closeout:

1. A written request to use the aggregate method for calculating administrative indirect costs and the dollar amount requested; and,
2. A table of administrative costs requested to date and the available funds in the recipient's administrative indirect cost pool. (NOTE: We recommend using the worksheet from the Aggregate Method Administrative Cost Tool).

## **OTHER APPLICATION PROVISIONS**

**Q95. What must an applicant do if it does not have a negotiated indirect cost (IDC) rate?**

- A. The answer to this question differs depending on the applicant. A cognizant agency for negotiating IDC rates is determined by the Federal agency that provides a recipient with the majority of its federal funding. If they do not have a current IDC rate, some applicants must negotiate one with their cognizant agency. Some applicants may not need to negotiate an IDC with their cognizant agency. If an applicant has never negotiated an IDC rate with the Federal government and receives \$35 million or less in direct federal funding per year, it may be eligible to use 10% of the project's modified total direct costs as its eligible IDC rate in lieu of negotiating an IDC rate with its cognizant agency. However, if it does so, it must keep the documentation of this decision on file (see 2 CFR § 200.414(f)), and must contact its cognizant federal agency to determine if that agency will require the applicant to submit its IDC documentation for review. Treasury staff is available to discuss applicants' specific indirect cost rate questions on a case-by-case basis.

**Q96. Is there a cost sharing or matching requirement for Direct Component grant?**

- A. No. There is no cost sharing or matching requirement for Direct Component grant.

**Q97. What does Treasury require if an applicant wants to use Direct Component funds as the non-Federal cost-share of another Federal award?**

- A. Treasury's implementing regulations at 31 CFR § 34.200(b) allow eligible applicants to use funds under the Direct Component to satisfy the non-Federal cost-share of an activity that is eligible for funding under 31 CFR § 34.201 and authorized by Federal law. Applicants seeking to use Direct Component funding to cover their non-Federal cost-share of another federally funded project or program which is a Direct Component eligible activity must include the following in its application to Treasury:
1. If the other Federal agency already has approved the activity, the applicant must submit a copy of the grant agreement or other approval documents as part of its Direct Component application;
  2. If the other Federal agency has not approved the activity, the applicant must submit a letter of commitment from that agency or other documentation that indicates that the applicant will receive funding, along with the project description/scope of work, and performance metrics as part of its Direct Component application; and
  3. If the other Federal agency has not approved the activity, the applicant must submit a narrative describing the activity's status and the approximate timeline for the Federal agency to approve or decline the activity as part of its Direct Component application.

Treasury will not award funds for the non-Federal cost-share until the other Federal agency has approved the activity and Treasury received documentation of the approval.

**Q98. The RESTORE Act Direct Component Financial Assistance Application requires applicants to identify key personnel. Who are key personnel?**

- A. Key personnel should include the applicant organization director who is authorized to sign the grant application and award, the technical person who is responsible for the project, and the financial person who is responsible for the award's accounting and financial records. The RESTORE Act Standard Terms and Conditions require recipients to notify Treasury if there are any changes in identified key personnel.

## **PROGRAM INCOME**

### **Q99. How would a recipient (or subrecipient) quantify and report program income if the facility being improved with RESTORE Act grant funds is operating at a loss during the award period of performance?**

- A. Treasury authorizes RESTORE Act award recipients to calculate net income in accordance with 2 CFR § 200.307(b) which provides “costs incidental to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the Federal award.”

### **Q100. If a recipient is using RESTORE Act grant funds to make improvements to only a portion of an existing facility, would revenue generated by other portions of the facility be considered program income?**

- A. Program income is defined in 2 CFR § 200.1 as “gross income earned by the non-Federal entity that is directly generated by a supported activity or earned as a result of the Federal award during the period of performance;” therefore, the income generated by an existing portion of the facility is not considered program income, so long as no improvements to the amenities of the existing portion are being paid for by Direct Component funds. Any income generated during the Federal award period of performance from the use of any new or improved facility features or amenities that are purchased with Direct Component funds would be considered program income.

For example, a state park is spending Direct Component grant funds to improve and create additional campsites for recreational vehicles. During the award period of performance, the existing campsites are continuing to generate income for the park. The income generated by existing campsites is not considered program income because no improvements to the amenities of the existing campsites are being paid for by Direct Component funds. Any income generated during the award period of performance from the use of the new campsites for recreational vehicles that are paid for with Direct Component funds, is program income.

All program income determinations are project scope-specific and should be determined prior to award or at the earliest point possible post-award. Consult with your OGCR project officer about whether a proposed improvement directly generates income as a result of the Federal award.

## **POST-AWARD**

**Q101. How should funds be drawn down if there is a non-federal match on the award?**

- A. Federal and non-federal funds should be drawn proportional to the percentage of federal to non-federal funds in the award for all allowable and allocable incurred costs, unless otherwise specified in the award document. Treasury may include a Special Award Condition in the Notice of Award specifying the percentage of Direct Component federal funds and non-federal funds.

**Q102. How should a recipient account for the non-federal share on a Federal Financial Report (FFR)?**

- A. The recipient must account for all costs in the award, which includes costs associated with both the federal and non-federal share, and provide the information on the semiannual FFR, SF 425 under Recipient Share, rows 10 i-k.

**Q103. Is prior approval by Treasury required for a subrecipient budget revision?**

- A. Prior approval from Treasury is only required when the subrecipient's budget revision requires a change to the recipient's federal award. Otherwise, the recipient is responsible for addressing its subrecipient's budget revisions. Recipients should notify Treasury of its subrecipients' budget revisions in their semiannual performance and financial reports.

**Q104. Is a monetary amendment required prior to a recipient adding third-party funds to a Direct Component project to cover increased costs due to inflationary pressures and cost escalation?**

- A. No. A monetary amendment is only required when a recipient is seeking additional Direct Component funds for an existing Direct Component grant or when the addition of third-party funds will also result in a new activity or a change to the scope or size of the project under an existing Direct Component grant. When the recipient is only adding third-party funds to supplement the increased costs on its existing Direct Component project due to inflationary pressures and cost escalation in materials and services the recipient would need to notify Treasury in writing at the time that it is determined that third-party funds will be used to cover the increased costs and provide evidence sufficient to Treasury that the third-party funds are immediately available for use on the project (see the proof of other funds guidance below). Once Treasury is satisfied and accepts the information provided, then the recipient may proceed with using the third-party funds.

The final grant budget can be updated to reflect the third-party funds if the grant is later amended or at closeout when the grant budget should be adjusted to reflect the additional third-party funds. Treasury will accept the following documentation as proof of available other funds:

- Bonds: When an applicant wishes to use bond funds as part of its budget on a project using Direct Component funds, it must show that it has the legal capacity and authority to issue bonds sufficient to cover the total cost of the project less the federal funds of the Direct Component grant. A statement from the applicant’s attorney or bond attorney certifying to the applicant’s capacity and authority will suffice as documentation.
- Grants/loans: When an applicant wishes to use a grant or loan from a third party as part of its budget on a project using Direct Component funds, it must provide a letter of commitment or similar confirmation, signed by an authorizing official, that it will receive a grant or loan from a third party sufficient to cover the total cost of the project less the federal funds of the Direct Component grant.
- Local funds (cash): When an applicant wishes to use cash as part of its budget on a project using Direct Component funds, it must submit as part of its application an assurance signed by its Chief Executive Officer, attorney, or authorizing official certifying that the local funds will be available for the project, have been budgeted expressly for the project, and will not be used for any purpose other than the project.

## COMPLIANCE

### **Q105. If an eligible applicant identifies issues as part of its operational self-assessment (OSA), how should the applicant address them prior to receiving a grant award?**

- A. If an eligible applicant identifies issues, the applicant should document them in its OSA and take measures to meet the requirements outlined in 2 CFR § 200.303 (Internal controls) of the OMB’s Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. This section states that “[t]he non-Federal entity must: (a) Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in ‘Standards for Internal Control in the Federal Government’ issued by the Comptroller General of the United States and the ‘Internal Control Integrated Framework’, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).”

### **Q106. How should eligible applicants monitor their own performance and compliance and that of their subrecipients?**

- A. Eligible applicants must monitor their own performance and compliance to adequately report their performance to Treasury. Pass-through entities must manage and monitor their subrecipients in accordance with 31 CFR §§ 200.331 through 200.333, and:

- Ensure that subrecipient agreements have all the information required by 2 CFR §200.332 and all terms and conditions of the grant award
- Evaluate and document the risk of each subrecipient
- Confirm that the subrecipient is not suspended or debarred
- Create written monitoring procedures
- Document compliance (periodic reporting, reports of findings, corrective action plans and follow-up)
- Review subrecipient Single Audit reports and take necessary action

## **SPECIAL LOUISIANA PARISH PROVISIONS**

### **Q107. Are the Louisiana Parish Allocations specified in the Trust Fund Allocation Tables effective?**

- A.** Yes, the Louisiana Parish Allocations specified in the Trust Fund Allocation Tables became effective October 14, 2014, when Treasury published an interim final rule specifying allocations for each Louisiana parish. The final rule reiterates the previously specified allocation percentages, which became final on the effective date of the final rule, February 12, 2016. They are based on a weighted formula in the RESTORE Act and data from the United States Census Bureau and the United States Coast Guard. *See 79 Federal Register 44325.*

### **Q108. Must a Louisiana parish certify to the Governor that the parish has a comprehensive land use plan before submitting a Direct Component application to Treasury?**

- A.** Yes. In order to have a complete Direct Component application, a Louisiana parish must include with the application its certification to the Governor that the parish has a comprehensive land use plan. If the parish chooses to submit a planning assistance grant application for the preparation of a multiyear plan, the parish must include the certification as part of its planning assistance grant application.

### **Q109. May a Louisiana parish prepare a multiyear plan without a comprehensive land use plan certification?**

- A.** Yes. A Louisiana parish may begin work on a multiyear plan prior to certifying to the Governor that the parish has a comprehensive land use plan. However, Direct Component planning assistance funds are not available for the preparation of a multiyear plan until after the parish includes with the application a certification to the Governor that the parish has a comprehensive land use plan.

## **RESTORE GRANT MANAGEMENT SYSTEM (RGMS)**

**Q110. How may an eligible entity under Treasury’s RESTORE Act grant programs obtain access to Treasury’s RESTORE Grants Management System (RGMS) for its employees and contract staff?**

- A.** RGMS was set up to allow eligible entities to manage their own user accounts. Any RGMS user assigned to the Project Investigator/Project Director (PI/PD) role may add or remove users with the following roles: Authorized Official (AO), PI/PD, Program Support Staff, Financial Officer, and Financial Support Staff. Please see the RGMS User Guide for a complete description of the permissions for each of these roles. Additionally, the PI/PD may change user roles for existing system users. For example, the PI/PD may change the role of their entity’s user in RGMS from Financial Support Staff to Financial Officer.

If an eligible entity’s designated PI/PD is unable to discharge his or her duties regarding managing user access to the entity’s account on RGMS, either because that individual is no longer employed by the entity, has been reassigned to another role, or is on extended leave, the entity must designate another employee as the PI/PD in RGMS. In order to do so, the entity’s AO (which must be the same individual as the individual with an active AO user account in RGMS) must email [RGMShelpdesk@treasury.gov](mailto:RGMShelpdesk@treasury.gov) with this request and copy the OGCR Awards Program Analyst assigned to the entity. This request must be on the entity’s letterhead, be signed by the AO designated in RGMS, and include the full name, title, direct work phone number, and work email address of the employee for whom the AO is requesting a PI/PD user role in RGMS.

If an eligible entity’s designated AO is unable to discharge his or her duties regarding managing user access to the entity’s account on RGMS, either because that individual was not re-elected, is no longer employed by the entity, has been reassigned to another role, or is on extended leave, the entity must designate another employee as the AO in RGMS. In order to do so, the entity’s most senior official (i.e., the most senior elected official if the entity is a parish or county, such as the parish president, or if the entity is a state, the executive director of the state agency delegated to administer the Direct Component and/or Centers of Excellence Research Grants Program grant(s) on behalf of the state entity) must email [RGMShelpdesk@treasury.gov](mailto:RGMShelpdesk@treasury.gov) with this request and copy the OGCR Awards Program Analyst assigned to the entity. This request must be on the entity’s letterhead, be signed by the entity’s most senior official, and include the full name, title, direct work phone number, and work email address of the employee for whom the entity’s most senior official is requesting an AO user role in RGMS.

Please note that while contractors may serve in the Program Support Staff or Financial Support Staff, or Financial Officer roles, under no circumstances shall they be permitted to have PI/PD, AO, or FO roles in RGMS.