

American Recovery and Reinvestment Act of 2009
Implementing Guidance
(February 2009)

Background

The American Recovery and Reinvestment Act of 2009 (Public Law 111-5) was enacted on February 17, 2009. The purpose of this guidance is to provide information on funding, project selection, eligible activities, and specific requirements.

I. General

- A. Appropriation of Funds** - The American Recovery and Reinvestment Act of 2009 (ARRA) appropriates \$27,500,000,000 from the General Fund of the Treasury. These funds are in addition to contract authority provided in FY 2009 and FY 2010. The Fiscal Management Information System (FMIS) program codes are as shown below. DELPHI accounting codes will be provided upon receipt of the Treasury Symbol.

<u>Program Category</u>	<u>Program Code</u>
Highway Infrastructure Investment Grants	
-Transportation Enhancements	C220
- Urbanized Areas over 200K Population	C230
- Areas with Population equal to or less than 200K	C200
- Rural Areas with Population under 5K	C250
- Available for Use in Any Area (flexible)	C240
Puerto Rico Highway Program	CP10
Territorial Highway Program	CT10
Construction of Ferry Boats	C950
Indian Reservation Roads	D110
Park Roads and Parkways	D170
Forest Highways	D180
Refuge Roads	D190
Highway Surface Transportation and Technology Training	C490
Disadvantaged Business Enterprise Bonding Assistance	D480

- B. Obligation Authority** - As a general fund appropriation, ARRA funding is not subject to any obligation limitation that applies to Federal-aid contract authority. Specifically, the amounts made available shall not be subject to any limitations on obligations for Federal-aid highways or highway safety construction programs set forth in any Act.
- C. Federal Share** - The Federal share payable on account of any project or activity carried out with funds made available by the ARRA shall be at the option of the recipient, up to 100% of the total project cost. ARRA funds cannot be used as the non-Federal match for other Federal funds.
- D. Period of Availability for Obligation and Expenditure** – Funds remain available for obligation through September 30, 2010 (with the exception of the funds for administration and oversight activities, which are available until September 30, 2012), but are subject to redistribution requirements described in Section III. Deobligated funds are available for reobligation to another ARRA eligible activity within the State only during the period of

availability. Once the period of availability for obligation has expired, funds will not be permitted to be reobligated.

Obligated balances are available for expenses incurred until September 30, 2015, at which point any remaining balance will be canceled.

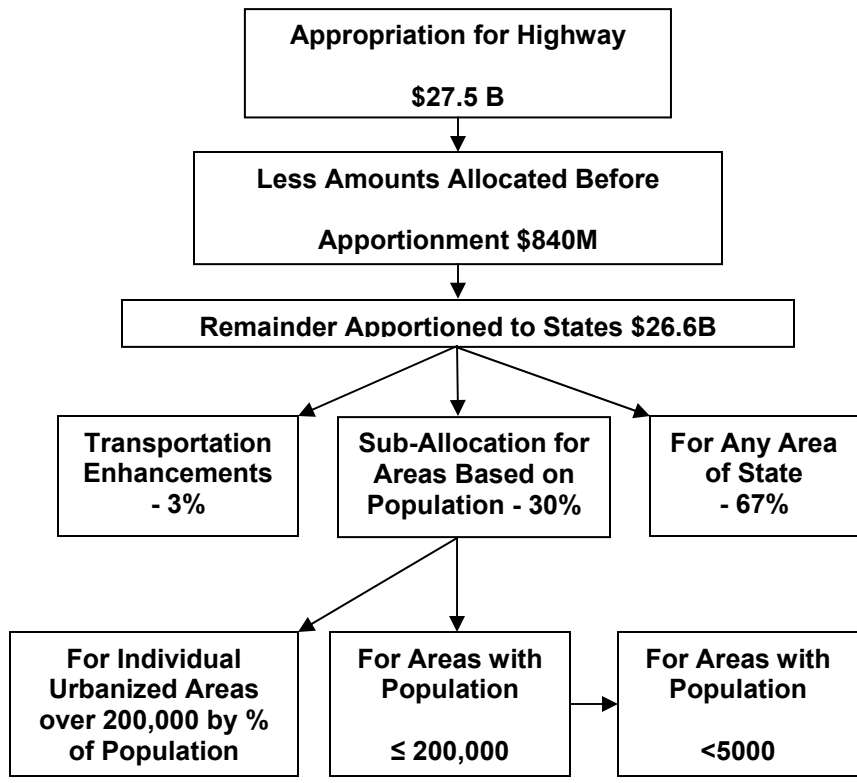
- E. Applicability of Title 23 and Title 49 Requirements** - The statutory provisions contained in Chapter 1 of Title 23 United States Code (U.S.C.) are applicable to all ARRA projects, with two exceptions. Indian Reservations and Federal lands and the Territorial Highway Program shall be administered in accordance with Chapter 2 of Title 23 U.S.C. and funds made available for Disadvantaged Business Enterprises Bonding Assistance shall be administered in accordance with Chapter 3 of title 49 U.S.C.
- F. FMIS Requirements** – The following items must be included in FMIS to facilitate proper reporting on ARRA funds. Additional reporting requirements are contained in Section VI.A.
 - 1. STIP Reference** - Funds obligated in the FMIS must include the STIP reference in the project information data collection field.
 - 2. State Project number** – must be included on all project agreements to facilitate ARRA reporting.
 - 3. FMIS designation** - To facilitate reporting requirements, all projects funded in whole or part with ARRA funds and obligated in the FMIS should be designated as such on the Projects Information Header under ***Special Projects Grouping - Major Projects – ARRA Funded Projects***.
- G. Project Agreement** – In order to meet the extensive reporting requirements, requests to obligate ARRA funds must include the following statements in the comments section of FMIS:
 - 1.** Agree to comply with the reporting requirements terms and conditions set forth in the ARRA and as designated by the FHWA,
 - 2.** ARRA funds are not obligated for advance construction purposes authorized under 23 U.S.C. 115(b), and
 - 3.** ARRA funds are not eligible for costs incurred prior to the date of obligation.

II. Funding Distribution

- A. FHWA Expenses** - Of the funds made available, up to \$40,000,000 is set aside for FHWA expenses for administration and oversight of ARRA funds, projects, and programs.
- B. Ferry Boat Discretionary Program** - Of the funds made available, \$60,000,000 is set aside for capital expenditures for construction of ferry boats and ferry terminal facilities eligible under 23 U.S.C. 147. The State specific set-asides contained in 23 U.S.C. 147(d), are not applicable to these funds. Priority shall be given to projects that will be completed no later than February 17, 2011. This discretionary program will be the subject of subsequent guidance.
- C. Indian Reservations and Federal Lands** - Of the funds made available, \$550,000,000 is set aside for investments in transportation on Indian Reservations and Federal lands. Of such funds \$310,000,000 shall be for the Indian Reservation Roads program, \$170,000,000 shall be for the Park Roads and Parkways program, \$60,000,000 shall be for the Forest Highway Program, and \$10,000,000 shall be for the Refuge Roads program. For investments on Indian Reservations and Federal lands, priority shall be given to capital investments, and to projects and activities that can be completed before February 17, 2011. Additional guidance will be provided by Office of Federal Lands Highway.
 - 1. Redistribution (Indian Reservations and Federal Lands funds)** – ARRA funds not obligated by February 17, 2010, may be redistributed within the respective program for which the funds were appropriated.

2. **Secretary of the Interior Expenses** - Up to 4% of the funding provided for Indian Reservation Roads may be used by the Secretary of the Interior for program management and oversight and project-related administrative expenses.
 3. **Lake Tahoe Region** - Specific funding requirements for the Lake Tahoe region, contained in 23 U.S.C. 134(f)(3)(c)(ii)(II), shall not apply to ARRA funds.
- D. On-the-Job-Training (OJT) Program** - Of the funds made available, \$20,000,000 is set aside for highway surface transportation and technology training under 23 U.S.C. 140(b). Additional guidance will be provided by the Office of Civil Rights.
- E. Disadvantaged Business Enterprise Bonding Assistance** - Of the funds made available, \$20,000,000 is set aside for disadvantaged business enterprises bonding assistance under 49 U.S.C. 332(e). This program will be administered by U.S. Department of Transportation, Office of the Secretary of Transportation (OST). Additional guidance will be provided by the OST.
- F. Allocation to Puerto Rico and Territories**
1. **Puerto Rico Highway Program** – Of the funds made available, \$105,000,000 is set aside for the Puerto Rico highway program authorized under 23 U.S.C. 165.
 2. **Territorial Highway Program** - Of the funds made available, \$45,000,000 is set aside for the Territorial Highway Program authorized under 23 U.S.C. 215.
- G. Apportionment to States** - After set-asides, 50% of the funds are apportioned to the States using the formula described below in item 1 and the remaining 50% are apportioned using the formula described in item 2.
1. **Surface Transportation Program (STP) FY 2009 formula set forth in 23 U.S.C. 104(b)(3)(A)**
Funds are apportioned to the States based on the following factors:
 - a. 25 % of the apportionment is based upon each State's share of the total lane miles of Federal-aid highways.
 - b. 40 % of the apportionment is based upon each State's share of the total vehicle miles traveled on lanes on Federal-aid highways.
 - c. 35 % of the apportionment is based upon each State's share of the estimated tax payments attributable to highway users paid into the Highway Trust Fund (other than the Mass Transit Account) in the latest fiscal year for which data are available.
 2. **Formula (ratio) used in the FY 2008 distribution of Obligation Limitation**
Using the same ratio as that used for fiscal year 2008 distribution, as contained in 120(a)(6) division K of Public Law 110-161.
- H. Set-Asides and Suballocations of Apportionments to States**
1. **Transportation Enhancement Activities** - Of the funds apportioned to a State under this heading, 3% shall be set aside for Transportation Enhancement Activities, as described in 23 U.S.C. 133(d)(2) without regard to the comparison to fiscal year 2005.
 2. **Division between areas of over 200,000 population and other areas** - Of the funds apportioned to a State, 30% shall be suballocated for the purposes described in the first sentence of 23 U.S.C. 133(d)(3)(A), in 23 U.S.C. 133(d)(3)(B), and in 133(d)(3)(D). This suballocation shall be conducted in every State, including Alaska and Hawaii.

See the following chart for a breakdown of the distribution of the ARRA apportioned funds.



- I. **Transfers** – For those projects more suitably administered by another Federal agency (including flex funding transfers to the Federal Transit Administration), transfers can be made in accordance with the July 19, 2007, Information Memorandum "[INFORMATION: Fund Transfers to Other Agencies and Among Title 23 Programs](http://www.fhwa.dot.gov/legregs/directives/policy/fundtrans20070719.htm)" located at: <http://www.fhwa.dot.gov/legregs/directives/policy/fundtrans20070719.htm>

Periodic reports, as discussed in Section VI.A., will be the responsibility of the agency receiving the transferred funds.

Effect on Redistribution (Section III) - Transfers and the impact on redistributions will be the subject of further guidance.

III. Redistribution

Within 120 days after the apportionment to the State, 50% of the apportioned funds, excluding suballocated funds, must be obligated. Any portion of this 50% of apportioned funds that is not obligated will be withdrawn and redistributed to other States that have obligated their funds in a timely manner. This provision is applicable only to those funds apportioned to the State and not those funds suballocated by population to Metropolitan Planning Organizations (MPO's) and local jurisdictions. The 50% threshold will be calculated based on total funds apportioned to the State, excluding suballocated funds.

A table (Table 4) showing funds subject to redistribution at 120 days is available at: <http://www.fhwa.dot.gov/economicrecovery/estapportionment.pdf>

Within one year after apportionment to the State, all apportioned funds must be obligated. Any portion of the apportioned funds that is not obligated will be withdrawn and redistributed to other States that have obligated their funds in a timely manner. These funds are then available until September 30, 2010, for obligation. Withdrawal of only unobligated suballocated funds from within a State will not prevent that State from receiving redistributed funds.

Withdrawn funds will be redistributed in the manner described in section 120(c) of division K of Public Law 110-161.

At the request of a State, an extension to the 1-year period may be granted if the State has encountered extreme conditions that create an unworkable bidding environment or other extenuating circumstances. Before granting such an extension, the Secretary shall send a letter to the House and Senate Committees on Appropriations that provides a thorough justification for the extension. This issue will be addressed in a future notice regarding the 1-year redistribution.

- IV. Project Selection** - The following project priority criteria shall be considered during project selection. States should maintain documentation that supports the actions taken to fulfill each of the requirements below.
- A. Three-year completion priority** - Priority shall be given to projects\activities that are projected for completion by February 17, 2012.
 - B. Economically Distressed Areas** - Priority shall be given to projects that are located in economically distressed areas as defined by section 301 of the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. 3161). To assist the States in determining where their ARRA projects are relative to economically distressed areas, FHWA has incorporated two maps with the requisite information (low per capital income and/or unemployment rate above national average) on the Office of Planning's HEPGIS viewer. This Web-enabled GIS tool will be accessible at:
http://hepgis.fhwa.dot.gov/hepgis_v2/GeneralInfo/Map.aspx
 - C. Expedient project delivery (Section 1602)** - Preference shall be given to projects\activities that can be started and completed expeditiously including a goal of obligating at least 50% of the funds not later than June 17, 2009.
 - D. Maximizing job creation and economic benefit (Section 1602)** - Recipients shall also use funds in a manner that maximizes job creation and economic benefit.
- V. Eligible Activities** - Funds may be used for restoration, repair, construction and other activities eligible under the Surface Transportation Program (STP) as defined within 23 U.S.C. 133(b), and for passenger and freight rail transportation and port infrastructure projects eligible for assistance under subsection 23 U.S.C. 601(a)(8).
- A. 23 U.S.C. 133(b)** - The STP provides flexible funding that may be used for projects on any Federal-aid highway (as defined in 23 U.S.C. 101(a)(5)). Eligible projects are listed in 23 U.S.C. 133(b). It should be noted that bridge projects on any public road are eligible for STP funding under the provisions of 23 U.S.C. 133(b)(1). In addition, carpool, pedestrian, bicycle, and safety projects, as listed in 23 U.S.C. 133(b)(3) & (4), may also be implemented with STP funding on roads of any functional classification, under the provisions of 23 U.S.C. 133(c). ARRA funding shall be eligible in a similar manner for these eligible non Federal-aid highway activities.
 - B. 23 U.S.C. 601(a)(8)** - In addition to usual STP activities, the ARRA made eligible passenger and freight rail transportation and port infrastructure projects as described in subsection 23 U.S.C. 601(a)(8). For those projects more suitably administered by another Federal agency, funds may be transferred in accordance with Section II.I. Transfers.

Under 23 U.S.C. 601(a)(8), a project is defined as — (A) any surface transportation project eligible for Federal assistance under this Title or chapter 53 of Title 49; (B) a project for an international bridge or tunnel for which an international entity authorized under Federal or State law is responsible; (C) a project for intercity passenger bus or rail facilities and vehicles,

including facilities and vehicles owned by the National Railroad Passenger Corporation and components of magnetic levitation transportation systems; and (D) a project that-- (i) is a project-- (I) for a public freight rail facility or a private facility providing public benefit for highway users; (II) for an intermodal freight transfer facility; (III) for a means of access to a facility described in subclause (I) or (II); (IV) for a service improvement for a facility described in subclause (I) or (II) (including a capital investment for an intelligent transportation system); or (V) that comprises a series of projects described in subclauses (I) through (IV) with the common objective of improving the flow of goods; (ii) may involve the combining of private and public sector funds, including investment of public funds in private sector facility improvements; and (iii) if located within the boundaries of a port terminal, includes only such surface transportation infrastructure modifications as are necessary to facilitate direct intermodal interchange, transfer, and access into and out of the port.

- C. Advance Construction** – ARRA funds shall not be obligated for purposes authorized under section 115(b) of Title 23 U.S.C. (Advance Construction)(AC). AC conversions or AC authorizations are not permitted on any part of a project funded by ARRA.

AC authorizations that have not incurred any obligations of Federal-aid funds (i.e. no "conversions") may be cancelled by the Division and then a new authorization/obligation of ARRA funds may be established that covers the anticipated contract costs under the project agreement (including with both ARRA funds and other Federal-aid funds). Note that such authorizations may not include an effective date prior to the date of obligation of the ARRA funds and may only include work performed after obligation of funds. Similarly, projects that utilize bond and other debt instrument financing provisions of 23 U.S.C. 122, cannot use ARRA funds unless there have been no "conversions" on the project.

A new AC project may not be authorized as part of a project that includes ARRA funds. Projects may be split funded with ARRA funds and other Federal-aid funds with the exception of using AC provisions. In other words, no AC of any Federal-aid Funds may be included on any project that includes ARRA funds (including under separate project number). The Federal share for each funding category is subject to its own limitations.

- D. Planning Requirements** - The applicable planning and conformity requirements must be met prior to authorization/obligation of ARRA funds on a project. The project must be on an approved Statewide Transportation Improvement Program (STIP) (and Transportation Improvement Program (TIP), as applicable) prior to obligation/authorization of funds. In metropolitan areas the project must be consistent with the applicable metropolitan transportation plan prior to including it in the STIP/TIP. In non attainment and maintenance areas, non-exempt projects must be part of a conforming plan and TIP.
- E. Prohibitions on expenditures for certain establishments (Section 1604)** - No funds may be used for a casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.
- F. Use of ARRA funds for Change Orders on existing Federal-aid projects** - For a project that has already been authorized, let, and is under construction using non-ARRA Federal funding, ARRA funding may be used to fund a subsequent construction change order on the project. The change order may be funded with ARRA funds as long as the change order results in additional costs that are above the already committed State/Federal funds for the project. ARRA funds are only eligible for change order costs incurred after the date that the funds are obligated to the project. Caution should be used in exercising this option, since the project will be encumbered with all reporting requirements associated with all ARRA projects.
- G. Conversion of non Federal-aid funded projects** – Non Federal-aid funded projects may be converted to ARRA funded projects only if the projects meet and document compliance with all Federal-aid requirements. The effective date of eligibility of ARRA funds is the date of

obligation of such funds and no prior expenditures may be reimbursed. If all Federal-aid requirements have not been met, then the project cannot be "federalized" and use ARRA funds.

VI. Specific Requirements

A. Periodic Reports – FHWA headquarters is developing a method to automate collection and reporting of data. Details are forthcoming.

Fund recipients are required to submit periodic reports on the use of the funds for the covered programs. Such reports are collected and compiled and transmitted to Congress and to the public via the Web site <http://www.recovery.gov>. In the case of section 1201 reports only, agencies may develop reports on behalf of grant recipients to ensure the accuracy and consistency of such reports. Reports are required to contain financial, project, and job information as outlined in the Act. FHWA is working to complete guidance to meet the periodic reporting requirements of the Act, in addition to any supplemental guidance from the Office of Management and Budget (OMB) and OST. Full guidance will be forthcoming.

In the interim, States will need to provide a requirement in their contracts for both contractors and subcontractors to complete monthly reports on the number of newly hired employees and the number of existing employees. This information will include the number of employees (subtotal by new-hire and existing), total hours for employees (subtotal by new-hire and existing), and total wages for employees (subtotal by new-hire and existing). This data will be provided to the States, who will review and certify the contractor reports. That data will then be provided to the Division office to ensure compliance with the data requirement and to FHWA headquarters.

States will be required to submit data on projects to be funded completely or partially with ARRA funds. This data will be submitted electronically to FHWA as either a geographic information system (GIS) file, i.e. shapefile, or as a Microsoft Excel spreadsheet. This data must be submitted by the States by March 17, 2009, to Tianjia Tang (Tianjia.Tang@dot.gov). An extension beyond this date may be requested from Tianjia Tang. The file will contain the following information for each project:

- Federal-aid project number (if available)
- State project number, STIP number, or ID
- Project name
- Project description
- Project purpose
- Estimated total cost
- Project rationale
- NEPA Class of Action (CE, EA, FEIS)
- Other environmental approvals needed/acquired (Section 106 of NHPA, CWA section 404 permits, approvals under ESA section 7, etc.)
- Route number (if applicable)
- Beginning mile point (if applicable)
- Ending mile point (if applicable)
- Location (for grouped or bundled projects, provide the area covered by the project, e.g. countywide, district-wide, statewide, etc.)

No later than 10 business days after each letting, States and FHWA Federal Lands will provide FHWA with summary bid information and specific information on the ARRA projects that were awarded. FHWA is currently developing a system that States can utilize for providing this information, if existing State systems cannot produce the required information. Included in these periodic post-letting reports will be the following summary information:

- Name of State (or Federal Lands Region)

- Letting date
- Total number of ARRA projects put out to bid

The following project specific information will also be provided:

- Contracting agency (State, County, or MPO)
- Federal-aid project number
- Notice to proceed date
- Contractor name
- Contractor address
- Contractor phone number
- Contractor e-mail address

The project specific information will be used for determining the total number of ARRA projects awarded and for providing the contractors with access to a secure system for reporting their monthly jobs information. Details on the system and instructions for providing the jobs information will be forthcoming from FHWA.

For grouped or bundled projects, States will be required to submit periodic reports no later than 10 business days after individual projects are awarded. Included in each report will be the following information:

- Federal-aid project number
- State project number or ID
- Project description
- Project purpose
- Estimated total cost
- Route number
- Beginning mile point
- Ending mile point (optional for bridge projects or other projects with a total length of less than 0.5 miles)

States will be required to keep FMIS data accurate and up to date. States will also be required to provide prime contractor and subcontractor name, address, phone and e-mail (as contract is let). Reports on initial project information and post-letting information will be due periodically. Reports will be required from the States on a monthly basis for the employment, project completion, number of ARRA projects put out to bid and other data items.

States should be ready to provide the primary contact information of the individual that is responsible for receiving and certifying the contractor employment forms. States need to be ready to supply that information to FHWA.

Specific deadlines, forms, formats and data items will be provided in the complete guidance.

B. Certifications

- 1. Maintenance of Effort (Sections 1201(a) and (b))** - The Governor of each State must certify that the State will maintain its effort with regard to State funding for the types of projects that are funded by the ARRA. As part of the certification, the Governor shall submit a statement identifying the amount of funds the State planned to expend as of February 17, 2009, from State sources in the period beginning on February 17, 2009, through September 30, 2010, for the types of projects that are funded by the appropriation. This certification is required no later than March 19, 2009. State funding shall be identified, but funds from local governments or other non-Federal sources are not included in the certification.

If a State is unable to maintain the level of effort contained in the certification, the State will be prohibited from receiving redistributed Federal-aid highway program obligation limitation in the August Redistribution process for FY 2011.

As this certification covers funding beyond the scope of highway funding, this certification will be coordinated by the OST. Additional information regarding the certification process will be provided pending instructions from the OST.

2. **Section 1607** - The Governor must certify by April 3, 2009, that, for funds provided to any State or agency thereof, the State will request and use funds provided by this Act and the funds will be used to create jobs and promote economic health. If the Governor does not provide this certification, then the State legislature may act to accept the funds.

As this certification covers funding beyond the scope of highway funding, this certification will be coordinated by the OST. Additional information regarding the certification process will be provided pending instructions from the OST.

3. **Section 1511** - For funds made available to State or local governments for infrastructure investments, the Governor, mayor, or other chief executive, as appropriate, must certify that the infrastructure investment has received the full review and vetting required by law and that the chief executive accepts responsibility that the infrastructure investment is an appropriate use of taxpayer dollars. A description of the investment, estimated total cost, and the amount of ARRA funds used shall be provided and published on the ARRA Web site. Funds may not be provided to State or local agencies until this certification is made and posted on this Web site.

As this certification covers funding for infrastructure investments, this certification will be coordinated by the OST. Additional information regarding the certification process will be provided pending instructions from the OST.

C. DBE regulations - Section 1101(b) of Public Law 109-59 applies to ARRA funded projects.

D. Competitive Procedures (Section 1554) - Letting of contracts provisions contained in 23 U.S.C. 112, and related implementing regulations, are to be followed for projects carried out with ARRA funds. For any projects not awarded through a competitive process, such as those projects approved for force account pursuant to 23 CFR 635.204, a summary of the contract must be posted on a special Web site that is maintained by the Recovery Accountability and Transparency Board. The Web site is required to be established by March 19, 2009. More guidance on how to post information on such contracts will be provided once the Web site is established.

Contractor force account work, whereby the contract was competitively bid and the contracting agency is issuing a change order to pay for work where the quantities are not known and/or difficult to estimate, will not require posting on the Web site. Any use of "public agency force account" would trigger the Section 1554 criteria, and would require posting on the Web site.

E. Buy America (Section 1605) - FHWA's existing Buy America requirements apply to all ARRA funded projects. The Division Offices should identify and coordinate any Buy America waiver issues with HIPA-30 as early as possible. As with all Buy America waivers, they must be published in the Federal Register. See our [Notice of Buy America Waiver Request web page](#) for details at <http://www.fhwa.dot.gov/construction/cqit/buyam.cfm>.

F. Davis-Bacon Prevailing Wage Rates (Section 1606) - Prevailing wage rate requirements apply to all ARRA funded construction projects regardless of location (including projects on local roads or rural minor collectors, and Transportation Enhancement projects outside the

highway right-of-way). Contracting agencies must include the appropriate wage rate information in the contract and also include a contract provision that overrides the general applicability provisions in form FHWA-1273, Section IV and V.

G. National Environmental Policy Act Special Requirements (Section 1609) - Adequate resources must be devoted to ensuring that applicable environmental reviews under the National Environmental Policy Act are completed on an expeditious basis and that the shortest existing applicable process under the National Environmental Policy Act shall be utilized. Associated reporting requirements are presented in Section VI.A.

VII. Risk management and Financial Management Oversight

FHWA is developing a risk management plan to guide oversight efforts for ARRA funding and projects. This will be the subject of subsequent guidance.

VIII. Supplemental Discretionary Grants for a National Transportation System

This new \$1.5 billion discretionary grant program will be administered by the DOT Office of the Secretary and will be the subject of subsequent guidance.

IX. Other Information

A. Manual on Uniform Traffic Control Devices (MUTCD) Compliant Construction Sign -

Guidance is available for a MUTCD compliant construction sign that the States may use if they wish to sign ARRA projects. Additional information may be found at the following links:
[ARRA Sign Detail - http://www.fhwa.dot.gov/economicrecovery/arrasigndetail.pdf](http://www.fhwa.dot.gov/economicrecovery/arrasigndetail.pdf)
[ARRA Sign Guidance - http://www.fhwa.dot.gov/economicrecovery/arrasignguidance.htm](http://www.fhwa.dot.gov/economicrecovery/arrasignguidance.htm)

B. Questions and Answers (Q&A's) - Additional information may be found at the ARRA [questions and answers](http://www.fhwa.dot.gov/economicrecovery/qandas.htm) Web site. The Q&A's can be found at <http://www.fhwa.dot.gov/economicrecovery/qandas.htm>