



March 1, 2016

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

On February 12, 2016, the RESTORE Act rule 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.

1. Q. 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 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

2. Q. How can eligible applicants obtain grant awards?

- A.** Treasury periodically posts funding opportunity announcements for the Direct Component, which include deadlines for the submission of grant applications, on grants.gov. Eligible applicants may submit grant applications through GrantSolutions.gov. Treasury awards grants based on applications that meet the requirements of the RESTORE Act, Treasury's regulations and funding opportunity announcements, and the Office of Management and Budget's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR Part 200.

TRUST FUND QUESTIONS

3. Q. How does Treasury determine the Gulf Cost Restoration Trust Fund (Trust Fund) allocations for the Direct Component?

A. The Act equally distributes the allocations for the Direct Component among the five Gulf Coast states. Paragraphs (b) and (c) of 31 CFR 34.302 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 Act for the nondisproportionately impacted counties, respectively. Paragraph (e) of 31 CFR 34.302 specifies the allocation percentages available to each of the 20 eligible coastal parishes in Louisiana based on a formula described in the Act.

4. Q. How much money is currently available under the Direct Component for the Gulf Coast states, Florida counties, and Louisiana parishes?

A. The Trust Fund Allocation Tables, located on Treasury’s RESTORE Act website at [\[correct link\]](#), 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) QUESTIONS

5. Q. What is the purpose of the Direct Component multiyear plan?

A. The RESTORE Act and Treasury’s 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 periodically update their multiyear plans by following these same steps, including obtaining public input, prior to submitting their revised plans to Treasury. Interested parties may contact the appropriate state, county, or parish applicant to request that the applicant consider including its proposed project in the applicant’s multiyear plan. Treasury reviews the applicant’s plan for completeness and compliance with the RESTORE Act and Treasury’s regulations. The forms for a multiyear plan are in the “Direct Component Guidance - Application to receive Federal Financial Assistance,” which is available on the Treasury website [\[add link\]](#).

6. Q. Is there a deadline to submit multiyear plans?

A. No. Eligible applicants may submit a 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 multiyear plan.

7. Q. 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 plan. Applicants may prepare a plan that includes additional projects that could be undertaken with funds that may be deposited in the future following ongoing Deepwater Horizon litigation or settlement. If applicants approve more comprehensive plans, which may include projects to be undertaken in the future when funds are available, they may submit that information along with their completed Treasury multiyear plan matrix and narrative forms. However, Treasury may not award a project grant until sufficient proceeds are available for distribution based on the amount of funds shown in the allocation tables on Treasury's RESTORE Act website.

8. Q. 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 but not all of the eligible activities), adding new eligible activities later. 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. Applicants likely will prepare an initial multiyear plan to cover the current amounts in the Trust Fund from the Transocean settlement and the estimated proceeds from the Anadarko Petroleum December 16, 2015 judgment. Upon issuance of subsequent settlement agreements or final judicial decisions, applicants may submit modified multiyear plans to cover additional amounts deposited in or expected to be deposited in the Trust Fund by the remaining defendants in the *Deepwater Horizon* oil spill civil lawsuit under the Federal Water Pollution Control Act. Modified plans that include material changes will require the 45-day public and comment review process prior to submission to Treasury for review and acceptance.

9. Q. 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 plan 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 how they addressed relevant public comments in the plan. 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 as applicants prepare their multiyear plans.

10. Q. Do eligible applicants have to follow the Treasury format for a multiyear plan?

A. Eligible applicants must submit the required multiyear plan forms to Treasury. Applicants may prepare more detailed multiyear plans that encompass a longer timeframe and include a more comprehensive list of activities that exceeds the current Trust Fund

allocations and estimates of amounts from judgments or settlements from the *Deepwater Horizon* civil lawsuit. Applicants will need to include all the required information on the Treasury multiyear plan matrix and narrative forms, and attach the more detailed plan to the multiyear plan they submit to Treasury.

11. Q. What multiyear plan forms must the applicant make available for public review and comment?

A. The multiyear plan includes the multiyear plan matrix and narrative forms and a map showing where the proposed projects will be located. An applicant must make all the required items in the multiyear plan available for public review and comment (multiyear plan matrix, narrative, and map). An applicant may use a different format, provided the information made available for public review and comment is consistent with the information contained in the multiyear plan. Please note that if the applicant prepares a more detailed multiyear plan document in addition to completion of the multiyear plan matrix and narrative forms, it must submit the detailed multiyear plan, along with the required forms and map, to Treasury. Furthermore, the multiyear plan 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.

12. Q. What is Treasury's process for reviewing an eligible applicant's multiyear plan?

A. Treasury reviews eligible applicants' multiyear plans for completeness and conformity with the RESTORE Act and Treasury's 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 multiyear plan. Treasury posts applicants' multiyear plans on its website after Treasury accepts the applicants' plans.

13. Q. May eligible applicants submit applications for projects before they submit the multiyear plan to Treasury and before Treasury accepts the plan?

A. No. As a prerequisite under the RESTORE Act for requesting and receiving Direct Component funding for eligible activities, each eligible applicant must submit a multiyear plan to cover a timeframe during which projects could be undertaken with available or anticipated funds from the Trust Fund. Once Treasury accepts the multiyear plan, the applicant may submit applications seeking grants for projects listed on its multiyear plan. A grant application for planning assistance funding for the preparation of the multiyear plan itself is the one exception to this requirement.

14. Q. 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 GrantSolutions.gov. Applicants should refrain from addressing questions 4 and 8 in the application form that relate to the multiyear plan. The prerequisite to submit a multiyear plan prior to submitting a Direct Component application does not apply when planning assistance funding is for preparation of a multiyear plan itself.

STATUTORY DEFINITION QUESTIONS

15. Q. How does the RESTORE Act define 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.

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

A. Treasury’s 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.

17. Q. What are the eligible activities under the Direct Component?

A. The criteria for eligibility are described in Treasury’s regulations, including 31 C.F.R. 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

18. Q. 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.

19. Q. Who conducts the best available science review?

A. The requirement to use best available science applies to activities designed to protect or restore natural resources. Applicants must look at the nature of the activity, rather than the activity's label, when deciding whether this requirement applies. Applicants must explain in their application how the activity is based on best available science. The applicant must cite and describe in its application peer-reviewed, objective, methodologically sound literature sources that support the conclusion that the proposed scope of work is an effective way to achieve the stated objectives that are set out in the Act. Treasury will review the reasonableness of the applicant's submission for conformity with the Act and Treasury's regulations.

APPLICATION PROCESS

20. Q. Treasury released five 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, 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.

21. Q. 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 GrantSolutions.gov. Treasury posts the funding opportunity announcements in GrantSolutions.gov. Once the applicant obtains a GrantSolutions.gov 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.

22. Q. 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 regulations.

Q. What are pre-award costs?

A. Pre-award costs are defined in the OMB Uniform Guidance at 2 C.F.R. §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. A federal award cannot be solely comprised of pre-award costs and a scope of work that was completed prior to the start date of the award. 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.

23. Q. 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. Treasury will use the following criteria, which are based on the RESTORE Act, Treasury's 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?

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 C.F.R. 200.308(d)).]*

24. Q. 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 C.F.R. 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 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 requirements in Treasury's regulations and OMB's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, before Treasury published criteria for the multiyear plan in the interim final rule that was effective October 14, 2014.

25. Q. 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.

26. Q. What procurement procedures should states, counties, and parishes use?

A. States should follow state procurement procedures. Counties and parishes should follow their own procurement procedures; however, the procedures followed by counties and parishes must be consistent with and conform to Federal procurement standards. *See 2 CFR 200.318—200.326.*

27. Q. 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(f):

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

- (1) The item is available only from a single source;
- (2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- (3) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or
- (4) After solicitation of a number of sources, competition is deemed inadequate.

28. Q. 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.

29. Q. Is there a limitation on administrative costs under Direct Component awards?

A. Yes. A recipient may not use more than three percent of the Federal award 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.

30. Q. 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.

31. Q: Does the Buy American Act apply to Direct Component awards?

A. No. However, as referenced in the RESTORE Act Standard Terms & Conditions, grant condition V.5, recipients are encouraged to the greatest extent practicable to purchase American-made equipment and products with funding provided under the grant.

32. Q. Is there a cost sharing or matching requirement for Direct Component grant awards?

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

33. Q. 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 grantees to notify Treasury if there are any changes in identified key personnel.

COMPLIANCE QUESTIONS

34. Q. 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 § 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).”

35. Q. 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 §§ 200.330 through 200.332, and:

- Ensure that subrecipient agreements have all the information required by §200.331 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 QUESTIONS

36. Q. 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.*

37. Q. 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.

38. Q. 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.