



December 5, 2017

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

- 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, 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)

- 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 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 regulations. The forms for a multiyear plan are posted on [Treasury's website](#).

- 6. Q. 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

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 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.

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 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.

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 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.

- 10. Q. 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.
- 11. Q. 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.
- 12. Q. 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 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.
- 13. Q. May eligible applicants submit applications for activities before they submit their multiyear plans to Treasury and before Treasury accepts their 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.

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 5 and 8 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.

15. Q. 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.

16. Q. 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

17. 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.

18. 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.

19. 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

20. 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.

21. Q. 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 OGCR if there are questions about whether a specific project requires a BAS determination.

22. Q. 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.

23. Q. 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.

24. Q. 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.

25. Q. 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.

26. Q. 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.

27. Q. 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.

28. Q. 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.

29. Q: 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 the Treasury final rule 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 § 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 § 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 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 grantee 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 § 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

30. 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.

31. 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](https://www.grantsolutions.gov). Treasury posts the funding opportunity announcements in [GrantSolutions.gov](https://www.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.

32. 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.

PRE-AWARD COSTS

33. 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. 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.

34. 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)).]*

35. 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.

DIRECT COMPONENT FINANCING

36. Q. 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 (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; 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 award. 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 final rule, and the Office of Management and Budget's Uniform Administrative Requirements, Cost Principles, and Audit Requirements (Uniform Guidance).

37. Q. 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 C.F.R. § 200.449. The Uniform Guidance at 2 C.F.R. § 200.12 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 GAAP [Generally Accepted Accounting Practices]. 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 C.F.R. § 200.449, debt financing costs to acquire, construct, or replace capital assets may be allowable, subject to 2 C.F.R. § 200.449(c)—(g).

38. Q. 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.

39. Q. 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.

40. Q. 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 final rule, and 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 C.F.R. § 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 C.F.R. § 200.449(c)—(g)).

- If some or all of the work will be accomplished through a contract, the procurement standards of 2 C.F.R. §§ 200.317—200.326, 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 C.F.R. § 200.458).
- All of the costs for which an eligible entity plans to seek reimbursement must meet 2 C.F.R. Part 200, Subpart E – Cost Principles of the Uniform Guidance.

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.

41. Q. 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 final rule, and federal laws and regulations on grants, including the Uniform Guidance (*see also FAQs #33 and 34 on Pre-Award Costs*).

42. Q. 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.

CONSTRUCTION

43. Q. What is the recipient’s responsibility when real property is improved using Treasury 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

44. Q. How is real property defined?

A. “Real Property” is defined in 2 CFR 200.85 of the Uniform Guidance as “land, including land improvements, structures and appurtenances thereto, but excludes moveable machinery and equipment.”

45. Q. 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.

46. Q. What is the Estimated Useful Life of land?

A. Land has an unlimited useful life.

47. Q. What is “infrastructure” under Treasury’s regulation?

A. Infrastructure is a subset of real property, and is a capital asset. Treasury’s regulation defines it at 31 CFR 34.2 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.

48. Q. How must the recipient document a federal interest in real property?

A. To document the federal interest in real property funded by a Treasury grant under the RESTORE Act, the recipient must perfect a Covenant of Purpose, Use, and Ownership (Covenant) prior to the final grant payment and record it in the real property records of the jurisdiction where the property is located, in accordance with local law. Treasury may require an opinion of the counsel for the recipient that the Covenant is valid and enforceable and has been properly recorded. 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 perfect and record a Covenant or other notice of record 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.

Under exceptional conditions, Treasury may approve of an alternative notice of record or waive the requirement that a Covenant or other notice of record be perfected and recorded.

49. Q. What are the reporting requirements for Treasury-funded real property projects?

A. Pursuant to 2 CFR 200.329 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.

PROCUREMENT

50. 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.

51. 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.*

52. 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.

53. 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.

54. Q. 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 U.S.C 1292; and
- Davis-Bacon Act-related provisions are applicable for a construction project regardless of whether it is a “treatment works” project if it is receiving federal assistance from another federal agency operating under an authority that requires the enforcement of Davis-Bacon Act-related provisions.

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

A. Please contact your grants management specialist at Treasury. Also, the Department of Labor oversees the administration of Davis-Bacon Act-related provisions and has a website with extensive information on the Davis-Bacon Act and Davis-Bacon Act-related provisions.

56. Q. What are “treatment works”?

A. Pursuant to 33 U.S.C. 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 USC1281 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.

57. 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.

OTHER APPLICATION PROVISIONS

58. 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.

59. 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.

60. 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.

61. 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

62. 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).”

63. 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 PROVISIONS

64. 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.*

65. 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.

66. 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.