

Grants Policy Issuance (GPI) 11-01 – Managing Unliquidated Obligations and Ensuring Progress under EPA Assistance Agreements

1.0 PURPOSE

This policy establishes procedures for managing Unliquidated Obligations (ULOs) under EPA assistance agreements, including grants, cooperative agreements and fellowships. It also includes provisions to further the timely progress of work under EPA assistance agreements.

2.0 AUTHORITY

40 C.F.R. Parts 30 and 31; RMDS 2520-03-P1 (Administrative Control of Appropriated Funds)

3.0 APPLICABILITY AND EFFECTIVE DATE

With the exception of the terms and conditions required under Section 11, this policy is effective October 1, 2010. Specifically, it applies to (i) non-competitive awards (and amendments to them) made on or after October 1, 2010; (ii) competitive awards (and amendments to them) based on announcements issued on, or after, October 1, 2010; and (iii) competitive announcements issued on or after October 1, 2010.

4.0 BACKGROUND

As part of EPA's implementation of Government Accountability Office's (GAO's) Policy and Procedures Manual for Guidance of Federal Agencies, Title 7, the Federal Manager's Financial Integrity Act (FMFIA) and Office of Management and Budget Circular A-123, Assistant Administrators and Regional Administrators are required to certify annually to the Administrator that unneeded funds are deobligated from EPA assistance agreements.

The Office of Inspector General (OIG) has found, however, that EPA's internal controls have not always been effective in identifying and deobligating unneeded assistance agreement funds or preventing unwarranted accumulations of ULOs. The OIG has also identified weaknesses in ensuring that assistance agreement funds are efficiently utilized to achieve intended environmental purposes.

This GPI addresses the OIG's concerns as well as the Agency's responsibilities under FMFIA and [EPA Order 1000.24, CHG2 Management's Responsibility for Internal Control](#) by including provisions that highlight the need for timely project/program completion and monitoring of Unliquidated Obligations. These provisions supplement existing requirements in [EPA Order 5700.6A2 Policy on](#)

[Compliance, Review and Monitoring](#) and [EPA Order 5700.7 Environmental Results under EPA Assistance Agreements](#) for the review and reporting of project progress and for assistance agreement closeout.

5.0 DEFINITION

For purposes of this policy, the term ULO means the unexpended balance remaining from the amount of federal funds EPA obligated to an agreement under 31 USC 1501(a)(5). This is the amount the recipient of the agreement has not “drawn down.”

6.0 ROLES AND RESPONSIBILITIES

General: Oversight of ULOs is a shared responsibility between Project Officers (POs) and Grants Specialists. As described below, Grant Specialists are responsible for coordinating the review of ULOs, while POs are responsible for making programmatic decisions whether ULOs continue to be needed for an assistance agreement.

- a. Project Officers:** POs are primarily responsible for the programmatic management and oversight of assistance agreements. In particular, POs develop the assistance agreement funding package, including the relevant programmatic terms and conditions. POs also are responsible for monitoring project progress, annually reviewing the continuing validity of ULOs, immediately notifying the grant specialists of issues impacting the project or requiring the adjustment of funds, and maintaining adequate documentation of project management activities from inception to closeout.
- b. Grants Management Office:** Grant Specialists have primary responsibility for the award and administration of assistance agreements through final closeout. Grant Specialists work with POs to ensure appropriate grant terms and conditions and appropriate enforcement actions are taken as necessary to resolve issues. In consultation with the Las Vegas Finance Center (LVFC), grant specialists take steps to deobligate funds where POs have determined that the funds are no longer needed for authorized project activities. The Grants Specialist also ensures proper documentation is maintained in the grants administration file to support related administrative actions. If the Award Official, for a particular assistance agreement, imposes a timely payment term and condition under section 11.0 of this policy, the grant specialist is responsible for ensuring that the recipient submits the required quarterly billing request.
- c. Funds Control Officers (FCOs):** FCOs have primary responsibility for reviewing and monitoring obligations and expenditures of funding

documents related to grant actions. The FCO will also assist the PO in identifying funds to deobligate when there has been no activity on a grant for more than 180 days. They also assist in preparing proper documentation to send to the appropriation Finance Center and ensuring the requested deobligation has been entered into the Agency's finance system.

- d. National Program Managers and Regional Program Offices.** National Program Managers, working with the Regions, are responsible for developing "sufficient progress" term and conditions. Regional Program Offices are responsible for including a review of funds utilization in the joint evaluation process for assistance agreements funded with no-year appropriations.

7.0 COMPETITIVE ANNOUNCEMENTS

All competitive announcements issued on or after October 1, 2010, shall include the following provision in section VI of the announcement (see also Section 10.0 of this policy):

An applicant that receives an award under this announcement is expected to manage assistance agreement funds efficiently and effectively and make sufficient progress towards completing the project activities described in the work-plan in a timely manner. The assistance agreement will include terms/conditions implementing this requirement.

8.0 RESPONSIBILITY DETERMINATIONS FOR EFFECTIVE FUNDS UTILIZATION

[RESERVED PENDING THE ISSUANCE OF OMB
QUALIFICATION GUIDANCE UNDER 2 CFR PART 35, SUBPART A]

9.0 ASSISTANCE AGREEMENT WORKPLANS

When negotiating new work plans or amendments to work plans, on or after October 1, 2010, Program Offices must ensure, to the maximum extent practicable, that the work plans specify target dates and milestones for timely project completion.

10.0 ASSISTANCE AGREEMENT PROJECT PERIODS

This section establishes project period limitations for assistance agreements other than statutory congressional earmarks that require EPA to award an assistance agreement for a specified amount to an identified recipient for a particular purpose.

- a. Beginning October 1, 2010, and except as provided in paragraph b., the total project period of an assistance agreement, including any no-cost extensions or supplemental amendments, may not exceed 7 years unless a longer period is authorized by statute or regulation. Examples of programs covered by the 7-year limit include the Clean Water State Revolving Fund Program (40 C.F.R. Part 35 Subpart L), the Drinking Water State Revolving Fund Program (40 C.F.R. Part 35 Subpart K), the Wastewater Treatment Works Construction Grants Program (40 C.F.R. Part 35 Subparts E and I) and the State Superfund Cooperative Agreement Program (40 C.F.R. Part 35 Subpart O).
- b. Beginning October 1, 2010, the total project period of a new assistance agreement for continuing State and Tribal environmental programs (40 CFR Part 35 Subparts A and B) under the State and Tribal Assistance Grant (STAG) or Leaking Underground Storage Tank appropriations, including any no-cost extensions or supplemental amendments, may not exceed 5 years, except for Tribal General Assistance Program awards, which may not exceed 4 years (see 40 C.F.R. § 35.548). *[NOTE: The Office of Grants and Debarment (OGD) will monitor the impact of the 5-year limit in paragraph b. If the 5-year limit proves to be impracticable, OGD will issue a class waiver under section 17.0 of the policy to authorize a 7-year limit.]*
- c. Senior Resource Officials may request waivers from the limitations described above in accordance with the procedures in section 17.0 of this policy.

11.0 SUFFICIENT PROGRESS TERMS AND CONDITIONS

- a. For assistance programs under their jurisdiction, National Program Managers (NPMs), in coordination with Regional Program Offices, must develop a “sufficient progress” term and condition to be included in new assistance agreements awarded on or after December 1, 2010. The term and condition must establish clear progress expectations and reflect the particular requirements of a given program. For Performance Partnership Grants (PPGs), the PPG NPM, the Office of Congressional and Intergovernmental Relations, in coordination with the media program NPMs, Regional Program Offices and OGD, will be responsible for developing the PPG-specific term and condition.
- b. A sample term and condition issued by the Brownfields Office is contained in Exhibit 1.

12.0 TIMELY PAYMENT REQUEST TERM AND CONDITION

- a. Where a Program Office and Grants Management Office agree that a recipient has a history of accumulating ULOs without an adequate justification, the Award Official, with the concurrence of the Office of General Counsel or Office of Regional Counsel, as appropriate, may include the following administrative term and condition in new assistance agreements or amendments:

Recipient agrees to submit, at a minimum, a quarterly billing (payment) request(s) to the EPA, for all eligible, allowable, allocable, necessary and reasonable costs that the recipient had incurred in that quarter and will be paid by EPA (i.e., are not part of the recipient's cost share or maintenance of effort). More frequent payment requests (i.e., weekly, bi-monthly, monthly, etc.) may also be submitted as costs are incurred. A payment request is not required to be submitted during the quarter in the event that the recipient has not incurred such costs. However, if a recipient fails to submit a quarterly billing request to EPA for the costs it has incurred during that quarter, EPA may disallow those costs.

13.0 AGENCY ULO REVIEW AND POST-AWARD MONITORING

Office of the Chief Financial Officer (OCFO) Umbrella Policy Directive, RMDS 2520-03-P1 (Administrative Control of Appropriated Funds) requires that all active assistance agreement awards receive a ULO review at least once a year and that reviews also be conducted of any assistance agreement where there is financial inactivity of greater than 180 days. In accordance with Section II of the OCFO Policy Directive, OGD, working with the grants management community, will develop standard operating procedures for assistance agreement ULO reviews, including required documentation in EPA databases.

- a. To avoid duplication of effort, the results of administrative baseline or advanced monitoring under [EPA Order 5700.6A2 Policy on Compliance, Review and Monitoring](#) may be used to satisfy OCFO's annual ULO review requirement, provided the monitoring is conducted annually and documented in the Integrated Grants Management System Post Award Desktop tool.
- b. For awards subject to Section 10.0, programmatic baseline and advanced monitoring will include a review of compliance with terms and conditions for sufficient progress. Program Offices, and where necessary, Grants Management Offices will be expected to take appropriate remedial action to address non-compliance issues.
- c. OGD will work to enhance the existing baseline monitoring tool to trigger more frequent baseline monitoring in the event of significant financial inactivity by a recipient.

14.0 CLOSEOUT

- a. Timely closeout of expired assistance agreements is a critical component of proper ULO management. Headquarters and Regional offices are accountable for meeting the 90%-99% closeout performance measures established under Goal 4 of [EPA's Grants Management Plan 2009-2013](#) and [EPA Order 5700.6A2 Policy on Compliance, Review and Monitoring](#).
- b. Under EPA assistance regulations, recipients must submit performance and financial reports required for closeout within 90 calendar days after the completion of an award unless EPA grants an extension. Where recipients repeatedly fail to provide the reports necessary for closeout, causing undue delays in the closeout process, Grants Management Offices are expected to take appropriate remedial action that may include referring the matter to EPA's Suspension and Debarment Division.

15.0 SPECIAL REQUIREMENTS FOR ASSISTANCE AGREEMENTS FUNDED WITH NO-YEAR APPROPRIATIONS

- a. Beginning in Fiscal Year 2011, NPMs for assistance agreement programs funded with no-year appropriations shall develop financial indicators providing information on funding levels and unspent balances by Program/Project and by Region. NPMs, in consultation with the Regions, shall use these indicators to help assess the effectiveness of funds utilization.
- b. Beginning in Fiscal Year 2011, when Regional Program Offices conduct annual performance evaluations with recipients of assistance agreements funded with no-year appropriations (e.g., joint evaluations under 40 C.F.R. §§ 35.115 or 35.515), the evaluations will include a discussion of how effectively a recipient managed and utilized EPA grant funds, taking into account any accumulation of ULOs. The Project Officer will document the results of those discussions in the official assistance agreement file. To the extent permitted by statute or regulation for a particular assistance agreement program, NPMs and Regional Administrators will consider the results of those discussions when making future allocations of no-year funds.
- c. To better reflect the utilization of funds under a Performance Partnership Grant (PPG), the Las Vegas Finance Center (LVFC) will allocate PPG payments across all available accounting lines by year, starting with the oldest appropriation and moving to subsequent appropriation years as funding is spent. The LVFC will use a similar payment procedure for

single media, continuing environmental program grants funded with STAG appropriations from more than one fiscal year (e.g., a Clean Water Act Section 106 grant with a 2-year budget period and funded with STAG appropriations from FY 2009 and FY 2010). In addition, LVFC is responsible for processing deobligation funds for grants.

- d. The recertification of no-year funds under assistance agreements, including carryover funds or deobligated funds, must follow applicable OCFO procedures.

16.0 METRICS

For Fiscal Year 2011 and subsequent fiscal years, OGD, working with OCFO, will develop Agency-wide metrics to assess EPA progress in reducing assistance agreement ULOs.

17.0 WAIVERS

In response to a written request from the appropriate Senior Resource Official, and in consultation with OCFO, the OGD Director, or designee, may approve waivers to this policy on an individual or class basis because of national security concerns, circumstances of unusual or compelling urgency, unique programmatic considerations or the public interest.

18.0 REVIEW

OGD will periodically assess Agency compliance with this policy and evaluate its effectiveness.

Exhibit 1 – Sample Sufficient Progress Term and Condition

If after 1 year from date of award, EPA determines that the recipient has not made sufficient progress in implementing its Revolving Loan Program (RLF), EPA may terminate the agreement. The Cooperative Agreement Recipient (CAR) should note that in order to ensure adequate review time, the review of sufficient progress could begin as early as June 30, 2010 and the CAR must report on sufficient progress no later than August 30, 2010. Sufficient progress is indicated by the grantee having made loan(s) and/or subgrant(s), but may also be demonstrated by a combination of all the following: hiring of all key personnel, the establishment and advertisement of the RLF, and the development of one or more potential loans/subgrants.