

# **Amended 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**

2 CFR 200; 2 CFR 1500; 40 CFR 35; and Resource Management Directive System (RMDS) Chapter 2520-03-P1, *Responsibilities for Reviewing Unliquidated Obligations*

## **3.0 APPLICABILITY AND EFFECTIVE DATE**

With the exception of the terms and conditions required under Section 11.0, 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. ***[Note: Section 9.0 of this policy was amended effective October 1, 2012 to implement the requirements of Section 10.0 of [GPI 12-06: Timely Obligation, Award and Expenditure of EPA Grant Funds](#)].*** The terms and conditions required under Section 10.0 are effective December 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 ULOs. 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

- a. Unliquidated Obligation (ULO): 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."
- b. Discretionary award: This term is defined at [2 CFR 200.1](#) as an award in which the Federal awarding agency, in keeping with specific statutory authority that enables the agency to exercise judgement ("discretion"), selects the recipient and/or the amount of Federal funding awarded through a competitive process or based on merit of proposals. A discretionary award may be selected on a non-competitive basis, as appropriate.
- c. Non-discretionary award: This term is defined at [2 CFR 200.1](#) as an award made by the Federal awarding agency to specific recipients in accordance with statutory, eligibility and compliance requirements, such that in keeping with specific statutory authority the agency has no ability to exercise judgment ("discretion"). A non-discretionary award amount could be determined specifically or by formula.

## 6.0 ROLES AND RESPONSIBILITIES

- a. **Project Officers (POs):** 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 are required to conduct a ULO review at least annually on all active assistance agreement awards. In addition, POs must conduct the annual end-of-year ULO review of any assistance agreement where there has been no financial activity for 180 days or more. POs are also responsible for monitoring project progress, annually reviewing the continuing validity of ULOs, and immediately notifying the grant specialists of issues impacting the project or requiring the adjustment of funds as part of the programmatic baseline monitoring. POs must maintain adequate documentation of project management activities from inception to closeout.
- b. **Grants Management Offices:** 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 Research Triangle Park Finance Center (RTPFC), Grant Specialists take steps to deobligate funds where POs have determined that the funds are no longer needed for authorized project activities. The Grant 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 (NPMs), 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 ASSISTANCE AGREEMENT WORKPLANS**

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

## 9.0 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. Generally, the total project period of a Superfund cooperative agreement under 40 CFR Part 35 Subpart O or an assistance agreement made under a discretionary program described in Section 5.0 may not exceed 7 years absent a specific regulatory or statutory authorization for a longer project period or a waiver approved by the Director, Office of Grants and Debarment, or designee, the Director, National Policy, Training and Compliance Division.
- b. For other assistance agreements, and except as provided in paragraph d., the total project period for awards made on or after October 1, 2010, 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/assistance agreements covered by this paragraph include the Clean Water State Revolving Fund (CWSRF) Program (40 C.F.R. Part 35 Subpart L), the Drinking Water State Revolving Fund (DWSRF) 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 wastewater/drinking water grants to the District of Columbia or the Territories funded with CWSRF or DWSRF appropriations.

- c. (1) All assistance agreements, other than those specified in paragraph a., that were awarded prior to October 1, 2010, require a waiver under this GPI from the Director, Office of Grants and Debarment, or designee, to extend the project period beyond 7 years, except awards that had an approved project period greater than 7 years as of October 1, 2012.
- (2) The excepted awards noted above will require an OGD waiver under this GPI in the future if the Program Office proposes to extend the project period.

Examples: If a CWSRF award was made on October 1, 2005, and the original project period for the award was established as an 8-year project (October 1, 2005-September 30, 2013), the Region would not need to seek a waiver under this GPI. However, if the Region sought to extend the project period to 9 years (September 30, 2014), a waiver would be required to authorize the new project period end date.

Similarly, if a DWSRF award was made on October 1, 2004, with a 7-year project period (October 1, 2004-September 30, 2011), and the project period was extended,

through a grant amendment executed on September 29, 2011, to 9 years (September 30, 2013), the Region would not need to seek a waiver under this GPI. However, if the Region sought to extend the project period to 10 years (September 30, 2014), a waiver would be required to authorize the new project period end date.

- d. Beginning October 1, 2010, the total project period of new assistance agreements 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. The total project period for Tribal General Assistance Program (GAP) assistance agreements are limited by regulation at 40 CFR 35.548 and may not exceed four years.
- e. No-cost amendments, incremental funding amendments, and supplemental funding amendments may not be used to add additional activities to an assistance agreement under a discretionary grant program that are unrelated to the original scope of work. In such cases, EPA must fund the additional activities through a new award. For purposes of this policy, additional activities are considered unrelated to the original scope of work if they:
  - Involve significant changes to the type of work funded by the project; or
  - Involve material changes to the function, purpose, or nature of the project.
- f. Senior Resource Officials may request waivers from the limitations in paragraphs b., c., and d. in accordance with the procedures in section 15.0 of this GPI.

## **10.0 SUFFICIENT PROGRESS TERMS AND CONDITIONS**

- a. For assistance programs under their jurisdiction, 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.

## **11.0 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:

In accordance with 2 CFR 200.208, EPA is requiring that ***[Insert name of recipient]*** 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) as indicated in the notification dated, ***[Insert date of 2 CFR 200.208 notification]***. The quarterly billing requests are due ***[Insert due dates]***. 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 if the recipient has not incurred costs in the quarter that will be paid by EPA. In accordance with 2 CFR 200.305(b)(6)(iii), EPA may withhold payment if a recipient fails to submit a quarterly billing request to EPA for the costs it has incurred during that quarter. Payment will be released upon subsequent compliance by the recipient.

Award Officials must follow the procedures at 2 CFR 200.208(d) when imposing this specific condition.

## **12.0 AGENCY ULO REVIEW AND POST-AWARD MONITORING**

POs must conduct a ULO review at least annually on all active assistance agreement awards. RMDS 2520-03-P1 requires that POs must also conduct the annual end-of-year review of any assistance agreement where there has been no financial activity for 180 days or more. In accordance with Section II of the OCFO Policy Directive, the NPMs must work with their communities to develop standard operating procedures for assistance agreement ULO reviews to ensure consistency in the process.

- a. To avoid duplication of effort, the results of programmatic 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 EPA's grants system.
- b. For awards subject to Section 9.0, 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.

### **13.0 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 in [EPA Order 5700.6A2 Policy on Compliance, Review and Monitoring](#).
- b. Under 2 CFR 200.344, EPA will close out the award when it determines that all applicable administrative actions and all required work of the award have been completed by the recipient. Recipients must submit all financial, performance, and other reports as required by the terms and conditions of the award. If the recipient fails to complete the requirements, EPA will proceed to close out the Federal award with the information available.

### **14.0 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 CFR 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 PO 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 PPG, the RTPFC 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 RTPFC 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, RTPFC 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.

## **15.0 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.

## **16.0 REVIEW**

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

### **Exhibit 1 – Sample Sufficient Progress Term and Condition**

If after 18 months from the date of award, EPA determines that the Cooperative Agreement Recipient has not made sufficient progress in implementing its cooperative agreement, the CAR must implement a corrective action plan concurred on by the EPA Project Officer and approved by the Award Official or Grants Management Officer. Alternatively, EPA may terminate this agreement under 2 CFR 200.340 for non-compliance with its terms and conditions, or with the consent of the CAR as provided at 2 CFR 200.340, depending on the circumstances. Sufficient progress is indicated when an appropriate remediation plan is in place, institutional control development (if necessary) has commenced, initial community involvement activities have taken place, relevant state or tribal pre-cleanup requirements are being addressed, and a solicitation for remediation services has been issued.