

**U.S. DEPARTMENT OF TRANSPORTATION
ADDITIONAL GUIDANCE ON SECTION 1201 CERTIFICATION AND
REPORTING UNDER THE AMERICAN RECOVERY AND REINVESTMENT
ACT OF 2009
April 22, 2009**

This document provides U.S. Department of Transportation (DOT) additional guidance on the requirements of section 1201 of The American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5 (February 17, 2009)) (“Recovery Act”). It supplements Secretary LaHood’s letter and guidance issued on February 27, 2009. Specifically, this guidance provides information on section 1201(a) certification requirements, including the calculation of the maintenance of effort (MOE) amount, and reporting on MOE. This guidance also creates a 30-day opportunity for corrective amendments to section 1201(a) MOE certifications.

I. Certification and reporting are based on expenditures, not obligations or encumbrances.

As indicated in the Secretary’s February 27 letter and guidance, section 1201(a) requires the Governor to certify to “the amount of funds the State planned to expend from State sources....” Reporting under section 1201(c)(2)(G) requires each grant recipient to periodically submit information on “the actual aggregate expenditures” by each grant recipient under each covered program. A definition of expenditures, which is listed under its synonym “outlays”, appears in section 18.3 of title 49, Code of Federal Regulations. In sum, section 1201 calls for MOE certification and reporting of planned and actual spending, not obligations, encumbrances, or contracted amounts.

II. “State funding” means all sources of State funding, including bond proceeds.

Section 1201(a) requires the State’s Governor to certify that the State “will maintain its effort with regard to State funding for the types of projects that are funded by [the Recovery Act title XII] appropriation.” The section requires the Governor to identify in the certification “the amount of funds the State planned to expend from State sources...” The Act does not limit in any manner the types of State funding subject to the certification. Consequently, the term covers all sources of State funding, including without limitation bond proceeds, dedicated revenues, and general funds. State sources of funding do not include Federal or local sources of funds. Certified MOE amounts should incorporate all State funding sources as required by section 1201(a).

III. MOE amounts include planned State funding for every type of project eligible for funding under title XII of the Recovery Act.

Under section 1201(a), the State’s MOE amount includes planned State funding for any project of a type that is eligible for funding under title XII of the Recovery Act. This includes both planned State-funded match for federally-assisted projects and planned

State funding for non-federally-assisted projects that are eligible for Federal funding. If the nature of a project brings it within any category of appropriation under title XII of the Recovery Act, then any State funding on that project should be included in the MOE amount. We recommend that States review the provisions in title XII carefully to ensure that they include in their MOE amount all planned State funding for each type of project for which funding is appropriated.

IV. Section 1201 does not authorize a conditional or qualified certification.

DOT understands that the States have faced rapidly changing economic conditions over the last six months and that some States did not have Fiscal Year 2010 budgets in place on February 17, 2009. However, section 1201 does not authorize conditions or qualifications to the State's promise to maintain its level of effort with regard to State funding. Absent congressional action to permit adjustments to the spending a State had planned as of February 17, 2009, there is no authority for a State to submit a conditional section 1201 certification.

V. "Planned expenditures" under Section 1201 are calculated for the period starting February 17, 2009, and extending through September 30, 2010.

The statute is explicit about the time period for which planned expenditures of State funds must be certified and maintained. The statutory period is February 17, 2009 through September 30, 2010. Certifications must clearly state that the MOE amount covers this full time period.

VI. "Planned expenditures" are determined based on documented spending plans that existed as of February 17, 2009.

Section 1201 requires the Governor to identify "the amount of funds the State planned to expend from State sources as of the date of enactment of this Act during the period beginning on the date of enactment of this Act through September 30, 2010...." The date of enactment of the Recovery Act was February 17, 2009. Accordingly, section 1201 calls for a "snapshot in time" taken on that date. Subsequent actual or anticipated changes in planned expenditures may not be taken into account in the MOE calculation.

VII. Certifications should address each covered program under the Recovery Act.

It is not possible to determine the completeness of a certification that does not specifically include a representation about MOE for each covered program as defined in section 1201(d)(2) of the Recovery Act. Even if a State, as of February 17, 2009, did not plan to spend any funds for a particular covered program during the period from February 17, 2009 through September 30, 2010, the State section 1201 certification should list the covered program and note the amount planned as "\$0." States that submitted a certification with an incomplete list of covered programs should file a corrected certification that contains the full list of covered programs. We have included with this

guidance a copy of the template from DOT's February 27 guidance, listing each covered program.

VIII. A corrected amended section 1201(a) certification, if needed, should be filed by May 22, 2009.

States that followed the section 1201(a) template in the Secretary's February 27 letter and guidance may need to correct their MOE amount if they calculated it in a way that is not consistent with this guidance. States that included conditional, qualifying, or explanatory language, as well as States that did not certify for all covered programs, should file a corrected amended certification that is consistent in form and content with this guidance. A State may file a corrected amended section 1201(a) certification on or before May 22, 2009. The submission process remains as described in the February 27 letter and guidance. We also strongly encourage States to retain documentation showing how they arrived at their MOE amount.

**Attachments: Secretary LaHood Letter, February 27, 2009,
Section 1201(a) Template**



THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

FEB 27 2009

Dear Governor:

The U.S. Department of Transportation (DOT) is actively implementing the American Recovery and Reinvestment Act of 2009, (ARRA), which provides significant new funding for transportation infrastructure. The DOT is taking steps to ensure effective coordination and support among Federal agencies as well as preparing our partners and stakeholders to implement ARRA as expeditiously as possible. One key step to expedite the delivery of ARRA funds is for all State and local agencies to complete the certifications required under ARRA. These include section 1201, Maintenance of Effort; section 1511, Transparency and Oversight; and section 1607, Additional Funding Distribution and Assistance of Appropriate Use of Funds. This letter, along with the enclosed Guidance and Sample Forms, will assist your State in completing the required ARRA certifications.

Under section 1201 of ARRA, the Governor of each State must certify to the Secretary of Transportation that the State will maintain its effort with regard to State funding for the types of projects that are funded by ARRA. This certification must be completed no later than **Thursday, March 19, 2009**. Please see enclosed Guidance and Sample Form.

Under section 1511 of ARRA, for funds under ARRA made available to State or local governments for infrastructure investments, the Governor, mayor, or other chief executive, as appropriate, must certify that the infrastructure investment has received the full review and vetting required by law and that the chief executive accepts responsibility that the infrastructure investment is an appropriate use of taxpayer dollars. Please see the enclosed Guidance and Sample Form to be signed by the appropriate chief executive. For ARRA highway and transit funds, we request that the Governor or Chief Transportation Executive complete this section 1511 certification with reference to the Statewide Transportation Improvement Program for these investments. **This certification must be executed and posted prior to the State or local governments receiving ARRA funds.** The DOT plans to apportion ARRA highway funds as early as next **Tuesday, March 3, 2009**.

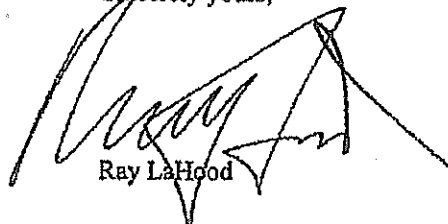
Under section 1607 of ARRA, the Governor of each State must certify by **Friday, April 3, 2009**, that the State will request and use ARRA funds and that the ARRA funds will be used to create jobs and to promote economic growth. Please see enclosed Guidance and Sample Form.

All executed ARRA certifications must be submitted to the Secretary of Transportation c/o of Joel Szabat, Deputy Assistant Secretary for Transportation Policy, at TigerTeam@dot.gov.

Please note that I have directed all DOT operating administrations to ensure that each project approved using ARRA funds complies with all requirements of law. The DOT operating administrations will achieve this through their standard project approval and oversight process for each transportation project. We may seek additional information in the future about specific programs or projects.

Thank you for working with us to ensure that the ARRA certifications are executed and posted in accordance with law. We must all continue to ensure that the ARRA funds are used for transportation infrastructure investments that are an appropriate use of transportation dollars and meet all the requirements of law, and instances of fraud, waste, and abuse are mitigated. Further, we must all work together to ensure that the recipients and uses of all transportation infrastructure funds are transparent to the public, and the public benefits of these funds are reported clearly, accurately, and in a timely manner.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Ray LaHood', is written over a printed name. The signature is stylized and somewhat illegible due to the cursive style.

Ray LaHood

Enclosure

**U.S. DEPARTMENT OF TRANSPORTATION GUIDANCE ON THE
CERTIFICATION REQUIREMENTS OF
THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009**

This document provides U.S. Department of Transportation (DOT) guidance on the requirements for Certification under sections 1201, 1511, and 1607 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5 (Feb. 17, 2009)) ("ARRA") and the process for submitting such Certifications. Sample Certification Forms to satisfy the requirements under sections 1201, 1511 and 1607 of ARRA are attached.

I. Certification under Section 1201 of ARRA.

(a) **General Description:** Maintenance of Effort (Section 1201(a) and (b)) - The Governor of each State must certify to the Secretary of Transportation that the State will maintain its effort with regard to State funding for the types of projects that are funded by ARRA. See attached Sample Form.

(b) **Certifying Official(s):** Governor.

(c) **Principal Requirements:**

- Maintenance of Effort: By no later than March 19, 2009, for each amount distributed to a State or agency thereof from a transportation program appropriation under ARRA, the Governor of the State shall certify to the Secretary that the State will maintain its effort with regard to State funding for the types of projects that are funded by the appropriation.
- Statement: The Governor must submit a statement to the Secretary identifying the amount of funds the State planned to expend from State sources as of Feb. 17, 2009, for the period beginning on February 17, 2009, through September 30, 2010, for the type of projects funded by the appropriation.
- Failure to Maintain Effort: If the State is unable to maintain the level of effort certified, the State will be prohibited from receiving redistributed Federal-aid highway and highway safety construction program obligation limitation in the August Redistribution for FY 2011.
- Periodic Reports Due Not Later than May 18, 2009 (90 days after enactment, with updates not later than 180 days, 1 year, 2 years, and 3 years after enactment). Further

guidance on the process for submitting these reports will be forthcoming in a separate document.

II. Certification Under Section 1511 of ARRA.

- (a) General Description: For funds under ARRA made available to State or local governments for infrastructure investments, Section 1511 requires that the Governor, mayor, or other chief executive, as appropriate, certify that the infrastructure investment has received the full review and vetting required by law and that the chief executive accepts responsibility that the infrastructure investment is an appropriate use of taxpayer dollars. See enclosure Sample Form to be signed by the appropriate chief executive.

For infrastructure investments funded with amounts appropriated by ARRA under the headings: "Highway Infrastructure Investments" to the Federal Highway Administration, "Transit Capital Assistance," "Fixed Guideway Infrastructure Investment," and "Capital Investment Grants" to the Federal Transit Administration, the appropriate chief executive may certify that the specific information required by Section 1511 concerning each such investment is provided on the [State name] Statewide Transportation Improvement Program (STIP) and is available to the public at [<http://.....>]. **This Certification Must Be Executed and Posted Prior** to State or local governments receiving ARRA funds. See enclosure Sample Form.

- (b) Certifying Official(s): Governor, mayor, or other chief executive, as appropriate.
- (c) Principal Requirements: Certification shall:
- include the fact that the infrastructure investment has received the full review and vetting required by law;
 - include the fact the chief executive accepts responsibility that the infrastructure investment is an appropriate use of taxpayer dollars;
 - include a description of the investment, the estimated total cost, and the amount of covered funds to be used; and,
 - be posted on a website and linked to the Recovery Accountability and Transparency Board website.

III. Certification under Section 1607 of ARRA.

- (a) General Description: The Governor must certify by April 3, 2009, to the appropriate use of funds, including the use of such funds to create jobs and to promote economic growth. See enclosure Sample Form.
- (b) Certifying Official(s): Governor.

Sample Form

**CERTIFICATION UNDER SECTION 1201 OF
THE AMERICAN RECOVERY AND REINVESTMENT ACT :**

Pursuant to Title XII, section 1201 of the American Recovery and Reinvestment Act (Pub. L. 111-5 (Feb. 17, 2009)) ("ARRA"), I _____, the Governor of the State of _____, hereby certify to the Secretary of Transportation that the State of _____ will maintain its effort with regard to State funding for the types of projects in DOT "covered programs" funded under ARRA. The enclosure list of DOT "covered programs" identifies the amount of funds the State plans to expend from State sources from February 17, 2009 to September 30, 2010, for the types of projects under the DOT "covered programs" funded under ARRA.

I understand that if the State of _____ is unable to maintain the level of funding identified in this list of the types of projects under the DOT "covered programs" funded under ARRA, the State of _____ will thereafter be prohibited by the Secretary of Transportation from receiving additional limitation on obligations for Federal-aid highway and highway safety construction programs that occurs after August 1 for fiscal year 2011.

Governor, State of _____

Signed this _____ day of March, 2009.

Attachment

Attachment

[INSERT OR ATTACH LIST OF DOT "COVERED PROGRAMS" UNDER ARRA AND THE SPECIFIC STATE FUNDING AMOUNTS FOR THE TYPES OF PROJECTS UNDER THE DOT "COVERED PROGRAMS", OR PROVIDE ELECTRONIC LOCATION OF LIST]

"Supplemental Discretionary Grants for a National Surface Transportation System"-
Office of the Secretary of Transportation- (\$)

"Supplemental Funding for Facilities and Equipment"- Federal Aviation Administration-
(\$)

"Grants-in-Aid for Airports"- Federal Aviation Administration- (\$)

"Highway Infrastructure Investment"- Federal Highway Administration- (\$)

"Capital Assistance for High Speed Rail Corridors and Intercity Passenger Rail Service"-
Federal Railroad Administration- (\$)

"Capital Grants to the National Railroad Passenger Corporation"- Federal Railroad
Administration-(\$)

"Transit Capital Assistance"- Federal Transit Administration- (\$)

"Fixed Guideway Infrastructure Investment"- Federal Transit Administration- (\$)

"Capital Investment Grants"- Federal Transit Administration- (\$)

"Supplemental Grants for Assistance to Small Shipyards"- Maritime Administration- (\$)
