Texas Education Agency (TEA) Guidance

Section 1511 Infrastructure Certification Requirements for the State Fiscal Stabilization Fund (SFSF) and Individuals with Disabilities Education Act Part B (IDEA-B) Grants under the American Recovery and Reinvestment Act of 2009 (ARRA)

Revised August 2010

This guidance supersedes the *Texas Guidance on Section 1511 Infrastructure Certification Requirements* posted to the TEA ARRA Web site on March 19, 2010 and on June 22, 2010.

Introduction

Grantees are permitted to use funds for infrastructure investments under the following ARRA grant programs:

- ARRA IDEA-B Formula
- ARRA IDEA-B Preschool
- ARRA SFSF

While infrastructure investments are allowable under these grants, TEA encourages grantees to be mindful of the **significant compliance obligations, additional reporting requirements, and potentially increased audit exposure** before deciding to use ARRA funds for infrastructure investments. Additionally, grantees who have included infrastructure investments in their grant applications may wish to reconsider their decision and may decide to amend their applications to remove infrastructure investments.

Please be reminded that if your local educational agency (LEA) uses funds for contracted construction, modernization, renovation, or repair, and the cost will exceed $2,000, you must comply with the Davis Bacon Act. For further information on the Davis Bacon Act, please visit http://www.dol.gov/compliance/laws/comp-dbra.htm.

Regardless of the dollar amount used for construction, modernization, renovation, or repair (contracted or not), you must also comply with the Buy American provisions under Section 1605 of ARRA and all other federal and state requirements pertaining to construction, modernization, renovation, and repair. Please refer to your eGrants application guidelines, instructions, and provisions and assurances for more information on these requirements. For further guidance on the Buy American provisions of ARRA, please visit http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=f30eda4f60d05e38155934509796b7a6&rgn=div6&view=text&node=2:1.1.1.2.3.2&idno=2

LEAs that will go forward with the infrastructure investments included in their application for any of the above grants must also comply with ARRA, Subtitle A, Section 1511, infrastructure certification requirements.

This document provides guidance to LEAs on the Section 1511 certification process for TEA ***approved*** infrastructure investments under ARRA SFSF, ARRA IDEA-B Formula, and ARRA IDEA-B Preschool grants. Section 1 describes the LEA certification process (including required reporting of certifications to TEA). Section 2 provides the definition of “infrastructure” for each of these grants. Section 3 provides contact information for both the ARRA SFSF and ARRA IDEA-B program areas at TEA.

Section 1: LEA Certification Process

LEAs must take the following steps to complete the required ARRA Section 1511 certifications and report them to TEA:

1. Prepare a certification form containing the information and statements required by ARRA Section 1511. TEA has prepared a Section 1511 Infrastructure Investment Certification Template, located at http://www.tea.state.tx.us/index2.aspx?id=2147484132, to aid LEAs in complying with all Section 1511 certification requirements. Please note that TEA’s Section 1511 Certification Template is a model intended to aid LEAs that have not

yet completed or posted their Section 1511 certification. If an LEA has already posted a Section 1511 certification **that includes all required information,** the LEA does not need to complete and post this template. If the LEA's posted certification does not include all of the required information, the LEA must revise and re-post its certification.

Whether an LEA chooses to use TEA's Section 1511 Certification Template or creates its own certification form, TEA **requires** that LEA Section 1511 certification forms include the following:

a) Short title of the infrastructure investment from the following lists:

For ARRA SFSF infrastructure investments:

- Communication and Utility System
- Modernization, Renovation, or Repair of Facility
- Construction of a New School Building
- A short title provided by the sub-recipient of less than 100 characters

For ARRA IDEA-B Formula and ARRA IDEA-B Preschool infrastructure investments:

- Alteration of Facility
- Construction

b) Description of the infrastructure investment

c) Estimated total cost of the infrastructure investment

d) Amount of the infrastructure investment to be paid for with ARRA funds

e) Name and county district number of the LEA

f) Statement by the LEA's chief executive that the infrastructure investment has received the full review and vetting required by law and that the LEA's chief executive accepts responsibility that the infrastructure investment is an appropriate use of taxpayer dollars. The LEA's chief executive will either be the superintendent for a school district or the chief operating officer for an open-enrollment charter school.

2. Obtain the signature of the LEA's chief executive and the signature date on the prepared certification form.
3. Scan and post the signed certification form on the LEA's Web site and provide a link to www.recovery.gov. If the LEA does not have a Web site, the LEA must request that the LEA's regional education service center (ESC) post the certification form to its Web site with a link to www.recovery.gov. Please e-mail TEA at arrastimulus@tea.state.tx.us to request contact information for your ESC regarding Section 1511 certification posting. To link to www.recovery.gov, add the hyperlink www.recovery.gov to the certification Web site posting.
4. Retain a hard copy of the certification form on file for compliance reviews, compliance investigations, or audits.
5. Enter TEA's Expenditure Reporting (ER) system and report that the certification form has been completed and posted on the LEA's (or ESC's) Web site, with a link provided to www.recovery.gov. ARRA 1511 Certification ER Entry Procedures are available on TEA's ARRA - Section 1511 Infrastructure Investment Web site at http://www.tea.state.tx.us/index2.aspx?id=2147484239&menu_id=934&menu_id2=941.

Additional Guidance for LEAs

Before LEAs receive (draw down) infrastructure investment funds made available through ARRA, the Section 1511 certification must be completed, posted to the LEA's (or ESC's) Web

site with a link provided to www.recovery.gov, and reported to TEA in ER. ***In order to comply with TEA and ARRA Section 1511 certification requirements, LEAs must follow these steps in this order:***

1. TEA approves the infrastructure investment through approval of the LEA's eGrants application.
2. The LEA receives the Notice of Grant Award (NOGA) for the ARRA grant.
3. The LEA completes certification and posts the certification to the LEA's (or ESC's) Web site and provides a link to www.recovery.gov.
4. The LEA reports to TEA, in ER, that the certification is complete.
5. The LEA requests and receives funds for the infrastructure investment.

Additional Guidance for Shared Services Arrangements (SSAs)
For an SSA where the fiscal agent receives a NOGA under one of the ARRA grants listed above and the member LEA receives approval for an infrastructure investment, **both the fiscal agent and the member LEA** must meet the Section 1511 certification requirements (i.e., both the fiscal agent and the member LEA must complete the certification and post it to their, or their ESC's, Web site with a link to www.recovery.gov). The fiscal agent (and not the member LEA) must report the certification to TEA in ER on behalf of itself and the member LEA.

Changes to an Infrastructure Investment
If an infrastructure investment changes after an LEA has completed, posted, and reported its Section 1511 certification to TEA in ER, the certification must be revised as follows:

- Changes to the infrastructure investment must be recertified by the LEA's superintendent (or chief operating officer for an open-enrollment charter school).
- The revised certification must be posted to the LEA's (or ESC's) Web site.
- The LEA must revise the certification information reported to TEA in ER.
- In the case of SSAs, both the fiscal agent and the member LEA must complete the recertification and post it to their (or their ESC's) Web site and include a link to www.recovery.gov. The fiscal agent (and not the member LEA) must report the recertification to TEA in ER on behalf of itself and the member LEA.

Cancellation of an Infrastructure Investment
If an LEA amends its grant application to remove an infrastructure investment, the LEA must also do the following:

- Remove the Section 1511 certification form from the LEA's or ESC's Web site.
- Delete the ARRA 1511 Report for the infrastructure investment in ER.

For additional information, please also refer to the "To The Administrator Addressed" letter titled "ARRA Reporting and Certification Requirements Update," posted on May 18, 2010, to the TEA Correspondence page (online at http://ritter.tea.state.tx.us/taa/opge051810.html).

Section 2: Infrastructure Guidance and Definitions

TEA has incorporated guidance from the U.S. Department of Education (USDE) to provide the following definitions of "infrastructure" under ARRA SFSF and ARRA IDEA-B. Please note that each definition is focused on the appropriate and allowable uses of funds defined for the relevant grant. For further guidance or questions, please contact the applicable program office at TEA, as listed in the following section.

Infrastructure Definition under ARRA SFSF:
"An infrastructure investment is financial support for a physical asset or structure needed for the operation of a larger enterprise. Therefore, infrastructure investments include support for tangible assets or structures such as roads, public buildings (including schools), mass transit systems, water and sewage systems, communication and utility systems and other assets or structures that provide a reliable flow of products and services essential to the defense and economic security of the United States, the smooth functioning of government at all levels, and society as a whole." However, an infrastructure investment **does not include 'minor remodeling'** as defined in Title 34 of the Code of Federal Regulations (34 CFR) §77.1(c)." (Source: U.S. Department of Education Clarifying Guidance on American Recovery and Reinvestment Act of 2009 Section 1512 Quarterly Reporting, Revised – April 2, 2010)

Minor remodeling, **which is not an infrastructure investment under the USDE's definition,** "means minor alterations in a previously completed building. The term also includes the extension of utility lines, such as water and electricity, from points beyond the confines of the space in which the minor remodeling is undertaken but within the confines of the previously completed building. The term does not include building construction, structural alterations to buildings, building maintenance, or repairs." (Source: 34 CFR, §77.1(c).)

"An LEA may use Stabilization funds for modernization, renovation, or repair of public school facilities. (*See* Section 14003(a) of ARRA.) However, an LEA is prohibited from using Stabilization funds for the following: (a) stadiums or other facilities primarily used for athletic contests or exhibitions or other events for which admission is charged to the general public; (b) improvement of stand-alone facilities whose purpose is not the education of children, including central office administration or operations or logistical support facilities; and (c) school modernization, renovation, or repair that is inconsistent with state law. (See Sections 14003(b) and (c) of ARRA.)" (Source: Guidance on the State Fiscal Stabilization Fund Program, USDE – issued April 2009, question V-3., p. 35)

"Regarding school buildings, an infrastructure investment may include work on the building related to electrical systems, plumbing systems, heating, ventilation or air conditioning systems, the installation of energy-efficient windows, the repair or replacement of roofs, asbestos abatement or removal, bringing facilities into compliance with fire and safety codes, making facilities accessible, or upgrading facilities to support new programs or services. Work related to the building's water and sewage systems and communication and utility systems (as defined in the previous paragraph) would also be included." (Source: Guidance on the State Fiscal Stabilization Fund Program, USDE – issued April 2009, question V-4., pp.35-36)

"Section 1602 of ARRA specifies that in using these grant funds for infrastructure investment, recipients must give preference to activities that can be started and completed expeditiously, including a goal of using at least 50% of the funds for activities that can be initiated not later than 120 days after February 17, 2009. In addition, recipients must use grant funds in a manner that maximizes job creation and economic benefit." (Source: Guidance on the State Fiscal Stabilization Fund Program, USDE – issued April 2009, question V-7., p.37)

In addition, all infrastructure investments must be a capital outlay.

Infrastructure Definition under IDEA-B:
"An infrastructure investment is financial support for a physical asset or structure needed for the operation of a larger enterprise." (Source: Education Department Recipient Reporting Tip Sheets for IDEA Formula Grant Programs January 2010 Reporting, USDE - issued August 28, 2009, updated December 30, 2009)

In order to be considered an infrastructure investment under IDEA-B, an activity must be a capital outlay and must enhance the structure in order for students with disabilities to access free appropriate public education (FAPE). An example of an infrastructure coded to 6600 Capital Outlay is an overhead lift system. All 6629 Building Construction and Alteration projects would be considered infrastructure.

Section 3: Contact Information

For ***program-specific*** assistance please use the following contact information, as appropriate:

Grant Name	Contact Information
• ARRA SFSF	Telephone: (512) 463-9374 E-mail: nclb@tea.state.tx.us
• ARRA IDEA-B Formula • ARRA IDEA-B Preschool	Telephone: (512) 463-9414 E-mail: sped@tea.state.tx.us

For questions regarding ***ARRA reporting requirements,*** please call (512) 936-3647 or e-mail arrastimulus@tea.state.tx.us.