

## **Attachment 11A**

### **Explanatory Note for Department of Justice (DOJ) Report August 1, 2011**

All of the Recovery Act Funds are in the form of grants and were awarded to four Bureaus within the Department of Justice: Office of Violence Against Women (OVW); Office of Justice Programs (OJP); Alcohol, Tobacco, Firearms and Explosives (ATF); and Community Oriented Policing Services (COPS). The attached spreadsheet includes data from all four bureaus. Please note, once these grants are awarded and obligated, we will have more to report on the applicability of the National Environmental Policy Act (NEPA). Specifically, column “E, Number of ARRA Funded Projects/Activities” will be filled in more as projects are funded. Below is more detailed information describing the types of projects for each Bureau.

#### **ATF (Spreadsheet page 1, Row 11):**

ATF received \$10 million through an 1151 Treasury transfer. To date, ATF has obligated \$9,628,000. The Act provided the \$10 million to ATF for its Project Gunrunner for the Southwest Border Initiative. The Southwest Border Initiative is designed to reduce cross border drug and weapons trafficking, and the associated high level of violence occurring on the border between the U.S. and Mexico.

ARRA funds are being used to establish staff (via new hire and relocation), and equip and operate Project Gunrunner criminal enforcement offices along the Southwest Border. Offices are being established in El Centro, CA, Las Cruces & Roswell, NM, and McAllen, TX. There are currently no leases in place. ATF is in temporary space in El Centro and shares DEA space in McAllen. Market surveys are being completed for all locations. ATF does not have direct leasing authority, but relies on GSA to secure office space. GSA has identified these projects as Automatic CATEX (Categorical Exclusions). They cite their PSB NEPA Desk Guide, dated October 1999, Chapter 5.3 (b):

*Acquisition of space within an existing structure, either by purchase or lease, where no change in the general type of use and only minimal change from previous occupancy level is proposed (previous occupant need not have been a Federal tenant).*

#### **OVW (Spreadsheet page 1, Row 9):**

Office on Violence Against Women received grants that are related to judicial, administrative, civil, or criminal enforcement actions that do not require a NEPA analysis (40 C.F.R. 1508.18[a]). OVW has a contractor to conduct the EA on the 10 sites that are conducting serious enough renovations that they need them. As OVW’s NEPA status is all “final”, the report for this period is the same as the last reporting period. The

Recovery Act provided the \$225 millions to OVW for Violence Against Women Prevention and Prosecution program and the total obligation is \$222,959,525. There are a total of 28 Categorical Exclusion actions and 10 Environmental Assessment actions for its projects.

**COPS (Spreadsheet page 1, Row 10):**

The Community Oriented Policing Services' use of Federal funding to implement a Federal assistance grant program has provided 1,034 grants to state, local and tribal law enforcement. Since the funds will be used for activities relating to judicial, administrative, civil, or criminal enforcement actions (40 C.F.R. 1508.18[a], the projects are listed as "NEPA Not Applicable." Total grants funded as of June 30, 2011 include 1,034 grants (1,025 grants awarded in 2009 and 9 grants awarded in September 2010). The total obligation changed from \$995,215,209 to \$993,953,283. The total number of grants withdrawn as of June 30, 2011 is 19, with 3 grants withdrawn during this reporting period at the request of the grantee agency. Grant agencies typically request to withdraw from their grants due to financial budget restrictions.

**OJP (Spreadsheet page 2, Row 3 & 15):**

Most of the OJP grant programs and contracts do not involve any type of construction activity.

OJP and its component agencies make grants to various recipients to carry out authorized projects. The 38 projects that are still pending as of the date of this report are funded by grants. As such, the agency does not have control over the projects. The grantees have discretion as to how quickly they will proceed with construction projects and if they will proceed with construction projects. Many of these grants are made pursuant to authorization statutes including the Omnibus Crime Control and Safe Streets Act. 42 U.S.C. § 3711 (Omnibus Act). The authority for these programs may be found in the Omnibus Act, the Juvenile Justice and Delinquency Prevention Act or the Victims of Crime Act. 42 U.S.C. § 5601; 42 U.S.C. § 10601. Each year, Congress appropriates funds for these grant programs. Under the Recovery Act (ARRA), OJP and its agencies made grants to recipients who are eligible for grants under the various statutory authorities that authorize grant programs [Ref. Pub. L. 111-5, 123 Stat. 114, 130 (2009)]. These various grant programs are set out in the rows on the spreadsheet. As noted above, the ARRA provided funding based on these existing Federal grant programs.

OJP does not perform the required environmental analysis itself. The grantees prepare the environmental analysis documents for OJP and 38 EAs are pending, awaiting completed analyses from the grantees. The need for an environmental analysis depends on the project that is undertaken by the grantee. In the case of the Justice Assistance Grant Program, the project may include construction or renovation. Clearly, if it does not include an activity that requires an environmental analysis, the grantee is not required to engage in any environmental analysis.

The Federal Grant and Cooperative Agreement Act sets out the standards for the use of various funding instruments (Ref.31 U.S.C. § 6301). Under a grant, the agency provides the funds and the grantee is to use the funds for a public purpose (Ref. 31 U.S.C. § 6304). The agency does not have the authority to direct the grantee how to conduct the project. In the case of the Justice Assistance Grant Program, the grantees may change the scope of the project [Ref. 42 U.S.C. § 3751(a)]. If the grantee changes the project plan, this change may mean that an environmental analysis is no longer required.

While many of these projects have been pending since the initial report, OJP is not able to hasten the process because of the factors that are outside of its control. As noted above, the course of action depends on the decisions that the grantees make. If the grantees do engage in construction or renovation activities, OJP requires that the grantees prepare an environmental analysis document unless the project qualifies for a categorical exclusion.

We are unable to provide an expected completion date. As noted above, the agency is not preparing the Environmental Assessments but must wait for input from the grantees for those 38 projects. The only projects that are for construction are the Tribal Lands Construction Grants. This applies to two (2) pending projects. In the case of the other 36 Justice Assistance grants, the grantees may decide to use the funds for projects that do not involve construction. In that case, NEPA would not apply.

Many of the projects listed under the Justice Assistance Grant Program are included because they may involve the use of chemicals. These 36 grant projects are the bulk of the pending projects. Under the agency's NEPA regulations, this use of chemicals requires the preparation of an EA. 28 C.F.R. Part 61, App. D. § 4 (c)(4). Also, as noted above, in the case of the Justice Assistance Grant Program, the grantees may change the scope of the project and decide not use chemicals or to construct anything. 42 U.S.C. § 3751(a). If the grantee changes the project plan, this change may mean that an EA is no longer required.

If the grant funds are not expended prior to the end date for the grant period, the grantee will be required to return the funds to the agency. This is standard practice for grant awards.

There are three changes from the last report to note. In Byrne Competitive Grants, Project titled "BIA Byrne Competitive Grants", there is a change resulted in the issuance of one Categorical Exclusion [2009-SC-B9-0092 (GA Bureau of Investigation): hire and train forensic scientists] and completion of one EA [2009-SC-B9-0077 (Hennepin County Sheriff's Office): DNA crime initiative, buy chemicals] (see Spreadsheet Page 2, Row 8). Therefore, there is no more pending action for the particular project.

For the Tribal Lands Jail Construction Grants, the pending EA's resulted in the issuance of FONSI's and this reduces the number of pending EAs to two (Spreadsheet Page 2, Row15).

For Rural Law Enforcement Assistance project, one out of three EA was completed during this reporting period and this leaves two pending EAs (Spreadsheet Page 2, Row 23). The completed EA [2009-SD-B9-0135 (County of Gray): Meth Lab Clean-up] includes a mitigation plan to comport with the meth lab programmatic EA.

There are no changes in the other programs that have pending environmental analysis documents.

There are a total of 40 pending actions. A brief description of each pending project is stated below:

**CORRECTIONAL FACILITIES ON TRIBAL LANDS** (Spreadsheet Page 2, Row15).

**2 EAs pending**

1. Eight Northern Indian Pueblos Council (2009-ST-B9-0077): jail construction
2. Tule River Indian Reservation (2009-ST-B9-0093): jail construction

**RURAL LAW ENFORCEMENT** (Spreadsheet Page 2, Row23).

**2 EAs pending**

1. 2009-SD-B9-0180 (Walton County Sheriff's Office): Development of a new crime scene unit, including forensic supplies
2. 2009-SD-B9-0034 (City of Mount Hope): Operation of evidence processing and training center, including forensic chemicals

**JUSTICE ASSISTANCE GRANTS** (Spreadsheet Page 2, Row3).

**36 EAs pending**

1. 2009-SU-B9-0024 (SC Dept of Public Safety): various criminal justice projects, including forensic science.
2. 2009-SU-B9-0038 (OK District Attorneys Council): various criminal justice projects, including forensic science.
3. 2009-SU-B9-0053 (PR Dept of Justice): various criminal justice projects, including forensic science.
4. 2009-SU-B9-0043 (NV Dept of Public Safety): various criminal justice projects.
5. 2009-SU-B9-0030 (Office of the Governor of KS): various criminal justice projects, including forensic science.
6. 2009-SU-B9-0029 (AZ Criminal Justice Commission): various criminal justice projects, including forensic science.
7. 2009-SU-B9-0009 (CA Emergency Mgmt Agy): various criminal justice projects
8. 2009-SU-B9-0049 (AR Dept of Finance and Administration): various criminal justice projects
9. 2009-SU-B9-0016 (RI Public Safety Grant Administration Office): various criminal justice projects, including construction
10. 2009-SU-B9-0057 (State of TX): various criminal justice projects
11. 2009-SU-B9-0051 (MN Dept of Public Safety): various criminal justice projects

12. 2009-SU-B9-0013 (ME Dept of Public Safety): various criminal justice projects
13. 2009-SU-B9-0019 (NH Dept of Justice): various criminal justice projects
14. 2009-SU-B9-0027 (OH Office of Criminal Justice Svcs): various criminal justice projects
15. 2009-SU-B9-0047 (IN Criminal Justice Institute): various criminal justice projects
16. 2009-SU-B9-0014 (PA Cmsn on Crime and Delinquency): various criminal justice projects
17. 2009-SU-B9-0015 (NY Division of Criminal Justice Services): various criminal justice projects, including forensic science
18. 2009-SU-B9-0059 (VI Law Enforcement Cmsn): various criminal justice projects, including construction
19. 2009-SB-B9-0271 (Orange County, CA): various criminal justice projects, including meth lab clean-up and forensic science
20. 2009-SB-B9-0110 (Erie County, OH): create regional information system
21. 2009-SB-B9-3383 (City of Grand Rapids, MI): various criminal justice projects, including forensic science
22. 2009-SB-B9-0841 (City of Winchester, TN): equipment purchase and jail construction
23. 2009-SB-B9-0753 (City of Philadelphia, PA): various criminal justice projects
24. 2009-SB-B9-0345 (Johnson County, TX): telecommunications center enhancement
25. 2009-SB-B9-0350 (City of Vernon, TX): equipment purchase and police facility repair
26. 2009-SB-B9-0549 (Scott County, IA): various criminal justice projects
27. 2009-SB-B9-2855 (City of Wilmington, OH): Police range improvement
28. 2009-SB-B9-1724 (County of Bladen, NC): various criminal justice projects, including meth lab clean-up
29. 2009-SB-B9-2544 (City of Fargo, ND): various criminal justice projects, including erection of radio tower
30. 2009-SB-B9-2201 (Milwaukee County, WI): various criminal justice projects, including replacing jail cells
31. 2009-SB-B9-2175 (City of Sapulpa, OK): website creation and meth lab clean-up
32. 2009-SB-B9-2024 (City of Los Angeles, CA): various criminal justice projects, including erection of radio towers
33. 2009-SB-B9-3075 (Owyhee County, ID): relocate radio repeater system
34. 2009-SB-B9-0780 (New York City, NY): various criminal justice projects
35. 2009-SB-B9-3062 (City of Cottage Grove, OR): jail modernization
36. 2009-SB-B9-0023 (City of Wilmington, DE): various criminal justice projects, including forensic science

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