

Attachment 11A

Explanatory Note for Department of Justice (DOJ) American Recovery and Reinvestment Act (ARRA) Section 1609(c) Report November 2, 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. 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 \$9,801,000. The Act provided the \$10 million to ATF for its Project Gunrunner for the Southwest Border Initiative. There are \$199K non-obligated funds left from deobligations due to actual that were lower than the estimate. Once all funds are expended/outlaid unused funds will be transferred back to DOJ. ATF will not use ARRA money to perform NEPA reviews after the FY ends. At the end of the FY ARRA dollars are available to be used only for adjustment to ARRA obligations.

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. Recovery Act funds allowed ATF to set up and staff offices along the Southwest Border as part of the Southwest Border initiative meant to stem the flow of illegal weapons 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.

Many of OVW's grants are three year awards, so the grantees will continue to spend the money for all of FY2012. Even for some of the two-year awards, there are often legitimate reasons for not finishing an award on time, such as when it takes longer than expected to hire an employee or obtain space for the project. In such cases, grantees can request a no-cost extension which would allow them to continue their project and the spending of the funds past the end of FY 2011. For the grantees where the project ends and there is money left but they do not receive a no-cost extension, OVW will close out the award and return the remaining funds to the Treasury.

COPS (Spreadsheet page 1, Row 10):

The Community Oriented Policing Service's (COPS Office) use of Federal funding to implement a Federal assistance grant program has provided 1,033 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 September 30, 2011 include 1,033 grants (1,024 grants awarded in 2009 and 9 grants awarded in September 2010). The total obligation changed from \$993,953,283 to \$993,795,219. The total number of grants withdrawn as of September 30, 2011 is 20, with 1 grant 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."

The COPS Office developed the COPS Hiring Recovery Program (CHRP), a competitive grant program designed to address the full-time sworn officer needs of state, local, and tribal law enforcement agencies nationwide. CHRP provided funding directly to law enforcement agencies to hire new and/or rehire career law enforcement officers in an effort to create and preserve jobs, and to increase their community policing capacity and crime-prevention efforts. When awarded in July 2009, CHRP funded 4,699 hired or rehired officers across the nation.

CHRP grant funding is available following the end of the Fiscal Year. CHRP grants provided funding to cover 100 percent of the approved entry-level salary and fringe benefits of each newly-hired and/or rehired, full-time sworn career law enforcement officer over three years (36 months), with a grant award period of July 1, 2009 through June 30, 2012.

OJP (Spreadsheet page 1, Row 1-8):

Most of the OJP grant programs and contracts do not involve any type of construction activity or the use of chemicals. OJP and its component agencies make grants to various recipients to carry out authorized projects. All of the 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. Also, the grantees may decide not to use grant funds for the

purchase of chemicals. 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. 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 and OJP reviews these documents. 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, renovation or the use of chemicals. 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. 31 U.S.C. § 6301. Under a grant, the agency provides the funds and the grantee has discretion to use the funds for a public purpose. 31 U.S.C. § 6304. The agency does not have the authority to direct the grantee how to perform the project. In the case of the Justice Assistance Grant Program, the grantees may change the scope of the project. 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 or the use of chemicals, OJP requires that the grantees prepare an environmental analysis document unless the project qualifies for a categorical exclusion.

OJP is 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. The only projects that are for construction are the Tribal Lands Construction Grants. This applies to two pending projects. In the case of the other grants, the grantees may decide to use the funds for projects that do not involve construction. In that case, NEPA would not apply.

All of these actions have been pending since the agency made the awards during FY 2009. As noted above, under a grant, the agency provides the funds and the grantee has discretion to use the funds for a public purpose. 31 U.S.C. § 6304. The agency does not have the authority to direct the grantee how to perform under the project.

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). The agency is currently considering the preparation of a

Programmatic Environmental Assessment to address this situation. Based on prior experience, this process may not be completed before the preparation of the next quarterly report. When this Programmatic EA is finished, it should resolve most of these pending environmental issues. 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 environmental analysis 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.

The following changes were made to page 1 of the enclosed spreadsheet.

- Row 1: Total obligation was updated and total number of projects was reduced. This reduction likely represents local jurisdictions that ultimately decided to decline the awards. Corresponding changes were made on page 2.
- Row 2: Total obligation was updated and two additional awards were added. Both projects qualified for a CATEX. Corresponding changes were made on page 2.
- Row 3: Total obligation was updated and two additional awards were added. Corresponding changes were made on page 2. Both projects qualified for a CATEX.
- Row 4: Total obligation was updated.
- Row 5: Total obligation was updated.
- Row 6: Twelve additional awards were added and corresponding changes were made on page 2. Each of these projects qualified for a CATEX.
- Row 7: An additional award was added and corresponding change was made on page 2. This project qualified for a CATEX.

A description of the funded projects was included in the spreadsheet. These descriptions are as of the date of this report. As noted above, the grantees may, in some cases, change the scope of their projects. As the spreadsheet explains, for the grant programs that do involve construction projects or the use of chemicals, some of the Environmental Assessments (EA) have not been completed, yet. There are a total of 40 pending actions. A brief description of each pending project is stated below:

Tribal Land Jail Construction – Correctional Facilities on Tribal Lands (Spreadsheet Page 2, Row15)

2 EAs pending

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

Rural Law Enforcement Assistance (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 - BJA Justice Assistance Grants to State and Local Recipients
(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 Agency): 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

