

**2009 New Jersey Environmental Infrastructure Financing Program**  
**Frequently Asked Questions**

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This compilation of questions and answers has been prepared in response to applicants' requests as they prepare for the 2009 New Jersey Environmental Infrastructure Financing Program (2009 Financing Program). Although NJEIFP staff has sought to provide guidance in all aspects of the 2009 Financing Program, please note that the 2009 Financing Program parameters are subject to change in the event unanticipated issues are encountered. This document will be updated periodically as new questions are posed to the program.

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70. Has there been any change in the 2010 schedule as a result of this year's program?
71. Is there any hope that additional funds will be provided for a second round of ARRA programs?

**FAF**

72. A. What is the submission schedule for ARRA and Traditional FAFs.  
B. An applicant's project was not listed as ARRA eligible under the original Project Priority List and as a result the applicant did not submit an FAF form by the May 29 deadline. The project is now listed as ARRA eligible under the Living List. Is the applicant precluded from seeking ARRA funding for this project because it missed the deadline?  
C. If an applicant's project was not listed for ARRA financing in the Project Priority List but is now listed for ARRA funding under the Living List, when is the ARRA FAF and FAF Supplement due?

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77. Is the Financial Addendum Form and/or the Supplement to the Financial Addendum Form required for projects composed of 100% Traditional Financing terms?

**FAF Supplement**

78. The supplement states that a separate FAF is required for each project is this correct?
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**Bid Blackout**

84. Does a bid black-out period apply to ARRA Projects?
85. Does a bid black-out period apply to Traditional Projects?
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**Bond Sale**

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89. A municipality or authority cannot get appropriation until it is approved by the Local Finance Board. Therefore, a borrower cannot award a contract before receiving LFP approval. The application deadline for the June LFB meeting is May 20, 2009. We cannot make that deadline, is this going to jeopardize our ARRA funding?
90. Can NJEIT request delayed LFB deadline for applications for June hearing beyond 5/20 for ARRA projects or a special hearing in late June?
91. If an applicant has one or more projects that qualify for ARRA Financing Program funding and one or more projects that qualify for Traditional Financing Program funding, can such applicant pursue simultaneously official action, including Local Unit Bond authorization and Local Finance Board approval, that addresses the financing of all of such projects or, alternatively, must such applicant bifurcate such official action as between the ARRA Financing Program projects and the Traditional Financing Program projects?

**Fee Structures**

92. Will the NJEIFP fee structure be different this year?

**Loan Closing Issues**

93. How will closing an ARRA Financing Program loan work?

94. How many series of bonds does the borrower need to issue for a Traditional Financing Program loan or the ARRA financing Program loan?

95. When are Loan Forms expected to be available - early July as in the past? Previously, we adopted Authority bond resolution and form resolution together. That may not be possible now, due to required timing of contract awards, estoppel, etc.

96. If the Trust closing is November can an ARRA funded project award contract in December?

**Credit Worthiness**

97. Are the traditional “credit worthiness standards” applicable to the ARRA Financing Program?

**Interim Financing / Pre-award Approval**

98. Can an applicant that is participating in the ARRA Financing Program participate in the NJEIT’s Interim Financing Program?

99. Is it true that Traditional Financing Program borrower’s will likely not receive interim funding because NJDEP will be committing its efforts in the first few months to ARRA projects?

100. If a town applies for and gets an interim loan, are they guaranteed funding at some point in the future - 2009/2010?

**Capitalized Interest**

101. How long can a borrower capitalize interest?

**FREQUENTLY ASKED QUESTIONS**

**Intended Use Plan / Project List Public Hearing**

**1. A. What is the NJDEP’s Intended Use Plan and Project Priority System?**

A: The criteria used to determine the ranking of each qualifying project are set forth in the NJDEP Clean Water Project Priority System, Intended Use Plan and Project Priority List and the NJDEP Drinking Water Project Priority System, Intended Use Plan and Project Priority List, as the case may be.

If an applicant wishes to appeal or otherwise question the ranking of a particular qualifying project, it may do so via the respective public comment mechanisms for the NJDEP Clean Water Project Priority System, Intended Use Plan and Project Priority List and the NJDEP Drinking Water Project Priority System, Intended Use Plan and Project Priority List. The manner in which public comments may be submitted is detailed in the respective Project Priority Systems, Intended Use Plans and Project Priority Lists. The public comment period with respect to each of the NJDEP Clean Water Project Priority System, Intended Use Plan and Project Priority List and the NJDEP Drinking Water Project Priority System, Intended Use Plan and Project Priority List ends on June 1, 2009.

**B. I heard there is a public hearing on May 18 and the public comment period for the NJDEP's project priority list and intended use plan expires on June 1. Where can I get more information?**

A: Clean Water Program: [http://www.nj.gov/dep/dwq/cwpl09\\_p\\_arra.htm](http://www.nj.gov/dep/dwq/cwpl09_p_arra.htm)

Drinking Water Program:

[http://www.nj.gov/dep/watersupply/docs/amended\\_ffy2009\\_iup\\_proposed.pdf](http://www.nj.gov/dep/watersupply/docs/amended_ffy2009_iup_proposed.pdf)

### 2009 Borrower Recommitment

**2. What is the borrower recommitment and when is it due.** A: Traditionally, eligibility to participate in any program year is limited to entities filing initial submission packages/environmental planning documents each fall and applications/construction design documents in the following Spring. In December of 2008, the Program re-cast the initial submission deadline to March (through the call for projects) in anticipation of the federal stimulus legislation, and the belief that it would be unfair to preclude entities from participating that had shovel ready projects. In response, the Program received 360 additional applications from entities before the terms and conditions of the 2009 Financing Program were established. As a result, priority list project costs exceed available funding by a ratio in excess of 3:1, and a program staff that has been reduced by 20% in the past four years is tasked with processing 300 percent more applications than the highest year of record.

The purpose of the recommitment form is to improve the accuracy of the project priority list by removing projects whose sponsors are not interested in participating in the 2009 Program. The benefits are two-fold: (1) the project rankings will more accurately reflect each borrower's eligibility for limited funds; and (2) Program staff are more likely to complete its review of all program applications before the end of the program year. The program's ability to achieve these important objectives is dependent on the borrowers' accurate disclosure of their commitment to secure financing in the 2009 Financing Program. Hence, this requirement that a Recombitment Letter be submitted by each applicant is in the best interests of all 2009 Financing Program participants and the administration of the 2009 Financing Program.

The recommitment form was emailed by the Trust to the authorized representatives, bond counsel and consulting engineers for projects identified on the 2009 Project list. The recommitment form is not available on the Trust's website. Only authorized representatives may return the recommitment form and a recommitment form must be returned for each project to demonstrate continued interest in participating in the 2009 Financing Program. The completed form must be received by NJDEP no later than June 15, 2009 to the address as set forth in the form. The NJDEP has determined that it will not begin the process leading to project certification with respect to the project of a particular applicant until it receives that applicant's signed Recombitment Letter. Again, each borrower's accurate disclosure of its commitment to the program has significant ramifications to both program participants and program staff.

**3. A. If my project is not to be considered for the ARRA Program but rather the Traditional Program this fall, do I need to submit anything to confirm I am interested in participating in the Traditional financing Program for 2009?** A: Yes, the recommitment form.

**B. An applicant submitted its recommitment form prior to June 15. In the recommitment form, the applicant stated that it was only interested in Traditional financing for the project based on the fact that the project was only listed as eligible for Traditional financing in the original Project Priority List. The applicant's Drinking Water project is now identified as ARRA eligible in the Living List; what should the applicant do?** A: Nothing. The applicant should not submit another recommitment form. Applicants who recommitted to the Traditional Financing Program in the recommitment form will be deemed to also have also recommitted to ARRA Financing Program if the project is subsequently identified for ARRA funding in the Living List. If an applicant is identified in the Living List as ARRA eligible, the NJDEP will notify the applicant if and when it is preparing to commence project review. The program does not anticipate increasing

the number of ARRA eligible projects hereafter, and if such an action is taken, the applicant will be notified and the Living List will be adjusted accordingly.

General Procedures for Program participation

**4. How will the New Jersey Environmental Infrastructure Financing Program provide funding to qualifying applicants this year?** A: During State Fiscal Year 2010 (July 1, 2009 through June 30, 2010), the New Jersey Environmental Infrastructure Trust (the "NJEIT") and the New Jersey Department of Environmental Protection (the "NJDEP"), working jointly as financing partners, will administer two long-term financing programs through the 2009 New Jersey Environmental Infrastructure Financing Program (the "2009 Financing Program"): (i) the conventional, low-interest financing program for eligible clean water and drinking water environmental infrastructure improvements, that this year will include a new State stimulus feature (the "Traditional Financing Program"); and (ii) a new and one-time-only, low interest financing program for eligible clean water and drinking water environmental infrastructure improvements, that will be the means through which the State will implement the environmental infrastructure provisions of the American Recovery and Reinvestment Act of 2009 ("ARRA"), through which the NJDEP has received federal clean water and drinking water funds for disbursement in furtherance of economic stimulus within the State (the "ARRA Financing Program"). Collectively, the Traditional Financing Program and the ARRA Financing Program have been structured to provide significant financial incentives to qualifying applicants to proceed with and expedite the implementation of eligible environmental infrastructure projects that will generate significant economic activity throughout the State.

**5. Can a project sponsor in either the Traditional Financing Program or ARRA Financing Program self-finance a project and be reimbursed through the loan when the loan funds become available?** A: No project activities can be undertaken by an applicant for which it will be eligible to receive financing prior to the applicant's receipt of an Authorization to Advertise. Conversely, any activities undertaken by an applicant prior to receipt of an Authorization to Advertise are ineligible for financing. An applicant must satisfy all program and permitting requirements prior to the NJDEP's issuance of an Authorization to Advertise. In the event funds from either financing program are exhausted, the State's receipt of subsequent funds for the 2010 Financing Program will be distributed to the projects vying for funding in 2010 pursuant to the Intended Use Plan of the year in which such funds are received.

Traditional Loan.

**6. What are the basic features of the Traditional Financing Program, as enhanced for the current State Fiscal Year?** A: The ARRA Financing Program is the mechanism for disbursement of federal stimulus dollars provided to New Jersey through ARRA for eligible environmental infrastructure projects undertaken by qualifying applicants. However, the ARRA Financing Program is in addition to, and not in substitution for, the Traditional Financing Program. Hence, as stated above, the 2009 Financing Program will administer both the ARRA Financing Program and the Traditional Financing Program this year. In addition, the Tradition Financing Program will benefit from its own economic stimulus component. The economic stimulus component of the Traditional Financing Program will be funded by the State from traditional State Revolving Fund ("SRF") sources from which Fund Loans are made each year. Specifically, with only two category exceptions, each qualifying applicant with respect to the Traditional Financing Program will receive (i) a market rate Trust Loan provided by the NJEIT from proceeds of its natural-AAA-rated bonds for 25% of the funding needs of its eligible project and (ii) a zero interest rate Fund Loan provided by the NJDEP from traditional SRF sources for 75% of the funding needs of its eligible project.

The two category exceptions referenced above are (i) any applicant with respect to open space acquisition projects and (ii) any applicant seeking a supplemental loan in a case in which the original loan financing in 2008 (or a prior year) consisted of a Trust Loan and a Fund Loan allocated on a 50% - 50% basis. The policy

determination with respect to scenario (i) is reflective of the fact that open space acquisition projects -- while serving worthy environmental policy goals -- do not serve to stimulate new economic activity through the creation of jobs, etc. The policy determination with respect to scenario (ii) is reflective of the fact that the project at issue was funded previously and, therefore, currently is under construction. For such a 2009 supplemental loan applicant, the stimulus component of the Traditional Financing Program will not serve the policy goal of stimulating new economic activity and new environmental infrastructure improvements. However, if the original loan financing in 2008 (or a prior year) consisted of a Trust Loan and a Fund Loan allocated on a 25% - 75% basis, then such a 2009 supplemental loan applicant may receive Traditional Financing Program funding pursuant to the same allocation.

The Traditional Financing Program, enhanced as described above through State stimulus funding, is comparable to the "smart growth" initiative incorporated into the NJEIFP in recent years for the purpose of incentivizing certain types of environmental infrastructure policy goals. However, this year, the application of such 25% - 75% funding is much broader and has as its goal economic stimulus, as well as environmental infrastructure policy goals. Keep in mind that, while both the ARRA Financing Program and the Traditional Financing Program provide the opportunity for 25% - 75% funding for most participants, only the ARRA Financing Program provides the opportunity for some principal forgiveness.

**7. What are the general procedures of the Traditional Financing Program, as enhanced for the current State Fiscal Year?** A: There are three prerequisites (conditions precedent) to participate in the Traditional Financing Program: project conditions, availability of funds, and financing conditions. With respect to project conditions, an applicant may not participate in the Traditional Financing Program until its project is certified by the NJDEP Commissioner. Prior to certification by the NJDEP of a project, the NJDEP must conduct a review of the engineering and environmental aspects of the project, and all approvals and permits with respect to such project must have been applied for by the applicant and issued by the NJDEP or other applicable regulatory agency. Once the NJDEP completes its review of the projects and all approvals and permits have been issued, the NJDEP will certify the project.

With respect to the availability of funds condition precedent, initial estimated project costs for the 2009 Financing Program exceed available funds. The availability of funds will be influenced by projects that withdraw or are bypassed from the program. Updated information will be made available to applicants at [www.njeit.org/recovery.htm](http://www.njeit.org/recovery.htm). In addition, borrowers will receive notice as to the availability of funds upon their receipt of project certification.

With respect to the financing conditions precedent, each applicant must adopt all official action required to finance its project, including, without limitation, ordinances and/or resolutions, as applicable, authorizing such applicant (i) to enter into a Trust Loan Agreement, a Fund Loan Agreement and an Escrow Agreement, and (ii) to issue its bonds to, respectively, the NJEIT and the State in order to evidence and secure the repayment of the respective loans. Such official action is not considered complete until all applicable estoppel and publication periods have run. Each applicant also must receive approval with respect to the financing from the Local Finance Board or Board of Public Utilities, as applicable.

During the period in which each applicant proceeds to satisfy the conditions precedent set forth in the preceding two paragraphs, NJEIT bond counsel will circulate the forms of Trust Loan Agreement, Fund Loan Agreement and Escrow Agreement, as well as the forms of the various legal opinions and certificates that must be delivered at closing. Each applicant will be asked to submit comments to such documents, particularly the schedules thereto, relating to applicant-specific information. During this time, the NJDEP also will circulate Exhibits to the Loan Agreements which contain details as to the project(s), including cost breakdowns and draw schedules.

Upon satisfaction of all conditions precedent to participation in the Traditional Financing Program, an applicant will proceed to escrow closing with respect to its Trust Loan and its Fund Loan. At such time, each applicant will execute and deliver an Escrow Agreement with respect to the Trust Loan and the Fund Loan, pursuant to

which the applicant will deliver in escrow its executed Trust Loan Agreement, its executed Fund Loan Agreement, its executed Local Unit Bonds, and various certificates required by the NJEIT and the NJDEP. In addition, bond counsel and/or general counsel to such applicant will deliver a signed commitment letter, agreeing to deliver its legal opinions with respect to the Trust Loan and the Fund Loan on the date of release from escrow of the Trust Loan Agreement and the Fund Loan Agreement. The loan amounts will not be finalized at that time, although the Escrow Agreement will set forth the formula for determining such amounts upon completion of the NJEIT bond sale. In addition, the applicant's consulting engineer will deliver at the escrow closing a certificate as to the useful life of the project(s).

After the NJEIT sells its bonds and prior to pre-closing and closing with respect to such bonds, the NJEIT will distribute to each applicant the respective debt service schedules with respect to the Trust Loan and the Fund Loan. Each applicant, in its discretion, may choose to either adopt a confirmatory resolution or execute an award certificate confirming the final principal amounts of the Trust Loan and the Fund Loan and the respective debt service schedules with respect thereto. Upon closing with respect to the NJEIT bonds, (i) each applicant's bond counsel and/or general counsel will be required to provide the final, executed legal opinions with respect to the Trust Loan and the Fund Loan, (ii) the Trust Loan and Fund Loan documentation of each applicant will be released from escrow, and (iii) the Trust Loan and Fund Loan financing will be closed.

In addition to the (i) project conditions precedent and (ii) financing conditions precedent, as discussed above, we wish to reiterate that successful participation by an applicant in the Traditional Financing Program is dependent upon the availability of sufficient SRF funding and a sufficiently high ranking. See the response to Question 7, above.

**8. What is the general schedule for the Traditional Financing Program?** A: As described in detail in the response to Question 73 below, an applicant that is eligible for the Traditional Financing Program (other than Supplemental Loans, in which case, see the responses to Question 11 and 12 above) must submit its FAF on or prior to August 17, 2009.

Each applicant must submit its "Recommitment Letter" (as described in the response to Question 2, above) as soon as possible, but not later than June 15, 2009. The NJDEP will not begin the process of project certification with respect to a given project unless the Recommitment Letter with respect to such project is received. In general, the NJDEP will not begin the process of project certification with respect to Traditional Financing Program projects until after it completes project certification with respect to all ARRA Financing Program projects. If an applicant with respect to a Traditional Financing Program project seeks expedited project certification for such project due to extraordinary circumstances, such applicant is advised to contact the NJDEP as soon as possible.

Once the NJDEP is prepared to commence project certification with respect to Traditional Financing Program projects, it will begin reviewing plans, specifications, permit applications and other submissions with respect to the applicant's project(s), and will work with the applicant to prepare the applicant's project(s) for certification. The NJDEP will certify Traditional Financing Program projects by mid-fall (no later than October 15, 2009). When a project is certified by the NJDEP Commissioner, the applicant is ready to proceed to escrow closing, subject to the following paragraph.

No later than the period during which an applicant and the NJDEP shall undertake all work with respect to project certification for such applicant's project(s), such applicant should adopt the ordinances, resolutions and other official action necessary to enable the applicant to enter into loan agreements with, respectively, the NJEIT and the State, and to issue its bonds to, respectively, the NJEIT and the State. Each applicant also should apply to the Local Finance Board or Board of Public utilities, as applicable, for all approvals that may be required with respect to its Traditional Financing Program loans and bonds. We recommend that Traditional Financing Program applicants appear before the Local Finance Board no later than (and preferably sooner than)

the October 14, 2009 hearing date (or, as applicable, that Traditional Financing Program applicants appear before the Board of Public Utilities no later than (and preferably sooner than) the October 7, 2009 hearing date).

While the applicants are preparing and adopting their official action, NJEIT bond counsel will complete the Trust Loan and the Fund Loan documentation. NJEIT bond counsel expects to distribute the forms of Traditional Financing Program loan documents in early Fall, at which time it will distribute a schedule for the receipt of comments and the distribution of subsequent drafts. Each applicant should have all official action in place (including the completion of all publication and estoppel periods) no later than (and preferably sooner than) October 15, 2009.

Once an applicant's project(s) are certified by the NJDEP Commissioner, and when all official action of such applicant, including relevant publication and estoppel periods, is complete, the NJEIT and the NJDEP will schedule an escrow closing for such applicant with respect to both its Trust Loan and Fund Loan. More details with respect to closing procedures can be found in the response to Question 7, above. Such escrow closings are expected to occur in mid-to-late fall.

The NJEIT expects to market its bonds with respect to the Traditional Financing Program in December, with a bond sale occurring in late December or early January 2010. The NJEIT expects to close on its bonds with respect to the Traditional Financing Program in January 2010, at which time all documentation with respect to the Trust Loans and Fund Loans will be released from escrow. For additional, relevant information relating to the issues discussed in the response to this Question 8, please see the response to Question 10.

**9. Will projects that did not receive acceptance into the ARRA program automatically be considered for funding under the standard NJEIT funding program with 50% market rate loans and 50% zero rate loans?** A: Projects identified in the Project Priority List are all eligible to receive traditional financing program loans (subject to the availability of funds) with 75% zero interest rate loans and 25% market rate loans with the following exceptions: land preservation is 50% market rate and 50% zero interest rate, and supplemental loans are at the same interest rate of the original project loan.

**10. Must an applicant participating in the Traditional Financing Program wait until the Fall to proceed with its project and its work with respect to the financing conditions precedent? If such an applicant is ready to proceed early, must it wait until the Fall - Winter funding cycle?** A: No applicant (without distinction as between the Traditional Financing Program and the ARRA Financing Program) is permitted to advertise for bids with respect to its construction contracts prior to the receipt of an authorization to do so from the NJDEP. In addition, no applicant (without distinction as between the Traditional Financing Program and the ARRA Financing Program) is permitted to commence construction with respect to a project prior to the receipt of project certification (and pre-award approval) from the NJDEP and the NJEIT. To the extent that any applicant has received project certification, pre-award approval and NJDEP authorization to advertise, such applicant may proceed promptly with its project (award of contracts and construction), regardless of whether its project is being financed through the Traditional Financing Program and/or the ARRA Financing Program. (It is important to note that any applicant may incur preliminary costs in connection with engineering and other planning and design work relating to its project prior to receipt of project certification, pre-award approval and NJDEP authorization to advertise.) Therefore, it is possible that a participant in the Traditional Financing Program (i) may commence construction of its project prior to the Fall and (ii) may seek interim funding for such construction costs through the NJEIT Interim Financing Program prior to receipt of permanent funding through the Traditional Financing Program in January.

With respect to financing conditions precedent, applicants (without distinction as between the Traditional Financing Program and the ARRA Financing Program) may commence the process at any time and as early as they would like of adopting ordinances, resolutions and other official action, and obtaining Local Finance Board or Board of Public Utilities approval (as applicable). However, it is highly recommended that such applicants

consult with Public Financial Management, Inc., financial advisor to the NJEIT, prior to identifying an appropriately estimated “not-to-exceed” amount in any such official action.

Finally, to the extent that an applicant for financing through the Traditional Financing Program is successful in procuring project certification, pre-award approval and NJDEP authorization to advertise this Summer and also promptly completes all financing conditions precedent this Summer, there is a possibility that the NJEIT and the NJDEP will attempt to accelerate permanent financing for such an applicant prior to the Fall-Winter cycle by escrow closing and closing the Fund Loan and the Trust Loan therefore this Summer - Fall, with the Trust Loan being funded with proceeds of the NJEIT bonds to be issued in November. This scenario is anticipated to be unique and would be initiated by inquiry on the part of the NJEIT and the NJDEP with the particular applicant. The goal of the NJEIT and the NJDEP in such a scenario would be to accelerate permanent funding for such a project-ready Traditional Financing Program applicant so as to limit the draw on the Interim Financing Program, which is subject to its own funding limits and is expected to be in high demand this Fall.

#### Supplemental Loans

##### **11. What are the general procedures for participation by an applicant that seeks a supplemental loan?**

The general procedures for participation by an applicant that seeks a supplemental loan are the same as those procedures for participants in the Traditional Financing Program (see the responses to Question 7, above). However, supplemental loans will proceed according to a different schedule than other Traditional Financing Program loans. Please see the response to Question 12, below.

**12. What is the schedule for participation in the 2009 Financing Program for the purpose of obtaining a supplemental loan?** A: Supplemental loans generally will follow the same schedule as that for ARRA Financing Program loans (see the response to Question 15, above), but will follow the procedures of Traditional Financing Program (see the response to Question 7, above), as further described below.

An applicant eligible for a supplemental loan within the Traditional Financing Program must submit its FAF on or prior to May 29, 2009. Additionally, each such applicant must submit its “Recommitment Letter” (as described in the response to Question 2, above) as soon as possible, but not later than June 15, 2009. The NJEIT will not begin preparing an applicant for financing until the FAF is received, and the NJDEP will not begin the process of project certification until the Recommitment Letter is received. The NJDEP will certify supplemental projects during the summer. When a project is certified by the NJDEP Commissioner, the applicant is ready to proceed to escrow closing, subject to the following paragraph.

During the period in which a supplemental loan applicant and the NJDEP are undertaking all work with respect to project certification for such applicant’s project(s), such applicant should adopt the ordinances, resolutions and other official action necessary to enable the applicant to enter into loan agreements with, respectively, the NJEIT and the State, and to issue its bonds to, respectively, the NJEIT and the State. Each supplemental loan applicant also should apply to the Local Finance Board or Board of Public utilities, as applicable, for all approvals that may be required with respect to its supplemental loans and its bonds. We recommend that supplemental loan applicants appear before the Local Finance Board no later than the July 8, 2009 hearing date (or, as applicable, that supplemental loan applicants appear before the Board of Public Utilities no later than the July 1, 2009 hearing date). While the supplemental loan applicants are preparing and adopting their official action, NJEIT bond counsel will complete the Trust Loan and the Fund Loan documentation. NJEIT bond counsel expects to distribute the forms of supplemental loan documents in mid-to-late June, at which time it will distribute a schedule for the receipt of comments and the distribution of subsequent drafts. Each applicant should have all official action in place (including the completion of all publication and estoppel periods) no later than (and preferably sooner than) August 17, 2009.

Once a supplemental loan applicant’s project(s) are certified by the NJDEP Commissioner, and when all official action of such applicant, including relevant publication and estoppel periods, is complete, the NJEIT and the

NJDEP will schedule an escrow closing for such applicant with respect to both its Trust Loan and Fund Loan. Such escrow closings must occur no later than late August or early September.

The NJEIT will combine the supplemental Trust Loans and the ARRA Financing Program Trust Loans into a single NJEIT bond pool. The NJEIT expects to market its bonds with respect to such pool in October, with a bond sale occurring in mid-to-late October. The NJEIT expects to close on its bonds with respect to such pool in early November, at which time all documentation with respect to the supplemental Trust Loans and the supplemental Fund Loans will be released from escrow.

### ARRA Loans

**13. What are the basic features of the ARRA Financing Program?** A: A qualifying applicant that receives funding from the ARRA Financing Program for an eligible environmental infrastructure project will receive funding consisting of a Trust Loan and a Fund Loan. The market rate Trust Loan provided by the NJEIT from proceeds of its natural-AAA-rated bonds will represent 25% of the funding made available through the ARRA Financing Program to such qualifying applicant for its eligible project. The zero interest rate Fund Loan provided by the NJDEP from federal ARRA funds will represent 75% of the funding made available through the ARRA Financing Program to such qualifying applicant for its eligible project. Within the first year of the making of the Fund Loan and upon satisfaction of certain conditions precedent, the NJDEP will forgive the principal repayment obligation with respect to a portion of the Fund Loan representing 50% of the overall ARRA Financing Program funding package provided to such qualifying applicant. Hence, the ARRA Financing Program provides a qualifying applicant with funding for its eligible environmental infrastructure project consisting of a market rate Trust Loan for 25% of its funding needs and a zero interest rate Fund Loan for 75% of its funding needs; following implementation of principal forgiveness with respect to a portion of the Fund Loan representing 50% of the overall ARRA Financing Program funding package, the remaining outstanding repayment obligations of such applicant will consist of the market rate Trust Loan for 25% of funding needs and the zero interest Fund Loan for 25% of funding needs.

There are two important elaborations upon the basic structure as set forth in the preceding paragraph. First, the structural distinction between (i) principal forgiveness of a portion of a zero-interest loan, as established by the ARRA Financing Program, versus (ii) a direct grant for such forgiven portion may appear to be inconsequential, leading to a conclusion by applicants that they would be better served if the ARRA Financing Program were structured to provide a direct grant. However, there are substantive reasons derived from ARRA, as well as USEPA policies with respect to the implementation of the environmental infrastructure provisions of ARRA, that resulted in the principal forgiveness structure, as opposed to a direct grant structure, for the ARRA Financing Program. Specifically, there are substantive administrative advantages derived from the principal forgiveness structure, and such advantages benefit both the NJDEP as well as qualifying applicants receiving funding from the ARRA Financing Program.

Second, there is an overall “cap” of \$10,000,000 (a Trust Loan of \$2,500,000 (25%), a Fund Loan of \$7,500,000 (75%), with \$5,000,000 of the Fund Loan (50% of overall ARRA Financing Program funding) subject to principal forgiveness) upon the financing that any one qualifying applicant (as opposed to any one eligible project) may receive through the ARRA Financing Program from each of the clean water program for one or more of its eligible clean water projects and the drinking water program for one or more of its eligible drinking water projects. In other words, each qualifying applicant may receive up to \$10,000,000 in ARRA Financing Program funding for one or more of its eligible clean water projects and up to \$10,000,000 in ARRA Financing Program funding for one or more of its eligible drinking water projects. The purpose of the establishment of a “cap” is to ensure broad participation in the ARRA Financing Program. In the event that the financing needs of a qualifying applicant exceed the \$10,000,000 “cap” that has been placed upon funding through the ARRA Financing Program for such applicant’s eligible clean water project(s) and/or its eligible drinking water project(s), such applicant may obtain financing through the Traditional Financing Program for its funding needs for such project(s) in excess of that made available through the ARRA Financing Program. As a result, financing provided to a qualifying applicant by the 2009 Financing Program this year with respect

to a particular, eligible environmental infrastructure project may consist of both ARRA Financing Program funding and Traditional Financing Program funding.

**14. What are the general procedures for the participation by an applicant in the ARRA Financing Program?** A: There are three prerequisites (conditions precedent) to participation in the ARRA Financing Program: (i) project conditions; (ii) availability of funds; and (iii) financing conditions. With respect to project conditions, an applicant may not participate in the ARRA Financing Program with respect to a given project until (a) its project is certified by the NJDEP Commissioner, and (b) NJDEP receives from such applicant with respect to such project a certification that such applicant has awarded construction contracts with respect to 100% of the project. Prior to certification by NJDEP of a project, NJDEP must conduct a review of the engineering and environmental aspects of the project, and all approvals and permits with respect to such project must have been applied for by the applicant and issued by the NJDEP or other applicable regulatory agency. Once NJDEP certifies the project, it will thereupon issue an authorization to such applicant to advertise for construction contract bids. At such time, the applicant should proceed to advertise, receive and open bids, and award its contracts as soon as possible, within the parameters of applicable law. In order to participate in the ARRA Financing Program, each applicant must provide to NJDEP a certification that contracts with respect to 100% of its project have been awarded. Until such certification is provided to NJDEP, an applicant runs the risk of ARRA Financing Program funds being exhausted by other ARRA Financing Program-eligible applicants that already have completed such process and thereby have reserved their place in the ARRA Financing Program pool. However, rank among ARRA Financing Program-eligible applicants is relevant. NJDEP will work with projects in order of rank with respect to the completion of the project conditions precedent described in this paragraph.

With respect to the availability of funds, initial estimated project costs for the 2009 Financing Program exceed available funds. The availability of funds will be influenced by projects that withdraw or are bypassed from the program. Updated information will be made available to applicants at [www.njeit.org](http://www.njeit.org). In addition, borrowers will receive notice as to the availability of funds upon their receipt of project certification.

With respect to the financing conditions precedent, each applicant must adopt all official action with respect to the financing of its project, including, without limitation, ordinances and resolutions, as applicable, authorizing such applicant to enter into a Trust Loan Agreement, a Fund Loan Agreement and an Escrow Agreement, and to issue its bonds to, respectively, the NJEIT and the State in order to evidence and secure the repayment of the respective loans. Such official action is not considered complete until all applicable estoppel and publication periods have run. Each applicant also must receive approval with respect to the financing from the Local Finance Board or Board of Public Utilities, as applicable.

During the period in which each applicant proceeds to satisfy the conditions set forth in the preceding two paragraphs, NJEIT bond counsel will circulate the forms of the Trust Loan Agreement, the Fund Loan Agreement and the Escrow Agreement, as well as the forms of the various legal opinions and certificates that must be delivered at closing. Each applicant will be asked to submit comments to such documents, particularly the schedules thereto, relating to applicant-specific information. During this time, NJDEP also will circulate Exhibits to the Loan Agreements which contain details as to the project(s), including cost breakdowns and draw schedules.

Upon satisfaction of the aforementioned prerequisites, an applicant will proceed to closing on its Fund Loan and simultaneous escrow closing with respect to its Trust Loan. At such time, each applicant will execute and deliver its Fund Loan Agreement, a Local Unit Bond in the original principal amount (prior to principal forgiveness) of the Fund Loan, and various certificates required by the NJDEP. Bond counsel and/or general counsel to such applicant will deliver executed legal opinions with respect to the Fund Loan, and the applicant's consulting engineer will deliver a certificate as to the useful life of the project(s). Simultaneously with the delivery of the aforementioned documents, the applicant also will execute and deliver an Escrow Agreement with respect to the Trust Loan, pursuant to which the applicant will deliver in escrow its

executed Trust Loan Agreement, its executed Local Unit Bond to evidence and secure repayment of its Trust Loan, and various certificates required by the NJEIT. In addition, bond counsel and/or general counsel to such applicant will provide a signed commitment letter, agreeing to deliver its legal opinion(s) with respect to the Trust Loan on the date of release from escrow of the Trust Loan Agreement. The Trust Loan amount will not be finalized at that time, although the Escrow Agreement will set forth the formula for determining such amount upon issuance of the NJEIT bonds.

After the NJEIT sells its bonds and prior to closing on such bonds, the NJEIT will distribute to each applicant the debt service schedule with respect to the Trust Loan. Each applicant, in its discretion, may adopt a confirmatory resolution or execute an award certificate confirming the final principal amount of the Trust Loan and the debt service schedule with respect thereto. Each applicant's bond counsel and/or general counsel will be required to provide the final, executed legal opinions with respect to the Trust Loan at such time. Upon the closing of the NJEIT Bonds, the Trust Loan of each applicant and the related documentation will be released from escrow, and the financing will be closed. The principal forgiveness component of the ARRA Financing Program will occur at this time, and will be evidenced by the issuance of a new amortization schedule for the Fund Loan, which, pursuant to the terms of the Fund Loan Agreement, will be attached thereto. The principal forgiveness will be applied to the Fund Loan amortization schedule on a pro-rata basis.

**15. What is the general schedule for the ARRA Financing Program?**

As described in detail in Question 73, below, an applicant that is eligible for the ARRA Financing Program must submit its FAF and FAF Supplement (as defined in Question 73, below) on or prior to May 29, 2009. Additionally, each applicant must submit its "Recommitment Letter" (as described in Question 2, above) as soon as possible, but not later than June 15, 2009. The NJEIT will not begin preparing an applicant for financing until the FAF and FAF Supplement are received, and the NJDEP will not begin the process of project certification until the Recombitment Letter is received.

Once the NJDEP receives an applicant's Recombitment Letter, it will begin reviewing plans, specifications, permit applications and other submissions with respect to the applicant's project(s), and will work with the applicant to prepare the applicant's project(s) for project certification. The NJDEP has set a preliminary goal of mid-August with respect to completion of the certification of all ARRA Financing Program projects, but expects to begin certifying projects as early as mid-to-late June and hopes to complete certification of all ARRA Financing Program projects earlier than its currently projected goal of mid-August. When a project is ready to be certified by the NJDEP Commissioner, the NJDEP will issue an authorization to advertise for bids. At such time, the applicant must proceed as soon as possible to advertise, receive and open bids, and award its contracts, all within the parameters of applicable law. Once an applicant provides to the NJDEP a certification that contracts with respect to 100% of its project have been awarded, the applicant is ready to proceed to closing, subject to the following paragraph.

On May 29, 2009, the NJEIT and its professional advisors will commence review of the FAF and FAF Supplement of each applicant. It currently is projected that such review will be completed for all ARRA Financing Program applicants by June 15, 2009.

During the period in which an applicant and the NJDEP are undertaking all work with respect to project certification for such applicant's project(s), such applicant should adopt the ordinances, resolutions and other official action necessary to enable the applicant to enter into loan agreements with the NJEIT and the State, and to issue its bonds to the NJEIT and the State. Each applicant also must apply to the Local Finance Board for all approvals that may be required with respect to its ARRA Financing Program loans and bonds. We recommend that ARRA Financing Program applicants appear before the Local Finance Board as soon as possible. While the applicants are preparing and adopting their official action, NJEIT bond counsel will begin the drafting of loan documents. NJEIT bond counsel expects to distribute the forms of ARRA Financing Program loan documents in mid-to-late June, at which time it will announce a schedule for the receipt of comments and the distribution of subsequent drafts. Each applicant should attempt to have all official action in place (including

the completion of all publication and estoppel periods) at the same time that it awards its construction contracts, so that such applicant may proceed to Fund Loan closing and Trust Loan escrow closing as soon as possible.

Once an applicant submits its certification to the NJDEP indicating that contracts with respect to 100% of its project have been awarded, the NJEIT and the NJDEP will schedule (i) a closing with respect to such applicant's Fund Loan and (ii) an escrow closing with respect to such applicant's Trust Loan. In the event that such applicant has not completed its official action with respect to the financing conditions precedent, the closing will be scheduled for a date on which such action (including relevant publication and estoppel periods) is projected to be completed. On the date of closing of an applicant's Fund Loan, such applicant's Trust Loan also will close in escrow. More details with respect to such closing procedures can be found in the answer to Question 14, above. Such closings are expected to commence no later than early July, and are expected to occur on a rolling basis throughout the summer. Upon the closing of an applicant's Fund Loan, such applicant will be permitted to draw on its Fund Loan to pay qualifying project costs, as demonstrated by a requisition submitted to the NJDEP and the NJEIT.

The NJEIT expects to market its bonds with respect to the ARRA Financing Program in October, with a bond sale occurring in mid-to-late October. The NJEIT expects to issue its bonds with respect to the ARRA Financing Program in early November, at which time the Trust Loans will be released from escrow and fully funded and principal forgiveness with respect to the Fund Loan will be implemented.

**16. What types of applicants and projects are eligible to participate in the ARRA Financing Program?**

A: Clean water projects that are eligible for funding through the ARRA Financing Program include those projects that have satisfied the following ARRA Financing Program clean water eligibility criteria: (i) satisfaction of the March 16, 2009 document submission requirements; (ii) readiness to proceed (early construction schedule relative to other projects, greatest likelihood that permitting obligations can be satisfied in the shortest time period relative to other projects, and greatest likelihood that environmental review can be completed in the least amount of time relative to other projects); (iii) engagement in any of the following eligible activities: (a) wastewater management, (b) storm water management and certain nonpoint source pollution control projects, and (c) well sealing, but excluding (1) emergency projects, (2) conduit loans (a loan for any project in which a governmental entity is acting as a project sponsor on behalf of a private entity and such private entity is pursuing the project as a commercial enterprise for profit), (3) mobile storm water/sanitary sewer maintenance equipment, (4) septic system repair or replacement, (5) storm water/non-point source activities, (6) land preservation, (7) landfill projects (closure, construction, site remediation), (8) sanitary sewer/pump station rehabilitation projects, (9) State agency sponsored projects, and (10) supplemental loans; and (iv) traditional clean water ranking.

Drinking water projects that are eligible for funding through the ARRA Financing Program include those projects that have satisfied the following ARRA Financing Program drinking water eligibility criteria: (i) satisfaction of the March 16, 2009 document submission requirements; (ii) readiness to proceed (relative to other projects, greatest likelihood that permitting obligations can be satisfied in the shortest time period relative to other projects, and greatest likelihood that environmental review can be completed in the least amount of time relative to other projects); (iii) engagement in any of the following eligible activities: (a) rehabilitation or development of sources to replace contaminated water sources, (b) treatment and storage facilities and transmission/distribution pipes and appurtenances to prevent contamination or improve water pressure to safe levels, and (c) upgrades to security measures, but excluding (1) State agency sponsored projects, and (3) supplemental loans; and (iv) traditional drinking water ranking.

In addition to the above criteria, ARRA requires that 20% of the ARRA Financing Program funding be reserved for the financing of green infrastructure and water or energy efficiency improvements or other environmentally innovative activities. With respect to the clean water program, the NJDEP has identified portions of otherwise qualified ARRA Financing Program projects on the 2009 State Clean Water Project Priority List that satisfy this requirement. With respect to the drinking water program, the NJDEP has identified specific projects on the

2009 State Drinking Water Project Priority List that satisfy this requirement, and has ranked such projects accordingly. The Priority Lists themselves do not explicitly address whether a project is intended to satisfy the “green infrastructure” requirement; applicants concerned about this issue as it relates to a particular project should contact the NJDEP. The NJEIFP reserves the right to expand the project activities eligible for ARRA financing (#3 above) if all ARRA funds are not anticipated to be exhausted upon the review of projects currently deemed eligible for ARRA funds.

Principal Forgiveness (ARRA).

**17. Please explain the concept of principal forgiveness?** A: Borrowers’ projects which have satisfied project, availability of funding, and financing prerequisites, (see general procedures for ARRA Financing Program question), 75% of the project will be funded with ARRA funds and 25% will be funded with Trust bond proceeds. After the closing of the Trust loan a repayment schedule will be issued which will show repayment of 50% of the original project cost. 25% will be to the fund at 0% interest and 25% of the cost to the Trust at market rate. The repayment schedule will be for 20-year duration or the improvements useful life whichever is less.

**18. What’s the difference between principal forgiveness and a grant?** A: There are substantive reasons derived from ARRA, as well as USEPA policies with respect to the implementation of the environmental infrastructure provisions of ARRA, that resulted in the principal forgiveness structure, as opposed to a grant structure, for the ARRA Financing Program. Specifically, there are administrative advantages derived from the principal forgiveness structure, and such advantages benefit both the NJDEP as well as qualifying applicants receiving funding from the ARRA Financing Program.

**19. What conditions must be met in order to qualify for principal forgiveness?** A: Successful closing of fund and Trust loans which will ensure that the project is fully funded. Principal forgiveness can only be granted as part of the 75% fund loan. A project cannot receive only principal forgiveness.

**20. If a borrower is successful in securing an ARRA Loan, will the loan be for the entire amount or just the portion of the loan not subject to principal forgiveness?** A: A borrower is required to secure the loan for the entire amount of the loan including the portion which is subject to principal forgiveness.

**21. What is the schedule for the implementation of the principal forgiveness component of the ARRA Financing Program?** A: Each ARRA Financing Program Fund Loan Agreement will provide that a portion of the Fund Loan principal repayment obligation of such applicant, in an amount equal to 50% of the overall ARRA Financing Program funding package (but not more than \$5 million), will be forgiven upon the issuance of the NJEIT Bonds and the release from escrow of such applicant’s Trust Loan Agreement. At such time, the initial amortization schedule originally attached to the applicant’s Fund Loan Agreement will be replaced with a new amortization schedule reflecting such principal forgiveness. The principal forgiveness will be applied to the Fund Loan amortization schedule on a pro-rata basis.

**22. How is the ARRA money drawn? Does the loan forgiveness portion start at the back?** A: The NJDEP is responsible for the disbursement of these funds and will draw upon the fund loan first. After the long term Trust and the Fund loan have closed repayment schedules will be issued, with repayment of 25% of the funds at 0% interest to the fund and 25% of the monies with interest to the Trust with level debt service over a 20-year period.

**23. Is it possible to apply principal forgiveness to the Trust portion of an ARRA Financing Program loan?** A: No. the principal forgiveness applies to 2/3 of the 0% State loan component (ARRA funds) up to \$5 million.

**24. If a borrower has a project listed for ARRA funding, is it possible for the borrower to take just the principal forgiveness or the 75% State loan component?** A: No. In order to participate in the ARRA

Financing Program, an applicant must accept the entire funding package described in the answer to Question 13, including a market rate Trust Loan for 25% of its funding needs, a permanent zero interest rate Fund Loan for 25% of its funding needs, and a zero interest rate Fund Loan, that is subject to principal forgiveness within the first year of the making of the Fund Loan, for 50% of its funding needs.

ARRA Funding Cap.

**25. Is there a per borrower cap regardless of the program, i.e., CW or DW? or is there a separate cap for each program.** A: There is a \$10 million ARRA loan in each of the Clean and Drinking water programs, i.e., a single borrower may receive a total of \$20 million between the two programs.

**26. Explain how the cap works.** A: As noted above in our response to Question 12, there is an overall “cap” of \$10,000,000 (a Trust Loan of \$2,500,000 (25%), a Fund Loan of \$7,500,000 (75%), with \$5,000,000 of the Fund Loan (50% of overall ARRA Financing Program) subject to principal forgiveness) upon the financing that any one qualifying applicant (as opposed to any one eligible project) may receive through the ARRA Financing Program from each of (i) the clean water program for one or more of its eligible clean water projects and (ii) the drinking water program for one or more of its eligible drinking water projects. In other words, each qualifying applicant may receive up to \$10,000,000 in ARRA Financing Program funding for one or more of its eligible clean water projects and up to \$10,000,000 in ARRA Financing Program funding for one or more of its eligible drinking water projects.

The purpose of the establishment of a “cap” is to ensure broad participation in the ARRA Financing Program. In the event that the financing needs of a qualifying applicant exceed the \$10,000,000 “cap” that has been placed upon funding through the ARRA Financing Program for its eligible clean water project(s) and/or its eligible drinking water project(s), such applicant may obtain financing through the Traditional Financing Program for its funding needs for such project(s) in excess of that available through the ARRA Financing Program. As a result, financing provided to a qualifying applicant by the NJEIFP this year with respect to a particular eligible environmental infrastructure project may consist of both ARRA Financing Program funding and Traditional Financing Program funding. For example:

Rank	Applicant	Proj.	Project #	Trad. Loan	ARRA Loan	Princ. Forgiv.
16	N. Bergen MUA	CSO	S3406521-09	\$14,605,000	\$10,000,000	\$5,000,000

If the NBMUA satisfies the ARRA program requirements (and funds are available), it will receive an ARRA Loan for \$10 million of which the Trust loan component will be \$2.5 million at the Trust AAA market rate, the State loan component will be \$7.5 million at 0% (ARRA funds), and 50% of the total loan (or \$5 million of ARRA funds) will be subject to principal forgiveness. The applicant will receive a \$4.605 million loan through the Traditional loan program as follows: the Trust loan component is \$1,151,250 at the Trust AAA market rate, the State loan component will be \$3,453,750 at 0% (various State Funds).

In such a scenario, such applicant will receive its funding as follows. At the time of closing with respect to its ARRA Financing Program Fund Loan, such applicant also will receive its Traditional Financing Program Fund Loan. Such ARRA Financing Program Fund Loan and Traditional Financing Program Fund Loan will be made collectively (albeit from different sources) via a single Fund Loan Agreement. At the time of closing with respect to the Fund Loans, escrow closing will occur with respect to the ARRA Financing Program Trust Loan and the Traditional Financing Program Trust Loan. Each such Trust Loan will be made via a single Trust Loan Agreement. We will break escrow and close with respect to such Trust Loans in November, at the time of issuance by the NJEIT of its bonds, proceeds of which will fully fund each Trust Loan.

**27. Will an ARRA funded project receive funding for the entire project if the project cost exceeds the ARRA cap?** A: Yes, the project will be certified and the portion of the project eligible for financing through

the ARRA Financing Program and the portion eligible for financing through the Traditional Financing Program will be funded at the same time. As noted above, in our response to Question 13, there is an overall “cap” of \$10,000,000 (a Trust Loan of \$2,500,000 (25%), a Fund Loan of \$7,500,000 (75%), with \$5,000,000 of the Fund Loan (50% of overall ARRA Financing Program funding) subject to principal forgiveness) upon the financing that any one qualifying applicant (as opposed to any one eligible project) may receive through the ARRA Financing Program from each of (i) the clean water program for one or more of its eligible clean water projects and (ii) the drinking water program for one or more of its eligible drinking water projects. In other words, each qualifying applicant may receive up to \$10,000,000 in ARRA Financing Program funding for one or more of its eligible clean water projects and up to \$10,000,000 in ARRA Financing Program funding for one or more of its eligible drinking water projects.

The purpose of the establishment of a “cap” is to ensure broad participation in the ARRA Financing Program. In the event that the financing needs of a qualifying applicant exceed the \$10,000,000 “cap” that has been placed upon funding through the ARRA Financing Program for its eligible clean water project(s) and/or its eligible drinking water project(s), such applicant may obtain financing through the Traditional Financing Program for its funding needs for such project(s) in excess of that made available through the ARRA Financing Program. As a result, financing provided to a qualifying applicant by the 2009 Financing Program this year with respect to a particular, eligible environmental infrastructure project may consist of both ARRA Financing Program funding and Traditional Financing Program funding.

In such a scenario, such applicant will receive its funding as follows. At the time of closing with respect to its ARRA Financing Program Fund Loan, such applicant also will receive its Traditional Financing Program Fund Loan. Such ARRA Financing Program Fund Loan and Traditional Financing Program Fund Loan will be made collectively (albeit from different sources) via a single Fund Loan Agreement. At the time of closing with respect to the Fund Loans, escrow closing will occur with respect to the ARRA Financing Program Trust Loan and the Traditional Financing Program Trust Loan. Each such Trust Loan will be made collectively via a single Trust Loan Agreement. We will break escrow and close with respect to such Trust Loans in November, at the time of issuance by the NJEIT of its bonds, proceeds of which will fully fund each Trust Loan. Such methodology will facilitate an efficient and cost effective closing process for “over cap” applicants that will be accomplished through a minimal number of closings.

**28. If a town wants to downsize its >\$10m project, can it do so and not lose any ARRA funds as long as project amount is at least \$10m? Can it lose its priority number if it does so? What is the process for an applicant to reduce the project amt?** A: Applicants can reduce a project’s scope provided the ratio of fundable NJEIFP activities to unfundable activities does not decrease and the change in scope does not adversely impact the project’s ranking. The NJDEP’s Intended Use Plan of August, 2008 outlines the rankings for various project activities. To discuss issues related to reducing a project’s scope, the applicant should contact the NJDEP. Northern NJ: Shadab Ahmad; Southern NJ: Steve Betz. Both can be reached at 609-633-1169.

**29. Town has multiple ARRA projects listed that exceed \$10m in the aggregate. Can/should it proceed with more than one of them to increase likelihood of one getting done in time? What then happens with the financing for any excess amount over \$10m or the other project? Can it close both at the same time with non-ARRA funds for the other project?** A: When the Department commences substantive review of the project application, it will contact the municipality to work with it in selecting which projects or portions of projects the municipality wishes to proceed. The municipality will typically be given the opportunity to decide which project is most likely to receive approval (a) from the municipality’s perspective of readiness, i.e., which project has the easiest set of processes apart from the NJEIFP loan application to get started (e.g., likelihood of bid protest, complexity of municipal approvals, support from municipal agencies, local support) project has the fewest obstacles on to getting started and can most quickly get started; (b) highest ranking; (c) minimal environmental approvals, NJEIFP program approvals. At the time of issuance of the Authorization to Advertise (ATA) for each project, the Department will provide general guidance as to the availability of ARRA funding.

Final determination of the availability of ARRA funding will be made upon the Department's receipt of a borrower's construction contract award certification. When advising the borrower of the availability of ARRA funding, in the very rare case in which there are insufficient ARRA funds (the Department will monitor ARRA funding eligibility at the time of ATA), the Department will advise the borrower of the availability of Traditional Financing Program funding. Due to the means by which projects are being reviewed (ranked order) it is unlikely that there will be insufficient Traditional funding for a project for which there are insufficient ARRA funds.

**30. If a project is eligible for a green project reserve and ARRA funding do we get both or is one in place of the other?** A: Green projects are a type of ARRA projects and a borrower may not receive ARRA loans in excess of \$10 million regardless of whether it is green other ARRA or a combination of both.

Construction Award Certifications (ARRA)

**31. Will the Trust supply the form of certification regarding the entry into the construction contract for 100% of the project construction? When does this certification have to be submitted? How do you enter into a construction contract if the project has not yet been bid?** A: The applicant's construction award certification will be available at [www.njeit.org/recovery.htm](http://www.njeit.org/recovery.htm) in early June. An ARRA applicant submits the construction contract award certification to the NJDEP after awarding the construction contract. This is distinguishable from the NJDEP's project certification which is issued after the project has satisfied all program and permitting requirements and has received an authorization to advertise for construction. An applicant is prohibited from advertising for the construction contract before receipt of the Authorization to Advertise.

**32. Is there an October 1, 2009 construction contract award deadline?** A: No. The 2009 Economic Recovery Program Call For Projects, issued on December 18, 2008, proposed a timetable for project certification on or before July 1, 2009, advertisement and award of a construction contract within 90 days of project certification (by October 1, 2009), and issuance of a notice to proceed within 120 days of project certification (by November 1, 2009). Those program parameters are not a component of the 2009 Financing Program. See the Program Summary and the ARRA Program Schedule for operative schedules ([www.njeit.org/recovery.htm](http://www.njeit.org/recovery.htm)).

**33. By what date must an applicant that is participating in the ARRA Financing Program submit its construction contract certification?** A: The NJDEP has not established a specific deadline with respect to submission by an ARRA Financing Program-eligible applicant of the required certification with respect to construction contracts. However, such certification is a condition precedent to the ability of an eligible applicant to receive ARRA Financing Program funding. Until such certification is provided to the NJDEP, an applicant runs the risk of ARRA Financing Program funds being exhausted by other ARRA Financing Program-eligible applicants that already have completed such process and thereby have reserved their place in the ARRA Financing Program pool. While such risk certainly exists, rank among ARRA Financing Program-eligible applicants is relevant to the process. Generally, the NJDEP will work with projects in order of rank priority with respect to the completion of the project conditions precedent. Nevertheless, take no risks. Submit the required certification with respect to construction contracts as soon as possible.

**34. Is there a time limit from the point where the Construction Award Certification is issued to the applicant until a contractor is selected?** A. The applicant submits the construction contract award certification to the NJDEP after awarding the construction contract. This is distinguishable from the NJDEP's project certification which is issued after the project has satisfied all program and permitting requirements and has received an authorization to advertise for construction. The authorization to advertise is a prerequisite to advertising for the construction contract.

Project Lists

DEP vs. Trust List

**35. What's the difference between the NJDEP's intended use plans (Clean Water and Drinking Water) and the project Lists appearing in the njeit.org web site?** A: The project list appearing at [www.njeit.org/recovery.htm](http://www.njeit.org/recovery.htm) reflects project cost estimates (inclusive of a proposed cushion for cost overruns) annually submitted to the legislature. The amount approved by the legislature is the maximum which the Trust and DEP can issue loans. Moreover, the NJEIT project list identifies projects based on the entity (typically, local government unit) that has the legal authority to receive state appropriations. For example, the member municipalities are identified for joint meetings and public sewer operating committees. The NJEIT project lists merge certain borrower's ARRA funding amounts if the projects are both similarly ranked and will be provided with the option to select which project the ARRA funding and principal forgiveness will apply. The NJDEP project list typically reflects the project cost estimated identified by the applicant in the application.

**36. Should bond counsel use the project amount set forth in the DEP list or the njeit.org project list in the municipal ordinance?** A: Applicant bond counsel have raised questions as to which amount should be used for purposes of municipal bond ordinances, authority resolutions or supplemental resolutions, and applications to the Local Finance Board, among other applicant official action. The decision is that of the applicant bond counsel in consultation with the applicant and the applicant's financial advisor (if any). However, consistently over the years, NJEIT and NJDEP have encouraged strongly that all applicants estimate carefully and establish an appropriate "cushion factor" when arriving at an appropriate, conservatively estimated not-to-exceed Trust Loan Bond principal amount and Fund Loan Bond principal amount for purposes of official action to be adopted by the applicant. We reiterate such cautionary advice, and note that such cautionary advice implicates the careful estimate of construction costs, as well as the careful estimate of financing costs (e.g., capitalized interest) to be financed through the Trust Loan. Too often over the years, an applicant has been forced to either (i) scramble to amend official action or (ii) borrow less through the NJEIFP than it otherwise would have been permitted to borrow, in each case due to an insufficiently established not-to-exceed Trust Loan Bond principal amount and Fund Loan Bond principal amount for purposes of its official action.

**37. Does the project cost set forth in an applicant's project application limit the applicant in the amount it can borrow?** A: Generally speaking, yes. The only thing that could change those amounts is the bid received amounts. If contracts awarded are in excess of the loan application amount, then the loan can be increased to ensure that the entire project is funded. But this amount cannot exceed the amount that the borrower is authorized by the LFB and its ordinance.

**38. My town has funds identified in excess of my project needs. Can I add projects to the list to expend all of the allocated funds?** A: No. The 2009 Financing Program is closed to additional projects.

#### Final List

**39. A. When do you expect to have a final project list?** A: The "living list" will be posted and updated every Wednesday at [www.njeit.org/recovery.htm](http://www.njeit.org/recovery.htm). The list will identify all projects remaining in the program (projects for which recommitments have been received less projects that have withdrawn or have been bypassed), the balance of available ARRA loans, and projects receiving Authorizations to Advertise not reflected in the balance of available ARRA loans (by amount, date of ATA and rank).

**B. What are the Living Lists?** A: The Living lists identify 2009 Financing Program projects (clean water and drinking water project lists) in spreadsheet format and are updated weekly. The Living List is intended as a guide to applicants to assess the remaining balances of ARRA Financing Program funds relative to their project(s). A link can be found at [www.njeit.org/recovery.htm](http://www.njeit.org/recovery.htm). As its name implies, the Living List is distinguishable from the earlier published Project Priority List by, among other things, its reflection of the NJDEP's issuance of authorizations to advertise, bypass letters and the dates thereof for each project, as well as the remaining amount of available ARRA funding. Like the Project Priority List, the Living List contains an

ARRA funding contingency line, the projects above may receive ARRA funding subject to compliance with program requirements. Unlike the Project Priority List, projects will be raised above the Living List's funding contingency line in ranked order as other listed projects are bypassed. An updated version of the Living List is published each Wednesday.

**C. I will not undertake my project absent ARRA funding. It was not identified for ARRA funding under the Project Priority List and as a result I did not take numerous actions necessary to position the project for ARRA financing (subsequent to submission of the application, design documents and environmental planning documents by March 16). The project is identified for ARA funding under the Living List. Should I move quickly to secure the numerous conditions precedent to financing to ensure ARRA eligibility and thereby incur considerable expense?** A: The facts are unique to each project. Issues to include are how far below the funding contingency line is the project (likelihood of funding, see the Living List at [www.njeit.org/recovery.htm](http://www.njeit.org/recovery.htm)), what is the current status of all project permits, the reasonable time frame for securing same, has NJDEP commenced its review (i.e., has NJDEP contacted the applicant's consulting engineer) and has NJDEP provided any feedback as to the project's ability to immediately meet all permitting and project review requirements? Please note that upon NJDEP's commencement of ARRA funding project review, all program requirements shall have been complied with and permits secured or the same must be imminent. Absent the immediate satisfaction of program requirements and securing necessary permits, the project will be bypassed.

#### List Components

**40. The Clean Water Project list has three tiers of projects. What does that mean?** A: The first tier consists of Supplemental Loans, the second is the listing of all projects that have applied for funding with a line draw where it is expected that the ARRA funds will be exhausted. Projects at the top of the list designated for ARRA funding will receive first program review. ARRA designated projects at the top of the list are most likely to receive ARRA funding and eligibility for funding will decrease in order on the list. Projects below the funding contingency line for which ARRA funds have been designated, are only eligible to compete for ARRA funds in the event an ARRA project above the contingency line withdraws or is bypassed. Projects on the Project list for which there are only Traditional Financing Program funds identified are eligible for such loans again subject to the availability of funds.

**41. What is the significance to a project having funds identified in both the Traditional Financing Program and ARRA Funding Program columns on a Project List?** A: Those projects that are eligible for funding through the ARRA Financing Program also are eligible for funding through the Traditional Financing Program. Because the total allowable cost of all projects eligible for funding through the ARRA Financing Program exceeds the amount of funds available to the 2009 Financing Program for the ARRA Financing Program, not all applicants and projects that are eligible for funding through the ARRA Financing Program will receive such funding. Those applicants and projects that are eligible for funding through the ARRA Financing program, but do not receive such funding due to an insufficiency of ARRA funds, will be eligible to participate in the Traditional Financing Program. To facilitate this dual eligibility and to provide flexibility to each of the NJEIT, the NJDEP and the applicants, the 2009 State Clean Water and Drinking Water Priority Lists reflect a dollar amount for purposes of authorization under both the "Estimated Allowable Traditional Loan Amount" column and the "Estimated Allowable ARRA Loan Amount" column with respect to a number of applicant projects. This is all about maintaining maximum flexibility for such applicant projects by authorizing participation in both the ARRA Financing Program and (failing admission to the ARRA Financing Program) the Traditional Financing Program.

Further, the \$10 million "cap" described in the answer to Question 13, above, will result in certain applicants with allowable project costs in excess of \$10 million borrowing through both the ARRA Financing Program and the Traditional Financing Program for a particular project. With respect to such projects, the dollar amount

reflected in a particular Priority List under the “Estimated Allowable Traditional Loan Amount” column will exceed the dollar amount reflected under the “Estimated Allowable ARRA Loan Amount” column. Please note that, in such cases, the dollar amount reflected under the “Estimated Allowable Traditional Loan Amount” column is inclusive of the dollar amount reflected under the “Estimated Allowable ARRA Loan Amount” column.

**42. What does the contingency line mean?** A: There are sufficient ARRA loan funds to finance the projects appearing above the contingency line on the Clean Water Project list. However, some of those projects may not satisfy program requirements which will result in bypassing those projects and moving that line to include additional projects. NJDEP will prioritize its project review based on a project’s ranking.

#### Funding Guarantee / Sufficiency of Funding

**43. Which projects on the clean water or drinking water list are guaranteed ARRA financing?** A: None. At this time the Department cannot make that determination. After the recommitment letters are received, staff will have a better idea of the applicants that are interested in participating in the 2009 Financing Program. Every project above the line will be reviewed for readiness with the intent to issue an Authorization to Advertise (ATA). At that time, the review of projects will continue in the order that they appear on the list. After the applicant awards contracts for 100% of the project’s construction work, the applicant will forward a certification of construction contract award to the Department, the receipt of which is a prerequisite to the ability of an eligible applicant to receive ARRA Financing Program funding. Until such certification is provided to the Department (and the Department makes a determination of funding eligibility based exclusively on the date and time of receipt of such certification), an eligible applicant runs the risk of ARRA Financing Program funds being exhausted by other ARRA Financing Program-eligible applicants that already have completed such process and thereby have reserved their place in the ARRA Financing Program pool. However, rank among ARRA Financing Program-eligible applicants is relevant. NJDEP will work with projects in order of rank with respect to the completion of the project conditions precedent to ARRAF Financing Program funding.

**44. How do you preserve your place on the project priority list for ARRA funding?** A: The appearance of a project on a Project Priority Lists above the funding contingency line signifies a borrower’s eligibility to compete for limited ARRA financing loans for the stated project(s) upon receipt of an Authorization to Advertise (ATA). Prior to that time, an applicant can preserve its chances of receiving ARRA funding by ensuring it responds promptly to the Department’s requests for information. As the applicant is working with the Department during project review, the applicant should plan its procurement process in a manner that most expeditiously leads to construction contract award. Subsequent to receipt of an ATA, the applicant should promptly procure and award 100% of the construction contracts and submit its certification of construction contract award to the Department immediately upon award of 100% of the construction contracts. A borrower will be notified of the availability of ARRA financing for its project(s) upon receipt of NJDEP’s confirmation as to the availability of funds upon the NJDEP’s receipt of the borrower’s certification that it has awarded 100% of the construction contracts.

**45. Does it matter when the construction contractor mobilizes?** A: The construction contract must contain a provision requiring the construction contractor to mobilize within 30 days of construction contract award.

**46. For an applicant that is listed in the 2009 State Clean Water Project Priority List and/or the 2009 State Drinking Water Project Priority List, what are the implications of a low ranking?** A: With respect to projects that are eligible for the ARRA Financing Program, the primary impact of a low ranking for a given project on the 2009 State Clean Water Project Priority List and/or the 2009 State Drinking Water Project Priority List is that the NJDEP will not have sufficient ARRA funding to finance the Fund Loan (and corresponding principal forgiveness) with respect to such project through the ARRA Financing Program. Currently, the projects eligible for the ARRA Financing Program demonstrate an aggregate allowable cost in

excess of the amount of ARRA funding available to the NJDEP for the ARRA Financing Program. Applicants will be awarded ARRA Financing Program Fund Loans in the order in which their respective projects are ranked on the applicable Priority List, to the extent such projects are ready to proceed with construction in a timely manner. Therefore, it is expected that lower-ranked projects that are otherwise eligible for the ARRA Financing Program will not be able to receive financing through the ARRA Financing Program because of the insufficiency of ARRA funds available to the NJDEP.

It currently is expected that those projects that are eligible for, but that do not receive funding through, the ARRA Financing Program will be able to receive financing through the Traditional Financing Program. However, such financing is not guaranteed at this time, as the NJEIT and NJDEP do not know with certainty which projects will meet each of the conditions for participation in the Traditional Financing Program. More specifically, the NJDEP also has limited sources of SRF financing for the making of Fund Loans through the Traditional Financing Program. It is possible that such SRF sources will not be sufficient to finance Fund Loans for each applicant that otherwise qualifies for the Traditional Financing Program due to the low ranking of such applicant's project. In such case, a lower-ranked applicant that cannot receive a Traditional Financing Program Fund Loan may pursue a market rate loan with respect to 100% of its funding needs, as further described in Question 53.

To summarize:

- (i) Rank matters with respect to participation in both the ARRA Financing Program and the Traditional Financing Program;
- (ii) A low ranking may prevent an applicant that is eligible for ARRA Financing Program funding from being admitted to the ARRA Financing Program pool;
- (iii) A low ranking may prevent an applicant that is eligible for Traditional Financing Program funding from being admitted to the Traditional Financing Program pool;
- (iv) If an applicant that is eligible for ARRA Financing Program funding is denied such funding due to low ranking, such applicant will remain eligible for Traditional Financing Program funding and may receive such Traditional Financing Program funding due to the fact that the lowest ranked ARRA-eligible applicant probably will be ranked higher than a number of the lowest ranked applicants for the Traditional Financing Program and, therefore, may be ranked high enough to receive Traditional Financing Program funding; and
- (v) while rank is a significant determining factor with respect to both the ARRA Financing Program and the Traditional Financing Program, project readiness remains an essential factor.

An important variable that will impact ranking is attrition. The NJDEP currently projects that the 2009 Financing Program will experience withdrawal by some applicants with respect to their eligible projects. A variety of issues will result in such attrition, including, particularly, project readiness. Attrition will impact favorably those eligible projects that remain and the likelihood that such remaining project will receive funding. Due to the impact of attrition upon the ability of an applicant to receive funding through the ARRA Financing Program and/or the Traditional Financing Program, the NJDEP has committed to regularly preparing and making available updated lists that will reflect attrition. It is expected that the so-called "Living List" will be updated and made available on the Wednesday of each week.

The Recommitment Letter discussed in the response to Question 2, above, is specifically intended to address the question of recommitment versus withdrawal, given the relatively recent announcement of, and elaborations upon, the 2009 Financing Program parameters. It is possible that some significant attrition will be evidenced upon receipt by the NJDEP of the Recommitment Letters from eligible applicants.

**47. If I have a low ranked ARRA project, should I continue with the financing process no matter where my project ranks on the project priority list?** A: Yes, if you are committed to proceeding with the project regardless of which financing program (ARRA or Traditional) you will receive financing. If a project above your project on the project priority list is bypassed, your project's eligibility for ARRA funding will be improved.

**48A. What amount of money is available in the traditional program, and how far down the list do you anticipate that funding taking us?** A: The following will enable you to assess the likelihood of your project receiving funding: The total available funds for traditional loans are as follows: CW: \$418 mil, DW: \$167 mil. (1) Add the traditional funding for all of the projects above yours and (2) subtract the available CW or DW traditional loan amount. Note however, that neither NJEIFP staff nor the borrowers know what projects will be bypassed and historically approximately 50% to 55% projects are bypassed each year. There will be a graphic on the website that shows the remaining balance of traditional loan funds and the projects which have received authorization to advertise.

**48B. What amount of money is available in the ARRA program, and how far down the list do you anticipate that funding taking us?** A: The following will enable you to assess the likelihood of your project receiving funding: The total available funds for traditional loans are as follows: CW: \$213 mil, DW: \$57 mil. (1) Add the traditional funding for all of the projects above yours and (2) subtract the available CW or DW ARRA loan amount. Note however, that neither NJEIFP staff nor the borrowers know what projects will be bypassed. There will be a graphic on the website that shows the remaining balance of ARRA Loan funds, the amount of projects which have received authorization to advertise but have not submitted contract award certifications to aid borrowers in assessing the likely available ARRA funds when they award the construction contract.

**49. Will an applicant's LFB approval or municipal approval have any impact on an applicant's eligibility to receive ARRA financing?** A: Although the NJEIT and the NJDEP have emphasized that applicants with respect to the ARRA Financing Program should proceed quickly with respect to the satisfaction of both the project conditions precedent and the financing conditions precedent, an applicant's submission to the NJDEP of a certification as to the award of construction contracts with respect to 100% of project costs, is the definitive qualification of an applicant for a place in the ARRA Financing Program pool. If an applicant were to submit its certification with respect to the award of construction contracts and thereupon inform the NJEIT and the NJDEP that a particular financing condition precedent had not yet been satisfied, such applicant would not be disqualified from the ARRA Financing Program, provided that such applicant submits to the NJEIT and the NJDEP an acceptable schedule for the satisfaction of such remaining financing condition precedent in a manner consistent with the ARRA Financing Program financing schedule, and thereafter demonstrates good faith in fulfilling its schedule for the satisfaction of its remaining financing conditions precedent. However, applicants should note that, to the extent any official action by an applicant is required to be taken in order for such applicant to award its construction contracts, such official action is time-sensitive, because the prompt award of construction contracts is an essential project condition precedent to an applicant's placement in the ARRA Financing Program pool.

**50. Is there any chance that some projects will receive no funding (traditional or otherwise) for the upcoming year?** A: Yes. However it is difficult to estimate the likelihood of that occurring in 2009 for the following reasons: First, historically, approximately 50% and 55% of applicants do not receive financing due to various voluntarily withdrawal or project bypass. Second, a number of entities submitted applications this year with the expectation of receiving 100% grants will withdraw. If the program realizes an attrition rate of between 55% and 60%, the large majority of projects will be funded. The Program has developed a legislative estimate of \$2.6 billion for eligible project costs with a cushion for cost overruns. Subtracting a 60% attrition rate from the \$2.6 billion results in \$1 billion in projects. A 65% attrition rate will result in a total program of \$900 billion. It is anticipated that there will be approximately \$855 million in funding for total project loans. Note however, that NJDEP has realized a significant reduction in personnel over the past three years resulting in fewer staff to review projects. As such, it is possible that NJDEP staff may not review all projects by the end of November, 2009.

**51. Is the inclusion of a project on either list an indication that there is enough total funding available to at least fund the project in either the traditional or ARRA program?** A: If a project appears above the contingency line on the clean water project list there should be sufficient funds. The Drinking Water contingency line will be established in June.

**52. If an applicant is on the list for an ARRA Loan, but the program runs out of ARRA funds, will the applicant automatically be part of the Traditional Program? If so, is it given "priority" under the Traditional Program?** A: If a Clean Water ARRA project receives certification and there are insufficient ARRA funds to fund that project, the project will be given priority under the Traditional Financing Program based on its readiness to proceed. If a Drinking Water ARRA Project receives certification and there are insufficient ARRA funds to fund that project, the project will not be given priority under the Traditional Financing Program. However, given the fact that DEP is reviewing projects based on rank, it is highly likely that projects receiving certification will be the highest ranked projects and as such there will be sufficient funds in the Traditional Financing Program for program loan to that project. It is anticipated that with few exceptions, the Department will issue Authorizations to Advertise with the expectation there will be sufficient ARRA loans to finance those projects assuming the construction contract awards are received within a reasonable period of time.

**53. Can a low ranked Traditional Financing Program applicant pursue a market rate loan from the NJEIT for 100% of its funding needs in the event that such low ranking results in the unavailability of sufficient funds for the making of a Clean Water or Drinking Water Fund Loan by NJDEP?** A: The NJEIT's enabling legislation permits the Trust to make a Trust Loan to an eligible borrower for a qualifying project notwithstanding the fact that an accompanying Fund Loan cannot be provided by the NJDEP to such borrower for such project. As stated in the Program Summary available on the NJEIT website, the NJEIT is committed to making available market rate Trust Loans for up to 100% of the funding needs of any eligible applicant for which sufficient funds for the making of a Fund Loan by the NJDEP are unavailable.

However, the NJEIT recognizes that in such a scenario such an eligible applicant might find it more attractive to defer the financing of its qualifying project until a subsequent year, at which time there will be available sufficient funding for a Fund Loan from the NJDEP, thereby permitting at such time conventional 50% market rate Trust Loan funding and 50% zero interest Fund Loan funding. Nevertheless, the NJEIT remains committed to exploring all possibilities with any eligible applicant facing the inability to obtain a Fund Loan from the NJDEP this year due to the unavailability of sufficient Fund Loan funding.

**54. Will the ranking list be amended if one of the applicants withdraws its application because it does not accept the ARRA program and funding limits or conditions? How long does the applicant have to notify the NJEIT of its acceptance of the program funding?** A: The ranking list will be modified to address projects as they are withdrawn or bypassed by the program. Applicants have until June 15 to re-commit to the program.

#### Review and Approval of Projects

**55. Will projects included in the traditional loan program be given pre-award approval in 2009?** A: Yes as they are certified by the NJEIFP.

**56. If ARRA funds are identified for my project on a project priority list, can I start construction?** A: No. Prior to procuring construction, NJDEP must issue an Authorization to Advertise to the Applicant. The Authorization to Advertise will be issued upon a projects compliance with all permitting and program

**57. When will ARRA loan projects be approved for bidding?** A: ARRA projects will be reviewed first and in ranked order. Each project will be authorized to advertise for construction when it has satisfied all permitting

and program requirements and has received pre-award approval. It is anticipated that NJDEP will begin issuing ARRA Authorizations to Advertise in May and will have issued the large majority by August.

**58. When will Traditional loan projects be approved for bidding?** A: Upon NJDEP's completion of review of ARRA Financing Program projects, authorizations to advertise will commence in the late summer. It is not anticipated that any Authorizations to Advertise will occur after December of 2009.

**59. Will an applicant receive any assurance or confirmation prior to the awarding of construction contracts that its project will qualify for and receive ARRA Financing Program funding?** A: The NJDEP is aware of the concerns of many applicants that desire (i) some form of confirmation that they will qualify for and receive ARRA Financing Program funding, and (ii) the provision by the NJDEP of such confirmation prior to the awarding of construction contracts by the applicant. The NJDEP is considering ways to provide some form of assurance, and will disseminate information with respect thereto as soon as such information is available. It is anticipated that with few exceptions, the Department will issue Authorizations to Advertise with the expectation there will be sufficient ARRA loans to finance those projects assuming the construction contract awards are received within a reasonable period of time. Notwithstanding, the Department's receipt of a construction contract award is the basis of determination as to the availability of ARRA funding. There will be a graphic on the website that shows the remaining balance of ARRA Loan funds, the amount of projects which have received authorization to advertise but have not submitted contract award certifications to aid borrowers in assessing the likely available ARRA funds when they award the construction contract. There will also be a graphic on the website that shows the remaining balance of Traditional ARRA Loan based on project certifications issued and the ranking of the last project receiving authorization to advertise to aid applicants in assessing the likelihood of available Traditional funds for their project.

**60. When might an applicant know whether its project is funded and in order to gauge how far down the list available funding will reach, how much traditional funding is available in 2009 for the clean water and drinking water projects?** A: See the answer to the prior question.

Project Bypass

**61. How will the bypass procedure work?** A: If a project does not recommit they will be by-passed. During the review process if it is determined that a project is not ready to proceed it will be by-passed.

**62. If a project appears to be eligible for ARRA funding, and cannot meet deadlines and falls off the ARRA list, is it automatically moved to the traditional funding list if all other program criteria can be met for the 2009 program?** A: Yes. The Department will review the project with other Traditional Financing Loan projects in the late-summer of 2009.

**63. The list of "green projects" on the drinking water side indicates that several of the water main cleaning and lining have not had their "case approved." If these "cases" are not approved, will other projects be considered to take their place on that list?** A: In the event projects designated for ARRA funding as Green Projects do not receive certification, other projects may be considered by the Department provided they satisfy the program's green infrastructure requirements.

In House Labor

**64. Can any of the work proposed be done by in-house labor?** A: Yes, it is an eligible activity subject to NJDEP prior approval.

**65. If we have exhausted all available sources of American manufacturers is there a waiver that can be acquired?** Yes. Contact the NJEIT for more information.

Billing Invoices / Payment Requisitions.

66. **When will forms for submission for re-imbursement be available?** A: Requisition forms are provided to borrowers upon the approval of their loans.

67. **What are the borrower reporting requirements?** A: staff continues to research this topic and will provide information as it is developed.

2010 Program / Additional Funding.

68. **If I have a project that is not funded this year, what am I required to submit to demonstrate my continued interest in participating in 2010?** A: Submission of the Initial Submission package by October 5, 2009 is required to demonstrate your intention to participate in the 2010 Financing Program. That document is located at [www.njeit.org/forms.htm](http://www.njeit.org/forms.htm).

69. **All the projects on the list are shovel ready and funding short. If the community would like to continue with the NJEIT financing program, would they be required to reapply for the November 2009 loan programs or would a letter of intent be sufficient? Have the program deadlines and milestones changed to meet this situation? Or do they have to delay the project and wait for the November 2010 cycle?** A: If there are insufficient resources to finance your project in 2009 program year, you will have to resubmit the initial submission package in October as per the program requirements set forth in [www.njeit.org/forms.htm](http://www.njeit.org/forms.htm).

70. **Has there been any change in the 2010 schedule as a result of this year's program?** A: No changes to the 2010 Financing Program schedule has been made.

71. **Is there any hope that additional funds will be provided for a second round of ARRA programs?** A: The NJEIFP has no information to support New Jersey's receipt of any additional ARRA funding for Clean Water or Drinking Water Projects.

Financial Addendum Form

72. **A. What is the submission schedule for ARRA and Traditional FAFs.** A: ARRA FAFs (and supplement) are due on May 29, 2009 and Traditional FAFs are due on August 17, 2009.

**B. An applicant's project was not listed as ARRA eligible under the original Project Priority List and as a result the applicant did not submit an FAF form by the May 29 deadline. The project is now listed as ARRA eligible under the Living List. Is the applicant precluded from seeking ARRA funding for this project because it missed the deadline?** A: No, see the answer to question C below.

**C. If an applicant's project was not listed for ARRA financing in the Project Priority List but is now listed for ARRA funding under the Living List, when is the ARRA FAF and FAF Supplement due?** A: Applicants whose projects were not identified for ARRA financing in the Project Priority List but are identified for ARRA financing under the Living List are required to submit their FAF no later than August 17. If, as a result of NJDEP's bypass of other projects, a project is positioned above the funding contingency line, the applicant should commence preparation of the FAF and FAF Supplement. Note, prioritization of ARRA projects for limited ARRA loans is based on the date of receipt of each project's construction contract award certification, and nothing in this communication should be interpreted as suggesting that an applicant delay taking any and all actions necessary to expedite its submission of the construction contract award certification. Note also that notwithstanding the increase in the number of ARRA eligible projects there has been no increase in ARRA funds.

**73. Is the Financial Addendum Form for the ARRA Financing Program different from the Financial Addendum Form for the Traditional Financing Program? What is the schedule for the submission of a completed Financial Addendum Form by an applicant for the ARRA Financing Program? What is the schedule for the submission of a completed Financial Addendum Form by an applicant for the Traditional Financing Program?** A: The customary Financial Addendum Form (the “FAF”) was made available to all applicants in February of 2009 for use in applying for participation in the 2009 Financing Program. Such date was prior to the final structuring of the 2009 Financing Program with the detailed features of the ARRA Financing Program and the Traditional Financing Program. Following the final structuring of the 2009 Financing Program with the detailed feature of the ARRA Financing Program and the Traditional Financing Program, it was determined by the NJEIT that the customary FAF would not be revised, altered or even updated for purposes of changing dates referenced therein. The substance of the FAF is sufficient for any applicant regardless of participation in the ARRA Financing Program or the Traditional Financing Program or any hybrid combination thereof. Any revision to the FAF for purposes of addressing calendar issues would be challenging and futile in that various applicants can and will proceed according to different calendars for one or more of their projects. The only accommodation that was made by the NJEIT following the final structuring of the 2009 Financing Program was the development of a Supplement to the FAF (the “FAF Supplement”) to be completed by those applicants applying for participation in the ARRA Financing Program. The FAF Supplement was disseminated simultaneously with the dissemination of the Program Summary.

Following the publication by the NJEIT of its FAF Supplement, the NJEIT received a number of questions from applicants and their professional advisors with respect to the FAF and the FAF Supplement. Specifically, such questions have addressed whether a separate FAF and a separate FAF Supplement must be submitted for each project of a particular applicant or, alternatively, whether multiple projects of a particular applicant may be consolidated into a single FAF and a single FAF Supplement. Such questions are particularly relevant this year due to the significant number of ARRA Financing Program applicants that have applied for funding for multiple projects.

The original position of the NJEIT was that preparation of a separate FAF for each project of a particular applicant would be an appropriate policy response to the unique features of the 2009 Financing Program and the fact that the various projects of a particular applicant may be financed via different pools at different times. Nevertheless, the NJEIT received multiple appeals from applicants and their professional advisors requesting that this position be revisited. In response to such appeals, on May 12, 2009, the NJEIT issued its 2009 Financing Program Guidance Advisory #2 for the purpose of clarifying the FAF and FAF Supplement submission requirements. The substance of such 2009 Financing Program Guidance Advisory #2 is set forth below:

(i) As was the case with prior Financing Programs, if an applicant seeks a clean water project financing and a drinking water project financing through the ARRA Financing Program, a separate FAF and a separate FAF Supplement must be submitted with respect to each category of projects (i.e., clean water projects and drinking water projects).

(ii) With respect to multiple projects of a particular applicant that (a) fall within a single project category (i.e., clean water or drinking water) and (b) are eligible to participate in the ARRA Financing Program, to the extent that the information contained in Sections I and II of the FAF is identical for all of such projects, such applicant may submit a single FAF for all such projects. However, Section III of the FAF, which contains project-specific information, must be duplicated and a separate copy of such Section III must be completed and submitted (as part of the single FAF) for each project. Additionally, to the extent that Exhibits to such FAF are identical for all projects of an applicant addressed by such FAF, such Exhibits may be submitted once with respect to all such projects.

(iii) With respect to multiple projects of a particular applicant that (a) fall within a single project category (i.e., clean water or drinking water) and (b) are eligible to participate in the ARRA Financing Program, a single FAF Supplement may be submitted, provided that Section III of the FAF Supplement, relating to project-specific construction contract bidding and award, must be duplicated and a separate copy of such Section III must be completed and submitted (as part of the single FAF Supplement) for each project.

(iv) In response to the request of several applicants and/or the professional advisors thereof, the submission deadline for the FAF and the FAF Supplement relating to the ARRA Financing Program was extended from May 22, 2009 to May 29, 2009. We would like to reiterate that the FAF submission date for projects that are eligible only for the Traditional Financing Program is August 17, 2009. Such Traditional Financing Program projects should not be included in or addressed by the FAF and FAF Supplement submitted on May 29, 2009 in connection with the ARRA Financing Program.

(v) If an applicant submits an FAF and an FAF Supplement for one or more projects in connection with funding through the ARRA Financing Program and, thereafter, it is determined that one or more of such projects will not qualify for the ARRA Financing Program, but, alternatively, such project(s) will receive Traditional Financing Program funding, it will not be necessary for the applicant to resubmit a new FAF by the August 17, 2009 FAF submission date relating to the Traditional Financing Program. In such circumstances, the originally filed FAF will suffice, provided that the applicant submits any appropriate and necessary updated information and attachments.

**74. Is the Financial Addendum Form required for projects composed of 100% Traditional Financing terms?** A: Yes. FAFs are required for all ARRA and Traditional projects. ARRA Project FAFs are due on May 29, 2009 and Traditional Project FAF's are due on August 17, 2009.

**75. If an applicant already submitted a traditional loan FAF for clean water projects by the original deadline (March 2009), does EIT seek to have that FAF re-submitted.** A: No. Just the Supplement for an ARRA project. See the Supplement for additional information. [www.njeit.org/forms.htm](http://www.njeit.org/forms.htm).

**76. Does AN ARRA loan applicant need to file an additional FAF and Local Finance Board application in order to be part of the Traditional Financing Program once it is determined they cannot participate in the ARRA program?** A: No, the Program will rely on the original FAF provided it is supplemented with any changed information.

**77. Is the Financial Addendum Form and/or the Supplement to the Financial Addendum Form required for projects composed of 100% Traditional Financing terms?** A: The Supplement is not required for Traditional Financing Program Projects.

FAF Supplement

**78. The supplement states that a separate FAF is required for each project is this correct?** A: While the program initially advised applicants to submit separate FAFs for each project, it is no longer requiring same. ARRA borrowers should refer to the FAF supplement on [www.njeit.org/forms.htm](http://www.njeit.org/forms.htm).

**79. What is the timetable for an applicant who will be receiving ARRA financing to obtain a DUNS number?** A: ARRA Applicants are required to have the DUNS number acquired by May 29. The telephone contact # is 1-866-705-5711, Monday - Friday 7 AM to 8 PM C.S.T. The process to request a DUNS Number takes between 5 and 10 minutes. You will need to provide the following information:

- Legal Name
- Tradestyle, Doing Business As (DBA), or other name by which your organization is commonly recognized
- Physical Address, City, State and Zip Code
- Mailing Address (if separate)
- Telephone Number
- Contact Name
- SIC Code (Line of Business)
- Number of Employees at your location
- Headquarters name and address (if there is a reporting relationship to a parent corporate entity)
- Is this a home-based business?

**80. What is the timetable for an applicant who will be receiving ARRA financing to register with CCR?**

A: ARRA Applicants are required to register with CCR by May 29.

**81. A. What is a FFATA request form and where do I get one?** A: The FFATA Request Form is a form that each ARRA Financing Program applicant and each Traditional Financing Program applicant must complete in order to enable the NJDEP to comply with certain federal law requirements pursuant to the Federal Funding Accountability and Transparency Act (the "FFATA").

(i) With respect to ARRA Financing Program applicants, submission of the FFATA Request Form is a condition precedent to closing with respect to such applicant's Fund Loan and simultaneous escrow closing with respect to such applicant's Trust Loan;

(ii) With respect to Traditional Financing Program applicants, submission of the FFATA Request Form is a condition precedent to the escrow closing with respect to such applicant's Trust Loan and Fund Loan; and

(iii) With respect to Interim Financing Program participants, submission of the FFATA Request Form is a condition precedent to the closing with respect to such applicant's Interim Loan.

Only after a borrower receives confirmation from the Department that ARRA Financing Program and/or Traditional Financing Program funds have been set aside for a particular project, is a borrower required to submit an FFATA form. Confirmation of availability of ARRA funds will occur after a borrower has submitted a certification of construct contract award. Confirmation of availability of Traditional funds will typically occur at the time or after the NJDPE and Trust certify the project.

The FFATA Request Form is now posted on the NJEIT's website ([www.njeit.org](http://www.njeit.org)), under FORMS, as part of the 2009 FAF - ARRA Supplement.

**B. I heard that all applicants (ARRA and Traditional financing projects) will be required to submit the Federal Funding Accountability and Transparency Act (FFATA) in 2009. When should I submit it?**

A: The FFATA requires the full disclosure to the public of all entities receiving federal funds. A portion of NJEIFP loans are federal funds and therefore all loan recipients must comply with the FFATA. Applicants submitting Financial Addendum Forms learned of the FFATA in the FAF Supplement. Hereafter, applicants need not submit the FFATA at the time of submission of the FAF (regardless of whether ARRA or traditional financing is sought). Rather, submission of the FFATA form will be required as an element of escrow closing. The borrower will receive instructions regarding completion for the FFATA form at that time.

**82. Can you provide any guidance as to what information is required to be disclosed in the following FFATA fields?**

A: Federal Agency: EPA  
CFDA #: DWSRF: 66.468, CWSRF: 66.458  
Program Source: CWSRF or DWSRF  
Sub-award Amount: Project Amount

Transaction Type: Loan

83. **To whom do we mail the FAF Supplement?** A: The FAF Supplement is to be issued to the recipients identified in the Financial Addendum Form.

#### Bid Blackout

84. **Does a bid black-out period apply to ARRA Projects?** A: Because construction contracts with respect to 100% of the project must be awarded prior to closing with respect to an ARRA Financing Program Fund Loan (and the simultaneous escrow closing with respect to an ARRA Financing Program Trust Loan), the traditional bid blackout period will not apply to participants in the ARRA Financing Program.

85. **Does a bid black-out period apply to Traditional Projects?** A: Yes. With respect to applicants participating in the Traditional Financing Program, as has been the case in the past, the bid blackout period will commence on the date of such applicant's escrow closing, and will end on the date following the release from escrow of the Loan Agreements and the issuance of the NJEIT bonds. Please see Question XX for more information with respect to the schedule for the Traditional Financing Program. See also the Traditional Financing Program Schedule at [www.njeit.org/recovery.htm](http://www.njeit.org/recovery.htm).

86. **What may and may not be done by an applicant with respect to bidding and award during the Bid Blackout Period?** A: An applicant may not open bids during the bid blackout period. An applicant may advertise for, and receive, bids during the bid blackout period, as long as such applicant does not thereafter open such bids during the bid blackout period. If an applicant has advertised for, received and opened bids prior to the commencement of the bid blackout period and has shared those bids with the NJDEP prior to the commencement of the bid blackout period, such applicant may award its contract(s) during the bid blackout period.

#### Bond Sale

87. **When is the Bond Sale period going to be?** A: Bond sale for Traditional Financing Program projects is anticipated to occur in January and Bond Sale for ARRA Financing Program projects is anticipated to occur in October.

#### Local Finance Board Issues

88. **Will a delay in Local Finance Board approval cause a project to lose their ranking on the priority list?** A: Possibly. Assume a borrower has project Y with a project rank of 1 on the project Priority List for which it is delayed in securing LFB approval. If the NJDEP receives a construction contract certification for project X having a rank of 30 on day 10 at 9:00 a.m. and receives the construction contract certification for Project Y having a rank of 1 on day 10 at 9:01 a.m. The project's ranking is not a priority in funding for an ARRA loan.

89. **A municipality or authority cannot get appropriation until it is approved by the Local Finance Board. Therefore, a borrower cannot award a contract before receiving LFP approval. The application deadline for the June LFB meeting is May 20, 2009. We cannot make that deadline, is this going to jeopardize our ARRA funding?** A: The critical issue for preserving a project's ability to participate in the ARRA funding program is your ability to demonstrate to DEP that you have completed the process to award the contracts and that is reflected by the certification being submitted to DEP that 100% of the contracts have been awarded. The program does not provide any relief to borrowers delayed by the timing of their LFB approval.

90. **Can NJEIT request delayed LFB deadline for applications for June hearing beyond 5/20 for ARRA projects or a special hearing in late June?** A: The NJEIFP staff has apprised LFB staff as to the 2009 Financing Program and will continue to meet to discuss the unique needs of borrowers in this program year.

91. **If an applicant has one or more projects that qualify for ARRA Financing Program funding and one or more projects that qualify for Traditional Financing Program funding, can such applicant pursue simultaneously official action, including Local Unit Bond authorization and Local Finance Board approval, that addresses the financing of all of such projects or, alternatively, must such applicant bifurcate such official action as between the ARRA Financing Program projects and the Traditional Financing Program projects?** A: An applicant may pursue simultaneously official action, including Local Unit Bond authorization and Local Finance Board approval, for Traditional Financing Program projects and ARRA Financing Program projects. However, such official action should specify that the projects may be financed separately, at different times, and should provide for the issuance of multiple Local Unit Bonds at different times. To the extent that an applicant wishes to combine such official action and has any questions, bond counsel to such applicant is advised to consult with McCarter & English, LLP, bond counsel to the NJEIT.

#### Fee Structure Issues

92. **Will the NJEIFP fee structure be different this year?** The 2009 Financing Program fee structure will remain consistent with that of recent years. On the date of closing with respect to the NJEIT bonds that fund an applicant's Trust Loan, the NJDEP will charge such applicant a fee equal to 2% of the applicant's total project costs (including costs financed by the Trust Loan and the Fund Loan, and including the amount of any principal that is to be forgiven pursuant to the ARRA Financing Program).

On the date of closing with respect to the NJEIT bonds that finance an applicant's Trust Loan, the NJEIT will charge such applicant a fee equal to 0.01% of the principal amount of the applicant's Trust Loan. The NJEIT also will charge each applicant an annual fee equal to 0.03% of the principal amount of the applicant's Trust Loan, to be paid semiannually on each interest payment date with respect to the Trust Loan.

93. **How will closing an ARRA Financing Program loan work?** A: The ARRA Financing Program is different from the traditional program schedule. An ARRA Financing Program applicant will receive an authorization to advertise from the Department. The applicant will then advertise for the construction work and upon its award of 100% of the construction contracts, submit a certification of construction contract award to the Department. The Department will then issue a notice as to the availability of ARRA Funding. If ARRA funds are available, the borrower will then be queued to close on the fund loan. Fund loans will close on a rolling basis. The fund loan will be for 75% of the project costs. Simultaneous with the closing of the fund loan the borrower will close in escrow on a Trust loan which shall address all elements of the long term Trust loan.

94. **How many series of bonds does the borrower need to issue for a Traditional Financing Program loan or the ARRA financing Program loan?** A: The borrower needs to issue two bonds, one to the State for 75% of the project costs and one to the Trust for 25% of the project costs.

95. **When are Loan Forms expected to be available - early July as in the past? Previously, we adopted Authority bond resolution and form resolution together. That may not be possible now, due to required timing of contract awards, estoppel, etc .** A: Staff is The Loan Forms may not be available when they choose to take official action.

96. **If the Trust closing is November can an ARRA funded project award contract in December?** A: While not impossible, it is unlikely. It is expected that all ARRA projects will be closing in November because all contracts would have been awarded prior to that. A project does not qualify for ARRA unless the Department has received a certification of contract award from the applicant.

#### Credit Worthiness Standards

**97. Are the traditional “credit worthiness standards” applicable to the ARRA Financing Program?** A: The traditional “credit worthiness standards” are applicable to the ARRA Financing Program. Such standards generally require that an applicant receive an investment grade rating from one of the three major credit rating agencies, although there are several “safe harbors” (or exceptions) relating to this requirement. Public Financial Management, Inc., financial advisor to the NJEIT, is reviewing the status of each ARRA Financing Program applicant with respect to its satisfaction of the credit worthiness standards, and will contact applicants with respect thereto as appropriate. Feel free to contact NJEIT bond counsel with respect to the credit worthiness standards, an elaboration thereon, and a more detailed explanation of the exceptions thereto.

Pre-award Approval / Interim Financing

**98. Can an applicant that is participating in the ARRA Financing Program participate in the NJEIT’s Interim Financing Program?** A: To the extent that an applicant that is participating in the ARRA Financing Program requires funding prior to the closing of its Fund Loan, such applicant may participate in the NJEIT’s Interim Financing Program. However, the NJEIT believes that such need on the part of applicants will be rare and may not arise at all. Due to the availability of Fund Loan funding and the closing thereof on a rolling basis promptly following the award by an applicant of its construction contracts, we believe that the Fund Loan will address sufficiently the cash needs of applicants with respect to the costs of their projects.

It is possible, however, that, in order to address some accumulated soft costs, an applicant may require some funding prior to (i) the award of its construction contracts and (ii) the Fund Loan closing. Alternatively, following the award of construction contracts and the Fund Loan closing, it is possible that aggressive progress with respect to the completion of a project may create funding needs in excess of the amount of the Fund Loan and such substantial cash needs may arise prior to the release from escrow of the Trust Loan, thereby creating a temporary funding deficit. Again, the NJEIT believes that each such scenario will be rare. Nevertheless, in each such scenario, such applicant may participate in the NJEIT’s Interim Financing Program to address such interim funding needs.

**99. Is it true that Traditional Financing Program borrower’s will likely not receive interim funding because NJDEP will be committing its efforts in the first few months to ARRA projects?** A: Given program staff’s initial focus on ARRA projects, there will be relatively few Traditional Financing Program projects certified during the summer. Certified projects will be eligible to receive IFP Loans provided they comply with relevant program financing requirements.

**100. If a town applies for and gets an interim loan, are they guaranteed funding at some point in the future - 2009/2010?** A: In the Clean Water Program a project receiving interim funding will receive funding in this program year. In the Drinking Water Program, a project receiving an IFP loan will have no guarantee to funding in 2009 or thereafter because their ability to receive a traditional financing program loan is a function of the projects traditional ranking. The determination of eligibility for long-term financing will be made upon certification of all projects in the 2009 Financing Program.

Capitalized Interest

**101. How long can a borrower capitalize interest?** A: A borrower may capitalize interest up to three years after the sale of bonds but no later than six months after the completion of construction. For example, assuming the NJEIT has a November, 2009 bond issue and a borrower capitalizes interest for construction which is complete in May, 2010, the borrower can capitalize interest until November, 2010.