

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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