



# OKLAHOMA TAX COMMISSION AD VALOREM DIVISION



# BULLETIN

**DATE:** AUGUST 20, 2009

**NUMBER:** 09-22

**SUBJECT: USE OF STIMULUS FUNDS TO REPLACE AD VALOREM TAX REVENUE LOST DUE TO "FIVE YEAR MANUFACTURING EXEMPTIONS"; REQUIRED FORMS AND FURTHER GUIDANCE**

Dear County Treasurer:

## **REQUIRED FORMS:**

The use of stimulus funds to replace ad valorem tax revenue lost due to five year manufacturing exemptions is a complicated process. The OTC is required to have in place an agreement with the Board of County Commissioners of each County receiving these funds. The form of agreement is enclosed with this Bulletin (Form #1). Please have your Board of County Commissioners execute the enclosed agreement and return it to the OTC.

Also enclosed is another necessary form, Form #2, which is to be used if funds are distributed by the County to another entity, such as a school district. The County should have an executed copy of this form in its file for *each recipient of funds*.

If you have any questions concerning the two enclosed forms, please contact Ricky Branch at the Oklahoma State Auditor and Inspector's Office, (405) 521-3495.

## **FURTHER GUIDANCE REGARDING USE OF STIMULUS FUNDS:**

Despite the prohibitions specified in the attachment to our Bulletins 09-20 and 09-21, the consensus of affected County Treasurers appears to be that you are obligated and mandated to apply some of the funds received from third reimbursement payment made with ARRA (Stimulus) funds to forms of debt service and other prohibited purposes. This means: sinking funds (county, municipal, common school, vo-tech, tax increment financing districts or otherwise) or any of the purposes described in and specifically prohibited by the attached summary.

Because ARRA (Stimulus) funds cannot be used for any form of debt service or other purposes specified in and prohibited by the attached summary, that portion of your third reimbursement payment made with ARRA (Stimulus) funds which you would, otherwise, apply to various forms of debt service or any prohibited purposes, specified in the attached summary, must be returned, immediately, so the State remains in compliance with the requirements of ARRA.

You should err on the side of caution. If you have any questions as to whether the ARRA (Stimulus) funds can be applied for a particular purpose, don't use those funds for that purpose and return them, immediately.

If you have already applied any portion of those funds to a prohibited purpose, those funds must be returned, immediately.

If you have already disbursed any of those funds to an organization for application to a prohibited purpose, the organization which received those funds must return the funds, immediately.

Funds should be returned, *payable to Oklahoma Office of State Finance, c/o Ad Valorem Division, Oklahoma Tax Commission, P.O. Box 269060, Oklahoma City, OK 73126-9060.*

Please do not contact the OTC. Please direct any questions to Ricky Branch or Greg Hodges at the State Auditor and Inspector's Office, (405) 521-3495.

Sincerely,

OKLAHOMA TAX COMMISSION

Kenny Chuculate  
Deputy Director, Ad Valorem Division

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Enclosures

**FORM # 1:**

**AGREEMENT BETWEEN COUNTY AND OKLAHOMA TAX COMMISSION**

In accordance with the Office of Management and Budget (OMB) Circular A-133, the relationship between the Oklahoma Tax Commission and the County for this agreement is that of a subrecipient.

**Federal Award Information**

CFDA Number: 84.397

CFDA Name: State Fiscal Stabilization Fund (SFSF) – Government Services, Recovery Act

Federal Awarding Agency: Department of Education

**Responsibilities of the Subrecipient (Board of County Commissioners)**

1. The Board of County Commissioners (BOCC) is responsible for complying with the requirements of CFDA# 84.397 as described in the 2009 OMB Circular A-133 Compliance Supplement (Supplement). This includes ensuring that the funds received were not expended on any of the following:

Unallowable Activities - Education Stabilization Fund and Government Services

- a. SFSF funds cannot be used to provide financial assistance to students to attend private elementary or secondary schools, unless the funds are used to provide special education related services to children with disabilities as authorized by the IDEA (Section 14011 of ARRA).
- b. SFSF funds cannot be used to supplement or restore “rainy day funds,” as transferring SFSF funds to a rainy day fund does not constitute an obligation under 34 CFR section 76.707.
- c. No entity may use SFSF funds for:
  - (1) Maintenance of systems, equipment, or facilities;
  - (2) Modernization, renovation, or repair of stadiums or other facilities primarily used for athletic contests or exhibitions or other public events for which admission is charged to the general public; or
  - (3) Modernization, renovation, or repair of facilities used for sectarian instruction or religious worship, or in which a substantial portion of the functions of the facilities are subsumed in a religious mission (Section 14004(c) of ARRA).
- e. LEAs may not use SFSF funds for:
  - (1) Payment of maintenance costs;
  - (2) Stadiums or other facilities primarily used for athletic contests or exhibitions or other events for which admission is charged to the general public;
  - (3) Purchases or upgrades of vehicles;
  - (4) Improvement of stand-alone facilities whose purpose is not the education of children, including central office administration or operations or logistical support facilities; or
  - (5) School modernization, renovation, or repair of that is inconsistent with State law (Section 14003(b) and (c) of ARRA). June 2009 State Fiscal Stabilization Fund Cluster ED A-133 Compliance Supplement 4-84.394-7
- f. IHEs may not use SFSF funds for increasing their endowments (Section 14004(b) of ARRA).

## Unallowable Activities Applicable to Government Services

Government Services funds cannot be used to pay down past debt. Government Services funds must be used for public safety and other government services, precluding the use of Government Services funds to pay down past debt (Section 14002(b)(1) of ARRA).

If any funds are expended for any unallowable activity, which includes expenditures from the building fund, sinking fund, or any debt service payment, the county agrees to be responsible for reimbursing the Oklahoma Tax Commission for these unallowable expenditures.

2. The BOCC will monitor all subrecipients of the County (i.e. schools, cities, towns, ems's, TIF districts, etc.), that receive monies from the funds the County receives, to ensure the subrecipient complies with all requirements of CFDA# 84.397.
3. The BOCC will maintain required records and supporting documentation for all federal expenditures of the county and its subrecipients.
4. The BOCC will remit all program income (i.e. interest earned on deposited CFDA # 84.397 funds) to the Oklahoma Tax Commission.
5. Any BOCC in which federal funds expended for the County in total exceeds the threshold established in OMB Circular A-133 shall be required to have an independent audit. The audit must be conducted in accordance with Government Auditing Standards and OMB Circular A-133 "Audits of States, Local Governments, and Non-Profit Organizations" as required by the Single Audit Act of 1984, Amendments of 1996.
6. The BOCC is required to report to the Oklahoma Tax Commission as prescribed in Bulletin 09-20.
7. If the BOCC does not agree to accept the federal funds, all funds and program income should be remitted back to the Oklahoma Tax Commission.

AGREED AND ACCEPTED by the Board of County Commissioners of \_\_\_\_\_ County

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County Commissioner

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County Commissioner

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County Commissioner

AGREED AND ACCEPTED by the Oklahoma Tax Commission

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Russell Hulin, Director, Management Services

**FORM # 2:**

**AGREEMENT BETWEEN COUNTY AND SUBRECIPIENT**

In accordance with the Office of Management and Budget (OMB) Circular A-133, the relationship between the Board of County Commissioners and \_\_\_\_\_ under this agreement is that of a subrecipient. [Name of subrecipient]

**Federal Award Information**

CFDA Number: 84.397

CFDA Name: State Fiscal Stabilization Fund (SFSF) – Government Services, Recovery Act

Federal Awarding Agency: Department of Education

**Responsibilities of the Subrecipient**

1. The subrecipient is responsible for complying with the requirements of CFDA# 84.397 as described in the 2009 OMB Circular A-133 Compliance Supplement. This includes ensuring that the funds received were not expended on any of the following:

**Unallowable Activities - Education Stabilization Fund and Government Services**

- a. SFSF funds cannot be used to provide financial assistance to students to attend private elementary or secondary schools, unless the funds are used to provide special education related services to children with disabilities as authorized by the IDEA (Section 14011 of ARRA).
- b. SFSF funds cannot be used to supplement or restore “rainy day funds,” as transferring SFSF funds to a rainy day fund does not constitute an obligation under 34 CFR section 76.707.
- c. No entity may use SFSF funds for:
  - (1) Maintenance of systems, equipment, or facilities;
  - (2) Modernization, renovation, or repair of stadiums or other facilities primarily used for athletic contests or exhibitions or other public events for which admission is charged to the general public; or
  - (3) Modernization, renovation, or repair of facilities used for sectarian instruction or religious worship, or in which a substantial portion of the functions of the facilities are subsumed in a religious mission (Section 14004(c) of ARRA).
- e. LEAs may not use SFSF funds for:
  - (1) Payment of maintenance costs;
  - (2) Stadiums or other facilities primarily used for athletic contests or exhibitions or other events for which admission is charged to the general public;
  - (3) Purchases or upgrades of vehicles;
  - (4) Improvement of stand-alone facilities whose purpose is not the education of children, including central office administration or operations or logistical support facilities; or
  - (5) School modernization, renovation, or repair of that is inconsistent with State law (Section 14003(b) and (c) of ARRA). June 2009 State Fiscal Stabilization Fund Cluster ED A-133 Compliance Supplement 4-84.394-7
- f. IHEs may not use SFSF funds for increasing their endowments (Section 14004(b) of ARRA).

**Unallowable Activities Applicable to Government Services**

Government Services funds cannot be used to pay down past debt. Government Services funds must be used for public safety and other government services, precluding the use of Government Services funds to pay down past debt (Section 14002(b)(1) of ARRA).

If any funds are expended for any unallowable activity, which includes expenditures from the building fund, sinking fund, or any debt service payment, the subrecipient will be responsible for reimbursing the Board of County Commissioners for these unallowable expenditures.

- 2. The subrecipient will maintain required records and supporting documentation for all federal expenditures.
  
- 3. The subrecipient will remit all program income (i.e. interest earned on deposited CFDA # 84.397 funds) to the Board of County Commissioners.
  
- 4. Any subrecipient in which federal funds expended in total exceeds the threshold established in OMB Circular A-133 shall be required to have an independent audit. The audit must be conducted in accordance with Government Auditing Standards and OMB Circular A-133 "Audits of States, Local Governments, and Non-Profit Organizations" as required by the Single Audit Act of 1984, Amendments of 1996.
  
- 5. The subrecipient is required to report to the Board of County Commissioners all expenditures paid with funds received through CFDA #84.397.
  
- 6. If subrecipient does not agree to accept the federal funds, all funds and program income should be remitted back to the Board of County Commissioners.

ACCEPTED AND AGREED, \_\_\_\_\_

[name of subrecipient]

By: \_\_\_\_\_, an authorized and empowered representative of subrecipient

[signature]

printed name: \_\_\_\_\_

AGREED AND ACCEPTED by the Board of County Commissioners of \_\_\_\_\_ County

\_\_\_\_\_

County Commissioner

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County Commissioner

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County Commissioner

