Management of American Recovery and Reinvestment Act Funding

Editor's note: The following special supplement on the American Recovery and Reinvestment Act is designed to help grantees understand their role in managing the influx of funds provided under the act. Because this supplement pertains only to programs receiving funds under the Recovery Act, its content is narrowly focused and will be applicable only during the lifespan of the act. The following is the second version of this special supplement. It will be updated in future months as the federal government provides more details to grantees on managing these funds.

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Section 1: History

On Feb. 17, 2009, President Barack Obama signed the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5), thus setting the stage for an unprecedented surge in grant funding for a broad range of discretionary and formula-based programs. The Recovery Act specified about $787 billion in appropriations for a range of federal programs designed to increase or extend certain benefits payable under the Medicaid, unemployment compensation and nutrition assistance programs. The package also provided funds that seek to spur clean energy, encourage science and technology research, modernize the transportation infrastructure, expand health care and improve education.

To ensure recipients of Recovery Act funds are transparent and accountable, the law established an oversight board of inspectors general called the Recovery Accountability and Transparency Board. The board will report to Vice President Joe Biden.
In addition, the law created Recovery.gov, a searchable Web site that allows the public to see how Recovery Act funds are spent. Unlike USASpending.gov, which collects data about all types of contracts, grants, loans and spending across government agencies, Recovery.gov focuses solely on grants and contracts awarded under this act.

The law requires federal agencies to issue Recovery Act funds quickly and gives them a limited time in which to make funds available. As of late April, federal agencies had reported that about $15 billion in Recovery Act funds had been disbursed. Recipients of federal funding were to begin reporting on their use of funds by July 10, 2009, although delays in establishing a Web site for reporting are expected to push back the first reporting deadline to Oct. 10, 2009.

The life of the funds can best be described through this example from the Department of Housing and Urban Development. Public housing authorities must focus on projects that can award contracts based on bids within 120 days of the funds becoming available to the PHA for obligation. Grants cannot pay for operating expenses and must supplement, not supplant, public housing funding from other sources, such as state and local governments. PHAs must obligate all Capital Fund formula and discretionary grant funding within one year from the date the funds become available for obligation. They must expend at least 60 percent of grant funds within two years of the date they become available, and must expend 100 percent of the funds within one additional year. HUD will recapture any funds that PHAs fail to obligate or expend within these time limits and reallocate the monies to PHAs that comply with the law.

The White House has required federal agencies to develop and use merit-based selection criteria to help them choose appropriate grant projects for Recovery Act funding. This is intended to help agencies select projects that deliver programmatic results; achieve economic stimulus by creating and saving jobs; achieve long-term public benefits; and satisfy the Recovery Act’s transparency and accountability objectives. Funds may not be used for “imprudent projects,” such as a “casino or other gambling establishment, aquarium, zoo, golf course or swimming pool.”

Section 2: Federal Guidance

The Office of Management and Budget has issued two rounds of governmentwide guidance to help in carrying out Recovery Act programs. The OMB detailed federal agency responsibilities for overseeing these funds (i.e., grants, contracts, loans), reporting requirements and risk management procedures. Recipients of grants and cooperative agreements under the Recovery Act should be aware of the federal requirements to help them understand their own responsibilities.

Certain federal requirements under the act differ from traditional grants management practices. Among these are:

Grant objectives — Agencies will structure grants to provide measurable outcomes and promote the goals of the Recovery Act (e.g., job creation and preservation), and will evaluate these criteria when issuing the award.
**Competition** — Despite the urgency to expend funds, the OMB expects agencies to follow the same laws and procedures in awarding Recovery Act discretionary grants as they do with other funds, promoting competition to the maximum extent practicable. However, agencies may consider the appropriateness of limited competitions among existing high-performing projects versus full and open competitions and formula allocations. Agencies also should maximize local hiring and opportunities for small businesses where possible.

**Existing grants** — Agencies may consider obligating Recovery Act funds on an existing grant. However, because Recovery Act funds must be tracked and accounted for separately, the OMB did not recommend supplements to existing agreements since there is a greater risk the recipient will not be able to track and report Recovery Act funds separately. Recovery Act grant terms and agreements must spell out the assignment of agency roles and responsibilities, including report development and submission, accurate and timely data reporting, and special posting requirements to agency Web sites and Recovery.gov.

**Award timeliness** — The OMB required agencies to address existing award announcement processes for formula allocations and discretionary grants to enable timely awards, encouraging potential applicants to obtain Dun and Bradstreet Universal Number System (DUNS) numbers and register with the Central Contractor Registration.

**Catalog of Federal Domestic Assistance Numbers** — New Recovery Act programs or existing programs whose compliance requirements are significantly changed under Recovery Act must have new CFDA numbers.

Recovery Act funding opportunity announcements now are available to potential grant applicants at Grants.gov. Agencies are posting the full funding announcement, including specific requirements such as the use of funds, certification, data reporting and performance measures under the act. Again, agencies say they will favor applicants with a demonstrated ability to deliver programmatic results and accountability objectives.

The requirements for terms and conditions for competitive and formula grant agreements under the Recovery Act differ somewhat from standard grants. For Recovery Act award notices, agencies will use their standard award terms and conditions unless they conflict with act’s requirements. The guidance requires agencies to insert terms notifying recipients that the Recovery Act funding is one-time-only funding, and that they will receive funds as long as they meet the new law’s reporting requirements.

Terms and conditions affecting subgrants also require changes. Prime recipients should ensure first-tier subawardees hasten planning activities, including obtaining a DUNS number and registering with the CCR, and should establish systems to meet Recovery Act data collection requirements. Also in these terms and conditions, each grantee or subgrantee should promptly refer to an appropriate inspector general “any credible evidence that a principal, employee, agent, contractor, subgrantee, subcontractor or other person has submitted a false claim under the False Claims Act or has...
committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity or similar misconduct involving those funds.”

For more on grant terms and conditions, see Section 6, “Standard Terms and Conditions.”

Section 3: Administrative Requirements

Standard grants management administrative requirements can be found in the OMB Circular A-102 Common Rule for state, local and tribal governments, and Circular A-110 (2 C.F.R. Part 215) for educational institutions, nonprofit organizations and hospitals. These administrative requirements still apply to grants and cooperative agreements awarded under the Recovery Act, although certain deadlines, such as financial reporting deadlines and due dates will be altered to comply with accountability requirements for reporting to Recovery.gov. Certain grants under the Recovery Act also waive matching and cost-sharing requirements.

Grantees that expend $500,000 or more annually in federal financial assistance must have a single audit or program-specific audit performed under OMB Circular A-133. Those expending less than $500,000 annually are excluded from the single audit requirements. To boost accountability of Recovery Act funds, federal agencies will perform a risk analysis of Recovery Act programs and request the OMB to designate any high-risk program as a major program requiring a single audit. The OMB will provide information on this designation in the Circular A-133 Compliance Supplement, at the OMB Web site and at Recovery.gov.

In addition to single audits, agency inspectors general will use risk assessment techniques where data is available to identify high-risk programs and entities to be targeted for priority audits, inspections and investigations with faster turnaround reporting. Because many single audits are not received until at least nine months after the end of the entity’s fiscal year, OIG audits offer a chance for quicker reporting. These OIGs also will audit and inspect their respective agencies’ disbursement and monitoring of Recovery Act funds to determine if they are being used for their intended purposes.

Auditors may use the 2009 Circular A-133 Compliance Supplement to review Recovery Act compliance requirements. The OMB may issue interim updates to the supplement to keep Recovery Act requirements current.

Further, OIGs will offer technical assistance and training, as well as perform quality control reviews, to ensure single audits are properly performed and improper payments and other instances of noncompliance are fully reported. Results of OIG follow-up reviews of single audit quality on Recovery Act programs will be reported on Recovery.gov. For fiscal years ending Sept. 30, 2009, and later, all single audit reports filed with the Federal Audit Clearinghouse will be available online at the clearinghouse Web site (http://harvester.census.gov/fac), with a link provided from Recovery.gov. Federal agencies also will review single audits of Recovery Act funding and provide a synopsis of audit findings.
Section 4: Federal Agency Reporting

Effective reporting is critical for ensuring proper accountability under the Recovery Act. Federal agencies and grantees receiving these funds should be prepared to meet these reporting challenges.

Federal agencies are required to submit weekly financial and activity reports to the Office of Management and Budget on Recovery Act activities including obligations and gross outlays, as well as provide a list of major activities taken and those planned. This information is to be posted at USASpending.gov. Previous guidance calling for monthly financial reports has been eliminated.

Agencies also were required to submit to OMB by May 15, 2009, final agencywide Recovery Act plans showing how these funds will be applied and managed. These plans were to describe both broad Recovery Act goals, and how different parts of the grantor agency are coordinating efforts to implement the act and monitor programs. The plans will address processes now in place to review progress and performance, expected savings and future costs.

On a program level, agencies also were required by May 15 to give OMB final plans on how they will oversee programs included in the Recovery Act. These agency plans summarize specific Recovery Act projects and activities planned.

These plans include detailed funding disbursements, goals and objectives, activities to be performed, characteristics of the award (i.e., funding type, recipient type, award selection methodology), delivery schedule, environmental review compliance, expected outcomes, monitoring processes, transparency and accountability plans, barriers to effective implementation and federal infrastructure investments.

Agency plans also must include a description of how the agency will spend funds effectively to comply with energy efficiency and green building requirements.

Section 5: Recipient Reporting

OMB guidance on recipient reporting under the Recovery Act warns that the requirements are “extensive.” Prime recipients are responsible for reporting on their use of funds as well as any subawards they make. The OMB plans to evaluate whether it should expand the reporting model to obtain information from subsequent layers of subrecipients and subcontractors once system capabilities and processes have been established.

The reporting requirements apply only to prime recipients who receive funds through discretionary appropriations, and not those receiving funds through entitlement or other mandatory programs, except as specifically required by the OMB.

Recipients of Recovery Act funds are required to submit reports by Oct. 10, 2009, followed by quarterly reports due 10 days after the end of each calendar quarter. Grantees also must have their July quarterly reports ready for submission on July 10, but the centralized federal reporting portal (http://www.federalreporting.gov) is not expected to be ready by then.
Reporting requirements must be consistent across federal agencies. While agencies have discretion in the data they choose to collect for their programs, the information required for display on Recovery.gov will be standardized to the extent possible. The OMB and the Recovery Act Accountability and Transparency Board will evaluate cases that require waivers to existing standards to accommodate Recovery Act reporting requirements.

The OMB will work with agencies to determine the most appropriate method for collecting information from recipients for reports due July 10. Detailed reporting instructions will be made available at http://www.federalreporting.gov no less than 45 days before the Oct. 10 reporting deadline.

States will have the flexibility to determine the best means for collecting and sending data under the act, either by creating a central point of contact or having individual state agencies or recipients report to the federal government. However, federal agencies must expect the state to assign a responsible official to oversee data completeness and timeliness.

Recipients must report on the number and types of jobs created and retained by the program, using full-time equivalent estimates. “Jobs created” is defined as “those new positions created or filled, or previously existing unfilled positions that are filled, as a result of Recovery Act funding.” “Jobs retained” is defined as “those previously existing filled positions that are retained as a result of Recovery Act funding.” The number of jobs retained or created shall be expressed as full-time equivalents, calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule as defined by the recipient. For example, two full-time employees and one part-time employee working half a day would be reported as 2.5 full-time equivalents in each calendar quarter.

The OMB encourages prime recipients to work closely with their governors and state workforce investment boards to list all jobs generated through the Recovery Act on their state job banks.

Although Recovery Act funds under these reporting requirements can be used in conjunction with other funding as necessary to complete projects, tracking and reporting must be separate. All of this data will be recorded on Recovery.gov or an agency-specific recovery Web site. Agencies are required to dedicate a section of their existing Web site to Recovery Act activities (e.g., http://www.hud.gov/recovery).

The Recovery Act allows the Department of the Interior’s Bureau of Indian Affairs, the Department of Health and Human Services’ Indian Health Service, and the Department of Housing and Urban Development to use existing self-determination contracting authorities with Indian tribes. However, it also requires the agencies to incorporate the Recovery Act provisions regarding the timing for the use of funds, oversight, reporting and accountability. OMB meetings with these agencies will determine how best to incorporate appropriate transparency and accountability provisions into tribal self-determination contracts.
Section 6: Standard Terms and Conditions

Along with its implementation guidance, the OMB issued interim final guidance establishing standard award terms and conditions federal agencies should include in Recovery Act assistance awards. The guidance for grants, cooperative agreements and loans addresses several aspects of the Recovery Act including registration, reporting, the Buy American requirement, wage rate requirements under the Davis-Bacon Act, and single audit information. The terms and conditions, which address Sections 1512, 1605 and 1606 of the act, are being located in a newly created 2 C.F.R. Part 176.

The terms and conditions would require recipients and their first-tier subrecipients to maintain current registration in the Central Contractor Registration and have a DUNS number. The recipient must report on certain data elements required by the agency to http://www.federalreporting.gov (once the site is up and running).

The guidance would require entities receiving Recovery Act funds to provide the following information:

- the name of the project or activity;
- the total amount of recovery funds received;
- the amount of recovery funds received that were spent on the project or activity;
- a description of the project or activity;
- an evaluation of the completion status of the project or activity;
- an estimate on the number of jobs created and/or retained by the project or activity; and
- the purpose, total cost and rationale for state and local governments making infrastructure investments.

Subrecipient data that would be sought includes data elements required to comply with the Federal Funding Accountability and Transparency Act (Pub. L. 109-282), including subrecipient name; amount of the award; transaction type; funding agency; funding program's Catalog of Federal Domestic Assistance number; program source; location of the entity receiving the award and the location of the primary place of performance of the award; a unique identifier of the entity receiving the award and the parent entity of the recipient; and names and total compensation for the five most highly compensated officers of the entity if it received 80 percent or more of its annual gross revenues in federal awards and $25 million or more in annual gross revenue from federal awards.

For subawards or subcontracts of less than $25,000 or those awarded to an individual who had a gross income of less than $300,000, the recipient can report the aggregate number of such first-tier subawards or subcontracts awarded in the quarter and their aggregate dollar amount.

The guidance would require Recovery Act recipients involved in a public building or public works project to use American iron, steel and manufactured goods unless
one of the specified exemptions applies. These exemptions include the nonavailability of materials, unreasonable costs or if it is inconsistent with the public interest. The guidance also requires the payment of Davis-Bacon Act wage rates to laborers and mechanics employed by contractors and subcontractors on projects funded directly by, or assisted in whole or in part by, Recovery Act funds.

The guidance also states that within the grant terms and conditions for recipients covered by the Single Audit Act and OMB Circular A-133, grantees would separately identify Recovery Act expenditures on the Schedule of Expenditures of Federal Awards and the Data Collection Form (SF-SAC). Recipients would include the prefix "ARRA-" to identify the name of the Recovery Act program on the SEFA, and would include separate rows under Item 9 of Part II of the SF-SAC and identify Recovery Act programs by their CFDA number.

The guidance also states that recipients with subrecipients receiving Recovery Act funds would document at the time of subaward and at the time of disbursement of funds, the federal award number, the CFDA number and award amount. When a recipient receives Recovery Act funds for an existing program, it would be told which funds were Recovery Act funds so these funds could be distinguished from regular subawards under the existing program.

Subrecipients also would identify Recovery Act funding information on their SEFA in the same manner as prime recipients. This information is needed to allow the recipient to properly monitor subrecipient expenditures of Recovery Act funds and enable oversight by the federal awarding agency, offices of inspector general and the Government Accountability Office.

Section 7: Inspector General Reviews

Agency inspectors general may review, as appropriate, any concerns raised by the public about specific Recovery Act funds. The findings of such reviews and any audits conducted by an OIG on Recovery Act funds will be posted on the OIG’s Web site and linked to Recovery.gov, except for specific information that is protected from public disclosure.

The act authorizes any OIG representative to examine the records of grantees or contractors, and their subgrantees and subcontractors, that pertain to the programs covered under the act, and interview an officer or employee of the grantee, subgrantee or contractor regarding such transactions.

Section 8: Risk Management

The OMB will coordinate Recovery Act activities until the Recovery Act Accountability and Transparency Board is in place. After that, the OMB will work with federal agencies to ensure their grantees meet accountability objectives. The board’s responsibilities will be to ensure:

- funds are awarded in a prompt, fair and reasonable manner;
- that the recipients and uses of the funds are transparent to the public, and that the public benefits of these funds are reported accurately and in a timely manner;
• funds are used for authorized purposes and instances of fraud, waste, error and abuse are mitigated;

• projects avoid unnecessary delays and cost overruns; and

• program goals are achieved.

Agencies are required to designate a senior accountable official for Recovery Act activities, who will work with the agency’s existing senior management council to oversee Recovery Act performance across the agency and ensure the correction of weaknesses.

Agencies will identify and mitigate specific risks in their own grant programs, including:

• determining what award methods will allow recipients to begin work as quickly as possible consistent with prudent management and statutory requirements;

• enabling the timeliness of awards by reaching out to potential applicants to begin application planning activities;

• weighting selection criteria to favor applicants with a demonstrated ability to deliver programmatic results and accountability objectives;

• adapting current performance reviews to include the ability to report periodically on the completion of program activities, along with program and economic outcomes;

• providing appropriate oversight over contracts other than fixed-price to ensure all alternatives are considered;

• reviewing procurement practices to promote competition; and

• requiring recipients to meet Recovery Act reporting requirements in order to receive funds.

The guidance states that agencies may consider performing risk-based payment sampling as part of pre-payment reviews for Recovery Act funds. This sampling could include targeting high-risk grantees and vendors whose payments were identified as erroneous during agency audits or single audits.

Section 9: Contracts and Loans

Federal agencies will focus on several key aspects when planning contract awards. Grantees receiving funds under the Recovery Act should be aware of the OMB guidance on contracts and may want to consider implementing them within their own procurement plans. To the maximum extent possible, contracts using Recovery Act funds should be fixed-price contracts using competitive procedures. Agencies also must provide every opportunity for small businesses to compete for and participate in contracts.

For contracts under the Recovery Act, agencies must:

• follow Federal Acquisition Regulations Part 5 requirements for pre-solicitation and award notices, as well as publish pre-solicitation and award notices of orders under task and deliver order contracts in FedBizOpps;
- include special formatting for pre-solicitation and award notices in FedBizOpps and award reporting in the Federal Procurement Data System to distinguish Recovery Act actions;

- include terms and conditions in contract documents that are needed for effective implementation of Recovery Act data collection and accountability requirements;

- for each government contract greater than $500,000, provide a summary of the contractor order, including a description of the required products and services, which will be linked to Recovery.gov; and

- provide a summary of any contract or order, including a description of the required products or service, using such funds in a special section of Recovery.gov, unless the contract is both fixed-price and competitively awarded.

Grantees also can use the OMB’s guidance to agencies to determine whether contractor qualifications are reliable. Awarding contracts based solely on lowest evaluated price can produce a “false economy, increasing performance, cost and schedule risks,” the guidance adds. Prospective contractors should have adequate financial resources to perform the contract; the ability to comply with the required or proposed delivery or performance schedule; a satisfactory record of past performance; the necessary experience, accounting and operation controls, as well as the needed technical skills; and the necessary production, construction and technical equipment and facilities. Agencies, as well as grantees, should review the Excluded Parties List System (http://ww.epls.gov) before determining if a prospective contractor is considered responsible.

For loans and loan guarantees issued under the Recovery Act, agencies must implement several procedures similar to those involved for grants. For example, agencies should include terms and conditions in award documents to effectively implement Recovery Act data collection and accountability requirements. Single audit procedures used for federal loans and loan guarantees under the act also will be similar to those used for grants.

Agencies using the GovLoans.gov Web portal to disclose available loans must include additional information for Recovery Act loans, including performance measurement, data collection, and loan and loan guarantee award selection and evaluation criteria.

**Section 10: Other Provisions**

Certain sections of the Recovery Act state that the funds shall be used to supplement, not supplant, current program funding. For example, under the Department of Transportation’s Grants-In-Aid for Airports program for procuring and installing runway incursion prevention devices and systems at airports, DOT will distribute funds as discretionary grants to airports, with priority given to those projects that demonstrate the ability to be completed within two years, and that will supplement, not supplant, planned expenditures from airport-generated revenues or from other state and local sources on such activities.
Other provisions under the act state that:

- federal agencies receiving Recovery Act funds may adjust applicable limits on administrative expenditures for federal awards to help award recipients defray the costs of data collection requirements; and

- applicable environmental reviews under the National Environmental Policy Act must be completed on an expedited basis.

Another provision in the act that is of interest to grant oversight addresses the role of agency inspectors general and the review board. The provision allows the board to request that an OIG conduct an audit or investigation, or refrain from conducting an audit. If the OIG rejects the request in whole or in part, the OIG has 30 days to submit a report to the board, the head of the applicable agency and the congressional committees of jurisdiction giving the reasons that the OIG has rejected the request. The OIG’s decision shall be final. Some inspectors general and congressmen have expressed concern that the provision could limit the oversight abilities of the OIG.

For More Information