



GOVERNMENT

## Successfully Managing Activities and Outcomes of the American Recovery and Reinvestment Act of 2009

Co-Sponsored with the Council of State Governments

June 16, 2009

KPMG LLP

AUDIT ■ TAX ■ ADVISORY

# Successfully Managing Activities and Outcomes of the American Recovery and Reinvestment Act of 2009

## Welcome and Introduction

Shawn Warren, Audit Partner, KPMG LLP



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## Today's Guest Speakers

- ◆ Shawn Warren
  - Audit Partner, State & Local Government Audit Leader
- ◆ Dave Dennis
  - Advisory Partner, State & Local Government Advisory Leader
- ◆ Nancy Valley
  - Audit Partner, National Government Line of Business Leader
- ◆ Mandy Nelson
  - Audit Partner, Department of Professional Practice



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## Agenda

- |  |              |
|--|--------------|
| ◆ Overview: The American Recovery and Reinvestment Act of 2009 | Shawn Warren |
| ◆ Recent Developments and Trends                               | David Dennis |
| ◆ Implementation Challenges                                    | Nancy Valley |
| ◆ Single Audit Implications                                    | Mandy Nelson |
| ◆ Discussion/Q & A   | Shawn Warren |



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## Overview

**Shawn Warren**

**State & Local Government  
Audit Leader**

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## American Recovery and Reinvestment Act of 2009

- ◆ Signed into law by President Obama February 17, 2009: \$787 Billion in spending and tax relief to:
  - Create millions of jobs (3.5 million)
  - Promote economic recovery
  - Investment in technology (science and health)
  - Infrastructure investment (transportation, environmental protection)
  - Stabilize state and local government budgets
  - Tax cuts for 95% of taxpayers
  - Investment in healthcare programs, including healthcare IT
  - Education assistance, e.g., Pell grants
  - Housing assistance
  - Energy efficiency upgrades and tax incentives



Source: recovery.gov; CQ House Action Reports – Fact Sheet No. 111-1

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## American Recovery and Reinvestment Act of 2009: Accountability Objectives

The American Recovery and Reinvestment Act (ARRA) requires a combination of speed, transparency, accountability, efficiency, and effectiveness.

- Funds are awarded and distributed in a prompt, fair, and reasonable manner.
- The recipients and uses of all funds are transparent to the public, and the public benefits of these funds are reported clearly, accurately, and in a timely manner.
- Funds are used for authorized purposes, and instances of fraud, waste, error, and abuse are mitigated.
- Projects funded under this Act avoid unnecessary delays and cost overruns.
- Program goals are achieved, including specific program outcomes and improved results on broader economic indicators.



Source: OMB Memo 2/28/09



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## States\* by Stimulus Funding Level

Although the level of stimulus funding ranges from less than \$1 billion to over \$20 billion, all of the states face the same array of transparency, accountability, reporting, and compliance requirements. In other words, states will face the same complexities, regardless of the dollars received and distributed.

Dollar Award Level	States
<b>\$20 Billion +: 3 states</b>	California, New York, Texas
<b>\$10 – 20 Billion: 6 states</b>	Florida, Illinois, Michigan, New Jersey, Ohio, Pennsylvania,
<b>\$5 – 10 Billion: 12 states</b>	Arizona, Georgia, Indiana, Maryland, Massachusetts, Minnesota, Missouri, North Carolina, Tennessee, Virginia, Washington, Wisconsin
<b>\$1 – 5 Billion: 24 states</b>	Alabama, Arkansas, Colorado, Connecticut, District of Columbia, Hawaii, Idaho, Iowa, Kansas, Kentucky, Louisiana, Maine, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Mexico, Oklahoma, Oregon, Rhode Island, South Carolina, Utah, West Virginia
<b>Under \$1 Billion: 6 states</b>	Alaska, Delaware, North Dakota, South Dakota, Vermont, Wyoming

\* Including District of Columbia

Source: recovery.gov

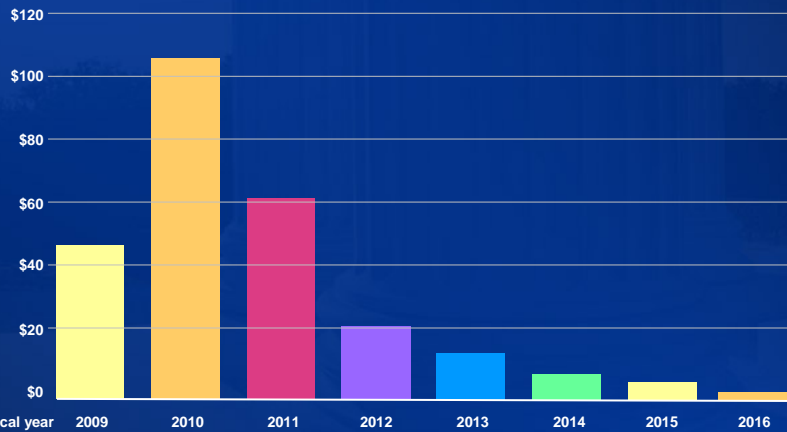


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## Projected Timing of Recovery Act Funds Made Available to States and Localities, by Fiscal Year

Dollars in billions



The projected timing of state and locally-administered spending shows the time lag between when policy changes are first proposed and actual spending begins to flow from the enacted changes.



Source: GAO analysis of CBO and FFIS data.

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## Recent Developments and Trends

**David Dennis**

**State & Local Government  
Advisory Leader**

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## Recent Developments and Trends

- ◆ FMAP Compliance
- ◆ Davis Bacon
- ◆ Buy American
- ◆ Job Creation
- ◆ Certification and Maintenance of Effort
- ◆ Fraud, Waste, and Abuse



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## FMAP Compliance: Section 5001

- ◆ Offers temporary increases in states' Federal Medicaid Assistance Percentage (FMAP) 10/1/08 – 12/31/10. States must comply with the following conditions:
  - = Must not have eliminated any eligibility groups or subgroups under the state plan
  - = Must not have eliminated coverage of any eligibility group or subgroup in any Home and Community Based Services (HCBS) waiver
- ◆ Improper restrictions on eligibility include, but are not limited to:
  - = Instituting or increasing premiums that may restrict, limit or delay eligibility
  - = Increasing stringency of the level of care determination process
  - = Adjusting cost neutrality calculation under an HCBS waiver
  - = Reducing "occupied waiver capacity" of an HCBS waiver
  - = Reducing or eliminating HCBS waiver slots
  - = Introducing restrictive adjustments in financial criteria
  - = Changing eligibility determination or predetermination processes or procedures
- ◆ States cannot require political subdivisions to pay a greater percentage of the non-federal share of expenditures than they would have been required to pay prior to the increased FMAP (10/1/08)
- ◆ States are prohibited from depositing or crediting increased FMAP directly or indirectly to any reserve or rainy-day fund



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## Section 1606 - Wage Rate Requirements

- ◆ Section 1606 of the Recovery Act requires the payment of Davis-Bacon Act (40 U.S.C. 31) wage rates to “*laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government*” pursuant to the Recovery Act.
- ◆ Wages rates should be not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor. <sup>1</sup>
- ◆ The Department of Labor has issued regulations to implement the Davis-Bacon and related Acts, instructing agencies concerning application of the standard Davis-Bacon contract clauses.
- ◆ Federal agencies providing grants, cooperative agreements, and loans under the Recovery Act shall ensure that the standard Davis-Bacon contract clauses found in 29 CFR 5.5(a) are incorporated in any resultant covered contracts that are in excess of \$2,000 for construction, alteration or repair (including painting and decorating).

1 - in accordance with subchapter IV of chapter 31 of title 40, United States Code



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## Section 1605 - “Buy American”

- ◆ Section 1605 of the Recovery Act prohibits use of recovery funds for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods (“materials”) used in the project are produced in the United States.
- ◆ The law requires that this prohibition be applied in a manner consistent with U.S. obligations under international agreements, and it provides for waiver under three circumstances:
  - **Nonavailability** - materials are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality;
  - **Unreasonable cost** - materials produced in the United States will increase the cost of the overall project by more than 25 percent; or
  - **Inconsistent with public interest** - applying the domestic preference would be inconsistent with the public interest.



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## Section 1605 - “Buy American”

- ◆ None of the Recovery Act funds may be used for a public building or public works project, unless:
  - The public housing or public work is located in the U.S.
  - All materials used in project are produced or manufactured in the U.S. (all manufacturing processes must take place in the U.S., except metallurgical processes involving refinement of steel additives. There is no requirement regarding origin of components or subcomponents in manufactured goods used, as long as the manufacturing occurs in the U.S.).
  - Requirements shall not apply where Recovery Act requires application of alternative Buy American requirements for materials.
  - If determined that foreign materials may be used:
    - Determination should be timely, i.e., before Recovery Act funds are awarded by federal agency or obligated by project recipient
    - Award official shall list excepted materials in the award
    - Notice in *Federal Register* should be published within two weeks after the determination, unless item already determined not available<sup>1</sup> domestically (notice may be posted by OMB on recovery.gov)



<sup>1</sup> - the list of items not available domestically is at 48 CFR 25.104(a)

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## Section 1605 - “Buy American” (cont.)

- ◆ If exception is based on unreasonableness of material cost, evaluation factors specified in the guidance should be applied.
- ◆ Late requests should be explained, and if determined justified, the award will be amended to authorize the use of foreign materials and the amount of the award or the budget will be adjusted, as appropriate.
- ◆ Award officials must review allegations of violations, notify recipient of the unauthorized use and take appropriate actions, including replacement of unauthorized materials, reduction of the amount of the award, exercising appropriate remedies (e.g., withholding cash payments or further awards for the project), suspending or debaring officials, or, in case of fraudulent noncompliance, refer matter to appropriate agency officials for investigation.



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## Council of Economic Advisors - Guidance on Job Creation

- ◆ On May 11, 2009, Council of Economic Advisors (CEA) released guidance on job creation, laying out general principles and approach, which will be basis for the OMB guidance on job creation – the OMB guidance is expected to be issued shortly
- ◆ The guidance clarified that recipients will be responsible for reporting only “direct” jobs and not “indirect” or “induced” jobs



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## CEA - Guidance on Job Creation

- ◆ The guidance covers a few points relating to the overall job creation reporting:
  - Majority of jobs expected to be private sector jobs at firms under contract on government projects, receiving grants or tax incentives
  - Direct reporting will only cover about 1/3 of recovery funds (approximately \$271 B in direct government spending). No guidance has been provided for tracking and reporting of job creation for the remainder (tax cuts and state fiscal relief)
  - Agencies will be responsible for reporting direct job creation numbers only; CEA will use extensive microeconomic analysis to estimate indirect and induced jobs to report aggregate job estimates
  - The first CEA report is due to Congress in August 2009 and will cover the quarter ending June 2009



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## CEA Guidance on Job Creation (cont.)

### ◆ The guidance highlights the following issues:

- Primary recipients are required to report jobs created or retained by project and activity or contract. Could potentially result in inconsistencies and cause comparability issues between recipients, depending on the level of reporting: grant vs. individual project.
- The Act uses and defines the word “Recipient”, the OMB guidance used the words “Prime Recipients” and the CEA Guidance used the words “Primary Recipients.” “Primary Recipients” for the purpose of reporting under the CEA guidance are not defined.
- Recipients also required to report on direct jobs created or retained by subrecipients. Level of back-up needed to support the numbers reported by “primary” and subrecipients is not defined; could result in a high-level of variability.



## CEA Guidance on Job Creation (cont.)

### ◆ Highlighted Issues (continued):

- Indirect and induced jobs should not be reported. Example for “indirect” in guidance: jobs created at materials suppliers. Unclear if “indirect” also includes jobs created at contractors working on actual government-sponsored project, e.g., a construction project.
- Jobs created or saved must be reported as FTE-based on the full-time schedule defined by the recipient. Would create inconsistencies in reporting, since definition of full-time work week may vary across jurisdictions.
- Baseline (year or quarter) for computing jobs created or retained is not defined. This is particularly important for jobs retained, since most states and cities have experienced multiple revisions to their budgets, and have made head-count adjustment decisions prior to the creation of the Act.



## Certification and Maintenance of Effort

### ◆ Certification

- Certification elevated to the governor, mayor or other state officials
- Upfront certification prior to spending
  - Infrastructure investment has been reviewed
  - Full responsibility is accepted as to the appropriate use of the taxpayers' funds
- Unprecedented intent by federal government to ensure accountability
- Currently governors of all states, territories and the District of Columbia have provided their certification
- Process for complying with the governor's certification of the use of funds

### ◆ Maintenance of Effort

- Federal funds cannot be used to supplant local funding
- Must be used for additive projects, not applied to cut-backs
- Governments will need to document current level of effort; difficult due to "baked in" cuts and decreases



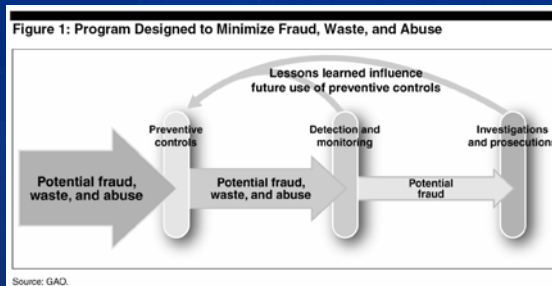
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## Fraud, Waste and Abuse Must Be Minimized

### ◆ A key objective of ARRA is to minimize fraud, waste and abuse

- Additional funding for audits, law enforcement and inspector general oversight
- Even a 5% error rate places \$40 billion of total program funding potentially at risk for fraud, waste and abuse
- The federal government expects states to embed antifraud, waste and abuse efforts into ongoing oversight of programs
- Existing systems and controls may not be capable of addressing increased expectations
- The public has zero tolerance for fraud, waste, and abuse



Source: GAO.



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## **Implementation Challenges**

**Nancy Valley**

**Government Industry Leader**

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## **Implementation Challenges**

- ◆ **Applying for and securing funds under competitive grants**
- ◆ **Inventorizing all new program-level compliance requirements**
- ◆ **Implementing new reporting process for quarterly reports (Section 1512)**
- ◆ **Paying for it – where's the money?**



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## Grant Applications and Governance

### ◆ Grant Application Considerations:

- Maximize funding
- Deadlines, procedures, forms and supporting documentation
- Public announcements/Press releases

### ◆ Leading Practices include:

- Identification of grants application leads by Agency
- Upfront approvals from the Procurement and Contracting Department
- Consideration for legal review and interpretation as needed
- Coordination and approvals with the Office of Management and Budget
- Implementation and coordination of fast, effective and transparent communications with stakeholders across all levels of governments
- Timely public communications and announcements



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## Program Compliance

### ◆ Federal agencies have identified over 200 new and existing CFDA programs funded by the Recovery Act

### ◆ Recipients should:

- Create an inventory of all programs where funds are expected
- Determine which of three categories your ARRA programs fall into
  - Update of existing program
  - New program for your entity
  - New programs for Feds under ARRA
- For each new program, determine the applicable compliance requirements
- Match requirements to existing processes at agency level
- Design new compliance program for those agencies receiving funds



OMB April 3, 2009

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## Section 1512 Reporting: OMB Guidance

- ◆ Federal level – central collections will be required through federalreporting.gov, no reporting through federal agencies
- ◆ State level – collection of data can be centralized or decentralized (agency-level)
- ◆ State is responsible for timeliness, accuracy and completeness of all reporting submitted through federalreporting.gov
- ◆ If a state chooses agency-level reporting, they will need strong processes and controls
- ◆ Reporting required only on state administered programs, e.g., Title I, transportation, etc.
- ◆ Reporting for entities outside the state, e.g., public housing authorities, is not required
- ◆ July 10 (required by earlier guidance) versus October 10 (required by the law)
  - federalreporting.gov will not be ready by July 10
  - Objective: “dry-run” on July 10 as test and to prepare for October 10
  - More information to come



OMB April 3, 2009

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## Data Elements

- Data elements to be collected were published in *Federal Register* 4/1/09
- States and other direct recipients will be required to file one report for each award
- Reports will need to be filed 10 days after the end of the quarter
- Each award report should present cumulative amounts and contain five sections:
  - General Section – Award and Award Recipient Information
    - Project period
    - Awarding Federal agency
  - Section 1: Project/Activity Information
    - Cash received
    - Fund expenditures
  - Section 2: Project/Activity Information
    - Status of work completed
    - Jobs created or retained
    - Cost and outcome of infrastructure investment (if applicable)
  - Section 3: Subrecipient Information
    - Cash disbursed and to be disbursed by recipient
    - Date of subaward and grant period
    - Subrecipient five most highly compensated officers (if applicable)
  - Section 4: Aggregated Award Information
    - Total number of awards <\$25,000
    - Cash disbursed



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## Program and Performance Reporting

- ◆ As with 1990s welfare reform, federal initiatives often mandate new reporting requirements
- ◆ Possible reporting areas:
  - Number of jobs created/saved
  - Timeliness of disbursements
  - Other project performance measures
    - Educational achievement
    - Compliance with corrective actions for low-performing schools
- ◆ Current government reporting systems may need to be supplemented to meet new requirements
- ◆ **Section 1552 of the ARRA allows federal agencies to “reasonably adjust applicable limits on administrative expenditures for Federal awards to help award recipients defray the cost of data collection requirements initiated pursuant to this Act”**



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## Payment to States for Administrative Costs

- ◆ On May 11, OMB memorandum clarifying existing flexibilities to recover administrative costs
  - Central administrative costs are allowable under OMB A-87
  - Alternative 1 – Use of Estimated Costs
    - Estimated or budgeted cost for recovery in submission of SWCAP (statewide cost allocation plan)
    - Include description of the service, the estimated amount, type of expense and allocation
    - Reconciliation will be made in subsequent-year review
  - Alternative 2 – Billed Service
    - Include description of service, procedure used to charge costs, how rates are determined, variance between actual and billed
  - Both options allow recoupments more quickly than permitted under traditional SWCAP process
  - Both limit total reimbursement to .5% of recovery dollars



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## ***ARRA and the Single Audit***

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## ***ARRA and the Single Audit***

- ◆ **2009 Compliance Supplement New Appendix VII**
  - Clustering of ARRA dollars
  - Major program determination
  - Award terms and conditions
  - Schedule of Expenditures of Federal Awards (SEFA) presentation
- ◆ **Additional Compliance Supplement by June 30**



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## ARRA and the Single Audit

- ◆ Single Audit Reports May Be Publicly Available
- ◆ Ongoing OMB/GAO Discussions
  - Additional work on internal control
  - Change in deadline



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## Discussion/Q & A

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