

**OVERVIEW OF ISSUES RAISED
AGA'S INTERGOVERNMENTAL DIALOGUES
ON THE
AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009
September 2009**

AGA is conducting a series of intergovernmental dialogues to provide opportunities for officials from the federal, state and local levels of government to talk about implementation of the American Recovery and Investment Act of 2009 (Recovery Act).¹ During these sessions, OMB and numerous federal agencies updated state and local officials on Recovery Act implementation and listened to what their state and local counterparts had to say about the Act. The dialogues provided an excellent forum for the candid and open exchange of information between governments. AGA provides the following observations about major themes that emerged with the same constructive spirit in which the dialogues were conducted.

LONG-LASTING CHANGES IN INTERGOVERNMENTAL RELATIONS

At \$787 billion, the American Recovery and Reinvestment Act of 2009 (Recovery Act) is staggering in its size and in the impact that it is likely to have on government operations both now and in the future. New processes, procedures and tools developed to implement the Recovery Act are reshaping intra- and intergovernmental relations and the ways that governments collect, maintain and report information.

Employees at all levels of government and their private sector partners are working long hours at a feverish pace in the face of shrinking budgets to meet tight deadlines consistent with an urgent need to stimulate the country's economy. The sweeping changes that are being ushered in by the Recovery Act are likely to remain long after the funds have been spent and will become part of the future governmental landscape.

Implementing the Recovery Act is also promoting a new era of cooperation and collaboration among governments, in part because governments must work together to implement the act and to meet public expectations associated with it.

In an unprecedented collaborative effort to facilitate transparency and accountability, the federal government is building a huge data warehouse, FederalReporting.gov, which will be populated by tens of thousands of governments and other Recovery Act fund recipients. This

¹ AGA's Partnership for Intergovernmental Management and Accountability sponsored a precursor to the dialogues in Washington, D.C. on March 20, 2009. AGA sponsored dialogues in Baltimore, MD, on May 6; Portland, OR, on June 8; Kansas City, MO on August 17; and Boston on September 1, 2009.

data warehouse will be produced by all levels of governments, in collaboration with other recipients and subrecipients of Recovery Act funds. The public will have access to Recovery Act information at Recovery.gov on October 30, 2009. It is unclear how the public will react to the information, but because citizens will be able to see which specific projects were funded with Recovery Act dollars, it may focus greater attention on local government spending.

Among key intergovernmental and technical initiatives spawned by the Act are:

- A series of free educational webinars conducted by OMB in August. The webinars were made available for free to those involved with implementing the Act. In addition, some federal agencies, such as the Department of Education, are conducting regularly-scheduled webinars on the Recovery Act's implementation.
- A call center that the federal government will be established for those required to file reports with FederalReporting.gov.
- Onsite technical support that the federal government will provide to some Recovery Act funding recipients.
- Answers to frequently asked questions posted online by OMB approximately every two weeks.
- Recovery.gov, the public-facing website established by the Recovery Accountability and Transparency Board (RATB) to foster greater accountability and transparency in the use of Recovery Act funds, had more than 400 million hits by the end of April 2009.
- OMB, federal agencies, GAO, the RATB, and state and local government officials all agreed to participate in AGA's intergovernmental dialogues in four locations throughout the country. The major issues raised during the dialogues are summarized in this document.

ISSUES RELATED TO IMPLEMENTATION GUIDANCE

Despite the efforts to promote intergovernmental cooperation, there is frustration over unanswered questions about the Recovery Act's implementation. These questions range from uncertainty about reporting on jobs to the deadline for spending funds. Given the challenges involved in implementing such a large, complex act in a short period of time, participants concede that some confusion is unavoidable.

Questions about OMB's Guidance Include:

- Reporting Jobs Creation/Retention
How far down the vendor chain should a recipient go to gather data on the number of

people hired to produce component parts for manufactured goods (i.e., microscopes or buses)? These issues are discussed in more detail, below.

- What type of documentation will be required on jobs creation/retention? These issues are discussed in more detail, below.
- The applicability of Buy American and Davis Bacon requirements to projects funded with Recovery Act funds.

Issues Related to Federal Agency Guidance:

- Which federal agencies have issued supplemental guidance and when will outstanding guidance be issued? (During the Boston dialogue, it was noted that agency guidance will be posted in a central location online.)
- USDA supplemental guidance is not likely to be issued until mid-September, making it difficult for recipients and subrecipients to comply with the October deadline for filing reports. Among other things, it is hoped that USDA's guidance will clarify the difference between an individual and a sole proprietor.

Issues on State Guidance:

Not all states have issued guidance for state agencies and subrecipients. As discussed in more detail below, this is especially important for states that will be reporting to FederalReporting.gov on a decentralized basis.

Relationship of OMB Guidance to Agency Guidance:

If a federal agency's guidance differs from OMB's implementation guidance, OMB's spokesperson told those attending AGA's Boston Intergovernmental Dialogue that OMB's guidance takes precedence. Guidance issued by agencies must be approved by OMB and, while agencies can supplement OMB guidance, it must be consistent with OMB's guidance.

Taking a "Prudent Person" Approach:

General support exists among intergovernmental dialogue attendees for the concept of taking a "prudent person" approach to implementation. Realizing that perfection is not possible, it would appear best to proceed in a collaborative manner, as a prudent person would, and to avoid a "gotcha" mentality by federal and state agencies and auditors alike.

RECIPIENT REPORTING/RESPONSIBILITY

The following reporting issues were identified during the dialogues:

Quarterly Reports—Many states say that it is “nearly impossible” to file reports 10 days after the end of a quarter. Accounting systems are not generally closed within 10 days, and states cannot get the necessary information from subrecipients in time. It was suggested that XBRL might help expedite the filing of quarterly reports.

“Contamination” of Funds—Some states are striving to make sure that they do not “contaminate” a project by using both regular and Recovery Act funding. They strive to limit the use of Recovery Act dollars to new projects and avoid adding Recovery Act dollars to regular funds. Recipients need to understand what triggers Recovery Act reporting requirements.

Populating State Websites—Some states would like the ability to pull data from Recovery.gov to populate state-level websites.

Jobs Reporting— Questions about how to calculate job creation and retention persist. While a uniform approach to jobs might be helpful, the wide variety of programs funded by the Recovery Act makes uniformity impractical. For example, it is possible for some recipients, like government agencies, to estimate jobs created by comparing current jobs to job projections contained in budget documents. For other government agencies, like a department of transportation, most road contractors will not have previous budget projections for jobs. Job estimates would vary again for human services agencies. How many jobs are created at a child care provider that receives one additional voucher to cover a child in daycare? How many parents were able to begin work because they were given child care vouchers?

State Oversight over Subrecipient Reporting—States must provide oversight and take ownership of subrecipients’ data. A state’s decision on whether to adopt centralized or decentralized reporting has a bearing on a state’s oversight responsibility:

- *Decentralized reporting.* In a decentralized model, it is not always clear what information must be given to the states so that the states can verify the data. How will the governor know what is happening with ARRA funding in a decentralized model? The ability of states and federal agencies to verify data was a repeated concern throughout the dialogue.
- *Centralized reporting.* If a state opts to handle reporting on a centralized basis, how will the state know that a subrecipient has not also reported their information directly to FederalReporting.gov? Even though the federal government will provide states with a list of those within their state who have registered on FederalReporting.gov, the concern about the potential for double reporting persisted.

Reporting to Congress—The House Committee on Transportation and Infrastructure has requested that states provide the Committee with “updated specific transparency and accountability information by September 20, 2009 and November 20, 2009. The committee also requested states to provide information on projects located in economically distressed areas and the intention of States to ensure an equitable geographic distribution of highway funds. The reports will be used by the committee to highlight the “best and worst performers” in implementing ARRA fund for transportation and infrastructure programs.

Potential Confusion over Published Jobs Figures—It will be important for governments to work together to avoid confusion over job estimates released by various organizations, especially since jobs figures will be issued at a macro, as well as a project, level. The macro estimates will be provided by the Council of Economic Advisors. These estimates will include jobs indirectly created in the economy, like jobs created in a sandwich shop across the street from a construction site funded by Recovery Act funds. The project-by-project figures will be useful to the public in determining the jobs funded in a specific community.

CLARIFICATION OF ROLES AND RESPONSIBILITIES

In dealing with subrecipients, it is important to define the roles and responsibilities of government employees. For example, it is important to define:

- Who files reports with Recovery.gov? Unless these responsibilities are defined, there may be duplication or gaps in reporting. Local governments do not want to report to both the state and the federal government.
- Who is the recipient and who is the subrecipient?
- Who can answer subrecipients’ questions (e.g., the federal government or state)?

AUDIT AND OVERSIGHT ISSUES

General areas of concern about audits include:

- Current funds may not be spent efficiently if audits will focus only on recovery dollars.
- Not all external auditors are educated or up to speed with how to audit Recovery Act funds.
- For Recovery Act funds already expended, there may not be much information to audit and documentation requirements may not be clear. If an auditor were to issue a disclaimer due to the lack of information, who would pay for the audit?
- Recipients and subrecipients need to understand the criteria that will be used for evaluating their projects.
- Some states are concerned that they may not have the resources to audit Recovery Act funds, since OMB has indicated that Recovery Act funds should be considered high risk. In addition, states are concerned that federal agencies will issue supplemental audit guidance, making it more difficult to keep track of audit requirements.

INCREASING EMPHASIS ON FRONT-END OVERSIGHT

In response to the Recovery Act's increased emphasis on accountability and the desire to reduce the potential for fraud, waste and abuse, there is a trend for all levels of government to place increased emphasis on front-end oversight, including:

- Risk assessments;
- Internal controls;
- Audits of prime and subrecipients;
- Documentation requirements; and
- Leveraging Single Audits as a pre-award tool.

RECOUPING ADMINISTRATIVE COSTS

Given extraordinarily tight budgets, states and local governments are struggling to come up with funds to cover the added costs of administering ARRA funds.

Calculating the .5 Percent—Guidance issued by OMB on May 11, 2009 (M-09-18) authorized states to charge ARRA grants for central service agency administrative costs up to 0.5 percent of total Recovery Act funds. OMB's spokesperson at the Boston dialogue said that all funds received by an entity serve as the basis for calculating the .5 percent that state and local governments may use to cover administrative costs. Contrary to some reports, FMAP and non-administrative funds are NOT excluded from the calculation of total ARRA funds.

Cost of Auditing New High Risk Programs—During the Kansas City intergovernmental dialogue, an OMB spokesperson clarified that all of the auditing costs for a grant program that is currently not a major program and would not normally be audited as part of the single audit, may be covered under 0.5 percent for ARRA administrative costs, if the expenditure of ARRA awards results in the program being considered high risk, thereby triggering inclusion in the single audit.

Waiver Request—To assist states in recovering administrative costs, the National Association of State Auditors, Comptrollers and Treasurers has asked OMB for two waivers to OMB Circular No. A-87, *Cost Principles for State, Local and Indian Tribal Governments*, to make a recently developed model SWCAP plan viable. The waivers address the areas of charging capital costs through accelerated depreciation and the allocation of central services cost on a prorate basis.

SHORTAGE OF RESOURCES AT ALL LEVELS OF GOVERNMENT

All levels of government are struggling with a lack of resources in implementing the Recovery Act. For example:

Federal Agencies—CMS' regional office in Boston has not been able to hire additional staff to implement the Act, even though its programs received a large portion of Recovery Act funds.

State Governments—One state auditor's office, which typically has a staff of about 140, has decreased its current staffing level to 100 in response to budget cutbacks. The office will have to carry on with its usual responsibilities, as well as conduct additional audits of Recovery Act funds with its reduced staffing level.

Local Governments—Those in local government were particularly concerned about gaps in guidance, since they must comply with both federal and state requirements. In addition, local governments may not have experienced the full impact of the recession yet since a major source of revenue—property taxes—tends to lag behind changes in the market.

ACCOUNTING ISSUES

Accounting Systems—Some government accounting systems are old and ill-equipped to deal with the demands of the Recovery Act. Given implementation schedules and the need to distribute funds on an expedited basis, there is no time to update them. Since the accounting systems are not currently set up to provide the information stakeholders are demanding, agencies are providing what they *can*.

Financial Statements—In the area of financial statements, some participants wondered what impact or adjustments, if any, will need to be made related to financial statements (timing, opinions, etc.). Will additional management comments, clarifications, etc. be necessary?

Cash Management—Some recipients wondered if it matters which "pot of money" gets spent first. Is there a specific order that needs to be followed in spending regular dollars versus Recovery Act dollars? There is also some concern about the implications of the Cash Management Improvement Act (CMIA) for Recovery Act funds. Given the extraordinarily large amount of money that will be going out in a relatively short period of time, there may be a significant administrative burden associated with making and receiving payments from thousands of recipients across the country. There is also some question about the impact that the CMIA might have on a concerted effort to disburse Recovery Act funds in an expedited manner.

PROCUREMENT

Prior Contracts and Schedules—States and local governments are seeking clarification on whether front-line federal grant program administrators can require local governments that receive ARRA funding to start purchasing and contracting actions “from scratch” to ensure that all federal requirements (including Davis Bacon and Buy American) are included in the solicitations or whether, if local governments have a contract or a schedule of competitive contracts in place, they can use those contracts and schedules of contracts with the federal requirements appended after-the-fact.

Dealing with Future Funding Shortfalls—In some cases, states noted that it may be easier to hire a contractor for a project, rather than hiring a government employee. If future funding is not available, contracts can be allowed to lapse and government employees do not have to be terminated.

OTHER ISSUES

Disparate Timeframes for Obligating and Spending Funds—Depending upon the section of the Recovery Act in which programs are addressed, or the federal agency responsible for the funds, the timelines for obligating and spending Recovery Act funds may vary. This complicates implementation and monitoring of the Act. Some recipients are not sure how long they have to spend Recovery Act funds.

Repayment of Loans—When loans funded with ARRA funds are repaid, to which accounts are the principal and interest credited—the U.S. Treasury or the federal agency?