

American Reinvestment and Recovery Act of 2009

Initial Accountability, Reporting, and Risk Areas for States
February 26, 2009

Soon after the passage of the *American Recovery and Reinvestment Act of 2009* ("Recovery Act"), the National Association of State Budget Officers (NASBO); the National Association of Chief Information Officers (NASCIO); the National Association of State Procurement Officials (NASPO); and the National Association of State Auditors, Comptrollers, and Treasurers (NASACT) collaborated to develop a listing of initial accountability, reporting, and risk areas that states should be aware of during the initial implementation of the Recovery Act.

Below is a compilation of the key issues that the associations should be discussing internally and with federal agencies.

Accountability and Reporting Issues

Issue: Central Coordination

Concern: With the funds from the ARRA being funneled through many different funding streams to the states, we are concerned that the states may have difficulty ensuring that all funds are properly tracked.

Example: Funds for weatherization are provided through the relevant federal agency directly to the state Department of Environmental Quality. The budget and Comptroller's offices in the state are not aware of the specific spending of the funds.

Recommendation to Consider: A mechanism should be developed to ensure that information about all funds from the ARRA is reported to a central agency at the state level.

Issue: Need for a Compliance Manual

Concern: States are working to ensure compliance with the requirements of the recovery funds and are moving in various directions as they assess internal processes to ensure both speed and accuracy in the use of the recovery funds.

Example: States are moving aggressively to form central offices to coordinate the recovery funds and are establishing state websites.

Recommendation to Consider: OMB may want to issue statewide guidance in addition to the guidance that will be forthcoming on a program by program or grant basis.

Issue: State representation on the Recovery Independent Advisory Council

Concern: The lack of a state representation on the Advisory Council may overlook some implementation issues occurring at the state level that can be addressed more rapidly with state input.

Example: Implementation concerns may be discussed internally in states but not be communicated to the Board.

Recommendation to Consider: Include state representation representing central functions such as finance and accounting.

Issue: Recovery Accountability and Transparency Board Website

Concern: The data collection formats across states will vary and it will be difficult to get an overall national perspective on the economic recovery funds.

Example: States have various programs, vendors, portals that are used to collect data and to aggregate data and other information statewide. Without some guidance on data collections parameters it will be difficult to ever compile national data.

Recommendation to Consider: OMB should provide guidance on data collection.

Issue: Strategy for "rolling up" data and synchronization with state level reporting

Concern: Keeping data current at the national level

Example: Accountability sites for states and local government will be maintained at some level of frequency – e.g., monthly, quarterly – ensuring this current data is reflected in Recovery.gov will be an issue if the update frequency is variable.

Recommendation to Consider: Use a “pull” strategy for keeping recovery.gov up to date, and for keeping state accountability portals up to date with local data. See recreation.gov, and the national sex offender registry as examples

Issue: Speed of allocations and principles for accounting, enterprise architecture, auditing.

Concern: There would seem to be a “collision” between these two needs. The need to expeditiously distribute funds in order to stimulate the economy and the necessity to follow principles that will help to manage risk, and ensure funds are managed effectively.

Example: It would be fairly straight forward to put up a web services application that will report something. However, to ensure that a portal is reporting the information citizens and government officials are truly interested in a consistent manner requires effective planning, design and implementation. States are different stages in terms of the types of back office systems, ERP solutions and scope, and data warehouses currently available for generating accountability information.

Recommendation to Consider: Consider a phased approach. Tap existing state accountability portals as much as possible. Report what is available currently, while working in parallel to determine the level of granularity required by the economic stimulus. Work toward a fully compliant reporting mechanism that is designed once and reused by the states and territories. This phased approach will not stand in the way of expeditious distribution of funds but will provide over time an iterative approach to accountability that continually improves.

Issue: Enterprise Perspective – Cross Boundary Opportunities

Concern: Need to look across state government in developing solutions with stimulus money

Example: Grants and other stimulus allocations coming from or through specific agencies must afford state government the flexibility to create enterprise solutions that can benefit / apply to more than one government line of business.

Recommendation to Consider: Write grant requirements in such a way as to give state government the freedom to apply funds to solutions that benefit more than one government line of business.

Preliminary Key Risk Factors

Many of the following risk factors and issue areas were developed based on lessons learned from states’ experiences with emergency management situations (e.g., Hurricane Katrina), where large sums of federal funding were received with an expectation of quick disbursement.

Overall/Cross-Cutting Issues

- Lack of resources/experienced personnel in state agencies – Most states have scaled back personnel in recent years and may not have adequate staff to handle this large increase in federal funding. Lack of grant experience will be a concern that must be addressed. States should consider capitalizing on retirees and other experienced government workers. However, states must be cognizant that hiring numerous employees to handle the workload in the short term with the intent to make them permanent is not sustainable once federal funds are gone.
- States must be careful not to use and budget stimulus funds as though they will be a recurring source of revenue. Funds from ARRA should be treated as “one-time” money.
- States must recognize all of the “costs” associated with these funds, including matching provisions that must come from state funds. This will require advance planning by the states.

Accountability/Transparency

- Recovery.gov – This new Web site is intended to track all expenditures of funds from ARRA. It is unclear what level of reporting will be required and how this information will be provided. It is also unclear as to whether the federal government will develop required data elements. State systems will likely have to be programmed to capture and report this information electronically. Guidance on payments to subrecipients must be developed. This has been a major problem under the Federal Funding Accountability and Transparency Act (FFATA) and its Web site, USASpending.gov. The Office of Management and Budget must issue clear guidance on

recovery.gov so that all grant recipients and subrecipients can be informed of their level of responsibility.

- Oversight – Many state and local governments may not have systems in place to provide strong oversight over this influx of money. State comptrollers and auditors, along with financial management within state agencies, should review and test their internal control systems to ensure adequate accountability. Lacking proper controls, swift and massive infusions of cash like those called for in ARRA can easily produce greater opportunities for waste, inadequate accountability, and even corruption. Necessary modifications to internal control systems should be made now.

Procurement/Contracting

- Conflicts between federal and state laws – Recipients must be aware that federal and state laws can be in conflict. For example, the state may not require professional service contracts to be bid whereas the federal rules may require a competitive process. Or, state law can be more stringent than federal law. States should identify those differences now and provide that information to local governments and other subrecipients.
- Contract review – Normal internal controls and contract review procedures could be circumvented or scaled back in an effort to release funds quickly for “shovel ready” projects. This could lead to cost overruns, project mismanagement, or fraud.
- Contract scope/milestones – Contract scope and milestones should be clearly stated so that progress can be clearly measured. Contracts should be negotiated as performance based with performance measures that are measurable, time bound, and results oriented.
- Project budgets – Budgets should be sufficiently detailed so that meaningful monitoring can be performed to determine whether projects are on budget. Contractors should be required to submit periodic progress reports.
- Change orders – Contracts should contain formalized approvals and amendments for changes to the original contract terms and conditions.
- Monitoring – A designated individual should be responsible for overseeing the contract, including reviewing and approving all requests for payment.
- Nonperformance – Contracts should contain penalties for failure to complete the project or meet milestones.

Financial Management

- Disbursement of funds – In the haste to expend the funds quickly, the entities receiving/expend the funds may not have established internal controls to adequately ensure that the funds are expended properly. For example, large sums of money may be disbursed to smaller entities of local government or not-for-profit organizations that do not have adequate internal controls in place to ensure the funds are properly spent. Funds should be disbursed only to entities that demonstrate adequate controls are in place.
- Appropriateness of expenditures – Again, in an environment where funds are being spent quickly, there is a risk that entities receiving these funds will feel pressure to expend the monies even if the funds cannot be used for allowable purposes. The primary recipients (in many cases – states) should ensure that the funds are passed through only to entities that have a demonstrated need for the monies.
- Allowable costs – Federal grantor agencies must clearly communicate the allowable uses for the funds. Without clear guidance, funds might be spent on items which appear to be in conflict with the federal “intent.” Both primary recipients and subrecipients may spend the funds improperly, causing problems later for both auditors and the recipients.
- Separate accounting – Failure to separately track stimulus funds will lead to problems in calculating performance metrics (e.g., job creation). The federal government should issue clear guidance on its expectations on how these funds should be tracked. Some states have already reported setting up separate activity or “reporting categories” to separately track these funds. States need to begin this planning process upfront before any money is expended.

- Cash Management Improvement Act (CMIA) requirements – Are CMIA requirements going to be waived as part of the act, or will this vary from agency to agency, grant to grant? Primary recipients must understand these requirements and also notify all subrecipients.
- Custodial risks/collateralization – Grant recipients must be cautious to provide adequate collateralization. If large sums of cash are advanced, appropriate and timely collateralization of the deposits may not be possible. Similarly, investment of any idle funds in a manner that does not sufficiently limit interest rate, credit, and custodial risks should be addressed.
- Subrecipient education/notification/monitoring – Primary recipients must notify subrecipients of the source of funding and the related compliance issues. Subrecipients must also be informed of the need to collect, prepare, and maintain adequate documentation, including testing for items like eligibility. Experience has shown that this is a major area that causes problems later for entities. States should consider regional workshops, where appropriate, to provide education on these grant management issues.

Single Audit

- New compliance requirements – Federal grantor agencies must develop new compliance requirements (if any) quickly and must communicate those requirements to auditors promptly so that adequate audit planning can occur.
- Audit cost – Clearly, there will be increased audit responsibilities resulting from this legislation. Will there be funding for state auditors? How can state auditors adequately “ramp up” resources to cover these increased demands for the short-term?
- Grant and CFDA numbers – It is unclear how federal agencies will award the money to the grant recipients. Will there be unique grant award numbers or Catalog of Federal Domestic Assistance (CFDA) numbers that will be used to track the funds? Any expansion of the CFDA number from five numbers to six (or more) will be problematic in some states, requiring significant modifications to existing accounting systems. Furthermore, grant recipients should be permitted to charge these system-type costs directly to the stimulus funds and not be required to include them in the statewide cost allocation plan as indirect costs.
- New major programs – Auditors should be alert to new Type A programs in this audit cycle due to large increases in some grant programs (e.g., state revolving funds for clean and drinking water).