

May 14, 2009

TO: CHIEF EXECUTIVE OFFICERS OF DEPARTMENTS AND AGENCIES RECEIVING FEDERAL FUNDS

FROM: JAMES ALLEN MAIN, FINANCE DIRECTOR

SUBJECT: Further Guidance on the American Recovery and Reinvestment Act of 2009

This memorandum transmits the second installment of state-wide guidance for carrying out the programs and activities funded by the American Recovery and Reinvestment Act of 2009 (“Recovery Act”). The guidance issued today supplements and clarifies the guidance dated April 9, 2009. This second state-wide guidance letter is based upon ongoing directives from the President, the Office of Management and Budget (OMB), Congress, and Federal officials about the implementation of the Recovery Act.

Upon completing your review of this information, you should have each Agency or Department Compliance Officer¹ initiate the risk management process outlined in this memorandum. In addition, the Compliance Officer will continue to provide oversight of the reporting procedure outlined in this memorandum.

A. RESPONSE TO AGENCY PLANS

I have received responses from State agencies, departments and institutions receiving Federal Recovery funds. As we analyze the comprehensive plans our state agencies and institutions have submitted, we may contact you with further questions or for clarification.

B. PRESIDENT’S MEMO ON THE RECOVERY ACT

The President issued a memorandum directing Federal departments and agencies to ensure that public funds are expended responsibly and in a transparent manner to further the job creation, economic recovery and other purposes of the Recovery Act.

All State departments and agencies are directed to take these measures into account when managing existing Recovery funds or applying for competitive grants under the Recovery Act.

¹ The Compliance Officer is the person designated by the chief executive officer of the Department or Agency pursuant to the April 9, 2009 Guidance Memorandum by the Finance Director to be responsible for the traditional reporting requirements for Federal funds and for Recovery Act reporting requirements.

1. ***Merit-Based Decision-Making.*** Federal departments and agencies are required to develop transparent, merit-based selection criteria that guide their discretion in committing, obligating or expending funds under the Recovery Act.
2. ***Long-term public benefits, optimizing economic and programmatic results.*** Federal departments and agencies are directed to support projects that have a demonstrated or potential ability to deliver programmatic results; optimize economic activity, create or save jobs, and provide long-term economic benefits.
3. ***Targeting assistance consistent with other policy goals.*** Federal departments and agencies are directed, to the extent permitted by law and practicable, to support projects that comply with equal opportunity laws and principles and to support small businesses including disadvantaged business enterprises. Federal departments and agencies are also directed to engage in sound labor practices, promote local hiring, and engage with community-based organizations.

C. FURTHER GUIDANCE ON REPORTING REQUIREMENTS

1. ***More grants, contracts and loan awards are included in the reporting requirements.*** In the Office of Management and Budget (OMB) April 3, 2009 Memorandum, the reporting requirements have been broadened to include more entities than previously covered by the Federal government. A new regulation by OMB and the Civilian Agency Acquisition Council extends coverage to contracts, grant awards and loans that would have been excluded from reporting under the simplified acquisition threshold (less than \$25,000), commercially available items off the shelf (COTS), and commercial items for contractors, recipients, grantees and loan recipients and their sub-awardees.
2. ***Each sub-recipient, grantee or loan recipient must report on the five most highly compensated officials.*** The Federal government will pre-populate as many of the data elements as possible to alleviate the burden on sub-recipients, grantees or loan recipients, etc. In addition, the OMB interim guidance regulation extended Section 1512(c) (4) requirements under the Federal Financial Accountability and Transparency Act (FFATA) to include compensation disclosure for sub-recipients, grantees and loan recipients. This will include the names and total compensation of the five most highly compensated officers of the entity receiving Federal funds if it received: (1) 80% or more of its annual gross revenues in Federal awards; and (2) \$25M or more in annual gross revenue from Federal awards.
3. ***More insight on how to determine jobs created and jobs retained.*** The April 3, 2009 OMB Memorandum has given us more insight into the methodology for determining jobs created and retained. The OMB guidance provides:

Jobs created means an estimate of those new positions created and filled, or previously existing unfilled positions that are filled, as a result of funding by the American Recovery and Reinvestment Act of 2009 (Recovery Act). The number shall be expressed as “full-time equivalent”

(FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule, as defined by the recipient. For instance, two full-time employees and one part-time employee working half days would be reported as 2.5 FTE in each calendar quarter.

Jobs retained means an estimate of those previously existing filled positions that are retained as a result of funding by the American Recovery and Reinvestment Act of 2009 (Recovery Act). The number shall be expressed as “full-time equivalent” (FTE), calculated using the same formula mentioned in the jobs created definition.

4. *Each entity receiving Recovery funds must have a CCR and DUNS number.*

Section 1512(h) of the Recovery Act requires recipients of Recovery funds to register in the Central Contractor Registration (CCR), and DUNS database at www.ccr.gov. Because recipients must report information on their first-tier sub-recipients, grantees and loan recipients, the proposed guidance also establishes a requirement for sub-recipient, grantee and loan recipient registration in the CCR as a way to help ensure consistent reporting of data about each entity and thereby make the data more useful to the public.

5. *American iron and steel and manufactured goods must be used in public buildings.*

Section 1605 of the Recovery Act requires that projects funded by the Recovery Act, for the construction, alteration, maintenance, or repair of a public building or public work use American iron, steel, and manufactured goods in the project unless one of the specified exemptions applies. Definitions of “manufactured good,” “public building and public work,” and other terms as they pertain to the Buy American guidance in 2 CFR part 176 are found in sections 176.140 and 176.160.

6. *Davis-Bacon requires laborers and mechanics to be paid minimum wage rates.*

In addition, there are specific minimum wage rate requirements under Section 1606 of the Recovery Act. The Act requires the payment of Davis-Bacon Act (40 USC 31) wage rates to “laborers and mechanics employed by contractors and subcontractors, [grantees and loan recipients] on projects funded directly by or assisted in whole or in part by and through the Federal government” pursuant to the Recovery Act.

7. *Council on Environmental Quality Reporting required for some projects.*

Under Section 1609(c) of the Recovery Act the President must report every 90 days to the Congress on the progress of compliance with the National Environmental Policy Act (NEPA) reporting requirements. If the receipt of Recovery funds by your department or agency mandates NEPA compliance, you must also meet these reporting requirements.

8. *All contracts must be awarded competitively.*

Under Section 1554 of the Recovery Act contracts funded under the Recovery Act must be awarded as fixed-price contracts through the use of competitive procedures, to the maximum extent possible. Any contract awarded that is not fixed-price and not awarded using competitive procedures must be posted in a special section of the website.

D. RISK MANAGEMENT PLAN AND PROCESS

1. Risk Management is an essential part of Compliance. The unprecedented transparency and accountability requirements that are essential to management of Recovery Funds means we must pay careful attention to the development of a risk management plan and process for Recovery funds. There are certain specific risks that each department and agency must include as a part of the risk management process.

2. Risk Management Plan required before making awards and grants. State Agencies and departments are required to develop a risk management plan prior to making each Recovery act award or grant.

A. STEP ONE – Review prior audits. Agencies and departments should begin planning by determining whether final action has been taken regarding weaknesses or deficiencies disclosed by prior audits and investigations in program areas receiving Recovery Act funds. If final action has not been completed, agencies should: (1) expedite such action to preclude the continuance of such weaknesses or deficiencies in the administration of Recovery Act funded programs; or (2) provide an explanation of why such corrective actions cannot or should not be taken in the administration of Recovery Act funded programs.

B. STEP TWO – Complete questionnaire. The State official generally tasked with providing the management response to the annual audit should complete the attached questionnaire providing an initial checklist for the development of a risk assessment plan and process. Section 3 of the OMB April 3, 2009 Guidance also provides additional insight into a methodology for developing a risk assessment plan. We will be including this risk management planning in our overall State planning process within the next 60 days.

A report on the evaluation and action on items in the review of previous audits for programs receiving Recovery funds, and a completed Risk Assessment checklist form will be reviewed during the State planning process.

My office will continue to communicate with State agencies and departments and issue further guidance as we learn of decisions by the Federal government that are important in our implementation of the Recovery Act. Your careful attention to each aspect of this guidance is an important part of our successful economic recovery in Alabama.

cc: All Agency or Department Compliance Officers
Website Contact persons

RISK MANAGEMENT CHECKLIST

Yes	No	Questions	Comments
		<p>1. Has your Agency designated a qualified Compliance Officer responsible for compliance with all grant assurances, contract terms and requirements identified in each award of Recovery funds received by your Agency?</p> <p>2. Do new requests for proposals issued under Recovery Act initiatives contain the necessary language to satisfy the requirements of the Recovery Act?</p> <p>3. If your Agency makes awards to sub-grantees or sub-recipients, has the Agency directed each entity receiving Recovery Act funds to assure that all reporting requirements in the award have been met?</p> <p>4. Are there controls in place ensure the accuracy and completeness of each report sent to the Federal government?</p> <p>5. Has my organization provided new requirements, conditions, and guidance to entities receiving Recovery Act funds through my organization?</p> <p>6. Does my organization have a corrective action plan process in place to promptly resolve any audit findings identified that may impact the ability to successfully implement Recovery Act?</p> <p>7. Has your organization established transparent lines of procurement responsibility, authority and oversight that are currently defined and operational?</p> <p>8. Have all sources of information to provide data elements been identified to meet the necessary reporting under Recovery Act?</p> <p>9. Has your organization implemented communication vehicles to ensure Recovery Act data is promptly reported on the appropriate website?</p>	

	<p>10. Are reports issued accurate and inclusive of all the data fields required under Recovery Act?</p> <p>11. Are the Recovery Act reports reviewed and approved prior to certification to the State?</p> <p>12. Do Recovery Act reports tell agency management what is happening on a timely basis?</p> <p>13. Does your organization have a methodology and procedure for identifying and resolving issues?</p> <p>14. Are issues identified through established reports addressed on a timely basis?</p> <p>15. Are reports issued on the effectiveness of risk management strategies and tactics timely?</p> <p>16. Are risk management strategies and tactics properly monitored?</p> <p>17. Is there an agency-wide methodology for measuring performance? What are the key performance metrics?</p> <p>18. Does my organization have sufficient level of personnel to manage the Recovery Act programs (for instance, Grant, Contracting, Financial Management, or IT personnel, etc.)?</p> <p>19. Are program officials trained in the performance management requirements?</p> <p>20. Has my organization considered using alternative hiring methods allowed under the Recovery Act?</p> <p>21. Are all employment requirements (Davis Bacon, where appropriate) under the Recovery Act met by employees hired to work on Recovery funds?</p> <p>22. Do Requests for Proposals issued under Recovery Act initiatives contain the necessary language to satisfy the requirements of the Recovery Act?</p> <p>23. Are contracts awarded using Recovery Act funds transparent to the public? Are the public benefits of the funds used under these contracts reported clearly, accurately and in a timely manner?</p>	
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	<p>24. Are funds used for authorized purposes and the potential for fraud, waste, error, and abuse minimized and/or mitigated?</p> <p>25. Do projects funded under Recovery Act avoid unnecessary delays and cost overruns?</p> <p>26. Are there any performance issues identified with regards to (potential) contractor? Are there follow up actions to address the performance issues?</p> <p>27. Has my organization established separate Symbols to ensure Recovery Act funds are clearly distinguishable?</p> <p>28. Are financial and operational systems configured to manage and control Recovery funds?</p> <p>29. Can financial and operational systems support the increase in volume of contracts, grants and loans, etc.?</p> <p>30. Are there controls in place to ensure that Recovery Act funds are not commingled with other agency or program funds?</p> <p>31. Are the appropriate data elements identified that must be captured, classified and aggregated for analysis and reporting to meet Recovery Act requirements?</p> <p>32. Has your agency developed clear, consistent objectives used for determining and analyzing relevant ARRA risks been established?</p> <p>33. Do you have policies in place to ensure adherence to high ethical standards to avoid such things as conflicts of interest or pressures to commit fraud?</p> <p>34. Has your agency implemented project management plans that include cost controls, schedule management, risk management and compliance?</p> <p>35. Has your agency identified policies and procedures that will allow for flexibility with the</p>	
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	<p>ARRA requirements and compliance programs that will be scalable in order to meet increasing demands?</p> <p>36. Do you have procedures in place to ensure that additional ARRA policies are obtained, updated, and enacted?</p> <p>37. Does your agency have a well designed fraud prevention program consisting of preventative controls, detection, monitoring and investigation?</p> <p>38. Has your agency or any program administered by your agency received a single audit that resulted in an opinion other than unqualified within the past two (2) years?</p> <p>39. Has your agency, or any program administered by your agency had compliance findings from a regulatory agency within the past two (2) years?</p> <p>40. Does your agency have a process in place to allow for open and timely communication between entities to provide for discussion of common questions and problem areas to ensure consistent treatment?</p> <p>41. Has your entity addressed the operational risks associated with the expansive budget increases in a short time frame?</p> <p>42. Does your agency have policies in place to ensure that clear guidelines for scope and allowable costs are established before contract approval and funding timelines are determined?</p> <p>43. Are program officials trained in the performance management requirements?</p> <p>44. Have you considered the need for "special certifications" that require grantee's signatures stating they understand or will meet certain program requirements or performance measures?</p> <p>45. Have you developed an educational tool to inform grantees of their responsibilities when</p>	
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	<p>signing "special certifications"?</p> <p>46. Are policies and procedures in place to ensure grants and loans are awarded in a prompt, fair, and reasonable manner?</p> <p>47. Has your agency developed a process by which clear documentation can be maintained during key aspects of the award process?</p> <p>48. Has your agency compiled a checklist that can be used in assessing potential grantee's strengths and weaknesses as they relate to the grantee's risk?</p> <p>49. Due to the increased amount of funding opportunities, does your agency have a process in place that allows for potential grantees to ask questions and receive answers in a timely manner allowing them to submit applications on time when strict timelines are involved?</p> <p>50. Do you have a process of ensuring that agency and field managers certify their recognition of the responsibility for accountability and internal controls in their programs?</p> <p>51. Does your agency have a way to ensure open communication for grantees to address questions in a timely manner to ensure proper use of funds?</p> <p>52. Does your agency have policies in place to ensure that verbal approval alone is not sufficient, and that all decisions must be appropriately documented in writing?</p> <p>53. Has your agency developed a process by which to determine if fund allocations are appropriate and if these funds are expended on costs that are reasonable and allowable as related to program scope and restrictions? (NPFTF February 2009)</p> <p>54. Has your agency identified controls within the system and reporting procedures to prevent fabrication of data relating to quality of work and progress completed? (OAS-RA-09-01)</p>	
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	<p>55. Has your agency identified a plan to review department performance to ensure program efficiency and success? (OASRA-09-01)</p> <p>56. Have you designed and implemented sufficient internal controls to provide reasonable assurance regarding prevention of or prompt detection of unauthorized acquisitions, uses or disposition of any funds or assets?</p> <p>57. Does your agency have the information technology resources to develop a process or system where ARRA data can be captured, processed, stored and reported completely, accurately and timely? (GAAS)</p> <p>58. Does your agency have controls in place to ensure the documentation of costs reported in the accounting system and expenditure levels reported on project documentation are correct, complete and equivalent?</p> <p>59. Do you have the ability to establish a common reporting framework across your entity?</p> <p>60. Does your agency have the ability to comply with OMB reporting requirements with agency-wide, program-specific, and Recovery.gov?</p> <p>61. Are processes and controls in place to verify that all transactions or events are promptly recorded to maintain relevance and value to management in controlling operations and making decisions? (GAO/AIMD-00-21.3.1)</p> <p>62. Does your agency have a sufficient process and system with the capability to report complete and accurate information to demonstrate the progress of your programs?</p> <p>63. Does your agency have a process in place to ensure proper documentation and timely reporting of all instances of alleged misuse of funds?</p>	
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	<p>64. Are processes in place to provide for the self-assessment, review of design and direct testing as it relates to internal controls and the controls effectiveness at a particular time?</p> <p>65. ARRA has added another level of evolution to current accounting and reporting system requirements; has your agency developed IT controls and policies that will allow you to assess systems adequacy for changing ARRA needs on continual basis?</p>	
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