

Global Financial Crisis Bulletin

Frequently Asked Questions Regarding Responsibilities of Recipients of Funds Under the American Recovery and Reinvestment Act of 2009

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The American Recovery and Reinvestment Act of 2009 (ARRA or Recovery Act) was signed into law on February 17, 2009. This legislation seeks to stimulate the economy by preserving and creating jobs, assisting the unemployed and uninsured, and providing state budget relief while making investments in infrastructure, education, science, health and energy efficiency.

The Obama administration has pledged transparency and accountability with respect to government expenditures aimed at stabilizing the financial services industry and stimulating the economy. The Office of Management and Budget (OMB) has issued guidance to government agencies that receive funds under the ARRA. The guidance outlines the steps that agencies must take to manage the risks associated with awarding and overseeing the use of ARRA funds. Protiviti has published a point of view paper, *A Risk-Focused Roadmap to Managing Recovery Funds and Delivering on Program Objectives*, covering the steps that need to be taken by federal agencies to design and implement appropriate risk management processes. This document is available at www.protiviti.com.

Another important issue is the steps that nonfederal recipients of Recovery Act funds must take to discharge their respective responsibilities. These recipients include state and local governments, educational institutions, research centers and other entities. The following discussion, while certainly not intending to be all-inclusive, provides answers to some of what Protiviti believes are the most frequently asked questions.

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1. What is a “recipient” under the American Recovery and Reinvestment Act of 2009?

The ARRA defines a “recipient” as any entity (not an individual) that receives Recovery Act funds directly from the federal government through contract awards, grant awards, cooperative agreements or a loan. Under this broad definition, a state that receives Recovery Act funds is a recipient. There are different types of recipients, depending on the nature of the ARRA funds. Recipients of contract awards will often be contractors and subcontractors. Recipients of grants and cooperative agreement awards will include state and local governments, educational institutions, research centers and other entities. Recipients of loans and loan guarantees will usually be commercial enterprises.

2. What is expected of a recipient specifically under the ARRA?

The objectives of the ARRA require the following of recipients:

- Award and distribute funds in a prompt, fair and reasonable manner, assuming the recipient is an intermediary (such as a state governmental agency or a local municipal authority).
- Make transparent to the public the recipients and uses of all funds, and report the public benefits of funds used in a clear, accurate and timely manner.
- Use funds for authorized purposes and avoid fraud, waste, error and abuse.
- Avoid unnecessary delays and cost overruns.

3. What are the reporting responsibilities of recipients under the Recovery Act?

Under the ARRA, spending and performance data must be reported on a federal website – www.recovery.gov – a database that will be used to track stimulus spending and progress. The 2009 guidance published by the OMB through April provides clarification of the information that must be reported on Recovery.gov, as well as the information that federal agencies will be required to report on their respective websites. Under the guidance, there are two categories of recipients for purposes of designating responsibilities to report information that flows up to the agency and Recovery.gov websites:

- **“Prime recipients”** – These recipients are the nonfederal recipients of federal funding that make the subawards, subgrants and contracts to other recipients. They are expected to meet the reporting requirements under the Recovery Act and the related OMB guidelines.
- **“Subrecipients”** – These recipients receive the subawards, subgrants and contracts from prime recipients or from intermediaries. In general, they are not required to issue a formal report under the Recovery Act. To illustrate, assume a federal agency issues a grant to the state of Texas, which in turn issues a subgrant to the city of Dallas, which hires a contractor to repair a major road, which subsequently hires a subcontractor to supply the necessary concrete. In this case, the state of Texas is the prime recipient. It is subject to the Recovery Act reporting requirements and would have to report its subgrant to the city of Dallas. Neither the city of Dallas (which in this example acts as an intermediary) nor the contractor or subcontractor is obligated to report to the federal government under the Recovery Act. However, the city of Dallas, the contractor and the subcontractor must comply with all other federal requirements, including existing agency and program reporting requirements.

The Recovery Act reporting requirements apply only to recipients receiving awards funded through discretionary appropriations. The reporting requirements do not apply to funding received through entitlement or other mandatory programs, except as specifically required by the OMB.

4. What must the prime recipients report under the ARRA?

Section 1512 of the ARRA requires extensive reporting on a number of data elements from certain recipients of Recovery Act funds. The OMB has instructed federal agencies to make the receipt of Recovery Act funds contingent on recipients meeting these reporting requirements. Also, agencies have been requested by the OMB to assess the risks of specific programs and grants, considering the nature of the likely final recipients of funds awarded (e.g., contractor, subcontractor, state, municipalities, educational institutions, etc.) and the potential performance issues related to each type of recipient. Therefore, additional requirements may be forthcoming as a result of these agency assessments.

Prime recipients can expect the specific reporting requirements to which they are subject to be set forth in contract or award documents and in related communications from the applicable federal governmental agencies from which they receive ARRA-related funds. Generally, each recipient is required to report quarterly the following information to the federal agency providing the award:

- The total amount of recovery funds received from the agency to which the recipient is reporting
- The amount of recovery funds received that were obligated or expended to specific projects or activities
- A detailed list of all projects or activities for which recovery funds were obligated or expended, including:
 - The name of the project or activity
 - A description of the project or activity
 - An evaluation of the completion status of the project or activity
 - An estimate of the number of jobs created and the number of jobs retained by the project or activity
 - For infrastructure investments made by state and local governments, the purpose, total cost and rationale of the agency for funding the infrastructure investment with funds made available under the ARRA, and name of the person to contact at the agency if there are questions with respect to the infrastructure investment
- Detailed information on any subcontracts or subgrants awarded by the recipient to include the data elements required by the Federal Funding Accountability and Transparency Act of 2006, allowing aggregate reporting on awards below \$25,000 or to individuals, as prescribed by the OMB. The

Transparency Act identifies specific data elements that USAspending.gov must include for each federal award (see response to Question 14 for data elements required of entities receiving federal assistance).

To address the transparency objective to make the recipients and uses of all Recovery Act funds transparent to the public and report the public benefits of these funds, the OMB has issued interim guidance to federal agencies through changes to the Federal Acquisition Regulations and Title 2. The agencies are required to implement the interim guidance effective immediately. Once comments on this guidance are received and evaluated, final guidance will be issued. The final guidance issued by the OMB for the Recovery Act is expected to lay out in greater detail the specific reporting instructions and how the data collection for recipient reporting will work on a governmentwide basis. The OMB has indicated its intent to make these requirements as consistent as possible across all federal agencies (see response to Question 8). As further explained in the response to Question 7, the timing for this guidance is expected to be within 45 days before the initial statutory reporting deadline of October 10, 2009.

5. Will recipient information be collected centrally?

When it issued its initial guidance in M-09-10, the OMB indicated it was looking at options for collecting and reporting of certain of the above information centrally. Since the original guidance was issued, the OMB has concluded that the development of a central collection and reporting capability is likely to lower system development costs across the federal government, improve the consistency of the data collected, improve access to the information by citizens and others outside of the federal government, and avoid recipients having to enter the same data more than once into separate systems. Accordingly, the OMB intends to oversee the development of a central collection system for the information required under the ARRA. It expects to have that available in time for the October 10, 2009, quarterly reporting.

6. Will reports received from recipients of federal funding be included on Recovery.gov?

Yes. The Recovery Act and OMB M-09-15 require extensive reporting from recipients of federal funding, with primary emphasis on the states. Responsible for reporting on their use of funds as well as on any subawards (e.g., subgrants, subcontracts, etc.) they decide to make, the states will be required to use a reporting framework to provide transparency into how and where federal funds are spent. The objective of this framework will be to foster consistency in reporting.

7. When are reports due from prime recipients?

The initial recipient reports required by the OMB are due 10 days after each calendar quarter, starting on July 10, 2009. Section 1512(f) of the Recovery Act requires recipient reporting to begin 180 days after enactment, and for reports to be submitted by recipients 10 days after the end of each calendar quarter. This mandate results in an initial statutory reporting deadline of October 10, 2009, with quarterly reports due 10 days after the end of each calendar quarter thereafter. In effect, the OMB is requiring a quarterly report one quarter in advance of the quarter the statutory requirement kicks in.

In accordance with this mandate, the OMB has required federal agencies to instruct recipients to submit reports by October 10, 2009. These reports should cover cumulative activity since the passage of the Recovery Act, including all subawards (or modifications to existing awards) made that utilize Recovery Act funding. Therefore, agencies must require recipients to maintain cumulative data through the October 10 reporting period. The OMB will make available detailed reporting instructions at www.federalreporting.gov no less than 45 days before the October 10, 2009, reporting deadline. In the meantime, the OMB will work with agencies to determine the most appropriate method for collecting the required information from recipients for purposes of the July 10 reporting.

8. How will the OMB ensure that recipient reporting is consistent across all federal agencies?

The OMB intends for Recovery Act reporting requirements to be consistent across agencies. While federal agencies will continue to 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. To that end, appendices 8 and 9 to OMB M-09-15 set forth standard terms and conditions for federal contracts, grants, loans and other assistance.

However, these standard terms and conditions leave significant discretion to federal agencies on how recipients should report the quantitative outputs and outcomes that result from the funded projects and activities. The OMB has requested agencies to instruct recipients to collect and report performance information as part of their quarterly submissions that is consistent with the agency's program performance measures. The detailed reporting instructions (which are expected to be made available before the end of August) will likely address the standardization of reporting of quantitative outputs and outcomes.

9. Can Recovery Act funds be used by recipients in conjunction with other funding?

Yes, Recovery Act funds can be used by recipients in conjunction with other funding to complete projects. However, tracking and reporting must be separate from funds received from other sources in order to meet the ARRA reporting requirements and the related OMB guidance.

10. What if federal agencies have issued grants and awards under conditions that are not consistent with OMB-approved governmentwide language?

In cases in which agencies finalized their award terms and conditions before the governmentwide language became available, federal agencies should ensure that such discrepancies are identified and corrected before reporting begins.

11. Will states be required to play a role in collecting and transmitting information under the ARRA?

Federal agencies are likely to provide flexibility to the states to determine the appropriate approach for collecting and transmitting to the federal government the data required by the ARRA. For example, a state may prefer to create a central point of contact responsible for transmitting all required data to the federal government centralized collection system. Alternatively, a state may prefer to have individual state agencies or recipients report separately. In all cases, however, the OMB states that federal agencies should expect the state to assign a responsible office to oversee the data collection efforts to ensure quality, completeness and timeliness of data submissions.

12. Will final recipients that do not have the reporting responsibilities of prime recipients have any responsibilities to assist with reports filed by prime recipients?

Given the nature of the reporting required of prime recipients under the Recovery Act, some mechanisms will likely be necessary to obtain certain information from final recipients in order to meet the data collection requirements. For example, it may be difficult for prime recipients to report a reliable evaluation of the completion status of specific projects or activities and a meaningful estimate of the number of jobs created and retained by specific projects or activities without input and assistance from the final recipients responsible for those projects or activities. Therefore, prime recipients can expect federal agencies to work with them to ensure that relevant information is collected, particularly for first-tier subawardees who receive the most funding. Accordingly, significant award recipients can expect standard formats for reporting summary information. Some of that information may have to be requested from final recipients.

13. What type of information will be included on Recovery.gov and how far down will that information reach to recipients of Recovery Act funds?

In M-09-15, the OMB indicated its intent that Recovery.gov would include the following information:

- For the approximately \$60 billion in federal contract dollars under the Recovery Act, detailed information will be available for the federal contracts awarded, how the prime contractor is using the funds it has been provided, and any subcontracts awarded by the prime contractor.
- For the more than \$300 billion in grants covered by the recipient reporting requirements in the Recovery Act, detailed information on use of funds will be available for the federal grants awarded, how the prime recipient of the grant is using the funds it has been provided, and any subawards made by the primary recipient. The following additional detail will help clarify how far down the reporting will reach:
 - For the approximately \$85 billion in competitive grant awards, information will be available from the local organization that is the primary recipient of the award, including any subrecipients that receive funds.

- For the approximately \$75 billion in education grants, information will be available from the state on how it is using the funding, including the local school districts receiving funds.
- For the approximately \$8 billion in housing funds, information will be available from the local housing authority on how it is using the funding, including reporting on what entities, if any, to which it distributes funding.
- For the approximately \$37 billion in highway and transit formula funding, grant recipients will be required to report on contractors they hire for various projects.

Note that the ARRA reporting requirements do not apply to funding received by recipients through entitlement or other mandatory programs, except as specifically required by the OMB. At this time, the OMB has not extended the ARRA reporting requirements to any entitlement or other mandatory program.

14. Do entities receiving assistance funding under the Recovery Act have reporting responsibilities?

Yes. An entity that receives assistance funding under the Recovery Act must report information required under the Federal Funding Accountability and Transparency Act of 2006. That legislation identifies specific data elements that USAspending.gov must include for each federal award. Such data elements include, but are not limited to:

- The name of the entity receiving the award
- The amount of the award
- The transaction type
- The funding agency
- The program source
- The location of the entity receiving the award, including four data elements for the city, state, congressional district and country
- The location of the primary place of performance under the award, including four data elements for the city, state, congressional district and country
- Identity of the parent, should the recipient be owned by another entity
- The names and total compensation of the five most highly compensated officers of the company if it received (1) 80 percent or more of its annual gross revenues in federal awards, and (2) \$25 million or more in annual gross revenues from federal awards

Note that in 2008, Congress amended the Transparency Act to add a requirement to collect compensation information on chief executive officers of recipient entities.

15. What are the responsibilities of final recipients that do not have the reporting responsibilities of prime recipients?

All recipients, whether prime or not, are responsible to comply with applicable laws and regulations. In addition, final recipients should be in a position to articulate the completion status of the project or activity for which they are responsible, as well as provide an estimate of the number of jobs created and the number of jobs retained by the project or activity, if called upon to do so by the award granting authority.

In some circumstances, recovery funds will flow from a federal agency to a state, and then to a local government or other local organization. In this case, the OMB's current reporting model will not track the funds to subsequent recipients beyond these local governments or other organizations. The OMB has indicated, however, that it plans to expand the reporting model in the future to also obtain this information once the reporting system infrastructure has been established. This will likely not affect the July 10 reporting, but could affect the October 10 reporting.

16. What are the risks to final recipients of receiving Recovery Act funds?

If the present and past provide any lessons at all on this question, it is this: The receipt of Recovery Act funds comes with a price of operating in a public fishbowl. For recipients awarded a substantial contract funded with Recovery Act funds, failure to deliver projects or research on time and on budget may result in unwanted and highly visible publicity, both nationally and at the regional and local levels. To manage this environment effectively, final recipients of Recovery Act funds must have the following:

- A clear understanding as to why they are receiving funding under the Recovery Act
- A ready-to-go public relations message in case members of the press ask them what they are doing with taxpayer money and why
- An auditable process over expending the funds in accordance with the terms of the awarded contract or grant
- A strong team in place focused on delivering the funded project or activity on time and on budget
- The ability to articulate the completion status of the project or activity and provide an estimate of the number of jobs created and the number of jobs retained by the project or activity, if called upon to do so by the authority awarding the contract or grant

17. What is likely to be emphasized at the federal level with respect to oversight of recipients of Recovery Act funds?

Recipients can expect federal efforts to implement risk-based analysis tools, conduct outreach to state and local officials to better coordinate fraud prevention, improve data quality and reporting at the agency and Recovery.gov levels, and deploy more procurement officers to reduce risks at the beginning of the contracting phase. On March 19, 2009, the House Oversight and Government Reform Committee held a hearing on preventing stimulus waste and fraud. During the hearing, there was discussion around the following topics:

- Structuring the Recovery.gov database to enable taxpayers to perform oversight, e.g., allowing the entire database to be downloaded so that third parties can use different technologies to track the money and perform analysis, providing a central data warehouse from which all interested parties could access stimulus funds, etc.
- Setting a uniform federal standard so that data collected by the states is not spread across a multiplicity of formats, which would make data management impossible at the federal level
- Tracking stimulus money to the states and beyond to subcontractors to ensure there is sufficient oversight directed to the money that states and municipalities disburse to contractors
- Allocating oversight money to fund more state and local auditors
- Empowering taxpayers to blow the whistle on fraud and abuse through hotlines, software that allows users to add and edit content, etc.
- Using the initial procurement process as an effective way to weed out fraud before the money is even distributed

18. What role does the Recovery Accountability and Transparency Board play in assuring transparent recipient reporting?

The Recovery Accountability and Transparency Board was created by the ARRA to coordinate and conduct oversight of funds distributed under this law in order to prevent fraud, waste and abuse. Chaired by Earl Devaney, the board has a series of functions and powers to assist it in the mission of providing oversight and promoting transparency regarding expenditure of funds at all levels of government. One way the board will fulfill these responsibilities is by monitoring the accountability objectives of the ARRA, including the objectives specifically directed to recipients (as discussed in the response to Question 2).

The board will issue quarterly and annual reports on the use of Recovery Act funds and any oversight matters. The board may also make recommendations to federal agencies on measures to avoid problems and prevent fraud, waste and abuse. To address issues quickly, the board may send flash reports to the president and Congress on potential management and funding problems that require immediate attention. The board is also charged under the Recovery Act with establishing and maintaining a user friendly website – www.recovery.gov – to foster greater accountability and transparency in the use of covered funds.

About Protiviti Inc.

Protiviti (www.protiviti.com) is a global business consulting and internal audit firm composed of experts specializing in risk, advisory and transaction services. The firm helps solve problems in finance and transactions, operations, technology, litigation, governance, risk, and compliance. Protiviti's highly trained, results-oriented professionals provide a unique perspective on a wide range of critical business issues for clients in the Americas, Asia-Pacific, Europe and the Middle East.

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To assist companies with understanding the new landscape and managing the uncertain times ahead, we have formed the **Protiviti Financial Crisis Team**. This cross-disciplinary group is comprised of seasoned professionals with deep industry, financial risk management, restructuring and litigation support experience. Coordinated by Protiviti's global industry and solutions leaders, this strategic team provides clients with advice on responding to these market conditions, as well as updates about market and regulatory changes, and works closely with the firm's client service teams to help clients deal successfully with the unfolding global economic environment.

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