



United States Department of the Interior

Bureau of Indian Affairs

Navajo Regional Office

P. O. Box 1060

Gallup, New Mexico 87305-1060



IN REPLY REFER TO:

N303-Branch of Indian Self-Determination Services

MAY 21 2009

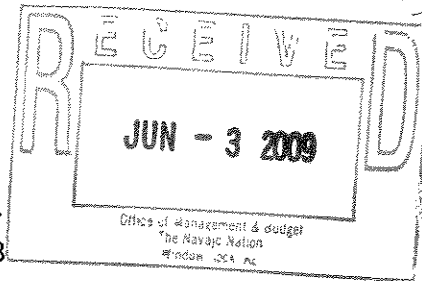
June 4, 2009

*Rachel - FY use.
email BDF to all
concerned e.g.)
ARRA Core Team;
D. Beysal; Mary at
DOJ; M. Grant, etc*

Honorable Joe Shirley, Jr.

President, The Navajo Nation

Attention: Cordell Shortey, Contracting Officer
Contracts and Grants Section, OMB



Dear President Shirley:

We have received the enclosed initial implementing guidance for the American Recovery and Reinvestment Act (ARRA) of 2009 from the Office of Management and Budget (OMB) dated February 18, 2009. More broadly, the guidance establishes requirements for various aspects of ARRA planning and implementations. These requirements are intended to meet crucial accountability objectives:

1. Funds are awarded and distributed in a prompt, fair and reasonable manner;
2. 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;
3. Funds are used for authorized purposes and instances of fraud, waste, error, and abuse are mitigated;
4. Projects funded under this AARA avoid unnecessary delays and cost overruns; and,
5. Program goals are achieved, including specific program outcomes and improved results on broader economic indicators.

As a result, the guidance is issued under the authority of 31 U.S.C. 1111, Reorganization Plan No. 2 of 1970; Executive Order 11541; and the Chief Financial Officers Act of 1990 (Public Law (P.L.) 101-576); the Office of Federal Procurement Policy (41 U.S.C. Chapter 7); and the Federal Funding and Accountability and Transparency Act of 2006 (P.L. 109-282). The provisions apply to all Executive Branch department and agencies involved in or impacted by the AARA or which otherwise perform services for agencies that received such appropriations.

*6/18/09
Scanned/ emailed
ARRA Core Team
D. Beysal
M. Grant
L. J. Nez
DCO*

Section 5 of the above mentioned guidance reflects Grants and Cooperative Agreements, and 5.8 reads the following (see enclosure):

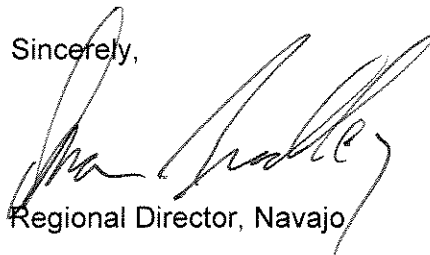
"5.8 How will transparency be provided for the results of Single Audits?

- For fiscal years ending September 30, 2009 and later, all Single Audit reports filed with the Federal Audit Clearinghouse (FAC) will be made publicly available on the internet. A link will be provided from Recovery.gov.
- Federal agencies will review Single Audit of Recovery Act funding and provide a synopsis of audit findings relating to obligations and expenditures of Recovery Act funding.⁷"

The concern is that an audit may inadvertently contain personal information that should not be released to the public. Therefore, the Navajo Nation should review its Single Audit Report before sending to the clearinghouse to make sure personal information is not disclosed.

Should you have any questions regarding the above, please contact me, Frances Price, Indian Self-Determination Officer at (505) 863-8311.

Sincerely,

A handwritten signature in black ink, appearing to read "Frances Price", written over a horizontal line.

Regional Director, Navajo

Enclosure



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

THE DIRECTOR

February 18, 2009

M-09-10

MEMORANDUM FOR THE HEADS OF DEPARTMENTS AND AGENCIES

FROM: Peter R. Orszag
Director

SUBJECT: Initial Implementing Guidance for the American Recovery and Reinvestment Act of 2009

This memorandum transmits the first installment of government-wide guidance for carrying out programs and activities enacted in the American Recovery and Reinvestment Act ("Recovery Act") of 2009. Please bring this memorandum and attachment to the attention of any personnel within your organization who will be involved in these matters.

The Administration is committed to investing Recovery Act dollars with an unprecedented level of transparency and accountability so Americans know where their tax dollars are going and how they are being spent. The guidance issued today contains critical action steps that Federal agencies must take immediately to meet these objectives and to implement the Act effectively. Of particular note, the guidance addresses Federal agency requirements to provide spending and performance data to the "Recovery.gov" website. To deliver a website that allows citizens to hold the government accountable for every dollar spent, the law and guidance require Federal agencies to implement mechanisms to accurately track, monitor, and report on taxpayer funds.

More broadly, the guidance establishes requirements for various aspects of Recovery Act planning and implementation. These requirements are intended to meet crucial accountability objectives:

- 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; and
- Program goals are achieved, including specific program outcomes and improved results on broader economic indicators.

Additional guidance providing further detail and covering a fuller range of items will be issued within 30-60 days of this memorandum. Questions about this memorandum or the guidance generally can be addressed to your organization's OMB counterparts or to recovery@omb.eop.gov.

Thank you for your attention to these matters.

Attachment

Section 5 – Grants and Cooperative Agreements

5.1 Are there actions, beyond standard practice, that agencies must take while planning for competitive and formula grant awards under Recovery Act?

Yes.

(1) Determining Grant Objectives and Evaluation Criteria for Award

Agencies should structure grants to result in meaningful and measurable outcomes that are consistent with agency plans and that promote the goals of the Recovery Act. The evaluation criteria for award should include those that bear on the measurement and likelihood of achieving these outcomes, such as, jobs creation and preservation.

(2) Competition

Although the Recovery Act calls on agencies to commence expenditures and activities as quickly as possible consistent with prudent management, this statement, by itself, does not constitute a sufficient justification to support award of a federal grant on a non-competitive basis. Agencies are expected to follow the same laws, principles, procedures, and practices in awarding discretionary grants with Recovery Act funds as they do with other funds. Agencies should review their internal policies with a goal towards promoting competition to the maximum extent practicable. In conducting this review, agencies may want to consider the appropriateness of limited competitions among existing high-performing projects versus full and open competitions and formula allocations.

(3) Existing Grants

Ultimately, agencies must determine what award method(s) will allow recipients to commence expenditures and activities as quickly as possible consistent with prudent management and statutory requirements. Agencies may consider obligating funds provided under the Recovery Act on an existing grant, including, but not limited to, a continuation or renewal grant. Because Recovery Act funds must be tracked and accounted for separately, supplements to existing agreements are not recommended as there is a greater risk that the grant recipient will be unable to track and report Recovery Act funds separately. Also, agreements must spell out the assignment of agency roles and responsibilities to fulfill the unique requirements of the Recovery Act. These include, but are not limited to, report development and submission, accurate and timely data reporting, and special posting requirements to agency web sites and Recovery.gov.

(4) Timeliness of Awards

Agencies need to assess existing processes for awarding formula allocations and announcing, evaluating and awarding discretionary grant opportunities to comport with the objective to make awards timely.

To enable timeliness of awards, agencies should engage in aggressive outreach to potential applicants to begin application planning activities, including the process for Central Contractor Registration (CCR) and obtaining a Dun and Bradstreet Universal Numbering System (DUNS) number. Outreach can also include efforts to update and validate existing CCR and DUNS registration data.

(5) Other Planning Activities

The following activities should also be part of the planning process for Recovery Act grants:

- Request an expedited “Recovery Act” Catalog of Federal Domestic Assistance (CFDA) number for new Recovery Act programs or existing programs for which the Recovery Act provides for compliance requirements that are significantly different for the Recovery Act funding;
- Provide notification of existing CFDA program descriptions that will be modified during the next CFDA update cycle to reflect Recovery Act authorities, financial information, etc.;
- Work with managers and staff at all levels of the agency so that they can plan and secure the resources needed to implement the Recovery Act requirements;
- Coordinate with agencies with similar grant programs to determine if there are ways to consolidate resources and efforts during the planning, award, and post-award stages of the grant cycle; and
- Review reporting responsibilities outlined in Section 2 of this Guidance and initiate necessary planning and implementation.

5.2 Are there actions, beyond standard practice, that agencies must take related to solicitation and evaluation of competitive grants awarded under Recovery Act?

Yes. Federal agencies must:

- Provide information in funding opportunity announcements and award notifications on Recovery Act-specific reporting requirements.
- Within twenty (20) days after enactment of the Recovery Act, agencies shall post funding opportunity announcements (i.e., “synopses”) to Grants.gov. Information about specific requirements (e.g., use of funds, certification, data reporting, performance measures, etc.) under the Recovery Act should be in the full funding announcement. The Grants.gov synopsis shall link to the full announcement on the agency website within thirty (30) days of enactment. In the interim, the synopsis should link to an agency instruction on when the full announcement is expected to become available.
- Consider weighting selection criteria to favor applicants for assistance with demonstrated ability to deliver programmatic result and accountability objectives included in Recovery Act.

5.3 What are the requirements for use of Grants.gov?

- For “find,” agencies are required to post synopses to Grants.gov, consistent with the requirements in section 5.2 above.
- For “apply,” agencies should generally use the “apply” feature of Grants.gov, but may, in limited circumstances, link from Grants.gov to an on-line application on the agency website.

Agencies who currently use the “apply” function for Grants.gov must consult with OMB prior to initiating a separate solution for Recovery Act awards.

5.4 Are Federal agencies expected to initiate additional oversight requirements for grants, such as mandatory field visits or additional case examinations for error measurements, to comply with grant rules and regulations?

Yes. Agencies must take steps, beyond standard practice, to initiate additional oversight mechanisms in order to mitigate the unique implementation risks of the Recovery Act. At a minimum, agencies should be prepared to evaluate and demonstrate the effectiveness of standard monitoring and oversight practices.

(1) Performance Management and Accountability

Agencies must adapt current performance evaluation and review processes to include the ability to report periodically on completion status of the program or activity, and program and economic outcomes, consistent with Recovery Act requirements.

Agencies in consultation with the Inspectors General, shall establish procedures to validate the accuracy of information submitted on a statistical basis and/or risk based approach as approved by OMB.

(2) Internal Controls Assessment

Consistent with normal practices, agencies must use appropriate internal control assessments to assess the risk of program waste, fraud, and/or abuse. Using the aforementioned risk assessments, agencies must have defined strategies, developed with input from the Inspector General for the agency, to prevent or timely detect waste, fraud, or abuse.

Also, consistent with Section 3 of this Guidance, agencies should initiate additional measures, as appropriate, to address higher risk areas.

5.5 Are agencies expected to comply with existing administrative grants requirements?

Yes. Agencies are expected to follow administrative requirements as directed OMB Circular A-102, Grants and Cooperative Agreements with States and Local Governments, the agency’s adoption of the grants management common rule; and OMB Circular A-110, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Learning, Hospitals, and other Non-profit Organizations. (see 2 CFR part 215)

5.6 What audit tools will be used to drive accountability for Federal awards under the Recovery Act?

- Non-Federal entities (States, local governments, tribes, and non-profit organizations) are required by the Single Audit Act Amendments of 1996 (Single Audit) and OMB Circular A-133 to have an annual audit of their Federal awards (e.g., grant programs).²
- Consistent with Section 3 of this Guidance, Federal agencies will perform a risk analysis of Recovery Act programs and request OMB to designate any high risk programs as Single Audit major programs, i.e., programs which must be tested in a particular year.³
- In addition to single audits, OIGs will use risk assessment techniques where data is available to identify high risk programs and non-Federal entities to be targeted for priority audits, inspections, and investigations with faster turnaround reporting.⁴
- OIGs will perform audits and inspections of their respective agencies awarding, disbursing, and monitoring of Recovery Act funds to determine whether safeguards exist to for funds to be used for their intended purposes.

5.7 What steps will be taken to make Single Audits effective in promoting accountability of Recovery Act grants.

- OMB will use the OMB Circular A-133 Compliance Supplement to notify auditors of compliance requirements which should be tested for Recovery Act awards. OMB will issue interim updates as necessary to keep Recovery Act requirements current.⁵
- Offices of Inspectors General (OIGs) will reach out to the auditing profession and provide technical assistance and training as well as perform quality control reviews to ensure single audits are properly performed and improper payments and other non-compliance is fully reported. OIGs will perform follow-up reviews of Single Audit quality with emphasis on Recovery Act funds and report the results on Recovery.gov.⁶

² Entities expending less than \$500,000 a year are exempt from Single Audit and a few non-Federal entities are permitted to have biennial audits under a grandfathering clause.

³ Circular A-133 § __.520(c) (2) allows OMB to designate selected Type A programs as major programs. Notice is required to be given to the recipient and the auditor 180 days prior to the end of the fiscal year to be audited. This information can be provided in the A-133 Compliance Supplement, OMB's website, and Recovery.gov.

⁴ Single audits normally are not received until at least 9 months after the end of the non-Federal entity's fiscal year. OIG audits can be completed and reported on more of a real time basis.

⁵ The OMB Circular A-133 Compliance Supplement is issued annually to guide the auditor on what compliance requirements should be tested under Single Audit. OMB will use issue interim updates as necessary to ensure auditors have adequate guidance on testing Recovery Act funds. Notice will be provided in the April 2009 Compliance Supplement of the interim update process, including where the update will be available.

⁶ It is anticipated that this review will be performed for fiscal years ending between June 30, 2010 and 2011 which will cover the majority of the Recovery Act awards.

5.8 How will transparency be provided for the results of Single Audits?

- For fiscal years ending September 30, 2009 and later, all Single Audit reports filed with the Federal Audit Clearinghouse (FAC) will be made publicly available on the internet. A link will be provided from Recovery.gov.⁷
- Federal agencies will review Single Audits of Recovery Act funding and provide a synopsis of audit findings relating to obligations and expenditures of Recovery Act funding.

5.9 Are there terms and conditions, beyond standard practice, that must be included in competitive and formula grant agreements under Recovery Act?

Agencies must:

- Use the agency's standard award terms and conditions on award notices, where applicable, unless they conflict with the requirements of the Recovery Act.
- Agencies must ensure receipt of funds is made contingent on recipients meeting the reporting requirements in Section 1512 of the Act.⁸
- Ensure that there is an award term or condition requiring first tier subawardees to begin planning activities, including obtaining a DUNS number (or updating the existing DUNS record), and registering with the Central Contractor Registration (CCR)⁹. Prime recipients and Federal agencies must establish mechanisms to meet Recovery Act data collection requirements. Agencies should work with prime recipients to ensure that DUNS and CCR requirements for first tier subawardees are met no later than the first time Recovery Act data requirements are due.

⁷ The Single Audit Act (31 U.S.C. § 7502(h)) and OMB Circular A-133 § __.320(a) and (d) require non-Federal entities to file Single Audit reports with the Federal Audit Clearinghouse (FAC). Entities are also required to make the reports available for public inspection. So in effect, Single Audit reports are public reports. The law does not require (or prohibit) the FAC from making the reports publicly available. Public access to these reports is a logical outgrowth to promote transparency since the FAC is a central repository of all reports and beginning in 2008 reports are filed in an electronic format. A current concern with the FAC making the reports publicly available on-line is a report may inadvertently include personally identifiable information (PII). While the reports are currently subject to the Freedom of Information Act, the FAC sends all FOI requests to the Federal Cognizant agency who is responsible to review, redact as necessary, and send to the requestor. Currently the FAC has an on-line system for Federal agencies to access Single Audit reports. There is no current plan as to how the FAC would respond to a FOI request for the whole data base of reports and ensure PII is not disclosed. The OMB can direct the FAC to take proactive steps to ensure Single Audit reports do not include PII. FAC steps can include: (1) notifying non-Federal entities, auditors, and Federal agencies that beginning with reports for fiscal years ending 9/30/09 the FAC will make the reports publicly available and that they should take steps to ensure the reports do not include PII; (2) include appropriate notices on the FAC website that reports will be made publicly available and therefore non-Federal entities and their auditors are responsible to ensure the reports do not include PII; and (3) use computer assisted techniques to screen reports for PII.

⁸ OMB will work with the relevant personnel from the Federal community to define a standard term and condition for all awards related to section 1512 reporting requirements that can be implemented in the short-term. OMB will also work with agencies to develop a standard term and condition that aligns to additional accountability requirements (e.g., prevention of misuse of funds).

⁹ A final decision on the extent to which subawardees will be required to register in CCR will be included in the final guidance.

- In the case where the Recovery Act requirement conflicts with an agency's standard award term or condition, the agency's award term or condition should be modified, as necessary, to ensure compliance with the Recovery Act requirement. A modification may not be necessary if the award term and condition is sufficiently rigorous to meet Recovery Act requirements.
- Make clear that that any funding provided through the Recovery Act that is supplemental to an existing grant is one-time funding.
- Include the requirement that each grantee or sub-grantee awarded funds made available under the Recovery Act shall promptly refer to an appropriate inspector general any credible evidence that a principal, employee, agent, contractor, sub-grantee, subcontractor, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving those funds.