

# The National Governors Association in conjunction with the Recovery Accountability and Transparency Board

State ARRA Training Notes  
Denver, Colorado  
June 14<sup>th</sup> thru June 15<sup>th</sup> 2010

Day One:

**Opening Remarks** – Nancy DiPaolo, Assistant Director, Congressional & Intergovernmental Affairs, Recovery and Accountability & Transparency Board

**Davis-Bacon Requirements** – Timothy Helm, Branch Chief, Government Contract Enforcement, Wage and Hour Division; U.S. Department of Labor

- The inception of ARRA increased the need for training and enforcement of the Service Contract Act and the Davis-Bacon Act.
- Davis-Bacon applies if the project is funded whole or in part.
- The Government Contract Enforcement branch takes a two pronged approach to fulfilling this added responsibility:
  - Internal: Acknowledge that there has been a lapse in training within the department and retrain from within the branch in order to keep up. The Government Contract Enforcement branch has allotted more than 30 analysts to learn Davis Bacon related issues. Also, we have encouraged the use of our website as a resource for state and local governments as well as contractors and sub-contractors. [Http://Dol.gov/whd/recovery](http://Dol.gov/whd/recovery)
  - External: We have conducted 8 wage conferences throughout the country and will continue to schedule additional conferences as necessary. These conferences focus on compliance and provide training on procedures and regulations relevant to both the Service Contract Act and the Davis-Bacon Act.
- In addition to increased training, we have also increased our focus on regulation and investigatory practices. In 2008 we conducted around 250 investigations. In 2009, we set a goal of 1,000. To date, we have already conducted more than 1,300 exhibiting the added emphasis our office has placed on the enforcement of both of these Acts.
- As we move forward, we intend to continue holding conferences throughout the country in order spread awareness about the importance of the Service Contract Act and the Davis Bacon Act and also maintain our focus on investigating as many projects as possible.

Questions:

1. The need for extensive record keeping of timesheets as related to Davis-Bacon has been an enormous obstacle for our State. We have limited space in our offices and the need to maintain up to date records have impeded our ability to be efficient in some respects. Is there another way to get around keeping hard copies of the timesheets?  
The timesheets, or certified payroll records, are not required by the Davis-Bacon Act. Instead, they are required by the Copeland Anti-Kickback Act. In order to avoid keeping hard copies you can make digital copies with electronic signatures. However,

the legality and authenticity of these signatures must be certified and meet various legal obligations to be valid for use. While this may be costly, it can eliminate paperwork and might reduce the burden on your office.

2. Are these “workarounds” used to avoid prevailing wage markets?

Congress wanted no sidesteps to allow prevailing wage markets which create problems in some circumstances. Specifically, when comparing the prevailing wages for rural and urban areas they are often the same which would not occur without the stipulations from Congress.

3. What are the results of the new enforcement procedures and after the ARRA funding expires will these procedure disappear entirely?

First, the new enforcement procedures will not go away after ARRA. Second, new enforcement procedures have displayed how misinformed some contractors are of their responsibilities. Some contractors were unaware of the regulations noted in Davis-Bacon which is the responsibility of agencies to pass on as they write contracts. Also, some contractors who are aware of the regulations have used inventive techniques to get around Davis-Bacon and we have adjusted our inquiries accordingly.

**Sub-Recipient Monitoring** – Greg Thomas, Principal, Risk Services Public Sector Practice and Ragini Roy, Senior Manager, Audit and Enterprises Risk Services; Deloitte & Touche LLP.

- Overview on sub-recipient monitoring:
  - Understand the process and familiarize yourself with ARRA rules and regulations
  - Design the necessary process and tools to provide proper oversight and train people who can best serve these specific needs.
  - Execute your plan using a mix of technology, personal interaction and oversight.
- Our system is based on making risk based approaches to ARRA sub-recipient monitoring. This means that we do not need to focus on all projects equally. Instead, we assess those with the greatest risk based on people, technology and the process.
- With this in mind, our system helps provide reports in a timely and concise way so that you can streamline your monitoring to those projects that are high risk. In addition, the software helps ease the correspondence burden of performing reviews, site visits and others essential tasks.

**Buy American Steel, Disadvantaged Business Enterprise (DBE) & Grant Close Outs** – John Long, Director of ARRA Investigations & Omer Poirier, Chief Counsel; Department of Transportation.

John Long:

- When investigating fraud and other abuses there are three main priorities:
  1. Create awareness on fraud for the Department of Transportation by providing education and training. This allows us to spot fraud on a state and local level.
  2. Move away from reactionary tactics to more proactive tactics. Maintain constant communication with key personnel, prime and sub recipients and state/local governments. Look for key indicators of those who are at risk – individuals who were formerly debarred or convicted of fraud for example.
  3. Prosecute criminal and civil cases to show the consequences of fraud and abuse.

- Current trends in D.B.E. crimes
  1. Underbidding: Highway and transit projects are especially common with this type of crime. Contractors will underbid an engineer's estimate and then make up for it with faulty construction and materials. Make sure to investigate any contracting bid that is severely below the engineer's preliminary bid.
  2. Bid Rigging: The practice of two or more contractors colluding on their bids to drive up costs.
  3. Disadvantaged Business Fraud: This is the most common practice in D.B.E. fraud. Unfortunately there are not enough D.B.E. businesses to complete the project load in some areas and this leads to the inception of fraudulent D.B.E. companies who want to increase their workload. There are three common types of fraudulent D.B.E. companies:
    - a. D.B.E. Fronts: Companies that provide false documentation to real D.B.E. companies but never pay or execute the full extent of the work. By creating authentic contracts and working with actual D.B.E. companies non-D.B.E. contractors can maintain the image of working within the guidelines of ARRA. However, oftentimes in these schemes, contracts do not provide full payment of allow D.B.E. companies to complete their contractual agreements instead allowing the contractor to do the work and simply not pay.
    - b. Woman Owned Business Enterprise Fraud: Easiest to find because often husband is the actual owner and executer of the work. Husband often will set up wife/daughter/girlfriend to provide a false front and then seek contracts as a D.B.E.
    - c. D.B.E. that Does Not Meet Qualifications: In order to qualify as a D.B.E. a company's net worth must be below \$750,000. In this case many companies provide falsified financial statements. Another tactic is to lie about ethnic background or minority status. This type of fraud is most commonly discovered by performing random certification audits.
- The best way for ARRA to be executed in a transparent and legal manner is to have a network of oversight from all levels. Therefore, we would greatly appreciate that if you see something suspicious, please alert our offices and we can maintain a united, well informed front. Please visit [www.oig.dot.gov](http://www.oig.dot.gov) for more information.

Omer Poirier:

- The Buy American Steel Program along was key to the passage of ARRA. They encourage buying American steel when the product is available and Congress deliberately required contractors to demonstrate compliance with correct certification.
- However, fraudulent activity is occurring throughout the country in regard to this condition. Certifications are reused and falsified and it is hard to convict the guilty party because of the technical nature of the offense and the lack of clear harm to the government.
- The False Claims Act will be enforced more frequently in the coming years because it is more easily applied in situations relating to large Federal projects. Additionally, unlike in the past, the money recovered in such cases can be re-spent quickly because money will not be exchanged in most cases.
- The use of debarment will also increase. After Hurricane Katrina many contractors were found guilty of fraud yet there were no debarments. Look for many fraudulent contractors to be debarred in the coming months and years in order to stop the trend and send a message to those who are committing fraud.

**Recipient Responsibilities** – Carrie Hug, Assistant Director of Data Analysis & Nancy DiPaolo, Assistant Director, Congressional & Intergovernmental Affairs, Recovery and Accountability & Transparency Board

- Data Quality must be timely, accurate and complete.
- Recipients, sub-recipients and Federal Agencies are responsible for guaranteeing that this is information qualitative standards.
- Presentation then moved to finding and eliminating mismatched records and also included a question and answer period during which recommendations were taken for consideration regarding the federal reporting process.

**Recovery.gov for Uber-Users** – Carrie Hug, Assistant Director of Data Analysis & Mike Wood, Recovery.gov; Recovery Accountability and Transparency

- The creation of recovery.gov was constricted by tight deadlines and an enormous scope and scale for Federal Reporting. The pillars of transparency and accountability were prioritized with a renewed vigor that defined ARRA's inception.
- In the time since its creation, recovery.gov has accomplished many of these goals. The data is strong, but there are still errors and occasional inconsistencies which we will all need to continue to work to fix.
- Overall, the goal of recovery.gov was to create a local story on a neighborhood basis. This goal has largely been accomplished with the inception of new maps and the use of GIS technology recovery.gov has become the paramount source of information for ARRA.

**Recovery Update & Discussion** – Frank DiGiammarino, Deputy to the Special Advisor to the President for Recovery Implementation

- Status report
  - \$610 billion out of the \$787 billion has been obligated nationally.
  - Between 1.2 to 2.8 million jobs have been created thus far nationally (CBO and CEA estimates)
  - More than 179,000 reports have been filed on federalreporting.gov
  - Unobligated balances, pressure is high
  - Both federal and state agencies are processing payments in a timely manner so reimbursement can be quickly, because they are looking at the federal expended amount
  - Treasury still has many different Recovery bonds available to be spent before Dec. 31, 2010

**ARRA Transitions** – Frank DiGiammarino, Nancy DiPaolo and several state representatives

- Based on the upcoming elections in November many states and localities will be experiencing turnover and we should all be planning ahead for this transition. Therefore, we should establish ways in which we can limit confusion and loss of momentum.
  - Ideas:
    - Meet with candidates before the general elections in order to stress the enormity of the oversight responsibility.

- Prepare a how-to guide for incoming administrations so that they have preliminary guidance to the procedures that will be necessary.
  - Establish a clearinghouse for outgoing and incoming transition materials and contacts.
  - Share contacts with certain agencies and organizations that have been pivotal to oversight success.
  - Build a stakeholder map for those above and below your office. Ask who will be affected when I leave and who should I contact that relies on my knowledge right now?
- Many cornerstones for Federal oversight have been established through the experience with ARRA. This transparency and accountability obligation will not be temporary and we must move forward with that in mind. As a tenant of future Federal, state and local endeavors, we must institutionalize transparency and accountability into our daily work in order to maintain a high level of oversight.

Day Two:

**The Future of Federal Awards & Reporting** – Mike Wood, Director of Recovery.gov, Recovery Accountability and Transparency Board

- The oversight function of Federal Awards and the subsequent reporting is a part system.
  1. FederalReporting.gov functions and features:
    - Encompasses the registration, reporting and validation function. Additionally, provides a help desk function for reporters, states and localities.
    - Provides a state bulk reporting function
    - Has improved edit checks that have been added over time
    - Copy forward function
    - Extended Q & A period
    - Bulk commenting
    - Linking capabilities which help resolve mismatches
    - Warnings for mismatches
  2. Recovery.gov functions and features:
    - The Amazon Cloud IaaS provides a virtual data storage network that could expand if necessary. This allows us to share enormous amounts of data to millions of visitors in a concise manner. It is also the first Federal site to use the function because all of the information is public and presents no security risk.
    - USPostal API for Congressional Districts presentations
- Data
  - Strong dataset
- Problems:
  - Errors are most commonly found in excel (70%) and in webforms (30%). Most are directly related to mismatches.
  - Noise – the presence of non-1512 award data and awards under \$25,000.
  - Uncertainty – How many awards, non-reporters, and changes to awards have been submitted?

- Quality – Accuracy, precision, and timeliness of reported data is sometimes in question for selected records
- Complexity – Number of records, prime and sub recipients and multi-quarter data continuity is somewhat questionable for some records.
- Overall, fixing these problems will be a process of simplification. Boiling down the data to make it relevant and useful to the American people is the goal.
- Future
  - OMB will eventually collect information of sub-recipients for USA Spending.
  - There are numerous possibilities for incorporating pre-population functions eventually, but this requires cleaning many of the federal data sources.
  - New users will be reporting on smaller amounts but in larger populations.
  - FederalReporting.gov and GSA have submitted proposals for building the USASpending reporting system. OMB has not yet made a decision.
  - Improving Information Access
    - Develop a means of creating widgets that will allow states and localities to display local information to citizens in a clear and concise manner
    - Isolate data on a local level
    - Create graphs, charts and figures for specific populations
    - Widgets, programmable interfaces, APIs, web services will all help accomplish these goals and increase public use.
    - Inherently, this will also increase transparency as well.
  - Risk Assessment
    - Criminal prosecution is a two year process in most cases and audits take around 6 months. Therefore, by improving monitoring and access to information these fraudulent activities can be reduced or stopped altogether.

### **Leveraging GIS in the New Age of Government – Dave Wrazien, Solutions Architect; ESRI**

- New expectations for Government:
  - Open government, transparency, accountability and performance management expectations have grown.
  - Geographic Information Systems (GIS) are tools to meet these new challenges. After use for nearly 40 years in research and government, GIS is now used throughout the world to share information.
  - Geo Applications are becoming more common and maps are harnessing new technology to provide more information than ever before to new users.
  - With these new innovations crowd sourcing, the process of citizen engagement, reaches new forums as well.
- Relation to ARRA
  - These new technologies such as GEO Applications have already been used by some states to inform citizens of the projects and programs in their communities.
  - These states have taken advantage of free templates and technology readily available through our company.
  - As the technology continues to grow and the demands for more streamlined presentations of data become necessary, ESRI is a great source for guidance and materials.
  - To access these templates go to [resources.esri.com](http://resources.esri.com) and search for “ARRA Template.”

**GAO Future ARRA Activities** – Carol Patey, Assistant Director, Strategic Issues Team; U.S. Government Accountability Office

- Background
  - GAO is an independent agency of the legislative branch that works for Congress.
  - We evaluate and audit Federal programs.
  - In relation to ARRA, we try to ensure that the cornerstones of the act are maintained – transparency and accountability.
- Role
  - Quarterly reports on states and localities which include number of jobs created/retained.
  - Also, the GAO monitors the long-term effects of ARRA and maintains records on fraudulent behavior.
  - Currently, 16 states and the District of Columbia are subjects of the reports. This includes state governments, housing authorities, municipalities, etc.
- Objectives
  - Observe and evaluate the use of the ARRA funding.
  - Provide oversight, auditing, and evaluation plans for states and local governments.
- Projections
  - Based on our current projections the last remaining ARRA dollars will be spent by 2016.
- May Report
  - Medicaid: FMAP has been a huge aid to states in covering increasing caseloads but there is concern over its expiration and whether it will be renewed.
  - Highways/Transit: Obligated funding deadlines were met but some requirements such as the Maintenance of Effort (MOE) were troublesome.
  - Education: SFSF, ESEA, IDEA, Part B have been successful and most of the money has been used to pay teachers.
  - Recipient Reporting: Completeness and quality are improving but some problems remain. Recommendations have been made to the Department of Education, the Department of Housing and Urban Development and the Office of Management and Budget to help make changes.
  - Accountability: OMB completed a voluntary internal single audit control project and GAO made 54 additional recommendations to 9 Federal Agencies.
  - Challenges: Unprecedented transparency and accountability requirements. Close and ongoing coordination was necessary in order to maintain progress between Federal, State and Local Governments.
- Future
  - Next report is due in September and it might be the last to include a state appendix and a recipient review section due to budget constraints.
  - The September report will focus primarily on the program side of reporting rather than the state government side.

**Compliance** – Jack Reagan, Partner, Government Assurance Practice; KPMG LLP

- Audits
  - Single Audits
    - Risk based approach selection process

- Major programs will have to be audited (including all ARRA projects)
  - 2 main indicators
    1. Compliance
    2. Internal Control Structure (Priority)
  - When there is an increased risk, the likelihood of being audited increases as well.
- What qualifies as risk?
  1. Weakness in financial statement audit
  2. Weakness in major program audit
  3. Non-compliance in major program audit
  4. Failure to complete timely A-133 audit
- Which programs will be audited?
  - First, programs organized in descending order of finances.
  - Steps to being classified as a low risk program include:
    - Being audited in the past 2 years
    - Having no material weaknesses in internal control
    - Having no material non-compliance
    - Not otherwise considered a high risk
- Designations of Risk
  - If a program is not considered a high risk type A, then they are almost automatically classified as high risk type B.
  - To be eligible to be classified as low risk an ARRA program must meet the following qualifications:
    - Audited in 2009 with no findings
    - ARRA money spent in 2010 is less than 20 percent of the total amount of the program
  - A type B program (high or low risk) with ARRA funding will likely be audited if it is a new program. In some circumstances, these new programs might be considered a high risk type B.
  - The nature of the program's expenses also dictates the likelihood of being audited.
- If Audited
  - Be prepared. Establish a history of documentation and be ready with explanation of why certain decisions were made including the context of the time during which they were made. Document information available when a decision was made in hopes of conveying that it was made in a well-informed manner.
  - Know the requirements. Take responsibility to know and understand the compliance responsibilities of your office.
- Typical Audit Findings
  - Often there is a lack of support for a certain expenditure that has no basis.
  - Expenditures are often made on unallowable items.
  - Frequent improper payroll activities.
  - Not meeting earmarking, matching and level of effort portions of audit.
  - Failure to file audit at audit clearinghouse. This is the responsibility of the grantor if you are the recipient.
- Note
  - No more extensions will be allowed for single audits.

- New programs are automatically considered high risk.