

**GUIDANCE TO STATE AGENCIES
REGARDING THE USE OF FUNDS RECEIVED
UNDER THE AMERICAN RECOVERY AND
REINVESTMENT ACT (ARRA)**



Prepared for State Agencies

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BACKGROUND

On Tuesday, February 17, 2009, President Obama signed into law the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5 (ARRA). This Act provided \$787 billion of federally financed economic stimulus funding through a combination of spending programs and reductions in business and individual taxes.

The ARRA funds are provided for purposes which include preserving and creating jobs and promoting economic recovery; assisting those most impacted by the recession; investing in transportation, environmental protection, and other infrastructure to provide long-term economic benefits; and stabilizing state and local government budgets.

The State of Michigan will receive hundreds of millions of dollars of ARRA funds. Governor Granholm has identified five key priorities for spending Michigan's share of the economic recovery dollars. We will:

- Create new jobs and jumpstart Michigan's economy;
- Train Michigan workers and educate Michigan students for the good jobs here today, and the new jobs we create tomorrow;
- Rebuild Michigan infrastructure—roads, bridges, water and sewer systems, mass transit, broadband, health information technology, and schools;
- Provide assistance for struggling Michigan families, helping them make ends meet; and
- Invest in energy efficiency and renewable energy technologies to create jobs, save money, and reduce our reliance on fossil fuels.

Michigan has been selected as one of sixteen states to be part of a core group of states that will be monitored over the next three years to provide an analysis of the use of funds under the ARRA.

PURPOSE

The purpose of this correspondence is to give some preliminary guidance to State Agencies regarding the use of ARRA funds, including contractual and grant requirements and accounting and financial reporting requirements. State agencies will continue to adhere to the existing state procurement guidelines including the Public Acts, Executive Directives, Administrative Guides, and the Financial Management Guide. These requirements and considerations also apply to those contract types which are currently handled by the agency through statutory authority or Administrative Guide delegation (i.e. grants, direct human services, medical services, construction, MDOT, DNR leases, etc.).

In addition, the ARRA has some specific contractual, grant, and reporting requirements that are outlined in 'Title XV Accountability and Transparency & Title XVI General Provisions' of the Act. This document will be updated as necessary. Guidance provided herein is not intended to be exhaustive and the agency will have responsibility to research these two titles for complete detail.

INTRODUCTION

All contracts and grants involving the use of funds made available under the American Recovery and Reinvestment Act (ARRA) must include provisions described in the ARRA, in addition to the standard terms and conditions typically used by state agencies for contracts, grants, and other types of agreements involving the use of federal funds.

Our task will be to administer contracts that include the reporting tools, monitoring procedures, and accountability requirements that will help prevent fraud, waste, and abuse of these funds.

Agencies should put in place the internal controls that will support the requirements of ensuring that the ARRA funds are spent properly, efficiently, and effectively, and are meeting the intended goal. This will require that these contracts are overseen by an adequate number of trained purchasing and grant personnel. In light of the Administration's commitment to high levels of accountability and transparency, special attention should be given to maintaining strong internal controls over ARRA program funds. The high risk associated with the award and expenditure of ARRA program funds merits increased oversight by the agency.

Much of the guidance provided herein comes from the Federal Office of Management and Budget guidance and requirements to Federal Agencies (M-09-15, April 3, 2009) and the Federal Registry Vol. 74 Rules and Regulations (March 31, 2009, pages 14622-14651). We expect that Federal guidance and requirements to federal agencies will trickle down to first tier recipients of the ARRA funds. We encourage State Agencies to become familiar with the details of these requirements.

SECTION 1 – CONTRACT AND GRANT TERMS AND REQUIREMENTS

All contracts, both new and existing, involving the use of ARRA funds must include provisions like those set forth in this Section. As used in this Section, “Recipient” refers to the recipient of ARRA funds from the State of Michigan (i.e. the contractor or grantee).

1.1 - Buy Michigan Preference

A preference is given to products manufactured or services offered by Michigan-based firms if all other things are equal and if not inconsistent with federal statute (see MCL 18.1261).

1.2 - Buy American Requirement

The Buy American provision in Section 1605 of Division A, Title XVI of the ARRA requires that all “iron, steel and manufactured goods used in the construction, alteration, maintenance or repair of a “public building or public work funded in whole or in part by funds made available under the ARRA be “produced in the United States,” unless this requirement is waived by the appropriate federal agency.

Iron and steel are “produced in the United States” if all of the manufacturing processes, except metallurgic processes involving refinement of steel additives, take place in the United States. Iron or steel used as components or subcomponents of manufactured goods used in an ARRA-funded project, however, do not have to be “produced in the United States.” Manufactured goods are “produced in the United States” if the manufacturing occurs in the United States (there is no requirement about the origin of the components or subcomponents of the manufactured goods).

The Buy American requirement may be waived by federal agencies in the following circumstances only: (1) application of the Buy American requirement would be inconsistent with the public interest; (2) iron, steel and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; (3) or inclusion of iron, steel or manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

As used in this Section, “steel” means any alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements. “Manufactured good” means a good brought to the construction site for incorporation into the building or work that has been --- (1) processed into a specific form and shape; or (2) combined with other raw material that has different properties than the properties of individual raw materials. “Public building or public work” means a public building of, and a public work of, the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State regional or interstate entities which have governmental functions).

1.3 - Whistleblower Protections

Section 1553 of Title XV of Division A of the ARRA prohibits all non-federal recipients of ARRA funds, including the State of Michigan, and all contractors and grantees of the State of Michigan, from discharging, demoting or otherwise discriminating against an employee for disclosures by the employee that the employee reasonably believes are evidence of (1) gross mismanagement of a contract or grant relating to ARRA funds; (2) a gross waste of ARRA funds; (3) a substantial and specific danger to public health or safety related to the implementation or use of ARRA funds; (4) an abuse of authority related to implementation or use of ARRA funds; or (5) a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to ARRA funds. The Recipient must post notice of the rights and remedies available to employees under Section 1553 of Title XV of Division A of the ARRA.

This term must be included in all subcontracts or sub-grants involving the use of funds made available under the ARRA.

1.4 - Wage Requirements

All laborers and mechanics employed by contractors and subcontractors on projects funded in whole or in part with funds available under the ARRA shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality, as determined by the United States Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40 of the United States Code. (See ARRA Sec. 1606 & RFP Section 2.204 Prevailing Wage). The Secretary of Labor's determination regarding the prevailing wages applicable in Michigan is available at <http://www.gpo.gov/davisbacon/mi.html>.

1.5 - Publicizing Contract Actions

All contract solicitations funded in whole or in part with ARRA funds will be posted on the www.bid4michigan.com website. All contracts resulting from the ARRA will be published on the State of Michigan's Recovery Web site, www.michigan.gov/recovery.

1.6 - Reporting Requirements

Not later than ten calendar days after the end of each calendar quarter, the State must submit a report that, at a minimum, contains the information specified in Section 1512 of Division A, Title XV of the ARRA. It is imperative all contracts involving the use of ARRA funds include requirements that the Vendor supply the State with the necessary information to submit these reports to the federal government (see RFP Section 1.042 Reports) in a timely manner. More detail will follow regarding the timing and submission of reports.

The Recipient's failure to provide complete, accurate, and timely reports shall constitute an "Event of Default". Upon the occurrence of an Event of Default, the

state department or agency may terminate this contract upon 30 days prior written notice if the default remains uncured within five calendar days following the last day of the calendar quarter, in addition to any other remedy available to the state department or agency in law or equity.

1.7 - Inspection of Records

The Recipient shall permit the United States Comptroller General or his representative or the appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1998 or his representative (1) to examine any records that directly pertain to, and involve transactions relating to, this contract; and (2) to interview any officer or employee of the Recipient or any of its subcontractors/subgrantees regarding the activities funded with funds appropriated or otherwise made available by the ARRA.

1.8 - Availability of Funding

The Recipient acknowledges that the programs supported with temporary federal funds made available by the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, will not be continued with state financed appropriations once the temporary federal funds are expended.

1.9 - Non-Discrimination

The Recipient shall comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and other civil rights laws applicable to recipients of Federal financial assistance (see RFP Section 2.201 Non-Discrimination).

1.10 - Prohibition on Use of Funds

None of the funds made available under this contract may be used for any casino or other gambling establishment, aquarium, zoo, golf course, swimming pools, or similar projects.

1.11 - Publications

Recipient shall include the Michigan Recovery logo on all signage or other publications in connection with the activities funded by the state of Michigan through funds made available by the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5.

1.12 - False Claims Act

The Recipient shall promptly refer to an appropriate federal inspector general any credible evidence that a principal, employee, agent, contractor, sub-grantee, subcontractor or other person has committed 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.

1.13 - Conflicting Requirement

If the ARRA requirements conflict with State of Michigan requirements, then ARRA requirements control.

1.14 - Sub-Recipient Requirements

Recipient shall include these terms, including this requirement, in any of its subcontracts or subgrants in connection with projects funded in whole or in part with funds available under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5.

1.15 - Competitive Fixed Price Contracts

Recipient, to the maximum extent possible, shall award any subcontracts funded, in whole or in part, with Recovery Act funds as fixed-price contracts through the use of competitive procedures.

1.16 - Segregation of Funds

Recipient shall segregate obligations and expenditures of Recovery Act funds from other funding. No part of funds made available under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may be comingled with any other funds or used for a purpose other than that of making payments for costs allowable under the ARRA.

1.17 - Job Opportunity Posting Requirements

Recipient shall post notice of job opportunities created in connection with activities funded in whole or in part with ARRA funds in the Michigan Talent Bank, www.michworks.org/mtb.

SECTION 2 - COMPLIANCE AND CONTRACT MANAGEMENT:

This Section provides guidance to state agencies on Compliance and Contract Management in connection with funds made available under the ARRA. As used in this Section, "Recipient" refers to the recipient of ARRA funds from the State of Michigan (i.e. the contractor or grantee).

2.1 - General Planning and Process

In addition to any applicable state or federal procurement requirements, state agencies and Recipients, to the maximum extent possible, shall award any contracts funded, in whole or in part, with ARRA funds with the following provisions:

1. Fixed-price contracts whenever possible. Fixed price contracts can accommodate market fluctuations when appropriate, when tied to economic index price adjustments.
2. Competitive bidding with fair and open competition. Agencies are expected to follow the same laws, principles, policy, and procedures in awarding ARRA contracts as they do in awarding with other funds. (See PA 431 - 18.1261 (3), Administrative Guide 0510.02 & 0510.32, and Executive Directive 2005-3.)
3. A summary of any contract or order (or modification to an existing contract or order), including a description of the required products and services, using such funds may be posted in a special section of the Web site Recovery.gov or Michigan.gov/recovery unless the contract or order is both fixed-price and competitively awarded (see item 1 & 2 above).
4. State agencies and sub-recipients of ARRA funds shall use ARRA funds in a manner that maximizes job creation and economic growth.
5. Statement of Work development should ensure that performance measures are meaningful, measurable, time bound, results-oriented, and consistent with agency plans and the goals of the ARRA.
6. Contract terms should address the failure to complete the project, meet milestones or deliver the deliverables.
7. Planning should involve mitigating schedule, cost, and performance risk (see Risk Assessment Report & Worksheet in the DMB Purchasing Operations intranet ARRA toolkit).
8. If applicable, terms should include special Buy American requirements (see Division A, Title XVI, Section 1605 of the ARRA).
9. Requirements should assure that all sub-recipients of ARRA funds can report essential information as may be required under the ARRA.

2.2 - Determination of Responsibility

The award of a contract based solely on lowest evaluated price can produce a false economy, thus increasing performance, cost, and schedule risk. The general standards for responsibility include that the prospective contractor have:

1. Adequate financial resources to perform the contract or the ability to obtain them;

2. The ability to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments;
3. A satisfactory record of past performance, integrity, and business ethics;
4. The necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them; and
5. The necessary production, construction, and technical equipment and facilities, or the ability to obtain them.

2.3 - Delegated Authority

There will be no “Delegated Authority” (to SOM agencies) for ARRA-related contracts. Regardless of value, all purchase requests must be submitted to the DMB Purchasing Operations. There will be restrictions on the use of direct vouchers, and other controls will be in place to ensure that all ARRA-related payments can be “identified” to ARRA contracts. Requests for direct vouchers must be preapproved by DMB Purchasing Operations. There will be monitoring of SOM agencies ADPICS transactions for potential ARRA-related payments on contracts not previously approved by DMB Purchasing Operations/State Administrative Board. More details on the process and procedures will be forthcoming.

This restriction does not apply to those contract types which are currently handled by the agency through statutory authority or Administrative Guide delegation (i.e. grants, direct human services, medical services, construction, MDOT, DNR leases, etc.).

2.4 - Contract Surveillance/Administration

Contract surveillance and administration will be a critical component to the successful tracking of ARRA expenditures and monitoring of deliverables. The DMB buyer will continue to fill the role of Contract Administrator for DMB contracts. The Agency appointed Contract Compliance Inspectors (CCI) should be carefully chosen for their knowledge of the program, proximity to the deliverables and experience with the project. The CCI will play an important role in the day-to-day surveillance and supervision of the contract including:

1. Approving payments,
2. Documenting timely vendor performance issues,
3. Monitoring contract compliance, cost, schedules and deliverables,
4. Completing a vendor rating and contract closeout,
5. Documenting timely inspections and acceptance of deliverables,
6. Identify and help remedy deficiencies identified related to contract performance.

The agency should ensure that these persons have clear guidance as to their roles and responsibilities and that there is adequate training before assigning these roles.

You will find the following tools on the DMB intranet, in the ARRA toolkit, to assist with contract administration and contract monitoring:

1. Risk Assessment Report & Worksheet
2. Kick-Off Meeting Record
3. Contract Compliance Report
4. Vendor Scorecard
5. Contract Closeout Report

2.5 - Emergency Purchases

Agencies are cautioned that the ARRA does not independently trigger use of emergency procurement authorities in Administrative Guide 0510.38. These authorities are triggered in limited, statutorily identified, circumstances. Unless one of these circumstances exists, the special emergency authorities shall not be used.

2.6 - Reporting

Procurement officers will need to be able to report data and statistics on the following:

1. All competitively bid contracts
2. Non-competitive contract awards
3. Contract types & type of projects
4. The recipients of contracts
5. Amount of awards

Section 1512 of the ARRA requires reporting on the following:

1. The total amount of ARRA funds received by the Recipient/Contractor/Grantee during the Reporting Period;
2. The amount of ARRA funds that were expended or obligated during the Reporting Period;
3. A detailed list of all projects or activities for which ARRA funds were expending or obligated, including:
 - a) the name of the project or activity;
 - b) a description of the project or activity;
 - c) an evaluation of the completion status of the project or activity; and
 - d) an estimate of the number of jobs created and the number of jobs retained by the project or activity;
4. For any subcontracts or subgrants equal to or greater than \$25,000:
 - a) The name of the entity receiving the subaward;
 - b) The amount of the subaward;
 - c) The transaction type;
 - d) The North American Industry Classification System (NAICS) code or Catalog of Federal Domestic Assistance (CFDA) number;
 - e) Program source;
 - f) An award title descriptive of the purpose of each funding action;
 - g) The location of the entity receiving the subaward;
 - h) The primary location of the subaward, including the city, state, congressional district and country; and
 - i) A unique identifier of the entity receiving the subaward and the parent entity of the recipient, should the entity be owned by another.

5. For any subcontracts or subgrants of less than \$25,000 or to individuals, the information required in (4) (a)-(i) may be reported in the aggregate.
 - a) The certification of an authorized officer of the Recipient/Contractor/Grantee that the information contained in the report is accurate; and
6. Any other information reasonably requested by the Contract Manager/Grant Manager or required by state or federal law or regulation.

Besides these reports, the Government Accountability Office (GOA) is required to conduct bimonthly reviews and prepare reports on such reviews on the use by selected states and localities of funds made available in the ARRA. The ARRA does not specify the criteria by which the states and localities will be selected. The reports are to be available online.

For additional details about the 'Reporting' requirements, see the Section 1512 of the ARRA and Federal Register, Volume 74, Number 61 available at: [http://www.fta.dot.gov/documents/040409_OMB_Cmt_Request_1512_data_specs\(1\).pdf](http://www.fta.dot.gov/documents/040409_OMB_Cmt_Request_1512_data_specs(1).pdf). Further guidance regarding the specific data element as well as the method for submission of the information will be provided as soon as it becomes available.

2.7 - Segregation of Costs

Obligations and expenditures of ARRA funds must be segregated from other funding. No part of ARRA funds may be comingled with any other funds or used for a purpose other than that of making payments for costs allowable under the ARRA. Refer to section 3 for specific guidance on accounting and financial reporting requirements.

The Purchase Request Form (PRF) and the Administrative Bid Tab will have a check box added to designate which contracts are using ARRA funds, in whole or in part. These ARRA-funded projects that must receive State Administrative Board approval will be considered on a separate State Administrative Board agenda.

2.8 - Government Accountability Office/Inspector General Access

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement Sections 902, 1514, and 1515 of the American Recovery and Reinvestment Act of 2009. Collectively, these Sections provide for the audit and review of both contracts and subcontracts, and the ability to interview such contractor and subcontractor personnel under contracts containing Recovery Act funds.

For the Comptroller General these alternate clauses provide specific authority to audit contracts and subcontracts and to interview contractor and subcontractor employees under contracts using Recovery Act funds. Agency inspector generals receive the same authorities, with the exception of interviewing subcontractor employees.

For full details of the 'Government Accountability Office & Inspector General Access' requirements, see the Federal Registry Vol. 74 Rules and Regulations (March 31, 2009, pages 14646-14649).

2.9 - Ethics

It is critical that transparency and integrity are a cornerstone of this process. The risk of fraud and abuse grows when the distribution of millions of dollars is mixed with new programs, new requirements, and new staffing. DMB Purchasing Operations has reformatted the Confidentiality Statement and the Conflict of Interest and Disclosure Forms to add more accountability.

2.10 - Michigan Economic Recovery Office Notification

Agencies should forward all Requests for Proposals (RFP), Invitations to Bid (ITB), or similar solicitations to the Michigan Economic Recovery Office for review at least three days prior to releasing them to the public. Agencies may go ahead and release/post the document if they have not heard back from the Michigan Economic Recovery Office on the third day after notification.

2.11 - Notice Requirements under PA 7 of 2009

Section 203 of the bill provides for an automatic appropriation of any additional Recovery Act funds available to the state through the redistribution provisions of the Recovery Act. If your department receives additional funds under the Recovery Act as a result of these redistribution provisions, the department must report to the senate and house standing committees on appropriations subcommittee, senate and house fiscal agencies, state budget director and the Governor on the amount of the funds received and the purposes for which they will be spent within 30 days of receiving the funds.

If your department is distributing funds received under the Recovery Act through a competitive grant process, you must notify the senate and house of representatives standing committees on appropriations, senate and house fiscal agencies, and state budget office at least one day prior to the issuance of the request for proposals. Please include the Michigan Economic Recovery Office on this notice.

2.12 Fraud Prevention

By establishing an effective fraud prevention program, agencies can provide reasonable assurance that ARRA funds benefit intended recipients. A well-designed fraud prevention program will minimize waste and abuse and should consist of preventive controls, detection, monitoring, investigations, and prosecutions. These controls prevent ineligible individuals and questionable firms from gaining access to government funds in the first place.

Most recently, in February 2009, the National Procurement Fraud Task Force (NPFTF) published a white paper (*[A Guide to Grant Oversight and Best Practices for Combating Grant Fraud](#)*, Washington, D.C.: February, 2009) that identified best practices and made recommendations for agencies to consider in preventing fraud,

waste, and abuse in grants they administer. These recommendations included enhanced certifications, increased training, improved communications with grant recipients, increased information sharing concerning potential fraud, and rigorous oversight of how grant dollars are spent after they are awarded. We recommend you access and read that report.

2.13 - Grant and Cooperative Agreements

The passage of the American Recovery and Reinvestment Act of 2009 (ARRA) changed the way the State of Michigan will report information to the Federal Government related to grants. As a result, grant agreements must require recipients and sub-recipients to:

1. Maintain current registrations in the Central Contractor Registration (CCR) database. <http://www.ccr.gov/>
2. Report quarterly on project activity status (further defined in Section 4.7), in addition to any reporting requirements that currently apply to recipients of federal funds;
3. Follow Buy American guidelines (section 1605 of ARRA and section 1.10 of this document)
4. Implement wage rate requirements (section 1606 of ARRA and section 1.5 of this document)
5. Ensure proper accounting and reporting of ARRA expenditures in Single Audits

Grant agreements must also include any terms needed to implement agency/program specific provisions and general provisions of ARRA.

For complete details of the "Grants and Cooperative Agreements" requirements, see the Federal Office of Management & Budget guidance letter of April 3, 2009 (M-09-15), Section 5 and Appendix 9. <http://www.recovery.gov/sites/default/files/m09-15.pdf>

We have included some excerpts pertinent to grant requirements:

"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.

(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.

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.

5.9 Are there terms and conditions, beyond standard practice, that must be included in competitive and formula grant agreements under the 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. 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.
- Ensure other award terms needed to implement the agency/program-specific provisions and general provisions of the Recovery Act are included on awards. Note that OMB has issued standard award terms for agencies to use in implementing Sections 1512, 1605 and 1606 for grants, cooperative agreements, and loans. Agencies must ensure that they use any terms and conditions that implement other Recovery Act provisions, where applicable and as appropriate, such provisions in Sections 1511, 1515, 1553, 1604, and 1609.
- Ensure that there is an award term or condition requiring first tier sub-awardees to begin planning activities, including obtaining a DUNS number (or updating the existing DUNS record), and registering with the Central Contractor Registration (CCR). 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 sub-awardees are met no later than the first time Recovery Act data requirements are due.
- Make clear that that any funding provided through the Recovery Act 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. ”

2.14 - Risk Considerations

Risk identification and mitigation is a critical component to the contract process. For complete details of the ‘Governance, Risk Management and Program Integrity’ requirements, see the Federal Office of Management & Budget guidance letter of April 3, 2009 (M-09-15), Section 3 and Appendix 4. We encourage you to read the entire context of those sections to learn how to better identify and mitigate risks associated with grant funds. The following acquisition process questions should prove helpful.

1. Do new Requests for Proposals issued under Recovery Act initiatives contain the necessary language to satisfy the requirements of the Recovery Act?
2. Are contracts awarded in a prompt, fair, and reasonable manner?
3. Do new contracts using Recovery Act funds have the specific terms required?
4. 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?
5. Are funds used for authorized purposes and the potential for fraud, waste, error, and abuse minimized and/or mitigated?
6. Do projects funded under the Recovery Act avoid unnecessary delays and cost overruns?
7. Are there any performance issues identified with regard to (potential) contractor? Are there follow up actions to address the performance issues?

2.15 - Buy American Requirement Applicable to State Agencies

The Buy American provision in Section 1605 of Division A, Title XVI of the ARRA requires that all "iron, steel and manufactured goods used in the construction, alteration, maintenance or repair of a "public building or public work funded in whole or in part by funds made available under the ARRA be "produced in the United States," unless this requirement is waived by the appropriate federal agency.

Iron and steel are "produced in the United States" if all of the manufacturing processes, except metallurgic processes involving refinement of steel additives, take place in the United States. Iron or steel used as components or subcomponents of manufactured goods used in an ARRA-funded project, however, do not have to be "produced in the United States." Manufactured goods are "produced in the United States" if the manufacturing occurs in the United States (there is no requirement about the origin of the components or subcomponents of the manufactured goods).

The ARRA also provides that the Buy American requirement in Section 1605 "shall be applied in a manner consistent with United States obligations under international agreements." As a practical matter, this means that, for procurement under state construction contracts valued at \$7,443,000 or more, iron, steel, and manufactured goods may be purchased if they are produced in the United States or produced in any of the following countries: Aruba, Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, United Kingdom, Australia, or Chile.

The "exception" to the Buy American requirement for obligations under international agreements does not apply to dredging, the restrictions attached to federal funds to states for mass transit and highway projects, or the purchase of construction grade steel, motor vehicles or coal. Consequently, if using ARRA funds in connection with these activities or for construction grade steel, motor vehicles or coal, only items produced in the United States may be procured.

The Buy American requirement may be waived by Federal agencies in the following circumstances only: (1) application of the Buy American requirement would be inconsistent with the public interest; (2) iron, steel and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; (3) or inclusion of iron, steel or manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent. Requests for waivers must be submitted before funds are awarded by a federal agency or obligated by the state. The process for requesting a waiver of the Buy American requirements, including information that must be provided to federal agencies in support of a request for a waiver, is described on pages 139-141 of the federal Office of Management and Budget's April 3, 2009 guidance.

As used in this Section, "steel" means any alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements. "Manufactured good" means a good brought to the construction site for incorporation into the building or work that has been --- (1) processed into a specific form and shape; or (2) combined with other raw material that has different properties than the properties of individual raw materials. "Public building or public work" means a public building of, and a public work of, the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State regional or interstate entities which have governmental functions).

2.16 - WhistleBlower Protection

All state agencies must post notice of the rights and remedies available to employees under Section 1553 of the ARRA. (For the Michigan Civil Service Whistle Blowers Rule 2-10 link to: http://www.michigan.gov/mdcs/0,1607,7-147-6877_8155-72500--,00.html)

2.17 - Internet Sites

The following links may be helpful to your staff:

The fastest and easiest way to obtain copies of GAO documents at no cost is through GAO's Web site (www.gao.gov). Each weekday afternoon, GAO posts on its Web site newly released reports, testimony, and correspondence. To have GAO e-mail you a list of newly posted products, go to www.gao.gov and select "E-mail Updates."

Michigan Recovery site - <http://www.michigan.gov/recovery>

Federal Recovery site - <http://www.recovery.gov/>

NASPO Recovery site - <http://www.naspo.org/content.cfm/id/stimulus>

Council of State Governments ARRA Web site - <http://www.staterecovery.org/>

The American Recovery and Reinvestment Act -
<http://www.recovery.gov/?q=content/act>

OMB Guidance Memo (2/17/2009):
http://www.naspo.org/documents/initial_omb_guidance_090218.pdf

OMB Guidance Memo (04/03/2009):
http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m09-15.pdf

Access to the Federal Register – <http://www.gpoaccess.gov/fr/>

DMB intranet site - <http://connect.michigan.gov/portal/site/dmb/>

SECTION 3 - ACCOUNTING AND FINANCIAL REPORTING GUIDANCE

No part of ARRA funds may be comingled with any other funds or used for a purpose other than that of making payments for costs allowable under the ARRA. To assist in tracking and keeping ARRA funds separate from non-ARRA funds, the following steps will be taken.

3.1 - General R*Stars Coding Requirements

In order to meet specific ARRA reporting guidelines, it is necessary to track all federal ARRA revenues separately from existing federal program revenue. Each ARRA-related line item appropriation will require unique appropriation (20 profile) and fund (D23 profile) numbers.

3.2 - Profile Creation And Submission

Departments will submit new profile requests for 20s and D23s to the State Budget Office (SBO) for approval. SBO approved profiles will be sent to the Office of Financial Management (OFM) for final approval and entry into the R*Stars system. All profiles **must** have the acronym **ARRA** in the title. The ARRA funds will be tied to like fund sources through the use of the State Fund Group (D39 profile) and Finance Source (D53 profile) fields located on the D23 profile. These two coding elements will be created by SBO, Office of Budget Development (OBD) and OFM and entered on the agency submitted D23 profiles.

3.3 - D39 Profile Structure

The D39 values established to track ARRA revenue will use each of the four place holders of the profile to identify funds at multiple levels. The placeholders will be defined by SBO and OFM.

1. The first indicator identifies ARRA-related revenues and expenditures
2. The second indicator identifies a group of programs
3. The third indicator identifies major programs within a group
4. The fourth indicator identifies sub-programs (if needed)

The groups have been defined as follows:

1. 90XX – Fiscal Stabilization
2. 91XX – Health & Human Services
3. 92XX – Education
4. 93XX – Transportation
5. 94XX – Energy
6. 95XX – Economic Development
7. 96XX – Natural Resources & Environmental
8. 97XX – Justice
9. 98XX – Labor
10. 99XX – Miscellaneous

3.4 - D53 Profile Structure

The D53 values established to track ARRA revenues will use two values to distinguish between competitive and formula driven grants.

1. 70 – ARRA Funding/Expenditures – Competitive
2. 80 – ARRA Funding/Expenditures – Formula Driven
- 3.

3.5 - Budgetary Transaction Procedures

Departments will follow the same budgetary transaction procedures for supplemental appropriations as established by the SBO-OBDD. The instructions are available electronically on the SBO intranet at <http://connect.michigan.gov/budget>.

3.6 - Agency Receiving ARRA Revenue from another Agency

If an Agency plans to receive ARRA funds from another Agency, the recipient agency should contact their OFM Accounting Liaison for guidance related to profile establishment and transaction processing.

3.7 - Federal Reporting

On April 1, 2009, the Office of Management and Budget (OMB) issued federal reporting guidance related to ARRA revenue. The guidance contains standard data elements that agencies will be responsible for in order to comply with the reporting requirements under section 1512 of the American Recovery and Reinvestment Act of 2009 (Public Law 111 – 5).

The data elements are listed in detail within the Federal Register, Volume 74, Number 61. A copy of those reporting data elements can be found at: [http://www.fta.dot.gov/documents/040409 OMB Cmt Request 1512 data specs\(1\).pdf](http://www.fta.dot.gov/documents/040409%20OMB%20Cmt%20Request%201512%20data%20specs(1).pdf)

Further guidance regarding the specific data element as well as the method for submission of the information will be provided as soon as it becomes available.

SECTION 4 - APPENDICES

4.1 - AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (TITLE XV & XVI)

TITLE XV--ACCOUNTABILITY AND TRANSPARENCY

Sec. 1501. Definitions.

In this title:

- (1) AGENCY - The term `agency' has the meaning given under section 551 of title 5, United States Code.
- (2) BOARD - The term `Board' means the Recovery Accountability and Transparency Board established in section 1521.
- (3) CHAIRPERSON - The term `Chairperson' means the Chairperson of the Board.
- (4) COVERED FUNDS - The term `covered funds' means any funds that are expended or obligated from appropriations made under this Act.
- (5) PANEL - The term `Panel' means the Recovery Independent Advisory Panel established in section 1541.

SUBTITLE A--TRANSPARENCY AND OVERSIGHT REQUIREMENTS

Sec. 1511. Certifications.

With respect to covered funds made available to State or local governments for infrastructure investments, the Governor, mayor, or other chief executive, as appropriate, shall certify that the infrastructure investment has received the full review and vetting required by law and that the chief executive accepts responsibility that the infrastructure investment is an appropriate use of taxpayer dollars. Such certification shall include a description of the investment, the estimated total cost, and the amount of covered funds to be used, and shall be posted on a website and linked to the website established by section 1526. A State or local agency may not receive infrastructure investment funding from funds made available in this Act unless this certification is made and posted.

Sec. 1512. Reports On Use Of Funds.

- (a) Short Title - This section may be cited as the `Jobs Accountability Act'.
- (b) Definitions - In this section:
 - (1) RECIPIENT - The term `recipient'--
 - (A) means any entity that receives recovery funds directly from the Federal Government (including recovery funds received through grant, loan, or contract) other than an individual; and
 - (B) includes a State that receives recovery funds.
 - (2) RECOVERY FUNDS - The term `recovery funds' means any funds that are made available from appropriations made under this Act.

(c) Recipient Reports - Not later than 10 days after the end of each calendar quarter, each recipient that received recovery funds from a Federal agency shall submit a report to that agency that contains--

- (1) the total amount of recovery funds received from that agency;
- (2) the amount of recovery funds received that were expended or obligated to projects or activities; and
- (3) a detailed list of all projects or activities for which recovery funds were expended or obligated, including--
 - (A) the name of the project or activity;
 - (B) a description of the project or activity;
 - (C) an evaluation of the completion status of the project or activity;
 - (D) an estimate of the number of jobs created and the number of jobs retained by the project or activity; and
 - (E) 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 this Act, and name of the person to contact at the agency if there are concerns with the infrastructure investment.
- (4) Detailed information on any subcontracts or subgrants awarded by the recipient to include the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), allowing aggregate reporting on awards below \$25,000 or to individuals, as prescribed by the Director of the Office of Management and Budget.

(d) Agency Reports - Not later than 30 days after the end of each calendar quarter, each agency that made recovery funds available to any recipient shall make the information in reports submitted under subsection (c) publicly available by posting the information on a website.

(e) Other Reports - The Congressional Budget Office and the Government Accountability Office shall comment on the information described in subsection (c) (3) (D) for any reports submitted under subsection (c). Such comments shall be due within 45 days after such reports are submitted.

(f) COMPLIANCE - Within 180 days of enactment, as a condition of receipt of funds under this Act, Federal agencies shall require any recipient of such funds to provide the information required under subsection (c).

(g) GUIDANCE - Federal agencies, in coordination with the Director of the Office of Management and Budget, shall provide for user-friendly means for recipients of covered funds to meet the requirements of this section.

(h) REGISTRATION - Funding recipients required to report information per subsection (c) (4) must register with the Central Contractor Registration database or complete other registration requirements as determined by the Director of the Office of Management and Budget.

Sec. 1513. Reports Of The Council Of Economic Advisers.

(a) In General - In consultation with the Director of the Office of Management and Budget and the Secretary of the Treasury, the Chairperson of the Council of

Economic Advisers shall submit quarterly reports to the Committees on Appropriations of the Senate and House of Representatives that detail the impact of programs funded through covered funds on employment, estimated economic growth, and other key economic indicators.

(b) Submission of Reports-

(1) FIRST REPORT - The first report submitted under subsection (a) shall be submitted not later than 45 days after the end of the first full quarter following the date of enactment of this Act.

(2) LAST REPORT - The last report required to be submitted under subsection (a) shall apply to the quarter in which the Board terminates under section 1530.

Sec. 1514. Inspector General Reviews.

(a) Reviews - Any inspector general of a Federal department or executive agency shall review, as appropriate, any concerns raised by the public about specific investments using funds made available in this Act. Any findings of such reviews not related to an ongoing criminal proceeding shall be relayed immediately to the head of the department or agency concerned. In addition, the findings of such reviews, along with any audits conducted by any inspector general of funds made available in this Act, shall be posted on the inspector general's website and linked to the website established by section 1526, except that portions of reports may be redacted to the extent the portions would disclose information that is protected from public disclosure under sections 552 and 552a of title 5, United States Code.

Sec. 1515. Access Of Offices Of Inspector General To Certain Records And Employees.

(a) Access - With respect to each contract or grant awarded using covered funds, any representative of an appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), is authorized--

(1) to examine any records of the contractor or grantee, any of its subcontractors or subgrantees, or any State or local agency administering such contract, that pertain to, and involve transactions relating to, the contract, subcontract, grant, or subgrant; and

(2) to interview any officer or employee of the contractor, grantee, subgrantee, or agency regarding such transactions.

(b) Relationship to Existing Authority - Nothing in this section shall be interpreted to limit or restrict in any way any existing authority of an inspector general.

SUBTITLE B--RECOVERY ACCOUNTABILITY AND TRANSPARENCY BOARD

Sec. 1521. Establishment Of The Recovery Accountability And Transparency Board.

There is established the Recovery Accountability and Transparency Board to coordinate and conduct oversight of covered funds to prevent fraud, waste, and abuse.

Sec. 1522. Composition Of Board.

(a) Chairperson-

(1) DESIGNATION OR APPOINTMENT - The President shall--

(A) designate the Deputy Director for Management of the Office of Management and Budget to serve as Chairperson of the Board;

(B) designate another Federal officer who was appointed by the President to a position that required the advice and consent of the Senate, to serve as Chairperson of the Board; or

(C) appoint an individual as the Chairperson of the Board, by and with the advice and consent of the Senate.

(2) COMPENSATION-

(A) DESIGNATION OF FEDERAL OFFICER - If the President designates a Federal officer under paragraph (1) (A) or (B) to serve as Chairperson, that Federal officer may not receive additional compensation for services performed as Chairperson.

(B) APPOINTMENT OF NON-FEDERAL OFFICER - If the President appoints an individual as Chairperson under paragraph (1)(C), that individual shall be compensated at the rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

(b) Members - The members of the Board shall include--

(1) the Inspectors General of the Departments of Agriculture, Commerce, Education, Energy, Health and Human Services, Homeland Security, Justice, Transportation, Treasury, and the Treasury Inspector General for Tax Administration; and

(2) any other Inspector General as designated by the President from any agency that expends or obligates covered funds.

Sec. 1523. Functions Of The Board.

(a) Functions-

(1) IN GENERAL - The Board shall coordinate and conduct oversight of covered funds in order to prevent fraud, waste, and abuse.

(2) SPECIFIC FUNCTIONS - The functions of the Board shall include--

(A) reviewing whether the reporting of contracts and grants using covered funds meets applicable standards and specifies the purpose of the contract or grant and measures of performance;

(B) reviewing whether competition requirements applicable to contracts and grants using covered funds have been satisfied;

(C) auditing or reviewing covered funds to determine whether wasteful spending, poor contract or grant management, or other

abuses are occurring and referring matters it considers appropriate for investigation to the inspector general for the agency that disbursed the covered funds;

(D) reviewing whether there are sufficient qualified acquisition and grant personnel overseeing covered funds;

(E) reviewing whether personnel whose duties involve acquisitions or grants made with covered funds receive adequate training; and

(F) reviewing whether there are appropriate mechanisms for interagency collaboration relating to covered funds, including coordinating and collaborating to the extent practicable with the Inspectors General Council on Integrity and Efficiency established by the Inspector General Reform Act of 2008 (Public Law 110-409).

(b) Reports-

(1) FLASH AND OTHER REPORTS - The Board shall submit to the President and Congress, including the Committees on Appropriations of the Senate and House of Representatives, reports, to be known as 'flash reports', on potential management and funding problems that require immediate attention. The Board also shall submit to Congress such other reports as the Board considers appropriate on the use and benefits of funds made available in this Act.

(2) QUARTERLY REPORTS - The Board shall submit quarterly reports to the President and Congress, including the Committees on Appropriations of the Senate and House of Representatives, summarizing the findings of the Board and the findings of inspectors general of agencies. The Board may submit additional reports as appropriate.

(3) ANNUAL REPORTS - The Board shall submit annual reports to the President and Congress, including the Committees on Appropriations of the Senate and House of Representatives, consolidating applicable quarterly reports on the use of covered funds.

(4) PUBLIC AVAILABILITY-

(A) IN GENERAL - All reports submitted under this subsection shall be made publicly available and posted on the website established by section 1526.

(B) REDACTIONS - Any portion of a report submitted under this subsection may be redacted when made publicly available, if that portion would disclose information that is not subject to disclosure under sections 552 and 552a of title 5, United States Code.

(c) Recommendations-

(1) IN GENERAL - The Board shall make recommendations to agencies on measures to prevent fraud, waste, and abuse relating to covered funds.

(2) RESPONSIVE REPORTS - Not later than 30 days after receipt of a recommendation under paragraph (1), an agency shall submit a report to the President, the congressional committees of jurisdiction, including the Committees on Appropriations of the Senate and House of Representatives, and the Board on--

- (A) whether the agency agrees or disagrees with the recommendations; and
- (B) any actions the agency will take to implement the recommendations.

Sec. 1524. Powers Of The Board.

- (a) In General - The Board shall conduct audits and reviews of spending of covered funds and coordinate on such activities with the inspectors general of the relevant agency to avoid duplication and overlap of work.
- (b) Audits and Reviews - The Board may--
 - (1) conduct its own independent audits and reviews relating to covered funds; and
 - (2) collaborate on audits and reviews relating to covered funds with any inspector general of an agency.
- (c) Authorities-
 - (1) AUDITS AND REVIEWS - In conducting audits and reviews, the Board shall have the authorities provided under section 6 of the Inspector General Act of 1978 (5 U.S.C. App.). Additionally, the Board may issue subpoenas to compel the testimony of persons who are not Federal officers or employees and may enforce such subpoenas in the same manner as provided for inspector general subpoenas under section 6 of the Inspector General Act of 1978 (5 U.S.C. App.).
 - (2) STANDARDS AND GUIDELINES - The Board shall carry out the powers under subsections (a) and (b) in accordance with section 4(b)(1) of the Inspector General Act of 1978 (5 U.S.C. App.).
- (d) Public Hearings - The Board may hold public hearings and Board personnel may conduct necessary inquiries. The head of each agency shall make all officers and employees of that agency available to provide testimony to the Board and Board personnel. The Board may issue subpoenas to compel the testimony of persons who are not Federal officers or employees at such public hearings. Any such subpoenas may be enforced in the same manner as provided for inspector general subpoenas under section 6 of the Inspector General Act of 1978 (5 U.S.C. App.).
- (e) Contracts - The Board may enter into contracts to enable the Board to discharge its duties under this subtitle, including contracts and other arrangements for audits, studies, analyses, and other services with public agencies and with private persons, and make such payments as may be necessary to carry out the duties of the Board.
- (f) Transfer of Funds - The Board may transfer funds appropriated to the Board for expenses to support administrative support services and audits, reviews, or other activities related to oversight by the Board of covered funds to any office of inspector general, the Office of Management and Budget, the General Services Administration, and the Panel.

Sec. 1525. Employment, Personnel, And Related Authorities.

- (a) Employment and Personnel Authorities-

(1) IN GENERAL-

(A) AUTHORITIES - Subject to paragraph (2), the Board may exercise the authorities of subsections (b) through (i) of section 3161 of title 5, United States Code (without regard to subsection (a) of that section).

(B) APPLICATION - For purposes of exercising the authorities described under subparagraph (A), the term 'Chairperson of the Board' shall be substituted for the term 'head of a temporary organization'.

(C) CONSULTATION - In exercising the authorities described under subparagraph (A), the Chairperson shall consult with members of the Board.

(2) EMPLOYMENT AUTHORITIES - In exercising the employment authorities under subsection (b) of section 3161 of title 5, United States Code, as provided under paragraph (1) of this subsection--

(A) paragraph (2) of subsection (b) of section 3161 of that title (relating to periods of appointments) shall not apply; and

(B) no period of appointment may exceed the date on which the Board terminates under section 1530.

(b) Information and Assistance-

(1) IN GENERAL - Upon request of the Board for information or assistance from any agency or other entity of the Federal Government, the head of such entity shall, insofar as is practicable and not in contravention of any existing law, furnish such information or assistance to the Board, or an authorized designee.

(2) REPORT OF REFUSALS - Whenever information or assistance requested by the Board is, in the judgment of the Board, unreasonably refused or not provided, the Board shall report the circumstances to the congressional committees of jurisdiction, including the Committees on Appropriations of the Senate and House of Representatives, without delay.

(c) Administrative Support - The General Services Administration shall provide the Board with administrative support services, including the provision of office space and facilities.

Sec. 1526. Board Website.

(a) Establishment - The Board shall establish and maintain, no later than 30 days after enactment of this Act, a user-friendly, public-facing website to foster greater accountability and transparency in the use of covered funds.

(b) Purpose - The website established and maintained under subsection (a) shall be a portal or gateway to key information relating to this Act and provide connections to other Government websites with related information.

(c) Content and Function - In establishing the website established and maintained under subsection (a), the Board shall ensure the following:

(1) The website shall provide materials explaining what this Act means for citizens. The materials shall be easy to understand and regularly updated.

- (2) The website shall provide accountability information, including findings from audits, inspectors general, and the Government Accountability Office.
- (3) The website shall provide data on relevant economic, financial, grant, and contract information in user-friendly visual presentations to enhance public awareness of the use of covered funds.
- (4) The website shall provide detailed data on contracts awarded by the Federal Government that expend covered funds, including information about the competitiveness of the contracting process, information about the process that was used for the award of contracts, and for contracts over \$500,000 a summary of the contract.
- (5) The website shall include printable reports on covered funds obligated by month to each State and congressional district.
- (6) The website shall provide a means for the public to give feedback on the performance of contracts that expend covered funds.
- (7) The website shall include detailed information on Federal Government contracts and grants that expend covered funds, to include the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), allowing aggregate reporting on awards below \$25,000 or to individuals, as prescribed by the Director of the Office of Management and Budget.
- (8) The website shall provide a link to estimates of the jobs sustained or created by the Act.
- (9) The website shall provide a link to information about announcements of grant competitions and solicitations for contracts to be awarded.
- (10) The website shall include appropriate links to other government websites with information concerning covered funds, including Federal agency and State websites.
- (11) The website shall include a plan from each Federal agency for using funds made available in this Act to the agency.
- (12) The website shall provide information on Federal allocations of formula grants and awards of competitive grants using covered funds.
- (13) The website shall provide information on Federal allocations of mandatory and other entitlement programs by State, county, or other appropriate geographical unit.
- (14) To the extent practical, the website shall provide, organized by the location of the job opportunities involved, links to and information about how to access job opportunities, including, if possible, links to or information about local employment agencies, job banks operated by State workforce agencies, the Department of Labor's CareerOneStop website, State, local and other public agencies receiving Federal funding, and private firms contracted to perform work with Federal funding, in order to direct job seekers to job opportunities created by this Act.
- (15) The website shall be enhanced and updated as necessary to carry out the purposes of this subtitle.

(d) Waiver - The Board may exclude posting contractual or other information on the website on a case-by-case basis when necessary to protect national security

or to protect information that is not subject to disclosure under sections 552 and 552a of title 5, United States Code.

Sec. 1527. Independence Of Inspectors General.

(a) Independent Authority - Nothing in this subtitle shall affect the independent authority of an inspector general to determine whether to conduct an audit or investigation of covered funds.

(b) Requests by Board - If the Board requests that an inspector general conduct or refrain from conducting an audit or investigation and the inspector general rejects the request in whole or in part, the inspector general shall, not later than 30 days after rejecting the request, submit a report to the Board, the head of the applicable agency, and the congressional committees of jurisdiction, including the Committees on Appropriations of the Senate and House of Representatives. The report shall state the reasons that the inspector general has rejected the request in whole or in part. The inspector general's decision shall be final.

Sec. 1528. Coordination With The Comptroller General And State Auditors.

The Board shall coordinate its oversight activities with the Comptroller General of the United States and State auditors.

Sec. 1529. Authorization Of Appropriations.

There are authorized to be appropriated such sums as necessary to carry out this subtitle.

Sec. 1530. Termination Of The Board.

The Board shall terminate on September 30, 2013.

SUBTITLE C--RECOVERY INDEPENDENT ADVISORY PANEL

Sec. 1541. Establishment Of Recovery Independent Advisory Panel.

(a) Establishment - There is established the Recovery Independent Advisory Panel.

(b) Membership - The Panel shall be composed of 5 members who shall be appointed by the President.

(c) Qualifications - Members shall be appointed on the basis of expertise in economics, public finance, contracting, accounting, or any other relevant field.

(d) Initial Meeting - Not later than 30 days after the date on which all members of the Panel have been appointed, the Panel shall hold its first meeting.

(e) Meetings - The Panel shall meet at the call of the Chairperson of the Panel.

(f) Quorum - A majority of the members of the Panel shall constitute a quorum, but a lesser number of members may hold hearings.

(g) Chairperson and Vice Chairperson - The Panel shall select a Chairperson and Vice Chairperson from among its members.

Sec. 1542. Duties Of The Panel.

The Panel shall make recommendations to the Board on actions the Board could take to prevent fraud, waste, and abuse relating to covered funds.

Sec. 1543. Powers Of The Panel.

(a) Hearings - The Panel may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Panel considers advisable to carry out this subtitle.

(b) Information From Federal Agencies - The Panel may secure directly from any agency such information as the Panel considers necessary to carry out this subtitle. Upon request of the Chairperson of the Panel, the head of such agency shall furnish such information to the Panel.

(c) Postal Services - The Panel may use the United States mails in the same manner and under the same conditions as agencies of the Federal Government.

(d) Gifts - The Panel may accept, use, and dispose of gifts or donations of services or property.

Sec. 1544. Panel Personnel Matters.

(a) Compensation of Members - Each member of the Panel who is not an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Panel. All members of the Panel who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

(b) Travel Expenses - The members of the Panel shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Panel.

(c) Staff-

(1) IN GENERAL - The Chairperson of the Panel may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the Panel to perform its duties. The employment of an executive director shall be subject to confirmation by the Panel.

(2) COMPENSATION - The Chairperson of the Panel may fix the compensation of the executive director and other personnel without regard to chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

(3) PERSONNEL AS FEDERAL EMPLOYEES-

(A) IN GENERAL - The executive director and any personnel of the Panel who are employees shall be employees under section 2105 of title 5, United States Code, for purposes of chapters 63, 81, 83, 84, 85, 87, 89, 89A, 89B, and 90 of that title.

(B) MEMBERS OF PANEL - Subparagraph (A) shall not be construed to apply to members of the Panel.

(d) Detail of Government Employees - Any Federal Government employee may be detailed to the Panel without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(e) Procurement of Temporary and Intermittent Services - The Chairperson of the Panel may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

(f) Administrative Support - The General Services Administration shall provide the Panel with administrative support services, including the provision of office space and facilities.

Sec. 1545. Termination Of The Panel.

The Panel shall terminate on September 30, 2013.

Sec. 1546. Authorization Of Appropriations.

There are authorized to be appropriated such sums as necessary to carry out this subtitle.

SUBTITLE D--ADDITIONAL ACCOUNTABILITY AND TRANSPARENCY REQUIREMENTS

Sec. 1551. Authority To Establish Separate Funding Accounts.

Although this Act provides supplemental appropriations for programs, projects, and activities in existing Treasury accounts, to facilitate tracking these funds through Treasury and agency accounting systems, the Secretary of the Treasury shall ensure that all funds appropriated in this Act shall be established in separate Treasury accounts, unless a waiver from this provision is approved by the Director of the Office of Management and Budget.

Sec. 1552. Set-Aside For State And Local Government Reporting And Recordkeeping.

Federal agencies receiving funds under this Act, may, after following the notice and comment rulemaking requirements under the Administrative Procedures Act (5 U.S.C. 500), reasonably adjust applicable limits on administrative expenditures for Federal awards to help award recipients defray the costs of data collection requirements initiated pursuant to this Act.

Sec. 1553. Protecting State And Local Government And Contractor Whistleblowers.

(a) Prohibition of Reprisals - An employee of any non-Federal employer receiving covered funds may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct), a court or grand jury, the head of a Federal agency, or their representatives, information that the employee reasonably believes is evidence of--

- (1) gross mismanagement of an agency contract or grant relating to covered funds;
- (2) a gross waste of covered funds;
- (3) a substantial and specific danger to public health or safety related to the implementation or use of covered funds;
- (4) an abuse of authority related to the implementation or use of covered funds; or
- (5) a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

(b) Investigation of Complaints-

(1) IN GENERAL - A person who believes that the person has been subjected to a reprisal prohibited by subsection (a) may submit a complaint regarding the reprisal to the appropriate inspector general. Except as provided under paragraph (3), unless the inspector general determines that the complaint is frivolous, does not relate to covered funds, or another Federal or State judicial or administrative proceeding has previously been invoked to resolve such complaint, the inspector general shall investigate the complaint and, upon completion of such investigation, submit a report of the findings of the investigation to the person, the person's employer, the head of the appropriate agency, and the Board.

(2) TIME LIMITATIONS FOR ACTIONS-

(A) IN GENERAL - Except as provided under subparagraph (B), the inspector general shall, not later than 180 days after receiving a complaint under paragraph (1)--

- (i) make a determination that the complaint is frivolous, does not relate to covered funds, or another Federal or State judicial or administrative proceeding has previously been invoked to resolve such complaint; or
- (ii) submit a report under paragraph (1).

(B) EXTENSIONS-

(i) VOLUNTARY EXTENSION AGREED TO BETWEEN INSPECTOR GENERAL AND COMPLAINANT - If the

inspector general is unable to complete an investigation under this section in time to submit a report within the 180-day period specified under subparagraph (A) and the person submitting the complaint agrees to an extension of time, the inspector general shall submit a report under paragraph (1) within such additional period of time as shall be agreed upon between the inspector general and the person submitting the complaint.

(ii) EXTENSION GRANTED BY INSPECTOR GENERAL - If the inspector general is unable to complete an investigation under this section in time to submit a report within the 180-day period specified under subparagraph (A), the inspector general may extend the period for not more than 180 days without agreeing with the person submitting the complaint to such extension, provided that the inspector general provides a written explanation (subject to the authority to exclude information under paragraph (4)(C)) for the decision, which shall be provided to both the person submitting the complaint and the non-Federal employer.

(iii) SEMI-ANNUAL REPORT ON EXTENSIONS - The inspector general shall include in semi-annual reports to Congress a list of those investigations for which the inspector general received an extension.

(3) DISCRETION NOT TO INVESTIGATE COMPLAINTS-

(A) IN GENERAL - The inspector general may decide not to conduct or continue an investigation under this section upon providing to the person submitting the complaint and the non-Federal employer a written explanation (subject to the authority to exclude information under paragraph (4)(C)) for such decision.

(B) ASSUMPTION OF RIGHTS TO CIVIL REMEDY - Upon receipt of an explanation of a decision not to conduct or continue an investigation under subparagraph (A), the person submitting a complaint shall immediately assume the right to a civil remedy under subsection (c)(3) as if the 210-day period specified under such subsection has already passed.

(C) SEMI-ANNUAL REPORT - The inspector general shall include in semi-annual reports to Congress a list of those investigations the inspector general decided not to conduct or continue under this paragraph.

(4) ACCESS TO INVESTIGATIVE FILE OF INSPECTOR GENERAL-

(A) IN GENERAL - The person alleging a reprisal under this section shall have access to the investigation file of the appropriate inspector general in accordance with section 552a of title 5, United States Code (commonly referred to as the 'Privacy Act'). The investigation of the inspector general shall be deemed closed for

purposes of disclosure under such section when an employee files an appeal to an agency head or a court of competent jurisdiction.

(B) CIVIL ACTION - In the event the person alleging the reprisal brings suit under subsection (c)(3), the person alleging the reprisal and the non-Federal employer shall have access to the investigative file of the inspector general in accordance with the Privacy Act.

(C) EXCEPTION - The inspector general may exclude from disclosure--

(i) information protected from disclosure by a provision of law; and

(ii) any additional information the inspector general determines disclosure of which would impede a continuing investigation, provided that such information is disclosed once such disclosure would no longer impede such investigation, unless the inspector general determines that disclosure of law enforcement techniques, procedures, or information could reasonably be expected to risk circumvention of the law or disclose the identity of a confidential source.

(5) PRIVACY OF INFORMATION - An inspector general investigating an alleged reprisal under this section may not respond to any inquiry or disclose any information from or about any person alleging such reprisal, except in accordance with the provisions of section 552a of title 5, United States Code, or as required by any other applicable Federal law.

(c) Remedy and Enforcement Authority-

(1) BURDEN OF PROOF-

(A) DISCLOSURE AS CONTRIBUTING FACTOR IN REPRISAL-

(i) IN GENERAL - A person alleging a reprisal under this section shall be deemed to have affirmatively established the occurrence of the reprisal if the person demonstrates that a disclosure described in subsection (a) was a contributing factor in the reprisal.

(ii) USE OF CIRCUMSTANTIAL EVIDENCE - A disclosure may be demonstrated as a contributing factor in a reprisal for purposes of this paragraph by circumstantial evidence, including--

(I) evidence that the official undertaking the reprisal knew of the disclosure; or

(II) evidence that the reprisal occurred within a period of time after the disclosure such that a reasonable person could conclude that the disclosure was a contributing factor in the reprisal.

(B) OPPORTUNITY FOR REBUTTAL - The head of an agency may not find the occurrence of a reprisal with respect to a reprisal that is affirmatively established under subparagraph (A) if the non-

Federal employer demonstrates by clear and convincing evidence that the non-Federal employer would have taken the action constituting the reprisal in the absence of the disclosure.

(2) AGENCY ACTION - Not later than 30 days after receiving an inspector general report under subsection (b), the head of the agency concerned shall determine whether there is sufficient basis to conclude that the non-Federal employer has subjected the complainant to a reprisal prohibited by subsection (a) and shall either issue an order denying relief in whole or in part or shall take 1 or more of the following actions:

(A) Order the employer to take affirmative action to abate the reprisal.

(B) Order the employer to reinstate the person to the position that the person held before the reprisal, together with the compensation (including back pay), compensatory damages, employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.

(C) Order the employer to pay the complainant an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the complainant for, or in connection with, bringing the complaint regarding the reprisal, as determined by the head of the agency or a court of competent jurisdiction.

(3) CIVIL ACTION - If the head of an agency issues an order denying relief in whole or in part under paragraph (1), has not issued an order within 210 days after the submission of a complaint under subsection (b), or in the case of an extension of time under subsection (b)(2)(B)(i), within 30 days after the expiration of the extension of time, or decides under subsection (b)(3) not to investigate or to discontinue an investigation, and there is no showing that such delay or decision is due to the bad faith of the complainant, the complainant shall be deemed to have exhausted all administrative remedies with respect to the complaint, and the complainant may bring a de novo action at law or equity against the employer to seek compensatory damages and other relief available under this section in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy. Such an action shall, at the request of either party to the action, be tried by the court with a jury.

(4) JUDICIAL ENFORCEMENT OF ORDER - Whenever a person fails to comply with an order issued under paragraph (2), the head of the agency shall file an action for enforcement of such order in the United States district court for a district in which the reprisal was found to have occurred. In any action brought under this paragraph, the court may grant appropriate relief, including injunctive relief, compensatory and exemplary damages, and attorney's fees and costs.

(5) JUDICIAL REVIEW - Any person adversely affected or aggrieved by an order issued under paragraph (2) may obtain review of the order's conformance with this subsection, and any regulations issued to carry out this section, in the United States court of appeals for a circuit in which the reprisal is alleged in the order to have occurred. No petition seeking such review may be filed more than 60 days after issuance of the order by the head of the agency. Review shall conform to chapter 7 of title 5, United States Code.

(d) Nonenforceability of Certain Provisions Waiving Rights and Remedies or Requiring Arbitration of Disputes-

(1) WAIVER OF RIGHTS AND REMEDIES - Except as provided under paragraph (3), the rights and remedies provided for in this section may not be waived by any agreement, policy, form, or condition of employment, including by any predispute arbitration agreement.

(2) PREDISPUTE ARBITRATION AGREEMENTS - Except as provided under paragraph (3), no predispute arbitration agreement shall be valid or enforceable if it requires arbitration of a dispute arising under this section.

(3) EXCEPTION FOR COLLECTIVE BARGAINING AGREEMENTS - Notwithstanding paragraphs (1) and (2), an arbitration provision in a collective bargaining agreement shall be enforceable as to disputes arising under the collective bargaining agreement.

(e) Requirement to Post Notice of Rights and Remedies - Any employer receiving covered funds shall post notice of the rights and remedies provided under this section.

(f) Rules of Construction-

(1) NO IMPLIED AUTHORITY TO RETALIATE FOR NON-PROTECTED DISCLOSURES - Nothing in this section may be construed to authorize the discharge of, demotion of, or discrimination against an employee for a disclosure other than a disclosure protected by subsection (a) or to modify or derogate from a right or remedy otherwise available to the employee.

(2) RELATIONSHIP TO STATE LAWS - Nothing in this section may be construed to preempt, preclude, or limit the protections provided for public or private employees under State whistleblower laws.

(g) Definitions - In this section:

(1) ABUSE OF AUTHORITY - The term `abuse of authority' means an arbitrary and capricious exercise of authority by a contracting official or employee that adversely affects the rights of any person, or that results in personal gain or advantage to the official or employee or to preferred other persons.

(2) COVERED FUNDS - The term `covered funds' means any contract, grant, or other payment received by any non-Federal employer if--

(A) the Federal Government provides any portion of the money or property that is provided, requested, or demanded; and

(B) at least some of the funds are appropriated or otherwise made available by this Act.

(3) EMPLOYEE - The term `employee'--

(A) except as provided under subparagraph (B), means an individual performing services on behalf of an employer; and
(B) does not include any Federal employee or member of the uniformed services (as that term is defined in section 101(a)(5) of title 10, United States Code).

(4) NON-FEDERAL EMPLOYER - The term `non-Federal employer'--

(A) means any employer--

(i) with respect to covered funds--

(I) the contractor, subcontractor, grantee, or recipient, as the case may be, if the contractor, subcontractor, grantee, or recipient is an employer; and

(II) any professional membership organization, certification or other professional body, any agent or licensee of the Federal government, or any person acting directly or indirectly in the interest of an employer receiving covered funds; or

(ii) with respect to covered funds received by a State or local government, the State or local government receiving the funds and any contractor or subcontractor of the State or local government; and

(B) does not mean any department, agency, or other entity of the Federal Government.

(5) STATE OR LOCAL GOVERNMENT - The term `State or local government' means--

(A) the government of each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, or any other territory or possession of the United States; or

(B) the government of any political subdivision of a government listed in subparagraph (A).

Sec. 1554. Special Contracting Provisions.

To the maximum extent possible, contracts funded under this Act shall be awarded as fixed-price contracts through the use of competitive procedures. A summary of any contract awarded with such funds that is not fixed-price and not awarded using competitive procedures shall be posted in a special section of the website established in section 1526.

TITLE XVI--GENERAL PROVISIONS--THIS ACT

RELATIONSHIP TO OTHER APPROPRIATIONS

Sec. 1601. Each amount appropriated or made available in this Act is in addition to amounts otherwise appropriated for the fiscal year involved. Enactment of this

Act shall have no effect on the availability of amounts under the Continuing Appropriations Resolution, 2009 (division A of Public Law 110-329).

PREFERENCE FOR QUICK-START ACTIVITIES

SEC. 1602. In using funds made available in this Act for infrastructure investment, recipients shall give preference to activities that can be started and completed expeditiously, including a goal of using at least 50 percent of the funds for activities that can be initiated not later than 120 days after the date of the enactment of this Act. Recipients shall also use grant funds in a manner that maximizes job creation and economic benefit.

PERIOD OF AVAILABILITY

SEC. 1603. All funds appropriated in this Act shall remain available for obligation until September 30, 2010, unless expressly provided otherwise in this Act.

LIMIT ON FUNDS

SEC. 1604. None of the funds appropriated or otherwise made available in this Act may be used by any State or local government, or any private entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

BUY AMERICAN

Sec. 1605. Use of American Iron, Steel, and Manufactured Goods. (a) None of the funds appropriated or otherwise made available by this Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States.

(b) Subsection (a) shall not apply in any case or category of cases in which the head of the Federal department or agency involved finds that--

- (1) applying subsection (a) would be inconsistent with the public interest;
- (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
- (3) inclusion of iron, steel, and manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

(c) If the head of a Federal department or agency determines that it is necessary to waive the application of subsection (a) based on a finding under subsection (b), the head of the department or agency shall publish in the Federal Register a detailed written justification as to why the provision is being waived.

(d) This section shall be applied in a manner consistent with United States obligations under international agreements.

WAGE RATE REQUIREMENTS

SEC. 1606. Notwithstanding any other provision of law and in a manner consistent with other provisions in this Act, all laborers and mechanics employed

by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to this Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. With respect to the labor standards specified in this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (64 Stat. 1267; 5 U.S.C. App.) and section 3145 of title 40, United States Code.

ADDITIONAL FUNDING DISTRIBUTION AND ASSURANCE OF APPROPRIATE USE OF FUNDS

SEC. 1607. (a) Certification by Governor - Not later than 45 days after the date of enactment of this Act, for funds provided to any State or agency thereof, the Governor of the State shall certify that: (1) the State will request and use funds provided by this Act; and (2) the funds will be used to create jobs and promote economic growth.

(b) Acceptance by State Legislature - If funds provided to any State in any division of this Act are not accepted for use by the Governor, then acceptance by the State legislature, by means of the adoption of a concurrent resolution, shall be sufficient to provide funding to such State.

(c) Distribution - After the adoption of a State legislature's concurrent resolution, funding to the State will be for distribution to local governments, councils of government, public entities, and public-private entities within the State either by formula or at the State's discretion.

ECONOMIC STABILIZATION CONTRACTING

SEC. 1608. REFORM OF CONTRACTING PROCEDURES UNDER EESA. Section 107(b) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5217(b)) is amended by inserting 'and individuals with disabilities and businesses owned by individuals with disabilities (for purposes of this subsection the term 'individual with disability' has the same meaning as the term 'handicapped individual' as that term is defined in section 3(f) of the Small Business Act (15 U.S.C. 632(f)),' after '(12 U.S.C. 1441a(r)(4)),'.

SEC. 1609. (a) FINDINGS-

- (1) The National Environmental Policy Act protects public health, safety and environmental quality: by ensuring transparency, accountability and public involvement in federal actions and in the use of public funds;
- (2) When President Nixon signed the National Environmental Policy Act into law on January 1, 1970, he said that the Act provided the 'direction' for the country to 'regain a productive harmony between man and nature';
- (3) The National Environmental Policy Act helps to provide an orderly process for considering federal actions and funding decisions and prevents litigation and delay that would otherwise be inevitable and existed prior to the establishment of the National Environmental Policy Act.

(b) Adequate resources within this bill must be devoted to ensuring that applicable environmental reviews under the National Environmental Policy Act are completed on an expeditious basis and that the shortest existing applicable process under the National Environmental Policy Act shall be utilized.

(c) The President shall report to the Senate Environment and Public Works Committee and the House Natural Resources Committee every 90 days following the date of enactment until September 30, 2011 on the status and progress of projects and activities funded by this Act with respect to compliance with National Environmental Policy Act requirements and documentation.

SEC. 1610. (a) None of the funds appropriated or otherwise made available by this Act, for projects initiated after the effective date of this Act, may be used by an executive agency to enter into any Federal contract unless such contract is entered into in accordance with the Federal Property and Administrative Services Act (41 U.S.C. 253) or chapter 137 of title 10, United States Code, and the Federal Acquisition Regulation, unless such contract is otherwise authorized by statute to be entered into without regard to the above referenced statutes.

(b) All projects to be conducted under the authority of the Indian Self-Determination and Education Assistance Act, the Tribally-Controlled Schools Act, the Sanitation and Facilities Act, the Native American Housing and Self-Determination Assistance Act and the Buy-Indian Act shall be identified by the appropriate Secretary and the appropriate Secretary shall incorporate provisions to ensure that the agreement conforms with the provisions of this Act regarding the timing for use of funds and transparency, oversight, reporting, and accountability, including review by the Inspectors General, the Accountability and Transparency Board, and Government Accountability Office, consistent with the objectives of this Act.

Sec. 1611. Hiring American Workers in Companies Receiving TARP Funding. (a) SHORT TITLE - This section may be cited as the 'Employ American Workers Act'.

(b) PROHIBITION-

(1) IN GENERAL - Notwithstanding any other provision of law, it shall be unlawful for any recipient of funding under title I of the Emergency Economic Stabilization Act of 2008 (Public Law 110-343) or section 13 of the Federal Reserve Act (12 U.S.C. 342 et seq.) to hire any nonimmigrant described in section 101(a)(15)(h)(i)(b) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(h)(i)(b)) unless the recipient is in compliance with the requirements for an H-1B dependent employer (as defined in section 212(n)(3) of such Act (8 U.S.C. 1182(n)(3))), except that the second sentence of section 212(n)(1)(E)(ii) of such Act shall not apply.

(2) DEFINED TERM - In this subsection, the term 'hire' means to permit a new employee to commence a period of employment.

(c) Sunset Provision - This section shall be effective during the 2-year period beginning on the date of the enactment of this Act.

SEC. 1612. During the current fiscal year not to exceed 1 percent of any appropriation made available by this Act may be transferred by an agency head between such appropriations funded in this Act of that department or agency:

Provided, That such appropriations shall be merged with and available for the same purposes, and for the same time period, as the appropriation to which transferred: *Provided further*, That the agency head shall notify the Committees on Appropriations of the Senate and House of Representatives of the transfer 15 days in advance: *Provided further*, That notice of any transfer made pursuant to this authority be posted on the website established by the Recovery Act Accountability and Transparency Board 15 days following such transfer: *Provided further*, That the authority contained in this section is in addition to transfer authorities otherwise available under current law: *Provided further*, That the authority provided in this section shall not apply to any appropriation that is subject to transfer provisions included elsewhere in this Act.