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OFFICE OF MANAGEMENT AND BUDGET
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THE DIRECTOR

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MEMORANDUM FOR THE HEADS OF DEPARTMENTS AND AGENCIES

FROM: Peter R. Orszag
Director

A handwritten signature in black ink, appearing to read "P. Orszag", written over the printed name and title.

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

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

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

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

- Funds are awarded and distributed in a prompt, fair, and reasonable manner;
- The recipients and uses of all funds are transparent to the public, and the public benefits of these funds are reported clearly, accurately, and in a timely manner;
- Funds are used for authorized purposes and instances of fraud, waste, error, and abuse are mitigated;
- Projects funded under this Act avoid unnecessary delays and cost overruns; and
- Program goals are achieved, including specific program outcomes and improved results on broader economic indicators.

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

Thank you for your attention to these matters.

Attachment

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

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Section 1 – General Information

1.1 What is the purpose of this Guidance?

The purpose of this Guidance is to promulgate an initial set of government-wide requirements and guidelines that Federal agencies must immediately implement or prepare for in order to effectively manage activities under the American Recovery and Reinvestment Act (Recovery Act) of 2009.

The Guidance outlines necessary enhancements to standard processes for awarding and overseeing funds to meet accelerated timeframes and other unique challenges posed by the Recovery Act's transparency and accountability framework. More specifically, the Guidance:

- Answers questions and clarifies issues related to the mechanics of implementing the Recovery Act;
- Provides initial clarification on what information will be reported on Recovery.gov and what information will be required to be reported on agency websites;
- Instructs agencies on initial steps which must be taken to meet these reporting requirements, including incorporation of recipient reporting requirements in award documents and communications with funding recipients; and
- Establishes a common framework for agencies to manage the risks associated with implementing Recovery Act requirements.

1.2 What is the goal of this Guidance?

The goal of this Guidance is to establish and clarify the required steps Federal agencies must take to meet the following crucial accountability objectives:

- Funds are awarded and distributed in a prompt, fair, and reasonable manner;
- The recipients and uses of all funds are transparent to the public, and the public benefits of these funds are reported clearly, accurately, and in a timely manner;
- Funds are used for authorized purposes and instances of fraud, waste, error, and abuse are mitigated;
- Projects funded under this Act avoid unnecessary delays and cost overruns; and
- Program goals are achieved, including specific program outcomes and improved results on broader economic indicators.

1.3 Under what authority is this Guidance being issued?

This Guidance is issued under the authority of 31 U.S.C. 1111; Reorganization Plan No. 2 of 1970; Executive Order 11541; the Chief Financial Officers Act of 1990 (P.L. 101-576); the Office of Federal Procurement Policy Act (41 U.S.C. Chap. 7); and the Federal Funding Accountability and Transparency Act of 2006 (P.L. 109-282).

1.4 To which agencies does this Guidance apply?

The provisions of this Guidance apply to all Executive Branch departments and agencies involved in or impacted by the Recovery Act or which otherwise perform services for agencies that receive such appropriations.

The Head of the applicable Federal agency is responsible for the requirements in this Guidance and must determine what, if any, specific actions at the bureau or sub-agency level will be required to meet these responsibilities.

1.5 What are the critical requirements or elements of this Guidance for which agencies must begin to immediately implement or prepare?

[Further detail and explanation on each of the areas identified below are provided in Sections 2 through 7 and the Appendices of this Guidance.]

The Recovery Act and this Guidance include several provisions that require agencies to take steps beyond standard practice, including reporting, information collection, budget execution, risk management, and specific actions related to award type.

Transparency and Reporting

- **Major Communications.** Beginning immediately, agencies receiving Recovery Act funds should determine which major communications are appropriate for posting on Recovery.gov. (see Section 2.2 and Appendix 1 for required data fields and reporting instructions)
- **Formula Block Grant Allocation Reports.** As soon as information becomes available, Federal agencies are required to provide details on the allocations made for each formula block grant. (see Section 2.3 and Appendix 1 for required data fields and reporting instructions)
- **Weekly Updates.** Starting March 3rd, agencies must submit weekly reports providing a breakdown of funding, major actions taken to date, and major planned actions. (see Section 2.4 and Appendix 1 for required data fields and reporting instructions)
- **Monthly Financial Reports.** Starting May 8th, agencies must provide monthly financial reports providing obligations, expenditures, and other financial data by Treasury Account, vendor, and award number, as well as information on allocations of mandatory and entitlement programs by State, county, or other appropriate geographical unit. (see Section 2.5)
- **Award Transaction Data Feeds.** Starting on May 5th, agencies must provide all Recovery Act assistance transactions (primarily grants, loans, and loan guarantees) in the standard format currently provided to USASpending.gov. Agencies must also begin planning now for how they would provide this information on a more frequent basis if a decision is made to do so. (see Section 2.6)
- **Agency Recovery Plan.** No later than May 1st, agencies must provide their “Agency Recovery Plan” that describes both broad recovery goals and the agency’s coordinating efforts. Agencies should work with their Office of Management and Budget (OMB) representative to set an appropriate submission date and review process. (see Section 2.7)

- Recovery Program Plans. No later than May 1st, agencies must provide a separate “Recovery Program Plan” for each Recovery Act program named in the legislation. Agencies should work with their OMB representative to set an appropriate submission date and review process. (see Section 2.8)

Information Collection and Dissemination

- Starting immediately, agencies must ensure all funds provided by the Recovery Act are clearly distinguishable from non-Recovery Act funds in all agency financial systems, business systems (i.e., grant and contract writing systems), and reporting systems.
- To support reporting requirements, agencies need to have the appropriate contract/grant/loan number recorded on the obligation, expenditure, and other transactions in their financial system.
- Starting immediately, agencies must have all award documents and related communications include the clauses and provisions necessary to clarify that award recipients are legally obligated and must meet their reporting requirements under the Recovery Act and this Guidance.
- To facilitate transparency and reporting, agencies should establish a page on their existing website dedicated to the Recovery Act (i.e., www.agency.gov/recovery), which will link to Recovery.gov and will provide a single portal for all agency-specific information related to the Act.
- For each government contract or order (or modification to an existing contract or order) over \$500,000, agencies should provide a summary of the contract or order (or modification to an existing contract or order), including a description of the required products and services, which will be made available publicly and linked to Recovery.gov.
- 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 Recovery Act funds shall be posted in a special section of the web site Recovery.gov unless the contract or order is both fixed-price and competitively awarded.
- By March 15th, each agency should begin identifying to OMB’s E-Gov Office current agency systems that collect or will collect significant Recovery Act program information from recipients, but are currently unable to make this information available to the public.
- Within one week of issuing this guidance, agencies must establish a dedicated page on their website for recovery efforts. Appendix 2 describes agency website requirements, guidelines, and best practices.

Budget Execution

- Agencies must establish unique Treasury Appropriation Fund Symbols (TAFSs) in their financial systems for all Recovery Act funding, unless a waiver is granted by the Director of OMB by February 25th.
- Agencies should start planning now to submit apportionment requests to OMB in as expeditious a manner as possible.
- Agencies receiving Recovery Act funds should determine whether they plan to procure goods and services from other agencies in inter-agency agreements so they can inform the performing agencies as soon as possible.

- Agencies in interagency agreements that perform services for other agencies that receive Recovery Act funds should start planning now on fulfilling the reporting requirements resulting from the law.
- Agencies that administer TAFSS that receive non-expenditure transfers or expenditure transfers from TAFSS that receive Recovery Act funds should start planning now on fulfilling the reporting requirements resulting from the law.

Risk Management

- Agencies must immediately review the risk framework provided in Chapter 3 of this Guidance, capture and report against the common government-wide accountability measures, identify any additional agency-specific risks not provided for in Chapter 3, prioritize risk areas, and initiate risk mitigation strategies.
- At a minimum, immediate risk mitigation actions must address:
 - Audits and investigation of Recovery Act funds to identify and prevent wasteful spending and minimize waste, fraud, and abuse;
 - Qualified personnel overseeing Recovery Act funds;
 - Competitive awards maximized;
 - Timely award of dollars;
 - Timely expenditure of dollars;
 - Cost overruns minimized; and
 - Improper payments minimized.
- To assess how well the Federal government and funding recipients are progressing in meeting the items above, agencies should begin preparing to track progress against the above accountability measures.
- To assess risks for individual programs that receive Recovery Act funding, agencies should consider the following when assessing risk (note that the following list is intended to be illustrative):
 - Which programs are receiving (or providing) the most funding;
 - Are program outputs and outcomes clear and measurable and do agencies have tools to measure those outputs and outcomes;
 - Are existing resources sufficient to achieve program objectives;
 - Who is (are) the final recipient(s) of funds (e.g., contractor, sub-contractor, state, locality, educational institution);
 - Are existing internal controls sufficient to mitigate the risk of waste, fraud, and abuse adequately;
 - Are there performance issues with (potential) funding recipients; and
 - Are there leading indicators or lagging indicators (e.g., error measurements) to monitor ongoing program performance.

Actions Specific to Award Type

- For **contract** awards, agencies must:
 - In addition to the Federal Acquisition Regulation (FAR) Part 5 requirements for pre-solicitation and award notices, publish pre-solicitation and award notices of orders under task and delivery order contracts on FedBizOpps;

- Include special formatting for pre-solicitation and award notices in FedBizOpps and award reporting in the Federal Procurement Data System (FPDS) to distinguish Recovery Act actions;
 - Include terms and conditions in contract documents necessary for effective implementation of Recovery Act data collection and accountability requirements;
 - For each government contract or order (or modification to an existing contract or order) over \$500,000, agencies should provide a summary of the contract or order (or modification to an existing contract or order), including a description of the required products and services, which will be made available publicly and linked to Recovery.gov; and
 - 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 shall be posted in a special section of the web site Recovery.gov unless the contract or order is both fixed-price and competitively awarded.
- For **grant and cooperative agreement awards**, agencies must:
 - Request an expedited “Recovery Act” Catalog of Federal Domestic Assistance (CFDA) number for new Recovery Act programs or existing programs for which the Recovery Act provides for compliance requirements that are significantly different for the Recovery Act funding;
 - Provide notification of existing CFDA program descriptions that will be modified during the next CFDA update cycle to reflect Recovery Act authorities, financial information, etc.;
 - Within twenty (20) days after enactment of the Recovery Act, agencies shall post funding opportunity announcements (i.e., “synopses”) to Grants.gov;
 - Within thirty (30) days of enactment, the Grants.gov synopsis shall link to the full announcement on the agency website;
 - Include prominent labels and tags in funding opportunity synopses, full funding opportunity announcements, and award notices that clearly distinguish them as “Recovery Act” actions;
 - Begin outreach efforts with potential applicants to create or update their profiles in Dun and Bradstreet Universal Numbering System (DUNS) and Central Contractor Registration (CCR);
 - Provide their Weekly Report allocations for each formula grant award (see section 2.4);
 - Include terms and conditions in award documents necessary for effective implementation of Recovery Act data collection and accountability requirements; and
 - Identify opportunities to streamline data collection to help alleviate reporting burden on funding recipients.
 - For **loans and loan guarantees**, agencies must:
 - Request an expedited “Recovery Act” Catalog of Federal Domestic Assistance (CFDA) number for new Recovery Act programs, or existing programs for which the Recovery Act provides for compliance requirements that are significantly different for the Recovery Act funding; modify existing CFDA program descriptions to reflect Recovery Act authorities, financial information, etc.;

- Publish funding opportunity notices and/or funding allocation information on GovLoans.gov;
- Include prominent labels and tags in funding opportunity synopses, full funding opportunity announcements, and award notices that clearly distinguish them as Recovery Act actions;
- Begin outreach efforts with potential applicants to create or update their profiles in Dun and Bradstreet Universal Numbering System (DUNS) and Central Contractor Registration (CCR);
- Include terms and conditions in loan or loan guarantee award documents necessary for effective implementation of Recovery Act data collection and accountability requirements; and
- Identify opportunities to streamline data collection to help alleviate reporting burden on funding recipients.

Appendices 1 & 2 describe specific immediate transparency and reporting requirements. Additional guidance on other reporting requirements will be forthcoming.

1.6 What additional responsibilities exist for Executive Branch agencies?

The Executive Branch shall distribute Recovery Act funds in accordance with:

- All anti-discrimination and equal opportunity statutes, regulations, and Executive Orders that apply to the expenditure of funds under Federal contracts, grants, cooperative agreements, loans, and other forms of Federal assistance. Grant-making agencies shall ensure that their recipients comply with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and any program-specific statutes with anti-discrimination requirements. Generally applicable civil rights laws also continue to apply, including (but not limited to) the Fair Housing Act, the Fair Credit Reporting Act, the Americans With Disabilities Act, Title VII of the Civil Rights Act of 1964, the Equal Educational Opportunities Act, the Age Discrimination in Employment Act, and the Uniform Relocation Act.
- The National Environmental Policy Act, the National Historic Preservation Act, and related statutes, including requirements for plans and projects to be reviewed and documented in accordance with those processes.
- Section 1605 of the Recovery Act, which provides (subject to certain exceptions) that "[n]one 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."
- Section 1606 of the Recovery Act, which requires the payment of not less than the prevailing wages under the Davis-Bacon Act to "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."

1.7 Will additional Guidance be issued?

Yes. This Guidance document is intended to cover items critical to the first phase of Recovery Act implementation. More detailed guidance covering a fuller range of items will be issued 30-60 days after enactment.

In addition, OMB is creating the Recovery Act Architecture Package to support shared understanding of technical requirements and solution approaches across all stakeholders. Drafts of this document will be issued for review and comment on an accelerated schedule shortly after issuance of this guidance.

1.8 Are there specific instructions for transmitting required reporting to OMB or to other appropriate recipients?

Throughout this Guidance, there are numerous instances where Federal agencies are required to submit information to OMB or to other locations. Specific reporting instructions are provided in Appendices 1 and 2 of this Guidance or will otherwise be provided in future guidance.

1.9 Does this Guidance automatically provide Federal agencies with a waiver of existing legislative or administrative requirements?

No. If an agency believes it is appropriate to seek a waiver of an existing requirement in order to facilitate effective implementation of the Recovery Act, the agency shall pursue such waiver consistent with existing processes.

Section 2 – Agency Plans and Public Reporting

2.1 What reporting is required under the Recovery Act?

There are eight different levels of reporting necessary to meet accountability and transparency objectives of the Recovery Act and this Guidance. The reporting requirements in this Guidance apply at the department or agency level, except those reporting requirements in Section 2.8.

Note: Each reporting requirement below should be considered a part of the agency-wide and program-specific plans required in Sections 2.7 and 2.8. Thus, the planning process begins immediately and certain aspects of the plan will be made available on Recovery.gov and agency websites as they are ready for publication. The completed plans required by May 1st in Sections 2.7 and 2.8 will build off these earlier planning documents and fill in the remaining required elements.

Section	Reporting Requirement	Period
2.2	Major communications	Immediate/Ongoing
2.3	Formula block grant allocation reports	Immediate/Ongoing
2.4	Initial weekly reports to help populate early phases of Recovery.gov	3/3/09 – 5/12/09
2.5	Monthly financial reports	Starting 5/8/09
2.6	Award-level reporting consistent with what is currently required for USAspending.gov	Starting 5/5/09
2.7	Agency-wide Recovery Act plans	NLT 5/1/09
2.8	Program-specific Recovery Act plans	NLT 5/1/09
2.9	Recipient reporting	Starting 7/10/09

2.2 What communications materials are agencies required for posting to Recovery.gov?

Beginning immediately, all Federal agencies receiving Recovery Act funds should determine which major communications are appropriate for posting to the ‘Announcements’ section of Recovery.gov. These materials should be in a press release format, and should include a clear heading and short (no more than 5 sentences) overview of the main communications points. Items should be of interest to a broad cross section of the American public, and focus on Presidential priorities and programs with a major impact.

In addition, agencies should provide notification of any major press events or videos produced for the implementation of the Recovery Act. Recovery.gov will feature videos highlighting both major actions being taken by the Federal government as well as the impact the Recovery Act is having for the American people.

These communication materials should be cleared by the senior accountable official at the agency or his/her designee.

Instructions for reporting this information are included in Appendix 1.

2.3 What is required for the formula block grant allocation reports?

As soon as information becomes available, Federal agencies are required to provide details on the allocations made for each formula block grant.

These formula block grant reports should be cleared by the senior accountable official at the agency or his/her designee.

See Appendix 1 for required data fields and reporting instructions.

2.4 What is required for the initial weekly reports?

Starting on Tuesday March 3rd, and on each Tuesday thereafter through May 12th, all agencies receiving Recovery Act funds will submit the following information to OMB for cumulative recovery activity through the preceding Friday. All amounts are cumulative, year-to-date.

- By Treasury Account, total appropriations, total obligations, and total expenditures as recorded in agency financial systems on a cumulative basis; and
- A short bulleted list of the major actions taken to date and major planned actions. “Major” actions include those of likely interest to senior government officials, Congress, and the public.

Please note: Expenditure data is optional on the weekly report until April 6th. Other required amounts should be reported as zero if unknown at the time of reporting.

This information will be made publically available on Recovery.gov, and should be provided according to the format and instructions included in Appendix 1.

These weekly reports should be cleared by the senior accountable official at the agency or his/her designee.

2.5 What is required for the monthly financial reports?

Starting on May 8th, agencies must begin submitting financial data for the population of Recovery.gov. Agencies will submit obligations and expenditures by TAFS, vendor, contact/grant/loan number, program, and other data elements.¹ Agency submissions will take place no later than eight work days after the end of the month. This will allow agencies time to complete their SF 224, FMS 1219/1220, and SF 1218/1221 reporting to FMS. Agency reporting on obligations and expenditures will show cumulative amounts through the fiscal year.

¹ OMB will work with agencies in the immediate future to evaluate the implementation challenges associated with reporting obligations and expenditures by categories beyond TAFS (i.e., vendor, contract/grant/loan number, etc.). OMB will incorporate, as appropriate, the result of these consultations into the next issuance of Recovery Act guidance.

In addition to this reporting, each agency shall submit monthly reports no later than eight work days after the end of the month providing allocations of all mandatory and other entitlement programs by State, county, or other appropriate geographical unit.

Further information, including the format and instructions for monthly reports, will be included in future Guidance.

2.6 What is required for award level transaction data?

Recovery Act award obligations will be reported according to the current procedures for USASpending. To the extent possible, agencies should immediately begin including Recovery Act awards in their USASpending files, using the methodologies described below. Specifically:

For Contracts: Information will be reported to USASpending.gov through FPDS. When entering data in FPDS on any action (including modifications) funded by the Recovery Act, agencies must enter the Treasury Account Symbol (TAS) in the *Description of Requirement* field. The TAS code should be entered with TAS:: preceding the code and ::TAS following the code. The code itself should have spaces between the segments, i.e., Agency code (2 characters) would be entered followed by a space then the Account code (4 characters) followed by a space and then the Subaccount code (3 characters) which is optional and would only be included by those agencies utilizing this segment of the code. The entry would appear as follows:

TAS::XX XXXX XXX::TAS

Agencies should coordinate with their budget\finance offices to identify the applicable TAS codes.

Standard data validation practices currently required by the Office of Federal Procurement Policy (OFPP) assure the accuracy of contracting data, including data on contracts awarded under the Recovery Act.

For All Assistance Transactions (including grants, cooperative agreements, loans, loan guarantees, and other assistance): Agencies will continue to submit information on Federal assistance transactions in the FAADS PLUS file format currently required for reporting on USASpending.gov. For Recovery Act funds there are two modifications to the normal procedures for submitting FAADS PLUS files:

1. If agencies cannot ensure the Program Source/Treasury Account Symbol (TAS) is sufficient to segregate Recovery Act funding from non-Recovery Act funding in their FAADS PLUS submission, agencies must include a 3 digit code at the end of their FAADS PLUS file (following Original Subsidy Cost of the Direct Loan/Loan Guarantee), with the following values:
 - a. NON: Indicates the transaction does not utilize Recovery Act funds.
 - b. REC: Indicates the transaction utilizes Recovery Act funds.Transactions which utilize both Recovery Act and non-Recovery Act funding must be broken into two separate lines in the FAADS PLUS file.

2. FAADS PLUS submissions will be required 5 days after the close of each month starting on May 5th, instead of the current 20 days. Options are currently being explored for developing the capability to accept this data more frequently in the future, and agencies should begin preparing for a system-to-system interface which would enable this information to be made available with a minimal time-lag after the transaction occurs.

If agencies are not able to meet these requirements for their March 20th and April 20th FAADS PLUS submissions, no later than May 5th agencies must have in place the capability to clearly identify Recovery Act awards in their USASpending files, and must also be able to retroactively identify any awards submitted before May 5th as Recovery or non-Recovery.

For both Assistance and Contracts: Current reporting under the Federal Funding Accountability and Transparency Act only requires information above \$25,000 to be reported to USASpending.gov. The Recovery Act requires reporting on all funding, though it does allow for reporting of aggregates for amounts under \$25,000.

Beginning on May 5th, agencies must be prepared to report all Recovery Act funding through FPDS or in their FAADS PLUS files. Amounts under \$25,000, payments to individuals, administrative funding, and other amounts not currently reported to USASpending.gov can be entered into FPDS or in the FAADS PLUS file using a single vendor name from a list to be provided in future guidance. Purchase card transactions will be addressed in subsequent guidance as well. Agencies unable to report aggregate contract information through FPDS may include these aggregate amounts in their FAADS PLUS file.

For obligations that are funded by both recovery and non-recovery funds, agencies must record each line of accounting in financial systems and in business systems (i.e., grant and contract writing systems) separately. Example: An award is made for \$100,000. The existing Pell Grant program award amount is increased by \$500 of recovery money. The obligation would reflect one line of accounting for the current base Pell Grant amount that is funded by non-recovery money and a second line of accounting for the increase of \$500 funded by recovery money.

Data Quality and Completeness: Given the high priority placed on the accurate display of information related to Recovery Act on Recovery.gov, agencies are responsible for pre-dissemination review of all information that will appear on Recovery.gov. All agencies must ensure all reporting related to Recovery Act funding is complete and accurate and complies with the agency's Information Quality Act guidelines. Each agency on its Recovery.gov page shall provide its point-of-contact for information quality.

2.7 What is required for agency-wide Recovery Act plans?

Agency plans will be due to OMB no later than May 1st. Agencies should work with their OMB representative to set an appropriate submission date and review process. Consistent with sound program management principles, each agency receiving recovery funds must develop formal documented plans for how the recovery funds will be applied and managed.

The Agency Plan should describe both broad Recovery Act goals and how different parts of the agency are coordinating efforts toward successful implementation and monitoring. The agency must provide a summary table that lists each Recovery Act program and the amount of Recovery Act funds covered by the plan broken-out by appropriation title. For example, agencies should describe processes in place for senior managers to regularly review the progress and performance of major programs, including identifying and completing corrective actions. Agency plans should also identify the expected savings (e.g., from energy efficient buildings) and future costs (e.g., having to maintain new facilities) related to implementing the Recovery Act.

Consistent with OMB review process identified above, any component of these plans that are substantially complete prior to May 1st should be posted on agency web pages as soon as available.

2.8 What is required for program-specific Recovery Act plans?

Agency Program plans will be due to OMB no later than May 1st. Agencies should work with their OMB representative to set an appropriate submission date and review process. These separate plans are required for each Recovery Act program specifically named in the legislation and corresponding to new Treasury accounts established. To the extent possible, each agency's Recovery Program Plan should be a summary of the specific Recovery Act projects and activities planned.

Each Recovery Program Plan must minimally include:

- a. **Funding Table:** agency funding listed by program, project, and activity categories, as possible. Funds returned to the program or any offsetting collections received as a result of carrying out recovery actions are to be specifically identified.
- b. **Objectives:** a general Recovery Act description of the program's Recovery Act objectives and relationships with corresponding goals and objectives through on-going agency programs/activities. Expected public benefits should demonstrate cost-effectiveness and be clearly stated in concise, clear and plain language targeted to an audience with no in-depth knowledge of the program. To the extent possible, Recovery Act goals should be expressed in the same terms as programs' goals in departmental Government Performance Results Act strategic plans.
- c. **Activities:** kinds and scope of activities to be performed (e.g. construction, provision of services, conduct of research and development, assistance to governmental units or individuals, etc.)
- d. **Characteristics:** types of financial awards to be used (with estimated amount of funding for each), targeted type of recipients, beneficiaries and estimated dollar amounts of total Recovery Act funding for Federal in-house activity, non-federal recipients and methodology for award selection.
- e. **Delivery Schedule:** schedule with milestones for major phases of the program's activities (e.g. the procurement phase, planning phase, project execution phase, etc., or comparable) with planned delivery date(s).
- f. **Environmental Review Compliance:** description of the status of compliance with National Environmental Policy Act, National Historic Preservation Act, and related statutes.

- g. Savings or costs: expected increases or reductions in future operational costs (e.g., savings due to energy efficient facilities or increased operational costs as a result of having more buildings to manage and maintain).
- h. Measures: expected quantifiable outcomes consistent with the intent and requirements of the legislation and the risk management requirements of Section 3.5, with each outcome supported by a corresponding quantifiable output(s) (in terms of incremental change against present level of performance of related agency programs or projects/activities specified in the plan) – agencies must specify the length of the period between measurements (e.g., monthly, quarterly), the measurement methodology, and how the results will be made readily accessible to the public. The measures currently used to report programs’ performance in relationship to these goals (consistent with Administration policy) should be retained. In addition to reducing burden on grant recipients and contractors, use of existing measures will allow the public to see the marginal performance impact of Recovery Act investments.
- i. Monitoring/Evaluation: description of the agency process for periodic review of program’s progress to identify areas of high risk, high and low performance, and any plans for longer term impact evaluation.
- j. Transparency: description of agency program plans to organize program cost and performance information available at applicable recipient levels.
- k. Accountability: description of agency program plans for holding managers accountable for achieving Recovery Act program goals and improvement actions identified.
- l. Barriers to Effective Implementation: a list and description of statutory and regulatory requirements, or other known matters, which may impede effective implementation of Recovery Act activities and proposed solutions to resolve by a certain date.
- m. Federal Infrastructure Investments: a description of agency plans to spend funds effectively to comply with energy efficiency and green building requirements and to demonstrate Federal leadership in sustainability, energy efficiency and reducing the agency’s environmental impact.

Consistent with the OMB review process identified above, any components of these plans that are substantially complete prior to May 1st should be posted on agency web pages as soon as available.

2.9 What reporting will be collected from recipients of Federal funding for reporting on Recovery.gov?

The Recovery Act and this guidance require extensive reporting from recipients of Federal funding. The Recovery Act defines “recipient” as any entity that receives Recovery Act funds directly from the Federal Government (including Recovery Act funds received through grant, loan, or contract) other than an individual and includes a State that receives Recovery Act funds. See Section 1512 of the Recovery Act.

These requirements apply to:

- **Prime recipients.** Reporting requirements only apply to the prime non-Federal recipients of Federal funding, and the subawards (i.e., subgrants, subcontracts, etc.) made by these prime recipients. They do not require each subsequent subrecipient to also report. For instance, a grant could be given from the Federal government to State A, which then gives a subgrant to

City B (within State A), which hires a contractor to construct a bridge, which then hires a subcontractor to supply the concrete. In this case, State A is the prime recipient, and would be required to report the subgrant to City B. However, City B does not have any specific reporting obligations, nor does the contractor or subcontractor for the purposes of reporting for the Recovery.gov website. All recipients of Federal funds must continue to comply with existing agency and program reporting requirements.

- Only recipients receiving awards funded through discretionary appropriations. These reporting requirements only apply to non-Federal recipients who receive funding provided through discretionary appropriations. The reporting requirements do not apply to funding received through entitlement or other mandatory programs, except as specifically required by OMB.

As required by Section 1512 of the Recovery Act and this guidance, each recipient, as described above, is required to report the following information to the Federal agency providing the award 10 days after the end of each calendar quarter, starting on July 10th.

These reports will include the following data elements, as prescribed by the Recovery Act:

- (1) The total amount of recovery funds received from that agency;
- (2) The amount of recovery funds received that were obligated and expended to projects or activities. This reporting will also include unobligated Allotment balances to facilitate reconciliations.
- (3) A detailed list of all projects or activities for which recovery funds were obligated and expended, 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 (P.L. 109-282), allowing aggregate reporting on awards below \$25,000 or to individuals, as prescribed by the Director of OMB.

The final guidance issued by OMB for the Recovery Act will lay out in more detail specific reporting instructions and how the data collection for this reporting will work government-wide. OMB is actively pursuing options for collecting some of this information centrally, focusing first on the data required in (4) above in the standard formats currently used by Federal agencies to report to USA Spending.gov. OMB is also actively considering how to centralize the collection and reporting of the information required in section (3) above, though the current preference is that, to the extent possible, this data should be collected and reported through existing program level systems. Agencies should develop initial contingency plans for collecting and reporting this information directly on the agency recovery website within the 30 days specified by law.

Instructions for reporting this information will be provided in subsequent guidance. Agencies should be cautious before making investments in new system capabilities before further guidance is issued or before consulting with OMB.

Regarding the reporting requirements in 3(d), usual methods for reporting jobs created by a contract do not take into account the time frame over which the jobs are created. As a result, they are likely to be inconsistent with macroeconomic estimates of jobs created at a point in time. For this reason, departments and agencies should use conventional jobs estimates for internal planning purposes only. Uniform reporting requirements for estimates of job creation will be specified at a later time.

Federal agencies must instruct recipients covered by these reporting requirements that Recovery Act funds can be used in conjunction with other funding as necessary to complete projects, but tracking and reporting must be separate to meet the reporting requirements of the Recovery Act and this Guidance.

For information related to the Recovery Act to be fully transparent to the public, each agency must develop a list of agency systems which will capture significant program-related information related to the use of Recovery Act funds from recipients, either through existing or new reporting requirements. Further, agencies must identify what information each system captures, if it is publicly available in a user-friendly format, and if not, what technological or policy barriers exist to it being made public. For those systems presently unable to make information public in a user-friendly format, agencies should provide an estimate of resources necessary to achieve full transparency. This list need not include core financial and other systems which make information available through existing financial reporting, USASpending.gov, or other government-wide reporting requirements. Each agency should assemble this list and provide it to the E-Gov Administrator no later than March 15th. Reports can be sent to recovery@omb.eop.gov.

2.10 How will agencies implement tribal self-determination contracting authorities with Recovery Act funding?

Section 1610(b) of the Recovery Act allows the Department of the Interior's Bureau of Indian Affairs, the Department of Health and Human Services' Indian Health Service, and the Department of Housing and Urban Development to use existing self-determination contracting authorities with Indian tribes. However, it also requires the appropriate Secretary to "incorporate provisions to conform the agreement 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."

In their Agency-wide Recovery Act plans, DOI, HHS, and HUD shall identify how they will incorporate these provisions into tribal self-determination contracts that are used for Recovery Act funds. To assist these agencies, OMB will convene a meeting for the agencies to discuss how to incorporate appropriate transparency and accountability provisions into tribal self-determination contracts.

2.11 Will these reports be made available to the public?

Yes. All reporting described above may be used to populate Recovery.gov or agency recovery websites. Agency-wide and program-specific plans will be posted on agency websites, on a dedicated page for Recovery Act activities. See Section 2.12 and Appendix 2 for more information on agency websites.

2.12 What are the requirements for agency websites?

Agencies are not required to develop *new* websites dedicated to recovery efforts. The initiative is designed to create one portal where the public can find and analyze information and report potential fraud, waste and abuse pertaining to the Recovery Act. As such, www.recovery.gov is intended as the single, consolidated portal to that information. Multiple websites will confuse the public.

Each agency should, however, dedicate a section of its primary website to Recovery Act activities within one week of issuance of this guidance. Those pages must be consistently identified with a url that identifies the key entry page to that information with a “/recovery” extension, i.e. www.agency.gov/recovery.

See Appendix 2 for a description of specific requirements and best practices for agency websites.

2.13 What impact do the new data reporting requirements under Recovery Act have on pre-existing data collection requirements?

This Guidance is intended to ensure the government-wide reporting requirements in the Recovery Act are fulfilled and that all necessary data to populate Recovery.gov is available. All other reporting requirements in the Recovery Act and existing law must continue to be fulfilled and should be made transparent on agency recovery websites.

In the short term, agencies should not change standard reporting for awards, unless there is a legal or other compelling justification. However, if the Recovery Act requires modifications or additions, agencies should integrate new and existing procedures to streamline data collection and to minimize funding recipients’ burden. Cases that may require waivers to existing standards to accommodate Recovery Act reporting requirements will be evaluated by the Recovery Act Accountability and Transparency Board (see Section 3.1) and OMB in the context of a government-wide review of data reporting.

2.14 What procedures will agencies follow to comply with relevant requirements of the Paperwork Reduction Act?

The collections of information that will be necessary to comply with Recovery Act disclosure and transparency provisions will be subject to OMB review and approval under the Paperwork Reduction Act of 1995 (PRA). In recognition of the need to act quickly to collect information

from recipients of Recovery Act funds, OMB will allow agencies to request “emergency processing” of information collection requests under OMB’s PRA regulations (5 CFR 1320.13)

Each request for emergency processing needs to be accompanied by a written determination that the information collection is necessary to implement provisions of the Recovery Act. In addition, the agency is to submit information indicating that it has taken all practicable steps to consult with interested agencies and members of the public in order to minimize the burden of the collection of information.

1. Public notice. The agency is to publish in the *Federal Register* a notice that the emergency clearance request has been submitted to OMB for review (unless such notice is waived by OMB). This notice is to include a statement that the agency is requesting emergency processing within a specified time period.

2. Potential OMB Actions. OMB will approve or disapprove an emergency collection of information within a reasonable time period, provided that such time period is consistent with the purposes of the PRA. An inconsistent time period is one that does not permit OMB to evaluate independently whether the proposed collection of information:

- Is necessary for the proper performance of the agency functions;
- Imposes unnecessary or excessive burden;
- Unnecessarily duplicates other available information;
- Maximizes practical utility; and
- Otherwise meets the substantive criteria embodied within the PRA.

Section 3 – Governance and Risk Management

3.1 What is the role of Recovery Act Accountability and Transparency Board (the “Board”) in coordinating government-wide policy on the Recovery Act?

The Board is responsible for coordinating and conducting oversight of Federal spending under the Recovery Act to prevent waste, fraud, and abuse. One way the Board will fulfill these responsibilities is by monitoring the accountability objectives of the law, including the following:

- Funds are awarded and distributed in a prompt, fair, and reasonable manner;
- The recipients and uses of all funds are transparent to the public, and the public benefits of these funds are reported clearly, accurately, and in a timely manner;
- Funds are used for authorized purposes and instances of fraud, waste, error, and abuse are mitigated;
- Projects funded under this Act avoid unnecessary delays and cost overruns; and
- Program goals are achieved, including specific program outcomes and improved results on broader economic indicators.

3.2 What is the role of OMB in coordinating government-wide policy on the Recovery Act?

OMB will coordinate Recovery Act activities until the Board is in place. Once the Board is fully in place, OMB will support the Board in its oversight of Recovery Act implementation, including working with agencies to meet full performance of the accountability objectives. Additionally, Federal agencies will be expected to continue to work directly with OMB on implementation issues related to the Recovery Act.

3.3 Are agencies required to designate a senior accountable official for Recovery Act activities?

Yes, agencies are required to designate a senior accountable official for Recovery Act activities. This individual should have responsibility and authority to coordinate across agency bureaus, program offices, and programs. It is recommended that the senior accountable official be at the sub-cabinet or Deputy Secretary level, and lead regular reviews of recovery planning, implementation, and performance. The senior accountable official should also designate a person or office for maintaining their agency’s Recovery Act content on their website.

3.4 Are there certain risks that all agencies must include as part of their risk mitigation process?

Yes, there are specific risks that all agencies must include as part of their risk mitigation process. These risks can also be thought of as “accountability objectives,” which are outlined in Section 3.1 above. This means that if agencies are not meeting an accountability objective, such as

effectively mitigating the risk of fraud, there may be a risk of not meeting the broader goals of the Recovery Act (e.g., job creation, economic growth).

Figure 1, includes the government-wide accountability measures and organizes them into an accountability risk framework. The framework places the objectives under the phase(s) of the funding lifecycle where, if necessary, those risks will be monitored and mitigated: pre-award, performance-period, post performance.

Figure 1, Recovery Act Accountability Framework and Objectives

		Success: Program outcomes and economic outcomes achieved				
		Pre-Award	Performance Period			Post-Performance Period
Key Accountability Area	Audits and investigation of ARRA funds occurring to identify wasteful spending and minimize waste, fraud, and abuse					
	Qualified personnel overseeing Recovery Act funds					
	Competitive awards maximized	Timely award of dollars	Timely expenditure of dollars	Timely completion of planned work	Cost overruns minimized	Improper payments minimized

An additional area of risk is improper implementation of transparency and reporting requirements (i.e., providing timely and accurate data via prescribed technical solution approaches). The appropriate mitigation is to participate in the review and comment on the Recovery Act Architecture Package while it is being developed, and then use it to guide agency Recovery Act transparency and reporting activities.

3.5 What are the reporting requirements for these common risk areas?

There are no specific reporting requirements related to risk management established by this Guidance. However, it is anticipated that the Board may initiate reporting requirements related to risk management at some point in the future. More information on this issue will be available in the next issuance of this Guidance.

In the interim, agencies should begin planning to capture statistics related to the accountability objectives. This information could be available on Recovery.gov and be presented in aggregate as well as by agency and project, when possible. Reporting the information in this manner would allow stakeholders to see government-wide, agency-by- agency, and agency-program and therefore enable visibility in both aggregate and detailed views.

To assess how well the Federal government and funding recipients are progressing in meeting the objectives, the agencies should begin considering how they would track progress against accountability measures, such as the following:

1. Audits and investigation of Recovery Act funds occurring to identify wasteful spending and minimize waste, fraud, and abuse;
2. Qualified personnel overseeing Recovery Act funds;
3. Opportunities to use competitive awards maximized;
4. Timely award of dollars;
5. Timely expenditure of dollars;
6. Timely completion of planned work;

7. Cost overruns minimized; and
8. Improper payments minimized.

3.6 For risks that are common to all agencies, are there specific risk mitigation actions that all agencies must initiate?

Yes, for the risks that are common to all agencies, specific risk mitigation actions are included throughout this Guidance and include, but are not limited to, the following:

- 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 Recovery Act on an existing grant, including, but not limited to, a continuation or renewal grant.
- To enable timeliness of awards, agencies should engage in aggressive outreach to potential applicants to begin application planning activities, including the process for Central Contractor Registration (CCR) and obtaining a Dun and Bradstreet Universal Numbering System (DUNS) number. Outreach can also include efforts to update and validate existing CCR and DUNS registration data.
- Consider weighting selection criteria to favor applicants for assistance with demonstrated ability to deliver programmatic result and accountability objectives included in the Recovery Act.
- 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. Establish procedures to validate the accuracy of information submitted on a statistical basis and/or risk based approach as approved by OMB.
- Using other than fixed-price contracts requires agencies to pay special attention to ensuring that sufficient qualified acquisition personnel are available to perform contract administration to mitigate the government's risk. When riskier contract types are proposed, agencies should provide appropriate oversight so that all alternatives have been considered and that qualified staff is available for monitoring performance to mitigate risks.
- Agencies should review their internal procurement review practices to promote competition to the maximum extent practicable. For instance, agencies might lower the dollar thresholds at which higher level review is required when a non-competitive acquisition strategy is contemplated.
- Agencies must ensure receipt of funds is made contingent on recipients meeting the reporting requirements in Section 1512 of the Act.
- Agencies must structure acquisitions 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.
- Consider alternatives to contract financing, including structuring contract line items to allow invoicing and payments based upon interim or partial deliverables, milestones, percent-of-completion, etc. Ensuring consideration of contractor cash flow during acquisition planning

will mitigate schedule and performance risks to the government and reduce costs to the contractor associated with financing in a tight credit market.

- Evaluate workforce needs in order to appoint qualified Contracting Officers, Contracting Officer Technical Representatives (COTRs), and Program Managers with certification levels appropriate to the complexity of Recovery Act projects.

Sections 4 – 7 include additional detail on the items above.

3.7 Should agencies undertake efforts to identify, prioritize, and mitigate implementation risks associated with the Recovery Act that are specific to their agency and programs?

Yes, beyond the “common risks” discussed above, agencies should also be identifying, prioritizing, and mitigating agency / program specific-risks. Whereas the common risks may impact the larger objectives of the Recovery Act (i.e., job creation, economic growth), agency risk management efforts should focus on items that may negatively impact the achievement of programmatic objectives. Whenever possible, agencies should leverage existing practices (e.g., assessments required under OMB Circular A-123) and teams (e.g., senior assessment teams) to manage risk.

For programs that receive Recovery Act funding, agencies should consider the following when assessing risk (note that the following list is intended to be illustrative):

- Which program are receiving the most funding;
- Are program outputs and outcomes clear and measurable;
- Are existing resources sufficient to achieve program objectives and proper award and management in accordance with statutory and regulatory requirements;
- Who is (are) the final recipient(s) of funds (e.g., contractor, sub-contractor, state, locality, educational institution);
- Are existing internal controls sufficient to mitigate the risk of waste, fraud, and abuse adequately;
- Are there performance issues with (potential) funding recipients; and
- Are there leading indicators or lagging indicators (e.g., error measurements) to monitor ongoing program performance?

Agencies should also develop a plan for monitoring and reassessing risk throughout Recovery Act funding availability and project close-out.

3.8 What risk mitigation actions must agencies take for risks specific to their agency and programs?

Depending on the answers to the questions suggested in Question 3.7, agencies should develop mitigation plans that align with specific risks. At a minimum, agencies should focus on those risks with the highest probability of occurrence and the greatest impact if not mitigated. As with the common government-wide risks, agencies are strongly encouraged to identify common agency risks and corresponding accountability objectives.

Agencies should determine whether final action has been taken regarding weaknesses or deficiencies disclosed by prior audits and investigations in program areas under which Recovery Act funds are authorized. If final action has not been completed, agencies should: (1) expedite such action to preclude the continuance of such weaknesses or deficiencies in the administration of Recovery Act funded programs; or (2) provide an explanation of why such corrective actions cannot or should not be taken in the administration of Recovery Act funded programs.

3.9 What are the reporting requirements for these agency-specific risk areas?

Initially, agencies risk assessments, mitigation plans, and reporting for risks specific to an agency or program are for internal agency use. Agencies are also required to include in program-specific planning documents information about how managers will be held accountable for achieving recovery program goals and improvement actions identified.

Per Section 3.5 above, agencies will eventually be required to report on their risk mitigation efforts in these areas to OMB or the Board, including performance measures for the accountability objectives with associated performance ranges. If programs fall outside of what is considered to be an acceptable performance range, those programs should be required to explain why a shortfall exists and / or provide a corrective action or get-well plan.

3.10 Does the Office of Personnel Management offer any tools that my agency can use to match the right talent with the right job and hire as quickly as possible?

Currently, there are many, important hiring flexibilities available to agencies.

The Chief Human Capital Officers Act of 2002 provided new hiring authorities which, coupled with those that already existed, have the potential for dramatically improving agencies' ability to get the right people in the right jobs at the right time.

OPM has a number of tools on its website to help agencies understand and implement human resources flexibilities that may serve their needs under the Recovery Act and the agency Chief Human Capital Officer (CHCO) can provide advice and assistance on using these flexibilities:

- The Human Resources Flexibilities and Authorities in the Federal Government handbook provides detailed information on staffing, benefits, compensation, work/life and other HR flexibilities. The Handbook can be accessed at: http://www.opm.gov/omsoe/hr-flex/HumanResourcesFlexibilities_and_AuthoritiesHandbook.pdf
- The Federal Hiring Flexibilities Resource Center provides guidance on hiring flexibilities and includes an interactive tool to help determine the appropriate flexibility based on particular needs. The Resource Center can be accessed at: http://www.opm.gov/Strategic_Management_of_Human_Capital/fhfr/default.asp
- The Hiring/Recruitment Video Library is a Web-based learning tool featuring vignettes on a number of hiring flexibilities, including direct hire, veterans' appointing authorities, and excepted service hiring. The Video Library can be accessed at: http://www.opm.gov/video_library/Recruitment/Hiring/Index.asp

- The Hiring Toolkit provides strategies, tools and techniques to help agencies improve their hiring processes. The Toolkit can be accessed at: <http://www.opm.gov/hiringtoolkit/>

When deciding which hiring flexibility to use, agencies should assess their needs in relationship to the duration of the funding. Therefore, they should strongly consider temporary or term appointments with durations consistent with the monies.

OPM will continue working closely and directly with agencies impacted by the Recovery Act so they understand the range of currently available human resources flexibilities and will partner with agencies to develop effective human capital strategies aimed at meeting program objectives under the Act.

To support the goals of transparency and accountability for activities carried out under the Act, OPM will also provide oversight so that agencies are exercising human resources flexibilities effectively, efficiently, and in accordance with merit system principles. For additional questions, please contact your agency's OPM Human Capital Officer or for other OPM questions please email generalinquiries@opm.gov.

Section 4 – Budget Execution

4.1 Where is general guidance on budget execution?

OMB publishes general guidance on budget execution in OMB Circular A-11. Sections 120 and 121 address apportionments, and Section 130 addresses budget execution reporting. OMB will publish additional guidance, most likely in an OMB Bulletin, after enactment of the American Recovery and Reinvestment Act of 2009 (Recovery Act).

4.2 Can agencies co-mingle Recovery Act and non-Recovery Act funds?

No. To maximize transparency of Recovery Act spending required by Congress and the Administration, agencies must not co-mingle Recovery Act funds with other funds in apportionment requests they prepare for OMB; SF 133 budget execution reports; or data feeds or reports they provide to Recovery.Gov. Within their financial systems, agencies must separately track apportionments, allotments, obligations, and expenditures related to Recovery Act funding.

Agencies in some cases may need to use Recovery Act funds in conjunction with other funds to complete projects. They may do so, but they must separately track and report the use of Recovery Act funds for these projects.

4.3 Can agencies use Recovery Act funds to pay their own fixed costs?

Sometimes. When an agency receives a supplemental appropriation of Recovery Act funds for a program, project, or activity for which Congress provided appropriations for in a prior Act, the agency should not use Recovery Act funds to pay fixed, administrative support costs, e.g. rent. By contrast, agencies can exercise judgment in using Recovery Act funds provided for a new program, project, or activity to support fixed administrative costs.

4.4 Can agencies request a waiver from OMB to the requirement that they use new TAFSs to record and report Recovery Act financial activity?

Yes. The requirement that new TAFSs be created to record and report Recovery Act financial activity applies to both Division A and Division B of the Recovery Act. If an agency feels that establishing unique TAFSs will impose an extreme burden, will significantly delay funding allocations and awards, AND will negatively impact its ability to fulfill its reporting requirements under the Act, the agency can apply for a waiver from this provision. A request for a waiver must be made in writing by the Agency head and a scanned copy of the letter must be emailed to recovery@omb.eop.gov by close of business on February 20th, 2009. All requests will be considered and waivers issued by COB on February 25th, 2009. Such requests will only be approved when the three conditions above are met. You should include in the letter the email address to which a scanned copy of the response should be sent.

4.5 Will agencies need to do anything beyond standard practice if OMB grants a waiver from establishing a unique TAFS for a program funded by the Act?

Yes. In cases without a unique TAFS for Recovery Act funds, OMB will use Category B projects to facilitate separation of Recovery Act and non-Recovery Act funds in agency financial systems. The apportionment process will provide a basis for agencies to report obligations financed through Recovery Act budget authority in their budget execution reports. The omission of unique TAFSs for Recovery Act funds will complicate the reporting of net outlays in TAFSs that take in offsetting collections for both Recovery Act and non-Recovery Act programs; as a result, OMB will require separate reporting of Recovery Act collections in these TAFSs. Agencies may also have slightly different requirements in reporting some of their data to the Recovery.gov web site.

4.6 How will OMB apportion Recovery Act funds?

OMB in large measure will apportion TAFSs with Recovery Act funds the same way it apportions other TAFSs. In some cases, this will involve apportioning funds by time period (Category A). In other cases this will involve apportioning funds by project (Category B). The next four questions describe exceptions to these standard processes.

4.7 What special treatment is required on apportionment requests if OMB allows a TAFS to have both Recover Act and non-Recovery Act funding?

If a TAFS has both Recovery Act and non-Recovery Act funding, OMB will establish very strict conventions requiring agencies to use separate Category B projects for all Recovery Act funds in both apportionments and budget execution reports. Agencies must separately track and report on apportioned amounts financed through Recovery Act and non-Recovery Act sources, as well as separately track and report on obligations captured in their financial systems or submitted in SF 133 budget execution reports. Agency apportionment requests and SF 133 reports will show apportioned amounts and obligations, respectively, using Category B project stubs that start with the words “Recovery Act”.

In addition, if OMB grants a waiver so a TAFS has both Recovery Act and non-Recovery Act funds, the apportionment requests must use a line split to separately show Recovery Act and non-Recovery Act budget authority. The stub for the line should read “Recovery Act budget authority”.

4.8 What special treatment is required on apportionment requests with regard to authority from offsetting collections if a TAFS has both Recovery Act and non-Recovery Act funds.

If a TAFS has both Recovery Act and non-Recovery Act funding, agencies must separately show authority from offsetting collections that comes from recovery funding versus non-recovery funding on their apportionment requests. Agencies will use a line split value of “9” on the apportionment to do this. In addition, they will preface the line stub with the phrase “Recovery Act”.

The lines that show BA from offsetting collections are:

<u>Line Number</u>	<u>Description</u>
3D1A	BA: Offsetting Collections - Earned, Collected
3D1B	BA: Offsetting Collections - Earned, Change in receivables from Fed sources
3D3	BA: Offsetting collections - Anticipated
3D4	BA: Offsetting Collections - Previously unavailable

The reason to distinguish authority from offsetting collections that come from recovery funds is to accumulate sufficient information on offsetting collections to calculate net outlays. While FACTS II data that underlie the SF 133 reports identify the obligations and disbursements associated with recovery funds, the FACTS II data do not provide sufficient detail to determine the collections associated with Recovery Act funding in a TAFS that has both Recovery Act and non-Recovery Act funding. To compute or cross-check net outlays, OMB will compile obligations and disbursements from FACTS II as well as authority from collections – as a proxy for actual collections – in the apportionments.

4.9 What special treatment is required on apportionment requests for a TAFS that is an ordering account in an interagency agreement?

As background, Section 130.9 in Circular A-11 uses the words “ordering agency \ ordering account” and “performing agency \ performing accounts” to describe the parties involved in interagency agreements. This guidance follows A-11 by also using the words ordering and performing.

OMB will issue a bulletin that provides automatic apportionment authority for ordering TAFSs. The bulletin will provide agencies with flexibility to incur new obligations within the parameters of their existing apportionments. The purpose of these Category B projects is to provide a mechanism for the ordering TAFS to explicitly report the obligations it uses for interagency work on SF 133 reports. In addition, ordering TAFSs must also use the stub “Recovery Act Interagency Agreement” on their SF 133 reports. The purpose of this requirement is to acquire sufficient information to facilitate reconciliation between ordering agency obligations and performing agency obligations. For example, the Recovery.gov site will check that obligations from performing agencies do not exceed obligations from ordering agencies.

4.10 What special treatment is required on apportionment requests when a TAFS uses a non-expenditure transfer to shift funds to a different TAFS?

There are no additional requirements for TAFSs that use non-expenditure transfers to shift Recovery Act funds to other TAFSs. The reason is that the Treasury Department Financial Management Service (FMS) processes all requests for non-expenditure transfers using its NET system, and provides this information to OMB on a weekly basis. OMB will forward the

information to Recovery.gov. OMB also publishes reports on the Budget Community that show non-expenditure transfers; the URL is: <https://max.omb.gov/community/x/pwCwBQ>.

4.11 What are the reporting requirements for performing TAFSs when the ordering TAFS uses recovery funding?

To the degree practical, agencies should flag the use of Recovery Act funds in making new inter-agency agreements. OMB will also issue a request that asks agencies to identify the ordering TAFSs they anticipate will use inter-agency agreements, and post this report on the Budget Community web site.

Performing agencies must take necessary steps to provide detailed information on their obligations and disbursements to Recovery.gov. To help establish a framework to facilitate accurate reporting from performing agencies to Recovery.gov, OMB will issue a bulletin that provides automatic apportionment authority for performing TAFSs. The bulletin will provide performing agencies with flexibility to incur new obligations within the parameters of their existing apportionments. However, performing agencies will need to use Category B projects to highlight obligations generated from Recovery Act funds. The stubs for these Category B projects used in budget execution reports must start with the phrase “Recovery Act”. The requirements in this paragraph are not needed for budget execution, per se, but are attempting to leverage the budget execution framework to respond to the needs of Recovery.gov.

Performing agencies in their financial system and budget execution reports will separately show obligations incurred against reimbursable income from ordering TAFSs that hired it to perform work using Recovery Act funds. Performing agencies will also submit detailed spending reports to the Recovery.gov web site showing, among other things, how much funding each vendor received. Section 2.5 provides guidance for handling inter-agency agreements, and data submissions by performing agencies to Recovery.gov.

Performing agencies will report obligations and disbursements in their budget execution reports and to Recovery.gov. They may report back to ordering agencies as part of normal inter-agency processes. However, ordering agencies will not provide this information back to Recovery.gov.

GSA and other performing agencies should begin to plan how to handle these requirements and modify inter-agency agreements or processing Interagency Payment and Collection (IPAC) transactions to help them fulfill these requirements.

4.12 What are the reporting requirements for TAFSs that receive non-expenditure transfers of Recovery Act funds?

TAFSs receiving non-expenditure transfers of Recovery Act funds have the same reporting requirements as performing TAFS in interagency agreements. See section 4.12 for additional information.

4.13 Will agencies that receive Recovery Act funds need to take any special actions to report spending in FACTS II \ SF 133 budget execution reports?

No. Agencies will submit FACTS II data the same way they do now. If a TAFS receives Recovery Act and non-Recovery Act funds, its FACTS II reporting must use Category B projects to show obligations incurred from Recovery Act funds. The stubs for the Category B projects must start with the words “Recovery Act”.

4.14 How will agency budget execution reporting fit with agency reporting to the Recovery.gov site?

In general, agencies will report much more detailed information on obligations and expenditures to the Recovery.gov site than they do in normal budget execution reporting. While agencies may report Recovery Act obligations in a given TAFS using a single Category B project, they may submit many lines to Recovery.gov that, in total, agree with the Category B project obligations. For example, a single Category B project may show \$100 million in grants to states, but the underlying detail agencies report to Recovery.gov will show separately the 20 states that receive the funds.

Section 2.5 describes the Recovery.gov reporting requirements.

4.15 Some provisions of the Recovery Act provide supplemental budget authority for existing programs, projects, and activities. Will agencies have new or different reporting requirements for these existing programs?

It is unclear at this time what additional reporting requirements will be levied on non-recovery funds used for recovery programs. Agencies should use Recovery Act budget execution page in the budget community web site to describe and share ideas on how to handle such potential additional requirements.

4.16 Are agencies required to obligate recovery funds prior to obligating non-recovery funds?

No. This question only applies in cases when Congress appropriates Recovery Act funds to programs where Congress has previously appropriated funds. In those cases, agencies should determine the most appropriate sequence of obligation to maximize program efficiency. In making this determination, agencies need to explore ways to effectively expedite recovery expenditures in a manner that does not compromise program objectives or increase the risk of unintended consequences (e.g., accounting and/or payment errors, waste, fraud, etc.)

4.17 Do Inspectors' General need to follow special rules in reporting their own Recovery Act spending?

Yes. Inspectors' General (IGs) will be required to separately report obligations associated with oversight of Recovery Act programs. The Recovery Act includes provisions that provide supplemental funding to some IGs to carry out additional oversight of activities funded by the Act. IGs will report these funds separately in their budget execution reports and submissions to Recovery.gov. IGs will also report other funds not provided through the Recovery Act that they otherwise use to monitor Recovery Act programs in their agencies. The purpose of these requirements is to provide the Administration with a basis to inform Congress and the public how much money IGs are obligating on oversight of Recovery Act funded activities.

OMB will issue a bulletin that provides automatic apportionment authority for IGs to carry out Recovery Act oversight activities. The bulletin will provide IGs with the flexibility to incur new obligations for Recovery Act oversight activities within the parameters of their existing apportionments.

4.18 Will OMB issue a Budget Data Request (BDR) to collect information relating to the Recovery Act?

Yes. In the near future, OMB will issue a BDR asking agencies to, among other things:

- Identify existing programs and TAFSs that the Recovery Act will add funds to.
- Identify Recovery Act TAFSs that will likely use inter-agency agreements.
- Identify Recovery Act TAFSs that will likely bring in offsetting collections.
- Identify sub-functions for each Recovery Act TAFS.

4.19 Will FMS use expedited processes to establish TAFSs and process Recovery Act warrants?

Yes. FMS working with OMB will provide agencies with a list of the majority of new TAFSs on Wednesday, February 18th. Each TAFS will include a new 4-digit account number. OMB will post the list of TAFSs on the Budget Execution and Recovery Funding page of the Budget Community; the URL is <https://max.omb.gov/community/x/-4BeDw>

Agencies should use these TAFSs in their financial systems. OMB will make the new TAFSs available in the apportionment system so that agencies can use the new TAFS to send apportionment requests to OMB.

FMS will do its best to develop a list that is complete. However, agencies finding any omissions will need to work with their normal contacts at FMS to create new TAFSs.

FMS is identifying the TAFSs that it will create in its central systems – prior to putting the TAFSs into its systems. FMS is taking this action to help agencies expedite the processes they use to create TAFSs in their systems, and that they use to submit their apportionment requests to

OMB. Over the next couple of weeks, FMS will put the TAFSs in its systems as well as process warrants.

4.20 Can agencies start preparing apportionment requests for newly established TAFSs prior to FMS creating the TAFSs.

Yes. Agencies should start preparing apportionment requests in anticipation of FMS quickly establishing the new TAFSs.

4.21 Can agencies submit apportionment requests for newly established TAFSs prior to knowing the TAFS identifier that FMS will create?

No. Agencies must wait until Wednesday, February 18th when FMS produces a list of TAFSs it will create in its systems. OMB will post the list of TAFSs on the Budget Execution and Recovery Funding page of the Budget Community; the URL is <https://max.omb.gov/community/x/-4BeDw>

4.22 Can agencies process payment requests prior to FMS creating TAFSs?

No. Most if not all payment systems and IPAC require agencies to use valid TAFSs.

4.23 Do agencies need to follow different processes in handling recoveries, upward adjustments, or downward adjustments of Recovery Act funds?

No. TAFSs funded exclusively from the Recovery Act do not need to follow different processes in handling of recoveries, upward adjustments, or downward adjustments. After processing requests and identifying the TAFSs that will have both Recovery Act and non-Recovery Act funds, OMB may issue additional guidance on this topic. The expectation is that very few TAFSs will include Recovery Act and non-Recovery Act funds.

Section 5 – Grants and Cooperative Agreements

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

Yes.

(1) Determining Grant Objectives and Evaluation Criteria for Award

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

(2) Competition

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

(3) Existing Grants

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

(4) Timeliness of Awards

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

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

(5) Other Planning Activities

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

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

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

Yes. Federal agencies must:

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

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

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

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

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

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

(1) Performance Management and Accountability

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

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

(2) Internal Controls Assessment

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Agencies must:

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

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

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

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

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

Section 6 – Contracts

6.1 Are there actions, beyond standard practice, that agencies must take while planning for contract awards under the Recovery Act?

The critical importance of the Recovery Act, and the funds it will make available to stimulate the American economy, require heightened management attention on acquisition planning in order to:

- Mitigate schedule, cost, and performance risk;
- Define contract requirements that deliver meaningful and measurable outcomes consistent with agency plans and the goals of Recovery Act;
- Obtain maximum practicable competition;
- Maximize opportunities for small businesses to compete for agency contracts and to participate as subcontractors;
- Use supplies and services provided by nonprofit agencies employing people who are blind or severely disabled as provided in FAR Subpart 8.7;
- Expeditiously award contracts using available streamlining flexibilities;
- Apply sufficient and adequately trained workforce to responsibly plan, evaluate, award, and monitor contracts (see Section 6.6 below for further workforce guidance);
- Ensure an adequate number of qualified government personnel are available to perform inherently governmental functions during the acquisition life-cycle; and
- Provide appropriate agency oversight at critical decision points.

Key considerations during the acquisition planning process include the following:

(1) Contract Type Selection

FAR Part 16 addresses contract types. The objective of contract type selection and negotiation is to ensure reasonable contractor risk and provide the contractor with the greatest incentive for efficient and economical performance. Agencies should emphasize the importance of selecting a contract type that supports requirements for meaningful and measurable outcomes consistent with agency plans for, and the goals of, the Recovery Act. Fixed-price contracts (FAR Subpart 16.2) provide maximum incentive for the contractor to control costs and perform effectively and impose a minimum burden upon the contracting parties. These contracts expose the government to the least risk. Fixed-price contracts can also accommodate market fluctuations or other contingencies, when appropriate, using economic price adjustments. Using other than a fixed-price contract may be appropriate but requires agencies to pay special attention to ensuring that sufficient qualified acquisition personnel are available to perform contract administration to mitigate the government's risk. When riskier contract types are proposed, agencies should provide appropriate oversight to ensure that all alternatives have been considered and that qualified staff is available for monitoring performance to mitigate risks. See requirements for posting summary information on contracts and orders that are not both fixed-price and did not use competitive procedures in (2) below.

(2) Competition

Although the law 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 contract on a non-competitive basis. Agencies are expected to follow the same laws, principles, procedures, and practices in awarding non-competitive contracts with Recovery Act funds as they do with other funds. Competition is the cornerstone of our acquisition system. The benefits of competition are well established. Competition saves money for the taxpayer, improves contractor performance, curbs fraud, and promotes accountability for results. Agencies should review their internal procurement review practices to ensure they promote competition to the maximum extent practicable. For instance, agencies might lower the dollar thresholds at which higher level review is required when a non-competitive acquisition strategy is contemplated.

To the maximum extent practicable, contracts using Recovery Act funds shall be awarded as fixed-price contracts (See FAR Subpart 16.2) using competitive procedures. These procedures include those identified under FAR Subparts 6.1, 6.2, and 16.505(b)(1) and Subsections 8.405-1 and 8.405-2. Existing fixed-price contracts that were competitively awarded may be used to obligate funds expeditiously.

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 shall be posted in a special section of the web site Recovery.gov unless the contract or order is both fixed-price and competitively awarded (see Section 6.2(5) below).

(3) Determining Acquisition Objectives and Evaluation Criteria for Award

Agencies should structure acquisitions 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.

(4) Existing Contracts

If agencies obligate funds provided under the Recovery Act on an existing order or contract, including but not limited to a Governmentwide Acquisition Contract (GWAC), multi-agency contract, General Services Administration (GSA) Federal Supply Schedule contract, or agency indefinite-delivery/indefinite-quantity (ID/IQ) contract, they must be reported as “Recovery” actions per Section 6.2(3) and comply with Sections 6.2(4) and (5) below.

(5) Interagency Agreements

When using assisted acquisitions, Interagency 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.

(6) Small Business Participation

Small businesses play a critical role in stimulating economic growth and creating jobs. They are the engine of our economy, and provide creativity, innovation and technical expertise to support our agencies. Agencies must provide maximum practicable opportunities for small businesses to compete for agency contracts and to participate as subcontractors in contracts awarded by agencies. Agencies may take advantage of any authorized small business contracting program. If, in making an award to a small business, a non-competitive procedure is used, such as a non-competitive set-aside under section 8(a) of the Small Business Act, then a summary of any such contract, including a description of the supplies and services, shall be posted in a special section of Recovery.gov (see Section 6.2(5)).

(7) Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) - AbilityOne

To maximize participation of Americans who are blind or severely disabled in our economic recovery, agencies must continue to purchase required goods and services on the Procurement List maintained by the Committee for Purchase From People Who Are Blind or Severely Disabled, which are produced or provided by qualified nonprofit agencies employing such individuals. Agencies are encouraged to pursue additional opportunities to award contracts to AbilityOne sources as authorized by the Javits-Wagner-O'Day Act. See FAR Subpart 8.7 and www.abilityone.gov.

(8) Environment, Energy and Water Efficiency, Renewable Energy Technologies, Occupational Safety, and Drug-Free Workplace

Agencies must continue to comply with the requirements of FAR Part 23 when acquiring supplies and services using Recovery Act funds.

(9) Contract Financing and Structuring Contract Deliverables

Agencies should give special attention to structuring contract deliverables to promote the economic stimulus goals (including expenditure timeframes) of the Recovery Act.

Contract financing is not a normal practice in commercial item fixed-price contracting. However, tight credit markets may make it difficult for some contractors to secure the cash flow they need to fund their operations. Increased management and oversight must be provided if government financing is provided to ensure accountability for these taxpayer funds.

Alternatives to contract financing include structuring contract line items to allow invoicing and payments based upon interim or partial deliverables, milestones, percent-of-completion, etc. Ensuring consideration of contractor cash flow during acquisition planning will mitigate schedule and performance risks to the government and reduce costs to the contractor associated with financing in a tight credit market.

(10) Tribal Self-Determination Contracts

See Chapter 2 regarding tribal self-determination contracts.

6.2 Are there actions, beyond standard practice, that agencies must take related to solicitation of offers and award of contracts under the Recovery Act?

Yes. While the FAR generally provides the necessary policy and procedure for solicitation of offers and award of contracts, the Recovery Act imposes unique transparency requirements that change the pre-solicitation and award notice process, beyond standard practice, as described in (1) – (5) below:

(1) Unique Requirements for Posting of Presolicitation Notices

Presolicitation notices must be posted on FedBizOpps (FBO) in accordance with FAR Part 5, including applicable dollar thresholds. Under the Recovery Act, presolicitation notices are required for any order, meeting the FAR Part 5 dollar thresholds, under a task or delivery order contract, including GWACs, multi-agency contracts, GSA Federal Supply Schedule contracts. These notices will be posted in FBO for information purposes only (i.e., the requirements of FAR Subpart 5.203 do not apply). Contracting officers should continue to also use their usual solicitation practice (e.g., e-Buy).

To facilitate transparency and ensure consistency in tracking notices for Recovery Act funds, agencies must use the following special formatting requirements:

- All presolicitation notices must include the word “Recovery” as the first word in the *Title* field in FBO preceding the actual title.
- Presolicitation notices for delivery and task orders must also include the following statement in the *Description* field preceding the actual description:

“THIS NOTICE IS PROVIDED FOR INFORMATION PURPOSES ONLY. THIS OPPORTUNITY IS AVAILABLE ONLY TO CONTRACTORS UNDER [*contracting officer insert program name. For example: GSA Schedule 03FAC, COMMITS, Navy’s SEAPORT-E.*]

(2) Unique Requirements for Announcing Contract Awards

Contract award notices must also be posted at FBO in accordance with FAR Part 5, including all task and delivery orders as described in (1) above. To facilitate transparency and ensure

consistency in tracking award announcements for Recovery Act funds, agencies must use the following special formatting requirement:

- All award announcements must include the word “Recovery” as the first word in the *Title* field in FBO preceding the remaining title.

(3) Unique Requirements for Entering Awards into the Federal Procurement Data System (FPDS)

When entering data in FPDS on any action (including modifications) funded by the Recovery Act, agencies must enter the Treasury Account Symbol (TAS) in the *Description of Requirement* field. The TAS code should be entered with TAS:: preceding the code and ::TAS following the code. The code itself should have spaces between the segments, i.e., Agency code (2 characters) would be entered followed by a space then the Account code (4 characters) followed by a space and then the Subaccount code (3 characters) which is optional and would only be included by those agencies utilizing this segment of the code. The entry would appear as follows:

TAS::XX XXXX XXX::TAS

Agencies should coordinate with their budget/finance offices to identify the applicable TAS codes.

Standard data validation practices currently required by the Office of Federal Procurement Policy (OFPP) assure the accuracy of contracting data, including data on contracts awarded under the Recovery Act.

(4) Unique Requirements for Contracts, Orders, and Modifications Exceeding \$500,000.

For each government contract or order (or modification to an existing contract or order) over \$500,000, agencies shall provide a summary of the contract or order (or modification to an existing contract or order), including a description of the required products and services, which will be made available publicly and linked to Recovery.gov. Subsequent guidance will provide additional details.

(5) Unique Requirements for Actions that are not Fixed-Price or Competitive

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 shall be posted in a special section of the web site Recovery.gov unless the contract or order is both fixed-price and competitively awarded. (See table below).

Posting of Notice/Summary on Special Section

	Description of Contract Action	Posting on Special Section of Recovery.Gov
(1)	A contract is competitively awarded and is fixed price	Not Required
(2)	A contract is awarded that is not fixed-price	Required
(3)	A contract is awarded without competition	Required
(4)	An order is issued under a new or existing single award IDIQ contract	Required if order is made under a contract described in (2) or (3)
(5)	An order is issued under a new or existing multiple award IDIQ contract	Required if one or both of the following conditions exist: <ul style="list-style-type: none"> i. the order is not fixed-price ii. the order is awarded pursuant to an exception to the competition requirements applicable to the underlying vehicle (e.g., award is made pursuant to an exception to the fair opportunity process)
(6)	A modification is issued	Required if modification is made: <ul style="list-style-type: none"> i. to a contract described in (2) or (3) above; or ii. to an order requiring posting as described in (4) or (5) above
(7)	A contract or order is awarded pursuant to a small business contracting authority (e.g., SBA's section 8(a) program)	Required if one or both of the following conditions exist: <ul style="list-style-type: none"> i. the contract or order is not fixed-price ii. the contract or order was not awarded using competition (e.g., a non-competitive 8(a) award)

Subsequent guidance will provide additional details.

In general, if a question arises about whether to provide public disclosure of information, agencies should promote transparency to the maximum extent practicable when consistent with national security interests.

Agencies should also give special attention to the following:

(6) Responsibility Determinations

FAR Part 9 addresses contractor qualifications. Agencies should place special emphasis on responsibility determinations and pre-award surveys. The award of a contract based solely on lowest evaluated price can produce a false economy, increasing performance, cost, and schedule risk. FAR Subpart 9.103 states that a prospective contractor must affirmatively demonstrate its responsibility, including, when necessary, the responsibility of its proposed subcontractors. The general standards for responsibility include that the prospective contractor have:

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

Additionally, the prospective contractor must be otherwise qualified and eligible to receive an award under applicable laws and regulations. Agencies are reminded that they should review the Excluded Parties List System (see FAR Subpart 9.404) before determining that a prospective contractor is responsible. When an acquisition poses unique risks, agencies may also use special responsibility standards to mitigate the risk. If an Agency cannot obtain sufficient information to make a determination of responsibility, a pre-award survey should be requested unless the contract will have a fixed-price at or below the simplified acquisition threshold or will involve the acquisition of commercial items (see FAR Subsection 9.106-1).

(7) Acquisition Flexibilities

Agencies should use authorized acquisition flexibilities as appropriate to avoid unnecessary delays in awarding contracts with Recovery Act funds. See Table below. Agencies are cautioned that the Recovery Act does not independently trigger use of emergency procurement authorities in FAR Part 18. These authorities are triggered in limited, statutorily identified, circumstances, such as in support of a contingency operation or to facilitate the defense against or recovery from nuclear, biological, chemical, or radiological attack against the United States. See FAR 18.001. Unless one of these circumstances exists, the special emergency authorities in FAR Part 18 shall not be used.

**Generally Available Acquisition Flexibilities
A Quick Reference**

Small Dollar Acquisitions under the Simplified Acquisition Threshold (SAT) (\$3,000 to \$100,000)

- ✓ Various flexibilities are provided in connection with publicizing -- e.g., an oral solicitation may be efficient for actions up to \$30,000 & other actions for which there is an exception to notice; response time may be less than 30 days provided a response time is reasonable (FAR 5.101, 5.202, 5.203, 13.106-1).

**Acquisitions under the test program for commercial items
(\$100,000 to \$5,500,000)**

- ✓ Acquisition generally may be treated like a purchase under the SAT, with certain exceptions (see FAR Part 13.501)

**Commercial Item Acquisitions
(over \$5,500,000)**

- ✓ FAR Part 12 policies & procedures apply, including optional streamlined procedures for evaluation & solicitation.
- ✓ Wait period after notice & before issuance of solicitation may be reduced (FAR 5.203(a)).
- ✓ Based on circumstances, the contracting officer may allow for fewer than 30 day response time for receipt of offers (FAR 12.205, 5.203(b)).

**Non-commercial item acquisitions
(over \$100,000)**

- ✓ Some acquisitions of non-commercial items may qualify to use FAR Part 12 (FAR 12.102(f) & (g)).
- ✓ Offerors may be allowed to give oral presentations (FAR 15.102).

(8) Davis-Bacon Act and Service Contract Act.

The Davis-Bacon Act and Service Contract Act apply to contract actions using Recovery Act funds. Agencies must follow the same laws, principles, procedures, and practices in awarding contracts with Recovery Act funds as they do with other funds.

6.3 Are there actions, beyond standard practice, that agencies must take related to the monitoring of contracts under Recovery Act?

Agencies must provide for appropriate oversight of contracts to ensure outcomes that are consistent with and measurable against agency plans and goals under the Act. It is critical that agencies evaluate their workforce needs so that they are able to appoint qualified Contracting Officers, Contracting Officer Technical Representatives (COTRs), and Program Managers with certification levels appropriate to the complexity of Recovery Act projects. In addition, agencies should actively monitor contracts to ensure that performance, cost, and schedule goals are being met, including:

- Ensuring that incentive and award fees are effectively administered. (For further guidance, see the OFPP memorandum entitled *Appropriate Use of Incentive Contracts*, 12/4/07);
- Implementing quality assurance procedures established for the contract;
- Documenting timely inspection and acceptance of deliverables;
- Promptly using all available tools to identify and remedy deficiencies related to contractor performance, cost, and schedule (e.g., Quality Assurance Surveillance Plans, cure notices, show cause letters); and
- Completing timely contractor performance evaluations that accurately reflect the contractor's actual performance, supported by appropriate documentation.

6.4 Are there terms and conditions, beyond standard practice, that must be included in contract agreements under the Recovery Act?

The Recovery Act establishes several special contract requirements. For example, the Recovery Act requires reporting on first-tier subcontractor awards. A FAR case is in process that will accommodate this requirement. Other Recovery Act matters under consideration for FAR coverage or other governmentwide guidance include:

- Special Buy American Act requirements;
- Additional requirements for contractor reporting; and
- Expanded GAO/OIG access to contractor records.

Agencies must ensure receipt of funds is made contingent on recipients meeting the reporting requirements in Section 1512 of the Act.¹¹

6.5 Are there actions, beyond standard practices, that agencies must take related to oversight and audit of contracts awarded under Recovery Act?

Agencies already have in place processes and procedures to continuously monitor and improve the effectiveness of internal control associated with their programs. 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 Recovery Act program funds. High risk associated with the award and expenditure of Recovery Act program funds, merit increased oversight by the Agency. In addition, the Recovery Accountability and Transparency Board, established by the Act, Congress and the Office of Management and Budget will oversee and monitor implementation of the Recovery Act through periodic reporting on the use and expenditure of funds. Reporting will be in a variety of areas including:

- Progress against program schedule and performance objectives;
- Qualification and number of acquisition, grants and program management staff
- Use of competition;
- Timeliness of awards; and
- Dollars obligated and expended

¹¹ OMB will work with the relevant personnel from the Federal community to define a standard term and condition for all awards related to section 1512 reporting requirements that can be implemented in the short-term. OMB will also work with agencies to develop a standard term and condition that aligns to additional accountability requirements (e.g., prevention of misuse of funds).

Agencies should identify any special reporting requirements required by the Act and take action to ensure the information will be available for timely reporting.

Agencies are reminded that proper documentation must be maintained for each contract award. FAR Part 4 prescribes policies and procedures related to the proper documentation of contract files.

6.6 We know we will need more acquisition people to carry out our agency's responsibilities under Recovery Act. How do we meet this need?

Once you've determined your workforce needs, determine if there are agency resources that can be reallocated. If there are immediate, temporary needs that cannot be filled from within your agency, OFPP and the Federal Acquisition Institute can assist in identifying human capital and other resources. Assistance could be in a variety of forms, such as interagency collaboration, details, or teaming.

If you identify a need for short-term supplemental acquisition personnel, please consult with your agency Chief Human Capital Officer (CHCO) when planning how to meet your agency human capital needs. Also consult with your OMB representative. Below is guidance that might be helpful in hiring additional temporary or term employees quickly.

- Re-hiring Federal retirees – The GSA Modernization Act (P.L. 109-313) amended the OFPP Act with provisions relating to reemployment of retired acquisition-related professionals (defines as those in the GS-1102 and GS-1105 series and other series with significant acquisition-related duties). The OFPP memorandum of Sept 4, 2007, *Plans for hiring reemployed annuitants to fill acquisition-related positions* http://www.whitehouse.gov/omb/procurement/workforce/090407_reemployed.pdf provides details on how to use this authority to re-hire retired Federal professionals without impacting their annuity. The authority includes special provisions for temporary emergency need and provided your agency has documentation for each annuitant, your agency head can approve multiple people for hiring at a time. If your agency has not already developed a plan for this authority, consult with your CHCO on building the plan, obtaining approval, and implementation.

- Direct Hire Authority – The Services Acquisition Reform Act (P.L. 108-136) authorized direct hire authority for civilian agencies. Once an agency head determines there is a shortage of acquisition professionals (which includes personnel in the GS-1102, GS-1105, and other series with significant acquisition-related duties), the agency can announce jobs, rate applications, hold a large-scale event with agency personnel to conduct interviews and make offers the same day as interviews. If your agency has not already developed a plan for this authority, consult with your CHCO on building the plan, obtaining approval, and implementation.

- Hiring Veterans – based on the Veterans' Recruitment Appointment (VRA) Authority (P.L. 107-288) and 5 CFR 307, agencies may also identify and rapidly hire qualified professionals (through the GS-11 or equivalent grade). This is a non-competitive appointment authority that your CHCO can help you use.

- Hiring Persons with Disabilities - using Schedule A appointments as outlined in 5 CFR 213, agencies may identify and rapidly hire qualified professionals with disabilities. This is a non-competitive appointment authority that your CHCO can help you use.

For more comprehensive guidance on hiring flexibilities, please consult with your CHCO who can guide you through OPM's Human Resources Flexibilities and Authorities in the Federal Government handbook at: http://www.opm.gov/omsoe/hr-flex/HumanResourcesFlexibilities_and_AuthoritiesHandbook.pdf

If multiple agencies are interested in hiring a substantial number of professionals under any of these authorities, OFPP and the CAOC may consider facilitating a large-scale recruitment initiative to identify interested candidates. OFPP will reach out to agencies shortly to determine the interest and need for a coordinated activity.

Section 7 – Loans and Loan Guarantees

7.1 What actions, beyond standard practice, must agencies take while planning for awarding loans and loan guarantees under Recovery Act?

Consistent with standard agency practices, Federal credit policies under OMB Circular A-129, and the Administration’s commitment to accountability and transparency, planning for loan and loan guarantee awards under the Recovery Act is critical to:

- Mitigate performance and credit risk;
- Define program requirements that deliver meaningful and measurable outcomes consistent with agency plans and the goals of Recovery Act;
- Obtain maximum practicable competition consistent with program authorizing legislation;
- Expeditiously award financial assistance using available streamlining flexibilities;
- Apply sufficient and adequately trained workforce to responsibly evaluate, award and monitor loans and loan guarantees;
- Ensure adequate government personnel is available to perform inherently governmental functions during the loan award and credit management cycles;
- Provide appropriate agency oversight at critical decision points; and
- Make information available to the public, consistent with the Recovery Act.

In addition to the transparency provisions, consistent with statutory and regulatory requirements, standard agency practices, and Federal credit policies under OMB Circular A-129, key considerations during the planning process include the following areas:

(1) Compliance with Statutory Provisions

Agencies should evaluate specific program provisions, and incorporate necessary information collection and other requirements into opportunity notices, applications, award agreements, and processes to ensure adequate oversight and management, and compliance with any unique provisions under the Recovery Act.

(2) Competition

Although the law 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 federal assistance on a non-competitive basis. Program authorizing language, (with possible clarification provided by the Recovery Act), agency regulations, and other documentation specify the competition requirements for awards. Agencies shall enforce competition requirements consistent with the provisions of all applicable statutory, regulatory, and other requirements.

(3) Financial Assistance Objectives and Evaluation Criteria

Agencies should develop specific performance goals and target measures prior to developing a funding opportunity notice. Agencies shall obtain sufficient information from applicants, to evaluate the degree to which the loan or loan guarantee would meet the desired program outcomes.

Where competition is permitted by program authorization, agencies shall publish in the opportunity notice, criteria for determining the best use of funds for each opportunity notice and formalize the procedures to evaluate applications.

(4) Performance Measure, Accountability, and Reporting

Agencies should also establish systems or other processes using existing systems to capture, validate, report, and evaluate information regarding the loan and loan guarantee award, from the borrowers, the lenders or other relevant sources, to periodically assess and report performance against expected results consistent with Recovery Act reporting requirements. Such systems or processes include development of a standard format for award recipients to report summary information on the award and use of funds, and making such information available on a public website. Reviews of spending shall be designed to proactively identify and minimize risks.

7.2 What are the requirements related to loan and loan guarantee announcements under the Recovery Act?

Agencies shall use the GovLoans.gov web portal in conjunction with agency websites and existing agency marketing and outreach initiatives to assure public awareness of loan availability under the Recovery Act.

(1) Requirements for Opportunity Notices

Current GovLoans.gov opportunity announcements include sections for eligibility determination, terms and conditions, application process, and contact information. Opportunity notices posted on GovLoans.gov must include the following sections:

- Performance Measurement;
- Data Collection; and
- Loan and Loan Guarantee Award Selection and Evaluation Criteria

(2) Requirements for Loan and Loan Guarantee Award Notices

The loan and loan guarantee award notice shall address the following topics:

- Statement of Expected Benefit/Outcome;
- Face Value of Loan or Loan Guarantee;
- Subsidy cost to Government of the Loan or Loan Guarantee;

- Congressional District;
- Key Performance Measures;
- Competitive Award Process Determination; and
- Justification of Non-Competitive Selection Process, if appropriate.

7.3 Are Federal agencies expected to initiate additional requirements related to the implementation and monitoring of loans and loan guarantees under Recovery Act?

Yes. Agencies must take steps, beyond standard practice, 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 the Office of Management and Budget (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 to prevent or timely detect waste, fraud, or abuse, developed with input from the Inspector General for the agency.

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

7.4 Are there terms and conditions, beyond standard practice, that must be included in loan and loan guarantee agreements under Recovery Act?

Agencies must ensure receipt of funds is made contingent on recipients meeting the reporting requirements in Section 1512 of the Act.¹²

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

¹² OMB will work with the relevant personnel from the Federal community to define a standard term and condition for all awards related to section 1512 reporting requirements that can be implemented in the short-term. OMB will also work with agencies to develop a standard term and condition that aligns to additional accountability requirements (e.g., prevention of misuse of funds).

of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving those funds.

7.5 Are there actions, beyond standard practices, that agencies must take related to oversight and audit of loan and loan guarantees awarded under Recovery Act?

While Recovery Act does not mandate specific requirements, the law does envision that additional steps, beyond standard practice, will be taken to mitigate the unique implementation risks. At a minimum, agencies should be prepared to evaluate and demonstrate the effectiveness of standard monitoring and oversight practices. Also, consistent with Section 3 of this Guidance, agencies should initiate additional measures, as appropriate, to address higher risk areas.

7.6 What audit tools will be used to ensure accountability for Federal loans and loan guarantees under the Recovery Act?

- Non-Federal entities (States, local governments, tribes, and non-profit organizations) are required by the Single Audit Act Amendments of 1996 (Single Audit) and OMB Circular A-133 to have an annual audit of their Federal awards (e.g., loan programs).¹³
- Consistent with Section 3 of this Guidance, Federal agencies will perform a risk analysis of Recovery Act programs and request OMB to designate any high risk programs as Single Audit major programs, i.e., programs which must be tested in a particular year.¹⁴
- In addition to single audits, OIGs will use risk assessment techniques where data is available to identify high risk programs and non-Federal entities to be targeted for priority audits, inspections, and investigations with faster turnaround reporting.¹⁵
- OIGs will perform audits and inspections of their respective agencies awarding, disbursing, and monitoring of Recovery Act funds to determine whether safeguards exist to ensure the funds are used for their intended purposes.

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

- For fiscal years ending September 30, 2009 and later, all Single Audit reports filed with the Federal Audit Clearinghouse (FAC) will be made publicly available on the internet. A link will be provided from Recovery.gov.¹⁶

¹³ Technical Single Audit exceptions applicable to a very small percentage of funding are entities expending less than \$500,000 a year are exempt from Single Audit and a few non-Federal entities are permitted to have biennial audits under a grandfathering clause.

¹⁴ A-133 §__.520(c) (2) allows OMB to designate selected Type A programs as major programs. Notice is required to be given to the recipient and the auditor 180 days prior to the end of the fiscal year to be audited. This information can be provided in the A-133 Compliance Supplement, OMB's website, and Recovery.gov.

¹⁵ Single audits normally are not received until at least 9 months after the end of the non-Federal entity's fiscal year. OIG audits can be completed and reported on more of a real time basis.

¹⁶ § 7502(h) of the SAA and OMB Circular A-133 §__.320(a) and (d) require non-Federal entities to file Single Audit reports with the Federal Audit Clearinghouse (FAC). Entities are also required to make the reports available for public inspection. So in effect, Single Audit reports are public reports. The law does not require (or prohibit) the FAC from making the reports publicly available. Public access to these reports is a logical outgrowth to promote transparency since the FAC is a central repository of all reports and beginning in 2008 reports are filed in an electronic format. A current concern with the FAC making the reports publicly available on-line is a report may inadvertently include personally identifiable information (PII). While the reports are currently subject to the

- Federal agencies will review Single Audits of Recovery Act funding and provide a synopsis of audit findings and required corrective action taken on Recovery.gov.

Freedom of Information Act, the FAC sends all FOI requests to the Federal Cognizant agency who is responsible to review, redact as necessary, and send to the requestor. Currently the FAC has an on-line system for Federal agencies to access Single Audit reports. There is no current plan as to how the FAC would respond to a FOI request for the whole data base of reports and ensure PII is not disclosed. The OMB can direct the FAC to take proactive steps to ensure Single Audit reports do not include PII. FAC steps can include: (1) notifying non-Federal entities, auditors, and Federal agencies that beginning with reports for fiscal years ending 9/30/09 the FAC will make the reports publicly available and that they should take steps to ensure the reports do not include PII; (2) include appropriate notices on the FAC website that reports will be made publicly available and therefore non-Federal entities and their auditors are responsible to ensure the reports do not include PII; and (3) use computer assisted techniques to screen reports for PII.

Appendix 1 – Detailed Instructions on Transmitting Materials

This appendix currently includes transmission instructions for the following information flows: Major Communications (Section 2.2), Formula Block Grant Allocations (Section 2.3), and Weekly Reports (Section 2.4). Future guidance will include instructions for the submission of the reports required in sections 2.5 through 2.9.

For each of the near term reporting requirements (major communications, formula block grant allocations, weekly reports) agencies are required to provide a feed (preferred: Atom 1.0, acceptable: RSS) of the information so that content can be delivered via subscription. Note that the required information can be supplied in the feed or the feed can point to a file at the agency using the convention noted below. If an agency is immediately unable to publish feeds, the agency should post each near term information flow (major communications, formula block grant allocations, weekly reports) to a URL directory convention suggested below: www.agency.gov/recovery/year/month/date/reporttype. It is expected that the information files will be posted at the following URLs:

- Major Communications: www.HUD.gov/recovery/2009/02/16/comms
- Formula Block Grant Allocation: www.HUD.gov/recovery/2009/02/16/fbga
- Weekly Report: www.HUD.gov/recovery/2009/03/01/weekly

In addition to posting the files either via feed or the URL structure, agencies are also required to email the files to the following email address: recoveryupdates@gsa.gov. Emails should have a subject in the following format: Official Agency Abbreviation, Report Type. For example:

- HUD, Major Communications
- HUD, Formula Block Grant Allocation
- HUD, Weekly Report #X

Note that the body of the email should include the appropriate completed template as an attachment and should include the name, title, and contact information for the submitter. Templates for these files can be found at <https://max.omb.gov/community/x/doC2Dw>.

Major Communications: Agencies are asked to send major announcements for potential use on Recovery.gov. The announcements should be written in the normal agency press release format, and include a short paragraph in the following format:

PRESIDENT OBAMA ANNOUNCES ECONOMIC ADVISORY BOARD

Washington (February 17, 2009) – President Barack Obama today signed an executive order establishing the new Economic Recovery Advisory Board. Modeled on the Foreign Intelligence Advisory Board created by President Dwight D. Eisenhower the Board will provide an independent voice on economic issues and will be charged with offering independent advice to the President as he formulates and implements his plans for economic recovery.

Data elements for the major communications feed should include:

Major Communications Data: (Based on Recovery Act Guidance)			
Data Elements	Field Type	Source of Requirement	Source of Record
Title (Clear Heading)	varchar(45)	OMB Guidance	Agency
Link to Communications Item	varchar(250)	OMB Guidance	Agency
Type of Major Communication (Press Release, Video, Press Event, Other)	varchar(45)	OMB Guidance	Agency
Short (no more than 5 sentences) overview of the main communications points	Up to 65535 characters	OMB Guidance	Agency
Date and time of communication	MMDDYYYY HH:MM	OMB Guidance	Agency
Additional citizen friendly tags that can be used on Recovery.gov to help present the news items	varchar(45)	OMB Guidance	Agency

Formula Block Grant Allocation Reports: Agencies are asked to provide Formula Block Grant Allocation information as soon as it becomes available. Data elements for the formula block grant allocation feed should include:

Formula Block Grant Allocation Data: (Based on Recovery Act Guidance, Recovery Act, and FFATA.)				
Data Elements	Description	Field Type	Source of Requirement	Source of Record
Recipient Name	The name of the recipient of the award.	varchar(45)	OMB Guidance	Agency
Federal Funding Amount	Amount of federal government's obligation or contingent liability, in dollars. A negative number represents a decrease in funding.	int(11)	OMB Guidance	Agency
Recipient DUNS	Unique nine-digit number issued by Dun &	char(1)	OMB Guidance	Agency

Number	Bradstreet to the agency. Followed by optional DUNS Plus 4 which allows an agency to submit different bank account data for a single DUNS (Assigned by Dun & Bradstreet)	3)		
CFDA Program Number	The numeric code that indicates the program under which this award was funded within the Catalog of Federal Domestic Assistance (CFDA). Numbers that contain AAA, AAB etc. are pseudo-codes and are not in CFDA.	varchar(7)	OMB Guidance	Agency
CFDA Program Title	The title of the program under which the award was funded, taken from the Catalog of Federal Domestic Assistance (CFDA).	varchar(74)	OMB Guidance	Agency
Recipient Address Line 1	Recipient 's Full address Line 1	char(35)	OMB Guidance	Agency
Recipient Address Line 2	Recipient 's Full address Line 2	char(35)	OMB Guidance	Agency
Recipient Address Line 3	Recipient 's Full address Line 3	char(35)	OMB Guidance	Agency
Recipient City Code	The five-digit FIPS city code for the city in the address of the recipient of the award.	varchar(5)	OMB Guidance	Agency
Recipient City Name	The city in which the address of the recipient of the award is located.	varchar(21)	OMB Guidance	Agency
Recipient County Code	The three-digit FIPS county code for the county in which the address for the recipient of the award is located.	char(3)	OMB Guidance	Agency
Recipient County Name	The county in which the address for the recipient of the award is located.	varchar(21)	OMB Guidance	Agency
Recipient State Code	The two-digit FIPS state code for the state or territory in which the address for the recipient of the award is located.	char(2)	OMB Guidance	Agency
Recipient State Name	The name of the state or territory in which the address for the recipient of the award is located.	varchar(25)	OMB Guidance	Agency
Recipient Zip Code	The Zip code in the address of the recipient of the award.	varchar(9)	OMB Guidance	Agency
Program Source/Treasury Account Symbol: Agency Code	Agency Code part (First 2 characters) of Treasury Account Symbol (9 characters) assigned by U.S. Department of Treasury	varchar(2)	OMB Guidance	Agency
Program Source/Treasury Account Symbol: Account Code	Account Code part (3 rd to 6th characters) of Treasury Account Symbol (9 characters) assigned by U.S. Department of Treasury	varchar(4)	OMB Guidance	Agency
Program Source/Treasury Account Symbol; Sub-Account Code (OPTIONAL)	Sub-Account Code part (7th to 9th characters) of Treasury Account Symbol (9 characters) assigned by U.S. Department of Treasury	varchar(3)	OMB Guidance	Agency

Weekly Update Reports: Starting 3/3/2009, agencies will be required to submit a weekly update report on a cumulative, year-to-date basis for Recovery.gov. Expenditure data is optional on the weekly report until April 6th. Other required amounts should be reported as zero if unknown at the time of reporting. Data elements for the weekly update report feed should include:

Weekly Update Report Data: (Based on Recovery Act Guidance)				
Data Elements	Description	Field Type	Source of Requirement	Source of Record
Week Start Date	The date for the first day in the week covered in the weekly update report.	MMDD YYYY	OMB Guidance	Agency
Program Source/ Treasury Account Symbol: Agency Code	Agency Code part (First 2 characters) of Treasury Account Symbol (9 characters) assigned by U.S. Department of Treasury	varchar(2)	OMB Guidance	Agency
Program Source/Treasury Account Symbol: Account Code	Account Code part (3rd to 6th characters) of Treasury Account Symbol (9 characters) assigned by U.S. Department of Treasury	varchar(4)	OMB Guidance	Agency
Program Source/Treasury Account Symbol; Sub-Account Code (OPTIONAL)	Sub-Account Code part (7th to 9th characters) of Treasury Account Symbol (9 characters) assigned by U.S. Department of Treasury	varchar(3)	OMB Guidance	Agency
Total Appropriation	Total Allocations - actual dollar amount, rounded to the nearest whole dollar	int(12)	OMB Guidance	Agency
Total Obligations	Total Obligations - actual dollar amount, rounded to the nearest whole dollar	int(12)	OMB Guidance	Agency
Total Expenditures	Total Expenditures - actual dollar amount, rounded to the nearest whole dollar	int(12)	OMB Guidance	Agency
Major Completed Actions	Short bulleted list of the major actions taken to date	Up to 65535 charac ters	OMB Guidance	Agency
Major Planned Actions	Short bulleted list of the major planned actions	Up to 65535 charac ters	OMB Guidance	Agency

Note on Federal Solicitation Data: The Recovery Act requires that Recovery.gov include links to contract and financial assistance solicitations. Contract solicitations will be published through the Federal Business Opportunities website (www.fbo.gov) and Federal financial assistance solicitations will be published through Grants.gov. The legislation does not state any specific data field requirements for contract or financial assistance solicitations to be presented on Recovery.gov.

Appendix 2 — Agency Recovery Related Web Pages

As discussed in Section 2.12 of this guidance, agencies are not required to develop *new* websites dedicated to American Recovery and Reinvestment Act (Recovery Act) efforts. Each agency should dedicate a page of its primary website to Recovery Act activities (entitled “[Insert Agency Name] Information Related to the American Recovery and Reinvestment Act of 2009”). Those pages must be consistently identified with a URL that identifies the key entry page to that information with a “recovery” standard extension, i.e. www.agency.gov/recovery. Agencies must create their recovery related page within one week of the issuance of this guidance.

This section outlines specific requirements and best practices for agency recovery related web pages.

Requirements

In order to facilitate transparency to the public, agencies must follow some minimum common formats for their Recovery Act pages. These include:

- Page titles. To help the public find the information via commercial and government search engines, agencies should use a consistent page title for their main Recovery Act page (“Agency X Information Related to the American Recovery and Reinvestment Act of 2009”).
- Main headings. Each agency’s Recovery Act key entry page should include the following main headings:
 - “Overview of the American Recovery and Reinvestment Act of 2009 (Recovery Act). The American Recovery and Reinvestment Act of 2009 (Recovery Act) was signed into law by President Obama on February 17th, 2009. It is an unprecedented effort to jumpstart our economy, create or save millions of jobs, and put a down payment on addressing long-neglected challenges so our country can thrive in the 21st century. The Act is an extraordinary response to a crisis unlike any since the Great Depression, and includes measures to modernize our nation's infrastructure, enhance energy independence, expand educational opportunities, preserve and improve affordable health care, provide tax relief, and protect those in greatest need.”
 - “Implementing the American Recovery and Reinvestment Act of 2009 (Recovery Act)”. Agencies should include a short paragraph or bullets giving an overview of implementation of the Recovery Act for your agency.
 - “Agency Plans and Reports”. This section should include agency plans and reports as required by this guidance, the Recovery Act, or as determined by the agency. This includes agency and program specific reports required by the Recovery Act.

- “Learn more about our programs”. Agencies should use this section to highlight program plans and other programmatic activities. There are no specific formatting requirements for this section.
- Prominent link to Recovery.gov. Agencies should include the “Recovery.gov” graphic prominently on their Recovery pages, linked to www.recovery.gov. Agencies can find the recovery graphic at <https://max.omb.gov/community/x/7QCtDw>.
- Legislation. Agencies should include a link to the final legislation on their main Recovery page.
- How to Apply. Agencies should have prominent links to Grants.gov and FBO.gov so that people and entities that want to apply or bid for grants, contracts, loans or loan guarantees have a clear and consistent avenue to learn more and act.
- Link to agency Inspector General (IG) website. Include a link to the IG's websites to allow for fraud reporting and easy access to IG reports.
- Transparency & reporting. Agencies will also be using the web for transparency and reporting that is required for compliance with the Recovery Act. Please see Appendix 1 for more information.

Best practices

Agencies should have a prominent link to their Recovery Act key entry page from their home page and from other relevant sections of their site where visitors are likely to look for this information. For example, agencies should link to their Recovery Act section from their “Performance and Budget” page and their “Grants” page, where applicable. Agencies should also link to their Recovery Act page from relevant program areas that are receiving funding from Recovery Act.

- Content should be written in plain language and follow government-wide best practices for plain language (see: http://www.usa.gov/webcontent/managing_content/writing_and_editing.shtml).
- Agencies should ensure that all content, including printable reports, is accessible to people with disabilities and meets requirements of Section 508 of the Rehabilitation Act of 1973 as well as any agency specific Section 508 procedures. Agencies should ensure that large documents are presented in a way for users to easily scan their contents and download them.
- To ensure maximum transparency and accountability, agencies should provide contact information for the person or office responsible for maintaining their agency’s Recovery Act content. Agencies should also provide contact information for the office of the senior accountable agency official responsible for Recovery Act activities.

- As they develop their web content, agencies should follow general government-wide web best practices developed by the Federal Web Managers Council, published on WebContent.gov: http://www.usa.gov/webcontent/reqs_bestpractices/best_practices.shtml