



Office of the City Auditor

INFORMATION CALENDAR

April 20, 2010

To: Honorable Mayor and Members of the City Council
From: Ann-Marie Hogan, City Auditor
Subject: Recovery Act Readiness: Housing Prepared to Meet Funding Requirements

INTRODUCTION

The objective of our audit was to determine if the Department of Housing and Community Services (Housing) has adequate procedures and controls to ensure compliance with requirements of the American Recovery and Reinvestment Act (Recovery Act). Our audit found that these procedures and controls are in place. We are pleased to report that our audit of Housing resulted in no findings, and no recommended improvements for Housing's oversight of Recovery Act financing.

CURRENT SITUATION AND ITS EFFECT

Housing appears to be prepared to meet Recovery Act requirements. It has established procedures and controls to accurately capture all data needed to report revenue, expenditures, and jobs created under each Recovery Act grant. In addition, Housing has posted a notice of employee whistleblower rights in its offices, and at a public health clinic to be renovated with Recovery Act funds. It will require subcontractors to post the notice at their Recovery Act work sites. Finally, Housing's Recovery Act subcontracts will include terms and conditions to require compliance with all applicable provisions of the Act. These procedures and controls are explained in greater detail in the attached report.

Housing's Recovery Act grants have stringent limits on administrative costs. There is a possibility that the General Fund might have to absorb administrative costs that exceed these limits.

BACKGROUND

The Recovery Act was enacted in February 2009 to stimulate recovery in response to the most severe economic crisis since the Great Depression. The Act holds grant recipients to high standards for transparency and accountability in expenditure of funds received. For example, it requires prime recipients to report detailed quarterly data on grant projects, expenditures, jobs created, and subcontracts awarded to FederalReporting.gov. It also establishes extensive whistleblower protection for employees that report gross waste, abuse or other specified misconduct. Recovery Act funding comes with other requirements, such as Davis-Bacon Act wage rate protection and use American made iron, steel, or manufactured goods for construction projects.

These and other requirements are explained in greater detail in the attached audit report.

An audit of Recovery Act funds was initiated because of the inherent risk associated with accepting funds at a time when the funder's requirements were not yet fully developed. We focused on Housing because the Department is responsible for almost \$3.3 million in Recovery Act grants, which is half of the City's known funding to date under the Act.

FISCAL IMPACT

The Recovery Act will provide Housing with almost \$3.3 million in known funding to provide services to Berkeley citizens and to create jobs in the area. Housing also anticipates receiving almost \$380,000 in additional funding. Noncompliance with Federal grant terms could cause the grantors to withdraw the funds. It could also result in Single Audit findings that could impair future grant funding for other City programs. Housing's successful establishment of appropriate internal controls and procedures reduces these risks for Recovery Act funds and for the much larger dollar amount of total Federal grants to the City.

POSSIBLE FUTURE ACTION

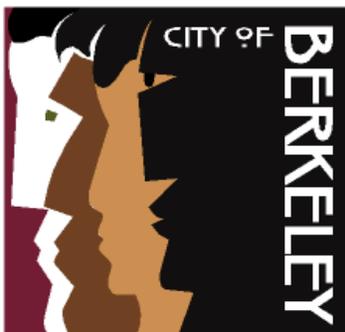
We will consider additional audits of grant funding for next year's audit plan based on identified risks, including the dollars involved. The auditors invite the City Council and the City Manager to make suggestions for next year's audit plan this month.

CONTACT PERSON

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1. Recovery Act Readiness: Housing Prepared to Meet Funding Requirements

City of Berkeley



RECOVERY ACT READINESS HOUSING IS PREPARED TO MEET FUNDING REQUIREMENTS

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Presented to Council on April 20, 2010

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Recovery Act Readiness: Housing Prepared to Meet Funding Requirements

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I. Executive Summary

Audit Objective: Determine if the Department of Housing and Community Services (Housing) has adequate procedures and controls to ensure compliance with the requirements of the American Recovery and Reinvestment Act of 2009 (Recovery Act).

We focused on Housing because the Department is responsible for almost \$3.3 million in Recovery Act grants, which is half of the City's known funding to date under the Act. Housing appears prepared to meet the requirements of the Recovery Act. The Department has implemented procedures to collect and report information required by the Act, and controls to ensure accuracy of that information. These procedures and controls should result in complete and accurate reporting. Housing has also taken measures to ensure compliance with other applicable Recovery Act requirements.

The General Fund may have to absorb administrative costs that exceed limits allowed by Housing's Recovery Act grants. See Section IV below.

II. BACKGROUND

The mission of the City's Housing and Community Services Department (Housing) is to produce, preserve and support affordable housing in order to help meet the needs of Berkeley residents, especially low-income, homeless, senior, disabled or special needs individuals. The Department contracts with neighborhood-based organizations to help people overcome poverty through housing, employment and training, and other services. Housing also administers a subsidized transportation program for seniors and disabled persons.

The American Recovery and Reinvestment Act of 2009 was enacted in February 2009 to stimulate recovery in response to the most severe economic crisis since the Great Depression. The \$787 billion Act cuts federal taxes, increases unemployment benefits, and provides spending for education, health care, and infrastructure improvements. More information on the Recovery Act can be found at Recovery.Gov.

Housing is responsible for six Recovery Act grants:

Homelessness Prevention and Rapid Re-Housing Program	\$1,447,619 ¹
Community Development Block Grant	871,248 ²
Low Income Weatherization Assistance	377,147 ³
Community Services Block Grant	308,958
Summer Youth Employment Program	263,016
Senior Nutrition Program	<u>22,218</u>
Total Housing Recovery Act Funding	<u>\$3,290,206</u>

Transparency and Accountability

The Recovery Act has high standards for accountability and transparency.

The Recovery Act holds grant recipients to high standards for transparency and accountability in expenditure of funds received. It created the Recovery Transparency and Accountability board to “coordinate and conduct oversight of covered funds to prevent fraud, waste, and abuse.” The Recovery Act requires prime recipients to report detailed quarterly data on grant projects, expenditures, jobs created, and subcontracts awarded to FederalReporting.gov. If funding is used for infrastructure investments, the quarterly reports must also disclose the purpose, total cost, and rationale for funding the infrastructure project with funds received under the Recovery Act.

To receive funding under the Recovery Act for infrastructure improvements, the governor, mayor, or other chief executive of a state or local government must certify that:

- The infrastructure investment has received full review and vetting required by law, and
- The chief executive accepts responsibility that the infrastructure improvement is an appropriate use of taxpayer dollars.

This certification must be posted on a website linked to Recovery.Gov.⁴

¹This amount consists of a \$1,332,952 grant for which the City is prime recipient (receives funding directly from the federal government), and a second \$114,667 grant for which the City is sub-recipient to the county.

² The City is also prime recipient for the Community Development Block Grant, but is sub-recipient to the state or county for the other Recovery Act grants.

³Housing anticipates receiving an additional \$380,349 for low income weatherization.

⁴ This website was created by the Recovery Accountability and Transparency Board, as required by the Recovery Act.

The Recovery Act also provides extensive whistleblower protection. An employer that receives Recovery Act funding is prohibited from taking action against, or discriminating against, an employee as reprisal for reporting information that the employee reasonably believes is evidence of gross waste, abuse, or other specified misconduct.

Other Requirements and Restrictions

Additional requirements and restrictions apply to Recovery Act funding.

- If funding is for a construction project, the project is subject to Davis-Bacon Act wage rate protections. Laborers and mechanics must be paid wages not less than those of similar projects in the locality.
- With certain exceptions, only American made iron, steel, or manufactured goods may be used in projects for construction, alteration, maintenance, or repair of a public building or a public work.
- Recovery Act funds cannot be used for a casino or other gambling establishment, an aquarium, a zoo, a golf course, or a swimming pool.
- The Code of Federal Regulations requires Recovery Act funding recipients to maintain records that adequately identify the source and application of Recovery Act funds.⁵
- If Recovery Act funding is used for infrastructure investment, the recipient must give preference to projects that can be started and completed expeditiously, including a goal of using 50 percent of the funds for activities that can be initiated not later than 120 days after enactment of the Act (February 17, 2009).
- The Recovery Act requires that adequate resources be devoted to ensure expeditious completion of environmental reviews required by the National Environmental Policy Act. The City was required to conduct environmental compliance reviews for two Community Development Block Grant projects.

⁵ Title 2, Part 176.210

III. HOUSING IS PREPARED TO MEET RECOVERY ACT REQUIREMENTS

Housing appears to be prepared to meet the Recovery Act's reporting requirements, as well as other applicable requirements.

Reporting Requirements

Housing's procedures and controls should ensure complete and accurate reporting.

Housing has established procedures and controls that should ensure that revenue, expenditures, and jobs created under each Recovery Act grant will be reported accurately to FederalReporting.gov. Recovery Act revenues and expenditures are identified in FUND\$⁶ by project codes.⁷ These project codes should enable the City to clearly identify the source and application of Recovery Act funds.

Jobs created will be supported by internal time reports and subcontractor payroll reports. Housing staff time reports are coded to show time spent on each Recovery Act grant by fund and project code. Subcontracts specifically require that the subcontractor report staff time worked on the project.

Grant project managers will review subcontractor and vendor invoices. An Accountant I or Accounting Office Specialist III will then code the invoice with the applicable FUND\$ account number and project code. Finally, Housing's Senior Accountant will review each invoice to ensure it is correctly coded.

General Recovery Act Requirements

Section 1511 Website Certification

None of Housing's Recovery Act projects are classified as infrastructure projects. Therefore, the City Manager will not be required to post a certification on the City's website per Recovery Act Section 1511 for any Housing grant.

⁶ SunGard/HTE software known as FUND\$ is the City's financial system.

⁷ There are one to three project codes for each Recovery Act grant, and each project code relates to a single grant. The project codes were established by the City Manager's Office.

Section 1553 Whistleblower Protection

A flyer on whistleblower rights will be posted at key locations.

Administrative Regulation 3.17 (Fraud, Abuse and Misuse of City Resources) prohibits retaliation against employees who, in good faith, report misuse of public funds. Also, Housing will use a flyer that describes whistleblower protection rights. According to Housing, this flyer has been posted or requested to be posted on a bulletin board in Housing, at a public health clinic that will be renovated under a Recovery Act grant, and at each subcontractor work site.

Starting with a subcontract awarded in September 2009, Housing plans to include a set of supplemental terms and conditions in Recovery Act subcontracts to require compliance with applicable provisions of the Act, including provisions for whistleblower protection.

Davis-Bacon Act Wage-Rate Protections

Software will track compliance with wage rate requirements.

The supplemental terms and conditions for subcontracts include a requirement to comply with Davis-Bacon wage rate provisions. Also, subcontractors on construction projects will be required to use proprietary software designed to track compliance with prevailing wage requirements.

Buy American Provisions

The supplemental terms and conditions for subcontracts also include a requirement for use of American iron, steel, and other manufactured goods.

Environmental Reviews

Required environmental reviews are complete.

The City completed required environmental reviews for two public facility projects under the Community Development Block Grant:

- City of Berkeley Public Health Clinic Renovations
- Amistad House Acquisition and Renovation

In accordance with Title 24 of the Code of Federal Regulations⁸, both projects were found to be excluded from the requirement to file an environmental impact statement.

⁸ Section 58.35 (a) (3) (ii)

**IV. ADMINISTRATIVE COSTS MAY REQUIRE
GENERAL FUND SUPPLEMENTATION**

Housing’s Recovery Act grants have stringent limits on administrative costs, as shown in the following table.

**Housing Recovery Act Grants
Administrative Cost Limits (1)**

Grant Title	Limit on Administrative Costs (2)
Summer Youth Employment (3)	4%
Homelessness Prevention and Rapid Re-Housing	5%
Low Income Weatherization Assistance	5%
Community Development Block Grant	10%
Community Services Block Grant	12%

- (1) As a percent of total grant funding.
- (2) We did not include the Senior Nutrition Program since total Recovery Act funding is only \$22,218. This amount does not fund administrative costs.
- (3) In addition to the four percent administrative cost limit, the Summer Youth Program grant covered a portion of the salaries of three City employees as direct costs of the program.

The City might not recover all administrative costs.

With these limits, the City will not be able to bill the cost of all staff time expended on the projects. Housing staff believe that administrative costs not recovered under the Recovery Act grants can eventually be recovered under future federal and state grants through application of the Department’s indirect cost rate. It is uncertain if the terms and conditions of future contracts and grants will allow recovery of administrative costs incurred under the City’s current Recovery Act grants. These future contracts and grants may also have limits on administrative costs, or on indirect cost rates.

V. FISCAL IMPACT

The Recovery Act will provide Housing with almost \$3.7 million in current or anticipated funding to provide services to Berkeley citizens and to create jobs in the area. The procedures established by Housing are critical to ensure compliance with applicable Recovery Act requirements.

It is uncertain whether the General Fund will have to absorb administrative costs that exceed administrative cost limits established by Housings Recovery Act grants.

On February 23, 2010, Housing reported to the City Council on the status of grants awarded through the Recovery Act.⁹ This report can be found on the [City's website](#).

VI. CONCLUSION

We commend the Director of Housing and her staff who have prepared the Department to meet the complex requirements of the Recovery Act. Berkeley and its residents will benefit from the services provided and the jobs created by Housing's Recovery Act projects. We also commend the City Manager's Office and the Director of Finance and his staff for the guidance and training they provided to the various City departments to help them meet the challenges that come with Recovery Act funding.

⁹ The report slightly understates the amount of funding for the Senior Nutrition program. A \$394 line item was overlooked.

APPENDIX A

SCOPE AND METHODOLOGY

Our audit was limited to contracts and grants received by the City under the American Recovery and Reinvestment Act of 2009, and administered by the Housing and Community Services Department (Housing).

We focused on Housing's systems, procedures and controls to ensure compliance with specific Recovery Act requirements, especially reporting requirements. To accomplish our audit objectives, we researched Recovery Act provisions applicable to grants administered by Housing. We also reviewed Recovery Act guidance published by the President's Office of Management and Budget, and the federal agencies that awarded Housing's Recovery Act grants.

We interviewed key Housing staff as to procedures and controls to ensure that the City accurately reports all required Recovery Act data, and complies with other Recovery Act requirements. We also reviewed documents related to those procedures and controls. In addition, we reviewed applicable revenue and expenditure accounts in FUND\$ to ensure that they clearly identify the sources and applications of Recovery Act funds.

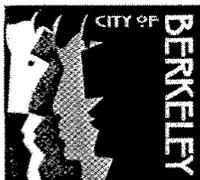
Fieldwork was conducted from September 9, 2009 through December 22, 2009 and was limited to those areas specified above. We conducted this survey in accordance with *Generally Accepted Government Auditing Standards (GAGAS)*. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our conclusions based on our audit objective.

Section 2.24.050 of the Berkeley Municipal Code requires the City Auditor to review, countersign, number, and register all contracts. We believe these functions did not impair our compliance with GAGAS standards for auditor independence.

Housing requested Audit's assistance in conducting a risk assessment required by the Community Services Block Grant. We did not participate in the assessments, but we provided a list of risk related questions for Housing's use in conducting the assessments. We also referred Housing to sources of support for the risk assessment, which are available on the City's website or intranet. We believe that this minimal involvement did not impair our compliance with GAGAS standards for auditor independence.

This performance audit was initiated by the Auditor's Office and scheduled as part of the fiscal year 2010 Audit Plan, which was presented to Council on June 23, 2009.

APPENDIX A



Housing & Community
Services Department
Office of the Director

MEMORANDUM

Date: April 20, 2010

To: Phil Kamlarz, City Manager and
Ann-Marie Hogan, City Auditor

From: Jane Micallef, Housing & Community Services Director 

Subject: American Recovery and Reinvestment Act of 2009 Implementation

The Housing & Community Services Department manages a number of grants under the American Recovery and Reinvestment Act of 2009 (ARRA). These grants total \$3.6 million and include the Summer Youth Employment Program, Senior Meal Program, Weatherization Assistance Program, Community Development Block Grant, Homeless Prevention and Rapid Re-Housing Program and the Skills Opportunity and Success Program. The ARRA funds have been utilized to alleviate adverse financial circumstances facing individuals and households due to the economic downturn and for improvement of public facilities that serve low income persons.

ARRA was enacted in February 2009 in response to the severe economic crisis this country faced with the intent of getting resources out quickly to negatively impacted communities and reinvigorating stalled capital improvement projects. The Act's mandate to deliver relief quickly was coupled with unprecedented standards for transparency and accountability. HCS staff worked diligently to develop the ARRA funded programs, identify community partners, and set up complete and accurate reporting systems.

The urgency with which ARRA funds were released resulted in a set of new and ever-evolving program regulations. HCS staff have done a remarkable job learning and understanding these requirements and keeping abreast of changes. During the early days of implementation, we received assistance from the Auditor and her staff. Our department has never before been audited during the program implementation phase and given the challenges of this implementation, we benefitted greatly from having the Auditor work with us to set up systems and interpret regulatory requirements.

ARRA has been an incredible resource for Berkeley citizens. The knowledge and expertise we have acquired in implementing the ARRA programs well situates the City to take advantage of opportunities that may arise for future funding.