UNITED STATES DEPARTMENT OF COMMERCE
Chief Financial Officer and
Assistant Secretary for Administration
Washington, D.C. 20230

August 24, 2009

MEMORANDUM FOR: Grants Council
Department of Commerce

FROM: Helen Hurcombe
Director, Office of Acquisition Management

SUBJECT: Department of Commerce (DOC) Guidance for the Reports of Use of Funds Pursuant to the American Recovery and Reinvestment Act of 2009

The attached document reflects the Department of Commerce's Guidance to its Operating Units (OU) for implementing the recipient reporting requirements in Section 1512 of the American Recovery and Reinvestment Act of 2009 (Recovery Act). The purpose of this Guidance is to establish the minimum requirements for all DOC Operating Units in administering grants under the Recovery Act, particularly with respect to the reporting and oversight of the awards.

Individual operating units are permitted to develop supplemental guidance for program officers and other key personnel for Recovery Act awards. The supplemental guidance will not contradict, undermine, detract, or contravene DOC minimum policy, but will serve as clarifying guidance to OU, DOC, and OMB policies. All supplemental guidance will be submitted to Helen Hurcombe (hhurcombe@doc.gov), Director, Office of Acquisition Management and by copy to Gary Johnson (gjohnso3@doc.gov) for review and approval.

If you have any questions concerning the application of this guidance, please contact Gary Johnson at 202-482-1679 or email him at GJohnso3@doc.gov.

Attachment

Department of Commerce (DOC) Guidance for the Reports of Use of Funds Pursuant to the American Recovery and Reinvestment Act of 2009

This memorandum transmits the DOC guidance to its Operating Units (OU) for implementing the recipient reporting requirements included in Section 1512 of the American Recovery and Reinvestment Act of 2009 (Recovery Act). Additionally, it establishes oversight responsibilities for the Recovery Act grants.

Individual OUs are permitted to develop supplemental guidance, but must submit these documents to the Department for review and approval. OU guidance will be submitted to Helen Hurcombe (hhurcombe@doc.gov), Director, Office of Acquisition Management and by copy to Gary Johnson (gjohnso3@doc.gov).

A. General Information

The purpose of this Guidance is to establish minimum requirements for DOC OUs in administering grants under the Recovery Act, particularly with respect to the reporting and oversight of the awards. The goal is to provide Guidance that will facilitate consistent general departmental standards for reporting and oversight. The OUs receiving this Guidance are: Economic Development Administration (EDA); National Institute of Standards and Technology (NIST); National Oceanic and Atmospheric Administration (NOAA); and, National Telecommunications and Information Administration (NTIA).

This Guidance complements any information provided by OMB in Memorandum M-09-21 *Implementing Guidance for the Reports on Use of Funds Pursuant to the American Recovery and Reinvestment Act of 2009* dated June 22, 2009, OMB webinars which may be reviewed on the Internet at (www.whitehouse.gov/recovery/webinartrainingmaterial), and any subsequent guidance provided by OMB.

OUs will take the necessary steps to provide this Guidance to Grants and Federal Program Officers as well as other officials playing key roles in administration and monitoring of Recovery Act awards.

B. Dissemination of Information

Each OUwill be responsible for ensuring timely and accurate dissemination of information regarding their Recovery Act programs and the responsibilities of recipients. OUs will use available technologies to provide a repository of information and provide linkages to DOC, White House and OMB Recovery Act information sources.

1. Agency websites

All agencies will be responsible for maintaining an updated Recovery Act topical section on their respective websites. The OUs may post highlights of their program activities, but more importantly they will keep current the policies and guidance documents for the implementation of the Act. This includes, but is not restricted to, such items as noting mandatory CCR requirements, OMB webinar availability, OU-specific clarifying guidance, and any future planning activities which may affect recipients.

2. Award Letters

OUs will provide pertinent information on the conditions and responsibilities to the recipient in their award letters.

3. Clarifying Guidance and Special Award Conditions

OUs will develop *Clarifying Guidance* as necessary to address recipient reporting requirements in various forums including conference calls, town hall meetings and other venues. The general agenda of these events will be submitted to the Department for review to ensure consistency of message and assure that any supplemental information available to the Department is included.

Special Award Conditions (SAC) will be incorporated into the award if deemed necessary as a compliance instrument to assure the identification of all organizations required to perform reporting on the use of Recovery Act Funds. The SAC should be available on the agency's website.

4. Personal Contact

All OUs will ensure that program and grants office personnel who have contact with recipients have timely knowledge of the policies, procedures, and guidance for the Recovery Act. OUs will also ensure that there is continuity of coverage, including back-up personnel, to address any issues from the recipients and public at large.

5. Terms and Conditions

The *U.S. Department of Commerce American Recovery and Reinvestment Act Award Terms* should be available on each OU's Recovery Act website and are posted on the Office of Acquisition Management website.

C. Central Contractor Registration (CCR) Requirement

In accordance with U.S. Department of Commerce American Recovery and Reinvestment Act Terms, OUs will ensure that all recipients required to be registered with the CCR will do so (Section A.1.(c)). OUs will make note that the CCR

requirement is mandatory in all Federal Funding Opportunities (FFO), and for registration with Grants.gov. With the exception of applications received through Grants.gov, OUs will confirm the currency of each award recipient's CCR using the Search function on CCR.gov. OUs will include a notice of the mandatory CCR requirement on their respective Recovery Act websites, and will also remind recipients of the registration requirement in their award letters. OUs will emphasize to recipients the requirement to renew their CCR annually.

D. OU-Specific Supplemental Guidance

OUs have the authority to develop supplemental guidance for program officers and other key personnel for Recovery Act awards. The supplemental guidance will not contradict, undermine, detract, or contravene DOC minimum policy, but will serve as clarifying guidance to OU, DOC and OMB policies (MO-09-21, Section 1.6). OU guidance will be no less restrictive than DOC guidance but may be more restrictive. Any supplemental guidance developed must be submitted to DOC for review and approval. Upon approval, OUs will make the supplemental guidance available on the agency's website.

E. Reporting and Review Requirements

OUs must ensure that program and grants office personnel as well as recipients are aware of the reporting responsibilities associated with Section 1512. This will include the need for accuracy, consistency and timeliness in the reporting and reviewing process.

1. Recipients

OUs will have provided recipients with all necessary instructions for reporting responsibilities with Section 1512 prior to the beginning of the reporting period and will provide periodic reminders of the reporting responsibilities. If Prime Recipients are delegating reporting to sub-recipients, then it is the Prime Recipients' responsibility to ensure that the sub-recipients are aware of their reporting requirements. To assist in oversight, OUs will require Prime Recipients to inform their Grants Officer when a delegation is made to a sub-recipient. OUs will remind Prime Recipients of the deadlines for reporting Section 1512 information.

OUs will remind the Prime Recipients of their reviewing responsibilities. The Prime Recipients will have the first review period (Days 11 -21), and should be checking for the following:

- Double-counting
- Material omissions
- Significant reporting errors

The definitions for "material omissions" and "significant reporting errors" are found in the Appendix of MO-09-21 or in Section C of Report to the Department of Commerce.

2. Agency Reviewing Requirements

The Federal Agency review of Section 1512 information will be accomplished by the respective OUs. Although informal review may be completed during the Prime Recipient review period (Days 11-21), formal review by OUs will occur on Days 22-29. OUs will conduct their reviews and notify the appropriate recipients concerning material omissions and/or significant reporting errors in a timely manner.

OUs will maintain records on prime recipients that: 1) fail to report by the deadline; 2) have material omissions; and/or 3) have significant reporting errors. If these recipients fail to take corrective actions, or if the same recipient demonstrates systemic or chronic reporting problems in subsequent quarters, the respective OUwill ask for a detailed narrative on the recipient's processes and procedures for collecting, reviewing, and reporting their Section 1512 information. If the recipient fails to provide the narrative, or otherwise ultimately fails to correct systemic or chronic reporting problems, the OUs may consider the recipient as non-compliant and take appropriate enforcement action in accordance with standard DOC grants policy.

F. Job Creation/Retention

DOC is asking recipients to report on the numbers of jobs created and/or retained using the full-time equivalent (FTE) methodology described by the Office of Management and Budget (OMB) in Section 5.3 of "Implementing Guidance for the Reports on Use of Funds Pursuant to the American Recovery and Reinvestment Act of 2009" (M-09-21). For grants to the University community, the DOC accepts the percentage of time worked methodology outlined by OMB (M-09-21, Section 5.3). These methodologies reflect reasonable and consistent approaches to collection of employment data and have been highlighted in the OMB webinars to members of the Federal and Recipient community.

DOC anticipates that the vast majority of recipients will be able to comply with the FTE methodology. However, there may be circumstances when a recipient can demonstrate an unreasonable burden would result from using a direct and comprehensive job count. In such instances, the recipient will be responsible for developing a statistical method for obtaining the required FTE information, based on a representative sample of sub-recipients, and articulating how this method is preferable to implementing a comprehensive job count.

Examples of instances where a statistical method may be a satisfactory alternative may include the following circumstances:

- A recipient may be responsible for administering a substantial amount (e.g., tens of millions of dollars) of Recovery Act funds that are distributed to a multitude of projects (e.g., hundreds), each having a large number of distinct sub-recipients and vendors. In such instances, the number of sub-recipients and vendors receiving Recovery Act funds may be sufficient in number to support an effort that identifies a

representative sample and to use statistical methods that yields valid and robust information on the number of jobs created and jobs retained.

- A recipient may be funding a set of projects where the operating characteristics and nature of the work performed by sub-recipients are equivalent for these projects, so that having detailed job information on a sample might yield reliable statistics to use in developing estimates for the remainder of the population. An example might be a situation where all of a prime recipient's contracted sub-recipients working on projects funded by the Recovery Act employ the same type of experienced workforce; are required to perform the same tasks; face the same prices and market conditions; and utilize the same amount of labor in their production practices.

- A recipient may have a pre-existing validated statistical method it has recently used to generate information on direct job effects attributable to the receipt of federal government funds for the same type of projects designated to receive Recovery Act funds. In this instance, the recipient may consider seeking permission to transfer this direct job estimation method to quantify the direct job effects associated with projects supported by the Recovery Act funds.

Recipients will be required to obtain approval from DOC on the use of a statistical methodology, as well as the specific methodology the recipient is proposing. In addition, DOC will have to obtain concurrence from OMB prior to preparing a response to the recipient's request.

1. Change in Methodology Request Information

If a Prime Recipient requires the use of an alternative methodology for collection job creation/retention data rather than directly collecting specific data from all sub-recipients and vendors, it must submit a written proposal to the funding Bureau containing the following information:

a. A justification as to why an alternate methodology is needed. This must address the reasons why the direct collection of information from all sub-recipients and vendors is overly costly or burdensome for the Prime Recipient.

b. A technical description of the proposed methodology. This should include sufficient detail and supporting documentation of the sample design and estimation procedures so that the validity of the methodology can be assessed.

c. A statement of the qualifications of the persons who will be carrying out the statistical methodology.

d. A statement on the length of time the Prime Recipient anticipates making use of the statistical method (e.g., the first effective Section 1512 recipient reporting period; or for an extended period of time, such as the duration of the period during which the project receives Recovery Act funds); and

e. Point of contact information including telephone and e-mail information for transmitting DOC and OMB response, and any follow-up questions arising during the review of the request.

Recipients seeking to use statistical methods are advised to make use of information contained in OMB's Guidance on Agency Survey and Statistical Information Collections and Standards and Guidelines for Statistical Surveys. These documents describe professional principles and practices that Federal agencies are required to adhere to and the level of quality and effort expected in all statistical activities, and as such, can serve as a useful guide to recipients of Recovery Act funds.

2. Process for Change in Methodology Request

The DOC operating unit from which the Prime Recipient received Recovery Act funds will manage the process to accept and review applications from recipients. When the operating unit is satisfied with the methodology, it will transmit the proposal to DOC. DOC and OMB will approve or decline the request within 20 days from receipt of the request. **All requests must be submitted no later than September 10, 2009.** This will allow DOC and OMB to reach a decision in time for the recipient to either implement the statistical methodology (if request is approved) or pursue a direct and comprehensive approach for gathering job information from sub-recipients and vendors (if request is declined).The reporting deadline for Section 1512 will remain October 10, 2009.

G. Department of Commerce Review

The Department of Commerce will monitor the activities of the Recovery Act grants by 1) preparing a quarterly summary report to the Director of the Office of Acquisition Management using information obtained from the OUs, and 2) assign intra-department teams to review submissions to FederalReporting.gov and Recovery.gov after the final publishing date on a quarterly basis.

1. Report to Department of Commerce

Each OU, no later than 10 days after the final publishing date (30th day of the quarter) will provide to DOC a report providing a detailed description of its oversight activities for Recovery Act grants. This report will contain the following:

a. **Pre-reporting activities:**
   i. A narrative detailing the OU's outreach activities to recipients. This should include a general statement of the approach each OU takes to ensure timely, accurate and consistent reporting of Section 1512 data.
   ii. A table containing the number and types of different activities will be included. **Note:** after the first quarter reporting period, if there are no

changes to the OU's outreach activities, the table may be submitted alone. If an unusual event occurs, a short narrative will be included. The table should include the following:

(a) A listing of each type of outreach activity identified in the narrative.

(b) The number of each type of outreach activity.

Example of Pre-reporting Activities Table

Type of Pre-reporting Activity	Number of Activities			
Activities are all non-cumulative	**1st Qtr**	**2nd Qtr**	**...**	**Total**
Kick off meetings				
Conference Calls with recipients				
Group meetings				
...				
Total				

b. Reporting Activities

i. A narrative containing the OU's review process including:

(a) Agency parties responsible for reviewing reports and sufficiency of coverage plans.

(b) Whether sampling or review of every report will be accomplished.

(c) Any difficulties that their recipients experienced with the process.

(d) Information on material omissions and/or significant reporting errors including the nature of such omissions and/or significant reporting errors. (See definitions below)

(e) Information on non-compliance on the part of recipients

(f) Any outstanding problems at the end of the reporting and review period with an explanation indicating how the problem will be resolved.

(g) Any explanation for any report that is classified as "Not reviewed by Agency" at the end of the review period.

(h) Any significant findings that may impact future reporting periods.

ii. A table containing the following information:

(a) Number of awards. This data element will be cumulative.

(b) Number of awards reporting in the current quarter. This data element will be non-cumulative.

(c) Number of awards submitting final report. This data element will be non-cumulative.

(d) number of recipients who requested and received approval on an alternate methodology for reporting job creation and/or retention. This data element is non-cumulative.

(e) Number of reports reviewed each quarter. This data element is non-cumulative.

(f) Number of reports with material omissions or significant reporting

errors that are present at the Agency review period (30th day of the quarter). This data element is non-cumulative.

(g) Number of reports with material omissions or significant reporting errors that remain after the review period (30th day of the quarter). This data element is non-cumulative

(h) Number of reports classified as "Not Reviewed by Agency" after the review period. This data element is non-cumulative.

Example of Reporting Activities Table

	1st Qtr	2nd Qtr	...	Total
Number of awards (cumulative)				
Number of awards reporting in current quarter (non-cumulative)				
Number of awards submitting final report (non-cumulative)				
Number of recipients who requested and received approval for an alternate methodology for reporting job creation/retention (non-cumulative)				
Number of reports reviewed (non-cumulative)				
Number of reports with material omissions or significant reporting errors* (non-cumulative)				
Number of reports with material omissions or significant reporting errors outstanding after publication* (non-cumulative)				
Number of reports with "Not Reviewed by Agency" classification (non-cumulative)				

*See definition of material omissions or significant reporting errors below.

c. Definitions

Department of Commerce has accepted the definitions of "material omissions" and "significant reporting errors" provided by OMB in Memorandum M-09-21 *Implementing Guidance for the Reports on Use of Funds Pursuant to the American Recovery and Reinvestment Act of 2009* dated June 22, 2009, (Appendix – Reference Sheet of Frequently Used Guidance Terms). The definitions are as follows:

Material omissions – "those instances where required data is not reported or reported information is not otherwise responsive to the data request and such reporting gaps result in significant risk that the public will be misled or confused by the recipient report in question." Examples include:

- Leaving a required data field (such as amount of award spent) unanswered

- Description of a purchase made from a vendor may not provide sufficient detail for the reader to derive the nature of the purchase

Operating Unit – for purposes of this policy guidance, Operating Unit means Economic Development Administration (EDA); National Institute of Standards and Technology (NIST); National Oceanic and Atmospheric Administration (NOAA); and, National Telecommunications and Information Administration (NTIA).

Significant reporting errors – "those instances where required data is not reported accurately and such erroneous reporting results in significant risk that the public will be misled or confused by the recipient report in question." Examples include:

- Recipient reports expenditures in excess of the amount awarded by the Federal funding agency (excluding match requirements)
- Number of jobs created/retained is inconsistent with the award activities (e.g., 45 jobs reported as 450)

2. Intra-departmental Review Teams

The intradepartmental team will review submissions to FederalReporting.gov and Recovery.gov after the final review date.

In addition, the intradepartmental teams will have the authority to conduct spot checks of project reporting at their discretion. Reporting compliance will be a permanent agenda item for the meetings of the Office of Acquisition Management's Monday Conference call.