



## How to Make the Economic Recovery Act Transparent, Accountable, and *Effective*

President-elect Obama campaigned to bring transparency, accountability and integrity back to government. Since the Economic Recovery Act is likely to be the first bill he signs and its cost could equal the Wall Street bailout, it provides a very visible opportunity for the Obama Administration to contrast its values and priorities with its predecessor. By embedding new transparency benchmarks in the first legislation he signs into law, the President-elect will demonstrate his commitment to open government and the effective use of Recovery funds.

The common lesson from the failed federal response to Katrina/Rita, the fraud and corruption in the Iraq War, and the inability to track the hundreds of billions given to financial institutions is this: **if strict reporting requirements (with penalties for non-compliance) are not put into emergency spending bills, the federal funds spent will effectively vanish for months or even years.** They will disappear into the grey areas of competing agency oversight responsibility, into Governors' favorite special projects, and simply never be heard of again. If reporting requirements are absent, and the public cannot track how the Recovery funds are being used, many American voters will be susceptible to critics' charges that the Recovery plan is just one more example of wasteful spending and patronage politics.

Enabling taxpayers to track the flow of federal stimulus funding is not just good government, it is good politics. True transparency is a potential game-changer on the order of the passage of the Employee Free Choice Act or the establishment of an affirmative right to vote. Because few Americans understand the nature of U.S. federalism, they tend to blame the federal government when projects go off track. But state and local public agencies will be responsible for setting state priorities, implementing local recovery projects, and overseeing their completion. With transparency built into the Recovery plan and citizen oversight encouraged, the 38 Governors up for re-election during the Administration's first term will have to account to their constituents for how they used Recovery funds.

Creating new, more public ways to track how the Recovery funds are being spent will turn average citizens into watchdogs in the recovery process. With local reporters on the state house beat and national investigative reporters being laid off in record numbers, we can't expect the press to effectively monitor a flow of funds of this magnitude. But if reporting requirements are embedded in the recovery package and on-line reporting systems are established at the outset, the Administration will create the evidence to deflect any charges of waste, fraud, and misuse that opponents make.

When the Obama Administration installs an effective public system for tracking the flow of public monies from the national to state and local governments and opens this information up to average citizens, it will transform the practice of democracy in America and put the United States back on the leading edge of transparency and good government.



## Tracking the Use of Funds in the Recovery Package Will Require Administrative Changes and New Reporting Requirements:

1. A new section of the USASpending.gov site can be created to report on the contracts, grants, loans, loan guarantees, cooperative agreements and financial assistance awards provided through the Recovery Package stimulus program;

*This centralized federal spending website was created by legislation co-sponsored by then-Senator Obama and Senator Coburn. Using USASpending.gov as a platform will demonstrate President Obama's continuing commitment to improving government accountability and can be heralded as the extension of a successful bipartisan effort.*

2. By adding a new "tag" code created by the Treasury Department especially for the Recovery Act funds, the Treasury Department could track the release of funds to states, localities, or private firms in real time. Treasury should report this activity to the Office of Management and Budget (OMB) within 30 days or automatically through an interagency data link;

*Currently, data posted on USASpending.gov comes from federal agencies; long delays can occur between the time of the award and the actual posting of information. If Treasury assigned a new budget specific to Recovery Act funds, then it could immediately report information to OMB whenever it cuts a check. The information provided would be enhanced with additional codes indicating the federal agency responsible for monitoring the funds and the purpose of the award (for example, Recovery Act - Transportation – Bridge Repair.) This would speed up reporting and ensure accuracy. Without a centralized system to collect information on Recovery Act expenditures, it will be very difficult for the Administration to honor President-elect Obama's "use it or lose it" promise.*

3. On the USASpending.gov website section related to Recovery Act funds, the following information on the public or private entities receiving funds should be listed: (a) the award identification number; (b) the agency, company, or nonprofit name, (c) its address and contact information, (d) the amount of the contract, grant, or subsidy received, (e) the activity/services to be provided under the contract<sup>1</sup>, and (f) the start and projected finish dates for the project. This information will be updated with data from the Treasury Department automatically (or within 7 days of receipt of checks being cut);

*By making this information publicly available, the Administration will demonstrate its commitment to open government and give national and local press (and bloggers) the opportunity to do their own investigative reporting about how the Recovery funds are being spent. It also gives interested citizens the ability to see how well their state and/or district is being served by the Recovery Act. If money has been released, but projects have not started, public attention should focus on the appropriate state or local agency and its operations.*

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<sup>1</sup> The level of information required to be meaningful must come a summary description of Task and Delivery orders.



4. Each state would be required to set up its own public searchable **State Economic Recovery Act Spending Website** to report how the funds received under the Recovery Act are being allocated to state and local public agencies and/or private entities or nonprofits within its borders. This information would be provided in a uniform way, compatible with the USASpending.gov website. The Office of Management and Budget would transfer the spending data it receives from Treasury (the name, address, amount of money, and the activity funded, etc.) to each state's website each month. This will allow citizens in the state to see the spending priorities of their Governor and State Legislature. Each state would be required to have an automated whistleblower hotline for citizens to call to report the misuse of Recovery Act funds.

*Currently, all 50 states have basic websites disclosing state contracts and spending, although only 26 report on the economic development subsidies states provide to private employers for job creation. Conservative as well as progressive advocacy groups have been pushing for more state-level transparency (e.g., the "Google government" letter co-signed by Ralph Nader and Grover Norquist.) If the creation and use of uniform state websites were conditions of receiving Recovery Act funds, a new standard for open government would be established at the state level. This would give a huge boost to good government advocates everywhere and would set the stage for similar disclosure requirements and public posting of information for the upcoming Surface Transportation Act reauthorization.*

*Since Governors and state agencies are the ones submitting "shovel-ready" projects, and citizens are most concerned with what happens in their own state or locality, the state web sites could become important tools for citizens, journalists, and bloggers to examine gubernatorial priorities and implementation results. Performance problems will then be laid at the doorstep of the state and local public agencies, not the new Administration. In many states, especially those ruled by entrenched interests that have long evaded public scrutiny, this kind of disclosure could be a political game-changer.*

5. Each public agency, private company or nonprofit directly receiving funds from the Recovery Act will be required to submit the following data to the Bureau of Labor Statistics (BLS) **quarterly**<sup>2</sup>: (a) the award identification number; (b) the total amount of the award; (c) quarterly draw-downs from the contract, grant, loan, loan guarantee, cooperative agreements, financial assistance award or subsidy; (d) the number of individuals (full and part-time) on their payroll before they received the contract, grant or subsidy from the federal recovery money; (e) the number of individuals (full and part-time) who were hired (or re-hired) after the contract, grant, or subsidy was received; (f) the wage rates (salaried and non-managerial hourly wage rates) of the individuals supported

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<sup>2</sup> The Recovery Act would need to include an exemption from the Paperwork Reduction Act to be able to collect this data, but given the public anger over EESA, it would be difficult for a Representative to vote against transparency and accountability measures.



by the Recovery Act funds<sup>3</sup>; (g) whether the new-hires are offered healthcare and pension coverage; (h) the gender, race, and nine-digit zip codes of the new-hires. The Bureau of Labor Statistics **will create an interactive website with an automatic template for reporting this information, and release the data back to each State Economic Recovery Act Website in aggregated reports within 30 days of receiving the information.** The head of the agency or CEO of the firm will certify the information provided, with penalties for falsifying information. A summary report will be automatically forwarded to OMB every quarter. Projects that are more than 30 days delinquent in reporting will be highlighted on the State Economic Recovery Act Website and will be subject to fines or a 10 percent reduction in project funding (as occurs under the Transportation Act.)

*Since the President-elect has publicly committed his administration to recouping Recovery Act funds that are not being immediately used, some kind of continuous public monitoring of expenditures is needed. Waiting for states to collect and send information to a particular federal agency that must then report to OMB creates unnecessary layers of reporting. In this case in particular, Google government will make the process faster, more accurate, and enable OMB to redeploy unused funds more rapidly.*

*Quarterly reporting of such data gives public agencies and firms time to get their work underway while preserving the federal government's oversight. States will be able to use Unemployment Insurance payroll filings to cross-check jobs data for accuracy, as some states already do with their own incentive programs.*

*Since one of the core goals of the Economic Recovery Act is to put people to work and stabilize the economy, the Obama Administration will want to estimate the Act's job creation impact, and the quality of the jobs created. Such information will allow the Administration to fine-tune later allocations by seeing which kinds of expenditures are working best. This will be important information if another stimulus package is needed later in the year.*

*Tracking who gets the jobs created by the Recovery Act funds is a core equity issue. With minority unemployment already double that of whites and central cities struggling, the Administration needs to know if certain communities are being systematically excluded from state-defined projects.*

*These reporting requirements will no doubt be opposed by Chambers of Commerce and some business groups as burdensome, but filling out an online form three times a year is something any competent business should be able to do. With capital and credit in short supply, no business is going to turn down a contract because there are reporting requirements. More than 150 local jurisdictions across the country have passed living wage ordinances that routinely mandate the collection of such data from employers. It is considered part of the cost of doing business with government and*

<sup>3</sup> Under Davis-Bacon and the Service Contract Act, non-exempt hourly employees paid through government contracts are required to be paid the prevailing wage in a locale. However, more than 90 percent of federal contracts are "professional services" contracts and so exempt from wage reporting. See Addendum for more on why wage reporting is so important.



*there is no evidence that living-wage jurisdictions have lost contract bidders or economic development deals as a result of job quality reporting standards.*

6. The entity that receives Recovery funds is responsible for reporting on the number of employees (and their wages and benefits) supported by the award; if the public agency or private company receiving the award sub-contracts some of the work to others, the entity receiving the initial contracts, grants, loans, loan guarantees, cooperative agreements and financial assistance award remains responsible for reporting data to BLS.

*The failure to establish and enforce strong reporting standards made it impossible to accurately track spending in the aftermath of Katrina/Rita and in the Iraq War. This enabled contractors to obscure the fact that many bill excessive overhead and charge the government multiples of the hourly rate they actually pay employees. Without strong reporting requirements built into the Recovery Act, this could happen again.*

7. Up to 0.001 of the funds provided in the Recovery Act would be allocated to Treasury, OMB, and BLS to establish their own linked data monitoring systems and to design uniform, linked websites with each of the states.

*The prototype for the USASpending.gov website was built for \$300,000 by OMB Watch and the Sunlight Foundation, although private vendors estimated the costs would be in the tens of millions of dollars.*

**To conclude:** President Obama can send a powerful signal that a new era of competent government has arrived by making the Recovery Act a model of transparency. Between the existing precedents of USASpending.gov and state and local disclosure trends, we know it can be done: only the will has been missing.



## Addendum: **Why reporting on wage rates is at the heart of effective oversight of the Economic Recovery Package, who will oppose the reporting requirements, and how to respond**

Americans want to know that: (a) their tax dollars are being used to for worthy projects that improve the quality of life and living standards in their communities; (b) this stimulus package is actually creating decent jobs for American workers; and (c) they are not supporting inflated salaries of executives and private consultants. Reporting on wages and other forms of compensation is the only way that the new Administration will be able to gather the evidence to **demonstrate** that the Recovery package is doing all three.

In the other historical moments when the federal government invested heavily in public job creation projects (WPA, CETA), critics charged that “makeshift” jobs were created that did not create real value, so the Administration needs to be able to show that the activities the Recovery Act supports are tied to real people doing real work.

More than 32 million workers in the U.S. today earn less than \$10 an hour. They are desperate for evidence that the next Administration is actually interested in creating decent jobs that pay enough to support a family and that might have the possibility of stability and upward mobility. Public-sector jobs have traditionally held this promise. Including wage standards in the legislation and collecting evidence on job quality will demonstrate the Administration’s commitment to this issue.

The median household family income in the United States today is a little more than \$48,000. And this family has probably seen its biggest value depreciate by 25 percent over the past four months. Americans are outraged that their tax dollars have been used to keep wealthy investment bankers and stockbrokers employed. They want the Obama Economic Recovery Act to benefit average Americans. It will be important to show that the majority of those who enter new jobs or whose jobs are saved by the Recovery are “average” citizens. Trickle down economics won’t sell anymore.

So who will oppose the reporting requirements?

Opposition to wage reporting requirements will come from three sources – the Governors (who will not want to be held accountable for implementation of the Recovery Act), large corporations/contractors (many of whom are accustomed to the loose rules of the current Administration), and small business associations (who tend to be controlled by anti-regulatory, anti-government leadership).

**Governors** typically argue for maximum flexibility in the use of federal funds and minimum reporting. This allows them to reward political allies and contributors. Given the number of corruption scandals that have occurred at the state level in recent years (the Illinois Governor only being the most egregious), demanding regular reporting with some detail on the way funds are used is critical to the legitimacy of the Recovery Act. Making this information completely public with a transparent website means Governors will have to answer to their constituents – not just to the Federal government. With 38 Gubernatorial races in the next two years as well as midterm elections, it is important to encourage citizens to hold their local politicians to high ethical, public interest, and effectiveness standards in their oversight of Recovery Act projects.



Many of the **largest construction and engineering firms** that will probably be part of “shovel-ready” infrastructure projects will be accustomed to working under the “Indefinite delivery-Indefinite quantity” (i.e., blank check) contracts that characterized the Bush Administration. This is an opportunity to demonstrate that there will be a new way of doing business in Washington. They will probably claim that providing wage data is an unfair paperwork burden and will slow down their ability to get projects up and running. In fact, large firms are most likely to have automated payroll systems that make wage information easier to collect and aggregate and have staff to provide the quarterly records. If they cannot provide this information easily and efficiently, then we should question their management capacities.

**Small business associations** may argue that the reporting requirements put an undue burden on them and their ability to compete for contracts. If a small business owner cannot fill out an automated electronic form provided by BLS four times a year, the contracting agency should question whether the firm has adequate capacity to perform the work.

Given the public’s appetite for accountability and transparency today, the Administration and Congress should easily win these battles – if they invite American taxpayers to weigh in on the debate. The public wants accountability. If BLS can create an easy-to-understand template on a website to collect already available payroll data, and show this website template to the public (which has extensive experience with on-line ordering forms today), the complaints would be shown to have no merit. It would create a “teachable moment” about the lack of accountability that characterized previous Administrations and mark the change the Obama Administration intends to make. Everyone - the public, Governors, public officials, and private employers - would be clear what the new standards of transparency and accountability are.

A final note: There are precedents for mandating reporting on employment conditions – in the Federal Migrant and Seasonal Agricultural Protection Act, in State laws and in practices in cities and counties around the country (see below). If we can require reporting on employment conditions to prevent the abuse of migrant workers, surely we can require reporting on employment conditions to ensure that taxpayer funds are used to create decent jobs for American workers.

Wage rate reporting precedents:

Under the **Federal Migrant and Seasonal Agricultural Worker Protection Act** (<http://edis.ifas.ufl.edu/FE406>) farm labor contractors, agricultural employers, and agricultural associations are all subject to disclosure requirements. Disclosure must cover these items:

- Place of employment.
- Wage rates (including piece rates) to be paid.
- Crops and kinds of work.
- Period of employment.
- Transportation, housing, and any other benefits provided (plus cost to the worker.)
- Whether Workers' Compensation and unemployment insurance are provided.
- Whether a strike or work stoppage is in progress.
- Any commission (kickback) arrangement between the employer and any local merchant selling to employees.

DOL Form WH-516 is recommended for migrant workers and might be modified for the BLS data collection site. Congressional action in 1996 substantially expanded disclosure requirements pertaining to Workers' Compensation.



**Florida** has the country's most expansive sunshine law, which seems to support wage disclosure: Florida Stat. Sec. 287.0574: "Each contract for a proposed outsourcing, pursuant to this section, must include ... a provision that requires the contractor and its subcontractors to comply with public records laws, specifically to keep and maintain the public records that ordinarily and necessarily would be required by the state agency in order to perform the service or activity ... provide the public with access to such public records on the same terms and conditions that the state agency would provide the records ... meet all requirements for retaining records and transfer to the state agency, at no cost, all public records in possession of the contractor upon termination of the contract...."

The **State of Illinois** has strong disclosure requirements (<http://www.w-p.com/CM/Articles/Whats-the-Illinois-Prevailing-Wage-Act.asp>): "Any contractor or subcontractor working on a prevailing wage project must submit a *certified payroll* to the public body in charge of the project on a monthly basis. The certified payroll records must include for every worker employed on the public works project the name, address, telephone number, social security number, job classification, hourly wages paid in each pay period, and the number of prevailing wage hours worked each day. Such payroll records are public records for at least 3 years, and are subject to disclosure under the Freedom of Information Act. On a related note, all records concerning prevailing wage projects should be kept for 3 years by the contractor or subcontractor, and must be open for reasonable inspection to the IDOL."

The law covers contractors and subcontractors (820 ILCS 130/5, from Ch. 48, par. 39s-5) <http://ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2405&ChapAct=820%26nbsp%3BILCS%26nbsp%3B130%2F&ChapterID=68&ChapterName=EMPLOYMENT&ActName=Prevailing+Wage+Act>)



## Expert resources:

Project on Government Oversight has extensive experience monitoring abuses of federal contracting.

Contact:

Danielle Brian, Executive Director [dbrian@pogo.org](mailto:dbrian@pogo.org)

(202) 347-1122

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Washington DC 20001

OMB Watch helped create the USASpending.gov website at the Office of Management and Budget, has deep knowledge of the issues involved in tracking federal funding flows.

Contact:

Gary Bass, Executive Director [gbass@ombwatch.org](mailto:gbass@ombwatch.org)

(202) 234-8494

1742 Connecticut Ave

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Good Jobs First has been extensively involved in efforts to accurately document the number and quality of jobs created with the public money at the state level.

Contact:

Greg LeRoy, Executive Director [goodjobs@goodjobsfirst.org](mailto:goodjobs@goodjobsfirst.org)

(202) 232-1616

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Partnership for Working Families, a network of public policy centers working in 17 metropolitan areas, has been instrumental in establishing transparency and job quality standards in city and county contracts.

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