

The Honorable Edolphus Towns, Chairman  
U.S. House of Representatives  
Committee on Oversight and Government Reform  
2157 Rayburn House Office Building  
Washington, D.C. 20515-6143

The Honorable Diane E. Watson, Chairwoman  
U.S. House of Representatives  
Subcommittee on Government Management, Organization and Procurement  
2157 Rayburn House Office Building  
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**Statement of Gavin Payne  
House Committee on Oversight & Government Reform**

**March 5, 2010**

**California Science Center  
Los Angeles, California**

Good afternoon, Chairman Towns, Chairwoman Watson, Representative Issa, Representative Bilbray and other members of this committee. I am Gavin Payne, Chief Deputy Superintendent, on behalf of State Superintendent of Public Instruction Jack O'Connell and the California Department of Education (CDE). Thank you for inviting me to share some of our accomplishments and challenges in administering the grants we have received under the American Recovery and Reinvestment Act, or ARRA.

**Background**

We are grateful to Congress for providing these funds. They have truly been a lifeline for school districts in California in the current fiscal crisis.

First, let me provide some background. The CDE administers \$45 billion of state and local funds, and \$7 billion of federal funds that are allocated annually to school districts. The federal funds are allocated under six major federal programs and a number of smaller ones. Under ARRA, we have received (thus far) nine grants, including one grant in which we administer the kindergarten through grade 12 (K–12) portion on behalf of the Governor's Office. These nine grants will total around \$6 billion.

For these nine grants, to date we have issued 3,800 subgrants to 1,800 subrecipients, primarily school districts, charter schools, and county offices of education. In the second

quarter, our subrecipients reported creating or retaining 34,703 jobs. This is the largest volume of subrecipients and subgrants among our fellow state agencies in California, and possibly the largest among state agencies nationwide.

We have issued subgrants for seven of the nine ARRA grants. The table below shows summary data on these seven grants (the Individuals with Disabilities Education Act (IDEA) grant column includes two grants). The table includes the higher education subrecipients, which reported through our reporting system. The jobs total above is just for the K–12 subrecipients.

## ARRA Section 1512 4th Quarter Reporting Summary

Data	Individuals with Disabilities Education Act (IDEA)	Title I, Parts A and D	McKinney-Vento Homeless Children	State Fiscal Stabilization Fund	Nutrition	Child Care
No. of grants	371	1,247	168	1,600	243	171
Total sub award amount	\$1,267,972,271	\$1,027,286,572	\$13,423,277	\$3,951,198,909	\$12,859,773	\$90,750,333
Sub award disbursed	\$269,113,167 21%	\$461,207,234 45%	\$2,686,425 20%	\$3,951,198,909 100%	\$11,573,795 90%	\$0 0%
Sub award expended	\$289,984,330 23%	\$176,198,040 17%	\$1,963,376 15%	\$2,671,556,484 68%	\$9,263,891 72%	\$24,201,101 27%
Sub awards with zero percent expended	13%	16%	26%	10%	14%	81%
Sub awards with greater than zero and less than 50 percent expended	81%	61%	64%	48%	4%	5%
Sub awards with greater than or equal to 50 percent expended	6%	23%	10%	42%	81%	14%
Sub awards with 100 percent expended	2%	13%	4%	30%	53%	10%
Total jobs saved from effective date through December 31, 2009	5,817	5,146	45	38,924	81	40
Classified jobs saved	3,115 54%	1,338 26%	33 73%	4,488 12%	36 44%	24 59%
Certificated	2,504	3,727	8	18,802	6	1

jobs saved	43%	72%	17%	48%	7%	2%
Vendor jobs saved	198	81	5	283	39	15
	3%	2%	10%	1%	48%	38%
Institutions of Higher Education jobs saved	0	0	0	15,351	0	0
	0%	0%	0%	39%	0%	0%
Sub award effective date	02/17/09	02/17/09	02/17/09	04/17/09	03/01/09	03/01/09

I will now address the issues the committee wishes us to address.

### Use of ARRA Funds

We have not collected any data, other than jobs data, on how local educational agencies and other subrecipients have used ARRA funds but will do so as part of the annual fiscal reporting process. We note that eight of the nine ARRA grants we administer are essentially augmentations to existing federal programs, and the funds must be spent for designated purposes. With respect to the State Fiscal Stabilization Fund (SFSF), the funds are very flexible.

Four of our grants (SFSF, Child Care, and the two IDEA grants) permit spending on infrastructure if the subrecipient certifies that the project is an appropriate use of taxpayer money and complies with specified other requirements. Thus far, a small portion of the SFSF and Child Care grants have been spent for infrastructure. Lists of the projects funded are available at the CDE ARRA SFSF Web page at <http://www.cde.ca.gov/ar/sf/documents/alph.doc> and CDE ARRA Early Childhood and Development Block Grant Web page at <http://www.cde.ca.gov/ar/ec/documents/alphalistingforccdf.doc>.

### Section 1512 Reporting

Section 1512 of ARRA requires reporting quarterly from recipients and subrecipients on, among other things, the amount of funds awarded, the expenditures, and the number of jobs saved or created as a result of the ARRA. To comply with this requirement, we developed a Web-based system for collecting this data from our subrecipients. We issued guidance, issued passwords, and followed up with entities that did not report initially. We then submitted our data to the system developed by the Governor's Office, which in turn submitted the data to the federal site, recovery.gov. Our reporting effort has been successful—99 percent of our subrecipients have submitted data for the quarterly reports required by the act.

A major issue in reporting has been the calculation of the jobs figures. As you may know, the federal Office of Management and Budget (OMB) issued guidance in June 2009 that outlined how recipients and subrecipients were to calculate the number of

jobs. We in turn issued guidance to our subrecipients on September 4, 2009, on how to calculate jobs in the school context. We used that methodology in the first quarter, for reports that were due to OMB in October 2009.

OMB issued revised guidance for calculating jobs on December 18, 2009. We welcomed this change because the new methodology is simpler and more straightforward than the original methodology. We notified our subrecipients on January 6, 2010, of the change in methodology. However, we continued to use the original methodology in the second quarter for data due to OMB in January 2010, as was permitted by OMB.

We are currently collecting revised second-quarter jobs data, using the new methodology, for submission to OMB by March 15. Our revised guidance is posted on the CDE ARRA Funding Information and Reporting Requirements Web page at <http://www.cde.ca.gov/ar/rr/datafldshelp.asp>.

Why did we defer converting to the new jobs methodology until now? Why did we continue to use the original methodology instead of changing to the new methodology for the second quarter submission in January?

First, to require our subrecipients to re-do the reporting that they had just completed based on this late change in guidance would impose an unacceptable burden. We were not willing to ask school districts and other subrecipients to drop everything else they were doing to comply with this new requirement. Our school districts were and are struggling with \$17 billion in budget cuts over the last two years. In addition, in early January they were working on two major deadlines related to ARRA. Staff at both the state and local levels were working long hours in connection with these projects. The first deadline was for the SFSF Phase II application due January 11, and the second was the Race to the Top application, which was due January 19. In connection with the latter application, local educational agencies had to review the Memorandum of Understanding and determine whether to participate in the Race to the Top program.

Second, it would have been impossible for us to obtain revisions by the deadline. On December 18, most school districts were already closed for the holidays. Most literally close down—there's no one there to receive e-mails or answer the phone. So even if we had tried, we could not have gotten anyone's attention until the first week of January. Then it takes us about a week to remind non-reporters, review the data, and correct errors. It takes at least another week to submit the data to our state system and for the state system to get it approved at the federal level. We simply could not obtain new data and get it into the federal system by the January 15 deadline. We had already collected jobs data from our subrecipients before the holidays, using the original methodology.

Why did it take so long to actually submit the data? Here are some of the challenges we faced in the first two reporting periods:

- In the second cycle, the OMB decided to validate congressional district (CD) coding. In some situations, the CD in the federal database was simply wrong and we had to spend a lot of time resolving the issue. We also had hundreds of errors because we had advised subrecipients to use the CD that matched their area the best, while OMB wanted us to use the CD that matched the zip+4 of the subrecipient headquarters. We did not have access to the database that OMB used to perform its matches, and do not understand why, if OMB had a database to determine the correct CD, why OMB could not have added the CD information itself.
- In the first cycle, we had problems with DUNS numbers, as did many other states. These are universal numbers issued by Dun&Bradstreet and OMB required that subrecipients have them. Many subrecipients had to go through the process to get a DUNS number before reporting. We had *no* tools to validate DUNS numbers; we had to wait to see if OMB rejected our data—which they did if a DUNS number was wrong. When we received a rejection we called our subrecipients to troubleshoot issues with DUNS numbers. This took an incredible amount of staff time.

It turned out that about two-thirds of the DUNS numbers identified as invalid were actually valid. When we followed up on the “errors,” in most cases the subrecipients contacted Dun&Bradstreet and were assured that the records were valid, current, and complete. It turned out that OMB did not have access to a current list of valid DUNS numbers. (We also were concerned that when some of our subrecipients called Dun&Bradstreet to try to figure out the problem, more than once were subjected to sales pitches for Dun&Bradstreet products such as credit checks.)

Finally, both the federal Department of Education (ED) and OMB had issued guidance that permitted us to delay implementing the new methodology. The Recovery and Accountability Transparency Board had issued verbal statements requiring implementation of the new methodology immediately. However, in fact, the written guidance acknowledged that in some cases it would be impossible to obtain data using the new methodology. With 1,800 subrecipients and 3,800 subgrants, we believe that if it were impossible anywhere, it was impossible in California. We note that there are other states that submitted jobs data calculated using the old methodology. Some, but not all, are collecting revised data for submission in March. Texas, Washington, Ohio, and Illinois all used the old methodology. Texas, Ohio, and Illinois intend to update their data in the March correction period.

As an example of the guidance we received, please see the OMB December 18, 2009, guidance, at the OMB Web site at <http://www.whitehouse.gov/omb/asset.aspx?AssetId=2182> (Outside Source). Page 2 of the cover letter states "Recipients should implement the updated methodology to the greatest extent possible for the January reporting period. Federal agencies should consider the efforts put forth and the complexities and challenges of the recipients when

reviewing compliance with the Federal awards." Page 12 of the guidance itself says "Effective February 2, 2010, the FederalReporting.gov solution will be open for corrections of all data submitted for the quarter ending December 31, 2009. Recipients will have the ability to make correction up until the start of the next reporting period. For example, from February 2, 2010 through March 31, 2010, recipients will have the ability to correct data for the quarter ending December 31, 2009."

### **Administration and Oversight of Recovery Funded Projects within CDE, and Effect of Budget Shortfalls**

I am proud of the job we have done in administering these funds, given the current budget crisis in the state of California. We have issued subgrants quickly so the funds have been put to work quickly at the local level. We have issued voluminous guidance to our subrecipients and held numerous conference calls and webinars regarding use of the funds. We have posted numerous documents, including federal guidance and our own guidance, on our Web site. Finally, we have complied with federal reporting requirements—as indicated earlier, 99 percent of our subrecipients have submitted data for the quarterly reports required by the act.

You should know that in administering these nine grants totaling \$6 billion, we have not received *any* additional staff or funds to perform necessary administrative functions. None. Our reporting effort is being operated by two staff redirected temporarily from their usual jobs, plus time from our technology division for system development. We are still working to identify how we can staff some of our oversight efforts.

Two specific issues that have been raised by auditors are subrecipient monitoring and cash management.

By monitoring, I mean the set of activities undertaken by state staff to review local programs and expenditures to make sure they are effective and appropriate for the funding source, and that they comply with federal rules.

Eight of the nine ARRA grants we are administering are essentially augmentations to existing federal programs. We are monitoring those eight programs in conjunction with monitoring of the parallel well-established programs. While our regular monitoring procedures can always be improved, and in fact we are currently implementing improvements related to use of risk-based approaches and fiscal issues, we believe the monitoring we are doing is appropriate and adequate.

The ninth program is the SFSF, which provides funds to stabilize state and local budgets. We are administering the K–12 portion of the program on behalf of the Governor's Office. This is a new program and the funds can be used for virtually any purpose, although there are some restrictions. There is no programmatic monitoring needed because, as ED guidance states, there are no specific "SFSF activities." With respect to fiscal monitoring, in February 2010 the ED issued guidance regarding its

expectations for state monitoring of local programs. In response to that guidance, we are currently developing a monitoring plan for these funds. It is due March 12.

We note that, again, resources will be an issue in establishing a monitoring program for the SFSF. As I indicated before, we are working to identify how we can staff our monitoring efforts. None of the K–12 funds available through the SFSF can be used for administration. There is another portion of the funding that can be used for this purpose (the Government Services Fund portion), but the state Department of Finance allocated all the Government Services Fund to Corrections.

With respect to cash management, we have issued letters to local educational agencies regarding remittance of interest they earn on federal funds, and they have been submitting interest payments to us. We have also initiated changes to our processes to consider the amount of cash on hand in issuing payments. Our enhanced fiscal monitoring procedures will include review of compliance with these requirements.

### **Measures to Prevent Waste, Fraud, and Abuse**

To prevent waste, fraud, and abuse, we have posted information on our CDE ARRA Web site alerting subrecipients to the issue and providing a link to resources to report suspected incidents. The same link contains information on whistleblower protections. The state Inspector General has also posted information on this issue. We also have placed posters around our department headquarters building.

Our primary protection against waste, fraud, and abuse is the nature of the programs funded by ARRA. As indicated earlier, eight of the nine grants are essentially augmentations of existing programs with well-established rules on use of funds. The subrecipients are virtually all local educational agencies with experience operating these programs. The ninth program, SFSF, is intended to stabilize local budgets—and with the huge budget cuts implemented recently in California, it is likely that there is intense scrutiny of these funds locally. Local educational agencies need to use these funds to avoid teacher layoffs. Two pieces of evidence for this conclusion are (1) the large number of certificated jobs saved (18,802) and (2) the small percentage of the funds spent on infrastructure (\$7.2 million out of \$2.5 billion allocated to K–12 agencies).

### **Conclusion**

In conclusion, we have done a great job in administering these funds, within incredible fiscal constraints. I would be happy to answer any questions.