

**IMPLEMENTATION IN DELAWARE OF THE
AMERICAN RECOVERY AND REINVESTMENT ACT**

Interim Report

October 29, 2009

INTRODUCTION

The Honorable Jack A. Markell
Governor, State of Delaware
820 N. French Street
Wilmington, DE

Dear Governor Markell:

The American Recovery and Reinvestment Act was signed into law by the President on February 17, 2009. In asking me to coordinate implementation of ARRA in Delaware, you asked me to focus on two primary goals and a number of related goals. The two primary goals were (a) to ensure that Delaware sought all ARRA funds that it could responsibly seek, and (b) to ensure that Delaware responsibly monitored and tracked ARRA funds that were received.

Consistent with these goals, I have looked at the following areas in preparing this interim report for you on the state's implementation of ARRA:

1. Have state agencies applied for all 'formula' and all appropriate competitive ARRA grants?
2. Has the state encouraged private actors to apply for ARRA grants?
3. Are ARRA funds received by the state being processed and spent efficiently given the need to scrutinize and carefully track expenditure of those funds?
4. Are state purchases with ARRA funds being reviewed to ensure that they are appropriate?
5. Are ARRA funds being properly tracked and reported?
6. Are jobs being created at a rate that is consistent with federal expectations?
7. Is the state operating with sufficient transparency with respect to ARRA funds?
8. Has the state made appropriate efforts to include women and minority owned businesses in stimulus opportunities?

My conclusions are:

1. State agencies have applied for all formula grants, and although a small number of state agencies initially had an overly restrictive view of which competitive grants they should apply for, state agencies ultimately applied for all competitive grants that made economic sense for the state.
2. The state has been aggressive about encouraging private actors to apply for ARRA funds.
3. ARRA funds have, in most cases, been processed and spent as quickly as is reasonably possible. A small number of state agencies have been encouraged accelerate their efforts and are in the process of doing so.
4. The state is overseeing ARRA funds through an effective but labor-intensive process.

5. The state has put in place an effective system for tracking and reporting the spending of ARRA funds.
6. Job creation and retention can only be estimated with a broad range due to the uncertainty inherent in making such estimates. Available data suggests that between 1,055 and 3,605 jobs have been created or retained in Delaware due to ARRA, and there are additional jobs created or retained for which a range is not possible given the absence of data. The federal estimate of job creation and retention for Delaware is within the range of actual estimated job creation and retention.
7. The state has adopted an ambitious transparency policy for ARRA funds, but has yet to make its web site sufficiently user-friendly to allow citizens to take full advantage of this high level of transparency.
8. The state is making vigorous efforts to inform women and minority owned businesses of opportunities created by stimulus funds. However, it is difficult to track the ultimate success of these efforts due to limitations in the state's record-keeping procedures.

We will continue to work diligently in these areas, and will provide you with another status report when appropriate.

Sincerely,

Lieutenant Governor Matthew P. Denn

GRANT APPLICATIONS

One of the challenges created by the ARRA was the number of opportunities it created for state agencies to apply for federal funds. Some of those opportunities were for ‘formula funds’—funds whose amount was determined by numerical formulas, most of which were based upon population, and which were guaranteed to Delaware provided that timely applications were submitted. Other applications were for competitive grant funds, where Delaware was not guaranteed any funds.

Our instructions to state agencies were that they should apply for all formula funds and any competitive grant funds that Delaware had any reasonable likelihood of obtaining, with the caveat that any federal grants which would obligate the state to spending state taxpayer funds—either now or in the future—should only be sought after receiving administration approval.

Each state agency applied for all formula grant funds, and almost all of those formula grants have been awarded.

To date, state agencies have also applied for all competitive grants that satisfied the two criteria referred to above—the agencies had to have at least some non-trivial likelihood of receiving the grant in order to justify the staff time and expense involved in preparing an application, and there had to be compelling reasons to apply for a grant that would obligate the state to spend future state taxpayer funds. Most state agencies were diligent about seeking out competitive grant opportunities. We did encounter a small number of state agencies that were reluctant to apply for competitive grants, but those problem areas were detected early enough that we could ensure that grant applications were timely submitted.

With respect to results, as would be expected, there have been successes and disappointments. The University of Delaware has had notable success in obtaining federal stimulus funds, already receiving grants totaling well over \$50 million. This amount compares very favorably to amounts received by flagship public universities around the country. Two disappointments for Delaware were the federal government’s decision not to award Delaware funds for additional state police resources, and the federal government’s decision not to include Delaware in any proposed high-speed rail corridors that would have allowed Delaware to join with other states to compete for a substantial additional source of federal rail funds. Both of these decisions were policy decisions that were made by federal agencies.

Two cabinet secretaries, DTI Secretary James Sills and DHSS Secretary Rita Landgraf, have been extraordinarily helpful in offering the resources of their agencies to assist in the preparation of competitive stimulus grant applications that did not fall strictly within their statutory responsibilities.

ENCOURAGEMENT OF PRIVATE SECTOR

Many of the opportunities presented by the ARRA are available to private entities—and particularly businesses. We have made a priority of publicizing these opportunities. Working with the Delaware State Chamber of Commerce and DEDO, we have held detailed forums for businesses up and down the state regarding these opportunities. We have also presented forums targeted specifically at non-profit entities, faith-based entities, and minority and women owned businesses. Webcasts of several of these forums are available on the state's recovery web site. Finally, we have also issued press releases when ARRA opportunities of particular interest to the business community have become available.

The Delaware State Chamber of Commerce has been an important partner in our efforts to inform the private sector of stimulus grant opportunities. The Chamber strongly encouraged its members to find out about ARRA opportunities, and as a result attendance at most of the forums we co-sponsored with the Chamber was high.

Many of the opportunities presented to the private sector will continue to be available for several months to come, so these efforts will continue.

SPEED OF SPENDING FEDERAL FUNDS

There is obviously an interest in spending ARRA funds in order to allow them to help stimulate the economy. However, we take very seriously our responsibility to carefully screen the spending of ARRA funds and track and report on the spending of those funds, which places some limits on how quickly the funds can be spent. Another limit on the state's ability to cause the rapid expenditure of stimulus funds is the fact that a significant portion of the ARRA funds Delaware is receiving are simply being 'passed through' to other government entities, in particular local school districts and local governments. The state has almost no control over how quickly those pass-through funds are spent.

With those important caveats, the majority of state agencies are committing and expending ARRA funds with reasonable speed. We will not know until the federal government releases comprehensive statistics at the end of October how Delaware's rate of expenditures compares to that reported by other states, and I suspect that public pressure will cause some other states to be quite aggressive in the accounting procedures they use to report stimulus spending. For that reason, I am less concerned with statistical comparisons to other states than I am with the agency-by-agency and program-by-program review of spending that I conducted with each member of your cabinet in the summer.

The state had received approximately \$510 million in ARRA funds as of September 30, 2009. Of that amount, the state has spent or encumbered nearly \$263 million, slightly more than half. The pace of spending varies dramatically depending upon the type of program.

- Of the \$510 million received, 36% is money that went directly to state government, in large part through the federal government's increase in its share of the cost of the Medicaid program. Almost all of that money (94.2% of it, or \$174,036,000) has been spent.
- Another 15% of the money received has been designated for DelDOT's road and transit projects. Of that amount, almost half (49%) has been either encumbered or spent.¹
- The rest of the \$510 million has gone to a wide variety of programs, some of them operated directly by the state and others (particularly education and water projects) where the state is a pass-through entity. The encumbrance/spending figure in this last category of programs is 20.4% (i.e. 20.4% of the funds received have been encumbered or spent), with about a quarter of that amount representing spending and the remainder being encumbrances.

¹ Because DelDOT spends its funds by reimbursing contractors for work done, the amount of funds encumbered is a more accurate reflection of work underway than the amount of funds expended, which can extend over the entire life of a road project. Although 49% of DelDOT's funds are encumbered, only 9.5% of them have actually been expended.

Some state agencies that have been particularly effective in responsibly but efficiently spending ARRA funds are the Division of Vocational Rehabilitation, the state's Clean Water and Safe Drinking Water programs (which do not spend the funds but make them available to local governments), and the state's Child Development Watch program.

There are some areas where the state has made a strategic decision to spend stimulus funds within the time periods dictated by ARRA, but more methodically than other states. In particular, Delaware decided to dedicate a substantial portion of its ARRA highway transportation funds to two projects—the creation of EZ Pass lanes at the Maryland border and the raising of South Market Street in Wilmington out of a flood plain—that are more time consuming than the road paving and repair projects focused on by other states, but also hold out significantly more potential for future economic benefit and job creation.

There are some categories of ARRA funding where spending will, by the nature of the programs involved, be extended over time. For example, 16% of the funds received to date have been passed directly through to local school districts and charter schools, and a significant portion of those funds could not be spent until the current school year began and will be spent on a monthly basis on programs that extend over one or two years.

Our agency-by-agency review of spending did raise concerns with a small number of programs where spending did not seem to be occurring as efficiently as it could. Those concerns have been pointed out to the responsible cabinet officials and those officials are focused on resolving the problems. Specifically, I expressed concerns about the rate of spending of state energy funds, which are overseen by the State Energy Office and DNREC, and the state's funds for weatherization of low-income homes and financial support for non-profit organizations (Community Development Block Grants). Steps to expedite the spending of weatherization and CDBG funds have already been taken, and I have been assured that the use of state energy plan funds will accelerate in the near future.

OVERSIGHT OF STIMULUS SPENDING

The state has adopted a rigorous but time-intensive method of pre-screening ARRA-funded expenditures. Using existing funds from my office's budget, the state hired an experienced financial manager from the private sector who personally reviews each purchase order that comes to the state involving expenditure of stimulus funds. Any purchase order that appears to be anything other than a routine expenditure is routed to my office for an independent review. I am not aware of any other state that is exercising this level of oversight.

On the whole, our review of purchase orders to date has indicated that funds are being spent in an appropriate way consistent with the terms of the grants. A small number of purchase orders have been flagged as containing either insufficient information or information that raised concerns regarding the use of funds. Each of those cases, however, has involved ARRA funding streams outside the state's direct control: two of the cases involved non-profits that were entitled to a flat fee from the federal government for their services, thereby limiting our ability to demand detailed billing information, and the case involving what we viewed as questionable use of funds resulted from a contract between the vendor in question and a state board (as opposed to a state agency) that had already been signed by the parties. In the latter instance, we notified the board of our concern regarding the contract and encouraged it not to enter into future contracts that allowed the types of expenses in question.

We will continue to vigorously review purchase orders relating to the use of stimulus funds. The pre-screening system we have set up is an extremely strict one—many other states appear to be relying more heavily on after-the-fact audits to detect improper spending. But this process by its nature is also a labor-intensive one. As the pace of stimulus spending increases, our ability to carefully review purchase orders may be degraded simply by virtue of the volume we receive.

One area of specific concern regarding expenditure oversight is our local school districts and charter schools. As mentioned earlier, an enormous amount of federal stimulus funds are being passed through the state directly to these entities, and the state's legal and logistical ability to monitor the spending of these educational dollars is limited. Our level of concern is heightened by the difficulty that we encountered in obtaining compliance from local school districts and charter schools with their first federal reporting deadlines this month. For these reasons, we asked the State Auditor, who has expansive legal authority to monitor school district and charter spending and staff expertise, to concentrate his stimulus oversight efforts in this area beginning last July.

TRACKING OF ARRA SPENDING

The state has invested significant time in ensuring compliance by state and local agencies with the federal reporting obligations associated with the receipt of ARRA funds. This effort has included scores of meetings and teleconferences, and a statewide exercise conducted in September to determine state agencies' ability to comply with the federal government's first comprehensive reporting deadline earlier this month.

Every Delaware entity that we are aware of with a federal reporting obligation has complied with that obligation. A small number—primarily local school districts and charter schools—complied after the initial federal deadline, but all submitted reports in time to have their reports posted later this month when the federal government makes those reports public.

In both our reporting exercise in September, and again in the formal reporting that took place earlier this month, it became apparent that some of our local school districts and charter schools are struggling with the reporting requirements associated with their receipt of ARRA funds. As noted above, we have asked the State Auditor to focus his ARRA oversight efforts in this area due to the difficulties experienced and the Auditor's unique legal and practical ability to probe school finances.

JOB CREATION/RETENTION

In the only formal analysis that the federal government has conducted of the number of jobs that should have been created or retained by the federal stimulus bill, the President's Council of Economic Advisors calculated last month that Delaware should have expected to create or retain approximately 3,000 jobs because of ARRA, including both private sector jobs and government jobs. That calculation was based on an economic model of what unemployment would have been in Delaware in August had the stimulus legislation not existed. As explained below, there is a significant amount of uncertainty involved in estimating job creation and retention resulting from the ARRA, but Delaware's data suggests that the job impact of ARRA in Delaware is roughly equivalent to that predicted by the Council of Economic Advisors.

The Council of Economic Advisors estimate of 3,000 jobs created or retained includes jobs in three separate categories: jobs created or retained directly through ARRA programs, as calculated by a somewhat complex formula created and constantly revised by the federal government; jobs created or retained by the state as a result of ARRA funds helping to close the state's budget deficit; and jobs created through a variety of ancillary effects of ARRA funding, such as jobs created or retained due to new tax credits, and jobs created or retained as a byproduct of new programs made possible by ARRA funding.

The first category of jobs described above are those that must be reported to the federal government as part of the state's formal ARRA reporting. As mentioned above, the federal government created, and regularly refined, the formula for counting job creation and retention for purposes of these reports, and the formula can produce job estimates that do not necessarily represent the number of people working at any given time. Recognizing the limitations of this counting formula, Delaware entities and federal entities have filed reports indicating creation or retention of 1,055 jobs in this first category.

The next stream of stimulus funds—most significantly, the federal government's augmentation of the funding for Delaware's Medicaid program—does not require federal reporting of job creation. Estimating job creation and retention with this stream of funds is more difficult. It is inarguable that the \$153 million in stimulus funds that have already gone directly into balancing the state's budget have allowed the state to retain jobs that it would otherwise have had to eliminate. However, determining the precise number of jobs created or retained requires some level of speculation as to how the General Assembly would have balanced the state's budget if these funds were not available—other options, such as dramatically increasing state taxes, extraordinary state employee pay cuts, or major cuts in Medicaid benefits were also available to legislators. If all of the \$153 million in stimulus funds were used to retain jobs, between 1,530 and 2,550 jobs were retained, depending upon the range of values that are assigned to the salary and benefits associated with average state positions. To whatever degree one assumes that the legislature would have raised state taxes, further cut employee pay, or undertaken major Medicaid cuts to make up this amount, those job retention figures must be reduced. Therefore, the only way to estimate job creation and retention from this \$153 million windfall to the state's budget is to state that it created or retained anywhere between zero and 2,550 jobs.

The final category of job creation and retention is impossible to measure or estimate at a state level based on currently available data. ARRA has provided a significant amount of tax and loan assistance to private businesses, which inevitably has resulted in job creation or retention for those businesses that have taken advantage of it. ARRA has also provided direct income subsidies to Delawareans receiving unemployment insurance, money which is often spent on groceries and other items that stimulate job creation and retention in local businesses. Analysts have suggested that jobs created or retained in this category will represent up to 36% of the total jobs created or retained as a result of ARRA, but we have chosen not to make such broad estimates for purposes of this report. Other states may do so, and this may distort state-to-state comparisons of job creation and retention.

For this reason, available data only allows us to estimate that between 1,055 and 3,605 jobs were created or retained in Delaware to date as a result of ARRA in the first two categories described above. Whether the figure is closer to the higher or lower end of this range is dependent upon one's predictions regarding what the legislature would have done absent the ARRA funds, and upon one's predictions regarding the salary and benefits that would have been associated with any positions the state did eliminate. And in any event, this range understates the amount of job creation and retention in Delaware by as much as 50% because it cannot include jobs created or retained due to tax and other benefits flowing directly to private businesses and individuals.

TRANSPARENCY

Our goal with respect to transparency is straightforward: to the extent that technology allows, we want Delawareans to be able to see every ARRA dollar that Delaware seeks, and to be able to trace every ARRA dollar that is spent by the state.

Delaware has adopted a very ambitious transparency policy. Our policy is to post every ARRA grant application submitted by a state government agency on the state recovery web site, and to publish on the web site every State of Delaware purchase order involving the use of stimulus funds, with the exception of purchase orders that contain confidential personal information.

Delaware's recovery web site still faces limitations. First, although the state is methodical about updating the summary financial information on the site, original documents relating to grant applications and purchase orders have not been posted as quickly as we would like. Second, it is more difficult for visitors to use search functions and navigate Delaware's ARRA web site than it is to navigate the ARRA web sites of some other states. These limitations of the web site are a direct function of resources: because Delaware's ARRA web site is maintained by a single state employee in his spare time from a full-time job, it has not been possible to make Delaware's web site as user-friendly or scan and post original documents as quickly as the state would like. Fortunately, we have received an indication from the Office of Management and Budget that help in this area will be forthcoming.

WOMEN AND MINORITY OWNED BUSINESSES

Although the state has an Office of Minority and Women Business Enterprise responsible for advertising all state opportunities to women and minority owned businesses, we have attempted to augment that office's efforts with respect to ARRA opportunities. It is difficult to gauge our success because of the difficulty in Delaware of tracking contracts issued to women and minority owned businesses.

There has been active participation by women and minority owned businesses in the general forums that our office has organized with DEDO, but we have also targeted additional efforts specifically at these businesses. There have been two major forums for women and minority owned businesses in Delaware since passage of the ARRA, and we have made presentations at both forums, focused on stimulus opportunities that might be of special interest to women and minority owned businesses. We are in the process of posting a video of our most comprehensive briefing for women and minority owned businesses on the state's Recovery web site.

Recently, my office along with Delaware's Office of Minority and Women Business Enterprise and the federally-funded ARRA Advocacy Office in Philadelphia signed a Memorandum of Understanding to help provide access to ARRA opportunities for minority and women owned businesses. The goal of this partnership is to better inform minority and women owned businesses about ARRA opportunities and to help increase the numbers of these businesses that respond to RFPs and bid for contracts. Our partnership with that office will create opportunities for Delaware businesses across state lines.

It is difficult to measure the success of our efforts, because outside of DelDOT, Delaware does not have formal mechanisms in place to effectively track the issuance of contracts to minority and women owned businesses. DelDOT, which has specific minority and women owned business contracting goals incorporated into its federal funding opportunities, reports that it is meeting those goals at the current time, and that the number of women and minority owned businesses seeking certification as such has dramatically escalated since ARRA outreach began. There is anecdotal evidence on other fronts that our efforts are bearing fruit: in the low-income weatherization program, which is one of the programs that presents significant new contracting opportunities, we are informed by the contract administrator that half of the contractors who have entered the program since the passage of ARRA have been women and minority owned businesses. But absent a statewide tracking mechanism for issuance of contracts to women and minority owned businesses, there is no precise way to empirically assess our efforts.

Your office had already taken note of the challenges presented by the absence of a statewide tracking mechanism for contracting with women and minority owned businesses, and is preparing options for you in attempting to address this challenge. In the meantime, we will continue our efforts to reach out to the women and minority owned business community regarding ARRA opportunities.