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Washington, DC 20503

Comments on Draft Recovery Act Program Reporting Guidance for State Energy Programs and EECBG

The NH Office of Energy and Planning (NH OEP) has been making good progress in carrying out its mandate to spend ARRA funds according to the specific terms and conditions of the awards it has received. However, as has been previously communicated to U.S. Department of Energy (DOE) personnel at all levels of the department, our office has serious concerns regarding the impact of DOE's and the Office of Management and Budget's (OMB's) continually inconsistent, confusing, and continually changing guidance and communication.

The newly proposed Reporting Program Guidance was brought to NH OEP's attention not by DOE, but by NASEO, via email. We are not able to fulfill the requirements of this proposed guidance without stopping work and revamping our entire financial and metric tracking system. Our standard payroll system may not be able to accommodate some of the elements.

NH OEP is aware that DOE is concerned about the progress on these important programs and spending SEP funds in a timely manner. We understand that the intent of the proposed reporting guidance is to "effectively track the pace of expenditure of ARRA funds," but we believe that imposing such reporting requirements on all states, regardless of their progress in committing or expending funds, is unnecessary and wasteful. Requiring monthly tracking and reporting on issues that we are not set up to track or report will not empower us to complete the work more expeditiously. On the contrary, such requirements will significantly impede our work. This slow down could be dramatic in the first months the new requirements are in force as we notify, make modifications to existing contracts or other agreements, provide guidance, and monitor our sub-recipients for compliance.

The following summarizes our concerns in detail.

- **Original SEP funding opportunity announcement guidance ignored.**
- **Reporting changes are unexpected and recipients not notified.**

When NH OEP submitted its original application for Recovery Act funding in April 2009, DOE required that energy savings and financial activity be estimated *by market title*. In Section 5.8 of the Funding Opportunity Announcement published March 12, 2009, ARRA Progress and Reporting Metrics were described as follows:

*“As in the past, States will be required to report quarterly on project expenditures, and also on specific activities and achievements, **such as square feet of buildings retrofitted**. These items tend to be outputs (actions taken by grant recipients) but also include some short-term outcomes (results achieved relatively soon after project outputs occur that lead toward attainment of ultimate project objectives). A list of metrics required for reporting is included in Section 10.” [emphasis added]*

Section 10 listed the metric activities to be reported on quarterly, which NH OEP has been doing since the grant was awarded. Financial reporting by metric activity was not included on this list, nor has it ever been suggested that States track expenditures by metric activity.

Now, seven months after NH OEP’s SEP application was approved, more than 65% of our grant has been committed, seven contracts or Memorandum of Agreements (MOAs) are in place between NH OEP and sub-recipients, and a number of other contracts or agreements are in place between those sub-recipients and other partners. With no warning, and only indirect notification, the Draft Reporting guidance issued on January 21, 2010 proposes significant changes to both the *frequency* of reporting and the *type* of reporting required.

- **New types of reporting to be required.**
- **Reporting changes retroactive.**
- **Monthly reporting not permitted under ARRA legislation.**

The proposed changes would require reporting on expenditures by *metric activity* rather than by market title. This reporting is proposed for some metric activities on a monthly basis and for others only on a quarterly basis. Neither type of financial reporting is possible for NH OEP at this time because: (a) we did not set up our budgets this way when we applied for the grant; (b) we did not guide our sub-recipients to track their expenditures this way; (c) we were never warned that such reporting might be required; and (d) we have never been asked to report this way previously.

Furthermore, such reporting would be required as of March 20, 2010 for the period ending February 28, 2010, which would result in our having to set up and implement a system that could track such data *in anticipation* of actually receiving a modification to our grant agreement from DOE. In other words, the new guidance would require retroactive implementation.

If DOE must impose additional reporting requirements, more notice and specific guidance will be needed in order for states to comply with any degree of accuracy, consistency, or timeliness.

The original Recovery Act legislation specifies that federal agencies may require quarterly reporting but does not allow for monthly reporting. In addition, the legal authority cited in part 3.0 of the proposed guidance references implementing regulation at 10 CFR part 420, subsection 5 of which does not anticipate monthly reporting, but instead states that “Each State receiving financial assistance under this part shall submit to the cognizant Regional Office Director a quarterly program performance report and a quarterly financial status report.” It also provides for a deadline of *30 days* following the end of the quarter, not the 20 that is imposed in the proposed reporting requirements.

- **Reporting financial expenditures by metric activity not possible at this time.**
- **Metrics keep changing.**
- **Metric activities should capture the most important outcomes of the work, not the most expensive ones.**

NH OEP has 16 market titles, all of which contain multiple milestones and metrics. Not all activities within these markets can be tied to a specific metric, and indeed, DOE states on page 39 of the Funding Opportunity Announcement released on March 12, 2009 “To be clear, *the new metrics discussed in this Guidance are not intended to restrict or to change state activities funded by SEP.*” [emphasis in the original].

The proposed requirement to report monthly and quarterly financial data by metric activity will not adequately capture the amount of funding being spent on the programs as a whole, will not capture those activities for which specific metrics are not assignable, and will result in an inaccurate picture of what states are expending and achieving.

NH OEP staff time is allocated on individual Market Titles (for example Business Loans and Grants). They count the number of trainings they provide, or the number of technical assistance events, but they do not correlate that to a specific amount of funds spent or even hours worked on those specific activities. The same is true for work that is sub-contracted out to third parties. We have not and cannot track hours and expenditures in the way it is being requested at this time without revamping our financial systems. We can, and will, continue to track the expenditures by Market Title, and within that Title by the total amount contracted to a third party under contract with NH OEP, which is what our accounting and payroll system is designed to do. We would have to stop work, evaluate whether we could incorporate the new parameters, re-establish budgets based on activity, re-input the budgets, and establish new reporting. This is not feasible mid-stream without a significant impact on work progress. In addition, we are not certain our payroll system would have all the capabilities needed.

The primary metric for our Building Code Compliance market is “Building Code Adoption” from which we will report on the number of buildings covered by the adopted code. New Hampshire is one of the first (and very few) states to have passed the 2009 IECC building energy code, an accomplishment we are proud of but which did not require a tremendous amount of SEP

funds to get passed. Most of our funds under this market will be spent on training professionals to understand and implement the code and to develop a plan for achieving 90% compliance. Financial expenditures on the specific “Building Code Adoption” metric activity will therefore not reflect the amount of effort or progress made to ensure the adopted code has the impact that NH OEP and DOE desire under the State Energy Program.

The solution proposed by a DOE representative (not our program officer, but someone he had referred us to) was to change our metric activity so that it reflects how the money is being spent (i.e., training or clean energy policy) rather than to how the program will impact the state. This is unacceptable not only because our application was approved as submitted (with amendments), but also because it seems to be putting the cart before the horse, giving priority to a particular metric measurement (money spent) rather than to the program as a whole

- **“Total Head Count” of workers is a new concept.**
- **Total Head Count guidance not provided.**
- **Total Head Count is contrary to OMB 1512 Guidance.**

One of the jobs-related metric activities listed in the newly proposed guidance is “Total Head Count,” described as the “cumulative number of individuals compensated for any amount of work on Recovery Act-supported projects.” This metric activity is to be reported on quarterly, yet to date there has been no suggestion that we should be tracking such a number or guidance on *how* we should track it. It is also completely different than the extensive and often-changing guidance provided by OMB relating to how to count jobs for the sake of 1512 reporting. These 1512 reporting changes have to be communicated to our sub-recipients and partners (and their vendors and partners) every time they are changed. This is another area that could require contract modifications which will significantly slow work progress.

- **Sub-recipients are likely to resist additional reporting changes.**
- **Reporting changes will take time, slow work, and be costly.**
- **Changing reporting requirements damages credibility.**

In order to even approximately capture the head count figure, or to report on financial expenditures by metric activity, we would have to guide our sub-recipients to track these numbers, which is not within the contracts and agreements they currently have in place with their vendors. Most contractors accepted the extensive reporting and compliance requirements of ARRA funding because of the weak economy. If and when contracts *could be* amended, they would likely have to go back through the State’s cumbersome contract approval process which can literally take months. In the meantime, either work stops or the reporting requirements are not accurately fulfilled.

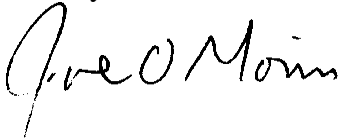
If these reporting changes are implemented and NH OEP is forced to impose them on our sub-recipients after we have provided comprehensive training on compliance with federal requirements, it is likely that our credibility will suffer. We will also incur additional re-training costs. The confusion and red tape surrounding the Recovery Act is already negatively impacting how it is viewed in our communities and by contractors.

Summary

In summary, NH OEP believes that the additional reporting requirements being proposed in the guidance issued on January 21, 2010 would lead to several unintended consequences, including slowing down States' progress in committing and expending their ARRA funds and impeding their ability to work effectively with sub-recipients and vendors. Particularly concerning is the proposed requirement to report monthly on expenditures by metric activity. Because our financial and payroll systems are not currently set up to track this information in this way, it would take an inordinate amount of time and effort to provide. In addition, contracts and other agreements already in place do not require sub-recipients and vendors to track their expenditures in this way and would have to be amended. This process in itself could take several months. We believe that it would be much more reasonable and meaningful for DOE to collect financial expenditure data by Market Title rather than by metric activity.

Thank you for the opportunity to comment on these proposed changes to reporting requirements. We hope you will carefully consider the overall impact these changes will make on the successful and efficient implementation of the state stimulus programs. Please feel free to call me directly, or Mary Downes at 603-271-1715, if you wish to discuss our comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Joanne O. Morin". The signature is fluid and cursive, with the first name "Joanne" and last name "Morin" clearly distinguishable.

Joanne O. Morin
Director