



The American Recovery and Reinvestment Act of 2009:
A Guide for State and Local Governments

Prepared for The Council of State Governments by:
Latham & Watkins LLP

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Introduction

President Obama signed the American Recovery and Reinvestment Act of 2009 (the ARRA) into law on February 17, 2009, advancing an ambitious plan to revitalize the nation's economy. This \$787 billion package seeks to stimulate economic growth through federal spending on such programs as education, energy, health care, housing, and transportation.

The ARRA provides funds for a wide array of public and private actors, including federal entities. This paper summarizes key opportunities for state, local, territorial, and tribal governments to secure federal support through the ARRA. This includes direct funding as well as opportunities to act as a conduit for funds to constituents. Many of the provisions in the ARRA increase funding for existing programs. This paper summarizes current law where appropriate, but assumes familiarity with such existing programs.

This paper is not intended as a comprehensive guide to any particular program, but is intended as a general summary of the law to help identify funding opportunities for further inquiry. Any organization or entity interested in a specific program or opportunity referenced in this paper should seek additional information from the relevant government agencies, and consult with competent counsel to determine applicable legal requirements in a specific situation.

Time is an important consideration in evaluating opportunities under the ARRA. By 45 days after the date of enactment (April 3, 2009), state governors (or in some cases, state legislatures) must certify that their states will request and use funds and that these activities will create jobs and economic growth. The ARRA emphasizes rapid expenditure by imposing deadlines for application and disbursement and granting priority to projects that can use funds quickly. Therefore, authorities that are able to take quick action will benefit most from the new funding. Any date contained in this paper is either explicitly set forth in the text of the ARRA or is calculated based on the number of calendar days from the enactment thereof. Dates determined by calculating the number of days from enactment of the ARRA are determined without regard to whether the date falls on a weekend or federal holiday and, therefore, are necessarily estimates. Legal counsel should be consulted to determine these dates with certainty.

Many provisions of the ARRA do not provide guidance on the distribution of funds provided therein. In the coming weeks, relevant government agencies will issue guidance regarding application and disbursement of funds under their jurisdiction.

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2. EMERGENCY MANAGEMENT

Firefighter Assistance Grants - \$210 million

[A.VI]

- Federal Emergency Management Agency (FEMA) administers grants to fire stations through the Assistance to Firefighters Grants (AFGs). The ARRA adds an additional \$210 million in the form of AFGs for construction or modification of state and local fire authorities. FEMA can reserve \$5 million for program administration.
- To ensure that FEMA distributes these grants to as many fire stations as possible, FEMA cannot award an AFG for over \$15 million.

Federal Fire Prevention and Control Act Grants

[A.VI]

- The ARRA waives the cost-sharing requirements for all grants under the Federal Fire Prevention and Control Act (15 U.S.C. § 2229(a)) for FY 2009 and FY 2010.

Public Transportation and Railroad Security Assistance - \$150 million

[A.VI]

- The ARRA provides an additional \$150 million for Public Transportation and Railroad Security Assistance. The FEMA currently awards grants to state and local governments, among other entities, for security-related expenses under the Implementing Recommendations of the 9/11 Commission Act (the 9/11 Act). See 6 U.S.C. §§ 1135, 1163.
- Public Transportation Security Assistance grants are available for public transportation agencies, but agencies must first develop a security plan or undergo a security assessment under section 1135 of the 9/11 Act.
- State and local governments will have to compete for Railroad Security Assistance grants with railroad carriers, owners of railroad cars, Amtrak, the Alaska Railroad, and offerors of security-sensitive materials who ship by railroad.

Port Security Grants - \$150 million

[A.VI]

- FEMA currently awards risk-based grants to port authorities, facility operators, and state and local governments. See 46 U.S.C. § 70107. The ARRA provides an additional \$150 million for Port Security Grants, and waives state and local cost-sharing requirements for these additional funds.

Emergency Food and Shelter Grants - \$100 million

[A.VI]

- FEMA administers grants for state and local governments, and non-profit institutions, to provide food and shelter to homeless individuals, under the McKinney-Vento Homeless Assistance Act. See 42 U.S.C. § 11331. The ARRA provides an additional \$100 million for this program. The Emergency Food and Shelter Program National Board, which consists of directors of national charities, distributes the funds.

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Disaster Assistance Direct Loan Program
[A.VI]

- FEMA provides loans to local governments under the Robert T. Stafford Disaster Relief and Emergency Assistance Act. See 42 U.S.C. § 5121. For loans in response to 2008 disasters, the ARRA amends the ceiling for disaster assistance loans from 25 percent of a local government's annual operating budget to 50 percent, and allows loans to exceed \$5 million, provided the local government has experienced a 25 percent or greater loss in tax revenue.
- The ARRA provides that the cost of such loans is to be determined based on the definitions provided in the Congressional Budget Act. See 2 U.S.C. § 661(a).

Wildland Fire Management Grants - \$250 million
[A.VII]

- The ARRA provides an additional \$250 million to the Forest Service to be distributed as grants to state and private organizations for hazardous fuel reduction, forest health, and ecosystem improvement projects on state and private forests. (Another \$250 million is designated for federal lands.) Up to \$50 million can be used to make wood-to-energy grants to promote increased utilization of biomass from federal, state, and private lands.
- These additional grants are not subject to matching or cost sharing requirements.

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