



**Testimony of
Gary D. Bass, Ph.D.
Executive Director, OMB Watch**

**Before the
Subcommittee on Investigations and Oversight,
House Committee on Science and Technology**

**On
Accountability and Oversight of Funding Provided
in the American Recovery and Reinvestment Act (Recovery Act)**

May 5, 2009

Chairman Miller, Ranking Member Broun, members of the subcommittee:

My name is Gary Bass and I am the Executive Director of OMB Watch — an independent, nonpartisan watchdog organization. Thank you for inviting me to testify today on what we all can agree is a crucial cause — making our government the most effective and responsive it can absolutely be through transparency and accountability of Recovery Act spending.

OMB Watch was founded in the early 1980s and has spent over twenty-five years advocating for government accountability, transparency and access to government information, and citizen participation in governmental processes. OMB Watch believes citizens must take an active role in holding their government accountable, and Recovery Act transparency will do much to enable this.

Our development of FedSpending.org, a website that provides access to information about most of the federal government's spending, demonstrated how the web can be used for greater accountability. We also co-chair with Good Jobs First the Coalition for An Accountable Recovery (CAR) that calls for greater transparency and accountability with regard to federal recovery efforts. In other words, we have both policy and practical experience with disclosure of federal spending information. OMB Watch does not receive any government funding and, therefore, would not be financially affected by actions taken with regards to improved transparency and accountability of the Recovery Act.

President Obama has been emphatic that he wants Recovery Act expenditures to be transparent and accountable. While transparency is laudable for its own sake, it should not be forgotten that transparency is a means to an end; it makes accountability possible. And it is accountability, after all, that makes government spending more effective and efficient.

The challenge in creating such a system for the implementation of the Recovery Act is to make a simple structure by which recipients of stimulus funds answerable to taxpayers. To create such a

Celebrating 25 Years of Promoting Government Accountability and Citizen Participation — 1983 - 2008

1742 Connecticut Ave. NW
Washington, DC 20009

tel: 202.234.8494
fax: 202-234.8584

email: ombwatch@ombwatch.org
web: <http://www.ombwatch.org>

system, those recipients must be able to enumerate what services or goods they provided to the nation, the state, and the local communities in which they work while explaining the degree of success of the projects they undertook. The government has the obligation to taxpayers to ensure that recipients are efficient in the delivery of the services or goods they were trusted to deliver.

Without a system that creates incentives that aligns the goals of the Recovery Act with those of who receive funds to implement it, it is quite likely this effort will fall short. And without knowing what every recipient is doing with the funds that they receive, it is impossible to find instances of waste, fraud, and abuse. Nor is it possible to discover those recipients that are exceptional stewards of the nation's resources and deserve recognition for their work and additional opportunities to serve their country.

It may be necessary to place criminal and civil penalties in place to reduce waste, fraud, and abuse. The Recovery Act does not specify any such penalties beyond those existing prior to the enactment of the act. Conversely, it is worth considering ways of rewarding the most efficient entities receiving Recovery Act funds, either through public praise or monetary bonuses in order to encourage good behavior.

This is all easier said than done. The concept of transparency in Recovery Act spending is rather easy to articulate but quite difficult to implement. In order to ensure that Recovery Act spending is fully transparent, the government and the public should not only have access to data about who is getting money and what they are doing with it, but also be able to easily access and understand that information. I believe there are three essential elements of spending transparency necessary for the Recovery Act:

1) Information about Who Receives Recovery Act Funds

Americans have a right to know how and where public dollars are being spent. Reporting and oversight are necessary to ensure the honest and ethical use of public funds. Without sufficient transparency, pay-to-play scandals and corruption are endemic to large, federal expenditures. Additionally, understanding which communities, companies, and individuals are supported by Recovery Act funds is a basic fairness issue. Without it, some communities or sectors could be systematically excluded from support, while well-connected entities may get special deals. Proper transparency mechanisms for tracking spending will help mitigate this.

2) Information about Effectiveness of Recovery Act Spending

Only by carefully tracking expenditures will public officials be able to judge the effectiveness of public investments and be able to fine-tune or shift spending to achieve maximum results. As with all federal spending, decisions on whether to fund similar programs, contractors, or grantees in the future should be informed by the effectiveness of their performance during the Recovery Act implementation.

3) Accessible, Understandable, and Useable data on Recovery Act Spending

Information flows from agencies to OMB should take place through publicly visible channels. Recipient data transmission that is hidden from public view raises concerns about the timeliness and information fidelity of recipient reports. Aggregated data, for example, obscures the fine-grain details of spending data that enable assessments by program advocates, government watchdogs, and the press. Data made available through machine-readable feeds represent an ideal way to

accomplish this. Through feeds, the public can obtain important disclosures directly from the source, mitigating distrust that may emerge from more filtered data.

Implementation of the Recovery Act to Date

OMB Watch has been intently monitoring the implementation of the Act and is very encouraged by what we have seen so far. But as of today, the federal government's efforts to make Recovery Act spending fully transparent and accountable still have a long way to go.

This is not to say the task is easy or there hasn't been significant progress. The task which the administration has undertaken – the tracking of hundreds of billions of dollars that are being rapidly disbursed to thousands of recipients – is unprecedented and enormous. The administration has made great strides within a very short time frame and is already making some data available to the public. While Recovery.gov and the recipient reporting requirements that will drive what data are available remain less than ideal, I am cautiously optimistic that the system will continue to substantially improve.

The willingness of the administration to solicit feedback from the public on its designs has been very helpful in improving Recovery.gov and I am hopeful that they will continue to implement the advice and recommendations of the Coalition for an Accountable Recovery (CAR). The CAR coalition is co-chaired by OMB Watch and Good Jobs First and is comprised of some 30 politically diverse organizations. It was founded on the eve of passage of the Recovery Act to design and advocate for a Recovery Act spending tracking system that will provide the unprecedented level of transparency and accountability in federal spending as articulated by President Obama. As a coalition we have communicated to the Obama Administration our ideas and have commented on guidance issued by OMB. Indeed, we are encouraged by more recent interim guidance from OMB to the federal agencies issued on April 3 that we believe incorporated some of CAR's recommendations.

Despite an open dialogue and receptive officials within the Obama administration, there are still major obstacles to full transparency and accountability in the current rules for Recovery.gov and recipient reporting. These obstacles fall into six main areas: Multi-Tier Reporting; Direct Recipient Reporting and Registration; Solicitations (RFPs), Bids, and Contracts; Jobs Data; Performance Data; and Data Access.

Multi-Tier Reporting

The first major obstacle is the Act's (and OMB's) definition of "recipient." This is critical because it is recipients that are required to report on their use of and Recovery Act funds. Both the Recovery Act and OMB consider a recipient to be "any entity that receives Recovery Act funds directly from the Federal Government (including Recovery Act funds received through grant, loan, or contract) other than an individual and includes a State that receives Recovery Act funds."¹ While the current reporting requirements apply to prime non-federal awardees only, they also require that prime recipients report on any sub-awards (i.e., sub-grants, subcontracts, etc.) they make. These requirements are problematic for two reasons:

¹ OMB memo M-09-10

First, Recovery Act funding remains visible only to the first tier of sub-awards. For large projects, it is likely that there will be several tiers of sub-awarding. For example, the Department of Energy has allocated \$132 million to North Carolina for its Weatherization Assistance for Low-Income Persons program.² If North Carolina hires a contractor to implement the program, information reported by that contractor would be made available by the Department of Energy through Recovery.gov according to current reporting requirements. However, if North Carolina gives some of those funds to Raleigh, and Raleigh hires a contractor to implement the program, then we would not, under current reporting requirements, be able to see which contractor was hired nor would we be able to see how well it executed the program. Limiting reporting requirements to only the first two layers will obscure basic information -- such as to whom the money went and on how that entity employed it -- on billions of dollars of Recovery Act spending.

Second, sub-awardees do not themselves report on their use of the funds. The prime recipient has responsibility to report on any sub-awards made, hiding from the public much of the details on Recovery Act activities by state hired contractors. So, in this example, North Carolina would report to the Department of Energy on its use of funds, and it would report that it sub-awarded the funds to Raleigh. The Department of Energy would then submit a report to OMB. So not only can we not see what happened to the funds after they were sub-granted to Raleigh, we have access only to the Department of Energy's report -- not Raleigh's nor North Carolina's. Although spending and performance information (such as jobs data) may be included in state government reports, performance information of those contractors will not be available to the public, nor will any information on Recovery Act funds that were used to hire sub-contractors.

There is reason for optimism however. In its April 3 interim guidance (M-09-15), OMB stated that it intends to eventually "expand the reporting model in the future to also obtain...information [on awardees beyond first-level awards], once the system capabilities and processes have been established."³ OMB Watch is eager to see the details of such a model and we are withholding judgment until then. But it is essential that all recipients of Recovery Act funds -- possibly with a de minimis level of, say, \$25,000 that allows some exclusion -- report directly to the federal government.

Direct Recipient Reporting and Registration

Another chief area of concern with Recovery Act transparency related to the definition of "recipient" is the means by which recipients report on the use of their funds. Data from prime recipients are reported directly to the federal agency that disbursed the funds, with the disbursing agency making that information available on Recovery.gov. Not only would the public not be able to directly view these recipient reports, recipients of Recovery Act funds that are sub-awardees (e.g., subcontractors and sub-grantees) would not be required to report on the use of their funds. The use of tens of billions of Recovery Act dollars by thousands (perhaps tens of thousands) of Recovery Act funds recipients would be hidden from public scrutiny.

Direct reporting by recipients, rather than reporting back up through the chain of funding, will eliminate the possibility that data will be manipulated or delayed by agencies or companies higher in the chain. There will still be some level of "cleansing" of data necessary to identify and correct errors or to standardize names of companies and state agencies (e.g., to standardize "Dept. of Transportation" vs. "Department of Transportation"). But when data are "cleaned," the raw reported

² [Formula Block Grants Allocation - April 14, 2009](#)

³ OMB memo M-09-15

data should also be preserved and made available. A system that collects spending and program performance data directly from all recipients ensures the raw data are actually raw and not manipulated before the federal government receives it.

Again, the April 3 OMB interim guidance shows the government is moving in the right direction in this respect. OMB states that it is “moving aggressively” to develop a central collection system for recipient reports.⁴ Agencies are to instruct recipients to begin submitting recipient reports (those specified in Sec. 1512 of the Recovery Act) on Oct. 10 of this year, and that they “should assume the central system capability will be online and available no less than 45 days before the October 10, 2009 statutory quarterly reporting deadline.”⁵ However, the guidance remains unclear about which recipients will report what data. By requiring first-hand reporting directly from recipients, the data will likely be more accurate, comprehensive, and timely.

In order to facilitate accurate reporting directly from all recipients, the government should require all recipients (this includes all sub-recipients) of Recovery Act funds to register with OMB’s proposed central reporting system prior to receipt of Recovery Act awards. The April 3 OMB interim guidance would require first-tier sub-grantees to register with Central Contracting Registration (CCR) system but exclude first-tier subcontractors of prime contractors from this requirement. This bifurcated registration requirement would significantly hinder OMB’s efforts to centrally collection information on all sub-awardees. By excluding subcontractors and additional tiers of sub-awardees from CCR registration, potentially thousands of recipients of Recovery Act funds would not be identified as such. If OMB expanded its definition of “recipient” to include all tiers of sub-awardees and required all recipients to register with CCR, OMB Watch would strongly support this area of OMB’s interim guidance for the Recovery Act implementation.

For a centralized registry and centralized reporting system to work there must be standardized formats in how data are reported. There are various standards, such as eXtensible Markup Language (XML), for transport and storage of data. One type of XML schema is eXtensible Business Reporting Language (XBRL), which gives each data element its own identity tag, thereby creating a taxonomy that is easily readable by computer data processors. If done correctly, data can easily move from registry to reporting systems, from federal agencies to state agencies, or to any public source. The data is also easier to compare and analyze.

Solicitations (RFPs), Bids, and Contracts

While transparency in the use of Recovery Act funds is essential, the decision-making process by which those funds are awarded must also be transparent. Because billions of dollars of federal Recovery Act funds will be awarded through state and local governments, solicitations for contracts at the state level should be advertised as widely as possible to ensure that a large pool of potential bidders are aware of such projects. Without access to requests for proposals (RFPs), bids, and all of the language of attendant awarded contracts, it will be difficult for outside stakeholders to assess the performance of any contractor using Recovery Act funds.

The first step to enabling transparency in the Recovery Act contract award process is to require that state and local governments report to the federal government as quickly as possible any

⁴ *ibid*

⁵ *ibid*

Recovery Act project RFPs they may be offering. The next step is to make available online all bids received for all Recovery Act RFPs. If this presents a confidentiality problem, it would be reasonable to adhere to the guidelines surrounding disclosures of bids as articulated in the Strengthening Transparency and Accountability in Federal Spending Act of 2008 (S. 3077) as introduced in the 110th Congress by then Sen. Barack Obama.

Lastly, but most importantly, current Recovery Act law and OMB guidance⁶ requires agencies to post to the agency website and to Recovery.gov summaries of contracts or orders (or modifications to an existing contracts or orders) over \$500,000, or any contract was not fixed-priced and competitively awarded. There are two problems with this requirement.

First, contract summaries will not offer the quality of data that will enable the public to assess whether a given contractor did, in fact, faithfully carry out its fiduciary duties. Nor will the public be privy to assessing whether the awarded contract adheres closely to the RFP under which it was granted. **This is critical to developing true accountability in the Recovery Act contracting process.** Access to all contract agreement language is an essential element to any effort to oversee governmental spending. While some will argue information contained within contracts can contains confidential business information, allowing for limited redactions in contracts can help to alleviate those concerns.

The second problem with existing contract posting requirements is that the contract reporting threshold is too high. There could be thousands of contracts below \$500,000 that would escape public scrutiny and congressional oversight. Substantially lowering that threshold, say to \$200,000, would allow the public to see much more information on how Recovery Act funds are distributed without creating an overly burdensome reporting requirement.

Jobs Data

Congress crafted and President Obama supported the Recovery Act as a means to stimulate the economy with the express purpose of creating or saving millions of jobs. To ascertain the effectiveness of the package, Congress appropriately built into it a requirement that funding recipients and federal agencies report the number of jobs created or saved by Recovery Act projects. While this provision is certainly welcome, the law and OMB guidance could be substantially improved in two respects: The method of counting the number of jobs created or saved and the type of data collected on those jobs.

Current employment data will be collected by federal agencies from prime recipients only. Prime recipients are responsible for “reporting on their use of funds as well as any sub-awards (i.e., sub-grants, subcontracts, etc.) they make.”⁷ In cases in which a federal agency gives money to a state, the state would be required to report employment data on each project that it has undertaken with those Recovery Act funds. Aggregation of employment data by prime recipients will hinder transparency and accountability by obscuring the performance and results of individual organizations that receive Recovery Act funds at the end of the funding chain.

⁶ OMB memo M-09-10

⁷ Ibid

OMB interim guidance states that recipients are to report a brief description and an estimate of the jobs created or retained. Job creation and retention figures are to be based on aggregate hours worked converted into a figure for full-time-equivalent (FTE) positions. Yet it leaves it up to each recipient to determine how many hours equal a FTE, which will lead to substantial inconsistencies across all job data that is reported. It would be advisable to require recipients to report the aggregate hours figure as well as the FTEs, so that analysts and watchdogs can make valid comparisons.

While it is encouraging that the procedures for employment reporting include the collection of data on the types of jobs created (“job titles or broader labor categories”), it is disappointing that the guidance does not also provide for gathering information on the quality of those jobs, especially wage levels and availability of health coverage. Without such information, it will not be possible to safeguard against the use of Recovery Act funds in the creation of substandard jobs. To assess of the quality of jobs created by the Recovery Act, OMB Watch believes the OMB should require employers should report: type of work; wage levels; healthcare coverage; and demographic characteristics of Recovery Act project workers.

Performance Data

In addition to the collection of the number of jobs saved and created as called for in the Recovery Act and OMB interim guidance, there are a host of data that need to be collected to allow the government and the public to discover how well or how poorly Recovery Act programs are being implemented. Information on who receives funds needs to be combined with information about what those recipients did with the money. For example: How many homes were weatherized by the Energy Department’s Weatherization Assistance program? How many acres of marine habitat were restored under NOAA’s Habitat Restoration project? What new research did NSF undertake? How many and which NIST facilities were repaired?

Such information could be used to demonstrate the accomplishments of government funding just as easily as it could be used to draw scrutiny to waste, fraud and abuse. This performance data also could be used as a valuable data set to help improve the quality and effectiveness of federal programs. Those involved in the delivery of government services seem to draw public attention only for failures. Yet a good monitoring system doesn’t just give out grades, it also uses interim goals and benchmarks so that self-correction and improvement can be undertaken. Moreover, as federal funds move farther from the federal government through sub-awards, the federal government has less and less control. This type of monitoring system mitigates against this loss of control by creating new opportunities for dialogue and openness.

OMB Recovery Act interim guidance requires that agencies submit specific plans for each Recovery Act program. One of the elements required in this plans is “expected quantifiable outcomes consistent with the intent and requirements of the legislation.”⁸ The guidance also notes that the terms and conditions that are to accompany Recovery Act grant awards leaves “significant discretion to Federal agencies” on how and what performance data awardees must report as part of their quarterly recipient reports.

This flexibility is a necessary provision to allow for collection of agency- and program-specific performance data, but OMB needs to ensure that all federal agencies will obtain sufficient data

⁸ Ibid

necessary to measure the impact of Recovery Act projects. While flexibility and discretion with respect to measuring each agency's programs is desirable, OMB should immediately engage federal agencies to quickly devise their Recovery Act performance data requirements to ensure that sufficient, relevant, and comparable data are collected from the beginning. OMB should also require federal agencies to seek public input on the performance data to be collected. While providing the flexibility already mentioned, OMB should also issue guidance to the agencies on core principles, such as equity, to incorporate in the data to be collected.

While a comprehensive list of such data has yet to be compiled, the CAR coalition has developed some examples of what performance benchmarks should include:

For general state funds:

- Total general fund expenditures, and expenditures specifically in elementary and secondary education (K-12), higher education, Medicaid/SCHIP, human services, transportation, corrections, and other areas;
- Per-pupil state K-12 expenditures as well as distribution by school districts;
- Changes in Medicaid eligibility and services with 2008 as a baseline.

For transportation projects:

- Net number of new lane miles, if any, generated by projects;
- New transit capacity should be tracked via new service mileage for fixed guideways and expanded fleet capacity for all transit modes (in comparison to replacement fleet purchases);
- Reporting on whether funds have been "flexed" over to other programs such as public transit, intercity rail, or pedestrian improvements as allowed by law.

For school construction projects:

- The name of the school district (including school) or college/university, along with the code assigned from the Common Core of Data, which is the Department of Education's primary database on public elementary and secondary education in the United States;
- Expected life of improvement;
- Whether matching funds were involved, how much, and source of the matching funds.

OMB should also be clear that the requirements for performance data collection will follow Recovery Act funds so that any level of sub-awardee must collect the performance data specified by the agency for the project.

Access to Data

Even if the law was changed today to collect the information as described above, these data would remain essentially useless unless they were made available in such a way that the public could not only understand but also manipulate the data. In terms of helping the public understand Recovery Act data, Recovery.gov will have to present the collected data in a way that novice and experienced can access and make sense of it. At the most basic level, a user should be able to search the data on Recovery.gov for Recovery Act projects located in her state, zip code, city, or congressional district. She should be able to sort the data from largest expenditure to smallest; from most jobs created to least; by entities receiving money, and by which federal agency

authorized each project. These are just a few examples of the kind of elementary searching and sorting functionality Recovery.gov should provide, but does not currently have. There are knowledgeable and talented people working on Recovery.gov right now, who no doubt see the value in these tools, but I cannot emphasize enough that it is this basic database functionality that will provide the sort of transparency envisioned by Congress and President Obama.

Analysis and presentation of the data should not be the sole province of the federal government, however. There are many outside organizations that could make use of Recovery.gov data for many purposes – some as yet unimagined. To accomplish this, these groups must have access to Recovery Act data in a machine-readable format, such as through a data feed like RSS (Real Simple Syndicate) or Atom. These feeds should not be an option, but a requirement for every source of information (e.g., the central registry, the central reporting system, agency websites).

OMB Watch's database of federal spending, FedSpending.org, is a perfect example of the importance of making data available in an understandable and accessible format. Before the creation of FedSpending.org, data on trillions of dollars in federal government spending were nominally accessible to the public, but the presentation, search, and sorting tools were abysmal, rendering the data difficult to understand and virtually useless to the public. However, because these government data sets were public, we were able to download the data and build a user-friendly, easily-searchable website that opened up the data for millions of people. Since its launch in October, 2006, FedSpending.org has attracted well over a hundred thousand unique visitors a month, processed over ten million searches, and has been cited hundreds of times in media reports. With the increased attention and scrutiny of the Recovery Act spending, there are many more organizations – large and small, for- and nonprofit – that would no doubt invent novel ways to add value to Recovery Act spending data and work to make it more accessible to the public. This will only work if the data are made available in the proper, "machine-readable" formats.

It is also essential that Recovery Act data be transmitted in such a way so as to maximize access to as much unfiltered data as possible. Reporting data should be available as close to the source of Recovery Act reporting as possible. Additionally, OMB Watch's experience with federal contract and grant data throughout the FedSpending.org project has taught us there is certainly a need for some data "cleaning," such as standardizing the name of funding recipients or ensuring address and zip code fields match on individual entries. Ideally, a "cleansed" data set would be available in addition to the "raw" data.

These feeds do not negate the importance of a robust Recovery.gov website as many in the public will want an easy to use, searchable website run by the government.

Recovery Act Transparency and the States

So far I have discussed elements of Recovery Act transparency that are in the domain of the federal government. However, state governments are already beginning to allocate hundreds of billions of dollars of federal funds for Recovery Act projects. States will also add their own money to Recovery Act projects, the details of which will not be reported on Recovery.gov. Many citizens, local media, and local government watchdogs, therefore, will look to state Recovery Act websites to learn about their state's implementation of the Recovery Act. My own review of state Recovery Act websites has revealed a substantially uneven landscape.

As people query their state's website to find out how to receive Recovery Act funds, how the funds will be allocated, who has received them already, and what did they do with them, Americans will find that there is not a single state website that can provide the answer to all these basic questions of spending transparency. For example, the Maryland and Washington State Recovery websites have interactive maps showing county-by-county breakdowns of Recovery Act funding by category (health care, infrastructure, education, etc.). Yet one can't perform a simple search such as typing in a ZIP code to find a list of all Recovery Act projects within a given neighborhood.

Washington State's website has information describing the kinds of grants that are available to the state. It also has a useful list of programs that are providing funding for state projects, but is thin on details about how to apply for funds. Rhode Island's site has only a detailed list of proposed Recovery Act projects per agency, in PDF format, with no aggregate data, like the county-by-county summaries that appear on Maryland's site. When looking at state Recovery websites last week in preparation for this testimony, Virginia's website was experiencing technical errors. And while we have yet to see the quality of spending data that may be available on these sites, our experience so far indicates that it will vary as much as the quality of information today. It is here that the federal government should take the lead and offer not only funds to assist states in enabling Recovery Act transparency, but it should also provide technical assistance and advice, including minimal functional requirements that must be achieved.

Another problem is its unclear how concerns about waste, fraud, and abuse on state and local projects should be reported. While there are established hotlines for waste, fraud, and abuse at the federal level, the same is not immediately apparent for state and local governments. There is a lot of potential for abuse, especially at the local level, and since these are federal funds that could be wasted, the federal government should establish a clear reporting system for waste, fraud, and abuse allegations for state and local Recovery Act projects.

Current Effort Is Unprecedented, But More Is Still Needed

It is clear what the Obama Administration is trying to accomplish with Recovery Act transparency is unprecedented for our federal government. This is not to say that the level of transparency as articulated by President Obama can never be achieved. Implementing that degree of visibility will be an iterative process in which the reporting model and collected data improve over time – and should extend well beyond the Recovery Act to all future government spending. As the Recovery Accountability and Transparency Board implementing team learns more and more about the challenges they face, better and better versions of Recovery.gov – and the data reporting structure that supports the website – will emerge. OMB Watch continues to be guardedly optimistic about the efforts of the Obama administration to promote transparency and accountability in Recovery Act spending. But there is still much work to be done. The attention this committee is directing at Recovery Act transparency in this hearing is a critical step on the path to a better accountability system for federal government spending.