

# TOP 10 COMPLIANCE RISKS UNDER THE STIMULUS BILL

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The American Recovery and Reinvestment Act (ARRA) has infused health centers with millions of dollars of Stimulus funds to expand the provision of primary and preventive care to additional populations. At the same time, however, the legislation creates significant risks for health centers that fail to take adequate steps to maintain compliance with ARRA's legal requirements.

Here are, in our view, the top ten compliance risks created under ARRA.

**1. Separately tracking Stimulus funds.** Recipients of stimulus funds must track and report ARRA funds separately from other sources. For health centers, this means tracking funds received under each ARRA award separately from existing Section 330 funds.

Health centers will receive a separate Notice of Grant Award (NGA) and Catalog of Federal Domestic Assistance (CFDA) number for each ARRA award and the funds from each award will be deposited in separate Payment Management System (PMS) accounts so that the ARRA funds will not be co-mingled or pooled for drawdown purposes.

For example, if members of a health center's staff split their time working on ARRA-supported projects and Section 330-supported projects, the health center would be wise to ensure employees are completing time sheets in order to properly allocate the costs (e.g., salaries, benefits) among the different Federally-funded projects.

Similarly, specific health center services or programs that use both ARRA funds and existing Section 330 funds should have separate cost centers, general ledgers or other accounting books/records in order to properly segregate expenditures and programmatic outcomes related to ARRA funds.

**2. Government-wide reporting requirements.** ARRA fund recipients, including health centers, must submit government-wide reports on a quarterly basis, due 10 days after the end of each quarter, beginning October 10, 2009. The statute requires recipients to submit reports for each ARRA award that includes the following information:

- the total amount of ARRA funds received under the award;
- the amount of ARRA funds received under the award that were expended or obligated at the time of the report;
- a detailed list of all projects or activities for which ARRA funds under the award were expended or obligated, including: the name and description of the project or activity; an evaluation of the completion status of the project or activity; an estimate of the number of jobs created and/or retained by the project or activity; and additional information for infrastructure investments made by State and local governments; and
- detailed information on any subcontracts or sub-grants awarded by the recipient, consistent with and including data elements required by the Federal Funding Accountability

and Transparency Act of 2006 (Public Law 109-282).

### **3. Program-specific reporting**

**requirements.** Similar to the government-wide reports, health centers must submit their program-specific ARRA reports on a quarterly basis, due 10 days after the end of each quarter, beginning July 10, 2009. Under ARRA, health centers must comply with specific reporting requirements developed by the Bureau of Primary Health Care (BPHC) and included on the Health Center's Notice of Grant Award.

The Health Resources and Services Administration (HRSA) has developed certain data requirements specific to each type of ARRA funding awarded, which can be found in both the funding application as well as the NGA for each ARRA award.

The program-specific reports require information addressing the uses approved in the application, consistent with the federal objectives for which the health center was funded. Grants for new health center sites and grants to expand care at existing sites will require a health center to report:

- the number of new patients;
- the number of new visits;
- the number of new uninsured patients;
- the number of jobs retained (measured in FTE);
- the number of jobs created (measured in FTEs); and
- the actual v. projected budget information.

Grants for renovation or alteration of existing sites, or construction of new sites require a health center to report:

- the number of new/improved sites;
- the projected numbers of overall jobs created and retained;
- the projected numbers of construction-related jobs created;
- the percentage of project completion; and

- the actual versus projected budget information

Program-specific reporting will follow the model of the Uniform Data System (UDS) module and reports must be submitted to HRSA through the Electronic Hand Book (EHB) System. Health centers must submit one report per quarter, which will include information on ARRA-supported activities starting from the initial date of the award up to the end date of the most recent quarter. The reports will be comprised of separate sections for each ARRA award. The health center does not have to aggregate the information pertaining to each award; rather, the EHB system will "roll-up" each report section to generate a Universal Report for each health center summarizing that center's total ARRA-supported activities.

### **4. Existing Section 330 Requirements.**

All current grant-related standard terms and conditions apply to ARRA funds, unless they conflict with or are superseded by specific ARRA reporting requirements (or are specifically exempted by HRSA). HRSA has yet to determine definitively which existing reports will apply to ARRA funds. If HRSA applies any current reporting requirements to the ARRA funds, such reports will be in addition to the quarterly reports and must be submitted based on existing deadlines.

As of mid-May, the agency indicated that more than likely it will require separate annual Financial Status Reports (FSRs) and separate quarterly PMS financial reports for each ARRA award – at the time this column went to print, HRSA was still undecided regarding whether to require separate UDS reports but has assured health centers that if it decides to do so, it will provide specific preparation guidelines with sufficient time in which to produce the reports.

Existing audit requirements apply equally to ARRA funds as they do to other federal funds. However, because ARRA funds are awarded as separate grants, health

centers must separately identify the expenditures of each award on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC). OMB's March 2009 Compliance Supplement applicable to the health center's annual A-133 audit was not updated for ARRA requirements; however, OMB indicated that, as necessary, it will issue addenda to the Supplement to provide additional guidance (including compliance with government-wide reporting requirements). The goal is to ensure consistency between these forms and the quarterly reports submitted.

**5. Public access to reports.** Health centers must not only be accountable for the uses of all ARRA funds, they must also ensure that such uses are transparent to the public. To further the goal of transparency, all information from the ARRA-related reports (focusing on the use of the ARRA funds) will be available for public examination through posting on the internet.

The Office of Management and Budget (OMB) has created a special website to post this information (<http://www.recovery.gov>). All reports will be available on-line within thirty (30) days of submission.

Although HRSA does not currently require public posting of the program-specific reports, the information from the reports submitted will be used by the agency to report on and demonstrate the impact of health center activities funded under ARRA. HRSA has also created a special website where the agency will post information regarding ARRA grants awarded by HRSA (<http://www.hhs.gov/recovery/index.html>).

**6. Whistle-Blower Protections.** To encourage both voluntary and required disclosures, ARRA includes specific protections for "whistleblowers." Disgruntled, disappointed, and dissatisfied employees are often a key source of whistleblowers.

ARRA expressly prohibits any non-federal employer (such as health centers) that receives ARRA funds from discharging, demoting, or otherwise discriminating against any employee as reprisal for that individual's disclosure of information that he/she reasonably believes is evidence of:

- Gross mismanagement of an agency contract or grant relating to, or gross waste of, ARRA funds;
- Substantial and specific danger to public health or safety, or abuse of authority, related to the implementation or use of ARRA funds; or
- Violation of law, rule, or regulation related to an agency contract or grant awarded or issued relating to ARRA funds.

**7. Self-Reporting.** ARRA recipients themselves are required to report instances of fraud, waste and/or abuse. In particular, recipients are required to disclose to the HHS Office of Inspector General (OIG) any credible evidence that a principal, employee, agent, contractor, sub-recipient, subcontractor or other person has (with respect to ARRA funds): (1) submitted a false claim under the False Claims Act; or (2) committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct. Thus, it is a violation of ARRA if a health center does not report credible evidence of a violation of law.

**8. The RAT Board.** ARRA established a special board called the Recovery Accountability and Transparency Board (RAT Board) to coordinate and conduct oversight of ARRA funds. The Board has extensive audit and program review powers and will submit reports directly to President Obama and Congress.

**9. OIG Audits.** In addition to their current investigatory authorities, agency-specific OIGs will review concerns that are raised by the public regarding the use of ARRA funds and will retain independent authority to

determine whether to conduct audits or investigations related to such concerns. The HHS OIG has established a new “hot line” so that anyone can anonymously report fraud, waste, or abuse in the use of ARRA funds.

**10. GAO Reviews.** ARRA directs the Government Accountability Office (GAO) to report to Congress every two months on the use of ARRA funds. GAO is focusing its ARRA review on 16 states (Arizona, California, Colorado, Georgia, Florida, Illinois, Iowa, Massachusetts, Michigan, Mississippi, New Jersey, New York, North Carolina, Ohio, Pennsylvania, and Texas) and the District of Columbia. Similar to the OIG, GAO has urged the public to report

(anonymously) on waste, fraud, and mismanagement of ARRA funds.

## **Conclusion**

Today’s health centers operate in an unusual climate of accountability, transparency and enforcement. As some of the earliest recipients of Stimulus funds, health centers should anticipate a high level of scrutiny in regard to use of these funds. Accordingly, this is the time for health centers to review their corporate compliance programs and ensure they are active and effective in reducing compliance risks, including the risks created under the Stimulus bill.