“Stimulus Spending by DOE”

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Chairman Bingaman, Senator Murkowski and Committee Members, on behalf of the National Governors Association, thank you for the opportunity to testify on implementation of the American Recovery and Reinvestment Act's (ARRA) energy-related provisions.

As you know, ARRA outlined three basic goals: spend the money quickly, create jobs, and maintain full transparency and accountability in spending taxpayer dollars. Governors have worked diligently since passage of the Act on February 17, 2009 to efficiently and transparently manage and spend over $240 billion in ARRA funds flowing to or through states. While there have been delays at the federal and state levels in fully implementing some of ARRA's energy-related programs, those delays are mostly behind us and states are focused on meeting the Act's September 30, 2010 deadline to obligate and expend all funds by the Department of Energy's (DOE) deadline of spring 2012.

Background

On October 27, 2008, the National Governors Association (NGA) joined with five other associations that represent state and local elected officials to urge congressional leaders to provide countercyclical assistance to state and local governments to help offset declining tax revenues and growing safety net expenditures. NGA asked that Congress provide a two-year increase in the Federal Medical Assistance Percentages, a Medicaid component that would provide immediate fiscal relief to states. NGA also asked that the stimulus package include funding for infrastructure, including funds for airports, highways, transit, clean water, drinking water and schools. While NGA did not take a position on the inclusion of state energy and weatherization programs in the stimulus bill, governors are committed to efficiently using these funds to create jobs, reduce energy costs including for low-income citizens and small businesses and promote renewable energy.

State Energy Program; Weatherization Assistance Program; Energy Efficiency and Conservation Block Grant

ARRA provided significant increases for three energy programs administered by state and local governments: the State Energy Program (SEP) received $3.1 billion; the Weatherization Assistance Program (WAP) received $5 billion and the newly-created Energy Efficiency and Conservation Block Grant (EECBG) received $3.2 billion. In the cases of SEP and WAP, these amounts represented significant increases above the programs' annual appropriations of $50 million in fiscal year 2009 and $200 million respectively. EECBG, as a new program, had never received an appropriation nor had any existing infrastructure or regulations to guide its implementation.

ARRA also continued several existing program requirements and imposed new restrictions on the programs. For example, ARRA continued requirements that the programs comply with the National Environmental Policy Act (NEPA) and the National Historic Preservation Acts (NHPA); laws requiring sometimes lengthy processes to ensure the projects have a minimal environmental impact and protect historic buildings. In addition, although SEP and WAP had always been exempt from Davis Bacon prevailing wage requirements and Buy American procurement provisions, ARRA required recipients of SEP, WAP and EECBG funds to comply with both provisions. These new and existing requirements, especially when combined with unprecedented levels of funding and ARRA's objectives of accountability and transparency, required the Department of Energy (DOE) to establish new program guidelines before states could fully implement the programs.

Federal Delays

In December 2009, NGA sent Secretary Chu a letter along with its colleagues in the other "Big 7" associations (the National Conference of State Legislatures, the National League of Cities, the U.S. Conference of Mayors, the National Association of Counties, the Council of State Government and the International City Managers Association) articulating frustration with the slowness in which federal guidance was issued. This frustration was subsequently underscored by both the Government Accountability Office and DOE's own Inspector General (OIG) in reports detailing some of the obstacles the Department encountered in 2009. The OIG summed up the situation by stating "...as straight forward as [the Weatherization Assistance Program] may have seemed and despite the best efforts of the Department, any program with so many moving parts was extraordinarily difficult to synchronize."

The following paragraphs outline federal obstacles identified by states and articulated by GAO and OIG as having slowed spending for the SEP, WAP and EECBG programs.

NEPA/Historic Preservation: Despite having experience with NEPA and the NHPA, ARRA's significant increase in funding for SEP and WAP generated significantly more projects subject to NEPA and NHPA review. In hindsight, increasing the capacity of the NEPA and historic preservation processes would have helped avoid delays caused by the sheer volume of projects subject to review. We very much appreciate that DOE has developed a model programmatic agreement for states to use that will speed historic preservation reviews, but note that the model was just released in February of this year. In contrast, NEPA reviews continue to be a problem. For instance, DOE is still conducting its NEPA review for one state's EECBG plan that was approved in September 2009. Until the NEPA review is completed, the state cannot use its EECBG funds.

Davis Bacon: While the Secretaries of Energy and Labor issued a joint memorandum in July 2009 encouraging recipients to spend the money while the Department of Labor conducted the wage survey necessary to determine the prevailing wage for weatherization projects, many states did not proceed with awarding grants out of fear of future liability. States were concerned they would have to later divert funds from one project to retroactively pay workers on another project that were unintentionally paid less than the prevailing wage or would have to take money away from workers who were paid more than the contractually-mandated prevailing wage.

While the new wage determination is now in place for the WAP, DOE just received final word from the Department of Labor stating that this same wage rate cannot be used for residential projects funded through EECBG and SEP. This delay, through no fault of DOE, tied up millions of dollars from these programs.

Inconsistent messages: DOE encouraged states to establish loan loss reserves, a credit enhancement mechanism through SEP and EECBG. However, it has recently come to light that such credit enhancements may be disallowed under an OMB circular. Several states are holding funding until this issue is resolved.

Reporting

Since December, communication between DOE, NGA and the other Big 7 organizations has improved. Representatives of the seven associations now have weekly calls with the department to review issues and receive updates. However, there is one remaining issue over which the Governors are at odds with the department: DOE's new monthly reporting requirements.

While states share the DOE's interest in tracking spending and job creation, the additional reporting sought by the department will do nothing to speed the expenditure of funds or hasten the creation of jobs through these programs. States have made it clear that from a capacity standpoint, their personnel are already fully dedicated to implementing ARRA programs and meeting quarterly reporting requirements. Any additional requirements or responsibilities will diminish the amount of time state officials can spend implementing the programs and meeting existing requirements.

States were particularly dismayed that OMB gave DOE emergency information collection authority for the SEP and WAP programs and required that DOE seek public comment only on how to implement the reporting authority and whether to proceed with monthly reporting for the EECBG program. I have attached the comments submitted by the NGA, the Council of State Governments and the National Conference of State Legislators expressing our concerns with the monthly reporting requirements, and ask that the letter be included in the hearing record.

NGA maintains that the quarterly reports DOE already receives and the OMB jobs reporting guidance issued on December 18, 2009 are sufficient to meet federal data collection needs, and that DOE's additional job counting requirements are inconsistent with existing job calculations. While OMB requires all recipients report on full time equivalent (FTE) jobs created by ARRA funding, DOE will also now require the collection of non-federally funded FTEs. NGA believes this invites criticism that recipients are using subjective calculations to 'inflate the numbers' to make ARRA look better. One of OMB's goals with its new guidance was to move away from subjective criteria to improve the job calculation. As noted by OMB in its guidance, "Previous guidance required recipients to make a subjective judgment on whether a given job would have existed were it not for the Recovery Act. The updated guidance eliminates this subjective assessment and defines jobs created or retained as those funded in the quarter by the Recovery Act."

Further, DOE has added to its requirement that states report quarterly on more than 100 SEP metrics, a requirement that states report monthly on over 40 metrics. States are awaiting a final determination as to whether similar reporting requirements will be placed on EECBG.

Even if there is some value in having the information the Department is seeking on a monthly basis, NGA disagrees that the value of that information exceeds the level of burden it places on state and local recipients. States have designed new computer programs and systems to automate the unprecedented reporting requirements of ARRA. If DOE proceeds with its proposals for new data points on a monthly timeframe, state systems will have to be reprogrammed or changed increasing the initial burden of the requirements beyond what DOE has projected.

More importantly, DOE’s proposed requirements must be viewed as part of the comprehensive reporting process required by ARRA. Over half of the states are central reporting states for Section 1512 reporting purposes, meaning that reports flow through a central system with its own level of verification and validation. Adding reporting requirements on recipients therefore translates into additional hours at each level of government responsible for collecting information. These additional reporting requirements were not included in the states’ original estimates of personnel costs which will now have to be recalculated potentially affecting overall grant amounts.

Governors are very concerned that other departments will follow DOE's lead and institute their own monthly reporting requirements. For states charged with administering more than $240 billion worth of recovery funding on thousands of projects, any further reporting requirements threaten to quickly overwhelm recipients and slow implementation.

Fiscal Condition of the States

A final critical factor in the expediency with which funds are being spent is capacity and the financial crisis affecting nearly all state and local governments. According to a fiscal survey conducted by NGA with the National Association of State Budget Officers in February, states experienced historic drops in revenues in fiscal years 2009 and 2010, which resulted in a 3.4 percent decline in general fund spending for fiscal 2009 and a 5.4 percent decline in fiscal 2010. Moreover, between now and the end of fiscal 1012, state balanced budget requirements will force states to close budget gaps in excess of $136 billion. These gaps translate into spending cuts, hiring freezes and furloughs that hinder the ability of states to implement new programs or administer the explosive growth in programs like SEP and WAP. As the OIG noted:

> "Ironically, given the anticipated stimulus effect of the program, economic problems in many states adversely impacted their ability to ensure that weatherization activities were performed. State hiring freezes, problems with resolving significant local budget shortfalls, and state-wide planned furloughs delayed various aspects of the program and contributed to problems with meeting spending and home weatherization targets."

While the OIG was speaking of the WAP program, its comments could just as easily be applied to the SEP and to a lesser extent, the EECBG, which had to be created from the ground-up. ARRA itself did not provide administrative funding for the states. The Weatherization program does authorize states to use 5% for administrative expenses and EECBG and SEP authorize the use of 10%, but most state hiring-freezes apply across the board, making it extremely difficult for states and local governments to rapidly increase capacity to the level proportionate with the amount of funding provided.

State Implementation

Despite federal delays and state and local fiscal constraints, states are focused on using ARRA money to create jobs and promote energy conservation. Governors believe that most of the obstacles to implementation are now behind us and are confident states can fully and efficiently spend SEP, WAP and EECBG funds. Here are just a few examples of the successes Governors are having throughout the country with their energy programs:

1 The State of Minnesota typically provides about 4,000 Minnesota households per year with weatherization services, but with ARRA the state expects to weatherize 17,000 homes by March 2012. Minnesota estimates that the enhanced weatherization program has created over 340 new jobs through December 31, 2009.

2 OH was one of the few states that proceeded with weatherization projects without having the final wage determination from DOL and as a result, has weatherized 7,289 homes and created job activity equivalent to 2,485 FTE jobs. DOE estimates that for every $1 invested in OH's weatherization program returns $2.73 to the household and society. Further, since January 2009, OH has trained over 350 weatherization workers, 100 inspectors, 130 existing heating contractors and completed 40 inspector and 10 heat tech re-certifications.

3 California has obligated $195.4 million of its $226 million SEP grant, including $25 million for a low interest loan program that is currently oversubscribed and $20 million for green jobs workforce training through the state. The state expects to begin in April or May of this year a clean energy business loan program that would use up the remainder of its grant.

4 Pennsylvania also saw the infusion of ARRA money as a prime

opportunity to update and reform its program establishing new standards and monitoring requirements for weatherization work. The state also hired eight new program monitors to ensure the quality of weatherization activities. While much of the work in Pennsylvania was delayed by protracted budget negotiations, weatherization efforts took off in November and December. The state has already met its goal of weatherizing 1,500 homes per month.

5 Michigan's State Energy Program's funding opportunities are oversubscribed by a range from 2:1 to 10:1. Among the projects Michigan has funded is $15.5 million in grants to support Clean Energy Advanced Manufacturing of renewable energy systems and components in Michigan and the installation of anemometers to assist in the collection of data to support wind development in the state. Michigan plans to use $10 million for its revolving loan program but is awaiting final DOE determination regarding the loan loss reserve issue.

6 Michigan expects to have 100% of its EECBG funds under contract within the next few weeks. Projects funded through EECBG will include a mobile recycle center program and tire and electronic recycling collections in Montcalm County; conducting building audits and retrofits and developing energy conservation strategies for several towns.

7 North Carolina used some of its ARRA SEP money to provide technical assistance to applicants prior to the issuance of its EECBG RFP. The Energy Office provided nearly 300 local governments and education units with strategic energy plans. The state will soon issue an RFP for the SEP program, following on one already done for the EECBG program, providing funds to its Main Street Programs which fund preliminary and detailed energy surveys of private businesses. Grants are provided on a dollar-for-dollar match.

8 North Carolina, like several other states, also saw the infusion of ARRA money as an opportunity to update its weatherization program to ensure timely and efficient expenditure of federal funds. In particular, NC, through its community colleges, redesigned its training programs for both local nonprofits and vendors.

9 The State of Kentucky has established the Green Bank of Kentucky Revolving Loan Program to promote energy efficiency in state buildings with its first loan going to the Kentucky Department of Education (KDE).

KDE will use the loan to make improvements and implement Energy Conservation Measures (ECM) for a total savings of $2.15 million over the life of the project.

10 Beginning in June, Kentucky will begin its Kentucky Home Performance program leveraging ARRA funds at a 3:1 ratio with private capital to make loans for home energy retrofits. The state hopes to make available $20 million in loans.

11 The State of Mississippi has weatherized over 1,500 homes using ARRA funding and anticipates weatherizing 5,468 homes by March 2012.

12 The State of Nevada will use $7.9 million of its SEP grant for energy efficiency and renewable energy projects in state buildings and $10 million of its grant to provide energy efficient lighting in each of Nevada's 17 school districts.

13 In Oklahoma, the Governor has committed $11million from the state's SEP funding for compressed natural gas vehicle and infrastructure development.

14 Pennsylvania has allocated $10 million from its SEP grant for the deployment of innovative alternative and renewable energy generation, efficiency and demand side reduction projects. Another $12 million of its SEP grant will fund a competitive grant program for combine heat and power projects.

Conclusion

Thank you again for the opportunity to talk with the Committee regarding state implementation of DOE's ARRA-funded energy programs. Governors are committed to the successful implementation of these programs over the next two years and are optimistic about their potential to create jobs and energy savings.