



General Oversight Provisions in the American Recovery and Reinvestment Act of 2009 (ARRA): Requirements and Related Issues

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Summary

In the wake of a rapidly deteriorating economic picture and year-long recession that the Congressional Budget Office has called the most severe since World War II, Congress passed the American Recovery and Reinvestment Act of 2009 (ARRA; P.L. 111-5). This report discusses ARRA's "general oversight provisions" and several related issues for Congress. For purposes of this report, the term "general oversight provision" means an oversight-related provision that addresses multiple programs, agencies, or appropriations accounts. Provisions that are specific to a single program or appropriation (e.g., appropriations set-asides and reporting requirements) are excluded from the report's scope.

The report includes tabular presentations of ARRA's general oversight provisions. The provisions provide for, among other things, establishment of a Recovery Accountability and Transparency Board, numerous reporting and evaluation requirements, and increased resources for agency Inspectors General (IGs) and the Government Accountability Office (GAO).

Even before considering experience with implementation, several broad issues related to ARRA oversight may be of interest to Congress. These include assessments of ARRA's role in achieving economic objectives. Typical objectives of a fiscal stimulus policy relate to increasing economic activity in the short term, compared to what would have happened without a stimulus. In addition, some stakeholders have emphasized that stimulating the economy in the short term alone is not a sufficient definition of "success." From this perspective, the manner in which spending, tax, and other public policies are implemented, and also the impacts of these policies, may be important.

All of these perspectives appear to have been included among the law's explicit purposes and "general principles concerning use of funds." Given ARRA's direction to "commenc[e] expenditures and activities as quickly as possible consistent with prudent management," difficult trade-offs among goals may be inevitable. Over time, Congress may consider whether existing management and oversight mechanisms, in combination with ARRA's additional provisions, adequately support effective management and oversight of ARRA implementation. The experience with ARRA also may offer lessons learned for the "normal," non-ARRA systems of oversight.

Beyond the immediate situation, additional oversight issues for Congress may relate to longer-term questions. These include how to build and monitor capacity within agencies to respond effectively to crises. Questions also may arise regarding how to build and monitor capacity in agencies and government overall to anticipate crises, mitigate their risks, and avoid preventable crises. This report analyzes these and other issues after reviewing how the oversight provisions were developed and providing an overview of the enacted provisions themselves, including related appropriations and reporting requirements.

The topic of subsequent implementation of the oversight provisions, including actions by executive agencies and the Office of Management and Budget (OMB), is not included in the scope of this report. This report will be updated as events warrant.

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In the wake of a rapidly deteriorating economic picture and year-long recession that the Congressional Budget Office (CBO) has called the most severe since World War II, Congress passed the American Recovery and Reinvestment Act of 2009 (ARRA).¹ This report discusses ARRA's "general oversight provisions" and several related issues for Congress. For purposes of this report, the term "general oversight provision" means an oversight-related provision that addresses multiple programs, agencies, or appropriations accounts. Provisions that are specific to a single program or appropriation (e.g., appropriations set-asides and reporting requirements) are excluded from the report's scope. The provisions provide for, among other things, establishment of a Recovery Accountability and Transparency Board, numerous reporting and evaluation requirements, and increased resources for agency Inspectors General (IGs).

The topic of subsequent implementation of the oversight provisions, including actions by executive agencies and the Office of Management and Budget (OMB), is not included in the scope of this report. Nevertheless, even before considering experience with implementation, several broad issues related to ARRA oversight may be of interest to Congress.² These include assessments of ARRA's role in achieving economic objectives. Typical objectives of a fiscal stimulus policy relate to increasing economic activity in the short term, compared to what would have happened without a stimulus. In addition, some stakeholders have emphasized that stimulating the economy in the short term alone is not a sufficient definition of "success." From this perspective, the manner in which spending, tax, and other public policies are implemented, and also the impacts of these policies, may be important. All of these perspectives appear to have been included among the law's explicit purposes and "general principles."

Given ARRA's direction to "commenc[e] expenditures and activities as quickly as possible consistent with prudent management" (P.L. 111-5, Section 3), difficult trade-offs among goals may be inevitable. Over time, Congress may consider whether existing management and oversight mechanisms, in combination with ARRA's additional provisions, adequately support effective management and oversight of ARRA implementation. The experience with ARRA also may offer lessons learned for the "normal" systems of oversight that correspond to non-ARRA-related funding and operations. Beyond the immediate situation, additional oversight issues for Congress may relate to longer-term questions. These include how to build capacity within agencies to respond effectively to crises. Questions also may arise regarding how to build capacity in agencies and government overall to anticipate crises, mitigate their risks, and avoid preventable crises. This report analyzes these and other issues after reviewing how the oversight provisions were developed and providing an overview of the enacted provisions themselves, including related appropriations and reporting requirements.

Development of ARRA's Oversight Provisions

Examination of how ARRA and its general oversight provisions were developed may provide perspectives on congressional objectives associated with the legislation. In addition, reflection on

¹ P.L. 111-5, February 17, 2009; 123 Stat. 115. For CBO's statements, see U.S. Congressional Budget Office (hereafter CBO), *A Preliminary Analysis of the President's Budget and an Update of CBO's Budget and Economic Outlook*, March 2009, pp. 19, 33. For more on the economic situation and ARRA, see CRS reports at "American Recovery and Reinvestment Act," http://apps.crs.gov/cli/cli.aspx?PRDS_CLI_ITEM_ID=3405&from=3&fromId=4.

² The potential purposes of oversight are numerous; see CRS Report RL30240, *Congressional Oversight Manual*, by (name redacted) et al.

the development of the provisions may suggest opportunities to make enhancements in ARRA's existing oversight provisions or to address any perceived gaps in the provisions' coverage of significant matters.

Obama Transition Planning for Fiscal Stimulus and Oversight

On November 7, 2008, then President-elect Barack Obama held his first news conference since the presidential election. In view of continued monthly job losses, he called for a "fiscal stimulus plan that will jump-start economic growth."³ In response to a question about the prospect that "a stimulus package may be in trouble" during the remainder of the 110th Congress, the President-elect said "[i]f it does not get done in the lame-duck session, it will be the first thing I get done as President of the United States." Later that month, he announced he had directed his transition "economic team to come up with an Economic Recovery Plan."⁴ On December 23, 2008, Vice President-elect Joe Biden said "there will be no earmarks in this economic recovery plan."⁵ After the holidays, President-elect Obama referred to the plan as an "American Recovery and Reinvestment Plan."⁶ He reiterated on January 6, 2009, that under the economic recovery plan, "[w]e are going to ban all earmarks."⁷ He also said that the plan "will set a new higher standard of accountability, transparency, and oversight."

Legislative Action in the 111th Congress on Stimulus and Oversight

Planning for Stimulus Legislation and Related Oversight Provisions

In the wake of a rapidly deteriorating economic picture, CBO released an economic forecast on January 7, 2009. CBO issued the forecast "several weeks earlier than usual to aid the new [111th] Congress in its deliberations."⁸ The Senate Budget Committee held a hearing on the forecast the next day.⁹ In the forecast, CBO said that a "downturn in housing markets across the country,

³ "President-elect Obama Holds News Conference After Meeting with His Transition Economic Advisory Board (Chicago)," transcript, *CQ Transcriptions*, November 7, 2008, <http://www.cq.com> (subscription required). For press coverage, see David Cho, Michael D. Shear, and Michael S. Rosenwald, "Obama Calls on Congress to Act Fast on Stimulus," *Washington Post*, November 8, 2008, p. A1; and Jeff Zeleny, "Obama, in His New Role as President-elect, Calls for Stimulus Package," *New York Times*, November 8, 2008, p. A16.

⁴ Office of the President-elect (Obama), "2.5 Million Jobs," November 21, 2008, http://change.gov/newsroom/entry/2_5_million_jobs/. See also Jackie Calmes and Jeff Zeleny, "Obama Vows Swift Action on Vast Economic Stimulus Plan," *New York Times*, November 23, 2008, p. A1.

⁵ "Vice President-elect Biden Delivers Remarks Before Briefing on the Economy," transcript, *CQ Transcriptions*, December 23, 2008, <http://www.cq.com> (subscription required).

⁶ Office of the President-elect (Obama), "American Recovery and Reinvestment," January 3, 2009, http://change.gov/newsroom/entry/american_recovery_and_reinvestment/.

⁷ "President-Elect Holds Media Availability Following Meeting with His Economic Advisers," transcript, *CQ Transcriptions*, January 6, 2009, <http://www.cq.com> (subscription required).

⁸ CBO, *The Budget and Economic Outlook: Fiscal Years 2009 to 2019*, January 2009, "Preface," <http://www.cbo.gov/doc.cfm?index=9957>. CBO's website links to the agency's testimony before the Senate Committee on the Budget, which held a hearing on the report on January 8, 2009, <http://www.cbo.gov/doc.cfm?index=9958>. The latter website also links to a C-SPAN Webcast of the hearing.

⁹ U.S. Congress, Senate Committee on the Budget, *The CBO Budget and Economic Outlook*, 111th Cong., 1st sess., January 8, 2009, <http://budget.senate.gov/democratic/hearingstate.html>, and <http://budget.senate.gov/republican/NewHearings&Testi.htm>.

which undermined the solvency of major financial institutions and severely disrupted the functioning of financial markets, has led the United States into a recession that will probably be the longest and the deepest since World War II.”¹⁰

To help establish a basis for Congress to consider alternative courses of action, the forecast was done under an assumption that current laws and policies regarding federal spending and taxation would remain the same. CBO noted, for example, that the forecast did not include “the effects of a possible fiscal stimulus package.”¹¹ CBO anticipated that the recession, which began in December 2007, would last until the second half of 2009. Economic output over the next two years, CBO estimated, would average “6.8 percent below its potential—that is, the level of output that would be produced if the economy’s resources were fully employed.”¹² CBO explained that this gap in gross domestic product (GDP)—a “GDP gap”—is “the difference between real (inflation-adjusted) gross domestic product and its estimated potential level (which corresponds to a high level of resource—labor and capital—use).”¹³ In accompanying testimony, CBO’s acting director said that “[m]any economists believe that a stimulative fiscal policy (that is, an increase in spending or reduction in taxes designed to foster faster economic growth in the short run) is desirable under the current economic conditions.”¹⁴

Congress soon considered legislation intended to diminish this GDP gap and, in the process of doing so, to bolster employment and address perceptions of other economic and policy problems. An early version of the legislation reportedly was drafted by then President-elect Barack Obama’s transition team working with Members of the House Committee on Appropriations.¹⁵

On January 14, 2009, then OMB Director-designate Peter Orszag appeared before the Senate Committee on Homeland Security and Governmental Affairs for a confirmation hearing.¹⁶ Among other things, he was asked about his plans for oversight of the economic stimulus package that was anticipated to be considered at the beginning of the 111th Congress. Director-designate Orszag said the incoming Administration would favor creating a special oversight board. The board would be composed of relevant IGs and chaired by a newly established White House position of Chief Performance Officer (CPO). The board “would review problems and ... would conduct regular meetings to examine specific problems that might be identified.” Director-designate Orszag also said the Administration planned “to create a website that will contain information about the contracts and include PDFs [of] contracts themselves.”¹⁷

¹⁰ *Ibid.*, p. 1. For more information and CRS reports on the topic of the “Economy, Recession, and Financial Sector,” see http://apps.crs.gov/cli/level_2.aspx?PRDS_CLI_ITEM_ID=4.

¹¹ CBO, *The Budget and Economic Outlook: Fiscal Years 2009 to 2019*, p. 2.

¹² *Ibid.* Economic forecasts typically are subject to considerable uncertainty. CBO noted several sources of uncertainty in the present case that “make it particularly difficult for analysts to use historical patterns to forecast the near future.” *Ibid.*, pp. 4-5.

¹³ See **Appendix A** for CBO’s graphical display of a GDP gap, which is included in this report to aid with visualizing oversight issues related to the stimulus law’s impact on the economy.

¹⁴ CBO, *Testimony, The Budget and Economic Outlook: Fiscal Years 2009 to 2019*, prepared statement of Robert A. Sunshine, acting director, before the Senate Committee on the Budget, January 8, 2009, pp. 31-32.

¹⁵ Amit R. Paley, “Stimulus Provision May Inhibit Watchdog Investigations, Critics Warn,” *Washington Post*, February 28, 2009, p. D1.

¹⁶ U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, *Nominations*, 111th Cong., 1st sess., January 14, 2009, <http://hsgac.senate.gov/public/index.cfm?Fuseaction=Hearings.Detail&HearingID=b6ebfd98-b0ac-4edb-a9bf-118eb5519984>. A transcript is available at <http://www.cq.com> (subscription required).

¹⁷ He continued, “One of the difficulties in existing financial—federal financial management payment flows is that the (continued...)”

Soon after President Obama was inaugurated, the Obama Administration established a website called *Recovery.gov* in anticipation of enactment of stimulus legislation. The home page explained the Administration's future intentions for the website: "Check back after the passage of the American Recovery and Reinvestment Act to see how and where your tax dollars are spent. An oversight board will routinely update this site as part of an unprecedented effort to root out waste, inefficiency, and unnecessary spending in our government."¹⁸

Action on Legislation and Oversight Provisions

Numerous oversight provisions subsequently were included in economic stimulus legislation considered by the House and Senate.¹⁹ On January 21, 2009, after mark-up of a draft bill by the House Committee on Appropriations, the committee issued a press release that characterized the stimulus as providing "unprecedented accountability" (see **Box 1**).²⁰

Box 1: Excerpt from House Appropriations Committee Press Release

Unprecedented Accountability: A historic level of transparency, oversight and accountability will help guarantee taxpayer dollars are spent wisely and Americans can see results for their investment.

- In many instances funds are distributed through existing formulas to programs with proven track records and accountability measures already in place.
- How funds are spent, all announcements of contract and grant competitions and awards, and formula grant allocations must be posted on a special website created by the President. Program managers will also be listed so the public knows who to hold accountable.
- Public notification of funding must include a description of the investment funded, the purpose, the total cost and why the activity should be funded with recovery dollars. Governors, mayors or others making funding decisions must personally certify that the investment has been fully vetted and is an appropriate use of taxpayer dollars. This will also be placed on the recovery website.
- A Recovery Act Accountability and Transparency Board will be created to review management of recovery dollars and provide early warning of problems. The seven member board includes Inspectors General and Deputy Cabinet secretaries.
- The Government Accountability Office and the Inspectors General are provided additional funding and access for special review of recovery funding.
- State and local whistleblowers who report fraud and abuse are protected.
- There are no earmarks in this package.

(...continued)

time between when a contract is signed and when the information shows up on federal government websites is so long that we didn't want to allow that time lapse to occur. So we would propose that the contract officer ... fill out a simple template, basically to create a faster flow of information, at least at an aggregate level, on specific contracts." PDF stands for Portable Document Format and refers to electronic files that replicate paper documents.

¹⁸ This language was posted at the new website, <http://www.recovery.gov/>.

¹⁹ It is possible that some oversight provisions may have been informed by experience with implementation of the Emergency Economic Stabilization Act of 2008 (EESA, Division A of H.R. 1424, P.L. 110-343) and the Troubled Asset Relief Program (TARP). For more information about oversight provisions in that law, see CRS Report RL34713, *Emergency Economic Stabilization Act: Preliminary Analysis of Oversight Provisions*, by (name redacted).

²⁰ U.S. Congress, House Committee on Appropriations, "Summary: American Recovery and Reinvestment," press release, January 21, 2009, <http://appropriations.house.gov/pdf/PressSummary01-21-09.pdf>.

On January 26, 2009, the American Recovery and Reinvestment Act of 2009 (H.R. 1, 111th Congress) was introduced in the House.²¹ Shortly before introduction, the White House reportedly had released a document describing several goals of the legislation, both in terms of economic stimulus and achievement of various public policy objectives relating to energy, health care, education, infrastructure, tax policy, income maintenance, and accountability.²² On January 28, the House passed an amended version of the measure by 244-188. Senate versions of components of ARRA were introduced and reported on January 27 (S. 336, with written report) and January 29 (S. 350).

At the same time, general concerns had been expressed about the capacity of agencies and “a depleted contracting workforce” to spend funds rapidly “while also improving competition and oversight.”²³ In addition, the question had been raised whether IGs and the Government Accountability Office (GAO) have sufficient resources to conduct oversight of the stimulus legislation.²⁴ Situated in the context of these concerns, however, many observers felt quick action on the stimulus legislation was critical. According to one press report, “[w]hile economists remain divided on the role of government generally, an overwhelming number from both parties are saying that a government stimulus package—even a flawed one—is urgently needed to help prevent a steeper slide in the economy.”²⁵

The Senate amended the House version and passed an amendment in the nature of a substitute on February 10, 2009, by a vote of 61-37.²⁶ A conference report, which included a joint explanatory statement, was filed on February 12, 2009, stating that it contained no congressional earmarks, limited tax benefits, or limited tariff benefits.²⁷ The conference report was agreed to in the House

²¹ The measure has been referred to as “the stimulus legislation,” the Recovery Act, and ARRA.

²² Peter Baker, “White House Offers New Details on Recovery Plan,” *nytimes.com*, January 25, 2009, http://www.nytimes.com/2009/01/25/us/politics/25report.html?_r=1. This online press report linked to an undated Obama Administration document: White House, “The American Reinvestment and Recovery Plan—by the Numbers,” [no date], http://www.whitehouse.gov/assets/documents/recovery_plan_metrics_report.pdf. Several days earlier, an early presidential memorandum appeared to presage more general Obama Administration plans regarding transparency, beyond the stimulus. The memorandum announced broad policy priorities to make government “transparent,” “participatory,” and “collaborative.” In addition, the memorandum directed that recommendations be developed within 120 days (i.e., by approximately May 20, 2009) for an eventual “open government directive,” which would be issued later by OMB. See U.S. President (Obama), “Transparency and Open Government,” memorandum for the heads of executive departments and agencies, January 21, 2009, printed in 74 *Federal Register* 4685-4686, January 26, 2009, http://www.whitehouse.gov/the_press_office/Transparency_and_Open_Government/.

²³ Robert O’Harrow Jr., “If Spending is Swift, Oversight May Suffer,” *Washington Post*, February 9, 2009, p. A1. Related to the issue of workforce capacity, the George W. Bush Administration’s initiative to improve management of federal agencies, the “President’s Management Agenda,” established criteria for agencies to receive scores on things such as their workforce planning (e.g., to ensure the workforce is adequate to an agency’s needs). According to the Bush Administration’s criteria and final grades in December 2008, eight of the 15 cabinet departments received the highest rating of a “green” score for “management of human capital,” while the other seven departments received the middle “yellow” score. See White House, “Executive Branch Management Scorecard,” December 31, 2008, <http://georgewbush-whitehouse.archives.gov/results/agenda/scorecard.html>.

²⁴ Senator Claire McCaskill asked then OMB Director-designate Orszag about this issue in one of his confirmation hearings. See U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, *Nominations*, 111th Cong., 1st sess., January 14, 2009.

²⁵ Steven Mufson and Lori Montgomery, “Economists Agree Time Is of the Essence for Stimulus,” *Washington Post*, February 8, 2009, p. A1.

²⁶ For a comparison of general oversight provisions in the House and Senate versions, see CRS Report R40215, *General Oversight Provisions in the American Recovery and Reinvestment Act (ARRA) of 2009: Brief Comparative Analysis of House and Senate Versions*, by (name redacted).

²⁷ U.S. Congress, Conference Committees, *Making Supplemental Appropriations for Job Preservation and Creation*, (continued...)

on February 13, 2009, by a vote of 246-183, with one Member voting present. On the same day, the Senate agreed to the conference report by a vote of 60-38, clearing the measure for presentment to the President. President Obama signed the measure into law on February 17, 2009.²⁸

General Oversight Provisions in ARRA

Context in Which Oversight Provisions Will Operate

Several aspects of ARRA establish the context in which the legislation's general oversight provisions will operate. These include the structure of the legislation, the legislation's explicit purposes and "general principles," and the scale of the oversight task at hand.

Structure of Legislation

ARRA was enacted in two divisions. Division A, titled "Appropriations Provisions," included many discretionary appropriations provisions in 16 titles. Some of the appropriations were provided for IGs and other oversight-related institutions. Division A also included substantive legislative provisions in some titles. These included provisions to, among other things, promote health information technology (Title XIII), establish a State Fiscal Stabilization Fund (Title XIV), and create a variety of mechanisms and entities focused on oversight (Title XV). A title containing general provisions for Division A focused on oversight (Title XVI). Division B, titled "Tax, Unemployment, Health, State Fiscal Relief, and Other Provisions," included seven titles. Titles in Division B appeared to contain very few general oversight provisions, as discussed later.

References to "the Act" within ARRA generally refer to either Division A or Division B, not to the entire law.²⁹ Therefore, most of ARRA's substantive general oversight provisions that are located in Titles XV and XVI of Division A appear to cover activities and provisions associated with Division A rather than the entire law. Many, but not all, oversight-related appropriations also focused on oversight of funding provided by Division A, as opposed to the entire law.³⁰

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Infrastructure Investment, Energy Efficiency and Science, Assistance to the Unemployed, and State and Local Fiscal Stabilization, for the Fiscal Year Ending September 30, 2009, and for Other Purposes, conference report to accompany H.R. 1, 111th Cong., 1st sess., February 12, 2009, H.Rept. 111-16 (Washington: GPO, 2009), pp. 780-781.

²⁸ For a more comprehensive overview of ARRA's legislative history and non-oversight provisions, see CRS Report R40537, *American Recovery and Reinvestment Act of 2009 (P.L. 111-5): Summary and Legislative History*, by (name redacted) et al. The White House released "state by state numbers" and several fact sheets about ARRA-related economic and policy objectives. See White House, "White House Releases State by State Numbers; American Recovery and Reinvestment Act to Save or Create 3.5 Million Jobs," press release, February 17, 2009, http://www.whitehouse.gov/the_press_office/White-House-Releases-State-by-State-Numbers-American-Recovery-and-Reinvestment-Act/ (website provides links to various fact sheets).

²⁹ P.L. 111-5, Section 4.

³⁰ Appropriations that were provided for a purpose of carrying out provisions in Division A, for example, would not be available for other purposes. However, appropriations that did not specify a purpose related specifically to Division A (e.g., some appropriations for GAO and IGs) also would be available for oversight of activities outside of Division A, including activities associated with Division B.

ARRA's Purposes and "General Principles"

A conventional approach for oversight is to assess a program, agency, or law in terms of its purposes and related objectives. ARRA identified several explicit purposes and "general principles concerning use of funds," which are excerpted in **Box 2**.

Box 2: ARRA's "Purposes and Principles" (P.L. 111-5; Section 3)

- (a) Statement of Purposes.—The purposes of this Act include the following:
- (1) To preserve and create jobs and promote economic recovery.
 - (2) To assist those most impacted by the recession.
 - (3) To provide investments needed to increase economic efficiency by spurring technological advances in science and health.
 - (4) To invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits.
 - (5) To stabilize State and local government budgets, in order to minimize and avoid reductions in essential services and counterproductive state and local tax increases.
- (b) General Principles Concerning Use of Funds.—The President and the heads of Federal departments and agencies shall manage and expend the funds made available in this Act so as to achieve the purposes specified in subsection (a), including commencing expenditures and activities as quickly as possible consistent with prudent management.

As discussed later in this report, the purposes and principles might be thought of as falling roughly into three categories:

- macroeconomic objectives related to recovery from the recession;
- discrete programmatic, microeconomic, and other policy objectives; and
- process objectives, which include balancing speed (to address macroeconomic objectives) with "prudent management" (e.g., to minimize waste and fraud).

Many of ARRA's specific appropriations and nonfunding provisions, which concern myriad policy areas, might be viewed as falling roughly into these categories, as well.

In some cases, there may be ambiguity around, or disagreement about, the specific purposes and objectives of a law and how to define "success" in its implementation.³¹ To the extent these phenomena may be evident, stakeholders may believe other criteria are important to consider when overseeing or evaluating a program, agency, or law. Unintended consequences also may be of interest or concern.

Scale of Oversight Task: CBO Estimates of ARRA Impacts

In response to a congressional request, CBO prepared a year-by-year estimate of the short-term economic impacts of ARRA.³² In addition, CBO included tables that showed estimated economic

³¹ Laws often leave room for interpretation regarding specific purposes and bases for judging "success." In addition, there may not be consensus on precise objectives or definitions of success among majority coalitions of Members of Congress, or between Congress and the President.

³² CBO, Letter from Douglas W. Elmendorf, Director, to Senator Charles E. Grassley, Ranking Member, Senate (continued...)

“multipliers” corresponding to many provisions,³³ and, in addition, the agency’s cost estimate for the conference agreement on H.R. 1.³⁴ In the letter, CBO estimated that ARRA would increase the federal government’s budget deficit by an overall total of \$787.2 billion over 11 years.³⁵ CBO also broke down the legislation’s estimated fiscal impacts on spending and revenues.

With regard to spending, CBO estimated that Division A of the legislation would increase discretionary spending by \$308.3 billion over the 11-year period from FY2009 through FY2019.³⁶ Nearly half of the total amount would be spent by the end of FY2010 (September 30, 2010), and nearly 72% would be spent by the end of FY2011 (September 30, 2011). CBO estimated that Division B would increase direct spending by \$267.0 billion over the same 11-year period. Nearly 73% of this total would be spent by the end of FY2010, and over 91% would be spent by the end of FY2011. Overall, spending from the perspective of the federal government’s unified budget was estimated to total \$575.3 billion from FY2009 through FY2019.

CBO estimated that Division A would decrease revenues by \$0.1 billion over 11 years. Division B would decrease *net* revenues by \$211.8 billion over 11 years, with \$244.9 billion in revenue reductions occurring by the end of FY2010. The tax provisions of Division B’s Title I accounted for the vast majority of these estimated decreases. The total revenue decrease would be \$211.9 billion over 11 years.

Two Categories of General Oversight Provisions

ARRA’s general oversight provisions might be grouped into two categories:

- *nonfunding* provisions, which established federal agencies, required agencies to undertake certain tasks, established procedures that must be followed, etc.;³⁷ and
- *funding* provisions, which provided appropriations to oversight-related entities including IGs, GAO, and the newly established Recovery Accountability and Transparency Board.

General oversight provisions that fall within each category are discussed in the sections below.

Nonfunding General Oversight Provisions

Nonfunding general oversight provisions appeared to be included only in Division A, chiefly in Titles XV and XVI. Nevertheless, they were included in considerable variety. Among other things, these substantive provisions established new oversight-oriented entities like the Recovery

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Committee on Finance, March 2, 2009, http://www.cbo.gov/ftpdocs/100xx/doc10008/03-02-Macro_Effects_of_ARRA.pdf, also located at <http://www.cbo.gov/doc.cfm?index=10008>.

³³ Ibid., Table 1 (unnumbered pp. 5-6 in PDF file).

³⁴ Ibid., Table 2 (unnumbered pp. 7-11 in PDF file).

³⁵ Ibid., Table 2 (unnumbered p. 11 in PDF file).

³⁶ CBO indicated that discretionary spending totals included “estimates for changes to mandatory programs contained in Division A,” *ibid.*, Table 2, footnote “a” (unnumbered p. 11 in PDF file).

³⁷ Other terms have been used to differentiate this kind of statutory provision from appropriations provisions. Some examples include “substantive,” “non-appropriations,” “legislative,” and “provisions that change existing law.”

Accountability and Transparency Board (RATB), enumerated diverse reporting requirements for federal agencies and nonfederal recipients of funds, and tasked RATB, IGs, and GAO with numerous duties. Some highlights of these statutory provisions and related reporting requirements are summarized in bulleted form, below. A more comprehensive tabular presentation of provisions, their ARRA citations, and related reporting requirements, including when ARRA requires specific information to be posted on the Recovery.gov website, is provided in **Table B-1**, in **Appendix B**.

IG and GAO Reviews and Reports

- IGs are required to review “any concerns raised by the public about specific investments using funds made available in [Division A]” and relay findings to agency heads. (Title XV, Sections 1514 and 1515).
- The Comptroller General is required to conduct bimonthly reviews on the use of funds made available in Division A by selected states and localities. (Title IX, Sections 901 and 902).

Reports on Use of Funds

- Recipients of funds are required to report certain information within 180 days of ARRA’s enactment, where *recipient* is defined as a state or any entity “other than an individual” that receives funds directly from the federal government from appropriations in Division A. (Title XV, Section 1512(c)).
- Federal agencies are required to publicly report information submitted by funding recipients to the agency. (Title XV, Section 1512(d)).
- State and local governments’ reporting and recordkeeping may be funded, at least in part, by flexibility granted to federal agencies to adjust applicable limits on administrative expenditures for federal awards. (Title XV, Section 1552).

State and Local Certification

- Chief executives of state and local governments are required to certify that infrastructure investments have “received the full review and vetting required by law and that the chief executive accepts responsibility that the infrastructure investment is an appropriate use of taxpayer dollars.” (Title XV, Section 1511).

Establishment and Functions of RATB

- RATB is established “to coordinate and conduct oversight of covered funds to prevent fraud, waste, and abuse.” RATB’s membership is to consist of at least 10 IGs, including, or in addition to, a chairperson, who may be designated or appointed by the President according to certain criteria (Title XV, Sections 1521 and 1522).
- RATB has several enumerated functions, including to review whether reporting for contracts and grants “meets applicable standards” and “specifies the purpose of the contract or grant and measures of performance.” The board also is required to coordinate oversight activities with the Comptroller General and state auditors.

- RATB is tasked with four categories of reporting requirements. (Title XV, Sections 1523 and 1528).
- RATB is required to make recommendations to agencies “on measures to prevent fraud, waste, and abuse relating to covered funds.” An agency that receives a RATB recommendation is required to submit a “responsive report” to the President, the congressional committees of jurisdiction, and RATB within 30 days of receipt. (Title XV, Section 1523).
 - RATB is required to conduct audits and reviews, and in doing so, may issue subpoenas to compel testimony from nonfederal officers and employees. RATB is authorized to hold public hearings and may enter into certain contracts. RATB has authority to transfer up to 100% of its appropriated funds to any office of inspector general, OMB, the General Services Administration, and an independent advisory panel established by Section 1541 of Title XV. (Title XV, Section 1524).
 - RATB is required to establish a website. (The website was established by the Obama Administration as Recovery.gov in anticipation of enactment of ARRA.) As agencies implement ARRA, the website is to contain, among many other things, considerable information about how funds are allocated and used. Fifteen specific requirements for the website are identified in one provision of Title XV, and other provisions in Division A describe additional information that is required to be posted on, or linked to, the RATB website. (Title XV, Section 1526).
 - IGs are instructed that nothing in the provisions related to RATB shall affect the independent authority of an IG “to determine whether to conduct an audit or investigation of covered funds.” An IG’s decision “shall be final.” (Title XV, Section 1527).

Additional Oversight Provisions

- Contracts funded under Division A are required to be awarded as fixed-price contracts through the use of competitive procedures “to the maximum extent possible,” and exceptions are required to be posted on RATB’s website. (Title XV, Section 1554).
- The Council of Economic Advisers, an entity in the Executive Office of the President, is required to submit quarterly reports to the House and Senate Appropriations Committees that “detail the impact of programs funded through covered funds on employment, estimated economic growth, and other key economic indicators.” (Title XV, Section 1513).
- Employees of nonfederal employers receiving funds are granted certain whistleblower protections when disclosing certain information to RATB, an IG, the Comptroller General, a Member of Congress, or other specified entities and persons. (Title XV, Section 1553).

Funding Provisions with Appropriations for IGs, GAO, and RATB

Appropriations to IGs, GAO, and RATB were included predominately in Division A.³⁸ In total, the appropriations provided to these oversight-oriented entities summed to \$363.75 million. Highlights of these appropriations are discussed here. A more comprehensive listing of the various oversight entities for which ARRA provided funds is presented in **Table C-1**, located in **Appendix C**.³⁹

Twenty-three IGs received \$254.75 million in 25 separate appropriations.⁴⁰ Sixteen IGs in all 15 executive departments received appropriations, ranging from a single appropriation of \$1 million for the Department of Veterans Affairs to two appropriations totaling \$48.25 million for the Department of Health and Human Services. IGs in an additional seven independent agencies also received appropriations.

ARRA provided the funding with widely varying periods of availability. For the IG at the Department of State, for example, funds are available until the end of FY2010. Other IGs variously have funds available until the end of FY2011, FY2012, FY2013, or “until expended” (i.e., “no-year” funds). GAO received \$25 million, available through the end of FY2010, and RATB received \$84 million, available through the end of FY2011.

Some of the appropriations were designated for specific purposes, chief among them oversight of programs, grants, and projects funded by ARRA. Other appropriations were essentially supplemental increases without a restrictive specification of purpose.⁴¹ RATB has authority to transfer up to 100% of its funds to any office of inspector general, OMB, the General Services Administration, and an advisory panel for RATB that ARRA established.⁴²

Potential Issues for Congress

With enactment of ARRA, a flurry of activity commenced in executive agencies and the Executive Office of the President. Further requirements and guidance concerning ARRA implementation were forthcoming from the White House and OMB. These documents focused

³⁸ The provisions were distributed among 12 titles in Division A and 1 title in Division B. A single appropriation to the Office of Inspector General of the Department of Health and Human Services was included in Title V of Division B. ARRA also contained numerous appropriations set-asides for oversight within specific accounts and programs. As noted earlier, these set-asides and other agency- or program-specific oversight provisions are not included within the scope of this report.

³⁹ In the appendix, IGs are listed in alphabetical order of their parent departments, followed by IGs located within independent agencies. GAO and RATB are listed at the table’s end. The table indicates the division and title of ARRA in which the appropriation was included, the funding amount, the period of availability for the funds, and whether appropriations language specified that resources be used to oversee ARRA-provided funds.

⁴⁰ In contrast, the Emergency Economic Stabilization Act of 2008 made \$50 million available to the Special Inspector General for the Troubled Asset Relief Program (SIGTARP). For discussion, see CRS Report R40099, *The Special Inspector General for the Troubled Asset Relief Program (SIGTARP)*, by (name redacted). For more information about statutory IGs, see CRS Report 98-379, *Statutory Offices of Inspector General: Past and Present*, by (name redacted).

⁴¹ Without specification of a purpose, appropriations could be used for purposes authorized by law that are not necessarily related to ARRA oversight. In addition, funds provided by Division A without a specification of purpose could be used for oversight of activities and funding associated with Division B.

⁴² Division A, Title XV, Section 1524(f).

especially on issues related to oversight, accountability, and transparency. Some of the requirements also went beyond ARRA's statutory requirements.

On February 18, 2009, OMB issued to agencies "initial implementing guidance" regarding ARRA, including numerous reporting requirements, in a 62-page document.⁴³ Some of the required information is to be posted on Recovery.gov and agency-specific ARRA-related websites. A month later, President Obama issued a presidential memorandum entitled "Ensuring Responsible Spending of Recovery Act Funds."⁴⁴ The memorandum directed agencies in how to use "available discretion" when allocating and spending certain ARRA-related funding. The memorandum also directed agencies to disclose certain communications with federally registered lobbyists. On April 3, 2009, OMB issued "updated implementing guidance" to agencies in a 175-page document.⁴⁵ Further guidance from OMB and RATB is expected.

In addition, the White House announced the designation of RATB's chairperson (Department of the Interior IG Earl E. Devaney) and the board's full membership in February and March 2009, respectively.⁴⁶ The Obama Administration also identified a number of leadership roles for purposes of ARRA implementation (e.g., the appointment of Mr. Edward DeSeve to a White House coordination role for ARRA implementation). Several congressional committees have incorporated ARRA into their oversight agendas and convened hearings.

Based on experience with ARRA implementation and other emerging developments, Congress may revisit the structure and contents of ARRA's general oversight provisions. Even before considering experience with implementation, however, several broad issues related to ARRA oversight may be of interest to Congress.

Oversight and Crises: Short- and Long-Term Perspectives

In the event of a crisis to which Congress, the President, and federal agencies feel compelled to respond, several challenges may present themselves. Some challenges might be characterized as relatively short term. Others may involve a longer-term orientation.

Among the short-term challenges, in the present context, is the question of how to balance speed (to address macroeconomic objectives) with "prudent management" (e.g., to minimize waste and

⁴³ U.S. Executive Office of the President, Office of Management and Budget, "Initial Implementing Guidance for the American Recovery and Reinvestment Act of 2009," memorandum for heads of departments and agencies from Peter R. Orszag, Director, M-09-10, February 18, 2009, http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m09-10.pdf.

⁴⁴ U.S. President (Obama), "Ensuring Responsible Spending of Recovery Act Funds," memorandum for heads of departments and agencies (contained in press release), March 20, 2009, http://www.whitehouse.gov/the_press_office/Memorandum-for-the-Heads-of-Executive-Departments-and-Agencies-3-20-09/.

⁴⁵ U.S. Executive Office of the President, Office of Management and Budget, "Updated Implementing Guidance for the American Recovery and Reinvestment Act of 2009," memorandum for heads of departments and agencies from Peter R. Orszag, Director, M-09-15, April 3, 2009, http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m09-15.pdf.

⁴⁶ See White House, "Vice President Biden to Oversee the Administration's Implementation of the Recovery Act's Provisions," press release, February 23, 2009, http://www.whitehouse.gov/the_press_office/Vice-President-Biden-to-Oversee-the-Administrations-implementation-of-the-Recovery-Acts-Provisions/; and U.S. Recovery and Accountability Board (hereafter RATB), "Recovery Accountability and Transparency Board Announces Membership," March 18, 2009, <http://www.recovery.gov/?q=node/258>. A Web page was established later to identify RATB members, <http://www.recovery.gov/?q=content/recovery-accountability-and-transparency-board&x=1>.

fraud). Other challenges in formulating a response to a crisis occur when allocating funding during budget execution. When allocating resources to specific projects and priorities, how should the federal government reconcile values of accountability, efficiency, effectiveness, transparency, public participation, fairness, and equity? Oftentimes in such circumstances, values “trade off” against each other. In making these judgments, agencies and policy makers typically have little time for planning or reflection.

For purposes of oversight, prioritization likely will be necessary. The need to prioritize raises a number of difficult questions. Which policy areas (e.g., transportation, health care information technology) or processes (e.g., contracting, grant management) should receive initial attention? Which should receive the most attention? Also, what types of oversight activity will be most effective at preventing future problems, catching current problems when changes still may be made, or identifying problems after the fact?⁴⁷ Some of these shorter-term issues are explored in greater detail under subsequent headings.

Some longer-term issues include questions of how to build the capacity of federal agencies, Congress, and the President to better prepare for and respond to crises. For example, concerns have been expressed by some observers for years about the adequacy of agency capabilities and workforces in areas such as contract management and program evaluation.⁴⁸ To address longer-term issues like these, Congress might explore advantages and disadvantages of options for assessing (or grading) the adequacy of agency management capabilities, both under “normal” circumstances and for contingencies.⁴⁹ If Congress wished to consider related options, Congress might explore how systematic, periodic, and transparent such assessments could be.

In addition, and arguably no less significant, questions arise of how to anticipate, avoid, and mitigate preventable crises. For example, the National Commission on Terrorist Attacks Upon the United States, generally known as the 9-11 Commission, described an aspect of this capability as “institutionalizing imagination.”⁵⁰ Organizational, procedural, and system-related options might be explored to address any of these questions.⁵¹

⁴⁷ A classic framework for understanding oversight activity is the dichotomy between “police patrol” and “fire alarm” oversight. The former concept is more resource intensive, because it involves episodic, relatively in-depth searches for possible problems. The latter concept refers to ongoing, relatively less resource-intensive systems of rules, procedures, and practices that allow observers to “flag” issues of potential concern.

⁴⁸ For an expression of concern in the context of ARRA implementation, see U.S. Department of Energy, Office of Inspector General, *Special Report: The Department of Energy’s Acquisition Workforce and its Impact on Implementation of the American Recovery and Reinvestment Act of 2009*, IG-RA-09-02, March 2009, <http://www.recovery.gov/?q=content/department-energy-inspector-general-issues-arra-special-report-acquisition-workforce>. With respect to program evaluation, GAO has “found limited (and diminishing) resources spent on ... program evaluation” and “reason to be concerned about the capacity of federal agencies to produce evaluations of their programs’ effectiveness.” U.S. General Accounting Office, *Program Evaluation: Agencies Challenged by New Demand for Information on Program Results*, GAO/GGD-98-53, Apr. 1998, p. 1; and *Performance Budgeting: Opportunities and Challenges*, GAO-02-1106T, Sept. 2002, p. 16. See also U.S. Government Accountability Office, *Program Evaluation: OMB’s PART Reviews Increased Agencies’ Attention to Improving Evidence of Program Results*, GAO-06-67, pp. 15-16, 28.

⁴⁹ See heading entitled “Making and Measuring Progress” in CRS Report RL32388, *General Management Laws: Major Themes and Management Policy Options*, by (name redacted).

⁵⁰ U.S. National Commission on Terrorist Attacks Upon the United States, *The 9-11 Commission Report* (Washington: GPO, 2004), p. 344.

⁵¹ For example, the advantages and disadvantages of legislating on the subject of enterprise risk management (ERM) might be explored. ERM is a process that focuses on bringing discipline to an organization’s choices about how to deal with uncertain events that, in turn, might affect the organization’s ability to accomplish its mission. More specifically, (continued...)

Overseeing Extent to Which ARRA Meets Objectives

A typical purpose of oversight is to assess the extent to which an agency, program, or law is meeting its objectives.⁵² Through a variety of tools and approaches, Congress may learn what seems to be working well or not well, where more study may be necessary, and about consequences that may not have been intended. Furthermore, both oversight activity and the prospect of scrutiny may prompt behavior changes by agencies and nonfederal actors to address areas of concern.

Potential Frameworks for Evaluation

As noted earlier, ARRA specified several explicit purposes and “general principles concerning use of funds” (see **Box 2**, earlier in this report).⁵³ These purposes and principles might be thought of as falling into three general categories:

- macroeconomic objectives (e.g., creating or saving jobs; other indicators of economic activity affected by a reduction of the GDP gap, compared to situation without stimulus);⁵⁴
- programmatic, microeconomic, and other discrete policy objectives (e.g., impact on public policy outcomes in myriad policy areas addressed by ARRA);⁵⁵ and
- process objectives (e.g., quick action; transparency; prudent management; low levels of waste, fraud, error, and abuse).⁵⁶

ARRA also could be examined through the lens of additional or different criteria, which may be based on corresponding views about the proper goals of public policy. For example, alternative criteria could be used if an observer perceived the law’s specified purposes as not being sufficiently comprehensive.⁵⁷ Certain non-governmental and non-ARRA activities, such as scams

(...continued)

ERM refers to a process for dealing with or avoiding things that might “go wrong,” or, alternatively, dealing with things that might “go better” only if they are appropriately handled. See Committee of Sponsoring Organizations of the Treadway Commission, *Enterprise Risk Management—Integrated Framework*, “Executive Summary,” September 2004, http://www.coso.org/Publications/ERM/COSO_ERM_ExecutiveSummary.pdf.

⁵² CRS Report RL30240, *Congressional Oversight Manual*, by (name redacted) et al.

⁵³ P.L. 111-5, Section 3, subsections (a) and (b), respectively.

⁵⁴ For macroeconomic analysis of the stimulus law and related issues, see CRS Report R40104, *Economic Stimulus: Issues and Policies*, by (name redacted), (name redacted), and (name redacted). Also see **Appendix D** for visual representations of early CBO projections of ARRA’s potential macroeconomic impacts.

⁵⁵ For coverage of many discrete policy areas in CRS reports, see CRS Web page “American Recovery and Reinvestment Act,” http://apps.crs.gov/cli/cli.aspx?PRDS_CLI_ITEM_ID=3405&from=3&fromId=4.

⁵⁶ In a March 9, 2009, article, RATB Chairperson Devaney was attributed to have multiplied a potential rate of fraud of 7% against the \$787.2 billion value of the stimulus package, resulting in potential fraud of \$55.1 billion. (See Neil King Jr., “Watchdog Over Stimulus Spending Toes a Delicate Line,” *Wall Street Journal*, March 9, 2009, p. A4.) The 7% rate apparently was drawn from a report by the Association of Certified Fraud Examiners (ACFE), which suggested “the typical U.S. [private or public sector] organization loses 7% of its annual revenues to fraudulent activity.” The ACFE fraud rate figure was based on a survey distributed to 16,606 certified fraud examiners, of whom 959 submitted usable responses (i.e., a 5.8% response rate, which may provide useful information but also is at high risk of nonresponse bias in resulting data). See Association of Certified Fraud Examiners, *2008 Report to the Nation on Occupational Fraud and Abuse*, 2008, pp. 8-9, 66-67, <http://www.acfe.com/resources/publications.asp?copy=rttn>.

⁵⁷ Existing agency general goals, performance goals, performance indicators, and program evaluations required by the (continued...)

perpetrated on the public by impersonators of federal agencies and personnel, also may be of concern for oversight purposes.⁵⁸

For objectives related to the first two general categories, many quantitative and qualitative data may be informative, including data from metrics, studies, and program evaluations. For example, in testimony before the Senate Budget Committee, CBO identified three criteria for judging the effectiveness of a fiscal stimulus policy: timeliness (i.e., the increase in aggregate demand caused by a stimulus should match the period when there is a GDP gap); cost-effectiveness (i.e., for a given budgetary cost, the increase in aggregate demand should be maximized, in order to bring real GDP as close as possible to potential GDP and thereby diminish the GDP gap); and consistency with long-term budget objectives (i.e., a short-term stimulus should not significantly exacerbate the nation's long-run fiscal imbalance).⁵⁹

For the third general category, relating to process objectives, a typical inference is that effective implementation (e.g., balancing speed with prudent management) increases the probability of achieving objectives associated with the first two categories. Nevertheless, some aspects of speed or prudent management may prove to be more important than others, or to trade off against each other (see related discussion further below). Experience with implementation may yield corresponding "lessons learned."

Likely Considerations

In assessing the extent to which ARRA meets its objectives, several related considerations likely will be significant. For example, a frequent challenge with metrics and evaluations is estimating the impact of a policy. That is, did a policy intervention such as ARRA (or one of its constituent parts) change the state of affairs for the better, compared to what would have happened without the policy intervention?⁶⁰ The task of validly estimating an answer to this question may require grappling with another, related question: to what extent are observed outcomes due to the policy intervention, as opposed to other factors? In order to estimate ARRA's impact, it therefore may be necessary to make comparisons between observed data, on one hand, and estimates of what would have happened in the absence of ARRA, on the other.⁶¹

From a macroeconomic perspective, for example, what impact is ARRA having on GDP, employment, and other indicators of economic activity, compared to what would have happened

(...continued)

Government Performance and Results Act of 1993 (GPRA) (P.L. 103-62) may cover some of ARRA's purposes and principles, but not others.

⁵⁸ RATB issued an announcement in April 2009 warning the public of potential frauds and scams that could be perpetrated on citizens and nongovernmental entities. RATB, "Recovery Board Issues Update on Recovery Act Frauds and Scams," press release, April 1, 2009, <http://www.recovery.gov/?q=node/295>. RATB encouraged people who come across suspected scams to notify relevant law enforcement or regulatory agencies.

⁵⁹ CBO, *Testimony, The Budget and Economic Outlook: Fiscal Years 2009 to 2019*, prepared statement of Robert A. Sunshine, acting director, before the Senate Committee on the Budget, January 8, 2009, p. 32.

⁶⁰ The term "impact" might be defined in this context as "an estimated measurement of how a program intervention affected an outcome of interest compared to what would have happened without the intervention."

⁶¹ The program evaluation field refers to the concept of "what would have happened without the policy intervention" as "the counterfactual." Many methods may be used to evaluate programs and contribute to assessments of impact. For discussion, see CRS Report RL33301, *Congress and Program Evaluation: An Overview of Randomized Controlled Trials (RCTs) and Related Issues*, by (name redacted), (name redacted), and (name redacted).

without a fiscal stimulus? What often makes this evaluation difficult is that experience without a fiscal stimulus, under identical conditions, is not observed. In addition, other factors unrelated to the stimulus may affect macroeconomic results or modify the stimulus' potential impact. For example, CBO cited the importance of an assumption in its March 2009 economic forecast, which included the estimated impact of ARRA. Specifically, the forecast assumed "that financial markets will begin to function more normally and that the housing market will stabilize by early next year. The possibility that financial markets might not stabilize represents a major source of downside risk to the forecast."⁶² Because a number of such factors may influence overall economic results, some level of uncertainty arguably is unavoidable in making any estimates of ARRA's impact.⁶³

Another potential consideration relates to trade-offs among ARRA's multiple objectives. A frequent complication of multidimensional goals (e.g., speed, effectiveness, efficiency, transparency, fairness, and accountability) is that some goals may trade off against each other. For example, the use of speed in the obligation of funds has been seen as essential for economic recovery. Greater speed may promote economic stimulus, but at a cost of some efficiency in the use of tax dollars to achieve public policy outcomes in discrete areas. Speed also may increase the risk of waste or fraud, particularly when agency capacities to handle a sudden infusion of funding may be in question. On the other hand, greater scrutiny and accountability may diminish speed and therefore economic stimulus. They also may increase or decrease efficiency and effectiveness, depending on whether the nature and level of scrutiny are adequately calibrated. When governmental decision makers evaluate policy options and make choices, they implicitly make trade-offs.⁶⁴ Decision making regarding ARRA most likely will be no exception. The reconciliation of trade-offs in decision making may be informed by policy analysis and management of risks. Ultimately, however, judgments about trade-offs arguably always are informed by an observer's priorities, beliefs, values, and ethics.

A third consideration relates to assessing what is realistically achievable in the short to medium term for each of the three general categories of objectives that were outlined above (i.e., macroeconomic, policy-specific, and process). With respect to process objectives, for example, a subject of considerable attention has been how to build the capability of the Recovery.gov website to provide full transparency for federal funds. Data availability, however, hinges on a number of complex factors, including legacy information technology systems, disparate state and federal systems and data definitions, uneven data quality, and a need for effective project management across a variety of jurisdictions. In that light, it is unclear how much capability may be realistically achievable by the end of FY2010, at which point CBO estimated nearly half of ARRA's discretionary spending will have been spent. In building the capacity of Recovery.gov,

⁶² CBO, A Preliminary Analysis of the President's Budget and an Update of CBO's Budget and Economic Outlook, March 2009, p. 19, <http://www.cbo.gov/doc.cfm?index=10014>.

⁶³ Overall estimates of ARRA's macroeconomic impact may be approachable using econometric and other methods (Division A, Title XV, Section 1513), but it is not clear that impact analyses will be feasible for disaggregated methods (e.g., estimates of jobs created and saved submitted by funding recipients under Division A, Title XV, Section 1512(c)).

⁶⁴ Generally speaking, it is usually virtually impossible to simultaneously maximize the achievement of multiple objectives in a highly complex social and economic system. Wayne L. Winston and S. Christian Albright, *Practical Management Science: Spreadsheet Modeling and Applications* (Belmont, CA: Duxbury Press, 1997), pp. 337-388 (chapter 7, "Multi-objective Decision Making").

the experience of implementing the USASpending.gov website may in some ways be instructive with regard to data availability and quality.⁶⁵

Assessing Oversight Systems, Coverage, and Objectives

Potential Questions Regarding ARRA Oversight

An Obama Administration official has called ARRA “the largest peacetime economic expansion program in the country’s history.”⁶⁶ The Administration and Congress negotiated numerous general oversight provisions for inclusion in the legislation. ARRA’s oversight provisions—a collection of new institutions, processes, systems, and resources—supplement the federal government’s existing systems of oversight in numerous respects. Some of ARRA’s provisions cover all government operations funded by Division A (e.g., many provisions in Title XV). Others operate in specific policy areas (e.g., specific appropriations set-asides). Over time, Congress may consider whether existing management and oversight mechanisms, in combination with ARRA’s additional provisions, adequately support effective management and oversight of ARRA implementation. In so doing, several topics and questions that are specific to ARRA might be examined.

- Does the combination of existing and new oversight mechanisms adequately address ARRA’s objectives and risks?
- Are there some potential oversight topics that are not explicitly addressed in ARRA? Does the combination of new and existing oversight systems leave gaps?
- Is there a point at which oversight efforts and scrutiny become counterproductive? If so, in what sense(s)? How are competing imperatives (transparency, accountability, flexibility, cost, etc.) to be reconciled?
- Are some approaches to oversight more helpful than others? Do some approaches produce unintended consequences?
- Does the experience with ARRA offer lessons learned for the “normal” systems of oversight? If so, are some changes in the “normal” system of oversight advisable?
- What approaches to oversight work well in a separation of powers system, in which federal government branches compete for control over public policy, and in a federal system,⁶⁷ in which the federal government and states have potentially overlapping lines of authority?

⁶⁵ CRS Report RL34718, *The Federal Funding Accountability and Transparency Act: Implementation and Proposed Amendments*, by (name redacted).

⁶⁶ White House, “Remarks of Lawrence H. Summers, Director of the National Economic Council, ‘Responding to an Historic Economic Crisis: The Obama Program,’” press release, March 13, 2009, http://www.whitehouse.gov/the_press_office/Remarks-of-Lawrence-Summers-Director-of-the-National-Economic-Council-at-the-Brook/.

⁶⁷ CRS Report RL30315, *Federalism, State Sovereignty, and the Constitution: Basis and Limits of Congressional Power*, by (name redacted).

If Congress wishes to assess the overall oversight framework for ARRA, several overarching considerations about federal oversight may be relevant to assessing questions like the foregoing. A number of these considerations are analyzed below.

Federal Oversight Systems and Objectives

As a threshold matter, the federal government might be viewed as embodying a system of “nested” oversight. That is, multiple entities engage in simultaneous and multi-tiered oversight activities.⁶⁸ For example, Congress oversees the President, EOP (including OMB), agencies, and nonfederal entities. Furthermore, Congress has established, structured, and funded executive agencies to allow for oversight of agency actions. Congress also has passed a variety of “general management laws” for executive agencies to establish procedures that may be overseen.⁶⁹ At the same time, IGs and congressional support agencies such as GAO provide assistance to Congress, agencies, and the President with oversight. Within the executive branch, OMB has a statutory responsibility to provide management leadership for many agencies, including monitoring and oversight of their activities.⁷⁰ Agencies oversee their own activities, the activities of regulated entities, and the activities of recipients of federal funds. Agencies undertake these tasks through a variety of organizational and procedural arrangements, often as Congress has mandated via statute. When state governments receive federal dollars, they may oversee the activities of local governments. All of the foregoing entities also oversee in many respects the activities of industries, firms, and other nongovernmental actors.

Viewed together, for example, GAO may attempt to oversee OMB’s oversight of an agency’s oversight of a state agency, which in turn attempts to oversee the use of funds it made available via contract or grant to a firm, local government, or nonprofit organization. Throughout, tools such as monitoring, analysis, and evaluation may be utilized.

In assessing and potentially considering how to modify an oversight framework, there also are multiple perspectives on the potential objectives of oversight. These include the following:

- compliance with applicable laws and regulations (e.g., adherence to legal requirements and avoidance of fraud);
- implementation that is faithful with congressional intent, when an agency or the President exercises discretion;
- avoidance of mismanagement (e.g., adherence to sound management practices);
- avoidance of undesired bias in funding allocations and policy execution (e.g., fair allocation of resources and fair implementation of policy, with intended equity);

⁶⁸ This overall “system” is arguably a product of the decision by the Framers of the Constitution to fragment governmental power both at the federal level (under a constitutional separation of powers) and between the federal level and states (in a system of federalism), in order to accomplish the varied purposes set forth in the preamble to the Constitution. Oversight entities may attempt to avoid duplication of effort and at the same time try to maintain autonomy to address their major concerns.

⁶⁹ See CRS Report RL30795, *General Management Laws: A Compendium*, by (name redacted) et al.; and CRS Report RL32388, *General Management Laws: Major Themes and Management Policy Options*, by (name redacted).

⁷⁰ See, for example, 31 U.S.C. § 503.

- effectiveness of funded activities (e.g., achievement of programmatic missions and purposes); and
- efficiency of funded activities (e.g., minimization of avoidable “waste” and unnecessary redundancy).

The ways in which RATB, IGs, GAO, OMB, implementing agencies, and nonfederal recipients of funds (e.g., state governments) approach these perspectives on oversight, in the context of ARRA, may reveal lessons learned and patterns over time.

Topics Not Explicitly Addressed by General Oversight Provisions in ARRA

Assessments of ARRA’s implementation and oversight framework likely will be informed by an observer’s values, short- versus long-term orientation, and perspectives on the proper structure and objectives of oversight. Nonetheless, as a point of departure, some initial observations still might be made regarding topics that do not appear to be explicitly addressed by general oversight provisions in ARRA.

Coverage of Division B

Almost all of ARRA’s general oversight provisions apply to provisions included in Division A of the legislation. Very few appear to apply explicitly to Division B (e.g., regarding tax expenditures).⁷¹ At the same time, however, some provisions in Division B are subject to study or oversight in specific cases.⁷² In addition, although some appropriations to IGs in Division A specified that funds were to be used for oversight of activities related to Division A (thereby restricting their use to that purpose), other appropriations to IGs and GAO did not contain a specification of purpose related only to Division A.⁷³ Therefore, some appropriations presumably could be used for oversight of activities and funding associated with Division B.

Consideration of the extent to which ARRA’s general oversight provisions cover Division B may raise questions. For implementation purposes, will Division B receive the same level of oversight as Division A? Will existing oversight mechanisms provide adequate oversight for all of ARRA’s provisions, notwithstanding the focus of ARRA’s general oversight provisions on Division A?⁷⁴

⁷¹ For some discussion about oversight of tax expenditures, see CRS Report RL33641, *Tax Expenditures: Trends and Critiques*, by (name redacted).

⁷² For example, Division B of ARRA requires the Department of the Treasury to conduct studies of certain education incentives (Division B, Title I, Section 1004).

⁷³ With regard to RATB, its appropriations were made “to carry out the provisions of title XV of this Act” (Division A, Title V). In Title XV, RATB’s functions are numerous, but most involve oversight of “covered funds” (Division A, Title XV, Section 1521). The term “covered funds” was defined in Title XV as “any funds that are expended or obligated from appropriations made under this Act” (Section 1501). Section 4 of ARRA states that references to “this Act” shall be treated as “referring only to the provisions of that division.” Therefore, it appears that RATB’s appropriations are provided predominately for the purpose of oversight of activities and funding related to Division A. However, some aspects of the board’s activities appear to allow for the use of some discretion that could have implications for oversight of Division B (e.g., information that is included on the Recovery.gov website).

⁷⁴ At a congressional hearing, GAO indicated that it would dedicate some resources to evaluating the impacts of tax expenditures. Testimony of Gene L. Dodaro, Acting Comptroller General, in U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, *Follow the Money: Transparency and Accountability for Recovery and Reinvestment Spending*, 111th Cong., 1st sess., March 5, 2009, <http://hsgac.senate.gov/public/index.cfm?Fuseaction=Hearings.Detail&HearingID=bdb909ea-7e73-430f-a14d-a136aab767ab>.

Funding for, and Capacity of, State and Local Oversight Entities

State and local governments will receive a surge of many billions of dollars under ARRA, raising the potential issue of whether these governments will have capacity to effectively manage the influx of funds. ARRA authorized agencies that receive funds under Division A to “reasonably adjust applicable limits on administrative expenditures for Federal awards to help award recipients defray the costs of data collection requirements initiated pursuant to [Division A]” (Division A, Title XV, Section 1552). However, it is not clear if state and local oversight entities (e.g., state-level auditors general) will have access to increased resources, if they are needed in order to accommodate a surge in activities funded by ARRA. To what extent might this be an issue that state and local governments confront?

Transparency Regarding Agency and OMB Decision Making

In addition, many of the general oversight provisions in Division A focus on transparency regarding final allocations of funds and the outcomes of expenditures. However, not as much attention in ARRA appears to focus on the process within executive agencies for deciding how to allocate funds in the first place. When early versions of ARRA were being developed, then President-elect Obama and Vice President-elect Biden indicated an Obama Administration position that ARRA should contain no congressionally originated earmarks. The President later made a policy statement on the general subject of congressionally originated earmarks, outside the context of ARRA. He said that “on occasion, ... [p]rojects have been inserted [in legislation and report language] at the 11th hour, without review, and sometimes without merit, in order to satisfy the political and personal agendas of a given legislator, rather than the public interest.”⁷⁵

Some of the same concerns, however, might be raised in the context of OMB and agency decision making during budget execution under ARRA. Agencies frequently are granted considerable discretion during budget execution. Given this discretion, to what extent might political appointees within agencies cause certain projects to be funded, without substantial review or merit? Similar concerns about “presidential earmarking” and “executive earmarking” sometimes have been raised.⁷⁶ At the same time, the Obama Administration has issued presidential memoranda regarding agency use of discretion under ARRA and in contracting.⁷⁷ Experience

⁷⁵White House, “Remarks by the President On Earmark Reform,” press release, March 11, 2009, http://www.whitehouse.gov/the_press_office/Remarks-by-the-President-on-Earmark-Reform/.

⁷⁶For example, concerns were expressed about how the Office of Juvenile Justice and Delinquency Prevention (OJJDP) in the Department of Justice (DOJ) used discretion in FY2007 for a competitive grant program. The concerns resulted in a letter from Chairman Henry A. Waxman of the House Committee on Oversight and Government Reform requesting information from the Attorney General. The inquiry cited a trade publication article that reported several “top-scoring” grant applications, as assessed by peer review, had been passed over for funding by the OJJDP administrator in favor of lower-scoring applications. See letter from Rep. Henry A. Waxman, Chairman, House Committee on Oversight and Government Reform, to Michael B. Mukasey, Attorney General, Mar. 13, 2008, <http://oversight.house.gov/story.asp?ID=1814>; and Patrick Boyle, “For Juvenile Justice, A Panel of One,” *Youth Today*, vol. 17, Dec./Jan. 2008, p. 1. See also coverage in Peter Cohn, “Justice Department Grant Process Gets Waxman’s Attention,” *CongressDailyPM*, Mar. 24, 2008. For broader discussion of the concept of executive earmarking, see CRS Report RL34648, *Bush Administration Policy Regarding Congressionally Originated Earmarks: An Overview*, by (name redacted), (name redacted), and (name redacted).

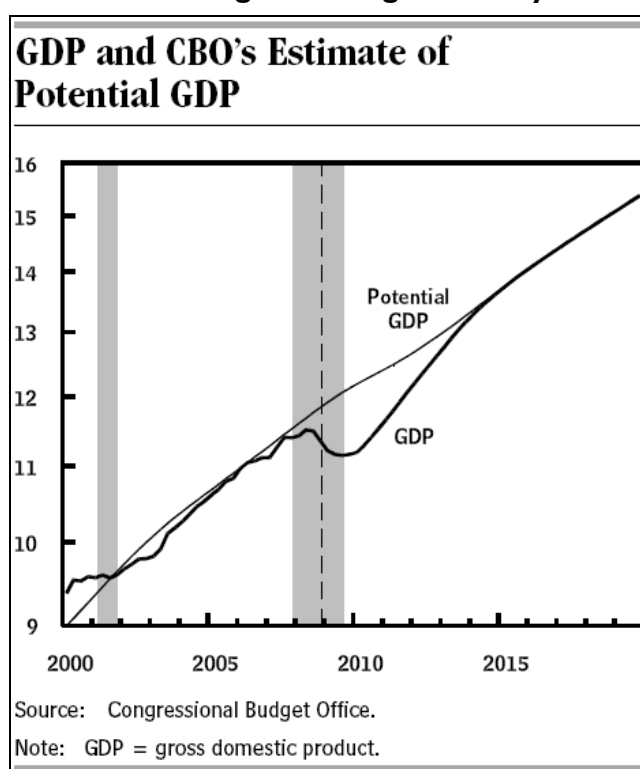
⁷⁷U.S. President (Obama), “Ensuring Responsible Spending of Recovery Act Funds,” memorandum for the heads of executive departments and agencies, March 20, 2009; and “Government Contracting,” memorandum for the heads of executive departments and agencies, March 4, 2009, http://www.whitehouse.gov/the_press_office/economy_in_government_contracting/.

with ARRA's implementation may indicate what level of transparency regarding executive agency and OMB decision making ultimately will be forthcoming.

Appendix A. CBO January 2009 Estimate of GDP Gap, Without Enactment of ARRA

Graphical displays may assist with visualizing the concept of a GDP gap.⁷⁸ CBO’s January 2009 testimony before the Senate Budget Committee included such a graphic, showing an estimate of the GDP gap without enactment of a stimulus law. Based on CBO’s economic forecast, which assumed no changes in policy, CBO projected “that the economy will produce about \$1 trillion less output per year than its estimated potential in each of 2009 and 2010 and significantly less than its potential in 2011 and 2012 as well.”⁷⁹ See **Figure A-1**.

Figure A-1. CBO’s January 2009 Forecast of GDP Gap, Assuming No Changes in Policy



Source: CBO, *Testimony, The Budget and Economic Outlook: Fiscal Years 2009 to 2019*, January 8, 2009, Figure 12, p. 31.

Notes: Numbers on the vertical axis show trillions of dollars, adjusted for inflation. The gray areas indicate actual or estimated time periods of recessions. The dashed vertical line indicates when CBO produced its forecast. After the projected end of the recession that began in late 2007 (i.e., end of the second gray area), CBO forecasted actual output (i.e., GDP) to grow temporarily at a rate faster than potential GDP, until GDP equals potential GDP and resumes its estimated long-term rate of growth.

⁷⁸ For economic analysis of ARRA, see CRS Report R40104, *Economic Stimulus: Issues and Policies*, by (name redacted), (name redacted), and (name redacted).

⁷⁹ CBO, *Testimony, The Budget and Economic Outlook: Fiscal Years 2009 to 2019*, prepared statement of Robert A. Sunshine, acting director, before the Senate Committee on the Budget, January 8, 2009, p. 31.

Appendix B. Table of Selected ARRA General Oversight Provisions

Table B-I. Selected Substantive General Oversight Provisions in ARRA, Including Reporting Requirements

Subject	ARRA Citation	Overview of Provision (see also next column)	Reporting Requirement(s)
IG and GAO Reviews and Reports			
IG reviews, and access to information and employees	Division A, Title XV, Sections 1514 and 1515	Any IG of a federal department or executive agency shall review, as appropriate, “any concerns raised by the public about specific investments using funds made available in [Division A].” With respect to each contract or grant awarded using covered funds, the statute authorizes any representative of an “appropriate” IG who is appointed under Sections 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.) (i.e., appointed by the President or by the head of a designated federal entity, respectively) to examine certain records and interview certain officers and employees. Section 1501 defines “covered funds” as any funds expended or obligated under from appropriations made under Division A. The specified records include “any records of the contractor or grantee, any of its subcontractors or subgrantees, or any state or local agency administering such contract, that pertain to, and involve transactions relating to, the contract, subcontract, grant, or subgrant.” The authority to interview officers or employees provides that “any officer or employee of the contractor, grantee, subgrantee, or agency” may be interviewed regarding the transactions noted above.	Findings from a review that are not related to an ongoing criminal proceeding are required to be “relayed immediately” to the head of the department and agency concerned. The findings of such reviews, along with any audits conducted by an IG of funds made available in Division A, are required to be posted on the IG’s website and linked to the website established by RATB under Division A, Title XV, Section 1526. A portion of a report may be redacted to the extent it would disclose information that is “protected” from public disclosure under the Freedom of Information Act (FOIA; 5 U.S.C. § 552) and the Privacy Act (5 U.S.C. § 552a). (On January 21, 2009, President Obama issued a memorandum to the heads of executive departments and agencies outlining Administration policy on FOIA and directing the Attorney General to issue new guidelines to agencies. ^a)
GAO reviews and reports, and access to information and employees	Division A, Title IX, Sections 901 and 902	Requires the Comptroller General (CG) to conduct bimonthly reviews on the use of funds made available in Division A by selected states and localities. The CG is required to prepare reports on these reviews. The CG is authorized to examine “any records related to obligations and use by any Federal, State, or local government agency of funds made available in [Division A].” Requires that each contract awarded using funds made available in Division A shall provide that the CG and his representatives are authorized to examine any records of the contractor or any of its subcontractors, or any state or local agency administering such a contract, “that directly pertain to, and involve transactions relating to, the contract or subcontract.” Requires that each contract also provide that the CG and his representatives are authorized to interview any officer or employee of the contractor or any of its subcontractors, or of any state or local government agency administering the contract, regarding such transactions.	The CG is required to prepare reports on the subject of the bimonthly reviews. The reports are required to be posted on the Internet, along with any audits of funds made available by Division A. The reports and audits are required to be linked to the website established by RATB under Division A, Title XV, Section 1526. A portion of a report or audit may be redacted when made publicly available, if the portion would disclose information that is not subject to disclosure under FOIA (GAO is not covered as an “agency” under FOIA, 5 U.S.C. § 552(f).)

Subject	ARRA Citation	Overview of Provision (see also next column)	Reporting Requirement(s)
Reports on Use of Funds			
Recipient reports	Division A, Title XV, Section 1512(c)	Requires certain reporting by a “recipient” of “recovery funds” within 180 days of enactment, as a condition of receipt of funds. Defines recipient as a state or any entity “other than an individual” that receives funds made available from appropriations in Division A (including funds received through grant, loan, or contract) “directly from the Federal Government.” Defines these funds as “recovery funds.” Requires some information in recipient reports to include data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 (FFATA; P.L. 109-282). (For more information about FFATA, see CRS Report RL34718, <i>The Federal Funding Accountability and Transparency Act: Implementation and Proposed Amendments</i> , by (name redacted).)	Not later than 10 days after the end of each calendar quarter, each recipient receiving funds from a federal agency is required to submit a report to the agency. The report is required to contain (1) the total amount of recovery funds received from that agency; (2) the amount of received funds that were expended or obligated to projects or activities; (3) a “detailed list” of all projects or activities for which recovery funds were expended or obligated; and (4) “detailed information on any subcontracts or subgrants awarded by the recipient.” Each item on the “detailed list” (i.e., the list required by (3)) is required to include the name of the project or activity, a corresponding description, an evaluation of its “completion status,” and “an estimate of the number of jobs created and the number of jobs retained by the project or activity.” For infrastructure investments made by state and local governments, an item on the “detailed list also is required to include “the purpose, total cost, and rationale of the agency for funding the infrastructure investment with funds made available under [Division A],” and the name of an agency contact person “if there are concerns with the infrastructure investment.” The “detailed information” on subcontracts and subgrants (i.e., the information required by (4)) is required to include “the data elements required to comply with [FFATA], allowing aggregate reporting on awards below \$25,000 or to individuals, as prescribed by the Director of [OMB].”
Agency reports	Division A, Title XV, Section 1512(d)	Requires certain reporting by each agency that made recovery funds available to any recipient. In Title XV, the term “agency” has the meaning given under 5 U.S.C. § 551 (Administrative Procedure Act).	Not later than 30 days after the end of each calendar quarter, each agency that made recovery funds available to any recipient is required to make the information submitted in recipient reports (i.e., the reports required by Section 1512(c)) publicly available by posting the information on “a website.”

Subject	ARRA Citation	Overview of Provision (see also next column)	Reporting Requirement(s)
Other reports	Division A, Title XV, Section 1512(e)	Requires CBO and GAO to “comment” on recipients’ reports of jobs created and retained.	Within 45 days of the submission of recipient reports (i.e., the reports required by Section 1512(c)), CBO and GAO are required to “comment on the information” relating to “an estimate of the number of jobs created and the number of jobs retained by the project or activity.” This is to be done “for any reports submitted” under Section 1512(c). (ARRA does not specify the audience to whom the comments are due to be submitted or the means by which comments are to be submitted.)
Compliance, guidance, and registration	Division A, Title XV, Section 1512(f), 1512(g), and 1512(h)	Within 180 days of enactment, as a condition for receipt of funds under Division A, federal agencies shall require recipients to provide information required to be included in recipient reports. In coordination with the director of OMB, agencies are required to “provide for user-friendly means” for recipients to meet requirements. Funding recipients that are required to report FFATA-compliant information are required to register with the Central Contractor Registration database or complete other registration requirements as determined by the director of OMB.	N/A (not applicable)
Set-aside for state and local government reporting and recordkeeping	Division A, Title XV, Section 1552	After following notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. § 553), federal agencies receiving funds under Division A may “reasonably adjust applicable limits on administrative expenditures for Federal awards to help award recipients defray the costs of data collection requirements initiated pursuant to [Division A].” (ARRA cites 5 U.S.C. § 500 instead of § 553.)	None, but any adjustments presumably would be published in the <i>Federal Register</i> .
State and Local Certification			
State and local certification requirements for infrastructure investments	Division A, Title XV, Section 1511	With respect to “covered funds” made available to state or local governments for infrastructure investments, the governor, mayor, or other chief executive, as appropriate, is required to certify that “the infrastructure investment has received the full review and vetting required by law and that the chief executive accepts responsibility that the infrastructure investment is an appropriate use of taxpayer dollars.” Section 1501 defines “covered funds” as any funds expended or obligated under from appropriations made under Division A. A state or local agency may not receive infrastructure investment funding from funds made available by Division A “unless this certification is made and posted.”	The certification is required to include a description of the investment, the estimated total cost, and the amount of covered funds to be used. The certification is required to be posted “on a website” and linked to the website established by RATB under Division A, Title XV, Section 1526.

Subject	ARRA Citation	Overview of Provision (see also next column)	Reporting Requirement(s)
Certification by governor or acceptance by state legislature	Division A, Title XVI, Section 1607	Not later than 45 days after enactment, a governor must certify that (1) the state will request and use funds provided by Division A, and (2) the funds will be used to create jobs and promote economic growth. If funds are not accepted by the governor, acceptance by the state legislature by means of the adoption of a concurrent resolution “shall be sufficient to provide funding to such state.”	A certification-related document may be issued. For analysis of this provision, see CRS Report R40467, <i>Authority of State Legislatures to Accept Funds Under the American Recovery and Reinvestment Act of 2009</i> , by (name redacted).
Establishment and Functions of RATB and Advisory Panel			
Establishment of RATB, termination	Division A, Title XV, Sections 1521 and 1530	Establishes the Recovery Accountability and Transparency Board “to coordinate and conduct oversight of covered funds to prevent fraud, waste, and abuse.” RATB terminates at the end of FY2013.	N/A
Chairperson of the board	Division A, Title XV, Section 1522	Requires the President to designate or appoint a chairperson, using any of three options: (a) designate the OMB deputy director for management; (b) designate another Senate-confirmed presidential appointee; or (c) appoint an individual, subject to Senate confirmation. If (c), the individual is required to be compensated at the rate of basic pay for level IV of the Executive Schedule.	N/A
Board membership in addition to chair, and term length of members	Division A, Title XV, Section 1522	Ten IGs are specified as being members of RATB. These include IGs from USDA, DOC, ED, DOE, HHS, DHS, DOJ, DOT; Treasury, and the Treasury IG for Tax Administration. In addition, the President may designate as a member any other IG from “any agency that expends or obligates covered funds.”	N/A

Subject	ARRA Citation	Overview of Provision (see also next column)	Reporting Requirement(s)
Functions of the board; reporting requirements	Division A, Title XV, Sections 1523 and 1528	<p>The board is required to, in general, “coordinate and conduct oversight of covered funds in order to prevent fraud, waste, and abuse.” In addition, RATB has six enumerated functions: (A) reviewing whether reporting for contracts and grants “meets applicable standards” and “specifies the purpose of the contract or grant and measures of performance”; (B) reviewing whether competition requirements for contracts and grants have been “satisfied”; (C) auditing or reviewing covered funds to determine whether “wasteful spending, poor contract or grant management, or other abuses are occurring,” and referring matters it considers appropriate for investigation to the IG for the agency that disbursed the covered funds; (D) reviewing whether there are “sufficient qualified acquisition and grant personnel overseeing covered funds”; and (E) reviewing whether acquisition and grant personnel receive “adequate training”; and (F) reviewing whether there are “appropriate mechanisms for interagency collaboration,” including coordinating and collaborating “to the extent practicable” with the Inspector Generals Council on Integrity and Efficiency. The board also is required to coordinate oversight activities with the Comptroller General and state auditors. Because the term “covered funds” is defined in Title XV as “any funds that are expended or obligated from appropriations made under [Division A],” activities undertaken by agencies in compliance with Division B would appear to not be within scope of RATB’s charge, unless the activities were funded by Division A or specific ARRA provisions directed otherwise.</p>	<p>RATB’s functions suggest issues that may receive attention in RATB’s reports and for which agencies may be held accountable. RATB is tasked with four categories of reporting requirements: “flash” reports, “other” reports, quarterly reports, and annual reports. Requires the board to submit to the President and Congress, including the Committees on Appropriations of the Senate and House of Representatives, “flash reports” on “potential management and funding problems that require immediate attention.” RATB also is required to submit to Congress “such other reports as the Board considers appropriate on the use and benefits of funds made available in [Division A].” Quarterly reports are required to be submitted to the President and Congress, including the appropriations committees of both chambers. These reports are to summarize “the findings of the Board and the findings of inspectors general of agencies.” The board is authorized also to submit “additional reports as appropriate.” RATB is required to submit annual reports to the President and Congress (including the appropriations committees of both chambers), which are to consolidate “applicable quarterly reports.” All reports submitted under these provisions are required to be made publicly available and posted on the website established by RATB under Division A, Title XV, Section 1526. Any portion of a report may be redacted when made publicly available, if the portion would disclose information that is not subject to disclosure under FOIA and the Privacy Act.</p>
RATB recommendations and agency responses	Division A, Title XV, Section 1523	<p>RATB is required to make recommendations to agencies “on measures to prevent fraud, waste, and abuse relating to covered funds.”</p>	<p>An agency that receives a recommendation from RATB is required to submit a “responsive report” to the President, the congressional committees of jurisdiction (including the appropriations committees of both chambers), and RATB not later than 30 days after receipt of the recommendation. A responsive report is required to indicate “whether the agency agrees or disagrees with the recommendations,” and “any actions the agency will take to implement the recommendations.” (Beyond the 30-day requirement for agencies to submit a report responding to board recommendations, an agency is not required to report on subsequent implementation.)</p>

Subject	ARRA Citation	Overview of Provision (see also next column)	Reporting Requirement(s)
Powers of the board	Division A, Title XV, Section 1524	<p>RATB is required to conduct audits and reviews of spending of covered funds. These activities are required to be coordinated with the IGs of relevant agencies to avoid duplication and overlap of work. The board is authorized to conduct its own independent audits and reviews and also to collaborate on audits with any IG of an agency. In conducting audits and reviews, RATB has authorities provided under Section 6 of the Inspector General Act of 1978 (i.e., various IG authorities), may issue subpoenas to compel testimony from nonfederal officers and employees, and may enforce the subpoenas in the same manner as IG subpoenas under Section 6 of the Inspector General Act of 1978. RATB is required to carry out its powers in accordance with standards prescribed in Section 4(b)(1) of the Inspector General Act of 1978. The board is authorized to hold public hearings, to which the head of each agency is required to make all officers and employees available. RATB is authorized to enter into certain contracts. RATB has authority to transfer up to 100% of its appropriated funds to “any office of inspector general, the Office of Management and Budget, the General Services Administration, and the [Recovery Independent Advisory Panel established by Section 1541].” Section 1524(f) authorizes the board to make these transfers for “expenses to support administrative support services and audits, reviews, or other activities related to oversight by the Board of covered funds.” Further insight into congressional intent may be gleaned from the joint explanatory statement, which says “[t]he conferees note that funding appropriated to the Board will support activities related to accountability, transparency, and oversight of spending under the Act. Funds may be transferred to support the operations of the Recovery Independent Advisory Panel established under section 1541 of the Act and for technical and administrative services and support provided by the General Services Administration. Funds may also be transferred to the Office of Management and Budget for coordinating and overseeing the implementation of the reporting requirements established under section 1526 of the Act” (H.Rept. 111-16, p. 510).</p>	<p>No provision appears to specifically require RATB to report on the use of its appropriations transfer authority. However, because RATB would appear to be an “agency” for purposes of Title XV, it appears that RATB would be required to comply with requirements for an agency to post a “plan ... for using funds made available in [Division A]” on the board’s website (Section 1526(c)(11)). The same requirement would seem to apply to OMB, GSA, IGs, and the Recovery Independent Advisory Panel, if any received transferred funds from RATB. For more information about requirements for the board’s website, see below in this table (Title XV, Section 1526).</p>

Subject	ARRA Citation	Overview of Provision (see also next column)	Reporting Requirement(s)
RATB staffing, administrative support, and information access	Division A, Title XV, Section 1525	The board may exercise most provisions of 5 U.S.C. § 3161 (relating to employment and compensation of employees in a temporary organization established by law or executive order), subject to time periods of appointment that may not exceed the board's termination date at the end of FY2013. (Pay provisions of 5 U.S.C. § 3161 allow the rate of basic pay for an executive director to be up to the maximum rate of pay for the Senior Executive Service (SES) under 5 U.S.C. § 5382, which under some conditions may be level II of the Executive Schedule.) Upon RATB's request, the head of "any agency or other entity of the Federal Government" is required, "insofar as is practicable and not in contravention of any existing law," to furnish information or assistance to RATB or an authorized designee. GSA is required to provide the board with administrative support services, including office space.	If information or assistance requested by RATB is "unreasonably refused or not provided" in the board's judgment, RATB is required to report the circumstances "without delay" to congressional committees of jurisdiction, including the House and Senate Appropriations Committees.

Subject	ARRA Citation	Overview of Provision (see also next column)	Reporting Requirement(s)
Establishment of RATB website	Division A, Title XV, Section 1526	Requires the board to establish and maintain a “user-friendly, public-facing website to foster greater accountability and transparency in the use of covered funds,” no later than 30 days after enactment. (This website was established in anticipation of ARRA’s enactment as Recovery.gov.) The website’s purpose is to “be a portal or gateway to key information relating to [Division A] and provide connections to other Government websites with related information.” The board is tasked with ensuring the website meets 15 requirements concerning content and function. Many of the 15 requirements are essentially reporting requirements. These include providing: (1) materials about what Division A means for citizens; (2) accountability information, including audit findings from IGs and GAO; (3) data on relevant economic, financial, grant, and contract information; (4) detailed data on contracts awarded, including, among other things, “information about the competitiveness of the contracting process”; (5) printable reports of funds obligated by month to each state and congressional district; (6) a means for the public to give feedback on the performance of contracts; (7) detailed information on federal contracts and grants, to include certain data elements required by FFATA; (8) a link to estimates of jobs “sustained or created” by Division A; (9) a link to information about announcements of grant competitions and solicitations for contracts to be awarded; (10) links to other government websites with information about covered funds, including federal agency and state websites; (11) a plan from “each Federal agency for using funds made available in [Division A] to the agency; (12) information on “Federal allocations of formula grants and awards of competitive grants using covered funds”; (13) information on “Federal allocations of mandatory and other entitlement programs by State, county, or other appropriate geographical unit; (14) to the extent practical, links to and information about how to access certain job opportunities, “in order to direct job seekers to job opportunities created by [Division A]”; and (15) necessary enhancements and updates.	In addition to the requirements of Section 1526 in the previous column, several other provisions in ARRA’s Division A require the posting of certain information on RATB’s website. See references elsewhere in this column, including for Title IX, Section 901 (links to GAO reports and audits); Title XV, Sections 1511 (relating to state and local certifications), 1514 (IG reviews), 1523 (RATB reports), and 1554 (non-fixed-price and non-competitively awarded contracts); and Title XVI, Section 1612 (use of general 1% transfer authority). Some reports required by Division A (e.g., Title XV, Section 1513 (Council of Economic Advisers reports)) and information about some activities authorized by Division A (e.g., Title XV, Section 1524 (RATB’s 100% transfer authority)) are not explicitly required to be posted on the RATB website. RATB is authorized to exclude posting contractual or other information on a “case-by-case basis when necessary to protect national security or protect information that is not subject to disclosure under [FOIA and the Privacy Act].” It is not clear the extent to which information will be included on the website about activities and funding associated with Division B of ARRA.
Independence of IGs	Division A, Title XV, Section 1527	Nothing in Title XV, Subtitle B (Sections 1521-1530, establishing RATB) shall affect the independent authority of an IG “to determine whether to conduct an audit or investigation of covered funds.” An IG’s decision “shall be final.”	If RATB requests that an IG conduct or refrain from conducting an audit or investigation and the IG rejects the request in whole or in part, the IG is required to not later than 30 days after rejecting the request submit a “report” to RATB, the head of the applicable agency, and the congressional committees of jurisdiction, including the appropriations committees of both chambers. The report is required to state the reason that the IG has rejected the request.

Subject	ARRA Citation	Overview of Provision (see also next column)	Reporting Requirement(s)
Establishment of Recovery Independent Advisory Panel (RIAP)	Division A, Title XV, Sections 1541-1546	Establishes a panel of five presidentially appointed members to advise RATB on how it could prevent fraud, waste, and abuse relating to covered funds. Provisions address hearings, securing information from federal agencies, using the U.S. mails, gifts, compensation and travel expenses for members, appointment of staff, detail of federal employees, procurement of services, and administrative support. RIAP terminates at the end of FY2013.	N/A
Oversight Provisions Relating to Additional Budgetary, Contractual, Economic, Environmental, and Whistleblower Matters			
Separate Treasury accounts for Division A appropriations	Division A, Title XV, Section 1551	Requires the Secretary of the Treasury to “ensure that all funds appropriated in [Division A] shall be established in separate Treasury accounts,” unless waived by the director of OMB, in order to “facilitate tracking these funds through Treasury and agency accounting systems.”	For reporting purposes, separate accounts will allow separation of supplemental Division A-provided funding from previous appropriations that correspond to the same programs, projects, and activities.
General transfer authority, and oversight thereof	Division A, Title XVI, Section 1612	Provides that “[d]uring the current fiscal year, not to exceed 1 percent of any appropriation made available by [Division A] may be transferred by an agency head between such appropriations funded in [Division A] of that department or agency,” subject to several provisos and reporting requirements.	Requires that an agency head notify the Committees on Appropriations of the Senate and House of Representatives of the transfer 15 days in advance. Also requires that notice of any transfer made pursuant to this authority be posted “15 days following such transfer” to the website established by RATB.
Limit on funds	Division A, Title XVI, Section 1604	Prohibits use of funds made available by Division A from being used by a state or local government or a private entity “for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.”	N/A
Non-fixed-price or non-competitively awarded contracts	Division A, Title XV, Section 1554	Requires that contracts funded under Division A be awarded as fixed-price contracts through the use of competitive procedures “to the maximum extent possible.”	Requires that “a summary” of any contract awarded “that is not fixed-price and not awarded using competitive procedures” shall be posted in “a special section” of the RATB website required to be established by Title XV, Section 1526. (On March 4, 2009, President Obama issued a memorandum to the heads of executive departments and agencies outlining Administration policy on government contracting, directing the director of OMB and other officials to issue new guidelines to agencies regarding “noncompetitive” contracts. ^b)
Employment and economic impacts of stimulus legislation	Division A, Title XV, Section 1513	Requires chairperson of Council of Economic Advisers (CEA), an entity located in the EOP, to submit reports that “detail the impact of programs funded through covered funds on employment, estimated economic growth, and other key economic indicators.” The reporting is required to be done in consultation with the director of OMB and the Secretary of the Treasury.	Reports are required to be sent quarterly to the Committees on Appropriations of the Senate and House of Representatives. Because Section 1501 defines “covered funds” as any funds expended or obligated under from appropriations made under Division A, the provision does not apply to provisions in Division B (e.g., Title I tax changes).

Subject	ARRA Citation	Overview of Provision (see also next column)	Reporting Requirement(s)
Compliance with National Environmental Policy Act (NEPA)	Division A, Title XVI, Section 1609	Premised on several “findings,” provision says “[a]dequate resources within this bill must be devoted to ensuring that applicable environmental reviews under [NEPA] are completed on an expeditious basis and that the shortest existing applicable process under [NEPA] shall be utilized.” For more information on NEPA, see CRS Report RL33152, <i>The National Environmental Policy Act (NEPA): Background and Implementation</i> , by (name redacted).	Requires the President to report to the Senate Environment and Public Works Committee and the House Natural Resources Committee every 90 days following the date of enactment until the end of FY2011 on the status and progress of projects and activities funded by Division A with respect to compliance with NEPA “requirements and documentation.” The provision makes no reference to posting reports on the Internet.
Protections for state and local government and contractor whistleblowers	Division A, Title XV, Section 1553	Employees of nonfederal employers receiving funds may not be discharged, demoted, or otherwise subject to a reprisal for disclosing to RATB, an IG, the CG, a Member of Congress, a state or federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct), a court or grand jury, the head of a federal agency, or their representatives, several kinds of information relating to covered funds, including about mismanagement, waste, a substantial and specific danger to public health or safety, an abuse of authority, or a violation of law, rule, or regulation related to an agency contract or grant. Provides for investigation of complaints by IGs, remedy and enforcement authority, nonenforceability of certain waivers of rights and remedies, and requirement for any employer receiving covered funds to post notice of certain rights and remedies. An IG has discretion not to investigate complaints, in which case the complainant shall assume the right to a civil remedy.	Upon completion of an investigation, the investigating IG is required to submit a report of the findings to the person making the complaint, the person’s employer, the head of the appropriate agency, and RATB. An IG is required to include in semi-annual reports to Congress a list of the investigations the IG decided not to conduct.

Source: CRS

- a. See U.S. President (Obama), “Freedom of Information Act,” memorandum for the heads of executive departments and agencies, January 21, 2009, http://www.whitehouse.gov/the_press_office/Freedom_of_Information_Act/.
- b. U.S. President (Obama), “Government Contracting,” memorandum for the heads of executive departments and agencies, March 4, 2009, http://www.whitehouse.gov/the_press_office/economy_in_government_contracting/.

Appendix C. Detail of ARRA Appropriations to IGs, GAO, and RATB

IGs are listed in alphabetical order of their parent departments, followed by IGs located within independent agencies. GAO and RATB are listed at the table's end. The table indicates the division and title of ARRA in which the appropriation was included, the funding amount, the period of availability for the funds, and, in the last column, whether appropriations language specified that resources be used only for the purpose of overseeing ARRA-provided funds.

Table C-1. Appropriations for IGs, GAO, and RATB in ARRA (P.L. 111-5)

Entity	Div. / Title	Budget Authority (\$ millions)	Available Until	ARRA Oversight Purpose Specified?
Inspectors General				
Dept. of Agriculture (USDA)	A / I	\$22.5	end of FY2013	yes ^a
Dept. of Commerce (DOC)	A / II	10.0	expended	yes
	A / II	6.0	end of FY2013	no
Dept. of Defense (DOD)	A / III	15.0	end of FY2011	no
Dept. of Education (ED)	A / VIII	14.0	end of FY2012	yes
Dept. of Energy (DOE)	A / IV	15.0	end of FY2012	no
Dept. of Health and Human Services (HHS)	A / VIII	17.0	end of FY2012	no
	B / V	31.25	end of FY2011	yes
Dept. of Homeland Security (DHS)	A / VI	5.0	end of FY2012	yes
Dept. of Housing and Urban Development (HUD)	A / XII	15.0	end of FY2013	no ^b
Dept. of the Interior (DOI)	A / VII	15.0	end of FY2012	no
Dept. of Justice (DOJ)	A / II	2.0	end of FY2013	no
Dept. of Labor (DOL)	A / VIII	6.0	end of FY2012	yes
Dept. of State (DOS)	A / XI	2.0	end of FY2010 ^c	no ^d
Dept. of Transportation (DOT)	A / XII	20.0	end of FY2013	yes
Dept. of the Treasury, Treasury IG for Tax Administration (TIGTA)	A / V	7.0	end of FY2013	yes
Dept. of the Treasury (Treasury)	A / V	7.0	end of FY2013	yes
Dept. of Veterans Affairs (VA)	A / X	1.0	end of FY2011	yes
Corporation for National and Community Service	A / VIII	1.0	end of FY2012	no
Environmental Protection Agency (EPA)	A / VII	20.0	end of FY2012	no
General Services Administration	A / V	7.0	end of FY2013	yes
National Aeronautics and Space Administration (NASA)	A / II	2.0	end of FY2013	no

Entity	Div. / Title	Budget Authority (\$ millions)	Available Until	ARRA Oversight Purpose Specified?
National Science Foundation (NSF)	A / II	2.0	end of FY2013	no
Small Business Administration (SBA)	A / V	10.0	end of FY2013	yes
Social Security Administration (SSA)	A / VIII	2.0	end of FY2012	yes
Total, Appropriations for IGs		254.75		
Non-IG Entities				
Government Accountability Office (GAO)	A / IX	25.0	end of FY2010	no
Recovery Accountability and Transparency Board (RATB) ^e	A / V	84.0	end of FY2011	yes ^f
Grand Total, Appropriations for IGs, GAO, and RATB		363.75		

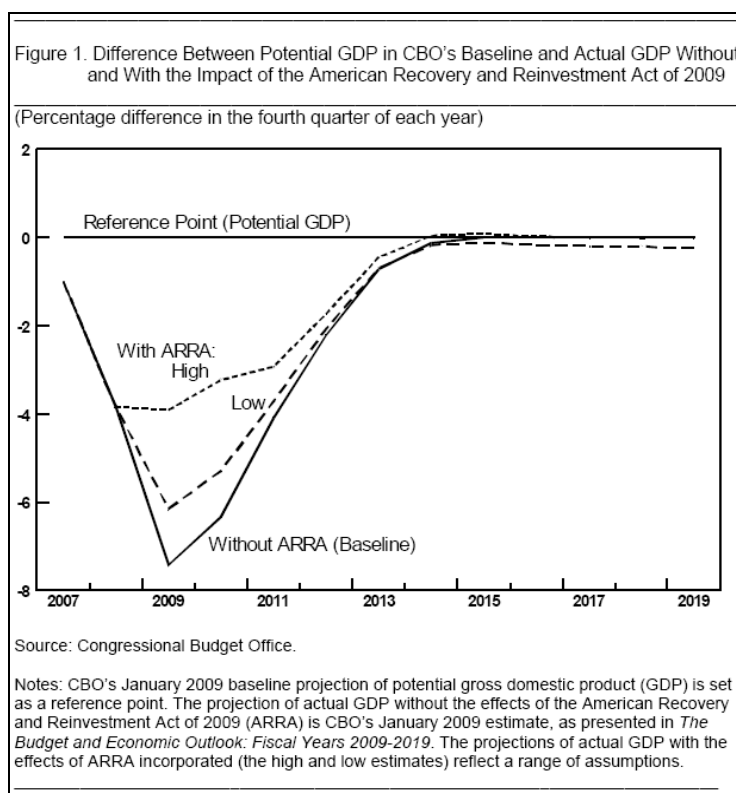
Source: CRS; P.L. 111-5 and H.Rept. 111-16.

- a. Report language in the joint explanatory statement indicated that \$7.5 million is for oversight of the U.S. Forest Service (H.Rept. 111-16, p. 413).
- b. Report language in the joint explanatory statement said the “funding will assist the IG in monitoring the use of these funds to ensure that funding provided in this bill is used in an effective and efficient manner” (H.Rept. 111-16, p. 473).
- c. The Department of State IG’s appropriation language was silent on its period of availability, therefore making the funding available until the end of FY2010 under a general provision in Division A, Title XVI (Section 1603).
- d. Report language in the joint explanatory statement indicated the funds are for “oversight of the funds made available to the Department of State by [Division A]” (H.Rept. 111-16, p. 468).
- e. Division A, Title V (“Financial Services and General Government”) provided funds for the “Recovery Act Accountability and Transparency Board” to carry out provisions in Title XV of Division A (“Accountability and Transparency”). Section 1521 of Title XV established the slightly differently named “Recovery Accountability and Transparency Board.”
- f. Many of RATB’s functions and duties refer to “covered funds,” which Title XV defined as funds provided by Division A (Title XV, Section 1501). RATB has authority under Division A, Title XV, Section 1524(f) to transfer up to 100% of its funds to “any office of inspector general, the Office of Management and Budget, the General Services Administration, and the [Recovery Independent Advisory Panel established by Section 1541].” Section 1524(f) authorized the board to make these transfers for “expenses to support administrative support services and audits, reviews, or other activities related to oversight by the Board of covered funds.” Section 1501 defined “covered funds” as “any funds that are expended or obligated from appropriations made under [Division A].” See this report’s next table for more information about the 100% transfer authority.

Appendix D. Early CBO Estimates of GDP Gap, Including Impact of ARRA

Congress required in ARRA's Division A that the law's impact on economic indicators be evaluated (Title XV, Section 1513). Congress may conduct oversight over the federal government's attempts to diminish the recession's GDP gap and ARRA's contribution to the effort. Graphical displays may assist with visualizing the concept.⁸⁰ After ARRA was enacted, CBO prepared a year-by-year estimate of the short-term economic impacts of the law. CBO noted that "[t]he macroeconomic impacts of any economic stimulus program are very uncertain," and that "[e]conomic theories differ in their predictions about the effectiveness of stimulus."⁸¹ Nonetheless, CBO developed a range of estimates of the impacts of ARRA "that encompasses a majority of economists' views." CBO's letter included a graphic that showed the estimated impact of ARRA on actual GDP.

Figure D-1. CBO's March 2009 "High" and "Low" Estimates of ARRA's Impact on Previously Forecasted GDP Gap (January 2009 Forecast)



Source: Letter from Douglas W. Elmendorf, Director, to Senator Charles E. Grassley, Ranking Member, Senate Committee on Finance, March 2, 2009, Figure 1 (unnumbered p. 13 of PDF file).

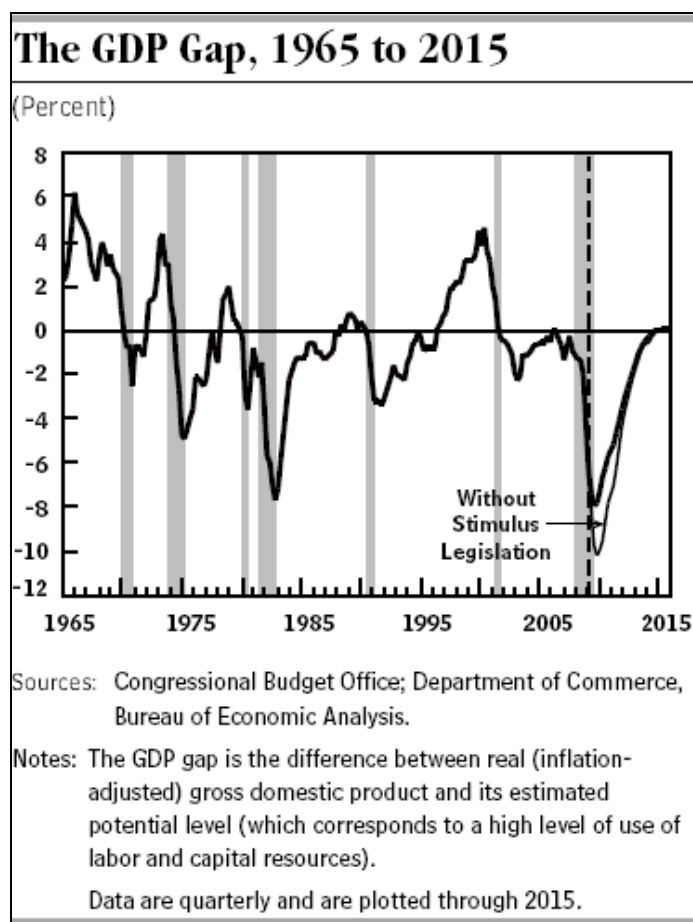
⁸⁰ For analysis of economic issues related to ARRA, see CRS Report R40104, *Economic Stimulus: Issues and Policies*, by (name redacted), (name redacted), and (name redacted).

⁸¹ Letter from Douglas W. Elmendorf, Director, to Senator Charles E. Grassley, Ranking Member, Senate Committee on Finance, March 2, 2009, p. 1, <http://www.cbo.gov/doc.cfm?index=10008>.

CBO explained that the previous figure “shows three different projections of the economy’s actual output: CBO’s January baseline projection of GDP (which does not include the effects of ARRA), GDP using CBO’s high estimate of the effects of the legislation; and GDP using CBO’s low estimate of the effects of the legislation.”

CBO subsequently updated its economic forecast of the GDP gap in its analysis of the Obama Administration’s preliminary budget proposals for FY2010.⁸² In two graphics, CBO showed “the middle of the range of the agency’s [March 2009] estimates of ARRA’s impact on GDP and employment.”⁸³

Figure D-2. CBO’s Updated March 2009 Forecast of GDP Gap, Showing March 2009 “Middle” Estimated Impact of ARRA



Source: CBO, *A Preliminary Analysis of the President’s Budget and an Update of CBO’s Budget and Economic Outlook*, March 2009, Figure 2-1, p. 21.

In brief, CBO estimated ARRA likely would contribute to helping end the recession, in concert with actions by the Federal Reserve and Department of the Treasury.

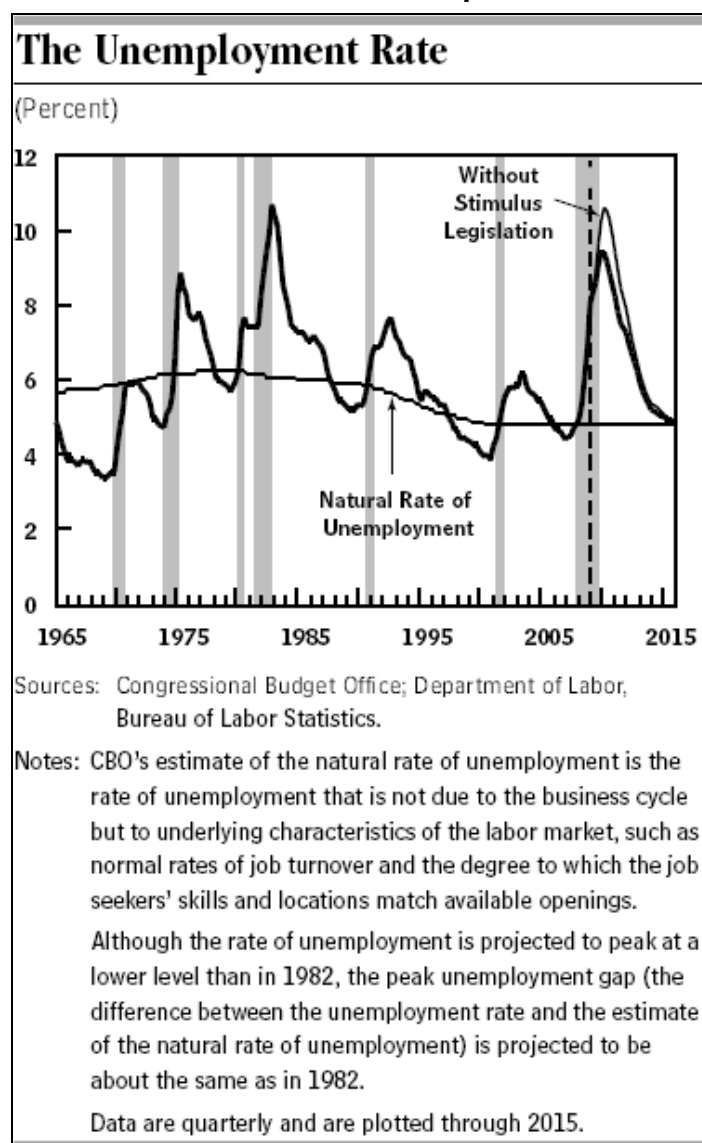
⁸² CBO, *A Preliminary Analysis of the President’s Budget and an Update of CBO’s Budget and Economic Outlook*, March 2009, <http://www.cbo.gov/doc.cfm?index=10014>.

⁸³ *Ibid.*, p. 21.

The current recession, which began in December 2007, took a sudden and severe turn for the worse late last year. Of the 4.4 million jobs lost since the recession began, more than half have been lost in just the past four months. According to the Congressional Budget Office's economic projections, the economy will continue to deteriorate for some time, although the adoption of the American Recovery and Reinvestment Act and very aggressive actions by the Federal Reserve and the Treasury will help end the recession this fall.⁸⁴

CBO performed similar analysis regarding the unemployment rate. See **Figure D-3**, below.

Figure D-3. CBO's Updated March 2009 Forecast of Unemployment, Showing March 2009 "Middle" Estimated Impact of ARRA



Source: CBO, *A Preliminary Analysis of the President's Budget and an Update of CBO's Budget and Economic Outlook*, March 2009, Figure 2-2, p. 21.

⁸⁴ Ibid., p. 19.

CBO noted, however, that the range of estimates of ARRA’s impact “is quite large,”⁸⁵ and that CBO’s “current [economic] forecast, particularly for the near term, is subject to a greater than normal degree of uncertainty.”⁸⁶

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Oversight Issues for Specific Agencies or Policy Areas	Relevant CRS Experts	7-....	n/a

⁸⁵ Ibid., p. 21.

⁸⁶ Ibid., p. 19.

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