Allocation & Administration of American Recovery & Reinvestment Act of 2009 Funding by the California Energy Commission and Department of Community Services & Development
Part II

This hearing is a follow-up to a hearing on August 1, 2011, examining whether the California Energy Commission (CEC) and the California Department of Community Services and Development (DCSD) are on track to meet 2012 spending deadlines for energy efficiency programs funded by the American Recovery and Reinvestment Act of 2009 (ARRA). CEC received $226 million in ARRA State Energy Program funds that must be spent by April 30, 2012. DCSD received $185 million in ARRA funds to supplement an ongoing low-income weatherization program that must be spent by March 31, 2012. The California State Auditor reported in July that tens of millions of ARRA dollars were at risk of reverting to the federal government because of delays and other challenges with program implementation by both agencies and their contractors. Moreover, these spending delays have impeded achieving ARRA's primary goal of immediately creating jobs and economic stimulus.

The background for the August 1 hearing provides a full description of the energy efficiency and weatherization programs administered by CEC and DCSD and also summarizes the State Auditor conclusions regarding at-risk funds.[1] Since August 1, CEC and DCSD have implemented enhanced monitoring of contractor performance, reallocated funds from under-performing contractors, and taken other steps to increase the likelihood that all ARRA funds will be spent by their respective April 30 and March 31 expenditure deadlines. Attached are charts presenting the current status of each agency's expenditures, with notations to reflect significant remaining challenges. The following are major developments since August 1 that will be discussed at the hearing:

California Energy Commission

- DOF Audit and Request for Plans – In August, CEC engaged the Department of Finance, Office of State Audits and Evaluations (DOF) to conduct an audit with on-site visits to evaluate the ability of grantees and loan recipients to fully expend awarded funds by the deadline. Based on DOF's findings, CEC sent letters in mid-September to 12 contractors identified as unlikely to meet

[1] August 1, 2011 Senate EU&C Committee informational hearing background is available at: http://seuc.senate.ca.gov/informationalhearings/#Aug1.

spending deadlines and asked them to submit a plan to improve performance and identify funds potentially available for reallocation.[2]

- Reallocations, Augmentations, and Cancelations – Based on contractor responses to the DOF audit letters, CEC has modified contracts to reduce or augment funding or authorize program changes identified as necessary to improve performance, such as authorizing additional efficiency measures, larger incentive amounts, or expanded geographic area of targeted participants. One program participant, a recipient of a $3.5 million loan to expand manufacturing of solar panels, did not respond to the DOF letter, and CEC is taking steps to cancel the loan. All other participants are proceeding under original or modified plans that CEC has deemed currently viable for spending allocated funds. However, even for contractors incurring significant expenditures, some are facing delay in invoice reimbursement in connection with payroll certification of compliance with prevailing wage and other ARRA requirements.

- Two Large Contracts with Low Expenditures – Although CEC has expressed confidence in the viability of current spending plans, significant concerns remain about two large contracts with a relatively very low amount of funds expended to date. The first is a $19.9 million residential retrofit program administered by the Sacramento Municipal Utility District (SMUD) for which less than $2 million has been spent. Significant funds are targeted for multifamily housing projects, which include risk of delay in getting federal approval on non-energy retrofit work to be done at the same time as the ARRA-funded energy efficiency retrofits. The second, and largest, contract with low expenditures to date is the $33 million Energy Upgrade California statewide retrofit program for residential and commercial buildings, with the Local Government Commission as prime contractor, for which less than $10 million has been spent. Nearly all spending to date has been for development of a web portal, marketing, outreach, systems development, and a plan to sustain the program after the $33 million is spent. The contractor could not confirm whether a single dollar of the $11.6 million targeted for financing of actual building retrofits had yet been spent for that purpose. Both the SMUD and Energy Upgrade California contracts require aggressive monitoring to ensure obstacles to performance do not put large sums at risk.

- New Legislation Provides Safety Net for Unspent Funds – At the end of session, the Legislature approved AB 1392 (Bradford), which the Governor signed (Chapter 488, Statutes of 2011), authorizing CEC to transfer up to $50 million of ARRA funds to the Department of General Services' (DGS) Energy Efficiency State Property Revolving Loan Fund. To date, $25 million of the CEC's $226 million ARRA funds is allocated to this DGS fund for financing energy efficiency retrofits of state buildings. Funds deposited into this revolving loan fund are considered spent for ARRA purposes even if not lent to a specific project by the ARRA expenditure deadline. Thus, this legislation enables CEC to make a last-minute transfer of up to $50 million that may fall out from other projects, thereby protecting those unspent funds from reverting to the federal government.

[2] The Department of Finance audit report is available at:
http://www.dof.ca.gov/osae/audit_reports/documents/PerformanceAuditReviewofStateEnergyProgramFundedfromtheAmericanRecoveryandReinvestmentActof2.pdf

<u>California Department of Community Services and Development</u>

- <u>At-Risk Providers</u> – Based on end-of-month data for August and September, DCSD has prepared a monthly "ARRA Dashboard" with an expenditure forecast report for each of about 45 providers of weatherization services. Letters sent in late September identified providers most at risk of not spending all funds based on a high projected balance by the March 31 expenditure deadline and a high percentage monthly production increase necessary to spend all funds. At-risk providers were required to submit a plan showing how they will achieve production goals and to identify any funds available for reallocation. The ARRA Dashboard based on September 30 data **<u>(attached)</u>** indicates seven providers are projected to have substantial unspent balances, some exceeding $2 million.

- <u>Significant Challenges Remain</u> – DCSD has identified three providers that, even with a revised plan, face significant challenges in spending allocated funds. These include the Community Action Partnership of San Bernardino County and the Los Angeles Department of Water and Power (LADWP), which DCSD claims have plans with an insufficient number of units for weatherization and insufficient dollar amount per unit to account for all funds. In addition, the Community Resource Project in Sacramento faces multiple hurdles in its weatherization of multifamily housing without an adequate backup plan if those projects fall out. DCSD continues to work with these and all providers to overcome challenges.

- <u>Reallocations</u> – DCSD has already reallocated $4.2 million that was voluntarily identified by providers as unlikely to be spent. DCSD is continuing to identify high-performing providers that can absorb additional funds that fall out from providers unable to spend allocated funds. For example, reallocation of $1 million from LADWP to Maravilla, another provider in Los Angeles, is under consideration. It is unclear, however, whether the high-performing providers have adequate capacity to handle all potential unspent funds and whether DCSD has another contingency plan to avoid unspent funds reverting to the federal government.

- <u>Annual Funding for Ongoing Program</u> – In addition to the March 31, 2012, deadline for spending the full $185 million one-time ARRA grant, DCSD faces a June 30, 2012, deadline for spending all of the roughly $20 million in annual weatherization funds for 2009 and 2010 plus prior-year carryover balances. DOE has made some of the special requirements applicable to the ARRA funding now also applicable to the ongoing program, which could add to challenges in spending down all the annual grant balance.

- <u>Deadline Extension</u> – DCSD has a pending request with the Department of Energy (DOE) for a one-year extension of the March 31, 2012, ARRA expenditure deadline but has received no information indicating that this request will be granted.

<u>State Auditor Reports</u>

The State Auditor is expected to issue additional reports on the CEC's and DCSD's expenditure of ARRA funds in December 2011 or January 2012.
The State Auditor's letter report dated July 14, 2011, on CEC's administration of ARRA funds is available at http://www.bsa.ca.gov/pdfs/reports/2011-503.3.pdf.
The State Auditor's letter report dated July 11, 2011, on the DCSD weatherization program is available at http://www.bsa.ca.gov/pdfs/reports/2011-503.2.pdf.