



California Energy Resources Conservation and Development Commission

It Is Not Fully Prepared to Award and Monitor Millions in Recovery
Act Funds and Lacks Controls to Prevent Their Misuse

December 2009 Letter Report 2009-119.1



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December 1, 2009

Letter Report 2009-119.1

The Governor of California
President Pro Tempore of the Senate
Speaker of the Assembly
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

This letter report presents a review conducted by the Bureau of State Audits (bureau) concerning the preparedness of the California Energy Resources Conservation and Development Commission (Energy Commission) to receive and administer federal American Recovery and Reinvestment Act of 2009 (Recovery Act) funds awarded by the U.S. Department of Energy for its State Energy Program (Energy Program). On February 17, 2009, the federal government enacted the Recovery Act for purposes that include preserving and creating jobs; promoting economic recovery; assisting those most affected by the recession; investing in transportation, environmental protection, and other infrastructure; and stabilizing state and local government budgets. The state law authorizing the Energy Commission to administer the Recovery Act funds indicates the Legislature's intent that the commission should do so in the most expedient manner possible.

During our review, we found that as of November 16, 2009, the Energy Commission had entered into contracts totaling only \$40 million despite having had access to \$113 million of the \$226 million in Recovery Act funds it has been awarded for the Energy Program. Although these funds have been available to the Energy Commission since July 2009, it has been slow in developing guidelines, issuing requests for proposals (RFPs), and implementing the internal controls needed to administer the Energy Program. As a result, few Recovery Act dollars have been spent. The remaining \$113 million in funds will be available to the Energy Commission on January 1, 2010.

The Energy Commission has approved the use of \$51 million for Energy Program services, and of this amount has entered into contracts totaling about \$40 million with subrecipients for only two of the eight subprograms it intends to finance with the Recovery Act funds; however, none of the \$40 million has been spent. The funds from these two contracts, which were awarded to the Department of General Services (General Services) and the Employment Development Department, will be used to issue loans, grants, or contracts to state departments and agencies to retrofit state buildings to make them more energy efficient and to provide job skills training for workers in the areas of energy efficiency, water efficiency, and renewable energy. The contracts were signed in October 2009 and November 2009, respectively. Therefore, except for approximately \$71,000 that the Energy Commission has used for its own administrative costs, no Recovery Act funds have been spent. If the Energy Commission continues its slow pace in implementing the necessary processes to obligate the Recovery Act funds, the State is at risk of either having the funds redirected by the U.S. Department of Energy or awarding them in a compressed period of time without first establishing an adequate system of internal controls, which increases the risk that Recovery Act funds will be misused.

According to the Energy Commission's administrator for the Economic Recovery Program (program administrator), several factors have contributed to the delay in infusing the Energy Program's Recovery Act funds into California's economy. He stated that seven of the eight subprograms being funded are

new, and therefore it was necessary to develop program guidelines for subrecipients to follow when providing services under the new subprograms. In addition, he indicated that the Energy Commission had to wait until a bill was signed on July 28, 2009, giving it the statutory authority to develop and adopt the guidelines. However, based on our review of the bill, we found that it pertains only to the adoption of the guidelines—nothing precluded the Energy Commission from beginning to develop the guidelines prior to its passage. The program administrator also stated that before it adopted the guidelines, the Energy Commission wanted to conduct workshops across the State to discuss the guidelines and receive public input. The Energy Commission adopted the guidelines concerning four of the eight subprograms on September 30, 2009. Finally, the program administrator stated that the Energy Commission had to wait until legislation was signed on July 28, 2009, before it had the authority to award funds. According to the program administrator, this legislation authorized the Energy Commission to spend about \$113 million. Assembly Bill 262, enacted in October 2009, authorizes the Energy Commission to spend the remaining \$113 million beginning January 1, 2010.

Although it began applying for Recovery Act funds in March 2009, the Energy Commission has not yet implemented a system of internal controls adequate to ensure that those funds are used appropriately. The Energy Commission has acknowledged that it needs to assess its capacity for properly administering the program and to make improvements in some areas. Specifically, it needs to institute better controls to detect fraud, waste, and abuse; develop reporting processes to capture the required data and ensure that the reports are accurate and complete; and establish an adequate internal control structure to administer the funds. These weaknesses have contributed to the Energy Commission's inability to more promptly obligate Recovery Act funds and to ensure that subrecipients spend the funds in a manner that will accomplish the objectives of the Recovery Act.

Because the Recovery Act requires that Energy Program funds be obligated by September 30, 2010, and because the Energy Commission will need time to carry out these tasks, any further delays in developing and implementing an adequate system of internal controls may adversely affect its ability to properly administer program funds. Specifically, awarding Recovery Act funds without an adequate system of internal controls in place may impair the Energy Commission's ability to collect and report data on the performance of the program, and would increase the risk that the funds will not be used appropriately. Furthermore, if the delays continue and funds are not obligated by September 30, 2010, the State could lose a significant amount of Recovery Act funding because the federal oversight agency could choose to redirect the funds.

Recommendations

As soon as possible, the Energy Commission should take the steps necessary to implement a system of internal controls adequate to provide assurance that Recovery Act funds will be used to meet the purposes of the Recovery Act. These controls should include those necessary to collect and verify the data needed to measure and report on the results of the programs funded by the Recovery Act and to mitigate the potential for fraud, waste, and abuse. Such steps should include quickly performing the actions already planned, such as assessing the Energy Commission's controls and the capacity of its existing resources and systems, and promptly implementing all needed improvements.

The Energy Commission should promptly solicit proposals from entities that could provide the services allowable under the Recovery Act and should execute contracts, grants, or loan agreements with these entities.

Background

On February 17, 2009, the federal government enacted the Recovery Act for purposes that include preserving and creating jobs; promoting economic recovery; assisting those most affected by the recession; investing in transportation, environmental protection, and other infrastructure; and stabilizing state and local governmental budgets. One general principle of the Recovery Act is that the funds be used to achieve its purposes as quickly as possible consistent with prudent management.

Accountability Requirements for the Use of Recovery Act Funds

Accountability and transparency are the cornerstones of the Recovery Act. In its February 18, 2009, initial guidance for implementing the Recovery Act, the U.S. Office of Management and Budget (OMB) directed federal agencies to immediately take critical steps to meet the accountability objectives defined in the text box. On April 3, 2009, the OMB updated its initial guidance to clarify existing provisions, such as those related to the mechanics of implementing the reporting requirements of the Recovery Act, and to establish additional steps

Accountability Objectives for Implementing the American Recovery and Reinvestment Act of 2009

- The American Recovery and Reinvestment Act of 2009 (Recovery Act) funds are awarded and distributed in a prompt, fair, and reasonable manner.
- The recipients and uses of all Recovery Act funds are transparent to the public, and the public benefits of these funds are reported clearly, accurately, and in a timely manner.
- Recovery Act funds are used for authorized purposes, and the potential for fraud, waste, error, and abuse are mitigated.
- Projects funded under the Recovery Act avoid unnecessary delays and cost overruns.
- Program goals are achieved, including specific program outcomes and improved results on broader economic indicators.

Source: U.S. Office of Management and Budget's *Initial Implementing Guidance for the Recovery Act*, February 18, 2009.

that must be taken to facilitate the accountability objectives of the Recovery Act. In addition to the guidance the OMB issues, federal agencies responsible for administering Recovery Act programs provide guidance for states, local governments, and Indian tribes that use program funds or administer them to subrecipients.

The Recovery Act also established the Recovery Accountability and Transparency Board (Recovery Board) to coordinate and conduct oversight of federal agencies' handling of Recovery Act funds in order to prevent fraud, waste, and abuse. The Recovery Board's responsibilities include auditing or reviewing funds to determine whether wasteful spending, poor contract or grant management, and other abuses are occurring, as well as referring matters it considers appropriate for investigation to the inspector general for the federal agency that distributed the funds. The Recovery Board must also coordinate its oversight activities with the Comptroller General of the United States (better known as the GAO) and state auditors.

The OMB provides guidance for conducting state and local audits of federal financial assistance programs, including those programs authorized or augmented by the Recovery Act. The Single Audit Act of 1984 established requirements for audits of states, local governments, and Indian tribes that administer federal financial assistance programs. The OMB provides program compliance requirements for recipients of federal financial assistance program

funds and guidelines to assist auditors in performing required audits. For Recovery Act programs, this guidance is contained in OMB's 2009 *Compliance Supplement to Circular A-133* and the June 30, 2009, *Addendum to the Compliance Supplement*.

Responsibilities of the California Energy Resources Conservation and Development Commission

- Forecasting future energy needs and keeping historical data.
- Licensing thermal power plants 50 megawatts or larger.
- Promoting energy efficiency by setting the State's appliance and building efficiency standards.
- Supporting public interest energy research that advances energy science and technology.
- Supporting renewable energy.
- Implementing the State's Alternative and Renewable Fuel and Vehicle Technology Program.
- Planning for and directing state response to energy emergencies.

Source: California Energy Resources Conservation and Development Commission.

California's Administration of the Energy Program Funds

The federal Energy Program provides grants and technical assistance to states and U.S. territories to promote energy conservation and reduce growth of energy demand. The work to deploy new renewable-energy and energy-efficient technologies takes place in the states and is managed by the state energy offices. The state energy office for California is the Energy Commission. The Energy Commission was created by the Legislature in 1974 through passage of the Warren-Alquist State Energy Resources Conservation and Development Act and is the State's principal energy policy and planning organization. Its primary responsibilities are shown in the text box.

The Recovery Act designated a total of \$3.1 billion for the Energy Program, of which California was awarded \$226 million. This amount was awarded to the Energy Commission in three separate grants—\$23 million in April 2009, \$90 million in July 2009, and \$113 million in September 2009.¹ According to the Recovery Act, all funds appropriated under the act will remain available for obligation until September 30, 2010, unless expressly provided otherwise in the act. In our review of applicable sections of the Recovery Act, we did not find any provisions to extend this deadline for energy programs funded by the act. Furthermore, the U.S. Department of Energy's *Financial Assistance Funding Opportunity Announcement* for Recovery Act funding states that, "In keeping with the intent of this funding, Congressional and Department goals are for all Recovery funds to be obligated by September 30, 2010."

On June 3, 2009, the Energy Commission created the Ad Hoc Committee on the American Recovery and Reinvestment Act of 2009 (Recovery Act Committee) to develop guidelines to govern the administration and award of federal funds it expected to receive under the Recovery Act, including funds for the Energy Program. The Energy Commission directed the Recovery Act Committee to focus on defining program objectives, eligibility requirements and limitations, available funding, evaluation criteria, and administrative procedures for applying for funding.

State law authorizes the Energy Commission to use Energy Program funds for energy efficiency, energy conservation, renewable energy, and other energy-related projects and activities authorized by the Recovery Act. The Energy Commission intends to use Recovery Act funds to award contracts, grants, and loans for projects and activities related to these goals. However, Energy Program grant funds cannot be used for certain activities, such as the purchase of land or buildings, construction of buildings or structures, subsidies of public transportation, or research and development of technology that is not commercially available.

Expansion of the Energy Program Under the Recovery Act

The Energy Program existed prior to the Recovery Act; however, federal funding for the program was greatly enhanced by the act. For example, the Energy Commission's award of federal Energy Program funds for 2008, prior to the passage of the Recovery Act, was about \$3 million. As of April 2009, the U.S. Department

In June 2009 the Energy Commission created a committee to develop guidelines to govern the administration and award of federal funds it expected to receive.

¹ Although the Energy Commission was awarded \$113 million in September 2009, it is not authorized to spend these funds until January 1, 2010.

of Energy began awarding Recovery Act funds to the Energy Commission that, as of September, amounted to \$226 million. The Energy Commission has allocated these funds to eight subprograms under the state energy office. One of these subprograms supplements an existing program, and the Energy Commission added the remaining seven subprograms as a result of the influx of funds. The subprograms and the amount of Recovery Act funds allocated to each are shown in Table 1.

Table 1
California Energy Commission Subprograms Funded by the Recovery Act, With Estimated Funding Allocations

SUBPROGRAM	DESCRIPTION	NEW/EXISTING PROGRAM	AMOUNT (IN MILLIONS)
Department of General Services' Revolving Loan Program—Energy Efficiency in State Buildings	Performs energy efficient retrofits to state buildings, such as lighting, heating, ventilation, and air conditioning systems and controls to achieve energy savings.	New	\$25
Green Jobs Training	Support regional workforce development training programs that focus on professional and personal skills in the areas of energy efficiency, water efficiency, renewable energy, and clean transportation.	New	20
Energy Conservation Assistance Account Revolving Loan	Provide low-interest financing to public schools, hospitals, care institutions, and units of local government for energy efficiency, combined heat and power, demand reduction, and generation projects.	Existing	25
School and Public Sector Matching Grants*	Provides additional funding to offer Energy Conservation Assistance Act loans to public schools, colleges, and other public agencies for energy efficiency, combined heat and power, demand reduction, and generation projects.	New	Up to 50
Clean Energy Systems Revolving Loan	Provides loan and grant funding for systems such as combined heat and power systems using natural gas or renewable energy and distributed generation systems that use renewable energy.	New	Up to 35
California Comprehensive Residential Building Retrofit	Implements energy retrofits in existing residential buildings.	New	Up to 95
Municipal and Commercial Building Targeted Measure Retrofit	Funds targeted retrofit measures where opportunities exist in large numbers across the State's municipal and commercial building sectors. An example of these targeted measures is occupancy-controlled bi-level lighting fixtures for parking lots, parking garages, and exterior walkways.	New	†
Municipal Financing District‡	Assistance to cities and counties in implementing or continuing their own financing district programs to fund energy efficiency retrofits in the residential and commercial sectors.	New	†

Source: California Energy Resources Conservation and Development Commission (Energy Commission).

Note: The total amount shown for the eight subprograms exceeds the \$226 million awarded to California for the State Energy Program because the Energy Commission has not yet determined the final amounts it plans to allocate to each.

* According to the Energy Commission's program administrator for the Economic Recovery Program, this program is on hold, given the lack of interest in the program. He stated at this time there are two other potential subprograms that appear to provide more promising opportunities to retain and create more manufacturing jobs, but did not identify a projected date when the Energy Commission would make a decision on how it would use the funds.

† This amount is included in the California Comprehensive Residential Building Retrofit amount of up to \$95 million.

‡ Financing of renewable energy and energy efficiency projects.

Executive Branch Oversight of Recovery Act Funds

California provides guidance and oversight of state agencies' use of Recovery Act funds through entities such as the California Recovery Task Force (task force), the California Office of the Inspector General, and the Department of Finance. The governor created the task force in March 2009 through Executive Order S-02-09. The task force is led by the director of the Governor's Office of Planning and Research, and its responsibilities include ensuring that the State receives the optimal benefit from the Recovery Act, ensuring that the funds are used strategically and in a manner consistent with federal requirements, and providing accountability and transparency regarding the programs funded under the act.

Further, in April 2009 the governor signed Executive Order S-04-09, creating the Office of the Inspector General, independent of the task force. According to the governor's executive order, the inspector general's responsibilities include protecting the integrity and accountability of the expenditure of Recovery Act funds by detecting and preventing fraud, waste, and misconduct in the use of those funds and conducting periodic reviews and audits to ensure that state and local governments comply with the federal requirements of the Recovery Act and state law. The Department of Finance, among other duties, serves as the governor's chief fiscal policy adviser and ensures the financial integrity of the State by issuing policy directives and by monitoring and auditing expenditures and internal controls of state departments to ensure compliance with the law, approved standards, and policies.

Scope and Methodology

The Joint Legislative Audit Committee (audit committee) requested that the bureau conduct a review of California's preparedness to receive federal Recovery Act funds for selected programs, including funds for the Energy Program. To gain an understanding of the program requirements, we obtained and reviewed federal and state laws, rules, regulations, and guidance from federal oversight agencies that are relevant to the Energy Program and significant to the audit objectives. We also reviewed the Federal Register to determine whether the OMB or the U.S. Department of Energy had proposed new regulations governing the use of these Recovery Act funds, and found that none had been proposed as of November 5, 2009. Because seven of the eight subprograms the Energy Commission intends to fund with the Recovery Act money are new, no internal control structure yet exists for them. Since the control

structure is not in place, we were unable to perform early tests of internal controls the Energy Commission intends to use to administer the funds. Rather, we focused on assessing the extent to which the Energy Commission is prepared to receive and administer the funds. To achieve this objective, we interviewed key management and staff of the Energy Commission and reviewed documents they provided to support the status of the Energy Commission's preparedness. We primarily used program risk considerations and other program guidance developed by the federal OMB and the U.S. Department of Energy, the terms and conditions attached to the federal grant award, and the federally approved state plan to evaluate the requirements for receiving and administering the funds.

Because the California Energy Commission Is Not Yet Prepared to Administer Recovery Act Funding, the State Is at Risk of Losing Millions

As shown in Table 2, the Energy Commission is not yet ready to administer the program. As outlined in the Recovery Act, the purposes of the funding include preserving and creating jobs, promoting economic recovery, and assisting those most affected by the recession. State law authorizing the Energy Commission to administer the Recovery Act funds calls for the Energy Commission to award funds in the most expedient manner possible. However, as of November 16, 2009, the Energy Commission had approved the use of \$51 million for Energy Program services and of that amount had entered into two contracts totaling \$40 million with subrecipients to provide services for two of the eight subprograms. Furthermore, it is still developing program oversight processes and RFPs to award contracts, loans, and grants for the other six subprograms.

The funds from these two contracts, which were awarded to General Services and the Employment Development Department, will be used to issue loans to state departments and agencies to retrofit state buildings to make them more energy efficient and to provide job skills training for workers in the areas of energy efficiency, water efficiency, and renewable energy. However, as of November 16, 2009, General Services has yet to issue any such loans, grants, or contracts, and the Employment Development Department had not begun to provide services or draw down program funds through the contract. As a result, except for approximately \$71,000 that the Energy Commission spent on its own administrative costs as of October 31, 2009, no other Recovery Act

Except for approximately \$71,000 that the Energy Commission spent on administrative costs as of October 31, 2009, no other Recovery Act funds have been spent.

Table 2
Summary of the California Energy Commission's Preparedness to Administer Funding Received Under the Recovery Act

AREA OF PROGRAM RISK	LEVEL OF PREPAREDNESS
Human Capital	
Sufficient staff are available	✗
Staff are trained	◻
Financial and Operational Systems	
Separate accounting is maintained for Recovery Act funds	◊
Systems are configured properly	✗
Systems can handle volume	✗
Fraud, Waste, Abuse	
Controls are in place to prevent misuse of funds	◻
Policies and Procedures	
Recovery Act provisions have been incorporated	✓
Cash management procedures are in place	✗
Eligibility determination policies and procedures are in place	◻
Corrective action processes are in place	◻
Recipient guidelines are in place	◊
Acquisitions/Contracts	
Requests for proposals contain Recovery Act provisions	✓
Awards are prompt and fair	◻
Proper terms are included	✓
Costs are controlled to prevent overruns	◻
Awards are transparent to public	✓
Public benefits are reported	◻
Transparency and Accountability	
Governance body is established	◻
Data elements are identified	✗
Reporting mechanisms are established to collect data	✗
Reports are reviewed	✗
Reports are prepared on a timely basis	✗
Recipients are monitored	✗

Note: For detailed descriptions of the legend refer to pages 21 and 22.

- ✓ = Prepared
- ◊ = Mostly prepared
- ◻ = Moderately prepared
- ✗ = Not prepared

funds have been spent. Table 3 summarizes the funds received, obligated, and spent. We are concerned that if the Energy Commission continues its slow pace in implementing the necessary processes to commit the Recovery Act Funds, the State is at risk of either having the funds redirected by the federal oversight agency or being forced to make awarding decisions in a compressed time frame without having established an adequate system of internal controls, which increases the risk of their misuse.

Table 3
Recovery Act Funds Obligated and Spent

FEDERAL PROGRAM	PROGRAM'S CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER	RECOVERY ACT FUNDS FOR WHICH THE ENERGY COMMISSION APPLIED	RECOVERY ACT FUNDS AWARDED BY THE FEDERAL GOVERNMENT	APPROVED FOR EXPENDITURE BY THE ENERGY COMMISSION*	RECOVERY ACT FUNDS THE ENERGY COMMISSION HAS SPENT [†]
State Energy Program	81.041	\$226,093,000	\$226,093,000	\$51,000,000	\$71,000

Source: California Energy Resources Conservation and Development Commission (Energy Commission).

* Amount is as of November 16, 2009.

† This amount represents administrative costs such as salaries and benefits of Energy Commission personnel. Amount is as of October 31, 2009.

The Energy Commission Is Moving Slowly to Complete the Tasks Needed to Award and Monitor the Use of Recovery Act Funds

As shown in Table 4, the Energy Commission still needs to complete several critical tasks before it can begin implementing the eight subprograms and award Recovery Act funds to subrecipients to be spent for various projects. In other words, these tasks must be implemented before Recovery Act funds can be used to retain or create jobs and alleviate the effects of the recession, some of the primary purposes of the act. Although the Recovery Act was enacted on February 17, 2009, few of the activities listed in Table 4 have been completed for any of the subprograms, and none of the subprograms have been implemented. For example, a critical activity for program implementation is having guidelines to follow. However, as Table 4 indicates, the Energy Commission is still in the process of developing the guidelines related to four of the eight subprograms it intends to implement. The combined Recovery Act funds available for these four programs could reach \$130 million.

In addition, as of November 16, 2009, the Energy Commission has released solicitations to potential recipients who will provide program services for three of the six subprograms it intends to implement that require a solicitation. Moreover, the Energy Commission has not fully developed an adequate system of internal controls for any of the subprograms. These controls include procedures to ensure that programs funds are used

only for intended purposes, that subrecipients are periodically monitored, and that measures are in place to mitigate and minimize the potential for fraud, waste, or abuse. The implementation of such an internal control system is critical before subrecipients begin to receive Recovery Act funds and provide services.

Table 4
Progress of the California Energy Commission in Implementing the Subprograms

PROGRAM	PROGRAM SPECIFIC GUIDELINES ADOPTED	RELEASE DATE OF REQUESTS FOR PROPOSALS OR APPLICATIONS	DUE DATE OF PROPOSALS OR APPLICATIONS	SYSTEM OF INTERNAL CONTROLS DEVELOPED*	APPROVED FOR EXPENDITURE BY THE ENERGY COMMISSION†	AWARD AGREEMENTS EXECUTED
Department of General Services' Revolving Loan Program—Energy Efficiency in State Buildings	Unknown‡	Not applicable§	Not applicable§	No	\$25 million	Executed on October 5, 2009
Green Jobs Training	Unknown‡	Not applicable§	Not applicable§	No	\$20 million	Executed ^{II} on November 2, 2009
Energy Conservation Assistance Account Revolving Loan	Adopted on September 30, 2009	Unknown‡	No due date. Applications are accepted on a first come first served basis	No	\$6 million	Unknown [#]
School and Public Sector Matching Grants**	Unknown	Unknown	Unknown	No	Unknown	Unknown
Clean Energy Systems Revolving Loan	Expected January 14, 2010	Expected on January 14, 2010	March 4, 2010	No	Expected April 7, to April 23, 2010	Unknown [#]
California Comprehensive Residential Building Retrofit	Adopted on September 30, 2009	Released on October 8, 2009	December 21, 2009	No	Expected on March 24, 2010	Unknown [#]
Municipal and Commercial Building Targeted Measure Retrofit	Adopted on September 30, 2009	Released on October 8, 2009	December 21, 2009	No	Expected on March 24, 2010	Unknown [#]
Municipal Financing District††	Adopted on September 30, 2009	Released on October 8, 2009	December 21, 2009	No	Expected on March 24, 2010	Unknown [#]

Source: California Energy Resources Conservation and Development Commission (Energy Commission).

* A system of internal controls includes the activities or processes designed and implemented by management to ensure, among other things, compliance with federal, state, and program requirements. See the Appendix for a summary of our assessment of the Energy Commission's preparedness to administer the State Energy Program (Energy Program).

† Awards are made at public Energy Commission business meetings. Amounts as of November 16, 2009.

‡ According to the administrator for the Economic Recovery Program, these two programs did not require that the Energy Commission develop guidelines, but did not provide an explanation. He further stated that the Department of General Services prepared an implementation plan and both the Employment Development Department and the Employment Training Panel have existing programs in place to implement the Green Job Training program, but provided no details. Finally, he stated that the Energy Commission released a solicitation for Energy Conservation Assistance Account Revolving loans on September 16, 2009, but provided no support for his assertion.

§ It was not necessary for the Energy Commission to release requests for proposals for these subprograms because the funds will be awarded through interagency agreements executed with other state agencies. The governor announced that on October 2, 2009, about \$15 million in Energy Program funds were awarded to 27 subrecipients for green jobs training.

^{II} This date relates only to the \$15 million agreement entered into by the Energy Commission and the Employment Development Department. The Energy Commission also has approved \$5 million for the Employment Training Panel. However, as of November 16, 2009, the contract for the \$5 million was not executed.

[#] Despite repeated requests for this information, the Energy Commission did not provide it.

** According to the Energy Commission's program administrator for the Economic Recovery Program, this program, which was allocated \$50 million, is on hold. As a result, we do not have this information to present.

†† Financing of renewable energy and energy efficiency projects.

Although the Energy Commission had access to \$113 million in Recovery Act funds since late June, it has contracted for only \$40 million and none has been spent.

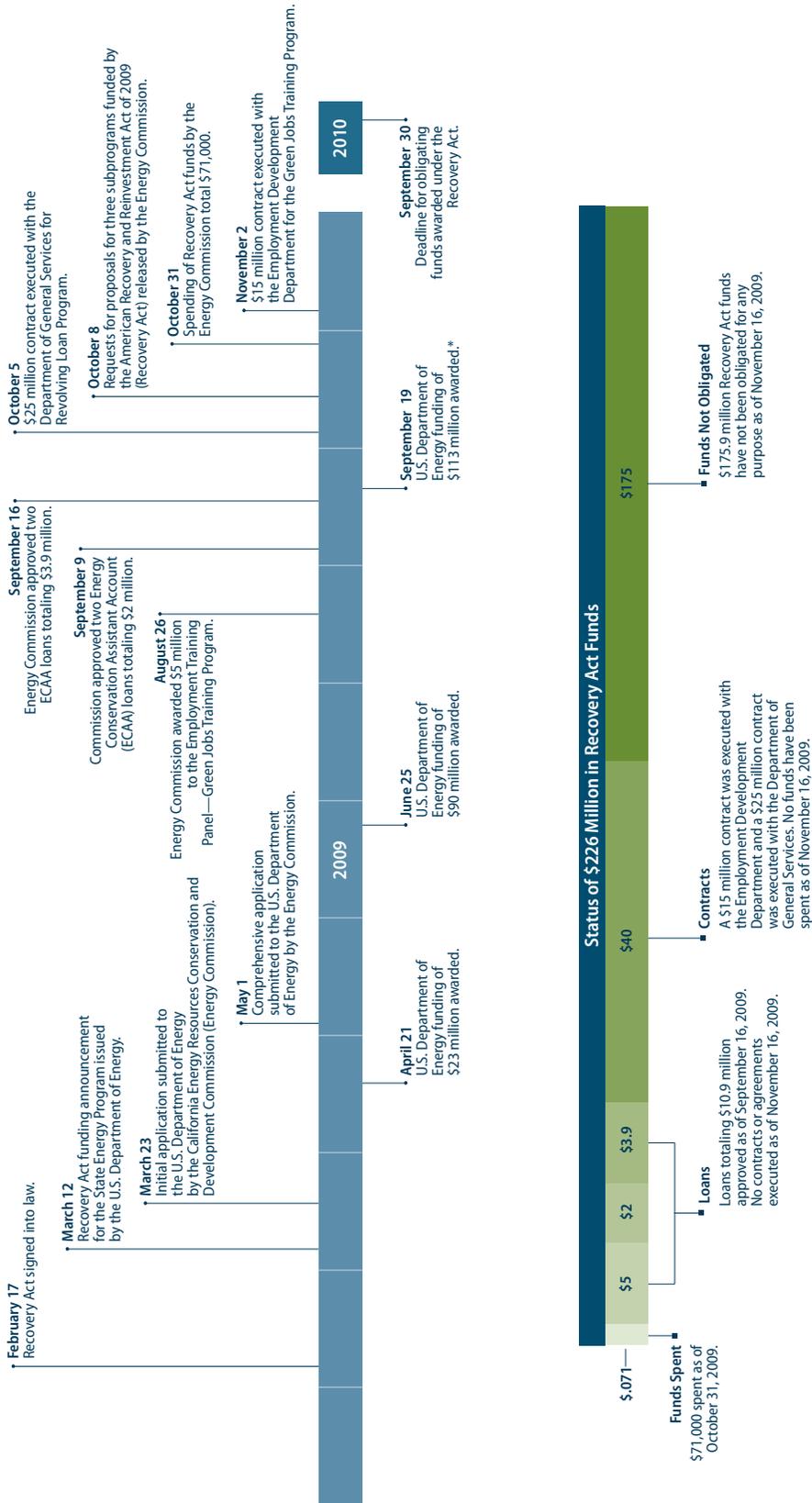
The Energy Commission Has Contracted for Only \$40 Million of the \$226 Million It Has Received in Recovery Act Funds

As the timeline in the Figure shows, the U.S. Department of Energy awarded the Energy Commission about \$23 million dollars in Recovery Act funds on April 21, 2009, and \$90 million on June 25, 2009. The final installment of \$113 million was awarded on September 19, 2009, bringing the total Recovery Act funds available for Energy Program activities to \$226 million.² However, as of November 16, 2009, the Energy Commission had approved \$51 million for Energy Program services and contracted for only \$40 million—\$25 million to General Services and \$15 million to the Employment Development Department—of Recovery Act funds for program purposes. None of the \$40 million has been spent. In fact, the Energy Commission has spent only approximately \$71,000 for administrative costs such as staff salaries and benefits. Because the Energy Commission has been slow to develop program guidelines and issue RFPs, it will have to complete these tasks in the next 10 months to avoid the potential of losing federal funds. Furthermore, because it has not established a system of internal controls for its programs, the risk of waste, fraud, or abuse is increased.

According to the program administrator, several factors have contributed to the delay in infusing the Energy Program's Recovery Act funds into California's economy. Specifically, he stated that seven of the eight subprograms are new, and that therefore it was necessary to develop program guidelines for subrecipients to follow when providing services under the new subprograms. In addition, he indicated that the Energy Commission had to wait until a bill was signed on July 28, 2009, giving it the statutory authority to develop and adopt the guidelines. However, we saw nothing during our review of the bill that would have precluded the Energy Commission from beginning to develop the guidelines before the bill was passed and signed. The program administrator also stated that before the Energy Commission adopted the guidelines, it wanted to conduct workshops across the State to discuss the guidelines and receive public input. The Energy Commission ultimately adopted the guidelines for four of the programs on September 30, 2009. Finally, the program administrator stated that the Energy Commission had to wait until legislation was signed on July 28, 2009, before it had the authority to award funds.

² Although the Energy Commission was awarded \$113 million in September 2009, it is not authorized to spend these funds until January 1, 2010.

Figure
Significant Dates in the Progress of the California Energy Commission's Readiness to Award Recovery Act Funds and Status for Obligating Those Funds



Sources: California Energy Resources Conservation and Development Commission; U.S. Department of Energy Web site, www.energy.gov; the Whitehouse Web site, www.whitehouse.gov.
* Although the Energy Commission was awarded \$113 million in September 2009, it is not authorized to spend these funds until January 1, 2010.

The Subprograms Are Not Likely to Begin Awarding Recovery Act Funds Until April to July 2010

Because the Energy Commission has made so little progress in implementing its subprograms, none of the Recovery Act funds are being used to provide benefits to Californians, such as preserving and creating jobs, promoting economic recovery, and assisting those most affected by the recession. Moreover, these Recovery Act funds will not likely be awarded to subrecipients until at least April 2010 to July 2010, based on the time frames provided by the Energy Commission. For example, according to the grants and loans manager, the Energy Commission takes an average of two months from receipt of an application to process a loan and six months from the release of a solicitation for service providers to process a grant. As shown in Table 4 on page 11, the timeline established by the Energy Commission for the California Comprehensive Residential Building Retrofit Program, the Municipal and Commercial Building Targeted Measure Retrofit Program, and the Municipal Financing District Program indicates that the Energy Commission expects to award Energy Program funds to subrecipients on March 24, 2010. If these programs meet the expected time frame for executing grant agreements provided by the grants and loans manager, the Energy Commission will not begin to obligate funds for these three programs until April 2010.

For the Clean Energy Systems Revolving Loan Program, the Energy Commission was still developing program guidelines and service provider solicitations as of November 16, 2009. According to its timeline for this program, the Energy Commission expects to release the solicitation on January 14, 2010. If we factor in six months to execute the grant agreements, it appears that the Energy Commission will not begin to issue Recovery Act funds for this program until mid-July 2010. Although this would allow the Energy Commission to obligate the funds prior to the federally imposed deadline of September 30, 2010, it is imperative that the Energy Commission adhere to its current timelines. Otherwise, it may risk losing the funding.

Due to lack of interest, one program for which the Energy Commission allocated \$50 million is on hold.

Finally, according to the program administrator, the School and Public Sector Matching Grants program is on hold, given the lack of interest in the program. He stated that there are two other programs that appear to provide more promising opportunities to retain and create manufacturing jobs, but he did not identify a projected date when the Energy Commission would make a decision on how it would use the \$50 million in funds currently allocated for the School and Public Sector Matching Grants program.

The Energy Commission has acknowledged that it needs assistance to implement and administer the Recovery Act funds awarded for the Energy Program. In fact, the Energy Commission anticipates that it will have to contract for additional support services to administer the program, including services to help it establish internal controls to ensure that Recovery Act funds are used properly. However, as of November 16, 2009, the Energy Commission had not yet sought proposals from potential contractors to provide the assessment and assistance it needs. It is developing RFPs for support services contracts and expects to release them to the public by the end of November 2009. Therefore, we were not able to review them in their final form. The Energy Commission's contracts manager estimated that it takes three to five months from the time the commission releases an RFP to potential contractors until the contracts are executed. Therefore, the Energy Commission may require until April 2010 to secure the support services it anticipates it will need to properly administer the subprograms. Added to the three to five months estimated to execute a contract will be whatever time the contractor needs to render the services it was hired to perform, further adding to the delay.

We believe that it is important for the Energy Commission to establish the internal controls it needs to administer the subprograms before it releases Recovery Act funds to subrecipients. If the Energy Commission adheres to its timelines and time frames for executing grants, loans, and support services contracts, it could be ready to obligate most Recovery Act program funds by April 2010, and the remainder by mid-July 2010. Delaying the time frames for any of these activities would risk further delay in implementing the subprograms, perhaps beyond the September 30, 2010, deadline for obligating the funds, which could result in the loss of some of the Recovery Act funding. A less attractive alternative would be to award funds to recipients without an adequate system of internal controls in place. This approach would increase the risk that Recovery Act funds would not be used appropriately and would also increase the risk of fraud, waste, and abuse.

The Department of Finance Has Raised Concerns About the Energy Commission's Readiness to Disburse and Monitor Recovery Act Funds

As requested by the California Recovery Task Force, in April 2009 the Department of Finance (Finance) surveyed six departments and requested that they complete a self-assessment of their readiness to receive and administer Recovery Act funds. The Energy Commission was one of the six departments. Finance's survey, which included some of the elements we used in our assessment, presented in this report's Appendix, focused specifically on the

Focus of the Department of Finance's Survey of the California Energy Resources Conservation and Development Commission's Readiness to Receive and Administer American Recovery and Reinvestment Act Funds

- Oversight and fraud prevention—Did the agency perform a risk assessment to identify and mitigate potential risks and provide training to its employees?
- Grants management and accountability—Did the agency provide training to recipients on proper grant management and accountability, develop grant templates with specific American Recovery and Reinvestment Act of 2009 (Recovery Act) language and written guidance for recipients, and develop tracking mechanisms for data elements, including the number of jobs created?
- Reporting requirements—Is the agency prepared to separately track the receipt and disbursement of Recovery Act funds?
- Transparency—Did the agency develop clear and informative reporting systems?

Source: California's Economic Recovery portal Web site.

areas shown in the text box. Finance relied upon interviews and inquiries of Energy Commission staff when conducting its survey, and it did not evaluate the documents and reports received from the Energy Commission for validity. Finance's survey, which was completed on April 27, 2009, found that the Energy Commission was not sufficiently ready to receive, spend, and provide oversight for the Recovery Act funds. In fact, based on the responses to its survey, Finance scored the Energy Commission as either "not ready" or "partially ready" for 17 of 25 attributes included in the survey document. For example, the Energy Commission was unable to provide Finance a risk assessment for oversight and fraud prevention, it lacked a plan for training recipients in grant management and accountability, and it had not developed data reporting standards. In addition, the Energy Commission told Finance in June 2009 that it would be "hard-pressed to meet obligation deadlines" because it was already four months into the time schedule and was still waiting for direction from the U.S. Department of Energy.

Subsequent to Finance's review, the Energy Commission submitted a corrective action plan in June 2009 and asserted that it had begun to address Finance's concerns. Based on our review of the corrective action plan, we agree that the Energy Commission has made progress in addressing many of Finance's concerns. However, our review also revealed that the Energy Commission has done little to respond to some of the more critical issues. For example, one area Finance addressed was whether the Energy Commission was prepared to track and report on jobs created or saved. In its corrective action plan, the Energy Commission stated that it had initiated work on developing draft, boilerplate agreement language that includes Recovery Act and state expenditure and reporting requirements. However, as we describe in the Appendix, the program administrator acknowledged that the Energy Commission does not have reporting mechanisms in place to collect the required data from subrecipients to meet the Recovery Act's transparency requirements. The program administrator also stated that the Energy Commission does not have a plan or process in place for determining and documenting its review and approval of reports for completeness and accuracy.

The California Office of the Inspector General (inspector general), created in April 2009 through a governor's executive order, also surveyed the Energy Commission's readiness to administer the Recovery Act funds. The inspector general is charged with overseeing the State's administration of the Recovery Act funds. The inspector general's July 2009 survey contained a list of questions to the Energy Commission concerning, among other things, its goals for expending the Recovery Act funds, its policies and procedures for ensuring that funds are expended in a manner consistent with the act's objectives, and the oversight plan the Energy Commission has to ensure that the funds are not lost to fraud, waste, and abuse.

In its response to the survey, dated July 20, 2009, the Energy Commission identified several goals to be achieved through the use of the Recovery Act funds. For example, one goal was to attract or retain energy industries and create jobs in California. However, as discussed earlier, although the Energy Commission has executed contracts totaling \$40 million with two state agencies to assist in administering specific subprograms, as of October 31, 2009, only approximately \$71,000 had been spent by the Energy Commission on administrative costs. Consequently, it has not yet been able to pursue its goal of attracting and retaining energy industries or creating jobs.

Additionally, the Energy Commission indicated in the survey that it had begun to develop a monitoring process that will have checks and balances as well as detailed management reports to allow for proper oversight and management of all awards. It also stated that the monitoring and reporting processes were scheduled to be in effect by September 2009, the date that it expected to make the first awards. However, our review found that the Energy Commission is still in the process of developing the necessary reporting process and soliciting bids from potential consultants to provide Recovery Act oversight activities. Therefore, we believe that some of the Energy Commission's responses were overly optimistic.

The Energy Commission's Current Control Structure Is Not Sufficient to Ensure Proper Use of Recovery Act Funds

The Energy Commission has not yet established the internal control structure it needs to adequately address the risks of administering Recovery Act funds. The Energy Commission is in the process of seeking help in establishing such a control structure but, as of November 16, 2009, had not issued the RFP. Further delay increases the risk of delays in implementing the subprograms, possibly inhibiting the Energy Commission's ability to obligate Recovery Act funds before the September 30, 2010, deadline. Alternatively, the

In July 2009 the Energy Commission informed the inspector general that monitoring and reporting processes would be in effect by September 2009. However, we found that such processes are still being developed.

Energy Commission might try to award the funds to subrecipients without first establishing an adequate system of internal controls, increasing the possibility that Recovery Act funds will not be used appropriately and heightening the risk of fraud, waste, and abuse.

In the Appendix to this report, we summarize our assessment of the preparedness of the Energy Commission to administer the Recovery Act funds it received for the Energy Program. We evaluated the Energy Commission's preparedness using program risk factors developed by the OMB. In some areas, the Energy Commission appears to be ready or almost ready. For example, we found that the Energy Commission has established a committee to manage the overall implementation of the Recovery Act. In addition, in the solicitation to subrecipients we reviewed for the Municipal and Commercial Building Targeted Measure Retrofit Program, we found it included language that satisfies the provisions of the Recovery Act. The Energy Commission has also established manuals and procedures for procuring contracts and policies that require subprograms to obtain approval from the Energy Commission for contracts greater than \$10,000, thereby providing transparency to the public regarding the use of Recovery Act funds.

However, we identified several areas in which the Energy Commission's internal controls are not adequate. For instance, despite its assertions that its present internal control structure will enable it to properly administer the Recovery Act funds, the Energy Commission could not provide documentation to demonstrate that its existing internal controls are sufficient to mitigate and minimize the risks of fraud, waste, and abuse. In addition, the Energy Commission could not show that it has a process in place to effectively monitor subrecipients' use of the Recovery Act funds. We also question whether the Energy Commission has sufficient staff to handle the increase in workload, and whether its existing financial and operational systems can handle the additional stress associated with an increase in the volume of contracts, grants, and loans prompted by the infusion of Recovery Act funds. Further, the Energy Commission reported that it did not have reporting mechanisms in place to collect and review the data required to meet the Recovery Act transparency requirements.

In some instances, the responses the Energy Commission provided to our questions concerning its internal controls conflicted with other information we became aware of, including documents the Energy Commission has asserted are confidential. However, in other instances the contradictions existed in public documents. For example, in its survey Finance noted that the Energy Commission asserted in its June 2009 corrective action plan that it had selected a contractor to assist staff with developing fraud awareness procedures, although no such contract has been executed.

In June 2009 the Energy Commission told Finance that it had selected a contractor to assist with developing fraud awareness procedures; however, no such contract has been executed.

In July 2009 the Energy Commission told the inspector general that it had begun the necessary efforts to develop a monitoring and reporting process to detect fraud, waste, and abuse. However, when we inquired in October 2009 the Energy Commission could not provide documentation to show that it had even identified the risks related to fraud, waste, or abuse. The program administrator stated that the Energy Commission planned to rely on its existing controls but did not identify any such controls.

As we mentioned earlier, for some areas of risk for which it lacks adequate controls, the Energy Commission plans to seek assistance from consultants to bolster its internal control structure. In its May 2, 2009, comprehensive application for funding submitted to the U.S. Department of Energy, the Energy Commission stated that it plans to contract for a variety of services related to administering the Recovery Act funds received from the Energy Program. Specifically, the Energy Commission indicated that it would seek contractors to assist recipients in implementing the energy efficiency projects; perform outreach and program support; handle project metric tracking and reporting; provide administrative support in implementing funding awards; assist with overall program evaluation, feedback, and fraud detection; and assist in monitoring, verifying, and evaluating projects awarded Recovery Act funds.

However, as of November 16, 2009, the RFPs to provide these services had not been released. Because the usual time frame between the release of an RFP and the execution of contracts is three to five months, it could take the Energy Commission until April 2010 or beyond to secure contracts to allow consultants to begin work on areas critical to establishing an effective internal control structure and providing the prudent management required by the Recovery Act. Therefore, the Energy Commission may find itself ready to award millions in Recovery Act funds without having established the controls needed to ensure that those funds are properly spent. We believe that until such controls are in place, it would be premature for the Energy Commission to award Recovery Act funds to subrecipients.

Recommendations

As expediently as possible, the Energy Commission should take the necessary steps to implement a system of internal controls adequate to provide assurance that Recovery Act funds will be used to meet the purposes of the Recovery Act. These controls should include those necessary to collect and verify the data needed to measure and report on the results of the programs funded by the Recovery Act and to mitigate potential fraud, waste, and abuse. Such steps

should include quickly performing the actions already planned, such as assessing the Energy Commission's existing controls and the capacity of its resources and systems, and promptly implementing all needed improvements.

The Energy Commission should promptly solicit proposals from entities that could provide the allowable services and should execute contracts, grants, or loan agreements with these entities so that California can realize the benefit of the Recovery Act funds.

We conducted this review under the authority vested in the California State Auditor by Section 8543 et seq. of the California Government Code and according to generally accepted government auditing standards. We limited our review to those areas specified in the letter report.

Respectfully submitted,



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Appendix

STATUS OF THE CALIFORNIA ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION'S PREPAREDNESS TO ADMINISTER FUNDING RECEIVED UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

Table A provides a summary of our assessment of the preparedness of the California Energy Resources Conservation and Development Commission (Energy Commission) to administer the funds received under the American Recovery and Reinvestment Act of 2009 (Recovery Act). We assessed the Energy Commission's ability to administer the Recovery Act funding it received for the U.S. Department of Energy's State Energy Program. We determined that the Energy Commission is not fully prepared to administer the funds.

We used the following ranking system, consisting of four colors and symbols, to indicate the Energy Commission's preparedness with respect to each program risk area:



- Documentation was provided to support the Energy Commission's assertions.
- Guidance has been received and implemented.
- Guidance is deemed not necessary, and appropriate action to prepare for receipt of Recovery Act funds has taken place.



- Documentation was not provided to support the Energy Commission's assertions.
- The federal program was not audited during the past two fiscal years. Therefore, we are not sure if internal controls are adequate.
- Guidance has been received, and the Energy Commission is in the process of implementing such guidance.
- No guidance is necessary, but the Energy Commission is still in the process of taking action to prepare for receipt of Recovery Act funds.



- Documentation was not provided to support the Energy Commission’s assertions.
- No guidance is necessary, but the Energy Commission has not taken any action to prepare for receipt of Recovery Act funds.



- Documentation was not provided to support the Energy Commission’s assertions.
- Proposed implementation of provisions will not be effective or timely.

We applied the lowest-ranking symbol when more than one condition was present. For example, if we found that the Energy Commission provided documentation to support its assertions in a risk area, but that more activities in that area were needed to be accomplished, we did not give it a green symbol.

Table A
The California Energy Commission’s Preparedness to Administer the Recovery Act Funding for the State Energy Program

AREA OF PROGRAM RISK	PREPAREDNESS	STATE ENERGY PROGRAM CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER 81.041
Overall Preparedness		
Overall, is the California Energy Resources Conservation and Development Commission (Energy Commission) prepared to track, monitor, and report on American Recovery and Reinvestment Act of 2009 (Recovery Act) funds and to comply with Recovery Act provisions?		The Energy Commission is not fully prepared to implement the provisions of the Recovery Act for the funds received from the State Energy Program (Energy Program).
Human Capital		
Does a sufficient level of personnel exist to manage the Recovery Act programs?		According to the Energy Commission’s program administrator (program administrator) for the Economic Recovery Program, the increase in the Energy Commission’s workload is not known because the number of grants to be awarded is yet to be determined. He believes that the Energy Commission will have a sufficient level of personnel to manage the program after it adds nine two-year limited-term positions and a peak workload contractor. Individuals in the nine positions to be added would provide support in areas such as engineering, information technology, secretarial, and legal. However, as of November 16, 2009, the Energy Commission had yet to finalize the request for proposal (RFP) for the contracted services. Additionally, documentation we reviewed at the Energy Commission contradicts the program administrator’s assertion that it will have sufficient staff to handle the increased workload.

AREA OF PROGRAM RISK	PREPAREDNESS	STATE ENERGY PROGRAM CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER 81.041
Are staff adequately trained to effectively implement Recovery Act provisions?		<p>The Energy Commission has developed a procedure manual covering contracts and a separate manual covering grants and loans. The manuals are generic to all its programs. The procedure manual for contracts provides detailed information regarding the various areas of contracting, including the types of contracting, the contract approval process, and contract management.</p> <p>The procedure manual for grants and loans provides detailed information regarding the selection process and grant and loan agreement development, approval, and execution, among other things. According to the contracts office manager, the Energy Commission provides training sessions annually on contract management and related topics. She also stated that training for grants and loans is performed as needed.</p> <p>However, according to the program administrator, the Energy Commission has not provided training to its staff that specifically incorporates the Recovery Act requirements. Rather, the Energy Commission has entered into an agreement with a consulting firm to develop a training plan and training materials. The program administrator stated that the training materials will assist management and staff in implementing Recovery Act provisions. However, although the contract has been executed, the consulting firm has not finalized the training materials. Finally, other documentation we reviewed indicated that the Energy Commission intends to contract for additional Recovery Act training; however, as of November 16, 2009, it had not yet done so.</p>
Financial and Operational Systems		
Are separate accounts established to ensure that Recovery Act funds are clearly distinguishable?		<p>The Energy Commission has established several accounts in its accounting system specifically to identify Recovery Act revenues and expenditures. According to the accounting administrator, additional accounts will be added in the future when funding allocations across program areas have been finalized. Lastly, the State Controller's Office has set up a separate account within its fiscal system to separately account for Recovery Act funds for the Energy Program.</p>
Are financial and operational systems configured to manage and control Recovery Act funds?		<p>According to the program administrator, the Energy Commission already has existing processes in place for awarding grants, loans, and contracts and believes that these systems can support the increase in volume of grants, contracts, and loans resulting from the Recovery Act funding. However, he also stated that the Energy Commission has not conducted an analysis to determine whether these systems are configured to manage and control Recovery Act funds. Without conducting such an analysis, we question how the Energy Commission could know whether its systems are adequate to manage Recovery Act funds. Furthermore, other documentation we reviewed contradicted the program administrator's statements. However, we cannot disclose specifics because the Energy Commission has asserted that these documents are confidential under Government Code Section 6254(a).</p> <p>The program administrator stated that the Energy Commission relies on the Department of Finance (Finance) to identify any internal control issues in its annual audits of the Renewable Resource Trust Fund (Trust Fund) and noted that Finance did not identify internal control issues in its 2007 and 2008 audits. He also stated that since the Energy Commission will use these same financial and operational systems and related internal controls to administer the Energy Program, the Energy Commission has assurance that the systems and internal controls are sufficient. However, the Energy Commission could not provide documentation to show how it determined that the new activities funded by the Recovery Act money were similar enough to those of the Trust Fund to enable the same control structure to be used. In addition, the Energy Commission did not show that it considered specific Recovery Act requirements when determining whether the same control structure would be adequate. Finally, in its audit report regarding the Trust Fund, Finance stated that the purpose of the audit was not to express an opinion on the Energy Commission's internal controls.</p>
Can financial and operational systems support the increase in volume of contracts, grants, and loans?		<p>According to the program administrator, the financial and operational systems can support the increase in volume of contracts, grants, and loans resulting from the Recovery Act funds. However, the Energy Commission could not provide documentation to show how it made this determination. Additionally, other documentation we reviewed contradicted the program administrator's statements. However, we cannot disclose specifics because the Energy Commission has asserted that these documents are confidential under Government Code Section 6254(a).</p>

STATE ENERGY PROGRAM

CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER 81.041

AREA OF PROGRAM RISK

PREPAREDNESS

Fraud, Waste, and Abuse

<p>Will Recovery Act funds be used for authorized purposes, and will the potential for fraud, waste, error, and abuse be minimized and/or mitigated? (Are there internal controls related to allowable and unallowable activities?)</p>		<p>We do not believe the Energy Commission's internal controls are sufficient to minimize or mitigate the potential for fraud, waste, and abuse. The Energy Commission could not provide documentation to show that risks related to fraud, waste, or abuse for the Energy Program activities had been identified or which of the Energy Commission's existing internal controls might mitigate any potential risks. According to the program administrator, for now the Energy Commission will rely on its existing internal controls to mitigate the risks of fraud, waste, and abuse, but he did not identify those controls. The program administrator also stated that the Energy Commission plans to hire a contractor to provide guidance to Energy Commission management and to conduct audits and risk assessments. He stated that the contractor may identify other controls the Energy Commission may use to ensure that Recovery Act funds are used only for allowable purposes. However, as of November 16, 2009, the Energy Commission had not released the RFP for these services.</p> <p>To ensure that Recovery Act funds are used for authorized purposes, the Energy Commission plans to perform several activities. According to the program administrator, the Energy Commission will determine whether the purpose of a project as stated in the application is consistent with the allowed uses of Recovery Act funds as specified in the program guidelines and in the Recovery Act. In addition, the Energy Commission plans to review invoices submitted by subrecipients to ensure that the goods or services received are allowable under the program guidelines and the Recovery Act. Moreover, a project manager or contract manager will review activities when performing site visits, to be sure they are allowable.</p> <p>The Energy Commission has also developed a questionnaire to be completed by applicants to aid in risk assessment and identification of applicants that might pose a greater risk. In our review of the questionnaire, we found that it would be a useful tool in helping to identify instances of noncompliance and assessing fraud risk.</p>
Policies and Procedures		
<p>Have specific provisions of the Recovery Act been incorporated into agency policies?</p>		<p>According to the program administrator, the Energy Commission plans to include an exhibit that describes Recovery Act specific requirements in grants, loans, and contracts that are funded by the Recovery Act. This exhibit is designed to specifically cover Recovery Act requirements. Our review of the exhibit confirmed that it includes significant Recovery Act requirements.</p>
<p>Are there written departmental policies providing procedures for (1) requesting cash advances as close as is administratively possible to actual cash outlays, (2) monitoring cash management activities, and (3) seeking repayment of excess interest earnings when required? (Are there internal controls related to cash management?)</p>		<p>The accounting administrator told us that the Energy Commission does not have written policies and procedures for requesting cash advances as close as is administratively possible to actual cash outlays, monitoring cash management activities, and seeking repayment of excess interest earnings when required.</p>
<p>Have written policies and procedures been established to provide direction for making and documenting eligibility determinations for Recovery Act fund grants? (Are there internal controls related to eligibility?)</p>		<p>The Energy Commission issued overall guidelines for the Energy Program funds, as well as specific guidelines for four of the eight subprograms the Energy Commission plans to implement. The overall guidelines include a description of the eligibility requirements for receiving Recovery Act funds.</p> <p>According to the program administrator, detailed eligibility requirements will be included in the solicitations for service providers that will be released for the various subprogram areas. In addition, the program administrator stated that the Energy Commission will keep the approved applications on file to document its eligibility determinations. In our review of the solicitation for the Municipal and Commercial Building Targeted Measure Retrofit Program, we found that it included eligibility requirements.</p>
<p>Are corrective action processes in place to promptly resolve any audit findings that may affect the Energy Commission's ability to successfully implement the Recovery Act?</p>		<p>The Energy Commission does not have a documented process in place to promptly resolve audit findings. An associate management auditor stated that the Energy Commission plans to document the process, which includes submitting a copy of audit findings to the executive director, financial branch chief, and applicable program staff. The financial branch chief, with the assistance of the executive director, management, and administrative and program staff, will coordinate a written response to the audit findings.</p>

AREA OF PROGRAM RISK	PREPAREDNESS	STATE ENERGY PROGRAM CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER 81.041
Have new requirements, conditions, and guidance regarding Recovery Act funds been provided to potential subrecipients?		<p>The Energy Commission prepared overall guidelines for the Energy Program being funded with Recovery Act funds, which have been posted on its Web site. These guidelines include a description of the application process and selection method, the funding available for the subprograms, and award payment and invoicing procedures. The Energy Commission held a workshop on August 28, 2009, at which it presented information on the Recovery Act's effect on the Energy Program. The Energy Commission's Web site includes downloadable files of the workshop transcript, the slide show presentation, and a link to view the workshop via streaming audio and video.</p> <p>According to the program administrator, the Energy Commission plans to provide training to Recovery Act fund subrecipients during project kickoff meetings to discuss agreement terms, budgeting, invoicing, and reporting requirements. The Energy Commission has entered into an agreement with a consulting firm to develop procedures and training materials for subrecipients. Although the training materials have not been finalized, the Energy Commission provided draft copies for our review. The draft materials included guidance for project managers on how to communicate Recovery Act requirements to subrecipients. In addition, the draft materials included a list of frequently asked questions related to the Recovery Act, which provides useful information to subrecipients on topics such as Recovery Act reporting requirements and the process used for reporting.</p>
Acquisitions/Contracts		
Do new RFPs issued under Recovery Act initiatives contain the necessary language to satisfy the provisions of the Recovery Act?		<p>According to the program administrator, solicitations issued under the Recovery Act will include an exhibit that specifically covers Recovery Act requirements. In our review of the exhibit, we concluded that it includes significant Recovery Act requirements. We reviewed the solicitation for the Municipal and Commercial Building Targeted Measure Retrofit Program and found that the Energy Commission included the exhibit.</p>
Are contracts using Recovery Act funds awarded in a prompt, fair, and reasonable manner?		<p>The Energy Commission believes contracts using Recovery Act funds will be awarded in a prompt, fair, and reasonable manner because contracts must go through a competitive bid process. According to the contracts office manager, solicitations for Recovery Act funded programs will include a ranking system to evaluate and score proposals received. In our review of the solicitation for the Municipal and Commercial Building Targeted Measure Retrofit Program, we found that it contained a process for assessing proposals that included a ranking scheme and an explanation of the evaluation criteria used for scoring the proposals. The solicitation stated that the Energy Commission will post a Notice of Proposed Award at the Energy Commission's headquarters in Sacramento and on its Web site. Lastly, we found that sample contracts were included in three solicitations currently available for the subprograms, so that prospective bidders could be aware of the terms and conditions of the contracts. However, the Energy Commission had awarded only two contracts as of November 16, 2009.</p>
Do new contracts awarded using Recovery Act funds have the specific terms and clauses required?		<p>According to the program administrator, contracts executed using Recovery Act funds will include an exhibit that specifically covers Recovery Act requirements. Our review of the exhibit found that it includes significant Recovery Act requirements. Finally, our review of the two contracts executed with the Department of General Services and the Employment Development Department revealed that the Energy Commission followed its procedures by including the exhibit in the contracts.</p>
Will projects funded under the Recovery Act avoid unnecessary delays and cost overruns?		<p>In its contract manual the Energy Commission describes its process for determining whether projects are avoiding delays and cost overruns. Specifically, each contractor or grantee must submit quarterly progress reports, which must include a project schedule and budget, among other things. The schedule helps the Energy Commission determine whether the project is on schedule. If the project is not on schedule, the subrecipient should include a written explanation. The budget is used by the Energy Commission to determine if expenses are in line with the budget in the contract. If the expenses are not in line with the contract budget, the subrecipient should provide an explanation.</p> <p>However, as of November 16, 2009, no projects funded by the Recovery Act had progressed to the point that they would reveal whether the Energy Commission's procedures are effective and being followed.</p>

continued on next page...

AREA OF PROGRAM RISK	PREPAREDNESS	STATE ENERGY PROGRAM CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER 81.041
Are contracts awarded using Recovery Act funds transparent to the public?		<p>For contracts less than \$10,000, the executive director has approval authority. However, for contracts valued at \$10,000 or more, the Energy Commissioners must approve the contract. In addition, all grants and loans must be approved by the Energy Commissioners at public business meetings. The Energy Commission's Web site notes that meeting agendas are posted about 10 days prior to the date of the meeting. Further, the Web site states that transcripts of the meetings are posted about 10 days after the meeting and minutes are posted after they have been approved by the Energy Commissioners at a subsequent meeting.</p> <p>In our review of an example of an agenda and minutes, we found that descriptive information about contracts was included. This information included items such as the contractor name, the project name, and the purpose of the contract. In addition, the minutes included the dollar amount of the contract. Lastly, according to the contracts office manager, the Energy Commission will provide a copy of any executed contract upon request.</p>
Are the public benefits of Recovery Act funds used under contract reported clearly, accurately, and in a timely manner?		<p>According to the contracts office manager, to report the public benefits of contracts or grants for program services the Energy Commission plans to provide a listing on its Web site that includes the name of the entity that received the funds; the dollar amount; the purpose of the contract, grant, or loan; and the subprogram area within the Energy Program. However, as of November 16, 2009, no projects funded by the Recovery Act had progressed to the point that they would reveal whether the Energy Commission's procedures are effective and being followed.</p> <p>The contracts office manager also stated that solicitations would include information regarding public benefits. In our review of the solicitation for the Municipal and Commercial Building Targeted Measure Retrofit Program, we found that it included a description of the benefits expected from the projects.</p> <p>Lastly, according to the contracts office manager, the Energy Commission plans to contract for services for guidance on how to report public benefits. However, as of November 16, 2009, the RFP for these services had not been released.</p>
Transparency and Accountability		
Has a governance body been established to manage the overall implementation of the Recovery Act?		<p>The Energy Commission has created the Ad Hoc Committee on the American Recovery and Reinvestment Act of 2009 (Recovery Act Committee). The Recovery Act Committee was formed to develop guidelines and be involved in tasks such as making recommendations for funding and initiating investigations of subrecipients that it has reason to believe may have misstated, falsified, or misrepresented information. The Recovery Act Committee will not oversee the overall implementation of the Recovery Act, such as managing or monitoring program activities.</p>
Have the data elements that must be captured, classified, and aggregated for analysis and reporting to meet Recovery Act provisions been identified?		<p>Section 1512 of the Recovery Act requires the State to submit quarterly progress reports that include, among other things, information on the amount of Recovery Act funds expended, a list of projects the Recovery Act funds were used for, the status of the projects, and an estimate of the number of jobs created and retained by the projects. States such as California, which have received Recovery Act funds directly from the federal government in the form of grants, loans or cooperative agreements, are required to submit the reports. In order to ensure timely reporting of quality data, the Energy Commission will need to develop and implement processes and procedures to collect and review these data for Recovery Act funded projects and activities from its subrecipients. However, as we discuss later in this table, the Energy Commission does not have a plan or process in place for determining and documenting its review and approval of data reported under the Recovery Act for accuracy and completeness, nor has it finalized its reporting mechanisms to collect the required data from subrecipients.</p>
Are reporting mechanisms in place to collect the required data from recipients to meet Recovery Act transparency provisions?		<p>According to the program administrator, the Energy Commission does not have reporting mechanisms in place to collect the required data from subrecipients to meet Recovery Act transparency requirements. However, the program administrator stated that the creation of such a mechanism is currently under development. The Energy Commission is developing an Excel spreadsheet that subrecipients will complete and use to provide the required data. Lastly, the program administrator stated that subrecipients will be required to submit their Excel spreadsheets electronically to the Energy Commission. The Energy Commission had not completed the spreadsheet as of November 16, 2009.</p>

AREA OF PROGRAM RISK	PREPAREDNESS	STATE ENERGY PROGRAM CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER 81.041
Are reports published under the Recovery Act reviewed and approved for accuracy and completeness? (Are there internal controls related to reporting?)	✘	According to the program administrator, the Energy Commission does not have a plan or process in place for determining and documenting its review and approval of reports published under the Recovery Act for accuracy and completeness. The program administrator stated that the Energy Commission is currently developing an RFP to contract for consulting services regarding the processes that will be used. However, as of November 16, 2009, the RFP was not finalized. According to the program administrator, the selected contractor will provide guidance to Energy Commission management with regard to the steps necessary to perform effective reviews for accuracy and completeness. The Energy Commission plans to have the project manager or contract manager (as appropriate) perform a first-level review of the reports submitted by subrecipients. After the data are aggregated, the final report will be reviewed by the Energy Commission's program administrator. However, because these procedures are still under development and the Energy Commission has not yet funded any projects, we could not assess their effectiveness.
Are reports prepared on a timely basis?	✘	As discussed previously, the Energy Commission plans to have subrecipients submit spreadsheets intended to capture the data used for reporting. The program administrator stated that since the spreadsheet they are developing to collect the data will be completed by the end of October 2009, the Energy Commission expects that the data from subrecipients will be collected promptly, enabling it to meet the January 10 submission deadline. However, as of November 16, 2009, the Energy Commission had not finalized the design of the spreadsheet.
Will the department regularly monitor subrecipients' compliance with federal program requirements? (Are there internal controls related to monitoring subrecipients?)	✘	Although the program administrator stated that the Energy Commission intends to release a RFP to contract for these services, as of November 16, 2009, the Energy Commission had not done so. In addition, the Energy Commission requires subrecipients of grants, loans, and contracts to submit progress reports and has a process in place to document its review of these reports. The progress reports require information such as budget information, scope of work, and project schedule. In our review, we found that the evaluation forms the Energy Commission used to review the progress reports included significant aspects of subrecipient monitoring, such as whether the project was on schedule and whether changes have occurred in the scope of work. However, as of November 16, 2009, no projects funded by the Recovery Act had progressed to the point that they would reveal whether the Energy Commission's procedures are effective and are being followed.

Sources: Interviews with key California Energy Resources Conservation and Development Commission (Energy Commission) personnel, and review of relevant documents pertaining to processes and procedures the Energy Commission had in use, has developed, or will be developing for implementing provisions of the American Recovery and Reinvestment Act of 2009.

Note: For detailed descriptions of the legend refer to pages 21 and 22.

- ✓ = Prepared
- ◆ = Mostly prepared
- = Moderately prepared
- ✘ = Not prepared

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(Agency response provided as text only.)

California Energy Commission
1516 Ninth Street
Sacramento, CA 95814-5512

November 25, 2009

Elaine M. Howle, State Auditor*
Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, CA 95814

Dear Ms. Howle,

Thank you for the opportunity to comment on your draft report *California Energy Resources Conservation and Development Commission: It Is Not Fully Prepared to Award and Monitor Millions in Recovery Act Funds and Lacks Controls to Prevent Their Misuse*. The Energy Commission provides the following response to address issues raised by the Bureau of State Audits (BSA) regarding the State Energy Program (SEP).

- The SEP implementation has taken longer than anticipated because the requirements of an open, public process have necessitated extensive public interaction through workshops and meetings throughout the state. The Energy Commission however sought and received legislative authorization to implement the program through guidelines rather than regulations, cutting months out of the process.
- Extensive public and stakeholder input in developing innovative programs will ensure a more transparent, equitable and beneficial use of ARRA funds.
- It is critical for a successful program to follow state mandated processes and procedures that are in place to ensure a fair and competitive process, even though compliance with these requirements impacts the schedule. ①
- The majority of SEP funds will be obligated by April 2010, nearly five months before the federal obligation deadline. ②
- At a November 16, 2009 meeting, senior U.S. Department of Energy (DOE) officials and program experts commented that the Energy Commission's progress with the SEP since July 2009 was impressive. ③

In summary, we agree that additional internal controls should be implemented to meet federal ARRA requirements and that further work is needed to finalize our preparations to disburse the ARRA SEP funds. The Energy Commission however has made significant strides in obtaining public input, developing program guidelines and releasing program solicitations. Given the legal and transparency framework within which the Commission must operate, it has not been slow in developing guidelines, and according to DOE the state is not at risk to lose funds. The Energy Commission did not wait to begin work on guidelines until the requisite legislation was enacted, but proceeded efficiently and expeditiously in anticipation of enactment. The Energy Commission must comply with numerous state laws, including the Administrative Procedures Act (APA) that requires due public process for adopting regulatory requirements, the Warren-Alquist Act requiring the Energy Commission to make all decisions in an open public setting ④ ⑤

* California State Auditor's comments begin on page 33.

with ample opportunity for public input, the trailer bill exempting the Commission from some, but not all APA requirements when adopting guidelines, the Energy Commission's regulations for adopting rules and guidelines, and state contracting law.

More detailed comments are provided regarding several major topic areas mentioned in the report.

Internal controls. The Energy Commission agrees that its internal controls can and should be strengthened to fully comply with ARRA guidelines and ensure proper expenditure of funds and collection of required data. These additional internal controls will be developed and documented over the next several months with the assistance of a contractor who will review existing processes and procedures and assist staff in developing adequate procedures and documentation.

We note that the Energy Commission has an established internal control structure in place for its existing programs. However, BSA is correct that these internal controls are not adequately documented. The adequacy of existing internal controls has been demonstrated by the following:

- ⑥ • The Department of Finance (DOF) conducts an annual Financial Statement Audit of the Energy Commission's Renewable Resource Trust Fund (RRTF) and internal controls. DOF's latest audit report dated January 2009 stated that the "financial statements are fairly presented for the fiscal year ended June 30, 2008" and the audit did not identify any reportable internal control or compliance weaknesses." The audit tests expenditures, disbursements, revenue collection and reconciliation, financial report preparation and other fiscal controls. These fiscal control processes are not unique to the Renewable Resource Trust Fund. The same internal controls, processes, and staff in the financial operations of the Energy Commission are for all programs, regardless of fund source. It should also be noted that in more than ten years, there has never been a material finding by DOF in their audit of the RRTF.
- ⑦ • The Energy Commission successfully implemented and administered a similar size program effort during the energy crisis of 2000/2001. Approximately \$345 million in general funds were awarded by the Energy Commission to public and private entities to reduce electricity consumption, demand and increase electricity generation. During this crisis, the Energy Commission developed 12 new programs and expedited program guidelines to effectively and efficiently implement the programs. Approximately 240 projects were funded through contract, grant and loan agreements. These extraordinary efforts were conducted with minor staffing increases (eight limited term positions) and existing processes and procedures. In fact, fiscal reporting systems in place today are more robust than the fiscal reporting systems in place during the energy crisis.
- ⑧ • The State Controller's Office (SCO) has recognized the Energy Commission's Accounting Office with its "Award for Achieving Excellence in Financial Accounting" on numerous occasions for numerous fund financial statements. Most recently, the SCO presented the Energy Commission with its excellence in Financial Reporting award for 11 funds for the fiscal year ending June 30, 2008.

Progress in implementing the program. The Energy Commission agrees that program implementation should be expedited to maximize the economic benefits of the Recovery Act. The BSA, however, does not recognize the efforts and significant progress made to date by the Energy Commission to develop new, innovative programs. Unlike other state departments receiving and expending ARRA funds, the Energy Commission did not have existing programs in place (except for the Energy Conservation Assistance Account loan program) to readily expend ARRA funds. Additionally, state law requires the Energy Commission to maintain a transparent and open, public process when designing and developing programs and approving funding awards.

Once the ARRA was enacted, the Energy Commission moved quickly to assemble a core team to begin working on program design and complete the Department of Energy grant application. Contrary to BSA's assertion, the Energy Commission did not wait until legislation was signed late July 2009 to begin guideline development. Stakeholder meetings occurred in early April 2009 and the first SEP public workshop was held in late April 2009. Additional public workshops were held in early May to solicit public input on broad SEP program concepts. Staff took the input from these workshops and developed program guidelines from mid-May through June 2009. These draft program guidelines were presented in a series of statewide public workshops during July 2009. Further input from these workshops was incorporated into the draft guidelines and then the final, draft guidelines were posted for the required 30-day timeframe in August 2009. As legally required, the Commission adopted these guidelines in September 2009.

⑤

The BSA's report also implies that the Energy Commission chose a public and open guideline development process at the expense of expediency. As we explained to the BSA, the Energy Commission is required to conduct such matters as guideline development and funding award approval through a public process and received strong encouragement and support from both the Governor's Office and Legislature to do so through a guideline process authorized by trailer bill language as opposed to the lengthier regulation process. This allowed the Energy Commission to conduct a meaningful public process while saving considerable time. The BSA does not acknowledge that we must comply with administrative procedure and contracting law. Where appropriate and consistent with applicable law, the Energy Commission has negotiated expedited approval processes with control agencies such as Department of General Services for expenditure of ARRA funds. However, the Energy Commission recognizes and the state benefits from the important public process served by these laws and must fully comply with their requirements.

①

Additionally, state expenditure authority for the SEP funds was not received until passage of the budget trailer bill passed in late July 2009 and only half of the program expenditure authority was approved at that time. The remaining \$113 million was recently authorized in a legislative bill that becomes effective January 1, 2010. We believe the majority of SEP funds will be obligated by April 2010, nearly five months before the federal obligation deadline.

⑨

On November 16, 2009 members of the California Recovery Task Force and the Energy Commission met with senior U.S. Department of Energy officials to discuss the SEP. The primary purpose of DOE's visit was to get an update on the Energy Commission's implementation of the SEP grant and to determine if there was anything DOE could do to assist in the process. At the meeting, DOE representatives acknowledged that further guidance will be forthcoming on job calculations and reporting and compliance with Davis-Bacon and prevailing wage issues as well as National Historic Preservation Act and National Environmental Protection Act certifications that have delayed states obligating SEP funds. At the close of the November 16 meeting, DOE representatives expressed that they were very impressed with the progress the Energy Commission has made since the late July meeting and stated the Energy Commission has made "100 percent progress." Also during this meeting, DOE expressed support for the Energy Commission's work-to-date and did not state, suggest or imply that the Energy Commission risked losing any ARRA funding based on the status of program delivery.

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The Energy Commission agrees with the BSA's recommendation that the support solicitations should be completed as soon as possible. The audit solicitation was released on November 24 and we anticipate releasing the monitoring, verification and evaluation (MV&E) solicitation within the next 10 days. With the assistance of the audit contract, we expect to enhance our internal controls. Existing internal controls are adequate; however we believe there are opportunities to further strengthen existing controls that will enhance the delivery of programs and project success.

⑪

- ⑫ Finally, we provide some additional examples of progress expending the ARRA SEP funds not reflected in the BSA's report:
- The Employment Development Department, in coordination with the Energy Commission, awarded 27 ARRA/SEP funded grants on October 2, 2009 totaling \$14.5 million. These grants also leveraged \$10 million in federal Workforce Investment Act funds. All of these projects are expected to begin training efforts in December 2009 and January 2010.
 - The SEP Energy Conservation Assistance Account Revolving Loan Program was launched on September 16, 2009. To date, the Energy Commission has received applications totaling \$35 million, an oversubscription of currently available program funds.

Progress in executing support contracts. The Energy Commission recognizes that it would be preferable to have the support contracts in place to assist with the implementation of ARRA funded programs. Development of the solicitation packages for the audit and fraud work and the monitoring, verification and evaluation (MV&E) contracts have taken longer than anticipated. As mentioned, the solicitation for the audit and fraud work was released on November 24, 2009 and the MV&E solicitation should be released in the next 10 days.

- ⑬ We believe the timing of the planned commencement of the audit and MV&E contracts complement when we expect to execute the bulk of the funding awards. A quicker selection and execution of the competitively bid support contracts will result from contract teams who will conduct concurrent reviews/edits, and an expedited approval process. Additionally, we have negotiated a more streamlined approval process with the Department of General Services (DGS) that allows for the approval of draft contracts that can be performed
- ⑭ concurrent with Commission Business Meeting approval, further expediting the execution process. The "standard process for executing a contract" as referenced by the BSA will not be the standard operating procedure for the SEP support contracts or other SEP funding agreements.
- ⑮ **Prepared to meet federal reporting requirements.** The BSA incorrectly stated that the Energy Commission is not prepared to comply with the federal Office of Management and Budget (OMB) 1512 reporting requirements. The Energy Commission met the OMB reporting deadline for the quarter ending September 30, 2009. Additionally, a support contractor has been working closely with administrative and information technology staff to develop a comprehensive reporting system that captures OMB, DOE and other data elements. This system is in the final stages of testing before rollout. Training of interagency staff – DGS, EDD and ETP – is planned for December 1, 2009. Additional training of internal staff is planned for the first two weeks of December. The Energy Commission will develop a documented process for reviewing and validating federal reported data.

We appreciate the BSA's efforts to identify areas where the Energy Commission can improve its internal controls, reduce risks for misuse of ARRA funds while meeting the federal objectives to spur economic activity, save and create new jobs in a transparent and accountable manner.

Sincerely,

(Signed by: Melissa Jones)

Melissa Jones
Executive Director

Comments

CALIFORNIA STATE AUDITOR'S COMMENTS ON THE RESPONSE FROM THE CALIFORNIA ENERGY COMMISSION

To provide clarity and perspective, we are commenting on the response to our audit from the California Energy Commission (Energy Commission). The numbers below correspond to the numbers we placed in the margins of the Energy Commission's response.

Because it is frequently our job to measure compliance with state laws and regulations, we better than most understand the importance in following state mandated processes and procedures. Furthermore, nowhere in the report do we ever imply or suggest that required processes not be followed.

We hope that the Energy Commission is correct in its assertion that the majority of the funds for the subprograms it has identified for the State Energy Program (Energy Program) will be obligated by April 2010. To do so, the Energy Commission will need to meet its current timelines. However, it has already allowed some of its time frames to slip. For example, the Energy Commission's Web site as of November 25, 2009, shows that the deadlines for potential subrecipients to submit proposals providing program services for the California Comprehensive Residential Building Retrofit, Municipal and Commercial Building Targeted Measure Retrofit, and Municipal Financing District programs have already slipped from November 30, to December 21, 2009.

As the Energy Commission did not make this assertion regarding the U.S. Department of Energy during the course of our fieldwork, we have no way to validate either its assertion or the basis for the U.S Department of Energy's statements and conclusions.

Although the Energy Commission claims to have made significant strides in releasing program solicitations, according to its Web site it has only released three solicitations to subrecipients of its Energy Program as of November 25, 2009. We do not believe that the release of three solicitations could be considered significant.

The Energy Commission could not provide any evidence to support its claim of promptly developing guidelines. In fact, as we show in Table 4 on page 11, it still had not adopted guidelines for at least two of its eight subprograms as of November 16, 2009. In addition, the Energy Commission asserted it did not need program specific guidelines for another two subprograms in an email dated November 24, 2009; however, it failed to provide evidence to support its assertion. Furthermore, on November 4, 2009, the

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program administrator told us that the Energy Commission had to wait until a bill was signed on July 28, 2009, giving it statutory authority to develop and adopt the guidelines.

- ⑥ The Energy Commission's assertions are misleading. The annual financial audit performed by the Department of Finance (Finance) is not relevant to internal controls over compliance with federal regulations or Recovery Act requirements. Moreover, as we state on page 23, in its audit reports regarding the Energy Commission's Renewable Resource Trust Fund, Finance stated that the purpose of these audits was not to express an opinion on the Energy Commission's internal controls relating to its programs.
- ⑦ It was not within the scope of our review to validate assertions made by the Energy Commission regarding a program it states it administered in 2000 and 2001. Further, controls that may or may not have been in place nine years ago for a state program are not relevant to the system of internal controls needed to ensure compliance with federal regulations and American Recovery and Reinvestment Act of 2009 (Recovery Act) requirements today.
- ⑧ The Energy Commission's statements regarding the awards it received from the State Controller's Office for excellence in financial reporting are not relevant to any of the statements or conclusions we make in the report. This award is presented to recognize agencies that submit both accurate and timely year-end financial reports. At no point in the report do we comment on the Energy Commission's financial statements.
- ⑨ We acknowledge on page 2 of the report the Energy Commission's statements regarding needing to wait until legislation was signed in July 2009 to receive the authority to award half the Recovery Act funds and that it will not be able to award or spend the other half until January 1, 2010.
- ⑩ We acknowledge on page 18 that in some areas the Energy Commission is prepared or almost prepared to administer the Recovery Act funds, but we also state that we identified several areas in which its internal controls are not adequate or it is not yet prepared.
- ⑪ We disagree with the Energy Commission's assertion that its internal controls are adequate. As we state throughout the report, the Energy Commission could not provide any convincing evidence that it had established a system of internal controls that would ensure that Recovery Act funds will be used as intended and would minimize the risk of fraud, waste, and abuse.

The Energy Commission's statement is misleading. As we depict in the Figure on page 13, none of the funds relating to its contracts, grants, or loans have been spent as of November 16, 2009.

⑫

We hope the Energy Commission's belief regarding its efforts to strengthen its controls and obligate the remainder of the Recovery Act funds is realized and look forward to assessing its progress when we receive its six-month response to our recommendations in the report. As stated on page 19, we believe that until effective internal controls are in place, it would be premature for the Energy Commission to award Recovery Act funds to subrecipients.

⑬

The Energy Commission states that it has negotiated a more streamlined approval process for draft contracts and that the "standard process for executing a contract" that we reference will not be the standard operating procedure for the Energy Program support contracts or other Energy Program funding agreements. However, the "streamlined" time frames for processing contracts, loans, and grants we discuss in our report are the time frames the Energy Commission's contracts manager and grants and loans manager provided in the context of discussions concerning the Energy Program.

⑭

Our statement is correct. As the Energy Commission states in its response, it is still working to develop a comprehensive reporting system that will capture all the required information. As for what the Energy Commission reported for the quarter ending September 30, 2009, it basically had little to report as no funds had been spent as of that time.

⑮

December 2009

cc: Members of the Legislature
Office of the Lieutenant Governor
Milton Marks Commission on California State
Government Organization and Economy
Department of Finance
Attorney General
State Controller
State Treasurer
Legislative Analyst
Senate Office of Research
California Research Bureau
Capitol Press