



**U.S. Department of Education
Office of Inspector General**



American Recovery and Reinvestment Act of 2009

**States' Treasury-State Agreements Might Need to Include American
Recovery and Reinvestment Act, Education Jobs Fund, and Other
Similarly Funded Programs**

Final Alert Memorandum



ED-OIG/L05L0004

June 2011

Abbreviations, Acronyms, and Short Forms Used in this Memorandum

C.F.R.	Code of Federal Regulations
CMIA	Cash Management Improvement Act of 1990, as amended
OCFO	Office of the Chief Financial Officer
Recovery Act	American Recovery and Reinvestment Act of 2009
Treasury	U.S. Department of the Treasury
TSA	Treasury-State Agreement



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF INSPECTOR GENERAL

AUDIT SERVICES

June 20, 2011

FINAL ALERT MEMORANDUM

TO: Thomas Skelly
Acting Chief Financial Officer
Office of the Chief Financial Officer

FROM: Keith West /s/
Assistant Inspector General for Audit

SUBJECT: States' Treasury-State Agreements Might Need to Include American Recovery and Reinvestment Act, Education Jobs Fund, and Other Similarly Funded Programs
Control Number ED-OIG/L05L0004

The purpose of this alert memorandum is to bring to your attention an issue of concern related to annual Treasury-State Agreements (TSA) between the U.S. Department of the Treasury (Treasury) and States. Throughout this alert memorandum, we use the term "State" to mean a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, and the U.S. Virgin Islands. It includes any agency, instrumentality, or fiscal agent of a State that is legally and fiscally dependent on the State Executive, State Treasurer, or State Comptroller.

States establish a TSA with Treasury to detail their implementation of the Cash Management Improvement Act of 1990, as amended (CMIA). CMIA was enacted by Congress to ensure efficiency, effectiveness, and equity in the exchange of funds between the States and the Federal government for Federal assistance programs. The main intent of the CMIA is for States to draw down Federal funds exactly when they are needed and for Federal programs to be "interest-neutral," resulting in no gains or losses by either Federal or State governments. Each State's TSA establishes the threshold for determining major Federal assistance programs covered by the TSA, identifies the major Federal assistance programs, and documents the accepted funding techniques and methods for calculating interest agreed upon by both parties.

Treasury regulations at 31 Code of Federal Regulations (C.F.R.) § 205.5(e) provide that "*unless specified otherwise*, major Federal assistance programs must be determined from the most recent Single Audit data available." (Emphasis added.) Treasury regulations at 31 C.F.R. § 205.7(a) provide that "[Treasury] or a State may amend a Treasury-State agreement at any time if both [Treasury] and the State agree in writing."

Single Audit data might be sufficient for determining the major Federal assistance programs that are funded with ongoing annual appropriations. However, Single Audit data might not be the

best source for determining the status of programs authorized or funded under large, one-time appropriations such as the American Recovery and Reinvestment Act of 2009 (Recovery Act) and the Education Jobs Fund.¹ Single Audits reflect a State's expenditure of funds and are not finalized until 9 months after the end of the fiscal year that they cover. Therefore, a new program for which a State has received funding generally will not be considered for inclusion in the State's TSA until after the State expends the funds and the Single Audit on which the TSA is based reflects the expenditures. Because of the lapse between the time the State is initially awarded program funds and the time the State's Single Audit reflects the program's expenditures, a new program that meets or exceeds the threshold for a major Federal assistance program generally will not be included in a TSA until at least the second fiscal year after the State initially received the program funds. Consequently, major Federal assistance programs funded with large, one-time appropriations might not appear in a State's TSA until after all or most of the funds have been expended.

For example, a State with a fiscal year ending June 30 that received Recovery Act program funds in April 2009 would have seen Recovery Act program expenditures reflected, at the earliest, in its Single Audit for the fiscal year that ended June 30, 2009 (FY 2009 Single Audit). The State's FY 2009 Single Audit was due on March 31, 2010, and was the audit on which the State's TSA for the period July 1, 2010, through June 30, 2011 (FY 2011 TSA), was based. Thus, the State's FY 2011 TSA would have been the first TSA to include Recovery Act programs, provided these programs' expenditures met or exceeded the threshold for a major Federal assistance program. However, if the State expended little or no Recovery Act program funds between April and June 2009, then its FY 2011 TSA would not have included Recovery Act programs, either because Recovery Act program expenditures were not reflected in the State's FY 2009 Single Audit or because the Recovery Act program expenditures did not meet or exceed the threshold for a major Federal assistance program. The State's TSA likely would not reflect Recovery Act funded programs until FY 2012 (July 1, 2011, through June 30, 2012), more than 2 years after the funds were initially awarded, and the State had expended most or all of its Recovery Act funds.

We reviewed the TSAs of 12 States where we conducted Recovery Act audit work. For 10 of the 12 States, the Single Audit data did not include any of the Recovery Act awards that we reviewed during our Recovery Act audit work. Because the TSAs were based on Single Audit data, the TSAs for those 10 States did not include any of the Recovery Act programs that we reviewed even though those States received Recovery Act funding that met or exceeded the major Federal assistance program thresholds identified in their TSAs. (See the following table.)

¹ The Education Jobs Fund is a formula grant that provides funds to States to assist local educational agencies in saving or creating education jobs for school year 2010 – 2011. The total obligation for FY 2010 was \$10 billion, and the average State grant award was about \$190.4 million.

Table: States with Recovery Act Programs That Met the Threshold to Be Included as a Major Federal Assistance Program as Defined in Their Existing TSAs			
State	Effective Date of TSA	TSA Threshold For a Major Federal Assistance Program	Recovery Act Programs Included in TSA
Alabama	10/01/09–9/30/10	\$41,484,940	None
California	7/01/10–6/30/11	\$323,000,000	Title I, SFSF-ED, SFSF-GS*
Illinois	7/01/09–6/30/10	\$60,000,000	None
Louisiana	7/01/09–6/30/10	\$60,000,000	None
Maryland	7/01/09–6/30/10	\$51,509,710	None
Missouri	7/01/09–6/30/10	\$56,470,000	None
Oklahoma	7/01/09 until terminated	\$34,378,592	None
Pennsylvania	7/01/10–6/30/11	\$77,374,170	None
South Carolina	7/01/09–6/30/10	\$45,179,481	None
Utah	7/01/10–6/30/11	\$22,597,823	SFSF-ED
Virginia	5/01/09–6/30/10	\$43,828,884	None
Wisconsin	7/01/09 until indefinitely	\$25,000,000	None
* TITLE I SFSF-ED SFSF-GS	Title I, Part A of the Elementary and Secondary Education Act of 1965, as amended State Fiscal Stabilization Fund, Education Stabilization Fund State Fiscal Stabilization Fund, Government Services Fund		

Including Recovery Act and other programs funded under large, one-time appropriations (such as the Education Jobs Fund) in the TSAs would protect State and Federal interests by either specifying interest-neutral funding techniques or by requiring one party to compensate the other for the early or late transfer of Federal funds. If Recovery Act and other similarly funded programs are excluded from States' TSAs, States must then comply with the Education Department General Administrative Regulations at 34 C.F.R. §§ 80.20 and 80.21. These regulations require States to maintain proper cash management procedures that include calculating the interest earned on Federal funds drawn in advance of need and remitting that interest to the Federal government at least quarterly.

Because the fiscal year for many States is July 1 to June 30, States might have already begun determining whether to amend their TSAs for FY 2012, which would be effective July 1, 2011.

RECOMMENDATION

We recommend that the Chief Financial Officer—

- 1.1 Work with Treasury to encourage Treasury and the States to (a) determine whether TSAs for FY 2012 and subsequent fiscal years should be amended to include applicable Recovery Act,

Education Jobs Fund, and other similarly funded programs; and, (b) if so, consider amending TSAs as soon as possible rather than waiting until these programs are included in a Single Audit.

Office of the Chief Financial Officer Comments

A draft of this alert memorandum was provided to the Office of the Chief Financial Officer (OCFO) for comment. In its comments, OCFO stated that including Recovery Act programs in TSAs would protect State and Federal interests. However, OCFO stated that it has very little influence over TSAs because the agreements are negotiated between States and the Treasury. Therefore, OCFO proposed a revision to the recommendation contained in the draft copy of the alert memorandum. Instead of stating that the Chief Financial Officer should “Work with all States and Treasury to determine whether TSAs should be amended . . . ,” OCFO suggested that the recommendation should be that the Chief Financial Officer “Work with Treasury to encourage Treasury and the States to determine whether TSAs should be amended. . . .” We have included OCFO’s comments in their entirety as an Enclosure to this memorandum.

OIG Response

We agreed with OCFO’s suggestion to change the draft recommendation, and we revised the report accordingly. We also revised this alert memorandum to include the Education Jobs Fund and other similarly funded programs. In addition, we clarified the memorandum to better explain why Single Audit data might not be the best source for determining whether large, one-time appropriations such as the Recovery Act and Education Jobs Fund should be included in TSAs.

Administrative Matters

We conducted our work in accordance with the OIG’s quality standards for an alert memorandum.

Corrective actions proposed (resolution phase) and implemented (closure phase) by your office will be monitored and tracked through the U.S. Department of Education’s Audit Accountability and Resolution Tracking System. Alert memoranda issued by the Office of Inspector General will be made available to members of the press and general public to the extent information contained in the memorandum is not subject to exemptions in the Freedom of Information Act (Title 5, United States Code, § 552).

Should you have any questions or require additional information, please do not hesitate to contact me at (202) 245-7041 or Gary D. Whitman, Regional Inspector General for Audit, at (312) 730-1658.

Enclosure

Enclosure



**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE CHIEF FINANCIAL OFFICER**

MEMORANDUM

DATE: February 17, 2011

TO: Gary D. Whitman
Regional Inspector General for Audit

FROM: Thomas P. Skelly /s/
Delegated to Perform the Functions and Duties of Chief Financial Officer

SUBJECT: Draft Alert Memorandum
States' Treasury-State Agreements Might Need to Include American Recovery
and Reinvestment Act Programs.
ED-OIG/L05L0004

We reviewed the draft Alert Memorandum entitled "States' Treasury-State Agreements Might Need to Include American Recovery and Reinvestment Act Programs." Clearly, including Recovery Act programs in Treasury-State Agreements (TSA's) would protect State and Federal interests. While we have very little influence regarding the actual negotiation of Treasury-State Agreements, as these agreements are directly negotiated between the States and Treasury, we certainly recommend and encourage the inclusion of Recovery Act programs in Treasury-State Agreements.

As a result, we propose the following revision to the recommendation contained in the draft Alert Memorandum:

Work with Treasury to encourage Treasury and the States to determine whether TSA's should be amended to include applicable Recovery Act programs that will meet or exceed the dollar threshold of a major Federal assistance program as defined in their TSAs.

We will begin the preparation of a corrective action plan to be used in the resolution process upon issuance of the final Alert Memorandum. If you have any questions please contact Gary Wood at (202) 245-8118.

CC: Keith West
Rich Rasa

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