

**Show Me the Money (and the Strings): Some Things
the Construction Industry Needs to Know about the
American Recovery and Reinvestment Act
of 2009**

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Spend Out Rate

Total Nationwide Estimated Stimulus Amount: ~ \$787 Billion

2/3 Direct Spending on public works, infrastructure, social spending, broadband deployment, health, information technology, etc.

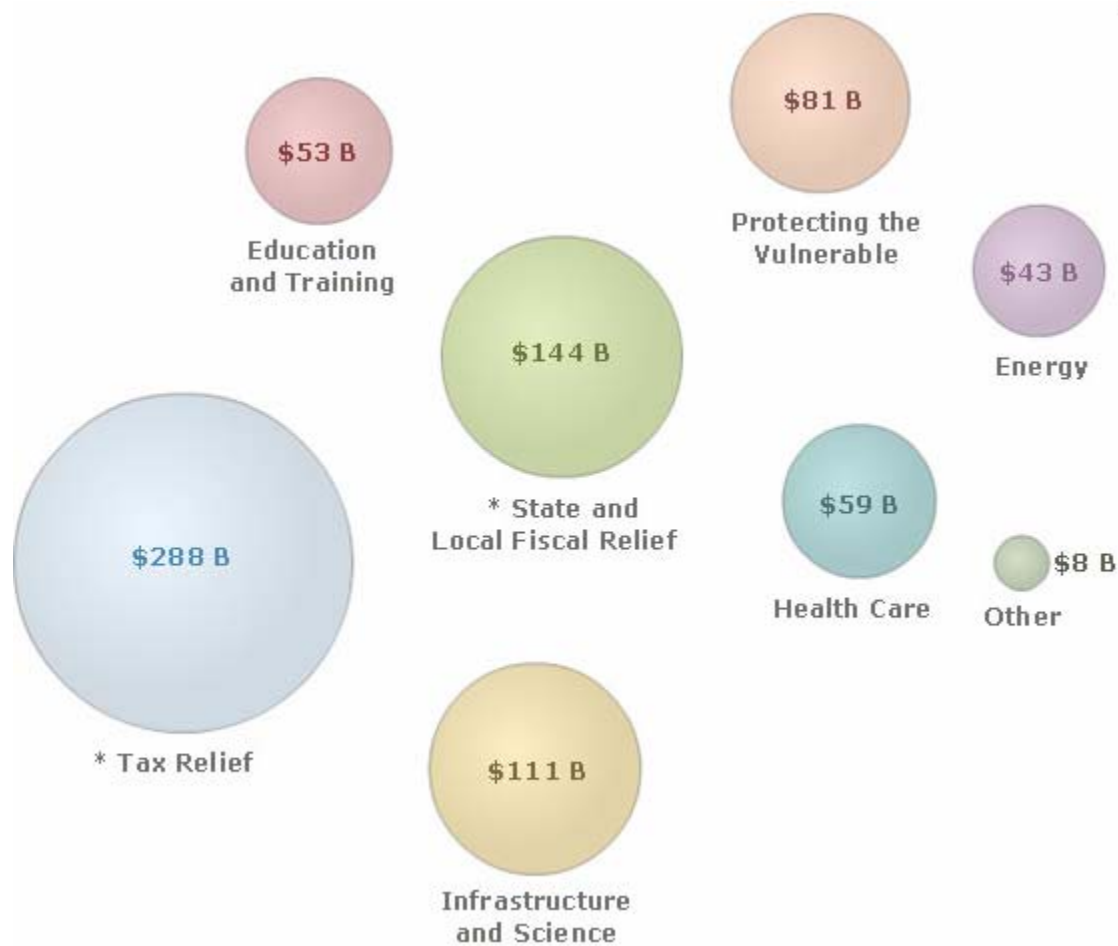
The Congressional Budget Office (CBO) estimates the money will spend out over the following time period:

- \$34.9 billion in 2009 outlays
- \$110 billion in 2010 outlays
- \$76.3 billion in 2011 outlays
- \$38.0 billion in 2012 outlays
- \$22.8 billion in 2013 outlays
- \$25 billion between 2014-2019

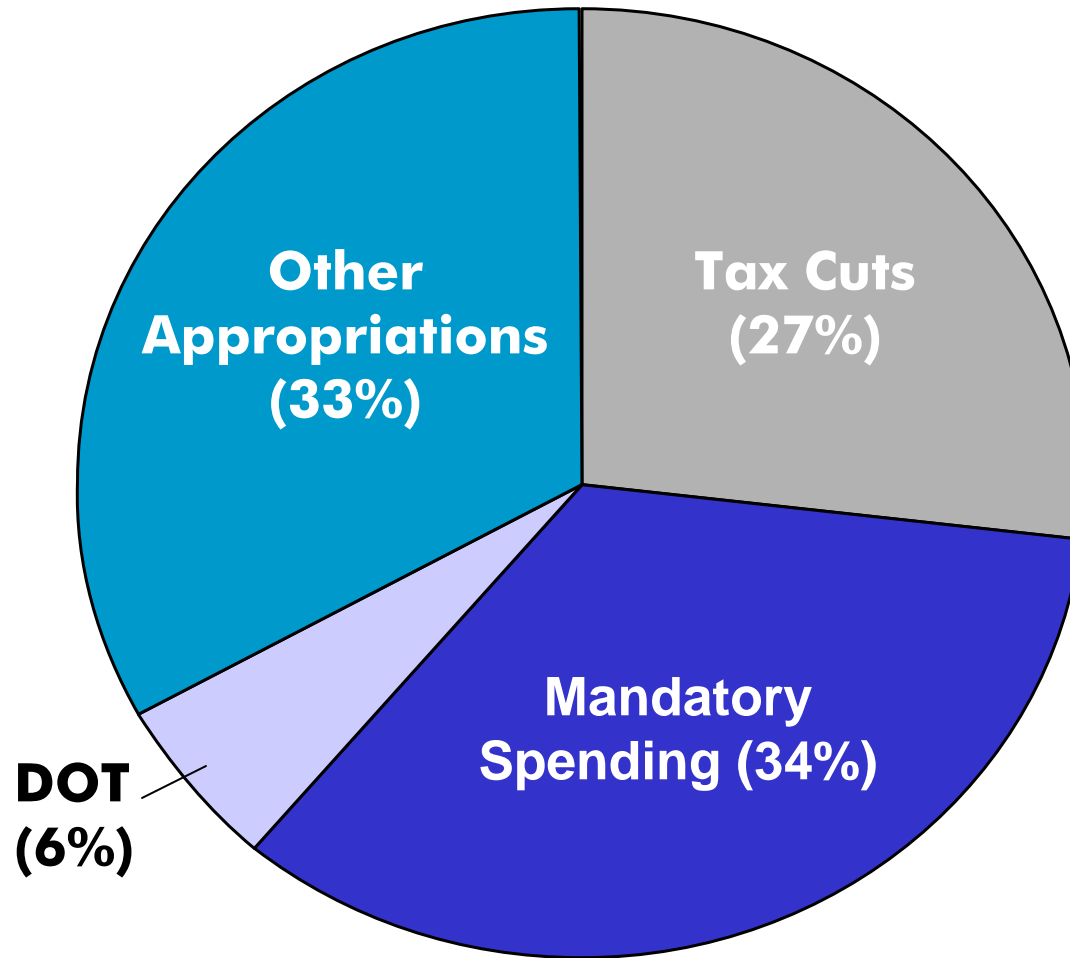
“Down-payment” on the Green Economy

- Transportation & Water Resources peak in 2010-2011 – Fast Jobs
- New Economy – Down-payment for Future
 - Energy Efficiency Bulges 2012-2014
 - Health Information Technology Bulges 2012-2015 (\$14.2B in 2014 alone)
 - Broadband Bulges in 2012-2015 But Less Pronounced

Nationwide Stimulus Allocation



Nationwide Stimulus Allocation



What is the impact on local employment levels?

Over the next two years, the total number of jobs ARRA is intended to create are:

- Tennessee: 70,000
- Georgia: 106,000
- Alabama: 51,000
- North Carolina: 105,000
- Kentucky: 48,000
- Mississippi: 30,000

General Contracting Provisions

- **Fixed-price Contracts**—Whenever possible, contracts funded under the Act will be fixed-price contracts awarded through the use of competitive procedures.
- **Quick Starts**—Congress intends for each recipient of infrastructure funds to use at least 50 percent of the funds for activities “that can be initiated not later than 120 days after the date of enactment of this Act.”
- **Obligation Period**—Unless otherwise specified, funds made available under this Act shall remain for obligation until September 30, 2010.

General Contracting Provisions (continued)

- **Excluded projects**—No casinos, aquariums, zoos, golf courses, or swimming pools.
- **Prevailing Wage**—Contractors and subcontractors on projects funded directly by or with assistance from this Act will pay prevailing wage to “all laborers and mechanics” they employ on these projects.
- **Environmental Review**—The Act contains language requiring projects to meet all applicable environmental laws and review procedures “on an expeditious basis” and “that the shortest existing applicable process under NEPA shall be utilized.”

Buy American

“None of the funds appropriated or otherwise made available by this Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States.”

Buy American Exceptions

The Buy American provision will not apply in any case or category of cases in which a federal department of agency finds—

- (1) enforcement of the provision is inconsistent with the public interest;
- (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of satisfactory quality; or
- (3) inclusion of iron, steel, and manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

Transparency and Accountability

- Federal Recovery Accountability and Transparency Board will oversee implementation of the Act
- The website --www.recovery.gov-- will contain information on all contracts
- State certification
- Special whistleblower protections

Reporting Requirements

- Federal agencies and their “prime recipients” of grants, loans and contracts (but not mandatory or entitlement programs) are subject to reporting requirements.
- For the state and local recipients of ARRA grant funds, state/locals and/or the subawardees to whom state/locals let contracts will be responsible for the Section 1512 reporting requirements
- Requirements will include reporting on the funds received, total project cost, jobs created, etc.
- For direct government contracts, reporting requirements apply to prime contractors and their first-tier subcontractors. OMB is working on FAR regulations on these reporting requirements as well provisions for expanded contractor reporting and expanded GAO/IG access to contractor records.

Major Federal Appropriations

- Government Procurement Opportunities—\$30 billion
- Renewable Energy and Energy Efficiency Programs—\$31 billion
- Employment and Worker Training Programs—\$4.92 billion
- Transportation, Water Resources & Infrastructure, and Environmental Remediation—\$80 billion
- Housing—\$12.2 billion
- Broadband Deployment—\$6.95 billion
- Private Sector Assistance—\$936 million

Government Procurement Opportunities

Federal Government Procurement—\$15.2 billion

- Federal agency IT upgrades and Modernization
- Federal building-related modernization, repair and construction
- Homeland security procurement opportunities

Federal “Green” Buildings and “Green” Contracting—\$12.7 billion

- “Green” Defense Department operations and maintenance construction
- Defense Department facilities infrastructure investment
- General Services Administration Federal Building Fund

Non-Federal Facility Construction (excluding school modernization under the State Stabilization Fund)—\$2.6 billion

Renewable Energy and Efficiency

Research, Development, and Deployment Initiatives—\$15.3 billion

- DOE innovative technology and loan program
- DOE alternative fueled vehicles pilot program and advanced battery manufacturing
- DOE fossil energy research and development

Renewable Energy and Energy Efficiency Grants—\$11.6 billion

- DOE energy efficiency and conservation block grants
- DOE State Energy Program

Electricity Grid Modernization—\$4.5 billion

Employment and Worker Training Programs

Department of Labor—Workforce Investment Act—\$3.9 billion

Department of Labor—Community Employment for Older Americans—\$120 million

Department of Labor—State Unemployment Insurance and Employment Service Operations—\$400 million

Department of Health and Human Services—Health Professions Workforce—\$500 million

Environmental Remediation

Department of Energy Defense and Non-Defense Environmental
Cleanup—\$5.6 billion

EPA Superfund Cleanup Program—\$600 million

EPA Leaking Underground Storage Tank—\$200 million

Water Resources and Water Infrastructure

WATER RESOURCE FUNDING—

- \$2 billion for Army Corps of Engineers construction (not less than \$200 million of that amount for environmental infrastructure)
- \$375 million for the Mississippi River and its tributaries
- \$2 billion for operations and maintenance

WATER INFRASTRUCTURE FUNDING—

- \$4 billion for Clean Water State Revolving Fund
- \$2 billion for Safe Drinking Water State Revolving Funds

Water Infrastructure Distribution

- Funds flow to States through an existing statutory structure.
- EPA Administrator to reallocate state revolving funds (SRF) "where projects are not under contract or construction within 12 months of the date of enactment" of the stimulus bill.
- Priority will go to projects on the State priority list ready to construct within 12 months of enactment.
- For both SRF accounts, the bill mandates 50 percent of the funds go to "additional subsidization to eligible recipients in the form of forgiveness of principal, negative interest loans or grants or any combination of these."
- 20 percent will go to projects to address "green infrastructure, water or energy efficiency improvements or other environmentally innovative activities."

Transportation Funding

Department of Transportation—\$1.5 billion (discretionary grants)

Federal Aviation Administration—\$1.1 billion

Federal Highway Administration—\$27.5 billion

Federal Railroad Administration—\$8 billion

(includes potential high speed rail through Birmingham and major railroad hub)

Federal Transit Administration—\$8.4 billion

Key Dates

- July 10, 2009 (approximate) – States must obligate 50 percent of highway/bridge money
- July 15, 2009 – Fund recipients begin reporting their use of funds
- September 10, 2009 (approximate) – mass transit formula grants must be obligated
- February 17, 2010 – DOT surface transportation discretionary grants and remaining 50% of Airport Improvement Program (“AIP”) funds must be obligated
- March 10, 2010 – Remaining 50 percent of federal highway/mass transit formula funds
- September 30, 2010 – All ARRA funds expire (with some exceptions)

Stimulus Grant Timeline

7/15/2009	Transportation: Highway Infrastructure Investment, Transit Capital Assistance, State and Tribal Assistance Grants & Clean Water State Revolving Funds - Provide updated transparency and accountability reports.
7/17/2009	HUD: Neighborhood Stabilization Program - Applications due to HUD for grants to purchase abandoned and foreclosed property for use as affordable housing.
8/1/2009	The Department of Health and Human Services sent letters to governors that detail Early Childhood Advisory Council state allocation amounts under ARRA and provide guidance for application of the startup grant awards. The application deadline is August 1, 2010. A copy of the letter that went to governors and the guidance is attached.
8/8/2009	Education: McKinney-Vento Homeless Act - Deadline for SEAs to award McKinney-Vento ARRA subgrants to LEAs.
8/16/2009	HHS-ONC/IT: Health Information Technology - HHS and the Federal Trade Commission must promulgate interim final regulations on notification of breaches.
9/1/2009	FTA: Transit Capital Assistance & Fixed Guideway Infrastructure - FTA will reallocate unobligated funds from first 50% of apportioned funds.

Stimulus Grant Timeline

9/1/2009	HHS-ACF: Temporary Assistance for Needy Families (TANF) Emergency Contingency Fund - Reporting period for FY2010 Q1 begins. States submit estimated caseload/expenditure increases to ACF and apply for emergency fund dollars for Q1.
9/1/2009	HUD: Homelessness Prevention Fund - 100% of funds obligated by HUD.
9/30/2009	HUD: Native American Housing Block Grants - Deadline to distribute half the funds by competitive grant
9/30/2009	HUD: Public Housing Capital Fund - Deadline for allocation of funds for grants, including those that leverage private funding or finance energy conservation renovations or retrofits.
9/30/2009	DOT: Supplemental Discretionary Grants for a National Surface Transportation System - Deadline for funds to be obligated.
9/30/2009	Education: Special Education IDEA Parts B and C & Vocational Rehabilitation State Grants - Remaining 50% of funds to be distributed by this date.
12/1/2009	Deadline for local educational agencies to file with the state educational agency a school-by-school listing of per-pupil expenditures from state and local resources during the 2008-2009 academic years. (See March 31, 2010)
12/1/2009	HHS-ACF: Temporary Assistance for Needy Families Emergency Contingency Fund - Reporting period for FY 2010 Q2 begins. States submit estimated caseload/expenditure increases to ACF and apply for emergency fund dollars for Q2.
12/31/2009	Labor/HHS/TREAS: COBRA - End of eligibility period for 65% federal subsidy for COBRA continuation coverage.
12/31/2009	HHS-ONC/IT: Health Information Technology - Secretary must adopt through rulemaking the initial set of HIT standards, implementation specifications and certification criteria and the initial proposed set of security standards.
12/31/2009	Labor: Extension of Unemployment Benefits - Extended benefits expire.

Stimulus Grant Timeline

12/31/2009	Labor: Weekly Unemployment Insurance Benefit Increase - Benefit increase expires.
1/1/2010	HHS-ONC/IT - HHS may begin grantmaking to states and Indian Tribes for loan programs to facilitate adoption of certified EHR technology.
2/16/2010	FAA: Grants-in-Aid to Airports - Deadline for grant funds to be obligated by.
2/17/2010	EPA: Clean & Drinking Water State Revolving Loan Funds - Deadline for certification that contracts have been signed or projects are under construction in an amount equal to the full ARRA assistance value.
2/17/2010	Deadline for state agencies to commit at least 75 percent of the funds to HOME Investment Partnerships Program
2/17/2010	Deadline for the Secretary of Transportation to announce grant awards under Supplemental Discretionary Grants for a National Surface Transportation System
2/17/2010	Deadline for the Secretary of Labor to issue procedures regarding the distribution of funds held in reserve if additional training funds are deemed necessary.
3/1/2010	EPA: Clean and Drinking Water State Revolving Loan Funds - Deadline for certification that contracts have been signed or projects have been implemented under Section 604(b)
3/1/2010	FHWA: Highway Infrastructure Investment - 1-year redistribution deadline for obligation of next 50% of apportioned funds. Extension option for "extreme conditions".
3/1/2010	HHS-ACF: Temporary Assistance for Needy Families Emergency Contingency Fund - Reporting period for FY 2010 Q3 begins. States submit estimated caseload/expenditure increases to ACF and apply for emergency fund dollars for Q3.
3/5/2010	FTA: Transit Capital Assistance & Fixed Guideway Infrastructure - One-year obligation deadline for grant recipients for remaining 50% of apportioned funds

Stimulus Grant Timeline

3/31/2010	Deadline for state educational agencies to file with the Secretary of Education a school-by-school listing of per-pupil expenditures during the 2008-2009 academic years. (See Dec. 1, 2009)
6/1/2010	End of extension period with respect to certain workers for full federal funding for extended unemployment compensation benefits.
6/1/2010	HHS-ACF: Temporary Assistance for Needy Families Emergency Contingency Fund - Reporting period for FY 2010 Q4 begins. States submit estimated caseload/expenditure increases to ACF and apply for emergency fund dollars for Q4
6/30/2010	Deadline for obligation of construction, rehabilitation, and acquisition funds for Job Corps Centers.
6/30/2010	End of period during which additional Workforce Investment Act funds are available.
6/30/2010	HHS-ONC/IT: Health Information Technology - Deadline for report on the application of EHR payment incentives for providers not receiving other incentive payments
8/17/2010	HHS-ONC/IT: Health Information Technology - By this date, HHS must issue guidance on minimal necessary standards
9/1/2010	HHS-ACF: Temporary Assistance for Needy Families Emergency Contingency Fund - HHS will not accept any initial requests for funding for any quarter after this date
9/1/2010	Labor: WIA Adult, Youth & Dislocated Worker - Governors can recapture and reallocate excess unobligated Recovery Act WIA formula grant funds allocated to local areas
9/30/2010	Commerce: NTIA Broadband Technology Opportunities Program & Broadband Mapping Grants - Deadline for NITA awards to be made
9/30/2010	Justice: COPS - End of additional funding for career law enforcement officers

Stimulus Grant Timeline

9/30/2010	NSF - Extra funding for "research and related activities" is available until this date
9/30/2010	Deadline for states to submit form regarding how additional FMAP funds were expended.
9/30/2010	Education: NCLB Title I Grants to LEAs - In the absence of a waiver, LEAs must obligate at least 85% of its total FY 2009 Title I, Part A funds (including ARRA funds)
9/30/2010	Energy: Weatherization Assistance Grant, State Energy Program, Energy Efficiency and Conservation Block Grant & Alternative Fueled Vehicles Pilot Program - Deadline for all funds to be obligated
9/30/2010	EPA: Clean and Drinking Water State Revolving Loan Funds - Deadline for all funds to be obligated
9/30/2010	FHWA: Highway Infrastructure Investment - Obligation deadline for redistributed funds
9/30/2010	FTA: Transit Capital Assistance & Fixed Guideway Infrastructure - Obligation deadline for redistributed funds
9/30/2010	HHS-ACF: Child Care Development Block Grant & Community Services Block Grant - Deadline for supplemental funds to be obligated
9/30/2010	HUD: Community Development Block Grant - 100% of funds must be expended
10/1/2010	USDA: Supplemental Nutrition Assistance Program - State agencies must disregard any benefits received by jobless workers prior to this date and clear all ABAWD time limits due to the 3 in 36 rule
10/1/2010	HHS-ONC/IT: Health Information Technology - Report to Congress on current availability of open source HIT systems to federal safety net providers and recommendations

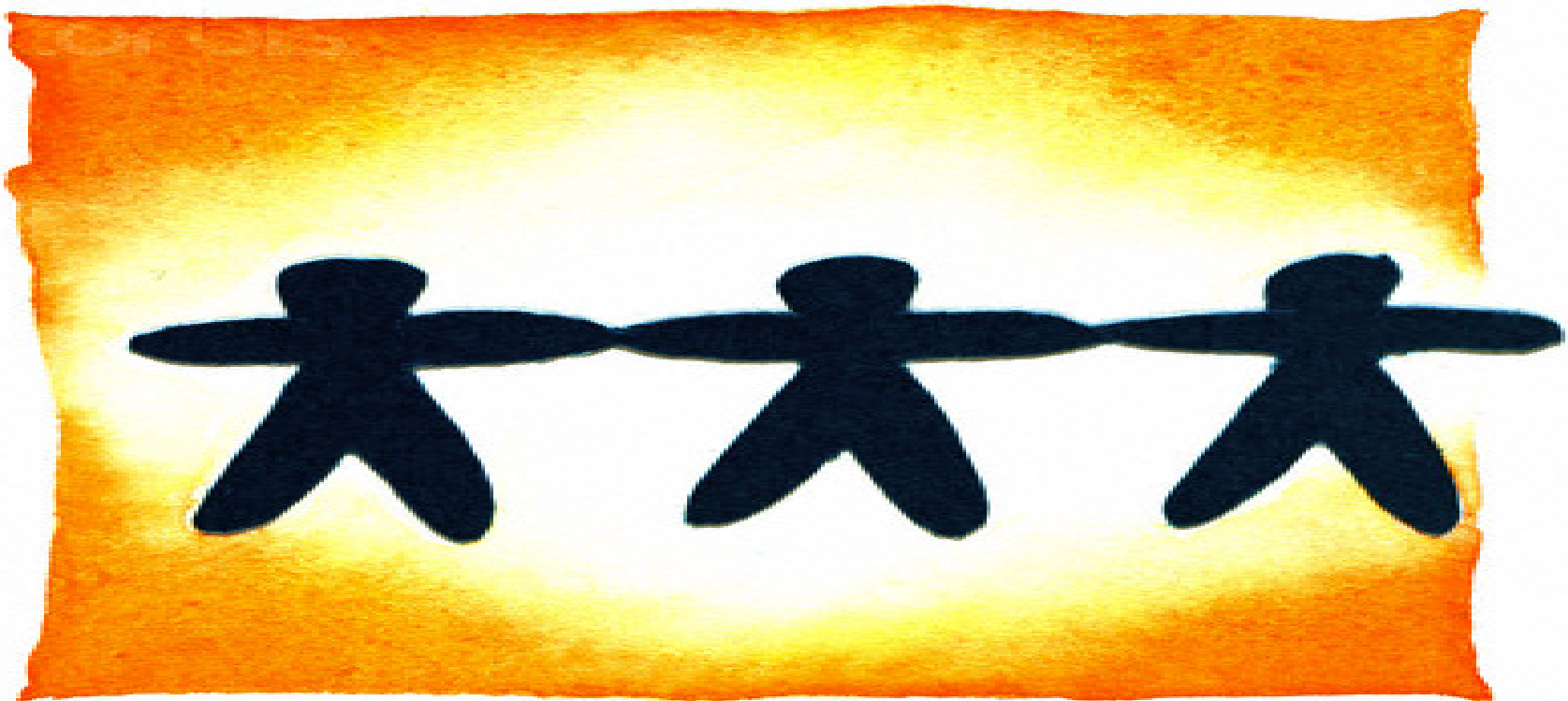
Stimulus Grant Timeline

10/1/2010	HHS-ONC/IT: Health Information Technology - After this date, HHS may make grants to states to promote health information exchange with a required state match
12/29/2010	HHS-ACF: Community Services Block Grant - Funds must be liquidated and a final report is due (for both accrual and cash accounting systems)
12/31/2010	End of period during which each state's FMAP is increased by 6.2 percent.
12/31/2010	HHS-CMS: Transitional Medical Assistance - TMA ARRA extension ends
12/31/2010	HHS-CMS: Qualifying Individuals Extension - Q1 ARRA extension ends
12/31/2010	Labor: Trade Adjustment Assistance Training - Programs expire
1/1/2011	Deadline for states to use the funds provided by election to substitute grants to states for low-income housing projects in lieu of low-income housing credit
2/16/2011	FAA: Grants-in-Aid for Airports - Deadline for construction projects to be completed by
2/17/2011	Fourth Reporting deadline for recipients of grants under the General Provision for Funding Distributed by the Department of Transportation
2/17/2011	Projects under Grants-in-Aid to Airports must be scheduled to be finished by this date in order to receive priority funding.
2/17/2011	Deadline for state agencies to demonstrate that project owners have spent at least 75 percent of the funds. (HOME Investment Partnerships Program)

Stimulus Grant Timeline

2/17/2011	Projects must be scheduled to be finished by this date in order to receive priority funding. (Supplemental Funding for Facilities and Equipment)
3/31/2011	HHS-ACF: Temporary Assistance to Needy Families Emergency Contingency Fund - Final Emergency Fund data must be submitted
6/30/2011	Labor: WIA Adult, Youth & Dislocated Worker - Deadline for all ARRA WIA formula funds to be expended by
6/30/2011	Labor: State Employment Service (Wagner-Peyser) - Deadline for all ARRA Wagner-Peyser funds to be expended by
9/1/2011	HUD: Homelessness Prevention Fund - 60% of funds expended
9/30/2011	Education: State Fiscal Stabilization Fund & NCLB Title I Grants to LEAs - Deadline for funds to be obligated
9/30/2011	HHS-ACF: Child Care Development Block Grant - Deadline for lead agencies to liquidate FY 2009 grant awards including supplemental grant award funds
9/30/2011	Labor: Unemployment Insurance Modernization - All state incentive payment applications must be approved by DOL and all funds distributed. Any remaining funds will be returned to the Federal Unemployment Account
10/1/2011	Final date when incentive payments for unemployment compensation modernization will be paid to states.
2/17/2012	Final Reporting deadline for recipients of grants under the General Provision for Funding Distributed by the Department of Transportation
2/17/2012	Deadline for state agencies to demonstrate that project owners have spent all the funds. (HOME Investment Partnerships Program)
2/17/2012	Projects must be scheduled to be finished by this date in order to receive priority funding. (Supplemental Discretionary Grants for a National Surface Transportation System)

Where and what are the strings?



Executive Order 11246

- Office of Federal Contract Compliance Programs (OFCCP) of the United States Department of Labor
- Executive Order 11246 prohibits federal contractors and subcontractors, and federally-assisted construction contractors and subcontractors that generally have contracts that exceed \$10,000, or that will have (or can reasonably be expected to have) in the aggregate more than \$10,000 in any 12-month period, from discriminating in employment decisions on the basis of race, color, religion, sex, or national origin.
- It also requires covered contractors to take affirmative action to ensure that equal opportunity is provided in all aspects of their employment.

- Government contractors with 50 or more employees and \$50,000 or more in government contracts are required to develop a written affirmative action program (“AAP”) for each of its establishments.
- A written AAP helps the contractor identify and analyze potential problems in the participation and utilization of women and minorities in the contractor's workforce.
- If the contractor finds problems, the contractor specifies in its AAP the procedures it will follow and the efforts it will make to provide equal employment opportunity.

- Section 503 of the Rehabilitation Act of 1973: Any contract in excess of \$10,000 entered into by any federal department or agency for the procurement of personal property and nonpersonal services (including construction) for the United States shall contain a provision requiring that the party contracting with the United States shall take affirmative action to employ and advance in employment qualified individuals with disabilities.

You must maintain records

- Federal contractors are required to maintain any personnel or employment records made or kept by the contractor for a period of two years from the date of creation of the personnel record or the personnel action, whichever occurs later. Examples of records that must be maintained include: job descriptions, job postings, job advertisements, records of job offers, applications, resumes, interview notes, tests and test results, written employment policies and procedures, and personnel files.
- Contractors with fewer than 150 employees, or who do not have a government contract of at least \$150,000, only need to keep records for one year.

Companies with multiple offices

- Even if your particular office does not have a federal project governed by the OFCCP, once a **company** is subject to OFCCP oversight, all of the company's offices are subject to the same regulatory requirements, regardless of where the federal contract is to be performed.
- In addition, some businesses that do not have federal contracts/subcontracts may be covered by OFCCP if they are considered a "single entity" with a related business that holds such contracts. OFCCP uses a "single entity" test to determine whether the businesses are so closely related that they may constitute a single entity:
 - common ownership;
 - common directors and/or officers;
 - de facto day-to-day control through policies, management or supervision;
 - personnel policies emanate from a common or centralized source; and,
 - operations are dependent on each other, e.g., services are provided principally for the benefit of one entity by another and/or both entities share management, offices, or other services.

Do you have to monitor your suppliers and vendors?

- A prime contractor is **not** required to ensure that its vendors and suppliers develop and maintain written AAPs.
- Each contractor and subcontractor must include the EO clause in each subcontract or purchase order. Whether a vendor or supplier is subject to the written AAP requirements depend on, among other things, whether the vendor or supplier has a subcontract that is necessary to the performance of the federal contract, the dollar value of any such subcontract, and the number of employees in the vendor's or supplier's workforce.

Enforcement of EO 11246

- OFCCP conducts compliance reviews to investigate a contractor's employment practices. During a compliance review, OFCCP examines the contractor's AAP, checks personnel, payroll, and other employment records, interviews employees and company officials, and can investigate virtually all aspects of employment.
- A compliance review also checks to determine whether the contractor is making appropriate efforts to achieve employment equal opportunity through affirmative action. If problems are discovered, OFCCP will recommend corrective action.
- An individual may file a complaint if he believes he has been discriminated against. Complaints also may be filed by organizations on behalf of the person or persons affected.
- If a complaint filed under EO 11246 involves discrimination against only one person, OFCCP usually will refer it to the EEOC. Cases involving groups of people or indicating patterns of discrimination are handled by OFCCP.

Consequences of Violating EO 11246

- A contractor in violation of EO 11246 may have its contracts canceled, terminated, or suspended in whole or in part, and the contractor may be “debarred” -- declared ineligible for future government contracts. Debarments may be for an indefinite term or for a fixed term.
- A contractor cannot be debarred without being given an opportunity for a full evidentiary hearing.
- For an indefinite term debarment, the contractor may be reinstated as soon as it has demonstrated that the violations have been remedied.
- Under a fixed-term debarment establishes, a contractor has a trial period during which it can demonstrate its commitment and ability to establish compliant personnel practices.

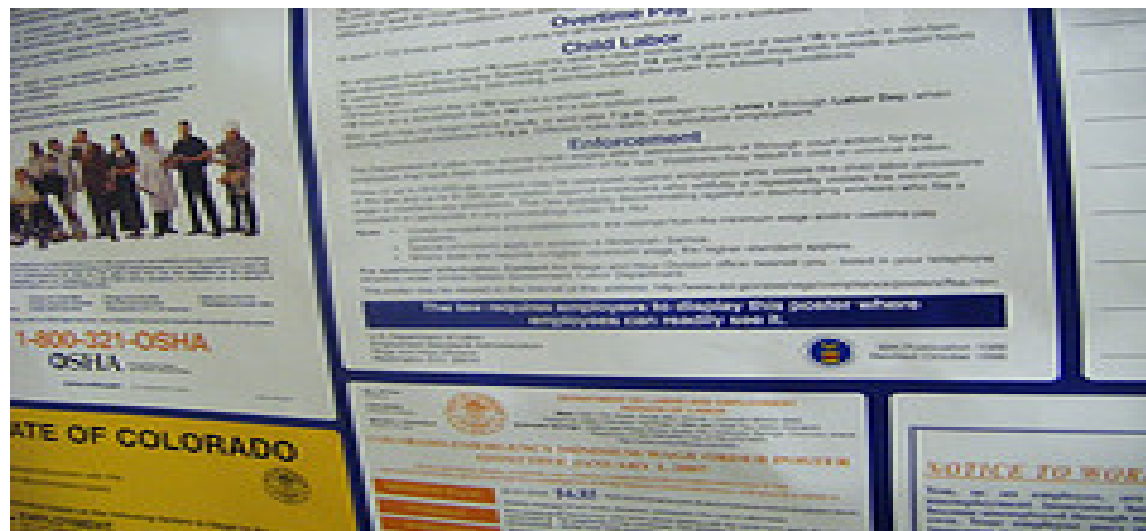
Davis-Bacon and Service Contract Acts



- **Purposes:**
 - **Give local laborers and contractors fair opportunity to participate in programs**
 - **To protect local wage standards**
- **Construction contracts over \$2,000**
- **Services contracts over \$2,500**

Davis-Bacon Act Requirements

1. Payment of the **prevailing wages** owed;
2. Payment or providing of the **fringe benefits** owed;
3. **Post the scale of wages** to be paid in a prominent and easily accessible place at the site of the work; and



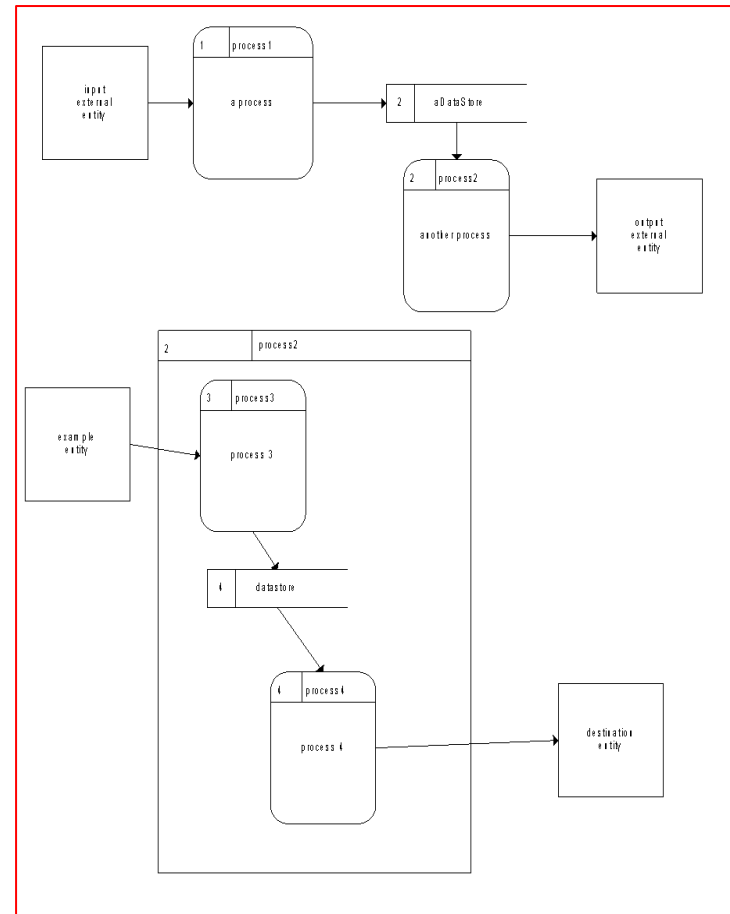
Service Contract Act Requirements

1. A provision specifying the **prevailing wages** to be paid;
2. A provision specifying the **fringe benefits** to be furnished;
3. A provision that no part of the services will be performed in **unsanitary or hazardous conditions**; and
4. A provision requiring **notice** to employee of the compensation required under (1) and (2).



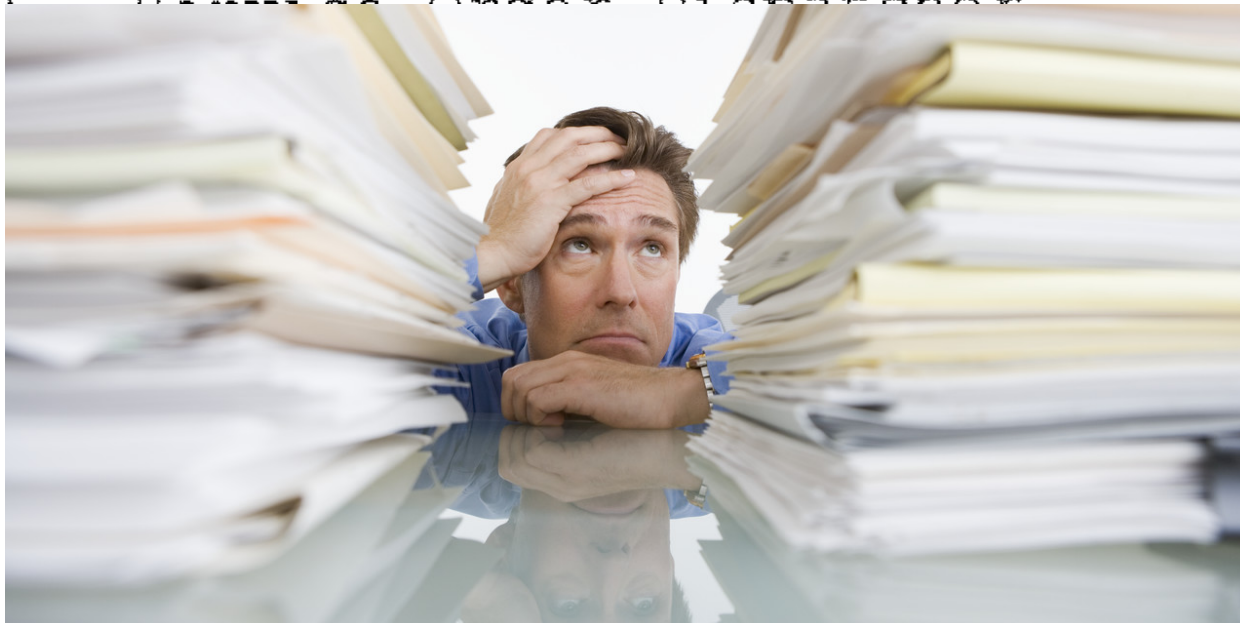
Prevailing Wage Determinations

- Schedules Established by the Federal Government
- Pages and Pages of data
- Periodic Revision
- Incorporated into Contracts



Prevailing Wage Determinations

01300	- Scheduler, Maintenance	15.00
01311	- Secretary I	14.74
01312	- Secretary II	16.64
01313	- Secretary III	19.51
01314	- Secretary IV	21.69
01315	- Secretary V	24.01
01320	- Service Order Dispatcher	13.60



Wage Determinations – Conformance

- **Goal – Fill the Gap in the Schedules**
- **Identification of the Issue**
 - **DOL**
 - **Contracting Officer**
 - **Prime Contractor**
 - **Subcontractors**
 - **Employees**
- **Multi-Step Process**



Fringe Benefits

- **If in wage determination, employees must receive:**
 - **Life, Disability and Sickness Insurance**
 - **Pensions on Retirement or Death**
 - **Workers Compensation**
 - **Unemployment Benefits**
 - **Medical or Hospital Care**
 - **Vacation and Holiday Pay**
- **Cash payment may be made in lieu of providing benefit**



Davis-Bacon Act – Postings and Notifications

One Option

1. Posting in a Conspicuous Place



Service Contract Act – Postings and Notifications

Two Options

- 1. Notice to Each Employee**
- 2. Posting in a Conspicuous Place**



Joint Employer Issue under the Acts

- Statutes require prime contractor to ensure that subcontractors are complying with the Acts
- The Davis-Bacon Act requires prime contractors to report weekly certified payrolls of their subcontractors
- The Service Contract Act requires prime contractors to maintain the records to prove compliance



Violations of the Provisions of the Acts

- **Violations render the “responsible party” liable for:**
 - **A sum equal to the amount of any deductions, rebates, refunds or underpayment of compensation due to any employee in the performance of the contract.**
- **The amounts owed may be withheld or may be paid directly to the underpaid employees.**



Enforcement of the Acts

- **DOL has broad authority to investigate complaints**
- **DOL can initiate an investigation**
 - **Individual worker generally does not have direct claim**
 - **Source of the investigation typically kept confidential**
- **During an investigation, DOL may:**
 - **Order all wage records be produced**
 - **DOL may initiate its own action against the contractor**
 - **DOL may refer matter to the contracting agency for sanctions**



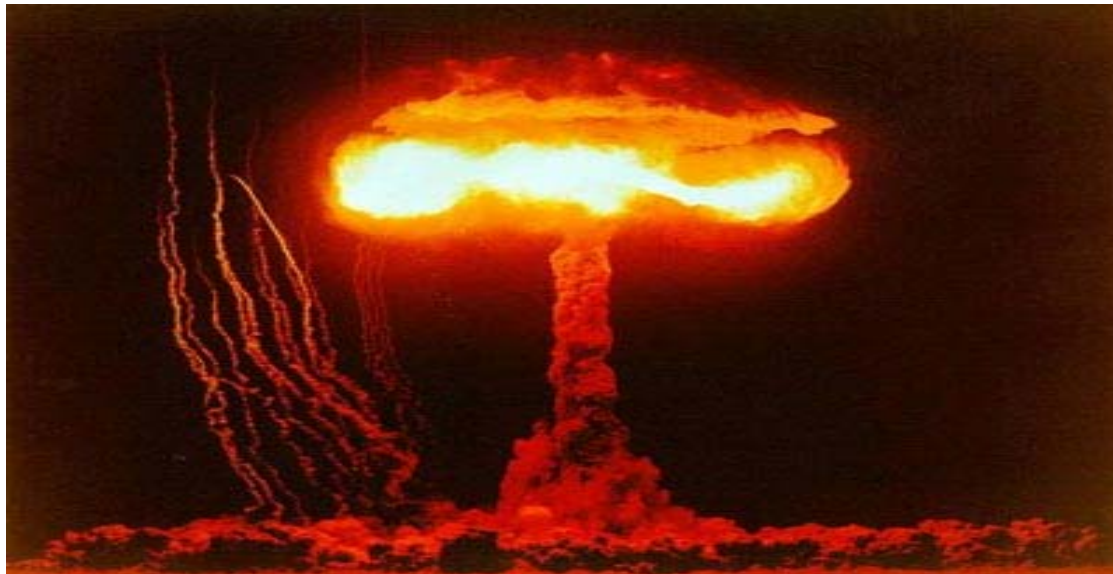
Enforcement of the Acts



- **Additional Concerns Under the SCA:**
 - **Failure to perform may be attributed to each officer charged by reason of his or her corporate office**
 - **Personal liability for violations by corporate officers who control, or are responsible for control of, the corporate entity, as they, individually, have an obligation to assure compliance**

Consequences for Violations

- **Withholding Payment**
- **Cancelling the Contract**
 - **Cost of New Contract Recoverable**
- **DOL Order to Contracting Agency to Pay Workers Directly**
- **Debarment**



Contract Work Safety and Standards Act

- **\$100,000 Contract Amount**
- **Establishes standard 40 hour workweek**
- **Workers on federal projects are entitled to 1-1/2 times the prevailing wage for hours in excess of the standard workweek**
- **Rights are required to be enunciated in contracts**



Violations of the CWSSA

- **Violations of CWSSA create liability for:**
 - **Amounts owed as well as liquidated damages**
 - **Liquidated damages:**
 - **\$10 for each calendar day excess of the standard workweek (when overtime was not paid)**
 - **When calculating liquidated damages, fringe benefits owed are not included**



Enforcement of CWSSA



- **DOL has the investigatory authority described above**
- **DOL has the authority to order the withholding of money payable under the contract**
- **DOL is directed to report violators to the contracting agency**

Walsh-Healey Public Contracts Act

- **\$10,000 Contract Threshold**
- **Contracts for Manufacture or Providing of Goods to the Federal Government**
- **Requires Payment of FLSA Minimum Wage**
- **Requires Payment of Overtime**



Joint Employer Problem – the FLSA

- **“Employers” under Fair Labor Standards Act**
 - **“any person acting directly or indirectly in the interest of an employee in relation to an employer”**
 - **Not traditionally defined to include one’s direct employer alone**
 - **Any entity for whom the worker works is a potential “employer”**
- **Courts scrutinize the true nature of the relationship with the worker**

Who Is an “Employer” under FLSA?

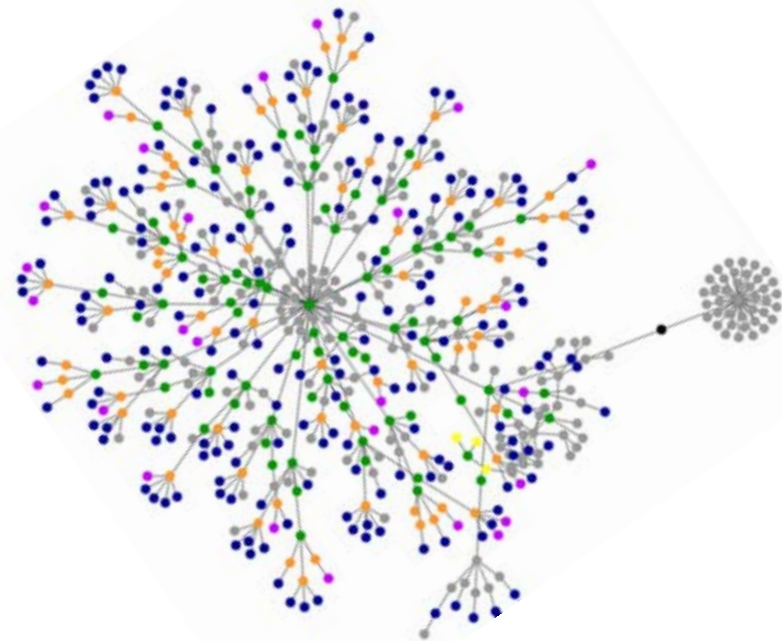
- Who provided the equipment the employee used
- Whether the employee was economically beholden to the putative employer
- The level of skill employed by the workers
- Whether the putative employer has an ownership interest in the subcontractor

Who Is an “Employer” under FLSA?

- **The degree to which the employee’s efforts are supervised by the putative employer**
- **Whether the employee worked predominantly for the putative employer**
- **Who set the terms and conditions of employment**
- **Who maintained the employment records**
- **Courts look to historical practice in industry**

Who Can Be an “Employer” under FLSA?

- **The Direct Employer**
- **The Indirect Employer (up the tiers)**
- **Individuals**
 - **Officers**
 - **Directors**
 - **Site Managers**
- **Employment Agencies**



Whistleblower Protections: ARRA Section 1553

- ARRA protects employees of non-federal employers who make certain types of disclosures relating to possible fraud, waste, abuse, danger to public health, violation of the law, and/or gross mismanagement of ARRA funds
- Disclosures must be made to the RAT Board, certain public officials, an employee's superiors
- These employees cannot be terminated, demoted, or suffer other discrimination as a reprisal for making a protected disclosure