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RECOVERY ACT

Funds Continue to Provide Fiscal Relief to States and Localities, While Accountability and Reporting Challenges Need to Be Fully Addressed (Colorado)



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Contents

Appendix III	Colorado	1
	Overview	1
	While Recovery Act Funds Have Helped Colorado’s Budgets, Revenue Shortfalls Will Continue and Need to Be Addressed	4
	SFSF Funds Continue to Support Higher Education but Budget Cuts Have Caused the State to Seek a Waiver from State Spending Requirements	6
	State Transit Authorities Are Using Recovery Act Funds for High- Priority Projects	10
	Colorado Is Going Forward with Weatherization Activities but Davis-Bacon Act Requirements May Limit Amount of Weatherization Work	15
	Colorado Continues to Spend Highway and Education Funds	22
	Colorado Is Concerned about Funding Availability to Meet the Accountability and Transparency Functions of the Recovery Act	29
	Colorado Has Developed Guidance for Recovery Act Procurement and Will Use a New Contract Management System to Track Recovery Act Contracts	32
	Colorado Plans to Report Centrally but Unresolved Issues May Affect Its Ability to Report Recovery Act Data to OMB in a Complete and Timely Manner	39
	Colorado’s Comments on this Summary	45
	GAO Contacts	46
	Staff Acknowledgments	46

Figures

Figure 1: Arapahoe County Weatherization Worker Installing Insulation at a Home in Aurora, Colorado	18
Figure 2: Highway Obligations for Colorado by Project Improvement Type as of September 1, 2009	24
Figure 3: Planned Recovery Act Highway Projects in Colorado by County	25
Figure 4: Colorado’s Planned Process for Reporting Recovery Act Data to OMB	42

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Appendix III: Colorado

Overview

The following summarizes GAO's work on its third bimonthly review of American Recovery and Reinvestment Act (Recovery Act)¹ spending in Colorado. The full report on all of our work, which covers 16 states and the District of Columbia, is available at www.gao.gov/recovery/.

Colorado is targeting Recovery Act funds to help restore the state's budget and to meet key program needs during the current budget crisis. Our work in Colorado focused on specific Recovery Act programs, including a detailed review of three programs—State Fiscal Stabilization Fund (SFSF), Transit Capital Assistance, and Weatherization Assistance. We reviewed these programs in detail for different reasons. The state has allocated major portions of SFSF funds to institutions of higher education (IHE), and we therefore reviewed this program. We included transit funds because of a Recovery Act deadline for obligating a portion of funds by September 1, 2009, in addition to the fact that the state received a significant amount of transit funds. Finally, we included the weatherization program in our review because of the large influx of funds the state received and the increased risks associated with managing those funds. In addition to the detailed review of these three programs, we updated funding information for three other programs—Highway Infrastructure Investment; Individuals with Disabilities Education Act (IDEA), Part B; and Title I, Part A, of the Elementary and Secondary Education Act (ESEA) of 1965. For all programs, we identified the use of Recovery Act funds; examined safeguards over these funds, including those related to procurement of goods and services; and considered how the effects of Recovery Act spending would be reported by the state of Colorado.

Budget stabilization: As we reported in July 2009, Colorado estimated it will receive a total of \$3.5 billion in Recovery Act funds.² While Recovery Act funds helped Colorado balance its budget for fiscal year 2009 and will provide additional support for the state's budgets in fiscal years 2010 and 2011, the state still faces significant revenue shortfalls in those 2 years. As a result, the state has made \$318 million in budget cuts in the fiscal year 2010 budget and anticipates making more drastic cuts in fiscal year 2011.

¹Pub. L. No. 111-5, 123 Stat. 115 (Feb. 17, 2009).

²GAO, *Recovery Act: States' and Localities' Current and Planned Uses of Funds While Facing Fiscal Stresses (Colorado)*, GAO-09-830SP (Washington, D.C.: July 8, 2009).

In summary, for the Recovery Act programs we reviewed, we found the following:

- **U.S. Department of Education (Education) State Fiscal Stabilization Fund (SFSF).** Education has allocated \$760 million in SFSF funding to Colorado and Colorado plans to spend the majority of the funds on higher education. As of September 2, 2009, state IHEs had been reimbursed \$155 million from SFSF funds. The two state institutions we reviewed used the funds to restore teaching positions and programs and to limit tuition increases. Recent budget cuts at the state level have caused the state to plan to reallocate \$81 million in SFSF funds from K-12 to higher education in fiscal year 2010. The budget cuts decreased the state's spending on higher education below levels required to meet Recovery Act requirements. As a result, on September 9, 2009, the state submitted a request to Education to waive the requirement to maintain state education spending at certain levels in fiscal year 2010.
- **Transit Capital Assistance.** The U.S. Department of Transportation's (DOT) Federal Transit Administration (FTA) apportioned \$103 million in Recovery Act Transit Capital Assistance funds to Colorado and urbanized areas in the state. Of that total, \$90.2 million was apportioned to urbanized areas and the remaining \$12.5 million was apportioned to the state for spending in nonurbanized or rural areas. As of September 1, 2009, FTA had obligated \$96.3 million for the state and urbanized areas in Colorado. Officials from Colorado transit agencies told us they directed Recovery Act funds toward high-priority projects that were facing a funding shortfall, including capital maintenance, safety improvements, and light rail projects.
- **Weatherization Assistance Program.** The U.S. Department of Energy (DOE) allocated about \$79.5 million in Recovery Act weatherization funding to Colorado, as we reported in July 2009. As of September 15, 2009, DOE had provided almost \$39.8 million to the state and Colorado had obligated \$17.3 million of these funds, of which about \$4.1 million had been spent. Colorado's weatherization plan was approved by DOE on August 13, 2009. Officials from some weatherization agencies in Colorado were concerned that Davis-Bacon Act wage requirements have increased the wages that they will pay for weatherization work, potentially limiting the amount of weatherization activities that can be completed in Colorado.
- **Highway Infrastructure Investment funds.** DOT's Federal Highway Administration (FHWA) initially apportioned almost \$404 million in

Recovery Act funds to Colorado. Of these funds, \$18.6 million was transferred to FTA for transit projects, leaving \$385 million for highway projects in the state. As of September 1, 2009, FHWA had obligated almost \$290 million for Colorado projects and about \$16.5 million had been reimbursed by the federal government.

- **Individuals with Disabilities Education Act (IDEA) Part B.** As of August 31, 2009, Education had allocated \$154 million to Colorado for IDEA Part B. As of the same date, Colorado had reimbursed almost \$4.1 million in Part B funds to local education agencies (LEA).
- **Title I, Part A, Elementary and Secondary Education Act (ESEA) of 1965.** As of August 31, 2009, Education had awarded Colorado \$111 million for ESEA Title I, Part A and Colorado had reimbursed almost \$280,000 in ESEA Title I, Part A funds to LEAs.
- **General administrative costs.** The Office of Management and Budget (OMB) released guidance on May 11, 2009, allowing states to recover costs related to central administrative activities to manage Recovery Act programs and funds.³ Such activities include oversight of the state's reporting and auditing of Recovery Act programs. Colorado submitted a cost allocation plan to the Department of Health and Human Services Division of Cost Allocation (DCA), the agency charged with approving such plans, on August 13, 2009. State officials expect DCA to review the plan within 60 days; as of September 14, 2009, the plan had not been approved. The State Controller is concerned that timing and methodology difficulties will delay its approval, thereby delaying the state's ability to recover these costs and hindering the state's ability to oversee Recovery Act programs and funds.

Contracting: Colorado has taken several steps to facilitate the timely and efficient management of Recovery Act contracts. First, legislation was enacted permitting a waiver of its procurement code requirements under certain circumstances, although the state has not yet used the waiver.⁴ Second, the State Purchasing Office developed and provided procurement guidance regarding the use of Recovery Act funds. Third, Colorado identified the need to hire 16 staff in the Department of Personnel and

³OMB memorandum, M-09-18, *Payments to State Grantees for Administrative Costs of Recovery Act Activities* (Washington, D.C., May 11, 2009).

⁴2009 Colo. Legis. Serv. Ch. 285 (S.B. 09-297) (West).

Administration and several state agencies in the areas of purchasing, accounting, contracts, and risk management; the state plans to use general administrative funds to pay for some of these staff and program administrative funds for others. Finally, Colorado implemented a new Contract Management System on July 1, 2009, to facilitate centralized data collection and reporting on all state contracts. Various Colorado agencies have begun awarding Recovery Act contracts, including the Colorado Department of Transportation (CDOT) and the Governor's Energy Office.

Reporting: Colorado is planning to use a centralized process to report Recovery Act data to OMB rather than having state agencies report individually. However, a number of unresolved issues may affect Colorado's ability to report to OMB in a complete and timely manner. For example, Colorado's centralized reporting process is new and testing is ongoing, which may lead to problems when the state tries to upload data to OMB's online portal, www.federalreporting.gov, by the October 10, 2009, deadline. The Office of the State Controller has issued guidance on Recovery Act reporting, and the state is conducting meetings with state agencies to train them in the new policies and systems for reporting.

While Recovery Act Funds Have Helped Colorado's Budgets, Revenue Shortfalls Will Continue and Need to Be Addressed

As Colorado faces continued declining revenues compared to forecasts, Recovery Act funding helped the state balance its fiscal year 2009 budget, which ended June 30, 2009, and has also been a major factor in closing the gap for the current year's (fiscal year 2010) \$19 billion budget. However, on August 25, 2009, the Governor made cuts to balance the fiscal year 2010 budget, and state officials anticipate that continuing revenue shortfalls and increasing program caseloads will likely require even deeper cuts for fiscal year 2011. During the same year, the state will have to manage the fact that Recovery Act funds will be reduced or eliminated and these funding sources will no longer be available to support the state's budget.

Although Recovery Act funds are helping stabilize the state's budgets, they are not expected to make up entirely for the state's lost revenue over the next 2 fiscal years and the state has begun to make budget cuts.⁵ As we reported in July, in May 2009, Colorado adopted a balanced budget for fiscal year 2010 based on the state's March 2009 economic forecast. To

⁵The use of Recovery Act funds must comply with specific program requirements but also, in some cases, enables states to free up state funds to address their projected budget shortfalls.

help balance the budget, state officials included more than \$500 million in Recovery Act funds, including SFSF funding for education (over \$150 million) and funds made available as a result of the increased Federal Medical Assistance Percentage (FMAP, over \$340 million).⁶ The state's June 2009 economic forecast, however, indicated that revenues would decline further than expected and would be insufficient to cover the fiscal year 2010 budget. As a result, in August 2009, the Governor presented a budget-balancing plan totaling \$318 million in cuts and adjustments, which included \$258 million in general fund reductions, \$40.6 million in cash fund transfers, and \$19 million in other adjustments. As a result of these changes, state officials expect 300 full-time equivalent jobs to be eliminated.⁷

For fiscal year 2011, state officials are very concerned that state revenues will continue to decline and demand for services will continue to increase at the same time that the elimination or reduction of Recovery Act funding occurs. State projections show that lower revenues will contribute to a budget shortfall in fiscal year 2011 of several hundred million dollars. Revenues will not return to fiscal year 2008 levels until fiscal year 2012.⁸ During that time, state officials expect caseload increases in Medicaid and Corrections, as well as increases in higher education and K-12 enrollments. At the same time these fiscal challenges exist, major Recovery Act funds will be ending. In particular, the additional Recovery Act funding for Medicaid FMAP is scheduled to end December 31, 2010, and Colorado has allocated its SFSF funds over 3 years, ending in fiscal year 2011. As a result, Colorado officials expect that they will need to find additional revenue sources and/or make further budget cuts. State officials anticipate that even if economic recovery is underway, budgetary shortfalls will be "brutal" and "painful" through fiscal year 2011 and the fiscal situation will not improve until fiscal year 2012.

⁶FMAP is discussed in detail in [GAO-09-1016](#).

⁷Programs that were not part of this budget-balancing plan were (1) K-12 education, which the Governor identified as protected by the Colorado Constitution, and (2) CDOT and the Colorado Department of Labor and Employment, which receive no general fund monies. Budget cuts were in addition to actions taken prior to the start of fiscal year 2010 to reduce the budget, such as instituting four furlough days for nonessential state employees, transferring funds from cash funds to the general fund, using \$45 million of the SFSF funds to balance the budget, and reducing the statutory reserve from 4 percent to 2 percent.

⁸Revenue forecasts are from the Legislative Council's June 22, 2009, forecast.

As a result of the state's current budget challenges, the Colorado General Assembly created an interim commission to study long term fiscal stability.⁹ The joint resolution creating the commission directs it to study the fiscal stability of the state, including solutions for education and transportation funding, affordable access to health care, state-owned assets, and the creation of a rainy day fund. The resolution also calls for the commission to develop a strategic plan for state fiscal stability and to present any written findings and recommended legislation by November 6, 2009. According to Legislative Council staff, the commission plans to discuss state constitutional provisions that constrain legislative options by limiting tax increases or mandating increased funding levels for programs such as K-12 education.

SFSF Funds Continue to Support Higher Education but Budget Cuts Have Caused the State to Seek a Waiver from State Spending Requirements

The Recovery Act created SFSF in part to help state and local governments stabilize their budgets by minimizing budgetary cuts in education and other essential government services, such as public safety. Stabilization funds for education distributed under the Recovery Act must be used to alleviate shortfalls in state support for education to school districts and public IHEs. The initial award of SFSF funding required each state to submit an application to the U.S. Department of Education (Education) that provides several assurances, including that the state will meet maintenance-of-effort requirements (or it will be able to comply with waiver provisions) and that it will implement strategies to meet certain educational requirements, such as increasing teacher effectiveness, addressing inequities in the distribution of highly qualified teachers, and improving the quality of state academic standards and assessments. In addition, states were required to make assurances concerning accountability, transparency, reporting, and compliance with certain federal laws and regulations. States must allocate 81.8 percent of their SFSF funds to support education (these funds are referred to as education stabilization funds), and must use the remaining 18.2 percent for public safety and other government services, which may include education (these funds are referred to as government services funds). After maintaining state support for education at fiscal year 2006 levels, states must use education stabilization funds to restore state funding to the greater of fiscal year 2008 or 2009 levels for state support to school districts or public IHEs. When distributing these funds to school districts, states must use their primary education funding formula, but they can determine how to

⁹Colorado Senate Joint Resolution 09-044, adopted in May 2009.

allocate funds to public IHEs. In general, school districts maintain broad discretion in how they can use stabilization funds, but states have some ability to direct IHEs in how to use these funds.

Colorado Plans to Spend a Majority of Stabilization Funds on Higher Education and Is Seeking a Waiver from the Maintenance-of-Effort Requirement

As we reported in July 2009, Colorado has been allocated more than \$760 million in SFSF funds, \$622 million of which will be education stabilization funds and \$138 million of which will be government services funds. Initially, the state planned to allocate the majority of its SFSF education stabilization funds to higher education (\$452 million over a 3-year period) and the remaining \$170 million over a 2-year period to the state's K-12 system. Given the state's emphasis on using SFSF to fund higher education, we focused our work for our third bimonthly review on IHEs. We met with officials from the University of Colorado System, the largest 4-year college system in Colorado, and the Colorado Community College System, a system of 13 2-year community colleges, to discuss their use of SFSF funds. As both college systems allocate funds to their individual campuses, we also met with officials from the University of Colorado at Boulder, one of the universities under the University of Colorado System, and from Red Rocks Community College, one of the community colleges under the Colorado Community College System.

Because of a recent \$81 million budget cut in the state's general fund contribution to higher education for fiscal year 2010, Colorado plans to allocate more SFSF funds to higher education than it had originally planned. Colorado had allocated about \$302 million of the education stabilization funds in fiscal year 2010, with \$150.7 million going to higher education and \$152 million going to K-12 education programs. However, on August 25, 2009, the Governor, in the fiscal year 2010 budget-balancing plan submitted to the Colorado General Assembly, cut \$81 million from the state's \$660 million general fund contribution to higher education, causing the state's share of funding to fall below the SFSF maintenance-of-effort level (2006 funding level) required under the Recovery Act.¹⁰ As a result, the state has requested a waiver from Education of the SFSF state maintenance-of-effort funding requirement for fiscal year 2010. The state plans to offset the budget cuts by targeting additional SFSF funds to higher education and decreasing the SFSF funds for K-12 by \$80.8

¹⁰In cutting the budget, the Governor's budget office cited statutory authority that authorizes the Governor to suspend or discontinue, in whole or in part, the functions or services of any department, board, bureau, or agency of the state government during any fiscal period when there are not sufficient revenues available for expenditures.

million.¹¹ Assuming that the waiver is granted, Colorado expects to allocate a total of \$320.5 million in fiscal year 2010, with \$231.5 million going to higher education and \$89 million to K-12. This will leave \$150.7 million in SFSF funds for higher education in fiscal year 2011.

SFSF funds have had a significant effect on higher education programs and staffing in Colorado. As of September 2, 2009, IHEs had spent (been reimbursed) \$155 million in fiscal years 2009 and 2010.¹² Colorado officials told us that the use of SFSF funds in fiscal years 2009 and 2010 has prevented layoffs, protected academic programs, and avoided increased class size. For example, University of Colorado System officials said that its share of SFSF funding, \$50 million in fiscal year 2009, prevented layoffs and reductions in some programs. According to officials, budget cuts would have been “horrible” without SFSF funding. Similarly, Red Rocks Community College officials said that in fiscal year 2009, without its share of the \$25.3 million of SFSF funds allocated to the Colorado Community College System, the college would have had difficulty meeting certification requirements for some of its programs due to increasing enrollment and associated costs. Officials said that enrollment at the college increased almost 18 percent over the last two-year period as a result of poor employment opportunities and the need for retraining in the current economy. At the same time, many of the college’s classes are relatively expensive career and technical education courses that have costly instructional materials and require small class size to meet the accreditation requirements of certain career-focused professions. Further, in fiscal year 2010, officials said they would have had to make significant cuts in positions beginning in the fall of 2009 if they had not received SFSF funds.

The use of SFSF funds also enabled Colorado to significantly limit potential tuition increases in fiscal year 2010. Tuition increases could have been greater in fiscal year 2010, but Colorado’s Governor, citing the Recovery Act section that discusses mitigating tuition increases for public IHEs, vetoed a portion of the state’s fiscal year 2010 appropriations bill that would have allowed tuition increases greater than 9 percent. Colorado also required IHEs to sign letters of assurance that included limitations on

¹¹According to a state official, this reduction will not cause the state funding to drop below the state maintenance-of-effort level required for K-12.

¹²The state has allocated funds to LEAs for 2010, but according to Colorado officials, they have not yet spent SFSF funds.

tuition increases. For example, the University of Colorado System limited tuition increases at its institutions to an 8.5 percent average. Officials said, drawing a comparison to tuition increases of 25 percent that resulted from similarly severe budget cuts to higher education in the mid-2000s, that the increase could have been significantly larger without SFSF funds and the Governor's guidance. Officials at Red Rocks Community College said SFSF funds have had a similar impact on tuition at their school. They said the college's tuition increase of 9 percent, or \$7 per credit hour, could have been 15 percent without SFSF funds.

Officials from both college systems expressed concern about future funding levels for fiscal year 2012, the year after the state's final planned distribution of SFSF funds to IHEs. University of Colorado System officials said they were planning for the cliff effect that will happen when Recovery Act funds end by trying to develop revenue-enhancing programs in the interim. Colorado Community College System officials also expressed concerns about the exhaustion of SFSF funds, but said they are hoping to get additional revenues from new gaming tax revenues earmarked for community colleges that they say may be commensurate with SFSF funding.

University of Colorado System and Red Rocks Community College Plan to Use Existing and Additional Controls for Recovery Act Funds

Officials representing the University of Colorado System and Red Rocks Community College said that they have added specific internal controls to manage Recovery Act funds, augmenting the institutions' established control environments and procedures. Officials with the University of Colorado System told us that the institution has extensive control procedures, as well as fiscal and purchasing policies approved by the President of the University of Colorado at Boulder. Red Rocks Community College officials said their established controls include monthly budgetary and transactional reviews at all levels, direct control and oversight of all fiscal activities by the Vice President of Administrative Services and the Controller, and anonymous tip and online reporting. Both the University of Colorado System and Red Rocks Community College officials said they have staff with extensive financial experience to manage Recovery Act funds, as well as personnel with certified public accountant licenses and auditing backgrounds. According to these officials, no material weaknesses in internal controls have been reported by internal or external auditors. Additional controls over Recovery Act funds installed at University of Colorado System institutions include new accounting codes to track Recovery Act funds, a designated point person to coordinate all Recovery Act-funded activities, and new written guidance on Recovery Act funds. Red Rocks Community College officials said that the college added

an additional review of all expenses to be charged to Recovery Act grant funds. In addition, the financial status of Recovery Act funds will be monitored through unique organization and account codes in the college system.

State Transit Authorities Are Using Recovery Act Funds for High-Priority Projects

The Recovery Act appropriated \$8.4 billion to fund public transit throughout the country through three existing Federal Transit Administration (FTA) grant programs, including the Transit Capital Assistance Program.¹³ The majority of the public transit funds—\$6.9 billion (82 percent)—was apportioned for the Transit Capital Assistance Program, with \$6.0 billion designated for the urbanized area formula grant program and \$766 million designated for the nonurbanized area formula grant program.¹⁴ Under the urbanized area formula grant program, Recovery Act funds were apportioned to urbanized areas—which in some cases include a metropolitan area that spans multiple states—throughout the country according to existing program formulas. Recovery Act funds were also apportioned to states under the nonurbanized area formula grant program using the program’s existing formula. Transit Capital Assistance Program funds may be used for such activities as vehicle replacements, facilities renovation or construction, preventive maintenance, and paratransit services. Up to 10 percent of apportioned Recovery Act funds may also be used for operating expenses.¹⁵ Under the

¹³The other two public transit programs receiving Recovery Act funds are the Fixed Guideway Infrastructure Investment Program and the Capital Investment Grant Program, each of which was apportioned \$750 million. The Transit Capital Assistance Program and the Fixed Guideway Infrastructure Investment Program are formula grant programs, which allocate funds to states or their subdivisions by law. Grant recipients may then be reimbursed for expenditures for specific projects based on program eligibility guidelines. The Capital Investment Grant Program is a discretionary grant program, which provides funds to recipients for projects based on eligibility and selection criteria.

¹⁴Urbanized areas are areas encompassing a population of not less than 50,000 people that have been defined and designated in the most recent decennial census as an “urbanized area” by the Secretary of Commerce. Nonurbanized areas are areas encompassing a population of fewer than 50,000 people.

¹⁵The 2009 Supplemental Appropriations Act authorizes the use of up to 10 percent of each apportionment for operating expenses. Pub. L. No. 111-32, §1202, 123 Stat. 1859, 1908 (June 24, 2009). In contrast, under the existing program, operating assistance is generally not an eligible expense for transit agencies within urbanized areas with populations of 200,000 or more.

Recovery Act, the maximum federal fund share for projects under the Transit Capital Assistance Program is 100 percent.¹⁶

The State and Urbanized Areas Have Met Recovery Act Obligation Dates for Transit Capital Assistance Funds and Transit Agencies Are Directing Funds to High-Priority Projects

In March 2009, FTA apportioned \$103 million in Transit Capital Assistance Recovery Act funds to the state and urbanized areas in Colorado for transit projects. Of that amount, \$90.2 million was apportioned to urbanized areas and the remaining \$12.5 million was apportioned to the state to use in nonurbanized or rural areas.¹⁷ The Recovery Act requires that 50 percent of funds apportioned to urbanized areas or states must be obligated within 180 days (before September 1, 2009) and that the remaining apportioned funds are to be obligated within 1 year. The Secretary of Transportation is to withdraw and redistribute to other urbanized areas or states any amount that is not obligated within these time frames. As of September 1, 2009, FTA concluded that the 50 percent obligation requirement had been met for the state and urbanized areas located in the state. Specifically, \$96.3 million of the total funds, or almost 94 percent, had been obligated.¹⁸ Seventy percent of Recovery Act Transit Capital Assistance Program obligations in Colorado have been made in the greater Denver metropolitan area for capital improvements or projects to extend light rail service.

We reviewed one urban and one rural transit agency in Colorado that are receiving a large portion of Transit Capital Assistance funds. The urban transit agency we reviewed is the Regional Transportation District (RTD), which covers the Denver metropolitan area and is the state's largest transit agency. RTD received \$72.1 million in Transit Capital Assistance Recovery

¹⁶The federal share under the existing formula grant program is generally 80 percent.

¹⁷CDOT's Transit Unit manages the state's nonurbanized Transit Capital Assistance formula programs in rural areas with populations less than 50,000.

¹⁸For the Transit Capital Assistance Program, DOT has interpreted the term "obligation of funds" to mean the federal government's commitment to pay for the federal share of the project. This commitment occurs at the time the federal government signs a grant agreement.

Act funds.¹⁹ The rural transit agency we reviewed is Summit County, which received \$10.3 million in Transit Capital Assistance Recovery Act funds through CDOT.

Officials from RTD and CDOT told us they directed Recovery Act funds toward high-priority projects that were facing a funding shortfall. Among other things, these projects involve capital maintenance, safety improvements, infrastructure to support operating improvements, and light rail projects. For example, RTD is using \$17.1 million in Recovery Act funds to replace aging farebox equipment on its buses, \$10.2 million to conduct preventive maintenance on its bus and rail fleet, and \$7.6 million to create queue jumps (infrastructure that helps buses bypass traffic at certain intersections) along U.S. Highway 36. RTD officials stated that the projects they are planning to fund with Recovery Act dollars are needed projects that, because of financial constraints, would likely have been deferred. Moreover, RTD officials told us that they had implemented a service reduction totaling over \$4.5 million before receiving Recovery Act funds, so these funds have enabled them to preserve jobs and avoid even larger service reductions. CDOT is using \$10.3 million in Recovery Act funds to construct a bus maintenance facility in rural Summit County, a mountainous area west of Denver, and is also planning a \$2.2 million project that will provide new buses and related equipment to rural transit authorities throughout the state.²⁰ CDOT and Summit County officials stated that the planned bus maintenance facility is very important to the ongoing maintenance of the transit fleet in Summit County and will help the county improve and expand maintenance services. These officials told us that without Recovery Act funding, the new facility may never have been built—Summit County would have done the minimum repairs needed for safety to keep using it but would probably have had to contract out some of its maintenance.

¹⁹RTD also received \$18.6 million in Recovery Act funds transferred from FHWA to FTA through DOT's flexible funding provisions. Flexible funds are legislatively-specified funds that may be used either for highway or transit purposes. The Denver Regional Council of Governments (DRCOG, the Denver area's large Metropolitan Planning Organization) requested this transfer. FTA has obligated 100 percent of these funds; the \$18.6 million will be used to provide partial funding for Denver Union Station, a \$500 million multi-modal transit hub. In particular, the funds will be used to pay for a part of the design and construction of bus bays at Denver Union Station.

²⁰FTA has not obligated funds for the \$2.2 million project to buy buses and other vehicles. CDOT officials stated that they expect to submit the project to FTA by December 30, 2009; FTA officials stated that they expect to obligate funds for this project by March 5, 2010.

In selecting projects to fund with Recovery Act dollars, RTD and CDOT screened projects according to whether they were critical projects that could be undertaken quickly and would offset funding shortfalls. RTD also followed an existing formula they use for allocating funds among various transit projects, directing 60 percent of available funds to capital improvements, including preventive maintenance and projects to improve safety, and 40 percent to projects extending light rail service. CDOT selected eligible projects based, among other things, on the extent to which they would (1) increase transportation options and transit ridership, (2) increase mobility on congested portions of the state highway system, and (3) leverage funding from other sources. For example, CDOT selected the \$10.3 million bus maintenance construction project because this project was identified as one of the state's highest rural transit priorities in 2008 and as a high priority in the state's long-range transit plan. The project also leverages local funds as Summit County has agreed to pay 31 percent of the total project cost since the facility will be used to service nontransit vehicles in addition to transit buses. As of August 31, 2009, two RTD Capital Assistance project contracts and one CDOT grant had been awarded; no projects had been completed.

Both RTD and CDOT reported that they expect to realize bid savings on some of the Recovery Act project contracts and grants and that they will redirect any savings to other Transit Capital Assistance projects. For example, on July 31, 2009, CDOT awarded a contract to Summit County to competitively bid the bus maintenance facility project, according to CDOT officials. The county has awarded the contract to a company that bid \$8.4 million, about \$1.9 million less than the estimated cost of \$10.3 million, potentially freeing up funds for other projects.

RTD is not considering using Recovery Act funds to cover operating expenses, although CDOT is considering using some funds to cover operating shortfalls in rural parts of the state. On June 24, 2009, Congress enacted the Supplemental Appropriations Act, which provided that up to 10 percent of apportioned Recovery Act Transit Capital Assistance funds could be used for operating expenses.²¹ Despite the provision allowing Recovery Act funds for operating expenses, RTD officials told us that they do not plan to use any of the Recovery Act funds for operating expenses because they want every available dollar to go to specific planned projects. CDOT stated that they are studying whether any of their transit

²¹Pub. L. No. 111-32, § 1202, 123 Stat. 1859, 1908 (June 24, 2009).

contractors in rural parts of the state need funding to cover operating shortfalls because such shortfalls may lead to layoffs or service reductions. CDOT recently proposed to its Transportation Commission that a process be established to offer operating funds to its grantees in rural areas according to need. The commission approved CDOT's proposal and, as of September 1, 2009, CDOT continued to gather data to assess grantee needs.

RTD and CDOT Plan to Use Existing Internal Controls to Manage Recovery Act Funds

RTD and CDOT plan to use their existing internal controls and processes to manage and expend Recovery Act funds. For example, RTD is using its standard accounting system with established procedures and controls to manage Recovery Act funds, as it has done with federal grants received in the past. According to officials, RTD's Board of Directors reviews and approves all projects, which provides an additional level of control over projects selected for Recovery Act funds. To meet Single Audit Act requirements,²² RTD is reviewed annually by external auditors. We reviewed RTD's audit reports for the last 3 calendar years and found no material weaknesses or significant deficiencies identified for financial statements or for federal awards. In 2008, FTA reviewed RTD's compliance with statutory and administrative requirements, as is required every 3 years, a process known as a triennial review.²³ The 2008 review identified deficiencies in four areas, which RTD has taken action to correct. CDOT is also using existing processes to manage Recovery Act funds and projects. CDOT was recently reviewed by an external consultant to assess compliance with federal requirements for several federally funded programs, including Transit Capital Assistance. The July 2009 report identified deficiencies in nine areas, including program management, grant administration, financial management, and Buy American requirements.

²²The Single Audit Act of 1984, as amended (31 U.S.C. §§ 7501-7507), requires that each state, local government, or nonprofit organization that expends \$500,000 or more a year in federal awards must have a Single Audit conducted for that year subject to applicable requirements, which are generally set out in OMB Circular No. A-133, *Audits of States, Local Governments and Non-profit Organizations* (June 27, 2003). If an entity expends federal awards under only one federal program, the entity may elect to have an audit of that program.

²³The requirements for reviews of Urbanized Area Formula Grant activities are contained in 49 U.S.C 5307(i) and consist of reviewing grantees' compliance with federal requirements in 23 areas. This process is described in a recent GAO report, GAO, *Public Transportation: FTA's Triennial Review Program Has Improved, but Assessments of Grantees' Performance Could Be Enhanced*, [GAO-09-603](#) (Washington, D.C.: June 30, 2009).

CDOT and FTA officials told us that CDOT is working to correct the deficiencies.

Colorado Is Going Forward with Weatherization Activities but Davis-Bacon Act Requirements May Limit Amount of Weatherization Work

The Recovery Act appropriated \$5 billion over a 3-year period for the Weatherization Assistance Program, which DOE administers through each of the states, the District of Columbia, and seven territories and Indian tribes. The program enables low-income families to reduce their utility bills by making long-term energy efficiency improvements to their homes by, for example, installing insulation; sealing leaks; and modernizing heating equipment, air circulation fans, or air conditioning equipment. Over the past 32 years, the Weatherization Assistance Program has assisted more than 6.2 million low-income families. By reducing the energy bills of low-income families, the program allows these households to spend their money on other needs, according to DOE. The Recovery Act appropriation represents a significant increase for a program that has received about \$225 million per year in recent years.

As of September 14, 2009, DOE had approved all but two of the weatherization plans of the states, the District of Columbia, the territories, and Indian tribes—including all 16 states and the District of Columbia in our review. DOE has provided to the states \$2.3 billion of the \$5 billion in weatherization funding under the Recovery Act. Use of the Recovery Act weatherization funds is subject to Section 1606 of the act, which requires all laborers and mechanics employed by contractors and subcontractors on Recovery Act projects to be paid at least the prevailing wage, including fringe benefits, as determined under the Davis-Bacon Act.²⁴ Because the Davis-Bacon Act had not previously applied to weatherization, the Department of Labor (Labor) had not established a prevailing wage rate for weatherization work. In July 2009, DOE and Labor issued a joint memorandum to Weatherization Assistance Program grantees authorizing them to begin weatherizing homes using Recovery Act funds, provided they pay construction workers at least Labor’s wage rates for residential construction, or an appropriate alternative category, and compensate workers for any differences if Labor establishes a higher local prevailing wage rate for weatherization activities. Labor then surveyed five types of “interested parties” about labor rates for weatherization work.²⁵ The

²⁴The Weatherization Assistance Program funded through annual appropriations is not subject to the Davis-Bacon Act.

²⁵The five types of “interested parties” are state weatherization agencies, local community action agencies, unions, contractors, and congressional offices.

department completed establishing prevailing wage rates in all of the 50 states and the District of Columbia by September 3, 2009.

Colorado's Plan for Recovery Act Weatherization Funds Has Been Approved by DOE and Colorado Is Going Forward with Weatherization Activities

DOE approved Colorado's weatherization plan for Recovery Act funds on August 13, 2009,²⁶ and as of September 15, 2009, DOE had provided almost \$39.8 million in weatherization funds to Colorado, 50 percent of the total \$79.5 million in Recovery Act weatherization funding that Colorado will receive over a 3-year period. In Colorado, the Governor's Energy Office is responsible for administering the weatherization program and the office contracts with local administering agencies to implement weatherization activities in various regions across the state.²⁷ These agencies, in turn, either conduct weatherization work in-house or contract for weatherization activities with local contractors. From June through September 2009, Colorado awarded 10 contracts to local administering agencies to conduct weatherization activities throughout the state. In addition, the Governor's Energy Office plans to award one statewide contract to a local administering agency to conduct weatherization activities at multi-family units. As of September 15, 2009, the Governor's Energy Office had obligated \$17.3 million or 22 percent of its total weatherization funds, of which about \$4.1 million had been spent. We visited two local administering agencies: Arapahoe County, a local government agency that conducts weatherization activities in Arapahoe and Adams Counties in the Denver metropolitan area; and Housing Resources of Western Colorado, a nonprofit agency that conducts weatherization activities in the western part of the state. We selected these two agencies to visit because they received varying amounts of Recovery Act funds, one covers an urban area and one covers a rural area, and they have varying performance records.

²⁶In our last Recovery Act report, [GAO-09-830SP](#), we reported that officials from the Governor's Energy Office were concerned about a potential delay in DOE's approval of their weatherization plan. According to these officials, DOE had told Colorado that they were planning to approve Colorado's plan on July 1, 2009, the same day that some of the Governor's Energy Office's contracts with local administering agencies were scheduled to begin. While DOE was delayed in approving Colorado's plan, officials from the Governor's Energy Office told us that the delay did not affect weatherization activities in Colorado and that they were able to move forward with contracts based on the award amount even though the plan was not yet approved.

²⁷State officials told us that the contracts between the Governor's Energy Office and the local administering agencies are considered grant contracts and are therefore not subject to the procurement code nor do they need to be competed. The local administering agencies follow their own procurement processes to award contracts to local contractors.

In Colorado, the Governor's Energy Office and the local administering agencies together are using Recovery Act weatherization funds for a variety of activities, including training weatherization workers, conducting energy audits of homes eligible for weatherization funds, purchasing equipment and materials, and weatherizing qualified homes. For example, officials from Arapahoe County told us that they are using Recovery Act funds for basic weatherization activities, such as installing insulation, as shown in figure 1. The picture on the left shows a technician blowing insulation into the walls of a home in Aurora, Colorado, while the picture on the right shows the holes that the insulation is blown into; once insulation is installed, the holes are filled and sealed. Arapahoe County conducts most weatherization activities in-house but officials said they plan to award contracts to about six contractors in the next few years to help with the expanded weatherization program.²⁸ Similarly, officials from Housing Resources of Western Colorado are using Recovery Act funds to install energy-efficient appliances and insulation, among other weatherization activities. They conduct all weatherization activities in-house and do not plan to award any contracts for weatherization work.²⁹

²⁸Arapahoe County does not plan to hire any contractors to conduct Recovery Act weatherization work; rather, they plan to have contractors conduct weatherization work using other sources of weatherization funding.

²⁹Housing Resources of Western Colorado currently uses a contractor to conduct some administrative activities. In the past, Housing Resources of Western Colorado contracted with another agency to conduct weatherization work in Southwestern Colorado. However, the Governor's Energy Office is contracting with a new local administering agency to conduct weatherization activities in that area of the state.

Figure 1: Arapahoe County Weatherization Worker Installing Insulation at a Home in Aurora, Colorado



Source: GAO.

Of the 10 local administering agencies that the Governor's Energy Office is contracting with, 8 are legacy agencies that the office has contracted with in the past and 2 are new agencies.³⁰ One of the legacy local administering agencies, which provides weatherization services in Denver and Jefferson Counties, was only awarded a 6-month interim contract because officials from the Governor's Energy Office had concerns about the agency's performance. The Governor's Energy Office discovered, through a partial audit in 2009, that the agency had reported units as completed despite ongoing work, demonstrated cost allocation problems, and overextended its budget and thus had to furlough staff for the month of June 2009. Officials in the Governor's Energy Office plan to competitively award the contract this fall with a new contract to begin in January 2010, shortly before the 6-month contract ends. The legacy agency will be able to compete for the new contract but will not be given preferred status, which would have provided the agency with additional points when the Governor's Energy Office scores the grant applications.³¹ In the meantime, officials from the Governor's Energy Office have increased their monitoring of the agency and are conducting a full financial audit. According to officials, they can terminate the interim contract if any significant issues are discovered.

³⁰As we reported previously in July 2009, when the Governor's Energy Office first learned that they would be receiving an influx of weatherization funds from the Recovery Act and began developing its state plan for spending the funds, officials from the office talked to the local administering agencies to determine how much weatherization funding the agencies believed they could reasonably spend. In 2008, Colorado received almost \$5.5 million from DOE for the weatherization program, compared to almost \$80 million allocated under the Recovery Act, and officials from the Governor's Energy Office recognized that not all agencies may be equipped to handle the resulting influx of funds. In compiling the numbers from the agencies, officials at the Governor's Energy Office determined that there was a gap between available Recovery Act funds and the amount of work the agencies believed they could deliver, so the office initiated two new requests for applications and has awarded contracts to two new agencies to fill in the gaps to conduct weatherization work in certain regions of the state.

³¹In selecting a subgrantee, grantees are to give preference to any agency that has or is currently administering an effective program, as defined in regulation. 10 C.F.R. § 440.15(a)(3). When scoring local administering agencies' applications for weatherization contracts, the Governor's Energy Office plans to give a 15-point bonus to all agencies in good standing.

Davis-Bacon Act Wage Requirements May Limit Amount of Weatherization Activities in Colorado

Some weatherization officials in Colorado are concerned about Davis-Bacon Act wage requirements, noting that paying prevailing wages may increase the cost of weatherizing homes, thereby limiting the amount of weatherization activities that can be completed. Officials from the Governor's Energy Office told us that they did not wait for Labor to establish Colorado's weatherization wage rates before awarding contracts to local administering agencies. They said that the local agencies selected the "best-available" wage rate to pay weatherization workers in the interim as well as taking additional steps to comply with the Davis-Bacon Act, such as implementing weekly payroll. They said that any difference in wages would be paid retroactively once weatherization wage rates were issued; Labor issued the weatherization wage rates for Colorado on September 1, 2009.³² In some cases, the new weatherization wage rates are higher than the rates the local administering agencies were paying weatherization workers in the past.

Because of the increased weatherization wages, the Governor's Energy Office may adjust one of its weatherization performance measures so as not to limit the amount of weatherization activities the local administering agencies can complete in Colorado. The office uses two performance measures to track Recovery Act weatherization funds: (1) the amount of funds spent per home; and (2) a savings to investment ratio for each weatherization measure. DOE and the Governor's Energy Office require weatherization measures to be cost-effective or they cannot be installed. While DOE requires a cost-benefit ratio of 1:1 for all weatherization work (i.e., for every \$1 that is spent on weatherization measures, at least \$1 must be saved over the life of the measure) the Governor's Energy Office requires a cost-benefit ratio of 1:1.7 for insulation measures and a ratio of 1:1.2 for furnaces and energy-efficient appliances. However, because the increased weatherization wages required for Recovery Act funds make some weatherization measures less cost-effective, the Governor's Energy Office requested approval from DOE on September 9, 2009, to move to a 1:1 cost-benefit ratio in Colorado so as not to limit the amount of weatherization activities. Officials from the Governor's Energy Office told us that they have to get approval from DOE to make any changes to their savings to investment ratios even though their proposed ratio meets DOE's

³²The Governor's Energy Office directed all of the local administering agencies to complete the Labor weatherization survey. The two agencies we visited told us that they completed the survey.

minimum requirement because their plan is approved with the higher ratios.

Officials at the two local administering agencies we visited told us that they had concerns about Davis-Bacon Act wage rates and one agency, Arapahoe County, decided to conduct all Recovery Act weatherization work in-house rather than awarding contracts because of the requirements. Because Arapahoe County is a local government entity, its staff will not be affected by Davis-Bacon Act but any contractors would be subject to the requirements, which could have increased the cost of the weatherization contracts.³³ However, Arapahoe County is receiving non-Recovery Act weatherization funding that is not subject to Davis-Bacon Act wage requirements, so they plan to use contractors for a portion of that work instead of for Recovery Act work, as initially planned, to avoid the wage requirements. Officials from Housing Resources of Western Colorado were concerned that, because Colorado's weatherization wages are higher than what they were previously paying, weatherization work will not be as cost-effective, resulting in fewer weatherization measures being installed in each home.³⁴

Colorado Is Using Existing Controls to Manage the Use of Recovery Act Weatherization Funds and Plans to Increase Monitoring

The Governor's Energy Office is using its existing internal controls to manage Recovery Act weatherization funds but is planning to increase its site visits to local administering agencies to monitor the programs and funds. Officials in the Governor's Energy Office told us that they plan to conduct monthly visits to all agencies, in contrast to the semiannual or annual visits they made in the past, and that they plan to do more comprehensive monitoring of each agency twice per year. When the Governor's Energy Office visits local administering agencies, it sends staff from multiple disciplines, which allows for cross-functional monitoring of different aspects of the weatherization program. Officials plan to inspect at least 5 percent of all weatherized units, as has been done in the past, and will inspect additional units if any issues are discovered. Officials at the two local administering agencies we visited said that following

³³Davis-Bacon Act prevailing wage requirements do not apply to local government employees. 29 C.F.R. § 5.2 (h); see also Department of Labor Advisory Letter to Department of Energy, dated June 1, 2009.

³⁴According to officials, because there was no weatherization wage rate before the Davis-Bacon Act weatherization wage rates were released, Housing Resources of Western Colorado paid weatherization workers the Davis-Bacon Act labor wage rate in the interim.

completion of weatherization work on every unit, a final inspection is done by a person who was not involved with the initial energy audit of the unit. In addition, as we discussed in our previous report, the Governor's Energy Office is implementing a new Web-based tracking system that officials hope will help them track weatherization activities in real-time and assist in identifying problems at their inception. However, officials at one of the local agencies we visited had some concerns about using the new system, which were mainly related to new required data elements that they did not previously track.

Colorado Continues to Spend Highway and Education Funds

As we previously reported, Colorado is receiving a large amount of Highway Infrastructure Investment and education funds, which the state continues to spend. Colorado is receiving about \$385 million in Highway Infrastructure Investment Recovery Act funds, of which \$289,604,854 had been obligated as of September 1, 2009. In addition, the U.S. Department of Education (Education) provided, as of August 31, 2009, the state's \$154 million allocation for IDEA Part B, of which \$4,091,882 had been reimbursed to local education agencies (LEA). Colorado was awarded about \$111 million in funding for Title I, Part A, of the ESEA, of which \$278,962 had been reimbursed to LEAs as of August 31, 2009.

CDOT Projects Are Under Way with 41 Contracts Awarded and 36 of 92 Planned Projects Located in Economically Distressed Areas

The Recovery Act apportions funding to the states for restoration, repair, and construction of highways and other activities allowed under the Federal-Aid Highway Surface Transportation Program and for other eligible surface transportation projects. The Recovery Act requires that 30 percent of these funds be suballocated, primarily based on population, for metropolitan, regional, and local use. Highway funds are apportioned to the states through existing Federal-Aid Highway Program mechanisms and states must follow the requirements of the existing program including planning, environmental review, contracting, and other requirements. However, the federal fund share of highway infrastructure investment projects under the Recovery Act is as much as 100 percent, while the federal share under the existing Federal-Aid Highway Program is usually 80 percent.

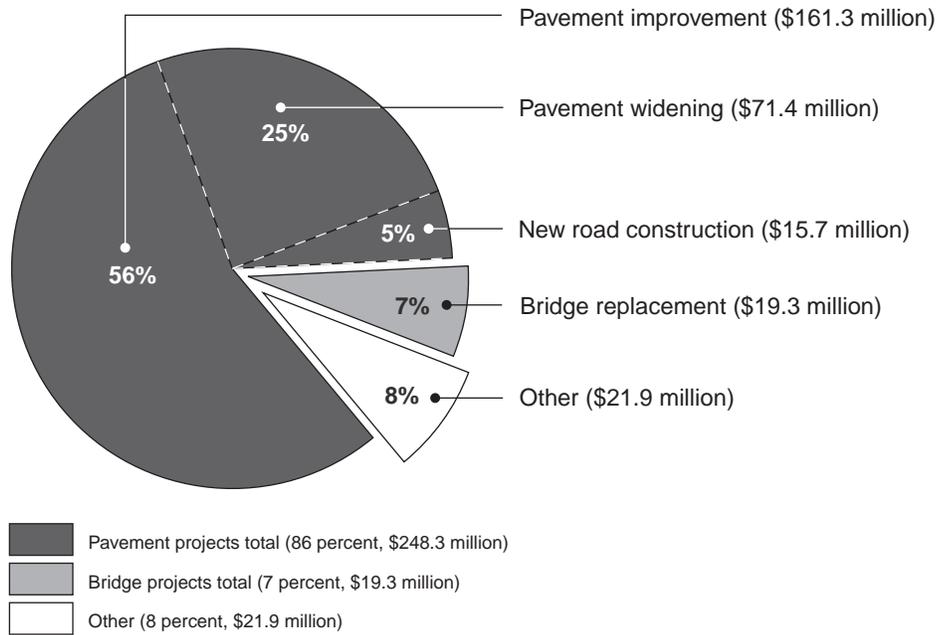
As we previously reported, DOT apportioned \$403,924,130 to Colorado in March 2009 for highway or other eligible projects.³⁵ As of September 1, 2009, \$289,604,854 had been obligated and \$16,455,759 had been reimbursed by FHWA.³⁶ Fifty-six percent of Recovery Act highway obligations for Colorado have been for pavement improvement projects. Specifically, over \$161 million of the funds obligated for Colorado projects as of September 1, 2009, is being used for projects such as reconstructing or rehabilitating deteriorated roads. State officials told us they selected a large percentage of resurfacing and other pavement improvement projects because they did not require extensive environmental clearances, were quick to design, could be quickly obligated and advertised for bid, could employ people quickly, and could be completed within 3 years. In addition, about \$71.4 million, about 25 percent of Colorado Recovery Act highway obligations, has been for pavement widening. As of August 31, 2009, CDOT reported that contracts for 41 of the 92 planned Recovery Act projects had been awarded, 37 of these were under construction, and construction was completed on 3 projects.³⁷

³⁵This does not include obligations associated with \$18.6 million of apportioned funds that were transferred from FHWA to FTA for transit projects. Generally, FHWA has authority pursuant to 23 U.S.C. § 104(k)(1) to transfer funds made available for transit projects to FTA.

³⁶DOT has interpreted the term “obligation of funds” to mean the federal government’s contractual commitment to pay for the federal share of the project. This commitment occurs at the time the federal government signs a project agreement. States request reimbursement from FHWA as the state makes payments to contractors working on approved projects.

³⁷CDOT initially planned 92 projects, but plans to present new projects to the Transportation Commission later in September; at that time it will remove 1 project from the list of certified projects and may add more.

Figure 2: Highway Obligations for Colorado by Project Improvement Type as of September 1, 2009



Source: GAO analysis of FHWA data.

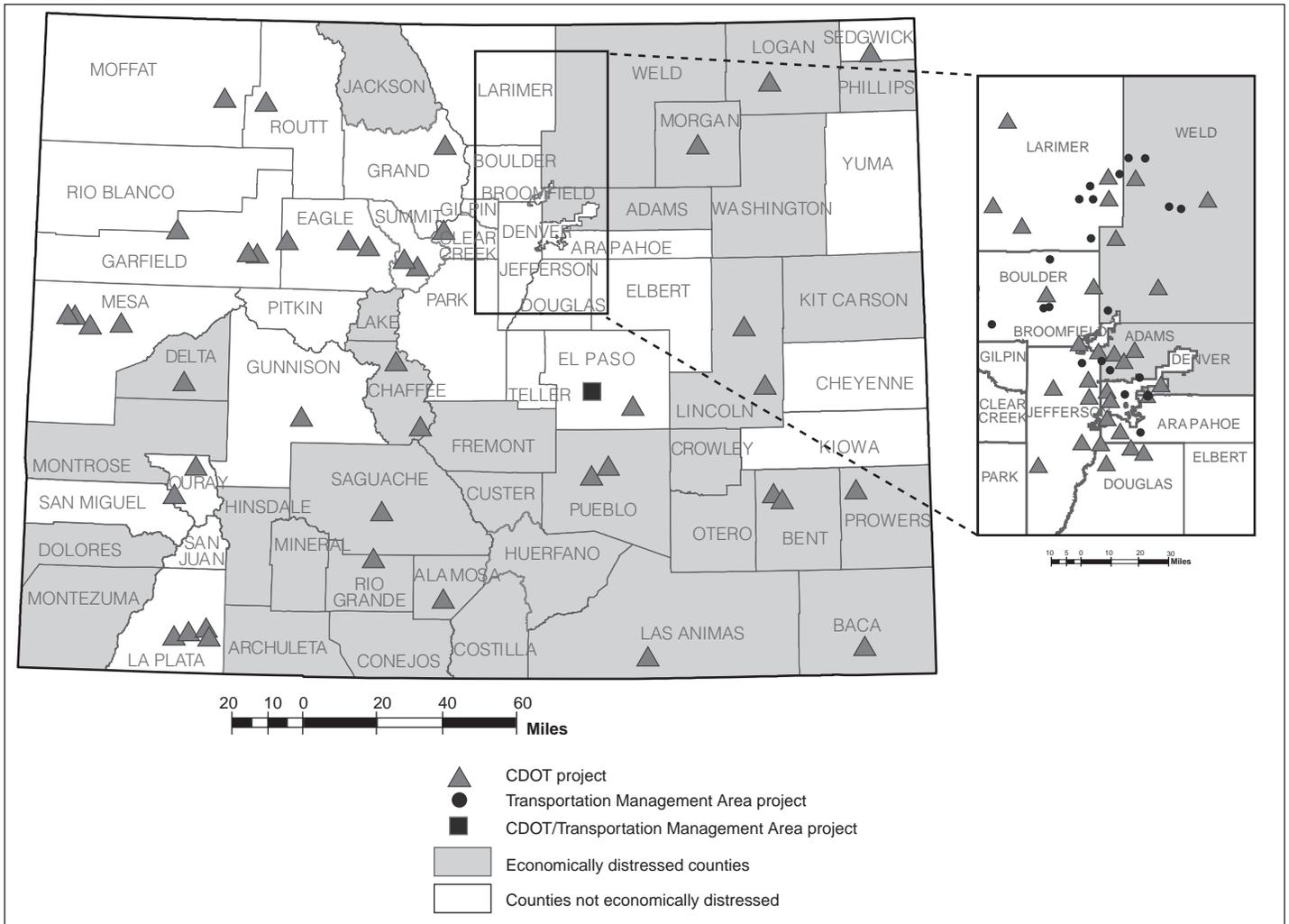
Note: Totals may not add due to rounding. "Other" includes safety projects, such as improving safety at railroad grade crossings, and transportation enhancement projects, such as pedestrian and bicycle facilities, engineering, and right-of-way purchases.

The Recovery Act directs states to prioritize projects in economically distressed areas and CDOT is planning to complete a total of about 36 Recovery Act projects in such areas.³⁸ However, as we reported in July 2009, selecting projects in economically distressed areas was not initially one of CDOT's top priorities when CDOT and its local partners began

³⁸Economically distressed areas are defined by the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. § 3161). According to this act, to qualify as an economically distressed area, the area must (1) have a per capita income of 80 percent or less of the national average; (2) have an unemployment rate that is, for the most recent 24-month period for which data are available, at least 1 percent greater than the national average unemployment rate; or (3) be an area the Secretary of Commerce determines has experienced or is about to experience a "special need" arising from actual or threatened severe unemployment or economic adjustment problems resulting from severe short-term or long-term changes in economic conditions. GAO recommended in our July 2009 report that the Secretary of Transportation develop clear guidance on identifying and giving priority to economically distressed areas.

planning in anticipation of the Recovery Act in December 2008, before the Recovery Act was passed. Figure 3 shows planned projects by county and by economically distressed county.

Figure 3: Planned Recovery Act Highway Projects in Colorado by County



Source: GAO analysis of CDOT data.

Note: Data points exceed total planned projects because two planned projects have more than one location.

As of August 31, 2009, Colorado had awarded contracts at a total value of \$39,360,281 less than the engineers' estimates, according to CDOT officials. CDOT officials reported that bids for 32 of the 41 awarded

Recovery Act projects had come in lower than the engineers' estimates. CDOT officials told us that the low bids are due to the economic recession—since many contractors are in need of work, they are submitting lower bids. FHWA has been deobligating funds as a result of contracts being awarded for less than originally estimated. CDOT plans to use these savings for additional projects, including projects in economically distressed areas of the state. In September 2009, CDOT will present a list of potential additional projects to the Transportation Commission, including potential projects in economically distressed areas.

Colorado Continues to Spend Recovery Act Funding for IDEA Part B

The Recovery Act provided supplemental funding for programs authorized by Part B of IDEA, the major federal statute that supports the provisions of early intervention and special education and related services for children and youth with disabilities. Part B funds programs that ensure preschool and school-age children with disabilities access to a free and appropriate public education and is divided into two separate grants—Part B grants to states (for school-age children) and Part B preschool grants (section 619). Education provided the first half of Colorado's \$154 million IDEA Recovery Act allocation for Part B grants on April 1, 2009, under Colorado's existing application.³⁹ Education released the second half of these funds to Colorado on August 31, 2009. As of August 31, 2009, Colorado had reimbursed \$4,091,882 in Part B funds for school-age children to LEAs.

Colorado Continues to Spend Elementary and Secondary Education Act Funds Allocated for ESEA Title I, Part A and Received Waivers from Some Spending Requirements

The Recovery Act provides \$10 billion to help LEAs educate disadvantaged youth by making additional funds available beyond those regularly allocated through ESEA Title I, Part A. The Recovery Act requires these additional funds to be distributed through states to LEAs using existing federal funding formulas, which target funds based on such factors as high concentrations of students from families living in poverty. In using the funds, LEAs are required to comply with current statutory and regulatory requirements and must obligate 85 percent of the funds by September 30, 2010.⁴⁰ Education is advising LEAs to use the funds in ways that will build

³⁹During our second bimonthly review of Recovery Act spending in Colorado, we reviewed IDEA Part C, which we did not review during this cycle.

⁴⁰LEAs must obligate at least 85 percent of their Recovery Act ESEA Title I, Part A funds by September 30, 2010, unless granted a waiver, and must obligate all of their funds by September 30, 2011. This will be referred to as a carryover limitation.

the agencies' long-term capacity to serve disadvantaged youth, such as through providing professional development to teachers. In addition, there are requirements related to the amount of ESEA Title I, Part A funds that LEAs must spend on various services, such as public school choice-related transportation and supplemental educational services.⁴¹ Education made the first half of Colorado's \$111 million ESEA Title I, Part A Recovery Act allocation available on April 1, 2009, under the state's ESEA consolidated application and the second half on August 31, 2009. Each LEA submits individual applications to the Colorado Department of Education to access its Title I, Part A funds. As of August 31, 2009, Colorado had reimbursed \$278,962 in ESEA Title I, Part A funds to LEAs.

Colorado has received four waivers from Education from some of the spending requirements associated with ESEA Title I, Part A Recovery Act funds. In July 2009, the Colorado Department of Education requested waivers from some of these spending requirements to provide LEAs with more flexibility in spending Recovery Act funds.

On August 11, 2009, the Colorado Department of Education received approval from Education for the following waivers for which LEAs can apply to the state:

- Waiver of the requirement for LEAs to spend an amount equal to 20 percent of their fiscal year 2009 ESEA Title I, Part A, Subpart 2 funds for public school choice-related transportation and supplemental educational services;⁴²
- Waiver of the requirement for LEAs identified for improvement⁴³ to spend 10 percent of their fiscal year 2009 ESEA Title I, Part A, Subpart 2 funds on professional development;⁴⁴

⁴¹Schools that have missed academic achievement targets for 3 consecutive years must offer students public school choice or supplemental educational services, which are additional academic services, such as tutoring or remediation, designed to increase the academic achievement of students.

⁴²20 U.S.C. § 6316(b)(10).

⁴³An LEA is identified for improvement if it has missed academic achievement targets for 2 consecutive years.

⁴⁴20 U.S.C. § 6316(c)(7)(A)(iii).

- Waiver of professional development spending requirements for schools that are identified for improvement. Like LEAs, schools in improvement are also required to spend 10 percent of their fiscal year 2009 ESEA Title I, Part A funds on professional development;⁴⁵ and
- Waiver of inclusion of some or all of ESEA Title I, Part A Recovery Act funds in calculating the per-pupil amount for supplemental educational services.⁴⁶ An agency's allocation would be doubled with ESEA Title I, Part A Recovery Act funds, which would therefore increase the amount the state would have to spend for supplemental educational services on each student. This waiver allows Recovery Act funds to be excluded from the per-pupil calculations for 1 year.

While Education approved these waivers for Colorado, each LEA must individually apply for the waivers to the Colorado Department of Education, which plans to review each LEA's request to ensure that the LEA provides all the information required by Education. There are several different assurances that LEAs must agree to, such as assuring that they will comply with statutory and regulatory obligations for the funds; use the funds freed up by the waiver to address needs identified based on data, such as statewide or formative assessment results; and comply with all of their other ESEA Title I, Part A funds or amend their existing applications to reflect the strategies they intend to use to address those needs. As of August 31, 2009, the Colorado Department of Education had received 39 applications for waivers, as follows:

- Twelve requests to waive the requirement that LEAs spend an amount equal to 20 percent for school choice-transportation and supplemental educational services;
- Nine requests to waive the requirement that LEAs identified for improvement spend 10 percent for professional development;
- Eight requests to waive the requirement that schools identified for improvement spend 10 percent for professional development; and
- Ten requests to waive the requirement that LEAs include some or all of the ESEA Title I, Part A Recovery Act funds in calculating the per-pupil amount for supplemental educational services.

⁴⁵20 U.S.C. § 6316(b)(3)(A)(iii).

⁴⁶Under ESEA, the amount that an LEA provides for supplemental educational services for each child is the lesser of the amount of: the agency's Title I, Part A, Subpart 2 allocation divided by the number of children below the poverty level in the LEA or the actual costs of the supplemental educational services received by the child. 20 U.S.C. § 6316(e)(6).

According to Education guidance, the Colorado Department of Education may not deny a request from an LEA to implement the waiver if the LEA's request includes all of the required information and meets all conditions on the Colorado Department of Education's waiver.

Colorado Is Concerned about Funding Availability to Meet the Accountability and Transparency Functions of the Recovery Act

State officials have identified the need to pay for central administrative activities, such as reporting on and auditing Recovery Act programs, to help ensure that Recovery Act funds are spent in an accountable and transparent way. States do not generally recover central administrative costs upfront, but instead are reimbursed for such expenses after they are incurred. OMB's May 11, 2009, guidance allows each state to recover central administrative costs associated with Recovery Act activities. As a follow up to this guidance, the federal Division of Cost Allocation (DCA) within the Department of Health and Human Services issued a set of frequently asked questions on how states should prepare an addendum to their cost allocation plans to recover these central administrative costs. Colorado's Controller has developed such an addendum, but has, in conjunction with several other controllers and the National Association of State Auditors, Comptrollers, and Treasurers (NASACT), identified what they consider several difficulties in implementing the OMB and DCA guidance. On August 7, 2009, NASACT sent a letter to OMB requesting that OMB waive certain depreciation and cost allocation methods for Recovery Act funds. According to Colorado officials, however, OMB has recently stated that each state will have to submit its individual waiver request.

Colorado officials are concerned that the state does not have the necessary resources to oversee the state's use of Recovery Act funds in addition to its normal government activities. In particular, officials believe budget and staffing cuts facing the government will affect the state's ability to fill vacant positions needed to conduct functions related to the oversight of Recovery Act funds. Colorado officials have identified two primary functions related to Recovery Act funds that are conducted by central state offices that do not receive direct Recovery Act funding to pay for those functions. These two functions include oversight of the state's Recovery Act activities, including developing a centralized reporting process to meet Recovery Act reporting requirements, and auditing Recovery Act spending. According to state officials, several state offices are involved in overseeing the state's management and use of Recovery Act funds and for ensuring the overall accountability and transparency of the state's processes through reporting on its Recovery Act activities. These offices include the Governor's Recovery Office; Office of Information Technology; the Office of State Planning and Budgeting; the

Department of Personnel and Administration (DPA), which houses the Office of the State Controller and the State Purchasing Office; the Office of the Treasurer; and others. State officials have estimated that they will need an additional \$1.8 million in fiscal year 2010 to pay for this oversight. In addition, the State Auditor is responsible for conducting independent financial and performance audits of state funds, including Recovery Act funds, spent by the state's agencies, colleges, and universities, and is also responsible for performing the state's Single Audit, which reviews programs that spend federal funds in excess of a certain amount. As we reported in July 2009, the State Auditor believes the audit workload related to the Recovery Act for fiscal year 2009 is manageable. However, the State Auditor is concerned that her office will require advance funding in fiscal year 2010 to award contracts for the additional audit work related to the Recovery Act. The bulk of Recovery Act funds will be spent in fiscal years 2010 and 2011, and the State Auditor has estimated that it will cost an additional \$446,000 in fiscal year 2010 to cover the increased audit costs related to the Recovery Act.

OMB released guidance on May 11, 2009, allowing states to use existing processes under OMB Circular A-87 to recover costs related to central administrative services and limiting the amount recovered to 0.5 percent of the total Recovery Act funds received by the state.⁴⁷ OMB Circular A-87 requires states to submit a statewide cost allocation plan that identifies and assigns central administrative costs to activities or programs that receive the benefits of the central activities, using a consistent cost allocation basis.⁴⁸ On July 2, 2009, DCA issued a set of frequently asked questions to provide guidance to states on how to prepare an addendum to state cost allocation plans under the OMB memo. The addendum to the cost allocation plan must be approved by DCA.

Colorado submitted an addendum to its cost allocation plan to DCA on August 13, 2009, but the State Controller is concerned that certain difficulties will delay the approval of the plan and therefore delay the state's recovery of the funds needed to pay for activities conducted by

⁴⁷OMB Circular A-87 establishes a choice of two methodologies states may use to reimburse state recipients for central administrative costs and provide a uniform approach for determining costs and promote effective program delivery and efficiency.

⁴⁸A statewide cost allocation plan identifies, accumulates, and allocates costs incurred by agencies or develops billing rates based on the allowable costs of services provided by a governmental unit to its departments and agencies. The costs of these services may be allocated or billed to benefiting agencies.

central state offices, including oversight of the state's reporting to meet Recovery Act requirements and auditing of Recovery Act programs. The Controller has identified three areas in which Colorado may have difficulties getting its cost allocation plan approved in a timely manner, as follows:

- **Cost allocation method.** Colorado officials believe that the activities conducted by central state offices related to Recovery Act requirements benefit all Recovery Act programs. Therefore, the state's cost allocation plan allocates central oversight and related administrative costs based on the ratio of state agency Recovery Act funds received to the total Recovery Act funds received by the state, rather than varying the allocation depending on how much a program benefits from the central service. According to the Controller, this allocation method meets the requirements of OMB Circular A-87 to allocate costs to benefiting activities, but he is unsure whether DCA agrees and believes it may delay the approval of Colorado's plan.
- **Time to approve the state's plan.** According to Colorado's Controller, DCA has informed states that it will try to review individual cost allocation plans on a case-by-case basis within 60 days of their submission rather than approve a model cost allocation plan upfront that would allow states to start recovering central administrative costs now. The Controller is concerned that this case-by-case review could cause delays in approving Colorado's cost allocation plan. According to the Controller, states cannot start recovering funds until their statewide cost allocation plans and subsequent state agency plans are approved. Once Recovery Act funds are spent, states cannot recoup central administrative costs; therefore, any delay hinders the state's ability to recoup costs.
- **Cash flow.** The Controller said that the state needs a pool of funding from which to pay for central administrative costs prior to recouping costs. However, the state does not have such a pool of cash available⁴⁹ and it is the Controller's understanding that the existing processes outlined in OMB's May 11, 2009, guidance will not allow the state to recover central administrative costs before the costs are incurred. The Controller has proposed "borrowing" funds from the government

⁴⁹According to the Controller, the state legislature must approve any uses of the state's statutory reserve and the legislature is not in session until January 2010; similarly, the state can borrow funds from its pool of investment funds, but cannot do so without guarantee of repayment.

services portion of the SFSF funds to pay for these central administrative costs, but the state has not heard from Education whether this is an allowable use of those funds. The borrowed funds would be repaid when the oversight costs are recovered from the Recovery Act grants. According to state officials, the state has set aside these SFSF funds in case they are needed for borrowing to cover central administrative costs.

On August 7, 2009, NASACT sent a letter to OMB requesting a waiver for two A-87 requirements regarding (1) certain depreciation methods and (2) requirements for cost allocation in accordance with relative benefits received. According to NASACT, the waiver is necessary to implement the cost recovery guidance in a timely manner. However, according to Colorado officials, OMB has recently stated that each state should submit a letter requesting a waiver. The state has not yet submitted this letter; the State Controller said that he is awaiting an OMB response on the concepts included in the NASACT letter before he sends the request.

Colorado Has Developed Guidance for Recovery Act Procurement and Will Use a New Contract Management System to Track Recovery Act Contracts

The Colorado state government has begun awarding numerous contracts funded with Recovery Act dollars in various program areas such as Highway Infrastructure Investment and the Weatherization Assistance Program. To facilitate the timely and efficient management of Recovery Act contracts, various Colorado government officials have taken several steps since passage of the Recovery Act. First, state officials informed us that legislation was enacted permitting a waiver of procurement code requirements to the extent the waiver is necessary to expedite the use of Recovery Act funds in a transparent and accountable way or to the extent strict adherence to the code would substantially impede Colorado's ability to spend the money in a manner or within the time required by the Recovery Act.⁵⁰ Second, the Director of the State Purchasing Office provided procurement guidance to state agencies regarding the use of funds received under the Recovery Act. The State Purchasing Office has delegated different levels of authority for contracting to state agencies, such as the Colorado Department of Labor and Employment, Governor's Energy Office, and IHEs, depending on their management capacity to handle contracting responsibilities. Third, the Executive Director of DPA analyzed state agency personnel needs to facilitate Recovery Act implementation in the areas of purchasing, accounting, contracts, and risk mitigation. Finally, the State Controller is using a new Contract

⁵⁰2009 Colo. Legis. Serv. Ch. 285 (SB09-297) (West).

Management System designed to facilitate centralized data collection and reporting on all state contracts to separately track and report on contracts funded with Recovery Act dollars.

To begin assessing Colorado's management of Recovery Act funds carried out by contractors, we selected five contracts for initial review. They consist of two Highway Infrastructure contracts awarded by CDOT, two Weatherization Assistance Program contracts awarded by the Governor's Energy Office, and one contract awarded by the Governor. We reviewed contract documentation, interviewed selected contract awarding and oversight officials, and visited one transportation site and two weatherization sites where project work was ongoing. We examined guidance developed by the Director of the State Purchasing Office that was provided to state agencies regarding their use of funds received under the Recovery Act. We also interviewed state officials involved in developing (1) 2009 legislation allowing waivers of established procurement requirements, (2) the state's new Contract Management System, and (3) the state's analysis of projected staffing shortfalls.

Colorado Recovery Act Procurement Waiver Has Not Yet Been Used

State officials informed us that on May 20, 2009, the state enacted legislation establishing a process for waiving state procurement requirements if funding for a procurement action includes money received under the Recovery Act. According to state officials, the procurement waiver had not yet been used as of September 14, 2009, nor had any agencies requested use of the waiver. According to a state legal official familiar with development of the legislation, there was no specific aspect of the procurement code that the legislature believed needed revision, but the legislature wanted to provide a "safety valve" in case the state encountered any procurement impediments to spending Recovery Act funds. They did not want Colorado to lose Recovery funds because procurement or contracting provisions prevented their expenditure within Recovery Act required time frames.

In order to ensure that any procurement waiver did not compromise transparency or accountability, state officials said that they built controls into the waiver. Waiver requests must be in response to a clear need; made in writing by the agency's executive director; made public on the state's Web site; and reviewed and approved by the Executive Director of DPA and the Colorado Attorney General. Furthermore, officials told us that such requests cannot be used to waive an entire process; rather, the written request for a waiver must describe the new process that will be followed and the way in which strict compliance with the procurement

code is unworkable. According to state officials, the basis for requesting a procurement waiver could be very broad (e.g., to shorten procurement time frames by a couple of days) but the methods by which to apply for a waiver and have it approved are tight.

Colorado Developed
Additional Procurement
Guidance for State
Agencies

In June 2009, the Director of DPA's State Purchasing Office developed and provided to state agencies procurement guidance regarding the use of Recovery Act funds. Updated in August 2009, this guidance reiterates the goals of the Recovery Act, lists planning principles that agencies should follow to award Recovery Act contracts and grants, specifies requirements for evaluating and awarding contracts and grants, and identifies supplemental contract clauses specific to the Recovery Act that are now required in Recovery Act contracts. The Colorado guidance restates a number of the goals of the Recovery Act including the preservation and creation of jobs and promotion of economic recovery, and the investment in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits. It also states that agencies that award Recovery Act contracts and grants obtain maximum competition; minimize vendors' cost, schedule, and performance risks; and ensure that an adequate number of sufficiently-trained staff are available to plan, evaluate, award, and monitor contracts and grants. The guidance specifically discourages agencies from using noncompetitive (e.g., sole source) procurements, unless fully justified.⁵¹ In addition, the guidance states that, to the maximum extent practicable, Recovery Act contracts should be awarded as fixed price contracts. It also addresses detailed state reporting requirements established in Section 1512 of the Recovery Act as well as the Buy American and prevailing wage requirements.

On August 21, 2009, the State Controller's office issued Recovery Act Supplemental Provisions for Contractors who receive Recovery Act funds. The office also provided guidance to agencies and IHEs on how these supplemental provisions should be used with existing contracts, grants, and purchase orders and with new Recovery Act contracts, grants, and purchase orders, and how agencies and IHEs should address new guidance on reporting issued by OMB.

⁵¹According to Colorado's Recovery Act procurement guidance, in those circumstances where an agency determines that it must use a noncompetitive contract, the agency must fully justify this action and provide evidence in the contract file that appropriate action has been taken to protect the taxpayer. Procurement officials stated that use of a noncompetitive contract must also be approved by officials in Colorado's Recovery Office.

Procurement Requirements Have Created Staffing Shortages at State Agencies, According to State Officials

Procurement requirements associated with Recovery Act contracts and grants have created staffing shortages at some Colorado agencies, according to officials. On April 28, 2009, DPA reported on the results of a survey it conducted of the personnel needs necessary to facilitate implementation of the Recovery Act in the areas of purchasing, accounting, contracts, and risk mitigation. The survey involved DPA as well as the Governor's Energy Office, Department of Local Affairs, and Colorado Department of Education. These three agencies were surveyed because DPA expects a significant increase above the normal level of contracts that the agencies—with DPA assistance—will award, given the increase in Recovery Act funds and the agencies' limited delegations of procurement authority.

The results of the survey indicated that, altogether, DPA and the other three agencies need a total of 16 staff at an estimated total annual cost of almost \$1.1 million to handle the increase in purchasing and contract administration and oversight expected with the influx of Recovery Act funding. Specifically, the survey found that DPA needs a total of six staff, including three in purchasing and three in contracts; the Governor's Energy Office needs a total of eight staff, including three in purchasing, three in accounting, and two attorneys to negotiate and assist in monitoring contracts; the Department of Local Affairs needs an internal auditor to assist with risk mitigation; and the Colorado Department of Education needs one purchasing agent. In addition, the Colorado Department of Education indicated that it submitted a separate request for one accountant and one accounting technician. According to a budget official, the results of this survey have not been approved through the state's budget process and therefore are estimated needs.

On August 27, 2009, DPA officials informed us that the specific analysis cited above had not been updated but that personnel needs associated with Recovery Act work were now being addressed through the Controller's statewide cost allocation plan. The Director of the State Purchasing Office said that some agencies such as the Governor's Energy Office and Department of Local Affairs have some administrative funding available that is being used to pay for this staffing. For example, he said that the Governor's Energy Office is using administrative funds to hire employees on a "temporary" basis. In contrast, the Controller pointed out that the state's central agencies such as DPA currently do not have any funding for such purposes and are awaiting approval of the state's cost allocation plan. In addition, the Office of the State Controller does not have any Recovery Act administrative funding available and therefore

cannot fill two current vacancies that are directly related to Recovery Act oversight.

Agencies Plan to Use Colorado's New Centralized Contract Management System to Track Recovery Act Contracts

On July 1, 2009, Colorado implemented a new statewide Contract Management System, which is being used to track all state contracts, including those for Recovery Act activities and funds. Contracting officials in DPA said that from 1994 until June 30, 2009, Colorado used a decentralized data collection system embedded within the state's Colorado Financial Reporting System (COFRS) to monitor and report on contracts. They described this system as being decentralized with each state agency tracking contract data separately. For example, Colorado's IHEs each conducted contract monitoring and reporting independently while other agencies used Microsoft Access or Excel spreadsheets to track their contracts. Contracting officials said that in 2007, the Colorado legislature called for a new contracts database and that when the state received Recovery Act funds in 2009, state officials decided to use the state's new system to gather data on those contracts.

Contracting officials said that all agencies and IHEs are required to report all contract and grant information into the Contract Management System regardless of dollar value or purpose. They stated that the new system generally involves eight steps: (1) determination of a need for a contract, (2) application of the procurement process, (3) contract creation, (4) contract negotiation, (5) contract review and approval, (6) contract monitoring, (7) contract payments, and (8) contract closeout. Officials in the Colorado State Purchasing Office also stated that they are primarily responsible, in most cases, for the first five steps of the procurement process leading to the award of contracts subject to the state procurement code. Once a contract is awarded, primary responsibility for contract administration, or the final three steps of the process, rests with the agency program staff. Contracting officials told us that they are now providing training on the Contract Management System to about 200 employees at agencies and IHEs who are involved in contract administration.

Colorado's Recovery Act Contracts Reflect Diverse Situations

Colorado has already awarded a number of Recovery Act contracts for a variety of programs and these contracts reflect diverse needs and contracting situations. In each case, we reviewed the contract and discussed it with officials, as follows:

- **Johnson Village North Project.** On May 6, 2009, CDOT awarded the Johnson Village North project contract to conduct work in support of the Highway Infrastructure Investment program. The contract has a total value of \$5.2 million with a project start date of July 13, 2009, and a projected completion date of October 23, 2009. The contract was awarded to repave 12.6 miles of mountainous highway and includes work related to curbs, gutters, signs, and traffic control. According to the CDOT awarding official, the contract was awarded competitively following CDOT's contracting procedures; five bidders submitted sealed proposals and CDOT selected the low bid, which was 23 percent lower than the agency's estimate for the work. The official told us that the work was awarded using a fixed unit price contract. The contract includes a provision for the contractor to provide information to the state to meet its Recovery Act reporting requirements, according to an agency official. The official said that contract oversight personnel were assigned before the contract was awarded and that oversight would be performed in accordance with CDOT project administration standards. A project engineer as well as inspectors and materials testers will oversee the project and measure compliance with the contract specifications before providing contractor payments.
- **C-470 Project.** On May 27, 2009, CDOT awarded the C-470 project contract to conduct work in support of the Highway Infrastructure Investment program. The contract has a total value of \$25.8 million with a project start date of July 9, 2009, and a projected completion date of August 15, 2010. The contract was awarded to remove existing asphalt pavement patches, remove and replace concrete slab, seal concrete pavement cracks, and conduct asphalt overlay and guardrail construction on highway C-470 in the Denver metropolitan area. According to the CDOT awarding official, the contract was awarded competitively following CDOT's contracting procedures; seven bidders submitted sealed proposals and CDOT selected the lowest bid, which was 15 percent lower than the agency's estimate for the work. The official told us that the work was awarded using a fixed unit price contract. Like the Johnson Village North project, the official stated that the contract includes a provision for the contractor to provide information to the state to meet its Recovery Act reporting requirements. The official said that contract oversight personnel were assigned before the contract was awarded and that oversight would be performed in accordance with CDOT project administration standards. A project engineer as well as inspectors and materials testers will oversee the project and measure compliance with the contract specifications before providing contractor payments.

- **Arapahoe County Weatherization Division.** On April 17, 2009, the Governor's Energy Office awarded a contract for support of the Weatherization Assistance Program to the Arapahoe County Weatherization Division. This contract has a total value of \$2.9 million with a project start date of July 1, 2009, and a projected completion date of June 30, 2010. The contract was awarded as a fixed price contract. It provides for weatherizing 641 housing units at a cost of \$4,562.52 per unit. According to officials from the Governor's Energy Office, the contract was not competitively awarded because it is considered a grant agreement and such agreements with local administering agencies, such as Arapahoe County, are not subject to the state's procurement code and thus not required to be awarded competitively. The contracts were competitively awarded to Arapahoe County and other local administering agencies in 1997 but have not been competed since this time, according to officials. However, beginning in fiscal year 2011, officials from the Governor's Energy Office told us that they are planning on competing future contracts for weatherization services. They also stated that the Arapahoe County contract did not contain a provision for the contractor to provide information to the state to meet its Recovery Act reporting requirements, according to an official from the Governor's Energy Office, but will be modified to incorporate such requirements. Arapahoe County officials told us that inspectors conduct oversight of weatherization work through a final inspection process that follows completion of work at each housing unit. In addition, the Governor's Energy Office annually inspects a minimum of 5 percent of all housing units.
- **Housing Resources of Western Colorado.** On April 28, 2009, the Governor's Energy Office awarded a contract for support of the Weatherization Assistance Program to Housing Resources of Western Colorado. This contract has a total value of almost \$1.3 million with a project start date of July 1, 2009, and a projected completion date of June 30, 2010. The contract was awarded as a fixed price contract. It provides for weatherizing 325 housing units at a cost of \$3,913.60 per unit. The contract calls for the installation of weatherization measures, such as insulating homes, correcting air leaks, repairing windows and doors, and purchasing energy-efficient appliances. Like Arapahoe County, the contract was not competitively awarded but will be competed starting in fiscal year 2011, according to state officials. The contract did not contain a provision for the contractor to provide information to the state to meet its Recovery Act reporting requirements, but will be modified to incorporate such requirements, according to an official from the Governor's Energy Office. Also

similar to Arapahoe County, inspectors from Housing Resources of Western Colorado conduct oversight of weatherization work following completion of work at each housing unit and the Governor's Energy Office annually inspects a minimum of 5 percent of all housing units.

- **Governor's legal services contract.** On April 2, 2009, the Governor of Colorado entered into a contract with an international law firm to represent the Governor's Office in analyzing the Recovery Act. More specifically, a state official said that the law firm agreed to help the Governor and his representatives complete the certifications required in the Recovery Act in order for Colorado to receive and distribute its full share of Recovery Act funds in the most transparent and efficient manner possible. In addition, according to this official, the firm waived its standard practice of requiring a retainer and agreed to provide the services of three attorneys at an hourly rate discounted from its standard rate for attorneys. According to state officials, this contract was not competitively awarded because the state's procurement requirements contain an exception for elected officials to use sole-source contracts.

Colorado Plans to Report Centrally but Unresolved Issues May Affect Its Ability to Report Recovery Act Data to OMB in a Complete and Timely Manner

Colorado Recovery officials are planning to use centralized reporting to meet Recovery Act reporting requirements. Section 1512 of the Recovery Act requires that, no later than 10 days after the end of each calendar quarter, every entity that received Recovery Act funds from a federal agency report on those funds. This reporting requirement applies to any entity, including states that received Recovery Act funds directly from the federal government and includes funds received through a grant, loan, or contract.⁵² This report must include

- the total amount of Recovery Act funds received from that federal agency;
- the amount of Recovery Act funds expended or obligated to projects or activities;
- a detailed list of all projects or activities for which Recovery Act funds were expended or obligated, including the name and description of each project or activity; an evaluation of the completion status of each project or activity, and an estimate of the number of jobs created and retained by each project or activity; and certain other information for infrastructure investments made by state and local governments; and

⁵²This reporting requirement does not apply to individuals.

- certain detailed information on any subcontracts or subgrants awarded by the recipient, including information required to comply with the Federal Funding Accountability and Transparency Act of 2006.⁵³

The first deadline for these reports is October 10, 2009.

To ensure that the Section 1512 reporting requirements are carried out, OMB issued guidance on June 22, 2009, describing how recipients and subrecipients of Recovery Act funds are to report on their use of those funds.⁵⁴ Generally, prime recipients—nonfederal entities that receive Recovery Act funds from federal agencies—are to submit information to www.federalreporting.gov, an online portal that will collect Recovery Act information. Subrecipients—any nonfederal entity that is responsible for program requirements and spends federal funds awarded by a prime recipient—may or may not be delegated reporting responsibility by a prime recipient. The June guidance also identified the data elements to be reported, including project description and status, expenditure amount, and job narrative and number. These data elements were updated by OMB in August 2009 and include almost 100 items.

While Colorado Recovery officials determined that a centralized process provides more control and ability to prevent duplicate reporting than the alternate decentralized process described in OMB guidance, unresolved issues with the processes and procedures being developed and their integration with OMB's online portal may affect the completeness and timeliness of the state's report. Unresolved issues include being able to upload consolidated data to OMB and completing the development and testing of the elements that will be used in the centralized process to collect data from grant recipients, including the compilation of jobs data. We discussed these issues with officials in the Recovery Office and the Controller's office and with officials in several state agencies who will be responsible for implementing the reporting procedures being developed.

⁵³Pub. L. No. 109-282, 120 Stat. 1186 (Sept. 26, 2006).

⁵⁴OMB memorandum, M-09-21, *Implementing Guidance for the Reports on Use of Funds Pursuant to the American Recovery and Reinvestment Act of 2009* (Washington, D.C., June 22, 2009).

Colorado Is Developing a Centralized Process for Reporting Recovery Act Data to OMB

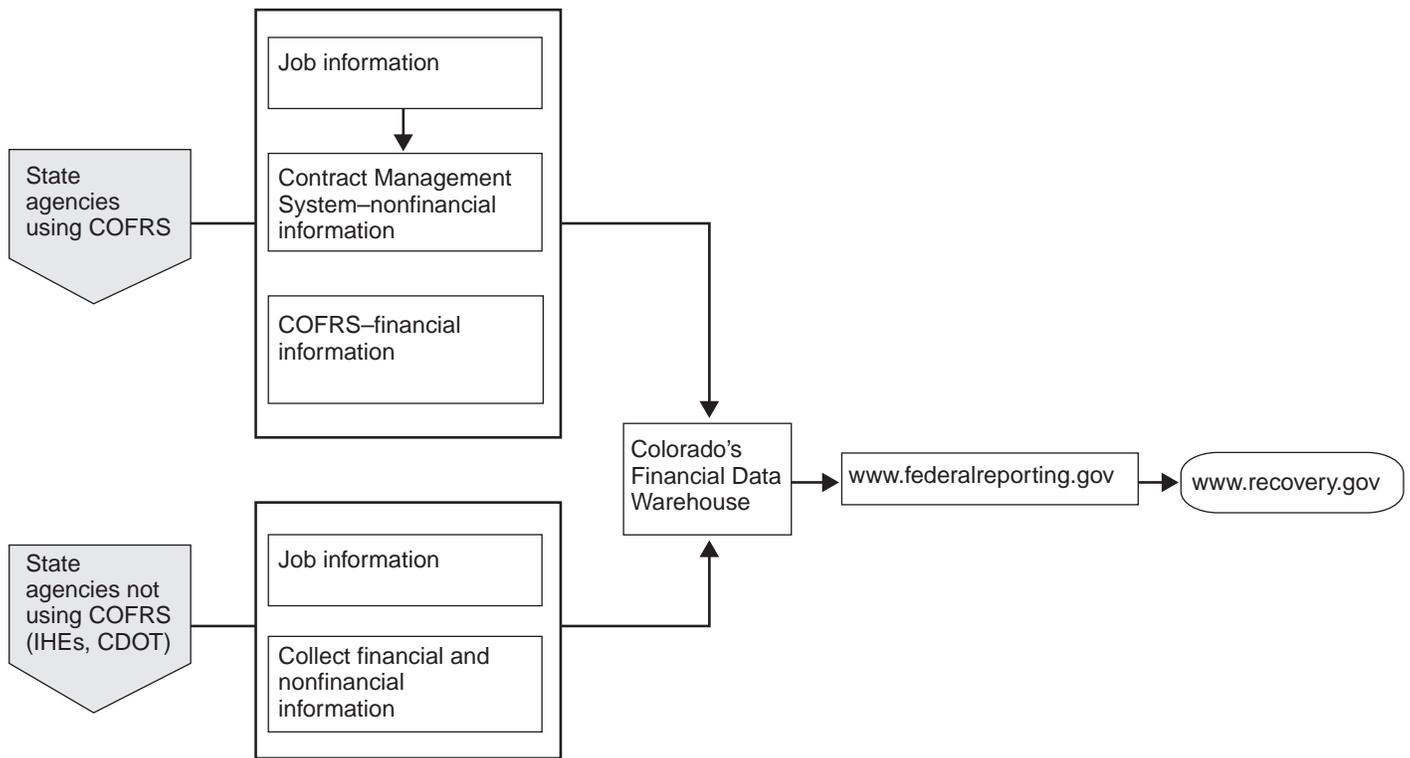
Colorado is planning on centrally reporting Recovery Act data to OMB rather than having state recipients and subrecipients report to www.federalreporting.gov individually. Colorado officials believe that a centralized process is necessary to oversee data collection, improve data quality, ensure completeness, and prevent duplication of data. In addition, a centralized process allows the state to capture data and report on its own Recovery Web site. Because of the numerous state agencies involved, potentially large numbers of Recovery Act projects, and many data elements that must be reported to OMB, state officials believe that creating a process to collect and report most of the data through a central location would increase the overall reliability of the data. To emphasize the importance of the process, the Governor's Recovery Office assigned a staff member to focus on Recovery Act reporting requirements and coordinate the activities of the different offices providing reporting information to ensure reporting occurs as required by OMB.

To report centrally, Colorado's Controller and the Governor's Office of Information Technology are developing new processes and procedures that will collect Recovery Act data to report to OMB. The State Controller issued a series of three alerts in May, July, and August 2009 explaining the state's policies and accounting and reporting requirements, defining prime recipients and subrecipients from the state perspective, and directing state agencies to use the centralized process.⁵⁵ The alerts set up a coding structure in the state's accounting system to track Recovery Act funds awarded to, and expended by, state agencies and external subrecipients that receive Recovery Act funds from the state agencies. The most recent alert describes how the state's new Contract Management System will be used to input Recovery Act nonfinancial information, such as jobs created or retained and subrecipient's congressional district. According to state officials, they had to develop new capabilities in the Contract Management System to capture and report Recovery Act data. As shown in figure 4, the state will gather agencies' financial data from the state's accounting

⁵⁵Office of the State Controller, Alert #184, *Coding Requirements Established for Recovery Act Monies, Compensated Absences Liability, and Electronic Funds Transfers for Employee Reimbursements*, May 13, 2009; Alert #185, *Recovery Act Funds-Schedule of Expenditures of Federal Awards Reporting Requirements, New Recovery Act Grant Tracking Requirements, Recovery Act Oversight Costs: Recent Guidance from Health and Human Services Division of Cost Allocation, Revised Fiscal Rule 5-1: Travel Effective July 1, 2009, Electronic Funds Transfer Travel Reimbursement COFRS Programming Changed on July 6, 2009, Lease-Purchase Threshold Increased with Passage of HB09-1218, Office of State Controller Staffing Changes*, July 10, 2009; and Alert #186, *Recovery Act Policies and Additional Recovery Act Grant Tracking Requirements*, August 4, 2009.

system, COFRS, and nonfinancial data from the state’s Contract Management System, and consolidate the data in the state’s Financial Data Warehouse (FDW).⁵⁶ Data for agencies that do not use COFRS as their primary system, such as CDOT and IHEs, will be collected separately in the warehouse. Data on jobs will be gathered by prime recipients from all state agencies for vendors and subrecipients using manually prepared summary documents.

Figure 4: Colorado’s Planned Process for Reporting Recovery Act Data to OMB



Source: GAO analysis of state information.

Note: State agencies can act as either a recipient or an internal recipient of Recovery Act funds. Job information is gathered and submitted by the primary recipients.

Once the state’s Recovery Act data are gathered centrally, the state plans to upload the data to www.federalreporting.gov. State agencies are responsible for reviewing and verifying their information once it is

⁵⁶FDW is a Web-based reporting tool that allows the state’s users to pull data on a daily basis.

compiled and reported by the state. OMB's June 22, 2009, guidance provided a timeline for agencies to review their data and make any necessary corrections. For the first cycle, recipient reports are due by October 10, 2009, state corrections can be made from October 11 through October 21, and corrections from federal agency reviews can be made from October 22 through October 29. Final reports will be posted on the www.recovery.gov Web site on October 30, 2009. To prepare state agencies for reporting, officials with the Governor's Recovery Office and the Controller's office have been meeting with state agencies to provide briefings and answer questions specific to each agency on what their roles and responsibilities will be relative to reporting data and reviewing the data on the Web site.

Colorado's centralized reporting process does not apply to local entities that receive Recovery Act funds directly from federal agencies, which is explained in the Controller's alerts. According to state officials, the state has no authority over local entities, such as RTD and other transit agencies, that receive Recovery Act funds directly from federal agencies rather than through a state agency. The state cannot dictate the reporting of such entities, but it is expected that the local entities will report directly to OMB.

Colorado Faces Challenges in Developing Its Reporting Process and Unresolved Issues May Affect Colorado's Ability to Report during the Recovery Act's First Quarterly Reporting Cycle

Colorado officials face two primary challenges in developing the state's process to consolidate and report the necessary Recovery Act information to OMB, which may limit the state's ability to ensure the completeness and timeliness of the reported information. First, state officials are working to resolve certain security control issues related to the uploading of Colorado's data to www.federalreporting.gov, and second, Colorado's plan for submitting data to OMB is in the process of being developed and tested.

Colorado officials are working on security control issues that must be resolved before the state will be able to upload agency data to OMB's Web site. According to OMB's June 22, 2009, guidance, part of the security measures require recipients to register on the OMB Web site to be able to submit and review the information. To do this, the recipients must be registered in the federal government's Central Contractor Registration (CCR) database and must also have a Dun and Bradstreet (DUNS)

number.⁵⁷ A users' guide posted on www.recovery.gov identifies various steps that the state will have to take before it will be able to upload the state agencies' Recovery Act information.⁵⁸ Based on the user guide, the Controller has informed the state agencies of the actions they must take immediately for the state to be able to meet OMB's reporting deadline. These actions include updating their DUNS and CCR information on the respective Web sites. Of particular importance is updating the CCR information for each agency's point of contact. According to the user guide, the agency points of contact will have to provide authorization on www.federalreporting.gov before the state can report all grant award information associated with the DUNS numbers for the respective agencies. Without the authorization from the points of contact, the state will not be able to upload the data. To further that process, the Controller has instructed all state agencies to identify all awards of Recovery Act funds so that an inventory of applicable DUNS numbers can be compiled. The inventory is critical for the identification of all authorizations that must be obtained from the points of contact.

According to state officials, they have learned that other states planning to do centralized reporting have also identified significant limitations with the security design of the www.federalreporting.gov Web site. According to Colorado officials, the Recovery Accountability and Transparency Board has proposed an enhancement to the system that would address many of the states' centralized reporting concerns. The main feature of the enhancements is that the state could more easily upload its data by making one data submission without the currently required multiple points of contact authorization. State officials did not have information on any milestones for the enhancements that are being developed. State officials said that they plan to use the new process for uploading data, but will proceed with the actions they are currently taking to report centrally as a backup strategy for reporting should the board's proposed uploading process not be available.

⁵⁷ A DUNS number is a unique number that identifies businesses, including government agencies.

⁵⁸ Recovery Accountability and Transparency Board, *ARRA In-bound Recipient Reporting FederalReporting.gov Recipient Point of Contact/DUNS Administrator User Guide-Registration and Next Steps Version 1.0* (undated).

In addition to security challenges, Colorado's process for centralized reporting involves new codes, reports, and programs to gather the information necessary to meet OMB's requirements and not all elements of the process have been fully developed or tested. Testing of the process is ongoing, as is development of various data formats and data accumulation media. For example, the formats for inputting the nonfinancial information into the Contract Management System and for compiling and uploading the information from the FDW to the OMB Web site have not been finalized. In addition, revisions will need to be made to the process state agencies had planned to use to review their data because of changes to the OMB Web site announced by the Recovery Accountability and Transparency Board on September 14, 2009. Colorado officials initially told us that for the first quarterly reporting cycle, the state agencies could review their data on www.recovery.gov. The data were expected to be available on October 11, 2009. However, according to the September 14 announcement, all data will now be displayed on October 30, 2009, which, according to state officials, will not allow state agencies to review their data as planned. Because of the change, the Controller's office is now working to develop the capability for agencies to review their Recovery Act financial data in FDW and nonfinancial data in the Contract Management System before it is submitted to www.federalreporting.gov. The Controller stated that he is uncertain whether his office has the resources to accomplish that task. Finally, because testing of Colorado's system is ongoing, it is uncertain whether the state will be able to report its data as scheduled. The Controller has set October 7, 2009, as the date the state's information will be uploaded to OMB. Until testing is completed, the Controller's office will not know how much time will be required to consolidate the data after the end of the month and whether there will be sufficient time before October 7, 2009, to consolidate all of the data.

Colorado's Comments on this Summary

We provided officials in the Colorado Governor's Recovery Office, as well as other pertinent state officials, with a draft of this appendix for comment. State officials agreed with this summary of Colorado's Recovery efforts to date. The officials provided technical comments, which were incorporated into the appendix, as appropriate.

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