



Highlights of [GAO-10-247](#), a report to the Republican Leader, U.S. Senate

Why GAO Did This Study

To help prevent the substitution of federal funds for state, local, or private funds, the American Recovery and Reinvestment Act of 2009 (Recovery Act) contains maintenance of effort and similar provisions requiring that recipients maintain certain levels of spending for selected programs. This report provides information on selected programs in the Recovery Act with maintenance of effort or similar provisions, the guidance federal agencies have issued to implement these requirements, and how responsible federal agencies are in determining whether recipients meet these requirements. To conduct this work, GAO identified programs in the Recovery Act that contain a new maintenance of effort or similar provision; account for at least \$4 billion in appropriations by agency; and collectively account for about \$100.5 billion of the \$106.8 billion in Recovery Act appropriations with these provisions. For these selected programs, GAO analyzed program documents and interviewed federal and state officials.

What GAO Recommends

GAO recommends that Education take further action to enhance transparency by requiring states to include an explanation of changes to maintenance of effort levels in their State Fiscal Stabilization Fund application resubmissions. All agencies agreed with GAO's findings, and Education agreed with the recommendation.

[View GAO-10-247](#) or [key components](#). For more information, contact A. Nicole Clowers at (202) 512-2834; Cornelia Ashby at (202) 512-8403; or Mathew Scire` at (202) 512-8678.

RECOVERY ACT

Planned Efforts and Challenges in Evaluating Compliance with Maintenance of Effort and Similar Provisions

What GAO Found

GAO identified eight programs in the Recovery Act with new maintenance of effort provisions. These programs span the areas of education, highway, housing, rail, telecommunications, and transit, and account for about \$100.5 billion in Recovery Act appropriations. The maintenance of effort or similar provisions are designed to prevent recipients, such as state departments of transportation, public housing agencies, and private companies, from substituting planned spending for a given program with Recovery Act funds—that is, the provisions ensure that the increased federal spending will supplement rather than replace state, local, or private spending. Although the maintenance of effort or similar provisions of these eight programs share a common purpose, the specifics of each provision vary by responsible agency. These variations include whether a state must certify the amount of funding it will maintain, whether waivers are allowed, and the consequences (if any) of not meeting the provisions. For example, the Recovery Act allows the Secretary of Education to waive state maintenance of effort requirements for the State Fiscal Stabilization Fund, under certain circumstances, but other programs GAO reviewed for this study did not have such a waiver provision.

Selected Maintenance of Effort or Similar Provisions in the Recovery Act

Agency	Spending provision summary	Covered time period
Department of Transportation (DOT)	Governor of each state must certify that the state will maintain its current level of transportation spending	Feb. 17, 2009, through Sept. 30, 2010
Department of Education	Governors must provide assurances that their state will maintain support for K-12 education and public institutions of higher education at least at fiscal year 2006 levels	Fiscal years 2009, 2010, and 2011
Department of Housing and Urban Development (HUD)	HUD must institute measures to ensure Recovery Act funds will supplement, not supplant, expenditures from other sources. To meet this requirement, HUD is requiring public housing agencies to sign an amendment to their annual contributions contracts	Varies based on time frames of grants
Department of Commerce	Grant applicants must demonstrate that, but for federal assistance, the project would not have been implemented during the grant period	Varies based on time frames of grants

Source: GAO analysis of the Recovery Act.

The federal agencies responsible for these eight programs have issued guidance to states and other recipients on how to implement the maintenance of effort or similar provision requirements. For example, since February 2009, the Department of Transportation (DOT) has issued several sets of guidance to reduce the variations in how states calculate their maintenance of effort certifications. DOT anticipates issuing further guidance to clarify some requirements, including how it will evaluate whether states maintained their certified levels of effort. The Department of Education also issued guidance allowing states flexibility in defining maintenance of effort levels. However, guidance from Education does not require states to include an explanation for changes made to maintenance of effort calculations in their resubmitted application, reducing transparency in terms of what has changed from previously approved applications. Given that some states plan to decrease their fiscal year 2006 maintenance of effort funding by billions of dollars, an explanation of why this change was made would allow the public and policymakers alike the ability to better understand the action. State officials GAO spoke with said the guidance from DOT was timely and that the agency was responsive to officials' questions. Furthermore, applicants to the Department of Commerce's broadband grant program did not have questions about the program's issued guidance.

Federal and state officials have not completed key steps in the implementation of the maintenance of effort or similar provisions because of administrative and fiscal challenges associated with their implementation.

- DOT has begun to assess the highway and transit levels that states certified to maintain; however, it has not estimated a date for completing this assessment and has not finalized plans for determining states' compliance with their transit certifications. Furthermore, according to a DOT official, the department has not made a decision as to whether the Recovery Act requires states to maintain a total level of effort for covered programs or to maintain their level of effort for each covered program. According to this DOT official, DOT plans to make a decision on this issue by the end of calendar year 2009.
- Education has begun to draft a monitoring plan to oversee and enforce state compliance with maintenance of effort requirements under the State Fiscal Stabilization Fund. Because the State Fiscal Stabilization Fund is a new program under the Recovery Act, Education has yet to finalize monitoring plans and processes. In addition, Education has not issued guidance to states on how to document that they met their required maintenance of effort level.

- Department of Housing and Urban Development (HUD) officials said they are monitoring Capital Fund formula grants through ongoing efforts. Officials further stated that they are still developing a strategy for monitoring Capital Fund competitive grants—also subject to the supplement-not-supplant requirement. According to HUD officials, their focus has been on completing this award program, for which they made awards in September 2009, and on reviewing Recovery Act reporting.
- Commerce's review of broadband grant applications for funding has been delayed because of scheduling and staffing challenges. In particular, the broadband grant program involves more applications and far more funds than the agency formerly handled, raising concerns whether the department has sufficient staff resources to implement the program in accordance with Recovery Act priorities. While Commerce originally anticipated that this review would be completed by November 7, 2009, the agency now estimates that it will not complete this review process and award the first round of grants until February 2010. To address this issue, GAO recently recommended that the Department of Commerce develop a contingency plan to ensure sufficient resources for oversight of Recovery Act-funded projects (GAO-10-80). Officials from Commerce have agreed with our recommendation and plan to take all appropriate steps to address our concern.

Officials from several state departments of transportation told GAO that while they plan to meet their maintenance of effort requirements, decreasing state revenues and budgets pose a challenge to doing so. These delays and challenges coupled with the varying requirements of the maintenance of effort and similar provisions we reviewed raise questions about whether the provisions will achieve their intended purpose. Accordingly, we plan to continue to periodically evaluate this issue.