



U.S. ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF INSPECTOR GENERAL

Catalyst for Improving the Environment

Evaluation Report

EPA Faced Multiple Constraints to Targeting Recovery Act Funds

Report No. 11-R-0208

April 11, 2011



Report Contributors:

Benjamin Beeson
Gabby Fekete
Natalie Hanson
Jeffrey Harris
John Patrick
Denton Stafford
Olga Stein
Jill Trynosky
Steve Weber

Abbreviations

ARRA	American Recovery and Reinvestment Act of 2009 (Recovery Act)
CWSRF	Clean Water State Revolving Fund
DWSRF	Drinking Water State Revolving Fund
EO	Executive order
EPA	U.S. Environmental Protection Agency
LUST	Leaking Underground Storage Tanks
OIG	Office of Inspector General
OMB	Office of Management and Budget
SRF	State Revolving Fund

Cover photos: *From left:* Vegetated curb extensions used to decrease stormwater runoff in Portland, Oregon (EPA photo); Recovery Act sign in Massachusetts (EPA OIG photo); pipes for water main extension project, Goffstown, New Hampshire (EPA OIG photo)

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At a Glance

Catalyst for Improving the Environment

Why We Did This Review

The objectives of this evaluation were to determine the extent to which the U.S. Environmental Protection Agency's (EPA's) American Recovery and Reinvestment Act of 2009 (Recovery Act) funds were targeted to economically disadvantaged communities, and the extent to which jobs were created and results were achieved in those communities. We also sought to determine the constraints faced by EPA in targeting funds and achieving results.

Background

The Recovery Act provided a total of \$7.2 billion for six programs administered by EPA. The programs funded projects related to the Clean Water State Revolving Fund, Drinking Water State Revolving Fund, diesel emissions reduction, leaking underground storage tanks, Brownfields, and Superfund.

For further information, contact our Office of Congressional, Public Affairs and Management at (202) 566-2391.

The full report is at:
www.epa.gov/oig/reports/2011/20110411-11-R-0208.pdf

EPA Faced Multiple Constraints to Targeting Recovery Act Funds

What We Found

After obligating over \$7 billion in Recovery Act funds, EPA is unable, both on a programmatic and national basis, to assess the overall impact of those funds on economically disadvantaged communities or those most impacted by the recession. Recovery Act funds were intended to create or save jobs, address environmental and other challenges, and assist those most impacted by the recession. EPA specifically sought to address location-specific, community-based public health and environmental needs with its Recovery Act dollars. While EPA was able to track financial expenditures, it considered but could not execute an effort to track the distribution of its Recovery Act funds to economically disadvantaged communities. The effort was hindered by the absence of definitions, data, and measures.

Multiple constraints limited EPA's ability to target funds to preserve and create jobs, as well as reach those most impacted by the recession. Short timeframes and the resulting emphasis on "shovel ready" projects also contributed to targeting challenges. Further, the development and funding of potential new projects in disadvantaged communities was hampered both by a lack of time and resources to prepare applications as well as a lack of priority for those economically disadvantaged communities that have environmental needs. Moreover, among the Recovery Act-funded programs at EPA, the states made the funding decisions for 86 percent of the funds.

What We Recommend

We recommended that EPA establish a clear and consistent regime that can address socioeconomic factors within the bounds of statutory and organizational constraints. The Agency responded that it did not have the authority or mission to target Recovery Act funds to disadvantaged communities and that these funds have already been obligated. Nevertheless, EPA agreed that the recommendations were consistent with its current efforts to improve the targeting and assessment of low-income, tribal, and minority communities. We modified our recommendation to focus on the achievement of Agency-wide objectives and priorities, and the inclusion of environmental justice principles in EPA's decisions. We believe, based on verbal representations, that the Agency agreed with our revised recommendations, and we await its 90-day response to confirm that informal communication.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

THE INSPECTOR GENERAL

April 11, 2011

MEMORANDUM

SUBJECT: EPA Faced Multiple Constraints to Targeting Recovery Act Funds
Report No. 11-R-0208

FROM: Arthur A. Elkins, Jr.
Inspector General

A handwritten signature in black ink, appearing to read "Arthur A. Elkins, Jr.", is written over the typed name and title.

TO: Bob Perciasepe
Deputy Administrator

This is a report on the evaluation of EPA's constraints in targeting Recovery Act funds, conducted by the Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA). This report contains findings that describe the problems the OIG has identified and corrective actions the OIG recommends. This report represents the opinion of the OIG and does not necessarily represent the final EPA position. Final determinations on matters in this report will be made by EPA managers in accordance with established audit resolution procedures.

The estimated direct labor and travel costs for this report are \$580,784.

Action Required

In accordance with EPA Manual 2750, you are required to provide a written response to this report within 90 calendar days. You should include a corrective actions plan for agreed-upon actions, including milestone dates. Your response will be posted on the OIG's public website, along with our memorandum commenting on your response. Your response should be provided as an Adobe PDF file that complies with the accessibility requirements of section 508 of the Rehabilitation Act of 1973, as amended. The final response should not contain data that you do not want to be released to the public; if your response contains such data, you should identify the data for redaction or removal. We have no objections to the further release of this report to the public. We will post this report to our website at <http://www.epa.gov/oig>.

If you or your staff have any questions, please contact Wade Najjum at 202-566-0832 or najjum.wade@epa.gov, Jeffrey Harris at 202-566-0831 or harris.jeffrey@epa.gov, or Jill (Ferguson) Trynosky, Project Manager, at 202-566-2718 or trynosky.jill@epa.gov.

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Chapter 1

Introduction

Purpose

The supplemental funding of environmental programs by the American Recovery and Reinvestment Act of 2009 (Recovery Act) was expected to achieve results not traditionally tracked by the U.S. Environmental Protection Agency (EPA). Anticipated results were to include creating and retaining jobs, promoting economic recovery, and assisting those most impacted by the recession. Moreover, EPA sought to address location-specific, community-based public health and environmental needs, and it cited environmental justice as a factor in Recovery Act implementation. This report evaluates the extent to which EPA's Recovery Act funds were targeted to economically disadvantaged communities, and the extent to which jobs were created and results were achieved in those communities. It also analyzes the constraints EPA faced in targeting funds and achieving results.

Background

The American Recovery and Reinvestment Act of 2009¹ was signed into law on February 17, 2009. It authorized \$787 billion in funding in the form of tax cuts, contracts, grants, and loans, among other things, to achieve five primary purposes:

1. To preserve and create jobs and promote economic recovery
2. To assist those most impacted by the recession
3. To provide investments needed to increase economic efficiency by spurring technological advances in science and health
4. To invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits
5. To stabilize state and local government budgets in order to minimize and avoid reductions in essential services and counterproductive state and local tax increases

¹ Information on the Recovery Act, fund provision, and other federal programs implementing funding is available at <http://www.recovery.gov/>.

These five Recovery Act purposes were designed to feed into the following three immediate goals of the Recovery Act:

1. Create new jobs and save existing ones
2. Spur economic activity and invest in long-term growth
3. Foster unprecedented levels of accountability and transparency in government spending

Of the \$787 billion in Recovery Act funds, EPA received \$7.2 billion to award or to disburse.² Table 1 shows the funds broken down by the six EPA programs involved.

Table 1: Amount of Recovery Act funds by program

EPA program	Recovery Act funding amount
Clean Water State Revolving Fund (CWSRF)	\$4 billion
Drinking Water State Revolving Fund (DWSRF)	\$2 billion
Superfund	\$600 million
Diesel Emissions Reductions	\$300 million
Leaking Underground Storage Tanks (LUST)	\$200 million
Brownfields	\$100 million

Source: EPA.

Recovery Act funding for EPA programs was designed to protect and increase “green” jobs, sustain communities, restore and preserve the economic viability of property, promote scientific advances and technological innovation, and ensure a safer, healthier environment. In its Recovery Act Plan,³ EPA states that these programs were “chosen carefully both for their ability to put people to work now and for their environmental value.” The plan further explains that the Agency sought to address location-specific, community-based public health and environmental needs using Recovery Act dollars, because investing in these needs would assure that job creation, economic growth, and environmental benefits accrue at the local level as well as nationwide.

The Recovery Act did not define “those most impacted by the recession.” However, Congress did specify in the joint conference report that they expected the states, as much as possible, to target the additional subsidized monies to communities that could not otherwise afford State Revolving Fund loan. This provision applied to the funds disbursed through the State Revolving Fund (SRF)

² EPA Recovery Act funds for the Clean Water State Revolving Fund, Drinking Water State Revolving Fund, and the Leaking Underground Storage Tank program were distributed to states using existing financing formulas. States, responsible for implementing these programs under agreements with EPA, selected the projects to fund. EPA selected the Superfund and Brownfields projects funded. For the diesel emissions reduction projects, EPA selected projects for 70 percent of the Recovery Act funds, and states selected projects for the remainder.

³ ENVIRONMENTAL PROTECTION AGENCY RECOVERY ACT PLAN: A STRONG ECONOMY AND A CLEAN ENVIRONMENT, dated May 15, 2009, was approved by the Office of Management and Budget and is available at <http://www.epa.gov/recovery/plans/EPA.pdf>.

programs, which accounted for approximately 83 percent of EPA’s Recovery Act funds. A March 2009 EPA Office of Water memorandum to Regional Water Management Division Directors provided “disadvantaged communities, environmental justice communities”, as examples of those that could not otherwise afford an SRF loan.

The EPA Administrator promoted environmental justice⁴ as a factor in the implementation of the Recovery Act. In an April 2009 letter, she reminded another federal agency that Congress intended that consideration be given to the needs of minorities and low-income communities in the use of Recovery Act funds. In addition, the Executive Order on Environmental Justice (EO 12898) specifies that each agency identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.

Noteworthy Achievements

According to recipient reports, EPA’s Recovery Act projects have created or retained as many as 16,603 jobs per quarter⁵ from the start of funds distribution to December 31, 2010. In congressional testimony delivered on February 23, 2010, EPA’s Senior Accountable Official for the Recovery Act stated that all SRF funds awarded to states were under contract or construction as of the February 17, 2010, deadline. As of February 2011, over 99 percent of EPA’s Recovery Act funds had been obligated.

Scope and Methodology

We performed our evaluation from November 2009 through November 2010. Our evaluation covers the period from the Recovery Act’s enactment in February 2009 through February 2011, to include the most current data available. We omitted the Diesel Emissions Reduction Act program from our evaluation because it is being evaluated separately by the EPA Office of Inspector General (OIG).

We interviewed EPA Recovery Act program staff to learn about selection criteria; Office of Policy, Economics and Innovation personnel regarding data analysis; Office of Environmental Justice personnel regarding the office’s role in Recovery Act efforts; and Environmental Council of the States staff regarding the states’ experience with the Recovery Act. We reviewed available Recovery.gov and EPA

⁴ EPA defines environmental justice as the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.

⁵ Each quarter of jobs data represents a snapshot of the number of jobs created or retained as reported by Recovery Act funding recipients for the particular quarter. Recipient-reported jobs created by EPA Recovery Act funds ranged from 3,899 jobs in the first quarter of the funds distribution (July 1, 2009–September 30, 2009) to a high of 16,603 jobs reported in the fourth quarter of the funds distribution (April 1, 2010–June 30, 2010).

data, as well as each program's Recovery Act plans, criteria, and project selection process.

We surveyed program managers and staff members from the 10 EPA regions to gather their opinions about the effectiveness of EPA's funding decisions, communications, and processes related to the Recovery Act. In addition to the regional survey, we visited program managers and staff members from six states to determine the states' experience in working with EPA on expending Recovery Act funds and targeting communities in need. Our sample included the states receiving the greatest proportion of EPA's Recovery Act funds across the programs of interest: California, Florida, Illinois, Massachusetts, Michigan, and Ohio. In addition, we attended EPA's 2010 Environmental Justice Conference and interviewed select presenters.

We also reviewed prior reports from the U.S. Government Accountability Office on states' and localities' use of Recovery Act funds and EPA OIG reports on green infrastructure, State Revolving Fund intended use plans, and Recovery Act planning activities. The EPA OIG reports resulting from these activities are available at <http://www.epa.gov/oig/recovery.htm>. The U.S. Government Accountability Office reports are available at <http://www.gao.gov/recovery>.

We conducted this performance evaluation in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the evaluation to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based upon our objectives.

Chapter 2

Full Impact of EPA's Recovery Act Funds on Disadvantaged Communities Is Unknown

After obligating over \$7 billion, EPA is unable, both on a programmatic and national basis, to assess the overall impact of its Recovery Act funds on disadvantaged communities or environmental justice communities. EPA sought to address location-specific, community-based public health and environmental needs using its Recovery Act dollars. The EPA Administrator recognized that in making Recovery Act investments, Congress intended that consideration be given to the needs of minorities and low-income communities.⁶ EPA considered but could not execute an effort to track the distribution of its Recovery Act funds to economically disadvantaged communities. The effort was hindered by the absence of definitions, data, and measures. Rather, EPA collected success stories regarding the use of Recovery Act funds to meet community needs.

EPA Did Not Track Targeting of Recovery Act Funds to Economically Disadvantaged Communities

In February 2009, EPA's Office of Environmental Justice raised the issue of targeting EPA's Recovery Act funds to economically disadvantaged communities to the Agency's Stimulus Steering Committee. In April, the committee agreed to address the tracking of funds to these communities. The committee subsequently requested options on the "story EPA wants to tell," specifically focusing on economically disadvantaged communities given the economic stimulus focus of the Recovery Act.

EPA's Office of Environmental Justice and the Agency's Stimulus Subcommittee on Measurement researched existing federal and/or other definitions of "economically disadvantaged" and presented options to the Agency's Stimulus Steering Committee. The full committee reviewed the subcommittee's options and directed that efforts should focus on mapping employment and income indicators, the Economic Development Agency's "Distress Index," and EPA Recovery Act dollars spent. In November 2009, the Office of Environmental Justice met with a statistician to explore how the Economic Distress Index layer is created and maintained. The office sought to determine whether the layer could be used to measure the impact of EPA Recovery Act funds on economically disadvantaged communities. Specific to the SRF programs, documents prepared for the Agency's Stimulus Steering Committee noted that it would be difficult to use the U.S. Economic Development Agency's statutory definition of "distressed

⁶ Memorandum from Administrator Jackson to Mr. Alonzo L. Fulgham, Acting Administrator, U.S. Agency for International Development, April 20, 2009.

communities”, as well as the U.S. Department of Housing and Urban Development and U.S. Department of Agriculture criteria, because the criteria may not align with state SRF disadvantaged definitions. Further, maps using the county as the unit of analysis may not provide a high enough resolution to determine the impact of EPA’s projects. Regarding the Leaking Underground Storage Tank (LUST) and Brownfields programs in which the state agency was, in some cases, the award recipient, EPA would need to take additional steps to obtain further information on where projects occurred or could occur. The Steering Subcommittee on Measurement’s initial conclusion was that the use of the layer may require resources for regular updates to the data. After this point, no additional direction was given by the Agency’s Stimulus Steering Committee, and no further action was taken on this matter.

Without Tracking, Impact of Recovery Act Funds on Economically Disadvantaged Communities Unknown

The Recovery Act included goals related to creating jobs and reaching those most impacted by the recession. EPA did not have a plan or strategy in place to integrate these goals into program operations and funding decisions. EPA did not systematically identify or seek to direct program funds to those projects or communities that are, for socioeconomic reasons, more in need than others. Although EPA has an Office of Environmental Justice and several tools to help identify potential environmental justice communities, it does not have baseline assessment data on a nationwide basis for socioeconomic factors or unemployment. Further, as of July 2010, EPA did not have a systematic methodology with specific definitions, criteria, or tools to:

- Identify communities that are economically disadvantaged
- Ensure consistency among program offices or regions
- Evaluate the impact of funding decisions on disadvantaged communities

The Director of EPA’s Office of Environmental Justice detailed these weaknesses in a document prepared for our review, outlining the role of the office in the Agency’s Recovery Act implementation. The conclusion of the document stated:

There is an urgent need for EPA to adopt a consistent approach to identifying minority, low-income and tribal/indigenous areas disproportionately burdened by environmental and health concerns, [and to determine] whether such an approach can serve as a surrogate for cases such as ARRA funding where the primary factor is “economically disadvantaged.”

EO 12898 requires EPA to consider environmental justice in decision-making, and the Administrator has made it a priority area. However, in implementing the Recovery Act, EPA did not demonstrate an ability to identify or target these communities through program operations.

In response to questions regarding the accomplishment of the Recovery Act goals to create or retain jobs and assist those most impacted by the recession, EPA managers noted that unemployment data were not incorporated into Recovery Act funding decisions. Stories of reported success in places such as Buckeye Lake, Ohio, provide anecdotal evidence that some EPA Recovery Act projects reached economically disadvantaged communities. However, EPA needs to include and use targeting data in allocating funds so that it can effectively describe the impact its funds had on economically disadvantaged communities and explain how it helped achieve the purposes of the Recovery Act. Further, without targeting data, EPA will not be able to meet the environmental justice requirements of EO 12898.

Success Story Example

Buckeye Lake, Ohio, remains one of the largest villages in the State of Ohio without a public drinking water system. The village received \$5 million from the Recovery Act to fund a project to bring the area treated water. The median household income for Buckeye Lake is below the State's average of \$36,250. There are a number of public health concerns surrounding the current wells and small public water systems on which the village relies. Construction is underway on the system, which will serve nearly 1,200 households when it is completed.⁷ Ohio estimates that the project will result in the creation of 50 jobs.

Conclusion

Within months of its enactment, the EPA Administrator recognized that in making Recovery Act investments, Congress intended that consideration be given to the needs of minorities and low-income communities. EPA considered but could not execute an effort to track the distribution of its Recovery Act funds to economically disadvantaged communities. The effort was hindered by the absence of definitions, data, and measures.

If EPA had, prior to the Recovery Act, adopted a consistent approach to identifying minority, low-income, and tribal/indigenous areas disproportionately burdened by environmental and health concerns, it still would have faced multiple constraints to targeting funds and resources to these areas. Chapter 3 describes these statutory, organizational, and programmatic constraints, and offers recommendations for the Agency to address these constraints as it focuses on the achievement of Agency-wide objective and priorities.

⁷ The project's estimated completion was July 2010. The water mains, booster station, and elevated storage tank went into service in May 2010; 1,100 service connections were due at the end of September 2010. The project, however, was incomplete as of February 28, 2011.

Chapter 3

EPA's Ability to Target Recovery Act Funds Was Limited

Multiple constraints limited EPA's ability to target funds to preserve and create jobs, as well as reach those most impacted by the recession. EPA programs have varying requirements to incorporate socioeconomic needs in project selection and funding decisions. The Office of Management and Budget (OMB) issued multiple guidance memoranda addressing, among other topics, how to report the numbers of Recovery Act jobs created or retained. Short timeframes and the resulting emphasis on "shovel ready" projects also contributed to targeting challenges. The development and funding of potential new projects in disadvantaged communities was also hampered by a lack of time and resources to prepare applications, as well as a lack of priority for those economically disadvantaged areas that have environmental needs. Moreover, among the Recovery Act-funded programs at EPA, the states made the funding decisions for 86 percent of the funds.

EPA Programs Have Varying Abilities to Incorporate Jobs and Community Needs in Funding Decisions

The majority of EPA's Recovery Act funding was for the CWSRF and DWSRF grants infrastructure programs. The remainder of the funds was primarily for cleanup projects, specifically Superfund, Brownfields, and LUST. Table 2 contrasts the amount of additional money received through Recovery Act funding with fiscal year (FY) 2008 and 2009 funding levels.⁸ However, neither EPA nor its state partners were required to track the number of jobs created or retained by programs prior to the Recovery Act, so a similar comparison cannot be made for jobs.

⁸ We omitted the Diesel Emissions Reduction Act program from our evaluation because it is subject to a separate OIG program evaluation.

Table 2: Recovery Act funds received and results

EPA program	Funding level			Fourth quarter 2010 jobs ^a	% funds disbursed ^b	Obligation deadline
	Recovery Act	2008	2009			
CWSRF	\$4 billion	\$689 million	\$689 million	6,371	78%	02/17/2010
DWSRF	\$2 billion	\$829 million	\$829 million	2,911	82%	02/17/2010
Superfund ^c	\$600 million	\$262 million	\$267 million	432	77%	09/30/2009
LUST ^d	\$200 million	\$72 million	\$77 million	349	63%	09/30/2010
Brownfields	\$100 million	\$94 million	\$97 million	200	42%	None

Source: EPA. Data for Jobs and Percentage of funds disbursed was current as of March 28, 2011. Other values come from EPA's Recovery Act Plans. Funding levels are rounded to the nearest million.

^a Numbers shown are quarterly report numbers from the fourth quarter of 2010, the most recent quarter of data available. According to the Agency, each quarter of jobs data represents a snapshot in time of the number of jobs created or retained as reported by the recipients that received Recovery Act funding for the particular quarter [and] the results should not be added cumulatively. Also according to the Agency, the number of jobs for all programs are only for first-level recipients and do not include subrecipients and others that benefited from Recovery Act funding.

^b The percentage of funds disbursed is the amount disbursed divided by the actual budgeted amount found in EPA's Recovery Act tracking system, not the amount appropriated.

^c According to the Superfund program, the \$600 million in Recovery Act funding is comparable only to the remedial cleanup amounts funded under FYs 2008 and 2009. The program provided the funding amounts for FYs 2008 and 2009 shown in the table above. Superfund program staff also informed us that the number of jobs for Superfund only reflects the jobs under EPA contracts and cooperative agreements and does not include interagency agreements.

^d The Office of Solid Waste and Emergency Response informed us that the FY 2008 and 2009 figures should only include the LUST cleanup levels, not the total LUST levels that included prevention funding; the office provided the numbers in the table above.

Each of the EPA programs funded under the Recovery Act was created to address specific environmental problems or human health concerns. Additional funding for these programs from the Recovery Act was expected to result in outcomes not traditionally tracked by EPA: creating and retaining jobs, promoting economic recovery, and assisting those most impacted by the recession. However, the ability of EPA to consider factors such as the economic conditions in communities applying for Recovery Act funds was determined, in part, by the authorizing statutes of the funded EPA programs.

Each program incorporates the socioeconomic conditions of communities in project selection differently, if at all. For example, DWSRF allows states to establish separate eligibility criteria and special funding options for economically disadvantaged communities. The Safe Drinking Water Act defines a disadvantaged community as "the service area of a public water system that meets affordability criteria established after public review and comment by the State in which the public water system is located." No universal definition of "disadvantaged community" is available for public policy purposes. However, a disadvantaged community generally is defined in socioeconomic terms, and

median household income is a typical measure. Income data are also used to identify people and households living below the poverty level.

In the Brownfields program, financial distress and economic need are part of the selection criteria. The CWSRF does not have the same provision. However, the Recovery Act stipulated that not less than 50 percent of its SRF capitalization grants funds should provide additional subsidization to eligible recipients. This level is reached through principal forgiveness and negative interest loans or grants, thus increasing the eligibility of economically disadvantaged communities. The Superfund and LUST programs do not dictate the incorporation of socioeconomic factors in project selection or prioritization.

Variations Existed Among EPA Guidance, Documents, Public Outreach Materials, and Recovery Act Goals

Overall, there was an absence of actionable EPA guidance or overall strategy on how to achieve Recovery Act goals and Agency priorities beyond environmental protection. Some managers stated that the Agency was only responsible for the environmental protection and infrastructure purposes of the Recovery Act, with job creation as a secondary consideration. Of the five Recovery Act purposes, only one (to invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits) is directly related to EPA's mission. Guidance from OMB to EPA as well as guidance from EPA to states generally focused on achieving funding obligation deadlines and reporting jobs created and retained.

There was no mention in EPA guidance documents of what actions could be taken to further the accomplishment of any Recovery Act goal, other than environmental protection and infrastructure improvement. However, in its Agency-wide Recovery Act Plan, public correspondence, and promotional materials, EPA stated it would be working toward the achievement of the other goals. For example, EPA's Recovery Act Plan and individual program offices' plans included a discussion of the need to reach disadvantaged and environmental justice communities. In addition, several Recovery Act grants and contracts stated within the purpose or description section that the funds were to "preserve and create jobs and promote economic recovery." Further, in Recovery Act promotional materials, EPA stated it anticipated that Recovery Act funds would create thousands of jobs, jumpstart local economies, and protect human health and the environment.

Recovery Act Funding Decisions Not Driven by Job Creation

Prior to the passage of the Recovery Act, EPA was not required to, and did not set targets for, job creation. With passage of the Recovery Act, EPA did not establish guidance on how this priority could be incorporated in Recovery Act project selections. Per OMB guidance, job creation data were reported by fund recipients

to a national database. EPA did not independently track the numbers or locations of new or retained jobs.

For the most part, EPA program managers lacked data that showed where high unemployment rates corresponded with environmental needs, as well as the number of jobs created by the different types of EPA projects funded. Because of these data gaps, managers were unable to guide states toward specific types of projects or into areas with notable unemployment rates. As shown in table 3, only 1 of the 55 respondents to our EPA regional survey said that his or her region had a list of areas most in need of job creation, and only 13 percent of respondents acknowledged that their programs had goals for job creation. However, many respondents cited job creation as the most important indicator of success for EPA’s national Recovery Act program. In contrast, for infrastructure improvement needs, 23 percent of respondents were aware that the region had a priority list, while more than half were aware of a priority list for environmental protection needs.

Table 3: Regional survey responses

Survey question	Response	
	Yes	No
Job creation		
Does your region have a list of areas most in need for job creation?	2%	98%
Does your region have goals for Recovery Act job creation?	13%	87%
Infrastructure improvement		
Does your region have a list of areas most in need for infrastructure improvement?	23%	77%
Does your region have goals for Recovery Act infrastructure improvement?	32%	68%
Environmental protection		
Does your region have a list of areas most in need for environmental protection?	57%	43%
Does your region have goals for Recovery Act environmental protection?	51%	49%

Source: OIG survey.

Recovery Act Milestones Inhibited Targeting Based on Need

Recovery Act requirements for the rapid allocation of funds limited the time available to define, locate, and/or mitigate any additional barriers to achieving goals outside routine program operations. The focus for the regions and program offices was on meeting the deadlines mandated by the Recovery Act. EPA staff and program managers responding to our survey also referred to the emphasis on timeliness and changing guidance as impediments to Recovery Act implementation. Our survey asked respondents to rate the extent to which six

areas impeded the effective implementation of the Recovery Act. Fifty-five percent of respondents rated “timeliness and adequacy of external guidance” as an “impediment” or “significant impediment,” referring to guidance provided from OMB or the U.S. Department of Labor. Similarly, 49 percent of respondents reported the “ARRA [Recovery Act] statutory requirements” were an “impediment” or “significant impediment” to effective implementation. The most common examples of impediments mentioned by regional survey respondents were getting guidance or definitions on Recovery Act requirements such as Davis-Bacon, Buy American, Green Project Reserve, infrastructure, and reporting.

According to state officials, the tight timeframes established in the Recovery Act are a significant barrier in utilizing the Recovery Act funds. States have considerable latitude in selecting projects that meet their environmental goals and needs, particularly in the intended use plan process for the SRFs. However, Recovery Act requirements necessitated that some states amend their intended use plans to ensure that projects funded met the deadlines. Despite the changes made, recipients told us that several projects would have been completed regardless of the Recovery Act efforts because the work had already been planned. A state representative stated that the Green Project Reserve stipulation caused it to pass over some valid, environmentally important public health projects to select those that fit green requirements.

Emphasis on Shovel-Ready Projects Adversely Impacted EPA’s Ability to Address Some Environmental and Economic Needs

EPA managers and staff implementing Recovery Act guidance identified a number of challenges in reaching communities in both economic and environmental need with Recovery Act funds. These challenges were primarily associated with the “shovel ready” requirement. The challenges included the lack of time to prepare applications, lack of priority for areas with both economic and environmental needs, and the inability of these communities to prepare timely and complete proposals. EPA programs require all applicants (regardless of environmental or health conditions) to meet program criteria. For Superfund eligibility, the community must have already been on the National Priorities List. For water and wastewater projects, applicants must demonstrate a level of preparedness to include making sure that permits and design plans are obtained and complete. During state visits, we were informed that applicants must demonstrate a level of preparedness, including completion of design plans and permitting processes, to have water and wastewater projects funded under the Recovery Act. According to a consultant for a Recovery Act recipient, the items needed for water and wastewater projects are costly and not a priority for communities without financial resources to develop their own design plans. More importantly, state representatives said that those communities that had not prepared the necessary materials in advance were unable to compete for Recovery Act funds.

In our regional survey, 74 percent of respondents reported that the designation of a community as environmental justice or disadvantaged had a minor or no impact on Recovery Act funding decisions. Eleven percent responded that no environmental justice areas were identified in their regions. Responses to the question, “What do you believe is the most important indicator of the success of EPA’s ARRA [Recovery Act] efforts?” most often related to the Agency’s ability to spend the Recovery Act funds in a timely manner.

States Selected Most of the Projects Receiving EPA Recovery Act Funds

States awarded assistance funds to the projects and communities for the DWSRF, CWSRF, and LUST programs, and their decisions determined where EPA’s Recovery Act funds were distributed. Whether and how socioeconomic conditions influenced project selection was at their discretion. States used a variety of techniques to determine which projects and communities would be awarded funds. A number of states used websites to solicit public input on specific projects and general areas of interest or need. These states noted that the public response was overwhelming and showed a high degree of need across their states.

The Recovery Act specifies, “Each State shall use not less than 50 percent of the amount of its capitalization grants to provide additional subsidization to eligible recipients in the form of forgiveness of principal, negative interest loans or grants or any combination of these.” The intent was for the states to target, as much as possible, these additional subsidized funds to communities that could not otherwise afford a loan (e.g., disadvantaged communities and environmental justice communities). However, EPA does not know whether and to what extent these communities were reached.

As depicted in table 4, states used the available flexibility in determining the percentage of forgiveness for their recipients based on their individual state needs and philosophies. For example, in Ohio, one of the states opting for broad public input, managers decided to fund numerous projects throughout the state rather than a few large projects. Ohio funded 287 projects with its \$220 million in Recovery Act CWSRF funding. Meanwhile, California, a geographically larger state, funded 109 projects with its \$280 million Recovery Act CWSRF funding.

Table 4: Sampled states forgiveness levels

State	Funding level (in dollars)		% principal forgiveness	% principal forgiveness
	CWSRF Recovery Act	DWSRF Recovery Act	CWSRF	DWSRF
California	\$280,285,800	\$159,008,000	64%	75%
Florida	\$132,286,300	\$88,074,000	52%	67%
Illinois	\$177,243,100	\$79,538,000	50%	50%
Massachusetts	\$133,057,300	\$52,216,000	96%	96%
Michigan	\$168,509,000	\$67,454,000	94%	65%
Ohio	\$220,623,100	\$58,460,000	100%	100%

Source: EPA.

According to EPA, state law in Florida did not preclude the state from forgiving loans under the Recovery Act even though such authority does not exist in the base CWSRF program. Florida state officials explained that this provision gave the state flexibility in CWSRF decision-making. In contrast, State of Illinois officials advised that Illinois law had not provided for any forgiveness of CWSRF; therefore, it had to make emergency rule changes to implement Recovery Act funding. They further advised that Illinois also awarded Recovery Act funding differently, funding 50 percent of project cost with Recovery Act funding and forgiving 50 percent of Recovery Act funding on all projects.

States also differed in their execution of the LUST program. Ohio state officials advised that the Ohio Bureau of Underground Storage Tank Regulations had historically focused on compliance and enforcement of sites with liable owners or other sites that had the ability to pay for the cleanup. As a result, they advised that many sites without liable owners were not being addressed. They further advised that Recovery Act LUST funding provided the opportunity to address such sites. In California, state officials told us that the state had to obtain the authority to add the Recovery Act funds into the budget. From the state's perspective, an additional layer of federal rules had to be put on top of the state rules for cleaning up LUSTs under the Recovery Act. Additionally, they advised that the state also had to develop new grant agreement templates and guidance, and create an infrastructure for reporting that did not previously exist.

For the Superfund and Brownfields programs, funding decisions were not made by the states. For those programs, states generally did not have many comments about their role in the Recovery Act selection process. However, in two of the six states visited, managers commented that they would have liked to be more involved in the site selection process for these programs.

Conclusions

The extent to which EPA's Recovery Act funds were targeted and spent, jobs created, and results achieved in economically disadvantaged communities are unknown. EPA's contributions under the Recovery Act emphasized environmental protection and remediation. These benefits were achieved through supplemental funding of existing programs. EPA was able to meet Recovery Act funding obligation deadlines; however, it was unable to systematically target or track funds to fully address the Recovery Act's intent. EPA's Recovery Act-funded projects were selected primarily by states. Priority was placed on "shovel ready" projects—a characteristic that, in some cases, placed economically distressed communities at a disadvantage, according to state officials.

There were both internal and external organizational constraints to the targeting of EPA Recovery Act funds to economically disadvantaged communities. EPA program offices are subject to varying requirements to incorporate socioeconomic needs in project selection and funding decisions. Within EPA regions, we found varying degrees of knowledge as to where high unemployment rates corresponded with environmental needs and on the number of jobs created by the different types of EPA projects funded by the Recovery Act. Because of these data gaps, managers were unable to assist states in looking for specific types of projects or into areas with notable unemployment rates. Moreover, among the Recovery Act-funded programs at EPA, states made project selection decisions that accounted for 86 percent of the funds.

The supplemental funding of environmental programs by the Recovery Act was expected to achieve results not traditionally tracked by EPA, to include creating and retaining jobs, promoting economic recovery, and assisting those most impacted by the recession. While the Agency faced numerous obstacles to the pursuit of these objectives, it did not develop a strategy to overcome them to the extent possible. We found no deliberate effort to (1) target funds toward the creation of jobs in areas of high unemployment, (2) provide funds to those who were most impacted by the recession, or (3) track the degree to which these objectives were met. EPA was also hampered because of its limited ability to identify disadvantaged communities. Without controls and a strategy, it would be difficult for EPA program and state decisionmakers to duplicate their reported success in reaching economically disadvantaged communities.

The EPA Administrator has made environmental justice an Agency-wide priority. However, EPA lacks the ability to reach or target communities with these types of socioeconomic constraints and is further challenged in its ability to measure the impacts of EPA funding on these communities. A clear and consistent Agency regime is needed to know whether EPA programs are a vehicle to achieve a temporary goal, such as the economic stimulus provided by the Recovery Act, or to achieve continuous goals, such as environmental justice.

Recommendations

We recommend that the Deputy Administrator:

1. Establish a clear and consistent regime that can address socioeconomic factors within the bounds of statutory and organizational constraints. Such a regime should allow the Agency to target program funds to achieve Agency-wide objectives and priorities for the inclusion of environmental justice principles in all of EPA's decisions.
2. Identify the sources of information needed by EPA program offices and managers to assess the socioeconomic conditions in communities. Within the bounds of statutory and organizational constraints, this information should be used to identify and target opportunities for which investment and grants, program funding, or technical assistance would return the most benefits in terms of jobs needed, infrastructure improvements, or economic benefit to the community.

Agency Comments and OIG Evaluation

The Agency stated that implementing the first recommendation regarding the targeting of Recovery Act funds was not practical because EPA had obligated 100 percent of its appropriated Recovery Act resources. Moreover, the Agency responded that it did not have the authority or mission to target Recovery Act funds to disadvantaged communities. Nevertheless, EPA did agree that the recommendations were consistent with its current efforts to improve the targeting and assessment of low-income, tribal, and minority communities. We modified our first recommendation to focus on the achievement of Agency-wide objectives and priorities, and to include environmental justice principles in EPA's decisions.

The Agency also suggested that we combine and modify our recommendations that individual program offices identify sources of information needed to assess socioeconomic conditions and build databases to identify the most opportune targets where investment through grants, program funding, or technical assistance would return the most benefits in terms of jobs needed, infrastructure improvements, or economic benefit to the community. Specifically, the Agency identified the screening tool under development for Plan EJ 2014 as an appropriate vehicle, once available. The OIG agrees that it is not necessary to task each program office separately to achieve the intent of these recommendations, and we have combined the recommendations.

However, it is still our intent that EPA work to identify the sources of information needed by EPA program offices and managers to assess the socioeconomic conditions in communities. As described, the screening tool will assist EPA in

considering potential environmental justice concerns more consistently as they implement programs. However, until the screening and targeting tool is designed and applied, the extent to which it will assist in planning and targeting future efforts towards the most opportune targets where investment through grants, program funding, or technical assistance would return the most benefits in terms of jobs needed, infrastructure improvements, or economic benefit to the community is unknown. During a February 2011 meeting to discuss Agency comments and our recommendations, the Agency agreed with our recommendations as revised. The recommendations are currently open, pending completion of corrective actions.

Status of Recommendations and Potential Monetary Benefits

RECOMMENDATIONS						POTENTIAL MONETARY BENEFITS (in \$000s)	
Rec. No.	Page No.	Subject	Status ¹	Action Official	Planned Completion Date	Claimed Amount	Agreed To Amount
1	16	Establish a clear and consistent regime that can address socioeconomic factors within the bounds of statutory and organizational constraints. Such a regime should allow the Agency to target program funds to achieve Agency-wide objectives and priorities for the inclusion of environmental justice principles in all of EPA's decisions.	O	Deputy Administrator			
2	16	Identify the sources of information needed by its program offices and managers to assess the socioeconomic conditions in communities. Within the bounds of statutory and organizational constraints, this information should be used to identify and target opportunities for which investment and grants, program funding, or technical assistance would return the most benefits in terms of jobs needed, infrastructure improvements, or economic benefit to the community.	O	Deputy Administrator			

¹ O = recommendation is open with agreed-to corrective actions pending
 C = recommendation is closed with all agreed-to actions completed
 U = recommendation is undecided with resolution efforts in progress

Agency Response

MEMORANDUM

SUBJECT: Response to the Office of Inspector General Draft Report,
EPA Faced Multiple Constraints to Targeting Recovery Act Funds,
OPE-FY09-0023, November 9, 2010

TO: Arthur Elkins Jr.
Inspector General

Thank you for the opportunity to respond to the Office of the Inspector General's draft evaluation report, *EPA Faced Multiple Constraints to Targeting Recovery Act Funds*, No. OPE-FY09-0023, November 9, 2010. We at the U.S. Environmental Protection Agency greatly appreciate your undertaking this review; we believe it will help us in achieving Administrator Lisa P. Jackson's priorities.

My response incorporates comment from the EPA's Office of Water, the Office of Administration and Resource Management, the Office of Solid Waste and Emergency Response, the Office of Enforcement and Compliance Assurance, the Office of Policy and the Office of the Chief Financial Officer. First, we would like to address some concerns with the report overall. Second, we offer a response to each recommendation. Lastly, we provide additional comments from the Office of Water to ensure that the final evaluation report contains accurate information.

OVERALL RESPONSE

Implementing the recommendations regarding the targeting of American Recovery and Reinvestment Act funds is not practical because the EPA had obligated 100 percent of its appropriated ARRA resources by September 30, 2010. The draft evaluation report repeatedly suggests, though it does not explicitly state, that EPA should have targeted and tracked ARRA project funding in consideration of "socioeconomic needs." Further, it was never possible for the EPA to target funding based on such needs because ARRA did not authorize the EPA to do so, and, as noted in the draft report, states made the funding decisions for 86 percent of the funds. This was required by the underlying statutes for the programs for which Congress chose to appropriate ARRA funds. In the enabling statutes for both State Revolving Fund programs the states have the sole authority to select projects to be funded. Congress made a number of fundamental changes to underlying statutory authorities for the SRFs via the ARRA appropriation – for example, waiving the State Matching Fund requirement, providing authority for grants and principal forgiveness in the Clean Water State Revolving Funds. If Congress

intended the EPA or the states to “target” use of funds, it could have or would have done so. Moreover, ARRA reporting requirements did not authorize the EPA to require states to track consideration of “socioeconomic needs.”

Given that states made the funding decisions for 86 percent of the funds, the EPA only had the ability to impact the allocation of 14 percent or \$700 million dollars. In regard to distribution of the roughly 14 percent of the EPA’s ARRA funds not provided to the states through mandatory formulas, the funding decision process varied for the two programs involved: Brownfields and Superfund. The nature of both programs, which address contaminated sites at former industrial locations or abandoned waste sites, provide significant benefit to disadvantaged communities often located near the cleanup projects. Our own analysis of the actual distribution of Brownfields and Superfund awards by county compared to population and income factors clearly shows that nearly 70 percent of the counties that received ARRA Superfund or Brownfields grants had a higher percentage minority population than the median county in the U.S. In addition, nearly 60 percent of ARRA Superfund and Brownfields grant money went to counties with higher poverty rates than the statewide poverty rate.

OIG Response: The purpose of EPA’s analysis of the distribution of Brownfields and Superfund awards (see appendix C) is unclear; perhaps it is intended to illustrate that the targeting of disadvantaged communities is occurring by design or is unnecessary. The excerpt is selective and ignores the analyses’ summary conclusion that “Grants tended to be awarded to counties with higher than average percentage minority population, but lower than average percentage in poverty.” The OIG decided not to include an analysis of Recovery Act spending in this report precisely because EPA does not have baseline assessment data on a nationwide basis for either socioeconomic factors or unemployment, nor does it have a systematic methodology with specific definitions, criteria, or tools to identify communities that are economically disadvantaged. EPA’s own analysis demonstrates the need for a clear and consistent regime that can address socioeconomic factors, statutory constraints, and organizational constraints to both guide EPA decisions and evaluate their impacts.

With respect to the disposition of future funding, the IG recommendations are consistent with our current efforts to improve our targeting and assessment of low-income, tribal and minority communities. In the past, EPA program and regional offices have relied upon and used different screening tools, such as EJSEAT⁹ for targeted compliance reviews and enforcement and EJ VIEW for grant or funding resources. To improve upon our existing efforts, Plan EJ 2014, which was announced for public comment in July 2010, has a screening tool as one of its areas for tool development. Under this plan, the EPA is working to develop a common mapping platform and a nationally consistent screening and targeting tool to enhance environmental justice analysis, funding and decision making. Such a tool will help ensure that the EPA’s program managers consider potential environmental-justice concerns more consistently as they implement programs within statutory mandates and that community stakeholders have more access to information on how the EPA screens for potential environmental-justice concerns. An implementation plan for the development and deployment of this environmental-justice screening tool will be developed by early 2011.

⁹ Environmental Justice Strategic Enforcement Assessment Tool (OECA).

OIG Response: Earlier, the Agency repeats several OIG observations of why it was not possible to target or track the use of EPA funds for Recovery Act projects based on “socioeconomic needs,” including that it was not within its authority. Above, the response states, “With respect to the disposition of future funding, the IG recommendations are consistent with our current efforts to improve our targeting and assessment of low-income, tribal and minority communities.” This apparent conflict between EPA’s authorities and its stated intentions is the fundamental rationale behind our first recommendation—that EPA establish a clear and consistent regime that can address socioeconomic factors, statutory constraints and organizational constraints...to target program funds to achieve Agency-wide objectives and priorities.

Lastly, it is not clear how the “Recommendations for Deputy Administrator” action on page 16 result from the presented findings of the draft report. As noted previously, the findings regarding the SRF programs acknowledge that states are responsible for making decisions on project selection and funding and that the ARRA statutory priority for “shovel-ready” projects may have impaired the ability of unprepared communities to receive ARRA funding. As the “shovel-ready” priority used in ARRA has not been incorporated in the enabling statutes, this observation has no relevance to the future base program (non-ARRA) activities. Findings about the unique, specific conditions of ARRA do not bear on implementation of the base programs absent those conditions, and thus it is not clear what the purpose would be to generalize programmatically from findings under such unique circumstances.

OIG RECOMMENDATIONS AND THE EPA’S RESPONSE

Recommendation 1: “We recommend that the Deputy Administrator establish a clear and consistent regime that can address socioeconomic factors, statutory constraints and organizational constraints when targeting Recovery Act funds or other funds to Agency-wide objectives and priorities.”

Agency Response: The EPA has obligated 100 percent of its appropriated ARRA program resources and outlaid over 71.4 percent. ARRA resource-distribution decisions were made in 2009 and any regime developed now could not be retroactively applied. With respect to the recommendation to apply such a regime to target “other funds to Agency-wide objectives and priorities” where underlying statutes give states the sole authority to select projects, the EPA will promote consideration of socioeconomic factors to the extent consistent with statutory requirements.

Recommendations 2 and 3: “We recommend that the Deputy Administrator task the Assistant Administrators of the program offices to identify the sources of information needed to assess the socioeconomic conditions in communities with existing or potential Superfund, LUST, and Brownfield sites, and clean and drinking water system needs.”

“We recommend that the Deputy Administrator task the Assistant Administrators of the program offices to build a database for use in identifying the most opportune targets where investment through grants, program funding, or technical assistance would return the most benefits in terms of jobs needed, infrastructure improvements, or economic benefit to the community.”

Agency Response: We suggest modifying recommendations 2 and 3 into a single recommendation as follows: "We recommend that the EPA identify the sources of information needed to assess the socioeconomic conditions in communities and that this information be considered when making future investment decisions, which will benefit underserved communities, to the extent consistent with statutory authority for relevant programs."

The EPA suggests the revisions for the following reasons: Recommendation 2, as originally worded, would have the Deputy Administrator task the Assistant Administrators to identify "sources of information needed to assess the socioeconomic conditions in communities with existing or potential Superfund, LUST, and Brownfield sites and clean and drinking water system needs." Rather than tasking all the Assistant Administrators to identify sources of information, it would be more efficient and effective for the EPA to create one tool to identify sources of information needed to assess the socioeconomic conditions in communities and then provide that information to all the Assistant Administrators and Regional Administrators so that the EPA has a consistent approach to areas assessing socioeconomic needs. The screening tool that the EPA is developing under Plan 2014 will be available for use by all EPA programs as applicable.

Recommendation 3 calls for the EPA to build a database for use in identifying targets for investment. The screening tool contemplated under Plan 2014 will draw on a number of existing databases and will provide guidance on the use of these databases in identifying areas of concern.

Along with this response, I am offering more specific, detailed comments on the report, and they are attached.

Should you have any questions, please let me know directly or have your staff contact Nena Shaw, Special Assistant, Office of the Administrator, at (202) 564-5106.

In the meantime, I thank you once more for the opportunity to share our thoughts.

Bob Perciasepe

OIG Response: We initially recommended that the Deputy Administrator establish a clear and consistent regime that can address socioeconomic factors, statutory constraints, and organizational constraints when targeting Recovery Act funds or other funds to Agency-wide objectives and priorities. According to the EPA, it has obligated 100 percent of its appropriated ARRA program resources and outlaid over 71.4 percent. Although the Agency used existing funding structures to disburse the majority of its Recovery Act funds, any regime developed now could not be retroactively applied to Recovery Act or other funds already disbursed. Moving forward, we believe Agency decision-makers need clear and consistent criteria to determine how and where to incorporate Agency-wide objectives and priorities for environmental justice into existing funding structures. Therefore, we revise our recommendation to:

Recommendation 1: We recommend that the Deputy Administrator establish a clear and consistent regime that can address socioeconomic factors within the bounds of statutory and organizational constraints. Such a regime should allow the Agency to target program funds to achieve Agency-wide objectives and priorities, including the inclusion of environmental justice principles in all of EPA's decisions.

We also initially recommended that the Deputy Administrator task the Assistant Administrators of the program offices to identify the sources of information needed to assess the socioeconomic conditions in communities with existing or potential Superfund, LUST, and Brownfield sites, and clean water and drinking water system needs. In addition, we initially recommended that the Deputy Administrator task the Assistant Administrators of the program offices to build a database for use in identifying the most opportune targets where investment through grants, program funding, or technical assistance would return the most benefits in terms of jobs needed, infrastructure improvements, or economic benefit to the community.

EPA suggests revising the two recommendations into one combined recommendation to allow for more efficient and effective use of Agency resources. It suggests that, rather than task each Assistant Administrator separately, EPA as an entity can create one tool to identify the sources of information needed to assess the socioeconomic conditions in communities across the Agency. The screening tool EPA is developing under Plan 2014 will be available for use by all EPA programs as applicable.

We agree that it is not necessary to task each Assistant Administrator separately to achieve the intent of these recommendations. However, we do not view the creation or use of a screening tool as equivalent to developing a database or data system. As described, this screening tool will assist EPA in considering potential environmental justice concerns more consistently as they implement programs. However, until the screening and targeting tool is designed and applied, the extent to which it will assist in planning and targeting future efforts towards the most opportune targets where investment through grants, program funding, or technical assistance would return the most benefits in terms of jobs needed, infrastructure improvements, or economic benefit to the community is unknown. Therefore, we revise recommendations 2 and 3 into a single recommendation:

Recommendation 2: We recommend that EPA identify the sources of information needed by its program offices and managers to assess the socioeconomic conditions in communities. Within the bounds of statutory and organizational constraints, this information should be used to identify and target opportunities for which investment and grants, program funding, or technical assistance would return the most benefits in terms of jobs needed, infrastructure improvements, or economic benefit to the community.

Detailed SRF Comments on Draft Report From the Office of Water and OIG Response

- 1) *At A Glance, paragraph 1, 1st sentence, “... EPA is unable, both on a programmatic and national basis, to assess the overall impact of its Recovery Act funds on economically disadvantaged communities...”*

The EPA is able to determine how many jobs were created with each project and are able to determine the level of subsidy each project received. We also have recipient locational data for each project. This information is available in our respective reporting systems as well as in Federalreporting.gov for jobs data. This can be assessed against economic indicators available through other departments. It should be noted that the ARRA statute neither required nor authorized the EPA to take any action or collect information with regard to economically disadvantaged communities specifically. To have done so for the purposes of ARRA – notwithstanding ARRA’s lack of such directives and its unprecedented and extremely demanding deadlines for action – would have detracted from the EPA’s necessary focus on meeting ARRA’s unequivocal priority for immediate action to promote job creation.

OIG Response: As stated in our report and detailed in documents provided to us by the Director of EPA’s Office of Environmental Justice, as of July 2010, EPA did not have a systematic methodology with specific definitions, criteria, or tools to identify communities that are economically disadvantaged, ensure consistency among program offices or regions, and evaluate the impact of funding decisions on disadvantaged communities. Specific to the SRFs, these documents noted that it would be difficult to use the U.S. Economic Development Agency’s statutory definition of “distressed communities,” as well as the U.S. Department of Housing and Urban Development and U.S. Department of Agriculture criteria, because the criteria may not align with state SRF disadvantaged definitions. Further, maps using the county as the unit of analysis may not provide a high enough resolution to determine the impact of EPA’s projects. Regarding the LUST and Brownfields programs in which the state agency was, in some cases, the award recipient, EPA would need to take additional steps to obtain further information on where projects occurred or could occur.

Although the Recovery Act did not specifically require EPA to take action on economically disadvantaged communities, the Agency was encouraged to do so by Administrator Jackson and in subcommittee language. Despite EPA’s “necessary focus on meeting [the Recovery Act’s] unequivocal priority for immediate action to promote job creation,” it is important to note that EPA’s existing statutory authorities do not include a job creation requirement, and that Recovery Act funds did not change EPA’s programmatic structure. It would therefore follow that EPA’s focus in disbursing Recovery Act funds would be on meeting the Agency’s mission to protect human health and the environment, as well as following the direction and priorities of the Administrator.

- 2) *At a Glance, paragraph 2, 5th sentence, “The development and funding of potential new projects in disadvantaged communities was hampered, both by a lack of time and resources to prepare applications as well as a lack of priority for those economically disadvantaged communities...”*

Projects that had not begun substantial planning and design work would not have created as many jobs in the immediate term as projects that were ready to proceed with construction. Furthermore, since ARRA required all SRF projects to be under contract or construction by February 17, 2010, projects not ready to move forward immediately should not have been funded. Base (i.e., non-ARRA) SRF program resources remained available to continue to support of ongoing planning and design work to ensure all communities, including disadvantaged communities, that were not ready for ARRA would still be ready for SRF funding at the appropriate time.

OIG Response: This sentence focused on disadvantaged communities' inability to develop projects in time to use Recovery Act funds. During state visits, we were informed that those most in need of receiving Recovery Act funding were unable to receive funding because of a lack of preparedness. It is unclear, given our finding that socioeconomic data gaps made managers unable to assist states in looking for specific types of projects or into areas with notable unemployment rates, how these projects would be ready for "SRF funding at the appropriate time." In addition, most EPA regional respondents to our survey did not possess lists of areas most in need for job creation (98 percent) or infrastructure improvement (77 percent). Without a clear and consistent regime to address the factors identified in this report and to direct Agency funds to the most opportune targets for investment, it is unclear how EPA, including the SRF program, will know the appropriate locations and times at which it will be most beneficial to the community to provide resources.

3) *At a Glance, paragraph 2, 6th sentence, "Moreover, among the Recovery Act-funded programs at EPA, decisions for 86 percent of the funds were delegated to the States."*

This sentence implies that the EPA decided to delegate decisions under ARRA to the states and ignores the fact that the enabling statutes for both SRFs require funding decisions to be made by the states. Also, the use of "moreover" assumes that the states' funding choices negatively impacted funding decisions. Decision making by the states, as required by statute, is not counterproductive to assisting economically disadvantaged communities as the report implies. Indeed, it can achieve substantial benefits the EPA is not as well positioned to achieve. States must conduct a detailed financial assessment of each potential loan recipient to ascertain the community's ability to repay the loans. As a result, states are uniquely qualified to determine which communities could not otherwise afford an SRF loan and what level of additional subsidy is necessary to yield a financially viable infrastructure project.

OIG Response: This section of the report describes the multiple constraints that impacted EPA's ability to target funds to preserve and create jobs, as well as reach those most impacted by the recession. In the first paragraph of EPA's OVERALL RESPONSE section, it notes that states made funding decisions for 86 percent of EPA's Recovery Act funds. There is no value judgment regarding the states' decisions. We revised the statement to remove the term "delegated". We use the term "Moreover," as defined by Merriam Webster, "to convey information, in addition to what has been said." **Revised report statement:** *"Moreover, among the Recovery Act-funded programs at EPA, the states made the funding decisions for 86 percent of the funds."*

- 4) *At a Glance, paragraph 2, 7th sentence, “In the future, infrastructure and environmental conditions in economically disadvantaged communities may become increasingly vulnerable to deterioration as funding and assistance levels decrease.”*

There is no information or evidence provided anywhere in the draft report to support or substantiate this statement. As a practical matter, deterioration of infrastructure assets is due to the age of assets as well as inadequate operations and maintenance (O&M) spending. Further, the EPA does not know how Congress may choose to appropriate funds and/or direct funding in the future nor do we know how the states may choose to appropriate and/or direct state funding in the future.

OIG Response: The total stimulus funding for the two SRF programs was almost four times larger than the FY 2009 appropriations for these programs. With the fourfold increase in funds, EPA was able to reach more communities overall, including disadvantaged communities. However, absent planning and a strategy for how to prioritize these factors in funding, there is no assurance the results achieved can be repeated. There is not another Recovery Act funding opportunity currently planned to continue this cycle. The Administrator has cited the vulnerability of environmental justice and economically disadvantaged communities in communication with the public. Combining those factors evidences the fact that these communities could potentially deteriorate further if they did not receive Recovery Act funding. Nevertheless, acknowledging that other factors besides funding can impact conditions, as well as the uncertainty of any future scenario, we deleted the sentence.

- 5) *Report, Page 1, paragraph 1, 3rd sentence “Moreover, the agency sought to address location-specific, community-based public health and environmental needs...”*

This sentence represents a misunderstanding of the language used in the EPA Recovery Act Plan, which simply makes the factual statement: “The programs targeted by EPA’s portion of Recovery Act dollars address location-specific, community-based public health and environmental needs.” Each EPA program targeted by Congress to receive ARRA funding is clearly designed to address location-specific, community-based public health and environmental needs.

OIG Response: We use the language “sought to address” because, in our evaluation of the extent to which EPA’s Recovery Act funds were targeted, jobs were created, and results were achieved in economically disadvantaged communities, we did not find evidence that EPA Recovery Act funding was clearly designed to address location-specific, community-based public health and environmental needs. As described in our report, as of July 2010, EPA did not have baseline assessment data on a nationwide basis for either socioeconomic factors or unemployment, nor did it have a systematic methodology with specific definitions, criteria, or tools to identify communities that are economically disadvantaged. The absence of information creates a challenge to determine the extent to which these location-specific, community-based public health and environmental needs are actually met with Recovery Act funding. As noted in the Agency’s response to our report, “the EPA is working to develop a common mapping platform and a nationally consistent screening and targeting tool to enhance environmental justice analysis, funding and decision making.”

- 6) *Report, Page 1, paragraph 1, 3rd sentence “...and it cited environmental justice as a factor in Recovery Act implementation.”*

Environmental justice appears as follows on page 6 of the Recovery Act plan regarding the SRFs: "A greater share of federal funds provided for local clean water and drinking water projects, including disadvantaged and environmental justice communities." The share of federal funds was increased for **all** projects due to elimination of state-match requirement and then further increased due to the provision of additional subsidy to select recipient communities. Thus, every ARRA-funded SRF assistance agreement, including those to disadvantaged and environmental-justice communities, provided a greater share of federal funds for projects, and this goal was met.

OIG Response: Administrator Jackson also cited environmental justice in a memorandum to another federal agency on April 20, 2009, noting, "In enacting the Recovery Act, Congress intended that funding benefit all people, regardless of race, age, color, national origin, or income. This includes ensuring that consideration is given to the needs of minority and low-income communities." Regardless of whether the increase in federal funds for all projects resulted in additional Recovery Act-funded SRF assistance agreements that reached disadvantaged and low-income communities, EPA did not have a deliberate, targeted approach to reach these communities.

- 7) *Report, Page 1, paragraph 2, 2nd sentence “The Act authorized \$787 billion in funding in the form of tax cuts, contracts, grants, and loans, among other things, to achieve five primary purposes:...”*

Stating that the \$787 billion in ARRA funds was for five primary purposes implies that all \$787 billion was equally intended to produce all five outcomes. This is incorrect. For instance, goal #3 is “to provide investments needed to increase economic efficiency by spurring technological advances in science and health.” This goal clearly applies to programs, created or funded by ARRA, that provide research funding or economic development funding to particular fields of science or health. The funds provided to the EPA programs were for infrastructure spending. The five goals encompass the purpose of the aggregate of all appropriations in the Act. Each line item of the Act was not intended to meet each goal.

OIG Response: The statement appears in our “Background” section and provides the reader with information about the amount of funding associated with the Recovery Act and its primary purposes. The purposes are from section 3a of the act.

We recognize that each line item of the Recovery Act was not intended to meet each of the five goals; however, the act did not state, nor did the Administrator direct, that the EPA Recovery Act funds would only be used for infrastructure spending. In its Agency-wide Recovery Act Plan, public correspondence, and promotional materials, EPA stated it would be working toward the achievement of the other goals, stating in the purpose or description section of Recovery Act grants and contracts that the funds were to “preserve and create jobs and promote economic recovery.”

- 8) *Report, Page 2, last paragraph, 2nd sentence, “However, Congress did specify that a portion of EPA’s funds should be awarded as subsidies to communities that could not otherwise afford infrastructure loans. “*

This suggestion that the affordability language was statutory is misleading and factually incorrect. The draft report is presumably referring to, without quoting, a sentence in the joint explanatory statement that accompanied the statutory language of the conference report. This sentence does not appear in the statute nor does any language that in any way constrains the states’ discretion on how to allocate the subsidies. The conference report states: “The bill does not include language proposed by the House that would require a specific amount for communities that meet affordability criteria set by the Governor. However, the Conferees expect the States to target, as much as possible, the additional subsidized monies to communities that could not otherwise afford an SRF loan.” Further, for the DWSRF, which has an additional subsidy for disadvantaged communities’ provision in its enabling statute, ARRA actively divorced a state’s decision to provide additional subsidy under ARRA from the subsidy for disadvantaged assistance.

OIG Response: The sentence, along with the sentence in comment 9, was changed to more accurately reflect the language included in the March 2009 Office of Water memorandum. The report sentence cited above does not state that Congress constrained the states’ discretion on how to allocate the subsidies. The Recovery Act contains the following requirement:

That notwithstanding the requirements of section 603(d) of the Federal Water Pollution Control Act or section 1452(f) of the Safe Drinking Water Act, for the funds appropriated herein, each State shall use not less than 50 percent of the amount of its capitalization grants to provide additional subsidization to eligible recipients in the form of forgiveness of principal, negative interest loans or grants or any combination of these...

Our report sentence further reflects congressional recognition that issues such as socioeconomic disadvantage *should be* considered in awarding Recovery Act funds, as stated in the Joint Explanatory Statement in Conference Report 111-16, “The Conferees expect the States to target, as much as possible, the additional subsidized monies to communities that could not otherwise afford an SRF loan.”

- 9) *Report, Page 3, paragraph 1, 1st complete sentence, “A March 2009 EPA Office of Water memo to Regional Water Management Division Directors further defined communities that could not otherwise afford an SRF loan, as “(e.g., disadvantaged communities, environmental justice communities)”.”*

This quote from the March 2009 memo has not been accurately interpreted. The memo did not define communities that could not otherwise afford a SRF loan. It merely conveyed the conference language as described above with the addition of the language in parenthesis. The provision of examples is not a definition. The SRF program knowingly and appropriately used “e.g.” in this situation to convey examples of communities that could not afford a loan.

OIG Response: The sentence, along with the sentence in comment 8, was changed to more accurately reflect the language included in the March 2009 memorandum. Revised report statement: “A March 2009 EPA Office of Water memorandum to Regional Water Management Division Directors provided ‘disadvantaged communities, environmental justice communities’ as examples of those that could not otherwise afford an SRF loan.”

10) *Report, Page 5, 1st sentence, first paragraph, “... EPA is unable, both on a programmatic and national basis, to assess the overall impact of its Recovery Act funds on disadvantaged communities...”*

The EPA is able to determine how many jobs were created with each project, is able to determine the amount of subsidy each project received and has the locational data for each project. The EPA can assess that information against locational economic indicators maintained by other departments (for example, median household income).

OIG Response: As stated in our report and detailed in documents provided to us by the Director of EPA’s Office of Environmental Justice, as of July 2010, EPA did not have a systematic methodology with specific definitions, criteria, or tools to identify communities that are economically disadvantaged, ensure consistency among program offices or regions, and evaluate the impact of funding decisions on disadvantaged communities. Specific to the SRFs, these documents noted that it would be difficult to use the U.S. Economic Development Agency’s statutory definition of “distressed communities,” as well as U.S. Department of Housing and Urban Development and U.S. Department of Agriculture criteria, because the criteria may not align with state SRF disadvantaged definitions. Further, maps using the county as the unit of analysis may not provide a high enough resolution to determine the impact of EPA’s projects. Regarding the LUST and Brownfields programs in which the state agency was, in some cases, the award recipient, EPA would need to take additional steps to obtain further information on where projects occurred or could occur.

Although the Recovery Act did not specifically require EPA to take action on economically disadvantaged communities, the Agency was encouraged to do so by Administrator Jackson and in subcommittee language. Despite EPA’s “necessary focus on meeting [the Recovery Act’s] unequivocal priority for immediate action to promote job creation,” it is important to note that EPA’s existing statutory authorities do not include a job creation requirement, and that Recovery Act funds did not change EPA’s programmatic structure. Therefore, EPA’s necessary focus in disbursing Recovery Act funds would be on meeting the Agency’s mission to protect human health and the environment, as well as following the direction and priorities of the Administrator.

11) *Report, Page 5, 1st paragraph, 4th sentence, “Congress intended consideration to be given to the needs of minorities...”*

That Congress intended consideration to be given to the needs of minorities in making Recovery Act decisions is not reflected in either ARRA or ARRA conference report language. This assertion is made with no supporting examples or citations.

OIG Response: This statement and its context appear on page 3 of our report. It is from an April 2009 letter from Administrator Jackson; we added a specific footnote to provide further clarification on page 5. Additional footnote added to report: “Memorandum from Administrator Jackson to Mr. Alonzo L. Fulgham, Acting Administrator, U.S. Agency for International Development, April 20, 2009.”

12) *Report, Page 6, 2nd paragraph, 2nd sentence, “EPA did not have a plan or strategy in place it could utilize to integrate these goals into program operations and funding decisions.”*

While the SRFs did not develop any new plans for integrating environmental justice into program operations for ARRA, the DWSRF, consistent with its enabling statute, required funds to be made available for small systems, allowed need on a per household basis according to state affordability criteria to be a part of priority setting, and allowed for states to use subsidy through their existing disadvantaged assistance programs. Both SRFs allow rates to be set based on affordability. These are existing elements of the programs.

OIG Response: The sentence cited refers to EPA as an Agency, not specific program offices. In addition, the section that contains this sentence refers to work done specifically for the Recovery Act, not to existing programmatic elements. In our regional survey, we found that regions did not have a consistent definition for disadvantaged communities. Moreover, as explained in our report, EPA did not systematically identify or seek to direct program funds to projects or communities that are, for socioeconomic reasons, more in need than others. In the case of the SRF program, for example, these decisions were left to individual states.

13) *Report, Page 6, 2nd paragraph, 2nd sentence, “EPA did not systematically identify or seek to direct program funds to those projects or communities that are, for socioeconomic reasons, more in need than others.”*

The enabling statute for both SRFs requires funding decisions to be made by the states. This sentence inaccurately implies that the EPA could have made funding decisions and disregards the fact that the EPA was legally precluded from making funding decisions for the states.

OIG Response: EPA did not identify or provide direction to program decisionmakers on the most opportune targets for achieving environmental and public health goals in communities that are, for socioeconomic reasons, more in need than others. It is correct that Recovery Act reporting requirements did not authorize the EPA to require states to track consideration of “socioeconomic needs.” However, the Recovery Act does not prohibit the Agency itself from tracking the consideration of socioeconomic factors. With the Administrator’s priority to include environmental justice principles in all of [EPA’s] decisions, tracking this information would inform the Agency on the extent to which need exists in these communities and identify the progress made through Agency efforts.

14) *Report, Page 6, 3rd paragraph, Text Box Quotation*

The quote comes from an unidentified OEJ source document. At minimum, the material must be documented and identified in a footnote. We note that the text provided is a sentence fragment, despite the use of a period, and appears to selectively quote from a complete sentence. Absent the necessary context of the source document, there is no way to address or evaluate this statement.

OIG Response: The source document cited in the report was created by the Director of EPA’s Office of Environmental Justice and provided to the OIG. The quote is direct, not selective.

15) *Report, Page 6, 4th paragraph, 1st sentence, “In response to questions regarding the accomplishment of the Recovery Act goals to create or retain jobs and assist those most impacted by the recession, EPA managers noted that unemployment data were not incorporated into Recovery Act Funding decisions.”*

Again, the report fails to distinguish between formula grant programs and programs where funding decisions are made at the EPA. We would note that at the state level, most DWSRF disadvantaged-assistance programs assess user rate as a percentage of median household income, which we believe is a better indicator of an economically disadvantaged community than unemployment data. Additionally, SDWA allows for need on a per household basis according to state affordability criteria to be a part of priority setting. It is not clear why EPA managers would or should be privy to this information when funding decisions are statutorily required to be made by states.

OIG Response: The sentence describes the comments we received in response to the questions on job creation and EPA’s ability to target economically disadvantaged areas. Respondents were asked, “Based on your experience, if a community was designated as an environmental justice or disadvantaged community, what impact did that have on EPA’s ARRA (Recovery Act) award process?” Seventy-four percent of respondents reported that the designation had “minor impact” or “no impact” on Recovery Act funding decisions, and 11 percent responded “No such communities identified.” In addition, an SRF representative said that he could not see how any job tracking would have happened, and that there was likely little consideration of unemployment figures in the decision-making process.

16) *Report, Page 8, paragraph 1, 1st sentence, “EPA’s ability to target funds to preserve and create jobs as well as reach those most impacted by the recession was limited by multiple constraints.”*

The principal constraint is underlying statutory authority, and it must be recognized first. The EPA obviously cannot act in a manner contrary to the underlying enabling statutes. Furthermore, every dollar spent on infrastructure and made possible through ARRA creates jobs and positively impacts the recession, as noted by studies conducted by both the Council of Economic Advisors and the Congressional Budget Office.

OIG Response: In our regional survey, only 21 percent of respondents viewed underlying statutory authority as an impediment to executing Recovery Act funds. While the SRF program managers at EPA headquarters may view this as the principal constraint, it is not an opinion shared by all managers in the Agency. In addition, the Administrator’s priority for environmental justice is that it must be included “in *all* of our decisions.” The Agency response to this report states that “the IG recommendations are consistent with our current efforts to improve our targeting and assessment of low-income, tribal and minority communities.” If the Agency determines there are statutory restrictions prohibiting it from advancing this priority and/or EO 12898 in some of its programs, it should communicate this message to the public, delineating where it can and cannot work toward its priority.

17) *Report, Page 8, paragraph 1, 3rd and 4th complete sentences, “Short timeframes and the resulting emphasis on “shovel-ready” projects also contributed to targeting challenges. The development and funding of potential new projects in disadvantaged communities was hampered by a lack of time and resources to prepare applications as well as a lack of priority for those economically disadvantaged areas that have environmental needs.”*

Projects that had not begun substantial planning and design work would not have created as many jobs in the immediate term as projects that were ready to proceed with construction. Furthermore, since ARRA required all SRF projects to be under contract or construction by February 17, 2010, projects not ready to immediately move forward should not have been funded. It should be noted that the “short timeframes” and “emphasis on 'shovel-ready' projects” were established by Congress in the ARRA. Base (i.e., non-ARRA) SRF program resources remained available to continue support of ongoing planning and design work to ensure all communities, including disadvantaged communities, that were not ready for ARRA would still be ready for SRF funding at the appropriate time.

OIG Response: The report sentences in question refer to EPA’s inability to develop and fund *new* projects in disadvantaged communities using Recovery Act funds. The Agency response supports this finding. The ability of a project to create more jobs than another was not a factor EPA considered in selecting Recovery Act projects. While EPA states that, “Projects that had not begun substantial planning and design work would not have created as many jobs in the immediate term as projects that were ready to proceed with construction,” SRF representatives told us that because the Recovery Act did not specifically instruct them to make job creation part of their selection criteria, they did not modify any SRF criteria to allow preference for projects that create more jobs than others, whether in the immediate or long term. Further, as repeated in this response, EPA left the selection to the discretion of the states for a large majority of the Recovery Act funds. During more than one state visit, we were told the challenges outlined in our report particularly impeded the ability of disadvantaged communities to obtain Recovery Act funding. The processes and procedures for the Recovery Act and EPA programs’ statutory requirements limit the ability of EPA to directly reach economically disadvantaged communities. These limitations were compounded by the lack of a coordinated Agency strategy to target communities most in need; hence “current efforts to improve our targeting and assessment of low-income, tribal and minority communities.”

18) Report, Page 8, paragraph 1, 5th complete sentence, “Moreover, among the Recovery Act-funded programs at EPA, decisions for 86 percent of the funds were delegated to the States.”

This reflects the underlying statutory authority of the programs for which Congress chose to appropriate ARRA funds. The enabling legislation for both SRF programs requires states to decide which are to be funded. This sentence disregards the fact that the EPA was legally precluded from making funding decisions for the states. Furthermore, the term “delegation” implies that the EPA decided or was compelled to allow states to have such authority when, in fact, such authority is specifically given to states through implementing statutes.

OIG Response: See response to comment 3. (This section of the report describes the multiple constraints that impacted EPA’s ability to target funds to preserve and create jobs, as well as reach those most impacted by the recession.) In the first paragraph of EPA’s OVERALL RESPONSE section, it notes that states made funding decisions for 86 percent of EPA’s Recovery Act funds. There is no value judgment regarding the states’ decisions. We revised the statement to remove the term “delegated.” We use the term “Moreover,” as defined by Merriam Webster, “to convey information, in addition to what has been said.”
Revised report statement: “Moreover, among the Recovery Act-funded programs at EPA, the states made the funding decisions for 86 percent of the funds.”

19) Report, Page 8, paragraph 1, 6th complete sentence, “In the future, infrastructure and environmental conditions in economically disadvantaged communities may become increasingly vulnerable to deterioration as funding and assistance levels decrease.”

There is no information or evidence provided anywhere in the draft report to support or substantiate this claim. As a practical matter, deterioration of infrastructure assets is due to inadequate operations and maintenance (O&M) spending. Further, the EPA does not know how Congress may choose to appropriate funds and/or direct funding in the future nor do we know how states may choose to appropriate and/or direct state funding in the future.

OIG Response: The total stimulus funding for the two SRF programs was almost four times larger than the FY 2009 appropriations for these programs. With the fourfold increase in funds, EPA was able to reach more communities overall, including disadvantaged communities. However, absent planning and a strategy for how to prioritize these factors in funding, there is no assurance the results achieved can be repeated. There is not another Recovery Act funding opportunity currently planned to continue this cycle. The Administrator has cited the vulnerability of environmental justice and economically disadvantaged communities in communication with the public. Combining those factors evidences the fact that these communities could potentially deterioration further if they did not receive Recovery Act funding. Nevertheless, acknowledging that other factors besides funding can impact conditions, as well as the uncertainty of any future scenario, we deleted the sentence.

20) Report, Page 11, paragraph 1, 2nd sentence, “These data gaps made managers unable to assist States to look for specific types of projects or into areas with notable unemployment rates.”

In the case of the SRFs, states did not identify this type of data as a need. The individual state programs are better situated to understand and identify such areas or communities in their state and may prefer to use other data to determine economic need. Furthermore, unemployment data is widely available for state programs, if so needed.

OIG Response: Our report speaks to the Agency as a whole, not to only the SRFs. As indicated in the Agency OVERALL RESPONSE, EPA is working to “develop a . . . nationally consistent screening and targeting tool to enhance environmental justice analysis, funding and decision making. Such a tool will help ensure that the EPA’s program managers consider potential environmental-justice concerns more consistently as they implement programs within statutory mandates and that community stakeholders have more access to information on how the EPA screens for potential environmental-justice concerns.” Without baseline assessment data on where socioeconomic factors or unemployment coincide with environmental need, EPA cannot effectively advise states on the incorporation of these factors into program decisions. EPA anticipates that the Plan EJ 2014 screening tool, when implemented, could aid in identifying employment needs, working with the states to determine need, and creating a harmonized Agency environmental justice program.

21) Report, Page 11, paragraph 1, 6th sentence, “In contrast, for infrastructure improvement needs, twenty three percent of respondents were aware of a priority list in the region, while for environmental protection needs, more than half were aware of a priority list.”

For the SRF programs, each state must maintain an intended use plan and priority list for SRF infrastructure improvements. In addition, each state also possesses relatively comprehensive data on infrastructure needs through the Clean Watersheds Needs Survey and the Drinking Water Needs Survey. Because state SRF programs make funding decisions, as required by statute, the awareness that EPA regional staff may have of priority lists is irrelevant to the decisions made by states.

OIG Response: The sentence in question refers to the survey conducted as part of our evaluation. The Regions were not able to inform the states in making decisions regarding infrastructure or priority setting, which limited the Agency's ability as a whole to assess impact. We were told by SRF representatives in headquarters that regional representatives review the state intended use plans, looking at eligibility, reviewing the subsidy amount and checking for consistency with the State priorities. Regardless of the existence of comprehensive data at the state level, EPA has not consolidated and contrasted these data on a national basis. Awareness of employment impacts and community needs is relevant in light of the Agency's efforts to improve its targeting and assessment of low-income, tribal and minority communities. The sentence merely contrasts the relatively low state of knowledge regarding jobs among regional staff and their relatively greater knowledge of infrastructure and environmental needs.

22) Report, Page 12, paragraph 3, 4th sentence, “EPA programs require all applicants (regardless of environmental or health conditions) to meet program criteria.”

This sentence seems to imply that such program criteria present challenges to state programs that are attempting to reach disadvantaged communities. Program criteria are intended to ensure compliance with all applicable laws and to ensure fairness in determining potential recipients.

OIG Response: We believe it is important to explain to the public that, regardless of economic or environmental circumstances, EPA could not award Recovery Act funds in any place or manner it chose. This sentence is a statement of fact; there are no implications. Applicants were required to complete application requirements and program criteria before receiving Recovery Act funds.

23) Report, Page 12, paragraph 3, 6th sentence, “For water and waste water projects, applicants must demonstrate a level of preparedness to include making sure that permits and design plans are obtained and complete.”

The draft report provides no factual basis for this assertion. Given planning and design are eligible activities for funding under SRFs, this is clearly incorrect. However, it is true, that absent designs and permits, a project may not have been "ready to proceed", thus less likely to receive funding, consistent with the ARRA statutory direction.

OIG Response: We attributed this sentence to the states sampled in our evaluation. We appreciate the concurrence from the Agency that “It is true, that absent designs and permits, a project may not have been ‘ready to proceed’, thus less likely to receive funding.” **Revised report statement:** During state visits, we were informed that applicants must demonstrate a level of preparedness, including completion of design plans and permitting processes, to have water and wastewater projects funded under the Recovery Act.

24) Report, Page 13, paragraph 2, 1st sentence, “States awarded assistance funds to the projects and communities for the DWSRF, CWSRF, and LUST programs and their decisions ~~primarily~~ determined where EPA’s Recovery Act funds ~~were distributed.~~ *for those programs* were distributed.”

Delete “primarily” from the sentence and insert “for those programs” between “EPA’s Recovery Act funds” and “were distributed.”

OIG Response: We agree and made the suggested change in the report text. **Revised report statement:** States awarded assistance funds to the projects and communities for the DWSRF, CWSRF, and LUST programs, and their decisions determined where EPA’s Recovery Act funds for those programs were distributed.

25) Report Page 13, paragraph 2, 3rd sentence, “A number of States used websites to solicit public input on specific projects and general areas of interest or need.”

Public comment is required by statute for completion of SRF Intended Use Plans.

OIG Response: The sentence in question refers to the states’ use of websites to solicit opinions, interest, and specific suggestions from the general public for Recovery Act funding. This activity was separate from the public comment process for intended use plans.

26) Report, Page 13, paragraph 3, 3rd sentence, “The intent was for the States to target, as much as possible, these additional subsidized funds to communities that could not otherwise afford a loan...”

This section mixes joint explanatory statement language and language from EPA guidance. It should clearly quote one source or the other. This language does not appear in ARRA statute, and the joint explanatory statement language does not have the full effect of a law. The SRF capitalization grants guidance clearly identifies this nonbinding language, but the EPA could not require compliance with it in the absence of corresponding statutory language. ARRA clearly gave flexibility to target subsidy toward achieving multiple goals.

OIG Response: The sentence cited is based on our analysis of available information. We do not state that the language is binding or places any specific requirements upon the states, and we agree at multiple points in the report that the Recovery Act provided flexibility toward achieving multiple goals. The Recovery Act contains the following requirement:

That notwithstanding the requirements of section 603(d) of the Federal Water Pollution Control Act or section 1452(f) of the Safe Drinking Water Act, for the funds appropriated herein, each State shall use not less than 50 percent of the amount of its capitalization grants to provide additional subsidization to eligible recipients in the form of forgiveness of principal, negative interest loans or grants or any combination of these...

The sentence cited above further reflects congressional recognition that issues such as socioeconomic disadvantage *should be* considered in awarding Recovery Act funds, as stated in the Joint Explanatory Statement in Conference Report 111-16, “The Conferees expect the States to target, as much as possible, the additional subsidized monies to communities that could not otherwise afford an SRF loan.”

27) Report, Page 13, paragraphs 4 and 5 in their entirety (and Table 3-3): *The examples and chart do not get to whether and to what extent communities that could not otherwise afford a loan were reached, which is the focus of the OIG’s discussion in this section as it deals with the SRFs. It is unclear what the OIG is trying to state or imply through these paragraphs and chart.*

OIG Response: There are no implications in these paragraphs or charts; they are provided to show the funding received by and forgiveness percentages for each of the six states in our sample. We provide the reader with information on the amount of funds each state was working with, the variability in principal forgiveness amounts, and the flexibility the Recovery Act provided to apply forgiveness, as mentioned in the Agency comments.

Report, Page 14, paragraph 1, 1st sentence, “In Florida, State officials advised that state law already provided for some forgiveness of CWSRF funding.”

This is incorrect. The program allows for some portion of a CWSRF recipient loan to be funded or repaid from a separate state-established and funded grant program. Prior to ARRA, no CWSRF programs could legally forgive loans or provide grants from CWSRF program funds. It is possible the state official meant that current Florida law did not preclude the state from forgiving loans under ARRA even though such authority does not exist in the base CWSRF program, as contrasted to other states, which needed emergency legislation to allow such forgiveness.

OIG Response: We have adjusted the text accordingly. **Revised report statement:** According to EPA, state law in Florida did not preclude the state from forgiving loans under the Recovery Act even though such authority does not exist in the base CWSRF program.

28) *Report, Page 15, paragraph 2, 1st and 2nd sentences, “There were both internal and external organizational constraints to the targeting of EPA Recovery Act funds. EPA program offices are subject to varying requirements to incorporate socioeconomic needs in project selection and funding decisions.”*

The principal constraint remains statutory authority and should be identified as such. Further, the text should acknowledge there may actually be no requirement to include socioeconomic needs in project selection and funding decisions, which is the case for the CWSRF. In the case of the DWSRF, it is not required but is left to the discretion of the state as described in SDWA 1452(b)(3)(A)(iii).

OIG Response: We reiterate that, in our regional survey, only 21 percent of respondents viewed underlying statutory authority as an impediment to executing Recovery Act funds. While the SRF program managers at EPA headquarters may view this as the principal constraint, it is not the Agency-wide opinion. The terminology “varying requirements” already reflects the comment that there may be *no* requirement to consider socioeconomic need. Also, nothing prohibits the Agency from encouraging this consideration and providing a clear and consistent regime to implement both the Administrator’s priority and EO 12898 related to environmental justice.

In the Agency’s Overall Response to this report, EPA states, “the funding decision process varied for . . . Brownfields and Superfund. The nature of both programs, which address contaminated sites at former industrial locations or abandoned waste sites, provide significant benefit to disadvantaged communities often located near the cleanup projects. EPA states that its own analysis of the actual distribution of Brownfields and Superfund awards by county compared to population and income factors clearly show that nearly 70 percent of the counties that received ARRA Superfund or Brownfields grants had a higher percentage minority population than the median county in the U.S.”

29) Report, Page 15, paragraph 2, 3rd sentence, “Within EPA Regions we found varying knowledge of where high unemployment rates corresponded with environmental needs...”

It is not clear why regions should possess such data and what they would do with such information. As noted throughout, in the SRF programs, states are solely charged with selecting and funding projects. These questions should have been posed to state managers, rather than the EPA.

OIG Response: We posed many of these same questions to state managers during our visits. However, in assessing EPA’s overall knowledge of and ability to target, track, and assess impact on economically disadvantaged communities, it only follows that we would focus our evaluation on EPA headquarters and regions. This is consistent with the Agency’s Plan EJ 2014: “In the past, EPA program and regional offices have relied upon and used different screening tools . . . To improve upon our existing efforts, Plan EJ 2014, which was announced for public comment in July 2010, has a screening tool as one of its areas for tool development. Under this plan, the EPA is working to develop a common mapping platform and a nationally consistent screening and targeting tool to enhance environmental justice analysis, funding and decision making”. EPA anticipates that, when implemented, such a tool will help ensure that the EPA’s program managers consider potential environmental-justice concerns more consistently as they implement programs within statutory mandates and that community stakeholders have more access to information on how the EPA screens for potential environmental-justice concerns.

30) Report, Page 15, paragraph 2, 5th sentence, “Moreover, among the Recovery Act-funded programs at EPA, project selection decisions were delegated to the States for 86% of the funds.”

The enabling legislation for both SRF programs grants states a range of authorities, including which projects are to be funded. Further, the implication is that somehow the EPA would have been better suited to make funding decisions. For the SRF programs, this is clearly not true. State environmental and public-health agencies implement most Clean Water Act and Safe Drinking Water Act programs and, as a result, are much more familiar with community needs and challenges. Congress granted SRF programs and authority to the states for this reason and for many others. This allows the states to flexibly address their environmental and public health needs and priorities. Congress passed ARRA with full knowledge of SRF program requirements.

OIG Response: See comment 3. (This section of the report describes the multiple constraints that impacted EPA’s ability to target funds to preserve and create jobs, as well as reach those most impacted by the recession. In the first paragraph of EPA’s OVERALL RESPONSE section, it notes that states made funding decisions for 86 percent of EPA’s Recovery Act funds. There is no value judgment regarding the states’ decisions. We revised the statement to remove the term “delegated.” We use the term “Moreover,” as defined by Merriam Webster, “to convey information, in addition to what has been said.” **Revised report statement:** “Moreover, among the Recovery Act-funded programs at EPA, the states made the funding decisions for 86 percent of the funds.”

31) Report, Page 15, paragraph 3, 3rd sentence, “We found no deliberate effort to target or track funds...”

The enabling legislation for both SRF programs grants states a range of authorities and funding determinations, including which projects are to be funded. For the SRF program, the EPA possesses and tracks substantive data regarding each loan recipient of SRF ARRA funds, and matching jobs data reported under ARRA Section 1512 is available via Federalreporting.gov.

OIG Response: We do not disagree that the information is available. However, the focus here is on the Agency’s efforts to track or target funds to economically disadvantaged communities and the synthesis of this information for identifying overall impact, not simply on job tracking. We found no deliberate efforts to target these communities.

EPA Office of Policy's Screening-Level Analysis of EPA ARRA Grants

1/13/2011

We (EPA Office of Policy) analyzed data on the 178 counties (or county equivalents) that received one or more EPA Superfund or Brownfields ARRA grants.

Key findings

- Grants tended to be awarded to counties with higher than average percentage minority population, but lower than average percentage in poverty.
- Minority population:
 - Over 70% and 80%, respectively, of the Superfund and Brownfields grant money went to counties where the percent minority population was above that of the median county in the US.
 - Over \$485 million of ARRA Superfund and Brownfields grant money went to counties where the percent minority population was above that of the median county in the country.
 - Nearly 70% of the counties that received ARRA Superfund or Brownfields grants had a higher percentage minority population than the median county in the US.
- Populations in poverty:
 - Nearly 60% of ARRA Superfund and Brownfields grant money went to counties with higher poverty rates than the statewide poverty rate, a slightly higher share than would be expected if counties were selected randomly (59% actual versus 56% if random).
 - Only 3% of the grant money went to counties in the bottom quintile of poverty rate, and only 35% went to the bottom 50% of counties. This suggests that dollars went to states with lower poverty rates overall, but had some tendency to go to the poorer counties within the selected states.

Methods

Grant data was provided by OEI/OARM as total dollars per county (or equivalent) within each program (Superfund or Brownfields). Grant data was matched to county-level demographic data. A grant to Fort Peck Tribal Nation was analyzed using demographics for Roosevelt County, Montana. A grant to “Dade County” Florida was assumed to apply to Miami-Dade County. All 178 locations will be referred to as “counties” here. The data includes 10 counties that received both types of grants.

For demographic data, we obtained the new Census Bureau data from the American Community Survey five-year sample (ACS 2005-2009), and analyzed demographic variables including county-level percentage of individuals below the Federal poverty threshold, median household income, and percentage of individuals who were minorities (defined here as all other than non-Hispanic white alone).

Counties and grant dollars were analyzed relative to demographics using several metrics including share of dollars or counties receiving grants, where demographic indicators were below various cutoffs. We also summarized demographic indicators among those receiving grants versus the US overall.

Results

Results of this screening analysis suggest these grants tended to be awarded to counties with higher than average percentage minority population, but lower than average percentage in poverty.

Among the 178 counties that received grants, 46 (26%) were in counties that were among the top quintile (top 20%) of US counties ranked by percentage minority, a larger share than would be expected if awards were randomly distributed across all counties. Across all counties receiving grants, the population was 43% minority (as a population weighted average), while the US population was just 34% minority. Nearly 70% of the counties that received ARRA Superfund or Brownfields grants had a higher percentage minority population than the median county in the US.

In fact, 74% of the dollars awarded went to counties that were above the median county in terms of percentage minority. Over 70% and 80%, respectively, of the Superfund and Brownfields grant money went to counties where the percent minority population was above that of the median county in the US. Over \$485 million of ARRA Superfund and Brownfields grant money went to counties where the percent minority population was above that of the median county in the country.

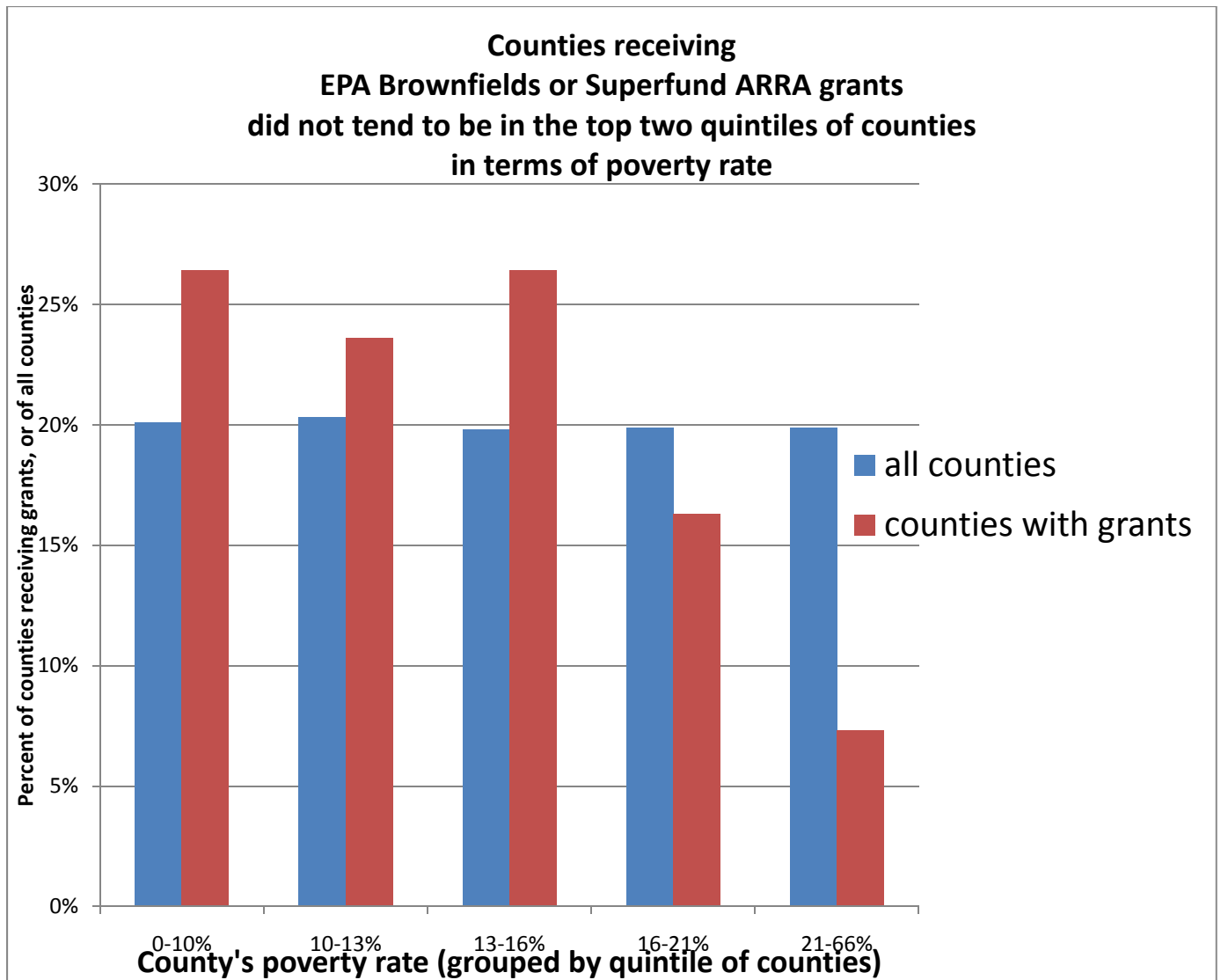
A different pattern was seen for income-related demographics. Across all counties receiving grants, the population was 12.9% in poverty (as a population weighted average), while the US population was 13.5% in poverty. Median household income was also about 9% higher for the population in counties receiving grants than in the US overall.

Only 3% of the grant money went to counties in the bottom quintile of poverty rate, and only 35% went to the bottom 50% of counties.

However, when comparing each county to the state-specific poverty rate, it appears that grants tended to slightly favor counties with higher poverty rates relative to their state overall. Nearly 60% of ARRA Superfund and Brownfields grant money went to counties with higher poverty rates than the statewide poverty rate, a slightly higher share than would be expected if counties were selected randomly (59% actual versus 56% if random).

This pattern suggests that dollars may have gone to states with lower poverty rates overall, but had some tendency to go to the poorer counties within the selected states.

Detailed results are attached.



Source: EPA Office of Policy Analysis

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