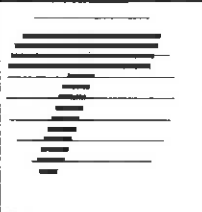




To: SUPERSEDED BY EB 21-057 EFFECTIVE 11/24/21		<i>New York State Department of Transportation</i> ENGINEERING INSTRUCTION	EI 09-013
Title: AMERICAN REINVESTMENT RECOVERY ACT (ARRA) REPORTING AND RECORD KEEPING REQUIREMENTS			
Distribution: <input type="checkbox"/> Manufacturers (18) <input type="checkbox"/> Surveyors (33) <input checked="" type="checkbox"/> Local Govt. (31) <input checked="" type="checkbox"/> Consultants (34) <input checked="" type="checkbox"/> Agencies (32) <input checked="" type="checkbox"/> Contractors (39)	Approved:  R. A. Dennison III, P.E. Chief Engineer  Date 		

ADMINISTRATIVE INFORMATION:

- Effective Date: This Engineering Instruction (EI) is effective upon signature.
- Expiration Date: All actions resulting from this EI shall stop when the ARRA fund sources expire.
- Superseded Issuances: None.

PURPOSE: To transmit special notes and guidance for including American Reinvestment Recovery Act (ARRA) reporting and record keeping requirements in a broad range of ARRA funded contracts and agreements.

TECHNICAL INFORMATION:

- The list of New York State certified projects is available at: <https://www.nysdot.gov/recovery> by selecting the "certified highway projects" option.
- The electronic format (MS Excel) of the Monthly Employment Report Form FHWA-1589 is available for download at <https://www.nysdot.gov/recovery> by selecting the "Reporting Requirements" option.
- Reporting entities should contact their typical project contract contact for contract-specific questions. For broader questions on this policy, see the "CONTACT" section of this EI.
- Wherever this EI refers to ARRA funded projects, it is referring to projects funded in full or in part with ARRA funds.
- Failure to comply with the provisions of the reporting and record keeping requirements transmitted by this EI may compromise contract or agreement (or public or private entities) eligibility to receive ARRA funds.

IMPLEMENTATION:

NYS DOT Let Construction Contracts:

- Actions by Contract Management Bureau: For all capital projects let and to be awarded with ARRA funds that do not include the "ARRA Reporting & Record Keeping Requirements" special note and the three attachments transmitted by this EI, Contract Management Bureau staff will verify these projects are on the list of certified projects and add the special note and the three attachments to the award package.
- Actions by Design Quality Assurance Bureau: The "ARRA Reporting & Record Keeping Requirements" special note and the three attachments transmitted by this EI shall be included in all capital projects to be let that have any amount of federal funds. DQAB shall insert the note in contract proposals or add by amendment to printed proposals that do not include the special note and the three attachments.
- Actions by Regional Construction Groups: (1) For all awarded contracts that include the "ARRA

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Reporting & Record Keeping Requirements” special note and the three attachments transmitted by this EI, Regional Construction staff will verify the project funding and, prior to the Notice to Proceed, inform the contractor if the note applies to the contract at this time. (2) For all capital projects where ARRA funds are added after award that do not include the special note transmitted by this EI, Regional Construction staff will verify these projects are on the list of certified projects and add the special note and the three attachments to the contract by order-on-contract. (3) Regional Construction Groups are responsible to verify the computational accuracy of the FHWA-1589 form information, initial the form and forward a copy of the signed, original form to the M.O. Highway Data Services Bureau. The original signed document will remain attached to the monthly billing request.

Local Let Construction Contracts:

- Actions by NYSDOT Regional Planning Groups: Regional Planning Groups will provide the “ARRA Reporting & Record Keeping Requirements” special note and the three attachments to Local Project Sponsors with instructions to include them in all contracts and subcontracts funded with ARRA funds. For contracts already approved and/or let the Region will instruct the project Sponsor to include the special note and the three attachments in their contract and all subcontracts funded with ARRA funds. The Region will also check that these provisions are included during PS&E review.
- Actions by Local Project Sponsors: Project Sponsors will incorporate the “ARRA Reporting & Record Keeping Requirements” special note and the three attachments in all contracts and subcontracts funded with ARRA funds. The Project Sponsor will require the Contractor to include these provisions in all Subcontracts which result in identifiable work on the project site. Material suppliers and their deliveries are not to be included. For ARRA funded projects underway or projects that have ARRA funds added at a later date the Sponsor will have the special note and the three attachments amended to the contract or subcontract.
- Actions by the NYSDOT Regional Office, or M.O. Division: For all capital projects that include the “ARRA Reporting & Record Keeping Requirements” special note and the three attachments transmitted by this EI, the Regional Office, or M.O. Division Group receiving the monthly billing request will verify the computational accuracy of the FHWA-1589 information, initial the form(s) and forward a copy of the signed form(s) to the M.O. Highway Data Services Bureau. The original signed document(s) will remain attached to the monthly billing request.

Vendor Placed Paving Projects (VPP):

- Actions by Office of Transportation Maintenance: For all contracts with ARRA funds, the Office of Transportation Maintenance will include the “OGS Contracts Issued on Behalf of NYSDOT ARRA Reporting & Record Keeping Requirements” special note and the three attachments transmitted by this EI.
- Actions by Regional Operations Groups: For all ARRA funded OGS contracts, for NYSDOT projects, the Resident Engineer or their designee in responsible charge of the VPP shall verify the computational accuracy of the FHWA-1589 form information, initial the form and forward a copy of the signed, original form to the M.O. Highway Data Services Bureau. The original signed document will remain attached to the invoice.
- Actions by Regional Office or M.O. Division: For all ARRA funded OGS contracts, for Local Municipal Government projects, Regional or M.O. Division staff receiving the monthly billing request will verify the computational accuracy of the FHWA-1589 information, initial the form(s) and forward a copy of the signed form(s) to the M.O. Highway Data Services Bureau. The original signed document(s) will remain attached to the monthly billing request.

NYSDOT Consultant Construction Inspection Contracts:

- Actions by Contract Management Bureau: For all consultant construction inspection contracts to be funded with ARRA funds that do not include the “ARRA Reporting & Record Keeping Requirements” special note transmitted by this EI, Contract Management Bureau staff will verify these projects are on the list of certified projects and add the special note and the three attachments to the agreements before sending to the consultant for signature.
- Actions by Office of Construction: For all consultant construction inspection contracts where ARRA funds are added after execution that do not include the “ARRA Reporting & Record Keeping Requirements” special note and the three attachments transmitted by this EI, Office of Construction staff will verify these projects are on the list of certified projects and add the special note and the three attachments to the contract by supplemental agreement.
- Actions by the NYSDOT Regional Office, or Main Office (M.O.) Division: For all consultant construction inspection contracts funded with ARRA funds that include the “ARRA Reporting & Record Keeping Requirements” special note and the three attachments transmitted by this EI, the group, the Regional Office, or M.O. Division receiving the monthly billing request will verify the computational accuracy of the FHWA-1589 form information, initial the form and forward a copy of the signed, original form to the M.O. Highway Data Services Bureau. The original signed document will remain attached to the monthly billing request.

NYSDOT Consultant Design Contracts:

- Actions by Contract Management Bureau: For all consultant design contracts to be funded with ARRA funds that do not include the “ARRA Reporting & Record Keeping Requirements” special note and the three attachments transmitted by this EI, Contract Management Bureau staff will verify these projects are on the list of certified projects and add the special note and the three attachments to the agreements before sending to consultant for signature.
- Actions by Consultant Management Bureau: For all consultant design contracts where ARRA funds are added after execution that do not include the “ARRA Reporting & Record Keeping Requirements” special note and the three attachments transmitted by this EI, Consultant Management Bureau staff will verify these projects are on the list of certified projects and add the special note and the three attachments to the contract by supplemental agreement.
- Actions by the NYSDOT Regional Office, or Main Office (M.O.) Division: For all consultant design contracts funded with ARRA funds that include the “ARRA Reporting & Record Keeping Requirements” special note and the three attachments transmitted by this EI, the group, the Regional Office, or M.O. Division receiving the monthly billing request will verify the computational accuracy of the FHWA-1589 form information, initial the form and forward a copy of the signed, original form to the M.O. Highway Data Services Bureau. The original signed document will remain attached to the monthly billing request.

Local Consultant Design and/or Construction Inspection Contracts:

- Actions by NYSDOT Regional Planning Groups: Regional Planning Groups will provide the “ARRA Reporting & Record Keeping Requirements” special note and the three attachments to Local Project Sponsors with instructions to include them in all Consultant Contracts and subcontracts funded with ARRA funds. For Contracts already approved and/or let the Region will instruct the project Sponsor to include the special note and the three attachments in the contract and all subcontracts funded in part or in whole with ARRA funds.

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- Actions by Local Project Sponsors: Project Sponsors will incorporate the “ARRA Reporting & Record Keeping Requirements” special note and the three attachments in all Consultant contracts and subcontracts funded with ARRA funds. The Project Sponsor will require the Consultant to include these provisions in all Subcontracts. An example would be for the Consultant to include the provision in subcontracts for testing by independent laboratories. Material suppliers and their deliveries are not to be included. For ARRA funded projects underway or projects that have ARRA funds added at a later date the Sponsor will have the special note and the three attachments amended to the contract or subcontract.
- Actions by the NYSDOT Regional Office, or M.O. Division: For all consultant contracts funded with ARRA funds that include the “ARRA Reporting & Record Keeping Requirements” special note and the three attachments transmitted by this EI, the group, the Regional Office, or M.O. Division receiving the monthly billing request will verify the computational accuracy of the FHWA-1589 information, initial the form(s) and forward a copy of the signed form(s) to the M.O. Highway Data Services Bureau. The original signed document(s) will remain attached to the monthly billing request.

State/Local Agreements:

- Actions by NYSDOT Regional Planning Groups: Regional Planning Offices will insert the "ARRA Reporting & Record Keeping Requirements" special note and the three attachments transmitted by this EI in all State Local Agreements (SLAs) that have ARRA funding. For Existing SLAs with ARRA funding the Regional Planning Office will execute a Supplemental Agreement with the Project Sponsor to add the special note and attachments. All State Local Agreements (SLAs) that have ARRA funding (including Supplemental Agreement) shall contain the following language: *“If funds for this Agreement are being supplied under the American Reinvestment and Recovery Act of 2009 (ARRA), then the provisions of the attached SPECIAL NOTE regarding monthly reporting and recordkeeping requirements and the authority of the US Comptroller General and Inspector General will apply. No additional compensation will be paid for this Contract requirement.”*
- Actions by the NYSDOT Regional Office, or M.O. Division: For all other SLAs funded with ARRA funds that include the “ARRA Reporting & Record Keeping Requirements” special note and the three attachments, the Regional Office, or M.O. Division Group receiving the monthly billing request will verify the computational accuracy of the FHWA-1589 information, initial the form(s) and forward a copy of the signed form(s) to the M.O. Highway Data Services Bureau. The original signed document(s) will remain attached to the monthly billing request.

Other NYSDOT Agreements:

- Actions by Contract Management Bureau: For all other NYSDOT agreements (e.g. utility, rail, aviation, transit, etc.) to be funded with ARRA funds that do not include the “ARRA Reporting & Record Keeping Requirements” special note and the three attachments transmitted by this EI, Contract Management Bureau staff will verify these projects are on the list of certified projects and add the special note and the three attachments to the agreements before sending to others for signature. All other NYSDOT Agreements that have ARRA funding (including Supplemental Agreement) shall contain the following language: *“If funds for this Agreement are being supplied under the American Reinvestment and Recovery Act of 2009 (ARRA), then the provisions of the attached SPECIAL NOTE regarding monthly reporting and recordkeeping requirements and the authority of the US Comptroller General and Inspector General will apply. No additional compensation will be paid for this Contract requirement.”*
- Actions by the NYSDOT Regional Office, or M.O. Division: For all other NYSDOT agreements (e.g. utility, rail, aviation, transit, etc.) funded with ARRA funds that include the “ARRA Reporting

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& Record Keeping Requirements” special note and the three attachments, the Regional Office, or M.O. Division Group receiving the monthly billing request will verify the computational accuracy of the FHWA-1589 information, initial the form(s) and forward a copy of the signed form(s) to the M.O. Highway Data Services Bureau. The original signed document(s) will remain attached to the monthly billing request.

TRANSMITTED MATERIALS:

- SPECIAL NOTE: ARRA REPORTING & RECORD KEEPING REQUIREMENTS Applicable To Transportation Projects Funded by the American Recovery & Reinvestment Act (ARRA)
- SPECIAL NOTE: OGS CONTRACTS ISSUED ON BEHALF OF NYSDOT ARRA REPORTING & RECORD KEEPING REQUIREMENTS Applicable To Transportation Projects Funded by the American Recovery & Reinvestment Act (ARRA)
- ATTACHMENT 1: American Recovery and Reinvestment Act of 2009 (ARRA) ADDITIONAL CONTRACT RECORD KEEPING REQUIREMENTS
- ATTACHMENT 2: American Recovery and Reinvestment Act of 2009 (ARRA) AUTHORITY OF THE COMPTROLLER GENERAL AND THE INSPECTOR GENERAL
- ATTACHMENT 3: American Recovery and Reinvestment Act of 2009 (ARRA) FHWA Form - 1589, & Instructions

BACKGROUND: The ARRA, signed into law on February 17, 2009, contains various reporting requirements including employment and jobs data related directly and indirectly to projects receiving funds from the legislation. The ARRA legislation requires all entities, both public and private, to make available to various State and Federal Agencies all records, documentation and related materials of ARRA funded contracts for inspection and audit purposes (see Attachment 1). The ARRA legislation also requires all entities, both public and private, to accept the authority of both the Comptroller General and the Inspector General (see Attachment 2). On March 2, 2009, the US Department of Transportation issued Notice N 4510.705 authorizing the apportionment of American Reinvestment Recovery Act (ARRA) funds. This issuance represents the Department’s interpretation of the federal reporting and record keeping requirements associated with ARRA funded projects.

CONTACTS:

- General questions regarding this issuance should be addressed to Kevin Stanley of the Design Quality Assurance Bureau via e-mail at kstanley@dot.state.ny.us or by phone at (518) 485-8612.
- General questions regarding the transmitted materials should be addressed to Anthony Torre of the Technical Services Division via e-mail at atorre@dot.state.ny.us or by phone at (518) 457-1965.
- Questions regarding DOT let contracts should be addressed to Brian DeWald of the Office of Construction via e-mail at bdewald@dot.state.ny.us or phone at (518) 457-9688.
- Questions regarding Local let contracts should be addressed to Ken Rupert of the Local Program Bureau via e-mail at krupert@dot.state.ny.us or by phone at (518) 457-3345.
- Questions regarding Vendor Placed Paving contracts should be addressed to Ed Denehy of the Office of Transportation Maintenance via e-mail at edenehy@dot.state.ny.us or by phone at (518) 457-6914.
- Questions regarding consultant contracts and agreements should be addressed to Bill Howe of the Contract Management Bureau via e-mail at whowe@dot.state.ny.us or by phone at (518) 457-1563.

ARRA REPORTING & RECORD KEEPING REQUIREMENTS

Applicable To
Transportation Projects Funded by the American Recovery & Reinvestment Act (ARRA)

The following information is applicable to public and private entities including state agencies, municipal governments, project sponsors, prime contractors, subcontractors and consultant firms contractually associated with State Let or Local Let transportation projects funded in total, or in part, by the ARRA.

For federally funded capital projects where this note is included, the presence of this note in the contract does not necessarily mean that the project is funded by ARRA funds. The prospective bidder may determine if this Special Note is applicable by accessing the list of certified projects at <https://www.nysdot.gov/recovery> and selecting the “certified highway projects” option. If the project appears on this list then the reporting and record keeping requirements delineated in this special note and its attachments are expected to apply to the project. Prior to the Notice to Proceed, Regional Construction Staff will verify the project funding and inform the contractor if the note applies to the contract at that time.

The ARRA, signed into law on February 17, 2009, contains various reporting requirements including employment and jobs data related directly and indirectly to projects receiving funds from the legislation. The ARRA legislation requires all entities, both public and private, to make available to various State and Federal Agencies all records, documentation and related materials of ARRA funded contracts for inspection and audit purposes. Refer to Attachment 1. The ARRA legislation also requires all entities, both public and private, to accept the authority of both the Comptroller General and the Inspector General. Refer to Attachment 2.

For all reporting entities the Federal Highway Agency form “FHWA-1589”, Revision 3-25, is to be completed on a monthly basis. Refer to Attachment 3 for the subject form and its instruction sheet. The electronic format (MS Excel) of this form is available for download at <https://www.nysdot.gov/recovery> by selecting the “Reporting Requirements” option.

All reporting entities, including subcontractors and subconsultants, are required to include their DUNS number (Dunn & Bradstreet Unique Identification Number) on the subject form, however, subcontractors and subconsultants who do not currently have a DUNS number are NOT required to obtain such. All other reporting entities must have a DUNS number.

The specific process for each reporting entity is described below. If the FHWA-1589 form is not properly completed and submitted by the scheduled submittal date, the NYSDOT may withhold the related monthly billing request.

- 1) For Consultants under contract with the NYSDOT whose contract is funded by provisions of the ARRA;

The firm will submit the FHWA -1589 form on a monthly basis attached to their monthly or

ARRA REPORTING & RECORD KEEPING REQUIREMENTS

appropriate bi-monthly billing request. If a billing request is not available for submittal by the 10th of the month the FHWA-1589 form shall be submitted separately with supporting documentation to the NYSDOT office receiving the billing request.

- 2) For Contractors under contract with the NYSDOT whose contract is funded by provisions of the ARRA;

The firm will enter the employee work hour and wage information (as required by Form FHWA-1589) for ARRA funded capital construction contracts into the EBO (Equitable Business Opportunities) computer application as is currently required on NYSDOT construction contracts. Note that the EBO computer application is being modified to accept the additional information required for ARRA funded contracts. Until such time the EBO application modifications are available for use contractors shall retain the required data for eventual input into EBO.

The contractor must also complete the FHWA-1589 form and submit the signed original form attached to their monthly billing request. If a billing request is not available for submittal by the 10th of the month the FHWA-1589 form shall be submitted separately with supporting documentation to the NYSDOT office receiving the billing request. The contractor is to complete the form for both their own employees and their subcontractor's employees. Subcontractors are also required to enter the information into the EBO computer application as is currently required on NYSDOT construction contracts.

For those contracts which do not require the EBO computer application the contractor is not required to use EBO, but shall complete the FHWA-1589 form as instructed herein.

- 3) For Local Municipal Governments, Project Sponsors, and all other entities not covered by #s 1 and 2 above (e.g. utilities, railroads, airports, transit agencies, etc.) under contract with the NYSDOT whose employees are funded by provisions of the ARRA;

The local government, project sponsor, or other entity, will submit the FHWA-1589 form on a monthly basis attached to their monthly billing request. If a billing request is not available for submittal by the 10th of the month the FHWA-1589 form shall be submitted separately with supporting documentation to the NYSDOT office receiving the billing request.

- 4) For contractors and consultants under contract to Local Municipal Governments, Project Sponsors, or other entities (e.g. utilities, railroads, airports, transit agencies, etc.) whose projects are funded by provisions of the ARRA;

The firms will submit the FHWA-1589 form on a monthly basis attached to their monthly billing request to the local government, project sponsor or other entity. If a billing request is not available for submittal by the 10th of the month the FHWA-1589 form shall be submitted separately with supporting documentation to the local municipal government, project sponsor or other entity.

ARRA REPORTING & RECORD KEEPING REQUIREMENTS

The Local Municipal Government, Project Sponsor or other entity receiving the monthly billing request for review, approval and signature will verify the FHWA-1589 form information, co-sign the form(s) and attach a copy of the form(s) to their monthly billing request to the NYSDOT. The Local Municipal Government, Project Sponsor or other entity will retain the original form(s) as project records.

- 5) For all other entities not covered by #4 above (e.g. utilities, railroads, airports, transit agencies, etc.) under contract to Local Municipal Governments, Project Sponsors or other entities whose contractors, consultants or employees are funded by provisions of the ARRA;

The firms will submit the FHWA-1589 form on a monthly basis attached to their monthly billing request to the local government, project sponsor or other entity.. If a billing request is not available for submittal by the 10th of the month the FHWA-1589 form shall be submitted separately with supporting documentation to the local municipal government, project sponsor, or other entity.

The Local Municipal Government, Project Sponsor or other entity receiving the monthly billing request for review, approval and signature will verify the FHWA-1589 form information, co-sign the form(s) and attach a copy of the form(s) to their monthly billing request to the NYSDOT. The Local Municipal Government, project sponsor or other entity will retain the original form(s) as project records.

**OGS CONTRACTS ISSUED ON BEHALF OF NYSDOT
ARRA REPORTING & RECORD KEEPING REQUIREMENTS**

Applicable To

Transportation Projects Funded by the American Recovery & Reinvestment Act (ARRA)

The following information is applicable to contractors and subcontractors contractually associated with projects listed in this solicitation which are funded in total, or in part, by the ARRA. See the list of funding sources by project elsewhere in this Invitation for Bids to see which projects are subject to these reporting requirements.

The ARRA, signed into law on February 17, 2009, contains various reporting requirements including employment and jobs data related directly and indirectly to projects receiving funds from the legislation. The ARRA legislation requires contractors to make available to various State and Federal Agencies all records, documentation and related materials of ARRA funded contracts for inspection and audit purposes. Refer to Attachment 1. The ARRA legislation also requires all contractors to accept the authority of both the Comptroller General and the Inspector General. Refer to Attachment 2.

For all reporting contractors the Federal Highway Agency form "FHWA-1589", Revision 3-25, is to be completed on a monthly basis. Refer to Attachment 3 for the subject form and its instruction sheet. The electronic format (MS Excel) of this form is available for download at <https://www.nysdot.gov/recovery> by selecting the "FHWA-1589" option.

All reporting entities are required to include their DUNS number (Dunn & Bradstreet Unique Identification Number) on the subject form. All other reporting entities must have a DUNS number.

The specific process for contractors is described below. If the FHWA-1589 form is not properly completed and submitted by the scheduled submittal date, the NYSDOT may withhold the related payment.

- 1) For Contractors with OGS contracts for NYSDOT projects that are funded by provisions of the ARRA;

The contractor must complete the FHWA-1589 form and submit the signed original form attached to their invoice. If an invoice is not available for submittal by the 10th of the month the FHWA-1589 form shall be submitted separately with supporting documentation to the office receiving the billing request. The contractor is to complete the form for both their own employees and their subcontractor's employees.

- 2) For contractors with OGS contracts for Local Municipal Government projects that are funded by provisions of the ARRA;

The firms will submit the FHWA-1589 form attached to their invoice to the local government. If an invoice is not available for submittal by the 10th of the month the FHWA-1589 form shall be submitted separately with supporting documentation to the office receiving the billing request.

ATTACHMENT 1
American Recovery and Reinvestment Act of 2009 (ARRA)
ADDITIONAL CONTRACT RECORD KEEPING REQUIREMENTS

If this Contract is funded, in whole or in part, by the American Recovery and Reinvestment Act of 2009 (ARRA), the State must provide certain information on jobs and employment to the Federal Highway Administration (FHWA). This will require all reporting entities including the State, local governments, project sponsors, contractors and consultants who work on ARRA funded Projects to provide information to the State in accordance with Reporting Requirements published by the FHWA on March 23, 2009. The FHWA Reporting Requirements and any additional requirements issued or to be issued by FHWA, are made a part of this Contract, as though fully set forth at length herein.

All Entities shall submit Monthly Employment Reports providing required information on its workforce and the workforce of all subcontractors and sub-consultants who were active on the Contract during the reporting month. Contractors and Consultants shall report the direct project related job information for their workforce and the workforce of all Subcontractors or Sub-consultants active during the reporting month. These jobs include all employees actively engaged in projects who work on the jobsite, in the project office, in the home office, or who telework from a home or other alternative work location. These jobs also include any engineering personnel, inspectors, sampling and testing technicians, and lab technicians performing work directly in support of the ARRA funded project, but do not include material suppliers. Information will also be required concerning total hours worked for all employees reported and the total dollar amount of wages paid.

There will be no additional compensation for this reporting activity and the Monthly Report Form (FHWA-1589) will be required in both paper and electronic formats (MS Excel Spreadsheet Format) available at: <https://www.nysdot.gov/recovery> by selecting the "Reporting Requirements" option.

Entities shall complete a Report for each month from the date of the Notice to Proceed (or other document directing the start of Contract Work) until Completion and Acceptance of the Contract. To ensure the proper reporting of data on contracts managed by funding recipients, Local Municipal Governments, contractors and consultants shall insert the entire Special Note into subsequent agreements (for any contract receiving ARRA funding) related to this Contract. By completing the Report, an entity certifies that they are knowledgeable of the hours worked and the employment status for all employees listed. All entities are responsible to maintain data to support the Monthly Report Form until September 30, 2012, and to make it available to the State or Federal Government should the State or Federal Government request such supporting documents and materials.