



America's Recovery and the Business of RIM

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The economic downturn and the resulting stimulus legislation offer RIM professionals new opportunities to highlight the value they and their programs can bring to their organizations.

The plight of the U.S. and world economies is reaching depths not seen in this generation. The stock market is experiencing significant volatility, unemployment is at a 20-year high, and home foreclosure and business failure rates have not stabilized. The outlook on the state of the economy changes dramatically from day-to-day and from expert-to-expert. Much is at stake, and the outcome will not only affect the United States, but will ripple through the global economy.

In the midst of this turmoil, the government has taken measures to stimulate the economy. At the heart of these measures is the American Recovery and Reinvestment Act (ARRA) of 2009, also commonly known as "the economic stimulus package," with a proposed budget of \$787 billion. Its purpose, as stated in the act, is to:

- Preserve and create jobs and promote economic recovery
- Assist individuals most impacted by the recession

- Provide investments needed to increase economic efficiency by spurring technological advances in science and health
- Invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits
- Stabilize state and local governments budgets in order to minimize and avoid reductions in essential services and counter-productive state and local tax increases

This act supplements the Emergency Economic Stabilization Act (EESA) of 2008, which was signed into law by President George W. Bush in October 2008 establishing the Troubled Asset Relief Program (TARP), also commonly known as the government "rescue package" or "bailout package," to purchase troubled assets from financial institutions. More than \$700 billion was proposed, mostly for banks, insurance companies, and other financial institutions.

All who pay taxes are stakeholders in the outcome of these measures, including records professionals, who may feel the impact of this economy.

Implications for RIM and RIM Professionals

The first consideration stemming from the legislation is the immediate impact on the practice of records and information management (RIM) relating to recordkeeping. The effect on your organization is three-fold:

- 1) Accountability and transparency mandates
- 2) Specific or implied recordkeeping requirements
- 3) Heightened public scrutiny

The second consideration is for RIM professionals themselves. In this economy, when millions remain unemployed, there are two key ways to remain relevant as a RIM professional:

- 1) Protect your RIM position within your organization by promoting your RIM program

- 2) Find new opportunities in different sectors

Considerations from the Legislation

1) The Establishment of the Recovery Accountability and Transparency Board

President Obama has made it clear he will hold all parties accountable for how they spend recovery plan monies and transparency is critical. To this end, he established the Recovery Accountability and Transparency Board, which will coordinate and conduct oversight of recovery spending to ensure taxpayer dollars are not wasted, abused, or used fraudulently.

The over-arching record requirement of this act is the broad, discretionary powers given to the inspectors general to review and examine any records related to covered funds as cited in Sec. 1515 of the act:

SEC. 1515. ACCESS OF OFFICES OF INSPECTOR GENERAL TO CERTAIN RECORDS AND EMPLOYEES.

(a) ACCESS – With respect to each contract or grant awarded using covered funds, any representative of an appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), is authorized

(1) to examine any records of the contractor or grantee, any of its subcontractors or subgrantees, or any state or local agency administering such contract, that pertain to, and involve transactions relating to, the contract, subcontract, grant, or subgrant; and

(2) to interview any officer or employee of the contractor, grantee, subgrantee, or agency regarding such transactions.

In addition, employees may need to bear witness to the records. The Government Accountability Office and the inspectors general of each oversight agency will receive additional

funding to audit and investigate recovery spending. The provisions ensure that these oversight agencies have the means and wherewithal to implement these oversight powers and are not token watchdogs.

2) Specific and Implied Recordkeeping Requirements of the Act

Under ARRA, several areas have specific or implied recordkeeping requirements; predominant is the implementation of the Health Infor-

mation Technology for Economic and Clinical Health (HITECH) Act with \$19 billion in funding. This act provides for the adoption of electronic health records in health care that includes:

Potential ARRA Recordkeeping Requirements

Employment Verification Records

Covered entity, under Sec. 1515 of the act, may be requested to show employment eligibility of workers for projects that have received Troubled Asset Relief Program (TARP) funds

Citation: SEC. 1611. HIRING AMERICAN WORKERS IN COMPANIES RECEIVING TARP FUNDING.

(a) SHORT TITLE. — This section may be cited as the “Employ American Workers Act.”

(b) PROHIBITION. —

(1) IN GENERAL. — Notwithstanding any other provision of law, it shall be unlawful for any recipient of funding under title I of the Emergency Economic Stabilization Act of 2008 (Public Law 110–343) or section 13 of the Federal Reserve Act (12 U.S.C. 342 et seq.) to hire any nonimmigrant described in section 101(a)(15)(h)(i)(b) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(h)(i)(b)) unless the recipient is in compliance with the requirements for an H–1B dependent employer

Manufacturing Records of Iron, Steel, and Manufactured Goods

Covered entity, under Sec. 1515 of the act, may be requested to prove the source of iron, steel, and manufacturing goods on public building projects

Citation: BUY AMERICAN SEC. 1605. USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS. (a) None of the funds appropriated or otherwise made available by this Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States.

Wage and Payroll Records

Covered entity, under Sec. 1515 of the act, may be requested to prove the wages paid to worker under this provision

Citation: WAGE RATE REQUIREMENTS SEC. 1606. Notwithstanding any other provision of law and in a manner consistent with other provisions in this Act, all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to this Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. With respect to the labor standards specified in this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (64

Health Insurance Coverage Records

This provision is specific for the access to records for this study.

Citation: HEALTH INSURANCE COVERAGE FOR ELIGIBLE INDIVIDUALS IN ORDER TO OBTAIN QUALIFIED HEALTH INSURANCE THAT HAS GUARANTEED ISSUE AND OTHER CONSUMER PROTECTIONS.

ACCESS TO RECORDS. — For purposes of conducting the study required under this section, the Comptroller General and any of his duly authorized representatives shall have access to, and the right to examine and copy, all documents, records, and other recorded information — (1) within the possession or control of providers of qualified health insurance, and (2) determined by the Comptroller General (or any such representative) to be relevant to the study.

- Developing an interoperable infrastructure and standards for the exchange of health records
- Tightening federal security and privacy laws, particularly related to the Health Insurance Portability and Accountability Act
- Broadening the scope of covered entities

While a detailed discussion for HITECH requirements is beyond the scope of this article, suffice it to say the positions of records professionals in the healthcare industry are relatively intact for now. However, records professionals in health care can still benefit and be proactive by learning more about the new law and being engaged in the implementation process. As the conversion takes place, all records professionals in health care can participate in efforts to integrate or migrate legacy data into the new systems, implement full life cycle management, and write new policies, procedures, and guidelines. (See chart on page 44.)

Throughout this legislation, there may be other implied recordkeeping requirements not covered under the general provisions. If your organization is in one of the affected sectors, it may be wise to have your general counsel review any recordkeeping implications for your organization.

3) Heightened Public Scrutiny

While the Recovery Accountability and Transparency Board establishes the vehicle for review and examination, heightened scrutiny has taken public awareness to a higher level. Few pieces of legislation have led to as high a level of public awareness as America's recovery plan; this plan has the potential to affect almost everyone in different areas of life, such as taxes, health care, jobs, finance, retirement, education, housing, transportation, environment, and local and state governments.

Furthermore, in no other administration has technology played such an integral part in its connection with the

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people. Sec. 1516 of the act established a government website (www.recovery.gov) to inform the public of where the money is spent. Under Sec. 1514 (Inspector Reviews), the public may raise concerns about specific investments for the board to investigate. Findings are published on the website. Other public watchdogs, such as ProPublica (www.propublica.org), keep track of spending information and provide a list of all financial institutions that have received TARP bailout money and how much they have received. Shovel Watch (www.shovelwatch.org) monitors the activities of the stimulus bills.

So what impact does this level of scrutiny have on organizations that have received funds or contract with organizations using these funds? Whenever public awareness increases, the organization's goodwill and reputation may be at risk. For example, one bank that received \$45 billion of TARP money was served with a subpoena to testify about \$3.6 billion in bonus payouts. A second bank, which received \$1 billion in bailout money, was criticized for its lavish spending on a party. Although there were not any recordkeeping violations identified in these instances, risky recordkeeping practices could become an issue for another organization in a different instance.

Good records management practices can mitigate possible risks. Maintaining a consistently implemented records management program is the best safeguard. This includes such things as consistency in destroying records in the normal course of business to reduce

the risk of spoliation or records exposure, as well as disciplined e-mail management to prevent harmful transitory or casual e-mail to surface in case of litigation or investigation.

One day, records such as contracts, invoices, payment records, work orders, quality records, project files, and bid documents could be required to bear witness to what happened to tax dollars. As a records manager, you can play a part in ensuring your organization mitigates and averts potential misunderstandings or misperceptions by the public and the associated risk to its reputation.

Considerations for RIM Professionals

Another consideration is the impact on RIM professionals. In an economic downturn, RIM professionals may find themselves without work for several reasons:

- RIM is not a profit center.
- RIM's impact on the bottom line is difficult to calculate.
- RIM's return on investment may be difficult to justify.

There are several ways RIM professionals can protect their positions or prepare for new opportunities.

1) Protect Your Current RIM Position

Essential to protecting your position in records management is keeping the practice of records management relevant within your organization. Whether your organization receives recovery funding or not, it still needs to manage records, comply with legal recordkeeping requirements, and en-

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sure employee awareness and compliance. As a RIM professional, you must present your role, skills, and knowledge to management so they can view them as essential to the survival of your organization.

With the current budget constraints, there are always low-cost initiatives you can move forward to promote effective records management and keep it in the forefront. Some suggested initiatives include:

- **Assess the risk** within your organization and develop a records management strategy as the primary defense in mitigating records risk. Look at shortfalls in your records program and find ways to improve efficiency and reduce cost without a large capital outlay.
- **Implement short-term, low-cost projects that have immediate benefits**, such as a records cleanup project. This can reduce storage costs and the organization can systematically destroy records that have reached their retention life.
- **Develop an education and training program** to reinforce the importance of RIM. This low-cost effort requires no capital investment and provides valuable benefits in RIM awareness.
- **Conduct a records audit** to assess weaknesses and areas of non-compliance and communicate these results to management.

- **Evaluate RIM processes** that support external audits, government reviews, or investigation and litigations.
- **Consult with your legal counsel** about RIM implications of this act if you are in an affected sector. Even if your organization is not receiving funds directly from the government, it may be under contract with an entity that is. Therefore, it may be under the same scrutiny and recordkeeping requirements.
- **Broaden the scope of your current RIM program.** If your company is operating in a global market, look at ways to expand your RIM program in other countries. You may receive consideration for future implementation if you do not receive funding now.

These are just some examples of proactive approaches you can take to broaden RIM exposure to management to maintain program visibility. Be innovative as a thought leader in records management for your organization instead of being reactive to business crises.

2) *Seek New Opportunities in Different Sectors*

If you are in the market for a new job, where can you look when RIM positions have become limited? ARRA targets specific sectors of the economy where you can focus your job search. Here are some suggestions on seeking new opportunities:

- **Identify targeted sectors** and focus your job search in sectors receiving assistance, such as, biomedical research, broadband, construction, education, electric grid, energy efficiency, environment, financial services institutions, fossil energy, health care, infrastructure, low income assistance, renewable energy, small business, and transportation. This is by no means an exhaustive list of supported industries. Refer to government and public watchdog sites for more details.
- **Visit the government's recovery website, www.recovery.gov**, for links to various government agencies for job postings and recovery opportunities and what agencies are recipients of grants.
- **Consider entry into a different industry or into a related field** where your experience in records may be a valuable asset.
- **Translate or learn new skills as new opportunities arise** to leverage your current expertise in a new environment.
- **Consider contract or consulting work** on a project basis in the interim. You could offer your services back to your employer on a contract basis.

In these challenging times, RIM professionals should not lose sight of their growing value to their organizations. Regardless of whether the economic outlook is bright or challenging, RIM professionals have an opportunity to develop and enhance their records programs – to ensure they will adapt and evolve with the changing times. **END**

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