

UNITED STATES DEPARTMENT OF AGRICULTURE
OFFICE OF INSPECTOR GENERAL

STATEMENT OF THE HONORABLE PHYLLIS K. FONG
INSPECTOR GENERAL

Before the
COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

MARCH 5, 2009



Good morning, Chairman Lieberman, Ranking Member Collins, and Members of the Committee. Thank you for inviting me to testify on the role of the Inspector General (IG) community in overseeing Federal expenditures and operations under the American Recovery and Reinvestment Act of 2009 (Recovery Act).¹ I am testifying today in my dual capacities as Inspector General at the U.S. Department of Agriculture (USDA) and Chair of the Council of the Inspectors General on Integrity and Efficiency (Council). Additionally, as IG at USDA, I am statutorily appointed to serve with nine other IGs on the Recovery Accountability and Transparency Board (Board) that was created by the Act. I am honored to serve in these multiple capacities and have the opportunity to contribute to our mutual efforts to improve the operations and integrity of the Federal Government.

Let me briefly also express my thanks to the Chair, Ranking Member Collins, and Senator McCaskill for soliciting the views of the IG community during the development and passage of the Act. My colleagues and I appreciate your affording us the opportunity to comment upon the practical impact of the provisions related to the Accountability Board and whistleblower complaints, among others. Further, your support for increased resources for IGs to meet our expanded responsibilities under the Recovery Act was of considerable assistance.

The Recovery Act creates a vital oversight role for the IG community, and I can assure the Committee that the IGs at the agencies that are receiving stimulus funds are actively engaged in planning to meet their responsibilities. Our emphasis is on taking proactive measures to make sure the vast public funds involved are properly expended and utilized. At this time, there are still questions and implementation issues that need to be explored and resolved with respect to how the relevant oversight bodies involved—IGs, Government Accountability Office (GAO), and the Board—can best work together to perform the rigorous oversight desired by Congress and the public. As requested by the Committee, my testimony today will address the new responsibilities imposed by the Recovery Act on IGs; the IG community's current stimulus oversight activities; USDA OIG's oversight plans for the Recovery Act funds that support USDA stimulus activities; and some "lessons learned" from the community with respect to supplemental appropriations for expedited Federal programs and operations.

¹ H.R. 1, Public Law 111-5, February 17, 2009.

I. New IG Responsibilities Pursuant to the Recovery Act

The Recovery Act creates new responsibilities for Federal IGs in three main areas: oversight of agency stimulus-funded programs, participation on the new oversight accountability board, and investigations of whistleblower complaints. My testimony will discuss some of the most challenging elements of these new responsibilities for the IG community.

1. Oversight of Stimulus Expenditures

Under the IG Act, IGs generally have broad oversight responsibility and authority for their parent entities' programs and operations. Recovery Act-funded activities at each Federal entity have become significant additions to this portfolio. IGs are giving high priority to oversight of stimulus activities due to the Act's requirements for mandatory reviews, investigations, reports, and—most importantly—the joint governmental and public interest in ensuring that expedited stimulus funds are spent properly. Agencies must promptly develop plans for allocating stimulus funds, including identifying and assessing any risks regarding the responsible disbursement and ultimate usage of the monies involved and appropriate risk mitigation strategies. IGs must also report on funds spent on our oversight activities.

Section 1514 of the Act mandates that an IG shall review, as appropriate, any concerns raised by the public about specific investments of stimulus funds. Unless criminal proceedings are involved, the OIG must relay its findings immediately to the agency head and post them on the OIG's web site (subject to privacy laws). The Recovery Act also provides new authority to OIGs to examine records and interview the employees of entities that receive stimulus funds. At this time, the volume and substance of the public complaints individual IGs will receive regarding stimulus activities—and the level of OIG resources required to address them—is difficult to predict. It is certainly an element of the Recovery Act, however, that the IG community must plan for and closely monitor.

2. The Recovery Accountability and Transparency Board

The Recovery Act creates a new Recovery Accountability and Transparency Board to coordinate and conduct oversight of stimulus programs. The Board is comprised of 10 IGs and is chaired by the Honorable Earl Devaney, IG at the Department of Interior. The Board has a number of functions, and is required to coordinate its work with individual IGs and the Council to avoid duplication of effort. Congress provided the Board with extensive audit and program review powers, but not investigative authority; allegations requiring investigations of a criminal nature must be referred to the appropriate OIG. The authorization for the Board expires on September 30, 2013.

During the Recovery Act's legislative development, there was extensive discussion in the IG community about the potential impact of the Board on OIG activities, such as whether unintended difficulties or interference with traditional IG independence and responsibilities would occur. We appreciate the assistance rendered by Committee Members in removing or modifying various provisions that were of concern regarding IG independence and the potential for conflict between the Board and IGs. In particular, we note that all of the Board's members are now IGs, a highly experienced IG has been appointed as Chairman, the Recovery Act clearly provides that each IG makes the final decision on audits and investigations to be pursued, and the Board and the Council are required to coordinate their activities. I therefore anticipate that the IG community will be able to forge a productive working relationship with the Board as it takes up its oversight responsibilities.

3. Assessing Whistleblower Complaints Related to Stimulus Activities

The third element of the Recovery Act that may significantly impact the IG community is the new protections from reprisal provided to whistleblowers who are State and local government employees or contractors. When such individuals present Federal officials with information they believe is evidence of gross mismanagement, waste, or illegality related to stimulus

expenditures, IGs are required to investigate any reprisal complaints that may result.² IGs are required to complete these whistleblower investigations within 180 days, subject to certain extensions. The Act's whistleblower mandates present a broad new area of potentially substantial investigative obligations for IGs regarding non-Federal employees and contractors. At this time, it is too early to predict the administrative and budgetary effects of these requirements as stimulus funds flow to States and localities. As the IG community gains experience over the course of the Act in meeting the whistleblower mandates, we will keep the Committee informed should any substantive procedural or resource allocation concerns arise.

II. Initial IG Community Actions in Response to the Recovery Act

The Council of Inspectors General on Integrity and Efficiency

Due in large part to the efforts and legislative determination of Members of this Committee, the Inspector General Reform Act of 2008³ created the Council of Inspectors General on Integrity and Efficiency (Council) which is comprised of Federal IGs and senior-level Federal officials from the Federal Bureau of Investigation, Office of Government Ethics, and Office of Special Counsel, among other entities. The Deputy Director for Management of the Office of Management and Budget (OMB) serves as the Executive Chair of the Council, and I am privileged to have been elected as the IG that serves as Chair of the Council for the next 2 years. Among the functions and duties stipulated by Congress for the Council are identifying and reviewing areas of weakness and vulnerability in Federal programs with respect to fraud and mismanagement and developing plans for coordinated Governmentwide activities that address such problems and promote efficiency in Federal programs and operations.

While each IG has unique challenges based on the nature of his/her agency's programs, a core purpose and value of the Council is to facilitate prompt information sharing between IGs about varying oversight approaches and experiences. A priority for me as Council Chair during the Recovery Act's implementation will be to continually explore effective, common

² The Act provides exemptions for OIGs to decline to initiate an investigation in circumstances of frivolous complaints, concurrent administrative/judicial proceedings, and lack of connection to stimulus funds, among others.

³ Public Law 110-409, October 14, 2008.

oversight approaches among IGs, and for our community to emphasize preventive measures that can be taken before public funds are expended.

IG Community Coordination with OMB and GAO on the Recovery Act

As part of our efforts, the Council worked with OMB to provide input on OMB's draft implementing guidance to agencies for their Recovery Act activities. The guidance contains critical steps that Federal agencies must immediately take to meet the objectives of transparency and accountability for Recovery Act monies. The Council's comments to OMB generally sought to enhance and fine tune the guidance's oversight requirements and more clearly distinguish the role of IGs from that of the managers of the programs being funded by the Recovery Act. Among the noteworthy changes recommended by CIGIE and adopted by OMB were: (1) extending the Federal Acquisition Regulation rule regarding "self-reporting" of fraud by contractors to Recovery Act grantees and loan recipients; (2) requiring agencies to expedite any corrective actions necessary for weaknesses and deficiencies that have been disclosed by prior audits and investigations and are relevant to imminent Recovery Act activities; and (3) providing that agency web sites have recovery program pages that link directly to their OIG web pages so that the public can contact OIGs directly about concerns related to stimulus programs. The Council and I will continue to work closely with OMB as it issues additional implementation guidance concerning the stimulus funds received and disbursed by Federal agencies.

With respect to IG coordination with GAO, I believe that most OIGs have excellent working relationships with their GAO counterparts in carrying out oversight activities. This is certainly the case for my agency, USDA OIG; we work very closely and productively with the GAO staff involved in agriculture, nutrition, and natural resources issues. These relationships have been built over many years, as the IG Act requires IGs to coordinate with GAO to reduce potential duplication in our respective audits and program reviews.

The IG Stimulus Working Group (discussed below) recently met with Acting Comptroller General Gene Dodaro and senior GAO officials to discuss community approaches to meeting

our new responsibilities under the Recovery Act. One issue of paramount concern to all is the need to ensure that stimulus funds are properly spent as they flow from Federal agencies to the State and local levels. There is general recognition that the traditional oversight provided by the Single Audit Act and OMB Circular A-133 will not be sufficient to provide timely and effective feedback on stimulus programs this year. While non-Federal entities are required to have an annual audit of their Federal awards and funds, the results are not available until at least 9 months after their fiscal years end. It is therefore necessary for the Federal oversight community to develop more timely approaches to overseeing the massive flow of money to State and local entities. IGs whose agencies have significant program dollars going to non-Federal recipients have already started to reach out to their State and local counterparts and to perform risk analyses of those programs to determine the types of testing that should be done. We also understand that GAO will be working closely with these governments to follow the flow of program funds and to ensure that these entities report their activities in a timely and consistent way. As IGs, we will need to coordinate our own reviews of program effectiveness closely with GAO to ensure that there are no gaps in our coverage. We believe that this is an opportunity for further productive collaboration between the IG community and GAO.⁴

Sharing Oversight "Best Practices": The Stimulus Oversight Working Group

The Council has created a Stimulus Oversight Working Group comprised of the 23 IGs whose parent agencies are receiving Recovery Act funds. I believe this Stimulus Working Group can serve as an excellent forum for IGs directly responsible for stimulus oversight to discuss and share strategies, best practices, and other proactive measures to provide rigorous oversight of stimulus activities. The Stimulus Working Group recently held its first meeting to discuss common concerns and oversight practices being implemented community-wide. I would like to present the Committee with an overview of the information these IGs have provided about their Recovery Act oversight planning.

⁴ The related issue of OIG liaison with State and local audit entities is further discussed in Section V of this statement.

III. Proactive Measures: IG Community Plans for Recovery Act Oversight

To inform the Committee about the specific stimulus oversight measures currently being considered or utilized, my office surveyed the IGs participating in the Stimulus Oversight Working Group. We asked these OIGs to provide brief responses on three aspects of their planning regarding the Recovery Act programs and operations under their jurisdiction. They were (a) provide examples of preventive and proactive stimulus oversight measures that the OIG is taking at this time; (b) provide examples of longer term stimulus oversight measures being planned; and (c) identify challenges the OIG faces in implementing its stimulus oversight activities. Below is a summary of some of the measures that are actively being implemented or considered by various Working Group IGs and some of the challenges noted by a number of the respondents.⁵

A. Preventive and Proactive Measures Being Taken Now

Communicating with Senior Managers at the OIG's Parent Agency/Department

- Establish Recovery Act steering committees (or partner with) agency officials regarding oversight activities and reporting.
- Evaluate agency stimulus spending, implementation plans, and performance measures.
- Evaluate unimplemented recommendations and provide technical advice, best practices, and guidance to agencies in areas targeted for stimulus spending.

Heightening Fraud Awareness in Recovery Act Assistance Programs

- Provide fraud awareness briefings and training to grant administrators and grantees.
- Determine what the agencies and program administrators are doing to reduce the risk of fraud, waste, error, and misuse relevant to stimulus activities.

Reviewing Loan, Grant, and Contract Activities

- Monitor grant planning activities and conduct pre-award audits of recipients.
- Prioritize audit efforts based on existing program risks and amount of supplemental stimulus funding.
- Adjust in process OIG audits (such as expanding/expediting them) to monitor supplemental funding.

⁵ Each IG has the authority to determine his/her own respective oversight plans and actions and can best respond to inquiries about the details and status of their particular Recovery Act activities.

B. Longer-Term Oversight Measures

- Obtain the appropriate level of additional audit and investigative staff via hiring, temporary employees, and the use of contract personnel.
- Develop and implement risk-based audit and investigation plans for stimulus funded grants, contracts, and agency programs and their respective financial management systems.
- Initiate criminal investigations based on Hotline complaints, agency referrals, audit work, and other sources.
- Conduct outreach to the external audit community (CPAs and State and local audit agencies) to provide technical assistance for their required audit oversight.
- Utilize data analysis and data matching to target programs receiving Recovery Act funding to look at eligibility issues and identify potential fraud, etc.
- Track agencies' compliance with the transparency requirements of the Recovery Act and verify data quality reports issued by agencies and posted to "Recovery.gov"

C. Challenges Facing OIGs for Recovery Act Oversight

- Meeting the oversight requirements of the Recovery Act while continuing to conduct other statutorily mandated and high-profile work such as Federal Information Security Management Act (FISMA), financial statement audits, and unscheduled congressional and agency requests.
- Meeting staffing needs, training new hires, and obtaining contractor assistance with experience in the targeted program areas.
- Ensuring that funds passed to State and local governments are adequately tracked.
- The inability to perform timely computer data matching across Federal agencies.
- Ensuring timely reporting of audit, inspection, and investigative issues.
- Identifying and monitoring critical Information Technology systems that are used to provide transparency.
- Monitoring agencies' internal control structures and timing audits when funds are being disbursed.

IV. USDA OIG's Preliminary Oversight Plan for USDA's Stimulus Activities

While I am increasingly engaged in Governmentwide oversight issues and organizations on behalf of the Council and the Oversight Board, my primary responsibility is my service as IG at the Department of Agriculture. USDA OIG is directly responsible for continuous oversight of USDA's vast programs and operations; in fiscal year 2008, the Department had expenditures of approximately \$95 billion and approximately 90,000 full-time employees. USDA alone received \$28 billion in Recovery Act funding for a broad array of Department programs and operation, ranging from rural development programs, nutrition assistance, and watershed activities, to wildfire management and broadband activities. Nine separate USDA programs or accounts received at least \$300 million in supplemental funding, and the Supplemental Nutrition Assistance Program (SNAP)—formerly known as the Food Stamp Program—received \$20.1 billion for increased benefits and administrative expenses. The major new program expenditures at USDA utilizing Recovery Act funds will present significant oversight challenges for our OIG.

We have developed a number of actions to enable OIG to provide timely and effective oversight of USDA's Recovery Act expenditures. Our oversight plan is of course preliminary, since we will regularly make adjustments and shift our resources as the numerous USDA program agencies involved develop their own plans for stimulus activities and begin to spend the monies.

In addition to the efforts described below, we are conducting immediate outreach to the Department—including meetings with the top officials of the relevant USDA agencies—to advise them of OIG's plans and to solicit their input on where our efforts would be most effective. We are providing them with information on oversight "best practices" as they come to our attention. For example, we have already provided USDA agencies with a recently issued guide to grant oversight and best practices for combating grant fraud. Summarized below are the major elements of our preliminary USDA OIG oversight plan, organized by audit and investigative activity.

A. Recovery Act Oversight at USDA: Audits

We will focus on key elements such as whether USDA agency officials have established proper internal control procedures and compliance operations, as well as review whether participants in stimulus-related programs meet eligibility guidelines. OIG's audit work will be conducted in multiple phases based on USDA's Recovery Act activities and expenditures.

Phase 1:

- (1) In recent years, OIG has made audit recommendations on virtually every USDA program that will receive stimulus funding. We are now assessing the extent to which USDA agencies have implemented our recommendations to determine whether program weaknesses have been corrected. In cases where OIG's recommendations were not agreed-to or not fully implemented, we will work with agency officials to identify the corrective actions necessary to ensure effective controls on USDA's Recovery Act expenditures.

- (2) We are also considering expanding the scope of audits that are already in process or planned for USDA programs receiving stimulus funds. Among them are reviews of Farm Service Agency oversight of farm loans; Rural Development (RD) programs for single family housing, business/industry loans, and water and waste disposal programs; the Forest Service's wildland firefighting program; and the Food and Nutrition Service's SNAP program.

- (3) We are expediting the completion and release of several audits related to Recovery Act-funded programs, including RD's broadband program and the rehabilitation of flood control dams by the Natural Resource Conservation Service.

Phase 2:

- (1) We will design new audits to specifically review various aspects of the programs receiving stimulus funding.

(2) We will review each USDA agency's Recovery Program Plan and then develop targeted oversight initiatives.

(3) Our newly formed Data Analysis and Data Mining group will begin its stimulus related oversight by analyzing data pertaining to RD's Direct Single Family Housing Loan Program.

Phase 3:

We will evaluate the determinations USDA agencies make about the effectiveness of their stimulus activities by analyzing their performance measures with respect to outcomes.

B. Recovery Act Oversight at USDA: Investigations

Our investigative efforts for the Recovery Act will emphasize preventing and identifying fraud; initiating timely investigations when potential criminal activity occurs; and responding to the new sources of whistleblower complaints according to the Act's benchmarks. Thereafter, Investigations will work with U.S. Attorneys and States Attorney General Offices to prosecute violators and seek asset forfeiture when appropriate.

Phase 1:

(1) OIG agents will increase the fraud awareness briefings we conduct for agency personnel and distribute information to program stakeholders on our investigative capabilities and the avenues available for citizens to report stimulus-related fraud. OIG fraud alert memoranda to USDA agency personnel will highlight fraud schemes attempted in other Federal entities to raise awareness levels.

(2) Our National Computer Forensic Division will assist in fraud identification related to USDA's stimulus programs, such as matching our audit data mining results against external data bases.

- (3) We will actively participate on national and regional task forces such as the Contract and Procurement Task Forces and the Mortgage Fraud Task Forces. These organizations increase OIG's ability to identify fraud and partner with other Federal/State investigators and prosecutors.
- (4) OIG will continue close liaison with USDA agencies to identify fraudulent activities and coordinate with their compliance and investigations units for joint investigations, as appropriate.
- (5) We will use OIG's Hotline as a source of information on potential criminal activity affecting USDA's stimulus activities. Each month, our Hotline staff receives approximately 275 contacts and performs an initial assessment of the complaints and allegations to determine the level of OIG investigative inquiry that is warranted. OIG will separately track complaints regarding Recovery Act funding and related whistleblower reprisal complaints.

Phase 2:

- (1) After assessing the results of the initiatives described above (and information revealed by our stimulus-related audit work), we will open criminal investigations as appropriate. Based on our experiences with emergency/supplemental USDA funds provided for Gulf Coast hurricane relief activities, we anticipate significant investigative work involving SNAP fraud.
- (2) Upon assessing our investigative results for USDA's stimulus activities, we will work to ensure that entities involved in criminal or serious misconduct are held accountable via criminal and/or civil prosecution, asset forfeiture, agency fines, and administrative sanctions (suspension/debarments, etc.).

Reporting OIG's Recovery Act Activities and Results

The closing comment I would like to offer regarding our preliminary oversight plan at USDA OIG pertains to our recognition of the importance of timely reporting by IGs about stimulus-related activities. Fulfilling our reporting obligations under the Recovery Act will assist agency heads and congressional oversight committees in carrying out their responsibilities. We will alert USDA officials to program integrity and efficiency problems as quickly as possible to expedite corrective actions. We will incorporate the Recovery Act's new requirements regarding whistleblower complaints into our semi-annual reports to Congress. As provided by OMB guidance, OIG will separately report our use of Recovery Act monies and other funds for stimulus-related activities in our reports and "Recovery.gov" submissions.

V. Lessons Learned: Past OIG Oversight of Expedited Federal Expenditures

As requested by the Committee, I will discuss the IG community's experiences from past oversight of Federal expenditures. While the amount and scope of the Recovery Act's expenditures are unprecedented, the multi-agency, expedited nature of the Federal response to Hurricane Katrina resulted in important "lessons learned" for IGs and program officials that could apply to stimulus-funded activities.

Critical to the successful performance of the IG community in providing effective oversight of Hurricane Katrina response activity was the systematic coordination and utilization of the skills, resources, and experience of a broad array of OIGs. Led by the Department of Homeland Security's (DHS) OIG, those OIGs whose agencies were involved in the hurricane recovery efforts established an oversight plan for mitigating crisis procurement risks, managing the broad scope of oversight work, and overseeing contracts. The OIGs refined the plan into an audit coordination model that outlined which offices would focus on specific Federal activities during the different phases of recovery efforts. Audit personnel from nine OIGs formed a Hurricane Katrina Contract Audit Task Force to coordinate efforts. The IG community also developed an investigation coordination model to address how case referrals and investigations would be managed.

The IGs involved in Katrina recovery oversight also coordinated their efforts with other law enforcement agencies to ensure that criminal activity was investigated and prosecuted. The Department of Justice created a Hurricane Katrina Fraud Task to investigate, prosecute, and deter fraud from any domestic natural/manmade disaster.⁶ According to DHS OIG, the task force command center referred 21,000 complaints to law enforcement and brought Federal charges against more than 900. On the audit side of the community, OIGs providing Katrina-relief oversight completed more than 150 audits that resulted in substantial monetary results (questioned and unallowable costs, etc.) for the Government and taxpayers.⁷

The IG community provided a complete discussion of our lessons learned from the Gulf Coast hurricanes in an October 2006 report to Congress.⁸ For the purposes of today's hearing, I will briefly highlight some of the more significant elements my colleagues compiled for the Committee as you begin to explore effective oversight practices for the Recovery Act.

✓ ***Efficacy of Risk Management Activities***

IGs have found that programs that have existing problems managing risk in their grant and procurement processes will experience significant deficiencies in effectiveness when they try to manage and spend large increases in funds in a short period of time. The staffing and infrastructure of these programs are not equipped to properly manage rapid and large funding increases. OIGs should review agency risk management activities and internal controls relevant to the management of the Recovery Act's supplemental and expedited funding.

✓ ***State and Local Liaison***

The Committee has aptly expressed an interest in the accountability of funds as they flow from the Federal to State and local entities. The Recovery Act brings increased challenges to Federal IGs to oversee the flow of funds at the Federal level (through the awards of contracts, grants, loans, etc.) and then to follow the funds as they flow to the State and local levels. Similar to Gulf Coast hurricane relief measures, a large portion of the Recovery Act's funding

⁶ Based in Baton Rouge, Louisiana, it is now known as the National Center for Disaster Fraud. More than 20 Federal agencies are located at the command center.

⁷ For example, DHS-OIG reported \$197 million in questioned costs pertaining to hurricane relief activities through FY 2008.

⁸ The President's Council on Integrity and Efficiency – *Oversight of Gulf Coast Hurricane Recovery: A Semiannual Report to Congress, October 2006.*

will be passed through State and local governments. Proactive and continuing communication and coordination between IGs, GAO, and the Board with State and local audit communities is vital. Developing audit response plans with state and local audit partners has proven effective for Federal IGs. Resource-draining duplication must be avoided to the greatest extent possible.⁹

✓ ***Information Data Sharing***

Interagency data sharing and coordination is important when funds are spent in interagency efforts. However, Federal law on agency computer matching limits the ability of IGs to promptly share data.¹⁰ The IG community certainly recognizes the importance of computer matching safeguards, but a number of OIGs have found that current restrictions hampered past efforts to prevent and pursue fraud. Members of the Council have discussed the concern that the absence of computer matching agreements forced the Hurricane Katrina Fraud Task Force to rely on manual record searches to detect improper payments and fraud. The problem identified was that IG oversight practices can encounter delays and obstacles due to the need to gain cooperation from the managers of agency database systems. Members of the Council have discussed this concern with Committee staff and welcome further consideration of this issue.

✓ ***Training***

Part of the Council's mission is to ensure that IG community oversight personnel are properly trained, and a lesson from the Katrina relief effort was that OIG personnel may need advanced training in specialized programs. Members of the community will need to evaluate the particularized training needs of their offices as they assess the audit and investigative oversight required for Recovery Act activities.

⁹ See the related discussion of IG and GAO stimulus oversight involving State and local entities in Section II.

¹⁰ The Computer Matching and Privacy Protection Act of 1988, Public Law 100-503.

✓ **Staffing**

In working to provide OIG staff necessary for the audits and investigations desired for expedited Recovery Act activities, IG managers must be mindful to maintain the proper level of continuing oversight for their parent agencies or Departments' recurring programs and operations.

This concludes my testimony. I want to thank the Committee for the opportunity to share my views and those of the IG community on these issues. I would be pleased to address your questions.