

TESTIMONY OF THE HONORABLE EARL E. DEVANEY  
CHAIRMAN, RECOVERY ACCOUNTABILITY AND TRANSPARENCY BOARD  
BEFORE THE COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL  
AFFAIRS  
UNITED STATES SENATE  
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Mr. Chairman and members of the Committee, I want to thank you for the opportunity to appear before you today to provide an update on the recent and planned activities of the Recovery Accountability and Transparency Board (the Board). My testimony today will address the current status and future direction of the Board's missions, and after my opening remarks, I will be glad to answer any questions you have for me.

I would like to begin by addressing some of the suggestions put forward by this Committee when I testified before you in April. One recommendation was that the Board seek the assistance of the American Association of Retired Persons and TRIAD in publicizing and creating awareness of Recovery-related scams, given that perpetrators of scams frequently target the senior population. The Board has since reached out to both of these organizations, as well as the Federal Trade Commission and the National Association of Attorneys General, to establish working relationships and to ensure a general awareness of such schemes. Although we have seen a marked decline in Recovery scams since the initial period of the law's enactment, the Board's relationships with these groups are now in place in the event that new scams arise.

Another suggestion made at the April hearing was that the Board consider employing former journalists to assist with our reporting requirements and to make the Board's website more reader-friendly. Since that hearing, the Board has hired former journalists in various staff positions where their superior writing skills will be put to good use in the Board's required quarterly and annual reports, as well as on the website Recovery.gov.

I am pleased to report that Recovery.gov has been upgraded and its companion reporting website, FederalReporting.gov, has been constructed. FederalReporting.gov, where recipients will enter data on their use of covered funds, has been created, performance-tested, and opened for registration. More than 14,000 recipients have registered with the site since it launched on August 17th. We are encouraging recipients to register prior to October 1, which is when the system will open for reporting purposes. Once data is reported on FederalReporting.gov, it will then flow into the latest iteration of the public-facing website, which I have been referring to as Recovery.gov Version 2.0.

The Board realized at the outset that the redesign and upgrade of Recovery.gov was going to be a project of significant magnitude and complexity. The General Services Administration (GSA) – acting for the Board – used its Alliant Government-Wide Acquisition Contract (GWAC) to select a vendor to redesign Recovery.gov and to rebuild and upgrade the site's infrastructure. The Alliant contract vehicle is designed specifically to support complex IT initiatives, particularly those that need to incorporate new technologies. Previously, 59 companies had won the right to bid on Alliant task orders through open competition. After using

the Alliant vehicle to solicit bids for the redesign, and following an exhaustive evaluation of the bids received, GSA awarded the contract to Smartronix, Inc. of Hollywood, Maryland.

The fully enhanced version of Recovery.gov, which is scheduled for release by October 10<sup>th</sup>, will provide visitors with a visually pleasing, user-friendly, and highly interactive website. It will have a mapping capacity that will allow visitors to search for spending all the way down to their own neighborhoods – or their Congressional districts, for that matter. Even before the newest version of Recovery.gov is unveiled to the public, the Board has implemented various improvements to the site. In July, we began publishing on the website a new regular feature called the Chairman’s Corner. There, I inform the American public of the achievements and future plans of the Board, as well as changes and developments made to Recovery.gov. One such change, also added in July, was the addition of an interim mapping solution, which allows the American people to look at major contracts awarded in their areas. This improved mapping system is serving as a placeholder until the final, more versatile mapping solution is introduced next month. Recovery.gov is currently undergoing user testing by citizen focus groups and stakeholders around the country.

As you can sense, I am quite hopeful about the coming capabilities of Recovery.gov Version 2.0, and the data the website will illuminate once Recovery reporting begins in earnest next month. However, I do not believe that just throwing data up on a website qualifies as “transparency.” Nor am I under any illusion that the first quarter – or even first few quarters – of reporting will be free of data quality problems.

A distinction needs to be made between data quality and data integrity. Although the Board and Inspectors General (IGs) will play a role in data quality – chiefly by reviewing agencies’ processes for ensuring quality of the data – the Board’s main goal will be one of data integrity. That is, the Board will strive to ensure that the data on Recovery.gov is a true reflection of what recipients report, including any subsequent modifications made to that data. The Board intends to track changes to the data entered and make that information available on Recovery.gov for all to see. The responsibility for data quality, however, rests with the recipients of the funds and the agencies distributing the funds, as they are in the best position to know the details associated with these funds. IGs’ involvement in ensuring data quality could run afoul of the Inspector General Act’s longstanding prohibition on program operating responsibilities – as well as the Comptroller General’s Government Auditing Standards for performing audits, also known as the Yellow Book.

This manner of data reporting represents new territory and brings the potential for new complications. The government has never before required recipients of federal funds to report to this degree. Even with the informative OMB-sponsored town halls on reporting, the guidance set forth in the OMB memoranda and interim Federal Acquisition Regulation (FAR) rules, and the reporting registry helpdesks that will be ready to receive the influx of questions, there is still potential for reporting issues. These obstacles will need to be overcome. If recipients do not report the required information – for whatever reason, mistake, neglect, or willfulness – the data on Recovery.gov will not be as insightful as it should be, which is a concern that I and the rest of the Board have. Although existing federal laws, like the false statements statute and the recently

amended Civil False Claims Act, should serve as useful tools in deterring willful or reckless noncompliance with the reporting requirements, the most likely outcome may be administrative remedies such as termination of the contract or other negative effects like an adverse past-performance evaluation.

Although the status of Recovery.gov receives a great deal of attention as people attempt to follow expenditures made under the Act, that transparency is only part of the Board's mandate. The Board continues to focus on its mission of accountability and the attendant goal of minimizing fraud, waste, and mismanagement of funds. Before I go on, I would like to expand briefly on my view of "waste" in the context of the Board's mandate. When I state that the Board is trying to minimize waste, I am referring to an objective assessment of contracting practices, rather than a subjective viewpoint of the nature of a particular expenditure. My view is that – aside from being mindful of the Recovery Act's flat-out prohibition on funding for aquariums, zoos, and the like – the purpose of the Board is not to weigh in on spending choices that come down to an agency's judgment or opinion. Such decisions are the result of political and policy determinations made by multiple layers of watchful individuals. Instead, when the Board focuses on waste in the spending of Recovery funds, we will be looking at the incurring of unnecessary costs due to ineffective practices or controls.

To achieve our goal of minimizing fraud, waste, and mismanagement of funds, the Board is coordinating its oversight activities with federal agencies, including IGs, and state officials. For example, the Board is working with OMB to develop a process whereby agencies, OMB, and IGs will work together to identify programs with the highest risk.

One overarching and widely recognized risk is the lack of procurement professionals in the federal government. The Board is keenly aware of this risk, as one of our functions is to review whether agencies have sufficient qualified acquisition and grant personnel overseeing Recovery funds. Without adequate procurement professionals in place to oversee the spending of funds, the likelihood of fraud, waste, and mismanagement only increases. To that end, the Board is partnering with the Office of Personnel Management (OPM) to host a hiring fair targeting procurement, grant, and auditing personnel. This hiring fair will take place here in Washington on October 27th.

As I have said before, the Board's accountability goal is more expansive than merely detecting fraud or waste that has occurred. Rather, given the vast sums that are being distributed, the Board is striving to prevent fraud before it occurs. Given the preponderance of money that will be disbursed by the states, the Board continues to reach out to each state's own Recovery officials, as well as state auditors. Earlier this summer, Board staff attended the National State Auditors Association's annual conference and, in addition to answering generalized questions about navigating the federal process, distributed a Board-prepared Recovery contract compliance checklist, which was well-received as a helpful tool. In addition, I spoke at the Association of Government Accountants' annual meeting in New Orleans alongside a state and city auditor, and last month I spoke at the annual meeting of the National Association of State Auditors, Comptrollers and Treasurers in Michigan. At that latter meeting, a number of technical questions arose, so in response, last week the Board's IT experts hosted a follow-up teleconference for the chief information officers for at least 30 states. These speaking opportunities have allowed me,

other Board members, and Board staff to carry our message beyond the Beltway to where the vast majority of oversight is actually taking place. Finally, the Board is creating a Recovery.gov training website that will contain a list of training opportunities offered by various IGs and other entities. Based on the training available, we will assess the need for the Board to fill any gaps or facilitate training for requesting entities. As Recovery funds continue to flow down the line, the Board will continue to brainstorm new methods to coordinate with and assist state and local governments.

The Board's Accountability Committee continues to strategize regarding methods of not only receiving reports of fraud, waste, and mismanagement and referring them to the appropriate IG, but also analyzing trends in light of publicly available, open-source data. To that end, the Board has recently put out a solicitation for analytical tools and personnel that can best extract and harness existing information in order to make the Board's referrals more value-added for the IGs and also contribute greatly to risk-based predictions about potential fraud. As with our last major procurement, GSA provided our procurement services and for this contract recommended we use the Service-Disabled Veteran-Owned Small Business GWAC. We hope to have our team in place by early October. The tools procured, along with the personnel, will be supervised by federal fraud investigators and will be housed in our Recovery Operations Center. We have high hopes that this risk-based fraud prevention and detection program will serve as a future model for government oversight.

The Board's contracts compliance staff also continues to review Recovery fund procurements as they occur, coordinating with IG offices on myriad issues. Thus far, we have forwarded more than 100 matters to various IGs to ensure heightened scrutiny of specific procurements that Board staff has identified as potentially problematic. These issues range from incidents of administrative oversight to awards that may raise more serious questions requiring resolution.

The Board will also be implementing a hotline where the public can report potential cases of fraud, waste, or mismanagement of Recovery Act funds. After researching several public and private hotline options, the Board has selected a hotline that will allow citizens to call, e-mail, fax, or mail letters to trained operators, and Board staff will then use this information to refer the complaints to the relevant IGs for investigation or other suitable response. We are hopeful that this enhanced hotline solution will be launched in conjunction with the upgraded Recovery.gov.

Whenever citizens have the potential to assist oversight and enforcement entities, legitimate concerns are raised about whistleblower protection. The Recovery Act explicitly states that employees of non-federal employers cannot be fired, demoted, or otherwise discriminated against as punishment for disclosing to the Board or several other entities any information that they believe is evidence of fraud, waste, or gross mismanagement of Recovery Act funds. If citizens believe they are being retaliated against for such disclosures, they may either contact the Board or submit a complaint directly to the appropriate IG.

Mr. Chairman, while I was serving as the IG at the Department of the Interior, I believe I had a well-deserved reputation for aggressively investigating whistleblower complaints of federal employees. I intend now to extend that practice outside the federal arena. If citizens

trust in their government, they will eagerly participate in the transparency and accountability of the Recovery funds. Because I believe that public contributions to transparency and accountability are critical to the Board's success, I plan to do everything I can to earn and keep safe that public trust.

In conclusion, I look forward to returning to this Committee once we have begun to unveil to the American public the full scope of Recovery spending. Those will be interesting times. I do not claim to be a prognosticator, but I suspect that there will be a strong reaction when the American public sees how the government actually spends its money. Some of the instantaneous reaction may be negative, but I think there will be a substantial positive reaction as well. Whatever the short-term effects, however, I truly believe that the long-term effects of such transparency will be decidedly positive. That is why I remain optimistic that the Board and I will be able to achieve success in this grand experiment created by the Recovery Act, and I firmly believe that what we accomplish here will lay the groundwork for how future government spending is tracked.

Mr. Chairman and members of the Committee, that concludes my prepared testimony. Thank you for this opportunity. I will now be glad to answer any questions you might have.