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AUDIT
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TO: Bruce Nelson
Administrator
Farm Service Agency

ATTN: Philip Sharp
Acting Director
Operations Review and Analysis Staff

FROM: Gil H. Harden
Assistant Inspector General
for Audit

SUBJECT: Controls Over Aquaculture Grant Recovery Act Funds (Phase 2)

This report presents the results of the subject review. Your written response to the official draft report, dated January 4, 2012, is included in its entirety at the end of the report. Excerpts from your response and the Office of Inspector General's position are incorporated into the relevant sections of the report. Based on your written response, we are accepting your management decisions for all audit recommendations in the report and no further response to us is necessary.

Please follow your internal agency procedures in forwarding final action correspondence to the Office of the Chief Financial Officer, Director, Planning and Accountability Division. In accordance with Departmental Regulation 1720-1, final action needs to be taken within 1 year of each management decision to prevent being listed in the Department's annual Performance and Accountability Report.

We appreciate the courtesies and cooperation extended to us by members of your staff during this audit.

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Controls Over Aquaculture Grand Recovery Act Funds (Phase 2)

Executive Summary

This report presents the results of the second phase of our audit to evaluate the Farm Service Agency's (FSA) controls and procedures to ensure that assistance provided under the American Recovery and Reinvestment Act of 2009 (Recovery Act) to aquaculture producers was in accordance with program requirements. The Recovery Act established the Aquaculture Grant Program (AGP), which made \$50 million available to States to assist eligible aquaculture producers for losses associated with high feed costs during the 2008 calendar year. Within the Department of Agriculture (USDA), FSA was responsible for the grant program and coordinated with the State Departments of Agriculture (SDA) to deliver the program. The Recovery Act mandated that the Office of Inspector General (OIG) oversee agency activities to ensure that Recovery Act funds were expended in a manner that maximized economic impact and minimized the risk of improper use. We, therefore, conducted an audit to evaluate whether AGP delivered appropriate funds to eligible aquaculture producers in an effective, accountable, and transparent manner.

Overall, we found that aquaculture producers generally received assistance when they needed it and in accordance with the Recovery Act. However, through our review of the SDAs in 4 of 35¹ participating States—Alabama, Louisiana, Mississippi, and Texas—as well as the selected FSA State and county offices, issues related to the program's delivery and assessment were discovered. Specifically, we determined that eligible producers did not always receive the correct benefits and program reviews did not provide sufficient evidence to satisfy the Recovery Act's emphasis on accountability and transparency. Additionally, we found that not all SDAs had placed AGP funds received into interest-bearing accounts.² In total, based on the four States included in our review, OIG identified improper payments of \$246,845 of the \$33.8 million³ distributed to the selected States. (See exhibit A.)

Our findings are as follows.

- One SDA made incorrect payments to producers who used feed types other than those initially used by the SDAs as the standard basis for payment calculations. This happened because the Recovery Act and the supplemental instructions did not specify the method of computing payments to producers who used alternative types of feed. While the Arkansas SDA implemented a revised, cost-based calculation policy with FSA's concurrence, this policy determination was not disseminated by FSA to all SDAs. OIG issued Fast Report 03703-2-Ch (1) to FSA officials on March 15, 2010, to advise them that all States needed to be notified that the cost-based calculation policy used by the

¹ All 50 States were given the opportunity to participate in AGP, with 10 States declining and 40 States being allocated funds. After the program began, six States withdrew from the program and one State that had declined to participate reversed its decision. Participating States therefore totaled 35.

² Regulations require recipients that are advanced Federal funds to maintain them in interest-bearing accounts.

³ Of the \$33.8 million initially allocated to the four States, only \$27.8 million was dispersed. The remaining funds were returned to the U.S. Treasury Department.

Arkansas SDA for producers who used alternative types of feed, and that underpayments should be corrected.

- FSA State and county officials in Texas and Alabama provided the SDAs with incorrect “person” determinations⁴ for four AGP applicants. These incorrect “person” determinations resulted in overpayments totaling \$229,025. This occurred because FSA State and county office staffs misinterpreted “person” determination rules and did not always adhere to the policy established for AGP.
- FSA did not establish guidelines for conducting the random internal reviews each SDA was required to perform. This occurred because FSA had only limited staff time available to implement and adequately communicate reporting requirements to the SDAs. Consequently, FSA received inconsistent and inadequate information from the SDAs and, therefore, has reduced assurance that the SDAs correctly computed program payments and distributed benefits only to eligible producers.

SDAs did not always place AGP funds they received into interest-bearing accounts or return the interest earned to FSA, which resulted in the forfeiture of potential interest earnings of at least \$12,135. Officials in both States where this occurred said that they had not noticed the requirement to place such funds into interest-bearing accounts and thus were not aware of it.

Recommendation Summary

We recommended that FSA:

- Determine if other SDAs correctly calculated grant payments for aquaculture producers, using the guidance provided to the Arkansas SDA. If not, recalculate the AGP payments made to producers who used alternate feed types, and correct any underpayments made to these producers.
- Make all SDAs aware of policy determinations made by FSA officials.
- Direct Texas FSA State officials to obtain and review the appropriate “person” determination forms from FSA county officials, and collect overpayments resulting from incorrect FSA “person” determinations.
- Establish a process to ensure that random internal reviews, required to be performed by the SDAs, are submitted timely and with sufficient documentation to allow FSA to assess the performance of the SDAs.

⁴ Because of the \$100,000 payment limit on AGP funds that an individual person could receive, “person” determinations were used to ensure that the SDAs did not provide excessive funds to individuals who were members of entities applying to AGP. FSA personnel perform the “person” determinations, using established criteria to determine for each entity how many “persons” were to be considered for payment limitation purposes.

- Ensure that, for any future programs coordinated with the SDAs, recipients deposit funds received in interest-bearing accounts and return any interest earned to CCC as required.

Agency Response

In their response, dated January 4, 2012, FSA officials agreed with Recommendations 4 through 9 in this report. FSA's response to the official draft report is included in its entirety at the end of this report. FSA's positions for Recommendations 1 through 3 were provided in the agency's March 29, 2010, response to Fast Report 03703-0002-Ch (1).

OIG Position

We accept FSA's management decisions for all nine recommendations in this report.

Background & Objectives

Background

The American Recovery and Reinvestment Act of 2009 (Recovery Act), signed into law on February 17, 2009, provided the Commodity Credit Corporation (CCC) \$50 million to carry out a program of grants to States in order to assist eligible aquaculture producers in their recovery from the unusually high feed costs experienced during the 2008 calendar year.⁵ A total of 35 States participated in the resulting Aquaculture Grant Program (AGP) before funds expired on September 30, 2010. Aquaculture producers in these States who raised animal species such as alligators, catfish, crawfish, and tilapia, and who met certain criteria, were eligible to apply for the program.

To qualify for grant funds, the Recovery Act required aquaculture producers to have both:

- produced an aquaculture species during calendar year 2008 for which feed costs represented a substantial percentage (at least 25 percent) of the operation's input costs; and
- experienced a substantial price increase (at least 25 percent) for feed costs above the previous 5-year average.⁶

Agencies involved in administering AGP include State Departments of Agriculture (SDA) in each State which offer services to aquaculture producers, and the Farm Service Agency (FSA), which is primarily responsible for administering and carrying out CCC programs and activities.

The Recovery Act's emphasis on transparency, and on using AGP funds to make a timely and positive impact on the economy, posed a challenge to the agencies that serve aquaculture producers. From the date it was signed into law, the Recovery Act gave FSA 60 days to notify the SDAs of the available funds; 120 days to provide the funds to the SDAs that chose to participate in the grant program; and 180 days to provide a report to Congress detailing how the program was carried out. Before FSA could provide these funds, however, FSA had to develop the protocols under which this new benefit program would operate. This involved creating the Memorandum of Agreement (MOA), which is the grant agreement governing the program and which is signed with each participating SDA; approving each SDA's work plan for distributing funds to eligible aquaculture producers; and allocating funds among the participating SDAs. The SDAs, in turn, had 60 days to distribute their allocated grant assistance to aquaculture producers. Each SDA then had 30 days to report to FSA how it provided the assistance, the amounts it distributed, and the process by which the State determined the levels of assistance provided to eligible producers.

⁵ The Office of Management and Budget (OMB) issued more specific guidance on April 3, 2009, requiring Federal agencies to establish rigorous internal controls, oversight mechanisms, and other approaches. *Updated Implementing Guidance for the American Recovery and Reinvestment Act of 2009*, M-09-15.

⁶ Because the Recovery Act was silent on the definition of "substantial," FSA determined "substantial" to mean at least 25 percent.

Due to the grant program's complex and time-sensitive demands, the Office of Inspector General (OIG) actively monitored and provided recommendations across the AGP's lifecycle. OIG activities took place in two phases.

During the first phase, OIG assessed the program as it developed and the MOA as it was being drafted, identifying policy changes and internal control weaknesses that required immediate corrective actions by FSA program officials since the finalized MOA largely took the place of program regulations for AGP.

During the second phase, we issued two Fast Reports on March 15, 2010, to immediately provide FSA officials with concerns that arose during our audit. The first Fast Report (03703-2-Ch (1)) concerned underpayments made to several producers in Alabama and is discussed more thoroughly in Finding 1. The second Fast Report (03703-2-Ch (2)) dealt with the reallocation of available AGP funds among the SDAs. Because some States exhausted their initial fund allocations and had to prorate levels of assistance among producers, while other States had funds in reserve, we recommended reallocations to better meet the program's needs among the participating States. Subsequent to the issuance of this Fast Report, on July 21, 2010, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act, which includes the requirement that any Recovery Act funds returned to a Federal agency by a State or local government be rescinded and deposited to the General Fund of the Treasury for the sole purpose of deficit reduction.⁷ Based on legal opinions received from both the Office of the General Counsel (OGC) and OIG's Office of Counsel, we determined that the recommended reallocation of funds could not be accomplished under the new law. Therefore, we are no longer reporting this as an issue and are not including any recommendations pertaining to it in this report.

Objectives

Our objectives were to test compliance with procedures and controls developed by FSA and participating SDAs to ensure AGP compliance with Recovery Act requirements. Specifically, we determined if the participating States had acted to assure that: (1) AGP recipients were eligible; (2) AGP funds were timely distributed; (3) program reporting requirements were met; and (4) sufficient oversight existed to ensure that AGP was administered in an accountable and equitable manner.

⁷ Public Law 111-203: Title XIII - Pay It Back Act, Section 1306.

Section 1: Control and Use of Aquaculture Grant Recovery Act Funds

Finding 1: One State Department of Agriculture Underpaid Tilapia Producers

When computing AGP payments for tilapia producers, the Alabama SDA did not take into account the fact that three of its seven participating tilapia producers used a less expensive type of feed in their operations than that which the SDA had used to compute its base cost for the 5 years preceding 2008. This occurred because neither the Recovery Act itself nor the supplemental instructions contained in FSA's Memorandum of Agreement (MOA) specified the method of computing payments to producers who used alternative types of feed. In the case of these producers, the SDA's payment calculations caused their previous 5-year average feed costs to be inflated, and resulted in the three producers being underpaid. In addition, this computation method caused a fourth producer to be incorrectly determined ineligible to participate in the program. In total, the SDA underpaid the four producers \$5,177. As noted in our Fast Report issued on March 15, 2010, this issue could also exist with tilapia producers in other States or with other types of aquaculture producers who likewise used alternative feed types in their operations.

To be eligible for participation in AGP, aquaculture producers were required to have experienced at least a 25 percent increase in feed prices in calendar year 2008 as compared to the average price of the previous 5 years.⁸ The 5-year average price-per-ton for each aquaculture species (e.g. catfish, tilapia) was computed on a Statewide basis⁹ by each participating State, and this was compared with each producer's own per-ton 2008 feed price to determine the amount of reimbursement a producer would receive.¹⁰

The guidance, as written, assumed that all producers of a given type of aquaculture species used the same type of feed in their operations as those upon which the States based their 5-year average feed prices. However, this was not always the case for tilapia producers who participated in AGP. This issue came to the attention of FSA officials in September 2009, when the Arkansas SDA notified them that they had encountered a case in which a tilapia producer had actually used low protein catfish feed in his operation, both during 2008 and in the preceding 5-year period. The SDA's determination was that because low protein catfish feed was significantly less expensive than the high protein catfish feed that tilapia producers normally used, it would be unfair to the producer to compare his actual 2008 feed purchases to a 5-year average that did not conform to his actual purchasing patterns. Therefore, when determining the producer's eligibility and the allowable program payments, Arkansas SDA officials based the 5-year average on the lower-priced catfish feed. FSA officials concurred with the Arkansas SDA's determination, but did not disseminate this as policy to the other participating States.

⁸ According to the Recovery Act, these funds are intended to assist producers with losses associated with high feed costs during the 2008 calendar year (H.R.1, Sec. 102, (d)(2)(a)).

⁹ MOA, Section C.5.

¹⁰ MOA, Section D.3.b.

In our review at 4 of the 35 States that participated in AGP we found that one of these, Alabama, had underpaid 3 of its tilapia producers. For these producers, the SDA computed the 5-year (2003-2007) average cost-per-ton of high protein catfish feed within the State at \$376 per ton. Unlike the Arkansas SDA, however, Alabama officials applied the 5-year average cost for high protein catfish feed to all tilapia producers, regardless of the type of feed they actually purchased and used during this period. In all, seven tilapia producers participated in Alabama's AGP, three of whom used high protein catfish feed in their operations. In these cases, we found that the SDA correctly determined both the applicants' eligibility and the amount of AGP payments to which they were entitled.

The other four tilapia producers, however, used low-protein catfish feed in their operations between 2003 and 2007, whose lower 5-year average price - \$237 per ton, or \$139 less than that of high protein catfish feed - was not reflected in the SDA's determinations of eligibility or its payment computations. For instance, when one tilapia producer applying for AGP stated that he paid \$504.64 per ton for low protein catfish feed, the Alabama SDA determined that the increase in feed price was \$128.64 per ton by subtracting the average high protein catfish feed price from his actual feed price to determine the extent of the 2008 price increase the producer had experienced ($\$504.64 - \376). Based on the producer purchasing 12.34 tons of feed, the Alabama SDA concluded that the producer should be paid a total of \$1,587.¹¹ Had the SDA instead compared the producer's actual 2008 feed costs to the comparable 5-year average cost of low protein catfish feed, the producer's increase in feed costs would have been computed at \$267.64 per ton instead of \$128.64, for a total reimbursement of \$3,303.¹² Similar issues were noted with the other cited tilapia producers, and we determined that in total the three producers were underpaid a total of \$4,777.

The remaining Alabama producer who used low protein catfish feed was determined ineligible for program participation based on this same computation. To be eligible for AGP, a producer's increase in feed prices for 2008 had to be at least 25 percent higher than the 2003-2007 average feed price.¹³ Based on the 5-year average price of high protein catfish feed, SDA officials determined that a producer's 2008 feed price would need to be \$470¹⁴ per ton, whereas his actual cost was only \$336.92 per ton. Had the SDA instead used the low protein catfish feed threshold of \$296.25,¹⁵ the producer would have been eligible for a payment of \$400¹⁶ for 2008.

Officials at the Alabama SDA stated that they believed that basing a tilapia producer's 5-year average feed price on the cost of high protein catfish feed was the correct method, and therefore did not seek clarification from FSA. As noted earlier, however, Arkansas SDA officials also encountered this same situation, and FSA officials had concurred with their proposal to base the 5-year average cost on the type of feed the producer had actually purchased. Although FSA's discussions with Arkansas took place after the Alabama SDA had made its determinations on

¹¹ $\$504.64 - \$376.00 = \$128.64 \times 12.34 \text{ tons} = \$1,587.42$.

¹² $\$504.64 - \$237.00 = \$267.64 \times 12.34 \text{ tons} = \$3,302.68$.

¹³ MOA, Section D.3.b.

¹⁴ $\$376 \times 1.25 = \470 .

¹⁵ $\$237 \times 1.25 = \296.25 .

¹⁶ $\$336.92 \text{ (producer's actual price per ton in 2008)} - \$237 \text{ (5-year average price for low protein catfish feed)} = \$99.92 \times 4 \text{ tons purchased in 2008} = \399.68 .

these four producers, Alabama still had AGP funds available at that time and could have amended its determinations if its officials had been aware of FSA's discussions with the Arkansas SDA.

We reported this issue to FSA on March 15, 2010, and recommended that the agency take actions as needed to ensure that AGP payments to tilapia producers, both in Alabama and in other participating States, were calculated using the 5-year average for the type of feed they actually used. We also recommended that FSA officials implement a process to disseminate AGP policy determinations to all participating SDAs.

Recommendation 1

Instruct the Alabama SDA to recalculate the four tilapia producers' grant payments using the 5-year catfish average price and thereby correct underpayments totaling \$5,177.

Agency Response

In FSA's response to the Fast Report, dated March 29, 2010, agency officials concurred with the recommendation, stating that they would instruct the Alabama SDA to recalculate AGP payments to the four tilapia producers and would reallocate \$5,177 to Alabama from AGP national reserve to correct the underpayments. This instruction was sent to the SDA on September 15, 2010.

OIG Position

We accept FSA's management decision.

Recommendation 2

Determine if other SDAs correctly calculated grant payments for aquaculture producers, using the guidance provided to the Arkansas SDA. Take appropriate action to correct any errors found.

Agency Response

In FSA's response to the Fast Report, dated March 29, 2010, agency officials concurred with the recommendation and stated that the SDAs providing assistance to tilapia producers would be contacted to ensure that AGP payments were calculated using the appropriate 5-year average feed price. FSA officials agreed to allocate additional funding to the SDAs, as needed, if it is determined that the correct 5-year average feed price was not used in determining AGP payments. On July 28, 2011, FSA officials informed us that they have completed this process.

OIG Position

We accept FSA's management decision.

Recommendation 3

Ensure that policy determinations made by FSA Headquarters are provided to all participating SDAs if this program is funded in future years.

Agency Response

In FSA's response to the Fast Report, dated March 29, 2010, agency officials agreed with the recommendation. They stated that in the event an aquaculture disaster assistance program is funded in the future, they would take the necessary steps to ensure that all participating States timely receive all program policy determinations.

OIG Position

We accept FSA's management decision.

Finding 2: FSA Needs To Ensure It Provides Correct "Person" Determinations to the SDAs

Of the four States we reviewed, we found that the SDAs in two States received incorrect information from FSA State or county offices regarding persons eligible to receive AGP grants. This occurred because personnel in FSA State and county offices in Alabama and Texas did not follow procedures, misinterpreted regulations, and/or mistakenly applied regulations applicable to person determinations in 2009 instead of instructions that had been applicable in 2008 when the losses were experienced, as mandated by the Recovery Act. In addition, the Texas FSA State office did not follow the agency's documentation requirements, which prevented errors from being timely discovered and corrected. Because the SDAs relied on the information FSA provided when calculating AGP payments, four AGP recipients were overpaid by a total of \$229,025, including feed credits¹⁷ of \$129,025 and cash of \$100,000. (See exhibit A.)

Due to the complicated and multiple ownership relationships that often arise in agricultural businesses, FSA has established guidelines that define individual applicants (i.e., "persons") eligible to participate in Government programs. These guidelines, which are documented through "person" determination forms, are critical in distributing benefits in programs such as AGP, which must allocate limited funds among eligible participants.¹⁸ The MOA between FSA

¹⁷ The Texas SDA issued payments to AGP recipients in the form of feed credits, while the Alabama SDA used cash to compensate recipients. SDAs who used feed credits to distribute AGP funds entered into agreements with feed mills, which required the feed mills to apply feed credits to eligible aquaculture producers for the purpose of future aquaculture feed purchases.

¹⁸ "County Committee Worksheet for "Actively Engaged In Farming" and "Person" Determinations," Form CCC-503A.

and each of the participating SDAs included payment provisions that limited the amount of AGP funds an applicant could receive to no more than \$100,000 per “person,” based on each applicant’s business structure as it existed during calendar year 2008. The MOA also referred to rules governing “person” determinations for those individuals and entities participating in AGP.¹⁹

Because of FSA’s concerns about ensuring consistency and equity, participating SDAs were to use “person” determinations for AGP that originated with FSA officials.²⁰ FSA therefore instructed its State and county offices to provide the SDAs with any “person” determinations, as they existed in 2008, that were needed to compute payments to AGP recipients. FSA county officials were to provide the FSA State offices with copies of any existing “person” determination forms for producers identified by SDA employees, and to complete “person” determination forms as necessary, based on information provided by producers applying for AGP.²¹ The FSA State offices were then to provide the “person” determinations to the SDAs for use in determining AGP payment amounts for which aquaculture producers were eligible.

During our review of “person” determinations made for AGP, we found that one Alabama FSA county office had misinterpreted the rules pertaining to “person” determinations involving husbands and wives. In this instance, a catfish farm that was owned by a husband and wife, each with 50 percent ownership, had a preexisting single “person” determination, and was therefore eligible for an AGP payment not to exceed \$100,000. We discovered that during the processing of AGP applications, a second catfish farm, solely (100 percent) owned by the same husband, erroneously received a separate “person” determination, and was therefore determined eligible for a second AGP payment of up to \$100,000.²² The Alabama FSA State office did not agree with our conclusion about the correct “person” determination for this producer and contacted FSA Headquarters to resolve the question. Officials at FSA Headquarters, however, agreed with our conclusion that the “person” determination for this case had been incorrectly made and informed the State office of the decision. As a result of the FSA county office’s incorrect “person” determination, this producer received excess payments in cash totaling \$100,000.

We found that an FSA county office in Texas likewise provided an incorrect “person” determination for one AGP applicant, a husband and wife who were the majority owners of both a shrimp company and a fish ranch that operated under another name. The FSA county office correctly determined that the husband and wife were considered a single “person” for payment limitation purposes. However, when recording the information onto a spreadsheet provided by the FSA State office, county office staff made typographical errors that indicated that the shrimp

¹⁹ MOA, Section C.7.

²⁰ FSA issued Notice DAP-311 on June 18, 2009.

²¹ FSA Handbook 1-PL, *Payment Limitations*, dated January 24, 2003, provides guidance for FSA county officials to use when making all “person” determinations.

²² According to the FSA Handbook, if a husband and wife hold a substantial beneficial interest in more than one entity and both entities are eligible to receive an AGP payment, the two should be combined as one person. In this instance, because the husband held a substantial beneficial interest in the two entities receiving AGP payments, the two catfish farms should have been combined for person determination purposes and the applicants should have received an AGP payment based on a single person determination that would have limited the AGP payment to one payment of \$100,000. FSA Handbook 1- PL (Rev.1) Amend. 41, paragraph 253 part B, dated 10-14-2003.

company and the fish ranch were two separate entities for payment limitation purposes. The error was not detected because the FSA State office failed to follow the documentation requirements established for AGP. Instead of requiring the FSA county offices in the State to provide each “person” determination form, the State office had only required them to complete a spreadsheet that showed the “person” determination made for each AGP applicant. This erroneous information was provided to the SDA and was used as the basis for the producer’s AGP payments, resulting in an overpayment in feed credits of \$90,085. FSA State officials in Texas agreed that if the forms had been collected as required, the State office could have confirmed the accuracy of the “person” determinations prior to providing the list to the SDA, and would likely have identified the mistake.

This error led us to identify another error associated with this same husband and wife and a third entity, a shrimp farm, which they owned until December 2008 when they sold it to their son and his wife. The son and wife applied for AGP, were provided a “two-person” determination by FSA, and received an AGP payment in feed credits of \$38,940. However, we concluded that although the shrimp farm had suffered a loss in 2008, the new owners were not eligible for AGP because they themselves had not suffered a loss for 2008, having only taken possession of the operation on December 31, 2008. Rather, the loss was incurred by the husband and wife who owned the farm throughout 2008; however, they had already received the \$100,000 maximum AGP payment and were thus ineligible to receive any of the \$38,940 of feed credits which were paid to the operation. Overall, we found the Texas SDA’s reliance on FSA’s erroneous information led to the producers being overpaid a total of \$129,025²³ in feed credits.

Because AGP was expected to be a one-time program, the “person” determinations made by the FSA county offices for AGP were not included in FSA’s normal control procedure, which involves performing compliance reviews of FSA program participant files for accuracy. It is therefore vital that FSA State officials follow procedures established by FSA Headquarters to deter erroneous AGP payments, including obtaining and reviewing copies of the forms CCC-503A completed by FSA county offices.

Recommendation 4

Instruct the Alabama and Texas SDAs to collect overpayments of \$100,000 and \$129,025, respectively, from the cited producers.

Agency Response

In FSA’s response dated January 4, 2012, agency officials stated that the Texas SDA has already requested and received the overpayments in the amount of \$129,024.66, and since the funds were not required to be returned to FSA, the Texas SDA redistributed the funds to other eligible aquaculture producers. However, FSA officials stated that under the default determination rules in Title 7 Code of Federal Regulations (CFR) Part 1400.2(f) and in FSA Handbook 1-PL, they could not collect the \$100,000 Alabama overpayment because more than 60 days had passed between the date of the initial payment and the date the error was discovered. FSA officials

²³ \$90,085 + 38,940 = \$129,025.

agreed to report the \$129,025 and \$100,000 as overpayments on the quarterly High Dollar Overpayment Report provided to the OCFO.

OIG Position

We accept FSA's management decision.

Recommendation 5

Direct the Texas FSA State office to obtain and assess the required documentation (forms CCC-503A) for all participating AGP producers in the State to verify the accuracy of the "person" determinations made by the FSA county offices.

Agency Response

In FSA's response, dated January 4, 2012, agency officials stated that due to the time and cost of implementing the recommendation, the agency proposed an alternative method of verifying the accuracy of the "person" determinations. The alternative method would require the Texas FSA State office to obtain the required documentation (Form CCC-503A) from the county offices for all Texas AGP producers who are not individuals (e.g., husbands, wives, and corporations). The Texas FSA State office will review the "person" determinations to verify the accuracy of the determinations and report its findings to the FSA national office by January 31, 2012.

OIG Position

We accept FSA's management decision.

Recommendation 6

Instruct the Alabama and Texas FSA State offices to review all "person" determinations related to AGP to ensure they were correct and that payments were made to only eligible producers.

Agency Response

In FSA's response, dated January 4, 2012, agency officials stated that due to the time and cost of implementing the recommendation, the agency proposed an alternative method of ensuring "person" determinations and payments related to AGP were correct. The Texas and Alabama FSA State offices will conduct a limited initial review of 10 percent of the AGP applicants in their States. The FSA State offices will focus on AGP applicants that are corporations and husbands and wives. If findings are discovered in the initial review, the Alabama and Texas FSA State offices will review additional applications. The initial review will be completed and a report sent to the FSA national office and SDAs by January 31, 2012. If additional reviews are warranted, the findings will be reported by February 1, 2012. After receiving the findings, the Texas and Alabama SDAs will be required to review the AGP payments to determine if

payments were correct. The SDAs findings will be provided to the FSA national office by March 1, 2012.

OIG Position

We accept FSA's management decision.

Finding 3: FSA Lacked Adequate Controls Over Internal Reviews Performed by the SDAs

Although FSA was responsible for overseeing AGP nationwide, we found that the SDAs did not provide sufficient internal review information to enable FSA to assess the operations of AGP within their States. Although FSA established a key internal control for AGP by requiring that all participating SDAs perform internal reviews of their AGP operations and submit these to FSA, the agency did not provide the SDAs with specific reporting requirements to be followed, including what documentation and information should be submitted when the internal review results are reported to FSA. In addition, according to an FSA official, the agency did not have sufficient staff assigned to review the reports the SDAs were submitting. As a result, FSA received inconsistent and inadequate information from the SDAs and therefore has reduced assurance that the SDAs correctly computed program payments and distributed benefits only to eligible producers.

Office of Management and Budget (OMB) guidance requires Federal agencies to establish rigorous internal controls, oversight mechanisms, and other approaches to meet the transparency and accountability objectives of the Recovery Act.²⁴ To ensure that aquaculture producers were equitably compensated for losses, and to ensure that such losses were verified, Section F.1 of the MOA specifically required each SDA to perform random internal reviews of 5 percent of the total applications received, and to provide the results of the reviews to FSA for further review by agency officials. However, FSA did not specify what information and documents the SDAs were to submit, or how FSA would assess the program's operations.

Our review of the internal review documents that 22 SDAs submitted to FSA as of May 25, 2010,²⁵ disclosed that internal review submissions were not consistent from State to State. These submissions ranged from simple emailed statements reporting that internal reviews had been completed (e.g., Illinois and Nebraska), to detailed reports substantiated by documentation (e.g., California, Oklahoma, South Dakota, and Utah). While the former offered no substance to FSA officials for review, the latter demonstrated the importance of providing documentation for further review. In one instance, our review of supporting documents provided by South Dakota's SDA disclosed that improper AGP payments had been made. While FSA officials might also have noted the problems in South Dakota had they conducted their review first, they would have

²⁴ *Initial Implementing Guidance for the American Recovery and Reinvestment Act of 2009*, M-09-10, dated February 18, 2009.

²⁵ As of July 26, 2011, FSA officials provided documentation that they had obtained and reviewed all internal reviews for the remaining 13 participating States. However, we did not review any documentation for these 13, since they were received after the completion of our fieldwork.

been unable to do so for any of the other 16 SDAs (in addition to Illinois and Nebraska) that provided no documentation to support the conclusions reached in their State-level reviews.

As discussed above, Illinois and Nebraska provided no information by which FSA could evaluate the adequacy of the reviews, or determine if the goals of AGP had been met. Further, in one of these instances, the statement submitted to FSA indicates that State internal reviews did not appear to fulfill the intent of the requirement as established in the MOA. Illinois SDA officials submitted an emailed statement certifying that the inspected procedures, protocols, and calculations complied with the guidelines contained in the MOA. The email stated that internal reviews of all applications and files had not yet been conducted but would be conducted in the future. FSA was not provided any further documentation to show when or if the reviews were ever completed, or their results.²⁶

The review results submitted by the Nebraska SDA likewise consisted of an email, although in this case the SDA certified that reviews had been conducted of all applicants and that producer eligibility and grant funding had been evaluated. The Nebraska SDA has not, as of May 25, 2010, provided documentation that would substantiate this claim.²⁶ South Dakota SDA officials sent an email similar to those of Illinois and Nebraska, noting that it had reviewed all five producers that received a payment under AGP and that it determined the financial information associated with the five producers to be correct.

In response to an FSA query about the elements of AGP that had been reviewed, the South Dakota SDA sent FSA copies of the forms documenting the internal review performed on the AGP payment received by one of its five participating aquaculture producers. In reviewing the documentation submitted for this producer, we found that the producer had not been eligible to participate in AGP because that entity had not experienced a substantial price increase in 2008 as defined in the MOA.²⁷ The SDA's review did not disclose the borrower's ineligibility, which resulted in an improper payment of \$508.

When we compared the information in the MOA signed by the SDA with the information initially provided in the work plan South Dakota submitted to FSA, we found that three of the remaining four producers that had participated in South Dakota may similarly not be eligible for AGP.²⁸ This was because South Dakota SDA officials had not followed the procedure for defining a "substantial price increase" by ensuring that the 2008 average feed prices paid by producers exceeded the previous 5-year average price for that species by at least 25 percent. The discovery of these other potential errors was only possible because of the amount of documentation that South Dakota SDA personnel submitted in response to the FSA query. In the

²⁶ We determined that as of July 26, 2011, FSA has obtained and reviewed all internal reviews for participating AGP States. We did not review and/or verify what if any documentation was provided to FSA.

²⁷ FSA determined that to have experienced a "substantial" price increase, a producer must have had at least a 25 percent increase of 2008 feed costs above the previous 5-year average cost established for the applicable species. See Section D.3.B of the MOA.

²⁸ The SDA's work plan did not provide sufficient information to determine the exact amounts of the overpayments to the three producers. As a result of our finding, the agency requested additional information from the SDA and found three additional overpayments made to producers, totaling \$1,881 and one underpayment totaling \$2,389. FSA did not seek to have the payments returned, but instead reached an agreement under which the SDA would use State funds to make the payment to the underpaid producer.

case of other SDAs such as Illinois or Nebraska, neither OIG nor FSA would be able to evaluate the adequacy of the reviews without obtaining additional information from the SDAs.²⁹

FSA officials acknowledged that there were problems with some of the reviews and stated that they had assigned another person to assist with obtaining the results of the internal reviews. They also stated that they planned to wait until they received all the various types of internal review submissions from the various SDAs before they would develop guidelines pertaining to reviews. However, awaiting the submissions of internal review results from all SDAs before determining the guidelines they were to meet would likely result in the SDAs having to duplicate the internal reviews that did not meet the guidelines and would delay effective assessment of the reviews by FSA. Furthermore, nearly all the funds had been disbursed at the time FSA received the SDA internal review submissions. When FSA enters into program oversight and implementation agreements with other agencies in the future, we believe that FSA should establish specific review protocols as well as standardized reporting requirements.

Recommendation 7

Instruct the South Dakota SDA to collect the \$508 in improper AGP payments made to the cited producers.

Agency Response

In FSA's response, dated January 4, 2012, FSA officials stated that the South Dakota SDA had identified AGP overpayments totaling \$2,389.01 to four producers in the State, as well as to a single producer whose underpayment exceeded this amount. FSA officials stated that their main concern, and that of the SDA, was for the producer who was underpaid; and to avoid the need to collect diminutive amounts from the other four producers, the FSA national office reached a collaborative agreement under which the SDA would use its own funds to reimburse the underpaid producer by \$2,389.01. FSA officials also stated that through discussions with Departmental officials and the South Dakota SDA, that due to the minimal amount involved, no action would be taken to collect the \$508 improper payment cited in the report.

OIG Position

We accept FSA's management decision.³⁰

Recommendation 8

Establish a process, in any similar programs funded in the future, to ensure the results of the internal reviews are received and reviewed timely and to ensure that sufficient documentation is

²⁹ We did not evaluate what if any documentation was provided to FSA.

³⁰ The difference between the \$508 we reported and the \$2,389 that FSA identified occurred because FSA agreed to review other payments in the State and identified another three improper payments totaling \$1,881.

submitted to permit FSA to be able to conclude on the accuracy and completeness of the internal reviews.

Agency Response

In FSA's response, dated January 4, 2012, agency officials concurred with the recommendation. FSA officials agreed to require standard criteria in future grant programs. The criteria would assist FSA in determining the accuracy and completeness of internal reviews submitted by the States. In addition, FSA would require specific documentation be included in the internal reviews, such as a spreadsheet which includes the payment calculations for all applicants in the State. FSA will take the necessary steps to ensure that internal reviews are timely filed by States.

OIG Position

We accept FSA's management decision.

Finding 4: AGP Funds Allocated to the SDAs Were Not Always Placed Into Interest-Bearing Accounts

During our audit, we discovered that not all SDAs had placed AGP funds received into interest-bearing accounts and included the interest earned when returning unneeded AGP funds to CCC. Specifically, we found that the Alabama and Arkansas SDAs did not maintain undisbursed AGP grant funds in interest-bearing accounts. Officials from both States said that this occurred because they had not noticed the requirement to place such funds into interest-bearing accounts and thus were not aware of it. Because the two SDAs failed to place AGP funds totaling almost \$18 million into interest-bearing accounts, CCC forfeited potential interest earnings of at least \$12,135.

OMB regulations require recipients that are advanced Federal funds to maintain them in interest-bearing accounts.³¹ Section G.3 of the MOA between FSA and the participating SDAs reiterates this requirement and, in addition, instructs States to remit any interest earned to CCC.

Alabama's SDA received and deposited into a non-interest-bearing account over \$10 million of AGP funds advanced on June 19, 2009. Over \$9 million was then obligated and distributed to eligible aquaculture producers over the next few months. The SDA returned the unused AGP funds of just over \$1 million to FSA on October 8, 2009, or 112 days after the funds had originally been deposited. When we discussed the issue of using an interest-bearing account for AGP funds, SDA officials stated that it had been an oversight on their part, even though they confirmed they had read the MOA before signing it.

Similarly, the Arkansas SDA received over \$7 million on June 12, 2009, and deposited the funds into a non-interest-bearing account. It distributed over \$6 million to aquaculture producers over the next few months, returning just over \$740,000 to FSA on March 30, 2010, or 292 days after

³¹ *OMB Circular A-110*, Section 215.22. (Revised 11/19/93, as further amended 9/30/99.)

receiving them. An official from the Arkansas SDA also explained that it was an oversight, stating that the SDA was a relatively new department of State government and its employees had not had any experience with Federally funded programs.

Because of the large number of payments and the length of time over which the AGP payments were disbursed by the SDAs, we could not estimate the full amount of interest that could have been earned. But, using only the unused AGP funds returned to CCC by the Alabama and Arkansas SDAs, the period of time the funds were held by the SDAs, and a simple savings account interest rate of 1.34 percent, we estimated that interest totaling at least \$12,135 would have been earned and returned to CCC.³²

Based on the most recent information received from the FSA Financial Management Division, at least five additional SDAs neither earned nor returned interest on the AGP funds they received. These SDAs received a total of almost \$1.3 million and returned just under \$930,000 to CCC without interest. This may impact additional SDAs also, including those that did not return any grant funds to CCC because they disbursed all their AGP funds to eligible producers. Therefore, CCC lost the interest that could have been earned by SDAs' use of interest-bearing accounts; the interest earned could have been used by CCC to support and protect farm income and prices.

FSA made the use of interest-bearing accounts for AGP funds a requirement of participation in the MOAs signed with the SDAs, and many States had returned to CCC the interest that had been earned along with any grant funds received that had not been disbursed to AGP participants. However, as discussed above, not all SDAs had done so. FSA should consider methods to better assure interest is earned on CCC funds and returned as required. This might include reminding the SDAs of the requirement to keep the funds in interest-bearing accounts when program funds are initially transferred from CCC, and requesting the Finance Office to notify program staff for follow up when recipients return unexpended funds, but include no interest. However it is accomplished, FSA should ensure that interest-bearing accounts are used by recipients of CCC funds in any similar future program and interest earned is returned to CCC.

Recommendation 9

For future programs, ensure that the SDAs place AGP funds into interest-bearing accounts and return interest earned to CCC.

Agency Response

In FSA's response, dated January 4, 2012, agency officials concurred with the recommendation. FSA officials agreed to take the necessary action in any similar future program to verify that States deposit program funds into an interest bearing account before the funds are released to the States. FSA will review banking information submitted by the States and verify that the accounts are interest bearing.

³² Alabama $\$1,014,559 \times 1.34 \text{ percent} / 365 \times 112 = \$4,172$.
Arkansas $\$742,795 \times 1.34 \text{ percent} / 365 \times 292 = \$7,963$.
Total $\$4,172 + \$7,963 = \$12,135$.

OIG Position

We accept FSA's management decision.

Scope and Methodology

We conducted our audit of AGP to assess the adequacy of controls and procedures developed under the general guidelines of the Recovery Act at the FSA national office in Washington, D.C.; at the Alabama, Louisiana, Mississippi, and Texas SDAs; and at FSA State and county offices located within those States.

We selected four States for visits based upon the amount of AGP funds allocated to them and the method used by the States to make AGP payments to eligible producers. The States selected received over 67 percent (over \$33.8 million) of the \$50 million provided to FSA for AGP, and provided AGP payments to eligible producers based on one of the two approved methods of dispensing payments: by cash payments or in the form of feed credits, vouchers, or similar documents to be applied to future aquaculture feed purchases. During the course of this phase of our audit, we expanded our scope to include interviews with officials of the SDA in Arkansas with regard to information we had sought from them during the first phase of the audit. We questioned Arkansas SDA officials specifically about their internal review process for AGP and about their use of an interest-bearing account for AGP funds.

We reviewed 163 of 606 applications submitted by aquaculture producers in the four States we visited, selecting these applications for review based on the amount of grant funding received or our judgment of similarities among producers' names or addresses;³³ and to include a cross section of aquaculture species. Of the 163 applications reviewed, we visited 50 applicants (producers) to confirm their eligibility and to observe their operations. We selected the 50 producers based on size and type of payment received, geographic location, and similarities among names or addresses. In addition, we selected 20 FSA county offices to visit based on the locations of the producers visited. We also interviewed officials at the four FSA State offices. We conducted our fieldwork between October 2009 and January 2011.

To accomplish our objectives, we:

- Reviewed applicable laws, regulations, and guidance related to AGP.
- Reviewed FSA handbooks, policies, and procedures related to AGP.
- Conducted on-site interviews of SDA officials from four States to verify procedures used to distribute AGP funds and a telephone interview with SDA officials from Arkansas.
- Reviewed SDA work plans to ensure compliance with Recovery Act provisions.
- Interviewed SDA officials to confirm that the application processes and eligibility determinations were performed on an equitable basis.
- Reviewed producer applications and eligibility criteria submitted for approval.

³³ A similarity of name or address may indicate a family or business association that could impact program eligibility or grant payment amount due to payment limitation provisions.

- Interviewed FSA State and county office officials about “person” determinations provided to the SDAs as part of the eligibility determinations.
- Assessed the “person” determinations made by FSA county office officials and the process of providing them to the SDAs.
- Interviewed producers to confirm the information provided to the SDAs and to determine if the producers received the proper payments and were treated equitably.
- Reviewed the supporting documentation for the self-certification applications submitted by the producers we visited.
- Assessed the results of the 22 internal reviews the SDAs submitted to FSA by May 25, 2010.

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

Abbreviations

AGP.....	Aquaculture Grant Program
CCC.....	Commodity Credit Corporation
FSA	Farm Service Agency
MOA	Memorandum of Agreement
OGC	Office of the General Counsel
OIG	Office of Inspector General
OMB	Office of Management and Budget
Recovery Act	American Recovery and Reinvestment Act of 2009
SDA.....	State Department of Agriculture
USDA.....	Department of Agriculture

Exhibit A: Summary of Monetary Results

Finding Number	Description	Amount	Category
1	Improper Payments Made to Tilapia Producers	\$ 5,177	Underpayments and Over Collections
2	Improper Payment Made to Producers Based on Erroneous Person Determinations	\$229,025	Questioned Costs/Loan, Recovery Recommended
3	Improper Payment Made to Producers Identified Through SDA Internal Reviews	\$ 508	Questioned Costs/Loan, Recovery Recommended
4	Interest on Federal Funds Not Earned and Returned to FSA	\$ 12,135	Funds to Be Put to Better Use
TOTAL		\$246,845	

**USDA'S
FARM SERVICE AGENCY
RESPONSE TO AUDIT REPORT**



United States
Department of
Agriculture

Farm and
Foreign
Agricultural
Services

Farm
Service
Agency

Operations Review
and Analysis Staff

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Date: January 4, 2012

TO: Director, Farm and Foreign Agriculture Division
Office of Inspector General

FROM: Philip Sharp, Acting Director
Operations Review and Analysis Staff

SUBJECT: Responding to Official Draft Report: Controls Over Aquaculture Grant Recovery Act Funds Audit 03703-2-CH (Phase 2)

The Deputy Administrator for Farm Programs has provided the following information to reach management decision on Recommendation 4 through 9 of the subject audit. We had previously responded to Recommendations 1 through 3 in a memorandum dated March 29, 2010, and management decision was reached on those recommendations.

Recommendation 4

With respect to the Texas State Department of Agriculture (SDA), the Texas SDA has been instructed to collect back \$129,025 in overpayments. The Texas SDA received a refund check in the amount of \$38,939.86 from [...], made on behalf of [...], and a check in the amount of \$90,084.80 from [...], made on behalf of [...]. (Copies of the deposited checks from [...] and [...] will be provided under separate cover). Both overpayments will be reported on the High Dollar Overpayment Report that is reported quarterly to the OCFO.

With respect to the Alabama SDA and the \$100,000 overpayment made to [...], the default determination rules found at 7 CFR Part 1400.2(f) apply; therefore, [...] may keep the \$100,000 AGP payment. [...] was issued the \$100,000 AGP payment because the initial payment eligibility determination, that [...] was a separate “person” from [...], was incorrect.

As provided in procedure in 1-PL, subparagraph 398 A, if a determination is found to be in error, but not within 60 days of the date the producer filed form CCC-502, the initial determination shall be considered a “default” determination. The regulations at 7 CFR section 1400.2(f) provides the following relating to a default determination:

The initial payment eligibility determinations will be made within 60 days after the required forms and any other documentation needed in making such determinations are received in the county FSA office. If the determination is not made within 60 days, the producer will receive a determination for that program year that reflects the determination sought by the producer unless the Deputy Administrator determines that the producer did not follow the farm operating plan that was presented to the county or State committee for such year.



Since more than 60 days have passed since the initial payment eligibility determination for [...] was made, the determination that [...] is one person separate and apart from any other entity for payment limitation purposes stands.

The \$100,000 payment will be recorded as an improper payment on the High Dollar Overpayment Report that is reported quarterly to the OCFO. Therefore, an accounts receivable for the \$100,000 improper payment will not be established and/or offset.

Recommendation 5

Due to the fact that recommendation 5, in conjunction with recommendation 6, would be extremely time consuming and costly and due to the heavy workload at both the Texas State and county FSA offices, an alternative approach to recommendations 5 is proposed. With respect to recommendation 5, the Texas FSA State office will be required to obtain from the county offices the required documentation (CCC-502's and CCC-503A's) for all participating Texas AGP producers who are not individuals, specifically focusing on AGP applicants that are corporations and husbands and wives. The Texas FSA State office will review the person determinations to verify the accuracy of the determinations made by the county offices. The Texas FSA State office will be required to provide a report of their findings to the National Office by January 31, 2012.

Recommendation 6

Due to the fact that recommendation 5, in conjunction with recommendation 6, would be extremely time consuming and costly and due to the heavy workload at both the State and county FSA offices, an alternative approach to recommendation 6 is proposed.

The Texas and Alabama FSA State offices will be required to conduct a limited, initial review of "person" determinations made for 10 percent of the AGP applicants in the State, specifically focusing on AGP applicants that are corporations and husbands and wives. If numerous findings are discovered during the initial review, the Alabama and Texas FSA State offices will be required to complete additional reviews of AGP applicants in the States. The Texas and Alabama FSA State offices will be required to complete their initial review and provide their findings to the National Office and SDA's by January 31, 2012. If additional reviews are required, the Texas and Alabama FSA State offices will be required to complete additional reviews and provide the findings to the Agency by February 15, 2012. After receiving the findings, the Texas and Alabama SDA's will be required to review the AGP payments made to the 10 percent of the AGP applicants selected to determine if payments were made to only eligible aquaculture producers. If additional reviews are conducted, the Texas and Alabama SDA's will be required to review the AGP payments made to the applicants in the additional reviews to determine if payments were made to only eligible aquaculture producers. The Texas and Alabama SDA's will be required to provide findings to the National Office by March 1, 2012.

Recommendation 7

The South Dakota SDA actually made improper AGP payments totaling \$2,389.01 to four aquaculture producers in the State. Under separate cover you will be provided a letter dated November 29, 2010, to [...], the Agency did not seek to have the payments returned, but instead reached an agreement under which the South Dakota SDA would make the payment to the underpaid producer in the amount of \$2,389.01. This decision was agreed upon collaboratively between the National Office and the South Dakota SDA based on the diminutive amount of 2008 AGP funding paid to the four subject producers and the fact that the Agency's main concern was that [...] be equitably compensated pursuant to the terms of the 2008 AGP. The South Dakota SDA compensated [...] for \$2,389.01. In addition, it was determined through discussions with Department officials and the South Dakota SDA, that due to the minimal amount involved, no action would be taken to collect the \$508 improper payment cited in the report.

Recommendation 8

The Agency concurs with Recommendation 8. For the 2008 AGP and future grant programs, FSA developed standard criteria that was and will be required to be included or checked for completeness when completing FSA's review of the States' internal reviews. The criteria will assist FSA in determining the accuracy and completeness of internal reviews submitted by the States. Such standard criteria includes a description of how the grant program was conducted in the State, steps taken by the State to ensure producer compliance, findings identified by the State or FSA, if any, and corrective action taken by the State, if any. In addition, FSA will require specific documentation be included in the internal reviews, such as a spreadsheet which includes the payment calculations for all applicants in the State. FSA will take the necessary steps to ensure that internal reviews are timely filed by States, according to the grant agreement.

Recommendation 9

The Agency concurs with Recommendation 9. For future grant programs, FSA will take the necessary action to verify that States deposit funding into interest bearing accounts before funds are released to States. FSA will review banking information submitted by States and verify that accounts are interest bearing.

Informational copies of this report have been distributed to:

Administrator, FSA

Attn: Agency Liaison Officer (2)

Government Accountability Office (1)

Office of Management and Budget (1)

Office of the Chief Financial Officer
Director, Planning and Accountability Division (1)

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