



U.S. Department of Agriculture

Office of Inspector General



**Title:**  
**Controls Over Aquaculture Grant  
Recovery Act Funds (Phase 1)**

Audit Report 03703-1-Ch  
December 2009



United States Department of Agriculture  
Office of Inspector General  
Washington, D.C. 20250



DATE: December 29, 2009

REPLY TO  
ATTN OF: 03703-1-Ch

TO: Jonathan W. Coppess  
Administrator  
Farm Service Agency

ATTN: T. Mike McCann  
Director  
Operations Review and Analysis Staff

FROM: Robert W. Young /s/  
Assistant Inspector General  
for Audit

SUBJECT: Controls Over Aquaculture Grant Recovery Act Funds (Phase 1)

This report presents the results of our audit of the Farm Service Agency's (FSA) controls over the aquaculture grant recovery act funds provided under the American Recovery and Reinvestment Act (ARRA) of 2009. Our objectives were to determine if FSA has established adequate processes and controls to implement the ARRA aquaculture provisions in a timely and equitable manner.

The report compiles the results of our work that we reported to you in two interim reports on May 8, 2009, and June 3, 2009. Excerpts of your responses and the Office of Inspector General's Position are incorporated into the Findings and Recommendations sections of the report.

Based on your agency's responses to the two interim reports, we have accepted management's decision for all recommendations in the report. Please follow your agency's internal procedures in forwarding documentation for final actions to the Office of the Chief Financial Officer. In accordance with Departmental Regulation 1720-1, all final actions need to be completed within 1 year of each management decision to preclude 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 1)***

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## **Executive Summary**

### Results in Brief

This report presents the results of the first phase of our audit to evaluate the Farm Service Agency's (FSA) internal controls, to ensure that assistance provided under the American Recovery and Reinvestment Act of 2009 (Recovery Act) to aquaculture<sup>1</sup> producers is in accordance with program requirements. The Recovery Act included \$50 million in grants to States to assist eligible aquaculture producers for losses associated with high feed costs during the 2008 calendar year. Congress, in passing the Recovery Act, emphasized the need for accountability and transparency in the expenditure of the funds. Further, on April 3, 2009, the Office of Management and Budget (OMB) issued guidance<sup>2</sup> that required Federal agencies to establish rigorous internal controls, oversight mechanisms, and other approaches to meet the accountability objectives of the Recovery Act.

Funding for the Aquaculture Grant Program (AGP) was provided by the Commodity Credit Corporation (CCC), a Federal corporation within the Department of Agriculture. However, since CCC has no operating personnel, administration of its programs and activities is carried out primarily by the FSA. Because AGP's basic provisions were contained in the Recovery Act itself, the Office of the General Counsel ruled the program could be implemented through a Notice of Funds Availability (NOFA) rather than through the normal rulemaking process. The State Department of Agriculture or similar entity in each State was notified of AGP in April 2009 and was responsible for administering the program at the State level.

Office of Inspector General's (OIG) role, as mandated by the Recovery Act, is to oversee agency activities and to ensure funds are expended in a manner that minimizes the risk of improper use. We conducted oversight activities during this phase of the audit to assess early implementation of the program. In doing this, we identified policy changes and internal control weaknesses that required immediate corrective actions by FSA program officials. We did not perform tests to assess compliance by the State Departments of Agriculture with FSA policies and procedures. Nor did we test producer compliance with State policies and procedures. As such, we did not conclude on the extent of abuse that was, or could be, occurring in the program. Our audit work will continue with our review and assessment of producer eligibility and grant assistance calculations, and program oversight and reporting activities.

We issued 2 interim reports with a total of 16 recommendations for strengthening program procedures during this initial phase of our audit of AGP. FSA officials immediately took corrective action. This report summarizes those audit results.

Although some of the agency's internal controls and processes were carried forward from the 2005 AGP, others were newly developed based on the requirements and provisions of the

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<sup>1</sup> According to the National Aquaculture Act of 1980 (as amended through Public Law 107-293, Nov. 13, 2002), aquaculture is the rearing of aquatic organisms under controlled conditions.

<sup>2</sup> "Updated Implementing Guidance for the American Recovery and Reinvestment Act of 2009."

Recovery Act. FSA officials provided each State with a draft Memorandum of Agreement (MOA) for review and comment on April 17, 2009. Once the MOA was made final, it would constitute the primary guidance to the States and contained the program requirements to be followed when disbursing grant funds to eligible aquaculture producers. The MOA's provisions included: (a) eligibility criteria for aquaculture producers to receive grant funds; (b) requirements for collection of calendar year (CY) 2007 feed delivery data to be used in allocating funds among participating States; (c) payment limitations to aquaculture producers; and (d) reporting requirements for participating States under the Recovery Act.

Our review of the initial draft MOA identified three policy issues and three internal control issues that needed to be implemented. We noted that the draft MOA did not exclude feed delivered to federal or State owned hatcheries or to producers not eligible for the program, and did not specify how losses were to be defined. We also noted that the draft MOA did not address how changes in participant business structures would impact assistance, did not specify timeframes for States to submit their internal reviews to FSA, and did not address record retention requirements for participants and feed mills. Because the MOA would largely take the place of program regulations for AGP, we believed these issues needed to be addressed prior to the MOA's issuance to ensure that participating States implemented the program in a consistent and equitable manner nationwide. Further, the MOA needed to provide the States with sufficient guidance to ensure compliance with the requirements of OMB and of the Recovery Act. On May 8, 2009, we issued our first interim report to FSA officials addressing these issues. FSA provided a written response on May 15, 2009, in which FSA generally concurred with our findings and outlined its planned corrective actions.

We were subsequently informed by FSA officials that the initial draft MOA would be revised to allow States the option of implementing their programs using a feed voucher system instead of making direct payments to aquaculture producers. As a result of this change, a second draft MOA was provided to us on May 21, 2009. The revised draft authorized the States to provide assistance in the form of either (1) cash payments to eligible producers or (2) feed credits, vouchers, or similar instruments to be applied to future feed purchases. Under the second option (the voucher method), each participating producer would be required to identify the feed mill from which feed would be purchased; assistance would then be provided in the form of credits that the producer would redeem at the designated feed mill. Each State would determine the method of providing assistance for its own program, but would then have to consistently apply that method to all participating producers Statewide.

Our review of the revised draft of the MOA identified 10 policy and control issues resulting from the decision to allow States to use the voucher method of assistance. These related to producer eligibility, payment calculations, potential restrictions on the use of out of State feed mills, data verification, oversight responsibilities, internal reviews, and reporting requirements. On June 3, 2009, we addressed these issues in our second interim report. FSA officials provided their written response on June 15, 2009, detailing their corrective actions.

## **Recommendation Summary**

In our 2 interim reports, we made a total of 16 recommendations to improve agency internal controls. In our first interim report, we made six recommendations to FSA officials to strengthen program requirements regarding State allocations, producer eligibility, payment limits, monitoring reviews, and record retention. In our second interim report, we made 10 recommendations for corrective actions regarding producer eligibility, payment calculations, use of feed mills in-State and out, data verification, oversight responsibilities, internal reviews, and reporting requirements.

## **Agency Response**

Agency officials generally agreed with our findings and recommendations, as presented in our interim reports. They took corrective actions as contained in their responses to both of our interim reports.

## **OIG Position**

We agree with the corrective actions agency officials have taken and have reached management decision on all recommendations in the report.

## ***Background & Objectives***

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### **Background**

In the face of an economic crisis the American Recovery and Reinvestment Act of 2009 (Recovery Act) was signed into law on February 17, 2009, to make supplemental appropriations for job preservation and creation, infrastructure investment, energy efficiency and science, assistance to the unemployed, and State and local fiscal stabilization. At the Recovery Act's direction, Federal agencies receiving Recovery Act Funds are to take critical steps to establish rigorous internal controls, oversight mechanisms, and other approaches to meet the accountability objectives of the Act. Under the Act, the USDA Office of Inspector General (OIG) was appropriated \$22,500,000 to remain available until September 30, 2013, for oversight and audit of programs, grants, and activities funded by the Recovery Act and administered by USDA, to include the 2008 aquaculture assistance authorized by the Act.

Under the Recovery Act, USDA is to use not more than \$50,000,000 of the Commodity Credit Corporation's (CCC) funds to remain available until September 30, 2010, to carry out a program of grants to States to assist eligible aquaculture producers in recovering from high feed input costs during the 2008 calendar year. Because CCC has no operating personnel, the Aquaculture Grant Program (AGP) is administered through the personnel and facilities of the Farm Service Agency (FSA).

Aquaculture producers, who raise species such as crawfish, catfish, and alligators, were adversely affected by Hurricanes Katrina and Rita in 2005. In response to this disaster the Secretary authorized the original 2005 AGP, which made \$25 million in block grants available to six States where producers suffered hurricane-related losses. Our 2005 audit<sup>3</sup> of this program did not identify improper payments of AGP funds, but did disclose that FSA did not allocate funds based on estimated losses, that some States did not compensate producers based on losses, and that some States paid producers in a manner that resulted in inequitable treatment. In response to our recommendations, FSA officials agreed to implement future programs so as to ensure that allocations would be based on losses and that producers are treated in an equitable manner. In the 2009 Recovery Act, Congress directed USDA to carry out a similar program of aquaculture grants to States.

Because AGP's basic provisions are contained entirely in the Recovery Act, the Office of the General Counsel ruled that FSA could implement the 2009 program through a Notice of Funds Availability (NOFA) rather than through the normal rulemaking process. The Recovery Act required that USDA notify the State department of agriculture (or similar entity) in each State of the availability of funds to assist eligible aquaculture producers within 60 days of its enactment (that is, by April 17, 2009). Funds were to be distributed pro rata to States within 120 days of the enactment of the Recovery Act (that is, by June 16, 2009) based on the amount of aquaculture feed used in each State during calendar year (CY) 2007.

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<sup>3</sup> Audit No. 03601-48-Te, "2005 Hurricane Initiatives: Aquaculture Grants to States", issued October 2007.

To qualify for grant funds, an aquaculture producer must (1) have produced, during CY 2008, a species for which feed costs represented a substantial percentage of the input costs of the aquaculture operation, and (2) experienced a substantial price increase of feed costs above the previous 5-year average. The Recovery Act does not define what is to be considered “substantial.” However, FSA defined this term to mean (1) feed costs that exceeded 25 percent or more of input costs, and (2) feed cost prices that increased 25 percent or more from each State’s previous 5-year average (2003-2007).

In April 2009, FSA announced the program to the States. The announcement requested information from each State and provided them with an opportunity to comment on program provisions through a draft Memorandum of Agreement (MOA). The MOA became the primary guidance to the States and contained the program requirements to be followed when disbursing grant funds to eligible aquaculture producers.

## **Objectives**

Our objective was to ensure that FSA officials established adequate processes and controls to implement the Recovery Act’s AGP provisions in a timely and equitable manner. Specifically, we evaluated the adequacy of FSA’s policies and controls to (1) allocate grant funds to the States on an equitable basis; (2) approve State program requirements to ensure that only eligible producers receive funds; (3) compute producer payments on an equitable and supportable basis nationwide; and (4) distribute grant funds to both States and producers in a timely manner. Because we performed audit work before the actual distribution of Recovery Act funds, we did not visit applicants for grant funds to perform testing of producer compliance with program requirements. We expect to perform this testing in a followup audit.



## **Section 1: Initial Draft Memorandum of Agreement**

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Although some of FSA's internal controls and processes were carried forward from the previous AGP, others were newly developed based on the requirements and provisions of the Recovery Act. On April 17, 2009, FSA officials provided the Governor of each State with a draft MOA for review and comment. Once the MOA became final, it constituted the primary guidance to the States and contained the program requirements to be followed when disbursing grant funds to eligible aquaculture producers. The MOA's provisions included: (a) eligibility criteria for aquaculture producers to receive grant funds; (b) requirements for collection of CY 2007 feed delivery data to be used as a basis for allocating AGP funds among participating States; (c) payment limitations to aquaculture producers; and (d) reporting requirements for participating States under the Recovery Act.

Because the MOA would need to take the place of program regulations for AGP, we believed it needed to include adequate provisions to ensure that participating States implemented the program in a consistent and equitable manner nationwide. Further, the MOA needed to provide the States with sufficient guidance to ensure compliance with the requirements of OMB and of the Recovery Act. Our review of the initial draft MOA identified three policy issues that related to State allocations and eligibility, and three internal control issues that related to payment limits, monitoring reviews, and record retention that needed to be addressed. On May 8, 2009, we issued an interim report to FSA officials.

The issues are presented in the following findings.

### **Finding 1: Policy Over State Allocations and Producer Eligibility**

Under the provisions of the Recovery Act, each participating State would receive a pro rata share of the \$50 million in authorized funding based on the amount of aquaculture feed delivered to its aquaculture producers during CY 2007. In reviewing the initial draft MOA, we noted that two important requirements relating to the allocation process were not included in the MOA. Although FSA officials did include these requirements in the letter requesting CY 2007 feed delivery data and transmitting the MOA to the Governor of each State, these were not binding on the States and could not be enforced by FSA. We also noted that the initial draft MOA did not properly limit the amount of feed deliveries reported to FSA and used to determine the amount of State grant allocations, and did not identify how aquaculture producers' losses were to be determined. The following sections describe each area of concern:

#### **Aquaculture Feed Data Obtained from States**

The letters requesting the 2007 feed delivery data and transmitting the draft MOA to the State Governors specified that (except for as noted below) when providing data to FSA on aquaculture feed deliveries in CY 2007, the States were to "include feed for all aquaculture species in the State that was delivered to an individual or entity that is still in operation in CY 2009." Since the program was intended to benefit aquaculture producers who were still in business at the time the program became effective in 2009, we agreed that the inclusion of producers who had gone out of business since 2007 could distort the pro rata allocations, particularly if some States had

suffered disproportionate reductions in the number of producers during the intervening time. In addition, the allocations could have been further distorted if some States included producers who were no longer in business, while others did not.

The letters to the Governors (as mentioned above) also instructed the States to exclude feed deliveries to Federal- or State-owned hatcheries, but this requirement was also not included in the draft MOA. The lack of this provision could potentially have resulted in some States including feed deliveries to such operations while others did not. Moreover, since Federal and State-owned hatcheries were not eligible for Recovery Act funds under this program, their inclusion could potentially divert unneeded funds to States that have operations of this type, even if all States handled this in a consistent manner. We agreed with FSA's instructions to the States in the cover letters, but believed these needed to be incorporated into the MOA so that they would be binding on the States and enforceable by FSA.

#### Aquaculture Producer Feed Data

Another issue we questioned in relation to the allocation process dealt with the method outlined in the MOA for obtaining feed information from producers when compiling each State's CY 2007 aquaculture feed deliveries. The cover letter transmitting the draft MOA instructed the States to report the total aquaculture feed delivered in a given State, rather than limiting this to only producers meeting eligibility criteria as defined in the MOA. Limiting it to those meeting eligibility criteria would serve the same purpose as the exclusion of State and federally-owned hatcheries, in that it would base the allocation of grant funds among the States on feed deliveries to eligible producers only.

#### Definition of Losses

On an eligibility matter, we noted that FSA officials did not specify as part of the MOA how "losses" were to be defined in computing assistance to producers. Our concern was that States could interpret this in different ways leading to possible inequities in producer payments. For instance, one State could limit payments to producers who operated at an actual loss during CY 2008; other States might apply this definition to any producer whose profits were reduced by high feed costs during that year.

We discussed these matters with FSA officials, and made the following recommendations in our interim report issued on May 8, 2009. In their response dated May 15, 2009, FSA officials generally agreed with the recommendations and took corrective actions.

#### **Recommendation 1**

Include the requirements contained in the cover letter for feed delivery data in the MOA.

#### **Agency Response**

In response to our interim report, FSA officials stated that they revised the MOA to incorporate the requirements from the cover letter for feed delivery data.

## **OIG Position**

We accept management decision for this recommendation.

## **Recommendation 2**

Limit the feed delivery data obtained from the States to those producers who meet the eligibility criteria as defined in the MOA.

## **Agency Response**

In the response to our interim report, agency officials stated that producer eligibility determinations will not be finalized until the States submit their program implementation plans to FSA. Because of the Recovery Act's requirement that funds be provided to States within 120 days of enactment, producers' eligibility would not be known in time for FSA to use in allocating Recovery Act funds to the States. Therefore, FSA officials asked the States to provide information on feed deliveries to all aquaculture producers within each State.

## **OIG Position**

We accept management decision for this recommendation.

## **Recommendation 3**

Specify how losses are defined in the MOA section providing assistance to producers.

## **Agency Response**

In their response, officials stated that they revised the MOA to incorporate how losses are to be defined.

## **OIG Position**

We accept management decision for this recommendation.

## **Finding 2: Need for Strengthened Controls**

In reviewing the initial draft MOA, we noted that controls also needed to be strengthened in the areas of payment limitation, monitoring reviews, and record retention. The following sections describe each issue of concern:

### **Change in Aquaculture Business Structures**

In the section of the draft MOA providing assistance to producers, FSA specified an \$80,000 per person payment limitation for AGP funds. However, the MOA's provisions did not address instances where the makeup of an aquaculture-producing entity might have changed between CY 2008 – the time period for which producers' eligibility for program benefits is based – and the beginning of the sign-up period in 2009. FSA officials agreed that multi-person partnerships or joint ventures applying for grant funds could have changed from sole proprietorships or taken

on additional partners, and that this could allow such entities to receive excessive benefits. They agreed that the wording of the MOA needed to ensure that the payment limitation as applied to each applicant was based on its business structure as it existed during CY 2008.

#### Timeframes for State Reviews

We found that the draft MOA did not specify timeframes for States to submit internal reviews, or for Single Audits to be submitted when required. Since FSA planned to rely largely on the States to oversee program implementation, we believed that the MOA needed to specify required timeframes.

#### Retention of Program Records

The draft MOA did not contain a record retention policy for either State agriculture agencies or aquaculture producers receiving payments. Such a provision would ensure that records are available for any FSA or other reviews as provided for in the MOA.

We discussed these issues with FSA officials and made the following recommendations in our interim report dated May 8, 2009. In their response dated May 15, 2009, FSA officials agreed with the recommendations and took appropriate corrective actions.

#### **Recommendation 4**

Clarify the payment limitation requirement to ensure it applied to each applicant based on its business structure as it existed during CY 2008.

#### **Agency Response**

In their response to our interim report, FSA officials stated that they revised the MOA to specify that the payment limitation shall be applied to each applicant based on the applicant's business structure as it existed during CY 2008.

#### **OIG Position**

We accept management decision for this recommendation.

#### **Recommendation 5**

Specify the timeframes for States to submit internal reviews and single audits, if appropriate.

#### **Agency Response**

In response to our interim report, agency officials stated that they had revised the MOA to include the timeframes for States to submit their internal reviews and Single Audits, if required.

#### **OIG Position**

We accept management decision for this recommendation.

**Recommendation 6**

Incorporate a record retention requirement for both State agriculture agencies and aquaculture producers receiving payments.

**Agency Response**

In response to our interim report, agency officials stated that they revised the MOA to include a record retention requirement.

**OIG Position**

We accept management decision for this recommendation.

## **Section 2: Second Draft Memorandum of Agreement**

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On May 8, 2009, we provided FSA with our comments and suggested modifications to the initial draft of the MOA. On May 15, 2009, we received FSA's response to our comments. Although FSA's changes largely addressed the concerns highlighted in our May 8, 2009, interim report (see section 1 of this report), we were subsequently informed by FSA officials that the MOA would be further revised to allow States the option of implementing AGP using a feed voucher system through designated aquaculture feed mills, instead of making direct payments to aquaculture producers.

A second revised draft of the MOA was provided to us on May 21, 2009, under which States would be authorized to provide assistance through either (1) cash payments to eligible producers, or (2) feed credits, vouchers, or similar instruments to be applied to future feed purchases. Under the second option (the voucher method), FSA officials stated that each participating producer would be required to identify the feed mill from which feed would be purchased under the program. Assistance would be provided in the form of credits that each producer would redeem at the producer's designated feed mill. Each State would determine the method of providing assistance for its own program, but would then have to apply that method to all participating producers in the State.

Because of the changes resulting from FSA's decision to allow States this option, we made a further review of the draft MOA to evaluate the proposed program provisions for its implementation. Our review identified concerns with 10 policy and control issue concerns relating to producer eligibility, payment calculations, and the use of feed mills in-State and out, data verification, oversight responsibilities, internal reviews, and reporting requirements.

On June 3, 2009, we issued a second interim report to FSA officials, making 10 recommendations that we believed needed to be addressed before finalizing the MOA. In some instances, our primary purpose was to point out the need for FSA officials to be aware of possible ramifications of their decisions to both AGP and the Department during the process of finalizing the MOA. The issues are described in the following findings.

### **Finding 3: Policy over Producer Eligibility, Use of In-State/Out-of-State Feed Mills, Payment Calculations**

Because the finalized MOA would largely take the place of program regulations for AGP, we believed the revised version of this document needed to contain provisions sufficient to ensure that the feed mill voucher option is properly implemented in those States which choose that option. Specifically, we believed that FSA needed to strengthen the MOA's provisions over eligibility and payment calculations, as well as providing sufficient controls and accountability over the feed mills. Moreover, we believed that FSA needed to consider the possible ramifications if producers were limited to using feed mills located in their own States. The following sections describe each issue of concern:

### Potential Exclusion of Certain Aquaculture Producers under the Voucher Method

Based on discussions with FSA officials, we were concerned that the use of feed credits, vouchers, or similar instruments could potentially exclude any otherwise-eligible aquaculture producer who does not purchase feed from a feed mill. The FSA officials we interviewed could not provide assurances that this possibility had been considered. We believed that, before making a final decision to allow States to provide assistance in this form, FSA needed to determine whether doing so could result in the unfair exclusion of otherwise eligible producers from program participation.

### Potential Restrictions on Out-of-State Feed Mills Under the Voucher Method

Based on our discussions with representatives of two State Departments of Agriculture, we found that many aquaculture producers in those States purchased their feed from out-of-State feed mills. However, FSA officials stated on May 26, 2009, that producers might be required to use their feed vouchers at feed mills located only within their own States. We believed that either decision carried risks that needed to be addressed in the revised MOA.

If FSA determined that producers may only redeem vouchers at feed mills within their own States, it could change the existing patterns of commerce between producers and feed mills in some areas. For example, a representative of the Arkansas Department of Agriculture stated that, of the 14 feed mills contacted to determine CY 2007 feed deliveries in Arkansas, only one was actually located within the State. Therefore, any decision that limited Arkansas aquaculture producers to using in-State feed mills could negatively impact the out-of-State feed mills from which those producers customarily made their purchases. We believed that before making a decision to limit producers to dealing with in-State feed mills, FSA needed to fully consider the possible impacts of such decision, some of which might not be in keeping with the purposes of the Recovery Act.

Another potential concern was that aquaculture producers in certain geographical areas could be limited to dealing with a single in-State feed mill (for instance, where no other in-State competition existed within a reasonable distance). Our concern was that some mill owners could raise their prices to reflect both the increased demand on their products and the limited choices available to local aquaculture producers. If FSA officials chose to limit producers to dealing with in-State feed mills, we believed the MOA should require States to provide sufficient oversight to prevent feed mills from taking advantage of the program by making unwarranted price increases.

### Equity of Payment Rate Calculations

During our review of the revised draft MOA, we noted one other issue that was not related to the implementation of the feed voucher system. FSA specified in the MOA that, to be eligible for AGP, producers must have experienced at least a 25 percent increase in feed costs in CY 2008 above the State's 5-year average cost. It specified that the program's payment rate<sup>4</sup> should be equal to the producer's 2008 average feed price, minus the State's 5-year (2003-2007)

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<sup>4</sup> According to the MOA, the payment rate times the producers total feed deliveries determines the amount of assistance.

average feed price. By this method, producers who met or exceeded the 25 percent threshold would receive benefits based on their entire loss. But producers who experienced losses that were even slightly below the 25 percent threshold would receive no benefits at all.

We believed that it would be more appropriate to calculate a qualifying producer's assistance on only those losses in excess of the 25 percent required for eligibility. Under this method, all producers in a State would equally absorb the first 25 percent in feed-related losses, instead of only those who did not qualify for assistance under AGP.

We discussed these issues with agency officials and made the following recommendations in our interim report dated June 3, 2009. In their response dated June 15, 2009, FSA officials agreed with the recommendations and took appropriate corrective actions.

### **Recommendation 7**

Before approving any State's request to implement a feed mill voucher system in lieu of direct cash payments to producers, require the applicable State Department of Agriculture to submit a written determination that this will not cause any otherwise-eligible aquaculture producer to be excluded from program participation.

### **Agency Response**

In response to our interim report, agency officials stated that each State is required to submit a work plan to FSA that describes how the State intends to implement the program. During its review of work plans where the State has chosen to implement AGP through the use of feed credits, vouchers, or similar instruments, FSA will make the States aware they may be excluding otherwise-eligible producers who do not buy feed from mills. Nevertheless, FSA officials stated that the State is responsible for any final decision on the method of program implementation.

### **OIG Position**

We remain concerned that States may exclude eligible producers because of the method selected for implementing the program. However, to help assure the timely implementation of the Recovery Act, we accept management decision for this recommendation.

### **Recommendation 8**

If under the voucher method, FSA determines that participating producers must redeem their feed credit vouchers at in-State feed mills, ensure that possible economic ramifications to the affected feed mills are fully considered as part of the decision-making process. Also, include oversight provisions in the MOA to preclude unwarranted price increases by designated feed mills.



## **Agency Response**

In response to our interim report, agency officials stated that they determined that producers would not be limited to redeeming their feed credits, vouchers or other instruments at in-State feed mills.

## **OIG Position**

We accept management decision for this recommendation.

## **Recommendation 9**

Modify the payment calculation under item D3b of the MOA to provide better equity to all producers.

## **Agency Response**

In response to our interim report, agency officials stated that the law does not provide a specific payment calculation for the program. FSA officials developed a payment calculation that was most beneficial to aquaculture producers, taking into account the limited amount of program funding, a \$100,000 payment limitation<sup>5</sup>, and a \$2.5 million Adjusted Gross Income provision.

## **OIG Position**

We continue to believe that, in order to equitably treat all aquaculture producers, eligible producers should only receive assistance for the amount of their loss that exceeds the 25 percent eligibility threshold. To qualify for assistance, aquaculture producers must have losses in excess of 25 percent. Those with losses less than 25 percent will not receive any funds while those with losses over 25 percent receive funding for their entire amount of losses. This appears inequitable to those sustaining losses but not to the level of the eligibility threshold. However, to help assure timely implementation of the Recovery Act, we accept management decision for this recommendation.

## **Finding 4: Strengthened Controls**

In reviewing the revised draft MOA, we noticed that controls could be strengthened in several areas. These areas related to: payment calculations, data verification, overseeing out-of-State feed mills, internal reviews, and reporting requirements. The following sections describe each issue of concern.

### **Payment or Reimbursement of Designated Feed Mills Under the Voucher Method**

The revised draft MOA did not specify whether designated feed mills would receive funds upfront or be reimbursed by submitting vouchers from participating producers. We believed that

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<sup>5</sup> Because of input from participating States, the payment limitation was increased from the \$80,000 specified in the initial draft MOA.

this needed to be clarified to ensure that adequate controls are in place to ensure that Recovery Act funds are properly accounted for and used in an expeditious manner

In our initial interviews with FSA officials, they stated that it had not yet been determined whether or not designated feed mills would receive funds upfront, and then distribute them in the form of feed credits, to participating producers. We questioned how either the States or FSA could be assured that these funds were either properly expended or timely refunded to the States. If FSA officials chose this payment option, we believed that the revised MOA should include requirements for each designated feed mill to report its status of AGP funds by a date specified by FSA, and return any unused funds to the applicable States. Although the revised draft MOA required the States to return any unused funds, there was no requirement for such action on the part of the feed mills. Further, to ensure that States used Recovery Act funds properly and accounted for them, FSA officials should require each State to perform verification checks at each participating feed mill. We believed such controls were necessary to prevent feed mills from improperly retaining Recovery Act funds that were not claimed by participating producers.

#### Oversight of Designated Feed Mills Servicing Producers in Multiple States Under the Voucher Method

In Finding 3, we had concerns about the possible ramifications of producers being restricted to in-State feed mills. We also noted that increased control and oversight would be necessary if feed vouchers or other instruments were allowed to be redeemed at out-of-State mills. This would be of particular concern in cases where a single feed mill processed vouchers from more than one State Department of Agriculture. If, for example, each participating State had sole oversight responsibility for those feed mills located within its own borders, each State would need to possess information on all of the participating producers, including producers located in other States, serviced by each of its mills. Unless protocols for the exchange of information between States were established upfront in the MOA, we questioned how any single State could accurately provide oversight of its feed mills in relation to the program. Moreover, a State that opted to not participate in the program might be called upon to provide oversight of its feed mills that participate in the program through another State.

Conversely, each State could be given responsibilities for providing oversight to each feed mill designated by its participating aquaculture producers, regardless of location. However, this would require coordination between participating States and could raise issues regarding the authority of one State Department of Agriculture to monitor and oversee a feed mill located in another State. Such issues needed to be addressed up-front by FSA when agency officials finalize the MOA.

#### Random Internal Reviews under the Voucher Method

The revised draft MOA required each State to perform random internal reviews of 5 percent of the total applications it receives. However, the revised MOA did not require that these reviews involve a cross-section of producers dealing with each of the State's feed mills that participate in the program. Without a specific provision in the MOA to address this, a State could potentially perform all of its reviews of producers dealing with a single feed mill, even if there are multiple feed mills that service its participating producers.

## Reporting Requirements under the Voucher Method

We believed the revised draft MOA needed to address reporting requirements for both the feed mills and for individual producers. Although the revised MOA required feed mills to obtain a Dun and Bradstreet Universal Numbering System (DUNS) number<sup>6</sup> if they did not currently have one, it did not include a reporting requirement for the feed mills or individuals. Feed mills were considered as “vendors” under this program. According to OMB Circular A-133, section 210,<sup>7</sup> “program compliance requirements normally do not pass through to vendors.” As such, we believed that the revised MOA needed to address compliance requirements such as reporting for feed mills (vendors) and individuals. We suggested the revised MOA include language requiring feed mills (vendors) and individuals that received funding under the Recovery Act to report vouchers processed.

We also believed the revised draft MOA should incorporate verbiage to ensure that persons making false statements on certifications could be prosecuted, as mentioned in the “Guide to Grant Oversight and Best Practices for Combating Grand Fraud.”<sup>8</sup> This language should cover, at a minimum, producers and feed mills.

We discussed these issues with FSA officials and made the following recommendations in our interim report dated June 3, 2009. In their response dated June 15, 2009, FSA officials agreed with the recommendations and took the appropriate corrective actions

### **Recommendation 10**

Specify, in the revised MOA, whether designated feed mills, under the voucher method, would receive payments up front or be required to apply for reimbursement following producer feed purchases.

### **Agency Response**

In response to our interim report, agency officials stated that the revised MOA does not permit a State to provide funds to a feed mill prior to the feed mill applying for reimbursement for feed already delivered to an AGP participant.

### **OIG Position**

We accept management decision for this recommendation.

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<sup>6</sup> The DUNS® Number is widely used by both commercial and Federal entities and was adopted as the standard business identifier for Federal electronic commerce in October 1994. (Retrieved on 10/22/09 from <http://fedgov.dnb.com/webform/pages/dunsnumber.jsp>).

<sup>7</sup> OMB Circular A-133, section 210, “Audits of States, Local Governments, and Non-Profit Organizations,” dated June 24, 1997, revised to show changes published in the *Federal Register*, dated June 27, 2003.

<sup>8</sup> Guide to Grant Oversight and Best Practices for Combating Grant Fraud,” National Procurement Fraud Task Force, Grant Fraud Committee, February 2009.

### **Recommendation 11**

If, under the voucher method, designated feed mills are provided with Recovery Act funds in advance of actual producer purchases, include a requirement in the MOA for each State to ascertain its designated feed mills' status of funds as of a date specified by FSA.

#### **Agency Response**

Agency officials stated that their response to the previous recommendation resolved this condition.

#### **OIG Position**

We accept management decision for this recommendation.

### **Recommendation 12**

Require, in the MOA, that each State using the voucher method implement a process to verify information reported by designated feed mills.

#### **Agency Response**

Agency officials stated that they revised the MOA to require States to implement a process to verify information reported by designated feed mills.

#### **OIG Position**

We accept management decision for this recommendation.

### **Recommendation 13**

If, under the voucher method, FSA allows participating producers to use out-of-State feed mills, include provisions in the MOA for States with out-of-State feed mills to outline the States' oversight responsibilities in relation to the feed mills that service participating producers.

#### **Agency Response**

Agency officials stated that they revised the MOA to outline oversight responsibilities in relation to the feed mills that service participating producers.

#### **OIG Position**

We accept management decision for this recommendation.

#### **Recommendation 14**

Amend item F1 of the MOA to ensure that, under the voucher method, the State internal reviews include all feed mills designated by participating producers.

#### **Agency Response**

Agency officials stated that they revised the MOA to ensure that all participating feed mills are included in the State's internal review of the program.

#### **OIG Position**

We accept management decision for this recommendation.

#### **Recommendation 15**

Ensure that item E5 of the MOA addresses reporting requirements for both feed mills and producers for States that choose to implement the voucher method.

#### **Agency Response**

Agency officials stated that they revised the MOA to address reporting requirements for feed mills and producers.

#### **OIG Position**

We accept management decision for this recommendation.

#### **Recommendation 16**

Incorporate verbiage in the MOA to require the States' agreements with feed mills under the voucher method, as well as producers' applications, state that false statements made on program certifications by feed mills or producers can be prosecuted.

#### **Agency Response**

Agency officials stated that they revised the MOA to address this requirement for feed mills and producers.

#### **OIG Position**

We accept management decision for this recommendation.

## ***Scope and Methodology***

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We conducted our audit of AGP at the FSA national office in Washington, D.C., and at two judgmentally-selected State Departments of Agriculture: Arkansas and Louisiana. There were approximately 40 States that had elected to participate in the program. The two States were selected because they each had been allocated large amounts of AGP funds (\$7,815,885 and \$2,412,560, respectively) and their work plans had been approved. In addition, we contacted six other State Departments of Agriculture<sup>9</sup> by telephone to obtain information about the sources of aquaculture feed data they submitted to FSA and general information about their implementation of AGP. We performed our audit fieldwork between April and August, 2009.

Our evaluations were based on the limited guidance provided under the Recovery Act and in the *Guide to Grant Oversight and Best Practices for Combating Grant Fraud*, which was issued by the National Procurement Fraud Task Force and provided to agencies receiving stimulus funds in February 2009.

We accomplished our objectives by examining FSA formal policies and procedures, observing the implementation of the program by agency officials (both at the national and State levels), and interviewing relevant FSA officials as well as officials of the selected State Departments of Agriculture. Our audit was designed to provide timely feedback to agency officials on the adequacy of their internal controls before significant funds are committed. We did not perform substantive testing during this initial of our work. We will be testing compliance with the agency's stated controls and procedures as our audit work continues at participating State Departments of Agriculture when the disbursement of program payments begins.

We conducted this performance 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.

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<sup>9</sup> Colorado, Florida, Illinois, Mississippi, Texas, and Wisconsin.

## ***Abbreviations***

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AGP	Aquaculture Grant Program
CY	Calendar Year
CCC	Commodity Credit Corporation
FSA	Farm Service Agency
MOA	Memorandum of Agreement
NOFA	Notice of Funds Availability
OIG	Office of Inspector General
OMB	Office of Management and Budget
USDA	United States Department of Agriculture
DUNS	Dun and Bradstreet Universal Numbering
Recovery Act	American Recovery and Reinvestment Act of 2009

Informational copies of this report have been distributed to:

Government Accountability Office (1)

Office of Management and Budget (1)

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