



U.S. Department of Agriculture
Office of Inspector General
Washington, D.C. 20250



DATE: March 11, 2010

REPLY TO

ATTN OF: 08703-5-SF

TO: Thomas L. Tidwell
Chief
Forest Service

FROM: Gil H. Harden /s/
Acting Assistant Inspector General
for Audit

SUBJECT: The Recovery Act – Forest Service (FS) Hazardous Fuels Reduction and
Ecosystem Restoration on Non-Federal Lands (1)

The American Recovery and Reinvestment Act (Recovery Act) of 2009 included \$200 million for the Forest Service (FS) to implement wildland fire management (WFM) activities on State and private lands.¹ FS' Pacific Southwest region received \$33.7 million of that amount and is using grants to competitively award these funds to State, local, and tribal governments, and non-profit organizations. In assessing the region's policies, procedures, and controls over Recovery Act funded, non-Federal WFM projects, we found that a number of necessary Recovery Act provisions were either inadequately stated or altogether absent from the grant templates and executed awards. The FS Washington Office Branch Chief for Acquisition Management responsible for the development of the grant templates initially believed that referring in general to the Recovery Act and other relevant Federal regulations in the template was sufficient. However, after further consideration, the branch chief agreed that the changes were necessary and took immediate action to modify the template language to address our concerns. The lack of a grant template with all the required Recovery Act provisions could significantly impact FS' ability to enforce grantees' compliance with the Recovery Act. This issue, along with any others identified, will be compiled into a final report at the conclusion of our audit.

The Recovery Act requires changes to the normal way FS issues grant and agreement awards, including the need to add special terms and provisions to ensure enhanced accountability and transparency of Recovery Act funds. The Office of Management and Budget (OMB) directed Federal agencies to include in their grant agreements any terms and conditions needed to implement the provisions of the Recovery Act.²

¹ This amount excludes \$50 million designated for non-Federal Wood to Energy grants.

² OMB Memorandum M-09-15, *Updated Implementing Guidance for the American Recovery and Reinvestment Act of 2009*, April 3, 2009.

FS established four specialized Economic Recovery Operations Centers (EROCs) that are responsible for executing and managing FS' Recovery Act awards in a consistent manner agencywide; the Southwest EROC manages and oversees the Pacific Southwest region's Recovery Act awards. As part of its standardization effort, EROC staff use standard grant and agreement templates from I-Web as the basis for every FS Recovery Act award.³ We reviewed the grant template from I-Web that the Southwest EROC uses and the region's three executed grant awards (totaling about \$10.5 million) and found that the executed awards, and the template serving as their foundation, lacked a number of required or necessary Recovery Act provisions. Specifically, the grant template did not include language explaining that:

- Award and subaward recipients are responsible for complying with all applicable Recovery Act requirements;
- Recipients are required to closely monitor and report Recovery Act-funded program activities and accomplishments;
- FS has the right to terminate awards for non-compliance or non-performance;
- OIG has access to recipient and subrecipient records; and
- Reprisals against whistleblowers are prohibited.

Each of the absent provisions is discussed in more detail below.

Grantees' Compliance with Recovery Act Requirements

The grant template did not include provisions specifically directing grantees to comply with all Recovery Act requirements. The template only directed grantees to comply with four specific Recovery Act provisions listed on an attachment to the grant agreement.⁴ In addition, the template did not inform grantees of OMB guidance developed specifically to ensure consistent interpretation of Recovery Act requirements, such as OMB memorandum M-09-21, providing instructions on quantifying the jobs created and retained with Recovery Act funding, and OMB memorandum M-09-18, instructing recipients on the nature and limitation of reimbursable Recovery Act administrative costs. The template also did not contain provisions to control subrecipients' use of Recovery Act funds. FS' grant template directed grantees to notify subrecipients that they were subject to the same terms and conditions stated in the primary award document. However, the template did not specifically require recipients to include Recovery Act terms in subawards. In the absence of such pass through language, subrecipients could receive substantial amounts of Recovery Act money without being subject to the Recovery Act requirements. The award template needs to include a provision directing recipients and subrecipients to be aware of and comply with all Recovery Act requirements. Without such general provisions, Recovery Act grantees could be exempt from Recovery Act requirements.

Monitoring Requirement

The grant template did not include specific Recovery Act monitoring requirements or direct recipients to increase monitoring activities to ensure accountability over Recovery Act funds. OMB Memorandum M-09-15 requires Federal agencies to initiate additional oversight

³ I-Web is a web-enabled General Support System that hosts a suite of database applications for various FS business areas.

⁴ Reporting and Registration Requirements cited in Recovery Act Section 1512c, the Recovery Act Buy American provision in Section 1605, the Wage Rate requirements cited in Recovery Act Section 1606, and the requirement to separately identify and track Recovery Act expenditures.

requirements for grants and agreements to ensure Recovery Act recipients are complying with applicable rules and regulations. FS' grant template only contained a standard monitoring provision that was insufficient because it did not specifically reference Recovery Act funds and the need for increased accountability and it understated the grantee's responsibilities as defined by Federal regulations. The template's provision only required grantees to "monitor performance to ensure goals are being met", while Federal regulations require that grantees manage the day-to-day operations of grant and subgrant supported activities and ensure activities comply with all applicable Federal requirements (e.g., the Recovery Act).⁵ The FS template did not cite the regulations' monitoring requirements, even though other requirements of these regulations (e.g., drug free workplace and Freedom of Information Act) were specifically cited in the template. Accountability of Recovery Act funds depends on effective monitoring. Because FS staff perform brief monitoring reviews of the grantee's activities on a quarterly basis, the day-to-day monitoring of Recovery Act project activities falls to the recipients of Recovery Act funds. The template should state specific recipient monitoring responsibilities to emphasize the importance and scope of recipients' oversight function. Without such monitoring provisions, there is reduced assurance that Recovery Act funds will be spent as intended and in a timely and effective manner.

Penalties for Non-Performance

The grant template did not state FS' right to terminate the award if recipients failed to perform or did not comply with the Recovery Act and other award terms. The template only contained a clause describing termination of the award by mutual consent of both parties. Regulations require Federal awarding officials to ensure that Recovery Act recipients comply with the Recovery Act and other award terms and to take enforcement or termination actions if they fail to do so.⁶ FS grants are subject to Federal regulations that allow FS to terminate grants under three conditions: (1) when recipients materially fail to comply with the terms and conditions of the award; (2) by the Federal awarding agency with the consent of the recipient; or (3) at the request of the recipient.⁷ The FS template contained a provision describing termination of the award by mutual consent (option 2), but no provision describing FS' right to terminate the award if and when the recipient failed to comply with Recovery Act requirements and award terms. The FS template also did not contain any enforcement provisions. Federal regulations provide Federal agencies five remedies to enforce compliance with grant terms, including withholding cash payments, disallowing grantee costs, and withholding further awards to the program. The FS template contained no provision discussing these or any other enforcement actions FS could take in response to Recovery Act project performance deficiencies. The grant template should specifically identify FS' right to terminate awards and enforce compliance to clearly inform recipients and subrecipients that these potential actions could occur and to strengthen FS' legal rights to initiate termination or enforcement actions when necessary.

⁵ FS grant awards are subject to Title 7 of the Code of Federal Regulations (CFR) Sections 3015, 3016, 3019, and 3052, and OMB Circulars A-21, A-87, A-102, A-110, A-122, and A-133.

⁶ Title 2 CFR 176, *Requirements for Implementing Sections 1512, 1605, and 1606 of the American Recovery and Reinvestment Act of 2009 for Financial Assistance*, April 23, 2009.

⁷ Title 2 CFR 176, Title 7 CFR 3016 and 3019, and OMB Circular A-110.

OIG's Right to Access Recovery Act-Related Records

The grant template did not specify OIG's right to access Recovery Act-related records. Section 1515 of the Recovery Act provides authority for representatives of the Inspector General (IG) to examine each grant awarded using Recovery Act funds. This includes any records of the grantee and its subgrantees or subcontractors or any State or local agencies administering such subawards. IG representatives may also interview any officer or employee of the grantee, subgrantee, or agency regarding such transactions. Notifying grantees of OIG's access to records is an important control over the accountability of Recovery Act funds because it informs grantees and subrecipients that their use of Recovery Act funds is subject to a Federal audit, which serves as a deterrent to fraud, waste, and abuse.

Whistleblower Protections

The grant template did not contain required whistleblower provisions. Section 1553 of the Recovery Act requires that employees of State and local governments and contractors be protected from whistleblower reprisals. In addition to this protection, OMB guidance M-09-15 requires Federal agencies to include specific whistleblower terms in Recovery Act-funded awards that direct recipients to promptly refer evidence of fraud, bribery, or similar misconduct to the appropriate IG.⁸ These whistleblower clauses are necessary to ensure non-Federal employees report instances of fraud, waste, and abuse.

To ensure consistent and sufficient accountability over Recovery Act-awarded funds, FS should immediately modify its Recovery Act grant templates in I-Web to include the necessary provisions discussed above. On December 3, 2009, we discussed our concerns with the FS Washington Office Branch Chief for Acquisition Management responsible for the development of the grant templates. She agreed to take immediate action to modify the grant templates used for the Recovery Act-funded projects.

Please provide a written response within 5 days that outlines your corrective action on this matter. If you have any questions, please contact me at (202) 720-6945, or have a member of your staff contact Steve Rickrode, Audit Director, Rural Development and Natural Resources Division, at (202) 690-4483.

⁸ Sections 5.9 and 6.4 of OMB M-09-15, *Updated Implementing Guidance for the American Recovery and Reinvestment Act of 2009*, April 3, 2009.



File Code: 1430-1

Date: March 25, 2010

Route To:

Subject: The Recovery Act Forest Service (FS) Hazardous Fuels Reduction and Ecosystem Restoration on Non-Federal Lands (1); OIG Report # 08703-5-SF

To: Robert W. Young, Assistant Inspector General For Audit

This letter is in response to the subject Office of Inspector General (OIG) report dated March 11, 2010. The OIG report cites that the FS Grant templates used for ARRA awards lacked some required or necessary American Recovery and Reinvestment Act of 2009 (Recovery Act) provisions. The FS has worked diligently to comply with all requirements of the Recovery Act related to mandatory terms and conditions of grant and agreement (G&A) award documents. As further clarifications and directions were received from the Office of Management and Budget (OMB), the G&A award templates were updated for use by the Economic Recovery Operations Centers (EROCs), who are charged with the responsibility of reviewing Recovery Act awards for format and authority. The Agency's Acquisition Management staff followed the OMB direction to ensure that the Recovery Act G&A award templates addressed the provisions highlighted in the recent OMB memoranda and ensured that the existing templates included references to statutes, OMB guidance, and general financial assistance terms and conditions.

The subject report recommends enhancements to the awards templates to expand the recipient's awareness of the magnitude of compliance activities mandated by the Recovery Act. The Agency has accordingly, directed that new Recovery Act G&A awards incorporate the recommended provisions with the existing disclosure references. In regards to the Report's recommendations, the FS has addressed the recommendations and considers the corrective actions completed; therefore requesting closure of this recommendation. Enclosed is the additional reference to be included in each grant template under the Recovery Act.

If you have any questions, please contact me at 202- 205-1321 or dcarmical@fs.fed.us.

/s/ <Karren Y. Alexander> (for): Donna M. Carmical
DONNA M. CARMICAL
Chief Financial Officer

cc: Donna M Carmical
Dave Dillard
Ronald Hooper
Melissa Dyniec
Laurie Lewandowski



**OFFICE OF THE INSPECTOR GENERAL
HIGHLIGHTED ARRA PROVISIONS FOR INCREASED GRANTEE AWARENESS**

OVERALL RECIPIENT ARRA COMPLIANCE:

The Recipient is hereby notified that this project will be financed with *American Recovery and Reinvestment Act of 2009 (ARRA)* funds and is therefore subject to all applicable ARRA requirements. Recipients may also be subject to additional ARRA requirements upon FS notification.

OVERALL ARRA SPECIFIC REQUIREMENTS REGARDING PROVISION FLOW-DOWN FOR SUBAWARDS:

The Recipient is hereby notified that this project will be financed with *American Recovery and Reinvestment Act of 2009 (ARRA)* Funds. The Recipient shall assure that all sub-awards for an ARRA funded project shall also have all applicable ARRA provisions in their award documents. As such the Department may require that the Recipient provide reports and other employment information as evidence to document the number of jobs created and/or sustained by this project for the Recipient's own workforce and any sub-recipients or sub-contractors.

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

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

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

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

(b) RELATIONSHIP TO EXISTING AUTHORITY.—Nothing in this section shall be interpreted to limit or restrict in any way any existing authority of an inspector general.

IG NOTIFICATION OF SUSPECTED INAPPROPRIATE ACTIVITY:

Grantees or sub-grantees awarded funds made available under ARRA are notified that a prompt referral is anticipated to an appropriate inspector general of any credible evidence that a principal, employee, agent, contractor, sub-grantee, subcontractor, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving those funds.

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SEC. 1553. PROTECTING STATE AND LOCAL GOVERNMENT AND CONTRACTOR WHISTLEBLOWERS

(a) PROHIBITION OF REPRISALS.—An employee of any non-Federal employer receiving covered funds may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee’s duties, to the Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct), a court or grand jury, the head of a Federal agency, or their representatives, information that the employee reasonably believes is evidence of—

- (1) gross mismanagement of an agency contract or grant relating to covered funds;
- (2) a gross waste of covered funds;
- (3) a substantial and specific danger to public health or safety related to the implementation or use of covered funds;
- (4) an abuse of authority related to the implementation or use of covered funds; or
- (5) a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

(b) INVESTIGATION OF COMPLAINTS.—

(1) IN GENERAL.—A person who believes that the person has been subjected to a reprisal prohibited by subsection (a) may submit a complaint regarding the reprisal to the appropriate inspector general. Except as provided under paragraph (3), unless the inspector general determines that the complaint is frivolous, does not relate to covered funds, or another Federal or State judicial or administrative proceeding has previously been invoked to resolve such complaint, the inspector general shall investigate the complaint and, upon completion of such investigation, submit a report of the findings of the investigation to the person, the person’s employer, the head of the appropriate agency, and the Board.

SEC. 1604. RESTRICTIONS ON USE OF ARRA FUNDS

None of the funds appropriated or otherwise made available in this Act may be used by any State or local government, or any private entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

2 CFR 176.20. PENALTIES FOR NON-PERFORMANCE

If the recipient fails to comply with the ARRA specific reporting requirements or other award terms, the award official or other authorized agency action official shall take the appropriate enforcement or termination action in accordance with 2 CFR 215.62 or the agency’s implementation of the OMB Circular A-102 grants management

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common rule. OMB Circular A-102 is available at
<http://www.whitehouse.gov/omb/circulars/a102/a102.html>.

The recipient's failure to comply with the reporting requirements may be made a part of the recipient's performance record.

§ 3019.62. ENFORCEMENT

(a) *Remedies for noncompliance.* If a recipient materially fails to comply with the terms and conditions of an award, whether stated in a Federal statute, regulation, assurance, application, or notice of award, the Federal awarding agency may, in addition to imposing any of the special conditions outlined in § 3019.14, take one or more of the following actions, as appropriate in the circumstances.

- (1) Temporarily withhold cash payments pending correction of the deficiency by the recipient or more severe enforcement action by the Federal awarding agency.
- (2) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.
- (3) Wholly or partly suspend or terminate the current award.
- (4) Withhold further awards for the project or program.
- (5) Take other remedies that may be legally available.

(b) *Hearings and appeals.* In taking an enforcement action, the awarding agency shall provide the recipient an opportunity for hearing, appeal, or other administrative proceeding to which the recipient is entitled under any statute or regulation applicable to the action involved.

(c) *Effects of suspension and termination.*

Costs of a recipient resulting from obligations incurred by the recipient during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other recipient costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if paragraphs (c)(1) and (c)(2) of this section apply.

(1) The costs result from obligations which were properly incurred by the recipient before the effective date of suspension or termination, are not in anticipation of it, and in the case of a termination, are noncancellable.

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) *Relationship to debarment and suspension.*

The enforcement remedies identified in this section, including suspension and termination, do not preclude a recipient from being subject to debarment and suspension under E.O.s 12549 and 12689 and the Federal awarding agency implementing regulations

7 CFR 3016.40(a). ARRA ENHANCED MONITORING REQUIREMENTS.

Grantees are responsible for enhanced monitoring activities for the day-to-day operations of ARRA grant and sub-award supported activities. Grantees must monitor grant and sub-award supported activities to assure compliance with applicable

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Federal requirements as referenced in paragraph 2 of the award letter and as specifically contained in the ARRA and that performance goals are being achieved. Grantee monitoring must cover each program, function or activity.

OMB RECOVERY ACT MEMORANDUMS:

It is suggested that Grantees become familiar with OMB guidance developed to expand and clarify various ARRA requirements, such as OMB memorandum M-09-21 which transmits guidance for carrying out recipient and sub-recipient reporting requirements in Section 1512 of the Recovery Act, and OMB memorandum M-09-18 which instructs State recipients on the nature and limitations of reimbursable ARRA administrative costs.