

**Testimony of Danielle Brian, Executive Director
Project On Government Oversight (POGO)
before the Subcommittee on Investigations and Oversight,
House Committee on Science and Technology
regarding Accountability and Oversight of Funding Provided in the
American Recovery and Reinvestment Act (Recovery Act)**

Tuesday, May 5, 2009

Thank you for inviting me to testify today. It is terrific that the Science and Technology Committee is conducting oversight of the way in which science and technology-related agencies will manage the American Recovery and Reinvestment Act (Recovery Act). POGO, as a member of the Coalition for an Accountable Recovery (CAR), supports the recommendations in OMB Watch's testimony, which would improve Recovery Act provisions for contract transparency, recipient reporting, and public access to data, as he lays out in his testimony. Thus, I will limit my comments today to improving resources for auditors, investigators, and whistleblowers.

I view the level of protection against waste, fraud, and abuse in the Recovery Act with mixed feelings. On the one hand, certain provisions provide a terrific opportunity to finally crack open the opaque world of government contracting. On the other hand, some essential protections are insufficient, and others are simply nonexistent. Due to those weaknesses, the velocity and magnitude of Recovery Act spending makes me very anxious. In fact, Earl Devaney, Chair of the Recovery Act Transparency and Accountability Board (RAT Board), recently noted that it is "inevitable" that taxpayer dollars will be lost to waste, fraud, and abuse.

One weakness that could be improved to stem those losses is the significant lack of funding for state and local auditors and investigators. This is a case of penny-wise and pound-foolish. For every dollar IGs invested in audits, there is an average return of more than nine dollars, according to a GAO study last year of all IGs. Chairman Edolphus Towns has introduced the Enhanced Oversight of State and Local Economic Recovery Act, which we believe is an essential step to helping provide adequate oversight of the spending of these funds.

Whistleblowers will also be essential to minimizing losses. According to a study last year by the Association of Certified Fraud Examiners, nearly half of the initial detection of occupational fraud—46 percent—resulted from whistleblower tips. Whistleblowers are clearly a vital source of information about fraud.

For that reason, I am distressed to testify that one of the most significant weaknesses of the Recovery Act is in Section 1553, the section protecting whistleblowers. While it provides meaningful protections for state, local, and contractor whistleblowers, federal employees are yet again left insufficiently protected. This is simply absurd given the important role federal whistleblowers play as the first line of defense—they are the eyes and ears for taxpayers. This defect is not the fault of the House. The House has repeatedly passed with almost no opposition, protections for federal whistleblowers. And in the case of the Recovery Act, Representatives

Chris Van Hollen (D-MD) and Todd R. Platts (R-PA) introduced an amendment to cover federal whistleblowers that was quickly passed by the House and incorporated into the language that was sent to the Senate. However, the Senate objected to allowing federal whistleblowers access to jury trials and to including protections for national security whistleblowers without having held Senate hearings first. The White House remained silent on this question, and as a result the House language protecting federal employees was stripped. And without solid protection, it is far less likely that a federal employee with knowledge of wrongdoing will come forward with that knowledge.

The good news is that there is now a lot of activity to repair that damage. The White House is engaged, and both the House and Senate are planning hearings to explore providing the missing protections to federal employees—so maybe soon this fundamental deficiency in the Recovery Act will be resolved with stand-alone legislation? I certainly hope so.

For those whistleblowers who are protected by the Recovery Act, I want to focus on what needs to happen for the process to work effectively.

First, potential whistleblowers need to know what their protections are and where to go with their disclosures. This may be harder than you would think. An individual in their hometown who comes across misconduct in the spending of recovery dollars is unlikely to be so immersed in the minutiae of the rules to know which website to look at—they may not even know which federal agency awarded the contract. In light of that, clear language should be on Recovery.gov, on state and local websites, and on the websites of each of the Inspectors General about what the whistleblower protections are and how to report waste, fraud, or abuse.

IGs especially need to make a concerted effort to encourage people to come to them with their disclosures. Some IG offices are already good at doing this. However, POGO just released a report on the Inspectors General system in which we found that many IGs are not effective at working with whistleblowers. In fact, I was just speaking with the Council of IGs last week where a few IGs argued quite forcefully that they do not see it as appropriate for their offices to proactively reach out to whistleblowers. Yet, the Recovery Act places this responsibility squarely in the hands of the IGs. So to make Section 1553 work effectively for those whistleblowers who are protected, the culture in some of those IGs' shops must change to one in which they recognize that they should be proactive in that regard.

It will take a concerted and cooperative effort by agencies and their IGs to inform recipients of Recovery Act funds of their whistleblower protections and that they need to go to the IGs with disclosures of waste, fraud, and abuse.

The next problem is also on the IG side—handling the volume of intake responsibly. Currently, Recovery.gov simply has a page that says “Tell us your story.” There are no explanations for a whistleblower about what kinds of information to report, how they are or are not protected, or how the information will be used. That is an invitation for problems. We know from our own experience you need to have very clear directions, a tracking system, and a way to communicate further with the whistleblower for this to work at all. Given the volume of intake they will be

receiving, this is an enormous but essential task, and one I know Earl Devaney is taking very seriously as he prepares to take over the site.

In that regard, I am happy to report that the Council of IGs has announced a cross-cutting review of all their hotline systems, I believe in part because POGO identified a number of weaknesses. While that review will be valuable for improving many of the tip-intake systems in the future, it may come too late to help protect Recovery Act funds from waste, fraud and abuse—the money is going out the door now and whistleblowers have already begun submitting tips. Because of the magnitude of funds being distributed, it is essential that interim steps be taken to implement more effective systems than those in place now. IGs should meet with representatives from the whistleblower community now in order to hash out best practices for outreach and tip intake. This is a terrific opportunity, not only to get it right for the purposes of the Recovery Act, but also to strengthen the capacity of many IGs to more effectively handle whistleblower cases.

Finally, and this will also mean a cultural change for some IGs, when there is a successful case of a whistleblower disclosure identifying a problem, the IG needs to herald it as a case well-done. Recently SIGTARP Neil Barofsky made a point in his testimony of saying that nearly one-third of his investigations were initiated because of tips coming to him through whistleblowers. This is the kind of positive reinforcement that will encourage others to come forward with disclosures of wrongdoing.

But even if the systems were to work perfectly, serious and sustained oversight from both the RAT Board and the Congress are essential. It is most likely that this oversight will be necessary to ensure the discretion clause included in Section 1553 is not abused. I want to be clear here. The clause is important: without it, IGs would have been required to investigate every single complaint received. As a person who runs an organization that receives such complaints, I can assure you such a requirement would have wasted valuable time and energy. However, the discretion given IGs regarding when they will or will not investigate disclosures is so broad as to be very worrisome. You can't legislate judgment, but I do think this is where oversight will play an essential role.

Another area that requires congressional oversight, and where this Committee in particular has shown great strength, is in overseeing the IGs themselves. For example, it is in large part because of this Committee's great work that the NASA IG was finally forced to resign after his poor performance, and the Committee deserves credit for sticking with that issue over the past several years.

At the moment, the stars are not in complete alignment for taxpayers to benefit from whistleblower disclosures, audits, and investigations of misconduct in Recovery Act spending. But the weaknesses are fixable—we just need to fix them now. I look forward to working with the Committee to accomplish that goal.