

COMMITTEE ON SCIENCE AND TECHNOLOGY

U.S. House of Representatives

Washington, D.C.

May 1, 2009

Subcommittee on Investigations and Oversight

HEARING CHARTER

Follow the Money Part II: Government and Public Resources for Recovery Act Oversight

May 5, 2009 2:00 PM
2318 Rayburn House Office Building

I. Summary

The Subcommittee will meet on May 5, 2009, to continue oversight of the accountability and transparency provisions in the American Recovery and Reinvestment Act (hereafter cited as the "Recovery Act"). The first panel will examine the establishment of the Recovery Accountability and Transparency Board, set up under the Act to coordinate the efforts underway to measure the outcomes from the investment of the Recovery Act's \$787 billion. The Board's new chairman and the acting comptroller general of the Government Accountability Office (GAO) will also discuss what progress has occurred on oversight since the Subcommittee's previous hearing in March.

Witnesses on the second panel have been invited to testify on the policies, processes and organizations that will provide the public its ability to participate in Recovery Act oversight. With the capabilities of the Internet, new channels for gathering information increase the opportunity to forestall misuse of Government resources as they happen, not when they are identified in audits months or years later. The Recovery Act calls for citizen involvement; the Subcommittee has asked the panel how to assure this happens.

II. Witness List

Panel I

- Mr. Earl Devaney, Chair, Recovery Accountability and Transparency Board
- Mr. Gene Dodaro, Comptroller General of the United States (Acting), Government Accountability Office

Panel II

- Dr. Clarence Newsome, President, Shaw University (Raleigh, NC), representing the National Association for Equal Opportunity in Higher Education.
- Dr. Gary Bass, Founder and Executive Director, OMB Watch (Washington, DC)
- Dr. Jerry Ellig, Senior Research Fellow, Regulatory Studies Program, The Mercatus Center, George Mason University (Arlington, VA)
- Ms. Danielle Brian, Executive Director, Project on Government Oversight (Washington, DC)
- Mr. Eric Gillespie, Senior Vice President, Products, Technology and Information, Onvia (Seattle, WA)

III. Panel I: Managing the Oversight Corps

Subtitle B of the Recovery Act's Title XV provides the statutory foundation for the Recovery Accountability and Transparency Board, established to "...coordinate and conduct oversight of covered funds to prevent fraud, waste, and abuse." President Obama named Mr. Devaney to chair the Board on February 23. Besides Mr. Devaney, the Board is made up of ten Inspectors General from Federal agencies receiving funds in the Recovery Act. Two Board members, the IGs from the Departments of Commerce and Energy, testified at the Subcommittee's earlier hearing on March 19.

At that time, the Board had not met; as Mr. Devaney told the Committee on Oversight and Government Reform, "The status of the board is what you might expect just 30 days after the Recovery and Reinvestment Act of 2009 was signed into law." The Board finally met on March 27. Mr. Devaney has been asked to describe for the Subcommittee the progress made by the Board in assuming its responsibilities.

In the Recovery Act, Congress explicitly required that grants and contracts issued using these funds be awarded using competitive procedures and for fixed prices¹, as defined in the Federal Acquisition Regulation (unless exempted by the Act). This could be an item of special concern to agencies under the jurisdiction of the Committee, as research and development contracts are regularly awarded on a cost-reimbursable basis. The selection of contract type is normally a function of how much knowledge the agency has about the product or service it intends to buy and how confident it is that its needs will not change during the life of the contract. For NASA, which received \$400 million in the Recovery Act to support the development of the Space Shuttle's replacement vehicles, this means that contracts using these funds have a higher likelihood of drawing Board attention. On the other hand, research grants issued by the National Science Foundation are normally awarded after undergoing merit review and are issued for fixed amounts. Thus, the NSF Inspector General is less likely to find this to be an issue. The Board is specifically tasked to review agency success at accomplishing these goals. The Board must also review whether the agencies properly report information on grants and contracts and identify what will be delivered by the recipient.

The Board will also have the responsibility to examine Recovery Act spending to detect "...wasteful spending, poor contract or grant management, or other abuses...."² While the Board has the authority to initiate its own audits, the Act clearly expects the Board to rely on the Inspectors General for the bulk of audit and investigation work. The Board will likely find its most important contributions to be distributing the workload most effectively and identifying topics that need immediate attention. Insight on specific Recovery Act projects, however, will come from direct work by an agency inspector general or cooperating state or local oversight offices.

"The President and the heads of Federal departments and agencies," says the Act, "shall manage and expend the funds made available in this Act so as to achieve the purposes specified..., including commencing expenditures and activities as quickly as possible consistent with prudent management."³ Mr. Devaney and Mr. Dodaro would likely agree with the witnesses at the Subcommittee's hearing in March that satisfying these simultaneous mandates puts a spotlight on the performance of the program managers and contracting officers directly managing the funds. As the Government's representatives closest to the actual performance of a particular grant or contract, they have an early opportunity to prevent wasteful spending. They can just as easily be the source of the "poor contract or grant management" that the Board will seek out. Members expressed concerns numerous times about this issue at the March hearing.

¹ P.L. 111-5, Section 1554.

² Section 1523(a)(2)(C).

³ Section 3(b).

In the course of its activities, the Board will collect information particularly useful in helping Congress gauge the severity of this problem. The Board will review whether agencies have an adequate number of people to determine what the agency needs, conduct competitions that result in maximum value for the money, and then manage the grantee or contractor to produce the expected outcome at the desired time and for the agreed cost.⁴ What training these people receive will also be scrutinized so that gaps in institutional knowledge and preparedness can be closed. This information will also be valuable as Congress considers reform of Government acquisition generally.

Central to the Board's interaction with the public is the Recovery.gov website, established by Section 1526 of the Recovery Act. The goal is to produce "a user-friendly, public-facing website to foster greater accountability and transparency in the use of covered funds."⁵ The statute has specific requirements for the types of data that are to be made available, such as the agency plans for distributing Recovery Act funds to be provided May 1.

The Recovery Act defines an expansive role for the public in oversight of Recovery Act activities, and Recovery.gov should be viewed as the data well that citizens can draw on to obtain source material. The Act requires the website to "...provide a means for the public to give feedback on the performance of contracts that expend covered funds," and in Section 1514 of the Act Inspectors General are directed to:

"...review, as appropriate, any concerns raised by the public about specific investments using funds made available in this Act. Any findings of such reviews not related to an ongoing criminal proceeding shall be relayed immediately to the head of the department or agency concerned."

Whether Recovery.gov is able to provide the support to interested citizens desiring to offer such support for oversight has been questioned in the early days of Recovery Act implementation. The Subcommittee has asked Mr. Devaney to discuss the Board's plans for management of the website; he will likely refer to the online forum the National Academy on Public Administration conducted for the Board this week seeking suggestions for website improvements. Mr. Devaney is likely to stress for the Subcommittee that Recovery.gov is a work in progress and that improvements to the site will likely be made throughout the life of the Board. The complexity of the task, involving the collection of data from multiple sources, assuring the quality of that data, and presenting it in comprehensible terms to the public, is formidable.

In the Recovery Act, the Government Accountability Office is focused more on how states, cities and other localities handle their allocations of Recovery Act resources. However, in the course of its regular work, GAO is likely to discover problems with the use of Recovery Act funds. The public is also likely to ignore the distinctions the Recovery Act makes in assigning oversight responsibilities and provide GAO with information that will need to be provided to the Board and Inspectors General for action. Thus the cooperation between GAO and the Board will be an important aspect in promoting Recovery Act oversight.

The Subcommittee has asked Mr. Dodaro to follow up on GAO's testimony at the Subcommittee's first hearing. GAO recently testified on the ability of Grants.gov, the website that is supposed to allow application for any Federal grant from one site, to handle the increased workload generated by the Recovery Act. In its first report examining implementation of the Act by the States, GAO reports on concerns expressed by officials that lack of resources may hamper the submission of data sufficient to meet the accountability and transparency requirements of the Act. Given GAO's responsibility for regular oversight of Government activities, he was specifically asked for

⁴ Section 1523(a)(2)(D) and (E).

⁵ Section 1526(a).

comments on public contributions to assist with oversight and on whistleblower protection. The Recovery Act offered new protection to whistleblowers in state and local governments and employed by contractors, and it is the responsibility of the Board and the Inspectors General to provide those protections. Mr. Dodaro should be able to provide additional insights on the issues Mr. Devaney now faces.

IV. Panel II: Public Perspectives on the Recovery Act

Witnesses on Panel II have been asked to discuss several different aspects examining how the Recovery Act is working or will work. This begins with the most basic question – how does someone who might benefit from Recovery Act funds learn how to compete for them? – to assuring that the oversight mechanism set up in the Act will improve our ability to "follow the money" and determine if it has contributed to "...provid[ing] investments needed to increase economic efficiency by spurring technological advances in science and health..." along with the other overall goals of the Act.

The Committee has continuing interests in the health of the American university system, driven by the need for educated citizens and the contributions colleges and universities make to economic development. Members of the Committee worked to include significant funding increases for science and technology programs in the Recovery Act. While the Recovery Act itself and the total level of resources available received wide publicity, potential beneficiaries have little assistance in actually obtaining funds if they are unfamiliar with the often opaque methods by which agencies conduct competitions and award grants and contracts. Members of the Committee also promote improved educational opportunities for communities that are hampered by historic barriers to top-quality education. The Subcommittee has therefore invited Dr. Clarence Newsome, representing the institutions of the National Association for Equal Opportunity in Higher Education, to describe their efforts to take advantage of the Recovery Act's opportunities to fill immediate and long-term needs for improvements at their campuses.

Dr. Bass has been asked to discuss the broadest set of oversight issues. If the Recovery Act is an experiment in encouraging information flow so that we can detect problems with Federal spending earlier, is the initial structure actually accomplishing that goal? If the Act is trying to harness the collective knowledge that citizens may have about the particular projects being funded with Recovery Act dollars, can they find information on those projects and then easily find the proper person who needs to know that the funds are not being used as described by the contract or grant? Dr. Bass helped establish the Coalition for an Accountable Recovery, which has argued that the Government does not collect enough information to provide the accountability and transparency sought by the Recovery Act. Unless states and localities present data on their use of Recovery Act funds, the ability to detect trouble may be lost.

Simply implementing the Recovery Act itself is also a work in progress. Guidance from the Office of Management and Budget to the agencies has evolved. Given Dr. Bass's experience at OMB Watch, the Subcommittee has asked for his comments on how accountability and transparency should be accomplished; he should also be able to comment on what the results of this experiment will mean for the regular operations of the Federal Government.

Dr. Ellig, of the Mercatus Center, is testifying at the suggestion of Dr. Broun, the Ranking Member. He has interests similar to those discussed by Dr. Bass, and will also discuss criteria for measuring the Act's performance. Dr. Ellig should also provide comments on the guidance issued to the agencies by the Office of Management and Budget on subjects such as counting the number of jobs produced or preserved by Recovery Act investments. Dr. Ellig has extensive knowledge about the Government Performance and Results Act of 1993, and helps to prepare the Mercatus Center *Annual Performance Report Scorecard*, which evaluates the annual agency GPRA Performance Reports for transparency and documentation of program outcomes. [While

Congress spent a lot of effort on GPRA-related matters in the 1990s, the Bush Administration implemented a new initiative, the PART Process (Program Assessment and Results Tool), that largely supplanted GPRA. OMB managed PART and neither Congress nor the White House seemed to find any interest in GPRA plans or results after the initiative of PART by then-OMB Director Mitch Daniels.]

Whistleblowers will be critical sources of information when conducting oversight of Recovery Act projects. The Act establishes new protections for whistleblowers working in state and local organizations, and for employees working for recipients of grants and contractors. The law requires the appropriate Inspector General to investigate a case unless it is the subject of another administrative or judicial process, does not involve Recovery Act funds or is determined to be frivolous. The Inspector General involved has 180 days to prepare a final report that goes to the whistleblower, that person's employer, the head of the funding agency and the Board. Because the Act has extended these protections to non-Federal employees, there may be new and unique issues that arise if it becomes necessary for an Inspector General to enforce these powers. The Subcommittee has asked Danielle Brian, Executive Director of the Project on Government Oversight, to evaluate the new protections. The Subcommittee asked for her comments on the difficulties that may arise, and for advice on how to let prospective whistleblowers know of their rights under the Act.

Developing and managing Recovery.gov will pose challenges for the Board. To offer some insight on the extent of that challenge, the Subcommittee will receive testimony on a private-sector equivalent, Recovery.org. This website was developed by Onvia, a Seattle company whose regular business involves identifying and tracking government procurement opportunities, and alerting private companies interesting in bidding. After passage of the Recovery Act, the company decided to use its capabilities to develop a tracking site for use by the public.

The Subcommittee has invited Eric Gillespie, the company's senior vice president for technology, to describe what was required to prepare the site, where to find the data for display, and how to present data for different audiences with different interests seeking different information from the site. Onvia has identified some 90,000 "purchasing units" across the U.S. that generate procurement opportunities. Each has unique rules for how funds should be spent and requirements for transparency. While Mr. Bass's coalition argues that data on spending should be provided down to contractor level, Mr. Gillespie's experience indicates this cannot be achieved overnight – if at all. Not all jurisdictions make their data accessible on the net to outside organizations. Changes must be tracked sometimes at hourly intervals, as it can't be guaranteed that postings will be permanent. States and localities may not have funds to collect, process and provide this data; Chairman Towns of the Oversight and Government Reform Committee is considering legislation to assist the states with funds to address this issue. While the Act provides the Board with \$84 million to fund its operations, building the data infrastructure it authorizes will take that and more.

The Board has a statutory termination date of September 30, 2013, and Mr. Devaney is considering what will be left behind when the Board is done. Some agencies are already viewing their work overseeing Recovery Act activities as a new model for managing regular appropriations. The database behind Recovery.gov will embody many lessons learned about understanding where the Federal Government's resources go and how they affect the economy. It may become possible to shorten the time to determine the effectiveness of Federal spending in order to react quickly to failure or reinforce success. The legacy of the Recovery Act may go beyond the physical infrastructure and economic benefits to include new ways to illuminate Government performance for citizens.