

COMMITTEE ON SCIENCE AND TECHNOLOGY
U.S. House of Representatives
Washington, D.C.

March 17, 2009

Subcommittee on Investigations and Oversight

HEARING CHARTER

***Follow the Money: Accountability and
Transparency in Recovery Act Science Funding***

March 19, 2009 10:00 AM
2318 Rayburn House Office Building

I. Summary

The Subcommittee will meet on March 19, 2009, to receive testimony relating to the accountability and transparency provisions in the American Recovery and Reinvestment Act (H.R. 1; hereafter cited as the "Recovery Act"). The Subcommittee will take testimony on steps taken by agencies under the Committee's jurisdiction to establish accountability for the funds they will receive under the Act.

Witnesses on the first panel have been designated as "senior accountability officers" by their agencies and are nominally in charge of planning for spending Recovery Act funds. The second panel is composed of Inspectors General (IGs) and the Government Accountability Office (GAO). These witnesses will describe their roles in overseeing appropriate distribution of these funds and highlight for the Subcommittee issues specific to our agencies that will deserve close oversight attention while these funds are available.

II. Witness List

Panel I

- Dr. Cora Marrett, Deputy Director (Acting) and Senior Accountability Officer, National Science Foundation
- Ronald R. Spoehel, Chief Financial Officer, National Aeronautics and Space Administration
- Ellen Herbst, Senior Official for Recovery Implementation, Department of Commerce
- Matthew Rogers, Senior Advisor to the Secretary, Department of Energy

Panel II

- Tim Cross, Inspector General (Acting), National Science Foundation
- Todd Zinser, Inspector General, Department of Commerce
- Gregory H. Friedman, Inspector General, Department of Energy
- Patricia Dalton, Managing Director, Natural Resources and Environment Division, Government Accountability Office

At the request of Mr. Broun, we have also invited testimony from Eileen Norcross, Senior Research Fellow at the Mercatus Center of George Mason University.

III. Funding Provisions

Funds made available under the Recovery Act are intended to accomplish certain purposes, defined in Section 3(a):

1. To preserve and create jobs and promote economic recovery.
2. To assist those most impacted by the recession.
3. To provide investments needed to increase economic efficiency by spurring technological advances in science and health.
4. To invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits.
5. To stabilize State and local government budgets, in order to minimize and avoid reductions in essential services and counterproductive State and local tax increases.

Further, the Act requires that, "The President and the heads of Federal departments and agencies shall manage and expend the funds made available in this Act so as to achieve the purposes specified in subsection (a), including commencing expenditures and activities as quickly as possible consistent with prudent management." [Section 3(b)]

What follows is a short description of the Recovery Act funds allocated to the major agencies under the jurisdiction of the Committee on Science and Technology:

Department of Energy (DOE)

\$15.9 billion

Of direct interest to the Committee is \$1.6 billion provided for the Department's Office of Science, and \$400 million made available for the Advanced Research Projects Agency – Energy (established in the America COMPETES Act in the last Congress).

The Department also received \$2.5 billion for "applied research, development, demonstration and deployment activities" in energy efficiency and renewable energy. The bill directed \$800 million to biomass energy efforts, \$400 million to geothermal energy projects and \$50 million to standards and efficiency work for information and communication technologies. Further, \$2 billion is provided for grants in support of advanced battery manufacturing.

For fossil research and development, the Act provides \$3.4 billion. Approximately half (\$2.32 billion) supports Round 3 of the Clean Coal Power Initiative and CO₂ capture and storage research. Another \$1 billion is available for general fossil energy research projects.

Finally, the Act establishes a new loan guarantee program "...for renewable technologies and transmission technologies." The Department will have \$6 billion for this purpose, and the conference report indicates it is expected this will leverage ten times that amount in private funds to develop such technologies.

**National Aeronautics and Space
Administration (NASA)**

\$1 billion

Each of the agency's appropriation accounts received funding in the Recovery Act:

- The Science account received \$400 million to expedite development of the first round of missions set out in the National Research Council's 2007 earth science decadal survey, and to upgrade NASA's supercomputers.
- Aeronautics has \$150 million to focus on aviation safety, mitigation of environmental impacts from aviation and projects related to replacement of the air traffic control system.
- \$400 million is made available for Exploration, which will likely be used to shrink the current hiatus between Shuttle retirement and initial operation of new Constellation systems.
- The agency also obtained \$50 million to assist in repairing facilities at the Johnson Space Center damaged by Hurricane Ike last year.

National Science Foundation (NSF)

\$3 billion

The majority of funds available to NSF are provided in the Research and Related Activities account, with \$300 million targeted on the major research instrumentation program and \$200 million set aside for academic facilities modernization. The conference report requires that all of the research divisions share in at least some of the other \$2 billion in the account, after providing for "...advancements in supercomputing technology."

Scholarship programs supported by the Foundation receive an additional \$100 million, while \$400 million is made available to programs funded by the Major Research Equipment appropriation.

**National Institute of Standards and
Technology (NIST)**

\$580 million

The research program at NIST is bolstered by \$220 million to support research, to provide more competitive grants and purchase needed equipment for laboratories. Remaining funding is split evenly between the agency's own facility construction efforts and a competitive grant program for research science buildings.

Not included in the total above is an additional \$20 million transferred from the Department of Health and Human Services to support NIST's efforts in developing security and interoperability standards for health information technology. A further \$10 million from the Department of Energy is intended to assist in bringing intelligence to the national electrical power grids.

**National Oceanic and Atmospheric
Administration (NOAA)**

\$830 million

The Appropriations Committee directed NOAA to provide \$230 million to reduce its "backlog of research, restoration, navigation, conservation and management activities." The remaining \$600 million is split between work on facilities, ships and equipment, weather forecasting and satellite development (\$430 million), and \$170 million targeted on climate activities such as modeling, data records and studies in mitigation.

IV. Accountability Provisions

For the agencies, the Recovery Act imposes new requirements to accompany the new funding available. For spending on infrastructure projects, the agencies are directed to obligate at least half of the funds available within 120 days of the bill's enactment (February 16, 2009). Grant funding is to be employed "in a manner that maximizes job creation and economic benefit." Contracts awarded as part of Recovery Act activities are to be fixed-price and awarded by the competitive process set forth in the Federal Acquisition Regulation; contracts awarded by other means are to be highlighted in a special section of the Recovery.gov website.

The Office of Management and Budget (OMB), on February 9, 2009, directed the agencies "to name, no later than February 13, 2009, a senior official responsible for coordinating recovery-related efforts across your agency." Those officials represent the agency witnesses here today. Weekly reports on agency activities relating to implementation of the Recovery Act were to be posted on the agency's own website for Recovery Act actions beginning March 3. According to the first weekly reports published by the agencies testifying at the hearing, there have been no expenditures to date using Recovery Act funds. The formal plans for distributing Recovery Act resources are due to OMB by May 1.

The Recovery Act does not relieve the agencies of their normal requirements for assuring the proper use of funds, such as prohibitions against discrimination in the Civil Rights Act and the reviews required by the National Environmental Policy Act. OMB has told the agencies that they can expect their performance to be measured against the following criteria:

1. Audits and investigation of Recovery Act funds occurring to identify wasteful spending and minimize waste, fraud, and abuse;
2. Qualified personnel overseeing Recovery Act funds;
3. Opportunities to use competitive awards maximized;
4. Timely award of dollars;
5. Timely expenditure of dollars;
6. Timely completion of planned work;
7. Cost overruns minimized; and
8. Improper payments minimized.

However, because of the short window during which Recovery Act funds will be available (appropriations under the Act will generally expire at the end of Fiscal Year (FY) 2010 unless otherwise stated) and specific direction in the Act to expedite disbursement, the agencies will have to execute their normal processes with alacrity, over and above the work needed to deal with regular activities.

At the same time, agency staff devoted to acquisition has been shrinking government-wide, from 67,085 in 1992 to 61,434 in FY2007, according to the Federal Acquisition Institute (with half of those at the Department of Defense). The Professional Services Council, an organization of government contractors, warned last month that "[w]ithout a government workforce sufficient to plan, deliver and manage the contracts and grants that dispense these huge funds, it will be like constructing an office building on a foundation of sand." The state of these acquisition staffs was a focus of OMB Director Peter Orszag at the first meeting with the Cabinet to discuss Recovery Act implementation. ***Agency witnesses should be questioned closely about steps they are taking to address their weaknesses in this critical area.***

It is the responsibility of the agency Inspectors General to monitor agency operations for waste, fraud and abuse, and they will have similar responsibilities for funds made available by the Recovery Act. It is anticipated that their work will provide the bulk of the information related to accountability that will become available on Recovery.gov (<http://www.recovery.gov/>, the central information website created in the Recovery Act). The Inspectors General have a specific responsibility to receive reports from the public relating to items funded by the Act and to determine if those reports demonstrate improper use of those funds. It will also be the IGs investigating allegations of retaliation against whistleblowers under the protections for State, local and contractor employees providing information on misuse of Recovery Act funds. The following table identifies the additional funding made available to the IGs in the Act:

Department of Energy	\$15 million
National Aeronautics and Space Administration	\$2 million
National Science Foundation	\$2 million
Department of Commerce	\$6 million

These funds remain available to the DOE IG until the end of FY 2012, and to the other IGs until FY 2013. The Subcommittee has asked each of the witnesses to describe how the extra resources will be employed.¹

To coordinate the work of the IGs, Title XV of the Recovery Act establishes a new entity named the Recovery Accountability and Transparency Board. The Board will have the power to determine if contracts and grants issued with Recovery Act funding conform to law and regulation and if they are appropriately managed. The Board will also evaluate the performance of the agency acquisition staffs. The Board will report to Congress and the public regarding the use of Recovery Act funds at least on a quarterly basis, and can issue immediate (“flash”) reports in cases requiring immediate attention. The Board will also maintain Recovery.gov. Given its position at the apex of the accountability structure, the Board will make recommendations for the prevention of waste fraud and abuse to the agencies, to which the agency must respond by report to Congress and the President within 30 days.

¹ The Subcommittee has made an affirmative decision to not invite the NASA Inspector General, Mr. Robert “Moose” Cobb. Both Chairman Gordon and Subcommittee Chairman Miller have recommended his ouster for almost two years, most recently in a letter to the White House. Based on investigative work by the Subcommittee and by the President’s Council on Integrity and Efficiency (PCIE), Mr. Cobb has not lived up to the high standards of conduct and integrity expected of an Inspector General. It was apparent from the PCIE investigation that Mr. Cobb failed to understand how to properly employ auditors and did not respect the audit staff in his organization. This may explain the finding in a recent report by GAO (done at the request of Chairman Gordon and Chairman Miller) that the NASA IG audit operation demonstrated close to the weakest performance of any IG office in the Federal government. For every tax dollar assigned to Mr. Cobb’s office, his audit operation discovers just thirty-six cents in potential savings. For an agency that puts 80% of its budget out the door in contracts and grants, that is an inexplicably low number. The Department of Commerce IG and Department of Energy IG were found to return \$2.25 and \$2.37, respectively. If anyone wishes more information on these matters, please contact the Subcommittee staff.

Membership for the Board is drawn from a subset of the departmental IGs, including two of our witnesses (Inspectors General Zinser and Friedman). President Obama has appointed the Inspector General of the Department of the Interior, Earl Devaney, to serve as the Board's chair (Mr. Devaney has taken leave from Interior to fill this job and has made a promise to Chairman Miller to appear at a future Subcommittee hearing). The Act specifically tasks the Board to consult and collaborate with the Inspectors General, the Government Accountability Office and State auditors in the conduct of its affairs and in the preparation of the reviews and reports it will publish. The Board receives a budget of \$84 million to fund its activities until its termination date of September 30, 2013.

With regard to GAO's contribution to Recovery Act oversight, the acting Comptroller General, Gene Dodaro, testified before the Senate Committee on Homeland Security and Government Affairs on March 5, 2009. He described the steps he has taken to begin cooperating with the IG community, State auditors and OMB as contemplated in the Act. Based on GAO's prior work, he highlighted fraud prevention, contract management and grant accountability as areas deserving special focus as Recovery Act funds are expended. GAO received an additional \$25 million in the Act for salaries and expenses relating to their responsibilities under the Act.

While we have asked the IG and GAO witnesses to distill general oversight principles (like those just discussed) from their respective bodies of work, they also can describe specific management challenges that relate to Recovery Act programs. Both NASA and the Department of Energy have spent years on GAO's high-risk list for contract management. When either agency employs a contract to spend Recovery Act money, how will the procurement process close the gaps GAO identifies? A recent report by the Department of Energy Inspector General indicates that the office managing loan guarantees at the Department is overstretched with its existing workload, and now faces an additional \$6 billion provided for a new set of guarantees authorized by the Recovery Act. What will be done to reduce the overload?

Ms. Norcross will address the ability of nongovernmental organizations, academia, and the private sector to complement existing oversight of the American Recovery and Reinvestment Act. Additionally, she will also speak to what tools Congress can provide to these organizations that will further enable transparency and oversight. As co-founder of the website stimuluswatch.org, Ms. Norcross will also discuss the role of technology in promoting accountability.

Mr. Devaney, in a *Wall Street Journal* article published March 9, 2009, noted that his previous experience indicated that fraud in Federal expenditures averaged "around 7% of all big contracts." While he stated that he believes strong agency oversight can keep losses "well below" that level, it is unlikely that it will end up reduced to zero. The efforts being made on accountability are themselves an experiment. Depending on their success at minimizing improper expenditures, they may become the standard for measuring federal spending distributions in the future.