



The Inspector General

Office of Inspector General
Washington, D.C. 20590

**U.S. Department of
Transportation**
Office of the Secretary
of Transportation

February 19, 2010

The Honorable Mark Pryor
United States Senate
Washington, DC 20510

Dear Senator Pryor:

This letter responds to your January 26, 2010, request that we report on our efforts to promote transparency and accountability in the Department of Transportation's (DOT) American Recovery and Reinvestment Act (ARRA) spending. The Office of the Inspector General (OIG) is committed to helping the Department maximize the return on the \$48 billion investment in DOT Recovery Act programs and projects. Since the Recovery Act's passage, we have conducted over 150 fraud prevention and awareness briefings with a total of more than 11,000 participants at all levels of government and industry groups, and have issued 4 timely and thorough Recovery Act audit reports, 3 ARRA advisories, and a number of reports with Recovery Act-related findings and recommendations. Our cross-modal team of auditors, analysts, investigators, engineers, and attorneys continues to examine areas presenting the greatest risks. We currently have 11 audits and 36 investigations under way.¹

Congress provided a total of \$20 million in our FY 2009 to FY 2013 budgets for conducting audits and investigations of DOT projects and activities funded by the Recovery Act. This funding helps ensure we have the staff, travel budget, information technology, and other resources needed to achieve Recovery Act goals. You asked us to (1) describe the actions we have taken to respond to allegations of fraud, waste, or abuse of Recovery Act funds, including those referred to us by the Recovery Accountability and Transparency Board (Recovery Board); (2) summarize our ongoing and planned audits; and (3) estimate the portion of our FY 2010 and FY 2011 workload that we expect to dedicate to Recovery Act oversight.

¹ DOT OIG has a Recovery Act oversight webpage, which can be found at www.oig.dot.gov/recovery.

Actions Taken to Respond to Allegations of Fraud, Waste, or Abuse

OIG assesses all allegations to determine whether or not they may be criminal in nature. Potential criminal and civil violations of law are referred to our Office of Investigations for further review and may lead to further investigation. To help ensure criminal allegations will be prosecuted if substantiated, OIG typically consults with a Federal prosecutor early in an investigation and coordinates investigative methods. Allegations not of a criminal nature are generally referred to the appropriate DOT agency for review and action,² or for information only. The agency is required to provide a written response, generally within 90 days, detailing the specific actions taken to address the allegations. If the agency substantiates the allegation, and we determine the actions are adequate, the allegation is closed. If further action is needed, we require that the agency conduct additional work to address our concerns. We do not require an agency to provide a response to allegations referred for information only.

As of January 31, 2010, we received a total of 215 Recovery Act-related allegations, 11 of which were referred to us from the Recovery Board. Of the 215 allegations, 119 were not actionable (including 2 from the Recovery Board) because they typically were not under DOT's jurisdiction or did not contain sufficient information. The remaining 96 were actionable allegations, ranging from waste to embezzlement, and concern the following DOT agencies: Federal Highway Administration (FHWA); Federal Transit Administration (FTA); Federal Aviation Administration (FAA); Federal Motor Carrier Safety Administration (FMCSA); Federal Railroad Administration (FRA); and Maritime Administration (MARAD). The vast majority of allegations concern FHWA programs (see table 1).

² Actionable allegations are those that directly involve a DOT agency, program or funds, and/or sufficiently detail the alleged fraud, waste, or abuse.

Table 1. Disposition of Actionable Allegations, as of January 31, 2010

	Allegations received independent of the Recovery Board				Allegations forwarded by the Recovery Board				Total
	Referred to agency		DOT OIG investigations		Referred to agency		DOT OIG investigations		
	Open	Closed	Open	Closed	Open	Closed	Open	Closed	
FHWA	21	8	28	1	2	0	1	3	64
FTA	10	0	3	0	1	0	0	1	15
FAA	4	4	4	0	1	0	0	0	13
FMCSA	1	0	0	0	0	0	0	0	1
FRA	1	0	0	0	0	0	0	0	1
MARAD	1	0	0	0	0	0	0	0	1
OST	1	0	0	0	0	0	0	0	1
Total	39	12	35^a	1	4	0	1	4	96

^aSixteen allegations were presented to a U.S. Attorney for prosecution, and one was advanced to the agency for administrative action—none of the allegations were forwarded by the Recovery Board.

Seventeen of the 96 actionable allegations are closed. Two of these closed allegations were substantiated and 15 were unsubstantiated. Both of the substantiated allegations were referred to FHWA and involved the use of Federal highway funds at the state level.

- In one case, FHWA found disparities in a state's Disadvantaged Business Enterprise (DBE) program³ and recommended the state take action to improve the program. FHWA noted that minority-owned DBE companies received fewer contracts than white female-owned DBE companies. FHWA also noted that there were few qualified minority-owned DBE firms available for the contract types procured through the Recovery Act. The state's department of transportation has initiated a study to address the identified disparities.
- In the second case, FHWA found that a state failed to adhere to its maintenance of effort obligation, a requirement for receiving additional Recovery Act funds. The state agreed to amend its maintenance of effort calculations to include local highway user revenue.

³ DOT's DBE program is intended to ensure nondiscrimination in the award and administration of DOT-assisted contracts in the Department's highway, transit, airport, and highway safety financial assistance programs. The goals of the program are to remedy past and current discrimination against disadvantaged business enterprises, ensure a "level playing field" in which DBEs can compete fairly for DOT-assisted contracts, improve the flexibility and efficiency of the DBE program, and reduce burdens on small businesses.

The 11 allegations forwarded to us by the Recovery Board ranged from misuse of Recovery Act funds to failure to adhere to Federal reporting requirements. Table 2 provides the status of these allegations by agency.

Table 2. Disposition of Allegations Forwarded by the Recovery Board, by responsible Agency or Office, as of January 31, 2010

Allegation	Action Requested	Status of Complaint
Amtrak OIG		
Government wrong-doing	Information	Closed
FTA		
Noncompliance with Recovery Act Requirements	Action	Open
FAA		
Noncompliance with Recovery Act Requirements	Action	Open
FHWA		
Noncompliance with Recovery Act Requirements	Action	Open
Noncompliance with Recovery Act Requirements	Action	Open
Wasting Funds	Information	Closed
OIG Office of Investigations		
Noncompliance with Recovery Act Requirements	Review	Open
Bid Rigging	Review	Closed; criminal investigation not warranted
Embezzlement	Review	Closed; criminal investigation not warranted
Noncompliance with Recovery Act Requirements	Review	Closed; criminal investigation not warranted
Noncompliance with Recovery Act Requirements	Review	Closed; criminal investigation not warranted

OIG Audits Focusing on Recovery Act Issues

In January 2009, we initiated a three-phase approach to conduct anticipated audit work pending the Recovery Act's passage. We completed the first phase in March 2009 with the issuance of our report, "American Recovery and Reinvestment Act of 2009: Oversight Challenges Facing the DOT." The report, based on prior OIG reports and other agencies' audit work, highlighted three key oversight challenges that DOT needed to address to better position itself to meet Recovery Act requirements: overseeing grantees; implementing new reporting requirements and programs; and combating fraud, waste, and abuse. In response, DOT developed a Recovery Act oversight plan that outlined key actions that were under way or planned to address the challenges and focus

areas we identified. Table 3 provides the key Recovery Act challenges and related focus areas for DOT.

Table 3. Major Recovery Act Challenges and Related Focus Areas for DOT

Ensuring DOT grantees properly spend Recovery Act funds
<ul style="list-style-type: none">• Acquire sufficient personnel with relevant expertise to oversee grantees.• Adhere to existing Federal requirements for programs funded under the Recovery Act.• Evaluate the credibility and completeness of cost and schedule estimates.• Oversee grantees' contracting management activities and ensure selection of appropriate contract types.• Address internal control weaknesses and identify unused funds for use elsewhere.
Implementing new accountability requirements and programs mandated by the Recovery Act
<ul style="list-style-type: none">• Implement new Recovery Act tracking and reporting requirements that are designed to promote accountability and transparency.• Develop comprehensive plans and sound criteria for the new discretionary grant and passenger rail programs within statutory deadlines.• Develop appropriate oversight strategies for the new discretionary grant and passenger rail programs.
Combating fraud, waste, and abuse
<ul style="list-style-type: none">• Enhance understanding among DOT staff, grantees, and their contractors on how to recognize, prevent, and report potential fraud to the appropriate authorities.• Take timely and effective action to suspend and/or debar individuals or firms that have defrauded the Department, or are otherwise known to be irresponsible, so they do not receive Federal contracts in the future.

The second phase targeted the 10 focus areas identified in phase 1. We deployed teams to each DOT agency receiving Recovery Act funding to assess their implementation efforts and identify vulnerabilities that could impede DOT's ability to (1) provide effective oversight to Recovery Act funded projects, and (2) meet new requirements mandated by the Recovery Act and the Office of Management and Budget. Our November 2009 report identified vulnerabilities related to (1) project selections for existing programs; (2) project and contract oversight for existing programs; (3) new programs created by the Recovery Act; and (4) new reporting requirements mandated by the Recovery Act. In response to our report, the Department provided dates for completing actions such as developing Recovery Act workforce plans and a grant monitoring plan. We plan to monitor the Department's progress.

While many of the vulnerabilities we identified require sustained focus because of their complexity, size, or scope, a number require immediate action to mitigate management and funding risks. To alert DOT of such risks, we began issuing in phase 2 ARRA

advisories—a new reporting format requesting prompt attention to vulnerabilities that could compromise the effective and efficient use of Recovery Act funds. The advisories helped DOT target areas needing correction before problems worsened and put more taxpayer dollars at risk. We plan to continue the practice of issuing advisories to alert DOT of significant issues that arise during our Recovery Act audits.

In addition to our phase 2 audits, a number of audits initiated before the passage of the Recovery Act directly relate to DOT programs that receive Recovery Act funding. The subjects of these audits include suspension and debarment, award fee implementation, FAA improper payments, single audits, and Amtrak's capital program. In January 2010, we concluded that unresolved suspension and debarment cases coupled with DOT's rapid disbursement of billions of Recovery Act dollars creates a 'perfect storm' for contractors who may intend to defraud the Government. Any actions that DOT takes to improve these programs based on our findings and recommendations will increase the likelihood that Recovery Act dollars will be spent efficiently and effectively. Our reports and advisories related to phases 1 and 2 are listed in table 4.

Table 4. OIG Reports and Advisories Related to Phases 1 and 2

Issue Date	Title/Link
03/31/09	American Recovery and Reinvestment Act of 2009: Oversight Challenges Facing the Department of Transportation
05/18/09	Advisory: Department's Suspension and Debarment Program
06/22/09	Advisory: Sampling of Improper Payments in Major DOT Grants Programs
08/06/09	Advisory: Federal Aviation Administration's Award of the Recovery Act Grant Funds to Airport Improvement Program Projects by August 5, 2009
10/06/09	Status of Operating Administrations' Processes to Conduct Limited Quality Reviews of Recovery Act Recipient Data
11/30/09	Department of Transportation's Implementation of the American Recovery and Reinvestment Act Continued Management Attention is Needed to Address Oversight Vulnerabilities
01/07/10	Department of Transportation's Suspension and Debarment Program Does Not Safeguard Against Awards to Improper Parties

The third phase, a longer-term initiative, is under way with 11 audits targeting high-risk areas that emerged from our phase 2 work. For example, we are reviewing FRA's new \$8 billion High-Speed Rail Program and evaluating FHWA's oversight of highway projects that have received more than \$20 million in Recovery Act funds. In addition we have 12 more Recovery Act audits planned for FY 2010.

Links to our completed, initiated, and planned Recovery Act audits can be found at [DOT
OIG FY 2010 Recovery Act Audit Work Plan](#).

OIG Recovery Act Oversight Workload

Our current Recovery Act oversight work comprises roughly 10 percent of OIG's total workload. As of January 31, 2010, our total gross outlays on Recovery Act work totaled \$3.3 million, and we have 32 full-time equivalent audit and investigation staff working on Recovery Act-related projects. We expect that the number of staff dedicated to the oversight of Recovery Act spending will remain around this level through FY 2011. However, spending is expected to increase as states' Recovery Act projects enter construction—a high-risk phase given the infusion of dollars—and our attention to these risks intensifies.

While our primary mission is to help ensure transportation safety, our office embraces its key role in helping to ensure accountability, efficiency, and transparency over DOT's portion of the massive economic recovery program. We are committed to promptly notifying DOT and Congress of actions needed to prevent fraud, waste, and abuse and achieve Recovery Act goals.

We would be happy to meet with you or your staff at your convenience to discuss our Recovery Act and other DOT-related work. If you have any questions, please call me at (202) 366-1959, or Madeline Chulumovich, Special Assistant for Economic Recovery, at (202) 366-6512.

Sincerely,

A handwritten signature in black ink that reads "C. L. Scovel III". The signature is written in a cursive style with a horizontal line under the name.

Calvin L. Scovel III
Inspector General