

COMMERCE, JUSTICE, SCIENCE, AND RELATED
AGENCIES APPROPRIATIONS FOR 2012

HEARINGS
BEFORE A
SUBCOMMITTEE OF THE
COMMITTEE ON APPROPRIATIONS
HOUSE OF REPRESENTATIVES
ONE HUNDRED TWELFTH CONGRESS
FIRST SESSION

SUBCOMMITTEE ON COMMERCE, JUSTICE, SCIENCE, AND RELATED
AGENCIES

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Minority Member of the Full Committee, are authorized to sit as Members of all Subcommittees.

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**COMMERCE, JUSTICE, SCIENCE, AND RE-
LATED AGENCIES APPROPRIATIONS FOR
2012**

WEDNESDAY, FEBRUARY 9, 2011.

U.S. DEPARTMENT OF COMMERCE

WITNESS

TODD ZINSER, INSPECTOR GENERAL

Mr. WOLF. Good morning. The hearing will come to order.

I want to welcome all the subcommittee members who will be here shortly for the first hearing of the 112th Congress. We have many familiar faces returning to the subcommittee and some new members as well, our new ranking member, Mr. Fattah, who has served on the Committee for nine years, and there have been others who have served on it for a number of years. We have new members, Mr. Austria of Ohio, Mr. Graves of Georgia, and Mr. Yoder of Kansas.

The President's budget for fiscal year 2012 will be released on February 14 and we intend to pursue an aggressive hearing schedule through the months of March and April. And this will be a year of severe budget austerity and the subcommittee intends to have the hearings with heads of all the major departments and agencies to justify their requests and help us to identify areas in which spending can be reduced with the least impact.

We are anxious to hear the agencies that come up because in many respects they know a lot better than, quite frankly, we will know. And we want to hear them to tell us from a priority basis where they think we can make these cuts.

In addition, we will have a few selected thematic hearings, the first of which will be a hearing on prisoner reentry and recidivism this Friday.

Our witnesses this morning are Mr. Todd Zinser, the Inspector General of the Department of Commerce, and Ms. Cynthia Schnedar, the Acting Inspector General of the Department of Justice.

Before I recognize the witnesses to present their testimony, I would like to recognize my colleague, Ranking Minority Member, Mr. Fattah, for any comments he would like to make.

Mr. FATTAH. Thank you, Mr. Chairman.

It is an honor to serve with you on this Committee and under your leadership. I look forward to working with you towards the goals of the Committee, which over the years have been bipartisan.

I came on to the Committee when you were in a leadership role and you have returned to that role. And throughout, you have remained consistently interested in a whole range of issues covered by the Subcommittee.

So I look forward to working through it. There will be some very tough decisions as we go forward, but I am convinced that we can arrive at those decisions in a bipartisan way, keeping the nation's interest foremost in our minds.

Thank you.

Mr. WOLF. Thank you.

Welcome, Mr. Zinser. We want to thank you for appearing before the Committee this morning to present the top management challenges facing the Department of Commerce.

Your office issued a December 2010 report, *Top Management Challenges Facing the Department*, which focused on a range of issues including NOAA satellites, the \$7.9 billion that Commerce received under the *American Recovery and Reinvestment Act*, the 2010 Decennial Census and IT security.

All these efforts include rather large sums of money, so part of what the Subcommittee will ask you today is where you think there may be opportunities for saving.

And, again, as I mentioned at the outset and when we met with the Secretary of Commerce, we would like to hear their comments. I guess in a real world if nothing had to be cut, it would be one thing.

But based on the reality, and this Subcommittee has been given an allocation, and based on the reality of where we are, we in an open spirit want to hear from the Department to say the same way that we would around our kitchen table if we were being eliminated, okay, you know, maybe we will cancel the trip to Disney this year or maybe we will not get a new car, but we want to maintain the priorities of our family to make sure the family stays strong and we do everything the same way we want to do with the departments.

So there may be things that the departments would like to have and maybe we would even like you to have them, too, but under the circumstances. So how do we maintain the sciences, maintain strong law enforcement, do what we have to do, but still reach the budget numbers?

So we hope you will share with the Committee some of the recent oversight work that you have done. Mr. Zinser, if you would just summarize remarks, your full statement will appear in the record.

Mr. ZINSER. Thank you, Chairman Wolf, Ranking Member Fattah, and members of the Subcommittee. Thank you for inviting me to testify this morning about our oversight of the Department of Commerce.

The department is responsible for a highly diverse set of technical and scientific programs that range from issuing patents to operating weather satellites to conducting the census and managing our ocean resources.

The President's budget request for Commerce for fiscal year 2011 was \$8.9 billion. In December of 2010, we issued our most recent top management challenges report. Our report discusses eight areas.

Two of the areas, IT security and acquisitions and contracts, are issues for all federal departments.

IT SECURITY

In these two areas, the Department of Commerce is playing catch-up. With respect to IT security, the department will require additional resources compared to previous years. The management reforms underway in the area of acquisitions and contracts, however, should actually result in cost savings to the department. For example, the department has set a target of \$50 million in annual savings through more strategic purchasing.

Our December report identified six additional management challenges.

NOAA ENVIRONMENTAL SATELLITE PROGRAMS

First and most important are NOAA's two multi-billion-dollar satellite systems that are part of the national critical infrastructure. The Joint Polar Satellite System is a new program transitioning from its troubled predecessor, called NPOESS. NOAA is at a critical juncture in the transition and delays in the program, which could result from any interruption in funding, will further increase the risk of serious gaps in satellite coverage for the collection of weather data and forecasting.

The Geostationary Operational Environment Satellite Series is at a less critical state in its development, but must avoid a return to the cost overruns and schedule delays that the program has suffered in the past.

AMERICAN RECOVERY AND REINVESTMENT ACT

The next item on our list relates to the Recovery Act. In fiscal year 2010, the National Telecommunications and Information Administration awarded 232 grants totaling \$3.9 billion under the Broadband Technologies Opportunities Program. The agency was successful in awarding the grants and obligating the funds within the deadline, but only about five percent of that money has been spent so far. This is a huge challenge and presents a significant amount of risk for fraud, waste, and abuse.

The second area of the Recovery Act that must be closely watched are nearly 200 projects involving construction costing an estimated \$1 billion funded through grants or contracts administered by NOAA, the National Institute of Standards and Technology, and the Economic Development Administration. As you know, Mr. Chairman, construction projects are inherently susceptible to cost overruns, schedule delays, and fraud schemes.

U.S. PATENT AND TRADEMARK OFFICE

The next management challenge included in our report is the U.S. Patent and Trademark Office. It has an annual budget of approximately \$2 billion funded through a complex set of user fees. Everyone agrees that the current backlog and pendency of patent applications is unacceptable and that there is much work necessary to improve the operations of the agency.

According to PTO, in fiscal year 2010, the backlog of applications totaled 726,000 and it took an average of three years from the time an application was filed to make its way all the way through the process. Secretary Locke and Under Secretary Kappos have a number of reform efforts underway and Congress is working on reauthorization, but it is a significant and complex problem.

One initiative that bears close watching is an IT modernization project for processing patent applications, which PTO estimates will cost almost \$300 million over the next several years. PTO does not have a very good track record when it comes to IT projects and will require close oversight should the project move forward.

2020 DECENNIAL CENSUS PLANNING

The final three areas in our report include NOAA's stewardship of marine resources, the nearly \$900 million, 13-year renovation of the Commerce headquarters building, and planning for the 2020 decennial census.

Of these three areas, the most critical for this subcommittee, Mr. Chairman, is the 2020 decennial. The 2010 decennial cost taxpayers approximately \$13 billion. According to estimates by the Census Bureau and GAO, the cost of the 2020 census, if it is done the same way, could possibly double to between 22 and 30 billion dollars. Such costs are not sustainable, and Census must develop more cost-effective approaches to the 2020 count.

Even though all the 2010 results have yet to be delivered, we strongly recommend that the department, the Census Bureau, and the Congress treat the 2020 decennial with a sense of urgency if we expect to develop the plans and systems necessary to avoid unacceptable levels of risk and cost for the 2020 census.

Mr. Chairman, that concludes my summary and I would be happy to answer any questions.

[The information follows:]

Testimony of

**THE HONORABLE TODD J. ZINSER
INSPECTOR GENERAL**

U.S. DEPARTMENT OF COMMERCE

before a hearing of the

**Appropriations Subcommittee on Commerce, Justice, Science, and Related
Agencies,
United States House of Representatives**

Wednesday, February 9, 2011

***Department of Commerce
Appropriations for Fiscal Year 2012:
Top Challenges Facing the Department***

Chairman Wolf, Ranking Member Fattah, and Members of the Subcommittee:

I appreciate the opportunity to testify today as you consider fiscal year (FY) 2012 appropriations for the Department of Commerce. While the President's budget for FY 2012 has not yet been submitted, the budget submitted for FY 2011 was \$8.9 billion.

The mission of the Department of Commerce is complex, encompassing many important aspects of economic development and technological advancement—promoting innovation, providing opportunities for economic growth and trade, predicting the weather, ensuring the accuracy of standards of measurement, overseeing the census, and conserving and managing the oceans' resources, just to name a few. Today I will briefly summarize several challenges faced by Commerce that Congress may want to keep on its list of watch items. These areas are addressed in greater depth in our recent *Top Management Challenges Report*, which we prepare annually as required by the Reports Consolidation Act of 2000.¹

¹ 31 U.S.C. § 3516(d).

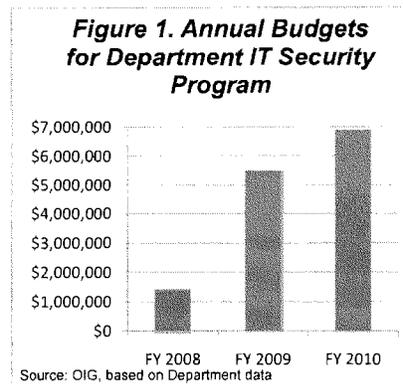
The challenges I will discuss focus on the following areas:

- **Information Technology (IT) Security:** Strengthening Department-wide information security.
- **NOAA Environmental Satellite Programs:** Effectively managing the development and acquisition of the National Oceanic and Atmospheric Administration's (NOAA's) environmental satellite programs.
- **Acquisitions and Contracts:** Managing acquisition and contract operations more effectively to obtain quality goods and services at reasonable prices and on schedule.
- **American Recovery and Reinvestment Act:** Enhancing the accountability and transparency of the Recovery Act's key technology and construction programs.
- **United States Patent and Trademark Office:** Improving USPTO's patent processing times, reducing its pendency and backlogs, and mitigating its financial vulnerabilities.
- **NOAA:** Effectively balancing NOAA's goals of protecting the environment and supporting the fishing industry.
- **Renovation of Department of Commerce Headquarters:** Protecting against cost overruns and schedule delays during the Commerce headquarters renovation.
- **Census Bureau:** Effectively planning the 2020 decennial.

First, however, it is important to note that the Secretary has initiated a number of management reforms designed to achieve a more integrated Department that leverages the strengths of its various bureaus to achieve its goals. The Department has often been called a "holding company of disparate bureaus" with many different goals, management methods, and operational approaches. These reforms counter that way of operating and are consistent with recommendations we have made regarding the need for strong and integrated departmental management.

IT SECURITY

The federal government has long acknowledged IT security to be a concern, especially in light of the risks presented by system compromises, policy violations, and increasingly sophisticated cyber attacks. With over 300 IT systems used to perform tasks from processing census and economic data to controlling weather satellites, the Department recognizes the importance of protecting its systems and ensuring the integrity, confidentiality, and availability of its data. Figure 1 shows the increased resources the Department has applied to IT security.



OIG has identified IT security as a management challenge for Commerce since 2001, and accordingly the Department has made several improvements to its cyber defenses. Based on certain policy changes and on the Department's efforts to improve its security posture, we recently recommended the Department upgrade its assessment of its information security program from a material weakness to a significant deficiency.² And based on our September 2009 audit report on its IT security workforce, the Department took several steps to introduce stronger training policies and performance requirements, a development program for employees in IT security roles, and a professional-certification requirement for select IT security positions.

Despite recent improvements, our ongoing assessment of Commerce's progress toward implementing effective IT security shows there is more to be accomplished. Every year we conduct an independent review in accordance with the Federal Information Security Management Act of 2002³ to evaluate the Department's IT systems and information security. In our FY 2010 report, we concluded that the Department's information security program and practices have not adequately secured its systems. During our audit, we conducted vulnerability assessments of Commerce IT systems, revealing thousands of potentially high-risk vulnerabilities that had not been identified by the Department's own efforts; these vulnerabilities increase the risk of a serious breach of IT systems. Also, weaknesses in contingency preparedness, security plans, and control assessments suggest that Commerce's systems are not sufficiently protected from cyber attack or other prolonged disruptions. Finally, the Department's process for reporting and tracking security weaknesses is deficient, affecting its ability to monitor operating units' corrective actions and potentially corrupting performance measures.

Our report recommended that the Department revise its IT security policy by providing specific implementation guidance that will ensure more effective and consistent practices Department-wide. Given the fragmented nature of the Department's IT operations—the 12 operating units each have their own CIO, IT staff, and internal processes—this is a particular challenge for Commerce.

In FY 2011, we will assess the effectiveness of the annual IT security awareness training program required for all Commerce employees. We will also evaluate the security features of various Web-based applications and assess the effectiveness of the security controls protecting the Department's systems and information.

NOAA ENVIRONMENTAL SATELLITE PROGRAMS

For the past 50 years, NOAA, in partnership with the National Aeronautics and Space Administration (NASA), has been responsible for developing and operating environmental satellite systems. Beginning in the 1960s, polar-orbiting satellites have provided data for global weather forecasting. And since the early 1970s, NOAA's geostationary satellites have provided

²A material weakness is a management control deficiency that the agency head determines to be significant enough to be reported outside the agency (i.e., included in the annual Integrity Act report to the President and Congress. Federal Managers' Financial Integrity Act of 1982, Pub. L. No. 97-255 [codified as amended in scattered sections of 31 U.S.C.]). A significant deficiency is a deficiency, or a combination of deficiencies, that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

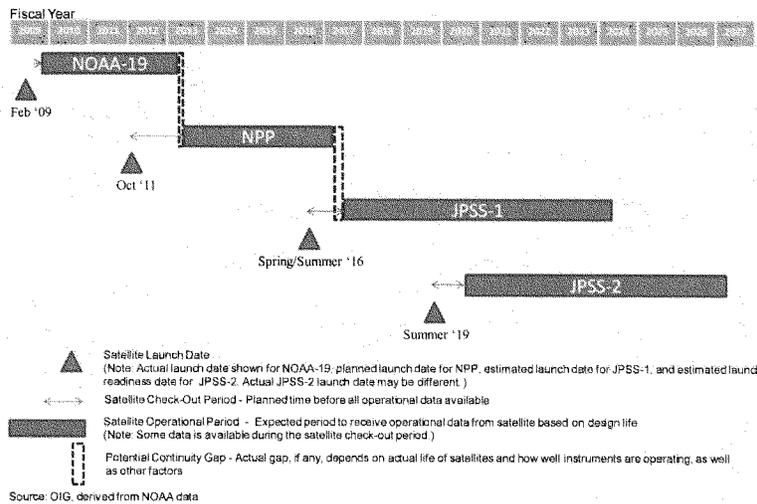
³44 U.S.C. § 3545.

data for weather warning services by maintaining continuous watch over the Western hemisphere. Over time, the satellites have evolved to support additional monitoring of the environment, including oceans, volcanic ash, forest fires, and space. NOAA's environmental satellite operations and weather forecasting are designated primary mission-essential functions of the Department of Commerce because they directly support government functions the President has deemed necessary to lead and sustain the nation during a catastrophic emergency.

But NOAA's current constellation of operational environmental satellites is aging, and its capabilities will degrade over time. As a result, the risk of gaps in critical satellite data is increasing. Developing, launching, and operating these satellites are complex, costly, and lengthy endeavors; however, the continuity of the data they provide is vital for accurate weather and climate prediction and has national security and safety implications. Gaps in coverage could affect our ability to forecast catastrophic weather events, increasing the potential for loss of life or damage to property and infrastructure. To help prevent such an outcome, NOAA is engaged in two major acquisitions to modernize these critical satellite systems and their current capabilities.

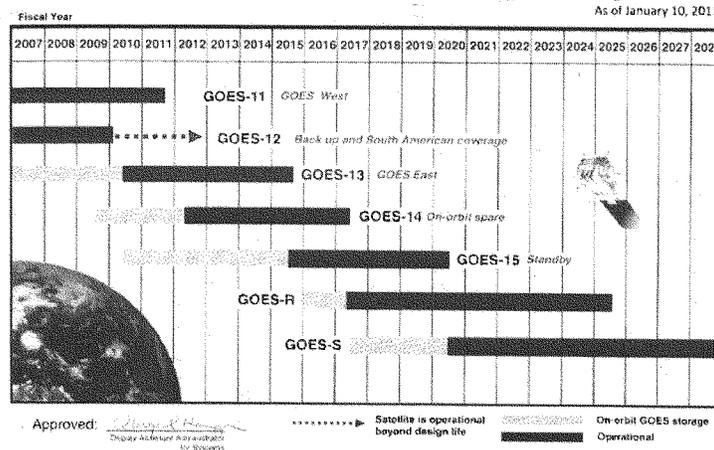
The first, the Joint Polar Satellite System (JPSS), estimated to cost \$11.9 billion, will collect data for short- and long-term weather and climate forecasting through 2026. JPSS was introduced in FY 2010 (figure 2) after its predecessor program, the National Polar-orbiting Operational Environmental Satellite System (NPOESS), underwent significant restructuring to address major cost overruns, schedule delays, and performance shortfalls. NOAA must prevent further delays to this program in order to reduce the risk of degrading the accuracy of weather forecasting and losing the continuity of climate data.

Figure 2. Potential Continuity Gaps in NOAA's Polar Operational Satellite Programs



The second system, the Geostationary Operational Environmental Satellite-R Series (GOES-R), is intended to offer uninterrupted short-range warning and “now-casting” through 2028. Estimated to cost \$7.7 billion, this project experienced cost overruns, schedule delays, and reduced performance capabilities in an earlier phase and had to be re-planned. Working with NASA, NOAA is responsible for managing the entire program and for acquiring the ground segment, which is used to control satellite operations and to generate and distribute instrument data products. NOAA’s policy for its geostationary satellites is to have three satellites in orbit, two operational satellites (GOES-East and GOES-West) and one on-orbit spare (figure 3). As shown, just prior to the GOES-R planned launch in 2015 there would be two operational satellites but no spare. GOES-R is needed to maintain NOAA’s policy, first as an on-orbit spare and soon after as an operational satellite.

Figure 3. Continuity of GOES Operational Satellite Programs



Source: NOAA

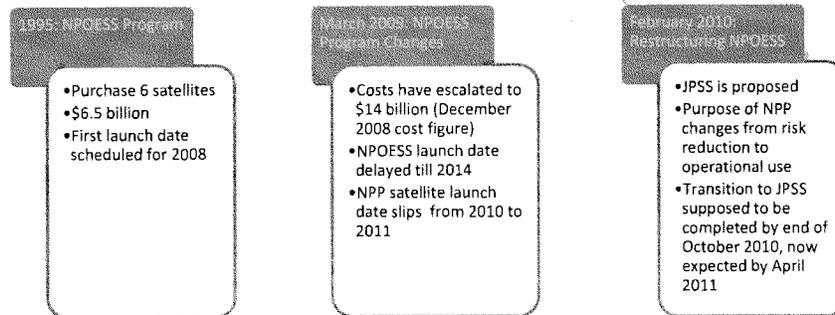
Given their histories, both programs require close oversight to minimize further delays and prevent any interruptions in satellite coverage. We believe NOAA has three near-term priorities for JPSS and GOES-R:

1. Complete the transition from NPOESS to JPSS without experiencing further delays.
2. Finish the development of JPSS’ ground system in time to support upcoming satellite launch readiness dates.
3. Ensure that GOES-R does not experience further schedule slips or cost growth.

JPSS Transition. A critical task for NOAA is to prevent further delays in the transition to JPSS from NPOESS. NPOESS, a joint project between NOAA, NASA, and the Department of Defense, was initiated in 1995. For years during its development, the program experienced significant setbacks that affected its budget, costs, capabilities, and launch dates—including the

launch date of the NPOESS Preparatory Project (NPP) satellite, a NASA-led risk reduction effort to test NPOESS' new instruments in flight. When NPOESS was restructured in 2010, JPSS was established as NOAA's component of the national polar environmental satellite capability (figure 4). As a result of the schedule delays, NPP will be used operationally to maintain continuity of climate and weather forecast data until the first JPSS satellite is operational.

Figure 4. NPOESS/JPSS Timeline



Source: OIG, based on information from NOAA

The transition to the restructured program was expected to be completed by the end of FY 2010, but the date has now been pushed to spring of 2011. Although the ground system and some of the instruments have been transferred, NOAA, NASA, and Defense are still negotiating with the NPOESS contractor for the transfer of physical property for the remaining instruments and settlement of intellectual property rights. The agencies' ongoing negotiations could create further delays and affect the launch readiness dates for JPSS satellites.

JPSS Ground System Development. While all of the instruments required for NPP have been integrated onto the satellite and are undergoing environmental testing, the ground system's development is later than originally planned. The NPP project team has recently focused on preparing for ground and spacecraft compatibility testing; successful testing will be crucial to keeping the program on schedule for NPP's October 25, 2011, launch readiness date.

NASA, as NOAA's acquisition agent, will continue to develop instruments, spacecraft, and the ground system for JPSS satellites 1 and 2. NOAA will manage the overall program with assistance from NASA. This program should leverage independent review team assessments, which have provided impetus for improvements on GOES-R. Defense continues to evaluate the best approach for maintaining the continuity of its polar satellites. It is critical that both NOAA and Defense implement their satellite programs on schedule to reduce the risk of gaps in coverage.

Avoiding Further Delays for GOES-R. GOES-R, too, is a complex program that must be rigorously managed to ensure that the system reaches launch readiness as planned. Since its

inception, GOES-R's projected costs have increased; a major satellite sensor was removed from the program; the number of satellites to be purchased was reduced from four to two;⁴ and the launch readiness dates for these satellites have slipped to October 2015 and February 2017. According to January 2011 program documentation, since the August 2009 revision to the launch schedule the overall program acquisition has remained within budget and on time. However, during two program reviews (during spring and summer of 2010), independent teams identified areas of concern for the GOES-R program office to address, including

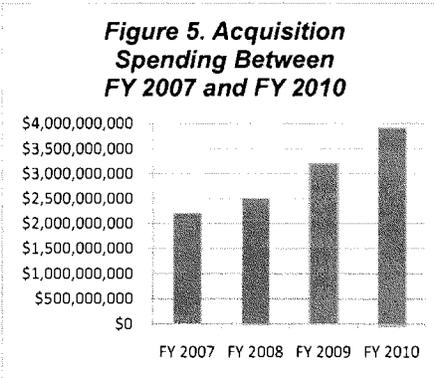
1. obtaining and maintaining adequate contractor staffing for spacecraft development;
2. ensuring the spacecraft design's suitability to the mission;
3. ensuring adequate end-to-end testing for program components (instruments, spacecraft, and ground); and
4. verifying satellite operational facility readiness.

Any further delays in the satellites' launch readiness will increase the risk of degraded weather- and climate-forecasting abilities. Our planned work for FY 2011 includes audits of select development activities for JPSS and GOES-R. We will assess the adequacy of development and program management activities supporting launch readiness and data continuity for these critical satellite programs.

ACQUISITIONS AND CONTRACTS

In FY 2010, the Department of Commerce spent almost \$4 billion (figure 5) to acquire a wide range of goods and services to support such mission-critical programs as the 2010 decennial census, satellite acquisitions, intellectual property protection, broadband technology opportunities, management of coastal and ocean resources, information technology, and construction and facilities management. With such a high-dollar investment at stake, the Department needs effective acquisition guidance, management, oversight, and infrastructure so that it can meet its goals.

In June 2010, the Secretary directed the Department to conduct a comprehensive review of its acquisition processes and identify areas for improvement. This review was undertaken in response to significant acquisition missteps Commerce has experienced in recent years, including the decennial's handheld computers, the



Source: Department of Commerce Office of Acquisition Management

⁴ An option for two additional satellites is included in the contract. These would be designated GOES-T and GOES-U during their development.

NPOESS and GOES-R programs, and issues we identified with NOAA's problematic decision to award a 20-year operating lease to house its Marine Operations Center-Pacific (MOC-P) at the Port of Newport, Oregon. In response to the Secretary's direction, Commerce has identified opportunities to strategically strengthen and improve the quality of its acquisition functions, but acquisition has many inherent risks and will require continued attention and improvement.

A major challenge facing the Department is its lack of cohesive policies and procedures for program management and oversight of major systems acquisitions. The lack of effective oversight leaves the Department without adequate visibility into major system acquisition processes, which can result in costly delays while problems are corrected.

Despite Office of Management and Budget (OMB) guidance aimed at improving the use of award fees, our audits of two Census contracts found several areas for improvement. In one case, performance-based fees awarded to the contractors were often excessive, and the justification for the awards was not properly documented. The payment structure of the other contract allowed the contractor to claim awards even if performance levels fell below acceptable standards. Such practices could lead to the Department paying out millions of dollars in award fees that were not sufficiently designed or administered as required by regulations.

Commerce also needs to improve its policies and processes for making real property acquisition decisions, as demonstrated by NOAA's inadequate support for its decisions on MOC-P. Our review of this case revealed that NOAA limited its options without a documented analysis based on its preference for a consolidated facility; it did not, in our view, adequately consider the use of existing federal facilities, which may have been more cost effective.

The Department has policies and procedures in place to protect itself—and taxpayers' dollars—from contracting with disreputable parties, i.e., firms or individuals who lack satisfactory records of integrity and business ethics.⁵ Overall, however, Commerce has not acted promptly to suspend or debar contractors when necessary, thus leaving the Department open to contractor fraud or impropriety.

Finally, in spite of a continuing need for skilled acquisition staff, the Department faces a very high turnover rate in the acquisition workforce due to attrition and retirement.⁶ As experienced acquisition professionals leave the Department, and with nearly half of the acquisition personnel expected to retire within the next decade, Commerce must implement a strategy to keep its workforce at the needed size and skill levels to support its mission. As part of our FY 2011 work, we are assessing the adequacy of the strategic acquisition workforce plan Commerce completed in March 2010 as required by OMB. We are also reviewing the Department's progress on and implementation of an OMB-required plan to reduce spending and increase savings on acquisitions.

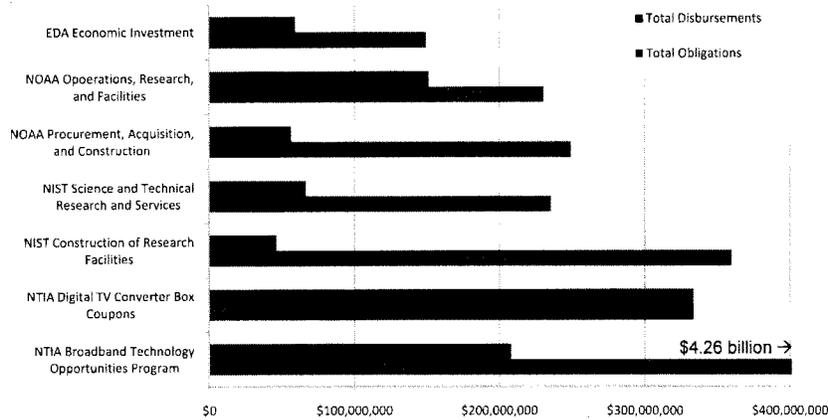
⁵ Suspension and debarment policy for the Department's acquisitions is codified in the Commerce Acquisition Regulations at 48 CFR Subpart 1309.4.

⁶ Twenty-four percent of the current workforce is eligible to retire. The attrition rates for the GS-1102 contracting series and the GS-1105 purchasing series are 14 and 11 percent, respectively.

AMERICAN RECOVERY AND REINVESTMENT ACT

The Department received \$7.9 billion through the American Recovery and Reinvestment Act of 2009. Of that amount, approximately \$6 billion was obligated in the form of grants or contracts for key technology and construction programs in four of the Department’s operating units: the Economic Development Administration (EDA), the National Institute of Standards and Technology (NIST), NOAA, and the National Telecommunications and Information Administration (NTIA). As of December 31, 2010, these operating units have spent about \$920 million (or approximately 16 percent of their obligated funds), leaving significant spending yet to be completed (figure 6).

Figure 6. Breakdown of Obligations and Disbursements for Recovery Act Grant and Contract Activities^a



Source: OIG, derived from operating unit data.

^a Amounts reflect a \$240 million rescission from DTV and a \$302 million rescission from the Broadband Technology Opportunities Program (BTOP). The “total obligations” bar for BTOP is not to scale, as of December 31, 2010, the total obligation for the program was \$4.26 billion. This includes both BTOP and mapping programs.

The Department faces considerable challenges as it manages the funds it received through the Recovery Act. NTIA must oversee and manage the funds awarded to BTOP grantees to expand broadband Internet access across the nation, and the almost 200 Recovery Act-funded construction and construction-related grants and contracts will also need careful oversight by Commerce and its operating units.

BTOP Program Management. In our view, of the Recovery Act programs being managed by the Department’s operating units, the one that presents the largest risk is NTIA’s BTOP. Between December 2009 and September 2010, BTOP awarded over 230 grants, totaling \$3.9 billion, but

as of December 31, 2010, only about 5 percent of obligated funds had been disbursed. In our November 2010 report on the program’s post-award processes, we noted that NTIA has made progress with its post-award operations. However, there are still several areas that can be strengthened, such as internal controls and IT program expertise in the BTOP office, documentation and training, and monitoring of awards and agreements.

Monitoring the largest and most complex grant program NTIA has ever overseen will be an ongoing challenge. The grant awards went to a diverse group of recipients, and conditions surrounding the awards themselves also vary widely. (Table 1 shows the composition of the BTOP awards.) NTIA staff will have to track the recipients’ compliance with grant terms and conditions, determine how well the recipients are monitoring any award subrecipients, and—most importantly—ensure that the recipients are on track to deliver the broadband capabilities to which they have committed. NTIA also will have to closely watch how its awardees manage the often complex process of drawing down federal funds.

Table 1. BTOP Grant Award Composition

AWARD TYPE		RECIPIENT	
Infrastructure	123	Government	89
Public Computer Center	65	Non-Profit	58
Sustainable Broadband Adoption	44	For-Profit	55
	<u>232</u>	Higher Education	25
		Tribal	5
			<u>232</u>
DOLLAR AMOUNT		OTHER INFO	
>\$100 Million	5	Largest Award ¹	\$ 154,640,000
\$25 Million-\$100 Million	46	Smallest Award ²	\$ 176,400
\$10 Million-\$25 Million	42		
<\$10 Million	<u>139</u>		
	<u>232</u>		

¹ The largest BTOP grant is a \$154,640,000 award to Los Angeles Regional Interoperable Communications System Authority (LA-RICS) to deploy a 700 MHz public safety, mobile broadband network across all of Los Angeles County.

² The smallest BTOP grant is a \$176,400 award to the Santa Fe Civic Housing Authority offering broadband access and computer training to low-income families, minorities, disadvantaged youth as well as disabled and elderly Santa Fe residents.

Source: OIG, derived from operating unit data.

Over the next 2 years, spending by BTOP grant recipients will increase substantially—which will in turn significantly increase the potential for fraud, waste, and abuse. Given this, we are currently conducting an audit of NTIA’s BTOP award monitoring and an inquiry relating to concerns associated with an infrastructure grant award to a San Francisco Bay area recipient. Our future work will include more risk-based reviews of individual grant recipient activity and periodic site visits to grant locations so that we can complete financial and operational reviews.

Construction Grants and Contracts. While BTOP is the largest Commerce program funded by the Recovery Act, NIST, NOAA, and EDA also saw an increase of \$1.5 billion in Recovery Act funds for contracts and grants, including \$1.0 billion for construction and construction-related projects (table 2). To complete these projects successfully, the agencies will need to overcome the inherent risks associated with construction projects.

Table 2. Construction-Related Recovery Act Awards by Agency^a

Agency	No. of Grants	Grant Amount	No. of Contracts	Contract Amount
NIST	16	\$179 million	28	\$202 million
NOAA	50	\$159 million	36	\$338 million
EDA	64	\$141 million	0	\$ 0
Total	130	\$479 million	64	\$540 million

Source: OIG, derived from operating unit data.

^aDollar amounts have been rounded to the nearest million.

The goal of any federally funded construction project is to achieve the objectives established for the project and to do so on time, within budget, and free from fraud. In addition to the challenges accompanying any acquisition or grant project, construction projects are also at particular risk of anticompetitive practices, substandard workmanship, defective materials, nonperformance, and fraud. Grants and procurement officials need to be alert to such problems as they manage the construction programs in their operating units. Currently, we are conducting audits of NIST's construction grants and contracts to assess the policies and procedures developed for Recovery Act construction projects; determine whether NIST has personnel, processes, and systems in place to monitor the grants and contracts; and evaluate the effectiveness of NIST's contract monitoring activities.

U.S. PATENT AND TRADEMARK OFFICE

USPTO is responsible for ensuring that the United States' intellectual property system contributes to a strong global economy, encourages investment in innovation, and fosters an entrepreneurial spirit. It accomplishes this mission by serving as the sole federal agency responsible for registering trademarks and granting patents.

Patents provide inventors with exclusive rights to their discoveries and contribute to the strength and vitality of the U.S. economy. But USPTO's ability to support U.S. innovation has been hindered by a substantial backlog and increased processing times for patent applications. USPTO is also faced with the challenges of accurately projecting the patent fees it relies on for funding and updating its aging IT systems to support its operational requirements.

Pendency and Backlog. With a growing number of patent applications being filed, USPTO faces immense and complex challenges in addressing patent pendency and application backlogs while building a highly trained, stable workforce and improving patent quality. Since FY 2000, patent

pendency times have increased by an additional 10 months, and the backlog of unexamined applications has more than doubled (see table 3). The large numbers of applications in process and long waiting periods for patent approval create a significant risk to the innovation and economic competitiveness necessary to maintain the nation's position as a world leader in innovation.

Table 3. Progression of Patent Pendency and Backlog, FY 2000 through FY 2010

	FY 2000	FY 2005	FY 2010
Patent Examiners	2,900	4,300	6,200
Total Time to Process (in months)	25	29	35
Application Backlog	308,000	611,000	726,000
Applications Filed	312,000	410,000	509,000
Patents Issued	182,000	165,000	233,000

Source: USPTO's FY2010 *Performance Accountability Report (PAR)*, 126-129 and 153; FY2005 PAR, 23 and 148; and OIG report IPE-15722, 4.

Since assuming office in August 2009, the Under Secretary of Commerce for Intellectual Property (who is also the Director of USPTO) has identified the state of patent pendency and backlog as a critical priority—as has the Secretary. USPTO's strategic plan for FYs 2010 through 2015 addresses this critical area with an overall goal to optimize patent quality and timeliness, including a specific goal to decrease the total processing time for patent applications to 20 months by FY 2015. We have begun a review of the status and effects of USPTO's multiple initiatives to decrease patent pendency and reduce the backlog of patent applications.

Patent Fees and Financing Tools. As a fully fee-funded agency, USPTO relies upon the patent and trademark fees it collects to fund its operations. These fees are used to support all segments of USPTO operations, including staffing, IT systems, and training. Congress, through statute, sets the majority of the patent fees. Congress also sets spending ceilings for USPTO through the annual appropriations process; USPTO's spending cannot exceed those ceilings (for FY 2010, approximately \$2 billion). With patent fees making up almost 90 percent of the fees collected by USPTO, patent activities account for most of its operations.

Our December 2010 audit examined USPTO's projection of patent fee collections and found a lack of documented management controls over patent fee forecasting operations. Further, while the aggregate differences between projections and collections appear to be within a generally acceptable margin of forecasting error, during FYs 2006 through 2009 USPTO consistently over- and underestimated—by tens of millions of dollars—some of its major patent fee revenue streams. Our recommendations to USPTO were aimed at strengthening its management controls over patent fee forecasting to provide increased accountability and transparency over these critical operations. USPTO agreed with our recommendations and is developing a corrective action plan to implement them.

USPTO is seeking legislative approval for new financing tools, such as greater authority to set patent fees, and is also taking management actions, such as establishing an operating reserve to protect its resources from unforeseen disruptions in revenue. According to USPTO, these tools are intended to enhance its ability to respond to changes in the economy and the fluctuating demand for its products and services. However, its ability to operate successfully will also depend on how effectively it can reduce pendency and backlog while maintaining operational efficiency.

IT System Upgrades. As USPTO begins to implement initiatives to meet its strategic goals, it is simultaneously planning to address its outdated IT systems. The operating unit relies on aging, unstable legacy technology to support its current operations. According to USPTO, system maintenance requires long periods of down time, which prevents examiners from working on their patent applications. Therefore, it plans to redesign and implement end-to-end electronic patent processing so that most applications will be submitted, handled, and prosecuted electronically. In doing so, it faces the risks and challenges inherent in any major IT system change, such as management oversight; cost control; and ensuring that the new system is delivered on time, meets user needs, and supports USPTO in achieving its goals.

As part of our FY 2011 work, we are currently evaluating USPTO's readiness to successfully manage the end-to-end modernization of patent IT systems. This initiative is currently estimated to cost around \$277 million by FY 2015, and has been assessed by OMB as a high-risk project due to its high price and USPTO's past history with similar efforts.

NOAA'S STEWARDSHIP OF MARINE RESOURCES

With an Exclusive Economic Zone of 3.4 million square nautical miles of ocean, the United States manages the largest marine territory of any nation in the world. According to NOAA's 2009-2014 strategic plan, the value of the ocean economy to the United States is more than \$138 billion, with \$47 billion attributable to the commercial and recreational fishing industry. Charged with protecting, restoring, and managing the use of living marine and coastal and ocean resources, NOAA has faced significant challenges in promoting the health of marine resources, especially in the areas of commercial fisheries and environmental restoration, while ensuring they sustain the vital economic benefits we derive from them.

NOAA's management of commercial fisheries and its enforcement of fair, transparent, and effective regulations is a critical component of the successful execution of its mission. In one policy, for example, NOAA endorsed a "catch share" strategy allocating a specific portion of a total allowable fishery catch to individuals, cooperatives, communities, and other entities. Each recipient of a catch share is required to stop fishing when its limit is reached, although catch share recipients would no longer be constrained by fishing seasons. Some fishing communities have expressed concerns about the quality of the data used to develop this strategy and the potential negative economic effects of its implementation on small-business fishermen, while other stakeholders view it as an effective strategy to achieve long-term ecological and economic sustainability of the nation's fishery resources. In its strategies and policies, NOAA must address both the environmental and economic performance of fisheries while considering the impact of its decisions on the nation's fishing communities.

There are additional critical aspects of NOAA's environmental stewardship. NOAA responds each year to over a thousand natural and human-induced incidents threatening life, property, and marine resources. For example, when the April 2010 explosion on Deepwater Horizon, a semisubmersible mobile offshore oil-drilling well in the Gulf of Mexico, resulted in the largest oil spill in U.S. history, NOAA provided spill response support and damage assessment. As of early February 2011, NOAA has dedicated approximately \$175 million to these efforts. In December 2010, we surveyed NOAA's processes for tracking the costs associated with its oil spill activities; we found that it needs to ensure that all costs charged to oil spill projects are properly recorded in the financial system; supported by sufficient, appropriate documentation; and reflect the full cost of oil spill response, damage assessment, and restoration activities.

To help the Gulf—and the people who earn their living from it—recover from the spill, NOAA must continue to devote resources to monitoring and restoration for years to come. Since serious threats to wildlife and the fishing community still exist, NOAA's National Marine Fisheries Service must track conditions along the coastal areas of Louisiana, Mississippi, Texas, Alabama, and Florida to ensure seafood is safe for consumption. NOAA, as the lead agency for the damage assessment process and the nation's lead science agency covering oil spills, will also continue to assess what environmental resources have been harmed. Finally, federal, state, and local governments and affected communities will rely on NOAA to provide continued monitoring and accurate data so responders can react to the oil's effects on our ecosystem. In short, the Gulf oil spill highlights the dual nature of NOAA's mission to promote environmental health while maintaining the commercial viability of the nation's marine resources.

RENOVATION OF THE DEPARTMENT OF COMMERCE HEADQUARTERS

The Herbert C. Hoover Building (HCHB), Commerce's Washington, D.C., headquarters, is undergoing a comprehensive renovation. With a current cost estimate of approximately \$922 million,⁷ this project will be the first major upgrade to the over 1.8 million-gross-square-foot building since its completion in 1932. The project will upgrade mechanical, electrical, and life-safety systems; increase usable space; improve energy and environmental efficiency; and incorporate security improvements.

The renovation, which began in January 2008, has been divided into eight phases, each of which is planned to take approximately 18 months. Phase 2 (the current phase) and Phase 3 will be financed by some \$185 million in Recovery Act funds. The project is scheduled for completion by 2021 (table 4).

⁷ HCHB renovation project funding sources: GSA's Federal Building Fund and Recovery Act funds, \$794 million; Commerce's estimated contribution, \$128 million.

Table 4. HCHB Renovation Scope of Work

Phase ^a	Activities	Timeframe
1	Replace air-conditioning system cooling towers. Build the swing space to house staff while future phases of the building renovation are in progress.	1/2008 – 1/2010 (complete)
2	Interior and exterior renovations, ^b Corridor 1 (along Constitution Avenue). Phase 2 also includes building facade restoration and site utilities replacement around the entire building, as well as development of a staging area for moving construction materials.	7/2009 – 11/2011
3	Corridor 2 (second corridor north of Constitution Avenue)	11/2011 – 6/2013
4	Corridor 3	6/2013 – 1/2015
5	Corridor 4	1/2015 – 7/2016
6	Corridor 5	7/2016 – 2/2018
7	Corridor 6	2/2018 – 9/2019
8	Corridor 7	9/2019 – 3/2021

Source: OIG, based on information from the General Services Administration (GSA).

^a All phases are subject to schedule changes.

^b Renovations include new mechanical, electrical, and plumbing systems; interior renovations; roof repairs; and architectural finishes.

GSA owns the building and is managing the renovation. However, to its credit, the Department is also taking an active management role. It should continue to work closely with GSA as an advocate for the operating units housed at HCHB since the project has the potential to disrupt Commerce's operations and affect its workforce. So far, the renovation project has experienced some operational issues, as well as matters that could have proved disruptive—or even harmful—to the building's tenants.

In August 2010, we issued a report on the Department's HCHB project management activities. In it, we identified two areas that could adversely affect the project's operation: Commerce did not routinely track or reconcile the project invoices it received from GSA; also, GSA and the Department disagreed on how to calculate the rental rate for the building. Since our report was issued, the Department's Office of Administrative Services has implemented new invoicing procedures and made progress in resolving the rental rate calculation. A conservative simple calculation shows that our involvement in resolving the rental rate issue saves the Department an estimated \$37 million a year in lease payments over the next 5 years.

Several incidents at HCHB have highlighted the potential for disruptions during the project. During work on our initial project report, OIG became aware of health complaints from Commerce staff occupying the renovation swing space; an inspection conducted by an Occupational Safety and Health Administration (OSHA) compliance safety officer found that the

complaints were related to indoor air quality and temperature (being too hot or too cold), which are not regulated by OSHA. And in another incident, a fire broke out at HCHB after normal working hours on Thursday, October 7, 2010, in an area undergoing renovation. Everyone was accounted for and there were no reports of injuries, but the building had to remain closed the next day for hazardous materials testing. All areas of the building were cleared for occupancy on October 12 (the next scheduled workday after the Columbus Day holiday); however, this unexpected closure affected approximately 3,500 employees—a clear example of the disruptive effect the renovation can have on Commerce’s operational efficiency and employee productivity and safety.

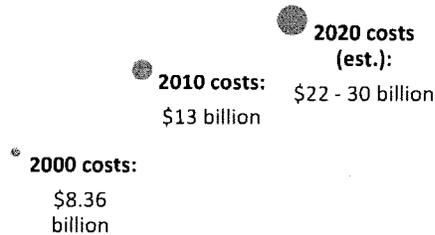
OIG will continue to monitor project cost schedules, performance, and any health or safety issues that may emerge as the renovation continues.

CENSUS BUREAU – 2020 DECENNIAL PLANNING

The 2010 census was an immense undertaking that encompassed more than a decade of planning, testing, and implementing dozens of operations aimed at accurately counting the more than 308 million people living in the United States.

The lifecycle cost for the decennial was approximately \$13 billion. Considering the current trends in population and cost growth, the U.S. Government Accountability Office (GAO) recently estimated that if 2010 is used as a model for designing the next census, the total price of the 2020 decennial could rise as high as \$30 billion; the bureau’s own estimate is \$22 billion (figure 7).

Figure 7. Increasing Lifecycle Costs for Decennial Census^a



^a Amounts have been adjusted to 2010 dollars. OIG calculations of 2000 costs are based on CPI inflation data from the Bureau of Labor Statistics.

By either estimate, such cost growth is simply unsustainable. Census must make fundamental changes to the design, implementation, and management of the decennial census in order to obtain a quality count for a reasonable cost—and in order to decide on, design, and implement

these changes, it has to start now. FYs 2011 and 2012 are critical years that will set the course for how well the 2020 count is performed and how much it will ultimately cost.

In order to develop an innovative, flexible, cost-effective, and transparent approach to the 2020 census, the bureau needs to apply the lessons it has learned from the 2010 process. These lessons have been highlighted by Congressional oversight as well as reviews by GAO and OIG; in addition, Census is currently engaged in a comprehensive review of the 2010 census. The bureau plans to use the results of this review, which include over 80 assessments and evaluations of various decennial activities, to modify 2020 census operations as needed.

Alternative approaches to the labor-intensive end-of-decade address list improvement and nonresponse follow-up operations must also be explored and tested early in the decade. Both operations were major 2010 cost drivers—address canvassing, an effort to update the bureau’s address list, cost \$444 million and employed approximately 140,000 temporary staff. And the nonresponse follow-up operation, which used more than three times that number of staff in attempts to interview residents who had not responded to the initial mailed or hand-delivered Census questionnaire, cost \$1.7 billion.

To reduce costs and risk, and to increase the accuracy of its information, the bureau’s 2020 census planning approach needs to leverage existing surveys, field operations, and data assets. Census should especially focus on enhancing operations by integrating the following into its decennial planning efforts:

- *Administrative Records.* These records are collected for the administration of programs and provision of services by federal, state, and local governments and commercial entities. Administrative records include, for example, address and population information from housing assistance, health services, and tax forms. Census can use administrative records, in conjunction with U.S. Postal Service files, to continually update the address list.
- *Continual Map Updates.* Rather than an intensive effort to update its maps and address list just before the decennial, Census should continually update its information throughout the decade—using the existing trained workforce in both office and field operations—to further reduce cost and risk, and likely increase quality. Moreover, maintaining current maps and address lists benefits the American Community Survey (ACS) and all other nationwide data collection and production efforts.
- *Internet Response.* Census should explore the use of Internet and other electronic response options for the decennial census, which will potentially provide data more quickly and cost effectively than mailed-out paper forms. Electronic data gathering improves efficiency, provides management with near-real-time reporting, and reduces the amount of paper in the field—2010 personnel handled over 164 million paper questionnaires; electronic response options could substantially reduce that number.
- *IT Systems.* Census must reduce the costs and risks associated with IT systems by limiting the deployment of one-time-use technology. A less risky and more economical

approach would be to build IT systems for use in various Census demographic surveys throughout the decade—systems that could also be used for decennial operations.

- *The American Community Survey.* The decennial is not the bureau's only means of measuring the population characteristics of the United States. The ACS is a large ongoing nationwide survey supported by a permanent field workforce. The bureau could use the ACS as a replacement for its decennial content and data collection tests throughout the decade. Carrying out smaller, focused field tests early through existing surveys allows more testing that is easier to plan, modify, and implement.
- *Project management.* While the bureau made significant strides in project management this last decade, it must implement management practices that integrate planned budget and expenditure information with scheduled activities to better track the status of available funds, forecast impending overruns and underruns so that funds can be reallocated promptly, and improve the transparency of the decennial status to oversight and stakeholders. The bureau should also develop a robust and transparent process to document significant management decisions and their impact on costs.

In FY 2011, we will assess the success of the bureau's 2010 update of the address and map database, and evaluate the ACS' program management, operations, and constituent satisfaction. Throughout the decade, we will continue to follow Census's 2020 decennial planning to ensure this vitally important, constitutionally mandated operation runs smoothly and cost-effectively.

In conclusion, Mr. Chairman, in FY 2012 the Department of Commerce faces important and challenging work related to the essential programs I have discussed here—and this work will require diligent, proactive monitoring by OIG to help achieve success. This concludes my prepared statement, and I will be pleased to respond to any questions you or other Subcommittee members may have.

(OIG-11-018-T)

NOAA SATELLITE PROGRAMS

Mr. WOLF. Thank you very much.

Your December 2010 report included a section on NOAA's environmental satellites focusing on two programs, NPOESS or the JPSS Program, and GOES-R.

Last year, the Administration proposed a major restructuring of the NPOESS Program. According to the report, when NPOESS was begun in 1995 as a joint program between DoD, NASA, and NOAA, it was estimated to cost \$6.5 billion and included six satellites, the first of which was to launch in 2008. That is the history.

Now the JPSS Program is estimated to cost \$14 billion. That is an estimate from 2008. It may actually be even higher. The first satellite will not launch until 2014. So here we were at 2008, now we are 2014. And now instead of buying six satellites, the government is only purchasing four. In short, the program cost has doubled. We are getting less capability than originally planned and we are six years behind schedule.

Can you briefly summarize the problems with the NPOESS program that led to its restructure and can you outline how you intend to proceed with your oversight of the program?

Mr. ZINSER. Yes, sir. I think the problems date back a number of years. I think that the plan was to merge governance of the program between NASA, DoD, and Commerce because there are Defense satellites as well as civilian satellites that NOAA and NASA are interested in.

And the governance issues, I think, were a problem. The satellites were not a priority for the Defense Department and there were problems getting decisions made.

I think the complexity of the instruments was a huge cost driver. There was one instrument in particular that ran into problems in its development. And at the end of the day, this marriage between Defense, NASA, and NOAA just didn't work. And so to solve that, the decision was made to divorce from DoD, and the increase in the cost to this subcommittee is basically the result of cost shifting from DoD to the Commerce Department.

As far as our oversight is concerned, right now the critical issue is this transition to JPSS, the name of the new program. And one of the things that is happening right now is there is going to be a launch of what they call the NPOESS Preparatory Project, the NPP. That is scheduled for a launch this fall. It was originally going to be a test satellite to test the instruments in orbit, but they have turned it into an operational satellite to actually go up and serve in an operational capacity. So we are watching that very closely.

One of the issues we identified, for example, was there are problems right now with the ground system and the instruments on the satellite communicating with the folks on the ground. They are focusing on that issue right now and trying to resolve it.

Assuming there is no further delay in resolving those issues, that satellite will launch in October. We are watching that very closely.

Mr. WOLF. Well, are you confident that they have everything together now? I mean, this has been going on for quite a while and

the numbers continue to go up. Who is the contractor, the lead contractor?

Mr. ZINSER. The lead contractor was Northrop Grumman, and I think Raytheon was also a contractor.

You know, one of the problems they had even in the lab, was probably six or seven years ago. They were working on NOAA-19, and the contractor, Lockheed Martin Space Systems Company, dropped the satellite and damaged it. And that caused some considerable cost overruns there.

Mr. WOLF. Do you believe that NOAA is on the right path now? I mean, are you confident you would stake your reputation on that, that they are on the right path?

Mr. ZINSER. I do think they are on the right path, sir. I think that it is an inherently complex program. It is very, very critical and we have dedicated staff to overseeing the program. I have staff embedded in this transition. We are watching them very closely.

Mr. WOLF. This is about 25 percent of the budget for the Commerce Department, maybe a little bit more.

How much of your staff is dedicated, 25 percent? How many people do you have on your staff, how many do you have that are dedicated to this and from a percentage basis?

Mr. ZINSER. My staff is fairly small.

Mr. WOLF. So the answer is you do not have very many people?

Mr. ZINSER. I have two people who have been watching the program on a daily basis. They are supplemented with audit teams as we identify specific audit work that needs to be done.

Mr. WOLF. And how many people do you have on your staff?

Mr. ZINSER. I have about 150 total. That has increased. I have some extra on my staff because of the *Recovery Act*. I got some supplemental funding for *Recovery Act* that has allowed me to hire temporary people, but base is about 150.

Mr. WOLF. But if this is such a large portion of the budget, should you have more people looking at it?

Mr. ZINSER. Yes, we should. One of the things I had to do last year was to dedicate a significant amount of staff to the decennial census. And now that that is completed, we will be able to shift resources over to some of these programs such as the Satellite Program and PTO. PTO has got a lot of issues too.

Mr. WOLF. Okay. Likewise, the GOES-R Program has experienced difficulties with a \$1.5 billion cost overrun to \$7.7 billion. And you can see why the American people get very skeptical, \$1.5 to \$7.7 billion, fewer sensors, two satellites instead of four, and a three-year schedule slip.

In addition, your report highlights additional areas of concern, namely the infrastructure of the NOAA facilities to accommodate another ground system.

Will you please provide us with a high level overview of the GOES-R Program and the critical problems at this juncture.

Mr. ZINSER. Well, the GOES-R Program, as I mentioned in my statement, is not at such a critical stage of development as NPOESS is. GOES-R has satellites up there. NOAA has set a policy that they want three satellites in orbit at any point in time. One covers the eastern part of the country, one covers the western part of the country, and then they have a third satellite up there

as kind of an on-orbit spare. Those are all in place, and there is not the risk of gaps in coverage that there is with NPOESS.

The department very wisely has outside independent teams that they have enlisted, experts in the field that come in and do evaluations of the program on a regular basis. Those teams have offered recommendations to NOAA in terms of managing the program. We are following up on those recommendations to see whether or not NOAA is implementing them.

Mr. WOLF. Are the same people running the program now the people that were there at the beginning pretty much?

Mr. ZINSER. Pretty much, sir, yes.

Mr. WOLF. Even though they may be wonderful people that you would like to have part of your family, maybe you would put different people in charge, because this has been going on for so long.

I have one last issue and then we will go to Mr. Fattah and the other Members. And then we have a lot of other questions we will get to near the end.

EXPORTS AND INTERNATIONAL TRADE

The Administration is making a big play to have exports. America is hollowing out. Our manufacturing base is pretty much eroding. We are literally eroding before our eyes. We used to think we were leading the world in high tech. We are no longer leading the world in high tech.

So I support what the Secretary of Commerce wants to do. Every time he talks to us, he talks about exports and exports and exports because we want to create American jobs, manufacturing in Philadelphia and Kansas and in Texas.

There is something I would like you to look at. I have been meeting with a number of companies, and I wonder if you know about this one company the other day said they have a product. They are very aggressive in exporting abroad. And I am trying not to name the product because they are afraid of having to be the focus of the attention.

They were at a trade fair in Germany. Their competitors had a coffee bar, meaning they were giving, I guess, Jacobs coffee to someone, which is not exactly a bad thing to do. They were prohibited, they said, by the *Foreign Corrupt Practices Act* to even have a coffee bar. And so, therefore, they felt they really—they almost cannot compete.

Since we have both the IG for the Justice Department and we have the IG for the Commerce Department—the *Foreign Corrupt Practices Act* is administered in the Justice Department, correct?

Ms. SCHNEDAR. Correct.

Mr. WOLF. I would like to get both of you on a quick basis, maybe a one week or two week basis so we are not pushing this thing off, because if we want to create jobs in America, not in China, not in Mexico, not in Timbuktu, but here in River City where we live, and there is almost a “de minimus” thing like “can I give you a cup of coffee,” “can I give you a pen with the name on it,” and if we are going to start prosecuting companies under the *Foreign Corrupt Practices Act*, then you are putting American companies who are creating jobs for Americans at a disadvantage.

So without getting into too much detail, since both of you are here, like Esther in the Bible, for such a time like this, you both come together. If you can team up and look at this, the *Foreign Corrupt Practices Act*, and we can get some people to talk to you, I guess off the record. The company is afraid to say anything because they do not want to get the Justice Department to come in and crack down.

But based on different things that I am hearing, if you can look at working with Mr. Zinser, you can look at your commercial attachés and see what they do and come back to the Committee in two weeks to give us kind of just a preliminary feedback, is this really such a problem, because if we are prosecuting for giving a cup of Jacobs coffee and they cannot compete with the Germans and the French and the Italians, then the Administration is not going to be able to create these jobs that they're talking about and doing, creating jobs here in America so we can make things here and export there.

I am tired of going into stores and seeing China, China, China, China, China. Let's reverse it. But if we are really going to do what we say, and the President said the other day we are going to look at all these regulations, let's really look at this and see.

So if both of you maybe in two weeks could come back to us—
Mr. ZINSER. Sure.

1. Commerce and DOJ IG should coordinate a quick review of the FCPA regarding its implementation, particularly with respect to whether it is being overly or aggressively enforced and thereby hurting U.S. businesses abroad.

On March 2, 2011, the Office of Inspector General (OIG) delivered a letter, dated March 1, addressing this matter to the subcommittee.



UNITED STATES DEPARTMENT OF COMMERCE
The Inspector General
Washington, D.C. 20230

March 1, 2011

The Honorable Frank R. Wolf
Chairman
Subcommittee on Commerce, Justice, Science, and Related Agencies
Committee on Appropriations
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

This responds to the question regarding enforcement of the Foreign Corrupt Practices Act of 1977 ("FCPA"), 15 U.S.C. §§ 78dd-1, et seq., that you raised during the February 9, 2011 hearing on *Oversight of the Department of Justice and the Department of Commerce*. During that hearing, you asked that we coordinate with the Acting Inspector General for the Department of Justice to examine whether the FCPA is being administered in a manner that unduly restricts U.S. companies from promoting their products abroad, such as by offering coffee or low-value promotional items at trade shows. The Department of Commerce works closely with U.S. exporters facing these types of questions, and we welcome this opportunity to discuss its role and observations.

Per your request, we have worked closely with the Office of Inspector General for the Department of Justice to examine the implementation of the FCPA and the effect that this may have on the competitiveness of U.S. industry. Because enforcement of the FCPA is within the purview of the Department of Justice, as you are aware, we understand that their Acting Inspector General will be providing you with a separate response more directly addressing that agency's enforcement policy.

Though not involved in enforcement, the Department of Commerce plays a significant role in assisting U.S. businesses with FCPA compliance. Within the Department's International Trade Administration, the U.S. and Foreign Commercial Service ("USFCS") partners with U.S. industry to increase its global competitiveness and identify new opportunities for U.S. exports. The Department's Office of the Chief Counsel for International Commerce advises the USFCS on the FCPA and other legal issues that may impact export activity. This includes the provision of regular training on the FCPA and related international anticorruption initiatives to USFCS



officers, who work directly with the business community. This training stresses to USFCS officers that, as noted below, they may explain the provisions of the FCPA to businesses but are not in a position to offer legal advice on particular fact scenarios.

In the course of preparing this response, we contacted both of these offices and inquired into the types of FCPA compliance questions that they commonly receive, as well as the tone of comments that U.S. companies make regarding the statute's effect on their ability to compete internationally. We further sought information on the nature of any advice that they provide to the public on the FCPA, including any oral or written guidance on specific activities restricted under the statute.

The USFCS and Office of the Chief Counsel for International Commerce reported that they do receive some inquiries from U.S. industry on whether expenditures related to product promotion, such as expenses for food, entertainment, travel, and lodging, are permissible under the statute. As for the effect that the FCPA has had on U.S. industry, the Office of the Chief Counsel for International Commerce responded that some U.S. companies have stated that not all of their foreign competitors face similar limitations in what they may offer to government officials. However, that office also offered anecdotal reports of U.S. businesses stating that the FCPA serves to their advantage because potential business partners have confidence that they will behave ethically. Moreover, that office also stated anecdotally that some U.S. companies support the intent of the FCPA and wished that none of their foreign competitors could engage in such conduct either.

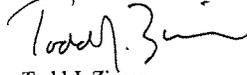
When U.S. companies raise FCPA questions, the USFCS and the Office of the Chief Counsel for International Commerce indicate that they provide general information on the statute verbally and also direct parties to various FCPA reference materials, including those found on the website for the Office of the Chief Counsel for International Commerce at <http://www.commerce.gov/os/ogc/transparency-and-anti-bribery-initiatives>. Among other guidance, this website provides links to materials authored by the Department of Justice, international anti-bribery initiatives, and a bibliography of FCPA-related articles that have appeared in various books and journals. These materials do not presently include specific examples of hospitality or product promotion activities that are prohibited under the FCPA.

We learned that USFCS and the Office of the Chief Counsel for International Commerce are, however, working on the creation of an informal "do and don't" list for FCPA compliance that will soon be provided to USFCS officers and further made available to members of the public. In support of that effort, we would be happy to speak on a strictly confidential basis with any affected U.S. company, as you mentioned during the hearing, and to forward their thoughts and questions to those offices. In this manner, companies wishing to participate may have their concerns taken into account without the disclosure of their identities.

Both USFCS and the Office of the Chief Counsel for International Commerce stated when asked that they provide general guidance on the FCPA, but that they do not give legal advice on whether a particular set of facts would violate the statute. Because the Department of Commerce does not have enforcement authority for the FCPA, these offices indicate that it is their policy to direct companies to contact the Department of Justice and/or private legal counsel with such questions. For this reason, it is appropriate that the Office of Inspector General for the Department of Justice is also weighing in on this topic per your request.

We understand that representatives of the International Trade Administration and the Office of the Chief Counsel for International Commerce are scheduled to meet with your staff in early March regarding the FCPA and will be able to further elaborate upon its effect on U.S. industry and what the Department of Commerce is doing to increase U.S. exports. However, please do not hesitate to contact me at 202.482.4661 if we may be of additional assistance in connection with this important issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Todd J. Zinser". The signature is fluid and cursive, with a large initial "T" and a long, sweeping underline.

Todd J. Zinser

Mr. WOLF [continuing]. Just maybe both of you come up to the Committee and tell us what you found. Is this a real problem? We will give the information that we have. Are there some changes that we need in the *Foreign Corrupt Practices law*? Is the enforcement being overly aggressive?

So would you mind working together on this since Justice enforces the *Foreign Corrupt Practices Act* and you provide oversight on the Foreign Commercial Service?

Mr. ZINSER. We would be happy to do that.

Mr. WOLF. Very good. Thank you very much.

Mr. Fattah.

Mr. FATTAH. Thank you, Mr. Chairman.

I concur with the chairman's concern about this, and I look forward to your report on it.

2020 CENSUS PLANNING

But let me go back to the census projections because obviously the census is a duty that we have as a government given to us through constitutional mandate.

You say that in the next census in 2020 the cost could be as much as twenty-two to thirty billion if we conduct the census as we conducted it this time?

Mr. ZINSER. Yes, sir. That is the estimate.

Mr. FATTAH. Assuming we did the same thing and it did not cost us that amount this time, why would it cost us so much?

Mr. ZINSER. Well, you are projecting the costs over the next ten years, so you have somewhat of an inflation factor. And when you are dealing in billions of dollars, those add up pretty quickly. But the big cost driver for the decennial is the cost of the temporary workers that the Census Bureau employs.

So, for example, the non-response follow-up operation that employed about six hundred to seven hundred thousand temporary workers cost over a billion dollars itself, about a billion and a half dollars itself. And those costs are going to increase simply for inflationary purposes, number one.

NOAA SATELLITE PROGRAMS

Mr. FATTAH. Now, on the Satellite Program, DoD is out completely, right, so that raised the cost from about seven to eleven billion, is that—

Mr. ZINSER. Well, actually, even when the Defense Department was involved, they had their own satellites in the program. Those have been taken out. So the costs would have been much more than \$11 billion had the Defense Department stayed in there.

Mr. FATTAH. And so from a taxpayer's standpoint, there's a need for the Satellite Program, right—

Mr. ZINSER. Yes, sir.

Mr. FATTAH [continuing]. For early warning purposes for a whole variety of reasons? But there is almost a profit center involved in these satellites and the weather reports that are generated because you have companies, right, that then sell this data for weather forecasting purposes for which the taxpayers do not receive any remuneration; is that accurate?

Mr. ZINSER. The weather data is made available to private companies that then sell the weather forecasting and do the forecasting for various media outlets.

Mr. FATTAH. Has there ever been any analysis of what, if any, cost sharing there could be between the taxpayers and the for-profit entities involved here so that we could recoup some of the dollars? Because the chairman is right, this has been going on since the early days of the Bush administration, if not before. What was the original name of the Joint Polar Satellite Program?

Mr. ZINSER. It was called NPOESS.

Mr. FATTAH. Right. The costs have gone up. So at some point, because a lot of members here are very concerned about the cost of the Federal Government enterprise, if we have activities that we need to undertake to provide warnings for communities around major weather events, but we could recoup some dollars in the ongoing operations of these satellites, it would seem that we might want to explore that.

Are you aware that anyone has ever made any judgment about what the economic value is of this weather information?

Mr. ZINSER. We have not looked at that, sir. I think it is actually the other way around. I think NOAA issues contracts to people so that they can provide this kind of information to local communities.

Mr. FATTAH. Okay.

Mr. ZINSER. I think it is actually working the other way right now, but that would be a good review to do.

Mr. FATTAH. All right. Thank you very much.

Mr. WOLF. Thank you, Mr. Fattah.

And, Ms. Schnedar, we will hear your full statement. We separate it out so we just do the Commerce Department. You will have the opportunity—

Ms. SCHNEDAR. Thank you.

Mr. WOLF [continuing]. For a full statement. Mr. Culberson.

Mr. CULBERSON. Thank you, Mr. Chairman.

And I sincerely want to thank you for the work that you do. We in Congress are so inundated with information and have such a huge realm of responsibilities, the taxpayers we represent get so frustrated with the waste as we do that the Inspectors General Offices truly, I think, is one of the most essential and valuable parts of the Federal Government.

We really appreciate what you do. It is very hard to get good information and we really, really appreciate the work that you do, all of you, all of your staff.

This, it seems to me, Mr. Chairman, is kind of a classic illustration of what is often so wrong with the Federal Government. The people, as you mentioned, Mr. Chairman, in your questions that, some of the people that have made the decisions that manage this program are still there. They are still running the program.

There was, as I understand, Inspector General Zinser, the Satellite Program was initially designed to be run both by the Defense Department, NASA, and NOAA. The costs got too high. Defense Department pulled out.

I gather they have their own separate—they have their own weather satellite system today?

Mr. ZINSER. Yes, sir.

Mr. CULBERSON. And they are not relying on NOAA or NASA?

Mr. ZINSER. They actually share data. There are Defense Department satellites up there and there are civilian satellites up there.

Mr. CULBERSON. Right. Defense Department, DoD has their own weather satellites?

Mr. ZINSER. Yes, sir.

Mr. CULBERSON. Because they found the Civilian Satellite Program to be unreliable obviously and costs a lot of money and the problems. It reminds me of when the Air Force decided to pull out, they no longer launch their payloads through our manned Civilian Space Program after the horrible Challenger disaster.

And the unclear chain of command, sounds like there is nobody clearly in charge. Nobody has really been held accountable for these vast cost overruns.

And as the chairman pointed out—I was unaware of this, Mr. Chairman—that the, make sure I understood, just the Joint Polar Satellite System alone represents 25 percent of the Department of Commerce's budget? Did I hear that? Was that right?

Mr. ZINSER. I do not—

Mr. CULBERSON. Just this one satellite system.

Mr. ZINSER. If you take the entire cost of the program over a number of years, right now the estimate is close to \$12 billion. The annual appropriation, the annual request from the Department of Commerce last year, was \$8.9 billion.

Mr. CULBERSON. It is just extraordinary. I mean, it is clearly an essential satellite system that we have got to have, but we are as—I have got to be able to reason together and find a far more efficient, effective, and particularly in this new era of austerity, cost-efficient way to manage these programs and get these absolutely essential weather satellite systems launched and that we not only get it launched, but we have a capable system that is going to last for many years.

As the chairman said quite correctly in the private sector, this would just—this is just not acceptable.

Are the folks in charge of this program at NOAA and the Department of Commerce career civil servants unionized, career civil servants protected by civil service laws so they essentially—nobody has been reassigned or fired at all over any of this?

Mr. ZINSER. Well, they have a large staff that works in the satellite service. It is a large part of NOAA. They have different services. The satellite service is a large part of that.

I am not familiar with the past history in terms of personnel actions and personnel moves and things like that.

Mr. CULBERSON. You are not aware of anybody being fired or reassigned as the chair—the chairman asked anybody reassigned. To your knowledge, has anybody ever been fired over this kind of grotesque mess—excuse me—this kind of grotesque waste of our kids' money?

Mr. ZINSER. I do not know the answer to that, sir. Not to my knowledge since I have been there. I am starting my fourth year, so—

Mr. CULBERSON. No one has been fired in the time you have been there?

Mr. ZINSER. I do not think that anyone has been fired directly for the cost overruns or schedule delays or problems that—

Mr. CULBERSON. Right.

Mr. ZINSER [continuing]. NPOESS has experienced.

Mr. CULBERSON. I am still infuriated no one has ever been fired for 9/11. It still galls me. I mean, has anybody ever been fired, to your knowledge, for—for example, who made the decision to spend how many billions of dollars on those hand-held computers the Census was going to use to go door to door and wasn't that like thrown out the window and how much money of our—how much of our children's money was wasted on that foolishness? And nobody was fired for that either?

Mr. ZINSER. There were some reassignments or some retirements, but I do not think anybody was fired, sir.

Mr. CULBERSON. How much money was wasted on the hand-held computer fiasco?

Mr. ZINSER. Well, the original contract was about \$600 million, and I think the reason that they scrapped it is because of the problems they ran into to finish the development to where it would meet the original intent. The cost of that was rising to about a billion dollars, and so they decided to not go forward with it.

PROGRAM DUPLICATION AND OVERLAP

Mr. CULBERSON. It is a pattern we see throughout the whole Federal Government and I am convinced—as someone who represents a district in Texas, we have no state income tax, virtually no labor unions. You work at will. People can be fired if you are incompetent or you screw up the job. And you reward people for good performance with bonuses, but there are consequences if you do not do your job.

And there is a clear chain of command. Typically in any kind of a big organization with making big decisions like this, you have got a General Patton. You have got somebody clearly in charge. There is none of this with the DoD and NOAA and NASA overlapping. Nobody is in charge. Nobody gets fired. Everybody gets reassigned. Nobody is responsible.

And, of course, I suspect Congress also had something to do with this and that the original program—was the original design giving DoD, NOAA, and NASA that sort of overlap, was that a policy decision made by Congress or by the agencies? Before I pick on the agencies too much, I suspect a lot of that may come from this side of the table I have no doubt.

Mr. ZINSER. To the best of my understanding, it came out of the national performance review that was done under the Clinton administration.

Mr. CULBERSON. So it was done through the Executive Branch?

Mr. ZINSER. As far as I know, but, again, Congress—

Mr. CULBERSON. Oversight.

Mr. ZINSER [continuing]. Congress appropriates and Congress oversees the program.

Mr. CULBERSON. True. True. We are all human. I know of only one human in history that was perfect, Mr. Chairman, and, you know, we are all human. And we are all overwhelmed and we, all of us, are devoted to do the best we can for our kids and our

grandkids, but this is just unacceptable. And I am really glad the chairman has brought this to our attention.

And I hope, Mr. Chairman and members, as we move through this, we could really rethink the way that the—for example, we are, and I cannot stress this enough, Mr. Wolf, who I just revere and admire so much, the chairman points out quite correctly that our kids, we as a country, I hope, are not—well, I hope we have not already gone over the cliff.

I share Mr. Wolf's concern that the level of debt, the level of deficit, the level of unfunded liabilities is already so huge, I hope we can pull out of what looks like, I hope, is a very scary time ahead. We are going to have to rethink outside the box the way we have approached problems in the past.

And in conclusion, Mr. Chairman, I appreciate the time. I hope we will rethink the way, for example, that decision making is allocated on these programs. You know, we are going to have to, I think, to look at combining some of these functions of NOAA with NASA with a clear chain of command, with a responsibility if this is—if we are talking about satellite systems and outer space, I do not know why all of that is not done under NOAA.

Why isn't the Coast Guard doing fisheries and oceans—excuse me—done under NASA and then the Coast Guard doing the oceans? And, quite frankly, in these huge programs where somebody screws up, there needs to be accountability. There needs to be—people need to be fired.

We need to revisit the way the civil service system operates and the unions and the inability to hold people accountable because we can withhold money and change the way the program is managed, but really to the extent that we can do so, we need to rethink the model. And we are going to have to come up with dramatic savings. It is not the deficit that is going to kill us, the debt, it is the unfunded liabilities, in particular the entitlement programs. And we have got an urgent task before us.

I just thank you because truly in this age of austerity we are about to enter into, the work that you do is absolutely vital to the critical job that we have in oversight. And I thank you.

Mr. ZINSER. Thank you, sir.

Mr. CULBERSON. And I thank you for the time, Mr. Chairman.

Mr. WOLF. Thank you.

I am going to go to Mr. Austria. But Mr. Culberson just triggered a thought. Is there any overlap on the climate research issue between what NOAA is doing versus what NASA is doing?

Mr. ZINSER. There is overlap, sir. I do not know precisely what it is, but I know that there is research being done at NOAA and research that is—

Mr. WOLF. But is there any that they are both looking at the same thing. I want to protect NASA to the best of our ability. But if there is something that NOAA is doing on a climate issue, maybe you can look at that and just get back to the committee.

Mr. ZINSER. Yeah. There are three data sets that exist in the world on climate data. NASA owns one, NOAA owns one, and the other one is at East Anglia University over in England.

Mr. WOLF. But what Mr. Culberson just kind of triggered, though, are there any areas that—I know iron sharpens iron and

competition is good, but are there any areas that are so relatively simple that they are both doing that you could then come together not to eliminate doing it, because I think looking at climate issues is very, very important, but if it is being done at NOAA and NASA, that way, there would be more money for research and development—

Mr. ZINSER. Understood.

Mr. WOLF [continuing]. In space or others. So if you could just look to see—

Mr. ZINSER. Sure.

Mr. WOLF [continuing]. What programs are similar. Then when the NASA people come up, we can ask.

Mr. ZINSER. Okay.

Mr. WOLF. Mr. Austria.

Mr. AUSTRIA. Thank you, Mr. Chairman.

Thank you, excuse me, to the inspector general for being here today.

Just to kind of follow-up on what Mr. Culberson was alluding to as far as reducing our deficits by improving efficiency and rooting out things like waste and fraud and abuse, let me ask you, because I know in your testimony, you made reference to improving efficiencies.

And I appreciate the plan that you have laid out before this committee in managing acquisition more effectively, increasing accountability with the Stimulus Program, improving U.S. Patent and Trademark Office processing times, preventing cost overruns with the Commerce headquarters renovation, et cetera. And we can go on and on.

And we are all tightening our belts. And right now when we talk about the delays that are happening right now, how do you propose that we are going to be able to be accountable for the taxpayer dollars when we are talking about this transition to whether it be JPSS and the developing of that program on the ground goes, not experiencing any further delays?

In your opinion, you know, roughly how much taxpayer money could be saved or has there been any tracking of the tax dollars that—the cost of these delays has cost the taxpayers and then making these improvements that you have laid out, how much that might save the taxpayers?

Mr. ZINSER. Yeah. I do not think there is an overall calculation on what we are going to save by reducing delays. I know that the department is engaged in a process very similar to what the chairman talked about where they have sat down and they have gone through a process trying to determine which programs are essential, which programs are less essential, and they have put them into a number of different buckets. And they are doing that kind of analysis to be prepared for the budgets that they are anticipating.

Mr. AUSTRIA. Is that information or that data available to be able to be viewed or when it is available or will we be able to view that?

Mr. ZINSER. I think the department would be prepared to share that information in connection with the budget request that is coming up next week.

CENSUS PLANNING

Mr. AUSTRIA. I think that would be very helpful.

Let me follow-up on the gentleman from Pennsylvania and his questions on the census because I think it is an important area that, you know, I have asked myself a lot of questions about this.

And being a new member of Congress, you know, the cost of the census has always been higher than the census preceding it largely because we know there has been an increase in population to account for that.

But in your current fiscal and the current fiscal environment, we need to, again, getting back to saving the taxpayers wherever possible, and it would seem that with the technology that is out there today that in today's age where everybody is using a cell phone, a BlackBerry, an iPad, the technology that exists, that the census workers are still walking door to door with paper and pencil.

Are there technologies or other efficiencies that could be embraced by the bureau to improve their operation and reduce the cost of this necessary exercise?

Mr. ZINSER. Yes, sir. That was the biggest disappointment about 2010 was the fact that the Census Bureau could not get that technology ready for use. That would have saved money, would have saved a lot of money. They did not successfully implement that acquisition.

In addition to hand-held devices like that, we have been encouraging the Census Bureau to come up with some way to use the Internet in the census. They have resisted that. And I think that they are trying to do some pilot testing in these early years of the decade to figure out how to use the Internet for the census.

There are things that they could do to maximize the use of administrative records that already exist about the population, if only to update their address list. Right now, to update their address list very late in the decade, they send three hundred, four hundred thousand temporary workers out to locate every address in the country. The post office has that information; the Social Security Administration has that information. So there are things that they could do along those lines, which we are encouraging them to do and which we included in our testimony.

PROGRAM DUPLICATION AND OVERLAP

Mr. AUSTRIA. And, I mean, we all know, and I will conclude with, we all know that there are cuts that are coming to programs. Chairman Rogers has said that these will be the most severe reductions in the history of this Congress. And I have asked the question to businesses, to the colleges, to some of the military, sites across my district, and now I would like to ask you the same question.

You know, where could we cut in your department? If the cuts are coming, you know, can you help us identify those areas that maybe we can look at that are less efficient or wasteful as far as cutting and what reductions would be least disruptive to your operation and also maybe those areas that we should not be cutting that you think we are seeing progress as far as cost-effectiveness and as far as efficiency?

Mr. ZINSER. Yes, sir. As I mentioned, the department is trying to prioritize where they could cut their programs. But I also think that the chairman was pointing out—and Mr. Culberson—that there is overlap. There is overlap. The Commerce Department does things that other departments do, and I think that is probably a good place to start focusing.

I know that the President, for example, mentioned export promotion in his state of the union address. Earlier last year, the President signed an executive order that set up the National Export Promotion Cabinet. That cabinet has 16 different agencies on it. So you know there is overlap in responsibilities across the government. I think that is a ripe berry to look at.

Mr. AUSTRIA. Thank you, Inspector General.

Thank you, Mr. Chairman.

Mr. WOLF. Mr. Serrano.

Mr. SERRANO. Thank you, Mr. Chairman.

Mr. Chairman, if I was to tell you that I am happy to see that party in the majority, I would be lying to you. But if I had to see someone chairing the committee other than our side, I am glad it is you. You know, the relationship we have and, well, we get along and we work together. So I did not want to say that in the mike. There is a reason to my madness, you know. I did not want that recorded.

CENSUS PLANNING

Mr. Chairman, as you know, I always have a disclaimer that I do at the beginning of any census questioning and it is that I have one brother, no sisters, and he has been working for the Census Bureau since 1980. I came to Congress in 1990, so he got the job way before I was in Congress.

My understanding is that the 2010 census came in almost \$2 billion under budget. Although I understand you have some concerns about the financial management of the census, I am more interested in knowing why it was so far under budget. Is it a result of the recession or are there other reasons?

Mr. ZINSER. Yes, sir. We—

Mr. SERRANO. Are we going to find out later that they should have spent that money and on a different job?

Mr. ZINSER. I do not think you are going to find out that they should have spent all of that money. I would offer two points. One is that I do not think the Census Bureau does a very good job budgeting in the first place, so the budget that they finally came up with, after they scrapped the hand-held, and revised their budget, was kind of fat actually. That is my view.

But, secondly, the Census Bureau—to their credit—did do a good job with the money they were provided to get people more aware of the census through media and to increase the response rate through the mails. The fact that the response rate was up in the 70 percent range contributed a great deal to the cost savings they did realize. It cost 45 cents to mail something back. It cost \$80.00 to send a census worker out to get that information door to door.

Mr. SERRANO. Now, this is probably not a fair question to ask you since we are talking about the Commerce Department, but is that true for many departments that they over budget? Is it the old

belief that you ask for more hoping to get what you really need and in this case, you got what you asked for?

Mr. ZINSER. I think that the census is a separate issue from the other departments. Sure, I think that there is some padding that goes on in budget requests in general. But for the Census Bureau, I do not think their budget was done in bad faith. I just do not think they are very good at projecting their costs. And as we saw, there is a mix of good management and there is a mix of poor budgeting in that \$1.6 billion figure that was returned to the Treasury.

IT SECURITY

Mr. SERRANO. Right. In part of an IG report about IT security, there are said to be security weaknesses that undermine the department's ability to defend its systems and information. That is on page one.

Can you specify these weaknesses and how they are affecting the department's functions? And I apologize if any of these questions have been asked already.

Mr. ZINSER. Yes, sir. The department has been working very hard on improving its IT security, but there are vulnerabilities that still exist. For example, last year as part of our audit work, we went through and did what we call vulnerability scans on computers. Well, the department did the same thing earlier in the year. Their scan showed like 1.3 vulnerabilities per computer. Our scan showed almost five significant vulnerabilities per computer. So they are just not bringing the skill level and the talent to the table necessary to really do what is needed to be done on IT security.

RECOVERY ACT GRANT PROGRAMS

Mr. SERRANO. Do I have time for one more question?

Mr. WOLF. Sure. Go ahead.

Mr. SERRANO. There is a mantra that I deal with on a daily basis here, for my 20 odd years in Congress, and that is what about the territories. And I always want the territories, Puerto Rico, Guam, Samoa, Virgin Islands, the Mariana Islands, treated equally. Granted they are not states, but as equal as possible under the Constitution.

What is your sense, if it is within your purview to comment on this, of how the Commerce Department deals with the territories?

Mr. ZINSER. Yes, sir. The one area that I am most familiar with would be in the grants that are made by the department, especially grants under the *Recovery Act*, for example. And I know that the department was very conscientious about making sure that all the states and territories were represented in the grants that were delivered for the various *Recovery Act* programs.

I do not have those numbers exactly, but I have never received a complaint or any concerns that the territories were not getting some kind of fair shake from the department.

Mr. SERRANO. You say that with sort of a smile on your face. I am wondering if that is just your style or you know they were reading my press releases.

Mr. ZINSER. No.

Mr. SERRANO. Okay. Just checking.

Mr. ZINSER. I was not reading your press releases.

Mr. SERRANO. Maybe they heard my request. Thank you so much and thank you for your service.

Mr. ZINSER. Thank you, sir.

Mr. SERRANO. Thank you, Mr. Chairman.

IT SECURITY

Mr. WOLF. Thank you.

I am going to go to Mr. Yoder. But before I do, if I could follow-up on a thing that Mr. Serrano asked for. Were you there when Secretary Gutierrez's computers were stripped in China?

Mr. ZINSER. Yes, sir, we did look into that.

Mr. WOLF. Can you tell the Committee so everyone knows, particularly new members, how the Secretary of Commerce's computers were literally stripped and how extensive was that because, quite frankly, there are members of Congress now who travel to China. The minute you are off that airplane and you are into the airport, they are stripping your computer and you are bringing it back on your cell phone and your BlackBerry. But can you tell us so everyone can be educated what happened to Secretary Gutierrez—

Mr. ZINSER. Yes, sir.

Mr. WOLF [continuing]. And how extensive that was both when he was in China and how it impacted back on the computers in the department?

Mr. ZINSER. Yes, sir. Well, there were newspaper reports that Secretary Gutierrez had his computer compromised in China. We went down and looked into that. What he told me personally, was he did not take a computer to China. Now, his staff has taken computers with them. They have taken their BlackBerries with them. And what happens is it is such a problem that they have set up policies now where if you want to take a BlackBerry to China, you get a special BlackBerry with nothing else on it and you take that with you. It is scanned before you go. You take it with you. It is scanned after you come back so that that particular device is isolated and is not incorporated or introduced into the rest of the networks. And that precaution is set—

Mr. WOLF. This is the Chinese Government where the Administration gave a state dinner to President Hu Jintao who was the one who cracked down in Tibet. I went to Tibet 13 years ago. I went in with a trekking group. They have plundered Tibet. They have executed Buddhist monks and nuns. And the man who literally has the policy in effect is the man that we gave a state dinner to.

But they are spying against us and every member should know, every staffer should know, and it is hard for the Congress, when they go to China, if they get off their airplane and they walk into the airport, they are stripping your computer.

Now, did that computer come back into the network with the other computers in the department?

Mr. ZINSER. Not that we know of, sir. We do not think that it was ever infiltrated into the department. Now, that is not to say that the department has not found occasions where foreign governments have taken information out.

Mr. WOLF. Well, that was my next question. How many cyber attacks have been against the computers in the Department of Commerce in the last two years and was China ever involved?

Mr. ZINSER. I do not have the exact numbers. I do know that there are a number of countries that—

Mr. WOLF. Was China one?

Mr. ZINSER. Yes, sir.

Mr. WOLF. And how often does China hit your computers?

Mr. ZINSER. I do not have that information. I can tell you that, for example, a couple years ago, the number of attempts to get into PTO computers alone totaled about a million in a year.

Mr. WOLF. And do we believe that it was in some cases by the Chinese Government?

Mr. ZINSER. I do not have that information. I would—

Mr. WOLF. What would your guess be if you were under oath and you had to put your hand up and there was a Bible in front of you and asked the question? Would it be your expectation? The answer was that the Chinese Government was partially involved at some times?

Mr. ZINSER. Yes, sir. That would be one of the countries I would suspect. Yes, sir.

Mr. WOLF. Just for the record, my computer was stripped by the Chinese. They came in and got my computer and 17 other Members, the International Relations Committee, and they took everything off. And the FBI acknowledged it was the Chinese Government that did it.

And I think every Member should know and hopefully the department now, based on the Gutierrez case, has laid the word out that, and I hope it is government-wide now, that when other agencies, the trade people, the Justice Department people, that when they go to China and countries like that, and there are other countries, Syria and other places that they do the same thing. So is that the policy now government-wide?

Mr. ZINSER. As far as I know, it is, sir. I know the NSA, for example, has come around and has done a lot of outreach in the last couple of years, with departments trying to make sure that that effort is coordinated across the government. I know they came to the Department of Commerce.

Mr. WOLF. Okay.

Mr. CULBERSON. Mr. Chairman, if I may on that point.

Mr. WOLF. Yeah.

Mr. CULBERSON. Real quickly, guys, the problem is so severe that Google, when I visited Google headquarters, tells me they forbid—that when a Google executive visits China, they can only take a stripped down laptop that only has an Internet browser on it to China and then as soon as the individual returns, the computer is destroyed. It is that aggressive and that bad.

Mr. WOLF. I have been told, too, that you really cannot clean it, that they can embed it whereby you can never actually technically clean it. So maybe the Chinese, even those who think that it has been cleaned, now feel very good, but the Chinese are having a day.

Mr. Yoder.

Mr. YODER. I will pass, Mr. Chairman.

Mr. WOLF. Thank you.

Mr. Schiff.

Mr. SCHIFF. Thank you, Mr. Chairman.

And I just want to join my colleagues in extending my congratulations on your becoming chairman. I remember when I first was elected to Congress, I think you were chairing CJS at the time. And I came to testify, I was not a member of the committee obviously at that time, during Member Day. And I know that member testimony is not often the most scintillating of testimony and I know mine was not, but I was struck how diligently you listened to all the members that came to testify and how seriously you took their concerns. And I appreciated that commitment to your colleagues and have ever since. And congratulations.

And, Mr. Serrano, what you said about the microphone reminded me when I was in the State Senate and the Senate president was giving an outgoing speech about one of the members and extolling their marriage. They were leaving the Senate. He said all these wonderful things about the member who was literally walking out the door and saying thank you, thank you, thank you. The minute the departing Senator left the room, the Senate president turns to the recorder and says, reporter, destroy that transcript.

Mr. SERRANO. By the way, was I the ranking member when he was so nice to you?

Mr. SCHIFF. I do not recall because I think that you would not listen to anything I had to say. You gave me the back of your hand.

Mr. FATTAH. You were that memorable.

U.S. PATENT AND TRADEMARK OFFICE

Mr. SCHIFF. I wanted to ask Mr. Zinser about the Patent Office. As you mentioned in your testimony, since 2000, patent pendency has increased ten months. The backlog has doubled. In the same period, the number of patent examiners has also doubled, but the number of patents has not kept up.

I have been hearing about this problem for years from California high tech companies and I have been working on this issue for some time to try to address the backlog. Many of the stakeholders are willing to pay higher fees if they have the confidence in two things. One, that the fees would actually go to reducing the backlog, that the fees will not be diverted to pay some other government function unrelated to patents and, second, that the Patent Office will be efficient enough to use it effectively to reduce the backlog.

What I would be interested to get a sense of is the relatively new head of the Patent Office has initiated some reforms. Do you see any signs of progress that the backlog is now moving in the right direction or is it still getting longer?

If we were somehow to, in order to raise fees, commit that the revenues would go to the Patent Office and insisted that they develop a five-year plan to eliminate the backlog and that we have certain milestones to meet, is there a mechanism that could be used to make sure that we did not just increase patent quantity, but we also had patent quality at the same time? What is your sense of where the office is now and what will be necessary to remove the backlog?

Mr. ZINSER. Yes, sir. I think they have made progress on the backlog. I think the number that I have seen is that they have reduced it by about twenty or thirty thousand applications last year. And I think it is headed in the right direction. The issue of whether additional funding would help reduce the backlog, I think, is probably just part of the answer.

I know that the reforms that the secretary and Mr. Kappos have initiated are fairly new and they have to be tracked, but I also know that the secretary is tracking it. He has set up this effort called his balanced scorecard, where each of the agencies are coming in with their performance metrics.

And one thing that PTO has is data. They have a lot of data about their operations. And I think the key is to figure out which of those data points are important to track and to really see whether those data points are valid. And that is the kind of work we are going to do in following up on those reforms that they have put in place.

Mr. SCHIFF. How much of an issue is it that you mentioned that they have not been very good at anticipating the revenues and without a good model to anticipate their revenues, they cannot make planning decisions about how many patent examiners to hire and whatnot? How much has that impeded their operations? How much is the uncertainty about whether they can keep all the fees they generate an obstacle to their long-term planning?

Mr. ZINSER. I do not think the issue of them keeping their fees is—I know it is a historical issue for the folks in the patent world, but the recent history of this committee is that PTO has been appropriating all the fees that it has collected, basically.

I think where the uncertainty comes in is in projecting what their revenues are going to be. There is uncertainty there, and what happens is it impacts their various business decisions on increasing staffing or what they spend on other contracts. There is uncertainty about their incoming revenue, so that creates uncertainty about some of their business decisions throughout the year.

Mr. SCHIFF. Thank you, Mr. Chairman.

NOAA SATELLITE PROGRAMS

Mr. FATAH. Mr. Chairman, when you get a chance.

Mr. WOLF. Go ahead.

Mr. FATAH. I just wanted to follow-up with something the chairman asked earlier because I thought it was a very important point given the extraordinarily large cost relative to the Satellite Program and the relatively small amount of your own resources that you have allotted to it.

Now, I am a big fan of inspectors general. I worked with Chris Shays who co-sponsored the bill that created these inspectors general and juiced them up years ago with a lot of resources.

The question is, given your response, you are the taxpayers' watchdog in the agency, right?

Mr. ZINSER. Yes, sir.

Mr. FATAH. So here you have got this program in which there are satellite cost overruns. And when the chairman asked you—and I do not mean to put you on the spot. I mean, I am searching for how we get at some of these issues. He said, well, you only have

two people watching over what is a multi-billion dollar program out of your entire staff.

IG'S RESOURCE ALLOCATION

So my real question is not about that in particular, but how you rationalize your allocation of your resources to watch over the dollars in these agencies inside the Commerce Department. So you have got the department. You have got its various agencies.

How do you go about as the public's watchdog deciding where you are going to apply your resources and are you, you know, are you majoring in the minors, are you focused on the major dollars where there could be efficiency improvements?

I am not as concerned about fraud. I assume that most of the people in the government are trying to do the right thing and if there is fraud, we have a Justice Department that will get the bad guys eventually. But in the meantime, efficiency is a big deal.

Mr. ZINSER. Yes, sir.

Mr. FATTAH. And the intelligence community has satellite interests. DoD has satellites. NASA has satellites. NOAA has satellites. In the private sector, they put up satellites, right? And I know the chairman was talking about the Chinese. I mean, they are getting very proficient. I mean, we should know how to get a satellite up, right?

And so my question is what is your rational basis, as the IG, for determining how you are going to apply your resources to look over the public's money? And I would assume you would, you know, just rationally put more people focused where the money really is.

Mr. ZINSER. It is an excellent question, sir. My philosophy has always been that I am going to deliver the best oversight I can deliver with whatever resources the Congress gives me, number one.

We have a very diverse department. And the first thing I have to make sure of is that I do the work that is mandated by statute. For example, I have financial statement audits I have to do. The IT security audits are required by statute. I am required by statute to go out and audit a public safety interoperable communications program. Within the last couple of years, Congress has required that I audit the decennial census. Even the top management challenges report that we issued, that is required by law.

So I have my statutory requirements. Then I get requests from time to time from members of Congress to do work, and I make that a priority. The secretary and the administrators ask me to do work. I make that a priority.

Last year, for example, we looked at an acquisition that NOAA did on their west coast operations center. That was requested by Senator Cantwell. And, in fact, that is one of the jobs that we did that resulted in a very significant review by the secretary of how they do acquisitions in the department. So I think we got a lot of mileage out of that review.

Mr. FATTAH. And if I could, I mean, so that is a great answer. You are doing what you are mandated to do. And that might take you away from looking at a multi-billion dollar expenditure like the Satellite Program because you have to go chase these things that the Congress has told you to do and to perform on a regular basis, right?

Mr. ZINSER. Yes, sir.

Mr. FATTAH. So if we want to find more efficiency where greater dollars are being expended, we will have to provide some relief or direct you in that way, right?

Mr. ZINSER. Yes, sir. Well, one thing I did do, and I have been here three years now, one thing I did do when I got this job and saw the Satellite Program, I did go out and find expertise, people that—

Mr. FATTAH. I know. I am trying to get to an answer here. I mean, Jesse James said he would rob banks because that is where the money was, right?

Mr. ZINSER. Yes, sir.

Mr. FATTAH. So if we are looking for efficiencies, we would have to have the watchdog looking where the money really is and not looking where, you know, the peanuts are, right?

Mr. ZINSER. Yes, sir.

Mr. FATTAH. So thank you.

Thank you, Mr. Chairman.

Mr. SERRANO. Betty Sutton.

RECOVERY ACT AND BTOP

Mr. WOLF. Thank you, Mr. Fattah.

Mr. Zinser, Commerce received \$7.9 billion in February 2009 as part of Public Law 111-5, the *American Recovery and Reinvestment Act*. This amount was almost as much as the \$9.7 billion in base funding provided to the department in 2009.

When you exclude the \$1.9 billion increase provided for census in fiscal year 2009, the \$7.9 billion in stimulus funding was nearly the same amount as the Commerce Department's base budget.

As of December 31, 2010, the Department has obligated about \$5.9 billion in the *Recovery Act* funds as the law stipulated that most of the funds had to be obligated by September 30, 2010.

However, even though about 92 percent of the funds have been obligated as of December 2010, only about \$1.7 billion has actually been expended or about 22 percent of total funding provided nearly two years ago.

Can you explain why there has been such a lag in sending these funds out the door and, secondly, does Commerce keep track of how its *Recovery Act* funds may have stimulated the economy and is any of this money able to be reclaimed, something that has not been used, because the purpose of the stimulus bill was actually to stimulate and create jobs? Can you explain why there has been such a lag in sending the funds out and can any be claimed?

Mr. ZINSER. Yes, sir. The discrepancy between the amount obligated and the amount spent is largely explained by the Broadband Program.

Mr. WOLF. Okay.

Mr. ZINSER. The Broadband Program was the largest program of that pot of money. And they were required to award the grants and obligate the money by the end of last fiscal year, by September 30.

Mr. WOLF. Right.

Mr. ZINSER. And it became very schedule driven, but they did it. Now the spending will occur over the next two or three years as the grantees actually start spending money on those projects. So

that explains most of the discrepancy and why the money was obligated but has not been spent.

Mr. WOLF. Were there matches involved then because with the localities having such a difficult time, you are hearing California, and different states are having a tough time in localities?

Mr. ZINSER. Yes, sir. We are very concerned about that. The Broadband Program itself awarded 232 grants, \$3.9 billion. The amount of match for those grants was about \$1.4 billion, which has to be spent by the grantees. Whether it is a private sector company or a state or a county, those grantees have to come up with that matching amount.

Mr. WOLF. Is there a time factor involved in that match?

Mr. ZINSER. The way the program is run, I do believe that they have to show their match invested in the project all along the way. And when we go out and do audits, for example, of those grants, that is one of the things we look at, to see whether or not the match is actually being provided by the grantee.

Mr. WOLF. Are there localities that are now having a difficult time making the match?

Mr. ZINSER. For the Broadband Program, the funds just went out there, so we have not completed any audits on individual grantees yet. But I know in past grant programs, even in better economic times, there were a lot of problems with grantees providing their match.

Mr. WOLF. Would there be a way, not to be a disincentive to the grantee obviously if this is something legitimate they are doing, but is there any thought of doing a kind of a checkup on everyone saying, okay, guys, you got the grant September 30 last year, we want to see in 60 days that you can comply? And if you cannot, tell us now because that money could be recovered.

If it could be recovered, it would certainly impact on the debt—I mean, we are not trying to hurt anyone. Again, I am not trying to say, you know, get somebody. But if a locality really will not be able to make the match—in the transportation bill, we used to have what we call a use or lose. If you did not use, and I know you were at Transportation then, and if you did not use it over a period of time—

Mr. ZINSER. Uh-huh.

Mr. WOLF [continuing]. You lost it. And this economy is very tough. So there may be a locality that had this great idea, but now the tax base—I saw Camden, New Jersey has had to lay off 50 percent of their policemen.

Mr. ZINSER. I think it is a very high risk area, sir, and—

Mr. WOLF. Well, could you do that then? Could we request that you—again, this is not to be punishment. I just want to make that clear. But if someone knows they are not going to be able to make it, and if they are going to be able to make it, I think they should continue, but if they are not going to be able to make it, to let you know in a period of time so that the money could be reclaimed. And then if it were reclaimed, there may be a program that, you know, members here would like to continue that would allow it to continue if they knew this money were coming in.

So is there a way for you to do that, to check, send a letter to everybody and say can you tell us within 30 days?

Mr. ZINSER. Yeah. Either our office could do that or the program office itself that is supposed to, in NTIA, that is supposed to be keeping track of these things.

Mr. WOLF. Well, maybe we should ask them if they can do it because, you know, based on what you told Mr. Fattah, I know you have got a lot to do. But maybe we should just ask them.

Mr. ZINSER. We could follow up with them as well.

RECOVERY ACT AND CONSTRUCTION GRANTS

Mr. WOLF. Okay. Good.

2. Can you ask NTIA to send a letter to all applicants to determine whether or not they are able to meet their match requirements?

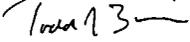
On March 9, 2011, my office transmitted a memorandum on this subject to Lawrence Strickling, Assistant Secretary for Communications and Information and Administrator for NTIA. We provided a copy of the memo to the subcommittee on March 14.



UNITED STATES DEPARTMENT OF COMMERCE
The Inspector General
 Washington, D.C. 20230

March 9, 2011

MEMORANDUM TO: Lawrence E. Strickling
 Assistant Secretary for Communications and Information and
 Administrator

FROM: 
 Todd J. Zinser

SUBJECT: Congressional Request Regarding BTOP Grant Recipients Meeting
 Matching Requirements

On February 9, 2011, I testified before the Commerce, Justice, Science, and Related Agencies Subcommittee of the House Appropriations Committee on the topic of *Department of Commerce Appropriations for Fiscal Year 2012: Top Challenges Facing the Department*. Implementation of the American Recovery and Reinvestment Act (ARRA) of 2009 is one of the Department's top challenges, and the Broadband Technology Opportunities Program (BTOP) presents the largest risk among ARRA programs.

During the hearing, Chairman Wolf asked whether grantees were encountering difficulties in meeting their requirement to provide matching funds or assets to projects sponsored by BTOP awards. In responding to his question, I stated that, based on our past experience with grant programs in which recipients had had trouble meeting matching requirements and on the current economy, we believed matching funds to be a high-risk area for BTOP. I also noted that NTIA was responsible for keeping track of issues such as grantees' ability to meet matching requirements.

The Chairman expressed interest in determining whether the BTOP grantees were able to meet their matching requirements. He indicated that the Subcommittee would ask NTIA to contact BTOP grantees to make such a determination. I replied that we would be happy to work with NTIA on this matter. If you have any questions, please contact Katie McKeivitt at (202) 482-0264 or Chris Rose at (202) 482-5558.

cc: Anthony G. Wilhelm, Director, BTOP



Mr. WOLF. NIST received \$360 million for its Construction Grant Program in the *Recovery Act*. Does NIST have the experience with construction funds and—

Mr. ZINSER. They do have experience actually contracting with construction companies to build research facilities. What they do not have a lot of experience with is part of that Recovery money is actually a grant program where they are granting money to other parties to do construction. That is a fairly new function for NIST and we do not think they have a lot of experience doing that. So that is a risk area that we have identified.

Mr. WOLF. And so what is going to be done about that?

Mr. ZINSER. Well, we have got it on our work plan to go out and audit the program, specifically looking at NIST's capability of overseeing those construction grants.

Mr. WOLF. Well, have they begun construction? This comment says that as of December 2010, it looked at, at that time, it could have changed, that only \$46 million or 13 percent of the \$360 million has been expended.

Mr. ZINSER. Yes. It is very similar to the Broadband Program where the money has gone out and now the grantees are in the process of spending it, and it has been a slow process.

Mr. WOLF. And are the matches there too? Probably not as much in—

Mr. ZINSER. I do not know the answer to that. I know that the construction grants primarily went to universities.

Mr. WOLF. Okay.

Mr. ZINSER. There is a whole list of universities that received these monies. I do not know the grant requirement for those funds, but I can let you know that.

3. Are the recipients of the NIST construction grants required to come up with a match?

The NIST construction grant program requires recipients to provide at least a 20 percent match, with the remaining 80 percent of the grant amount provided by NIST. For the 16 construction awards funded through the program, the matches ranged from 20 to 88 percent, with the median (and most common) match being approximately 50 percent.

Mr. WOLF. Okay. Who will be responsible for the ongoing operations and maintenance of these facilities? Will it be the federal government or the organization that got the money?

Mr. ZINSER. For the Grant Program, it would be the grantee.

Mr. WOLF. The grantee.

Mr. ZINSER. For the facilities that NIST is constructing itself, I think it is probably a mix. The answer is probably a mix of responsibilities.

U.S. PATENT AND TRADEMARK OFFICE

Mr. WOLF. Okay. Before I go back to Mr. Fattah and then to the other members, too, let me go back on the patent issue.

Last year, the director of the U.S. Patent and Trademark Office voluntarily, and I stress the word voluntarily, there was no mandate by Congress, gave the Chinese Government our entire patent database and continues to provide regular updates to the Chinese with new patent applications.

Now, anybody here who has a company that has left to go to China, just think about it. Was that a good idea to give, voluntarily give the Chinese Government our entire patent database and to give them a regular update to the Chinese with new patent applications? Do we do this to the Russians, to the Macedonians? Was that a good idea?

Mr. ZINSER. I am not familiar with that. I do know that PTO does share information with other governments. I was not familiar with that particular issue.

USPTO AND IT SECURITY

Mr. WOLF. Could you look into that? And have you looked into the policy impact on Chinese theft of U.S. intellectual property?

Mr. ZINSER. We can look into that. I do know that part of our emphasis on IT security, for example, is the fact that PTO would be such an economic target by other countries. That is why we are emphasizing IT security.

Mr. WOLF. To think PTO just gave them the database so they did not have to be inconvenienced, the Peoples Liberation Army. Just give it to them so they could have more time to do other things? I mean, it does not make any sense to me.

When the Patent and Trademark Office comes up, we are going to ask. Does that sound like a good idea to voluntarily give it to them? If you could check on it.

Mr. ZINSER. I will, sir.

4. If USPTO fees are raised, would that help reduce the backlog?

We have not yet conducted audit work analyzing USPTO's proposed 15 percent surcharge on fees, the activities to which these additional revenues would be directed, or how those activities would reduce the patent application backlog and pendency. This fee increase was proposed in USPTO's FY 2011 budget request and was expected to generate an estimated \$244 million. According to the President's FY 2011 budget request (p. 2), the proposed interim fee increase ". . . would fund the required hiring along with an attendant investment in information technology (IT). The USPTO will also create an operating reserve in FY 2011 to fully fund the cost of patent hiring in FY 2013 and maintain the reserve to protect the agency against unforeseen disruptions in revenue. Together, these will allow the USPTO to deliver on its pendency, quality, IT, and international objectives." The FY 2012 budget (p. 135) states that it would extend the interim increase for patent fees to fund the continued implementation of the 2010–2015 Strategic Plan.

In short, the question is best directed to the agency. The question could be expanded along the following lines: Of the collections expected from the 15 percent surcharge, what amounts would be directed at which activities, how do those activities relate to reducing USPTO's patent backlog and pendency challenges, and what measurable outcomes would be seen with respect to pendency and backlogs?

Mr. WOLF. And see who else we voluntarily give it to.

Mr. ZINSER. Yes, sir. I know at some point, the information about patent applications is made public. I do know that.

Mr. WOLF. Of course, there are 30 Catholic bishops in jail in China today. If you go into an internet café in Beijing and type in the Dalai Lama or type in freedom, nothing happens. So, I mean, it is not a good idea. So if you can look at it and get back to us about that, I would appreciate it.

Currently all patent applications are made available on line for the world to see in 18 months even though the average backlog has grown to more than 35 months.

Have we ever considered the impact of posting vendors' trade secrets on line for up to two years before it is granted the patent?

Mr. ZINSER. I do not know the answer to that, sir. I will have to find out.

Mr. WOLF. I mean, they are stealing. We know what they are doing. I know what they are doing, if the Patent Office does not know, but here we have all patent applications are made available on line for the world, i.e. the Chinese, i.e. the Russians, i.e. the Syrians, i.e. the Iranians, i.e., you could put whoever you want to put in.

And what is the impact of posting a vendor's trade secrets on line for up to two years before he is granted a patent? If you could look at that and check for us, I would appreciate it.

Mr. ZINSER. Okay.

Mr. WOLF. Do you think PTO is doing everything it can to protect American intellectual property from cyber intrusions prior to public release of the patent applications at 18 months?

Mr. ZINSER. I think they are getting better. I think they are paying attention to cyber security. I think they are getting better—

Mr. WOLF. Better meaning they went from zero to 15 or zero to 87? I mean, because these are jobs. Everyone is concerned about losing jobs to China factories.

I saw the other day this company in Massachusetts, the Evergreen Company, you may have seen it, just leaving. They got a bailout from the State of Massachusetts and they left. And they are laying off 800 employees in Massachusetts. Just literally they are walking off to China. I do not think it is an interest over at the Patent Department frankly. I think they are really—this is not their interest.

But if you could look to see, and I would like to get a report maybe even before the Patent Office comes up, as to whether or not you think they are doing everything they can on that.

Mr. ZINSER. I do think that by this time next year, they are going to be ahead of the department in terms of their IT security.

Mr. WOLF. Okay. Mr. Fattah, you want to go ahead?

Mr. FATAH. I am willing to pass and submit whatever other questions I have for the record.

Mr. WOLF. Okay. Fine. Okay.

Mr. Serrano, okay.

Let me just cover a couple of the—

Mr. SERRANO. If I could just submit some questions for the record.

Mr. WOLF. Sure. Sure. Without objection.

And I do not want to keep the Justice Department too. So we will have some questions, too, for the record on the broadband issue that you cover we assume there.

2010 CENSUS BUDGET

Also, I think you may have covered this, but I want to ask it because I think Mr. Serrano referenced it, too, and I think it was a good question.

Could you talk to us about the \$1.9 billion budget savings being described by the census? Are they really cost savings or was it the census budget for certain activities was not very accurate? So I think you covered it, but was that a—

Mr. ZINSER. I think it was mixed, sir. I think that we have reported in the past, and GAO has reported, that the census budget estimation is not very good. And when the hand-held computer was scrapped and they had to revise their budget estimates for the decennial, the estimate shot up \$3 billion.

One thing that they did do right, I think, is they promoted the census. They increased awareness. They used appropriations for a media campaign that I think kept the response rate at a level such that it did save a lot of money.

So I think you had a mix of bad budgeting and a response rate that helped reduce costs or keep costs contained.

Mr. WOLF. Do you think that the head of the Census should be a career person rather than a political appointee? I mean, you have changed a lot and it seems that—and I know it may sound opposite of what we were talking about earlier, but if you keep changing and changing and changing and changing it—

Mr. ZINSER. One of the things that have been proposed—I think it was in a bill last year—was to put the Census Bureau as a term similar to what they did to the FAA administrator so that the term would overlap—

Mr. WOLF. That is a good idea.

Mr. ZINSER [continuing]. Overlap the administration and—

Mr. WOLF. The FBI is ten years. The director of the FBI is ten years.

Mr. ZINSER. Yes, sir. I think the proposal was for the census director to be five years.

Mr. WOLF. Now, whose bill is that?

Mr. ZINSER. I think Representative Maloney put the bill in the House, and Senators Carper and Coburn put it in the Senate.

Mr. WOLF. That sounds like a good idea. And if you bring the right person in and confirm them by the Senate, so obviously they have to go through that, but I think the change has made so much of a problem that—so maybe we will take a look at that.

PSIC GRANT PROGRAM

Would you provide, on the Public Safety Interoperable Communication grants, would you provide the Committee with an update on the program? And we again understand the funds were all obligated by September 30th. But have any of the funds been actually spent?

Mr. ZINSER. On the public safety interoperable communication grants, that program is a couple years old now and was funded by the auctioning off of spectrum. We had a requirement to go out and do annual reports, and we are obligated to go out and audit about 25 of the grantees.

The only problem we saw in that program is that the way the program started out, the department allocated the money to the states before the states really had an idea what they were going to do with it. And so they had a time deadline to do the projects. We found that they were not going to be able to complete their projects, so the Congress extended the deadline. And so far, the audits that we are conducting show that the projects are on track and that the problems we found have been corrected.

Mr. WOLF. Okay. So you do not think that this money that is not being used ought to be rescinded and returned to the Treasury, the funds, if it has not been used at this time, or do you think it is moving along?

Mr. ZINSER. I think the PSIC Program is probably moving along, sir.

U.S. PATENT AND TRADEMARK OFFICE

Mr. WOLF. Okay. Telework, this Committee was the one who pushed the Department for telework. And maybe you can just give us an update, and we will ask the PTO, but give us—and maybe you can tell us how you think—I have been a strong supporter of telework. I think it is important. There is nothing magic about strapping yourself into a metal box and driving 35 miles to sit before a computer when you can do it in another place.

But if you can give us that and also if you can give us some information because I have been a supporter and have defended it and have been criticized by some of my colleagues on the Floor at times, which is all fair, but I maintain that from a continuity of government standpoint, because with 9/11, this place shut down, heavy snowstorms, the earthquake in California, if you did not have telework. Can you see how it has worked and if it improved productivity? Has it reduced sick leave? And if you could give us the raw truth on what it has done.

Mr. ZINSER. We do plan to do some work this year on PTO's Telework Program.

Mr. WOLF. Okay.

Mr. ZINSER. I think that they've put in place a very robust program and are relying on it as a key human capital tool. So we are going to do an audit of that program to try to measure how well it is succeeding.

Mr. WOLF. And Mr. Schiff asked a good question too. The Patent Office increased the number of patent examiners from 4,258 in fiscal year 2005 to 6,225 in fiscal year 2010. Yet, the backlog persists.

Why does it persist? And in your view, has PTO taken the necessary aggressive steps or should we bring in an outside group? Should we bring in a group of former Patent Office directors just to look to see because the backlog is increasing? The funding has been there. It really has.

I know sometimes outside groups will come in and say, well, you know, but this committee has on both sides of the aisle, I have given everything that they have needed. They have got a pretty nice building down there too. Could have probably saved some money if the atrium had been a little lower maybe, but the backlog continues. And that changes too. I mean, I think we have changed, we have been changing PTO administrators often too. Maybe there ought to be a set term there too.

What do you think the reason is?

Mr. ZINSER. Well, it is very complicated. I think one of the things that you look at is the increase in patent applications themselves. I think those have gone up. I think you factor in that some of the patent applications have increased in complexity themselves. As technology gets more complex, I think the patent applications get more complex.

I think there have been labor issues there with the employees and the working conditions, and one which I think has been successfully worked out is the telework. But the idea of reaching out to outside parties—I think Mr. Kappos is doing that. I do not have a list of his efforts along those lines, but I have heard him talk about the outreach efforts he is making to people outside the little patent PTO circle.

INTERNATIONAL TRADE/COMMERCIAL FOREIGN SERVICE

Mr. WOLF. Okay. We can ask him.

One last question and then I will go to Mr. Yoder to see if he has anything.

How many Commercial Foreign Service, this is on the export issue, how many Commercial Foreign Service officers does the U.S. post abroad compared to Germany and Japan and other developed countries? Would you know that?

Mr. ZINSER. I do not have that data at my fingertips, but I can get that for you, sir.

Mr. WOLF. Mr. Yoder, do you have any?

Mr. YODER. I do not have anything.

Mr. WOLF. No? Okay. Thanks.

I think that is pretty much—

2020 CENSUS PLANNING

Mr. SERRANO. Mr. Chairman.

Mr. WOLF. Yes, Mr. Serrano.

Mr. SERRANO. Can I go back on my—

Mr. WOLF. Sure, yeah.

Mr. SERRANO [continuing]. Decision not to ask another question?

Mr. WOLF. Sure, yeah. No. Go ahead.

Mr. SERRANO. I do not know, sir, if you have this information because it is related to the census but not directly to the Census Bureau. I have been involved as an elected official with the census in 1980, 1990, and 2000 and 2010, and I have never seen the outside involvement from the media and different groups throughout the country in advertising the need to fill out your form and return it.

For instance, I was asked to do about four PSAs including one which was a very serious effort by Telemundo nationwide asking people to return census forms.

Were those collaborations with the Census and, if not, do we have any idea of how much money was spent by non-public organizations or non-public funds were spent on promoting the census? I mean, I know it is not dollars that you keep an eye on, but it is just—

Mr. ZINSER. Well, the use of media to raise awareness of the census really was not introduced until 2000. And so whatever awareness campaigns existed before that probably did exist out in the local communities.

Mr. SERRANO. Right.

Mr. ZINSER. I am not sure that there is a lot of money—private money or non-government money—spent on raising awareness of the census. I think it all came from the Government. The media campaign, I believe, cost about \$180 million. But beyond that, there is assistance provided by private parties. They provide meet-

ing facilities to have rallies to get the word out about the census. And people volunteer their time to help promote the census. But I am not aware of actual private money being used to promote the census.

Mr. SERRANO. So when CBS says as a service of CBS or a service of NBC, you see these things that say make sure you turn in your census, or when Channel 4 asks you to return your census form, that was an ad for the Census Bureau and not something that Channel 4 did locally?

Mr. ZINSER. Yeah. That may have been something Channel 4 did locally. I do not know what occurred in each of the various localities. But when the Census Bureau procured the ad in the Super Bowl last year, for example—

Mr. SERRANO. That is different. I understand.

Mr. ZINSER [continuing]. Part of that deal was for the on-air talent to actually say some things about the census. That was part of the deal.

PROGRAM DUPLICATION AND OVERLAP

Mr. SERRANO. Right. Okay. That I understand. All right. Thank you so much.

Mr. WOLF. Thank you.

The last question is, and, again, you do not have to answer it, you can just talk to the staff, are there any, specific areas in Commerce that you see as duplicative or wasteful, similar to what Mr. Fattah was saying, if there are different things in different areas?

Again, the whole purpose is not to hurt anything but to—based on where we are and the reality of maybe something could be postponed or pushed off for a while and the money could be put on to a program like the exports that the Secretary thinks important or whatever the case may be, but—

Mr. ZINSER. Sir, I think there are a lot of opportunities in Commerce just to reduce overlap inside the administration of the department. For example, every department has a CIO. NOAA has four CIOs. There are three or four different operation centers for IT security in the department. There are duplications even within the Department of Commerce that could be consolidated and perhaps save money.

Mr. WOLF. Well, if you will let the Committee know and, again, depending on what authority we would have, obviously we have to talk to the authorizers, too, but we can deal with that, again, not in a way that hurts the Department.

And I think as I told the Secretary, we want to really be cooperative and help. And, you know, I think he is doing a good job personally and I have been impressed with him and on the export issue and other issues and things that he really thinks are a priority.

And so, anyway, I thank you for your testimony. I appreciate it very, very much. And you do not have to stay, but you can go if you want to go. You can stay if you want to stay, but I—

Mr. ZINSER. Okay.

Mr. WOLF. Anybody else have any other last questions?

[No response.]

Mr. WOLF. Great.

Mr. ZINSER. Thanks again.



UNITED STATES DEPARTMENT OF COMMERCE
The Inspector General
Washington, D.C. 20230

March 15, 2011

The Honorable Frank R. Wolf
Chairman
Subcommittee on Commerce, Justice, Science, and Related Agencies
Committee on Appropriations
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

On February 9, 2011, we testified before the subcommittee on the subject of *Department of Commerce Appropriations for Fiscal Year 2012: Top Challenges Facing the Department*. This letter transmits my office's responses to the subcommittee's questions for the record.

If I can be of further assistance, please contact me at (202) 482-4661.

Sincerely,

A handwritten signature in black ink that reads "Todd J. Zinser" with a horizontal line extending to the right.

Todd J. Zinser

Enclosure



Enclosure:**Department of Commerce Inspector General's Testimony Before the House Subcommittee on Commerce, Justice, Science, and Related Agencies, February 9, 2011
Office of Inspector General (OIG) Responses to Questions for the Record****Budget Savings**

1. *Are there specific areas in Commerce that you see as wasteful, redundant, or not mission-critical that could be reduced or eliminated?*

The U.S. Government Accountability Office (GAO) recently issued a report on potential duplication and overlapping programs in the federal government, including about 80 economic development programs at four agencies—the Department of Commerce, the Small Business Administration, the U.S. Department of Housing and Urban Development, and the U.S. Department of Agriculture. Other congressional studies have also reported overlapping activities in trade and export promotion and statistical reporting. Last year, the President issued an executive order on trade and established an export cabinet of 16 representatives from various federal agencies to better coordinate and implement the National Export Initiative. Finally, the President recently issued a memorandum on government reform for competitiveness and innovation, aimed at restructuring and streamlining the executive branch. The initial focus of this effort is on the departments, agencies, and functions that support increasing trade, exports, and overall competitiveness.

We agree with GAO that more systemic cross-agency coordination is needed to avoid unnecessary duplications and thus save taxpayers money. Ineffective and inefficient management oversight within federal agencies, too, can lead to redundant operations and wasteful spending. In the Department, our audits and investigations have identified several areas in which management deficiencies could result—or have already resulted—in wasteful spending:

- *Grants.* The Department spends \$3 billion to \$4 billion annually in grant operations. We found that close oversight is needed to ensure federal funds are spent responsibly:
 - Ineffective use of grant funds by outside entities is an ongoing concern. In 2008, we testified before Congress that Economic Development Administration (EDA) grantees, instead of lending the money to economic development projects, held \$70.3 million in excess cash. As a result, EDA failed to ensure the efficient use of program funds. And during the February 9, 2011, hearing, Chairman Wolf also expressed concern that recipients of grants under the National Telecommunications and Information Administration's (NTIA's) Broadband Technology Opportunities Program (BTOP) might not promptly inform the Department of their inability to meet fund matching requirements and decide to withdraw from the grants years later. As a result, BTOP grant funds could be sitting idle and unavailable for other legitimate use when they are most needed to stimulate the economy.

As of September 30, 2010, Commerce had a total of \$12.6 billion in unexpended obligations, including about \$5 billion for projects related to the American Recovery and Reinvestment Act of 2009 (ARRA). We will continue our oversight to assess whether unexpended obligations are being spent—or de-obligated, if not needed—in a timely manner to accomplish the goals of the Commerce programs.

- Our own audits, as well as single audits performed by independent CPA firms, identified tens of millions of dollars of questioned costs annually, such as charging the government unreliable/unsupported overhead costs or for ineligible services. Currently, \$26 million are pending for cost recovery decisions.
- Our investigations have found incidents in which grant funds were used for personal gain. The potential for grant fraud, waste, and abuse has increased significantly due to the large volume of ARRA transactions and the uncertainty regarding BTOP oversight funding. The need for effective monitoring and oversight of grant spending has never been greater for the Department.
- *Procurements.* The Department spends about \$3 billion annually on acquisitions and procurements. Among its largest and most challenging projects are two National Oceanic and Atmospheric Administration (NOAA) satellite acquisitions: the Joint Polar Satellite System (JPSS) and Geostationary Operational Environmental Satellite-R Series (GOES-R). These two programs, which have a combined estimated life-cycle cost of \$20 billion, are discussed later in this document. The modernization of the U.S. Patent and Trademark Office's (USPTO's) IT infrastructure for patent processing, which is slated for a total cost of almost \$300 million, will also be a challenge for the Department to implement.

Like many federal agencies, the Department does not have a strong track record when it comes to major acquisition projects. In recent years, we reported significant cost overruns and schedule delays in NOAA's satellite programs, many of which were attributable to the complex governance structure and competing interests inherent in a multi-agency program. We also concluded that NOAA did not adequately evaluate investment alternatives before awarding a multimillion-dollar operating lease for its Marine Operations Center-Pacific (MOC-P). At the Secretary's direction, the Department recently completed a comprehensive review of its acquisition processes, based in part on concerns surrounding the MOC-P lease acquisition. As a result of this review, Commerce is making improvements that should help it manage the acquisition process more effectively.

Using appropriate contracting vehicles is also critical to achieving desired outcomes. In recent years, the Administration has promoted use of performance-based contracts to encourage better performance by contractors. However, our audits found incidents in which the Department's contracting personnel did not properly structure and manage these contracts to promote excellent performance. In one case, a Census contractor received over 90 percent of available award fees despite serious performance problems on a multimillion-dollar contract. The fee determination process for this contract lacked key features—such as qualitative measures and mid-point assessments—for ensuring the appropriateness of awards. Another Census contract allowed the contractor to receive 75 percent of award fees even if its performance fell below acceptable standards.

- *Information Technology.* The Department spends about \$2.5 billion annually on IT-related operations. Having strong IT governance is essential to effectively overseeing IT investments and cyber security. Yet Commerce's IT management structure is highly fragmented, with the departmental Chief Information Officer (CIO) having little authority over operating unit operations. In fact, Commerce has 19 CIOs—1 in each operating unit and 7 in NOAA. This weak central governance has resulted in stovepipe IT operations and redundant software licenses, data centers, application systems, networks, and cyber security centers. Last year, we reported that this decentralized structure has created obstacles to integrating operations and avoiding overlap.
- *Administrative.* The Department spends millions of dollars per year to support various administrative operations. Last year, we reported serious mismanagement of NOAA's Asset Forfeiture Fund, such as using the fund to procure over 200 vehicles to support a staff of 170 and to support liberal international travels. Another audit found deficiencies in the Department's motor pool inventory recordkeeping and credit card usage. For example, employees are required to use a designated government credit card for spending associated with each of the over 2,000 vehicles in the pool. But more than 1,000 credit cards could not be matched to vehicles purchased or leased by the Department; as a result, credit card charges could not be verified to ensure they were only for authorized vehicle usage. Our investigation work also identified fraudulent activities and wasteful spending committed by employees. For example, a USPTO employee embezzled more than \$500,000 over a period of 7 years, and a NOAA employee misused a government purchase card for personal items totaling \$20,000.

We are encouraged that the Department is now taking aggressive actions to eliminate redundant operations. For example, it recently announced a plan to reduce common operating costs, especially in IT-related areas, by \$51 million through improved demand and performance management and smart contracting. The Department also plans to consolidate or close 26 of its 41 data centers over the next 5 years, leading to an estimated \$38 million in savings. Further, in the President's FY 2012 budget submission, the Department committed to trimming \$136 million in administrative costs through further consolidation and streamlining. We support these actions; however, the Department should also consider expanding its use of shared services provided by other federal agencies, such as monitoring cyber security incidents or processing grant payments, for potentially bigger savings.

We also recommend the Department expand its improper payments testing. There has been an increased government-wide effort to identify and reduce improper payments to government fund recipients. During the last 3 years, Commerce tested a total of \$86 million and found only \$6,000 in improper payments—far below the government-wide average of 5.5 percent. The test was limited to disbursements included in closed (expired) contracts and did not examine billions of dollars in grant and ongoing contract payments.

Finally, to support budget reduction, the Department has recently prioritized operating unit programs based on their criticality to its mission. This exercise has identified hundreds of millions of dollars in lower-priority programs. Two of these programs—NTLA's Public Telecommunications Facilities Program and NIST's Baldrige National Quality Program—were eliminated in the President's FY 2012 budget request.

Overall, we believe the Department is on the right track to eliminate the wasteful spending and redundant operations we have described here. However, more needs to be done to ensure taxpayer money is spent responsibly in today's economic environment.

NOAA's Joint Polar Satellite System*2. Please provide a brief summary of the JPSS program.**a. Status of the JPSS transition and any concerns.*

Delays in completing the transition are preventing the JPSS program office from fully working with its contractors to complete development of the instruments, spacecraft, and ground system for the first JPSS satellite (JPSS-1). For example, two instruments, the Advanced Technology Microwave Sounder and the Visual/Infrared Imager Radiometer Suite have not transitioned. An extended transition may delay the launch of JPSS-1.

b. Status of the ground system and any concerns.

Final testing has begun to determine whether the ground system meets its requirements. While a February test to determine the ability of the ground system to operate the National Polar-orbiting Operational Satellite System (NPOESS) Preparatory Project (NPP) satellite generally appeared to be successful, it identified discrepancies that need to be resolved. Another test this April will determine the ability of the ground system to process NPP data and produce operational products for users. Delays in resolving significant issues could cause NPP's launch to be postponed.

c. Status of intellectual property issues and transfer from contractors to the government and any concerns.

Negotiations are ongoing between the government and Northrop Grumman. JPSS program development activities will continue to be hampered until these issues are resolved.

d. What do you see as the biggest risk(s) with this program?

In our view, the biggest risks to the JPSS program are transferring all instruments and settling intellectual property issues, completing the ground system, and adequately funding development activities in FY 2011.

NOAA's GOES-R Satellite

3. *Please provide a brief summary of the GOES-R program.*

a. *Concerns with NOAA's ground system infrastructure and steps NOAA is taking to address any concerns.*

i. *Do you have any preliminary cost estimates on additional funding that may be necessary to address these infrastructure shortcomings?*

No, we do not have NOAA's preliminary cost estimate on additional funding that may be necessary to address infrastructure issues.

ii. *Are you aware if NOAA is taking any steps to address infrastructure deficiencies?*

Yes, NOAA program documentation indicates it is analyzing impacts to existing facility infrastructure, including floor weight load capacity, adequacy of computer room space, structural upgrades, and potential changes to the current design.

b. *Status of NOAA's ability to maintain contractor staffing for spacecraft development.*

According to GOES-R program documentation, planned spacecraft contractor staffing levels have recently been reached. Maintaining appropriate staff during the development life cycle has been identified as a concern by an independent review team.

c. *Concerns with end-to-end testing and suitability of the spacecraft to the mission.*

Program documentation indicates that the program office has an approach to conducting end-to-end testing; however, at this stage of the development, they have not yet completed a detailed plan that identifies components, associated interfaces, and user involvement. In addition, the program office recently conducted studies regarding the spacecraft's suitability to the mission. NOAA plans to make changes to the spacecraft based on the study results. Costs and schedules could be impacted if issues arise while NOAA implements these changes.

d. *What do you see as the biggest risk(s) with this program?*

In our view, the biggest risk to the GOES-R program is the successful development and integration of the spacecraft, instruments, and ground system, all of which are essential to maintaining continuity of environmental data from geostationary orbit.

Adequate IG Technical Staff to Monitor Satellite Program

4. *How many full time IG staff are dedicated to the satellite programs, and do you intend to increase this amount given that the satellite programs have experienced such huge cost growth, schedule slips and reduced capabilities?*

Currently, five full-time staff members are dedicated to the satellite programs—two senior staff with expertise in the JPSS and GOES-R programs leading a subordinate team. I intend to increase this amount.

Adequate IG Technical Staff to Monitor Satellite Program (cont.)

5. *You discussed reassigning auditors from Census to satellites. Do they have the technical expertise to understand all of the complexities associated with these satellite programs?*

As I mentioned in my testimony, we will be able to shift resources from our decennial oversight effort to the satellite program. This will not necessarily involve shifting specific staff members, but many of OIG's audit and evaluation staff have skills that are transferrable from one program to another as long as the auditors are led by staff with sufficient expertise.

For example, in our FY 2011 and FY 2012 budget submission, we identified the following areas for oversight:

- technical progress, risks, and issues with JPSS and GOES-R instruments;
- performance of JPSS and GOES-R acquisitions as compared to their cost, schedule, and technical baselines;
- JPSS and GOES-R program management;
- contract management, including administration of award fees;
- Department and NOAA oversight of JPSS and GOES-R acquisitions; and
- management of JPSS and GOES-R requirements.

Many of these areas require experience with major acquisitions. We will be able to leverage the expertise of our senior satellite staff to lead auditors on the acquisition processes involved.

Improprieties with NMFS's Asset Forfeiture Fund

6. *I understand that you have been reviewing NOAA's use of its law enforcement "assets forfeiture fund." Please summarize what your review has uncovered.*

Based on concerns we identified in our review of NOAA's fisheries enforcement program, in 2010 we engaged KPMG, a public auditing and accounting firm, to review the Asset Forfeiture Fund (AFF). During its review, KPMG was unable to determine the current balance of the fund, but suggested that it could be as high as \$47 million. Moreover, it found that no unit or individual within NOAA had a clear understanding of the AFF and how it functions. As a result, KPMG was unable to verify the \$8.4 million balance reported to us by NOAA's Office for Law Enforcement (OLE) and its Office of Finance.

We reviewed and summarized KPMG's report in July 2010. In our summary, we noted that NOAA's General Counsel for Enforcement and Litigation uses the AFF to fund over 99 percent of its non-salary operating expenses, and OLE has used the AFF extensively to pay for materials and services such as vehicles, vessels, travel, and training. OLE's vehicle inventory as of June 1, 2010, for example, lists 202 vehicles, only 2 of which are leased; the remaining vehicles were purchased—at a cost of about \$4.6 million—predominantly with AFF monies. OLE's fleet of 202 vehicles exceeds its total staffing of approximately 172 enforcement personnel.

We are now conducting a follow-up of KPMG's review to determine whether (1) NOAA has properly defined the assets comprising the fund, including the completeness and accuracy of its funding sources; (2) NOAA has appropriately defined allowable uses of fund assets and developed controls over collections and disbursements; and (3) a separate independent financial audit requested by NOAA is designed to provide an opinion on AFF-prepared financial statements and reliance on the AFF balances as of March 31, 2011.

Improprieties with NMFS's Asset Forfeiture Fund (cont.)

7. *What steps is NOAA taking to improve management controls over this funding, and do you believe that these steps are adequate?*

On September 23, 2010, Secretary Locke announced significant restrictions in the use of the AFF to prevent abuse and increase transparency. The new policy, which went into effect immediately, prohibits 50 percent of the fund's historical uses, including the purchase of vehicles and vessels; paying for travel that is not related to investigations, proceedings, or training; and paying for training unrelated to an integral part of an employee's job. NOAA has also shifted oversight of the fund from NOAA's Fisheries Service to the NOAA comptroller, and requires justification and approval from the NOAA comptroller for any expenditure of more than \$1,000 from the fund.

Also, in response to the July 2010 review by KPMG, NOAA has taken several steps to improve management controls over the AFF:

- NOAA has commissioned Clifton Gunderson LLP, an independent public accounting firm, to conduct a comprehensive financial audit of the March 31, 2011, fund activity statements in order to determine whether actions NOAA has taken to clearly identify and track AFF monies are working, and to ensure that AFF funds are not being commingled with other NOAA funds.
- The NOAA Finance Office will define the activities that make up the AFF and fund accounting structure to enable a clear understanding of the fund and how it functions. This step is intended to ensure that AFF activity can be properly delineated, tracked, and monitored.
- NOAA will develop and implement procedures for monitoring and overseeing the fund. This process will incorporate studies of other federal agencies with asset forfeiture funds to determine best accounting and fiscal management practices for the fund. NOAA will then develop a format for fund activity statements to allow for routine reporting and monitoring of fund transactions and balances.

We will have an indication of NOAA's progress on these efforts later in the fiscal year, after we complete our own review and Clifton Gunderson finishes its audit.

American Recovery and Reinvestment Act

8. *Commerce received \$7.9 billion in February 2009 as part of Public Law 111-5, the American Recovery and Reinvestment Act. As of December 31, 2010, the Department has obligated about \$5.9 billion in Recovery Act funds as the law stipulated that most of the funds had to be obligated by September 2010. However, even though about 92 percent of the funds have been obligated, as of December 2010 only about \$1.7 billion has actually been expended. Of this \$1.7 billion, nearly \$1 billion has been spent by the Census.*

a. Please explain the lag in expenditures.

Commerce has obligated \$6.8 billion in ARRA funds and transferred \$526 million to other agencies for obligation on Commerce-related projects. In addition, Congress rescinded \$542 million in funds—specifically, \$240 million from NTIA’s Digital Television program and \$302 million from BTOP. The obligations, transfers, and rescissions account for approximately 99 percent of the ARRA funds received by Commerce. Of the funds obligated directly by the Department, approximately \$1.9 billion has been expended as of December 31, 2010, with nearly \$1 billion spent by the Census Bureau.

More than half of the funding received by the Department under ARRA was for BTOP. This was a new program that required NTIA to staff a program office and develop rules and regulations before any grants could be awarded. As a result, most BTOP awards were not made until FY 2010, with many made the last quarter of the fiscal year.

Other Commerce programs with larger percentages of unspent funds are primarily new construction programs such as NIST’s construction grant program and large projects such as NOAA’s Pacific Regional Center. Historically, spending rates on such programs and projects are slower in the first year due to the permits and licensing that must be obtained before full construction operations can commence. Therefore, we expect that spending will gradually increase over the next few years. It should be noted that operating units with established grant programs and program offices, such as EDA, were able to make all of their ARRA awards in FY 2009. As a result, almost 40 percent of their \$150 million in funds were disbursed by December 30, 2010.

b. Have you conducted an analysis to determine if any of these unexpended funds can be rescinded?

We have not conducted an analysis focused specifically on unexpended Commerce funds. Nearly all of the Recovery Act funds appropriated to the Department have been obligated; as of September 30, 2010, only about \$29 million (less than 1 percent of the funds) remained unobligated. By contrast, a substantial portion of the funds that have been obligated have not yet been expended by the grant and contract recipients. Ordinarily, funds that have been properly obligated but not expended would not be subject to immediate rescission unless the agency withdraws or recaptures the funds, as the Dodd-Frank Wall Street Reform and Consumer Protection Act directs. For example, we have learned that several BTOP grants have been declined by the recipients in recent months. We have consulted with NTIA and learned that the agency intends to de-obligate these funds and return them to the Treasury.

Similarly, other unexpended funds may be rescinded if the grants or contracts are terminated either by the recipient or the government. Although it does not target unexpended funds specifically, the Dodd-Frank Act mandated the return of all unobligated funds to the Treasury by the end of 2012. Commerce's OIG received \$16 million dollars for ARRA oversight, which represents less than 1 percent of the amount to be obligated by the Department. Of this amount, \$6 million was appropriated through ARRA legislation and will expire on September 30, 2013. Another \$10 million was transferred to OIG from NTIA's BTOP appropriation for audit and oversight; these funds did not have an expiration date. However, unless a waiver is granted, the Dodd-Frank Act may lead to a December 31, 2012, expiration date for both groups of funds.

As of December 31, 2010, we have expended a total of \$5.2 million in our efforts to oversee the Department's ARRA programs, particularly those, such as BTOP, that pose a high degree of risk. This \$3.9 billion program presents many challenges, and OIG will need staff and resources through 2016 to adequately monitor its progress.

c. In your view, have any of the Commerce programs been stimulative in nature?

Given that much of Commerce's ARRA funding has not been spent, it is difficult to determine if Commerce programs have been stimulative in nature.

The quarterly recipient reports provided to Commerce and available on the Recovery.gov website indicate that jobs have been created as a result of grants and contracts awarded with ARRA funds. See table 1 for a summary of the jobs created, based on the most recent quarterly reports.

Table 1. Department of Commerce Jobs Created/Retained through ARRA Grants and Contracts^a

	Q1 2010	Q2 2010	Q3 2010	Q4 2010
Economic Development Administration	144.35	284.68	402.12	450.44
Census Bureau	124.23	519.74	515.71	6.58
National Institute of Standards and Technology	126.12	206.30	294.68	777.17
National Oceanic and Atmospheric Administration	722.65	913.35	775.82	734.49
National Telecommunications and Information Administration	206.83	416.35	663.04	1,197.24
Office of Secretary	1.00	1.00	1.00	0.00
Total	1325.18	2341.42	2652.37	3,165.92

Source: Recipient reports submitted through FederalReporting.gov.

^aThese job figures are reported quarterly by the recipients, as required by OMB Memorandum M-10-08; they are not cumulative.

NIST Recovery Act Construction Grants

NIST received \$360 million for its construction grant program under the Recovery Act.

9. *Does NIST have experience with this type of program, whereby construction funds are provided to outside organizations?*

NIST received \$360 million to address its backlog of maintenance and renovation and for construction of new facilities. Half of that amount was for its construction grant program, which provides grant funds to outside organizations to construct or expand research science facilities, including laboratories, test facilities, measurement facilities, research computing facilities, and observatories.

NIST has experience with awarding and administering grants; however, its construction grants program began in 2008, only 1 year before NIST received its ARRA funds. Since the program began, NIST has hired an engineer as the Federal Program Officer within its Office of the Chief Facilities Management Officer (OFMCO) to manage all construction grants. OFMCO has experience with constructing, operating, and maintaining facilities owned and operated by NIST. The Program Officer is also managing contract personnel to assist in post-award monitoring and oversight for all the construction grants in this program. Finally, NIST has dedicated certain grants office staff to administer the business management and administrative aspects of the awards. We are currently performing an audit of the NIST construction grant activities.

NIST Recovery Act Construction Grants (cont.)10. *Generally, what types of organizations received awards?*

The construction grant program specifies that U.S. institutions of higher education and non-profit science research organizations are eligible to apply. Of the 16 construction grants funded through ARRA, 15 recipients are universities and 1 is a non-profit research organization. The facilities being built support the research goals of the Commerce Department, NIST, and NOAA, in such diverse areas as advanced materials, coral reefs, hurricanes, quantum physics, nanoscience, and metrology.

The construction grant program requires recipients to provide at least a 20 percent match, with the remaining 80 percent of the grant amount provided by NIST. Based on these 16 awards, the matches ranged from 20 to 88 percent, with the median (and most common) match being approximately 50 percent.

NIST Recovery Act Construction Grants (cont.)

11. *Have any of them begun construction? (As of December 2010, only about \$46 million, or 13 percent, of this \$360 million has been expended.)*

As of December 2010, 9 of the 16 recipients have begun construction. According to NIST, the delay in drawdowns is primarily due to delays in recipients finalizing their security interest documentation and National Environmental Policy Act (NEPA) clearances. Having a security interest in the property undergoing construction protects the government; it prohibits the recipient from selling, leasing, or mortgaging the property, or using the property in any way other than what is specified in the grant award. NEPA requires certain federally funded construction projects to assess environmental effects and reasonable alternatives through specified reports or analyses. Both requirements must be completed before funds can be expended.

Recipients are allowed to start construction activities using their own funds until federal funds can be drawn down. We expect to see an increase in federal drawdowns as grantees finalize security interest documents and obtain NEPA clearances.

NIST Recovery Act Construction Grants (cont.)

12. *Do you have any concerns about this program and NIST's ability to see these projects through to fruition?*

In our *Top Management Challenges Report* for FY 2011, OIG identified NIST's construction grants as a specific risk area. While NIST has contracted with construction companies to build research facilities before, it does not have a great deal of experience managing grants for construction. Accordingly, as part of our oversight efforts of ARRA funds, our office has begun an audit of the \$180 million awarded through the NIST construction grants program. The objectives of this audit are to review the policies and procedures developed for the ARRA construction awards; to determine whether NIST has the personnel, processes, and systems in place to monitor the program, including the recipients' adherence to the terms of the grants; and to determine whether the construction projects are being built according to the original proposal. Our audit will detail our findings and any concerns we may have with this program.

NTIA's Recovery Act Broadband Technology Opportunities Program

NTIA originally received \$4.7 billion for a Broadband Technology Opportunities Program (referred to as "BTOP"), nearly 60 percent of total Recovery Act funds provided to the Department. As of December 2010, only about 5 percent, or \$241 million, has been expended.

13. *Can you tell me the status of this program? Please explain why it is taking so long to actually spend these funds.*

From February to December 2009, NTIA carried out a number of activities to set up BTOP, including staffing a program office, developing grant program rules and regulations, coordinating development activities with other federal agencies (such as the Department of Agriculture and the Federal Communications Commission), and awarding a contract to Booz Allen Hamilton to provide program support. Because NTIA encountered problems with the grant intake systems and in completing application reviews, initial awards were made in December 2009.

Between December 2009 and September 30, 2010, NTIA awarded \$4.2 billion in grants funded by ARRA. Of these, NTIA has awarded more than 230 BTOP grants, worth approximately \$3.9 billion. Approximately \$3.4 billion of that amount is funding 123 infrastructure projects, including 7 public safety broadband networks; \$200 million is funding 65 public computer centers; and \$250 million is funding 44 projects for sustainable broadband adoption. The remaining \$300 million was awarded to the 56 states and territories, as well as the District of Columbia, for developing and updating digital maps showing broadband coverage for their jurisdictions. NTIA is now responsible for monitoring the awards.

Only about 5 percent of broadband funds have been spent so far. However, spending will increase in the coming months, as most of the BTOP awards—about 70 percent of the \$3.9 billion—were made between July and September 2010 and grantees have a limited time to complete projects. It is to be expected that most funds have not yet been spent, given that most of the funds are associated with infrastructure projects. Many of these projects require environmental assessments, which can take as long as 6 months to complete, and grantees have limited access to the grant funds until the assessments are finished.

NTIA's Recovery Act Broadband Technology Opportunities Program (cont.)14. *Do you think that these funds will ever be spent?*

ARRA originally provided the Department with \$4.7 billion to establish BTOP. After the \$302 million rescission to the program, the bulk of the funds (\$3.9 billion) went to making awards for broadband projects, while \$300 million went to the digital broadband map. The remaining funds involved transfers to Commerce's OIG to carry out oversight, to the Federal Communications Commission to support development of a broadband plan, and to NTIA for administrative expenses to operate the program.

Our monitoring of the program has found that not all the funds will be spent. For example, three awards, representing about \$40 million (or around 1 percent of total funds awarded) of the \$3.9 billion related to BTOP projects, have been—or are in the process of being—terminated. Consequently, these funds will not be spent. It is reasonable to suspect that other projects will be terminated or reduced in scope as the over 200 projects move forward and issues arise that may affect their completion. For example, if match amounts anticipated in the grant application do not materialize, the grant awards will decrease, which will result in additional BTOP funds not being spent.

In our view, of all ARRA programs being managed by the Department and its operating units, BTOP represents the largest risk. BTOP is the biggest and most complex grant program that NTIA has overseen. The grant awards went to a diverse group of recipients, including public entities, nonprofit organizations, tribal entities, and for-profit companies. BTOP is the first grant program in which NTIA has awarded funds to for-profit companies, which represent approximately 20 percent of the awards. The award recipients also have different levels of experience with federal grants: some have received grant monies before, while others are first-time federal award recipients. And finally, conditions surrounding the awards themselves vary widely. All of these factors increase the risk of funds remaining unspent.

NTIA's Recovery Act Broadband Technology Opportunities Program (cont.)15. *What are your concerns about this program?*

A number of factors—the large dollar amounts involved; the number of grants; the mix of grant recipients and their different levels of experience with federal grants; the technical nature of many of the grants; and the relative inexperience of NTIA and its staff in administering such a large grant program—combine to make this the most complex grant program NTIA has ever administered and the highest risk ARRA program for Commerce.

Now that awards have been made, NTIA staff must shift its attention to making sure the recipients are properly spending the money and delivering on their broadband projects. How well recipients monitor the subrecipients enlisted to complete projects is one area that concerns us. In February 2011, we provided NTIA staff and BTOP recipients with a presentation on best practices related to monitoring their subrecipients. Also, NTIA has to make sure that matching funds committed to by the grantees are real funds because without matching funds there is a risk that the project cannot be completed.

The Department has identified that an additional challenge is the need for NTIA to have sufficient resources to oversee the awards. We believe that in addition to funding, it needs to maintain a dedicated staff to monitor awards and provide technical assistance. We are aware that NTIA has recently lost several staff members; it now needs to ensure that enough replacements are hired and that they receive appropriate training.

NTIA's Recovery Act Broadband Technology Opportunities Program (cont.)*16. Does NTIA have the capability to adequately oversee these programs?*

In addition to its BTOP and broadband coverage map efforts, NTIA is currently administering the Public Safety and Interoperable Communications (PSIC) program, a \$1 billion grants initiative by the Digital Television and Public Safety Act of 2005 to help public safety agencies establish interoperable communications systems. Oversight of these large programs presents a challenge to NTIA, which had managed only small grant programs in the past. And NTIA's challenges will be exacerbated if it is assigned oversight of any more programs; the Department's FY 2012 budget proposes \$1.4 billion in FY 2012 (as part of a total of \$7 billion in funding over the next several years) to help build an interoperable public safety broadband network and provide additional spectrum for public safety use.

We have performed two reviews that identified corrective steps to strengthen BTOP's internal controls, and NTIA has been responsive to our recommendations. Our ongoing reviews of NTIA's award monitoring activities and a review of an individual award to the Bay Area of San Francisco will assess the effectiveness of NTIA's program oversight. The ability to manage BTOP and its other programs will depend on whether NTIA can continue to strengthen its policies and procedures while maintaining a strong workforce to provide grant monitoring and technical assistance.

2010 Census Budget “Savings”

17. *Do you have an itemization of the \$1.9 billion “budget savings” being described by Commerce with respect to the 2010 Census budget?*

In August 2010, Secretary Locke announced \$1.6 billion in budget savings for the 2010 Census. That amount has been increased to \$1.87 billion. Census describes the breakdown of these savings as follows:

- \$800 million in unused contingency funds (examples of contingencies are natural disasters such as earthquakes, hurricanes, or floods that severely disrupt operations; a major system breakdown; or unexpected developments such as a lower-than-estimated response rate);
- \$650 million due to a higher-than-estimated response rate and nonresponse follow-up enumerators completing their work in less time than estimated; and
- \$420 million from various field operations (this figure was previously estimated at \$150 million in savings). A number of operations came in under budget, as well as costs associated with office staffing and fingerprinting temporary employees.

We found that the decennial budget process needs improvement in order to produce more reliable estimates. In addition, a more transparent budgeting process is needed. During the decennial census, funds were shifted from activities running surpluses to cover those running deficits. This practice made it difficult for us to assess whether activities were under, within, or above budget.

2010 Census Budget "Savings" (cont.)

18. *What was the original estimate for the cost of the 2010 census, and what did it end up costing?*

In 2003, the Census Bureau projected the 2010 census lifecycle cost at \$11.5 billion. The lifecycle estimate includes, for years FY 2001 through FY 2013, the 2010 Census, the American Community Survey, and Census's master address list and map updating efforts. In 2008, due to escalating costs associated with the decision to convert to a paper-based nonresponse follow-up operation, the bureau increased that estimate to \$14.5 billion. A \$1.87 billion surplus in FY 2010 reduced the total lifecycle cost to \$12.6 billion (almost twice the 2000 decennial's final cost of \$6.6 billion).

2010 Census Budget “Savings” (cont.)

19. *Have you made recommendations to the Department and Census leadership on how to ensure better budgeting and cost effectiveness for the 2020 census?*

The Supplemental Appropriations Act of 2008 required the bureau to submit to the Senate and House Committees on Appropriations a detailed plan and timeline of decennial milestones and expenditures, and a quantitative assessment of associated program risks. Our office was also required to deliver quarterly reports to the Appropriations Committee on the bureau’s progress against this plan. As a result of this work, we issued three memoranda to the bureau that contained several recommendations related to the 2020 decennial. Our cost-related recommendations included better integrating cost and schedule activities, completing the schedule early in the decade, and increasing the transparency of the decision making and budgeting processes. The specific reports can be found on the OIG website: <http://www.oig.doc.gov>. In the next 2 months, we plan to issue a summary report that outlines all of our recommendations.

As I stated in my testimony, to reduce costs and risk, and to increase the accuracy of its information, the bureau’s 2020 census planning approach needs to leverage existing surveys, field operations, and data assets. I suggested that Census focus on enhancing operations by integrating into its decennial planning efforts (1) increased use of administrative records (records collected for the administration of programs and provision of services by federal, state, and local governments and commercial entities), (2) continual map updating—using the existing trained workforce in both office and field operations—to further reduce cost and risk, and likely increase quality, (3) explore the use of Internet and other electronic response options, and (4) reduce the costs and risks associated with IT systems by limiting the deployment of one-time-use technology.

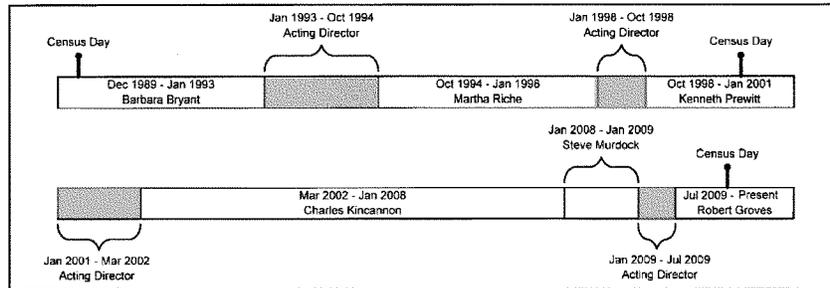
2010 Census Budget “Savings” (cont.)

20. *What are you doing to ensure that the 2020 census doesn’t experience the cost overruns and problems that the 2010 census experienced?*

The management of cost overruns and operations are under the control of the Department of Commerce and Census. In our oversight capacity, we will continuously monitor and report on 2020 planning and execution throughout the decade. We recently met with Census officials to discuss our FY 2011 oversight for the 2020 decennial census, as well as a review of their address list and map database updating. We suggest real-time monitoring and constant communication among Congress, the bureau, and oversight entities throughout the decade to identify problems early, contain costs, and minimize risks. We urge Congress to hold oversight hearings throughout 2020 decennial life cycle, rather than wait until the latter half of the decade (as was the case during the 2010 Census) when plans and costs are less flexible.

In addition, as we reported in our 2008 top management challenge report, the Census Bureau—particularly headquarters—has been an insular organization that eschews open dialogue with outside parties and even its own regional operations. While much progress has been made under the current leadership to change this culture, leadership continuity is essential to foster the improvements that must be made for the 2020 decennial. The bureau’s leadership usually changes when new administrations take office (figure 1), which may result in lengthy vacancies when critical decisions affecting the next decennial census must take place.

Figure 1. Tenure of Census Bureau Directors, 1989–Present



Source: OIG analysis of U.S. Census Bureau and public information

In 2010, Congress proposed (but ultimately did not approve) a fixed term for the Census director, staggered to begin and end in such a way as to minimize disruption to decennial planning, testing, and implementation. In our view, such a proposal has significant merit.

NTIA's Public Safety Interoperable Communications Grants

The Public Safety Interoperable Communications (PSIC) Grant Program was created by the Deficit Reduction Act of 2005 (the Act) (Public Law 109-171), as amended by the Implementing Recommendations of the 9/11 Commission Act of 2007 (the 9/11 Act) (Public Law 110-53). The legislation directed the National Telecommunications and Information Administration (NTIA) of the Department of Commerce, in consultation with the Department of Homeland Security, to establish and administer a grant program to assist public safety agencies in the advancement of interoperable communications.

On September 30, 2007, the PSIC Grant Program awarded \$968,385,000 to fund interoperable communications projects in the 56 states and territories.

21. Please provide the Committee with an update on this program.

- a. While the funds have largely been obligated, how much of the funds have been expended by grant recipients?

As of December 31, 2010, expenditures by grant recipients, which are reported quarterly, totaled \$497,050,000. Recipients have spent an average of 51 percent of the funds obligated: 23 states or territories have spent less than 50 percent of their authorized PSIC funds; several states, including New Hampshire, Massachusetts, Nebraska, and Vermont, have spent less than 20 percent; however, 6 states or territories have spent over 90 percent.

According to NTIA, the nature of PSIC-funded projects has contributed to what is often characterized as a "slow" drawdown rate. Grant recipients have applied approximately 88 percent of awarded funds to large-scale infrastructure projects such as radio tower construction and network expansions, both of which require significant lead time to identify site locations, acquire equipment, retain services, commence construction activities, and test system capabilities. All of these activities must be successfully resolved before the bulk of grant funds can be drawn down by the recipient. For some locations, this lead time could be measured in years.

These preliminary activities, however, are not the only requirements that must be completed before a project can fully begin. Compliance with NEPA is also a priority for the PSIC program, and significant resources have been applied toward managing the required review process. The number of project locations—now over 5,500—involved with the PSIC program has substantially exceeded initial estimates. Complex projects such as tower construction often require a full environmental assessment, which may take several months to complete in each instance.

Most PSIC grant recipients also operate on a reimbursement basis, in which local funds are used to cover project costs before federal reimbursement is requested. This has the effect of recipients drawing down funds toward the end of the period of performance. So although NTIA believes that PSIC recipients are actively engaged in project activity, this evidence does not necessarily appear in the drawdown data. Recipients can aggregate invoicing on multiple activities of a project before submitting a reimbursement request to the state, which

would then draw down federal PSIC funds to cover the reimbursement. In these instances, drawdown data can show 3 years of moderate activity punctuated by a massive 1-day spike.

The deadline for recipients to complete their grants is now September 30, 2011, but can be extended—upon recipient request and with the Assistant Secretary’s approval—until September 30, 2012. NTIA has informed us that requests for extensions are expected to be submitted by April 15, 2011, and either accepted or rejected by the Assistant Secretary by May 31, 2011. Both NTIA and the Federal Emergency Management Agency (FEMA) expect as many as half of the recipients to apply for extensions.

NTIA's Public Safety Interoperable Communications Grants (cont.)

22. *Do you intend to conduct any audits of this program to determine if any of these unused funds can be rescinded?*

Any PSIC funds that have not been expended by the end of a jurisdiction's period of performance (whether September 30, 2011, or September 30, 2012, with an approved extension) will be de-obligated and returned to the Treasury. If a grantee without an approved extension has funds available on September 30, 2011, but has not drawn down those funds, FEMA will de-obligate the funds and return them to the Treasury. If a grantee has an approved extension through 2012, then those funds will still remain available.

Because both NTIA and FEMA expect that all recipients will complete their grant projects by September 30, 2012, it is too early to determine whether funds could be rescinded.

While we cannot yet state definitively that PSIC funds will be returned, we are required by the Implementing Recommendations of the 9/11 Commission Act of 2007 to conduct, over 4 years, financial audits of a representative sample of at least 25 states or territories receiving PSIC grants. We have completed 9 individual state audits to date and have identified issues related to (1) noncompliance with matching share requirements, (2) unallowable costs, and (3) excessive cash drawdowns by grant recipients. We have also completed two annual assessments of NTIA's program management and monitoring, and are now conducting a third. In addition to this assessment, over the next 2 years we will audit 16 additional grants made to states or territories.

PTO Telework

23. *How many people are eligible to participate in this program, and how many people actually participate in this program?*

USPTO has multiple telework programs spanning patent, trademark, and other areas of operations. According to the Office of Personnel Management's FY 2010 *Status of Telework in the Federal Government*, about 3,000 of USPTO's 9,600 employees were not eligible to participate, so we can assume that about 6,600 employees are eligible. The report further stated that 5,300 USPTO employees teleworked at least once per week during FY 2010.

According to a December 2010 USPTO presentation, almost 2,500 of the 6,200 patent examiners participate in the Patent Hoteling Program (PHP), USPTO's largest telework program. To be eligible for PHP, a patent examiner must be a GS 12 to 15, have 2 years of experience at USPTO, and maintain a performance rating of Fully Successful. Under this program, eligible patent examiners who work at least 3 days a week at a remote location, such as their home, give up their designated office space at USPTO headquarters. When the examiners must be at USPTO, they reserve shared office space—a practice referred to as "hoteling."

PTO Telework (cont.)

24. *Are there any ways to determine if it has improved productivity, reduced sick leave, or other time away from the office?*

Yes, there are ways to determine changes in productivity and the use of leave. According to work conducted by USPTO in the spring of 2007, productivity increased, on average, for Patent Hoteling Program (PHP) participants when compared to their production output before joining the program. In addition, the number of leave hours decreased from 22 per biweekly period to 19.

During FY 2011, we plan to conduct an audit of PHP. Our objectives include examining how USPTO measures productivity for its PHP participants.

PTO Telework (cont.)

25. *In your view, is the PTO model applicable to other areas of the federal government?*

Yes, I believe so. As part of the new telework audit, we plan to issue our report publicly and share with the Department's operating units any innovative practices we identify. We will also report our results to the subcommittee. This information could be used to consider whether the PTO model would be applicable to other federal agencies.

PTO Backlog

According to the IG, since the year 2000, patent pendency has increased from 25 months to over 35 months, and the backlog of unexamined applications has grown from about 308,000 to more than 726,000. The Patent Office increased the number of patent examiners from 4,258 in FY 2005 to about 6,225 in FY 2010, yet the backlog persists.

26. *What key steps must PTO take to work down this backlog?*

Reducing the backlog is a complex problem. USPTO must address this challenge on multiple fronts, including building efficiencies into the patent examination process, and implementing and maintaining IT systems capable of supporting efficient work processes. USPTO must also utilize the abundance of data it collects on its own operations to pinpoint problems and inefficiencies.

a. In your view, is PTO doing what it should to reduce and eliminate the backlog?

I believe that the initiatives outlined in USPTO's recent strategic plan provide a comprehensive approach for addressing the backlog. My staff is currently conducting a review assessing the implementation status of these initiatives as well as USPTO's plans to evaluate their outcomes.

b. Are you aware of PTO providing to China an electronic, weekly update of certain pending patent applications? Under what legal authority are they providing this material to China? Have you looked into this policy's impact on Chinese theft of U.S. intellectual property? Have you considered the impact of posting an inventor's trade secrets online for up to 2 years before he/she is granted the patent?

I am not aware of any weekly update; according to our conversations with USPTO officials, there is no weekly report provided to China. In May 2010, USPTO did enter into a memorandum of understanding (MOU) on bilateral cooperation with China's State Intellectual Property Office (SIPO). According to USPTO, the primary focus of the MOU is to build work-sharing programs, including a bilateral Patent Prosecution Highway agreement, in order to reduce both offices' growing backlogs and shorten patent pendency. This is part of a larger coordinated effort involving USPTO and four other countries (the European Patent Office, the Japan Patent Office, the Korean Intellectual Property Office, and SIPO). These five offices account for 90 percent of all patent applications filed worldwide and 93 percent of all work carried out under the Patent Cooperation Treaty.

My office has not conducted any work on the impact of foreign theft of U.S. intellectual property or any negative impacts of USPTO posting pending patent applications 18 months after they are submitted. The 18-month policy is based on a statutory mandate in the American Inventors Protection Act of 1999, 35 U.S.C. § 122, and also aligned U.S. policy with the European Patent Office and the Japan Patent Office. However, an inventor can place restrictions on the disclosure of the application by filing a provisional application or stating that the application will not be filed in another country.

PTO Backlog (cont.)

27. Is PTO doing everything it can to protect American intellectual property from cyber intrusions prior to public release of the patent application at 18 months?

Our security assessments of USPTO systems over the past 6 years have identified significant security weaknesses. Furthermore, our network vulnerability scanning detected many more high-risk vulnerabilities (i.e., vulnerabilities that may provide an attacker with immediate access into a computer system) than USPTO's scanning did, which suggests that a greater risk for a serious breach exists. In addition, over the past few years we have continued to identify previously reported vulnerabilities in USPTO systems that have still not been corrected, indicating that USPTO management has not placed sufficient priority on remediating reported vulnerabilities.

While USPTO recently made improvements intended to strengthen its security posture, and has also developed a plan to address some organization-wide security issues, we cannot say that it has done everything possible to protect the nation's intellectual property from cyber intrusions.

ITA Human Rights Training Implementation

28. *For the last few years, the Subcommittee has included report language that ITA should ensure that its commercial officers and locally engaged staff receive training on human rights, corporate responsibility, and the rule of law.*
29. *Can you provide us with any insight with respect to whether or not ITA is following this direction?*

House Report 111-149, which accompanied the FY 2010 appropriations bill funding Commerce, Justice, Science, and Related Agencies (H.R. 2847), directed the International Trade Administration (ITA) to ensure its overseas staff received human rights training and to report to the House appropriations committee on its annual human rights training plan within 60 days of the enactment of the act (or February 14, 2010).

While we have not formally audited ITA training initiatives, based on a preliminary review of documentation provided by the U.S. Commercial Service (CS), we believe that ITA is following this direction. ITA is training employees who counsel U.S. businesses to provide information on human rights, rule of law, and corporate responsibility. The FY 2010 training agenda provided to us by CS included modules on the rule of law, the Foreign Corrupt Practices Act, human rights, and corporate responsibility. The CS officer responsible for the program also told us that his office has launched a web-based version of the course, which is available on the Department's Commerce Learning Center website. According to CS data, in FY 2010 ITA conducted 25 training sessions in 23 countries (including the United States), with a goal of reaching 100 percent of CS' international field-based staff.

Lack of IG Oversight of ITA

30. *Your office has not issued any reports on ITA in a number of years. Given the importance of international trade and how poorly the U.S. is doing with respect to exports, what is your plan for reviewing ITA activities to ensure that ITA is achieving its goal of boosting exports?*

In March 2007, my office issued a report evaluating Commerce's trade promotion efforts and coordination with other members of the Trade Promotion Coordinating Committee, state trade offices, and other trade partners. We made 19 recommendations to the Department and its operating units (including ITA), and monitored the recommendations until they were resolved.

In addition, we followed up on open recommendations from ITA reports made throughout the previous decade, many of them focused primarily on improving CS' overseas operations such as those in Argentina and China. In January 2011, my staff met with the CS deputy director and his staff to gain an understanding of CS' plans to improve human capital planning, business processes, and technology planning.

With respect to investigations, OIG special agents have recently worked with the Department of Justice on cases involving trade issues, including anti-trust matters in the freight-forwarding industry and antidumping actions.

Moving forward, the administration's current National Export Initiative aims to increase U.S. exports through efforts such as enhanced assistance for small and medium businesses, support for trade missions, increased advocacy efforts, and reducing trade barriers. As we develop our oversight strategy for international trade activities within the Department, we will consider evaluating the effectiveness of Commerce operating units in carrying out this mandate.

Foreign Commercial Service

31. *How many Commercial Foreign Service officers does the U.S. post abroad compared to Germany, Japan and other developed countries that have large exports?*

For FY 2010, CS reported a total staff of 1,149. As of December 31, 2010, CS had 169 Foreign Service officers and 756 local staff stationed in 78 countries. FY 2010 funding for overseas operations totaled \$171 million. Table 2 (below) provides a rough comparison of the size of select foreign government entities performing functions similar to CS. This information was compiled by CS as part of an internal comparative analysis and has not been audited by my staff.

Table 2. Size Comparison of CS and Select CS-Type Entities

Government	Total Staff ^a	Overseas Offices ^a	Countries	Funding - millions US\$ (year, if available)
United States	1,149	128	78	260 (2010)
Brazil	250	7	7	137
Canada	900	150	N/A	196 (2008-2009)
China	3,907	209	112	N/A
France	1,500	64	44	160
Germany	2,700	220	145	135 (2010)
Italy	690	117	87	225 (2010)
Japan	1,580	71	54	255 (2006)
Spain	1,500	N/A	80	N/A
United Kingdom	2,400	165	98	507 (2009-2010)
Source: U.S. Commercial Service				
^a In some countries, trade functions are divided among several governmental entities, and not every function is carried out in their respective overseas offices.				

Foreign Commercial Service (cont.)

32. *Are there any regions or key countries that U.S. Commercial Service does not provide sufficient coverage compared to our trading partners?*

Over the past several years, CS has closed offices in a number of industrialized countries, mainly in Europe, and increased staff levels in important countries with emerging market economies, such as China and India. However, at this time we are not in a position to comment on the adequacy of CS coverage throughout the world. In response to a recent GAO report on staffing levels, CS is working to better align resources at its posts and offices.

As we plan our work for FY 2012, we will consider assessing whether additional CS overseas resources are cost effective, fully utilized, and assigned to the appropriate locations.

IT Security

Commerce has over 300 IT systems to process census and economic data, manage patent applications, handle atmospheric predictions, and control weather satellites. The IG has identified high-risk vulnerabilities that were previously unknown due to inadequate policy, procedures, and practices.

33. *Have any of the Department's systems been breached during FY 2010 and thus far in FY 2011?*

During this period, the Department experienced several cyber incidents that resulted in data breaches. The breaches were primarily the result of targeted e-mail messages containing malicious code embedded in attachments.

IT Security (cont.)

34. *Have the instances of hackings increased or decreased over the last five years?*

Over the last 5 years, the frequency and sophistication of cyber attacks have increased, a trend noted across government agencies.

IT Security (cont.)

35. *Which countries are primarily responsible for these breaches?*

Because of the sensitive nature of this question, I would be glad to answer it in a more secure forum.

IT Security (cont.)

36. *Is Commerce taking the appropriate steps to mitigate and reduce future data breaches?*

Various Commerce operating units have implemented security operations centers to improve monitoring of their networks for malicious activities, and special security measures have been taken to secure the systems used by the Office of the Secretary. In addition, the Department has developed a strategic plan to address many of its critical security issues. However, implementation of this plan is contingent on management attention at the operating unit level as well as the Department level, and on the level of resources Commerce will be able to apply to the plan.

Export Promotion

I am concerned about “silos” in government—particularly among the divisions in Commerce—that may prevent more aggressive export promotion and, ultimately, economic growth in the U.S.

37. *How could Commerce better harmonize its various agencies (ITA, EDA, BIS) to maximize export promotion and grow our economy?*

We are aware that ITA and other Commerce operating units do collaborate in some ways. In some countries, ITA works with other operating units to help U.S. businesses export their goods and services. For example, USPTO has six overseas attachés who advocate the U.S. government’s intellectual property rights policy, but who also assist U.S. exporters in matters of intellectual property rights protection and enforcement. Similarly, the Bureau of Industry and Security has six overseas export control officers who primarily enforce export regulations, but also provide expertise to U.S. government staff, including CS, at overseas posts. These staff members, in turn, counsel U.S. companies on export matters.

As part of our oversight of the Department’s international activities and as we plan our FY 2012 work plan, we will consider how Commerce operating units, in light of the National Export Initiative, can further increase collaboration and coordination to better promote U.S. exports that contribute to domestic economic growth.

Trade Data Used By BEA

In December, the Wall Street Journal ran an article that discussed how the government may be using outdated data and models for determining trade statistics that may not reflect the complexities of trade in our globalized economy.

38. *Have you examined the trade statistic data and models that the Bureau of Economic Assistance uses to determine balance of trade to determine whether it remains accurate for the 21st century?*

My office has not conducted any work in this area. However, as we formulate our work plan for FY 2012, we will consider evaluating these data and models as part of our oversight of international trade activities.

Mr. WOLF. Thank you.
Ms. Schnedar, I appreciate your patience and you can proceed.
Your full statement will be in the record and proceed as you see
appropriately.

WEDNESDAY, FEBRUARY 9, 2011.

U.S. DEPARTMENT OF JUSTICE

WITNESS

CYNTHIA A. SCHNEDAR, ACTING INSPECTOR GENERAL

MANAGEMENT AND PERFORMANCE CHALLENGES AT THE DEPARTMENT
OF JUSTICE

Ms. SCHNEDAR. Thank you. Mr. Chairman, Congressman Fattah, and members of the subcommittee, thank you for inviting me to testify. While my written testimony focuses on the top ten challenges facing the Department, today I will focus on three challenges: counterterrorism, the development of information technology systems, and grant management.

Counterterrorism continues to be the highest priority of the Department and our reviews have consistently found that the Department must improve its information sharing and coordination efforts in order to be able to respond more effectively to the threat of terrorism. For example, we found in a recent review that while the FBI had taken the appropriate steps to prepare to respond to a potential incident involving a weapon of mass destruction, or WMD, the Department as a whole and its other components were not adequately prepared. We found that the Department had not developed coordinated response plans, had not designated anyone to have central oversight on this issue, and had provided little to no training for responding to a WMD incident.

In another example we conducted a review which found that the FBI and ATF had developed separate and often conflicting approaches to explosives investigations, explosives related activities, such as training, information sharing, and forensic analysis. These conflicts resulted in unnecessary competition and duplication of effort, and also could result in problematic responses to terrorist incidents involving explosives. In a 2009 audit we found that the FBI did not consistently nominate known or suspected terrorists to the terrorist watch list in a timely manner and did not update or remove watch list records as required. We recently initiated a new review of the FBI's management of the watch list to assess its progress in this area.

The Department has taken steps to address the deficiencies we have identified in these and other reviews relating to counterterrorism and we believe it is important that the Department continue to focus its efforts on improving its ability to combat terrorism.

Another significant challenge the Department faces is the planning and implementation of information technology, or IT, systems. Our audits have found that the Department has experienced significant problems in developing and implementing these IT systems in a timely and cost effective fashion. For example, when the FBI

awarded a contract to Lockheed Martin in March 2006 to develop the Sentinel Case Information System, the FBI estimated that it would cost a total of \$425 million and be completed by December 2009. The FBI later revised its budget estimate to \$451 million and its estimated completion date to June 2010. In our most recent report on the development of Sentinel we found that Sentinel is at least two years behind schedule and at least \$100 million over its original budget.

Since issuing its stop work order to the prime contractor Lockheed Martin in July the FBI has adopted a new agile methodology in which it has assumed direct management of Sentinel development and significantly reduced the role of Lockheed Martin as the prime contractor. We remain concerned that the FBI's new projected estimate that it will finish within its original budget appears optimistic. We will continue to report on the status of this project.

We have found similar problems in other Department IT development projects, including an ineffective requirements planning process, requirements being modified after much work has been done, and defects identified in the user acceptance stage that were costly to correct.

Other federal agencies are also experiencing IT development problems and there are no quick and easy solutions. But the Department's track record in this area is uneven and we believe the Department must focus on this increasingly important challenge.

Another significant challenge that the Department faces is that of grants management, and this has been heightened recently because the Department was required to award \$4 billion in grants under the Recovery Act at the same time that it awarded \$3 billion in grant funding from the Department's annual appropriations. Our reviews have found that the Department generally issued the Recovery Act grant funds in a timely, fair, and objective manner. We also found that the Department has been trying to improve its regular grant management practices by working to implement a series of recommendations that we provided them in 2009.

However, our audit work has continued to identify areas where the Department could further improve its management of grants. For example, we found that the Department needs to implement better controls to ensure that it correctly scores and ranks grant applications. We also found that the Department was not consistently documenting its reasons for making discretionary awards, including its reasons for deviating from the ranking provided by peer reviewers, and was not consistently implementing a process to eliminate conflicts of interest among its peer reviewers. In addition, we found significant deficiencies in the use of grant funds by some grantees, and we recommended that the Department issue additional guidance to grantees to help correct this problem.

In sum, the Department has made progress in addressing many of its top management challenges, but important improvements are needed in these areas. These challenges are not easily resolved and will require constant attention and strong leadership by the Department. To aid in this effort the OIG will continue to conduct vigorous oversight of Department programs and provide recommendations for improvement.

This concludes my prepared statement, and I would be happy to answer any questions.



Office of the Inspector General
United States Department of Justice

Statement of Cynthia A. Schnedar
Acting Inspector General, U.S. Department of Justice

before the

U.S. House of Representatives
Committee on Appropriations
Subcommittee on Commerce, Justice, Science
and Related Agencies

concerning

“Oversight of Department of Justice and
Department of Commerce”

February 9, 2011

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February 9, 2011

Mr. Chairman, Congressman Fattah, and Members of the Subcommittee:

Thank you for inviting me to testify about the activities and oversight work of the Office of the Inspector General (OIG) for the Department of Justice (Department or DOJ).

The OIG has compiled a list of top management and performance challenges for the Department of Justice annually since 1998 in an effort to provide strategic guidance for the Attorney General and top DOJ officials to take appropriate management actions. In my testimony today, I will provide an overview of the top management and performance challenges for the Department that we identified during this past year. My testimony is based on reviews conducted by the OIG and insight we have gained through our work in the Department. A more detailed discussion of our assessment of the top management and performance challenges facing the Department is available on our website at <http://www.justice.gov/oig/challenges/2010.htm>. Overall, I believe that the Department has made progress in addressing many of its top challenges, but improvement is needed in some areas.

1. Counterterrorism

Counterterrorism continues to be the highest priority of the Department, and the OIG has consistently identified it as a top management challenge facing the Department. To better address the threat of terrorism, the Department has undergone transformational changes since 2001, such as structural modifications in its law enforcement components and the creation of the National Security Division in 2006. The Department must ensure that these changes are effective and that the Department and its components are

effectively sharing information to disrupt attacks and to respond effectively to acts of terrorism. The Department also must be prepared to ensure public safety in the event of a terrorist act.

In a recent review, the OIG examined the readiness of the Department and its components to respond to a potential incident involving a weapon of mass destruction (WMD), as well as the readiness of Department field offices in the Washington area to respond in a coordinated way to a WMD incident. Our review found that the Federal Bureau of Investigation (FBI) had taken appropriate steps to prepare for responding to a potential WMD attack, but the Department as a whole and its other components had not implemented adequate WMD response plans. In particular, the Department's management of plans for responding to a WMD attack was uncoordinated and fragmented, with no entity or individual assigned responsibility for central oversight of WMD response activities throughout the Department. Moreover, other than the FBI, Department components provided little to no training for responding to a WMD incident and rarely participated in WMD exercises. In addition, while the Department had designated the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) as the lead agency to coordinate the use of federal law enforcement resources to maintain public safety and security if local and state resources are overwhelmed during a WMD incident, ATF had not adequately prepared for this role.

The Department has been responsive to the recommendations made in our report. It assigned to the Associate Deputy Attorney General for National Security the responsibility for coordinating all Department policies associated with continuity of operations, continuity of government, and emergency response at the scene of an incident. The Department established the Emergency Preparedness Committee (EPC) which is responsible for ensuring that the Department's leadership stays appropriately informed on emergency response and preparedness issues. The EPC recommended and the Department approved the creation of a position within the Office of the Deputy Attorney General that will serve as the Department's full-time "Emergency Preparedness and Crisis Response Coordinator." The EPC has also established several working groups to examine the Department's plans for responding to an incident involving a WMD.

Another example of insufficient counterterrorism coordination among Department components relates to the FBI and ATF response to explosives incidents. Federal law gives the FBI and ATF concurrent jurisdiction over most federal explosives incidents. In an October 2009 review, we determined that the FBI and ATF had developed separate and often conflicting approaches to explosives investigations and explosives-related activities such as training, information sharing, and forensic analysis. These conflicts resulted in unnecessary competition and duplication of effort and also could result in problematic responses to terrorist incidents involving explosives. Moreover,

this lack of coordination is not cost efficient, particularly with regard to training and forensic analysis.

In response to our report, in August 2010 the Acting Deputy Attorney General issued a new protocol designed to improve coordination between the FBI and ATF. The Acting Deputy Attorney General also directed ATF and the FBI to develop a joint plan for consolidated explosives training and to convene a board to discuss how laboratory resources and training could be better coordinated and integrated. We believe these actions are positive steps, but the Department needs to ensure that its protocols are workable and are enforced, and that the FBI and ATF consistently coordinate and cooperate in explosives investigations. In addition, the Department is also addressing other issues raised during our review, including explosive database consolidation, joint training coordination, and laboratory resource allocation.

Another important Department counterterrorism responsibility involves management of the consolidated terrorist watchlist, which is used for many purposes, including by frontline government screening personnel when a known or suspected terrorist requests entry into the United States. In May 2009 the OIG issued an audit examining the FBI's practices for making nominations to the consolidated terrorist watchlist. The audit concluded that the FBI did not consistently nominate known or suspected terrorists to the terrorist watchlist in a timely manner or in accordance with FBI policy, and the FBI also did not update or remove watchlist records as required. Since we issued our report, the FBI has reported that it has improved the timeliness of its nomination activities and has increased its monitoring of field office submissions. The OIG recently initiated a new review of the FBI's management of the watchlist to assess the progress in this area.

The Department also seeks to disrupt terrorist acts by attacking terrorists' financing. The OIG is currently reviewing the FBI and the National Security Division's (NSD) efforts to identify, investigate, and prosecute terrorist-related financing activities. Our audit is also reviewing how the FBI and NSD coordinate efforts throughout the law enforcement community to combat terrorist-financing operations.

In addition to improving information sharing and coordination, the Department should regularly evaluate the balance of resources devoted to counterterrorism and traditional law enforcement activities. In April 2010 we issued a report that examined the process by which the FBI assigns its personnel resources, including how the FBI utilizes agents and intelligence analysts on counterterrorism matters and other investigative areas. The FBI recently informed us that it has implemented our recommendation to develop a more sophisticated resource allocation methodology based on a risk-based analysis of threats and FBI priorities.

The Department is also faced with the challenge of hiring specialized employees essential to its counterterrorism efforts, such as employees with foreign language capabilities or expertise in information technology. In a follow-up review we conducted of the FBI's Foreign Language Translation Program, we found significant amounts of material collected for counterterrorism, counterintelligence, and criminal investigations that had not been reviewed. While the FBI made some improvements, such as in its quality control of translations, the FBI continued to experience problems meeting its goals for hiring linguists proficient in critical languages.

In sum, the Department must continue to improve information sharing and coordination in its counterterrorism efforts, and we believe that counterterrorism remains a critical challenge for the Department.

2. Restoring Confidence in the Department of Justice

We first identified this as a top management challenge 3 years ago. We believe the Department has taken aggressive steps to respond to issues we raised in a series of reports concerning the controversy about the Department's firing of U.S. Attorneys and the politicized hiring of certain career Department employees. However, other concerns persist, such as allegations of prosecutorial misconduct and the Department's ability to address these allegations in a timely and transparent manner.

The Department has been subject to significant criticism for some of its prosecutorial actions, including allegations of misconduct in the prosecution of former Alaska Senator Ted Stevens. In response, the Department has issued new guidance to prosecutors, appointed a coordinator to ensure improved training of prosecutors related to criminal discovery obligations, and expanded training on these topics to include federal law enforcement agents. These initiatives demonstrate commitment by the Department to reduce the risk of prosecutorial misconduct.

We believe, however, that the Department faces additional challenges in ensuring that it has an adequate process to investigate and hold accountable Department attorneys who commit professional misconduct. For example, The Office of Professional Responsibility, (OPR) the internal entity that investigates allegations of prosecutorial misconduct by Department attorneys, has taken steps during the past 2 years to address the backlog in its annual reports and to more promptly post its annual reports containing summaries of its investigations of allegations of prosecutorial misconduct. However, these reports provide only limited details on the cases and the basis of OPR's conclusions. We believe that the timeliness and transparency of the Department's internal processes for addressing allegations of prosecutorial misconduct need improvement to increase public confidence in the Department's ability to address such allegations.

In addition, the Attorney General recently announced that a new Professional Misconduct Review Unit will handle disciplinary actions for career DOJ attorneys. The Unit will review cases involving findings of intentional or reckless professional misconduct by OPR, determine whether these findings are supported by the evidence and applicable law, and where appropriate, refer cases for disciplinary state bar referrals. We note that this newly created unit will similarly need to provide transparency concerning its internal processes and findings in order to allow the public to have confidence that allegations of prosecutorial misconduct and attorney discipline issues are being adequately addressed.

Allegations have also arisen regarding the enforcement of federal voting rights law by the Voting Section of the Civil Rights Division. The OIG is reviewing the enforcement of civil rights laws by the Voting Section. This review will examine the types of cases brought by the Voting Section over time, any changes in Voting Section enforcement policies or procedures, whether the Voting Section has enforced the civil rights laws in a non-discriminatory manner, and whether any Voting Section employees have been harassed for participating in the investigation or prosecution of particular matters.

In September 2010 we also issued a report which found that a significant number of FBI employees had cheated on the FBI exam regarding the Domestic Investigations and Operations Guide (DIOG). The DIOG implements the Attorney General's Consolidated Guidelines for FBI Domestic Operations, which were issued in 2007 and replaced several older sets of guidelines that separately addressed the requirements FBI agents must follow in criminal investigations, national security investigations, and foreign intelligence collection. In our limited investigation of the cheating allegations, we found that a significant number of FBI employees had engaged in some form of cheating or improper conduct on the DIOG exam, some in clear violation of FBI directives regarding the exam. We recommended that the FBI take action regarding those who cheated on the DIOG exam, consider other appropriate steps to determine whether other test takers engaged in similar inappropriate conduct, and also conduct a new exam on the revised DIOG. The FBI is considering what steps it will take in response to our recommendations.

3. Law Enforcement Issues Along the Southwest Border

Organized crime activities along the 2,000-mile U.S. border with Mexico present stark challenges for the Department. To combat violent crime, gun smuggling, drug trafficking, and illegal immigration along the Southwest Border, the Department created the Southwest Border Enforcement Initiative, which seeks to promote cooperation and enhanced intelligence and enforcement activities to attack major Mexican-based trafficking organizations on both sides of the border.

ATF's Project Gunrunner is a key component of the Southwest Border Enforcement Initiative. Project Gunrunner is intended to reduce cross-border drug and firearms trafficking and the high level of violence associated with these activities on both sides of the border. An OIG review of Project Gunrunner found that it has major deficiencies. For example, ATF does not systematically and consistently exchange intelligence with its Mexican and some U.S. partner agencies and that intelligence personnel in ATF's Southwest border field divisions do not routinely share firearms trafficking intelligence with each other. We also found that ATF focuses largely on inspections of gun dealers and investigations of straw purchasers, rather than on higher-level traffickers, smugglers, and the ultimate recipients of the trafficked guns. ATF also is not using intelligence effectively to identify and target firearms trafficking organizations operating along the Southwest Border and in Mexico. According to ATF's June 2007 Gunrunner strategy, tracing guns seized in Mexico is the "cornerstone" of Project Gunrunner. However, we found that despite ATF's efforts it has been unable to expand gun tracing throughout Mexico, and the majority of recovered guns in Mexico were not traced. In September 2010 ATF circulated a revised strategy for combating firearms trafficking to Mexico and related violence. We believe that ATF's strategy can address many of the weaknesses identified in our review, but ATF must still develop an implementation plan – with defined goals, specific actions, and resources.

The OIG's report in June 2010 on the El Paso Intelligence Center (EPIC), a multi-agency intelligence center funded primarily by the DEA, also identified improvements that are needed in intelligence relating to Southwest Border drug smuggling and associated violence. Our review found that EPIC's partner agencies and users regard its products and services as valuable and useful, but we identified weaknesses in EPIC operations and programs. For example, EPIC does not analyze some information that it alone collects. As a result, EPIC may be overlooking drug trafficking trends and patterns that could assist law enforcement agencies in their interdiction investigations and operations. In response to the recommendations in the OIG report, the DEA reported it has taken steps to improve EPIC's systems for sharing information with federal, state, and local law enforcement users, and that EPIC is improving its capability to use seizure information to better identify vulnerabilities along the Southwest Border.

In addition to addressing violent crime and drug trafficking problems, the Department also plays a key role in immigration policy and enforcement along the Southwest Border. We are now conducting a review that is examining the Department's operation of its immigration courts, the backlog in immigration cases, and other issues that affect the Department's enforcement of immigration laws.

4. Civil Rights and Civil Liberties

At the same time that the Department is pursuing its counterterrorism and law enforcement responsibilities, the Department must also seek to protect civil rights and civil liberties. Several of our recent reviews demonstrate the challenges the Department faces in pursuing this balance.

In September 2010 we issued a report concerning allegations that the FBI targeted certain domestic advocacy groups for scrutiny based upon their exercise of rights guaranteed under the First Amendment to the U.S. Constitution. The OIG review did not find that the FBI targeted any of the groups for investigation on the basis of their First Amendment activities. However, the OIG concluded that the predication for opening some of the investigations of individuals associated with the groups was factually weak. In some cases, the FBI extended the duration of investigations involving advocacy groups or their members without an adequate basis, and in a few instances the FBI improperly retained information about the groups in its files. The FBI also classified some investigations related to nonviolent civil disobedience under its "Acts of Terrorism" classification, which resulted in the watchlisting of subjects during the investigation. We made six recommendations to help ensure that if the FBI investigates groups or individuals in connection with their exercise of First Amendment rights, it does so in strict compliance with Attorney General Guidelines. The FBI stated that it concurred with the recommendations in our report, and we believe the FBI should take prompt action to ensure that these recommendations are implemented.

The need for an appropriate balance between the Department's counterterrorism and law enforcement responsibilities on the one hand, and the need to protect civil rights and civil liberties on the other was also highlighted by an OIG report examining the FBI's use of exigent letters and other processes to obtain telephone records without legal process. In addition to prior reports on the FBI's misuse of national security letters (NSLs), in January 2010 the OIG examined the extent of the FBI's use of exigent letters and other informal requests to obtain telephone records without legal process, which we found to be widespread. Contrary to the statements in the letters, many of the investigations for which the letters were used did not involve exigent circumstances and subpoenas had not been sought for the records. In addition, we found widespread use of other, even more informal requests for telephone records in lieu of appropriate legal process or a qualifying emergency. Our review also found that the FBI's initial attempts at corrective action were seriously deficient, ill-conceived, and poorly executed. Our report described other troubling practices regarding requests, including improper requests for reporters' telephone records, inaccurate statements made by the FBI to the Foreign Intelligence Surveillance Act (FISA) Court, improper use of administrative subpoenas, and serious lapses in training, supervision, and oversight.

The OIG is again examining the FBI's use of NSLs and Section 215 orders for business records. Among other issues, our review is assessing the FBI's progress in responding to recommendations from prior OIG reports. In addition, the review is examining the FBI's use of its pen register and trap and trace authority under the Foreign Intelligence Surveillance Act.

In addition, based upon the requirements of Section 702 of the *Foreign Intelligence Surveillance Act (FISA) Amendments Act of 2008*, the OIG is examining the number of disseminated FBI intelligence reports that contain a reference to a U.S. person identity, the number of U.S. person identities subsequently disseminated in response to requests for identities not referred to by name or title in the original reporting, the number of targets later determined to be located in the United States, and whether communications of such targets were reviewed. Our review is also examining the FBI's use of and compliance with the targeting and minimization procedures required under FISA.

Also, the OIG is reviewing the Department's use of the material witness warrant statute, 18 U.S.C. Section 3144. Pursuant to the OIG's responsibility under Section 1001 of the USA PATRIOT Act, the review is addressing allegations of civil rights and civil liberties abuses in the Department's post-9/11 use of the statute in the national security context. The review is also examining the Department's controls over the use of material witness warrants, trends in the use of material witness warrants over time, and the Department's treatment of material witnesses in national security cases, including issues such as length of detention, conditions of confinement, and access to counsel.

5. Information Technology Systems Planning, Implementation, and Security

The Department annually spends almost \$3 billion on planning, implementing, and securing its many complex information technology (IT) systems. The Department must plan those systems so that they keep pace with technological innovations and meet the changing IT needs of the Department. At the same time, the Department must seek to implement those systems in a timely and cost-effective fashion and ensure the security of those systems.

The Department has experienced significant problems in developing and implementing these IT systems. Several of the Department's major IT initiatives have failed to meet their objectives after hundreds of millions of dollars were expended. Some of these IT systems have taken so long to develop that they were technologically outdated by the time of implementation.

As evidence of the Department's difficulties in this area, in August 2010 the Office of Management and Budget (OMB) issued a list of 26 high-risk IT projects across the federal government that "experienced problems such as significant cost increases or schedule delays." That list contained three Department projects – the FBI's Sentinel Project to develop a case management information system, the Justice Management Division's Litigation Case Management System (LCMS) project to develop a case management information system for all seven of the Department's litigating divisions, and the FBI's Next Generation Identification (NGI) project to develop a state-of-the-art automated system for sharing fingerprint and other biometric information. We share OMB's concern over these three IT systems.

With regard to Sentinel, when the FBI awarded a contract to Lockheed Martin to develop the system in March 2006 the FBI estimated that it would cost a total of \$425 million and be completed by December 2009. Following the June 2007 completion of the first phase of Sentinel, the FBI revised its project estimations, increasing the budget to \$451 million for a completion in June 2010. In a report issued in October 2010 the seventh of our reports on the development of Sentinel, we found that Sentinel is at least 2 years behind schedule and at least \$100 million over budget. According to its original plan, Sentinel was to be fully completed by now. However, after spending about \$405 million of the \$451 million budgeted for the Sentinel project, the FBI has delivered only two of Sentinel's four phases to its agents and analysts. Moreover, we believe that the most challenging development work for Sentinel still remains.

In September 2010 the FBI briefed us on the FBI's new approach for completing the Sentinel project using an "agile methodology" whereby it would assume direct management of Sentinel development and reduce the role of Lockheed Martin as the prime contractor. Significant concerns relating to the cost, schedule, functionality, and amount of work necessary to complete Sentinel remain under this new approach. We are monitoring the progress of the Sentinel project and will continue to report on its status.

The second high risk Department project identified by OMB, the LCMS project, had been under development since 2004. LCMS, which was intended to be a centralized IT case management system for approximately 14,500 authorized users in seven of the Department's litigating components, was originally estimated to cost about \$42 million and to be completed by December 2010. Yet, in an audit report issued in March 2009 we found that the LCMS project was more than 2 years behind schedule, approximately \$20 million over budget, and at significant risk of not meeting the Department's requirements for litigation case management. In September 2010 the Department decided to terminate the LCMS project. As a result, millions of dollars in development of this IT system were spent in an unsuccessful attempt

to develop a consolidated system, and the Department still struggles with decentralized, disparate litigation case management systems.

The reasons for the delays, cost overruns, and failure in LCMS were similar to problems we have identified with the implementation of other Department IT systems. Specifically, we found ineffective requirements planning processes, requirements being modified after much work had been done, defects identified in system integration and user acceptance that were costly to correct, and the failure to adequately address in a timely fashion the difficulties the contractor was having in meeting schedule and cost requirements.

The third Department high-risk project identified by OMB is the FBI's Next Generation Identification (NGI) project, which is intended to enhance the existing capabilities of the FBI's current fingerprint identification system and provide searching capability for other types of biometric identification, such as palm prints, iris scans, and tattoos. According to the OMB's "Federal IT Dashboard," the total cost of NGI is expected to be \$3.4 billion through its completion in Fiscal Year (FY) 2017. One of the key challenges for this high-dollar project is to contain its cost while implementing a design that can accommodate new types of biometric evidence as they become available.

Another example of a difficult major IT development project is the Department's Integrated Wireless Network (IWN), a joint project with the Department of Homeland Security (DHS) and the Department of Treasury (Treasury) that is intended to allow federal law enforcement agents to communicate across agencies. This project is seeking to permit interoperability with state and local law enforcement partners and meet mandates to use federal radio frequency spectrum more efficiently. We are currently conducting a follow-up to our March 2007 audit of this project. In our prior audit, the OIG reported that the project, which at that time had a budgeted cost of \$5 billion split among the Department, DHS, and Treasury, was at high risk for failure due to weaknesses in the program's governing structure and the uncertain and inconsistent funding mechanisms that allowed the participating agencies to pursue separate solutions.

In sum, developing IT systems in a timely, cost-effective, and secure way remains a major challenge for the Department. The difficulties the Department is facing are similar to the problems in other federal agencies, and there are no quick and easy solutions. But the Department's track record in this area is uneven, and we believe the Department must focus on this increasingly important challenge.

6. Violent and Organized Crime

While focusing on counterterrorism, the Department must also continue to address violent and organized crime. Organized crime in particular presents challenges for the Department because it is responsible for a wide range of criminal activity, such as manipulation of financial markets, drug trafficking, prostitution and human trafficking, and has taken on an increasingly transnational nature. In addition, gang-related crime has increased in prevalence and scope according to recent assessments by the Department.

To combat violent gangs, among other measures, the Department established the National Gang Intelligence Center (NGIC) and the National Gang Targeting, Enforcement and Coordination Center (GangTECC). In a review we conducted last year, the OIG concluded that these two gang intelligence and coordination centers did not significantly improve the coordination and execution of the Department's anti-gang initiatives. We recommended the Department ensure that their activities are better integrated for both law enforcement and cost efficiencies.

In response to our review, the Department established a partnership of GangTECC and NGIC with the DEA's Special Operations Division and the Organized Crime Drug Enforcement Task Force Fusion Center. GangTECC has relocated to the Special Operations Division and is now operating as the gang section at the Division. In early September 2010 NGIC detailed two full-time analysts to the Fusion Center to function as NGIC's operational intelligence unit. In addition, the Department has proposed merging three Criminal Division sections, including GangTECC and the Criminal Division's Gang Unit, to form the Organized Crime and Gang Section.

While the Department's has shown progress in addressing violent crime, many challenges remain. For example, the FBI Laboratory analyzes forensic DNA from crime scenes, which can provide critical evidence in identifying and prosecuting violent criminals. The OIG examined the FBI Laboratory's growing backlog of forensic DNA cases. This backlog and delay in receiving results can postpone legal proceedings that are waiting on the results of forensic DNA analysis, prevent the timely capture of criminals, prolong the incarceration of innocent people who could be exonerated by DNA evidence, and adversely affect families of missing persons waiting for positive identification of remains. The OIG report noted that the FBI is pursuing various strategies to reduce the forensic DNA case backlog and minimize workflow bottlenecks, such as implementing a laboratory information management system, strategic management of cases, and human resource initiatives.

The FBI is implementing the recommendations we made in our report to help improve the FBI Laboratory's DNA case backlog, and we intend to conduct a follow-up audit in the coming year to determine the FBI's progress in this

area. In addition, we currently are auditing the FBI's progress in addressing the backlog of known DNA samples from federal arrestees, non-U.S. detainees, and convicted offenders.

ATF also plays an important role in combating violent crime by ensuring that federal laws are followed during the sale of guns. For example, ATF conducts regulatory inspections of Federal Firearms Licensees (FFLs) to determine whether FFLs are taking appropriate measures to avoid selling firearms to prohibited persons. In a 2004 review, we found that ATF's inspection program was not fully effective for ensuring that FFLs comply with federal firearms laws because inspections were infrequent and of inconsistent quality, and follow-up inspections and adverse actions were sporadic even when numerous or serious violations were identified. We recommended that ATF improve its inspection program by developing a standard inspection process, revising staffing requirements, improving the comprehensiveness of crime gun tracing by law enforcement agencies, and creating a tracking system to monitor the progress and timeliness of FFL denials and revocations. We are now conducting a follow-up review to assess the changes ATF has made to the gun dealer inspection program since 2004.

7. Financial Crimes and Cyber Crimes

The need to aggressively combat financial crimes and cyber crimes is an increasing challenge for the Department. Financial fraud continues to negatively affect the economy, and the increased use of computers and the Internet in furtherance of financial crimes, as well as the international scope of these criminal activities, has exacerbated the challenge of cyber crime.

In November 2009 a presidential Executive Order created the Financial Fraud Enforcement Task Force (Task Force). The Department described the Task Force as the "cornerstone" of its work in the financial fraud area. Led by the Department, the Task Force combines the work of several agencies to focus on mortgage crime, securities fraud, *American Recovery and Reinvestment Act* (Recovery Act) and rescue fraud, and discrimination against borrowers and consumers. Among other things, the Department is seeking OIG assistance in providing training to federal grantees and contractors on ways to prevent and detect such fraud.

Closely related to the challenge of financial crimes is cyber crime. Rapid technological advances and the widespread use of the Internet make cyber crime an increasing challenge for the Department. The broad range of cyber crime includes intrusions, online fraud, identity theft, and child pornography. Cyber crimes can threaten national security and also result in serious financial consequences for individuals, businesses, and government institutions. Cyber

crime is of particular concern because it can be committed remotely and anonymously, across state and international borders.

Identity theft is a major cause of financial and cyber crime. According to the Department, identity theft was the fastest growing crime in 2008, victimizing more than 10 million Americans. Yet, a March 2010 OIG audit report found that the Department had not developed a comprehensive strategy to combat identity theft. We also determined that the Department had not implemented several of the recommendations stemming from a 2008 follow-up report issued by the President's Identity Theft Task Force. We recommended the Department ensure that its efforts to combat identity theft are better coordinated and are given sufficient priority. Since we issued our audit, the Department has designated a senior official to coordinate the Department's identity theft enforcement efforts, and all relevant DOJ components have designated an official to oversee their components' identity theft enforcement efforts. These officials are working to expand available training and ensure consistency in addressing identity theft victims.

The Department must also focus attention on cyber crime that can threaten national security. The OIG is examining the development and operation of the FBI's National Cyber Investigative Joint Task Force, as well as the capabilities of FBI field offices to investigate national security cyber cases. In addition, we are conducting a separate review on the Department's Justice Security Operations Center, which helps protect the Department's information technology infrastructure and sensitive data from cyber attacks.

8. Detention and Incarceration

Safely, securely, and economically handling the large federal inmate and detainee populations is a difficult challenge for the Department. The Federal Bureau of Prisons (BOP) must contend with overcrowded and aging facilities, higher inmate to staff ratios, the need to address staff sexual abuse of inmates and other types of staff misconduct, and providing jobs and training programs for inmates while they are incarcerated. At the same time, the USMS must find cost-effective detention space in state and local facilities to house tens of thousands of federal detainees awaiting trial or sentencing.

One factor that can affect the safety of inmates and staff is misconduct by correctional officers. In September 2009 the OIG issued a report on the Department's efforts to prevent staff sexual abuse of inmates. Since then, we have continued to assess the BOP's progress in preventing sexual abuse of inmates and providing services to inmate victims. We found that BOP's procedures for safeguarding inmate victims of sexual abuse continue to present concern. As protective measures, the BOP typically isolates inmate victims in special housing units and transfers victims to other institutions. Yet, these measures may further traumatize victims and move them further away from

family members. The BOP stated that as of November 2010 Wardens have been instructed to document the consideration of alternative safeguarding methods for inmate victims of sexual abuse and their rationale if they choose not to use the alternative method. We believe it is important that the BOP review this documentation and provide adequate oversight of the Wardens to ensure that Wardens are using alternative safeguarding methods when possible.

Under the *Prison Rape Elimination Act of 2003*, the Department is responsible for reviewing the proposed standards issued by the National Prison Rape Elimination Commission and issuing national standards to enhance the detection, prevention, reduction, and punishment of prison rape. The Act mandated that the Attorney General publish a final rule adopting national standards by June 2010 one year from the date of the Commission's recommendations. The Department has not yet met this statutory requirement. On February 3, 2011, the Department published its proposed National Standards and requested comments by April 4, 2011. We believe it is essential that the Department move quickly after it receives these comments to implement a final rule to help protect inmates from sexual abuse in prison.

Federal Prison Industries, called "UNICOR," is a government corporation within the BOP that provides employment to staff and inmates at federal prisons throughout the United States. In addition to the challenge of ensuring that UNICOR is financially self-sustaining, the BOP also must ensure that UNICOR facilities provide a safe work environment for inmates and staff. The OIG released a report in October 2010 that found workers and inmates at several BOP institutions were exposed to toxic metals, such as cadmium and lead, and other hazards while working in electronic waste (e-waste) recycling plants operated by UNICOR. Our report, which was completed with the assistance of four federal agencies with expertise in health, safety, and environmental matters, found that UNICOR had significant problems with its e-waste program and exhibited a troubling lack of attention to the safety of staff and inmates who participated in the e-waste recycling operations. However, we found that UNICOR began to implement significant health and safety improvements to its e-waste recycling operations starting in June 2003 that by 2009, with limited exceptions, UNICOR's e-waste operations were being operated safely. The BOP is beginning to implement recommendations in our report that will help UNICOR further improve its compliance with applicable health, safety, and environmental requirements.

The OIG also recently reviewed the BOP's furlough program, which allows BOP inmates authorized absences from institutions without escort. Our review found that the BOP's furlough policy has not been updated since 1998 and does not, for example, require BOP staff to notify victims and witnesses when an inmate is released on a medical furlough. In 2003, the BOP drafted a new furlough policy, but had not implemented it, because the BOP

believed it must negotiate these changes in the policy with the BOP union. The BOP initially estimated that the negotiation and implementation of such a policy would not be finalized until December 2017 a 14-year time lag from 2003 when BOP first drafted its revised policy. The OIG report included seven recommendations to the BOP, including that the BOP develop a more effective mechanism for negotiating with the union on required policy changes.

Since issuance of the report, the BOP has reached an agreement with its union on a new furlough policy. However, BOP has failed to implement some outstanding recommendations from other OIG reports, and BOP attributes its failure to implement these recommendations on the lack of an effective mechanism for negotiating policy changes with the union. The OIG believes the BOP needs to continue to seek improvement in this area.

In addition to incarcerating sentenced inmates at BOP facilities, the Department also must provide safe and affordable detention space for nearly 60,000 federal detainees awaiting trial or sentencing. The USMS is responsible for housing these detainees, and the Department's Office of the Federal Detention Trustee (OFDT) oversees an annual budget of approximately \$1 billion for housing federal detainees. The USMS houses 80 percent of its detainees in non-federal detention space by negotiating contracts, known as Intergovernmental Agreements (IGA), with approximately 1,800 state and local governments.

Over the years, we have expressed concerns that the Department was not effectively negotiating the rates it pays to state and local entities for housing these federal detainees. In FY 2008, the OFDT and USMS made changes in the way they establish jail-day rates with state and local detention facilities. One change involves OFDT using an econometric statistical model, known as eIGA, for estimating a fixed-price range for the jail-day rate for federal detainees housed at state and local facilities. However, negotiated jail-day rates under the new approach appear to give some state and local facilities a large profit to house the detainees. We are conducting an audit reviewing the Department's use of the eIGA process to determine whether it is economically and efficiently setting the jail-day rates. This issue could have significant consequences for the total budget required to house detainees.

We are now completing a review of the Department's implementation of the International Prison Transfer Program, in which inmates who are citizens of treaty nations may be returned to their home countries to serve their sentences closer to their families. We are examining several ways that implementation of the transfer program can be improved to increase the number of participants and reduce delays, which we believe may result in significant cost savings.

9. Grant Management

Grant management has long been a challenge for the Department. Beginning in 2009, the Department faced heightened challenges in grant management, because it was required to award \$4 billion in grants under the Recovery Act at the same time that it had to award the \$3 billion in grant funding contained in the Department's annual appropriations.

As of the end of August 2010, the Department had expended about 52 percent of its Recovery Act funds. The Department handled this increased grant workload without any significant increase in staff. Our reviews have found that, in general, the Department's grant management staff made extraordinary efforts to implement the Recovery Act programs and generally issued the Recovery Act grant funds in a timely, fair, and objective manner.

At the same time, the Department has sought to improve its regular grant management practices. In 2009, shortly after the passage of the Recovery Act, the OIG developed a document, entitled *Improving the Grants Management Process*, which contains a series of recommendations and best practices in grant management that federal agencies should consider implementing. In response, the Department has implemented changes in its grant management practices, including expanding the use of online training opportunities among grant recipients and assisting grantees in determining the appropriate performance information to collect.

At the same time, the Department's Office of Justice Programs' (OJP) Office of Audit, Assessment, and Management has increased its staff and improved its monitoring and oversight of grants. While we believe the Department has taken positive steps toward improving its grant management practices, these changes will take time to fully implement and to incorporate into the Department's regular practices. Moreover, our audit work has continued to identify areas where the Department could further improve its management of grants.

For example, our audit of the Department of Justice Byrne Justice Assistance Grants found that the Department treated competitive grant applicants inconsistently, allowing some grant applications to continue through the competitive process even though they did not meet one or more of the solicitation requirements, while denying other applicants further consideration for the same deficiencies. In addition, we identified some deficiencies in the peer review processes for evaluating grant applications and in documenting the basis for award recommendations. As a result of our recommendations, the Department is revising its procedures to address these deficiencies and to strengthen its oversight of grantees.

We also found that the Department needs to implement better controls to ensure that it correctly scores grant applications. Our audit of the \$1 billion Office of Community Oriented Policing Services (COPS) Hiring Recovery Program found that COPS had used some inaccurate scoring formulas to select grantees, which resulted in grant awards to 45 agencies that should not have received grants, while another 34 agencies that should have received grants did not. In response to the inaccuracies we identified, COPS corrected the scoring formulas so that the correct formulas will be used in the future when making grant awards. Similarly, in our audit of the Office on Violence Against Women's (OVW) administration of \$225 million in grant funding, we found several instances where OVW staff made errors while tabulating peer review scores of individual applications.

We also found in our Recovery Act audits that the Department was not consistently documenting its reasons for making discretionary awards and was not explaining why some applications that were ranked lower by peer reviewers were awarded grants over applications that peer reviewers had ranked higher. Although the Department is not required to follow the rankings of peer reviewers in awarding grants, we believe that the Department should document its rationale for award decisions that deviate from peer review results.

In sum, while the Department has demonstrated a commitment to improving its grant management process, considerable work remains before managing the billions of dollars the Department awards annually in grants is no longer a top challenge for the Department.

10. Financial Management

Financial management has been a top management challenge for the Department since 2003. It is important to recognize that the Department has made significant improvements in its internal controls over financial reporting and management. Yet, we believe the need for accurate, near real-time financial information continues to present management challenges for the Department.

For FY 2010, the Department again earned an unqualified opinion and improved its financial reporting. For the fourth straight year the financial statement auditors did not identify any material weaknesses at the consolidated level. Department components also reduced component significant deficiencies from eight in FY 2009 to four in FY 2010.

As in past years, however, much of this success was achieved through heavy reliance on contractor assistance, manual processes, and protracted reconciliations, primarily as a result of the Department's decentralized structure. This presents a major challenge to obtaining current, detailed, and accurate financial information about the Department as a whole, because there

is no one single source for the financial data. The Department currently uses five major accounting systems that are not integrated with each other. In some cases, the components' outdated financial management systems are not integrated with all of their own subsidiary systems and therefore do not provide automated financial transaction processing activities necessary to support management's need for timely and accurate financial information throughout the year. We remain concerned about the sustainability and cost of these ad hoc and labor-intensive efforts, which are often overlooked in measuring the true costs of maintaining the current financial management systems.

The Department has long recognized the need for a Department-wide financial management system and has sought to implement a Unified Financial Management System (UFMS) to replace the disparate major accounting systems currently used throughout the Department. The UFMS is intended to standardize and integrate financial processes and systems to more efficiently support accounting operations, facilitate preparation of financial statements, and streamline audit processes.

Yet, only the DEA and ATF have fully implemented the UFMS. While that is a significant achievement, both of those organizations had the Department's most modern legacy financial management systems. Therefore, the central issue to this challenge remains largely unaddressed because the Department's other components, particularly the USMS and FBI, continue to use non-integrated and, in some cases, antiquated financial management systems. Implementation at the USMS began in FY 2010 and will continue through FY 2012, and implementation planning for the FBI began in FY 2011.

Conclusion

In sum, the Department has made progress in addressing many of its top management challenges, but improvements are needed in important areas. These challenges are not easily resolved and will require constant attention and strong leadership by the Department. To aid in this effort, the OIG will continue to conduct vigorous oversight of Department programs and provide recommendations for improvement.

This concludes my prepared statement, and I would be pleased to answer any questions.

FOREIGN LANGUAGE TRANSLATION

Mr. WOLF. Thank you. Thank you very much. Your office reported in late 2009 that the FBI was failing to meet hiring targets for linguists in critical languages. In fact we were told they only made the hiring targets in two of fourteen critical languages, and the average time it took to hire a contract linguist increased to nineteen months. What are the major obstacles to correcting this problem? And what can the FBI do to get more qualified linguists on board more quickly?

Ms. SCHNEDAR. One of the obstacles we found in the delay in hiring was the background check process. And we thought there were things that they could do to simplify that process. There also was additional outreach efforts they could do in order to identify linguists and bring them on board. We did make a series of recommendations.

What's interesting, we did an audit in 2005 and we found that the hiring was actually worse in 2009 than it was in 2005. So this is—

Mr. WOLF. So it actually got worse?

Ms. SCHNEDAR. It actually got worse between 2005 and 2009. So, and many of the recommendations that we made in '05 and '09 were actually similar. So we are going to go, this is something we're going to be tracking very carefully and we will have to go back in at some point and see how they are doing in this area.

Mr. WOLF. Well we would like to see what your recommendations were to the Bureau. And what is the impact, how much material is not being reviewed? And does the FBI have sound practices in place for prioritizing what material gets translated and what goes into the backlog? Because if they are actually doing, there is more almost to review now than there was in '05, in some respects. So are they missing much?

Ms. SCHNEDAR. We did find, I should point out between '05 and '09 the number, the length of the backlog did go down. But we found in '09 there was still significant amounts of materials that were not being reviewed in a timely fashion. And we found that part of the problem was tracking all of the materials they were collecting and then prioritizing it. And we made recommendations about how to implement a system that would improve, would help improve that. We, they are trying, implementing some of those reforms now. We have not gone back in to do another audit to assess that. But we do know they are trying to implement some systemic changes at this point.

Mr. WOLF. Well maybe you can let us know before the Director comes up that way we can—

Ms. SCHNEDAR. Yes, we would be happy to talk with you about that.

HIGH VALUE DETAINEE INTERROGATION GROUP

Mr. WOLF. Has your office reviewed the implementation of the HIG, the High Value Interrogation team, the new interagency terrorist interrogation unit that is found under the auspices of the FBI? If you could tell us your findings? And if not, I would like you to look into it. Have you looked into the HIG?

Ms. SCHNEDAR. No, we have not conducted an evaluation of that.

Mr. WOLF. If you could I would appreciate it. At the time of the creation of the High Value Interrogation team, as you know it was the subject of a lot of controversy. And the Christmas Day Bomber, the High Value—

Ms. SCHNEDAR. Yes.

Mr. WOLF [continuing]. Interrogation Team was not implemented, was not used. And at the time of the creation I wrote to the Attorney General and the Director of the National Intelligence to urge that the HIG be colocated at the National Counterterrorism Center. Have you been out to the National—

Ms. SCHNEDAR. I have not myself personally been out there.

Mr. WOLF. Yes.

Ms. SCHNEDAR. So.

Mr. WOLF. Well then, you know what the Center is?

Ms. SCHNEDAR. Oh yes, absolutely. We have done many reviews and I am very aware of what it is.

Mr. WOLF. Yes.

Ms. SCHNEDAR. I just have not physically visited it.

Mr. WOLF. I was told at that time that it was not possible. It is in my district and it is very large, if you have not been there.

Ms. SCHNEDAR. Yes.

Mr. WOLF. That they could not do it because of space limitation. I believe that by having the HIG at that location, because that is where the information is coming in, and if you are going to send a team out, whether it be to Yemen or wherever, the fact that they are almost colocated with the team as the information is coming in, would you look at whether or not the HIG could be strengthened by being at the National Counterterrorism Center?

Ms. SCHNEDAR. Yes, we could look at that, too.

Mr. WOLF. And also, although they have expanded that quite extensively, is there someone, is there some function at the, and again it is a large, it is large. It is not a little place. Is there a function at the Counterterrorism Center that should be some other place in comparison to the HIG? Because if the HIG is there, had the HIG been on the site on Christmas Day, that team could have been sent out. There could have been a person who spoke the language, who understood the culture who, and that was not the case. And so it was just the FBI person working on Christmas Day in the Detroit office who may not have, who may be a wonderful person but may not have been the very best person that our country has. And you could have missed operations and things like that, or maybe they would not have read the Miranda rights right away. Who knows what the circumstances were? But I think if you are going to have the High Value Interrogation Team it ought to be used and I think it ought to be there. So if you can look at it there, should it be there? And then is there any other function out there that you could move to some other place? And have the HIG there on site?

Ms. SCHNEDAR. That is something we can certainly put in our queue. I would say we do, we will have to finish, there are some ongoing reviews that are coming near completion. So we would not have a team immediately available. But we would certainly prioritize that.

Mr. WOLF. But this is really a priority, though.

Ms. SCHNEDAR. Yes.

Mr. WOLF. Because on 9/11 when the Pentagon was hit, thirty-some people from my congressional district were killed in the attack on the Pentagon.

Ms. SCHNEDAR. Yes, we would—

Mr. WOLF. And if we missed, if we miss something, and so I think this is really a priority. And with the funding that the committee has given with regard, this committee funds that. The FBI is the lead agency with regard to that. I think it is really a priority because if we are missing this, so—

Ms. SCHNEDAR. Yes, we would treat it as a priority. We would just, we do need to take a little bit of time to assemble the team and get started on that.

GUANTANAMO DETAINEES

Mr. WOLF. I would hate to think of something happening, though, in the meantime, that we missed it. And then we would obviously say, “Why did we not do this thing?” In spring of 2009 the Attorney General made arrangements to secretly release a number of detainees held at Guantanamo Bay into the United States. It is my understanding that an apartment was secured for these detainees in Falls Church, Virginia, very near my congressional district. This was released when my, this release was stopped when my office became aware of the effort and made inquiries to the Department and the White House. Has your office ever looked into whether or not they were going to release detainees and allow them to have an apartment in Northern Virginia?

Ms. SCHNEDAR. No, we have not looked at that issue.

Mr. WOLF. Could you look into that?

Ms. SCHNEDAR. That is something that we could also look at here as well. I do, I am not as familiar with how much of that would be, we would have to talk to your staff and get a little bit more information. I mean, we are aware of what we read in the news but we have not done—

Mr. WOLF. Well the Attorney General made the decision. And if you cannot look at it no one—

Ms. SCHNEDAR. No, we certainly can look at it. I would just want to talk to your staff and get additional information and—

Mr. WOLF. Sure. Sure, we can—

Ms. SCHNEDAR [continuing]. Try to assemble, you know, put that, again, try to put our resources to that as soon as we can.

Mr. WOLF. Sure. We can, we can do that, give you the information. Mr. Fattah.

COUNTER-TERRORISM

Mr. FATTAH. Thank you very much. And obviously the first place is to start at this counterterrorism responsibility because obviously we agree that that is the principal responsibility of the FBI now. After 9/11 there was a lot of debate about whether that was going to be the primary focus, whether or not we need to think anew about the overall mission of the agency. How do you see it being fulfilled within the context of the other priorities that the FBI has? We are almost ten years out now, and obviously the agency has

done an extraordinary job in terms of protecting the country. Counterterrorism fits in, and still the FBI can carry on its other duties. Do you think that the right fit of responsibilities are there?

Ms. SCHNEDAR. Yes, that is I think one of the major challenges for the Department, is it has shifted a lot of its resource and attention to counterterrorism and at the same it has, you know, many needs, such as violent crime, organized crime, detention, incarceration. You know, it has many demands on its attention. We have found that overall the Department has I think made some major transformational changes and that is going well. However, there are many improvements that can be made to increase information sharing among the programs that relate to counterterrorism, and then those programs need to talk to the programs that are doing non-counterterrorism work as well. And so we continue to do these reviews that find areas where improvements can be made.

Mr. FATAH. Now the Congress has suggested that it is going to make some substantial cuts, and part of that is going to be an attempt to limit those cuts on national security issues. Now in the FBI it appears that a significant part of this budget, around, I don't know, \$4.5 billion or so, really seems to be related to national security. So I would suspect that a significant reduction at the FBI would have some impact on the agency's ability to conduct its counterterrorism mandate?

Ms. SCHNEDAR. That is correct. I think one of the things the Department of Justice is doing, just as the Inspector General for Commerce said, I know that they are currently doing the internal process of listing what all their programs are and, you know, prioritizing and that type of thing, too. And what will be impacted with budget cuts. But I think that, again, we have consistently emphasized that counterterrorism is a top challenge and one that, you know, attention must continue to be focused on.

INFORMATION TECHNOLOGY

Mr. FATAH. Now I know that you are the watchdog over the taxpayers' money so I am going to go to some of these more unpleasant areas. Looking at the long list of IT projects that are challenged, three of them were found in the Department. One you have mentioned already, I want to go to that, the Sentinel program. So not only is it over budget, it is a couple of years behind schedule. And you said that a lot of the responsibilities the agency is taking in house. And these are challenging systems to set up, I understand. The question is, going forward, here is a project which is already over budget. And you say in your review you are wondering whether or not the expertise exists inside the Department, because what you have got to do is you have got to figure out who is going to use this, what they are going to use it for, and design a system that can capture all of this information and make it work on a day to day basis. So given that a half a billion dollars is a lot of money, the real question is if the agency does not have the internal capabilities, should we not be looking to provide the resources so it can have those capabilities? Or, if one contractor did not work out, normally, at least in the businesses that I am familiar with, you go find their competitor and you give them a shot at it.

Ms. SCHNEDAR. Well I think part of what we are concerned, or our major concern, is how much can they deliver with what they have left to spend? They have brought it basically more in house. They have this new agile methodology where they have assumed control, they have reduced the number of contractors, they say they are talking directly to the subs. But there are still many things that have not been delivered. For example, initially Sentinel was supposed to deliver eighteen forms, electronic forms, that could be completely, you know, used easily by the agents and the analysts. To date they have only delivered four of those, and of those four forms they are not even completely functional. They still have to print them out and, you know, keep a signed copy in their records.

So with the money that they have left and the time that they have left one of the things that we are evaluating is what is it that the ultimate end product, are they going to be able to deliver what the agents and the analysts need to truly be effective in the field? And I think that is something that with some of the estimates we believe have been a little optimistic about that. And we have stressed to them that they need to do more consistent reporting. There are several reporting mechanisms that they have had, such as earned value management and some others, that they did not use consistently. And we think that is one of the things that they should be doing in order to keep on track with this project.

DNA BACKLOG

Mr. FATTAH. Let me skip ahead now to the DNA backlog, which is mentioned in your full blown statement.

Ms. SCHNEDAR. Yes.

Mr. FATTAH. What is it that you believe can be done to actually move this backlog? Is it more resources, and how much more resources? And, I know we spend a lot of time talking about cutting. But if we have to invest more money to deal with this problem, which is in effect to keep people safer and to make sure our criminal justice system works, what do we need to do to solve the problem?

Ms. SCHNEDAR. Part of it is, additional analysts would help. DNA analysts who could review that. But in addition they can improve their process. We found, again, there is another IT system that has failed in the laboratory. They had an evidence tracking system that has not gone anywhere. And I think that would have helped them expedite and improve their process. And there were better methods of tracking, even doing it in the old way, I think we found they could improve the way that the evidence was being tracked as it went through. So even with the resources they have they could make some improvements, but again they also will need additional resources to significantly cut that backlog.

Mr. FATTAH. Crime, serious crime is on the down swing in the country, which is good news. But there are still a lot of challenges. Only yesterday I visited the Center for Missing and Exploited Children, which is an agency funded in large measure by the Justice Department that helps track down about 2,000 children who are reported missing each day in our country. So there are a lot of issues that we cannot deal with on the cheap. I mean, they have a fairly extensive program there to reach out, and they have a lot

of cooperation from various entities inside the Justice Department. And I know the chairman has been out to visit, and I went out to visit yesterday. I was quite impressed with the work they are doing. But it obviously costs money. But to my way of thinking, locating children who have been kidnapped is worth the dollars that we spend to do it.

So I want to thank you for your answers, and maybe we will go back around again. Thank you, Mr. Chairman.

HUMAN TRAFFICKING

Mr. WOLF. Thank you, Mr. Fattah. And I agree with what Mr. Fattah said, and it just triggered another thought, too. We were going to ask the Attorney General about it. I saw they just put out something on sexual trafficking. There are reports that anywhere from 100,000 to 300,000 women and young girls are sexually trafficked in the United States. Some people think it is in Albania, but it is also in Annandale, Virginia. It is all over. And can you look at this whole issue of sexual trafficking? I hope that we can carry language in there directing that every U.S. Attorney's office have a task force to deal with this issue, and bring in the faith community.

But could you look at the whole issue of sexual trafficking and how effective you think the Department has been? And I know that the argument sometime, and Mr. Fattah's comment is true, it is that well, we are working on counterterrorism, we are working on this, that is really a local issue. But these women and young girls are being trafficked across state lines.

In Northern Virginia and in the Northern Virginia suburbs I saw a list of some of the places, and we have given them to the U.S. Attorney Neil McBride. But it is kind of frightening the number of places whereby there are young girls sexually trafficked. And if you could kind of look into that? And also to see are there things, more things the Justice Department could be doing, in the sense that much of this is on the internet, and things like this. But—

Ms. SCHNEDAR. Yes. And I would also want you to be aware that we did do a review, it was maybe three years ago, on some of the grant money that was given to organizations to be extended to victims of human rights trafficking. And we did find some deficiencies in that, in that they were not good at doing outreach and actually finding the victims, and that they needed to do a better, we made some recommendations there as well. And we would be happy to give you some information—

Mr. WOLF. Okay.

Ms. SCHNEDAR [continuing]. On that report.

Mr. WOLF. Okay. If you would? Mr. Yoder.

Mr. YODER. Thank you, Mr. Chairman. Thank you for your testimony today, and I appreciate hearing all this. I am a new member of Congress and a new member of the committee, so I am trying to—

Ms. SCHNEDAR. Well I am a new IG, so there you go.

INFORMATION TECHNOLOGY CONTRACTING/FBI SENTINEL

Mr. YODER. Well good, we will learn this together. And having gone through the process of visiting with constituents and listening

to the frustrations, we hear over and over and over again that Americans are just frustrated that Congress cannot find a way to balance the budget, and cut spending. It just, to most Americans it just seems inconceivable that this continues to run on and on and on and on. And it is boiling over to anger in the country.

And so I appreciate the work you do because it helps me understand where some of these holes are. And I took particular note of your discussion, and gentleman discussed earlier, regarding the overruns on the technology projects. And you noted the twenty-six projects across the federal government that experience problems such as significant cost increases, schedule delays. And then you listed a few here. And I am trying to understand how we got to this point, and where the error was, and who is to blame, and how we fix the problem going to forward, and how we stop the run on spending. It seems like there are cases like this all across government.

You have cited the Sentinel project. And at first read, when I first read this paragraph, it appeared to be that Lockheed Martin was not doing their job. And that there had been an agreement, the agreement was to come in under a certain cost, and that actually did not occur. But as I read further into your report I took particular note of the reasons for the cost, the reasons for the delays, the cost overruns. And you cited, and in the LCMS proposal or project, but you said it was similar to what you find in all of the projects. And you said specifically we have found ineffective requirements; planning process; requirements being modified after much work had been done; defects identified in system integration and user acceptance that were costly to correct; and the failure to adequately address in a timely fashion the difficulties the contractor was having in meeting schedule and cost requirements. So that makes it sound like it is completely internal and that it is our fault in our management of these projects, which I take particular note of the idea that we would bring more of these projects in house and more control as opposed to outside control of these projects. And it appears to be the client, the Federal Government in this case, that is making decisions that are costly because they are making them after the fact. So poor planning is what you are citing.

And so I guess I would first ask, is this a correct assessment of what is happening here? That these costs are being overrun because of decisions that are being made in the Department that are driving up the cost of the project?

Ms. SCHNEDAR. Well we cannot say that the contractors are without blame. But we do feel that in many of the systems that we have looked at the Department could be doing a much better job of exercising its oversight of the contractor; of making sure it has a tight set of requirements and that it sticks to that; that it looks to find the defects early rather than at a later stage where it is costly to correct. So we really do find a lot of areas for improvement for the Department.

Mr. YODER. Well in particular in the Sentinel project you note that the original budget was \$451 million. That we have spent \$405 million of the \$451 million. Two phases have been completed. And you believe that the most challenging work for that project

still remains. So even the current estimates appear to be way under what this is going to cost, if we are only halfway through and we are estimating to be hundred million over budget. It sounds like it is going to be much, much greater than the budget. Do we have, does the Department or do you have an estimate of where we think this thing is actually going to end up?

Ms. SCHNEDAR. We do not have a current cost estimate. I think one of the things we are tracking is what will be developed in the next nine months? For example, I mentioned that not all the forms have been developed. There is also, initially the plan was to migrate the existing system, the ACS database system, into a new system. And now the FBI has said it is not going to migrate, it is going to build an interface between the two. So they are basically in essence changing some of the requirements. So we have to see—or modifying some of those. We have to see what it is that, and this is one of the things that we have auditors on the scene now assessing this, what is it that ultimately, how will it be different from what was originally envisioned? And how much will that cost?

Mr. YODER. When do you think that occurs?

Ms. SCHNEDAR. Well we are continuing in the Sentinel project. We are working on our eighth report now, and so our next report should be coming sometime spring or summer. But the FBI is estimating, it is hoping to make a lot of major strides within the next year. And, you know, so that is one of the things we will be tracking. How much will they be able to do in that time period?

Mr. YODER. And then, noting that a lot of this appears to be decisions that were made within the Department that we have just discussed here, are there things that go into these contracts that can help the private contractor remain accountable? Not having seen this specific contract, are there things in here that say you receive a bonus if you can do it under budget and under time? You know, in the private sector there are all sorts of projects that, there are incentives for the producer of the outcome to do it quicker, in a quicker time, under budget. Are there things like that? Or is it essentially just a contract to produce a product, and it may come under budget or it may not? How do we keep the private contractor regulated and making sure they come under budget or within budget?

Ms. SCHNEDAR. I do not know off the top of my head, although I am sure our auditors know, are there incentives or penalties built into the contract that they had with Lockheed Martin. I do know that one of the things we have reported on is that they were not doing enough of these, you know, reporting mechanisms that were made to do assessments as they go along. How is the project going, and what do we need to change? But I can get back to you with that answer about this, incentives and penalties.

Mr. YODER. And then what would be your recommendations to this subcommittee and to this Congress? How do we try to root this kind of stuff out? We cannot just order that it get done in a timely fashion. I mean, that is what the whole point of the executive branch is. So what can Congress do to put in better controls and better accountability with the financing of these projects?

Ms. SCHNEDAR. I do think oversight is a key provision, what this committee is doing here today. It focuses attention on the issue. I

think it holds the FBI's feet to the fire. This is the critical system that the FBI needs, so understandably it is something that the committee wants to fund but to make sure it is done as cost efficiently as possible. And again, we have done work in this area, the GAO has done work in this area. And I think that also helps in that regard.

Mr. YODER. Okay, thank you. Thank you, Mr. Chairman.

Mr. WOLF. Thank you, Mr. Yoder. Following up on what Mr. Yoder said, though, is there one thing that can be done? This really is not new. I was on this committee before, and then I left years ago, and came back. I mean, it is the same thing. I think one of the last meetings I had we had some of the, we had Glenn Fine was up here, I think, a whole groups in this room. And I believe the Director was there, and now we are at this point. Do you really believe—I do not, to be honest with you—do you really believe that the expertise is in the FBI to do this? I mean, the FBI does a great job. I think Director Mueller, I am one of his biggest fans. I think he has done an incredible job. No one is perfect, and he came in at a very, very difficult time. So I have always been very supportive of the Bureau.

But that is not what the Bureau does. The Bureau does not put together comprehensive technical systems like this. And now, just to give you a case history, the administration, the President has frozen federal pay. Do you think you are going to bring a great person in from whatever high tech company is out there to come in now to, I mean, is this really, so is it really real that this will be done by the expertise? Or are they going to have the ability to go out and find the very best person out there to kind of do this?

Ms. SCHNEDAR. In our last report, and I think this is still our opinion, we do think that their current estimates appear optimistic. And it is a difficult task if they have to finish what they are going to do in the time that they have to do it.

They have made more efforts to bring expertise in but it is not something they can do themselves. They will have to work with contractors in order to do this.

Mr. WOLF. Well I think Director Mueller will want to resolve this before he leaves, and his term will be up at the end of this year. I think September, if my memory serves me, or October of this year. Is that correct? I think he—

Ms. SCHNEDAR. Yes, it is September, I believe—

Mr. WOLF. And so I think the Director, who again I am a fan of, will want to resolve this. Is there three of the very best minds, somebody at MIT, and somebody at Caltech, or somebody elsewhere, can come in for thirty days to kind of look at this system? Because it is important, what they wanted to do. But I do not have the confidence that there is the expertise in the Department or in the Bureau to really resolve this thing. And I know Director Mueller is going to want to resolve it before he leaves, because he was the initiator of it. Is there something, what would your recommendation be? Rather than just throwing rocks at the place and telling him it is all screwed up, what would be the way to bring it in? Would we bring in three of the very, and I am reluctant to mention a company because I do not know the answer. But somebody? This is not, I mean, other companies, other places are doing

these things. And so to bring in to kind of be an advisor to the Bureau, particularly since they have had the problem with Lockheed Martin?

Ms. SCHNEDAR. The recommendations that we have made are that they should, you know, redefine the requirements now that they are at the crossroads, if they have switched to this new agile methodology. And I think refocus on what it is they really need, and what they can get done. We do know that they have consulted each other, they have had assessments done by companies such as MITRE. They have had, you know, some outside expertise that is brought in. They have a fairly new person in charge of this project who comes from the private sector.

Mr. WOLF. Where did he come from?

Ms. SCHNEDAR. From Lehman. And then he was with Microsoft before that. He's, I forget his background off the top of my head.

Mr. WOLF. Did he take a pay cut from Lehman to come in?

Ms. SCHNEDAR. I would assume he would have had to take a pay cut. So, and part of that problem, too, bringing in the people from the outside, then they must become familiar with the government contracting process. I know he commented in an article about, you know, some of the difficulties he was encountering in learning the government contracting system. Where some of the obstacles that he became aware of after he entered the FBI.

So I think again, part of it is again this continual assessment of what it is they are doing. Continual tracking, you know, to keep it on track which with this agile methodology they are doing two-week sprints, where they report to each other, you know, report out what they do every two weeks. So that, you know, could be a positive step. Again, it's still fairly new and we're in there assessing.

Mr. WOLF. I think I know the answer. But how many people have been, how long have you been at the Department?

Ms. SCHNEDAR. Oh, I have been twenty years now at the Department.

Mr. WOLF. How many people have been involved in this program, responsible for it since it was initiated by the Director?

Ms. SCHNEDAR. Since the virtual case file?

Mr. WOLF. Yeah.

Ms. SCHNEDAR. Three to four is what my auditor is telling us.

Mr. WOLF. So that would be about—

Ms. SCHNEDAR. Well it was approximately ten years. It has been quite a while, so.

Mr. WOLF. Yeah.

Ms. SCHNEDAR. And we have done, this is our eighth report on Sentinel, and we did a report on the virtual case file before that. So we certainly—

Mr. WOLF. I think they have a dart board with Glenn Fine's picture on it in the FBI. I think.

Ms. SCHNEDAR. And this is something we will continue to follow closely, so.

Mr. WOLF. Well, but I think it has got to be more than follow it closely. Because it is, because people lose confidence, and also it deals with the national security of the nation. And my sense is, maybe you can be in touch with the subcommittee staff to see if you know or the people that you know who could tell who would

be the very best person or the team that you could bring in. Not to do it, but to assess, and make an evaluation. Otherwise, I think in fairness to Director Mueller, who has done a good job, this is something it would be ideal to get finished and resolved before he leaves. So.

Ms. SCHNEDAR. Yes, we would be happy to do that.

GANG ENFORCEMENT

Mr. WOLF. The DEA's El Paso Intelligence Center, EPIC, has become a valuable resource for federal, state, and local law enforcement providing intelligence related to a broad range of criminal activity. You did a review. What did it show?

Ms. SCHNEDAR. We found that overall they do produce a useful product and I think that users in the field found to be useful. However, we thought that not all users were aware of it. They could do a better job in their outreach to state and locals so that they are aware of that product. And we did find some areas where they could increase the type of information that they uniquely track, such as drug seizures, and try to gather that information together and conduct more analysis of it so that we could share that information and it could be used in the field.

Mr. WOLF. Gangs, about eight years ago gangs were running rampant in Northern Virginia. I offered an amendment to set up a gang task force. We brought in the FBI, DEA, ATF, and Marshals Service. To a family that lives in an area that is gang infested, they are impacted like a, almost like a terrorist is in them. They are afraid. There were neighborhoods in Northern Virginia that I would talk to the families that lived in them and they were afraid to send their kids to school.

The Congress in its wisdom has voted to abolish earmarks so there will be no opportunities to deal with this. And I might say, just for members, as you look in terms of the earmark issue, I was the author of the Iraq Study Group, which was an earmark, which the administration, we wanted to look at how the War was run so we put together the Baker-Hamilton Commission to look at this.

On this gang issue I really worry, and I personally believe we almost need a new concept, a new idea. Gang membership has increased by more than 20 percent from 2005 and gangs now total more than one million members out of the population of over 300 million in the country. Gangs are now developing a working relationship with U.S. and foreign based drug trafficking organizations and other criminal organizations. Your office did a review of anti-gang intelligence coordination in the Department. What is a weakness? What should be done? How do we really deal with it? Because, again, a person that lives in a neighborhood where they are afraid, they are impacted the same way that somebody would be afraid with regard to Al-Qaeda. I mean, their kids sending to school. What can we do and are we doing to really deal with the gang issue? And what did your analysis come up with?

Ms. SCHNEDAR. We did look at two gang intelligence centers in the Department, the National Gang Intelligence Center and GangTECC, which is a more tactical basis.

Mr. WOLF. Right.

Ms. SCHNEDAR. We found with NGIC that its products were not as useful as they could be. They were, one person described it as they were writing history instead of writing leads. And we thought they needed more discussion with the field and back and forth so they could understand how their product was actually used and make it useful.

We also found that the two centers, even though they were colocated, were not talking to each other and were not sharing information. And that they could, if they could work together they could be more effective.

Since we issued our report they have made efforts to make them more cohesive. They have not fully merged them but they have placed them within the special operations division and there has been some change in that area. But, you know, it is not a complete merger as we initially recommended.

Mr. WOLF. Do you think that we are doing everything in the country to deal with gangs that we could be doing or should be doing?

Ms. SCHNEDAR. I think that with the Department they certainly have made a lot of strides. But again, it is some of the problems that we have found in other areas. There needs to be more information sharing, more coordination. And this also goes to budgetary questions as well. The more that they can combine some of these different centers and work together and coordinate, they will actually have a better product in the end.

Mr. WOLF. Okay. Mr. Schiff.

DNA BACKLOG

Mr. SCHIFF. Thank you, Mr. Chairman. I want to ask you about a couple of areas, about DNA as well as the gun trafficking along the Mexican border. In terms of DNA, I understand now from Justice, and I want to see if you can confirm this, that they have now eliminated the offender backlog. I know your report is pending, but will your report conclude that in fact the offender backlog is a thing of the past?

Ms. SCHNEDAR. They have said they have eliminated the backlog. We have just begun that review, so I cannot tell you yet if that is actually true and if it will stay eliminated. Our review will take a few months to do, but we just initiated that review. And it was really following our previous report on the forensic DNA backlog.

Mr. SCHIFF. And on the casework backlog, what is the status of that now? Is that moving in the right direction?

Ms. SCHNEDAR. They have implemented many reforms. Again, there is also still a resource question. And one of the things that we intend to do is after we finish the offender backlog we are going to go back in and look at the case backlog because we think this is an important area that we need to continue to monitor.

Mr. SCHIFF. When you look at the casework backlog can you in particular look at a subset of that and determine if there is any backlog in rape kits? I have been informed over the last few years that there is not a rape kit backlog problem in the federal government but I want to confirm that that is true.

Ms. SCHNEDAR. I would have to double check and get back to you with the answer to that. I do know we found backlogs in general

in different types of forensic DNA cases, but I will have to look at that and get back to you.

ATF'S PROJECT GUNRUNNER

Mr. SCHIFF. In terms of the situation, the mutually destructive trade with Mexico in drugs and guns, I am interested to get your thoughts on an issue that you wrote about, and that is the current requirement that handgun sales of two or more within a certain period of time have to be reported but long gun sales do not.

As I am sure you know, the administration—well ATF—sought an emergency rule that would allow them to require notification of long gun, multiple long gun sales, that would apply in some of the border states and track the current requirement for handgun sales. The administration, I was disappointed to see, at least temporarily has turned that down. Can you shed some light on the impact of not having that information? And whether, if you had to choose one or the other, to be informed of multiple handgun sales or multiple long gun sales, which is of greater significance in terms of information we need to combat the terrific violence in Mexico?

Ms. SCHNEDAR. Well we did find on the southwest border that the long guns were the more prevalent gun that was used in trafficking, and that is what is being reported out of the information that is being gathered through the cases and the arrests that are being made. And I do not know if I had to choose if it is better to choose one or not, because what is the cause and what is the effect of reporting, I do not know. But we did find that there was a need for that information and recommended that the ATF consider ways in which to capture that information.

Mr. SCHIFF. Well if the long guns are the more prevalent weapons, would it make sense that that is where the more valuable information would be?

Ms. SCHNEDAR. My only question is if, does reporting cause a shift from one to the other? I do not know. But yes, I do think it is information that the ATF says would help it in fighting crime on the southwest border.

Mr. SCHIFF. I mean, right now if someone makes, you know, multiple, multiple purchases of an AK-47 there is no notice requirement. And it is discretionary, I guess, on the gun seller's part? Is that right?

Ms. SCHNEDAR. There is not a requirement to report that by the gun seller, that is correct.

Mr. SCHIFF. Your report has indicated a lot of problems with Operation Gunrunner. What do you think can significantly be done to enhance both Mexico's ability and our ability to prosecute not just the straw purchases, as difficult as that has proved to be, but frankly to follow them up the chain to those that are trafficking large numbers of weapons. What is missing that we can do? Is it manpower, or is it sharing information? What are the biggest obstacles? Whenever I meet with Mexican law enforcement officials this is obviously what concerns them most significantly. They just, they are getting massacred. And you know, significantly with American made weapons. And they do not feel like we are doing much to deal with that problem.

Ms. SCHNEDAR. We did find that the ATF should shift its focus less from the straw purchase to the organized trafficker. In fact, prosecutors that we spoke with told us they would prefer to see these kind of cases and that they are more likely to prosecute them. Sometimes the straw purchasing cases may not even rise up to the level of meriting a prosecution for various reasons. We found that they could be using OCDETF more, they could be coordinating more with ICE, they could be talking more between headquarters and their fields. Again, information sharing, to share this type of information, to build those cases instead of focusing on the straw purchases, which give you a lot of numbers but do not necessarily have the same impact as the organization traffickers.

Mr. SCHIFF. Well sometimes, having been a prosecutor, unless you can go after the low guy on the totem pole, you cannot roll them up to get the higher person, to get the higher person. I mean, what is preventing them now from going after higher level people?

Ms. SCHNEDAR. I do think that we have seen a bit of a shift since we have done our report. I think they are trying to encourage those type of cases. I think sometimes the low level cases are the low hanging fruit, they are easier to do. It does take organization, it takes intelligence sharing between agencies and between components of ATF in order to build these more complex cases. And again, we did heavily recommend that they work more with OCDETF in order to build those type of cases.

Mr. SCHIFF. And would it be within your jurisdiction, or one of the other agencies, to look at, you know, the very significant amount of money that we have been providing to Mexico for work on their side of the border to see how effectively that is being utilized to deal with the same problem?

Ms. SCHNEDAR. The Merida Initiative, I believe, is administered through the Department of Justice. So that would, I would believe that would be in our jurisdiction. We have not done a look at money going directly to Mexico. We are looking at the OPDAT, the overseas training for prosecutors, and ICITAP, the overseas training for law enforcement. But that is a more global look at what they are doing globally, not specifically at Mexico. And that is an audit that is underway now.

Mr. SCHIFF. Well if there were one or two priorities that you think we should focus on in terms of trying to more successfully combat this traffic, what would your recommendations to the committee be?

Ms. SCHNEDAR. Well our recommendations to ATF were, again, to increase information sharing and to focus more on going after the gun trafficker rather than the straw purchaser. And also with Mexico there is a real, I think they could improve its gun tracing program. They are not sharing information in a timely fashion and I think building that program in Mexico, and that also would be helpful.

Mr. SCHIFF. And what information sharing problem are you referring to on our side? Is it on our side of the border? Is it between U.S. and Mexican officials? I mean, what is, where is the breakdown that we can address?

Ms. SCHNEDAR. We found some weaknesses in the liaison program, and that they were not building the relationships and ex-

plaining some of the need to get the Mexican gun information in a timely fashion. They had distributed some equipment to the Mexicans but hadn't given them training on how to use it. So we found that there were improvements that could be made. And part of that is just relationship building between the two countries.

Mr. SCHIFF. So it is not so much an information sharing problem within U.S. agencies, but rather between U.S. and Mexican agencies?

Ms. SCHNEDAR. Well we also found it within U.S. agencies as well. For instance, ATF is not talking to ICE a lot. And there is a lot of overlap there, and there are cases that they could be prosecuting together, sharing information, having a stronger case together. And that they needed to implement a system for doing that. And then we found the ATF field was not coordinating with headquarters, and that that information needed to be shared that way as well so that it could be shared throughout the ATF when it needed to be.

Mr. SCHIFF. Are there, I mean in addition to the people located at Justice, are there, is there one or two of the U.S. Attorneys in the region who are sort of the point people on this?

Ms. SCHNEDAR. The southwest border U.S. Attorneys' offices are all very involved with the cases flowing out of Gunrunner and we did speak to a number of Assistant U.S. Attorneys in the southwest border states. So they are very aware of what ATF is doing and they did give us suggestions which we incorporated into our recommendations for ATF.

Mr. SCHIFF. Thank you, Mr. Chairman.

Mr. WOLF. Thank you, Mr. Schiff. We will try to go through these fairly fast, and if anybody has anything just say something. Any particular areas you think that the committee ought to look at with regard to targeting for cutting, please let us know. Again, not to be harmful. Just if there is something we are trying to balance off to protect things that are really important, to make sure that we can take from one to give to another in order to do what I think everyone in the country would like.

On the Gunrunner question too, and I am going to have a series of questions on that we will just submit for the record, but since 2009 we have appropriated more than \$65 million for Project Gunrunner. You note in your November 2010 report ATF's expansion of the e-trace system to trace guns in Mexico has yielded very limited information of intelligence value. Could you tell us what you mean? I mean, nothing? What is—

Ms. SCHNEDAR. We found that a lot of the trace information that is coming back from guns that are seized in Mexico is stale and not useful. And I think of that is they need to increase, improve their relations with Mexico to get a better system for getting the information in a more timely manner so that it can actually be usable.

Mr. WOLF. Is that because it is dangerous to go down to Mexico? Or is that because there are not enough ATF people down in Mexico?

Ms. SCHNEDAR. I think again, part of it was building those relations between the people running the tracing project for ATF, and with Mexico, and a lack of training—

Mr. WOLF. Have we brought them up here? Have they come up here and have we gone down there?

Ms. SCHNEDAR. I know we have had ATF down there. Yes. ATF has certainly been to Mexico. I do not know if Mexico has come to the U.S. for training on e-trace. But there has, we feel that there are many, just additional outreach effort, training systems that could be put in place to get these done more quickly and so that it could be more useful.

Mr. WOLF. Maybe they should be invited up here. How many people does Mexico have working on this issue? Do you know?

Ms. SCHNEDAR. I do not know that. I could find that out and let you know.

FEDERAL BUREAU OF PRISONS

Mr. WOLF. Well there will be a number of other questions on that. Bureau of Prisons, in your audit of the Bureau of Prisons furlough program published last September one unresolved issue was a need for BOP to have a more effective means of coordinating with the union on policy changes. According to your audit the collective bargaining agreement expired nine years ago, and BOP contends that it will not have another agreement in place until 2017. Is that accurate?

Ms. SCHNEDAR. That is what they said to us at the time of the audit. I do know they are focusing increased attention to it since we issued our audit, so—

Mr. WOLF. Probably. Still awaiting implementation is a policy that would assure that victims of crime are notified when an offender is approved for a medical furlough. This notification has waited seven years for implementation and may not be implemented for another seven years. Why? That is a big issue.

Ms. SCHNEDAR. Yes, it is. It is a big issue. Since we issued our report they did jump this issue to the top of the queue and negotiate it. So they did implement a policy where that notification now takes place. However, there are other recommendations we have made in other reports that have not been implemented that they have told us it is due to delays in negotiating with the union. And we think they need a better mechanism to bring these issues to the table and get them negotiated in a timely manner.

Mr. WOLF. Has that, because of the delay, has that jeopardized the safety or security of anyone? Are there any cases where certain things happened that would not have happened if that had been implemented?

Ms. SCHNEDAR. I do not have a particular case to point out to you. But we, I would say that some of the policies that we think have not been negotiated yet can affect prisoner safety, inmate safety and guard safety. So we think it is an important issue.

Mr. WOLF. Wow. I mean, it seems like it would, that would be something you would deal with pretty quickly.

Ms. SCHNEDAR. Yes. And we certainly have pointed this out to the Department. I will say that this is something that has received renewed attention since our report came out.

Mr. WOLF. Okay. Over the past twenty-five years the U.S. prison and jail population has skyrocketed to an all time high, with 2.3 million people incarcerated, we are now number one in the world

in incarceration, confining 23 percent of the world's prisoners. Meaning we have in our jails and prisons 23 of the world's prison population. Therefore, it has become imperative that the U.S. modernize its expensive, unsuccessful, and unsustainable correction policy. The goal of the Serious and Violent Offender Reentry Initiative and the Prisoner Reentry Initiative, programs which have now concluded, was to reduce recidivism among offenders released back into the communities. Your report on these programs provided lessons that can be applied to the existing Second Chance Reentry Initiative. While I am concerned about your findings that DOJ sometimes had difficulties awarding the grants consistently and assuring that grantees did not spend funds on unallowable expenses. Did these programs have the intended effect of reducing recidivism? That is the purpose of it.

Ms. SCHNEDAR. We found that they could not say. And part of that was they did not have good measures. First of all, they were not even using a uniform definition of what constitutes recidivism. And so in order to measure that they need to implement better performance measures. They had not collected the data to allow us to make that assessment.

Mr. WOLF. But this is a big issue. This is, the whole issue of recidivism. And there was a report we are going to have a hearing on Friday, I mean that is a big issue.

Ms. SCHNEDAR. Yes, it is.

Mr. WOLF. I have a couple of others on a different subject, but let me try to stay on that for a second. Has your office investigated the dramatic decline in prison industries participation over the last decade?

Ms. SCHNEDAR. We have not done a review on that. We have done a review on the e-waste recycling program that they had, which had some health and safety problems. And that is a program itself that has declined over the last few years.

Mr. WOLF. Has your office looked at the impact of the loss of prison work on inmates' violence against guards?

Ms. SCHNEDAR. No, we have not done a review of that.

Mr. WOLF. I hope you will look at, you know the Congress is really to blame here and not the administration, on the whole working in the prisons. But if you put a man in prison for years and give him or her no work and no dignity, no skill, you are just going to have recidivism. And so if you could look to see what the impact has been on the ending, basically, of the Federal Prisons Industries, and what that impact has had, or potentially would have, on recidivism.

Having a robust work program in our nation's prisons is an important priority. We learned from your investigation that prior to 2009 UNICOR's management of the electronic waste recycling program resulted in numerous violations of health, safety, and environmental laws, as well as BOP policies. What were they, and what changes are being done based on your report?

Ms. SCHNEDAR. The electronic waste recycling was basically the breaking up of computers, and the cadmium and lead were being exposed. Some of these, many of these corrections were made actually prior to the start of our report. But we did make additional suggestions. They were not wearing proper protective gear. They

did not have proper work stations with proper ventilation. Inadequate training, inadequate inspections, they were not, they ignored some of the early warnings that came in. So they have put in a series of reforms to correct many of these issues.

Mr. WOLF. Well, I would hope that we could convince the Congress to support a program of developing more work in the prisons, and having perhaps industries who are no longer making or manufacturing products in the United States. For instance, oversimplification, there are no televisions made in the United States. I am sure you have a television set, you may even have two.

Ms. SCHNEDAR. Two, that is all.

Mr. WOLF. So if we could have, and I am using this just as an example, manufacture televisions in prison so you are not in competition with American industry, you are in competition with something in Mexico or China, something like that. I would like to see in the federal prison system everyone works. And with that they get a skill and a training, and they have money that they can keep so when they get out of prison they have money to take with them, send money to their families, also use it for restitution. But I really think it is a tragedy that there is so little now because of the narrowing and hollowing out of the prison industries. So if you could look into that and give us a report of what you think or what you are seeing with regard to that, I would appreciate it.

CIVIL RIGHTS DIVISION

Next is the Black Panthers. Because of mounting evidence of improper activities in the Justice Department Civil Rights Division and the extremely troubling dismissal of the Black Panthers voter intimidation case, I felt it was essential that your office investigate the division. Inspector General Fine assured me that there would be an examination of the types of cases brought by the voting section and that any changes in these cases over time; any changes in voting section enforcement policy or procedures over time; whether the voting section has enforced civil rights law in a non-discriminatory manner; and whether any voting section employees have been harassed for participating in the investigation of a particular matter. Will this investigation include all these issues? And when can we expect your review?

And I want to kind of put out, so you know how strongly I feel about this. When the Voting Rights Act came up in the Congress I was the only member of Congress from the State of Virginia that voted for the Voting Rights Act. When I voted for it I was criticized by the Richmond Times Dispatch, and ripped apart in many newspapers in my area. I voted for the Voting Rights Act and I continue to be a strong supporter of the Voting Rights Act.

But I want to see the enforcement of the Voting Rights Act. And no one should be intimidated, whether they stand in front of polls in Philadelphia, Mississippi, and there is a Philadelphia, Mississippi, or Philadelphia, Pennsylvania. And so we have been pursuing this and pursuing this and pursuing this. So when can we see your review of what you have found?

Ms. SCHNEDAR. Our scope is the same as you just, as was described to you previously by Inspector General Fine. And we are working on it, we are in the middle of it. We are looking at docu-

ments, interviewing witnesses. It is very hard to predict when we will have it. It is still, you know months away. But I cannot give you a precise date because sometimes one thing leads to another in an investigation, so I cannot predict with certainty when it will be done. But we certainly have prioritized this and are trying to get it done as quickly as possible.

Mr. WOLF. Okay. Well again, as the only member of that delegation that voted for the Voting Rights Act, I feel passionate about this. And I just, I just want to see that this thing is done in an appropriate way. There will be some other questions on that issue, too.

SEXUAL ABUSE OF PRISONERS

I have just one or two more, and then I will go back to Mr. Fattah. Let us see, prison industries, we have covered that. We have the Marshals Service, in your September 2009 report entitled, "Department of Justice Efforts to Prevent Staff Sexual Abuse of Federal Inmates," you recommended that the U.S. Marshals Service develop and implement a policy that ensures a zero-tolerance policy standard aimed at preventing staff sexual abuse of federal prisoners. Has this policy been implemented?

Ms. SCHNEDAR. They did take steps to implement this policy. And I know they, I do not know if it has been distributed throughout the Marshals Service. Yeah, they have not, it is not a closed recommendation so they have not finished with their steps to implement it. But they have, they are taking steps to distribute that, to develop the policy and distribute it throughout the Marshals Service.

Mr. WOLF. As you may or may not know Congressman Bobby Scott and myself were involved in what we called the Prison Rape Bill. And some of the stories of prisoners being raped are just unbelievable. I have been really disappointed in the delay of the administration to finalize these regs. And but I think we will wait to go into that when the Attorney General comes up.

EXPLOSIVES COORDINATION BETWEEN FBI & ATF

And I guess the last question I may have, or last two and I will go back to Mr. Fattah, is the ATF and the FBI, and you covered this briefly in the opening, share jurisdictions for investigation of federal explosive crimes. Disputes between the two have arisen where there is an absence of clear jurisdiction with respect to a particular investigation. In what situations has there been an absence of clear jurisdiction? And I keep reading about it in the paper. They do not want to work together? What is the problem? And cannot they resolve this, or either give all to one or all to the other? Or, I mean, how do you work that out?

Ms. SCHNEDAR. With explosives they have given FBI jurisdiction if it involves a terrorist incident and the rest falls to ATF unless there is some other FBI preexisting interest. And what we found was the guideline just was not very clear, the memorandum was not clear, and they were racing to the scene and, you know, trying to beat each to the scene in order to gain jurisdiction.

The Deputy Attorney General has issued a new policy but we think a part of this will depend on implementation. And I think the

policy probably needs to be a little clearer about how the delineation will fall and we are continuing to track that to see how that works.

Mr. WOLF. Does the expertise reside equally in both of them?

Ms. SCHNEDAR. Well the ATF I think has built, you know, they both have experts. You know, probably the ATF has more explosive experts but the FBI has them as well. And again, we found overlap in their labs, in their training, in their canine programs. So there is a fair amount of overlap.

Mr. WOLF. Is not everything almost terrorism now in a way, whether it—

Ms. SCHNEDAR. That is the problem. How do they know when they are responding to the scene if it is a terrorist case or not? And that is where a lot of the conflicts arise.

Mr. WOLF. Well maybe you can help us resolve it? Or maybe we should write something in. I am, I am supportive of both of them. But somehow there ought to be a delineation. That time that you are arguing could better be used from some other way. And you are always seeing news stories about the conflict and you constantly hear about it. And there ought to be some mechanism to kind of resolve it.

And let me go to Mr. Fattah, and I think that would pretty much take it to the end.

RESTORING CONFIDENCE IN THE DEPARTMENT

Mr. FATTAH. Well I do want to not necessarily delve into it but want to take note of your written testimony describing the efforts that the Department has taken to restore confidence in the Department in terms of some of the issues that arose in Senator Stevens' case and other issues relating to professional conduct of attorneys, and other issues that have raised some public concern about activities inside of the Department over many years. I think that the Department has done a great deal in this regard, so I want to take note of it.

But I want to go back to a question that we asked of your colleague from the Department of Commerce about your general resources. How many staff people do you have?

Ms. SCHNEDAR. We have 430.

Mr. FATTAH. Okay. And how do you rationalize, and I know you are in an acting capacity, but how has it been rationalized, how and under what circumstances you would pursue the work as the watchdog for the public, and is it the case that you have a number of mandated responsibilities that prescribe most of these resources? Or do you have more of a free hand, a discretionary hand, about where to apply your resources?

Ms. SCHNEDAR. Our current work plan was developed by Inspector General Fine, who left a week and a half ago. But I was his Deputy so I was part of that planning process. And we intend to continue with the same planning process. Some of our reviews are mandated, but that is not the majority of what we do. We do a very careful work planning process. We look at the Department's top ten challenges and we try to find reviews that fall within those top ten challenges. We also consider very seriously any requests from committees with jurisdictions, congressional requests that are appro-

priate for us to take on. And we, you know, then we have to divide our resources between our investigations to look at, you know, any corrupt law enforcement agents. And we look at the numbers coming in to make sure we have enough there. And then with our program reviews we try to identify those that would have the most impact.

We also firmly believe in doing follow up reviews. So as in foreign language translation we will go back in after two or three years to see if they have actually implemented the recommendations that we made, if there has been improvement. And so we certainly try—

Mr. FATTAH. I assume that the dollars that we spend are well spent?

Ms. SCHNEDAR. We believe they are very well spent. We do think that inspectors general in general are cost savings because we do identify—

Mr. FATTAH. Okay. So this should not be an area that when we are looking at cuts that we should be enthusiastic about?

Ms. SCHNEDAR. Yeah, I think any inspector general would tell you yes, we are cost savings. So.

Mr. FATTAH. Okay. All right. Thank you very much.

Ms. SCHNEDAR. Thank you.

Mr. FATTAH. Thank you, Mr. Chairman.

Mr. WOLF. Thank you, Mr. Fattah. Where did Mr. Fine go?

Ms. SCHNEDAR. He is taking some well deserved time off. He probably will find an opportunity in the private sector, but he has not identified yet what he will be doing.

Mr. WOLF. I thought he was going to open up a bed and breakfast up in Vermont, or something like that.

Ms. SCHNEDAR. Well he thought about taking on coaching a basketball team, but he has decided instead—

Mr. WOLF. Give him my best. I appreciate, you know, his service.

Ms. SCHNEDAR. I certainly will.

Mr. WOLF. And thank you and thank all your people. And there will be questions that we will just submit for the record.

Ms. SCHNEDAR. Thank you.

Mr. WOLF. Thank you very much. Okay, the hearing is adjourned. Thank you.



U.S. Department of Justice
Office of the Inspector General

March 24, 2011

The Honorable Frank R. Wolf
Chairman
Subcommittee on Commerce, Justice,
Science and Related Agencies
Committee on Appropriations
U.S. House of Representatives
H-307 The Capitol
Washington, DC 20515

Dear Mr. Chairman:

Enclosed are my responses to questions for the record resulting from the hearing "Oversight of Department of Justice and Department of Commerce" held before the House Appropriations Subcommittee on February 9, 2011.

Sincerely,

A handwritten signature in cursive script, appearing to read "Cynthia A. Schnedar".

Cynthia A. Schnedar
Acting Inspector General

Enclosure

**Questions of Chairman Frank R. Wolf
House Appropriations Subcommittee
For Acting Inspector General Cynthia Schnedar
Department of Justice
Hearing on "Oversight of the Department the Justice
and Department of Commerce"
February 9, 2011**

PRISON INDUSTRIES

1. Has your office investigated the dramatic decline in Prison Industries participation over the last decade?

If yes, what were your findings?

Answer: *We have not reviewed this issue.*

What were your recommendations to increase work opportunities for inmates?

Answer: *We have not reviewed this issue.*

If no, why have you not looked at this?

Answer: *We have not previously selected this topic for a review during our planning process. We currently are considering options for an audit that concerns the Federal Prison Industries (FPI).*

By way of background, the OIG annually conducts work planning during which we identify Department programs and allocate OIG resources to reviews of matters during the next year. We include reviews that are required by specific legislative mandate, and we independently plan reviews in the areas we identified as presenting management and performance challenges for the Department. In addition, we consider requests for reviews and evaluations that we receive from several other sources, including Department leaders, Chairpersons of Congressional committees, and Members of Congress. We make adjustments to our work plan throughout the year to accommodate developing events facing the Department.

2. Has your office investigated the impact of the loss of prison work on inmate violence against guards and/or other inmates?

Answer: *We have not reviewed this issue, but we currently are considering options for an audit that concerns FPI.*

Have you considered its impact on recidivism?

Answer: *We have not reviewed this issue, but we currently are considering options for an audit that concerns FPI.*

3. Congressional restrictions have severely constrained Prison Industries over the last decade.

Do you believe FPI has been aggressive and creative in finding new work opportunities for inmates that do not violate these restrictions?

Answer: *We have not reviewed this issue, but we currently are considering options for an audit that concerns FPI.*

What would be the impact on FPI if Congress were to lift these restrictions?

Answer: *We have not reviewed this issue, but we currently are considering options for an audit that concerns FPI.*

ATTORNEY GENERAL

4. Over the last two years, the Attorney General and his staff have repeatedly stonewalled efforts by members of Congress and the U.S. Commission on Civil Rights -- which also comes under this Subcommittee -- to obtain critical information in response to a number of whistleblowers who have testified that the department has not been enforcing the Voting Rights Act in a non-discriminatory manner.

Much of this obstruction has stemmed from the department's decision to claim an undefined and ambiguous "privilege" with regard to critical documents and correspondence -- apparently in order to prevent their release to Congress and the Commission. However, department officials have repeatedly denied claiming "Executive privilege" with regard to these documents.

Will you be investigating this ambiguous claim of "privilege" to determine whether the department has inappropriately obstructed members of Congress and the Commission from investigating this matter?

Answer: *The OIG is conducting a review of the enforcement of civil rights laws by the Voting Section of the Department's Civil Rights Division. This review will examine, among other issues, the types of cases brought by the Voting Section and any changes in these types of cases over time, any changes in Voting Section enforcement policies or procedures over time,*

whether the Voting Section has enforced the civil rights laws in a non-discriminatory manner, and whether any Voting Section employees have been harassed for participating in the investigation or prosecution of particular matters. The scope of the OIG's review of the Voting Section of the Civil Rights Division does not include an assessment of the propriety of the Department's claims of privilege or other bases for declining to provide information to members of Congress or the U.S. Commission on Civil Rights.

VOTING RIGHTS ACT ENFORCEMENT

5. When do you anticipate concluding the investigation into the Civil Rights Division regarding the universal enforcement of the Voting Rights Act?

Answer: *The OIG is conducting a review of the enforcement of civil rights laws by the Voting Section of the Department's Civil Rights Division. See the answer to question number 4 for a description of the scope of this review.*

We have made significant progress in this review since its initiation. We have reviewed thousands of pages of documents and conducted numerous interviews. However, we have identified many additional current and former Civil Rights Division employees that we need to interview, and thousands of pages of documents and e-mails that we still need to review. In addition, it is not unusual for additional investigative leads to emerge as the review progresses. Therefore, it is difficult to predict with any certainty when the investigation will be concluded and our report issued. However, this review is among our highest priorities and we are working very hard to complete it as quickly as possible.

Where does the investigation currently stand?

Answer: *Please see answer immediately above.*

6. What interaction has your office had with the Office of Professional Responsibility (OPR) -- which has been underway for more than a year -- and how that does OPR's investigation will affect your analysis?

Answer: *OPR has been conducting a review of the handling of the New Black Panther Party case by the Civil Rights Division, whereas the OIG has been reviewing the Voting Section's enforcement program. OPR has provided the OIG with transcripts and recordings of numerous interviews from its pending investigation. Although there is a significant difference in the scope of our respective investigations, these interviews contain material that is relevant to the OIG review. While the OIG is reviewing the*

OPR material, the OIG is conducting its own interviews of relevant witnesses, including witnesses who were previously interviewed by OPR.

7. The Attorney General has already publicly stated that he doesn't think there's any "there" there with regard to the race-neutral enforcement of the Voting Rights Act during this Administration.

Since neither OPR nor your office has released any report yet, what do you believe the Attorney General's assessment based on?

Answer: *We do not know the basis upon which this statement was made.*

8. It is my understanding that former Attorney General Mukasey declined to speculate on questions related to pending investigations so as to avoid being perceived as trying to influence their outcome. Does this Attorney General have a different policy?

Answer: *The OIG did not conduct a review of former Attorney General Mukasey's policy on public statements about pending investigations, nor have we reviewed the current Attorney General's policy regarding public statements about pending investigations.*

9. To your knowledge, has any former Attorney General has ever publicly commented on the merits of a pending investigation like this?

Answer: *The OIG has not conducted a review of former Attorneys' General public statements about the merits of a pending investigation.*

GUANTANAMO BAY DETAINEES

10. In Spring 2009, the Attorney General made arrangements to secretly release a number of detainees held at Guantanamo Bay into the United States.

It is my understanding that an apartment was secured for these detainees in Falls Church, VA – near my Congressional District.

This secret release was stopped when my office became aware of this effort and made inquiries to the Department and the White House.

Has your office investigated this attempted release?

Answer: *The OIG has not conducted an investigation of this matter.*

The Attorney General initially denied that there was a plan to release the detainees in the U.S. Will you investigate whether the American people were misled by statements made by the Department during Spring 2009?

Answer: *We do not currently plan to conduct a review concerning the Attorney General's statements in 2009 about the Department's plans to release detainees into the U.S. See response to question number 1 above regarding the OIG's work planning process for resource allocation.*

HIGH-VALUE DETAINEE INTEROGATION GROUP (HIG)

11. Has your office reviewed the implementation of the HIG – the new interagency terrorist interrogation unit that is funded under the auspices of the FBI – since it was established in late 2009?

Answer: *We have not reviewed this matter.*

If so, could you please discuss your findings?

Answer: *Please see answer immediately above.*

If not, I strongly urge you to look at its implementation to determine its efficacy.

Answer: *We will consider this topic and your other suggested topics as potential matters for future reviews. See response to question number 1 above regarding the OIG's work planning process for resource allocation.*

12. At the time of its creation, I wrote to the Attorney General and the Director of National Intelligence to urge that the HIG be co-located at the National Counterterrorism Center.

I was told that this was not possible due to "space limitations."

Answer: *Please see answer immediately below.*

Would you look into whether the HIG could be strengthened by co-locating at the NCTC?

Answer: *We will consider a review of the implementation of the HIG and your other suggested topics as potential matters for future reviews. See response to question number 1 above regarding the OIG's work planning process for resource allocation. If we undertake a review of the HIG's*

implementation in the future, we will include whether the HIG could be strengthened by co-locating at the NCTC.

FOIA REQUEST POLITICIZATION

13. What is the status of my February 10 request (See attached) that you investigate whether ideological or political status has impacted the department's response to FOIA requests?

Answer: *We have reviewed the issues raised in your February 10, 2011 letter. We have requested documents from the Civil Rights Division to enable a preliminary assessment of whether the allegations described in your letter concern FOIA requests made to the Voting Section of the Civil Rights Division. When we have made that preliminary assessment, we will respond to your letter to inform you whether we will include an investigation of such allegations in our ongoing review of the Civil Rights Division, Voting Section.*

FUNDING REDUCTIONS

14. The Congress is committed to making significant funding cuts over the coming year, with a target of reducing non-defense discretionary spending to FY08, pre-Stimulus levels. What particular areas of the Department's budget would you recommend that the Committee explore as possible targets for reducing wasteful spending?

Answer: *Based upon our reviews of Department programs, the OIG has suggested several areas for reducing spending:*

FBI/ATF Explosives Investigations Training and Laboratory Overlap: *The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and the Federal Bureau of Investigation (FBI) share jurisdiction for investigating federal explosives crimes. An OIG report released in October 2009 found that the FBI and ATF still maintain separate explosives-related databases, and separate training and laboratory facilities. Combining the FBI's and ATF's explosives-related databases, and training and laboratory facilities will reduce duplicative and administrative costs, strengthen training programs, and result in better laboratory processing times. In response to our audit, the Department has taken steps to develop a joint plan for consolidating explosives training and integrating laboratory capabilities, and is considering options concerning database consolidation.*

Procurement of Federal Detention Space from State and Local Facilities:

The United States Marshals Service (USMS) is responsible for holding criminal detainees while courts adjudicate their cases. During Fiscal Year (FY) 2010, the USMS had an average daily custody population of about 60,000 detainees, with about 37,000 housed in state and local detention facilities. The USMS normally procures detention space at these facilities using intergovernmental agreements (IGAs), which set a price that the Department pays a state or local government to hold detainees. IGA detention costs have increased by 19 percent from \$743 million in FY 2005 to \$888 million in FY 2010, even though the detention population housed in state and local facilities has remained relatively constant during that time period. In an audit report released in March 2011, the OIG found that the USMS often disregarded facility-reported cost data as part of its negotiations. This information could save the Department millions of dollars in excessive profits to a requesting facility over the duration of the agreement. Our audit concluded that the Office of the Federal Detention Trustee (OFDT) and USMS need to take significant actions before the price analysis negotiation strategy it currently uses can be considered an effective tool for USMS specialists to justify fair and reasonable jail-day rates. The OFDT and USMS generally concurred with the recommendations in our report and said they will take steps to implement them.

Grant Administration: In an audit report released in March 2011, we found that the Office of Audit, Assessment and Management (OAAM) within the Office of Justice Programs (OJP) has made significant improvements in its monitoring and oversight of grants. However, despite OJP's improvements in monitoring and oversight of grants, we found that the Office of Violence Against Women (OVW) and the Community Oriented Policing Services (COPS Office) perform certain monitoring and oversight services that are duplicative of the services available through OJP. To eliminate such duplication and to provide uniformity in oversight among the Department's granting agencies - OJP, OVW, and COPS, we believe that the Department should consolidate and standardize the grant oversight and administrative services provided to OJP, OVW, and the COPS Office. The Department currently is pursuing efforts to standardize the oversight services provided by OJP to OVW and COPS.

Federal Employment Compensation Act Cases: In a 2009 audit report, the OIG concluded that the Department lacks effective controls to reduce the risk of waste, fraud, and abuse in its FECA program, and to ensure that employees return to work when appropriate. We found that many case files lacked claim forms substantiating the work-related injury and evidence of a second medical opinion. We also determined that a substantial amount of money was being paid to employees on long-term disability without a review as to whether their current medical condition

entitled them to remain on disability. The long-term cases where the claimant remained on disability for over 3 years comprised only 6 percent of the total number of the Department's FECA cases but accounted for over \$153 million (or 54 percent) of DOJ's total FECA expenses from 2006 through 2008. We concluded that the Department could save millions of dollars if it were more diligent about requiring the evidence necessary to support FECA claims. The Department reports it has taken steps to improve its oversight of FECA claims in response to our audit.

Duplication Among Drug Intelligence Centers: We believe that some of the Department's drug intelligence centers could be consolidated. In a June 2010 review, the OIG evaluated the operations of the DEA's El Paso Intelligence Center (EPIC). This center focuses on the collection and dissemination of tactical intelligence, and it provides federal, state, and local law enforcement agencies information that can be used in investigations and operations that target smuggling and other criminal activities. However, we concluded that the service provided by EPIC overlaps in several program areas with other Department intelligence entities, specifically the National Drug Intelligence Center (NDIC) and the Organized Crime Drug Enforcement Task Force (OCDETF) Fusion Center, as well as non-Department entities, such as the Office of National Drug Control Policy (ONDCP) and the Department of the Treasury Financial Crimes Enforcement Network.

For example, EPIC and the NDIC duplicate their intelligence intake efforts because they both receive information from the same intelligence centers, law enforcement agencies, and databases, and use the same information to support law enforcement organizations with drug interdiction responsibilities. Consolidating these functions under one organization could lead to greater efficiencies and cost savings.

We also found overlap between EPIC and the OCDETF Fusion Center in the exchange of drug trafficking investigative information. While EPIC continues its efforts to establish itself as a hub for the exchange of drug seizure information with the High Intensity Drug Trafficking Area (HIDTA) program, we found that some HIDTAs are now looking to exchange investigative information with the OCDETF Fusion Center, potentially establishing that Center as a parallel information hub for the HIDTAs. These parallel processes are occurring separately from each other and without coordination among the HIDTAs, ONDCP, EPIC, and the OCDETF Fusion Center.

Another overlap that we noted in our review is that the case support provided by EPIC's Asset Identification Unit overlaps with the case support that the Department of the Treasury's Financial Crimes Enforcement Network provides. Both entities research assets owned by or connected to suspects of investigations and their associates.

Combining the functions of the various drug intelligence centers could reduce duplicative and administrative costs.

Duplication Among Anti-Gang and Drug Intelligence Centers: Our reviews have found significant overlap in the roles and responsibilities of various Department anti-gang efforts. These include the FBI's National Gang Intelligence Center (NGIC), the FBI's MS-13 National Gang Task Force, and the Criminal Division's National Gang Targeting, Enforcement and Coordination Center (GangTECC). In a November 2009 report on the operations of NGIC and GangTECC, we concluded that the two centers have not significantly improved the coordination and execution of the Department's anti-gang initiatives. We found that the two entities have not worked together effectively because of differing leadership and management philosophies, funding sources, and investigative priorities. Our report recommended combining the two organizations into a single Department entity. In response to the OIG's report on its anti-gang centers, the Department has begun co-locating several of its anti-gang entities, but further savings through consolidation and inclusion of additional activities may be possible.

Department Conference Expenditures: In September 2007, the OIG issued an audit report detailing weaknesses in the methods by which Department components hosted and reported conference expenditures. Our report found that conference sponsors inconsistently performed and documented comparisons of costs among potential sites and allowed excessive food and beverage costs at some conferences. We currently are conducting a follow-up audit of selected conferences from FYs 2008 and 2009 to determine if the Department is conducting adequate oversight of conference expenditures.

Information Technology Systems: Information Technology (IT) investments are extremely expensive, and the Department should exercise greater oversight of these costs. The Department still uses a decentralized system for development of IT projects, which results in higher costs and duplicate IT solutions to common business processes. The Department IT Investment Review Board (DIRB), which is chaired by the Deputy Attorney General, attempts to monitor the progress of the Department's most important IT investments and annually reviews each component's IT investment portfolio. However, the DIRB's lack of direct line authority over IT project development makes it dependent on the components for information about

IT projects and reduces its ability to prevent problems in the development of IT systems. The Department could reinvigorate or expand its use of the DIRB to increase the centralized development of its IT projects.

Methods to Reduce the Cost of BOP's Inmate Population: The Department should consider strategies for reducing the BOP's inmate prison population without compromising public safety. We currently have an ongoing review concerning the Department's use of treaties allowing repatriation of non-citizen prisoners to their home countries through prisoner transfer. Our review will include an examination of whether the Department could achieve cost savings by using its repatriation authority more effectively.

ATF—PROJECT GUNRUNNER

15. The success of Project Gunrunner depends, in part, on ATF's sharing intelligence with its Mexican and U.S. partner agencies, the DEA and ICE. But your review determined that ATF was not systematically and consistently exchanging intelligence with its Mexican and some U.S. partner agencies. Has ATF revised any of its protocols in response to your criticism?

***Answer:** Our report recommended that ATF coordinate with the Government of Mexico, the Drug Enforcement Administration (DEA), Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE) to ensure systematic and regular exchanges of strategic intelligence to combat firearms trafficking to Mexico.*

Although ATF had taken some actions to improve coordination with its partner agencies, we believe ATF needs to take additional steps to ensure systematic and regular exchanges of strategic intelligence with all of its partner agencies. For example, ATF described meetings it initiated with the CBP and ICE to exchange strategic intelligence, but did not indicate how these meetings would be used to promote the regular exchange of strategic intelligence, or whether information exchange protocols were established. We have requested ATF to provide additional information with sufficient detail to demonstrate that the actions it is taking will ensure the systematic and regular exchange of strategic intelligence with its partner agencies.

In addition, some ATF field agents reported that they do not find investigative leads provided to them by ATF's Field Intelligence Groups to be timely and usable. What is the role of the Field Intelligence Groups beyond generating timely and useful leads, and how can their efforts be altered to provide more instrumental assistance?

Answer: ATF's 25 field divisions typically have a Field Intelligence Group, whose mission is to collect, evaluate, and disseminate tactical and strategic intelligence to the division's field offices. Field Intelligence Groups support field agents by responding to direct requests for information from agents to support their cases, and through proactive intelligence gathering to generate investigative leads to be referred to field agents. The criticisms expressed to us by field agents concerned the quality of investigative leads referred to field agents.

Our report recommended that each of ATF's firearms trafficking enforcement groups on the Southwest border develop guidelines that identify the types of investigative leads that are most useful to them and provide these guidelines to their supporting Field Intelligence Group. Our report also recommended that ATF develop an automated process that would allow ATF managers to track and evaluate the usefulness of investigative leads that are provided to ATF's enforcement groups on the Southwest border.

We believe that developing and regularly updating general guidelines for the Field Intelligence Groups to follow in generating investigative leads should result in more targeted, useful investigative leads on firearms traffickers for agents to pursue. Similarly, developing an automated process for ATF managers to track and evaluate the usefulness of the Group's investigative leads should improve the quality of the leads and the Field Intelligence Groups' overall efficiency. ATF stated it did not expect to be able to identify, acquire and implement an automated solution to resolve this recommendation before Fiscal Year 2014.

Last week, ATF arrested 20 defendants who conspired to illegally purchase hundreds of firearms to be exported to Mexico as part of its "Fast and Furious" investigation. Is this the kind of positive change you hoped to see—that is, is ATF going after the big fish instead of many small operators?

Answer: Our report recommended that ATF focus on developing more complex conspiracy cases against higher level gun traffickers and gun trafficking conspirators. Our report also recommended that ATF send guidance to field management, agents, and intelligence staff encouraging them to participate in and exploit the resources and tools of the Organized Crime Drug Enforcement Task Force (OCDETF), as directed in the Deputy Attorney General's cartel strategy.

Our report, however, did not review what strategies the ATF should employ in pursuing more complex cases, nor did it address what internal controls the ATF should have in place to minimize the risk associated with its investigative strategies.

We recently initiated a review of the ATF firearms trafficking investigation known as Operation Fast and Furious, and other investigations with similar objectives, methods, and strategies. The preliminary objectives of our review are to examine the development and implementation of Operation Fast and Furious and other firearms trafficking investigations, the involvement of the Department (including the ATF, the Criminal Division, and U.S. Attorneys' Offices) and other law enforcement or government entities in the investigations, the guidelines and other internal controls in place and compliance with those controls during the investigations, and the investigative outcomes.

Straw purchasers are the foundation of firearms trafficking schemes, but there is no firearms trafficking statute—just a variety of other statutes that substitute for one—and cases brought under these statutes are difficult to prove and do not carry tough penalties. Since there is no U.S. code statute on trafficking, how can we measure ATF's success in putting actual "traffickers" away?

Answer: *In our Project Gunrunner review, we found that ATF has had difficulty in measuring its success in this area. We recommended that one step ATF could take is to modernize its case management system and ensure that relevant performance measures are fully integrated into an information system. In December 2010, as part of the process of resolving the recommendation from our report on Project Gunrunner, we requested additional information from ATF concerning its plan to improve its ability to monitor the implementation and successes of its cartel strategy and strategic plan. ATF's response to this memorandum is due in March 2011.*

Since 2009, on average, how many people considered to be "traffickers" have been prosecuted each year?

Answer: *The OIG found in conducting our Project Gunrunner review that the Executive Office for United States Attorneys (EOUSA) and ATF could not provide us with this information. We have discussed this issue with ATF and EOUSA on numerous occasions, but their statistical collection is incomplete and their systems do not interface with one another, nor does either system capture cases referred to state law enforcement agencies for investigation and prosecution under state laws.*

Without a federal firearms trafficking statute, criminals engaged in firearms trafficking are investigated by ATF and prosecuted by U.S. Attorneys' Offices using a wide range of federal criminal statutes, few of which are readily identifiable as a firearms trafficking charge in either of those organizations' databases. EOUSA tracks general prosecutorial data for its United States Attorneys' Offices but it does not correspond to the coding method that ATF uses in its case management system and is often

incomplete because not every case referred by ATF is captured as such in the EOUSA's system. In addition, it does not capture any cases that were prosecuted at the state level, which often occurs. Consequently, it cannot identify firearms trafficking prosecutions.

The information contained in our reports is not based on data obtained directly from ATF or EOUSA, but is based on our analysis of Project Gunrunner cases referred by ATF to U.S. Attorneys' Offices for federal prosecution to identify how these cases had been charged, which had been prosecuted, the number of defendants involved, the sentencing outcome, and other information.

GRANT PROGRAMS

16. You've used the phrase, "high risk grantee." What makes an organization a "high risk grantee?"

Answer: *In conformance with 28 C.F.R. Section 66 on Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, the Department's OJP, COPS, and OVW deem a grantee to be high risk if the grantee:*

- *has a history of unsatisfactory performance,*
- *is not financially stable,*
- *has a financial management system that does not meet the management standards set forth in 28 C.F.R § 66.20 (standards for financial management systems), or*
- *has not conformed to terms and conditions of previous awards, or is otherwise not responsible.*

A grantee is automatically designated as high risk if any of the following events occurs:

- *Single Audit or OIG grant audit recommendations that remain open more than 1 year and for which the grantee has not submitted documentation that adequately addresses the recommendations,*
- *lack of a corrective action plan within 105 days of transmission of an audit report to the grantee from the Department,*
- *open questioned cost recommendations for more than \$500,000 where the Department agrees with the recommendations,*
- *referral to the Department of the Treasury for failure to repay funds due,*
- *appearing on the COPS list of grantees prohibited from receiving funds, and*

- *being recommended for suspension or debarment by the Department.*

In addition, any Department personnel may refer a grantee for inclusion on the high risk list, and the OAAM within the OJP maintains a process to evaluate and decide on such referrals.

THURSDAY, FEBRUARY 10, 2011.

NATIONAL SCIENCE FOUNDATION

WITNESS

ALLISON C. LERNER, INSPECTOR GENERAL

OPENING REMARKS OF CHAIRMAN WOLF AND RANKING MEMBER
FATTAH

Mr. WOLF. Good morning. The hearing will come to order. I want to welcome everyone today to our hearing on the state of management challenges at our science agencies.

The witnesses are Allison Lerner, Inspector General, National Science Foundation, and Paul Martin, Inspector General, National Aeronautics and Space Administration.

I want to thank you both for being here to go over the current budget and activities of the inspectors general. We will be looking to the IGs for guidance on where money can be put to very good use for program improvements and positive outcomes.

We are going to need your help redirecting that. We are going to discuss management challenges and identify their implications, which are important to effective and efficient programs.

Ms. Lerner will provide some brief overview and answer questions from the Subcommittee, and then we will turn to Mr. Martin and proceed the same way.

Before we begin with Ms. Lerner, I would like to first turn to the ranking member, Mr. Fattah, for any opening comments.

Mr. FATTAH. Thank you, Mr. Chairman.

I thought yesterday was quite productive in terms of hearing from the IGs and look forward to this morning's testimony, starting with the National Science Foundation.

So I will reserve and we can get right to it. Thank you.

Mr. WOLF. Thank you, Mr. Fattah.

Ms. Lerner.

OPENING REMARKS OF INSPECTOR GENERAL LERNER

Ms. LERNER. Mr. Chairman and members of the Subcommittee, I appreciate this opportunity to discuss the Office of Inspector General's work to promote the efficiency and effectiveness of the National Science Foundation's programs and operations and to safeguard their integrity.

My testimony will focus on two of the six top management challenges facing NSF in fiscal year 2011, improving grants management and strengthening contract administration, as well as some recent reviews our office has conducted of NSF's operational expenses.

With regard to the first challenge, in 2010, NSF did more than 55,000 awards at over 2,100 institutions. Since most of these awards are made as grants, it is essential that the foundation's grants management process be robust enough to ensure the highest level of accountability and stewardship.

Previous audits have found that the agency needs to improve its oversight of awardees and NSF has taken action to address these concerns including establishing an Award Monitoring and Business Assistance Program to provide necessary oversight.

That program's impact is limited as it can reach fewer than ten percent of the institutions receiving awards. In this time of increased concern about accountability and federal programs, it will be a continuing challenge for the agency to find new and cost-effective ways to ensure that awardees are accomplishing their goals and expending their federal funds appropriately.

In addition to grant administration, we have focused considerable attention on contract administration at NSF, particularly on the agency's efforts to manage and re-compete its largest contract and its ability to manage high-risk contract reimbursement contracts.

NSF obligated \$283 million for such contracts in fiscal year 2010 and the monitoring of cost reimbursement contracts was a significant deficiency in both the foundation's fiscal year 2009 and 2010 financial statements.

These contracts are high risk because of their potential for cost escalation and because NSF often pays contractors before they incur costs. This risk is compounded by the fact that the agency has made advanced payments to contractors that do not have adequate accounting systems or approved accounting system disclosure statements.

The risk of fraud, waste, and abuse on these contracts will continue to be high until NSF implements fully adequate cost surveillance procedures.

NSF's use of contingencies and budgets for its large major research equipment and facilities construction projects is an emerging management challenge.

Two recent audits of cooperative agreement proposals for large construction projects found that the awardees' budgets contained more than \$169 million of unallowable contingency costs and that \$55 million or 33 percent of this \$169 million was funding from the American Recovery and Reinvestment Act.

In addition, although the NSF allows awardees' project officers to hold contingency funds for allocation during construction, we found that there were no barriers to prevent the funds from being drawn down in advance and/or used for purposes other than contingencies. As a result, there is an increased risk of fraud and misuse of these funds.

We are working with the agency to resolve the recent audits and have started additional work in this area.

My office also examines how NSF spends money internally for its own operations and activities. In light of the current economic climate, it is essential that we carefully study these expenses to identify opportunities for cost savings, so our funds can be put to better use within the foundation.

In this vein, we recently examined expenditures in two areas, both of which might yield cost savings with additional oversight and control.

Our recent review of charges on NSF purchase cards for refreshments for panelists and others attending meetings at NSF identified nearly half a million dollars in food-related payments in both 2008 and 2009.

NSF pays for these refreshments out of program funds in addition to the compensation it is already providing to attendees to cover their expenses including meals.

One-fourth of the purchases we reviewed exhibited at least one typical fraud indicator. In addition, we found there is no foundation level oversight or coordination of refreshment purchases and that purchasing practices vary widely across the agency.

We recommended that NSF assess the prudence of these expenses and that if it decided to continue providing refreshments it centralize their purchase to improve control over the process.

Our review of NSF's Independent Research Development Program, which provides travel funds to temporary employees at NSF such as IPAs to travel to their home institutions and attend conferences, found that NSF could not tell without substantial effort how much it expends annually on IR&D travel or how such travel is used across the foundation's various divisions.

In addition, some participants used IR&D funds for more trips or longer trips or spent more on travel than proposed in their plan. Because of the weak oversight of the IR&D funds and the potential for abuse, we are currently auditing this program.

Thank you. I would be happy to answer any questions.

STATEMENT OF ALLISON C. LERNER**INSPECTOR GENERAL****NATIONAL SCIENCE FOUNDATION****Before the House Commerce, Justice, Science Appropriations Subcommittee**

Mr. Chairman and Members of the Subcommittee, I appreciate this opportunity to discuss the Office of Inspector General's (OIG) work to promote the efficiency and effectiveness of the National Science Foundation's (NSF) programs and operations and to safeguard their integrity. My office is committed to providing rigorous, independent oversight of NSF, and I welcome the chance to discuss some of the top management challenges facing the Foundation we have identified, as well as some reviews our office is conducting of NSF's operational expenses.

Background

NSF is the funding source for approximately 20 percent of all federally supported basic research in science and engineering conducted by the nation's colleges and universities. In many areas, such as mathematics and computer science, NSF is the major source of federal backing. The Foundation funds approximately 10,000 new awards each year, thereby fulfilling its mission to promote the progress of science. Proposals for funding are assessed by panels of experts as part of NSF's merit review process. Awards are made primarily as grants, with some large cooperative agreements and contracts, and go to individuals and small groups of investigators, as well as to research centers and facilities where scientists, engineers, and students undertake research projects. The Foundation also funds major research equipment such as telescopes, Antarctic research sites, and high-end computer facilities.

In FY 2010, NSF was appropriated approximately \$7 billion to carry out the agency's programs and operations. In addition, the agency received \$3 billion in Recovery Act funds in 2009; as of February 4, 2011, it has expended approximately \$992 million of that amount.

The OIG is an independent entity and reports directly to Congress and the National Science Board. Our mission is to conduct independent audits and investigations of National Science Foundation programs and operations and to recommend policies and corrective actions to promote effectiveness and efficiency and prevent and detect waste, fraud, and abuse. Consistent with our statutory mandate, the OIG has an oversight role and does not determine policy or engage in management activities involving the Foundation or program operations. Thus, my office is not responsible for managing any NSF programs, nor do we attempt to assess the scientific merit of research funded by the Foundation.

The OIG has two main components: the Office of Audit and the Office of Investigations. The Office of Audit is responsible for the annual audits of NSF's financial statements and the annual review of information system security. The office also conducts financial and compliance audits of grants, contracts, and cooperative agreements funded by NSF. Further, we monitor management functions that may pose significant financial or programmatic risks. In determining

priorities, we consider the results of prior audits and consult with the Foundation's senior management, the National Science Board and Congress, and with the Office of Management and Budget and members of the research community supported by the Foundation. In selecting areas for audit, we assess factors such as the risk involved in the activity, the potential for monetary recovery for the government, and the potential for the greatest substantive benefit for NSF.

The Office of Investigations is responsible for investigating possible wrongdoing involving NSF programs and operations, agency personnel, and organizations or individuals who submit proposals to, receive awards from, or conduct business with NSF. We focus our investigative resources on the most serious cases, as measured by such factors as the amount of money involved, the seriousness of the alleged criminal, civil or ethical violations, and the strength of the evidence. When appropriate, the results of these investigations are referred to the Department of Justice for possible criminal prosecution or civil litigation, or to NSF for administrative resolution.

NSF Top Management Challenges

In accordance with the Reports Consolidation Act of 2000, each year the OIG identifies what it considers to be the most serious management and performance challenges facing NSF. The top management challenges are areas that reflect fundamental program risk and are likely to require NSF's attention for years to come. Since the agency's primary mission activity is accomplished through funding external awardees, the success of NSF's overall mission and the achievement of its goals are largely dependent on effective grant and contract administration. Accordingly, my testimony will focus on two of the six top management challenges facing NSF in FY 2011: improving grant administration and strengthening contract administration.

Improving Grant Administration

In 2010, NSF funded more than 55,000 active awards involving over 2,100 institutions. Many of these awards were funded all or in part with Recovery Act monies. In light of the fact that most of those awards are made as grants, it is essential that the Foundation's grants management processes be robust enough to ensure the highest level of accountability and stewardship in its external awards portfolio. In particular, those processes should enable the agency to engage in effective oversight throughout the lifecycle of an award.

Previous OIG audits of NSF's operations have found that the Foundation needs to improve its oversight of awardees' financial accountability, programmatic performance, and compliance with applicable federal and NSF requirements. Over time, NSF has worked to address those concerns. Among other things, in 2004 it commenced an Award Monitoring and Business Assistance Program (AMBAP) designed to provide advanced monitoring activities to ensure that awardee institutions possess adequate policies, processes and systems to manage their NSF awards. Through this program, NSF assesses its awardees' capacity to administer NSF-issued awards in compliance with federal regulations and evaluates awardee performance in specific high-risk award administration areas. Since many institutions receive more than one award, the assurance that comes from the advanced monitoring activities is intended to increase the likelihood that the awardees will effectively administer all NSF-issued awards. Activities

conducted under this advanced monitoring program include desk reviews, site visits and, for large facilities, business system reviews.

As designed, this program provides NSF with three different ways of ensuring strong oversight. In practice, though, the program's effect is limited: in 2010, only a fraction of the institutions receiving NSF funding (approximately 7 percent) received an AMBAP desk review or site visit, or a business system review. In addition, in FY 2010 NSF performed 20 percent fewer site visits than it conducted in FY 2009 -- 24 instead of 30. NSF indicated that this decrease was due to staffing constraints. While it should be noted that NSF did increase the number of desk reviews it conducted in 2010 (up to 120 from 110 in 2009), site visits provide the agency with significantly more information that it needs to oversee awards. In this time of increased concern about accountability in federal programs, it will be a continuing challenge for the agency to find new and cost-effective ways to ensure that recipients, especially high risk ones, are accomplishing their goals and expending their federal funds in compliance with grant terms and conditions. If the Foundation's budget continues to grow, the resulting increase in awards to monitor will compound this challenge.

OIG also has an important oversight role, but given the breadth of our mission, we can only review a small number of awards each year. We are currently developing a data analytic capacity and improved forensic financial skills that should enable us to better identify awards with the most risk and thus more effectively leverage our limited staff resources. As we refine our approach, we will share our techniques with NSF management so it can utilize them to enhance its oversight capability. We are also expanding our outreach to NSF and the research community to ensure that agency staff and awardees understand the rules that apply to them. Finally, we are continuing to focus efforts on proactive reviews that help us identify grant fraud that might otherwise go undetected and deter fraudulent behavior.

Strengthening Contract Management

In addition to grant administration, we have devoted considerable attention to contract administration at NSF -- a long-standing management challenge for the Foundation. In recent years, we have focused on the agency's efforts to manage and re-compete its largest contract -- that for the operation of its Antarctic research sites. In addition, we have placed particular emphasis on the agency's management of cost-reimbursement contracts. We have focused on this area because of the risk associated with this type of contract, the substantial amount of money NSF expends annually on contracts of this type, and the significant deficiency in the monitoring of cost reimbursement contracts cited in the Foundation's FY 2009 and 2010 financial statement audits.

NSF obligated approximately \$422 million for contracts in FY 2010. Of that amount, two-thirds (or \$283 million) was obligated for cost reimbursement contracts. Cost reimbursement contracts are considered high-risk because of the potential for cost escalation and because the contractor's costs for performance are paid regardless of whether the work is completed. Compounding the risk, of the amounts NSF obligated for cost reimbursement contracts in 2010, over 70 percent (or \$204 million) was on contracts that permit advance payments to three of NSF's largest contractors.

Advance payments increase NSF's risk because the Foundation pays contractors before they incur costs. The Foundation's risk is further increased if it approves advance payments to contractors without knowing if they have adequate accounting systems or approved disclosure statements explaining their accounting practices and whether costs will be treated as direct or indirect. Of the three contractors that receive advance payments, none has an approved disclosure statement. As a result, NSF does not have an agreement with the contractors as to how they will classify and charge direct and indirect costs. In addition, only one contractor has an accounting system that has been deemed adequate recently by Defense Contract Audit Agency (DCAA) auditors. When contractors do not have adequate accounting systems, NSF lacks assurance that costs on its cost reimbursement contracts are being properly accumulated and billed. Given the amount of money it expends on these contracts, the risk of fraud, waste, and abuse by NSF contractors will continue to be high until NSF implements fully adequate cost surveillance procedures.

The agency has made some progress on improving contract management. It has developed policies and procedures for cost-reimbursement contracts, although they were implemented too late for their effectiveness to be assessed as part of the 2010 financial statement audit. It has also recently hired a new executive to provide leadership over the contracting staff. Finally, it has entered into an agreement with DCAA whereby DCAA will provide much-needed audits of agency contracts, including proposals for the Antarctic logistics contract. While these are important steps, the risks presented in this area remain significant, and contract management will likely continue to be a challenge to the agency for some time.

Controls over Contingency Funds

NSF requires contingency estimates in the budgets of large Major Research Equipment and Facilities Construction projects in an effort to ensure that actual costs do not exceed planned costs. The approved budgets for these projects serve as the basis upon which awardees can draw down funds over the course of an award. Control of contingencies in these budgets is an emerging challenge for the Foundation.

In two recent audits of cooperative agreement proposals for large construction projects, DCAA found that the awardees' budgets contained more than \$169 million of unallowable contingency costs. These costs comprised 25 percent of the combined award amounts, which totaled \$684 million. It is significant to note that \$55 million, or one-third of the \$169 million in contingencies consisted of funds awarded under the Recovery Act.

In both of the audits cited above, the auditors were further concerned by the lack of controls over the contingency funds. Although NSF allows contingency funds to be held by the awardees' project officers for allocation during the construction phase, DCAA found that the awardees could draw down the contingency funds at any point in the project just as they would normal funds, and that no barriers existed to prevent the funds from being drawn down in advance and used for purposes other than contingencies. As a result, there is an increased risk of fraud or misuse of these funds.

We recommended that NSF require the awardees to remove unallowable contingencies from their proposed budgets and that NSF stop its current practice of allowing awardees to manage

contingency funding. We recognize that the identification of funds needed for contingencies is an important part of project management; however, we are concerned by the risk associated with the approach NSF is taking. To protect federal funds set aside for contingencies, we have therefore recommended that NSF, not awardees, control the release of contingency payments for unforeseen events. NSF should implement procedures so that it controls contingency funds and does not release them until the awardee has demonstrated to NSF that the funds are needed to meet a project requirement.

We are currently working with NSF to resolve the contingency-related findings. Because of the large dollar amounts associated with contingencies in NSF awards, the risk we see posed by the agency's current process of funding these costs, and the complexity of the issue, we have started additional audit work that focuses broadly on NSF's use of contingencies in its awards.

NSF Expenses for Internal Operations

While much of my office's effort focuses on funds NSF provides to third parties in grants, cooperative agreements and contracts, we also examine how NSF spends money *internally* for its own operations and activities. In light of the current economic climate, it is essential that these expenses be reviewed to identify opportunities for cost savings or funds that can be put to better use within the Foundation. In this vein, we recently examined expenditures in two areas, refreshments provided to individuals participating in meetings at NSF and travel expenses under NSF's Independent Research and Development program -- both of which might yield cost savings with additional oversight and control.

Refreshment Purchases for Meetings

The Federal Travel Regulation states that agencies may provide light refreshments to agency employees attending an official conference. NSF's Office of General Counsel advises that meetings of review panels, advisory committees and Committees of Visitors fall within the definition of a conference. Our recent review of charges on NSF purchase cards for refreshments for merit review panelists and others attending meetings at NSF identified nearly \$500,000 in food-related payments in both 2008 and 2009. NSF pays for these refreshments out of program funds, in addition to the flat-rate or per diem compensation it provides to attendees to cover their expenses. The flat rate compensation is \$480 for each meeting day and \$280 for each travel day to cover an honorarium, hotel, local travel, and all meals. The per diem rate includes \$71 for meals and incidentals, in addition to lodging and travel expenses.

We examined expenditures associated with the substantial flow of food and beverages daily into NSF from a wide variety of vendors to determine the potential for fraud, waste, and abuse. Of the 110 purchases we reviewed, one fourth exhibited at least one typical fraud indicator, including late pre-approvals, inconsistent pre-approvals and invoices, late payment of invoices, handwritten changes to otherwise printed invoices, white-out on invoices, or late changes to already placed orders. In addition, we identified an NSF staff member who caused a relative's company to receive the refreshment orders for three review panel meetings, violating conflict of interests rules.

Pursuant to GSA guidance, prices paid for refreshments must be considered fair and reasonable, and purchases must be equitably distributed among suppliers. We found that there is no

Foundation-level oversight or coordination of refreshment purchases, no general definition of what is “reasonable” for refreshment purchases, no uniform guidance to ensure consistent refreshment purchase decision-making within and across NSF divisions, and no purchase card training specific to refreshment purchases. As a result, refreshment purchase practices vary widely across the Foundation. While the majority of NSF organizations purchase food for panels and other activities from vendors in the area near NSF in Arlington, nearly a quarter of such purchases were made from more distant vendors, which sometimes added additional delivery charges. Other situations our analysis revealed included: wide ranges in per-person prices paid for similar products; instances in which purchases were made of substantial food that could be viewed as a meal and not light refreshments; cases where offices purchased virtually all refreshments from a single vendor; and some purchases that appeared to directly contravene GSA and NSF guidance.

Although we ultimately did not find fraud in the transactions we examined, the large number of indicators and divergent or inconsistent practices we identified strongly suggests that NSF would benefit from a more centralized purchasing process.

We recommended that NSF assess whether it is a prudent use of federal funds to spend nearly a half-million dollars a year to provide extensive mid-morning and mid-afternoon refreshments for meeting attendees, in addition to the compensation they are already receiving for meals. If NSF chooses to continue providing food, we recommended that the agency centralize its provision of refreshments to improve control over the process and ensure it is carried out reasonably, consistently, and responsibly. A consolidated process could result in substantial savings, if NSF chooses to continue providing refreshments.

Travel Expenses under NSF’s Independent Research/Development Program

NSF’s Independent Research/Development (IRD) program provides an important benefit to qualified agency employees, allowing them to stay involved in their research while working at NSF. The program does this, in part, by providing travel funds to permit Visiting Scientists, Engineers and Educators (VSEEs) and Intergovernmental Personnel Act appointees (IPAs) to travel to and from their home institutions, participate in activities at other institutions, and attend domestic and international conferences. It also permits other employees to engage in active research programs.

IRD participants must submit plans describing, among other things, the work they will be conducting and its estimated costs. This information is required so that NSF officials will be able to identify possible conflicts of interests that could result from the IRD work, and so they can ensure that actual IRD travel is consistent with approved IRD plans.

Investigative staff in my office recently reviewed the use of IRD travel by VSEEs and IPAs at NSF in an effort to assess the potential for fraud within that program. We found that there is no centralized means to review IRD budgets, and therefore no convenient way for NSF managers to compare actual IRD expenditures to plans or budgets, or assess the use of IRD travel across the Foundation’s various directorates or divisions. In fact, we found that NSF could not tell, without substantial effort, how much it spent annually on IRD travel, or how much time NSF IPAs and VSEEs spent on such work. Further, in the sample we examined we found that some participants used IRD funds for trips and conferences that were not referenced in their plans, some took more

trips or longer trips than proposed, and others failed to provide sufficient detail on conference travel. Some of the individuals in our sample used IRD funds for activities not related to the IRD plan, while others spent more on travel than proposed.

Because of the significant internal control issues identified in the sample we examined, we are currently conducting an audit of the IRD program to evaluate the effectiveness of NSF's oversight of the IRD program. In addition, to ensure that IRD funds are appropriately expended and to improve the efficiency and oversight of the IRD program, we recommended that NSF examine all IRD plans and associated travel records for the past year to determine if the travel was IRD related and within the scope of the plan, and whether the actual travel costs are consistent with what was proposed. In response, NSF's Office of the Director asked the Office of Information and Resource Management to form a task group charged with strengthening oversight and accountability of the IRD program.

Conclusion

Scientific research and discovery are the building blocks of the technological advances that are essential for our nation's economy to grow and to meet the challenges of the future, and NSF has an essential role to play in promoting scientific discovery. For the agency to achieve its mission, NSF must spend its research funds in the most effective and efficient manner while maintaining the highest level of accountability over taxpayer dollars. My office will continue to utilize the full range of our audit and investigative resources to exercise robust oversight of NSF's stewardship of federal funds and to safeguard the integrity of the Foundation's operations.

Mr. WOLF. Wow. Thank you very much.

RESPONSIVENESS OF NSF

You raise a lot of issues. Are they paying any attention to you?

Ms. LERNER. I think they are doing what they can to improve these areas. They do have, as I noted in grants management, a program in place to do some monitoring of awards, but we think that it is time to think of ways that they can do more.

And one of the things that our office is starting to do is to develop a data analytic type capability that will enable us to do continuous monitoring of costs. NSF does this to a limited extent and we are hoping that if our efforts are successful, we can bring them along so that they can do more of that and hopefully have another cost-effective way of staying on top of how grantees are spending their funds.

In the contract area, we have been working with NSF for quite some time. And they have made some progress. They have a new procurement executive coming on board, I believe this month. They have come up with some new policies and procedures for overseeing cost reimbursement contracts, but those were implemented relatively late in the fiscal year, and the auditor who conducts the financial statement audit has not had a chance to evaluate their effectiveness. We will be doing that this year.

So they are attempting to tighten up their procedures over cost reimbursement contracts. They have also entered into an agreement with DCAA to do some of the much needed audits at the pre-award stage and across the life cycle of awards so that there will be better assurance that money is being spent appropriately.

So they are paying attention. There is just a lot of ground to cover and some real room for improvement.

Mr. WOLF. How many people do you have on your staff?

Ms. LERNER. Approximately 72 employees.

Mr. WOLF. I guess I should get it out of the way early. I have been a little disappointed. I am going to tell the NSF people that when they come up. I have been a strong supporter of NSF. I think America needs to be invested in—

Ms. LERNER. Absolutely.

Mr. WOLF [continuing]. Math and science and physics and chemistry and biology, et cetera, et cetera, and I have always supported increased funding.

About two years ago, we put language in asking the NSF to look at best practices with regard to having students get interested in science. The indications are that if they lose interest before fifth or sixth grade, you will lose them.

Ms. LERNER. You are out of the pipeline.

Mr. WOLF. It has been two years and they have never completed the report. Mr. Bement, who I always had a great amount of respect for, just left town without finishing it.

We cannot get the NSF to respond to this. This is a very minor thing. We have done the same thing for prisons. We have asked the prison systems to look at best practices, and the Pew Foundation and the state governments helped us to come up with a report. We have asked NSF to do the same thing on what is working in edu-

cation to get young people through first through fifth grade, and it has been two years.

And we cannot get an answer. Mr. Bement left town without the courtesy to call to say where the report is. The new director has never been up.

And so I am beginning to think that it is a very sloppy operation out there. As another example, I remember initially the National Science Foundation fought strenuously against moving their headquarters. They did not want to move to their current location.

Senator Robb had moved them out to the Arlington area, and they fought it and fought it and fought it. And now it is there, and someone said there may be some effort to move them again.

Is there any thought of that?

Ms. LERNER. The two buildings that the foundation is in, I think the Stafford One lease expires in 2013, I think Stafford Two in 2014. So the process is in place to find a new building for the agency.

Mr. WOLF. To move again?

Ms. LERNER. It is uncertain at this point whether they will move again or whether the current lender will be able to get the current space up to standards where they could remain is my understanding. But, yes.

Mr. WOLF. Well, they wanted to stay on Constitution Avenue in an old building that was falling down—

Ms. LERNER. Yes.

Mr. WOLF [continuing]. So they could be close to the White House.

Ms. LERNER. Right.

Mr. WOLF. If they come in and ask for money for that, I personally would not be very supportive. I mean, I think they ought to spend their time on science.

Well, you just let the word go back. I do not know who is here from the NSF, if anybody is, but I am really so disappointed in Dr. Bement and the current leadership now for not even having the courtesy to come up and discuss the status of the education report.

It was requested in the fiscal year 2009 language, and we cannot even get them to act. So if the Congress cannot get them to act, I wonder if you are able to do it.

Ms. LERNER. I meet with the director tomorrow at one o'clock and I will make sure he understands your concerns. So I will do what I can.

Mr. WOLF. Well, if they really care about education—

Ms. LERNER. Right.

Mr. WOLF [continuing]. And getting young people to be involved in the sciences—

Ms. LERNER. Right. And I know they do. So I do not know why they would not be getting back to you and communicating with you on that or completing the work that you asked them to do. But I will certainly have that conversation with the director.

Mr. WOLF. Somebody ought to tell Mr. Bement, too, who I really admired. I am really disappointed in him. He left town literally without cleaning up and dealing with this issue. And we have discussed it. We have had conversations. We have raised it in hearings. It is in the hearing record. It was in the bill. And he leaves

town and does not do a thing. How hard you work on the last day is as important as all the work you have done before.

Ms. LERNER. Right.

Mr. WOLF. You ought to stay until five o'clock or five-thirty and clean up everything. This was an act of Congress with regard to the sciences. This is not a—

Ms. LERNER. Right.

Mr. WOLF [continuing]. Pork barrel project. We want young people to be involved in science. Last year, China graduated 700,000 engineers. We only graduated 70,000. Half of them were foreign students. We want America to be number one. And here is something that could get young people involved, and NSF cannot even give us an answer.

POSSIBLE NSF BUDGET SAVINGS

Making cuts in programs that are inefficient, ineffective, or simply low priority is one of the ways to meet our critical deficit reduction needs while still allowing necessary flexibility for important NSF programs that advance our national competitiveness.

Using the knowledge you have gained by reviewing programs for waste, fraud, and abuse, and I think you have covered this, can you give the Subcommittee some specific areas that we could look at that would not hurt the sciences—

Ms. LERNER. Right.

Mr. WOLF [continuing]. But would allow us to make some necessary spending changes that would help save some money for the American taxpayer?

Ms. LERNER. Right. Well, I think at a minimum, the half million dollars that is spent on refreshments for panelists is something that should be looked at carefully.

Mr. WOLF. Well, if you could give us a list in addition.

The OIG does not have a basis for saying that one NSF program should be funded over another program. We will continue to examine NSF's external funding, particularly in regard to contingencies and contracting, as well as the Foundation's expenditures for its operations such as travel in order to identify opportunities for cost savings and funds put to better use.

Ms. LERNER. In addition to that? We will do what we can. And we are looking for more and more areas. So if you would like our thoughts beyond what we have identified in the light refreshment area, we will respond.

Mr. WOLF. I think that is important, but I am thinking of more extensive even—

Ms. LERNER. Right.

Mr. WOLF [continuing]. Than that. Has your office studied how the NSF measures the downstream outcomes from federal grants and tech transfers? What is the economic impact of National Science Foundation investments?

Ms. LERNER. Not in the period that I have been there. But we have been having conversations just in the past month or so figuring about how my office can get a handle on measuring how NSF measures performance and outcomes because we think it is critical that someone be looking critically at what processes and what infrastructure is in place. So we will be expending more time and effort in that area in the coming months.

NSF'S MANAGEMENT OF STIMULUS FUNDING

Mr. WOLF. Two years after the enactment of the stimulus bill, less than a third of NSF stimulus funding has been spent. This is the lowest stimulus expenditure rate across the entire government.

Ms. LERNER. Right.

Mr. WOLF. What does the extremely low outlay rate tell you about the stimulating impact of these funds?

Ms. LERNER. From NSF's view of the money it received from the Recovery Act is that, yes, what they do will have a certain stimulative effect to the extent that you have additional people. You are able to bring on additional investigators or folks to do the scientific research that is being funded. But their focus has been as much on the reinvestment, the second area that will come from the work that they are performing.

They have also structured their awards, I think they ranged from two to five years, so that is part of the reason you see the obligations, the rate being as low as it is.

Mr. WOLF. But the outlays of the stimulus funds have been even lower than NSF's own projections.

Ms. LERNER. And I do not know the precise reasons for why it is lower than their own projections. I know they do monitor the issue very carefully. But there are a variety of different lengths of projects and the scientific projects.

In some instances, you have some that are cost heavy at the beginning, others where costs are more spread out evenly over time, and some where the majority of expenses come later in the project. So I can only presume that that is playing out in the slow pace of the obligation rate.

Mr. WOLF. Most of the NSF funds were used for research grants. So some of the outlay problems may be due to inactivity on the part of the grantee.

What is NSF doing to identify inactive grantees and recover these awards?

Ms. LERNER. They are monitoring those pretty carefully. They have a 99 percent plus reporting rate from the entities who are required to report on a quarterly basis. So they are getting the quarterly reports, and I presume they are looking at the quarterly reports.

We have asked that where there were areas, we were very concerned with situations where you had awards that had been made, and it had been a year and no costs had been incurred. And so we have tried to stay on top of the agency and ensure that they were monitoring those awards.

And due to their own interest and the pressure that we were putting on them, they have reached out to the recipients where they have not had any expenditures at all to determine if there is a rational reason for it.

Mr. WOLF. Has any of it been reclaimed?

Ms. LERNER. Any reclaimed, I do not believe that any has at this point.

Mr. WOLF. Because there are so many others who are waiting for an NSF grant.

Ms. LERNER. Right.

Mr. WOLF. The number of people who apply is much higher than the number of people that receive.

Ms. LERNER. Yes. Right.

Mr. WOLF. So if someone has applied and got a grant but has not acted on it—

Ms. LERNER. Right. NSF is obviously more on top of the precise details of this than I am, but my understanding is when they did look at the situations where there had been that 12-month window without—the burn rate was not what it should be, that there were appropriate explanations for it in the instances where they followed up.

So I do not believe that any amounts were reclaimed. That certainly would have made sense and—

Mr. WOLF. Wouldn't it make sense to reclaim something to demonstrate to people that if they are going to get a grant and they have this great idea to save America—

Ms. LERNER. Absolutely.

Mr. WOLF [continuing]. And do something for math and science, they ought to move on it rather than getting a grant and then laying back? I would urge you to ask them to reclaim a couple to stimulate the others to move ahead. If you had a stimulating bill, you want to stimulate.

Ms. LERNER. And we did push them to do that when they were looking at this issue. And the feedback that we got was that there were appropriate reasons for—

Mr. WOLF. For every one, every single one?

Ms. LERNER. There were only a small number of these is my understanding and that there were—

Mr. WOLF. How many were there?

Ms. LERNER. There were, I think, fewer than 20.

Mr. WOLF. Could you give us a list of the 20?

National Science Foundation
4201 Wilson Boulevard
Arlington, Virginia 22230



OFFICE OF BUDGET, FINANCE & AWARD MANAGEMENT

MEMORANDUM

DATE: February 24, 2011

TO: Allison Lerner
NSF Inspector General

FROM: Martha A. Rubenstein *Marty*
Director, Office of Budget, Finance and Award Management and
Chief Financial Officer

SUBJECT: National Science Foundation: ARRA Expenditure Monitoring

Attached please find information relating to the National Science Foundation's (NSF) expenditure rate monitoring of American Recovery and Reinvestment Act of 2009 (ARRA) awards requested during your recent hearing before the House Appropriations Committee.

NSF understands that the key purposes of ARRA are to spur economic activity and invest in long-term growth. NSF's long term investment strategies in scientific and technological innovation specifically implement sections 3 and 4 of the statute, and are strongly supportive of the "reinvestment" aspect of ARRA.

NSF also understands that in order to positively impact the nation's economy it is vital for recipients of ARRA awards to commence work on projects expeditiously, thereby incurring allowable expenditures within a reasonable timeframe. In furtherance of this goal, the agency included a term and condition in every NSF ARRA award informing recipients that "NSF will monitor ARRA funds, and, if, after 12 months, no allowable expenditures have been incurred, NSF may consider reducing or terminating the award and reallocating the funds."

Each month, NSF staff from the Office of Budget, Finance and Award Management (BFA) generates a list of ARRA recipients with no expenditures reported on their Federal Financial Reports (FFR) 12 months after their award date. NSF/BFA staff conducts courtesy outreach, including phone calls and emails, to these recipients to determine if NSF records are in error, or if the recipient has a valid justification for not having expended funds. NSF program staff is encouraged to assist with these outreach efforts. It is important to note that in most cases, this outreach begins up to three months prior to the one year anniversary date of the award.

Once the courtesy outreach is underway and NSF/BFA staff confirms the list of recipients with zero expenditures for follow-up, NSF sends these recipients an official notification requiring them to reply within 10 days with a justification for having zero expenditures, a date of anticipated expenditures or

information demonstrating that NSF records may be in error. NSF business and program staff work collaboratively to evaluate the recipient justifications that the agency receives.

NSF issued more than 5,100 ARRA awards. Only 16 of those awards (or 0.3% of the total number of ARRA awards) have zero expenditures at 12 months according to our current records. As requested, we are attaching a list of those few awards to this memorandum for your reference. It is important to remember that unlike other kinds of ARRA awards, NSF ARRA awards are generally three to five year grants that must follow the pattern of academic research projects. This is part of the reason that our ARRA outlays are slower than one might expect.

Of the 16 awards with zero expenditures, NSF is in the process of determining the justification for two of them. For the remaining awards, however, the agency has found the reason given for having zero expenditures to be valid. Examples of such valid reasons include scientific delays relating to ordering, construction, installation or purchase of a unique piece of highly specialized equipment; accounting delays when a purchase is made in the early part of a fiscal quarter and takes more than three months to appear in NSF's financial system; and delays resulting from September awards that issue too late in the year for academic institutions to use to fund summer and fall salaries and activities, which causes expenditures not to start until the beginning of the following summer. Another valid reason we have found for zero expenditures occurs when the agency funds a multi-institutional collaborative research project, and work begins for the *overall* project, but project and budgetary plans do not call for one of the institutions in the collaborative to do their portion and make expenditures until the later years of the project. The attached list includes a summary of the justification in each case, as well as the status of NSF's monitoring efforts by award.

In the rare case that a recipient fails to reply to NSF within the appropriate timeframe with an adequate justification, NSF will move, within the discretion of the agency, to consider reducing or terminating the relevant award as is set forth in the ARRA term and condition cited above. To date, we have one instance where we have moved for potential termination of an award. In this case, however, termination is unlikely because our investigation uncovered a serious accounting error on the university's part, and in fact, the recipient had spent its ARRA funds prior to the anniversary date of its award and was never actually in noncompliance.

NSF has worked very hard to ensure that the trust provided by Congress, the President, and the U.S. taxpayers is well placed. We take our responsibilities under the ARRA seriously, and I hope that the above provides you a sense of the methodical, proactive, and professional steps we have taken to ensure that ARRA recipients are meeting their requirements. If I can be of further assistance to you regarding this matter, please do not hesitate to contact me.

Attachment

cc: Dedric A. Carter, Senior Advisor/OD
Anthony J. Gibson, Acting Division Director, Congressional Affairs/OLPA
Kenneth D. Chason, Counsel to the Inspector General/OIG

National Science Foundation							
ARRA Awards: 12 Months/Zero Expenditures as of February 18th, 2011							
Institution	Award	Title	Effective	Expires	Amount	Monitoring Status	Justification
1	Brown University 0923281	MRI: Acquisition of a Multi-Collector Inductively-Coupled Mass Spectrometer	01-Sep-09	31-Aug-11	\$677,890	Recipient Represents Expenditures Made in February 2011	Legitimate scientific/technical complications have delayed expenditures now expected to appear on the FFR* due no later than 04/30/2011.
2	CUNY Hunter College 0959517	MRI-R2: Acquisition of a 500 MHz Multinuclear NMR for Investigation of Metal-Containing Systems at Hunter College	15-Jan-10	31-Dec-12	\$390,000	Recipient Represents Expenditures Made in February 2011	Legitimate scientific/technical complications have delayed expenditures now expected to appear on the FFR due no later than 04/30/2011.
3	Emory University 0958205	MRI-R2: Acquisition of Computer Systems for Scientific Computation	15-Jan-10	31-Dec-12	\$258,770	Recipient Represents Expenditures Made in February 2011	Legitimate scientific/technical complications have delayed expenditures now expected to appear on the FFR due no later than 04/30/2011.
4	Georgetown University 0959546	MRI-R2: Acquisition of an X-ray Powder Diffractometer	01-Jan-10	31-Dec-12	\$197,547	12-month Notification Sent on 02/18/2011	NSF waiting for recipient response. Recipient has 10 calendar days from the date of the notification to justify the lack of expenditures to date.
5	New York University 0958457	MRI-R2: Acquisition of a MALDI-TOF Mass Spectrometer	01-Jan-10	31-Dec-12	\$295,919	Recipient Made Expenditures in August and November 2010	Recipient made a reporting error; confirmed by NSF staff. Award has been fully expended, and expenses have been logged in NSF's financial system.
6	North Carolina Ag. & Tech. University 0959406	MRI-R2: Acquisition of Smart X25 Automated Bench Top Single Crystal X-ray Diffractometer.	01-Jan-10	31-Dec-12	\$231,000	Recipient Represents Expenditures Made in January 2011	Legitimate scientific/technical complications have delayed expenditures now expected to appear on the FFR due no later than 04/30/2011.
7	Southern Illinois University at Edwardsville 0960177	MRI-R2: Acquisition of Raman and Infrared Microscopes for Interdisciplinary Research	15-Feb-10	31-Jan-12	\$572,417	Expenditures Expected on Next FFR	Legitimate scientific/technical complications have delayed expenditures now expected to appear on the FFR due no later than 04/30/2011.
8	Tulane University 0959393	MRI-R2: Acquisition of a High Resolution Field Emission Transmission Electron Microscope for Research in Self-Assembled, Synthetic and Biomolecular Materials	01-Feb-10	31-Jan-12	\$1,300,000	Expenditures Expected on Next FFR	Legitimate scientific/technical complications have delayed expenditures now expected to appear on the FFR due no later than 04/30/2011.

9	University of California-Berkeley	0902739	Collaborative Research: A Southern Hemisphere Perspective on Holocene Climate Variability Based on Mountain Glacial Chronologies	01-Sep-09	31-Aug-12	\$75,980	Recipient Represents Expenditures Made in June 2010 and January 2011	Recipient made accounting and reporting errors that led to a failure to record expenditures incurred. Correction expected to appear on the FFR due no later than 04/30/2011.
10	University of California-Davis	0919529	Collaborative Research: Phylogeny, Diversification, and Evolutionary Trajectories in the "Terrestrial" (Anacardiaceae and Burseraceae)	01-Aug-09	31-Jul-12	\$57,723	NSF Review of Project Budget	This is part of a multi-institutional collaborative research project for which the recipient's individual part of the project plan does not yet call for contribution.
11	University of California-Davis	0842181	A Comparative Approach to Dating the Diversification of Hawaiian Diptera	01-Aug-09	31-Jul-13	\$48,066	NSF Review of Project Budget	This is part of a multi-institutional collaborative research project for which the awarded's individual project plan does not yet call for contribution.
12	University of Maryland College Park	0922985	MRI: Acquisition of a 3-Tesla Magnetic Resonance Imaging (MRI)	01-Sep-09	31-Aug-11	\$1,936,855	Recipient Represents Expenditures Will Be Made in May 2011	The building that will house the equipment to be purchased under this award is nearing completion. Expenditures are now expected to appear on the FFR due no later than 07/31/2011.
13	University of Michigan Ann Arbor	0918388	COLLABORATIVE RESEARCH: Can microbial symbiosis mediate effects of climate change on the functioning of an ecosystem engineer?	01-Sep-09	31-Aug-12	\$63,379	Expenditures Expected on Next FFR	Legitimate scientific/technical complications have delayed expenditures now expected to appear on the FFR due no later than 04/30/2011.
14	University of Missouri-Columbia	0958574	MRI-R2: Acquisition of High-Voltage Transmission Electron Microscope	01-Feb-10	31-Jan-12	\$1,255,008	Expenditures Expected on Next FFR	Legitimate scientific/technical complications have delayed expenditures now expected to appear on the FFR due no later than 04/30/2011.
15	University of Missouri-Saint Louis	0959360	MRI-R2: Acquisition of a 600 MHz NMR Spectrometer	01-Jan-10	31-Dec-12	\$614,500	12-month Notification Sent on 02/23/2011	NSF waiting for recipient response. Recipient has 10 calendar days from the date of the notification to justify the lack of expenditures to date.
16	University of Southern California	0855274	IF-NEW: A Dedicated Computing Platform for Large Spatiotemporal-scale Atomic Simulations of DNA Translocation and Self-Assembly	01-Sep-09	31-Aug-11	\$450,000	Recipient Represents Expenditures Made in January 2011	Legitimate scientific/technical complications have delayed expenditures now expected to appear on the FFR due no later than 04/30/2011.

Monitoring Status Key	
Recipient Represents Expenditures Made In...	The NSF award recipient has represented to the agency in response to NSF outreach or formal notification that expenditures have been made, and that they will be reflected on the next FFR, which is due no later than 04/30/2011.
12-month Notification Sent on...	NSF has sent an official notification to the NSF award recipient requiring within 10 days a justification for having zero expenditures at 12 months. NSF is currently awaiting a formal response within the established 10 day window.
Recipient Made Expenditures on...	The NSF award recipient clearly demonstrated that a reporting error caused the award to show zero expenditures. That error has since been corrected, and NSF financial records currently indicate expenditures in accordance with the ARRA funded award's terms and conditions.
Expenditures Expected on Next FFR	The NSF award recipient represented to the agency in past correspondence resulting from NSF outreach or formal notification that expenditures were expected to be made before and reflected on the next FFR, which is due no later than 04/30/2011.
NSF Review of Project Budget	An NSF grants official has, in cooperation with the cognizant Program Officer, reviewed the award's original budget to ensure that the timeframe for expenditures is in accordance with the overall project timeline of a multiple institution collaborative award.
Recipient Represents Expenditures Will Be Made...	The NSF award recipient has represented to the agency in response to NSF outreach or formal notification that expenditures will be made at a future date and be reflected on the FFR that is due no later than 07/31/2011.

* Federal Financial Report (FFR) - mechanism through which awardees report expenditures against NSF funded awards.

Ms. LERNER. Sure. I will give you a list of however many it was. My recollection is it was fewer than 20, but, yes, we will give you a list of that.

Mr. WOLF. Okay. Thank you.

Mr. Fattah.

Mr. FATTAH. Thank you very much. Thank you, Mr. Chairman.

NSF POLICY ON REFRESHMENTS FOR MERIT REVIEW PANELISTS

I guess on the front end of this, some could suggest that there is no federal law here or no constitutional mandate for us to be involved in basic research?

I agree with you in your testimony, your written testimony, that this is a critically important area for the Federal Government, and it is one of the things that I am most proud of in terms of investments that we make as a country.

The National Science Foundation is the premier entity in the world, and obviously the work that your office is doing to improve its efficiency is important.

In defense of the coffee and doughnuts, I want to say that there are probably some areas where you could cut, but I am not sure that we should be inviting the most knowledgeable scientists in the world to sit around and talk about finding a cure for cancer and not offer coffee or some need.

I think we need to not be foolish about our efforts here. This is a very important entity, and part of what you do is the collaboration of scientists. There are no earmarks here. This is all—

Ms. LERNER. Right.

Mr. FATTAH [continuing]. Rigorously reviewed, peer reviewed research that in so many ways has helped move our country forward. So I just think that the totality of the budget at the National Science Foundation is less than we would spend in half a month or that we are spending in half a month in Afghanistan.

Ms. LERNER. Uh-huh.

Mr. FATTAH. So we ought to be careful as we go forward. And I want to get into some of the real work that I think that you have been involved that has saved money, the recompetes and the major construction efforts in Antarctica, and if you could also comment on the decision not to go forward in South Dakota in terms of the investment there.

But I would just say that I hope that in the future, we can always afford to take the best minds in the world, put them over at the National Science Foundation for a day-long or two-day meeting, and I think it is quite appropriate that there be coffee and orange juice and whatever else they need so that we can get the best of their thinking.

Ms. LERNER. Great.

Mr. FATTAH. But please respond.

Ms. LERNER. Sure. And, as you know, on the issue of refreshments, I think that is a management decision. The situation that we found was just a wide variety in amount spent per person across the agency. So there are some areas where you could still provide refreshments, but save a decent amount of money there.

Beyond that, the—

Mr. FATTAH. The recompetes and—

Ms. LERNER. The recompetete——
Mr. FATTAH. Right.

RECOMPETITION OF THE ANTARCTIC SUPPORT CONTRACT

Ms. LERNER. The recompetete is an issue that we have been monitoring very carefully. It is a delicate thing for an IG to do when there is an open procurement. But we have been very concerned.

NSF is not an agency that ordinarily has a lot of very large contracts. We are a big grant making agency. But every ten years or so, we have this enormous contract that has to be competed and has to be competed well. And we have been dealing with the flaws in the process of the last competition for the past 12 years. And so what we were hoping is that they would get it right this time.

And I am sure you are aware that there has been one extension that they have had to grant to the current contract because they simply did not get their act together sufficiently in order to make the award at the time when they needed to so that the new contract could take place and where a second extension has now been necessary.

NSF has really finally recognized that senior management has to pay attention to this process and make sure that it works or it is going to slip again. And they have a group of senior managers that meets I believe on a biweekly basis to stay on top of the process.

They have a plan with dates. They had a plan the first time around, but there were no dates associated with it after they missed the first year, after they missed the first effort to get the contract in place.

So they have a plan with dates. It is a plan that can work so that there will not need to be a third extension, but there is very little room for error in that plan because of the challenge that you have, the window of opportunity you have to do the transition. There is six months when nobody can get down to the pole. So there is a limited window when you can do a transition for a contractor.

If there is any slippage in the current schedule there is a chance that it would have to be extended once again. So we are monitoring their progress. I know NSF management is monitoring their progress. There are some issues that are not within their concern.

I am very happy to see that pursuant to our advice they are getting pre-award audits done of the proposals that are in the competitive range which should hopefully help eliminate some of the problems that plagued the past contract. But getting those pre-award audits is going to take some time.

They have budgeted a certain amount of time there based on conversations with DCAA about how much time they think they will need to do the work. But, I can tell you, you can think you know how much time it is going to take to get in to do an audit. But, until you get in there and start looking at the books, you really do not know what you are going to find.

So if it turns out that DCAA needs more time to do those very important audits, then the schedule may not be able to hold. So we are monitoring on that and we are hopeful that if everything works and the planets align that they can have a new contractor in place and avoid a third extension. But, I do not know if that will pan out.

Mr. FATTAH. Thank you, Mr. Chairman.

Mr. WOLF. Mr. Culberson.

Mr. CULBERSON. Thank you, Mr. Chairman.

And thank you so much for the work that you do. The inspectors general are really vital to help us do our job better and to help us be good stewards of the taxpayers' dollars.

I am devoted as the chairman is and other members of this committee to the National Science Foundation and to ensure that they are given as much support as we can possibly give them in this environment that is difficult, but we are all going to work hard to make sure that NSF is protected and want to be sure the money we are sending them is well spent.

NSF'S GRANT FUNDING ELIGIBILITY REQUIREMENTS

I wanted to ask about two areas, if I could. Could you talk about the level of funding we have been giving NSF and in your opinion from what you have seen and analyzed and the number of grant requests they receive what percentage of the requests that they receive are they actually able to fund? Do you know?

Ms. LERNER. Yes. It is about a 25 percent success rate.

Mr. CULBERSON. Twenty-five percent of the—

Ms. LERNER. This year.

Mr. CULBERSON. Twenty-five percent of the eligible grant requests that they receive, they are able to fund. And I assume that there are criteria. You cannot even apply for a grant unless you meet certain criteria. You are—

Ms. LERNER. It would depend on the program. There are many different programs, but there are two main criteria that NSF looks for, broad impact and intellectual merit. But beyond that, I am sure that individual programs may have specific criteria as well.

Mr. CULBERSON. Oh, excuse me. What I was talking about is the eligibility of the applicant to even receive the grant because one of the things I know that you are concerned about and mentioned in your report is the ability of NSF to ensure that the money is being well-spent.

Ms. LERNER. Right.

Mr. CULBERSON. That the recipient is actually doing what they said they were going to do—

Ms. LERNER. Right.

Mr. CULBERSON. With the money—

Ms. LERNER. Yes.

Mr. CULBERSON [continuing]. Which is vital. And I think your report said that NSF is only looking at a very small fraction, seven percent, I think you said, of the—

Ms. LERNER. Through one particular program. Kind of the jewel in their crown of monitoring only is able to touch about seven percent.

Mr. CULBERSON. And the institute of this program in 2004, I think you said in your testimony—

Ms. LERNER. Yes.

Mr. CULBERSON [continuing]. That to try to track how the money is being used by the recipient.

Ms. LERNER. Yes.

Mr. CULBERSON. Is there an eligibility requirement, though, before you can even apply? I mean, are there certain—

Ms. LERNER. I do not know that there are—

VOICE. There are a couple. There is the new awardee guide and some reviews of the institutions, but the institution eligibility is different than the PI eligibility.

Ms. LERNER. Right. A lot of our awards are made to institutions and not individuals with the exception of certain programs, career programs or things like that, so—

Mr. CULBERSON. What I was driving at is just to ensure that they are not making awards to people that are not able to fulfill the request, certain minimum requirements to—like any other job—

Ms. LERNER. Right.

Mr. CULBERSON [continuing]. You have got to be a licensed law enforcement officer before you can apply to be a, you know, Texas state trooper, for example.

Ms. LERNER. Right. And NSF is required to check the excluded parties list which is the list of people that are excluded from receiving federal funds before they make any awards, so they have a process.

Mr. CULBERSON. Why are they excluded? What is excluded? For what reason will they be excluded?

Ms. LERNER. The excluded parties list is a listing of individuals who have been suspended or debarred from doing business with the government for any number of a wide variety of reasons. Sometimes just lack of present responsibility, sometimes because they have committed crimes or civil crimes.

Mr. CULBERSON. Those folks for sure?

Ms. LERNER. So they are supposed to accept that.

Mr. CULBERSON. But, I mean, there is a standard. You know, you come in—

Ms. LERNER. Yes.

Mr. CULBERSON [continuing]. To apply for a job at a, like I say, use Texas, you know, if you are going to be a state trooper, you got to meet certain criteria. What are the minimum criteria of eligibility to even apply and receive a grant from the NSF? Are they in your opinion satisfactory?

I know, for example, you award a grant to any of the major universities of any of our districts—

Ms. LERNER. Yes.

Mr. CULBERSON [continuing]. It is going to be handled competently—

Ms. LERNER. Right.

Mr. CULBERSON [continuing]. Professionally—

Ms. LERNER. Right.

Mr. CULBERSON [continuing]. In a way that we would all be proud of.

Ms. LERNER. Right.

Mr. CULBERSON. What is NSF doing to make sure that there is nobody even coming to the door asking for money that is not capable of doing the work?

Ms. LERNER. I think that is certainly something that is examined in the merit process when the panels look at the proposals. They will look at the people who are the proposed collaborators. I do not know if there is the—

Mr. CULBERSON. I do not know if they have a minimum set of criteria of eligibility.

VOICE. It depends on the program. Some programs, if you are talking the PI, the person, there are some programs that do have criteria for those people.

Mr. CULBERSON. Uh-huh.

VOICE. You are talking institutions. There are criteria around their financial systems, but most of the requirements are placed back on the institution—

Ms. LERNER. Right.

VOICE [continuing]. To manage the awards.

Mr. CULBERSON. Okay.

Ms. LERNER. Yes. The burden is on the institution to—

Mr. CULBERSON. Okay.

Ms. LERNER [continuing]. To oversee this.

ICE BREAKING

Mr. CULBERSON. Let me also ask, and the chair has been very generous with the time, about the Ice Breaker Program.

Ms. LERNER. Yes.

Mr. CULBERSON. And that has been a concern of mine since I first got on this committee several years ago when Mr. Wolf was the chairman before. The Bush administration just issued an executive order that transferred responsibility for the Ice Breakers from the Coast Guard to the NSF which really alarmed me because, of course, they need to be replaced. It was a massive amount of money. They were in bad shape and needed to be replaced. And that just shifted that huge liability back on to the Coast Guard.

And I think Frank LoBiondo, Mr. Chairman—

Ms. LERNER. Yes.

Mr. CULBERSON [continuing]. Helped fix that. There was a Coast Guard reauthorization done, is that correct, about three or four years ago, right be—

Ms. LERNER. Right.

Mr. CULBERSON. Does that sound right, like about four or five maybe years ago?

Ms. LERNER. Yes. That sounds about right.

Mr. CULBERSON. And the reauthorization, because I remember pestering, Mr. LoBiondo was wonderful about that, the Coast Guard is responsible again for those Ice Breakers?

Ms. LERNER. That is my understanding, yes.

Mr. CULBERSON. Is there adequate money to get the Ice Breakers upgraded, repaired? Are they in good shape?

Ms. LERNER. I think there have been—

Mr. CULBERSON. Do our scientists have the ability to get to Antarctica? Are we leasing Ice Breakers? What is the status of that?

Ms. LERNER. My understanding at this point is that the two ships that the Federal Government has, the two Ice Breakers that they have, neither are capable of functioning. So we are relying on leases.

Mr. CULBERSON. Out of commission?

Ms. LERNER. They are both out of commission and in the process of getting refitted so that they can function again. There is talk of

procuring a new Ice Breaker. I gather that that is in motion right now. But currently we are relying on leased Ice Breakers.

Mr. CULBERSON. And that may be a good solution.

Ms. LERNER. Right.

Mr. CULBERSON. I mean, have you all looked at that? It is a huge expense. And have you looked at it?

Ms. LERNER. The Department of Homeland Security IG has done an audit of that process. I think they just completed that.

Mr. CULBERSON. That would be something worth looking at, Mr. Chairman.

Ms. LERNER. Yes. We can provide you with a copy of their report.



**The Coast Guard's Polar Icebreaker
Maintenance, Upgrade, and Acquisition
Program**



Office of Inspector General

U.S. Department of Homeland Security
Washington, DC 20528

JAN 19 2011



**Homeland
Security**

Preface

The Department of Homeland Security (DHS) Office of Inspector General (OIG) was established by the *Homeland Security Act of 2002* (Public Law 107-296) by amendment to the *Inspector General Act of 1978*. This is one of a series of audit, inspection, and special reports prepared as part of our oversight responsibilities to promote economy, efficiency, and effectiveness within the department.

This report addresses the strengths and weaknesses of the Coast Guard's Polar Icebreaker Maintenance, Upgrade, and Acquisition Program. It is based on interviews with employees and officials of relevant agencies and institutions, direct observations, and a review of applicable documents.

The recommendations herein have been developed to the best knowledge available to our office, and have been discussed in draft with those responsible for implementation. We trust this report will result in more effective, efficient, and economical operations. We express our appreciation to all of those who contributed to the preparation of this report.

A handwritten signature in cursive script that reads "Anne L. Richards".

Anne L. Richards

Assistant Inspector General for Audits

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Abbreviations

DHS	Department of Homeland Security
FY	Fiscal Year
NASA	National Aeronautics and Space Administration
NOAA	National Oceanic and Atmospheric Administration
NSF	National Science Foundation
OIG	Office of Inspector General
USCG	United States Coast Guard

OIG

*Department of Homeland Security
Office of Inspector General*

Executive Summary

According to 14 U.S.C. § 2, 6 U.S.C. § 468, *Homeland Security Presidential Directive 25*, *Presidential Decision Directive 26*, the U.S. Coast Guard is required to develop, establish, maintain, and operate the United States icebreaking fleet in the Polar Regions. We audited the Coast Guard's Polar Icebreaker Maintenance, Upgrade, and Acquisition Program to determine the Coast Guard's need for heavy-duty icebreakers to accomplish its missions in the Polar Regions.

The Coast Guard does not have the necessary budgetary control over its icebreakers, nor does it have a sufficient number of icebreakers to accomplish its missions in the Polar Regions. Currently, the Coast Guard has only one operational icebreaker, making it necessary for the United States to contract with foreign nations to perform scientific, logistical, and supply activities. Without the necessary budgetary control and a sufficient number of icebreaking assets, the Coast Guard will not have the capability to perform all of its missions, will lose critical icebreaking expertise, and may be beholden to foreign nations to perform its statutory missions. The Coast Guard should improve its strategic approach to ensure that it has the long-term icebreaker capabilities needed to support Coast Guard missions and other national interests in the Arctic and Antarctic regions.

The Coast Guard agreed with our five recommendations to improve the operation and management of its Ice Operations Program.

Background

In 1965, the U.S. Navy transferred control of all United States icebreaking ships to the Coast Guard. The original fleet included eight polar-class ships capable of performing icebreaking missions in the Polar Regions.

According to 14 U.S.C. § 2, 6 U.S.C. § 468, *Homeland Security Presidential Directive 25 "Arctic Region Policy," Presidential Decision Directive/NSC-26 "U.S. Antarctic Policy,"* and a Memorandum of Agreement with the U.S. Navy, the Coast Guard is charged with developing, establishing, maintaining, and operating the United States icebreaking fleet in the Polar Regions. Further, under 14 U.S.C. § 141, the Coast Guard provides icebreaking services to the National Science Foundation, which provides a platform for scientific research by keeping ice-laden waters open for navigation.

The Coast Guard commissioned two heavy-duty polar class icebreakers, the *Polar Star* in 1976 and the *Polar Sea* in 1978. The Coast Guard then decommissioned the rest of its aging fleet by the late 1980s, leaving only the *Polar Star* and *Polar Sea* capable of performing its polar icebreaking missions. Recognizing the need for scientific capabilities in the Arctic, the Coast Guard commissioned the *Healy* in 1999, bringing the number of polar-capable icebreakers to three. The *Healy* is a medium-duty icebreaker designed to conduct scientific research in the Arctic. Table 1 highlights the classification and capabilities for each type of icebreaker currently in the Coast Guard's fleet.

Table 1. Classifications of Icebreaking Ships

Types of Icebreakers	Heavy-Duty Icebreaker (<i>Polar Star</i> and <i>Polar Sea</i>)	Medium-Duty Icebreaker (<i>Healy</i>)
Icebreaking Capability	6 feet at 3 knots	4.5 at 3 knots
Ice-ramming Capability	21 feet thick	8 feet thick
Minimum Displacement	12,000 tons	8,000 tons
Operating Temperature	-60° Fahrenheit	-50° Fahrenheit
Year-Round Operating Capability	In all Arctic ice-covered waters	In moderate multiyear ice conditions

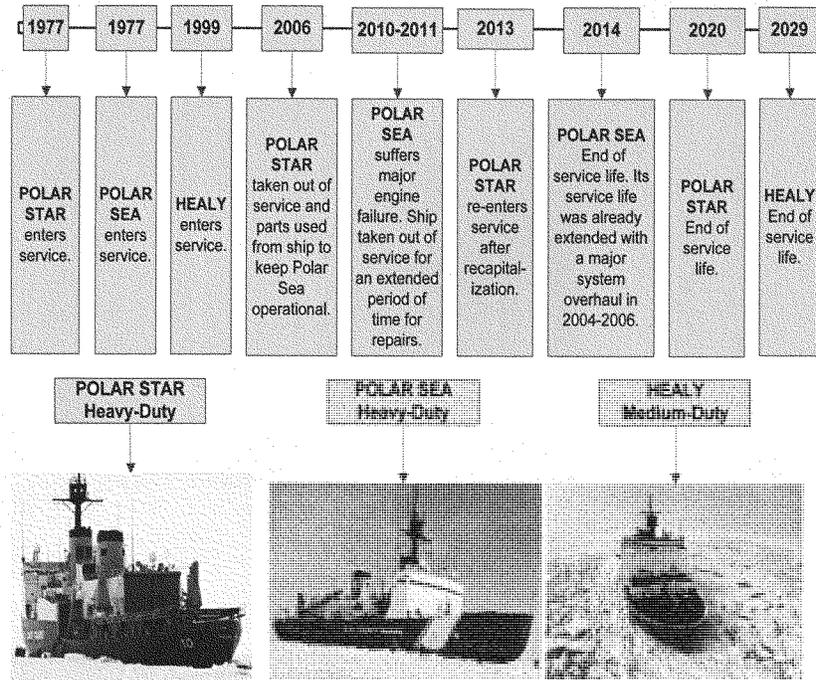
In 2006, the budgetary authority for the Coast Guard's icebreakers was transferred to the National Science Foundation (NSF) because it had been the primary user of the ships. However, the *Polar Star* was not kept operational, and in 2006 it was placed in an "in commission, special" status and is in the process of reactivation. Further, in May 2010, the *Polar Sea* suffered a critical engine failure and the Coast Guard immediately removed it from service. The ship is not expected to be operational until 2011. This leaves the *Healy* as the Coast Guard's sole operational icebreaker as of August 31, 2010.

In addition to the duties assigned under 14 U.S.C § 2, the Coast Guard has 11 statutory missions outlined in section 888 of the *Homeland Security Act of 2002* (codified at 6 U.S.C. § 468). These missions include both Homeland Security missions and non-Homeland Security missions, such as ice operations. The Coast Guard's icebreaking ships are managed by its Ice Operations Program. Ice Operations missions include facilitating the movement of commerce through ice-laden waters, conducting International Ice Patrol, assisting other government agencies with scientific activities, and supporting the performance of Coast Guard programs in waters constrained by ice.

Both 14 U.S.C. § 2 and 6 U.S.C. § 468 require the Coast Guard to perform multiple missions in the Polar Regions, including defense readiness; ice operations; search and rescue; marine environmental protection; and ports, waterways, and coastal security. The Coast Guard has traditionally had an extensive role in the Arctic and Antarctic, as it provides the principal U.S. presence in those regions.

Figure 1 provides a timeline of icebreaker service and depicts the icebreakers' current inability to meet Coast Guard missions.

Figure 1. Coast Guard Icebreaker Assets – Service Timeline



Source (Photos): U.S. Coast Guard

Arctic Region

The Coast Guard currently provides the *Healy* to the NSF for scientific research in the Arctic region. The Coast Guard uses icebreakers to support Arctic research, including biology, sea ice, marine geology, marine physics, cartography, oceanography, and atmospheric science. The Coast Guard also uses icebreakers to collect multibeam sonar and topography data to help resolve claims for offshore natural resources. Additionally, the Coast Guard is responsible for search and rescue missions while ensuring the nation has assured access to exercise its rights and responsibilities in its territorial waters and the Exclusive Economic Zone. It also must provide the Department of Defense assured access to ice-impacted international Arctic waters.

While the United States currently has only three icebreakers in its fleet, with the *Healy* as its sole operational icebreaker today, foreign nations with interests in the Polar Regions have more significant fleets, as indicated by table 2.

Table 2. Operational Foreign Icebreaker Fleets

Country of Origin	Icebreaking Fleet
Russia	18
Finland	9
Canada	6
Sweden	5

The United States is one of eight nations participating in the Arctic Council, a regional intergovernmental forum that addresses all aspects of sustainable development affecting Arctic nations. In 2005, the Arctic Council published *The Arctic Climate Impact Assessment*, which reported on the ongoing rapid and severe climate changes in the Arctic. It noted that reduced sea ice is very likely to increase marine transportation and improve access to resources. The Arctic Council and the National Oceanic and Atmospheric Administration (NOAA) have noted a sharp decline in sea ice cover. Estimates of Arctic Ocean sea ice thickness between 2004 and 2008 have shown an overall thinning. Computer models predict that within 30 years, the Arctic could be almost completely free of ice during the summer months.

The Coast Guard will face new operational challenges as conditions in the Arctic change. In the coming years, scientific data indicate that passageways will become more navigable for resource exploration, commercial shipping, tourism, science, and fishing. However, even as the sea ice retreats, significant ice-covered areas remain in the Polar Regions. As ships begin to traverse newly opened passageways, Coast Guard response will be required for hazards such as ships grounded by underwater icebergs or trapped by floating sea ice. Also, the Coast Guard will be required to respond in the event of oil spills or ship failures. Icebreakers will be the primary platform the Coast Guard uses to respond to these events.

Antarctic Region

The United States has an extensive role in the Antarctic, dating back to the *Antarctic Treaty of 1959*. The Coast Guard is required

by 14 U.S.C. § 2 to develop, establish, maintain, and operate icebreaking facilities to promote safety in U.S. waters and also in non-U.S. waters pursuant to international agreements. The United States maintains three NSF-operated year-round stations in the Antarctic: McMurdo Station, Palmer Station, and the Amundsen-Scott South Pole Station. This presence protects the United States' stance on Antarctic sovereignty, secures its role in the Treaty's decision-making system, and helps maintain the political and legal balance necessary for success of the treaty. In 1994, President Clinton issued a decision directive¹ on the Antarctic and presented four objectives for the United States: (1) protecting the unspoiled environment of Antarctica and its ecosystems, (2) conducting scientific research, (3) maintaining Antarctica as an area of international cooperation reserved exclusively for peaceful purposes, and (4) ensuring the conservation of the oceans surrounding Antarctica.

The principal role of the Coast Guard in the Antarctic has been to provide logistics support by breaking a channel into McMurdo Sound for the resupply of McMurdo Station by tanker and cargo ships. In addition to the resupply of McMurdo Station, the Coast Guard is required to design, procure, maintain, and deploy icebreaking ships to provide a platform for Antarctic research. Until recently, the NSF depended entirely on Coast Guard icebreakers to resupply McMurdo Station. However, since 2005, due to mechanical problems with the Coast Guard's heavy-duty icebreakers, the NSF has contracted with foreign-owned icebreakers to assist or conduct these missions.

Antarctic ice conditions can vary from year to year. In years with heavier ice, two heavy-duty icebreakers are needed to clear the channel into McMurdo Sound to allow ships to carry supplies to the science stations. In years with lighter ice conditions, one icebreaker is necessary to clear the channel, with one additional icebreaker on standby in the event it is needed.

Results of Audit

The Coast Guard does not have the necessary budgetary control over its icebreakers, nor does it have a sufficient number of icebreakers to accomplish its missions in the Polar Regions. The Coast Guard Ice Operations Program is facing

¹ Presidential Decision Directive/National Security Council-26 Memorandum, *United States Policy on the Arctic and Antarctic Regions*, dated June 9, 1994.

major challenges during a critical time in the Polar Regions. Currently, the Coast Guard has only one medium-duty operational icebreaker, making it necessary for the United States to contract with foreign nations to perform scientific, logistical, and supply activities. Without the necessary budgetary control and a sufficient number of icebreaking assets, the Coast Guard will not be able to perform all of its missions, will lose critical icebreaking expertise, and will be at the mercy of foreign nations to perform its statutory missions. The Coast Guard should improve its strategic approach to ensure that it has the long-term icebreaker capabilities needed to support Coast Guard missions and other U.S. interests in the Arctic and Antarctic regions.

The Coast Guard Needs Budgetary Authority Over Its Icebreakers

Currently, the Coast Guard does not have the necessary budgetary control of its icebreakers to accomplish its missions in the Polar Regions. In 2006, Congress approved an Administration request to shift funding for the Coast Guard's icebreakers to the NSF, since the icebreakers were used primarily by NSF to perform scientific operations. According to Congress, NSF was required to use those funds to reimburse the USCG for any icebreaking services provided under a Memorandum of Agreement (MOA) between the USCG and NSF. Congress continued to fund the icebreaking mission in this manner until fiscal year 2009, at which time it shifted partial funding to USCG for reactivation of the *Polar Star*.² Then, in fiscal year 2010, Congress transferred \$54 million from NSF to USCG to cover the year's anticipated operation and maintenance costs for icebreaking services.³ In the accompanying conference report, Congress noted that it expected USCG to request polar icebreaking funding for FY 2011 and directed USCG and NSF to update their MOA to reflect the change in budget authority. However, USCG did not request that funding transfer in its FY 2011 budget request as directed by Congress.

The transfer of funding to the NSF has spread management decisions related to the polar icebreakers across two agencies. The NSF is now effectively responsible for the Coast Guard icebreaking program's financial decisions that drive mission decisions. Under the MOA in effect since 2005, the Coast Guard must submit a yearly budget plan for approval by the NSF. Even though the MOA hinges such approval on mutual agreement between the parties, since 2006 (with the exception of 2010), the NSF has effectively determined how funding will be spent on maintenance, upgrades, and tasking of the USCG's icebreakers. Thus, the Coast Guard agreed to terms in the MOA that left it tasked with operating

² See FY 2009 appropriations laws and accompanying conference reports.

³ See FY 2010 appropriations laws and accompanying conference reports.

ships for which it has little budgetary or management control. In effect, the Coast Guard is unable to conduct its own icebreaking missions without first obtaining the NSF's approval.

Further, NSF's budgetary authority does not require NSF to conduct maintenance on the icebreaking ships. As a result, maintenance has been deferred, which has affected the ships' long-term operability. Because the NSF's primary use of icebreakers has been to conduct scientific research, it schedules the ships to fulfill that mission. The Coast Guard's missions go beyond science support. The Coast Guard should have the funding and authority to perform the full range of mission responsibilities within its icebreaking program.

An example of this problem is the underutilization of the *Polar Sea*. This heavy-duty icebreaker is available 185 days per year to conduct missions. The ship is scheduled for maintenance and repair the remaining 180 days. Over the past 3 years, the NSF has only used the *Polar Sea* an average of 101 of the available 185 days because this ship does not have the robust scientific research capabilities of other icebreakers, such as the *Healy* and Sweden's *Oden*. The Coast Guard has been unable to use the ship's remaining days to meet its mission requirements because it does not have budgetary control for the ship. For the remaining 84 days per year, this icebreaker sits in its Seattle port, fully staffed.

The use of the *Polar Sea* has diminished over the past 3 years. The Coast Guard has 141 crewmembers assigned to the *Polar Sea*, who stay with the ship even when it is in port. In 2007, crewmembers spent 142 days conducting ice operations missions. That number dropped drastically to 82 days in 2009. Without experience operating the ship in the Polar Regions, crewmembers' operational proficiency conducting ice operations continues to decline. The *Polar Sea* utilization is outlined in table 3.

Table 3. *Polar Sea* Service Chart

Fiscal Year	Number of Days Utilized
2007	142
2008	79
2009	82

The Coast Guard Is Unable to Accomplish Its Arctic Missions With Current Icebreakers

The Coast Guard is unable to accomplish its Arctic missions with the current icebreaker resources. The NSF uses the *Healy*, the Coast Guard's sole medium-duty icebreaker, to perform scientific research. NOAA and the National Aeronautics and Space Administration (NASA) also have scientific requirements necessitating the use of icebreaking ships, which the *Healy* is unable to accommodate due to the NSF demand. In addition, the Coast Guard has other mission requirements in the Arctic, including fisheries enforcement, and tribal outreach in Alaska that are largely going unfulfilled.

The Coast Guard's icebreaking resources are unlikely to meet future demands. Table 4 outlines the missions that Coast Guard is unable to meet in the Arctic with its current icebreaking resources.

Table 4. Arctic Missions Not Being Met

Requesting Agency	Missions Not Being Met
United States Coast Guard	<ul style="list-style-type: none"> • Fisheries enforcement in Bering Sea to prevent foreign fishing in U.S. waters and overfishing • Capability to conduct search and rescue in Beaufort Sea for cruise line and natural resource exploration ships • Future missions not anticipated to be met: <ul style="list-style-type: none"> – 2010 Arctic Winter Science Deployment
NASA	Winter access to the Arctic to conduct oceanography and study Arctic currents and how they relate to regional ice cover, climate, and biology
NOAA and NSF	Winter research
Department of Defense	Assured access to ice-impacted waters through a persistent icebreaker presence in the Arctic and Antarctic

Further, the Coast Guard has not followed its life cycle replacement plan, which requires replacement of icebreaking ships after 30 years in service. The Coast Guard has not requested replacement of its aging icebreaker fleet, but has performed major reliability maintenance. In 2004 through 2006, *Polar Sea* underwent a service life extension project, which added an additional 7-10 years of service life. The *Polar Star* is currently

undergoing a 30-month reactivation, which should also add an additional 7-10 years of service life.

Should the Coast Guard not obtain funding for new icebreakers or major service life extensions for its existing icebreakers with sufficient lead-time, the United States will have no heavy icebreaking capability beyond 2020 and no polar icebreaking capability of any kind by 2029. Without the continued use of icebreakers, the United States will lose its ability to maintain a presence in the Polar Regions, the Coast Guard's expertise to perform ice operations will continue to diminish, and missions will continue to go unmet.

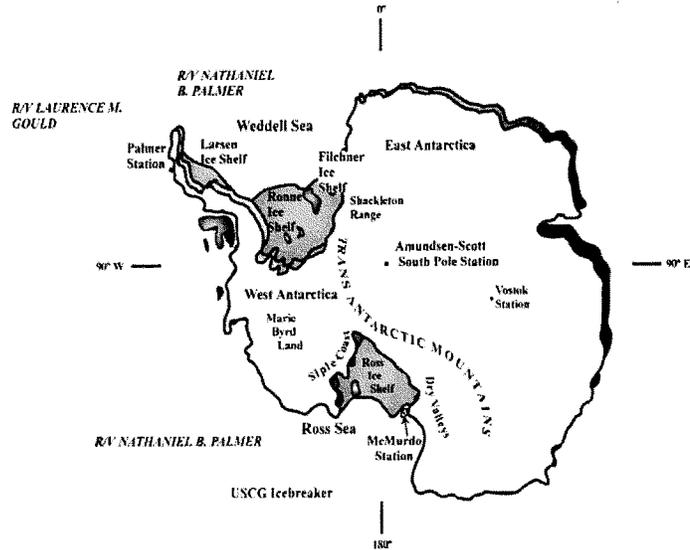
The Coast Guard Is Unable to Accomplish Its Antarctic Missions With Current Icebreakers

The Coast Guard needs additional icebreakers to accomplish its missions in the Antarctic. The Coast Guard has performed the McMurdo Station resupply in Antarctica for decades, but with increasing difficulty in recent years. The Coast Guard's two heavy-duty icebreakers are at the end of their service lives, and have become less reliable and increasingly costly to keep in service.

In recent years, the Coast Guard has found that ice conditions in the Antarctic have become more challenging for the resupply of McMurdo Station. The extreme ice conditions have necessitated the use of foreign vessels to perform the McMurdo break-in. In 2005, the Coast Guard recommended the use of a second ship to assist the *Polar Star* in completing the resupply mission due to the extreme ice conditions. The *Polar Sea* was undergoing repairs and no other U.S. icebreakers were available. It was necessary to lease the Russian icebreaker *Krasin* to assist the *Polar Star* in the resupply mission. In 2006, ice conditions lessened and only one ship, the Swedish icebreaker *Oden*, was needed to complete the resupply, with the *Polar Sea* in standby status. Heavy ice conditions occurred again in 2007, and the *Polar Star* was in caretaker status and unavailable. The *Oden* was hired to assist the *Polar Sea* in completing the resupply mission. In 2008 and 2009, the *Oden* performed the resupply mission with the *Polar Sea* on standby.

Figure 2 identifies the location of McMurdo, Amundsen-Scott South Pole, and Palmer stations, and shows the operating areas of research ships and Coast Guard icebreakers.

Figure 2. U.S. Research Stations in Antarctica



Source: National Science Foundation

As ice conditions continue to change around the Antarctic, two icebreakers are needed for the McMurdo break-in and resupply mission. Typically, one icebreaker performs the break-in and the other remains on standby. Should the first ship become stuck in the ice or should the ice be too thick for one icebreaker to complete the mission, the Coast Guard deploys the ship on standby. Since the *Polar Sea* and *Polar Star* are not currently in service, the Coast Guard has no icebreakers capable of performing this mission. Table 5 outlines the missions that will not be met without operational heavy-duty icebreakers.

Table 5. Antarctic Missions Not Being Met

Requesting Agency	Missions Not Being Met
NSF	Missions not anticipated to be met: – 2010–2011 Operation Deep Freeze – McMurdo Station Resupply
Department of State	Additional inspections of foreign facilities in Antarctica to enforce the Antarctic Treaty and ensure facilities’ environmental compliance

Conclusion

With an aging fleet of three icebreakers, one operational and two beyond their intended 30-year service life, the Coast Guard is at a critical crossroads in its Polar Icebreaker Maintenance, Upgrade, and Acquisition Program. It must clarify its mission requirements, and if the current mission requirements remain, the Coast Guard must determine the best method for meeting these requirements in the short and long term.

Recommendations

We recommend that the Assistant Commandant for Marine Safety, Security, and Stewardship:

Recommendation #1: Request budgetary authority for the operation, maintenance, and upgrade of its icebreakers.

Recommendation #2: In coordination with the Department of Homeland Security, request clarification from Congress to determine whether Arctic missions should be performed by Coast Guard assets or contracted vessels.

Recommendation #3: In coordination with the Department of Homeland Security, request clarification from Congress to determine whether Antarctic missions should be performed by Coast Guard assets or contracted vessels.

Recommendation #4: Conduct the necessary analysis to determine whether the Coast Guard should replace or perform service-life extensions on its two existing heavy-duty icebreaking ships.

Recommendation #5: Request appropriations necessary to meet mission requirements in the Arctic and Antarctic.

Management Comments and OIG Analysis

We obtained written comments from the Coast Guard and the National Science Foundation. We have included a copy of the Coast Guard's comments in Appendix B. We also reviewed the Coast Guard's and NSF's technical comments and made changes where appropriate.

The NSF provided informal comments to the draft report, which outlined its responsibilities in the Polar Regions. While the NSF also plays a critical role in operations in the Polar Regions, our report focuses on the Coast Guard's role for providing icebreakers in both the Arctic and Antarctic regions. The NSF did not object to the report recommendations and welcomes the opportunity to continue discussions on how best to meet icebreaking needs in the U.S. Antarctic Program.

The Coast Guard concurred with all five of the recommendations and is initiating corrective actions. We consider the recommendations open and unresolved. The Coast Guard provided information on some of its ongoing projects that will address the program needs identified in the report. A summary of the Coast Guard's responses to the recommendations follow.

Management Comments to Recommendation 1:

Concur: The Coast Guard concurred with our recommendation to request budget authority for the Polar Icebreakers and will work with the Administration for the return of budget authority. The Coast Guard has already agreed to a new Memorandum of Understanding with NSF to take effect with the return of budget authority.

OIG Analysis

We consider this recommendation open and unresolved. This recommendation will remain unresolved until the Coast Guard provides an action plan to address the recommendation that includes responsible officials and the targeted completion date. This recommendation will remain open until the Coast Guard provides documentation of its budget request for the Polar Icebreakers' operation, maintenance, and upgrade.

Management Comments to Recommendation 2:

Concur: The Coast Guard concurred with our recommendation to request congressional clarification on Coast Guard's Arctic missions and will work with the Administration to clarify Arctic mission requirements.

OIG Analysis

We consider this recommendation open and unresolved. This recommendation will remain unresolved until the Coast Guard provides an action plan to address the recommendation that includes responsible officials and the targeted completion date. This recommendation will remain open until the Coast Guard provides documentation of its request for Congressional clarification on the Coast Guard's Arctic missions.

Management Comments to Recommendation 3:

Concur: The Coast Guard concurred with our recommendation to request congressional clarification on Coast Guard's Antarctic missions and will work with the Administration to clarify Antarctic mission requirements.

OIG Analysis

We consider this recommendation open and unresolved. This recommendation will remain unresolved until the Coast Guard provides an action plan to address the recommendation that includes responsible officials and the targeted completion date. This recommendation will remain open until the Coast Guard provides documentation of its request for Congressional clarification on the Coast Guard's Antarctic missions.

Management Comments to Recommendation 4:

Concur: The Coast Guard concurred with our recommendation to conduct the necessary analysis to determine whether the Coast Guard should replace or perform service-life extensions on its two existing heavy-duty icebreaking ships. Coast Guard has begun a business-case analysis. This analysis, scheduled for completion in early 2011, will evaluate the business case for replacing or performing service-life extensions on the Coast Guard's two heavy icebreakers.

OIG Analysis

We consider this recommendation open and unresolved. This recommendation will remain unresolved until the Coast Guard provides an action plan to address the recommendation that

includes responsible officials and the targeted completion date. This recommendation will remain open until the Coast Guard provides a copy of the completed business case analysis.

Management Comments to Recommendation 5:

Concur: The Coast Guard concurred with our recommendation to request the appropriations necessary to its meet mission requirements in the Arctic and Antarctic. The Coast Guard is currently analyzing long-term Arctic and Antarctic mission needs, which will be used to determine resource requirements. The Coast Guard will work with DHS and the Administration to request appropriations to meet these mission requirements, as appropriate.

OIG Analysis

We consider this recommendation open and unresolved. This recommendation will remain unresolved until the Coast Guard provides an action plan to address the recommendation that includes responsible officials and the targeted completion date. This recommendation will remain open until the Coast Guard provides a copy of the budget request sufficient to meet its Arctic and Antarctic mission requirements.

Appendix A
Purpose, Scope and Methodology

We performed an audit of the Coast Guard's Polar Icebreaker Maintenance, Upgrade, and Acquisition Program. The objective of our audit was to determine the Coast Guard's need for heavy-duty icebreakers to accomplish its missions in the Polar Regions.

We performed the audit at Coast Guard Headquarters in Washington, DC; Pacific Area Command in Alameda, California; District 17 in Juneau, Alaska; District 13 in Seattle, Washington; and the National Science Foundation in Ballston, Virginia. Our audit included analysis of the Coast Guard's current and future missions, other federal agency requirements necessitating the use of icebreakers, the Coast Guard's icebreaking assets, icebreaking assets of other nations, and the ice conditions in the Arctic and Antarctic.

We reviewed applicable federal laws and regulations, national policies, interagency Memorandums of Agreement, prior Government Accountability Office reports, Congressional Research Service reports, and congressional hearings. We interviewed officials at Coast Guard Headquarters and Area Command, NSF, NOAA, NASA, and the Department of State. We also interviewed icebreaking agencies from foreign nations, including Canada, Finland, and Sweden.

We analyzed program plans, budget data, after-action cruise reports, and maintenance records. We also obtained and analyzed a draft copy of the *High Latitude Study*, the most recent study being completed on the Coast Guard's Arctic and Antarctic missions. We reviewed and tested internal controls pertinent to our overall objective and used this information to plan the audit and determine the nature, timing, and extent of our review and analysis.

We conducted this audit between January and August 2010 under the authority of the *Inspector General Act of 1978*, as amended, and according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our audit findings and conclusions based on our audit objectives. The evidence obtained provides a reasonable basis for our audit findings and conclusions based on our audit objectives.

**Appendix B
Management Comments to the Draft Report**



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United States Coast Guard

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7501
DEC 08 2010

MEMORANDUM

From: *KAC*
K. A. TAYLOR, RDML
COMDT (CG-8)

Reply to: Audit Manager,
Attn of: Mark Kulwicki
(202) 372-3533

To: Anne L. Richards
Assistant Inspector General for Audits

Subj: COMMENTS ON DHS OIG DRAFT REPORT: "THE COAST GUARD'S POLAR
ICEBREAKER MAINTENANCE, UPGRADE AND ACQUISITION PROGRAM"

Ref: (a) DHS Inspector General Draft Report OIG-10-050-AUD-USCG of October, 2010

1. This memorandum summarizes the Coast Guard response to the subject report, per your request.
2. The Coast Guard has no objection to the five recommendations as noted below:
 - a. Recommendation #1: The Coast Guard will continue to work with the Administration for the return of budget authority. A Memorandum of Understanding between the Coast Guard and the National Science Foundation to take effect with return of budget authority has been approved by both agencies.
 - b. Recommendation #2: The Coast Guard will continue to work with the Administration to clarify Arctic mission requirements.
 - c. Recommendation #3: The Coast Guard will continue to work with the Administration to clarify Antarctic mission requirements.
 - d. Recommendation #4: The Coast Guard has begun a business-case analysis, as directed in the Coast Guard Authorization Act, P.L. 111-281 Sec. 307(f). This analysis, scheduled for completion in early 2011, will evaluate the business case for replacing or performing service-life extensions on the Coast Guard's two heavy icebreakers.
 - e. Recommendation #5: The Coast Guard is currently analyzing long term Arctic and Antarctic mission needs which will be leveraged to determine resource requirements. The Coast Guard will work with DHS and the Administration to request appropriations to meet these mission requirements as appropriate. As the first step toward providing required resources for Arctic/Antarctic mission requirements, the Coast Guard will continue to work with DHS and the Administration to transfer budget authority for polar icebreaking back to the Coast Guard consistent with Recommendation #1.

**Appendix B
Management Comments to the Draft Report**

Subj: COMMENTS ON DHS OIG DRAFT REPORT: "THE COAST GUARD'S POLAR ICEBREAKER MAINTENANCE, UPGRADE AND ACQUISITION PROGRAM" 7501
DEC 08 2010

3. The Coast Guard provides points for factual clarification in the enclosed comment matrix. The Coast Guard has no objection to public release of this report once factual clarification comments are incorporated.

4. If you have any questions, my point of contact is Mr. Mark Kulwicki at (202) 372-3533. Alternatively, my Chief of External Coordination, CDR Todd Offutt, can be reached at (202) 372-3535.

#

Enclosure: (1) USCG Comment Matrix

Copy: CG-5, CG-7, CG-55

Appendix C
Major Contributors to this Report

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Mary Davis-Williams, Auditor
Brian Smythe, Program Analyst
Brandon Landry, Program Analyst
Rebecca Mogg, Program Analyst
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Appendix D
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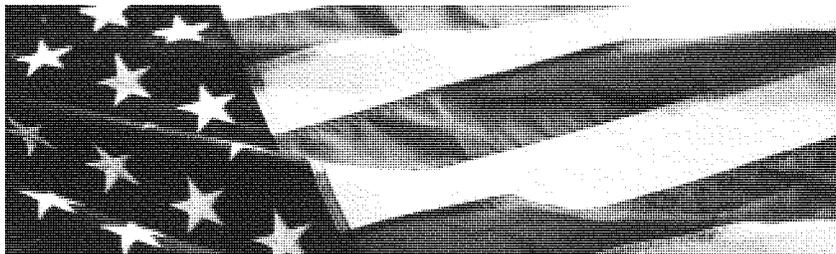
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Attention: Office of Investigations - Hotline,
245 Murray Drive, SW, Building 410,
Washington, DC 20528.

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Mr. CULBERSON. And it may indeed—
 Ms. LERNER. Yes.
 Mr. CULBERSON [continuing]. Be more cost effective to—
 Ms. LERNER. Yes.
 Mr. CULBERSON [continuing]. Lease them. I think other nations are using leased Ice Breakers.
 Ms. LERNER. Right.
 Mr. CULBERSON. But ours are completely out of commission. I did not know that.
 Ms. LERNER. That is my understanding.
 Mr. CULBERSON. Okay.
 Ms. LERNER. Yes.

ATTEMPTS TO IMPROVE THE EFFICIENCY OF THE MERIT REVIEW
 PROCESS

Mr. CULBERSON. Any areas I know the committee asked you about that you could identify—if they have already asked you, forgive me.

Ms. LERNER. Yes.

Mr. CULBERSON. I was hung up and could not get here. Areas that you find we could help make the money we are able to give to the NSF to reach those grant recipients and how can we save money at the NSF and ensure the money reaches the folks that need it—

Ms. LERNER. Right.

Mr. CULBERSON [continuing]. And not diminish our already diminishing abilities in science?

Ms. LERNER. Well, I think one thing that NSF is doing right now that is really exciting and that could lead to some savings and some efficiencies in their merit review process, they have an ongoing pilot of using Second Life as a way to conduct panels so that every panel does not have to be done at NSF.

You have I think about 19,000 scientists that come to NSF every year to do merit review panels at NSF. You know, that is a lot of people coming through. A lot of time and effort to get them here, a lot of time for them away from their work.

So NSF has a pilot right now where they are using Second Life to evaluate proposals. And they have done it, I gather, in about six instances and it seems to be working well. And I do not think that is a—

Mr. CULBERSON. Yeah. If I could—

Ms. LERNER [continuing]. Solution—

Mr. CULBERSON. Forgive me. I am sorry—

Ms. LERNER. Yeah.

Mr. CULBERSON [continuing]. For interrupting. And the chairman has been very generous and—

Ms. LERNER. Yes.

Mr. CULBERSON [continuing]. I am going to pass because he has been so kind with the time. We want to make sure everybody knows what Second Life is. That is basically a virtual reality world where you sit—

Ms. LERNER. A virtual reality world.

Mr. CULBERSON [continuing]. Playing Avatar and we are all sitting—

Ms. LERNER. You have an Avatar and they——

Mr. CULBERSON. Looking at each other.

Ms. LERNER [continuing]. Are doing merit review by Avatar, exactly.

Mr. CULBERSON. Time talking to each other.

Ms. LERNER. You can talk to each other——

Mr. CULBERSON. We can all look like——

Ms. LERNER [continuing]. So you get the camaraderie. You have the ability to talk and the feedback that is——

Mr. CULBERSON. Real time.

Ms. LERNER [continuing]. In place from some of the people participating is that you have that ability to interact. You lose that if you try and do panels by mail. You just lose that human connection which is an important part of the merit review process. But with this Avatar situation, you have that, but you do not have the time to go out to dinner in the evening or lunch.

So something is lost, but you gain people not having to travel. You may be able to attract some people who would not be able to take the time and effort to come to NSF and participate. So I think that that is a pilot program that they should really look at expanding and utilizing where appropriate across the foundation. I think it would be an efficient way.

Mr. CULBERSON. Get a real-time meeting like this, we can all be——

Ms. LERNER. Right.

Mr. CULBERSON [continuing]. 21 years old and in perfect physical condition.

Mr. FATTAH. Mr. Chairman, maybe we could have our hearings like that, you know.

Ms. LERNER. Well, and the beauty is it costs about \$3,600 a year to have the agreement with the entity that runs Second Life and the average panel costs about \$10,000. So you save. You know, you do one panel this way and you have paid for a whole year's worth of the ability to use this. So I think it is exciting and wonderful.

Mr. FATTAH. Let me ask a serious question about that. What about the security of the——

Ms. LERNER. That is something that I want to have a conversation with NSF about and make sure that all the procedures are in place.

Mr. FATTAH. Thank you.

Mr. WOLF. Have you found out that Second Life has been as successful as the panels coming in? Has anyone looked at that to see that the Second Life—is it teleconferencing? Is that pretty much what it is?

Ms. LERNER. It is teleconferencing and then some because you have these Avatars sitting talking.

Mr. WOLF. Right.

Mr. CULBERSON. Virtual world.

Ms. LERNER. Right.

Mr. WOLF. Do you then check to see that it has been as successful as it is when the panelists come in? Has anyone looked at the comparison?

Ms. LERNER. My understanding is that the groups that have done this, some have found it to be useful and the panels have

worked well. Some of the feedback that I have seen from the participants is very positive. Some missed the human touch.

Mr. WOLF. Sure.

Ms. LERNER. So I think that is why it is in pilot right now. And it is the sort of thing that has been tried in a focused area. It seems to me to make sense to expand it out, continue monitoring it. But the potential in that program is great for efficiencies and good ways to get the people who might not be able to commit to—

Mr. WOLF. Sure.

Ms. LERNER [continuing]. Flying to D.C., especially in crazy weather like we have had lately, and participating.

Mr. WOLF. It makes sense.

Mr. Aderholt.

Mr. ADERHOLT. I do not have anything.

Mr. WOLF. Mr. Austria.

TRENDS IN GRANT APPLICATIONS, EXTENSIONS AND AWARD RATES

Mr. AUSTRIA. Mr. Chairman, just I appreciate, as a new member, the Second Life is very interesting. I appreciate the things that you are doing in helping provide opportunities to research and science and engineering for our universities and colleges. Just a quick follow-up on the number of grants. You mentioned 25 percent.

Ms. LERNER. Yes.

Mr. AUSTRIA. How many of those are extensions and how many of those are new grants? And when you say 25 percent, is the number of requests increasing, decreasing? What is it made of because it seems like this is the way of the future?

Ms. LERNER. Right. Right. And can I get back to you with what the answer is for that? I do not have all of those facts committed to memory.

The OIG does not maintain its own information regarding the number of proposals, nor does it track trends. The most comprehensive source for the number of proposals submitted to NSF is the "Report to the National Science Board on the National Science Foundation's Merit Review Process, Fiscal Year 2009." The report is available at: <http://www.nsf.gov/publications/2010/nsb1027.pdf>. That report's executive summary (attached) provides an overview of awards made and some trends indicated in FY 09.

Report to the National Science Board
on the
National Science Foundation's
Merit Review Process
Fiscal Year 2009



May 2010

FY 2009 Report on the NSF Merit Review Process

I. Executive Summary

This report to the National Science Board (NSB) includes data and other information relative to the National Science Foundation (NSF or the Foundation) Merit Review Process for fiscal year 2009. NSF received a \$6.5 billion allocation through the FY 2009 Omnibus Bill and an additional \$3.0 billion allocation through the American Recovery and Reinvestment Act (ARRA). The report includes information indicating the impact of both these allocations.

In FY 2009, NSF received a total of 45,181 proposals. This is an increase of about 2% from the number of proposals received in FY 2008, and an increase of over 40% from the number of proposals received in FY 2001.

The Foundation made 9,975 awards with Omnibus funding and 4,620 awards with ARRA funding for a total of 14,595 awards. This resulted in a 32 percent funding rate in FY 2009, significantly exceeding the 25 percent funding rate in the previous year. However, as indicated by data in **Appendix 1**, the average funding rate varies by NSF directorate. Although not included in this report, there is an even greater variation of funding rate by program.

The funding rates for groups underrepresented in science and engineering and new principal investigators (PIs) were all greater in FY 2009 than in FY 2008. In particular, the funding rate in FY 2009 for female PIs was 34 percent, PIs from underrepresented race/ethnic groups was 30 percent, persons with disabilities was 32 percent and new PIs was 25 percent. These data are provided in Section IV.A.

The ARRA allocation also contributed to an increased annualized award amount in FY 2009. This data is provided in Section IV.E, with annualized award amounts in both current and constant dollars.

Proposals are externally reviewed by three methods: panel only, mail + panel, and mail only. In FY 2009, 57 percent were reviewed by panel only, 32 percent by mail + panel, and 7 percent by mail only. These percentages have remained fairly constant over the last several years. In addition, about 4 percent of proposals are not reviewed externally (these include, for example, proposals for travel, symposia, Early Concept Grants for Exploratory Research, and Grants for Rapid Response Research). This information is provided in Section V.C.

Because of space constraints, printed versions of this report include, in most cases, data for only eight years. However, one can access additional historical data through the electronic version of the report that is posted on the NSB website (<http://www.nsf.gov/nsb/>).

Mr. AUSTRIA. In general, I assume that the requests of grants are increasing; is it?

Ms. LERNER. Yes, I believe so. I mean, do we—

VOICE. The requests for grants are pretty stable.

Ms. LERNER. Right.

VOICE. The issue is how much can we fund them because of the money.

Ms. LERNER. Right. The number, if you heard my colleague, is pretty stable, but the issue is how many can be funded. And with more money, the success rate goes up or not.

NSF PORNOGRAPHY SCANDAL FOLLOWUP

Mr. AUSTRIA. Let me just touch on another area. You know, soon after you came into the position as inspector general, there was some significant things that happened as far as within NSF with employees, with taxpayer dollars, with the computers, with going to inappropriate sites, things like that.

Can you maybe just brief this committee or assure this committee that proper safeguard has been put in place to prevent that from happening in the future? And are you able to detail those safeguards that you put in place to assure that that does not happen again?

Ms. LERNER. Well, most of those incidents predated my arrival at NSF, but we were in the process of dealing with the agency and ensuring that it made the changes that were necessary to plug some of the holes that allowed situations like that to occur.

So it is the agency's problem to fix. And as the IG, I cannot fix the problems for them, but I can make sure that they do. I am there to oversee and make sure that they do the right things. So as a result of that, they have put in place e-mail filters, and let me pull my little note here, e-mails and internet filters so that we will not have situations where someone can sit for eight hours a day for multiple days a week and watch porn at their desk.

They have also beefed up their IT security training so that people are more aware of what they can and cannot do. They have circulated information out to NSF staff that they should report issues like that to my office so that if there are any further problems, we will become aware.

We have followed up fairly regularly with the IT security staff to make sure that they are doing what they said they were going to do to ensure that these problems will not happen again.

They have Blue Coat technology in place on most of their networks. They have a separate high speed network that is used by limited people for limited purposes that does not yet have Blue Coat technology, but we are working with them to make sure that they do what they can to ensure that that network will not be able to be used inappropriately.

But it is a situation where you fix one hole and another one appears. So I think that it requires constant vigilance on the part of NSF management and on my office to ensure that we do not fix one problem and then have another one.

Mr. AUSTRIA. And I appreciate your efforts to address that and put those safeguards in place. And I did not mean to imply at all that it was under your watch that all this occurred.

Thank you, Mr. Chairman.

Mr. WOLF. Mr. Fattah.

Mr. FATTAH. Well, this is a little bit toward the substantive area, which is not your involvement, but I do want to commend the agency. I have been paying some attention to the work related to neuroscience, both on the cognitive side and on the brain injury side. And given that our colleague, Congresswoman Giffords, was speaking in her own voice yesterday, I think that we should acknowledge the great science that really is going on as part of the efforts of the agency. I know you have a tough job because in all this good news, you are looking for the bad news. And that is what auditors do. That is what your job is.

But given the \$10 billion, both the annual and the stimulus dollars, and the thousands of awards, I think that it is pretty clear that this is a first-class operation. And obviously in any operation including our own here in the Congress, there are times when we have unpleasant circumstances that we have to deal with. So we appreciate the work you do in helping to make the National Science Foundation the premier entity in the world.

CYBER SECURITY

I am all for Second Life, Mr. Chairman, but I think that we should be concerned about security issues. This is taxpayer-paid research and, as you know, you were talking yesterday about cyber security issues. And, particularly, we have a great deal of espionage by economic competitors and others. I know that we are for intellectual curiosity, and we are for sharing information, and we want to be friends to the world, but we want to get the first benefit of our research here in the United States of America and not have it shared. So just in the chase for efficiency, we ought to be careful and make sure that we do things that actually protect the long-term public interest.

Ms. LERNER. Right.

Mr. FATTAH. Thank you.

Mr. WOLF. Well, I think Mr. Fattah makes a very good point. I would share that too. And it leads me to ask the question, have there been any cyber attacks against your computers?

Ms. LERNER. Yes, there have.

Mr. WOLF. By what countries?

Ms. LERNER. I do not know. We were not able to tell because the computers were wiped before our folks were able to look at them and—

Mr. WOLF. Who wiped the computers clean?

Ms. LERNER [continuing]. NSF IT staff and—

Mr. WOLF. Did they not tell you who did it?

Ms. LERNER. I do not know that they know. What we understand is that some NSF material—and there was an article about this in Nextgov—turned up on a server in the former Soviet Union. And so my office is very concerned about how that happened and how the computers came to be wiped before we were able to see if we could work with prosecutors and get to the bottom of what happened there. And we are going to be working with the agency to ensure that situations like that do not happen again and that the IT security processes are tightened up.

Mr. WOLF. When did this happen?

Ms. LERNER. Over Christmastime.

Mr. WOLF. We are going to ask the FBI to look at it, too, if we can. My computer was stripped by the Chinese, and there were 16 other Members of the House whose computers were stripped in addition to the International Relations Committee.

A number of government agencies went out of their way to urge me not to say who had done it, but they knew it was the Chinese.

I am sure NSF and NSA know who did it. And I think we should find out.

Have there been other attacks over the last several years?

Ms. LERNER. Not of that nature that I am aware of.

Mr. WOLF. You have checked to see how many cyber attacks—

Ms. LERNER. NSF is supposed to activate a CERT that includes participation by my office when a situation like that occurs. And they have not activated that cert.

My office has been increasingly concerned about the quality and the caliber of IT security within the foundation. And we are going to be expanding our efforts to evaluate the controls that are in place so that we can all be assured that adequate security, you know, that—

Mr. WOLF. Is there information given to NSF employees when they travel to China or Russia or Syria or whatever, not to take their BlackBerries or their telephones?

Ms. LERNER. I am not aware of that. I am not aware of that. I am not aware. I can—

Mr. WOLF. Shouldn't there be a policy? Has there been anyone from the NSF that has gone to China, Syria or Russia in the last year?

Ms. LERNER. I know there have been folks who have been to China. I do not know in the last year, but certainly in the past couple of years.

Mr. WOLF. But 30 seconds after you go through—

Ms. LERNER. Right.

Mr. WOLF [continuing]. The terminal, you are compromised.

Ms. LERNER. Right.

Mr. WOLF. Could you ask the Bureau to see how many other attacks have occurred, and could you tell us what the travel policy is? Maybe when the director comes up here, they could tell us what the policy is for—

Since 2007, NSF's Computer Incident Response Team (of which OIG is a member) was activated two times—once in 2007 and, most recently, in 2011.

NSF informed my office that it does not have specific information security policies for NSF employees traveling abroad, though it did note the following:

—All NSF staff are required to take annual IT security training.

—All mobile ICT equipment (laptops, Blackberries, etc.) issued by NSF to staff are encrypted and password protected.

—The Department of State must approve the travel of NSF staff travelling on official business to any country. OISE coordinates the "country clearance" process. When clearance is requested for travel to China, State provides warnings/guidelines related to use of mobile devices in China, and this is shared with each traveler.

—The NSF overseas offices (Beijing, Tokyo, Paris) operate under Embassy umbrella and are therefore subject to all Department of State requirements for USG officials in each country.

Ms. LERNER. Absolutely.

Mr. WOLF [continuing]. NSF employees who travel abroad—

Ms. LERNER. We will absolutely do that.

Mr. WOLF [continuing]. Because I think Mr. Fattah is very accurate.

Ms. LERNER. That is why our office was very concerned when we got word of this attack and then went to look into things and found that the machines had been wiped. So I think it is an area where we are going to be spending a lot of time.

Mr. WOLF. And NSA did that?

Ms. LERNER. Not NSA. NSF.

Mr. WOLF. But who wiped them? Your own people?

Ms. LERNER. Not my people. NSF IT staff is my understanding.

Mr. WOLF. Why did they do that?

Ms. LERNER. Because they believed it was standard operating procedure in a situation like that. So we have a lot of work to do in that area to ensure that they know how to handle an attack like this.

Mr. WOLF. Well, maybe what we will do is just ask the FBI and their cyber people to come over to the National Science Foundation, and I think you should be there. They can give everybody a briefing as to what is going on and then look to see that your computers are sound and safe. We will do that. We will make a call this afternoon and connect the Bureau with your office.

Ms. LERNER. Great.

Mr. WOLF. Okay.

CONTRACTING PRACTICES

You have done a lot of work documenting NSF's problems monitoring cost reimbursement contracts. But before we talk about those implementation problems, I want to talk about why NSF is using this type of contract vehicle to begin with. With cost reimbursement contracts, the risk is on the government, and they are the most difficult and expensive to administer. Yet, NSF relies on them almost exclusively.

Do you think NSF has adequate justification for its use of cost reimbursement contracts, and could they effectively meet program goals using a different contract vehicle?

Ms. LERNER. I think there may be some instances where—obviously the preferred method of contracting to use is fixed price contracting. I believe there are probably some instances where cost reimbursement contracts makes sense for NSF, but it has to be done right. It has to be done rigorously.

I really question the use of advanced payments in here, but it cannot be done without the groundwork to ensure that we know how the costs are going to be charged and how we are going to be billed and there is agreement on that from the outset.

And when NSF fails to get cost accounting disclosure statements, fails to have accounting systems audited, pays in advance on the high-risk contracts, you have just got a recipe for real problems. They could utilize the contracts when appropriate if they did things the right way. And I would have much less concern. I would still prefer that they rely more on fixed price contracts, but I understand there are certain instances when that just does not make sense.

Mr. WOLF. Through audits of existing contracts, you have found that the accounting controls needed to determine whether NSF is overpaying its contractors often do not exist.

Until those accounting controls are fixed, what can we say about the chances that NSF has been making improper payments under those contracts? And if you can answer that, then do you know what the magnitude of these improper payments could possibly be?

Ms. LERNER. I certainly think there is a risk of improper payments in the situation that we have found when there is no approved accounting system in place. The magnitude of it could be—I could not speculate as to that.

Mr. WOLF. Could be what? Try to finish that sentence.

Ms. LERNER. It would be pure speculation on my part.

Mr. WOLF. Well, let's speculate for a moment.

Ms. LERNER. You know, it could be anything. I mean, it could be minor and it could be tremendously major. The problem is we just do not know.

Mr. WOLF. What should we do to know?

Ms. LERNER. Well, what I would like to do is under contracts, if I can, when we start our data analytics capability, we can monitor payments under the contracts on a real-time basis in a meaningful way and even potentially get down to the transaction level. So I think improved use of data analytics both by my staff and by NSF staff would give everyone a lot better sense that the money is being used appropriately.

Mr. WOLF. This may be a controversial question, but I say this as a supporter of the NSF, and I think Mr. Fattah and Mr. Culberson are, too. In the CR that the House is marking up, we are doing everything we can to protect NSF. I believe America is falling behind in science, so I am with you.

But should we ask GAO to look at how these contracts are being done? I mean, would it be helpful, not in an adversarial way, to have the GAO come in to look at some of these things? You know, iron sharpens iron. The intention is not to catch somebody, not to embarrass anyone. But should we ask the GAO just to look at these things?

Ms. LERNER. Well, GAO has already come into NSF. In fact, one of the reasons that there is a significant deficiency in contract management of cost reimbursement contracts is because GAO looked at that issue across the government and focused a lot on several agencies including NSF in the 2009 time frame and found some real problems with what NSF was doing. They were looking at NSF in addition to I think it was about ten other different federal agencies.

So they have come in and looked and pointed out problems, but certainly I think there could be value in having them come in in a nonadversarial fashion and look a little more deeply and carefully at—

Mr. WOLF. Well, why don't we just ask the GAO to do that, just to make sure that, as Mr. Culberson said, every dollar that is available is used in such a way that America can have a renaissance, be number one in the sciences, innovate and do all the things we want to do. So, we will ask that GAO do that. You can go back and tell NSF that we are not trying to catch anybody. I am sure that

every congressional office could be looked at up here, and they could—

Ms. LERNER. Right.

Mr. WOLF [continuing]. Probably all be run better if somebody came in to tell them better ideas. On another topic, your office has identified problems with the way that NSF allows grantees to access contingency funds that are built into the construction budget. Specifically, regular project funds and contingencies are intermixed, and the grantee does not need NSF approval to spend contingency money.

How does this policy encourage poor fiscal management?

Ms. LERNER. We are very concerned about that. This is a brand new issue. It first surfaced in an audit that was conducted by DCAA for us. It was issued at the end of September. It surfaced again in another audit that DCAA did in January. And we are trying to get a handle around the issue right now, how NSF has done this, how it has happened.

Contingencies, I can certainly see in conducting a project why there might be a need for some contingent funds, funds for contingencies. But why NSF instead of holding the funds internally and providing them when they are needed to the awardee, why NSF just takes what looks to us to be a very generous estimate of what those contingencies would be and allows the awardee to handle it with very few constraints on it is concerning to us.

So we are trying to understand better why NSF is doing what it is doing, how contingencies are handled by other federal agencies, and we are going to look specifically at some closed projects to see how the contingency funds that they had were actually spent. Were they used for contingencies or do they just cover cost overruns that relate more to problems with project management than to actual contingencies. So we are trying to dig very deeply into this issue that has just surfaced.

Mr. WOLF. Okay. I just have a couple more questions, and we will submit others for the record.

GRANTS MANAGEMENT

Some of NSF's basic grant management activities decreased over the course of the last fiscal year. Site visits, for example, were down by 20 percent.

What do you believe is the cause for this decrease in oversight activity? Is it tied to the workload burden of simultaneously managing stimulus grants with normal NSF activity and what do you believe has been the impact on the management of NSF grants generally?

Ms. LERNER. NSF has indicated that they, instead of doing the 30 site visits that they planned, they were only able to do 24 because of staffing, because of lack of resources. I do not know precisely how much money they have, but it seems to me that getting people out to do those visits should be a priority to NSF management.

But I am concerned and have been concerned about the extent to which NSF staff has been stretched. You have got people who really care about what they do and who try to do the best they can, but they have a lot of work to do to start with.

And then with the stimulus activity being added on to it and no additional hiring being done in the administrative group, I think that people are being pushed to a level that is beyond their capability to do their job as well as they should.

And we are starting a job right now to look at the extent to which the span of control of individual program officers has increased over time so that we can get a sense of how much these people used to have to do in the past and how much they are having to do now and what NSF is doing to make it so that, if as we suspect, they are having to do a lot more right now with less, what can NSF do to work smarter.

I do not have the immediate answers, but I think it is a real concern that these people are stretched and we need to position them to be able to do their jobs well.

Mr. WOLF. Okay. I just have one last issue and then I will go to Mr. Fattah or any other members that have anything. And we will have other questions which we will submit for the record.

DISSEMINATION OF STEM EDUCATION FINDINGS

NSF spends a lot of money and effort on research about how best to implement STEM education, creating model programs and developing curricula. But there are already many schools out there that are highly successful in STEM education and have figured out effective curricula and methods.

That is why I had suggested that NSF get together some experts, identify those success stories, and focus on getting their methods replicated.

Does this make more sense than investing so much effort in reinventing what these schools have already done?

Ms. LERNER. It would certainly seem, you know. I know that there is a lot of question about overlap and effectiveness of those programs. And I think you raise a good question there.

Mr. WOLF. Well, hopefully we can do that. We will ask them and you can raise it with them.

I worry about, the country and whether we are falling behind.

Ms. LERNER. Right.

Mr. WOLF. I mean, China graduated 700,000 engineers. We graduated only 70,000. Norm Augustine's Gathering Storm report talks that about how last year, China graduated more English speaking engineers than we graduated.

Ms. LERNER. Right.

Mr. WOLF. And America is falling behind.

Ms. LERNER. Right.

Mr. WOLF. And, yet, we know there are things out there that are working. When I go into schools and talk to the young people, there are some very positive things being done around the country that we could put out so that people could know where to go and so.

Okay. Well, thank you for your testimony. Based on that, we will ask the FBI to look at the cybersecurity incidents. Tell them to keep us informed of any cyber attacks that are made. I think it should be publicized and not hidden, what attacks have been made and by what countries. Our FBI knows and NSA knows.

Ms. LERNER. Right.

Mr. WOLF. They know. They may not want you to say, but we should let people know.

So we will ask the bureau to come over and do that. And then we will ask GAO to come over and look at some of these questions that we have raised.

Mr. Fattah, do you have any thing else?

Mr. FATTAH. I know we are going to move on. I want to ask some questions for the record.

Mr. WOLF. Sure.

DEEP UNDERGROUND SCIENCE AND ENGINEERING LABORATORY

Mr. FATTAH. One of the more successful efforts your office was involved in was looking at the ocean observatory initiative. And if you could supply some additional information about—

Ms. LERNER. Certainly.

Mr. FATTAH [continuing]. The issues there. And in South Dakota, I mentioned this earlier, I am on Energy and Water also, so—

Ms. LERNER. Uh-huh.

Mr. FATTAH [continuing]. There was a project which in the National Science Foundation and the Department of Energy were going to collaborate—

Ms. LERNER. Right.

Mr. FATTAH [continuing]. And which you have now decided, maybe for very good reasons, not to, and I do not know to what degree your office was involved, this is a program decision, so—

Ms. LERNER. Exactly.

As the Ranking Member Mr. Fattah noted, NSF's participation in DUSEL would be a program decision. The OIG does not have information pertaining to that matter.

Mr. FATTAH. But if you have any information, we would be interested in it. And on the chairman's point, one of the great programs that you have in terms of the development of scientists, this is women scientists, is a program where different institutions around the country have really become the focal point for getting young girls into—

Ms. LERNER. Right.

Mr. FATTAH [continuing]. STEM education. And I do not know whether you have looked at this for any particular reason, but I did want to mention it because I think it is one of the things that may be right up the chairman's alley around some of the things that can be done to get populations that previously have not necessarily been at the very forefront of people's minds in these areas engaged around them.

So thank you for your testimony.

And I thank the chairman.

Mr. WOLF. Thank you, Mr. Fattah.

Thank you very much.

Ms. LERNER. Thank you, gentlemen.

Mr. WOLF. Do you have any follow up?

Mr. CULBERSON. If I can very quickly.

Mr. WOLF. Sure.

CYBER SECURITY, CONTINUED

Mr. CULBERSON. I just wanted to confirm, make sure I understand that I heard you say you are increasingly concerned about cyber security at NSF. I heard you say that they do not have, it sounds like, any standardized policy for dealing with a threat once it is discovered. They thought it was standard—

Ms. LERNER. They have a policy, but I do not know if it is the best policy and I do not know if it is always followed.

Mr. CULBERSON. Okay. And also I did not hear you mention that they have any standardized policy to protect against attack. Apparently everything you mentioned were things they discovered after the fact.

Ms. LERNER. They have patches, I mean, and they have monitoring. They were aware of the incident that occurred in December before the news occurred, hit the paper, but because they could see—

Mr. CULBERSON. After the fact.

Ms. LERNER. They could—

Mr. CULBERSON. But my question is—

Ms. LERNER. Well, they could see the information being pulled out of the computers. So they are monitoring, but I think—

Mr. CULBERSON. Right. But my—

Ms. LERNER [continuing]. They were not necessarily sensitive to why it might have been going.

Mr. CULBERSON. Yes, ma'am. Is NSF in the room? Sure. Okay. Great. We love you. We are devoted to you. But these are things when you come up, because truly you guys—our investment in the sciences and our space program and in encouraging kids to become scientists and engineers is what is going to save this Nation. So we are devoted to you. But this is really alarming.

And the chairman is exactly right and Mr. Fattah. All of us are devoted to you, but this has got to stop. I mean, you have got to have obviously a policy in place to protect against attacks, which it sounds like you do not have, to handle them afterwards. Obviously there has been serious breaches of security attacks on NSF computers.

And we are also, I can tell you, Mr. Chairman, very concerned about when NSF comes in to talk to us that you are paying for work in advance before the work is done, that you are giving large sums of money to grantees before the research is done and do not have good accounting procedures in place to make sure that the money is actually being spent for the purpose for which either the contractor or the grantee applied for because dollars are so scarce.

We are in a whole new environment. This is an age of austerity unlike anything this country has ever faced before. We want to help you and we are going to do everything we can to help you, but we just want to be absolutely certain, the committee wants to be certain every dollar we give you is actually reaching scientists and researchers that are going to do the work intended and that you are good stewards of our precious dollars and you are protecting the valuable intellectual property that you are stewards of.

Thank you.

Mr. WOLF. Thank you very much.

Ms. LERNER. Thank you all.

Chairman Frank R. Wolf
FY12 CJS Questions for the Record – NSF OIG
DUE BACK TO CJS – MARCH 18, 2011

Contracting Practices

1. Under GAO standards, cost reimbursement contracts are only appropriate in circumstances where requirements are undefined or there is insufficient experience with the activity to estimate expected costs. GAO believes that some of NSF's cost reimbursement contracts don't meet these criteria, and you have also indicated that some of NSF's contracts could or should be structured with firmer pricing. Can you provide a list of specific NSF cost reimbursement contracts that you believe could be executed through fixed price contract vehicles?

Answer:

While we have not performed an audit to determine which NSF cost reimbursement contracts could be executed through fixed price contract vehicles, we are aware of two types of services NSF is currently purchasing using cost reimbursement contracts that the agency could consider transitioning (all or in part) to fixed price contracts: 1) the information technology (IT) help desk function and 2) the conduct of surveys that produce research and engineering statistics. The agency has purchased these types of services for many years; as a result, the nature of these requirements appears to be stable enough that a fixed price could be determined based on an assessment of previous usage under similar contracts and historical or commercially available pricing.

2. In what circumstances is it appropriate or necessary to provide contractors with advance payments? Do you believe that NSF should discontinue this practice entirely or merely tighten controls over the provision of advance payments?

Answer:

The Federal Acquisition Regulation, subpart 32.402 provides general authority and governing requirements (e.g., a finding of public interest and provision of security from the contractor, among other things) for advance payments. FAR 32.403 further delineates circumstances in which advance payments "may be considered useful and appropriate." These include:

- Contracts for experimental, research, or development work with nonprofit educational or research institutions.
- Contracts solely for the management and operation of Government-owned plants.
- Contracts for acquisition, at cost, of property for Government ownership.
- Contracts with small business concerns, under which circumstances that make advance payments appropriate often occur (but see FAR 32.104(b)).

- Contracts under which exceptional circumstances make advance payments the most advantageous contract financing method for both the Government and the contractor.

Apart from this, NSF's FAR Supplement, subpart 2532.4 (which implements a provision in the NSF Act, 42 U.S.C. 1870(d)) states that NSF can provide advance payments "which relate to scientific activities or scientific information" when:

"(a) the amount of the advance payments is based upon an analysis of the financing required by the contractor for the contract and does not exceed reasonable financial requirements between payments, and (b) such advance payment is appropriate in order to contract for required work."

We believe that NSF should tighten controls over the provision of advanced payments and document its analysis and approval decisions when providing contractors advanced payment provisions. In conjunction with federal standards for financial management systems, awardees should not receive advance payments unless and until they have reviewed and approved accounting and billing systems, and disclosure statements, which demonstrate that their financial management systems are adequate for government awards. In our view, NSF should ensure that its major awardees have relevant accounting and billing systems audits and implement procedures to procure these audits periodically, at least every four years.

NSF has informed us that it only has three contracts that allow for advance payment terms. Moreover, according to the Foundation, the follow-on to the largest of these will not have advance payment terms.

3. NSF is working with its contractors to ensure that future contracts have the accounting controls needed to protect against improper payments, but what is being done to reconcile financial statements on closed contracts to identify improper payments that have already been made? How many of NSF's major closed contracts have had incurred costs audits to identify these improper payments?

Answer:

Historically, OIG has had incurred cost audits performed on NSF's closed awards. In addition, OIG has recently funded an additional incurred cost audit of segments of an NSF closed contract; work on that audit should begin in the near term. We are not aware of NSF having performed or funded any incurred cost audits on closed contracts.

With regard to the second question, we have defined "major closed contract" as a contract that NSF has administratively closed with a total value over \$50 million, the Cost Accounting Standards threshold. In the past 10 years there has been only one such contract at NSF: the Antarctic Support Associates contract, which was valued at \$887 million. That closed contract was audited by the OIG.

4. How will the implementation of a new system allowing you to monitor contract activity on a real-time basis improve your ability to identify questionable contracting practices? When will this capability be up and running?

Answer:

The new continuous award monitoring capability we are developing will allow us to better isolate questionable and anomalous financial payment and accounting transactions as they occur. It will improve our ability to identify potential duplicate and improper payments from the broad universe of transactions that our audit staff can research by enabling us to perform a closer examination of supporting payment documentation. We will also be able to examine historical trends and patterns over the award life-cycle using transaction-level data from key systems in the award process and thus refine our real-time detection logic. This enhanced monitoring capability will help us improve our ability to identify high risk award recipients for more in-depth audit work that will include an automated comparison of NSF and recipient financial information.

We hope to have the people and technology in place for this new capability by the end of the current fiscal year and to have data analytics embedded in our audit process by the end of fiscal year 2012.

Management of Large Construction Projects

5. In fiscal year 2009, NSF instituted a “no cost overrun” policy, under which any increases to a construction project’s budget must be accommodated by reductions in the project’s scope. NSF says that this policy has made them “successful at staying within cost and schedule plans”. Do you believe this characterization is true? What has been the impact of the 2009 policy?

Answer:

Although we have not yet been able to determine the impact of NSF’s “no cost overrun” policy on its construction projects, we are currently conducting an audit of NSF’s use of contingencies that will provide us with better information about the way those funds were managed and used in a specific, closed NSF award. As part of that audit we also plan to assess the impact the contingency funds had on cost and schedule plans.

One clear impact of NSF’s “no cost overrun” policy has been that awardees and NSF have included significant amounts of contingency costs in construction projects’ budgets and awards. As noted in my testimony, the Defense Contract Audit Agency recently performed audits of two awardees’ proposed budgets for large construction projects and found unallowable contingency provisions in both cases. The awardees told the auditors that NSF had directed them to include significant contingency amounts in their proposed budgets and that NSF had reviewed and accepted the proposed contingency costs, which totaled \$169 million and amounted to 20-30 percent of the total proposed construction budget for the two awards.

In terms of the policy's ability to keep projects within cost and schedule plans, it is worth noting that NSF stated in its FY 2012 budget request that two of its five major construction projects were behind schedule.

6. Does NSF make effective use of earned value management and other tools to track projects' adherence to cost and schedule goals?

Answer:

While NSF currently uses earned value management (EVM) to track its large facility projects' adherence to cost and schedule goals, we have not performed audit work to determine whether NSF's use of EVM is effective. Based on the agency's EVM data, in FY 2010 three of NSF's five large facility projects under construction were on schedule. The other two projects were behind schedule due to lagging procurements and delays in staffing at the implementing organizations.

NSF also, through its Large Facility Manual, requires projects receiving funding from its MREFC account to track and measure project progress using EVM and use this information when reporting to NSF. NSF plans to provide its large facility awardees with further guidance regarding the use of EVM through a module to its Large Facility Manual: Guidelines for Financial Management. According to NSF, this module will provide a "detailed explanation of earned value management reporting." However, this module has yet to be released. We received a draft of this module on March 11, 2011, and will be reviewing it to determine whether it satisfies outstanding audit recommendations from our December 2000 Gemini audit.

7. Every project budget has contingency funds built in, but not every project will need all of its contingencies. How does NSF incentivize its grantees to return unused portions of the contingencies rather than spending all budgeted funds simply because they're available?

Answer:

We are not aware of any NSF provisions or actions that incentivize its grantees to return unused portions of contingencies. In fact, NSF guidance states that it expects all contingency funds to be spent. As noted in the response to QFR 5, we are currently conducting an audit on contingencies to determine if, when, and how NSF-awarded contingency funds were used on selected projects.

Grants Management

8. Largely due to the influx of stimulus funds, the number of grants NSF is currently overseeing far exceeds normal workloads. At the same time, the tight budget environment dictates that we limit overhead costs to the greatest extent possible. What steps could NSF take to

streamline the administration of its grants and further maximize the impact of limited overhead dollars?

Answer:

As noted in my testimony, one way in which NSF could streamline its grants administration process is to expand its data analytics capability. By taking full advantage of the transactional data available to it on a real-time basis, the agency, like the OIG, could enhance its ability to spot problems at the earliest stages and to identify high risk recipients that warrant additional scrutiny—all without having to leave NSF. The results of this data analysis could be added to the agency's risk analysis model, and thus help NSF make better decisions about where to target the limited resources it has for on-site recipient reviews.

As part of a continuing body of work we have been performing within the human capital arena, our office will soon begin an audit focusing on NSF's financial and administrative functions and staff, taking into account recent legislation such as the Recovery Act and the America Competes Act, and the workload impact they have had on NSF staff. As part of that job, we will look for ways the agency could maximize the impact of its limited overhead dollars.

9. Most of NSF's grants management activities seem focused on ensuring that grantees are obeying the terms and conditions that come attached to the funding. Does NSF also do a good job of collecting program outcome data, including the downstream effect of its grants (e.g., technology transfer or the economic impact of research)? Has your office also looked at measuring these program outcomes and downstream impacts?

Answer:

When it comes to program outcomes, NSF uses a qualitative approach under the Government Performance and Results Act through Committees of Visitors (COV) that review NSF's awards and programs and comment on how the results generated by awardees have contributed to the attainment of NSF's mission and strategic outcome goals. We have not conducted an audit of this process since 2003 when we found COVs to provide a valuable service to NSF and offered recommendations to NSF for improving the management of the COV process. NSF agreed to these recommendations.

More recently, in 2004 we audited a specific NSF program involving Math and Science Partnerships and recommended that NSF establish an evaluation framework for assessing the impact of the intervention strategies, activities, and outcomes on student achievement in math and science. We have also conducted audit work in the area of program outputs involving quantitative data. In 2004, we conducted an audit of project reporting required on NSF awards and found deficiencies in the submission of required annual and final project reports. We offered recommendations to NSF for improving their reporting process and NSF agreed to implement changes. Our current audit plan includes a follow-up to this prior audit to assess NSF's new process for timely collection of project reports.

Research Misconduct

10. Currently, NSF delegates primary responsibility for preventing and detecting research misconduct to the grantees themselves. Is this kind of self-policing generally effective?

Answer:

NSF's process for conducting research misconduct investigations follows the investigative model outlined in the agency's Research Misconduct regulation, which is, in turn, based on the government-wide policy promulgated by the Office of Science and Technology Policy.

Under NSF's regulation, allegations of research misconduct are sent to the OIG, which assesses the nature and gravity of the alleged offenses. If appropriate, and the institution is capable of handling a referral, we send allegations pertaining to an employee or student of a particular institution to that institution to investigate pursuant to its relevant policy. In those instances where we feel an institution cannot objectively conduct an investigation, we conduct the investigation ourselves. In referring an allegation, we make clear to the institution what the OIG's expectations are for a complete, thorough and timely investigation; once the institution begins its review, we monitor its actions in an effort to ensure the quality and timeliness of the work. When the institution's review is complete, it documents its findings in an investigative report, which is provided to our office.

We review the investigative report for fairness, accuracy, and completeness. If the institution did not fully address all the issues, our office may request clarification from the institution and/or conduct additional investigation. We document our findings, along with any actions we believe are necessary to protect the federal interest, in an investigative report to NSF. Thus, the OIG provides an external, objective review of the "self-policing" aspects of NSF's policy. Based on our experience, this process is generally effective and protective of the federal interest.

11. Is there a feasible way for NSF to take a more proactive approach to detecting research misconduct? Do you think the benefits of more aggressive enforcement would outweigh the costs that would be incurred by implementing a more aggressive detection system?

Answer:

One way in which NSF and other federal agencies could take a more proactive approach to detecting research misconduct would be to require affirmative certification by grantees that documents submitted by those grantees have been examined for plagiarism by software these same entities currently use on materials submitted by students for class assignments. Such a process would benefit both the grantees, as well as the federal agencies that fund them, as it would enable them to catch possible instances of plagiarism and address them before they leave the institution. Addressing possible instances of plagiarism would also likely lead to a more robust discussion of the responsible conduct of research at affected institutions—an outcome that should help strengthen the research process and thus provides benefits to the grantees over and above the identification of individual instances of plagiarism.

There would be costs associated with such a process (the cost of the plagiarism software, if the university did not already have access to such a product, as well as the staff time needed to examine the possible instances of plagiarism and determine if the subject had a legitimate basis to use the text at issue). In our view those costs are far outweighed by the benefit to the research process that would come from an enhanced sensitivity to the responsible conduct of research in general and plagiarism in particular, as well as the security that such a process would provide federal funding agencies that their money is being used to fund original research.

12. What lessons can NSF learn about detecting research misconduct from other agencies, like NASA or DOD, that award significant numbers of research grants each year?

Answer:

Because NSF's primary mission is funding research, NSF OIG has been a leader in the effort to implement the OSTP policy mentioned above in QFR 10. Our office created and directed the IG-wide Research Misconduct Working Group (RMWG), whose membership included representatives from all affected OIG offices. Through this group we were able to educate other agencies about research misconduct and aid them in development of their own research misconduct policies. The RMWG also heightened awareness regarding the relationship between research misconduct and fraud, as well as the growing nature of international research collaborations and the challenges associated with investigating research misconduct in international scientific collaborations. As a result of the RMWG, our office has been asked on numerous occasions to meet with various agency and IG representatives to discuss the NSF research misconduct regulation and our investigative processes.

Our experiences with other agencies have shown that research misconduct, as an administrative investigative issue, is not a principal interest of most offices. Through our own efforts and our discussions with other offices we have learned that in some instances where research misconduct appears in funded projects these agencies successfully investigate the allegation as fraud. We have been able to leverage this knowledge to broaden the scope of our discussions and engage agencies that otherwise would not address administrative investigative issues like research misconduct.

Employee Misuse of NSF Computers

13. I was disappointed to learn of reports in 2009 about widespread NSF employee access to Internet pornography on work computers. It is my understanding that your office investigated this matter extensively and made recommendations. Could you discuss the steps that NSF has taken to prevent future abuse of federal resources? Have you seen a reduction in reported pornography abuses since these reforms were implemented?

Answer:

NSF has made a number of reforms to prevent future abuse of federal resources in response to our recommendations. Among other things, the agency has installed internet filtering software to prevent access by NSF computers to inappropriate web sites, such as gambling and sexually explicit adult sites. The Foundation is also exploring additional software to filter incoming and outgoing emails and attachments to prevent inappropriate material from being received and sent from NSF information technology resources.

In September 2009, the NSF Director issued a memorandum to all employees detailing the safeguards, training and policies that NSF has implemented pertaining to inappropriate use of government computers. This memorandum made it clear that NSF has a zero tolerance policy for this type of misconduct and that it will strictly enforce this policy. Further, NSF is including material in its New Employee Orientation sessions (which all new employees attend) stating that violations of this policy can result in disciplinary action. New employees must certify that they have reviewed this material before they are granted access to NSF's information technology system. NSF has also required all senior managers to train their staffs in appropriate use of federal IT resources. Following this training, the managers were required to report to the Director that the training had been conducted.

With regard to the question of whether we have seen a reduction in the number of pornography cases since these reforms were implemented, it is important to understand that most of the cases we worked that led to the reforms developed out of our self-initiated proactive work, and not as a result of allegations that we received about IT-related problems at NSF. We have not received any reported abuses since NSF implemented the reforms noted above. We plan to conduct proactive reviews in this area again after allowing a period of time for the reforms to be in place.

14. What lessons from this experience can be applied to other federal agencies to prevent similar abuse?

Answer:

In our view, there are several lessons that can be applied to other federal agencies based on the experience at NSF. Agencies should promptly, strongly, and directly communicate to staff that such misconduct is unacceptable in the workplace. Employees should be reminded of the high standards of conduct expected of government employees. In addition, the agency head should make it clear that misconduct is taken seriously and that any deviations from accepted behavior will result in disciplinary action.

Other preventive actions agencies can take include reinforcing strong support for effective and mandatory training; publicizing avenues of recourse, including OIG Hotline information and contact information for Equal Opportunity Office; and tangible acts that demonstrate management commitment to the prevention of misconduct and to swift action when misuse is identified.

Mr. WOLF. We are now going to hear from Paul Martin from NASA.

Why don't you proceed as you see fit. Your full statement will be on the record, and then there will be questions.

THURSDAY, FEBRUARY 10, 2011.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

WITNESS

PAUL K. MARTIN, INSPECTOR GENERAL

Mr. MARTIN. Thank you.

OPENING REMARKS OF INSPECTOR GENERAL MARTIN

Chairman Wolf, Ranking Member Fattah, and members of the Subcommittee: Today NASA finds itself in a state of significant uncertainty, particularly with respect to its Human Space Program. The immediate challenge facing NASA is managing the Agency's broad portfolio of space, science, and aeronautics projects amid the continuing lack of clarity about its budget in 2011 and in the out years.

Last month, we sent a letter to Congress describing conflicting directives in NASA's 2010 Authorization Act and the continuing resolution that prevents the Agency from terminating Constellation contracts or initiating new space exploration programs.

NASA officials told us that by March 1st they anticipate spending up to \$215 million on Constellation projects that had they been given a free hand, they would have considered canceling or significantly scaling back.

Moreover, by the end of this fiscal year that figure could grow to more than \$575 million if NASA is unable to move beyond the planning stages for its new Space Exploration Program.

In our letter, we recommended that Congress take immediate action to address this situation, and we encourage this subcommittee to support a legislative solution as soon as possible.

Moving on to the broader focus of this hearing, the OIG has identified the following as key issues facing NASA in 2011: The future of U.S. spaceflight; acquisition and project management; infrastructure and facilities management; human capital; information technology security; and financial management.

My written statement contains a detailed discussion of these six challenges. Rather than restate that testimony, I offer three observations to provide context for our submission.

First, with respect to spaceflight, NASA's top priority is to safely complete the Space Shuttle's two or three remaining flights.

In addition, NASA is directed in the Authorization Act to develop a new space launch system and multipurpose crew vehicle that use Constellation and Shuttle technologies, "to the extent practicable."

At the same time, the agency continues its efforts to foster development of commercial cargo and crew capabilities. One key unanswered question is whether NASA will receive the level of funding

necessary to address both of these priorities on an aggressive yet realistic time table.

Second, NASA has historically struggled with establishing realistic cost and schedule estimates for its science and space exploration projects. The James Webb Space Telescope is the most recent example of this problem.

In 2003, NASA said it planned to launch the Webb Telescope in 2011 at an estimated cost of \$1.6 billion. However, last November an independent review concluded that the earliest possible launch date was September 2015. But even this date depended on the project making critical management changes and receiving an additional \$500 million over the next two years. The new total estimated life cycle cost for the Webb Telescope: \$6.5 billion.

And third, it is important to keep in mind when evaluating NASA's performance that for some projects it really is rocket science. And I say that both a bit humorously and a bit seriously. The engineering required for many of NASA's science and space exploration projects is complex and visionary, but the agency must do a better job to manage costs and scheduling.

To its credit, NASA has made a concerted effort over the past several years to improve its management practices and address these systemic weaknesses. Nevertheless, significant challenges remain.

The Office of Inspector General is committed to providing independent, aggressive, and objective oversight as NASA seeks to meet these challenges.

I would be pleased to answer the Subcommittee's questions.

**Testimony before the Subcommittee on Commerce,
Justice, Science, and Related Agencies
Committee on Appropriations
U.S. House of Representatives**

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Major Challenges Facing NASA in 2011

Statement of

The Honorable Paul K. Martin

Inspector General

National Aeronautics and Space Administration



Chairman Wolf, Ranking Member Fattah, and Members of the Subcommittee:

The Office of Inspector General (OIG) is committed to providing independent, aggressive, and objective oversight of the National Aeronautics and Space Administration (NASA), and we welcome this opportunity to discuss the major challenges facing the Agency.

At the present time, NASA finds itself in a state of significant uncertainty, particularly with respect to its human space program. The final Space Shuttle flights are scheduled for later this fiscal year and construction of the International Space Station is essentially complete; however, the Agency has not achieved significant momentum on space exploration directives contained in 2010 authorizing legislation because of funding and technical questions.

The most immediate challenge facing NASA's leadership is to manage the Agency's portfolio of space and science missions amid the continuing lack of clarity caused by conflicting legislative directives in the Authorization Act and a holdover provision in NASA's fiscal year (FY) 2010 appropriations law. The latter provision prevents NASA from terminating any aspect of the Constellation Program or from initiating any new program.¹

Last month we sent a letter to Congress highlighting this issue. As we explained, due to language in NASA's FY 2010 appropriation carried over in the continuing resolution that currently funds NASA and the rest of the Federal Government, NASA is continuing to spend approximately \$200 million each month on Constellation, aspects of which both NASA and Congress have agreed not to build. Without congressional intervention, by the end of February 2011 NASA anticipates spending up to \$215 million on Constellation projects that, absent the restrictive appropriations language, it would have considered canceling or significantly scaling back. Moreover, by the end of FY 2011 that figure could grow to more than \$575 million if NASA is required to continue operating under the current constraints and is unable to move beyond the planning stages for its new Space Exploration program.

In our letter, we recommended that Congress take immediate action to address this situation. We encourage this Subcommittee to support enactment of a legislative solution as soon as possible.

In addition to the difficulties inherent in operating an Agency without a full-year appropriation, NASA managers face a series of significant challenges in managing the Agency's diverse projects and programs. In November 2010, we provided the Administrator and Congress with our assessment of "NASA's Top Management and Performance Challenges."

¹ Public Law No. 111-117 provides that "none of the funds provided herein and from prior years that remain available for obligation during fiscal year 2010 shall be available for the termination or elimination of any program, project or activity of the architecture for the Constellation program nor shall such funds be available to create or initiate a new program, project or activity, unless such program termination, elimination, creation, or initiation is provided in subsequent appropriations Acts." In July 2010, Congress placed an additional restriction on NASA providing that "funds made available for Constellation in fiscal year 2010 . . . shall be available to fund continued performance of Constellation contracts, and performance of such Constellation contracts may not be terminated for convenience by the National Aeronautics and Space Administration in fiscal year 2010." Pub. L. No. 111-212. NASA continues to be bound by both restrictions under the current continuing resolution.

Our report identified six broad issues that we believe constitute the key challenges facing the Agency:

- Future of U.S. Space Flight;
- Acquisition and Project Management;
- Infrastructure and Facilities Management;
- Human Capital;
- Information Technology Security; and
- Financial Management.

In deciding whether to identify an issue as a top management and performance challenge, we considered the significance of the issue in relation to NASA's mission; its susceptibility to fraud, waste, and abuse; whether the underlying issues are systemic in nature; and the Agency's progress in addressing the challenge. Several of the challenges we identified, specifically acquisition and project management and infrastructure and facilities management, are long-standing concerns likely to remain top challenges for the foreseeable future. In fact, recent cost overruns and schedule slippage in major NASA science programs, including the James Webb Space Telescope, underscore our ongoing concern about Agency project management practices.

Future of U.S. Space Flight

Throughout NASA's history, transitioning from a legacy flight system to the next system has always presented significant challenges, and conclusion of the Space Shuttle Program and transition to the next generation of space vehicles is no exception.

The Shuttle Program, originally planned for retirement at the end of FY 2010, is now scheduled to fly its final three missions by June 2011. Moreover, as discussed above, the Constellation Program – which was expected to produce the next generation of NASA space vehicles – essentially has been canceled, and NASA has been directed in the 2010 Authorization Act to develop a new space launch system and multi-purpose crew vehicle that meet specified requirements and use Constellation and Shuttle technology to “the extent practicable.”

In addition, the Agency continues its efforts to stimulate the U.S. commercial space industry to develop vehicles to transport cargo and crew into space. Fostering development of commercial cargo and crew capabilities while simultaneously developing its own space launch system and crew vehicle presents significant challenges, not the least of which is whether NASA will receive the level of funding necessary to address all of these priorities on an aggressive yet realistic timetable. Moreover, the level of specificity in the Authorization Act regarding the design and development of NASA's future launch system and crew vehicle presents additional challenges for NASA program managers and engineers.

Last month, NASA provided Congress with a preliminary report describing its plans for developing the space launch system and crew vehicle required by the Authorization Act. In the report, the Agency discussed the challenges it will face under current funding scenarios to develop a “heavy-lift” vehicle and crew capsule while meeting the timetable specified in the Act. NASA acknowledged that it will need to find greater efficiencies and more innovative and less costly ways of doing business to meet the Act’s directives.

Foremost among NASA’s Shuttle-related priorities is the challenge to safely complete the Program’s remaining flights. NASA originally planned to fly two Shuttle missions in 2011, but the Authorization Act provided for and NASA subsequently scheduled a third flight. However, it remains to be seen whether the Agency will obtain additional funding for this final Shuttle flight or whether it will need to pay for this extra flight using existing funds.

In addition to managing Shuttle funding challenges, the transition and retirement activities associated with ending the Shuttle Program present one of the largest such efforts ever undertaken by NASA. The Shuttle Program is spread across hundreds of locations, occupies more than 650 facilities, and involves more than 1.2 million line items of personal property with a total equipment acquisition value exceeding \$12 billion. Given the significance and magnitude of the task, the OIG is examining NASA’s transition and retirement efforts for the Shuttle Program. In December 2010, we released an audit report discussing NASA’s disposition of Shuttle-related information technology equipment.² We found significant weaknesses in NASA’s sanitization and disposal of computers and hard drives that resulted in IT equipment containing sensitive data being sold or prepared for sale. Among the serious issues we uncovered was the storage of hard drives removed from excess computers in an unsecured dumpster accessible to the public at Kennedy Space Center. An audit report that we expect to release in March 2011 examines NASA’s controls over the disposition of other types of Shuttle property.

Once the Space Shuttle has flown its last flight, NASA will need to rely on other countries for access to the International Space Station until it develops its own follow-on system or a commercial vehicle is proven capable of carrying cargo and humans into space. With respect to cargo, for the past several years NASA has been working to develop commercial providers through its Commercial Orbital Transportation Services (COTS) Program. As part of this effort, Space Exploration Technologies Corporation (SpaceX) staged successful demonstration flights of its Falcon 9 rocket in June 2010 and its unmanned “Dragon” capsule in December 2010. Even with these successful test flights by SpaceX and planned demonstration flights by both SpaceX and Orbital Sciences Corporation later in 2011, NASA has no firm timetable to begin commercial cargo delivery to the Space Station.

Moreover, developing commercial vehicles to carry humans into space presents significant additional challenges, particularly with NASA’s intent to “human-rate” any new flight system. Given the importance of this issue, the OIG is examining NASA’s development of human-rating standards for commercial vehicles and evaluating NASA’s process for certifying these vehicles.

² NASA OIG, “Preparing for the Space Shuttle Program’s Retirement: A Review of NASA’s Disposition of Information Technology Equipment” (Report No. IG-11-009, December 7, 2010).

NASA also faces challenges related to obtaining cost-effective medium-class launch vehicles suited for many of NASA's upcoming science missions. While new launch vehicles in this class are currently under development as part of the COTS Program, in the near term NASA faces limited domestic availability. This situation has been exacerbated by the Department of Defense's decision to stop using the Delta II, the medium-class launch vehicle that has been NASA's launch vehicle of choice for nearly 60 percent of its science missions over the last decade. We are examining NASA's acquisition strategy for these medium-class launch vehicles in an ongoing OIG audit that we expect to issue in the next several weeks.

Finally, the Authorization Act extends the life of the Space Station until at least 2020 and directs NASA to maximize the Station's productivity and use and to enter into a cooperative agreement with a non-profit organization to manage the activities of the Station's national laboratory. Both of these directives present significant challenges for Agency managers. As discussed above, the retirement of the Space Shuttle signals an end to the United States' ability, at least in the short term, to transport supplies, experiments, and crew to the Station. Consequently, NASA will be dependent on the Russians to transport astronauts until commercial vehicles are available or until NASA's new multi-purpose crew vehicle and launch system is operational. In addition, NASA needs to continue developing incentives and partnerships to encourage use of the Space Station by U.S. Government agencies, other nations, and the private sector.

Acquisition and Project Management

Effective acquisition and project management practices are critical to NASA's ability to achieve its overall mission, but systemic weaknesses in these areas have proven a long-standing challenge for the Agency. The OIG is focusing increased attention on these issues to help ensure that NASA is paying contractors in accordance with contract terms and is receiving what it paid for on schedule.

NASA historically has struggled with establishing realistic cost and schedule estimates for its science and space exploration projects, with the James Webb Space Telescope being the most recent example of this problem. In July 2003, NASA scheduled the Webb Telescope for launch in August 2011 at an estimated cost of \$1.6 billion. In succeeding years, the planned launch date slipped to June 2014 and the estimated total life-cycle cost increased to \$5.09 billion. An independent review of the program released in November 2010 cited problems with budgeting and program management rather than technical performance as the reasons for the delays and increases in costs for this flagship science project. The report concluded that Webb's earliest possible launch date of September 2015 was dependent on the project making a series of critical management changes coupled with an infusion of an additional \$500 million over and above the funds already identified for the project in the President's FY 2011 and FY 2012 budget profile.

To execute projects within established cost and schedule estimates, NASA needs to ensure that its project managers have the necessary training, authority, and resources. The OIG is initiating an audit that will examine the extent to which NASA's project managers are positioned to effectively manage Agency acquisition projects. Among the issues we will consider are a manager's role in overseeing development of the project, whether managers are provided with

stable requirements and adequate resources when projects begin, and the extent to which managers are empowered to control requirements growth and make funding decisions.

NASA spends approximately 85 percent of its \$18 billion budget on contracts and awards. Given the significant amounts of taxpayer funds at risk, continued findings by the OIG identifying systemic weaknesses in NASA's contract management practices illustrate the importance of this top Agency challenge. For example, the OIG has identified instances of fraud and waste by program participants that call into question the effectiveness of the internal controls in NASA's Small Business Innovation Research (SBIR) Program. OIG investigations have found that some award recipients received multiple SBIR contracts for essentially the same research and provided duplicate deliverables or questionable research products. And in an audit issued last month, we found that SBIR awards made by NASA in 2008 contained an estimated \$2.7 million in unallowable and unsupported costs. We also found that NASA has not implemented appropriate internal controls to prevent fraud and abuse in SBIR contract awards.

Infrastructure and Facilities Management

NASA is the ninth largest Federal Government property holder, controlling a network of approximately 5,400 buildings and structures that support Agency research, development, and flight activities. For years, NASA has struggled with its aging and underutilized infrastructure and the related issue of managing its backlog of deferred maintenance projects. According to NASA's 2008 Real Property Asset Management Plan, approximately 10 to 50 percent of NASA's warehouses and 30 to 60 percent of its laboratories are underutilized. NASA officials also report that more than 80 percent of the Agency's facilities are 40 or more years old and beyond their design life. In FY 2009, NASA reported spending more than \$283 million to repair and maintain its facilities even though Agency-wide deferred maintenance costs that year were estimated at \$2.55 billion.

The Authorization Act directs NASA to examine its structure, organization, and institutional assets and develop a strategy for the most efficient retention, sizing, and distribution of facilities and other infrastructure consistent with NASA's mission. This report is due to Congress no later than October 11, 2011. The OIG is currently conducting an audit assessing the accuracy of the data used by NASA to develop its real property strategy. Other ongoing work in this area includes an audit examining NASA's plans to re-side Hangar One at the Ames Research Center and a review evaluating NASA's planning for construction of facilities.

Human Capital

The impending retirement of the Space Shuttle and NASA's redirection from the Constellation Program to development of a heavy-lift vehicle and crew capsule, coupled with an emphasis on supporting development of commercial space flight capabilities, require the Agency to deftly manage its workforce to meet shifting objectives. Consequently, maintaining a highly skilled, diverse, results-oriented civilian and contractor workforce is vital to successfully accomplishing NASA's mission. But NASA faces increasing competition from the private sector for the best scientific and engineering talent. Moreover, as its workforce ages NASA will face particular

challenges in attracting and retaining highly specialized skill sets to sustain key Agency capabilities.

Similarly, the cancellation of the Constellation Program and the increased reliance on the private sector to provide transportation to low Earth orbit raises new questions for the future of NASA's Astronaut Corps. NASA has taken an important step to address this challenge by enlisting the National Research Council to conduct an independent study examining the role and size of the Astronaut Corps following the Shuttle's retirement.

Finally, NASA employees routinely work side-by-side with contractors, international partners, and researchers from academia. Many NASA employees seek opportunities in the private sector following their Government employment and others move between jobs in the private sector and NASA. These conditions pose particular challenges to NASA leadership to ensure that employees abide by ethics laws and regulations. Moreover, as NASA moves more deeply toward privatization of some aspects of space exploration, this challenge may increase in both scope and complexity.

Ethics issues continue to account for a significant portion of the OIG's investigative caseload. For example, in a recent case a senior NASA manager was convicted of a criminal conflict of interest in connection with his participation in NASA contracts awarded to a company owned by his wife. Another senior NASA manager used a majority of the \$1.5 million discretionary fund he controlled to initiate several studies that financially benefited him and a former NASA Chief of Staff.

Information Technology Security

NASA information technology (IT) systems and networks control spacecraft, collect and process scientific data, and enable NASA personnel to collaborate with their colleagues around the world. Users of these systems number in the hundreds of thousands and include NASA personnel, contractors, academia, and the public. As computer technology has advanced, NASA has become dependent on computerized information systems to carry out daily operations and to process, maintain, and report essential information. Accordingly, it is imperative that NASA properly protect its IT systems and networks.

Federal law and NASA policy designate the Agency's Chief Information Officer (CIO) as the NASA official responsible for developing IT security policies and procedures and implementing an Agency-wide IT security program. However, we have found that the CIO has limited ability to direct NASA's Mission Directorates to fully implement IT security programs, and consequently key Agency computer networks and systems operated by these Mission Directorates do not consistently comply with Agency-wide IT policy. Until the Mission Directorates fully implement NASA's IT security programs, the Agency will be at risk for security incidents that can have a severe adverse effect on Agency operations and assets.

Recent audit work by the OIG found that significant obstacles remain in NASA's effort to develop a highly effective IT security program. For example, as part of our FY 2009 and FY 2010 Federal Information Security Management Act (FISMA) audits, we found that NASA's

IT security program had not fully implemented key requirements needed to adequately secure Agency information systems and data. For example, NASA did not meet FISMA requirements for annual security controls and contingency plan testing. We also found that the CIO's Office had not effectively managed corrective action plans used to prioritize mitigation of IT security weaknesses.

In addition, our audit work has uncovered significant and recurring internal control weaknesses in NASA's IT security control monitoring and cybersecurity oversight. For example, we found that the Agency did not ensure that its computer servers remained securely configured over time and that the Agency's security practices could be improved by adding a control to verify that 100 percent of the devices connected to NASA's networks undergo vulnerability and patch monitoring. We also found control weaknesses related to user account management, the installation of unauthorized software, and inaccuracies with hardware and software inventories for a key NASA system.

The significance of NASA's IT security weaknesses is highlighted by the increasing number of cybersecurity threats facing the Agency. These threats are evolving, both in scope and sophistication, and present an ongoing challenge to NASA managers. For example, in May 2009 NASA notified the OIG of a suspicious computer connection and the subsequent OIG investigation confirmed that cybercriminals had infected a computer system that supports one of NASA's mission networks. Due to inadequate security configurations, the infection caused the computer system to make over 3,000 unauthorized connections to domestic and international IP addresses, including addresses in China, the Netherlands, Saudi Arabia, and Estonia.

In another case, the OIG alerted NASA to systemic IT deficiencies discovered during an investigation into unlawful computer intrusions at the Jet Propulsion Laboratory (JPL). The OIG determined that the intrusions resulted in the theft of approximately 22 gigabytes of program data illegally transferred to an IP address in China. The stolen data included information protected under International Traffic in Arms Regulations and Export Administration Regulations. The OIG investigation found that a significant contributing factor to the theft was inadequate security settings at JPL, which allowed the intruder access to a wide range of sensitive data.

To help the Agency address these and other critical cybersecurity issues, the OIG is initiating an audit that will examine whether NASA's Security Operations Center provides effective computer incident detection and response for all NASA computer networks and whether its related information system is effective in supporting NASA's computer incident detection and response capability.

Financial Management

After receiving disclaimers of opinion on its financial statements during the previous 7 years, NASA was able to provide sufficient financial evidence and documentation to allow auditors to issue a qualified opinion on the Agency's FY 2010 financial statements. The qualification was related to the valuation of property, plant, and equipment (PP&E) and materials in prior years and its possible effects on the current year statements of net cost and changes in net position. Over the past several years, NASA financial managers – working with the OIG and the

independent accounting firm – have made steady progress resolving previously identified weaknesses and their efforts resulted in the auditors' qualified opinion. While the ultimate goal for the Agency is an unqualified opinion, the FY 2010 results are a significant accomplishment that better positions NASA for the FY 2011 financial statement audit.

During FY 2010, NASA continued to develop policies, procedures, and controls to address its financial management weaknesses. For example, NASA revised its policy and procedures for quantifying its environmental cleanup costs associated with decommissioning PP&E. NASA also successfully implemented a new accounting standard to estimate property values. Nevertheless, challenges remain. NASA identified unexpected and erroneous adjustments in contractor-reported balances during the year, as well as large year-end accrual adjustments to record actual contractor-held property balances.

Due to the volatility of NASA's property balances and the risk of recording estimates for property, accounting for PP&E remains a significant management challenge. Ongoing efforts by NASA management to develop a rigorous review process that both validates and challenges the adequacy of estimation techniques and the sufficiency of supporting documentation are important in preparing for future audits of these estimates.

Conclusion

In addition to the OIG activities described in my testimony today, we have a number of other ongoing reviews that address both long-standing and emerging challenges facing NASA. For example, in separate audits we are examining whether NASA is effectively managing the Mars Science Laboratory and the National Polar-orbiting Operational Environmental Satellite System Preparatory Project to accomplish Agency objectives while meeting milestones and controlling costs. Other OIG audits are reviewing whether NASA's grant funds are being used for their intended purpose and how effectively NASA is managing its tuition assistance program.

Finally, we will continue to assess NASA's IT security and work with the Agency to improve its financial management through the annual audit of the Agency's financial statements.

We look forward to continuing our cooperative working relationship with NASA, this Subcommittee, and other congressional committees as we conduct audits and investigations that focus on the Agency's top management and performance challenges.

Mr. WOLF. Thank you very much.

FINDING SAVINGS IN THE NASA BUDGET

From your perspective as Inspector General, what areas of the NASA budget would you recommend we look into as possible sources of budget savings?

I think you have a subcommittee made up of people who are very, very supportive of NASA. I do not have a NASA facility in my congressional district, but, I think it is very, very important and I think that contribution to the country has been very, very important.

And so knowing these tight times, what would you recommend that we look at if you have to eliminate? Also, in the process, are there programs where there is an overlap? Are NOAA and NASA doing the same thing, whereby NASA could do more of it and we could reduce the NOAA budget? Or NOAA would do it, and we would free up the NASA budget to put a man on Mars and keep faith with aeronautics? What are you thinking when you look at it from your perspective?

Mr. MARTIN. Thank you, Mr. Wolf.

Let me tee up three areas. The first would be what I cited in my oral remarks and what we mentioned in our statement. And that is the conundrum created by the conflict between the holdover language in the CR that does not allow NASA to terminate the current Constellation contracts and begin a new program with the directives contained in NASA's 2010 Authorization Act.

There are big dollars at stake. I think NASA, to its credit, is doing what it can at this point to redirect those Constellation contracts to areas that it hopes will be part of the next Space Exploration Program, but they need to be freed from these constraints. So I think that is the first issue. And, again, there are significant dollars there.

Secondly, and I also touched on this, NASA must do a better job with its project management both in its cost estimations at the front end and its project management as the project moves forward.

I think the taxpayers, and certainly this Committee and the public, have the right to know that if we are going to do really ground-breaking technological science like James Webb, and it really is ground-breaking, NASA needs to inform the public we can do James Webb, but we can do it for \$3 billion or \$5 billion.

And so NASA and Congress can make a decision with the limited resources whether that is where we want to expend our dollars. But to go into a program, even something as visionary as James Webb, and estimate that it is going to cost \$1.6 billion and then find yourself ten years later multiple years behind schedule and several billion dollars above estimate is just not the way to run a railroad.

So some of these projects are incredibly expensive and incredibly visionary and incredibly important. And NASA should be on the cutting edge, but they need to do a better job at the front end saying this is our business case, this is our best cost estimating, and as the project moves forward managing those resources.

And, third, I would cite as an area for possible cost savings, NASA has at least ten facilities, NASA Centers spread out across the country. I would cite the aging infrastructure. NASA has over 5,400 buildings, laboratories, warehouses, and facilities. Eighty percent of NASA facilities are over 40 years old. There is a tremendous amount of what they call deferred maintenance. NASA spends about \$300 million every year just fixing the roof and plugging the holes, sort of mandatory maintenance. There is \$2.5 billion worth of deferred maintenance, major renovations, repairs, or demolitions and construction that need to happen.

In the 2010 NASA authorization bill, Congress directed NASA to deliver a report by October of this year taking a hard look at NASA's facilities, trying to identify redundancies, areas that we could downsize (I do not like to use the word right size) but looking at ways to handle this infrastructure problem because, again, with \$2.5 billion in deferred maintenance, given the tight economic times, that number is only going to increase.

So those would be the three areas I would cite.

Mr. WOLF. Okay. Well, it would be helpful if you had the report before October. Maybe you could ask NASA to update the Committee or the Subcommittee on a continuing basis.

OIG FINDINGS ON CONSTELLATION SPENDING UNDER THE CR

On the Constellation spending, I have a question. NASA Headquarters told us they disagree with your findings, and they believe that they have appropriately targeted their contracts to activities that would be directly applicable to the new exploration program or are required to maintain a minimal level of program readiness.

How do you respond to this contention? How do the data and methodology you used differ from what NASA is using to reach the opposite conclusion? I think this really has to be resolved. You cannot have he said, he said. We have got to resolve this thing. So what is your response to the NASA comments?

Mr. MARTIN. I read the two-page NASA clarification, and I find it a bit ironic. Here is our methodology in coming up with the numbers that are in our letter.

We went to the NASA people, the people running the Constellation Program, the people at Headquarters who the Constellation Program reports to, and we said given the conundrum created by the CR, the provision in the CR, along with the new directive in the NASA 2010 Authorization bill, if you were freed, if you had the ability to close down Constellation contracts and move in this new direction, what spending that you are doing now wouldn't you do.

These are their numbers. These are their answers. They are not our answers. They are not the Inspector General's policy call about which money is not being used efficiently. That is our methodology, asking the program people.

CHALLENGES WITH COST ESTIMATION AND PROJECT MANAGEMENT

Mr. WOLF. NASA continues to experience major challenges in accurately estimating costs and then managing programs to stay within the estimates. In the fiscal 2010 review of NASA's costliest projects, the GAO found that 10 of the 19 projects have experienced overruns, with an average budget overrun of over 19 percent and

an average schedule delay of 15 months. NASA implemented a new cost estimation policy in 2009 that is intended to produce more rigorous and realistic budget projections for major missions.

When do you believe we can begin assessing whether this policy has actually improved the accuracy of NASA's cost estimates?

Mr. MARTIN. I think given the dollars involved and the importance, we need to start doing that right now. I think with two or three years under their belt, we will have some sense of whether their new procedures are effective.

Again, as I mentioned at the outset, some of these more innovative, visionary projects, whether the technology is not mature and whether there is just not sound management practices, it is a very big issue.

We have recently opened a new audit that is going to examine the role of project managers at NASA: do they have the appropriate experience, the appropriate training, are they given the appropriate authority to make the difficult calls as they manage these projects.

Mr. WOLF. Okay.

IMPLEMENTATION OF THE NASA AUTHORIZATION ACT

We have been concerned about the Administration's hostility toward manned spaceflight and exploration over the past two years. The President's fiscal year 2011 budget would have effectively ended NASA's exploration program. However, the NASA authorization that the Congress passed explicitly mandates a strong exploration program.

Do you believe that NASA is, to the best of its ability, complying with the exploration provisions of NASA's authorization of last year?

Mr. MARTIN. I do. Again, we have the conundrum that we articulated in our January 13th letter. I think they are doing about as well as they can under the constraint and the prohibitive language in the existing CR to try to effectuate what the new directive is in the 2010 authorization. But, frankly, they are between a rock and a hard place.

Mr. WOLF. Have they come up to speak to the authorizers? If they do not agree with you, obviously they have not come up to say that.

Mr. MARTIN. Excuse me. They do agree. They agree with the bottom line that NASA, this provision, the holdover provision in the CR needs to be removed. There is complete agreement.

What they are dickering with a bit are the numbers. We cited it as politely as possible, "potential inefficient use of taxpayers' funds," the \$215 million number and the \$575 million number. That is what they are attempting to clarify. But they are not attempting to clarify, they agree a hundred percent, that this limitation in the current CR needs to be removed.

Mr. WOLF. Do you have any recommendations on how NASA can achieve its exploration objectives beyond low earth orbit?

Mr. MARTIN. Mr. Wolf, I really do not. As a lawyer and as an Inspector General, we do not do policy. We do not, you know, say "commercial crew development" versus keeping it in house at NASA. That is not really our role there.

Mr. WOLF. Then do we bring in four or five of the best minds in the country who are not connected to the issue that can look at this thing? Because we need a strong space program for military reasons and for other reasons.

How do you bring clarity? Quite frankly, I am not so sure, with due respect to the Congress, that the Congress knows precisely what to do. If you had a very serious disease that no one could figure out, we would send you up to Johns Hopkins or maybe bring some of the very best people in the country to look at your case to make a recommendation.

We know we want to have a manned space exploration program. I think everyone in the country agrees, except for maybe a handful. The science advisor at the White House may not be in that group, but everybody else agrees.

How do we do it without this back and forth?

Maybe you cannot answer that now, but it has got to be answered. You cannot just kick the can down the road.

Mr. MARTIN. It needs to be answered. After spending about a dozen years at the Department of Justice, I have been Inspector General, at the NASA OIG for about a year now and it has just been fascinating.

But there are starkly different policy-based visions, and I think everyone is of good faith, about what is the most appropriate and effective use of the taxpayers' money moving forward. Should NASA really be a test bed of research and innovation and should it fund the commercial sector for some of the low earth orbit both cargo and crew?

And NASA should think about this. Some of the legislative language they use funds the R&D for some of these sort of game changing technologies that could get us to Mars and beyond, is that NASA's primary role while encouraging commercial, or should NASA continue as it has historically by building or contracting out and keeping under its purview the actual, you know, rockets and flight instruments themselves. And these visions really are conflicting. I think the Authorization Act attempts to bring them both together.

Mr. WOLF. Do you think it did?

Mr. MARTIN. I do not know about the science yet. But I do not know in these funding times whether this compromise, this sort of shotgun marriage, is going to be funded adequately to achieve this, on the kind of timetable that Congress is looking for, the capability to move beyond low earth orbit. I just do not know.

I am not sure you can split the pie that NASA is going to get and say, well, we are going to give this amount to commercial crew and we are going to give this amount to NASA to fund its own heavy lift system.

Mr. WOLF. Well, just think about it. If there are things that NASA is doing that are not part of the organic act, you could then take those resources to put them into what the authorization said.

But let me just turn it over to Mr. Fattah.

Mr. FATTAH. Thank you, Mr. Chairman. You said that what NASA is doing is, in large measure, actually rocket science, which I thought was a great line.

Mr. MARTIN. We used to use that, excuse me, over at the Department of Justice where we are saying it is not rocket science. Well—

Mr. FATTAH. I got you. And I want to use that analogy, I want to use that analogy in my own way. Which is that, you know, I really love the programs side of this. You have got a much tougher job. And people are generally not fans of auditors. So I want to focus on the purpose of NASA, all right? Because I went to the greatest high school in the world, Overbrook High School in Philadelphia. And we got a lot of attention because a great basketball player went there, Wilt Chamberlain. But we had another guy by the name of Guion Bluford, who ended up being an astronaut. He led one of the shuttle missions and he did not even get the same attention as a great basketball player, but he is a fantastic scientist. He went to Penn State, too. And I note that you went to Penn State. And I spent a few years on the Board of Trustees at Penn State. And it is a great university. The Creamery on the campus is the best deal.

Mr. WOLF. And who is the coach there now? I am not sure who.

Mr. MARTIN. I think they have a new coach.

Mr. WOLF. I went to Penn State, and the same coach who was there when I was there—

Mr. FATTAH. He is still there. He is still there.

Mr. MARTIN. When our children go to Penn State he will still be coaching.

Mr. FATTAH. But let me just try to work with this rocket science deal, right? Because I think that sometimes those of us here in the Congress kind of forget that we are all kind of human and there are realities to some of this. We went to build the Capitol Visitor Center. I was in the Visitor Center this morning. When the first budget was released, it was going to be \$200 million and it was going to be finished in 2005. Well, you know, it came in at \$600 million, \$600.5 million, and it cost a lot more money, and this was not rocket science. This was just brick and mortar, right here, on earth, right?

So you know, when you are talking about taking a human being and sending them out into space, it is a challenging thing. The technology for how to get that done, originally when President Kennedy set the original mission, nobody knew how to do it then. I mean, it kind of was the investment in our belief in ourselves that moved the country into this effort successfully. And I think that it is a challenge.

When we went to Iraq, I do not know if you recall, but there were estimates given to the Congress about what the war was going to cost us. And it did not pan out that way. So I do not want anyone here to think that because NASA misjudges the finances on a particular project that somehow, that is different than the rest of the government. Because we often miss the mark. But it is not so much in the numbers. It is really in the overall purpose that we have to kind of keep focused on here. Right?

So the Chairman says, you know, look, we need to have a space program. I mean, we are not in this world all by ourselves. We have allies, and we have potential adversaries, actual adversaries. We have circumstances that we have to manage on behalf of a

great nation. So we have a responsibility here, and we just ought to be careful about how we proceed.

Now you say that, and I think your letter to the Congress was a courageous act because the truth is that we can want to tilt the blame in any particular direction. It is really that Congress has been the one that has provided the lack of clarity.

Now it is good that we have an authorizing bill, and our committee waited for us to have one. And I think that that is the direction we are going to head in. And we are going to make the wedding, shotgun or not, work out. That is our job, to make it work. But we have to take our foot off first base. So in the case of Constellation, at some point having the agency waste money that we know is a waste on a project that we have determined is not going to happen does not make any sense, especially in a climate where we say we do not want to waste money, that we want to cut spending.

So we just need to assert the truth in the simplest fashion here. One is that there is not going to be in the realm of science a kind of perfection around cost that we may desire. We cannot even find it in the normal activities of the government, so we are not going to find it in this particular activity in which costs are in many ways immeasurable. I mean, when you start talking about taking a human being now, and not in lower orbit but into deep space, and the technology leaps that we will have to make to do that, which is what I think is really grand about what the President has put forward. It really is to set a mark and a destination that would cause the agency to kind of renew its commitment and renew the country's covenant with it to really be the premier science agency in the world in terms of space flight.

So I think that we should invest in the technology. And just like it was true many years ago, we did not know what the end result was going to be, and we did not know exactly how it was going to work out, but there was a belief in our ability to do it. So I just think that as you go and you look through your work—and I think it is appreciated—the main point, I think, is your letter to the Congress, that we need to provide some clarity. And we cannot steal second base without taking your foot off first. And we need to, if we want to save money, we have now passed an authorization, the White House has signed it, the United States Government has a firm commitment about how we want to proceed. So what we need to do therefore is stop spending money on something we have already decided we are not going to do. And that would seem to be the most commonsense way to proceed. And that is not rocket science.

So I want to thank you for the work you are doing. I know that you are relatively new to this work in NASA. I am interested in this facilities issue because I do not have a, like the chairman, I do not have a NASA facility in my district. So this is not a jobs issue for me. There are no people working in my district relative to the space industry. I think this is purely a matter of national imperative. And we should be thinking about, you know, how we can, within the question of moving forward, if you have got forty-year-old facilities, I mean, there is no question. There was an article last week about one of our economic competitors and major in-

vestments in space. We should not be proud of the fact that the majority of these facilities are forty years-plus in age, and we should be looking to how we can make some sense about how we go forward.

And I know that some of my colleagues here from Alabama and Texas and Florida have a particular interest, but I think we have to think about how we modernize the agency with a modern mission. I do not see how it can possibly be a partisan matter. This is a matter that really should unify the country and unify the Congress.

So I want to thank you for your testimony. I do not have particular questions, Mr. Chairman. Thank you.

Mr. WOLF. Mr. Culberson.

Mr. CULBERSON. Thank you, Mr. Chairman. We really appreciate your work. We are all devoted to the space program but because, as if you were in earlier have heard us talk about the scale of the financial problem the country faces is an age of austerity really unlike anything we have ever faced before. Is NASA in the room? I hope NASA is in here somewhere. Is NASA here? Oh, okay. Because it is important that NASA hear what we are discussing and the questions that they can anticipate. And I know we will be, we will have, the chairman is going to sit down and the ranking member before we actually bring the administrator in.

CONFLICTING VISIONS FOR NASA

I wanted to, if I could, ask about a couple of areas, Inspector General Martin. The, I heard you say a moment ago there are starkly different policies, ideas, about the direction NASA should go, whether or not it focuses on commercial and R&D, or is space exploration. Did you mean within the agency you are aware of starkly, are you talking about in general with Congress and the administration, or within NASA?

Mr. MARTIN. I was just responding to the Chairman's suggestion, should we bring a panel in. You know—

Mr. CULBERSON. Oh, okay—

Mr. MARTIN [continuing]. The facility of that. I think Congress, through its Authorization Act, has brought some clarity to what is the objective, what is the mission.

Mr. CULBERSON. Okay.

Mr. MARTIN. I am just saying if you brought a panel in—

Mr. CULBERSON. Right.

Mr. MARTIN [continuing]. You would have the problem of some might be for—

Mr. CULBERSON. Okay.

Mr. MARTIN [continuing]. A more commercial route versus keeping it in house. And that is the tension.

Mr. CULBERSON. One thing I know that has concerned me and other members of the subcommittee and the Congress was that the administration abruptly about a year ago just announced that they were essentially shifting completely over into this commercial arena without coming to Congress, without any prior warning. We were, of course the Congress strongly resisted that. And we as a Congress have endorsed very strongly the idea of a manned space flight program as the principal mission of NASA, space exploration

and a manned space flight program. And with Mr. Wolf's leadership we were able to get that language in the authorization bill that NASA was going to build a heavy lift vehicle to go beyond low earth orbit and to develop a manned capsule.

However, I continue to get reports back from NASA field offices, from the flight centers, that there is a continuing problem, it was particularly bad last year with the NASA administrators, people at headquarters, despite what Congress had put in the law, continue to attempt to shut down major sectors of the work being done on the heavy lift rocket. Could you talk about that? Is that still going on? Is NASA and the administration following the statute?

Mr. MARTIN. Well again, I think you tee up the problem which is detailed in our letter. We have two conflicting statutes. We have the CR, which directs NASA—

Mr. CULBERSON. Right.

Mr. MARTIN [continuing]. And—

Mr. CULBERSON. Specifically the Constellation.

Mr. MARTIN. Correct. And so they need to keep funding those Constellation contracts, be it Ares I, Ares V, or the Orion crew vehicle. So under law, under the existing law, they are required to continue funding. Now there is discussion about what amount you have to keep funding them. I mean, they had projections of hundreds of millions of dollars for each of these parts of the Constellation contracts. I think they have appropriately scaled those back trying to anticipate what is going to be the architecture for the heavy lift that is called for in the Authorization Act. But these are in direct conflict.

Mr. CULBERSON. The statute signed by the President though, let me make sure I understand, would that not be a later enacted statute, the authorization act signed into law, that, the CR is of course ongoing and still in effect. But then we passed a statute that is very specific. You are an attorney—

Mr. MARTIN. I am.

Mr. CULBERSON [continuing]. And I just recall in looking in other cases where you have conflicting statutes the one that was signed later and is more specific wins.

Mr. MARTIN. I think as a general rule of statutory or congressional construction, that would be correct. But I think you, the problem here is you have an authorizing act that sets the policy direction. And then you have an appropriations act which talks about how you are able to spend the funds. And so the conflict is on the policy level.

Mr. CULBERSON. But both, the CR language was statutory, I think.

Mr. MARTIN. Yes.

Mr. CULBERSON. Excuse me, the language in the last appropriations bill that you are referring to was statutory, and this is a later enacted statute. It is more specific.

Mr. FATAH. But Mr. Chairman, maybe I can help you out here?

Mr. CULBERSON. No, please. Help me. I would love to get this straight.

Mr. FATAH. Let me help you out here. It does not matter what you say in that authorizing bill. What counts is what the appropriators have said. And what we have said in this instance is to the

contrary. We have said in the CR that they cannot initiate any new program—

Mr. CULBERSON. Mm-hmm.

Mr. FATTAH [continuing]. Or cancel any existing program. So you have an authorizing bill that says that we have worked this out and we know which way we want to go. That is where the conflict comes in.

Mr. CULBERSON. Yeah, and we are going to try to fix that, I think.

Mr. FATTAH. In a couple of weeks, we are going to pass a new CR. We can fix it or we can pass a new bill.

Mr. CULBERSON. I think we are, in fact. I know Chairman Wolf—

Mr. FATTAH. Whatever we are going to do. But they cannot solve this problem. This is our problem. And we have to decide how we want to proceed.

Mr. CULBERSON. Yeah, I just wanted to explore it with Mr. Martin.

Mr. FATTAH. Right.

Mr. CULBERSON. You are right, Mr. Fattah. And I think that, I am confident the bill that we are going to pass is going to give clarification of that, to ensure that the authorization act is the one that prevails and that we follow. The question of clarity then absolutely is essential. And the cost estimates, are you satisfied that NASA's ability to, that the programs and the policies that they have put in place are going to give us more realistic cost estimates at the outset of these major flagship missions?

Mr. MARTIN. I am hopeful. I am hopeful. Of course, as an IG's office we are going to keep auditing and reviewing and pushing them that way.

Mr. CULBERSON. Right.

Mr. MARTIN. And to just comment on something Congressman Fattah indicated, I think NASA needs, the American people need, to have a visionary agency. So I was not being overly critical that they are starting a project like James Webb.

Mr. CULBERSON. Oh we understand, sure.

Mr. MARTIN. I just think we need to be more disciplined about how, and sort of put up front. Because one of the problems you run into with these significant cost overruns in the James Webb Space Telescope Program is it is frankly going to eat the lunch potentially of other important science programs. There are only so many dollars to go around.

FINDING SAVINGS IN THE NASA BUDGET, CONTINUED

Mr. CULBERSON. Mm-hmm. Do you have specific recommendations that you could give us? There is a, the committee is going to produce a continuing resolution very rapidly. It is being written right now. Specific ideas or recommendations that you could give us for cost savings for the agency that would enable us to meet the charge that Chairman Wolf has to produce savings for all the agencies under our jurisdiction while preserving an agency that is vital to the national security of the country and that we are all devoted to. Have you got specific suggestions, Mr. Martin, that you could give Chairman Wolf and our very capable, professional staff, like,

right now that could help us find some savings without damaging or injuring NASA's core mission?

Mr. MARTIN. I would be pleased to work with Diana and Bob and the staff to try to come up with some discrete answers, I have mentioned three overarching issues here.

Mr. CULBERSON. We need real specific—

Mr. MARTIN. Right.

Mr. CULBERSON [continuing]. Real quickly.

Mr. MARTIN. We will do what we can.

RECOMMENDATIONS FOR BUDGET SAVINGS WITHIN NASA PROGRAMS

- Removal of the language in the Continuing Resolution currently funding NASA that prevents the Agency from terminating Constellation Program contracts or initiating new space exploration programs. This will allow NASA to more efficiently allocate its funds to address the directives in NASA's 2010 Authorization Bill that require the Agency to develop a Space Launch System and Multi-Purpose Crew Vehicle.

- NASA must exhibit greater discipline in managing its science and space exploration programs by, among other things, developing firm requirements, establishing more realistic cost and schedule estimates, and ensuring technologies are sufficiently mature before proceeding through development.

- NASA should take a realistic look at its sprawling infrastructure and aging facilities, assess those aspects it needs to retain and potentially upgrade, and develop an aggressive plan to "right size" the Agency's footprint to meet future challenges. Absent such an effort, NASA's facilities will not be used effectively or efficiently, and the Agency's deferred maintenance expense will continue to grow from its current estimate of \$2.5 billion.

Mr. CULBERSON. Yeah. And again, as we always stress, while protecting their core mission. I frankly, Mr. Chairman, really want to discuss this further. I have mentioned this to you before, and I want to talk to other committee members about it. I think ultimately in this environment, this age of austerity that we are entering which is unlike anything the nation has ever faced before, that we are going to need to look very carefully, as Mr. Wolf said, at combining some of the functions of, for example, NOAA. Why is not NASA responsible for the polar satellites, and the weather satellites? And the Coast Guard, for example, responsible for the oceanography mission of NOAA? That we are going to have to think about consolidating all sorts of things. The facilities that are 80 percent of them over forty years old. We are going to have to look very, very hard at how do we protect the core function of NASA to have a vigorous, not just vigorous, the very best manned space flight capability in the world. And the very best robotics missions in the world.

And in my mind the statute, the statute is there. We I think are going to need to protect the decadal survey missions. One way in my mind, and I wonder if you could just offer any comment, Mr. Martin, and I will pass on and yield my time, Mr. Chairman. If can you comment on the, if we are short of money and we were going to focus on manned space flight, and then we wanted to try to preserve the very, the best robotic missions, the most important robotic missions like Webb and others. To my mind we should focus on the decadal survey recommendations because that is an independent recommendation of all the best scientists in the world prioritizing the missions in separate categories, and would allow us to preserve NASA's ability to fly those top missions in an era where we just really do not have the money. Could you comment on that?

Mr. MARTIN. I cannot comment on, you know, the priorities in the science program or really, you know, some of these major policy decisions. I can offer that NASA takes quite seriously the results of the decadal survey. And tees up to the extent they can, they have different tiers of priorities. The National Science Foundation, or whoever puts the decadal survey together, does. I know NASA takes those recommendations quite seriously.

Mr. CULBERSON. Well I look forward to working with you, and thank you for what you do. And coming up with some short term recommendations, and then for the longer term as we produce a bill for the 2012 fiscal year. Thank you very much.

Mr. MARTIN. Thank you, sir.

Mr. WOLF. Mr. Bonner.

Mr. BONNER. Mr. Chairman, Mr. Serrano and I just came from meeting with the Inspector General of the Securities and Exchange Commission. And since we both got to this a little bit after Mr. Martin had started his testimony I am going to tee this up with first of all by saying I think everyone on this committee, Democrat, Republican, all sections of the country, certainly value what NASA means to our country, both our past and certainly for the future. But in talking with the Inspector General of the SEC he was going through some examples of some of the things that he had uncovered in terms of troubling expenditures, waste. A \$15 million lease in Manhattan, which the gentleman from the Bronx pointed out in Manhattan terms is not that much money, but in Mobile, Alabama terms or in the Bronx terms it is a lot of money. \$15 million for a lease of an office that they have not had a single employee in for the last five years.

Can you give us, because again we all support NASA. But have you uncovered during your time as the Inspector General some examples that as taxpayers we all should be concerned about that the agency needs to be more focused on in this time, as Mr. Culberson said, of austerity? How can the, how can NASA look inside and find some of its own misappropriations of funds?

Mr. MARTIN. Right. I do not want to repeat the areas about project management and about the conundrum created by the conflicting legislation. So those would be things I would put out number one. NASA also has a program called the SBIR Program. And these are grants for small business innovative research. And we have done a recent audit looking at the internal controls there. Our recommendation is that NASA can do a much better job improving the internal controls to ensure, number one, that the right people are getting the grants that they are qualified for. Number two, that they are producing meaningful research. And number three, that the expenses that they are charging the government are appropriate. We found over \$2 million in unallowable or unsupported costs.

We also made recommendations about the lack of internal controls. NASA is just one of eleven federal agencies that are involved in the SBIR program. And some of the criminal investigations we have done over time have found individuals who would apply for an SBIR grant through NASA would also apply through another agency, turn the same term paper, the same research into both, and collect from both. So the agencies involved in this program

need to talk and need to cooperate more to ensure that that kind of fraud does not occur.

Mr. BONNER. And then just one more question at this time. You said in your written statement, the third paragraph, "the most immediate challenge facing NASA's leadership is to manage the agency's portfolio of space and science missions amid the continuing lack of clarity caused by conflicting legislative directives in the authorization act and a holdover provision in NASA's fiscal year 2010 appropriation law." You have, in talking with Mr. Fattah and also with Mr. Wolf, you have addressed that as a concern. And I know your role as the inspector general is different than the administrator's role or the President's role or our role in Congress. But as the father of a fifteen-year-old daughter, and a soon to be this weekend thirteen-year-old son, I sometimes am having conversations, I am in no way drawing an analogy that NASA is our child. But we are proud of what NASA has accomplished. And I draw analogies to when my kids come to me telling me they want to do this, that, and the other. And my wife and I always say, "Well, when you make up your mind come back to us and we will talk." Is the most immediate challenge the conflict between the authorization law and the appropriations, the CR? Or is it that we have yet to have someone like President Kennedy did in the 1960's help give us a vision of where NASA will go in the next forty years?

Because we all touch on it. We are concerned about what our friends and some of the people who are not our friends in other countries are doing in terms of investing in their space programs. Do we have a, from your perspective, I know you are not policy. But from your perspective, having been on the job, do you see a clarity of vision and purpose for NASA today? Because I know I am older than you are. But when I was a child and could sit around the TV set, and people would come from all over the community to watch those space launches, and those first steps on the moon, and the exciting days of the shuttle program. Even if we did not know all of the science that was being conducted, and all of the research that was being done that would change our life, there was an excitement about that vision. I do not see the vision, personally. But I would love for you to tell me I am wrong.

Mr. MARTIN. Well again, as an inspector general, and as an inspector general who has been on the job for a little over a year I do not think I am qualified—

Mr. BONNER. That is a long time.

Mr. MARTIN. On some levels it seems like yesterday, on some levels it seems like a lifetime ago. I cannot really address that. I think it would be inappropriate for me to address and kind of check the vision of NASA and NASA's employees. I will say that NASA, excuse me, that the Congress has provided a roadmap and a blueprint in its 2010 Authorization bill and frankly has given marching orders for NASA. Now to what extent NASA at large has embraced those marching orders? I think they are absolutely following them. But again, when I talk about the most critical issue facing NASA it is a short term issue. NASA has to know what its funding stream is going to be. It needs to be freed from the constraints of funding the prior Constellation program so that it can begin to put

resources into the new blueprint outlined in the 2010 Authorization Act.

Mr. BONNER. Thank you, Mr. Chairman.

Mr. MARTIN. Thank you, sir.

Mr. WOLF. Thank you. I think Mr. Bonner really made a good point, though. And I feel the same way, too. I remember when I came to Washington and my parents came to visit me. We actually drove by John Glenn's house, and it was so exciting to say, that he lived in Arlington, by Little Falls. And I think you are exactly right. There is not that feeling anymore. Mr. Serrano.

Mr. SERRANO. Thank you, Mr. Chairman. I too apologize for my brief appearance here, being late and then leaving early. But you know how that works with all these subcommittees. And thank you for your service and for your testimony.

IMPACT ON NASA OF MAJOR BUDGET REDUCTIONS

Inspector General Martin, I do not envy, and this is in no way an attack, they know me better than that. I do not envy the majority party in the role they have taken to cut across the board incredible amounts of dollars. And some of those cuts will affect people and we will deal with that as time goes on, and they are very painful. But NASA, and any cuts to NASA, dramatic cuts to NASA is a very interesting situation. Because when the President talks about competing with other countries in the future and staying on top of our game, NASA to me is right there at the center of that competition and that preparation.

And it is interesting that we are discussing this here because the chairman has made a career, and I say that in a respectful way, of singling out what happens with the People's Republic of China, and how they treat their people, and how they interact with us, and how they in many cases attack us. And so we can bet that right now in China, and I am beginning to sound like him, there is the equivalent of NASA, not worrying about budget cuts, but worrying about how strong they are going to become in what they do and what they produce and what they invent. Because NASA has given us a lot, and it is not just Tang or Velcro, it is much more than that. Although those are very important.

So without putting you in the middle of the budget cutting debate, you looked for waste, you looked for fraud, but you also must have an idea of how much an agency could sustain in a cut. Can NASA sustain the cuts that we hear may be proposed and remain viable? When the President says we have to compete he is basically saying there are some areas you could leave alone. Could we accomplish that? Or are we all dreaming that the cuts will come across the board and affect everybody the same? How much of a cut can NASA take? Not in dollars, but in getting away from their mission?

Mr. MARTIN. I am going to apologize up front, Mr. Serrano. I cannot really address that because I do not know what level of cuts that the Congress is anticipating. But in addition it is a question really of prioritizing what the Congress does not want NASA to do. NASA can only do so much with the sizable budget that the Congress appropriates. So what science, what sort of visionary science

programs or projects, or satellites, or missions to Mars does the Congress not want to make a priority for NASA? It is——

Mr. SERRANO. And do you feel we have given NASA too much to do? Or do you think they can handle their mission right now?

Mr. MARTIN. Well again that is——

Mr. SERRANO. Before the cuts.

Mr. MARTIN. Yes. I do not think you have given NASA too much to do. NASA, again, and I keep using the word, really is a visionary place with people who are excited. There is no place like it in the United States, on earth, for both its history and its importance. So there are people clamoring to work at NASA and they can come up with, as Carl Sagan would say, billions and billions of projects to do. So no, I do not think you have given NASA too much to do.

Mr. SERRANO. Right. And I, this may shock Mr. Culberson because he does not remember the last time I agreed with him on something, although we agree on a lot, especially on immigration, but that is another issue. He is cutting immigration funding enforcement, too.

Mr. MARTIN. I hung up my DOJ hat.

Mr. SERRANO. Yes, right. But I agree that maybe part of what we do is take a closer look at where there is overlapping responsibilities. Why are satellites handled by two folks when only one folks?

It reminds me of this whole technology that you are so good at dealing with. I mean, there used to be an iPod, and there used to be a cell phone. And now each one of them can take pictures, can get you music. And you wonder, "Okay, do I need them all? Or do I just need one?" You know? I have a Walkman. I still have seventy-eight records, you know? Do you know why they were called albums? Do you know why? Because the seventy-eights used to go into an album, and you put six of them, which were twelve songs, and it was an actual album. I am the king of worthless information. Okay. I am. I have information you do not need.

ETHICAL CONFLICTS AT NASA

Let me ask you a question on this whole issue of ethical responsibilities. There was a report that showed there were contractors working alongside NASA employees, and then in many cases NASA employees then went on to get jobs in the private sector that may or may not have been influenced by their working along with these folks. Now this is an issue across the government. The whole idea of contractors, and what rules they follow as compared to the federal employees, and how much they get paid, and their benefits, and what does that. So is there anything being done about looking at what ethical issues may come up in having that kind of a situation, where you have these folks working side by side and then some folks leaving later?

Mr. MARTIN. It is an incredibly important issue and one that the Office of Inspector General stresses. We, our investigations division in particular, attacks any allegations of improper ethical conduct. I think the Agency does a pretty good job in ensuring that the employees, especially those that are dealing first hand with the contractors, are aware of their ethical responsibilities and obligations. But it is, as you see in the cases that we do, where senior members

of NASA are convicted for improper use and improper influence. And so it is something that we just need to be continually vigilant on.

Mr. SERRANO. So we know the number of contractors that work alongside NASA employees? I mean, is it a large number? Is—

Mr. MARTIN. It is a very large number. Eighty-five percent of NASA's funds are pushed out to contractors.

Mr. SERRANO. Okay. Thank you, Mr. Chairman.

NEED FOR ENTITLEMENT REFORM

Mr. WOLF. Thank you, Mr. Serrano. I am going to call on Mr. Aderholt, but I wanted to say that I am glad Mr. Serrano said what he said. I think he makes a very, very valid point. I think we are coming to a time when both parties are going to have to address this, as well as the audience, which is made up of probably a lot of contractors and people in the business. Everyone is going to have to face this. Simon and Garfunkel sang a song in Central Park called "The Boxer." And it says "a man hears what he wants to hear and disregards the rest." The reality is we can never solve these problems until you deal with the entitlements, if you do not look at Medicare, Medicaid, and Social Security.

I gave a speech on the floor the other day saying that if I had the opportunity to serve on the Bowles-Simpson Commission, I would have supported the recommendations. Because I am afraid of what is taking place. You are going to squeeze programs that are so important to keep up. And as Mr. Serrano says, the Chinese now have 200,000 engineers working on their space program, and we only have about 90,000 or 95,000. We are falling behind. And as a father of five and grandfather of fifteen, I worry about where this country is.

And so we need to deal with that. In the Senate, you had Tom Coburn, who I think is a good senator, and Dick Durbin both support what was in the Commission recommendations. Until you deal with the entitlement issue, you are making all of the cuts out of a very small, one-fifth or maybe one-sixth piece of the budget.

There is a piece by Niall Ferguson, a great historian, who says great nations decline rapidly once the decline begins. I do not want to stand by and see my country basically decline. I will send a copy of the piece to every member of the Committee. I was disappointed with the President. The President set up this commission and then he walked away from it. He should force the Congress to address it, and the Congress should force him to address it. I think we can do it in a bipartisan way that literally saves the country.

But if we, and as Mr. Serrano said, are not putting the money into math and science and physics and chemistry, into the space program, and investing, the decline comes. And I do not want to see our nation decline. Willie Sutton the bank robber said he robbed banks because that is where the money was. To make the necessary savings, to have a renaissance in this nation and to have a space program that has the excitement that Mr. Bonner is talking about really requires that we deal with the entitlements. The member who tells you he is going to solve the problems here by going after earmarks and waste, fraud, and abuse has missed the whole point. And I think the constituents have to say, well, that

is not going to solve the problem. Otherwise we will see this nation begin to slip. And I do not want to be here, or ten or fifteen years from now sitting on a rocking chair in the Shenandoah Valley, while my grandkids come up and say, "You know, you were there. How did you deal with it?" The answer is that we should come together in a bipartisan way to deal with Medicare, Medicaid, and Social Security so we can continue to have other investments.

If we continue the current process without looking at the entitlements, I will tell you another group that is going to suffer. The poor. In the tax bill that the Obama administration and the Republicans in this Congress supported that I voted against about a month ago, the 2 percent reduction in the payroll tax for social security gave a break to Jimmy Buffet and Warren Buffett. That cost us \$112 billion, and the Obama administration and the Congress, Republicans and Democrats, said they were going to make up for that by borrowing from the general fund. The general fund is broke. We borrow from China. China that has Catholic bishops in jail, Protestant pastors in jail, has plundered Tibet and is spying against us. We are borrowing from them, and we are borrowing from the Saudis who are funding radical Wahhabism, which led to 9/11 and led to what is taking place in Afghanistan and Pakistan. And here we gave the Buffet brothers or cousins, or if they know each other, a big opportunity under Social Security. So the poor will suffer, too.

So I think you have got to deal with these entitlement issues. In a certain period of time, about twelve to fifteen years, every penny that comes in will go for Medicare, Medicaid, Social Security and interest on the debt. There will be no money for the space program, no money for education, and no money for anything else. Mr. Aderholt.

OIG FINDINGS ON CONSTELLATION SPENDING UNDER THE CR,
CONTINUED

Mr. ADERHOLT. Thank you, Mr. Chairman. One of the first questions you asked, I think the chairman asked you about the methodology of your findings. And basically how, again just briefly, what was that methodology to, that you, how you arrived at your findings?

Mr. MARTIN. You are talking about the Constellation letter that we sent to Congress?

Mr. ADERHOLT. Yes.

Mr. MARTIN. We went to the program. We went to NASA Headquarters and we went to the Constellation program people and asked them this specific question: if you were not bound by the language in the CR, which aspects would you walk away from, or diminish, reduce? These are their numbers. These are their answers. These are their numbers.

Mr. ADERHOLT. All right. So, you know, of course I am from Alabama and of course represent the area around Marshall. So you spoke with the folks there at Marshall?

Mr. MARTIN. We did. The Deputy Program Manager of the Constellation program and the Associate Administrator at NASA Headquarters.

Mr. ADERHOLT. Here in Washington?

Mr. MARTIN. Correct.

Mr. ADERHOLT. In your letter that was dated on January 13, 2011 you state that the upper stage and related avionics elements of the Ares program are "insufficient use of funding," citing a conversation with unnamed NASA officials. When you talked with them did they offer evidence that provide that these elements were not applicable to the new heavy lift system?

Mr. MARTIN. No, we did not.

Mr. ADERHOLT. And as far as the letter to Congress contradicts NASA's ninety-day report to Congress, which states that the Ares project five segment boosters, J-2X upper stage engine, and the Ares I upper stage malfunctioning concepts and instrument unit assembly also could be applicable for SLS. How do you reconcile those two things?

Mr. MARTIN. I am sorry, I am not sure I followed all of that. But NASA has not decided yet, again we do not do policy, we do not say liquid fuel, solid fuel, that is not what the Inspector General does. But clearly NASA has not decided yet which architecture it is going to use to implement the launch program directives as well as the crew capsule directives in the Authorization Act. They have an idea and Congress has given them the impetus to look first at shuttle technology and existing Constellation technology. So again, in this letter we are not making a judgment call. We asked the program people if you were freed from the constraints of the language in the CR, which aspects of Constellation that you are funding now would you either reduce, diminish, or defer? These are their answers.

Mr. ADERHOLT. Okay. Why are these two contracts for the heavy lift vehicle being recompeted when number one, they are crucial to the HLV, and number two, appropriation language says existing contracts should be utilized?

Mr. MARTIN. You really need to ask the Administrator or the General Counsel. I know they are looking at the issue of whether or not they can extend the current Constellation contracts and morph them into the new vehicles that are directed under the Authorization Act, or whether they would need to recompet.

COMMERCIAL SPACEFLIGHT

Mr. ADERHOLT. NASA is paying private companies to resupply the Space Station with commercial resupply funds, yet none of these private companies have proven that they are capable of going to the Space Station. Could you share your concern with that?

Mr. MARTIN. I do not really have a concern with that. Again, it is a policy call where NASA and the Congress is going to put NASA's money. I will note that one of the companies, SpaceX, Space Exploration, had two successful flights, first in July, and a second in December. The December flight with a dummy capsule that they called the Dragon capsule. That is the name for their, at some point, potentially crew-based capsule. Leaving the atmosphere, circling the earth twice, and splashing down. So I think they are still perhaps, you know, it depends on who you ask, anywhere from one to three years away from being viable and certified to take cargo from the earth up to the Space Station. But again, it

is not my policy call that that is where NASA should put its money or they should build their own.

Mr. ADERHOLT. Okay. All right. That is all I have got right now. I may have some follow up.

Mr. FATTAH. Mr. Chairman.

Mr. WOLF. Mr. Fattah.

Mr. FATTAH. Let me explore some of this question about privatization or commercial crew, if you would. You said about 85 percent of NASA's dollars are now contracted out to private sector companies? In fact, some of the private sector companies that are involved in the Constellation also are involved in commercial crew, right? That is to say that this notion as if this is a foreign effort that we would rely on the private sector which is, you know, the big push here and which is part of the compromise that is in the authorization is that there would be commercial crew and that there would be this continuation of some parts of Constellation, even though it is not said like that. But it is this whole heavy lift capability.

But that in truth, the same company, a lot of the same companies that either contract with NASA now would be competing on the commercial side, right? So is that an accurate reflection?

Mr. MARTIN. My understanding is that is accurate, yes.

Mr. FATTAH. Right. So that NASA has always had a close reliance and connection and has been intertwined, it has been a public/private venture from way back under the, you know, I mean there was a time in Philadelphia with the GE reentry systems for the original moon flights. There were thousands of engineers, Mr. Chairman, who worked in Philadelphia on the reentry system. So I think that in the public debate about this, somehow we act as if NASA has been acting as a government entity with government bureaucrats building spaceships and now that the administration wants to use commercial companies to do it, it is really commercial companies that have been intricately involved in this activity from day one and will be going forward. That this really is a question in the decision package related to whether or not we want to use the private sector. Because that is the great engine of innovation in our country, and use entrepreneurial activities and risk taking to deal with some of the kind of normalized lower space, low orbit travel. And then to use what would be much more risky, and obviously require heavy investment, something only the government could do, is to focus on going into deep space and to Mars or to an asteroid, and so on.

So that this notion that we have not come to some agreement I think is defied by the fact that we passed the authorization. I mean, there is a deal. We call them deals in our business. There is a deal for how we are going to go forward. And all we need to do now is to effectuate or actualize it in the appropriations process, and then we can go on. And I think then the agency will have clarity. Because beating up on an agency for not having clarity when we are the ones who created the confusion just does not make any sense to me.

So Mr. Chairman, I think that the sooner we do the CR, and whatever clarity that can be arrived at in which the House and the Senate and the White House can decide how to go forward, then

we can get NASA to kind of lift off and not be kind of mired down. And it is kind of hard to reconcile the scientists with the politicians. And some of this has to do with jobs. I guess it is almost like an earmark. If you have a NASA facility, you have got a lot of jobs, and you have got a lot of interest. But we have got to have the national interest rise above that and think about where we are going, what we are doing. And we should get started because our competitors are not standing still. So we risk our own decline. And none of us as Americans should be interested in that. We should be trying to move our country forward, and NASA should be at the front edge of that.

CHINESE INFORMATION SECURITY ATTACKS AGAINST NASA

Mr. WOLF. Thank you, Mr. Fattah. Keying off of that, I just have one last question and then I will go to the other members. China uses information stolen from other countries to make up for gaps in its own technical knowledge. This allows the Chinese to make programmatic advances much faster than would otherwise be possible while simultaneously eroding the competitive edge of our own programs. To what extent can we trace recent advances in China's space program to theft of information from NASA?

Mr. MARTIN. Mr. Chairman, I cannot make that direct linkage. I can tell you—

Mr. WOLF. Well, but I would like you then to look at it, to come back—

Mr. MARTIN. I would be pleased to look at it.

Mr. WOLF. If you can come back in thirty days and tell us, we would appreciate it.

Mr. MARTIN. I can tell you that NASA as an agency is probably one of the top three or four targets of both economic and foreign government cyberattacks.

Mr. WOLF. That was my next question. Can you tell us about the cyberattacks against NASA?

Mr. MARTIN. They are frequent and they are detrimental.

Mr. WOLF. And what country is making the attacks?

Mr. MARTIN. Different countries. They have been traced to China. They have been traced to Russia. They have been traced to Estonia and other parts of Eastern Europe. They have been traced to Africa.

Mr. WOLF. And how often does that take place?

Mr. MARTIN. I cannot tell you the frequency, but it is not infrequent. And again, it is detrimental. I was pleased to inherit a very, very robust computer crimes division in the IG's office. And we have had our special agents flying to Estonia and China and other parts of the world to work these cases. So we take this incredibly seriously.

Mr. WOLF. I know the press is here and covering this. Can we honestly say that China or whoever is doing the cyberattacks? I know it is China. But whoever is doing the cyberattacks, there have been detrimental impacts to our space program that have also given information out that helps others. Is that right?

Mr. MARTIN. There have been improper releases of NASA data that have been traced to computers or individuals in the countries I identified, yes.

Mr. WOLF. And China has been part of the process of cyberattacks against NASA?

Mr. MARTIN. Yes.

Mr. WOLF. Yes.

Mr. MARTIN. Now China as a government or Chinese citizens? I cannot make that—

Mr. WOLF. It is the same. They have got one of the most comprehensive cyber programs in the People's Liberation Army and the government. It is China. I think we have got to say it. It is the same country that is spying against us, that has cyberattacks against us, that has Catholic bishops and Protestant pastors in jail, and is shooting people and taking their organs to sell for \$50,000 to \$55,000. Anyone who is out there and wants to see the video, we will show you the video of the Chinese People's Liberation Army executing people, then taking their corneas and kidneys out. So it is the same government.

But I think this is something we have to face. So if you can get back to us in less than thirty days about the threat from China. Just tell us, both in a classified version and then an unclassified version. Then we can let other members know what takes place with regard to that. Thank you. Mr. Bonner or Mr. Aderholt.

Unclassified assessment of how advancements in China's space program might be traced to theft of information from NASA

Investigations by the NASA OIG and the Federal Bureau of Investigation (FBI) have shown that data from NASA systems has made its way to China. However, it is unclear whether or to what extent these thefts of information have contributed to advancements in the Chinese space program.

Below we describe four incidents in which NASA information was illegally released to individuals in China.

1. NASA Contractor Employee Convicted on Economic Espionage Charges

Predicate: This case involved allegations that a former NASA contractor employee (30 years with Boeing and Rockwell) unlawfully obtained sensitive information including Space Shuttle radar and communication documents from U.S. contractors and transmitted this information to China. This case was investigated by the FBI with the assistance of NASA's Office of Protective Services, Counter Intelligence Division.

Disposition: In February 2010, the 74-year-old Chinese-born subject was convicted after a non-jury trial on six counts of economic espionage and sentenced to 15 years in prison.

2. Infection of Six Goddard Space Flight Center (GSFC) Computers

Predicate: On January 8, 2008, NASA discovered that six GSFC computer systems had been infected with malware after visiting the internet site www.analex.com. Once infected, data from the GSFC compromised computers – as well as data from dozens of other computers, including a NASA Headquarters computer – was sent to a computer in Kansas City, Missouri, which had been compromised and taken over by a Chinese citizen.

Disposition: The NASA OIG worked with the Departments of Justice and State to coordinate the investigation with Chinese law enforcement authorities. In December 2010, the OIG was advised that Chinese authorities reported that they had arrested the intruder and that he was sentenced to 10 days in prison for violating China's Public Security Punishment Law in connection with his hacking into various websites.

3. Hacking into a Jet Propulsion Laboratory (JPL) Server

Predicate: On May 12, 2008, a JPL employee's e-mail account was infected with a malware program that allowed the hacker to capture the employee's passwords to JPL data applications. The intruder was able to steal 22 gigabytes of data from JPL servers through the use of the captured passwords. This data included schematics, drawings, and manufacturing specifications that were proprietary and export controlled in nature. This intrusion was investigated as part of series of computer intrusions at defense contractors and U.S. Government agencies by the FBI, with assistance from the NASA OIG.

Disposition: The investigation determined that the intrusion came from an Internet Protocol address in China and that the stolen data was e-mailed to China. Although the investigation continues, the OIG made recommendations to NASA managers to help prevent future intrusions. In response, JPL instituted a Corrective Action Plan that was endorsed by NASA's Office of the Chief Information Officer.

4. Infection of JPL's Deep Space Network (DSN) System

Predicate: On May 26, 2009, NASA discovered that cyber criminals had infected a JPL computer system that supports the DSN. This infection caused the computer system to make over 3,000 unauthorized connections to domestic and foreign Internet Protocol addresses, including addresses in China, the Netherlands, Saudi Arabia, and Estonia.

Disposition: Due to inadequate JPL security configurations, the OIG investigation could not determine the specific origination of the intrusion or whether the intruders had manipulated any data. As a result of our work, the OIG made recommendations to NASA managers to improve the integrity of the JPL network, which they implemented.

Mr. BONNER. Mr. Chairman, I have got one question that I might submit for the record but I will pass to Mr. Aderholt who has one final question.

Mr. WOLF. Sure, sure. Without objection then.

JAMES WEBB SPACE TELESCOPE

Mr. ADERHOLT. In an IG report released last year you cited that four-year delay and \$5 billion overrun for the James Webb Space Telescope. Do you believe or anticipate there will be further delays or cost overruns for the program?

Mr. MARTIN. There was an independent review that I mentioned in my opening statement that was done in November of last year that anticipated that the earliest they could launch that incredibly important, incredibly sophisticated space telescope was September 2015. But that was only if, as the panel said, critical management changes in NASA's operation of the program were made, and an additional \$500 million was added to the money that was already in the budget, the NASA budget for that. So do I think there are going to be additional delays? I would think so. I do not see where the Congress is going to come up with an additional \$500 million on top of what is budgeted already for the Webb telescope.

Mr. ADERHOLT. Okay, thank you.

Mr. WOLF. Thank you very much for your testimony. The hearing is adjourned.

Mr. MARTIN. Thank you.

Chairman Frank R. Wolf

**FY12 Subcommittee on Commerce, Justice, Science and Related Agencies
Questions for the Record – NASA OIG**

Constellation Spending Under the CR

1. Your January 13 letter on spending under the Continuing Resolution says that, by the end of the current CR, NASA anticipates spending \$215 million on elements of the Constellation program that it would have “considered canceling or significantly scaling back” if such actions were legally permitted. This finding has been portrayed as an identification of \$215 million of wasteful spending. Isn’t it possible, however, that a final exploration architecture decision would result in NASA choosing not to cancel or scale back some of the activities highlighted in your letter?

Answer: In my letter, I stated that absent the restrictive language in the continuing resolution, NASA “would have considered canceling or significantly scaling back” certain Constellation programs. I also noted that Agency officials reported that NASA likely would use many of the major components currently under development in the Constellation Program for the new heavy lift system and had directed the majority of funding to Constellation contracts and projects they believed would most likely benefit the new system. However, NASA officials told us that as the fiscal year progresses, it will become increasingly more difficult for the Agency to avoid expending funds on projects that may not be readily transferrable to the new system.

2. Canceling contracts comes with its own set of costs, both to close out existing activities and to re-compete and award a new contract. Until NASA definitively decides on the new exploration architecture, could you argue that it would be wasteful to preemptively cancel contracts that could still end up being applicable?

Answer: As discussed above, senior NASA officials told us that absent the restrictive language in the continuing resolution, they would have considered cancelling certain Constellation contracts in light of the new directives contained in the 2010 NASA Authorization Act. In addressing these new directives, NASA will weigh the costs of terminating existing contracts against the benefits of redirecting funds to the new space launch system and multi-purpose crew vehicle.

Project Management

3. NASA implemented a new cost estimating policy in 2009 that is intended to produce more rigorous and realistic budget projections for major missions. Are you planning an analytical assessment of the impact this policy on the accuracy of NASA’s cost estimates? If so, when will this assessment be available?

Answer: We believe that NASA’s Joint Cost and Schedule Confidence Levels (JCL) initiative, under which the Agency is attempting to budget programs and projects at a

70 percent confidence level, is an encouraging step toward achieving more realistic budget projections. We plan to conduct a review of NASA's implementation of this policy in 2012 after a sufficient period of time has elapsed to allow us to measure its effectiveness.

4. NASA's new policy focuses on creating joint confidence level budgets, which are highly technical and a significant departure from the old policies and procedures. Does NASA's staff have sufficient training and expertise to create and use these new estimates effectively?

Answer: We agree that successful implementation of NASA's JCL initiative will, in part, depend on the technical and management capacity of Agency staff. Given the relative newness of the policy, the answer to your question is not yet clear. We plan to assess this issue as part of our ongoing review of NASA's project management practices, as well as in connection with our planned 2012 review of NASA's implementation of its JCL initiative.

5. Congress has attempted to create accountability by requiring NASA to report budget baselines and deviations from those baselines for large projects once they reach the development stage. Some NASA projects, however, will spend billions of dollars without ever reaching the development threshold that requires a baseline report. What steps could we take to improve budget accountability for these large projects that are still in the pre-development phase?

Answer: Currently, NASA does not provide Congress or the public with cost and schedule information for projects until after they have been formally approved to enter the implementation phase of development. Although NASA managers establish preliminary cost estimates for projects in the formulation phase, these estimates are available only to internal decision makers. As you note, projects can expend significant amounts of money during formulation. For example, Constellation's Ares and Orion projects spent more than \$9 billion combined without ever reaching implementation, and NASA spent \$2 billion on the James Webb Space Telescope (JWST) during 9 years in formulation. Requiring NASA to provide more insight into the costs associated with projects in the formulation phase could provide Congress and the public with important information about the full costs of NASA projects and programs.

6. When large NASA projects go over budget, the Congress often bails them out with new funds. Do you believe the practice of bailing out over-budget projects provides a disincentive for managers to focus on meeting budget goals? How should we address this problem? What would be the impact of a policy that requires a project's cost overruns to be offset within the project?

Answer: The OIG, Government Accountability Office (GAO), and others consistently have reported on NASA projects that exceed their cost and schedule baselines. Beginning in 2005, Congress required NASA to report cost and schedule baselines for all NASA programs and projects with an estimated life-cycle cost of \$250 million or

more. It also required NASA to report to Congress when development costs are likely to exceed the baseline estimate by 15 percent or more, or when a milestone is likely to be delayed by 6 months or more. In 2011, GAO reported that for 16 of the 21 NASA projects that had entered implementation, costs had increased by an average of 14.6 percent from baselines established 2–3 years earlier. Moreover, by the time many NASA projects breach their baselines, substantial amounts of time and money have been expended and the projects may be perceived as essentially “too big to fail.” We believe the identification and remediation of programmatic risks earlier in the development cycle is a key to addressing this issue. As discussed above, NASA has implemented its JCL initiative as one tool to address cost and schedule overruns, and we plan to assess NASA’s use of this tool in ongoing and future work.

Specific Program Reviews

7. Your September 2010 semiannual report noted that you are reviewing the James Webb Space Telescope program to look at its adherence to cost and schedule baselines and the adequacy of its reserves. In October, however, an independent review team chartered by Congress released a report on those same issues. How will your review of JWST add to or complement the analysis already done by the independent team?

Answer: The release of the JWST Independent Comprehensive Review Panel report superseded our efforts and we therefore discontinued our review. However, we briefed our preliminary findings regarding contingency funding, risk management processes, and the application of earned value management to Program and Project staff. In addition, we issued a report earlier this month regarding the use of Recovery Act funds on the JWST.

8. The semiannual report also provided notice of an ongoing audit of the management of the Mars Science Lab, which has been plagued by budget problems. Just 2 weeks ago, in fact, NASA notified us of another increase in MSL’s total cost, and we will have to decide whether and how to respond as part of the fiscal year 2012 budget. What can you tell us about your findings to date on MSL? Do you believe their request for additional resources is justified and that those additional resources will be well managed?

Answer: Mars Science Lab (MSL) Project management has historically underestimated the effort and costs associated with solving the technical issues of this complex mission. We are completing our review of the MSL project and later this spring expect to release our report detailing the challenges and tasks remaining to be completed before scheduled launch in November or December 2011.

Future of Human Space Flight

9. I have been concerned about this Administration’s hostility towards manned spaceflight and Exploration over the past 2 years. The President’s FY11 budget, for example, would have effectively ended NASA’s Exploration program. The NASA Authorization that the Congress

passed late last year, however, explicitly mandated the continuation of a strong Exploration program. Do you believe that NASA is, to the best of its ability, complying with the Exploration provisions of last year's NASA Authorization?

Answer: NASA's plans for complying with the Exploration provisions of the 2010 Authorization Act are outlined in the Agency's January 2011 "Preliminary Report Regarding NASA's Space Launch System and Multi-Purpose Crew Vehicle" (Preliminary Report). Based on our review of this report, it appears that the Agency is working to meet the Act's requirements. Specifically, NASA has established planning teams for the Space Launch System and Multi-Purpose Crew Vehicle programs and has selected Reference Vehicle Designs based on the Orion Project and Shuttle/Ares-derived architectures. Further, by spring 2011 NASA plans to complete its analysis of the current Orion, Ares, and Space Shuttle contracts for their applicability to the future development program outlined in the 2010 Authorization Act. In FY 2012, we intend to review NASA's efforts to meet the Authorization Act's requirements regarding the Multi-Purpose Crew Vehicle.

10. NASA has stated that the exploration goals laid out in the authorization are unachievable within the budget and schedule framework established in the bill. Large portions of the contracting community that will actually build the new heavy lift and crew vehicles seem to disagree. How should we view this disagreement? Is NASA being overly cautious, or are the contractors overly optimistic?

Answer: In its January 2011 Preliminary Report, NASA stated that it had a responsibility to be clear with the Congress and the American taxpayers about the true estimated costs and schedules for developing the Space Launch System and Multi-Purpose Crew Vehicle. To that end, NASA has committed to obtaining independent cost and schedule assessments for design options as part of its decision process and plans to make these assessments public. When completed, these assessments should help all involved parties gain a better understanding of realistic cost and schedule estimates.

11. NASA has convened its Human Exploration Framework Team to look at ways to change NASA's acquisition and project management plans in order to make the exploration program fit within budget and schedule constraints. Do you believe that project management and contracting changes alone can produce sufficient savings to fit the exploration program within its authorized budget? Do you have any additional recommendations on how NASA can achieve its exploration objectives beyond low-Earth orbit?

Answer: Given the Agency's historical experience with cost and schedule overruns, we agree that changes to NASA's acquisition and project management practices are necessary. As noted above, we are conducting a review of NASA's program management practices and will be making specific recommendations for improvement based on that work. In addition, planned work for FY 2012 includes a review of NASA's efforts to meet the Multi-Purpose Crew Vehicle requirements in the 2010 Authorization Act. This work may produce additional recommendations regarding

how NASA can achieve its exploration objectives within budgetary and schedule constraints.

12. Although NASA has selected reference designs for both the heavy lift launch system and the crew exploration vehicle, they are still doing trade studies to look for alternative design options that could be cheaper. Have you looked at the process by which NASA is completing these trade studies? What is your assessment of the quality and rigor of these studies? Are they likely to produce any feasible alternatives to the existing reference designs?

Answer: As referenced above, we are planning to conduct work in FY 2012 regarding NASA's efforts to meet the requirements of the Authorization Act.

13. The authorization bill commissions a National Academies study, beginning next year, to look at the exploration program and recommend changes for future fiscal years. This will provide information to help ensure that the program's goals and capabilities are aligned, but it may also create additional uncertainty within NASA and the contractor base by leaving open the possibility that the direction of the program could be significantly changed again. How would you balance the value of continued assessment, refinement and modification against the need to establish stability and continuity in the human space flight program?

Answer: As with any long-term development program, stability and continuity in both policy and funding is important. However, continued assessment and refinement, particularly relating to safety objectives and advances in technology, are also necessary. Moving forward, NASA must continue to strike the appropriate balance between these competing interests.

Information Security

14. Countries such as China have very aggressive national programs to infiltrate American government and business networks to steal sensitive or proprietary information. NASA, in particular, has been the target of some of these attacks. As just one example, your office identified an intrusion into JPL's networks last year that resulted in 22 gigabytes of export-controlled data being transferred to an IP address in China. The success of these attacks implies that NASA is insufficiently protected. How would you characterize the overall level of security of NASA's cyber infrastructure?

Answer: The significance of NASA's IT security weaknesses is highlighted by the increasing number of cyber-security threats facing the Agency. These threats are evolving, both in scope and sophistication, and present an ongoing challenge to NASA managers. In order to strengthen the Agency's IT security posture and better respond to IT security incidents, NASA has implemented a Security Operation Center (SOC) to provide layered defense and centralized management of such incidents. We are currently conducting an audit to determine whether NASA's SOC and related

information systems are effective in supporting an Agency-wide computer incident detection and response capability.

15. Although NASA's Chief Information Officer is responsible for IT security, you say that the CIO lacks authority to mandate the implementation of security policies within the mission directorates. Consequently, IT vulnerabilities persist. What is the best remedy to this problem? Is a statutory fix needed to give the CIO the necessary authority, or can the NASA Administrator solve this administratively?

Answer: We are not recommending a statutory solution to this issue at this time. Rather, we will continue to work with the CIO and NASA management to address the issue.

16. Last year, NASA announced that it was making a change to the way it certifies and accredits its IT systems. Instead of testing systems on a periodic schedule, they intend to monitor and assess their vulnerability on a continuous, automated basis. Have you assessed this proposal? Do you believe they are ready to successfully implement this more sophisticated system? Do you agree with NASA that this new process is more efficient and will therefore save money?

Answer: We are currently auditing NASA's process for continuous monitoring of key IT security controls. We expect to issue this audit report in late summer 2011 and will ensure that the Subcommittee receives a copy of the final report.

17. Information security goes beyond IT; you also have to appropriately screen your personnel to ensure that they will protect sensitive information. NASA recently won a court case upholding its right to use background checks on contract employees at the Jet Propulsion Laboratory (JPL) and now has to decide whether to reinstate the upheld policy. Do you believe that the policy should be reinstated? Why wouldn't we want to ensure that JPL's employees meet minimal standards of trustworthiness and integrity?

Answer: It is our understanding that NASA intends to resume the process of conducting background checks of JPL employees once the remaining legal proceedings have been concluded.

Contracting Practices

18. NASA contracting practices have been listed on GAO's government-wide high risk list for over twenty years now. How would you characterize the progress they've made in improving their acquisition management over that period of time? Do they have a realistic chance of getting off the high risk list any time soon?

Answer: In our judgment, the Agency has made progress but continues to face significant challenges in this area. Specifically, the Agency must continue to improve cost estimates and establish stable requirements for its projects. As part of our current

review of project management practices, we are evaluating the challenges associated with these tasks and we anticipate beginning specific reviews in 2012 evaluating NASA's processes for cost estimating and requirements setting prior to key decision points in the acquisition life cycle.

19. Like NSF, GAO has been critical of NASA's use of cost reimbursement contracts, which are risky to the government. Do you believe that NASA is over-reliant on this form of contract vehicle? Is there a feasible alternative for NASA, or are firmer pricing models impractical for the type of R&D work that NASA does?

Answer: NASA is making efforts to transition away from the use of cost reimbursement contracts and move toward fixed-price contracts where it makes sense to do so. For example, it is anticipated that the development and acquisition of commercial crew transportation services will be accomplished through the use of fixed-price agreements and contracts. However, because many NASA missions rely on technology that requires extensive research and development, fixed-price contracts may not always be a realistic option.

20. Your office has audited several NASA contracts and found that NASA does not make good use of award fees as a way to motivate higher contract performance. For example, some contractors were paid all or most of their award fees even if the program was late, over budget or did not achieve its performance goals. How is NASA addressing this issue? Has the policy on tying award fees to program outcomes been changed?

Answer: The NASA Federal Acquisition Regulation (FAR) Supplement was revised on February 8, 2011, to require closer linkage between award fees and acquisition objectives in the areas of cost, schedule, and technical performance and to prohibit unearned award fees from rolling over to subsequent rating periods. We will continue to monitor this issue in our future audit work.

Rightsizing NASA's Infrastructure

21. Your office has highlighted NASA's problems with aging infrastructure and facilities. One manifestation of this problem is a deferred maintenance backlog of \$2.5 billion. What steps is NASA taking to reduce its maintenance burden? Do you believe these steps are sufficient to get the maintenance problem under control?

Answer: NASA's ability to plan for and achieve a reduction in its deferred maintenance depends in part on having reliable facilities cost data. Without accurate, complete, and consistent data it will be difficult for the Agency to evaluate the maintenance and operation costs of its facilities, make informed sustainment/repair/replacement decisions, and establish meaningful performance measures. We are completing an audit that examines NASA's mechanisms for capturing costs associated with facilities maintenance work. We are hopeful that NASA

will use the results of this review in developing its October 2011 report to Congress that identifies the Agency's institutional assets and unneeded or duplicative infrastructure.

22. There is consensus that the deferred maintenance backlog is too high, but it is unrealistic to assume that it will ever be eliminated entirely. Standard management criteria suggest that "healthy" levels of maintenance spending are 2-4% of the replacement value of the facilities. Do you believe this level of spending would be sufficient for to deal with NASA's infrastructure problem?

Answer: For the past several years, NASA's maintenance and repair activities have been funded at approximately 1 percent of the current replacement value. Moreover, increasing funding to the levels recommended by the National Research Council would only maintain the current state of deferred maintenance (estimated at \$2.5 billion). Achieving a reduction in the level of deferred maintenance would require additional funding.

23. In addition to dealing with aging infrastructure, NASA also has a significant problem with underutilized facilities. NASA would like to divest itself of some of the less useful properties, but, as your office has noted, the government has often been unable to reach consensus on which properties should be targeted. If the current process for selecting facilities for demolition or transfer is broken, do you have recommendations for how to improve it?

Answer: An important first step in considering what NASA facilities should be demolished, transferred, or leased is to ensure the accuracy of the data the Agency uses to manage its facilities. To this end, we are conducting a review assessing the data NASA uses to track the utilization, mission dependency, and condition of its facilities. A better understanding of the limitations of this data should enable NASA to make more informed strategic decisions regarding its facilities. In addition, the results of this review should help inform the study required by the 2010 Authorization Act to examine the Agency's institutional assets and identify unneeded or duplicative infrastructure.

24. NASA has been granted authority to lease out some of its underutilized properties to private sector or other non-Federal users. You have identified this as one available tool for addressing NASA's maintenance and utilization problems in its property inventory. Are there other unique authorities or tools that would be useful to either improve utilization or fund the maintenance burden?

Answer: In addition to leasing some of its properties or facilities, NASA could also improve its utilization of viable facilities and help fund its maintenance burden by demolishing unneeded or underutilized facilities or by transferring facilities to other federal agencies or private entities.

Health of the Workforce

25. The impending retirement of the Shuttle combined with uncertainty about the fate of the exploration program have really challenged the NASA workforce. Many talented employees have been laid off, others are proactively leaving due to the instability, and there has been concern that this transition period may lead to a long term contraction of the aerospace industrial base. Have you been monitoring the workforce to identify or confirm trends in morale, layoffs, or voluntary attrition? What conclusions have you reached about the overall health of the NASA workforce and the industrial base?

Answer: We have not conducted any audits on this topic.

26. Do you believe that the passage of the authorization bill has reduced uncertainty enough to measurably impact worker retention and NASA's ability to make definitive workforce planning decisions? After so much turmoil, when can we expect to see equilibrium, or long-term stability, emerge in the workforce?

Answer: While the NASA Authorization Act of 2010 provides a road map for NASA's future, long-term stability is unlikely to emerge until more clarity is achieved on the issue of both short- and long-term funding for the Agency.

Aeronautics

27. I have long been concerned that the "other A in NASA"—Aeronautics—is often treated as a low priority within NASA, no matter who leads the agency. Has your office made any recent recommendations with regard to strengthening the Aeronautics program?

Answer: We recently initiated an audit that will examine the use of Research Announcements by the Aerospace Research Mission Directorate. The objective is to examine the effectiveness of aviation research funded by NASA Research Announcements. In addition, we are planning an audit of the technology transfer program at NASA Research Centers to evaluate the effectiveness of NASA's planning and technology transfer for commercialization of aeronautics research and technology projects.

28. Has your office measured "downstream" impacts of NASA Aeronautics investment on the U.S. aviation industry?

Answer: We plan to address this issue in the audit discussed in response to question 27.

29. How can the Aeronautics division better support the U.S. aviation industry to ensure that America remains competitive, especially in light of recent efforts by GE and China to develop a Chinese commercial aviation competitor?

Answer: We are hopeful that our planned audit work will produce recommendations that NASA can use to help improve the transfer of NASA-developed technology to industry.

Earth Science

30. Given NOAA's growing role in earth monitoring and climate satellites, I am concerned about duplicative overlap between NASA and NOAA's earth science programs. Would it make sense for NOAA to assume more of NASA's earth science responsibilities and reorient NASA toward space science, such as astrophysics and planetary science?

Answer: We have not done specific work regarding the role of each agency as it relates to Earth science research. However, a 2009 GAO study found no duplication between NASA and NOAA in their Earth science research. We are reviewing project management coordination efforts between the two agencies as part of our on-going review of the National Polar-Orbiting Operational Environmental Satellite System Preparatory Project and will also address this issue as part of our planned 2012 review of the Joint Polar Satellite System.

31. I am concerned that this Administration's heavy investment in climate change over the last several years has come at the expense of other critical NASA programs. Could you discuss the roll that NASA plays in federal climate change studies and how this corresponds with work being done by NOAA and other federal agencies?

Answer: NASA is the largest contributor to the 13-agency U.S. Global Change Research Program (USGCRP), which coordinates federal research on changes in the global environment and their implications for society. Using NASA's constellation of space-based observation satellites, each entity examines agency-specific research questions. For example, the U.S. Department of Agriculture focuses on climate change science activities that affect farmers, foresters, ranchers, and land owners, while the Department of Energy examines how climate change may affect energy production. In addition, given NASA's experience and expertise, the Agency's Launch Services Program is often given primary responsibility for launching Earth observing satellites.

32. How much money does NASA spend on climate change data collection and analysis?

Answer: We have not analyzed the total dollar amount that NASA spends specifically for climate change. However, 15 of NASA's 57 operational missions are dedicated to Earth science, which includes climate change data collection and analysis. In FY 2010, Earth science accounted for 32 percent (\$1.4 billion) of the Science Mission Directorate's \$4.5 billion budget.

33. Given that many of our international partners have developed climate change data collection programs, do you believe the U.S. could make better use of taxpayer dollars by participating in international—rather than U.S.-led—data collection programs?

Answer: NASA currently participates in a number of international programs, including the World Climate Research Program, the International Geosphere-Biosphere Program, and the International Polar Year. Whether NASA should rely more on these and other international climate monitoring efforts is a policy matter for the Agency to decide.

Commercial Orbital Transportation Services

34. I have been a supporter of the COTS commercial cargo program to resupply the International Space Station since my previous tenure as Chairman of this subcommittee. Has your office monitored the development of this program and, if so, do you have any recommendations for how to further improve it?

Answer: To date, we have not audited NASA's Commercial Orbital Transportation Services (COTS) program. However, we are aware that NASA has taken steps to ensure that risks to the program are identified, assessed, and documented, and that mitigation plans are in place to reduce these risks. In addition, although NASA's COTS partners have experienced delays in the development of their launch vehicles, the costs associated with these delays have been borne by the partners rather than NASA. As the COTS program matures in the months and years ahead, we anticipate opening audit work in this area.

35. I believe that the Wallops Island, VA launch facility (which Orbital Sciences will launch its COTS missions from) is a great and underutilized NASA resource. I have been told by experts that in some cases that costs to launch from Wallops are 1/10th of the launch costs from Cape Canaveral, FL. How can NASA make better use of the Wallops Island facilities?

Answer: We have not performed an assessment of utilization of the Wallops Flight Facility. However, NASA's forthcoming report on use of its institutional assets may shed some light on this issue.

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