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STIMULUS CONTRACTORS WHO CHEAT ON THEIR TAXES: WHAT HAPPENED?

HEARING

BEFORE THE

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

OF THE

COMMITTEE ON
HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

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STIMULUS CONTRACTORS WHO CHEAT ON THEIR TAXES: WHAT HAPPENED?

TUESDAY, MAY 24, 2011

U.S. SENATE,
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS,
COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:34 p.m., in room SD–342, Dirksen Senate Office Building, Hon. Carl Levin, Chairman of the Subcommittee, presiding.

Present: Senators Levin, Begich, and Coburn.

Staff Present: Elise J. Bean, Staff Director and Chief Counsel; Christopher Barkley, Staff Director to the Minority; Mary D. Robertson, Chief Clerk; Allison Abrams, Detailee (GAO); Michael Martineau, Detailee (DOJ); Katie Martin-Browne, Law Clerk; Daniel Perez, Law Clerk; John Richards (Senator Begich); Sarah Deutschmann, Detailee (ICE); and Candice Wright, Detailee (GAO).

OPENING STATEMENT OF SENATOR LEVIN

Senator LEVIN. Good afternoon, everybody. The Subcommittee today is examining Federal contractors who get paid with taxpayer dollars but then fail to pay the taxes they owe. I commend my colleague Senator Coburn for taking the initiative to press forward on this issue.

Prior Subcommittee hearings on this and related topics have exposed as tax delinquents tens of thousands of Federal contractors and service providers who collectively owe billions in unpaid taxes. The spotlight today is on businesses that receive contract or grant funds under the American Recovery and Reinvestment Act (ARRA or Recovery Act). While the vast majority—well over 90 percent—of the Recovery Act recipients are in compliance with Federal requirements and are contributing to the economic recovery, a small portion—about 5 percent—have put taxpayer dollars in their pockets while failing to meet their tax obligations.

That 5 percent, by the way, is about half the percentage of the Department of Defense (DOD) contractors that an earlier report found had unpaid taxes, but this is obviously very troubling, whether it is 5 percent or 10 percent.

According to the report the Subcommittee is releasing today, that 5 percent translates into about 3,700 contractors and grant recipients out of a total of about 63,000 that received over $24 billion in stimulus dollars while owing unpaid Federal taxes of more than

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$750 million. That is they owed taxes at the time they received the contracts.

Federal programs now exist to stop this type of abuse. One key program is the Federal Payment Levy Program, which was established over 10 years ago to enable the Federal Government to identify Federal payments being made to tax delinquents and authorize the withholding of a portion of those payments to apply to the person's tax debt.

When the Subcommittee began looking at the Federal contractor issue in 2004, the tax levy program was weighed down by bureaucratic requirements and red tape. In response to the Subcommittee's request, the key Federal agencies, including the Internal Revenue Service (IRS), the Financial Management Service at Treasury, and others, formed a governmentwide task force to streamline the tax levy program. That task force has addressed many of the problems that have been identified by the Subcommittee. As a result, the tax levy program has become energized. It has moved from covering only 10 percent to covering 100 percent of the payment systems at the Department of Defense. In addition, by September of this year, 100 percent of the $400 billion in Medicare payments made each year will be screened for tax delinquents.

Tax levy collections from tax delinquent Federal contractors as a whole have increased almost six-fold over the last 6 years, from about $20 million in 2004 to $115 million in fiscal year 2010. Last year is the first time the tax levy program has collected over $100 million from tax delinquent Federal contractors in a single year. We applaud that progress. But at the same time, that $100 million per year has to be compared to the billions of dollars in unpaid tax debt still owed by Federal contractors, which means there is still an awful lot more work to be done.

The Government Accountability Office (GAO) selected 15 of the Recovery Act recipients that raised particular red flags for a closer look. The GAO found that those 15 recipients alone were responsible for $40 million in unpaid taxes. The GAO also found that those 15 had engaged in abusive or potentially criminal activities, including failing to remit the payroll taxes that were taken out of employee paychecks but never sent to the IRS.

Federal law requires employers to hold payroll tax money "in trust" for the IRS, and the failure to remit those funds as required is a violation of civil and criminal law.

In one case, GAO identified a security company that received $100,000 in Federal funds yet owed $9 million in unpaid taxes. Those unpaid taxes were primarily payroll taxes from 5 years earlier that the company never forwarded to the IRS. The company had also been cited by the Department of Labor for violating Federal labor laws.

In another case GAO identified, a social services company owed over $2 million in taxes yet received more than $1 million in Federal funds. That company had defaulted on several installment agreements with the IRS, which finally imposed a penalty on an executive who was personally responsible for nonpayment of the taxes owed. GAO found that this executive had numerous transactions with casinos totaling hundreds of thousands of dollars a

year, indicating that he had substantial funds to apply to the company's tax debt, yet failed to do so.

The GAO also found that while some of the recipients were subjected to the tax levy program, about $315 million of the tax debt was not because the Recovery Act funds had not been paid directly by the Federal Government to the tax-delinquent businesses. Instead, in those cases the Federal Government had paid the funds to a State or a prime contractor or a grant recipient, which in turn made payments to the ultimate recipients. The businesses that got their money from a State, a prime contractor, or grant recipient were never screened by the Federal tax levy program and so escaped having any portion of their funds withheld for payment of their tax debt. That gap in the tax levy program needs to be addressed.

In addition to hearing from GAO, we will hear today from the President's Office of Federal Procurement Policy (OFPP), which sets contract policy for the Administration and is part of the Office of Management and Budget (OMB). President Obama became concerned about the issue of Federal contractors with unpaid taxes while he was here in the Senate, and he has not forgotten the issue.

In addition to setting a policy against awarding Federal contracts to tax-delinquent companies, his Administration has changed the Federal Acquisition Regulations (FAR), to require businesses bidding on Federal contracts to certify in writing if they have a tax debt of $3,000 or more so that Federal agencies would know about the problem when awarding contracts. The Administration also made nonpayment of tax grounds for debarring a business from bidding on any Federal contract.

In January 2010, the President also issued a memorandum which, among other matters, caused the Office of Management and Budget to initiate an evaluation of whether Federal contracting officers and debarment officials were fully utilizing tax debt information. Today we are going to hear more about those efforts.

Since the problem of Federal contractors who get paid with taxpayer dollars while dodging their own tax obligations is not going away, we need to do more to stop the abuse. One action we could surely take is a concerted effort to debar the really flagrant tax cheats from obtaining Federal contracts and grants. In each of the hearings that we have held on this topic, GAO has identified 15 or 20 or 25 tax-delinquent businesses that have essentially thumbed their noses at Uncle Sam. Some paid their taxes with bounced checks, repeatedly violated installment agreements, or reincorporated as a new company to escape past tax debt.

Some business owners sported mansions, expensive cars, or other luxury assets, indicating that they had the money needed to repay the outstanding tax debt but did not do so.

While these egregious cases have been referred to the IRS and prosecutors, in most cases the companies and their owners have not been debarred from obtaining new Federal contracts or grants. Starting with the cases flagged by GAO, the Administration ought to get on with an immediate effort to debar egregious tax cheats from competing against honest businesses that pay their fair share.

We should also consider requiring States, prime contractors, and grant recipients that receive Federal funds to require their subcontractors or sub-recipients to disclose tax debt as described in the Federal Acquisition Regulations, and then we should consider prohibiting those States, prime contractors, and grant recipients from dispensing Federal taxpayer dollars to those who have outstanding tax debt.

Tax deadbeats should not be getting taxpayer dollars, and they should not be allowed to compete against honest businesses that meet their tax obligations. I look forward to hearing from the witnesses today about these and other ideas to stop the abuse, and I now turn, again with thanks, to Dr. Coburn for his initiative in this area and for the great work of his staff.

OPENING STATEMENT OF SENATOR COBURN

Senator COBURN. Mr. Chairman, thank you very much. I would like for my complete statement to be made a part of the record.

Senator LEVIN. It will be.

Senator COBURN. And I would like to thank you for this hearing. I know you have worked on these issues for a long time, and I appreciate your work.

My colleague in the Senate, Senator Obama, and I passed the Federal Financial Accountability and Transparency Act, and one of the goals of that was to have subcontractees and sub-awardees on grants available on USAspending.gov. They are still not there, and one of the reasons we are not getting where we need to be is because of that.

To comment on the 5 percent, it is true that 5 percent of the contractors have a problem, but it is $1 in $6 that came through the stimulus grants and contracts that were issued if we extrapolate, and that is an extrapolation so I am not sure that is factual. But if you were to extrapolate it, that is what it would be.

I appreciate GAO's hard work. I think there are a lot of problems in terms of implementing the Federal Payment Levy Program. I think we can see that is obvious from the GAO report. And I would say that I think the Obama Administration has done a better job than the Bush Administration in many of these areas, but we are not where we need to be, obvious by this GAO report. So I look forward to the hearing, the comments, and the questioning in the hopes that we can truly achieve what is needed to get there.

It is one thing for us to have a hearing. It is totally another to say this has got to stop. What do we need to do to empower OMB and the Administration to put this to a dead stop? It is always inappropriate, but it is more so today when we find ourselves in such difficult times.

With that, I would yield back, and look forward to the testimony.

Senator LEVIN. Thank you very much, Dr. Coburn. Senator Begich.

OPENING STATEMENT OF SENATOR BEGICH

Senator BEGICH. Thank you, Mr. Chairman, and I will be very brief. I just want to say thank you also for holding this hearing and for you two to be here and hear more about the report. I am going to be interested in, as you looked at the ARRA money, how wide-

spread this is in the sense of the Federal Government in total. I will only give you my experience.

When I was mayor of Anchorage, we came in, we had about $20 million of owed fees, fines, and other taxes, and we could not get a lot of response. So we ended up creating a Web site. We posted everyone's name with what they owed on a Friday. The system crashed three times because it was not necessarily the person who owed the money who was looking. It was everyone else who wanted to see who was on the list. And within a short time, almost half of that money was paid up, and we were very aggressive about it.

So like Senator Levin and Senator Coburn, I am going to be interested in what is the next step. It is somewhat appalling to see that people can continue to do business, owe money to us, take our checks, and then never pay us for the taxes that are due when good, strong business folks are out there trying to compete and they are paying their taxes.

So I am going to be anxious to associate my comments and whatever actions the Subcommittee deems necessary, but I can tell you what we did as mayor, and it sure did change the deck, especially when we posted their names with what they owed and what for. Like I said, it got a lot of people talking and a lot of bills paid.

So I will just leave it at that and say thank you again, Mr. Chairman, for this opportunity.

Senator LEVIN. Thank you, Senator Begich. Let me now call on our witnesses for this afternoon's hearing.

First, Gregory Kutz, Director of Forensic Audits and Investigative Service at the Government Accountability Office, who has testified many times before our Subcommittee.

Second, Daniel Gordon, the Administrator of the Office of Federal Procurement Policy at the Office of Management and Budget.

We welcome you both. We appreciate both of you being with us this afternoon and look forward to your testimony. And as you know, we have a rule here, Rule VI, which requires all witnesses who testify before the Committee to be sworn, and at this time I would ask both of you to please stand and raise your right hand.

Do you solemnly swear that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. KUTZ. I do.

Mr. GORDON. I do.

Senator LEVIN. We will use our timing system today. At about 1 minute before the red light comes on, you will see that the light is changing from green to yellow, which would give you an opportunity to conclude your remarks. Your written testimony will be printed in the record in its entirety. We would appreciate it if you could limit your oral testimony to no more than 7 minutes.

Mr. Kutz, you go first.

TESTIMONY OF GREGORY D. KUTZ,[1] DIRECTOR, FORENSIC AUDITS AND INVESTIGATIVE SERVICE, U.S. GOVERNMENT ACCOUNTABILITY OFFICE

Mr. KUTZ. Mr. Chairman, Ranking Member Coburn, and Members of the Subcommittee, thank you for the opportunity to discuss the tax gap. Today's testimony highlights the results of our investigation into whether the Recovery Act recipients have unpaid Federal taxes.

My testimony has two parts: First, I will discuss the magnitude of unpaid taxes; and, second, I will discuss our case studies.

First, we found that at least 3,700 contract and grant recipients with $750 million of unpaid Federal taxes received $24 billion of Recovery Act funds. This represents about 5 percent of the 80,000 contract and grant recipients reported on Recovery.gov through July 2010. The numbers are understated for several reasons, including the fact that we could not derive taxpayer identification numbers for 17,000 of the 80,000 recipients.

As was mentioned, Federal law does not prohibit contract and grant recipients with unpaid taxes from receiving future contract and grant awards. However, Treasury can levy certain payments to satisfy tax debt.

About 90 percent of the $750 million of unpaid taxes was not subject to the continuous levy program for two key reasons: First, only 13 percent of the dollars were reported by the IRS to Treasury for levy; and, second, half of the 3,700 recipients were not directly paid by the Federal Government.

Moving on to my second point, as you mentioned, we took a further look at 15 of the 3,700 contract and grant recipients. We focused on those with unpaid payroll taxes. All 15 of these cases, which included 8 contract and 7 grant recipients, had unpaid payroll taxes. These entities provided construction, engineering, security, and health care services. These 15 cases were not randomly selected and, thus, may not be representative of all 3,700 recipients.

IRS has taken collection or enforcement action for all 15 of these cases. For example, IRS has filed Federal tax liens for 13 of the 15 cases. In addition, they have assessed trust fund recovery penalties for 12 cases. The effect of this civil penalty is a company's owners and officers are personally held responsible for a portion of the unpaid corporate or other entity payroll taxes.

Examples of some interesting facts related to these 15 cases include: Over half had reported State and local tax liens. Several had defaulted on installment agreements. Several did not file required tax returns. Several were cited for Federal labor law violations. Several executives received substantial salaries, as you mentioned, along with company loans. Several executives had hundreds of thousands of dollars each in gambling transactions. And several received millions of dollars of non-stimulus government contracts, Medicare and Medicaid dollars.

These cases raise questions not only about the integrity of government programs but also about fairness. Organizations that fail to pay their payroll taxes have a lower cost base and an unfair ad-

[1] The prepared statement of Mr. Kutz appears in the Appendix on page 31.

vantage when competing for government contract and grant awards.

As the Chairman mentioned, I first testified on this issue many years ago, in 1999, including several times before this Subcommittee. Our past reports have shown tens of thousands of individuals, corporations, and nonprofit organizations with unpaid taxes receiving billions of dollars of Medicare, Medicaid, contract, and grant payments.

In conclusion, today's report shows once again billions of dollars going to individuals, corporations, and nonprofit organizations that failed to pay their fair share of taxes. This sends a negative message to the vast majority of American taxpayers that pay their fair share.

As the Chairman mentioned, I am pleased to report to you that the continuous levy program has shown great improvement, and I applaud this Subcommittee for its role in making that happen.

Mr. Chairman, Ranking Member Coburn, that ends my opening statement, and I look forward to your questions.

Senator LEVIN. Thank you so much, Mr. Kutz. Mr. Gordon.

TESTIMONY OF HON. DANIEL I. GORDON,[1] ADMINISTRATOR, OFFICE OF FEDERAL PROCUREMENT POLICY, U.S. OFFICE OF MANAGEMENT AND BUDGET

Mr. GORDON. Thank you, sir. Chairman Levin, Ranking Member Coburn, and Members of the Subcommittee, I very much appreciate the opportunity to appear before you today. This is my first time before this Subcommittee. I am happy to discuss the question of preventing tax cheats from getting government contracts. I want to talk about the progress we have made, but also the challenges ahead.

I very much want to thank this Subcommittee for shining a spotlight on this issue for a good number of years, and with good results. And if I could be permitted to put in a good word for my former colleague, Mr. Kutz, and my former employer, GAO, where I had the honor to work in the Office of General Counsel for 17 years, let me say that we in the Administration appreciate GAO's report on tax debts held by recipients of Recovery Act funds, another in an ongoing series of GAO reports on tax-delinquent recipients of Federal funds.

We are proud of the high level of transparency and the low level of fraud, waste, and abuse shown in Recovery Act spending, and I think that the work of the Recovery Board has certainly helped in that regard. That said, we take very seriously what GAO found in its latest report using its unique statutory access to tax records.

I do have a few questions about data in the GAO report which I hope will be addressed, either at this hearing or we can do it as follow-up with GAO afterwards.

With the encouragement of this Subcommittee and due in part to hearings, as has been mentioned, that this Subcommittee held several years ago on this very important topic, we have taken action, as the Chairman was pointing out, to better protect taxpayer interests when dealing with contractors who have tax delinquency.

[1] The prepared statement of Mr. Gordon appears in the Appendix on page 37.

The fact is that the great majority of contractors pay their taxes, but we have an obligation to our citizens to crack down on those who abuse the system.

A key step forward that the Chairman mentioned has been mandatory self-certification in which prospective contractors must state whether they have tax delinquencies, and there is a similar disclosure requirement for applicants for grants. And, again, as the Chairman pointed out, there has been considerable progress with the levy program through which we take part of government payments to contractors to pay off tax debts before money goes to the contractors.

In January 2010, the President directed OMB and the Internal Revenue Service to evaluate the effectiveness of that contractor self-certification process. OMB worked with the agencies to check whether contracting officers had awarded new contracts to companies that had certified to having a tax delinquency. And the IRS evaluated the overall accuracy of contractor certifications based on their statistical sampling.

OMB's review showed that only a tiny fraction of contract dollars went to contractors that had certified to a tax delinquency, and IRS's review revealed that the vast majority of the certifications were accurate. That shows promise, suggesting that certification acts as an effective deterrent.

At the same time, we recognize that there is much more work that needs to be done. In particular, the statutory limits on IRS's ability to share taxpayer information represent a challenge for our contracting agencies, although we obviously fully appreciate and respect the importance of protecting taxpayer information. That is why we welcome the opportunity to work with Congress to craft statutory authority for limited sharing of information on tax delinquencies with appropriate safeguards so that the IRS can more effectively alert agencies if, for example, would-be contractors are misrepresenting their tax status, and agencies can stop those entities from getting government contracts.

In addition to increasing attention on the tax status of prospective contractors, we are, as you have noted, getting much better at collecting tax debt from contractors. I think the contrast with the environment in 2004 is noteworthy. At that time GAO concluded that defense contractors were able to abuse the Federal tax system with little consequence. Today we are moving much more vigorously to collect tax debt. And as you have noted, probably the most important way that we are doing that is through Treasury's Federal Payment and Levy Program under which a contracting agency is advised on a payment-by-payment basis how much to pay the IRS in satisfaction of a tax levy and how much, if any, to pay the contractor. And, again, as the Chairman noted, last year Treasury collected more than $110 million from tax delinquents through that program.

The bottom line is this: We must take all appropriate actions, including debarment, to ensure that government contracts are rewarded to responsible, law-abiding contractors who take their tax obligations seriously. And we need to collect tax debts that contractors owe the government. We very much look forward to working

with this Subcommittee, as we have in the past, and with other Members of Congress, as we move forward.

This concludes my oral remarks, but obviously I am happy to answer all of your questions. Thank you.

Senator LEVIN. Thank you so much, Mr. Gordon.

Why don't we try an 8-minute first round, if that is OK.

Mr. Kutz, let me first ask you about the 15 cases which GAO identified as apparently involving some real tax dodgers, hard-core tax dodgers. You said these cases were not selected at random, but they had some things which made it appear that these would be some good targets for you to analyze what is happening and what is not happening. I think you said that eight of them were Federal contractors, seven of them grant recipients; one of them was a prime, the rest were subcontractors.

Did you see any evidence that the Federal agencies intend to debar any of the eight that received contract dollars?

Mr. KUTZ. No, and one of them, according to IRS, was under criminal investigation by the IRS Criminal Investigative Division. So we did not see evidence that they were under debarment.

Senator LEVIN. Now, is there a different issue relative to the seven that received grants? Is that a harder problem in terms of getting debarment in those cases?

Mr. KUTZ. Not necessarily, but the levy program does not cover most grant payments. So the Federal Payment Levy Program would not have allowed offset of a Federal payment at the back end. So I do not think necessarily debarment would be more or less difficult for them because if you look at the health care system, HHS debars Medicare providers, etc. So I do not think the process would vary necessarily.

Senator LEVIN. OK. Now, we have all these businesses that are kind of obvious tax dodgers, and so obvious that you can pick them out. They stick out. And yet there is no debarment in evidence for any of those. What explains that lack of debarment? We have got the procedure that can be used, but apparently it is not often used, even in cases which are this egregious. Have you been able to figure out why?

Mr. KUTZ. Well, the agencies would not necessarily know that they had tax issues because they were not mostly primes. They were mostly at the subcontractor or sub-grant recipient type level. So under the self-certification under the FAR for the contractors, it would not have been necessarily apparent for the prime. But you mentioned the primes could get their subs to certify to them; that would have potentially gotten you a little bit more visibility if they were honest in that reporting.

Senator LEVIN. But 8 of the 15 were Federal contractors.

Mr. KUTZ. Correct.

Senator LEVIN. Only one of those was a prime. Is that right?

Mr. KUTZ. That is correct.

Senator LEVIN. And are you saying for the ones that were subcontractors, in effect, that it would be hard to know—it would be hard to utilize the current debarment proceeding?

Mr. KUTZ. Oh, no, not necessarily that.

Senator LEVIN. Well, then, why is there so little debarment?

Mr. KUTZ. Mr. Gordon maybe can answer that better. I do not know. Debarment is something that is one avenue for protecting the government from individuals and corporations that are bad actors.

Senator LEVIN. Yes, but it is apparently not very often used.

Do you have any statistics on debarment, Mr. Gordon?

Mr. GORDON. I am not sure I have numbers at hand, but I can tell you a little bit about suspension or debarment in this particular area, sir.

Mr. Chairman, when we checked with the agencies, we found that the Department of Defense, in fact, did refer a number of cases. (This is not with respect to GAO's report. This is the review we did last year.) The Department of Defense referred a number of companies because of tax delinquency certifications to their suspension or debarment offices, and, in fact, one of the companies was debarred.

Senator LEVIN. One company. I mean, we have got tens of thousands of companies out there that are delinquent, and debarment is rare. One company out of I do not know how many were referred by the Department of Defense. I think your testimony says several instances.

We just have to find out—it was great we collected over $100 million. We need it. But we have got billions out there, and we have got to figure out why debarment is not more often used. That is one of the things that I would like to figure out.

Mr. GORDON. If I could, Mr. Chairman—first of all, I agree with you. We need to be much more vigorous in our suspension and debarment programs. I will say that there has been improvement over the last 2 years. As you know, USAID has exercised their authority, and that is a good thing. The Small Business Administration certainly got everybody's attention when they suspended companies because of concerns of abuse.

Suspension and debarment is a key protection, and it needs to be exercised, when it is appropriate, but we should be seeing more vigorous investigations by our suspension and debarment officials, and you would expect there to be suspension or debarment.

One of the challenges, I think, that we all face as we look at this GAO report is one you alluded to, Mr. Chairman, and that is, many of the problems here were actually not by entities that directly received Federal funds. As Mr. Kutz pointed out, their report, when it looked at 15, had 8 what they call contract recipients. But, in fact, only one of them was a prime contractor. The other seven, I am not even sure that they were subs because they might have just been vendors. We need to find out more.

But it is noteworthy that the one entity that was a prime contractor in the GAO report was current in paying back its taxes.

Senator LEVIN. What would you think of requiring the prime contractors to include a provision in all of their contracts that says to anyone who wants to be one of their subs or supply materials or services that they must disclose to the prime whether there are any back taxes owing to Uncle Sam? What would you think of making that a requirement in every contract that we issue?

Mr. GORDON. Obviously, there may be sensitivities about taxpayer information, but I will tell you, I like the idea of shining a

brighter light on this question. The challenge that the GAO report points to is that tier below the primes. We need to find a way to reach them.

On the grant side, by the way, the vast majority of the grants—and I think Mr. Kutz alluded to this—were going to States and local governments. They are tax free. They are not the problem. It is the sub-recipients beyond the States.

It is a challenge, and we would very much look forward to the opportunity to working with this Subcommittee and others in Congress to find a way to reach those tax delinquents.

Senator LEVIN. Well, let me repeat one way, which is that there be a standard contract provision in all of our contracts with primes requiring them to have a clause in all of their subcontracts and in all of their purchase agreements that requires their subs or their vendors to disclose whether or not there is a back tax owed to Uncle Sam. Failure to disclose that would really create some jeopardy, or if there is a misstatement about it, because that could be a false statement that would be put in place in order to obtain Federal funds. So it could be very serious, a false statement or an omission where there is one that is required.

I hope you would take a look at that, and give us some other ideas as to how we can get to that tier below, because we are not using the tools that we have against very many people. We have made a small dent in the problem, and we are grateful we have. A lot of oversight has gone into this. I think probably, Mr. Kutz, there have been 100 to 150 contractors that the GAO has identified in this and earlier hearings.

Mr. KUTZ. Yes.

Senator LEVIN. I would hate to find out how many of those contractors never did pay their taxes, but we want to kind of not look that far backward. We want to just pick up right from here and really put some teeth into our laws and in the procedures which are supposed to be enforcing those laws, and we would look to both of you for specific recommendations on how we can use debarment more often and suspension more often and perhaps get that clause into all of our prime contracts. Thank you.

Dr. Coburn.

Senator COBURN. I want to repeat this one statement. If USAspending.gov was working the way it was supposed to, you would have a historical record of every sub-grantee and sub-sub-grantee of every grant and every contract with the Federal Government. And the fact that that is not happening—and it is something that the President actually authored the bill on, along with myself—and now it is not being implemented is one of our problems.

I want to go back to the question: Why should somebody get a Federal contract if they owe the Federal Government money? I mean, should we be in the business of giving them business so we can collect the taxes? Or should there be a consequence to being irresponsible?

Mr. GORDON. Shall I respond, sir?

Senator COBURN. Sure.

Mr. GORDON. First of all, I should say on USAspending.gov, it is a serious issue. I had the pleasure when I was preparing for this hearing of watching a hearing that you held about a year ago with

my colleague Vivek Kundra and others, talking about that. As I am sure you know, there has been some progress, Dr. Coburn, in terms of getting subcontractor data up, but we have a lot more work to do in that area.

On the issue of ever giving a contract to a tax delinquent contractor, as a general rule, we can all agree that tax cheats should not be getting Federal contracts. That said, on reflection, I think we would also agree that, for example, if the tax debt is very small, that probably would not be a reason to exclude them, and——

Senator COBURN. Why not? If I owe you money and I do not pay you the money, why would you give me more money? If I am not responsible—I do not care if it is a dime. Why would we say that you can be just a little bit irresponsible and still get a contract versus a little bit more irresponsible and you do not? I do not understand that thinking.

Mr. GORDON. I understand the point, Senator, but I think that when you are talking about if you had a tax debt of $200 and those debts are captured in the universe that GAO has in its report, it feels like the Federal Government could be cutting off its nose to spite its face if it says, "We are not going to award a contract even though with the levy program we will get our $200 back immediately."

Senator COBURN. That is not true. We do not get our levy money back. As a matter of fact, we have big problems with the levy program. It is much better than what it used to be, but it is not anywhere close to where it needs to be.

Mr. GORDON. It is certainly not as good as it should be, but, sir, we have collected overall through that levy program more than half a billion dollars, more than $600 million cumulatively through that levy program. Is it where it should be? Absolutely not. Have we made substantial progress? Yes. And if we were to say we are not going to award a contract to this company even though it offers us the best price or the best quality, or both, because of a $200 debt——

Senator COBURN. Have them go fix it before—in other words, what you are saying is rationalizing that you are going to create an expectation less than what we should have in terms of integrity. If all contractors know, if it is a given that if you have an outstanding debt liability to the Federal Government, you are not going to be considered for a contract, I guarantee you they will go borrow it from Granny and pay the two hundred bucks. This rationalization that, oh, well, we might miss one, if you create the proper expectation, you are not going to have that problem. That is not even going to be there. They are going to worry. If they are depending on Federal Government contracts or grants for their revenue, they are going to make sure that is taken care of. And if they do not take care of it, it tells you they are a terrible manager to begin with and you do not want them contracting with the Federal Government. So I would challenge that position.

Let me go back. In 2004, in the American Jobs Creation Act, we increased the levy amount to 100 percent of payments to Federal contractors and other vendors for goods or services sold or leased to the Federal Government. This increase would allow the Federal Government to be fully repaid, in some cases before payments are

made to contractors with back taxes. However, IRS officials told us that they have not implemented this authority because, in their opinion, the statute did not explicitly name real property among the assets that could be levied up to 100 percent.

So here we have a decision by the IRS that says we are not going to implement what the law is starting in 2004 because we are not sure it clarifies our ability to levy.

So what percentage of the levy program is not being levied because we do not have clarification—that is one of the things we are going to have to take care of if we address it. There is no question that it was the intent of the Congress to levy real property, and for them to not do it—what percentage of the levies are not being accomplished because the IRS will not levy real property?

Mr. GORDON. Sir, I do not know the percentage that is not being collected now, but I can tell you that we agree with your—we share your concern. The President's budget, as I am sure you know, includes a provision that would correct that problem.

Senator COBURN. All right. Let me have one other question, if I might, to you. Let us say I am a Federal contractor and I certify that I have no tax liability when, in fact, I do. What are the checks on that? And how often does it happen that you actually check whether I have a tax liability or not?

Mr. GORDON. It is very difficult to check because our contracting officers cannot get that information from the IRS. That is what we did last year. We had the IRS check certifications. They checked, if I remember correctly, a statistically valid sample of 400 of the certifications. It is just the situation you are referring to, Dr. Coburn. They looked at situations where companies said, "We do not have a qualifying tax delinquency," and what they found was that in the great majority—do not hold me to the exact number, but something like 93 percent of the time those certifications were accurate. And in the few that were not accurate, the problems were—I think they called them "transitory." They were either very minor, or they were resolved within a matter of weeks. And it is not because IRS was looking. They had already been resolved.

Senator COBURN. They had been resolved, so in the mind of the vendor, they had resolved the issue.

Mr. GORDON. Eventually, although at the time they certified, they were not accurate.

Senator COBURN. So what are the consequences to that? If I falsely certify to the Federal Government on the basis to get a contract that I have no tax liability, when I know very well that I do, what are the consequences?

Mr. GORDON. It is a very serious matter. As you know, it potentially is a criminal matter. It is a violation of 18 U.S.C. 1001. But the problem is that our contracting officials do not have any way to find out because we are barred by 6103 from getting taxpayer information.

Senator COBURN. You do not have to get taxpayer results. All you have to do is send to the IRS, is this an accurate representation? They either say yes or no. They are not giving you any tax information other than to say this representation is false or it is accurate.

Mr. GORDON. I would defer to my colleagues at IRS, but I fear that they would have concern that they were sharing taxpayer information.

Senator COBURN. Well, we need to fix that. That is something we need to fix.

Mr. GORDON. We would very much support improved ability to communicate between IRS and the agency.

Senator COBURN. I would also say, in terms of the levy program, you have saved half a billion dollars. This one report found $757 million, which is three-quarters of a billion dollars, just in this one report. So the magnitude—it is great that you found $500 million. I am happy for you. I want to find $5 billion. And I think we have a lot of work to do to get there.

You said a moment ago in your testimony or in answering one of Senator Levin's questions that you found a tiny fraction when you looked in terms of noncompliance at the OMB when you all looked at it. What is a tiny fraction to you?

Mr. GORDON. My recollection, sir, is that there was less than $20 million of contracts awarded during the fiscal year where the contracting officer was awarding a contract making a responsibility determination, and as to those $20 million, the contractor actually had certified to a tax delinquency. So that is $20 million out of something on the order of $540 billion.

Senator COBURN. OK. One last question real quick, Mr. Chairman, if you do not mind.

Mr. Kutz, you testified that you had no taxpayer identification number on 17,000 of these.

Mr. KUTZ. Correct.

Senator COBURN. Out of some 80,000.

Mr. KUTZ. Correct.

Senator COBURN. Why?

Mr. KUTZ. Because of the way—they had to use DUNS numbers. We matched Recovery.gov to the Central Contract Registry so we could get taxpayer identification numbers because Recovery only has Dun & Bradstreet numbers. To match the IRS unpaid assessment file, you have to get a taxpayer identification number. So these were entities that were not registered in the Central Contract Registry because they were not direct Federal Government contractors.

Senator COBURN. OK. So would you imagine that we need some help to clarify or at least clean up so that we have a consistent standard so that there is a way to track it?

Mr. KUTZ. Certainly, with respect to transparency of who these subs are, yes, that would be useful.

Senator COBURN. All right. Thank you, Mr. Chairman, for being lenient.

Senator LEVIN. Thank you, Dr. Coburn. Senator Begich.

Senator BEGICH. Thank you, Mr. Chairman. I am feeling bad that I have a 3:30 meeting because I would rather be in here.

Let me ask one thing. You talked about how to get that. I know everyone who buys a home in this country, when you settle, do a settlement—I know this as being someone in real estate for several years—you have to fill out the 4506 form, which is an IRS form. At any time that file is audited, they have the right to go look at

your tax records. Now, everybody in America who buys a home has to do that. Why can't we have that as a simple clause on the contractor who certifies that also says—it is a simple form. IRS produces it. It is a transcript form, and it is not complicated, and you just sign it. If you do not sign it, you do not get the contract. Why can't you just do that now? What prohibits you from that?

Mr. GORDON. I think that the idea of requiring consent——

Senator BEGICH. I know you like that.

Mr. GORDON [continuing]. Is a good idea.

Senator BEGICH. OK. What prohibits you from doing that right now?

Mr. GORDON. My understanding is that there is concern about 6103, but it is certainly something we are happy——

Senator BEGICH. But a contract of service is a mutually agreed upon arrangement. So I, government, offer you a contract; here are the terms of the contract. You sign it or you do not. You do not sign it, you do not get the contract. And part of that is at any time we audit this file on this contract, we have the right to review, just like every homeowner—I mean, if any of us in our homes, if the title company, and we closed that, got audited, they have the right to determine, to make sure that what we said our income levels were and everything at the time of purchase was accurate and we actually were doing our business.

So I challenge you with that because what I fear greatly is the way the legislative process works around this place, millions more will not be paid while we wait around. So I would encourage you to look at that.

Second, I will tell you this: As a former mayor and assembly, no one could get a liquor license unless they paid their taxes. That was the rule. You come up, you get a liquor license, but you are not in business until you pay your taxes. If you do not pay your taxes, you do not get the license. It is not complicated.

So I think administratively there are probably some things you can do, especially because it is under contract law. We always go back and say we have to write a new law to make this. It is contract law.

The other thing that drives me a little crazy as I am sitting here is that people—for example, if I wanted to know the person who has been banned from—I think it was one prime, where do I go to find that? If I am a local government official and I am granting out these contracts, and I want to look at a list that the Federal Government has of bad actors, is there any place I can go?

Mr. GORDON. Senator Begich, you raise several important points. I want to tell you, we in the Administration want to leave no stone unturned, whether it is through the suspension or debarment process, whether it is through more vigorous following up on these certifications, whether it is through thinking about how to get to subrecipients. They were all challenging, but I think we can make progress, as you say, on the administrative side and not only through the legislative side.

The certifications that entities have, if they are prime entities, prime contractors, the certifications go into a database that all of our contracting officials can see. It is called Online Representations and Certifications Application (ORCA). That is not publicly acces-

sible at this point. We would eventually want to make that publicly accessible. The main reason that we are not doing it is, frankly, the cost of building out the system.

We think, as long as there is not a taxpayer information problem, that there should be a way that the public can see which entities, in fact, have put into the system called ORCA, the fact that they have delinquencies.

But if I could, two other points that are worth considering. One of them is, what does the contracting officer do if she or he is given the right of access to tax returns? It is giving them a lot of sensitive information, and I think that our contracting officers would be hard pressed to make calls about how serious a tax return is as part of the responsibility determination. If we ended up going down that path, I would want to be sure that contracting officers get training.

Senator BEGICH. I am not necessarily saying that. What I am saying is one of the things I have heard over and over again is access. All I am saying is just like every homeowner has to sign a document that if that file is audited, they can get the information very easily.

But the other piece I want to try to dive into, if the IRS has a tax lien on any business, is there a simple—I can go to the IRS Web site, and if I am a Federal Government purchasing officer or a State purchasing officer or a local government purchasing officer, because a lot of the contracts local governments do, they require you to name your subs. They do not just give you a contract. I know this from the work we used to do as mayor. You have to name your subs. So can they access a site publicly to show if there are tax liens? I know you can do it State by State. But is there a central location as well as criminal investigations, just a simple one, two, three site, that is it.

Mr. GORDON. I do not believe there is a simple way to get that information today.

I should say, Senator, one of the challenges—and this is one of the things, as I was studying the GAO report. Again, in the 15 examples where they drilled down, the great majority of them were not entities that got money directly from the Federal Government.

Senator BEGICH. No, I understand. But what I am trying to do is follow the next link, and that is, if I am the municipality of Anchorage, when I was mayor, the purchasing officer would—they have Federal receipts. The requirement is you have to certify that no one owes taxes who you are granting this to. If I am a contractor with the city of Anchorage, the prime will give the list of the subbers. That is a requirement. At least in our city it was, that you cannot just go pick people later. You actually had to find your subcontractors. So then the purchasing officer just goes to one site, and they see who has tax liens all across this country. And if Joe Blow subcontractor has a tax lien, he tells the prime, "I cannot give you this contract until that is cleared up."

So that is what I am saying. In other words, what we have a tendency to do—at least what I am learning after 2½ years here, we have a disjointed information source. So if you expect a sizable amount of this money which does go to State and local governments and health care agencies, there has to be a point where they

can go to and what I call is a three-click rule. If it takes beyond that, it is never going to work.

So I am asking you to kind of look at that, and if there is a cost issue to this, I am sure we could do the pay-for as much we collect from the past due. I think we can figure this out. If you think there is money to be collected, the pay-for alone could probably solve this problem and have tons left over. But I am struggling here, and I will tell you, I will probably go to a Web site. I will pretend I am a contractor and try to see if I can accomplish the goal of finding out how to find this information. My guess is I will not be able to find it. It will be difficult for me, because we cannot—the Federal Government can only do so much, especially with so much money granted to States and local governments who are also using layers of prime and subs. And we give them tools. They sure do not want to have a violation because they want those dollars, whether they be transportation dollars or whatever they might be. But the combination of the three entities could be powerful. And I agree with Senator Coburn and Senator Levin. The minute they get the message, they are going to be kicked off the list. And I would agree—I would say one comment. Probably the reason why they have best prices is because they are not paying their taxes. But once they are kicked off the list, I know what we did in local government. They got their act together, or as Senator Coburn said, they were bad actors anyway and they needed to be cleared out of the system.

So, again, I just want to say thanks for having the hearing. Hopefully, again, the form that I suggested is an example, it is a contract relationship. I cannot see why every contractor cannot sign that and say, "We will ensure that the information is available." If not, then we will audit them.

Mr. KUTZ. Senator, could I address those before you go? Because I want to just touch on a couple things. We have mentioned—we believe, I think, that consent is a valid option here. We have talked about it at past hearings, and it is something that could be done to allow the government to do more of a systematic look at the tax issue.

There is a central location for all suspended and debarred contractors and other entities called the Excluded Parties List System. I do not know if it is available to State and local governments, though.

Mr. GORDON. It is publicly available.

Mr. KUTZ. OK. So then it could be searched by State and local—and it also includes the HHS exclusion list for health care-related issues.

On the tax liens, I do not believe——

Senator BEGICH. What Web site would you find that on?

Mr. GORDON. It is a GSA Web site, www.epls.gov, Excluded Parties List System. Publicly available.

Mr. KUTZ. The tax liens, I believe IRS does not have a central system, but we go to LexisNexis, and it is public information. So it is not one push. It might be a couple of buttons to get to. So it is available.

And then the criminal investigations, they are only available if they are closed. If it is an open criminal investigation, law enforcement is not going to talk to you about it.

Senator LEVIN. Before you leave, Senator Begich, we did act last year to have a more publicly available Web site, which shows a list of basically bad actors beyond those that are excluded formally. But let me go through this—there are a lot of acronyms here, and there is a lot of new stuff here, and I am not sure it has been implemented. But let me start.

You have a governmentwide database, as I understand it, called ORCA. You made reference to ORCA, the Online Representations and Certifications Application. Then you have something which we passed last year, which is FAPIIS. I do not know how you pronounce it.

Mr. GORDON. Usually "fap-is," although every so often there are people who say "fay-pis." It is the Federal Awardee Performance and Integrity Information System. It actually was up and running 1 year ago now, April of last year.

Senator LEVIN. That is what I want to get into, because I think this may or may not address some of the issues which have been raised here. So the Federal Awardee Performance and Integrity Information System has been up for a year. But I believe that—and your excluded contractors are just one part of that. That is not the whole deal.

Mr. GORDON. Yes.

Senator LEVIN. Then we adopted in our last year's defense authorization bill—I think this was the one where it was Congresswoman Maloney, I think, in the House and Mr. Waxman in the House and Mr. Towns in the House; Senator McCaskill and I were involved, Senators McCain and Sanders were involved here. Are you familiar with that issue?

Mr. KUTZ. I am not.

Senator LEVIN. Is that the FAPIIS issue?

Mr. GORDON. I have not heard what the next point is, sir.

Senator LEVIN. It is a public version of FAPIIS.

Mr. GORDON. Yes, now I understand. Last year, Congress required that we open up most of FAPIIS to the public except for the past performance section, and that has now happened as of——

Senator LEVIN. A month ago or so.

Mr. GORDON. Yes, exactly, several weeks ago. FAPIIS is now publicly available. That provides an enormous amount of information, for example, about civil problems, about convictions, about terminations for default, and many other issues. Publicly available.

Senator LEVIN. We are going to ask you, Mr. Kutz, if you would look at what is now publicly available and tell us what is available, since it is brand new, and what is not available. You have heard the kind of questions here today as to what we think ought to be available and what is there which is available publicly and what is not. That would be very helpful. I think while you are still here, it is right along the line, Senator Begich, that you were talking about.

OK. So that would be very helpful. But I also want to get to this other provision that I talked about, that every contractor would have to include a provision in their contract or purchase agreement with a supplier that the supplier would have to represent that they are current on their taxes, or if not, what their back taxes are. If they misrepresented in response to that, if a subcontractor made

a misstatement to a contractor in order to get a contract, or if a supplier misstated something, I presume that would be covered by current Federal law. Would that be true? It would be a misrepresentation in order to access Federal money.

Mr. GORDON. Well, Chairman Levin, I no longer work in GAO's Office of General Counsel, so I had better be careful about law. But what I would say is it sounds like that statement would not be going to the Federal Government, but it would be used in order to get Federal funds, so there might be a false claim issue, I will say, not functioning as a lawyer.

Senator LEVIN. OK. We have to find that out. I do not know who I am looking at to find that out.

Mr. KUTZ. We can try to report back to you on that.

Senator LEVIN. OK. Would you find out if there is a misrepresentation if a subcontractor misstates whether or not it is current in its Federal taxes?

Mr. KUTZ. And you want to know whether that would be a false statement.

Senator LEVIN. Is that a false statement under Federal law which would invoke some criminal liability?

Mr. KUTZ. Right, because it is not being made to the Federal Government, but we could do that.

Senator LEVIN. That is right, but if you are getting Federal funds——

Mr. KUTZ. Right, that is getting Federal funds.

Senator LEVIN [continuing]. Indirectly with the Federal Government. But the second question is whether or not if there is silence—if there is no statement made at all—if there is a requirement, tell us if you are behind in your Federal taxes, you must disclose to us, and there is no disclosure, would that be covered by Federal law? Is the failure to disclose—which is a harder case, I would think. But can you also let us know?

Mr. KUTZ. Sure.[1]

Senator LEVIN. Finally, would you let us know in both cases, is there anything we can do to tighten that law? Because that is really where a lot of this problem lies, is down below the prime level, for reasons you both have given. So we have to figure out, well, how do we get below the prime level? It may be a crime level too, but below the prime level. So if you could give us that information, we will look to you then, Mr. Kutz.

Mr. KUTZ. Yes, we will look into that, and I think that this is a good issue for today, too, because I think the Recovery Board provides some additional transparency at the sub-recipient level—which has not been there much in the past.

Senator LEVIN. All right. And then while we are asking, any other legislation that you can recommend to us to tighten our laws, it would be appreciated. If you could give us that for the record, that would be helpful.

Dr. Coburn.

Senator COBURN. How do we know that contracting officers are checking ORCA?

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[1] See Exhibit No. 2, which appears in the Appendix on page 75.

Mr. GORDON. The short answer is I cannot be 100 percent sure. They are required to, and we are providing them training that tells them how important it is. But can I be 100 percent sure that in every case every contracting officer is checking? I cannot.

Senator COBURN. They do not have a checklist of things that have to happen before a contract is issued?

Mr. GORDON. Oh, I suspect they do, but my point was——

Senator COBURN. Yes, I understand that. What about on contract renewals? Are they required to go back and look at ORCA again?

Mr. GORDON. If I could state it somewhat differently, but it is the very same question. Do they have to do a responsibility determination, for example, when they are exercising options? It is a very important question. I would want to check the Federal Acquisition Regulation and see if they are required to. I am not sure they are required to.[1]

Senator COBURN. OK. Why did the IRS go after these guys only after your report? Why not before?

Mr. KUTZ. The 15 cases?

Senator COBURN. Yes.

Mr. KUTZ. Well, they certainly did collection action against all of them. They did some enforcement action, as I mentioned. There were some levies and other types of things. But should there have been more aggressive action in some cases? That is a fair question. We did not really try to evaluate it.

Senator COBURN. And it is not fair to go after the IRS here because overall they do a pretty good job, but maybe one of the things we should have done is talk with them maybe a little bit and have them on a second panel.

Mr. KUTZ. Well, let me just say, on the payroll tax issue it is a felony to withhold and not forward payroll taxes, and that is rarely investigated from a criminal perspective. It is almost always investigated from a civil case. That is why I mentioned in my opening statement, trust fund recovery penalties are exclusively used. We have hardly ever seen anyone convicted. And if you think about it, it is like taking money out of a 401(k) plan. These are for the Social Security and the Medicare trust funds, which the trustees report just came out. That is pretty egregious behavior, in our view.

Senator COBURN. Yes.

Mr. GORDON. Dr. Coburn, if I could?

Senator COBURN. Yes.

Mr. GORDON. A couple of things here. If I were going to ask GAO for a little bit more detail, actually your question goes to one of the areas where I think it would be useful to know more. For example, we learned in the GAO report that the only prime contractor in their 15, as I mentioned earlier, was fully current in repaying their taxes.

The $40 million that were owed by the 15 entities that GAO identified, IRS was already collecting from them. And, in fact, before IRS ever saw the GAO report, before the IRS ever saw the list of 15, they were already taking action so that the $40 million that is owed by the 15 is already down below $32 million. IRS did not wait for the GAO report to go after those 15.

[1] See Exhibit No. 3, which appears in the Appendix on page 82.

Senator COBURN. Good point. Which comes back to the point. What did their certification say?

Mr. GORDON. It is an excellent question, sir. None of the entities were required to certify—none but one. I will get to that one in a moment.

Senator COBURN. Because they were not prime contractors.

Mr. GORDON. Because they were not prime contractors. The one that was required to certify accurately certified no delinquency because they were fully current in paying their taxes.

Senator COBURN. OK. So what we have discovered here is there is a problem, a big problem with subcontractors.

Mr. GORDON. Subcontractors, sub-recipients, and vendors, absolutely. It is a challenging one, and we want to work with you to find solutions, either administrative or legislative, that make sense.

Senator COBURN. I think this is probably a repeat of what Senator Levin said, but you advocated for legislation that would permit the Treasury to share information with agency contracting officials. Have you done any research to say what needs to be done and what is the likely cost of that? I can sit and think, if I have a certification that says I do not have a tax liability, that is not hard to put into a computer and bounce it off IRS and it says, yes, that is an accurate statement, or no, it is not. So you know nothing about their tax situation other than that it is not an accurate statement or it is. That cannot be too hard, can it?

Mr. KUTZ. It depends on the link you have with IRS and to what——

Senator COBURN. Well, I mean, we have all sorts of links with the IRS that are protected under statute that are monitored that can go back—and they do go back and forth.

Mr. KUTZ. Right. One approach is to do it case by case. The other is to do it systematically periodically and update the Central Contract Registry with who is and is not delinquent. Now, that would get into some disclosure issues with 6103 also, but right now there is an indicator in the Central Contract Registry about whether there is certain Federal tax debt—or Federal debt. Not tax debt—debt. There is a yes or no in there, and so there are certain types of situations where that could be a more systematic approach.

Mr. GORDON. And to be fair, Dr. Coburn, to our colleagues in IRS, you could be talking about hundreds of thousands of inquiries each year that would be going to them.

Senator COBURN. But hundreds of thousands of inquiries mean nothing on good modern computer systems, whereas if you are going—IRS knows who has a tax liability. It is on one server or one group of servers. There is nothing to write a program that if an intermediary said these are coming from contracting officers, all you have to say is yes or no, here is the taxpayer identification number, boom, yes, no, it is out. And nobody has to touch that except the contracting officer that says submit. And they can do them in batches or they can do it as they are working a contract. And they get an automatic answer, yes or no. So that is not a hard thing. It is not any harder than checking the box that said they filed the statement and certified that they did not have a tax liability. I mean, that is not a hard thing. We always try to make things hard. The only thing that is hard is getting the government up to

speed on some of its computer software and allowing it to talk to each other.

Is it a felony to falsely certify?

Mr. GORDON. I would want to turn to counsel to answer that question. [1]

Senator COBURN. OK. Please do.

Mr. GORDON. But I think that a false certification to the Federal Government might be a violation of 18 U.S.C. 1001, which would be a criminal violation.

Senator COBURN. One other question, and then we will finish up. I am going to have some questions for the record, and I hope you all will submit those. What I really want to do is create an environment where we can actually get from these gentlemen what we really need to do on our side to fix this and make it run smoother, make it more easily done.

As you look back on the Recovery Act, besides it being controversial, do you think Congress did a good job of setting up—I know we did good with the Recovery Board. We had a great IG. Overall, whether I agree with where the money was spent, we did more to work on accuracy with that than anything. But in this one area it looks to me like Congress did not get it done. What is your assessment of that?

Mr. GORDON. I think that would be a very harsh assessment, sir. I think that the Federal funds were going to recipients where I am not at all sure they had significant problems. The fact that there was a problem beyond that first tier—maybe it was the second tier, maybe even the third tier—that is very tough to do. Congress would have had to have some sort of a system to address the 6103 problem. It would have needed to be addressed. And the fact is we have had very few assertions of fraud, waste, or abuse in connection with the spending of Recovery Act funds.

Senator COBURN. So looking forward, what do we need to do to make sure we do not—I have put out a few reports on the Recovery Act myself in terms of some of the awards that were associated with it. What are the systematic changes that we need to make going forward so that when we have another episode when we are going to do this or with the tremendous amount of dollars that flow out of this, what do we need to do?

Mr. GORDON. And this is much broader than the Recovery Act. We need to be sure that the suspension and debarment progress is vigorous. I very much agree with what Chairman Levin said about that. The suspension and debarment process needs to be reinvigorated. We are working on that now. We need to be sure that our contracting officers have access to information. That is why ORCA and FAPIIS—forgive me for the acronyms, but that is why those databases are so important.

We then need to train our contracting officers, and we are working on that right now to be sure that they know they have to check. They must not overlook these important issues. Those three steps alone I think will help us move forward.

Senator COBURN. So do we have a system of randomly checking our contracting officers to see if they are checking?

[1] See Exhibit No. 3, which appears in the Appendix on page 82.

Mr. GORDON. I do not know that we have one governmentwide, but it is something I want to look into.[1]

Senator COBURN. Do we have one in the Defense Department?

Mr. GORDON. I think that some agencies are doing that, but I will tell you, one of the things I have done since I started this job a year and a half ago is talk to the senior procurement executives across the government. I want to raise that issue with them. I think it is a very important idea.

Senator COBURN. We have a tremendous shortage of contracting officers, and what I want to do is make it to where their job is easy to be effective and efficient.

Mr. GORDON. I could not agree more, sir.

Senator COBURN. Yes. Thank you, Mr. Chairman.

Senator LEVIN. Thank you, Dr. Coburn, again for your leadership here.

When I was a young lawyer practicing law, we represented companies, some of whom did not send along their Social Security money to the Federal Government that they had deducted from their employees' salaries. We told them that was about one of the worst things in the world you could do because you could be in jail for that one. I mean, that is serious business, trust fund money. And I am surprised that there has been, as you talked about, Mr. Kutz, so little criminal enforcement of those provisions. That is theft of money that belongs in a trust fund.

As you point out, there has been a reluctance to use the criminal law. But, I do not think there was a reluctance about that—I will not say how many decades ago, it is embarrassing—when I was practicing law, but I do not think there was that much reluctance.

Senator COBURN. Six or seven.

Senator LEVIN. Thank you—that is years. That is not decades.

Mr. KUTZ. I used to be the auditor of IRS back in the 1990s, and we looked at it back then, and it really has not changed that much in the 15 or so years.

Senator LEVIN. I am talking about the 1970s.

Mr. KUTZ. Yes, so you are little longer than that, but——

Mr. GORDON. But, sir, I very much agree. Those payroll taxes are held in trust by the employers. For the employers to take their employees' funds and not to pay them to the IRS is absolutely beyond——

Senator LEVIN. It is criminal.

Mr. GORDON. It is criminal and immoral.

Senator LEVIN. It is not figuratively criminal. It is literally criminal. It is not what? You said it is criminal and what?

Mr. GORDON. I said it is criminal and it is immoral.

Senator LEVIN. Immoral.

Mr. GORDON. It is taking those employees' funds.

Senator LEVIN. Right. But it is also—isn't there individual liability for that?

Mr. KUTZ. Yes, that is the trust fund recovery penalty. So the officers and owners that are held responsible for that, they get assessed personally, and as I said, in 12 of these 15 cases that was at least done. But no criminal.

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[1] See Exhibit No. 3, which appears in the Appendix on page 82.

Senator LEVIN. No criminal. At any rate, one of the things that would be helpful is if you could give us, Mr. Gordon, a little bit of an assessment of why there are so few suspensions and debarments.[1] What is missing in that area if we are going to really move strongly in that area to try to deter what is going on? There is still too much, although we have made some progress, and we also ought to acknowledge when we have made progress. We have. It just is frustrating that it has not been enough, and it is too slow. But if you could get us a report on the suspensions and debarments and why we do not debar more egregious tax deadbeats.

And, finally, from my perspective, if you could get us the responses to that idea of a provision in all the contracts requiring the people who are going to get Federal funds on subcontracts or on purchases to represent whether or not they are current on their taxes. You are going to give us some information on that, but also give us a recommendation as to whether that would be a wise idea.

Thank you again, and to you and your staff, Dr. Coburn, and my staff. Thank you all. And to our witnesses, thank you so much.

[Whereupon, at 3:49 p.m., the Subcommittee was adjourned.]

[1] See Exhibit No. 3, which appears in the Appendix on page 82.

APPENDIX

SENATOR CARL LEVIN (D-MICH)

BEFORE THE

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

ON

STIMULUS CONTRACTORS WHO CHEAT ON THEIR TAXES: WHAT HAPPENED?

May 24, 2011

The Subcommittee today is examining federal contractors who get paid with taxpayer dollars, but then fail to pay the taxes they owe. I commend my colleague Senator Coburn for taking the initiative to press forward on this issue.

Prior Subcommittee hearings on this and related topics have exposed as tax delinquents tens of thousands of federal contractors and service providers who collectively owe billions in unpaid taxes. The spotlight today is on businesses that received contract or grant funds under the American Recovery and Reinvestment Act. While the vast majority – well over 90% – of Recovery Act recipients are in compliance with federal requirements and are contributing to our economic recovery, a small portion, about 5%, have put taxpayer dollars in their pockets, while failing to meet their tax obligations. That 5% is about half the percentage of DOD contractors that an earlier report found had unpaid taxes, but it is nonetheless troubling. According to a report the Subcommittee is releasing today, that 5% translates into about 3,700 contractors and grant recipients, out of a total of about 63,000, that received over $24 billion in stimulus dollars, while owing unpaid federal taxes of more than $750 million.

Federal programs now exist to stop this type of abuse. One key program is the Federal Payment Levy Program, which was established over ten years ago to enable the federal government to identify federal payments being made to tax delinquents, and authorize the withholding of a portion of those payments to apply to the person's tax debt.

When the Subcommittee began looking at the federal contractor issue in 2004, the tax levy program was weighed down by bureaucratic requirements and red tape. In response to the Subcommittee's request, the key federal agencies, including the Internal Revenue Service (IRS), the Financial Management Service (FMS) at Treasury, and others, formed a government-wide task force to streamline the tax levy program. That task force has addressed many of the problems that have been identified by the Subcommittee.

As a result, the tax levy program has become energized. It has moved from covering only 10% to covering 100% of the payment systems at the Department of Defense. In addition, by September of this year, 100% of the $400 billion in Medicare payments made each year will be screened for tax delinquents. Tax levy collections from tax delinquent federal contractors as a

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whole have increased almost six-fold over the past six years – from about $20 million in FY 2004 to $115 million in FY 2010. Last year is the first time the tax levy program has collected over $100 million from tax delinquent federal contractors in a single year. We applaud that progress. At the same time, that $100 million per year has to be compared to the billions of dollars in unpaid tax debt still owed by federal contractors, which means there is still a lot more work to be done.

GAO selected 15 of the Recovery Act recipients that raised particular red flags for a closer look. GAO found that those 15 recipients alone were responsible for $40 million in unpaid taxes. GAO also found that those 15 had engaged in abusive or potentially criminal activities, including failing to remit the payroll taxes that were taken out of employee paychecks but never sent to the IRS. Federal law requires employers to hold payroll tax money "in trust" for the IRS, and failure to remit those funds as required is a violation of civil and criminal law.

In one case, GAO identified a security company that received $100,000 in federal funds yet owed over $9 million in unpaid taxes. Those unpaid taxes were primarily payroll taxes from five years earlier that the company never forwarded to the IRS. The company had also been cited by the Department of Labor for violating federal labor laws.

In another case, GAO identified a social services company that owed over $2 million in taxes, yet received more than $1 million in federal funds. That company had defaulted on several installment agreements with the IRS which finally imposed a penalty on an executive who was personally responsible for nonpayment of the taxes owed. GAO found that this executive had numerous transactions with casinos totaling hundreds of thousands of dollar a year, indicating he had substantial funds to apply to the company's tax debt yet failed to do so.

GAO also found that, while some of the recipients were subjected to the tax levy program, about $315 million of the tax debt was not, because the Recovery Act funds had not been paid directly by the federal government to the tax delinquent businesses. Instead, in those cases, the federal government had paid the funds to a State, prime contractor, or grant recipient which, in turn, made payments to the ultimate recipients. The businesses that got their money from a State, prime contractor, or grant recipient were never screened by the federal tax levy program and so escaped having any portion of their funds withheld for payment of their tax debt. That gap in the tax levy program needs to be addressed.

In addition to hearing from GAO, we will hear today from the President's Office of Federal Procurement Policy or OFPP, which sets contract policy for the Administration and is part of the Office of Management and Budget (OMB). President Obama became concerned about the issue of federal contractors with unpaid taxes while here in the Senate, and he hasn't forgotten the issue. In addition to setting a policy against awarding federal contracts to tax delinquent companies, his Administration changed the Federal Acquisition Regulations to require businesses bidding on federal contractors to certify in writing if they have a tax debt of $3,000 or more, so federal agencies would know about the problem when awarding contracts. His Administration also made nonpayment of tax grounds for debarring a business from bidding on any federal contract. In January 2010, the President also issued a memorandum which, among other matters, caused OMB to initiate an evaluation of whether federal contracting

officers and debarment officials were fully utilizing tax debt information. Today, we will hear more about those efforts.

Since the problem of federal contractors who get paid with taxpayer dollars while dodging their own tax obligations isn't going away, we need to do more to stop the abuse. One action we could surely take is a concerted effort to debar the really flagrant tax cheats from obtaining federal contracts and grants. In each of the hearings we've held on this topic, GAO has identified 15, 20, or 25 tax delinquent businesses that have essentially thumbed their noses at Uncle Sam. Some paid their taxes with bounced checks, repeatedly violated installment agreements, or re-incorporated as new a new company to escape past tax debt. Some business owners sported mansions, expensive cars, or other luxury assets indicating they had the money needed to repay the outstanding tax debt, but chose not to. While these egregious cases have been referred to the IRS and prosecutors, in most cases the companies and their owners have not been debarred from obtaining new federal contracts or grants. Starting with the cases flagged by GAO, this Administration ought to get on with an immediate effort to debar egregious tax cheats from competing against honest businesses that pay their fair share.

We should also consider requiring States, prime contractors, and grant recipients that receive federal funds to require their subcontractors or subrecipients to disclose tax debt, as described in the Federal Acquisition Regulations, and then prohibit those States, prime contractors, and grant recipients from dispensing federal taxpayer dollars to those with outstanding tax debt. Tax deadbeats should not be getting taxpayer dollars, and they shouldn't be allowed to compete against honest businesses that meet their tax obligations. I look forward to hearing from the witnesses today about these and other ideas to stop the abuse.

# # #

Opening Statement of Senator Tom Coburn
PSI Hearing: "Stimulus Contractors Who Cheat on Their Taxes: What Happened?"
May 24, 2011

I would like to start by thanking Sen. Levin for holding this hearing on a matter that is important to every taxpayer. I would also like to thank Senators Baucus, Hatch and Grassley, for working so closely with us on this bipartisan investigation.

Today we are focusing on a new GAO investigation that uncovered thousands of stimulus contract and grant recipients who received billions of dollars from hardworking taxpayers even though the same recipients refused to pay their own taxes. In many instances, the individuals involved have been referred for possible criminal activity.

The purpose of the hearing is to ask questions about the findings and what needs to be done to stop contractors who fail to pay their own taxes from getting federal money.

This is not the first time the Subcommittee has taken a look at tax-cheating federal contractors. In fact, in 2004, the Subcommittee held a hearing on a GAO report that revealed more than 27,000 DOD contractors owed more than $3 billion in back taxes.

The government should have no patience for those who do not pay their taxes but want federal money. Yet, though there have been improvements, the same problems persist nearly 20 years later.

In looking at the $821 billion stimulus program, GAO found that 3,700 Recovery Act recipients got **over $24 billion in contracts and grants, even though they owed $757 million in delinquent taxes**. This means that more than 10 percent of the money awarded for contracts and grants so far has gone to tax cheats.

Worse yet, for the time period looked at by GAO, it found that one in every six contract and grant dollars went to a known tax cheat.

Average Americans are likely wondering why we gave such a huge amount of federal money to tax cheats when our national debt is more than $14 trillion. That $24 billion went to such people looks like we are rewarding people for potentially criminal behavior.

The types of taxes that went unpaid varied, but were primarily corporate income taxes and payroll taxes. Contractors owed more than $400 million in corporate income taxes and over $200 million in payroll taxes, which includes taxes that were withheld from employees' wages but were not remitted to IRS. Some of these contractors received funding from not one, but multiple federal agencies.

Worst of all, these figures surely underestimate the problem, as GAO explains in the report. First and foremost is that it was not able to collect information on 17,000 of 80,000 stimulus contractors.

If GAO's findings are projected to the remaining 17,000 contractors, it is possible that as many as **4,500 contractors owing nearly $1 billion in taxes received $29 billion in contracts.** These numbers are truly astounding.

Illustrating why this is such an outrage, several contractors in question owned multi-million dollar real estate, purchased luxury vehicles, and gambled hundreds of thousands of dollars at the casino, all the while shirking their taxes. Let me highlight some of the more egregious cases:

- A construction company that owed $700,000 in back taxes received **multiple** stimulus awards totaling over $1 million. While the company refused to pay its payroll taxes, one company executive saw fit to blow hundreds of thousands of dollars at a casino.
- A security firm with over $9 million in tax debt got $100,000 in stimulus funding.
- A technical services company owed the federal government over $4 million in back taxes. One of the company executives, however, was found to own real estate also worth $4 million, grossed more than hundreds of thousands of dollars in income and bought a luxury vehicle.

Sadly, these stories are not isolated events. Recently, even the IRS—our nation's tax enforcer—awarded millions of dollars in contracts to known tax cheats. This just underscores the growing and deserved perception that government is broken and not working hard to protect taxpayer dollars.

At a time when there is growing economic uncertainty, how can we expect honest Americans to continue to do the right thing if federal contractors and grantees are allowed to forego their obligation to pay taxes?

To keep this kind of thing from happening in other areas of our government, I have introduced legislation that would prevent anyone with a serious tax debt from working at a federal agency. Similar rules should apply to contractors and grantees.

Over the last two years, I have raised numerous concerns about how the stimulus has been implemented, and today's report only adds to that concern. It is especially troubling that seemingly little effort was made by Congress or the administration to prevent tax cheats from getting billions in taxpayer money.

The single biggest weakness was that money went out through State governments and outside organizations. By sending the money through these third-parties, the government allowed recipients to escape the Federal Payment Levy Program.

To be fair, the conditions that led to this latest exposé are not unique to the Recovery Act program. Rather, it is symptomatic of a larger problem that has been kicked down the road for years.

Passing the Recovery Act without meaningfully addressing this problem meant that we simply allowed a longstanding problem to continue.

Congress and the Administration must implement meaningful solutions to ensure that future federal contractors or grantees pay what they owe. It will be equally important for federal contracting personnel to protect taxpayer dollars by using all available tools to achieve this goal.

I want to thank our witnesses for being here and for their time and preparation. I look forward to their testimony.

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FOR RELEASE: May 24, 2011

U.S. SENATE COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

HEARING: "Stimulus Contractors Who Cheat on Their Taxes: What Happened"

Statement of Senator Tom Carper

The findings released by the Government Accountability Office today are deeply concerning, but unfortunately not surprising. We've known for some time that there's a significant tax gap in this country, and in some cases we've found that government contractors are contributing to the problem. As we continue to develop a culture of thrift within our government, it's always best to go after the low-hanging fruit first. Reducing the tax gap is a common-sense approach to combating our nation's mushrooming budget deficits. Millions of Americans pay their taxes properly and on-time. However, those who fail to pay their fair share not only create a burden that our economy simply cannot sustain but they force their fellow Americans who play by the rules to pay more in taxes.

In the coming weeks, I look forward to offering legislation that takes the necessary steps to crack down on lawbreakers, which will lower costs for law-abiding Americans and reduce our deficit.

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United States Government Accountability Office

GAO

Testimony

Before the Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, U.S. Senate

For Release on Delivery
Expected at 2:30 p.m. EDT
Tuesday, May 24, 2011

RECOVERY ACT

Thousands of Recovery Act Contract and Grant Recipients Owe Hundreds of Millions in Federal Taxes

Statement of Gregory D. Kutz, Director
Forensic Audits and Investigative Service

GAO
Accountability * Integrity * Reliability

GAO-11-686T

Chairman Levin, Ranking Member Coburn, and Members of the Subcommittee:

Thank you for the opportunity to discuss the results of our most recent report, which we are releasing today, on American Recovery and Reinvestment Act of 2009 (Recovery Act) contract and grant recipients that owe federal taxes.[1,2] Collectively, individuals, businesses, and other entities owed the U.S. government about $330 billion in known unpaid taxes, including interest and penalties, as of September 30, 2010, according to the Internal Revenue Service (IRS). IRS enforcement of the nation's tax laws continues to be on our High-Risk List.[3] The Recovery Act appropriated $275 billion to be distributed for federal contracts, grants, and loans.[4] According to www.Recovery.gov (Recovery.gov) data on federal spending, as of March 25, 2011, about $191 billion of that amount had been paid out.[5] As far back as 1992, we have said that Congress should consider whether tax compliance should be a prerequisite for receiving a federal contract.[6] Federal law does not prohibit the awarding of contracts or grants to entities because they owe federal taxes and does not permit IRS to disclose taxpayer information, including unpaid federal taxes, to federal agencies unless the taxpayer consents. Because of the potential that some Recovery Act recipients also have unpaid federal taxes you asked us to investigate this issue.

My statement today is based on our most recent report regarding tax delinquent federal contractors and grantees. Our report and my statement address two issues: (1) the magnitude of known tax debt owed by

[1]GAO, *Recovery Act: Thousands of Recovery Act Contract and Grant Recipients Owe Hundreds of Millions in Federal Taxes*, GAO-11-485 (Washington, D.C.: Apr. 28, 2011).

[2]For the purposes of this report, we refer to prime recipients, subrecipients, and vendors as recipients of Recovery Act funds.

[3]GAO, *GAO's 2011 High-Risk Series: An Update*, GAO-11-394T (Washington, D.C.: Feb. 17, 2011).

[4]Pub. L. No. 111-5, 123 Stat. 115 (Feb. 17, 2009).

[5]Recovery.gov is a Web site created under the Recovery Act in order to track and publicly disclose the projects and activities for which Recovery Act funds were expended or obligated and information concerning the amount and use of funds by nonfederal recipients. It includes spending at the prime recipient level, as well as certain subrecipients.

[6]GAO, *Tax Administration: Federal Contractor Tax Delinquencies and Status of the 1992 Tax Return Filing Season*, GAO/T-GGD-92-23 (Washington, D.C.: Mar. 17, 1992).

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Recovery Act contract and grant recipients; and (2) examples of Recovery Act contract and grant recipients who have known unpaid federal taxes. To determine, to the extent possible, the magnitude of known tax debt owed by Recovery Act contract and grant recipients, we identified contract and grant recipients from Recovery.gov and compared them to known tax debts as of September 30, 2009, from IRS.[7] To provide examples of Recovery Act recipients with known unpaid federal taxes, we chose a nonrepresentative selection of 30 Recovery Act contract and grant recipients, which were then narrowed to 15 based on a number of factors, including the amount of taxes owed and the number of delinquent tax periods. These case studies serve to illustrate the sizable amounts of taxes owed by some organizations that received Recovery Act funding and cannot be generalized beyond the cases presented. Our work was performed in accordance with generally accepted government auditing standards and with standards for investigations prescribed by the Council of the Inspectors General on Integrity and Efficiency.

My testimony today summarizes our findings on each of the two issues discussed in our report. Specifically, we found the following:

- *Thousands of Recovery Act contract and grant recipients owe hundreds of millions in federal taxes:* At least 3,700 Recovery Act contract and grant recipients—including prime recipients, subrecipients, and vendors—are estimated to owe more than $750 million in known unpaid federal taxes as of September 30, 2009, and received over $24 billion in Recovery Act funds. This represented nearly 5 percent of the approximately 80,000 contractors and grant recipients in the data from Recovery.gov as of July 2010 that we reviewed. The estimated amount of known unpaid federal taxes is likely understated because IRS databases do not include amounts owed by recipients who have not filed tax returns or understated their taxable income and for which IRS has not assessed tax amounts due. In addition, our analysis does not include Recovery Act contract and grant recipients who are noncompliant with or not subject to Recovery Act reporting requirements. Our analysis also does not include contract and grant recipients that were not registered in the Central

[7]Specifically, we obtained all of the fourth quarterly contract and grant recipient reports made available on July 30, 2010, as well as all reports from prior quarterly submissions that were marked as "final" by the recipients.

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Contractor Registration (CCR).[8] Because Recovery.gov does not contain taxpayer identification numbers (TIN), we used CCR to identify the TIN for each contract and grant recipient. We were not able to match about 17,000 of the 80,000 recipients in Recovery.gov to the CCR database. As such, those 17,000 recipients were not included in our analysis.

- *Examples of Recovery Act recipients with unpaid federal taxes engaged in abusive or potentially criminal activity:* For the 15 cases we selected for further review, we found abusive or potentially criminal activity, i.e., recipients had failed to remit payroll taxes to IRS. Federal law requires employers to hold payroll tax money "in trust" before remitting it to IRS. Failure to remit payroll taxes can result in civil or criminal penalties under U.S. law. The amount of unpaid taxes associated with these case studies were about $40 million, ranging from approximately $400,000 to over $9 million. IRS has taken collection or enforcement activities (e.g., filing of federal tax liens) against all 15 of these recipients. Our analysis and investigation found that only 1 of these 15 Recovery Act recipients was subject to the new Federal Acquisition Regulation requirement for certification of tax debts in relation to their Recovery Act awards.[9] Because that contractor was current on its repayment agreement, the contractor was not required to disclose its tax debts. The other 14 recipients were grant recipients or contract subrecipients. However, 1 of the 14 companies that recently filed an Online Representations and Certifications Application improperly stated that the company had not been notified of any delinquent federal taxes (greater than $3,000) within the preceding 3 years. We did not identify any circumstances (e.g., current repayment agreement) that would allow the company to make such certification. We have referred all 15 recipients to IRS for

[8]CCR is the primary registrant database for the U.S. federal government. According to the Federal Acquisition Regulation 4.1102, prospective contractors shall be registered in the CCR database prior to award of a contract or agreement. Entities applying for grant awards from the federal government also need to register in CCR. All Recovery Act prime recipients were to register in the CCR database.

[9]On May 22, 2008, the Civil Agency Acquisition Council and the Defense Acquisition Regulations Council amended the FAR by adding conditions regarding delinquent federal taxes and the violation of federal criminal tax laws. The FAR rule requires offerors on federal contracts to certify whether or not they have, within a 3-year period preceding the offer, been convicted of or had a civil judgment rendered against them for, among other things, violating federal criminal tax law, or been notified of any delinquent federal taxes greater than $3,000 for which the liability remains unsatisfied. This certification is made through the Online Representations and Certifications Application Web site, orca.bpn.gov.

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further investigation, if warranted. Table 1 provides summary information on 3 of our 15 case study examples of Recovery Act contractors and grant recipients with known unpaid federal taxes.

Table 1: Examples of Recovery Act Contract and Grant Recipients with Known Unpaid Taxes

Nature of work	Total Recovery Act awards[a]	Known unpaid federal taxes[b]	Comments
Construction	Over $1 million	Over $700 thousand	• Company primarily owes payroll taxes from the mid 2000s. The company generally did not make any federal tax deposits during that time. • Company received multiple Recovery Act awards. • At the same time that the company was not paying its federal tax deposit, a company executive had hundreds of thousands of dollars in casino transactions. • According to IRS records, a company executive admitted to paying other creditors while neglecting to pay payroll taxes. IRS assessed a Trust Fund Recovery Penalty (TFRP) against a key executive for failure to pay payroll taxes. • IRS established an installment agreement with the company to make monthly payments of over $1,000. • Federal government awarded the company millions of dollars in nonstimulus funds in the late 2000s. • IRS filed federal tax liens against this company.
Social services	Over $1 million	Over $2 million	• Nonprofit organization primarily owes payroll taxes from the mid to late 2000s. Nonprofit organization did not make any federal tax deposits for several periods. • On multiple occasions, the nonprofit organization defaulted on installment agreements with IRS. IRS records also indicated that the nonprofit organization may have submitted an offer in compromise to delay IRS collection efforts. • An executive was assessed a TFRP. IRS records indicated that this executive was responsible for numerous questionable business expenses. In addition, the executive had numerous transactions with casinos totaling hundreds of thousand of dollars each year. IRS records also indicated that IRS assessed a TFRP on this executive for another entity that went defunct. • IRS records indicated that the nonprofit organization failed to meet employee payroll obligations on numerous occasions in the late 2000s. • According to one executive, the nonprofit received millions of dollars in government grants. • IRS filed federal tax liens against this organization.

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Nature of work	Total Recovery Act awards[a]	Known unpaid federal taxes[b]	Comments
Technical services	Over $100 thousand	Over $4 million	• Company owes payroll taxes from the mid to late 2000s. For several periods, the company did not make any tax deposits. According to IRS records, the company claimed it did not make tax deposits because the government did not give the company an abatement on its taxes.[c] • IRS assessed a TFRP against a company executive, who owns real estate valued at an estimated $4 million. This executive also purchased a luxury vehicle at the same time the company was not paying its payroll taxes. The company executive reported hundreds of thousands of dollars in adjusted gross income in a recent tax return. • IRS established an installment agreement with the company to make monthly payments of tens of thousands of dollars. IRS records indicated that the company provided unique and essential services to the government. • Federal government awarded the company millions of dollars in nonstimulus funds in the late 2000s. • IRS filed federal tax liens against this company.

Source. GAO's analysis of IRS and Recovery.gov records

Note: All dollar amounts are rounded.

[a]Total Recovery Act awards are based on contractor and grantee recipient reports as of July 2010.

[b]Rounded known unpaid tax amount as of September 30, 2009. Known unpaid tax amount does include penalty and interest.

[c]Abatements are reductions in the amount of taxes owed and can occur for a variety of reasons, such as to correct errors made by IRS or taxpayers or to provide relief from interest and penalties.

Additional examples of Recovery Act contract and grant recipients with known unpaid taxes can be found in our report.

Chairman Levin, Ranking Member Coburn, this completes my prepared statement. I would be happy to respond to any questions you or other Members of the Committee may have at this time.

Contacts

For additional information about this testimony, please contact Gregory D. Kutz at (202) 512-6722 or kutzg@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement.

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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

STATEMENT OF THE HONORABLE DANIEL I. GORDON
ADMINISTRATOR FOR FEDERAL PROCUREMENT POLICY
OFFICE OF MANAGEMENT AND BUDGET
BEFORE THE
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

MAY 24, 2011

Chairman Levin, Ranking Member Coburn, and Members of the Subcommittee, I appreciate the opportunity to appear before you today to discuss steps we are taking to limit contractors with serious tax delinquencies from receiving government contracts. The Administration shares your desire to ensure that federal agencies spend money wisely and eliminate waste and abuse of public resources. As guardians of the taxpayer's resources, our agencies have an obligation to make every possible effort to do business with contractors that place a premium on performance and quality and not do business with firms who are proven bad actors.

Nowhere is this vigilance more pronounced than for contractors and grantees that received Federal funds as part of the American Recovery and Reinvestment Act ("Recovery Act"). Congress set out unprecedented requirements for accountability and transparency in the disbursement of Recovery Act funds to ensure that the public had complete visibility into how their tax dollars were being spent. Congress also set up the independent Recovery Accountability and Transparency Board ("Recovery Board") to conduct oversight of these funds and work with the audit community in rooting out and preventing any waste, fraud, and abuse in

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the program. Using cutting edge forensic technology and a dedicated team of fraud analysts, the Recovery Board has carefully examined recipient data, comparing it with other relevant databases to detect patterns and ensure that Recovery Act funds do not go to lawbreakers. As a result of this oversight, the Recovery Board reports that expenditures under the Act have experienced a remarkably low rate of waste, fraud and abuse – less than 0.4% of awards.

Responsible stewardship includes taking appropriate action to protect taxpayers when a tax-delinquent contractor is trying to win a Federal contract and when a current contractor is found to be tax delinquent. Over the past several years, important actions have been taken to better protect taxpayer interests when dealing with companies with tax delinquencies. These actions include mandatory self-certifications by prospective contractors to identify if they have tax delinquencies and greater efforts to levy government payments when companies who already hold government contracts are identified as delinquent. While these are important steps, there is more to be done, as the findings in the recent report by the Government Accountability Office (GAO) remind us.

The President's January 20, 2010 Memorandum on Tax Delinquency reiterates the importance of ensuring that our contracting officials have the information they need about a contractor's tax status to protect the government's interests. Today, I would like to briefly discuss the progress we have made in better protecting taxpayers from tax-delinquent contractors and steps we are planning to further help contracting officials in considering an offeror's tax status.

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Considering tax delinquency in responsibility determinations

Before a federal contract is awarded, contracting officers must determine that the contractor is "responsible" – that is, qualified to do business with the Federal Government, which includes having the integrity and business ethics to work for our taxpayers. Tax compliance is appropriately considered in determining if the contractor has a satisfactory record of integrity and business ethics, a critical element of a responsibility determination. However, before 2008, there was no mechanism built in the responsibility determination process that allowed a contracting officer to determine the tax status of a prospective contractor. We have changed that. Today, pursuant to changes made to the Federal Acquisition Regulation (FAR) in 2008, any company trying to obtain a federal contract with a value above the simplified acquisition threshold (currently $150,000) must certify whether it has been notified, within a three-year period preceding submission of its proposal, of any delinquent federal taxes in amounts that exceed $3,000 for which the liability remains unsatisfied.[1] Taxes are delinquent if the tax liability has been assessed and all judicial appeal rights have been exhausted and the taxpayer has failed to pay the tax liability when full payment was due and required.

Offerors enter their certifications into the "Online Representations and Certifications Application," (ORCA), a web-based system that collects representation and certification information government-wide.[2] When an offeror is preparing a proposal that requires a tax certification, the offeror must go into ORCA to make the required certification. Consistent with the terms of the certification, the offeror must notify the contracting officer if, at any time prior

[1]The tax certification is part of FAR clause 52.209-5, Certification Regarding Responsibility Matters. The tax certification was added to this clause by FAR Case 2006-011. See 73 Fed. Reg. 21791 (April 22, 2008).
[2] Requirements for contractors to complete annual representations through ORCA are set forth in FAR Subpart 4.12. ORCA may be accessed at http://orca.bpn.gov

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to contract award, the offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. The FAR also requires contractors to update the certifications submitted to ORCA "as necessary, but at least annually, to ensure they are kept current, accurate, and complete."[3]

An offeror's certification to a tax delinquency may lead or contribute to a determination by the contracting officer that the offeror is non-responsible, and therefore ineligible for a contract. Certification to a tax delinquency may also be grounds for suspension or debarment. Furthermore, companies can face stiff penalties if they submit a false certification of tax status, including criminal or civil sanctions for making false statements or claims.

In the winter of 2010, the President directed the Office of Management and Budget (OMB) and the Internal Revenue Service (IRS) to evaluate the effectiveness of the contractor self-certifications. OMB worked with agencies to evaluate whether contracting officers awarded new contracts to companies that had certified to having a tax delinquency. The IRS evaluated the overall accuracy of contractor certifications based on a statistical sampling of certifications made after the FAR changes took effect. OMB's review showed that, for the most part, contractors who certify to tax delinquencies do not receive federal contracts. Only a small fraction of contract obligations involved federal funds going to a contractor with a certified tax delinquency. IRS's review revealed that the great majority of contractors certify accurately.

These conclusions show promise, suggesting that self-certification acts as a positive deterrent. At the same time, we recognize that there is more to do. Even a low rate of misrepresentation in certifications could potentially represent tax dollars being obligated to tax

[3] FAR 4.1201(b).

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delinquent contractors without appropriate protection of taxpayers' interests. Although at least one agency – the Department of Defense (DoD) – reported several instances where it referred contractors with tax delinquency certifications to the suspension and debarment official (SDO), agencies rarely reported using a contractor self-certification of tax non-compliance as the basis for a debarment or suspension action. A number of agency officials, including senior procurement executives and suspension and debarment officials, have noted the challenge associated with taking action based on the certification as currently worded. The limited information provided in the certification (i.e., an attestation of delinquency of $3,000 or more) makes it difficult to gauge the seriousness of the delinquency and the extent to which the non-compliance calls into question the contractor's integrity and business ethics, so that it is not clear whether the delinquency would justify a non-responsibility determination or indicates a systemic problem that might justify a suspension or debarment to protect the government's interests. Several agencies reported reaching out to contractors for additional information but few reported making such requests to the Treasury Department. In part, the lack of exchange of information between Treasury and contracting officers is due to the fact that disclosure of tax return information, which is governed by section 6103 of the Internal Revenue Code, is carefully and narrowly prescribed. Improved sharing of information between the IRS and agency contracting offices could enable the government to further reduce its business with tax delinquent firms.

In recent years, several bills have been introduced in Congress intended to help the Treasury Secretary share information concerning serious tax delinquencies to agency heads—information that could then be used to help inform SDOs on the need for debarments and suspension and contracting officers on whether a potential contractor is non-responsible. One

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such bill was introduced by the President when he was in the Senate. We welcome the opportunity to work with Congress to craft statutory authority for information on tax delinquencies, with appropriate safeguards, so that IRS can more effectively alert agencies if would-be contractors are misrepresenting their tax status and agencies can stop such entities from receiving government contracts.

We believe that legislation can help us crack down on serious tax delinquents, while also affording due process to contractors and preserving the discretion both of our contracting officers to determine, on a case-by-case basis, if a prospective contractor has the requisite business integrity to be determined presently responsible, and of our SDOs to also determine, based on the specific facts and circumstances, including any mitigating factors, whether suspension or debarment is necessary to protect the interests of the government. While the filing of a notice of lien is often cited as an indicator for a seriously delinquent tax debt that might warrant the initiation of a proposed debarment, we understand there may be situations where the existence of a filed lien may not warrant denying a contract to the entity – for example, where the contractor is current on payments under an approved payment plan. In short, giving both effective tools to our contracting agencies and discretion for them to structure an appropriate remedy in the circumstances of the specific case is critical for the system to be effective and fair.

We must also look for opportunities to take better advantage of technology, to the extent possible with available resources. A year ago, we unveiled the "Federal Awardee Performance and Integrity Information System" (FAPIIS) – a one-stop source for a comprehensive range of data, such as information on suspensions and debarments, contract terminations, and contractor disclosure of adverse, criminal, civil and administrative actions. Broadened and easier access to

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this information is giving our contracting officers the information they need to more easily determine whether a company is playing by the rules and has the requisite integrity to do business with the government. OMB will work with the agencies who manage our procurement systems and with the IRS to identify enhancements and determine required resources to support improved information exchange.

We must also expand training for our acquisition workforce so they can make the most of the authorities and tools to root out bad actors. The Federal Acquisition Institute (FAI) is currently developing on-line training on FAPIIS, so that all contracting officers and other officials can have free and easy access to the help they need to navigate through the new system. Despite the important role played by responsibility determinations, many of the agencies that OMB surveyed when it reviewed agency consideration of contractor tax self-certifications indicated that they do not formally train their personnel on the development and documentation of responsibility determinations or on internal agency policies and practices that they have developed to supplement the FAR's coverage in this area (e.g., checklists, business clearances). Consistent with our leadership responsibilities for FAI and the acquisition workforce generally, we will work to evaluate the type of training (government-wide or agency-specific), developmental activities, or additional tools that can further help contracting officers in making effective responsibility determinations.

Increasing consideration of tax delinquencies in disbursement process

In addition to increasing attention on the tax status of prospective contractors, we are continuing to strengthen policies and processes that directly result in increased debt collection.

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Unlike the environment in 2004, when GAO concluded that DoD contractors were able to abuse the federal tax system with "little consequence," we now move vigorously to collect tax debts; specifically:

- Increasingly, federal payment offices are sharing information with Treasury's Financial Management Service electronically to identify contractors subject to its Federal Payment and Levy Program (FPLP). Where payments may be levied, the agency will be advised, on a payment-by-payment basis, how much to pay the IRS in satisfaction of the levy and how much, if any, to pay the contractor.
- All Taxpayer Identification Numbers (TINs) that are entered in the CCR database are validated to ensure that contractors subject to the FPLP are correctly identified. Ensuring that the name and TIN of the contractor match increases the number of payments available for levy.
- The CCR flags contractors with delinquencies, including tax debt that is subject to collection under the Treasury Offset Program (TOP). Under a FAR change which took effect a year ago this past February, the Government-wide commercial purchase card can no longer be used as a method of payment if there is a debt indicator associated with the contractor because the government is not able to offset purchase card payments.

The President's 2012 Budget includes a provision to allow the IRS to continuously levy up to 100% of federal payments made to a federal vendor for goods and services sold to the Government if the vendor owes delinquent taxes. This technical correction would increase the current unintended levy limitation of 15% to 100% on vendor payments made for the sale or

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lease of real estate or other types of property. It would allow Treasury to levy up to 100% of any payment due to a federal vendor with unpaid federal tax liabilities.

Conclusion

We must take all appropriate actions to ensure that government contracts are awarded to responsible, law-abiding contractors who take their tax obligations seriously. We have raised the visibility of tax delinquency by making contractors self-certify to their tax status, but there is more to be done. In particular, we must secure legislation to support the establishment of improved processes for sharing information between IRS and our buying agencies, which will further deter and reduce the government's business with tax delinquent firms. We look forward to working with this Subcommittee and other members of Congress on this effort.

This concludes my statement. I am happy to address any questions you may have.

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United States Government Accountability Office

GAO

Report to Congressional Requesters

April 2011

RECOVERY ACT

Thousands of Recovery Act Contract and Grant Recipients Owe Hundreds of Millions in Federal Taxes

GAO-11-485

Permanent Subcommittee on Investigations
EXHIBIT #1

April 2011

GAO
Accountability • Integrity • Reliability
Highlights

Highlights of GAO-11-485, a report to congressional requesters

RECOVERY ACT

Thousands of Recovery Act Contract and Grant Recipients Owe Hundreds of Millions in Federal Taxes

Why GAO Did This Study

The American Recovery and Reinvestment Act (Recovery Act), enacted on February 17, 2009, appropriated $275 billion to be distributed for federal contracts, grants, and loans. As of March 25, 2011, $191 billion of this $275 billion had been paid out.

GAO was asked to determine if Recovery Act contract and grant recipients have unpaid federal taxes and, if so, to (1) determine, to the extent possible, the magnitude of known federal tax debt which is owed by Recovery Act contract and grant recipients; and, (2) provide examples of Recovery Act contract and grant recipients who have known unpaid federal taxes.

To determine, to the extent possible, the magnitude of known tax debt owed by Recovery Act contract and grant recipients, GAO identified contract and grant recipients from www.recovery.gov and compared them to known tax debts as of September 30, 2009, from the Internal Revenue Service (IRS). To provide examples of Recovery Act recipients with known unpaid federal taxes, GAO chose a nonrepresentative selection of 30 Recovery Act contract and grant recipients, which were then narrowed to 15 based on a number of factors, including the amount of taxes owed and the number of delinquent tax periods. These case studies serve to illustrate the sizable amounts of taxes owed by some organizations that received Recovery Act funding and cannot be generalized beyond the cases presented. This report contains no recommendations.

View GAO-11-485 or key components.
For more information, contact Gregory Kutz at (202) 512-6722 or kutzg@gao.gov.

What GAO Found

At least 3,700 Recovery Act contract and grant recipients—including prime recipients, subrecipients, and vendors—are estimated to owe more than $750 million in known unpaid federal taxes as of September 30, 2009, and received over $24 billion in Recovery Act funds. This represented nearly 5 percent of the approximately 80,000 contractors and grant recipients in the data from www.Recovery.gov as of July 2010 that GAO reviewed. Federal law does not prohibit the awarding of contracts or grants to entities because they owe federal taxes and does not permit IRS to disclose taxpayer information, including unpaid federal taxes, to federal agencies unless the taxpayer consents. The estimated amount of known unpaid federal taxes is likely understated because IRS databases do not include amounts owed by recipients who have not filed tax returns or understated their taxable income and for which IRS has not assessed tax amounts due. In addition, GAO's analysis does not include Recovery Act contract and grant recipients who are noncompliant with or not subject to Recovery Act reporting requirements.

GAO selected 15 Recovery Act recipients for further investigation. For the 15 cases, GAO found abusive or potentially criminal activity, i.e., recipients had failed to remit payroll taxes to IRS. Federal law requires employers to hold payroll tax money "in trust" before remitting it to IRS. Failure to remit payroll taxes can result in civil or criminal penalties under U.S. law. The amount of unpaid taxes associated with these case studies were about $40 million, ranging from approximately $400,000 to over $9 million. IRS has taken collection or enforcement activities (e.g., filing of federal tax liens) against all 15 of these recipients. GAO has referred all 15 recipients to IRS for further investigation, if warranted.

Examples of Recovery Act Contract and Grant Recipients with Unpaid Taxes

Nature of Work	Total Recovery Act awards	Known unpaid federal taxes	Comments
Construction	Over $1 million	Over $700 thousand	Company primarily owes payroll taxes from the mid 2000s. The company generally did not make any federal tax deposits during that time. Company executive admitted to IRS to paying other creditors while neglecting to pay federal payroll taxes.
Health Care	Over $100 thousand	Over $4 million	Nonprofit organization owes payroll taxes primarily from the mid-2000s. On multiple occasions, the nonprofit organization submitted dishonored checks to IRS for payment of federal taxes.
Security	Over $100 thousand	Over $9 million	Company primarily owes payroll taxes from the mid 2000s. IRS records indicate that the company paid other creditors and expenses while not paying federal taxes. Department of Labor has cited company for violating federal labor laws

Source: GAO analysis of IRS known tax debts as of 9/30/09 and Recovery.gov records as of 7/30/10

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United States Government Accountability Office
Washington, DC 20548

April 28, 2011

The Honorable Carl Levin
Chairman
The Honorable Tom Coburn, M.D.
Ranking Member
Permanent Subcommittee on Investigations
Committee on Homeland Security and Governmental Affairs
United States Senate

The Honorable Max Baucus
Chairman
The Honorable Orrin Hatch
Ranking Member
Committee on Finance
United States Senate

The Honorable Charles Grassley
Ranking Member
Committee on the Judiciary
United States Senate

Individuals, businesses, and other entities owed the U.S. government about $330 billion in known unpaid taxes, including interest and penalties, as of September 30, 2010, according to the Internal Revenue Service (IRS). IRS enforcement of the nation's tax laws continues to be on our High-Risk List.[1] In addition, the American Recovery and Reinvestment Act of 2009 (Recovery Act) appropriated $275 billion to be distributed for federal contracts, grants, and loans.[2] According to Recovery.gov data on federal spending, as of March 25, 2011, about $191 billion of that had been paid out. Because of the potential that some recipients also have unpaid federal taxes you asked us to investigate this issue.

This is the first in a series of reports to respond to your request. In this report, we (1) determined, to the extent possible, the magnitude of known tax debt owed by Recovery Act contract and grant recipients; and (2)

[1] *GAO's 2011 High-Risk Series: An Update*, GAO-11-394T (Washington, D.C.: February 2011).

[2] Pub. L. No. 111-5, 123 Stat. 115 (Feb. 17, 2009).

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provided examples of Recovery Act contract and grant recipients who have known unpaid federal taxes.[3]

To determine, to the extent possible, the magnitude of known tax debt owed by Recovery Act contract and grant recipients, we obtained and analyzed quarterly spending reports submitted by contractors and grantees[4] to www.recovery.gov (Recovery.gov) through July 2010.[5] We also obtained known tax debt data from IRS as of September 30, 2009.[6] To determine the extent to which Recovery Act contract and grant recipients had known unpaid federal taxes, we used the taxpayer identification number (TIN) as a unique identifier, and electronically matched IRS's tax debt data to the population of Recovery Act contract and grant recipients.[7] We included only those tax debts from tax year 2008 and before to eliminate tax debt that may involve matters that are routinely resolved between the taxpayers and IRS, with the taxes paid or abated within a short time.

To identify examples, we selected 30 Recovery Act fund recipients for a detailed audit and investigation, which we then narrowed to 15. This nonrepresentative selection of 15 Recovery Act contract or grant recipients were selected primarily based on such factors as the (1) amount of known unpaid federal taxes (including income, payroll, and other taxes); (2) number of delinquent tax periods; (3) location of the recipient;

[3]For the purposes of this report, we refer to prime recipients, subrecipients, and vendors as recipients of Recovery Act funds.

[4]Specifically, we obtained all of the fourth quarterly contract and grant recipient reports made available on July 30, 2010, as well as all reports from prior quarterly submissions that were marked as "final" by the recipients.

[5]www.recovery.gov is a Web site created under the Recovery Act in order to track and publicly disclose the projects and activities for which Recovery Act funds were expended or obligated and information concerning the amount and use of funds by nonfederal recipients. It includes spending at the prime recipient level, as well as certain subrecipients.

[6]Under federal accounting standards, unpaid assessments require taxpayer or court agreement to be considered federal taxes receivables. Compliance assessments and memo accounts are not considered federal taxes receivable because they are not agreed to by taxpayers or the courts.

[7]A TIN is a unique nine-digit identifier assigned to each business and individual that files a tax return. For businesses, the employer identification number assigned by IRS serves as the TIN. For individuals, the Social Security number, assigned by the Social Security Administration, serves as the TIN.

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and (4) potential disclosure issues.[8] Because we considered the number of delinquent tax periods in selecting these 15 recipients, we were more likely to select recipients who owed primarily payroll taxes; our prior work has shown delinquent payroll taxes to be an indicator of potential abusive or criminal activity.[9] Our investigators also contacted several of the recipients and conducted interviews. These case studies serve to illustrate the sizeable amounts of taxes owed by some organizations that received Recovery Act funding and cannot be generalized beyond the cases presented. A more detailed description of the scope and methodology related to our audit and investigative work supporting this report is provided in appendix I.

We conducted this forensic audit and related investigations from July 2010 through April 2011. We performed this forensic audit in accordance with 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. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. We performed our related investigative work in accordance with standards prescribed by the Council of the Inspectors General on Integrity and Efficiency.

Background

The Recovery Act was enacted to help preserve and create jobs and promote economic recovery, invest in technology to spur technological advances, and invest in infrastructure to provide long-term economic benefits, among other things. The act was a response to significant weakness in the economy; in February 2011, the Congressional Budget Office (CBO) estimated the net cost as $821 billion.

Congress and the administration built into the Recovery Act numerous provisions to increase transparency and accountability, including requiring

[8]The length of a delinquent tax period is dependent on the type of tax owed. For instance, income taxes are assessed on an annual basis; payroll taxes are assessed on a quarterly basis.

[9]We considered activity to be abusive when a recipient's actions or inactions, though not illegal, took advantage of the existing tax enforcement and administration system to avoid fulfilling federal tax obligations and were deficient or improper when compared with behavior that a prudent person would consider reasonable.

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recipients of some funds to report quarterly on a number of measures.[10] To implement these requirements, the Office of Management and Budget (OMB) worked with the newly established Recovery Board to deploy a nationwide system at www.federalreporting.gov (FederalReporting.gov) for collecting data submitted by the recipients of funds.[11] OMB set the specific time line for recipients to submit reports and for agencies to review the data. Recipients are required to submit the reports in the month after the close of a quarter, and, by the end of the month, the data are to be reviewed by federal agencies for material omissions or significant reporting errors before being posted to the publicly accessible Recovery.gov.[12] The Recovery Board's goals for this Web site were to promote accountability by providing a platform to analyze Recovery Act data and serving as a means of tracking fraud, waste, and abuse allegations by providing the public with accurate, user-friendly information.

The reporting requirements apply only to nonfederal recipients of funding, including all entities receiving Recovery Act funds directly from the federal government such as state and local governments, private companies, educational institutions, nonprofits, and other private organizations. OMB guidance, consistent with the statutory language in the Recovery Act, states that these reporting requirements apply to recipients

[10]Section 1512 of the Recovery Act requires recipients of some recovery funds to report on those funds each calendar quarter.

[11]The Recovery Act established the Recovery Board to coordinate and conduct oversight of covered funds to prevent fraud, waste, and abuse. In addition, the Board established three committees drawn from the 12 inspectors general on the Board. Recovery Act, div. A, §§ 1521-1525, 123 Stat. 289-93.

[12]This process of Web-based publication of funding and expenditure data was pioneered through the establishment of USASpending.gov, which was created in response to the Federal Funding Accountability and Transparency Act of 2006. The 2006 act requires that OMB "ensure the existence and operation of a single searchable website, accessible by the public at no cost to access, that includes [a variety of specified data] for each federal award." A federal award includes for this purpose federal financial assistance and expenditures in the form of grants, subgrants, loans, awards, cooperative agreements, or any other forms of financial assistance, as well as contracts, subcontracts, purchase orders, task orders, and delivery orders. The decision to include Web-based publication in the Recovery Act, although somewhat duplicative of the 2006 act, expands the reporting of project description data and shifts the burden of reporting data, in part, to the recipients of federal funds. Expansion of the reporting of federal agency data is consistent with the principles of transparency, participation, and collaboration promoted by the administration's open government initiative, as established by the President's Memorandum on Transparency and Open Government, January 21, 2009, and the Open Government Directive issued by the Director of the Office of Management and Budget, December 8, 2009.

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who receive funding through the Recovery Act's discretionary appropriations, not recipients receiving funds through entitlement programs, such as Medicaid, or tax programs. Individuals are also not required to report.

Federal Laws and Regulations Regarding Tax Debtors Receiving Federal Contracts and Grants

Federal law does not prohibit a contractor with unpaid federal taxes from receiving contracts from the federal government. Currently, regulations calling for federal agencies to do business only with responsible contractors do not require contracting officers to consider a contractor's tax delinquency unless the contractor was specifically debarred or suspended by a debarring official for specific actions, such as conviction for tax evasion. According to the Federal Acquisition Regulation (FAR), a responsible prospective contractor is a contractor that meets certain specific criteria, including having adequate financial resources and a satisfactory record of integrity and business ethics.[13] However, the FAR does not currently require contracting officers to take into account a contractor's tax debt when assessing whether a prospective contractor is responsible and does not currently require contracting officers to determine if federal contractors have unpaid federal taxes at the time a contract is awarded. Further, federal law generally prohibits the disclosure of taxpayer data to contracting officers. Thus, contracting officers do not have access to tax data directly from IRS unless the contractor provides consent.

On May 22, 2008, the Civil Agency Acquisition Council and the Defense Acquisition Regulations Council amended the FAR by adding conditions regarding delinquent federal taxes and the violation of federal criminal tax laws. The FAR rule requires offerors on federal contracts to certify whether or not they have, within a 3-year period preceding the offer, been convicted of or had a civil judgment rendered against them for, among other things, violating federal criminal tax law, or been notified of any delinquent federal taxes greater than $3,000 for which the liability remains unsatisfied. This certification is made through the Online Representations and Certifications Application (ORCA) Web site, orca.bpn.gov.

Neither federal law nor current governmentwide policies for administering federal grants or direct assistance prohibit applicants with unpaid federal taxes from receiving grants and direct assistance from the federal

[13]FAR 9.104.

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government. OMB Circulars provide only general guidance with regard to considering existing federal debt in awarding grants. Specifically, the Circulars state that if an applicant has a history of financial instability, or other special conditions, the federal agency may impose additional award requirements to protect the government's interests.[14] The Circulars require grant applicants to self-certify in their standard government application (SF 424) whether they are currently delinquent on any federal debt, including federal taxes. There is no requirement for federal agencies to take into account an applicant's delinquent federal debt, including federal tax debt, when assessing applications. No assessment of tax debt is required by OMB on a sampling or risk-based assessment.

Federal Payment Levy Program

To improve the collection of unpaid taxes, Congress, in the Taxpayer Relief Act of 1997,[15] authorized IRS to collect delinquent tax debt by continuously levying (offsetting) up to 15 percent of certain federal payments made to tax debtors.[16] The payments include federal employee retirement payments, certain Social Security payments, selected federal salaries, contractor, and other vendor payments. Subsequent legislation increased the maximum allowable levy amount to 100 percent for payments to federal contractors and other vendors for goods or services sold or leased to the federal government.[17] The continuous levy program, now referred to as the Federal Payment Levy Program (FPLP), was implemented in 2000. Under the FPLP, each week IRS sends the Department of the Treasury's Financial Management Service (FMS) an extract of its tax debt files. These files are uploaded into the Treasury

[14]In contrast, Section 3720B of title 31 of the United States Code makes federal debtors, other than tax debtors, ineligible to receive federal loans or loan insurance as specified by standards prescribed by the Secretary of the Treasury. In addition, governmentwide policies for managing federal loan, loan guarantees, and other credit programs promulgated in OMB Circular No. A-129, Policies for Federal Credit Programs and Non-Tax Receivables (November 2000) specifically require agencies to determine if an applicant is delinquent on any federal debt, including tax debt, and specify using credit bureaus as a screening tool

[15]Pub. L. No. 105-34, 111 Stat. 788, 923-924 (Aug. 5, 1997).

[16]26 U.S.C. § 6331(h).

[17]26 U.S.C. § 6331(h)(3).

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Offset Program.[18] FMS sends payment data to this offset program to be matched against unpaid federal taxes. If there is a match and IRS has updated the weekly data sent to the offset program to reflect that it has completed all statutory notifications, the federal payment owed to the debtor is reduced (levied) to help satisfy the unpaid federal taxes.

In creating the weekly extracts of tax debt to forward to FMS for inclusion in the offset program, IRS uses the status and transaction codes in the master file database to determine which tax debts are to be included in or excluded from the FPLP. Cases may be excluded from the FPLP for statutory or policy reasons. Cases excluded from the FPLP for statutory reasons include tax debt that had not completed IRS's notification process, or tax debtors who filed for bankruptcy protection or other litigation, who agreed to pay their tax debt through monthly installment payments, or who requested to pay less than the full amount owed through an offer in compromise.[19] Cases excluded from the FPLP for policy reasons include those tax debtors whom IRS has determined to be in financial hardship, those filing an amended return, certain cases under criminal investigation, and those cases in which IRS has determined that the specific circumstances of the cases warrant excluding it from the FPLP.

Recovery Act Contract and Grant Recipients Are Estimated to Owe More Than $750 Million in Known Unpaid Federal Taxes

At least 3,700 recipients of Recovery Act contracts and grants are estimated to owe $757 million in known unpaid federal taxes as of September 30, 2009, though this amount is likely understated for reasons discussed below.[20] This represented nearly 5 percent of the approximately 80,000 contract and grant recipients in the Recovery.gov data as of July

[18]The Treasury Offset Program is an automated process administered by the Department of the Treasury's FMS in which certain federal payments are withheld or reduced (offset) to collect delinquent tax and nontax debts owed to federal agencies, including IRS. For the FPLP, FMS matches federal payments to the tax-debt records sent to it by IRS, and when a match occurs, FMS offsets (levies) the federal payments and transmits the amount levied to IRS to reduce the tax debtor's outstanding debt and sends the residual to the debtor.

[19]An offer in compromise is an agreement between a tax debtor and IRS that resolves the tax debtor's tax debt by accepting less than full payment.

[20]Our analysis of Recovery Act recipients with known tax debt as of September 30, 2009, excluded (1) tax debts that have not been agreed to by the tax debtor or affirmed by the court, i.e., tax debts that IRS classified as compliance assessments or memo accounts for financial reporting; (2) tax debts from calendar year 2009 tax periods; and (3) tax debts of $100 or less

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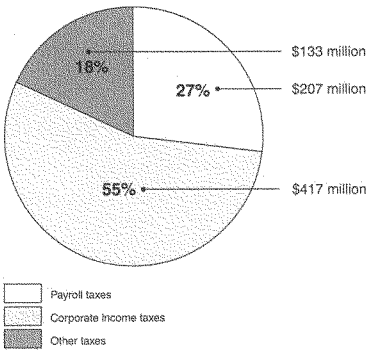
2010 that we reviewed. These approximately 3,700 recipients received over $24 billion through Recovery Act contracts and grants.

As indicated in figure 1, corporate income taxes comprised $417 million, or about 55 percent, of the estimated $757 million of known unpaid federal taxes. Payroll taxes comprised $207 million, or about 27 percent, of the taxes owed by Recovery Act contract and grant recipients we reviewed. Unpaid payroll taxes included amounts that were withheld from employees' wages for federal income taxes, Social Security, and Medicare but not remitted to IRS, as well as the matching employer contributions for Social Security and Medicare. The remaining $133 million was from other unpaid taxes, including excise and unemployment taxes.

Figure 1: Recovery Act Contract and Grant Recipients' Known Unpaid Taxes by Tax Type



Source: GAO analysis of Recovery.gov award data as of July 30, 2010, and known tax debt data from IRS as of September 30, 2009

Employers are subject to civil and criminal penalties if they do not remit payroll taxes to the federal government. When an employer withholds taxes from an employee's wages, the employer is deemed to have a responsibility to hold these amounts "in trust" for the federal government until the employer makes a federal tax deposit in that amount. When these withheld amounts are not forwarded to the federal government, the

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employer is liable for these amounts as well as the employer's matching Federal Insurance Contribution Act contributions for Social Security and Medicare. Individuals within the business (e.g., corporate officers) may be held personally liable for the withheld amounts not forwarded[21] and assessed a civil monetary penalty known as a trust fund recovery penalty (TFRP). Failure to remit payroll taxes can also be a criminal felony offense punishable by imprisonment of not more than 5 years,[22] while the failure to properly segregate payroll taxes can be a criminal misdemeanor offense punishable by imprisonment of up to a year.[23]

A substantial amount of the estimated unpaid federal taxes shown in IRS records owed by Recovery Act contract and grant recipients had been outstanding from several tax years. As reflected in figure 2, about 65 percent of the estimated $757 million in unpaid taxes were for tax periods from tax years 2003 through 2008, and about 35 percent of the estimated unpaid taxes were for tax periods prior to that.[24]

[21]26 U.S.C. § 6672.

[22]26 U.S.C. § 7202.

[23]26 U.S.C. § 7215 and 26 U.S.C. § 7512 (b).

[24]A "tax period" varies by tax type. For example, the tax period for payroll and excise taxes is generally one quarter of a year. The taxpayer is required to file quarterly returns with IRS for these types of taxes, although payment of the taxes occurs throughout the quarter. In contrast, for income, corporate, and unemployment taxes, a tax period is 1 year. A tax period may not always correspond to the age of the tax debt, as when a tax form is filed years after the due date or when IRS assesses additional taxes to earlier tax periods.

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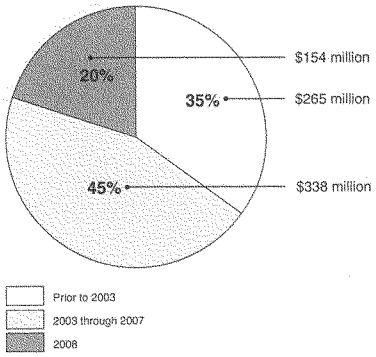
Figure 2: Known Unpaid Taxes of Recovery Act Contract and Grant Recipients by Tax Year



Source GAO analysis of Recovery.gov award data as of July 30, 2010, and known tax debt data from IRS as of September 30, 2009

Our previous work has shown that as unpaid taxes age, the likelihood of collecting all or a portion of the amounts owed decreases.[25] This is, in part, because of the continued accrual of interest and penalties on the outstanding tax debt, which, over time, can dwarf the original tax obligation. The estimated amount of unpaid federal taxes reported above does not include all tax debts owed by Recovery Act recipients because of statutory provisions that give IRS a finite period under which it can seek to collect unpaid taxes. Generally, there is a 10-year statutory collection period beyond which IRS is prohibited from attempting to collect tax debt.[26] Consequently, if the Recovery Act recipients owe federal taxes beyond the 10-year statutory collection period, the older tax debt may

[25]GAO, *Internal Revenue Service: Recommendations to Improve Financial and Operational Management*, GAO-01-42 (Washington, D.C.: Nov. 17, 2000).

[26]The 10-year time limit may be suspended and include periods during which the taxpayer is involved in a collection due process appeal, litigation, a pending offer-in-compromise, or an installment agreement. As a result, fig. 2 may include taxes that are for tax periods from more than 10 years ago.

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have been removed from IRS's records. We were unable to determine the amount of tax debt that had been removed.

Our analysis found that most of the estimated tax debt owed by these Recovery Act recipients could not be collected through the FPLP because the stimulus payments were not directly paid by the federal government to recipients that owed taxes or the recipient's data were not sent to the levy program. Specifically,

- The federal government disbursed many of these payments to the states or other prime contractors or grantees who then disbursed the funds to subrecipients and vendors. Specifically, our analysis found that approximately half of the approximately 3,700 recipients were subrecipients or vendors, who were estimated to owe about $315 million in federal taxes. Because the federal government did not make the payments directly to the recipients, these payments would not be subject to FPLP. In addition, some grant payments are paid through federal payment systems such as Automated Standard Application for Payments (ASAP) that do not interface with FPLP, and therefore would not be subject to levy.[27]
- Most of the approximately 3,700 tax debtors were not reported to FPLP for collection action, for either a statutory or policy reason.[28] Our analysis found that nearly a quarter of the approximately 3,700 Recovery Act recipients were reported to FPLP. The federal taxes associated with these recipients was approximately $98 million.

As mentioned above, the amount of known unpaid federal taxes we identified is likely understated for several reasons. First, the IRS taxpayer data reflected only the amount of known unpaid taxes either reported by the taxpayer on a tax return or assessed by IRS through its various enforcement programs. Thus the known unpaid tax debt did not include entities that did not file tax returns or underreported their income.

[27]ASAP currently plans to implement an interface with FPLP in 2014.

[28]As previously discussed, cases excluded from the FPLP for statutory reasons include tax debt that have not completed IRS's notification process, or tax debtors who filed for bankruptcy protection or other litigation, who agreed to pay their tax debt through monthly installment payments, or who requested to pay less than the full amount owed through an offer in compromise. Cases excluded from the FPLP for policy reasons include those tax debtors whom IRS has determined to be in financial hardship, those filing an amended return, certain cases under criminal investigation, and those cases in which IRS has determined that the specific circumstances of the cases warrant excluding it from the FPLP.

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According to IRS's most recent estimate, underreporting of income accounted for more than 80 percent of the estimated $345 billion annual gross tax gap.[29] Second, our analysis does not include Recovery Act contract and grant recipients who are noncompliant with or not subject to Recovery Act reporting requirements. Our analysis does not include contract and grant recipients that were not registered in the Central Contractor Registration (CCR).[30] Because Recovery.gov does not contain TINs, we used CCR to identify the TIN for each contract and grant recipient. We were not able to match about 17,000 of the 80,000 recipients in Recovery.gov to the CCR database. As such, those 17,000 recipients were not included in our analysis.

Examples of Recovery Act Contract and Grant Recipients Involved in Abusive Activity Related to the Federal Tax System

For the 15 cases of Recovery Act recipients with outstanding tax debt that we selected for a detailed audit and investigation, we found abusive or potential criminal activity related to the federal tax system.[31] Specifically, the 15 recipients we investigated owed delinquent payroll taxes. As discussed previously, businesses and organizations with employees are required by law to collect, account for, and transfer income and employment taxes withheld from employees' wages to IRS; failure to do so may result in civil or criminal penalties. These 15 recipients—8 contract and 7 grant recipients—received about $35 million in Recovery Act funds. The 15 case study recipients typically operate in industries, such as construction, engineering, security, and technical services. The amount of known unpaid taxes associated with these case studies is about $40 million, ranging from approximately $400,000 to over $9 million. IRS has taken collection or enforcement activities (e.g., filing of federal tax liens, assessment of a TFRP) against all 15 of these recipients. In addition, IRS

[29]The tax gap, estimated to be about $345 billion for tax year 2001 (the most recent estimate made), represents the net amount of noncompliance with the tax laws. According to IRS, underreporting of tax liability accounts for 82 percent of the gap, and nonfiling and underpayment of taxes comprised the rest of the net tax gap.

[30]The Central Contractor Registration (CCR) is the primary registrant database for the U.S. federal government. According to the Federal Acquisition Regulation (FAR) 4.1102, prospective contractors shall be registered in the CCR database prior to award of a contract or agreement. Entities applying for grant awards from the federal government also need to register in CCR. All Recovery Act prime recipients were to register in the CCR database.

[31]We considered activity to be abusive when a recipient's actions or inactions, though not illegal, took advantage of the existing tax enforcement and administration system to avoid fulfilling federal tax obligations and were deficient or improper when compared with behavior that a prudent person would consider reasonable.

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records indicate that at least one of the entities is under criminal investigation.

Table 1 highlights the 15 recipients with known unpaid taxes. We have referred all 15 recipients to IRS for criminal investigation, if warranted.

Table 1: Examples of Recovery Act Contract and Grant Recipients with Known Unpaid Taxes

Case study	Nature of work	Total Recovery Act awards[a]	Known unpaid federal taxes[b, c]	Comments
Case 1	Construction	Over $1 million	Over $700 thousand	• Company primarily owes payroll taxes from the mid-2000s. The company generally did not make any federal tax deposits during that time. • Company received multiple Recovery Act awards. • At the same time that the company was not paying its federal tax deposit, a company executive had hundreds of thousands of dollars in casino transactions. • According to IRS records, a company executive admitted to paying other creditors while neglecting to pay payroll taxes. IRS assessed a TFRP against a key executive for failure to pay payroll taxes. • IRS established an installment agreement with the company to make monthly payments of over $1,000. • Federal government awarded the company millions of dollars in nonstimulus funds in the late 2000s. • IRS filed federal tax liens against this company.
Case 2	Construction	Over $1 million	Over $1 million	• Company primarily owes payroll taxes. • On multiple occasions, the company either failed to file required quarterly payroll tax returns or filed late. • IRS assessed a TFRP against two officers for failure to pay payroll taxes but the TFRP was appealed. • IRS filed federal tax liens against this company.
Case 3	Construction	Over $1 million	Over $1 million	• Company primarily owes payroll taxes from the late 1990s and the early 2000's. • The company received multiple awards under the Recovery Act but none were prime contracts or prime grant awards. • Company had been cited multiples times by Department of Labor for labor law violations. • IRS filed federal tax liens against this company.

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Case study	Nature of work	Total Recovery Act awards[a]	Known unpaid federal taxes[b,c]	Comments
Case 4	Construction	Over $1 million	Nearly $400 thousand	• Company owes payroll taxes. The company generally did not make any federal tax deposits in the early to mid-2000s. According to IRS records, the company owner claimed that it did not submit taxes because of a lack of competent bookkeeping. • The company submitted dishonored checks to IRS for payment of taxes. • At the same time the company owed taxes, the company purchased about $200,000 in vehicles and equipment. • IRS established an installment agreement with the company to make monthly payments of $10,000 after the company made a $100,000 down payment. As part of this agreement, IRS agreed to not file federal tax liens. According to IRS records, the company claimed they would have gone out of business if a lien was filed because the prime government contractor would have canceled the contract. • IRS assessed a TFRP against the owner for failure to pay payroll taxes.
Case 5	Construction	Under $100 thousand	Over $2 million	• Company owes mostly payroll taxes from the mid-2000s. • Company loaned hundreds of thousands of dollars to company officers at the same time the company was not paying its taxes. • IRS assessed a TFRP against key officers for failure to pay payroll taxes. • Company recently entered into negotiations with IRS to repay the debt over a 5-year period. • The federal government awarded hundreds of thousands of dollars in nonstimulus funds to the company in the late 2000s. • IRS filed federal tax liens against this company.
Case 6	Electrical services	Over $100 thousand	Over $1 million	• Company primarily owes payroll taxes. Company is also delinquent in filing recent quarterly tax returns. • IRS agreed to an installment agreement because the company was a major subcontractor on an important project. According to IRS records, it was "in the public's best interest that they complete [the] work." However, the company subsequently defaulted on the installment agreement, including the submission of dishonored checks. • IRS records noted that the company was uncooperative; representatives of the company refused to return collections-related phone calls. • IRS filed federal tax liens against this company.

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Case study	Nature of work	Total Recovery Act awards[a]	Known unpaid federal taxes[b, c]	Comments
Case 7	Engineering services	Over $100 thousand	Over $6 million	• Company generally did not make any federal tax deposits or file quarterly tax returns in the early 2000s. Company has generally not made any federal tax deposits or filed quarterly tax returns for the last several years. • IRS records indicated that this company is an extreme case of noncompliance, which the company attempted to hide by failing to file required tax returns. • Company made an offer in compromise to IRS for about 15 percent of the taxes owed, to be paid over 5 years. IRS denied the offer because the company did not respond to IRS' request for financial information. • At the same time the company was not paying all of its employment taxes, the company purchased three new cars totaling about $90,000. In addition, the company paid its three officers about $700,000. • IRS filed federal tax liens against this company.
Case 8	Engineering services	Over $1 million	Over $2 million	• Company primarily owes payroll taxes for the last several years. • Company received multiple Recovery Act awards. • IRS records showed that this company defaulted on an installment agreement but was subsequently approved for a new installment agreement for tens of thousands of dollars per month. • IRS assessed a TFRP worth nearly $900,000 against the CEO for failure to pay payroll taxes. • IRS did not initially place liens on the company because of the earlier installment agreement. According to IRS records, the company deals mainly with government contracts and they claimed a lien would have placed them out of business. IRS has since filed federal tax liens against this company.
Case 9	Health care	Over $100 thousand	Over $1 million	• Nonprofit organization owes mainly payroll taxes for over 25 periods since the late 1990s. Nonprofit organization was also delinquent in filing quarterly tax returns for most of those periods. • IRS established an installment agreement for the nonprofit organization to pay approximately $1,000 per month toward over $1 million in unpaid taxes. The agreement defaulted after the organization missed required monthly payments. However, IRS subsequently reinstated the repayment agreement. • IRS filed federal tax liens against this organization.

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Case study	Nature of work	Total Recovery Act awards[a]	Known unpaid federal taxes[b,c]	Comments
Case 10	Health care	Over $100 thousand	Over $4 million	• Nonprofit organization owes payroll taxes primarily from the mid-2000s. • Nonprofit organization stated that it did not make timely federal tax deposits because state and federal agencies were slow on their payments. • IRS established an installment agreement with the nonprofit organization for monthly payments of about $100,000. The nonprofit organization subsequently defaulted. • On multiple occasions, the nonprofit organization submitted dishonored checks to IRS for payment of federal taxes. • According to IRS records, at the time the nonprofit organization was not paying its federal taxes, the president of the organization was paid an annual salary that was considered very high for the area that it serves. • Nonprofit organization proposed a long-term offer in compromise of about 2 million dollars to be paid in installments over approximately 10 years. IRS denied the offer in compromise because the offered terms were not acceptable and a long-term agreement was not in the government's best interest. • IRS assessed TFRP's on over five individuals. Most of these individuals have appealed the assessments. • Federal government awarded the nonprofit organization hundreds of thousands of dollars in nonstimulus funds in the late 2000s. • IRS filed federal tax liens against this organization.
Case 11	Municipality	Under $100 thousand	Over $1 million	• Municipality primarily owes payroll taxes. Municipality did not make any tax payments for at least 5 periods during the mid-2000s. • Municipality had a history of late filings of required tax returns. • According to IRS records, IRS had determined that certain debts owed by this municipality were uncollectible. • IRS filed federal tax liens against this municipality.
Case 12	Security	Over $100 thousand	Over $9 million	• Company primarily owes payroll taxes from the mid-2000s. • IRS records indicated that the company paid other creditors and expenses while neglecting to pay federal payroll taxes. • According to IRS, the company was uncooperative and had a history of missing deadlines and repeatedly filing appeals. • Department of Labor had cited company for violating federal labor laws. • IRS assessed a multimillion dollar TFRP against a company executive.

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Case study	Nature of work	Total Recovery Act awards[a]	Known unpaid federal taxes[b, c]	Comments
Case 13	Social services	Over $1 million	Over $800 thousand	• Nonprofit organization primarily owes payroll taxes from the mid to late 2000s. • The nonprofit organization's major sources of income are Medicare and Medicaid. • Nonprofit organization submitted a request for an installment agreement of over $10,000 per month. IRS was in the process of reviewing the request to determine if it could be granted. • Federal government awarded the nonprofit organization millions of dollars in nonstimulus funds in the late 2000s. • IRS filed federal tax liens against this organization.
Case 14	Social services	Over $1 million	Over $2 million	• Nonprofit organization primarily owes payroll taxes from the mid to late 2000s. Nonprofit organization did not make any federal tax deposits for several periods. • On multiple occasions, the nonprofit organization defaulted on installment agreements with IRS. IRS records also indicated that the nonprofit organization may have submitted an offer in compromise to delay IRS collection efforts. • An executive was assessed a TFRP. IRS records indicated that this executive was responsible for numerous questionable business expenses. In addition, the executive had numerous transactions with casinos totaling hundreds of thousand of dollars each year. IRS records also indicated that IRS assessed a TFRP on this executive for another entity that went defunct. • IRS records indicated that the nonprofit organization failed to meet employee payroll obligations on numerous occasions in the late 2000s. • According to one executive, the nonprofit received millions of dollars in government grants. • IRS filed federal tax liens against this organization.

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Case study	Nature of work	Total Recovery Act awards[a]	Known unpaid federal taxes[b, c]	Comments
Case 15	Technical services	Over $100 thousand	Over $4 million	• Company owes payroll taxes from the mid to late 2000s. For several periods, the company did not make any tax deposits. According to IRS records, the company claimed it did not make tax deposits because the government did not give the company an abatement on its taxes.[d] • IRS assessed a TFRP against a company executive, who owns real estate valued at an estimated $4 million. This executive also purchased a luxury vehicle at the same time the company was not paying its payroll taxes. The company executive reported hundreds of thousands of dollars in adjusted gross income in a recent tax return. • IRS established an installment agreement with the company to make monthly payments of tens of thousands of dollars. IRS records indicated that the company provided unique and essential services to the government. • Federal government awarded the company millions of dollars in nonstimulus funds in the late 2000s. • IRS filed federal tax liens against this company.

Source. GAO's analysis of IRS and Recovery gov records

Note: All dollar amounts are rounded.

[a]Total Recovery Act awards are based on contractor and grantee recipient reports as of July 2010.

[b]Rounded known unpaid tax amount as of September 30, 2009. Known unpaid tax amount does include penalty and interest.

[c]Generally, there is a 10-year statutory collection period beyond which IRS is prohibited from attempting to collect tax debt. Consequently, if the Recovery Act recipients owe federal taxes beyond the 10-year statutory collection period, the older tax debt may have been removed from IRS's records. However, the 10-year time limit may be suspended and include periods during which the taxpayer is involved in a collection due process appeal, litigation, a pending offer in compromise, or an installment agreement. As a result, unpaid tax amounts may include taxes that are for tax periods from more than 10 years ago.

[d]Abatements are reductions in the amount of taxes owed and can occur for a variety of reasons, such as to correct errors made by IRS or taxpayers or to provide relief from interest and penalties.

Our analysis and investigation found that only 1 of these 15 Recovery Act recipients was subject to the new FAR requirement for certification of tax debts in relation to their Recovery Act awards. Because that contractor was current on its repayment agreement, the contractor was not required to disclose its tax debts. The other 14 recipients were grant recipients or contract subrecipients. However, 1 of the 14 companies that recently filed an Online Representations and Certifications Application (ORCA) improperly stated that the company had not been notified of any delinquent federal taxes (greater than $3,000) within the preceding 3 years. We did not identify any circumstances (e.g., current repayment agreement) that would allow the company to make such certification.

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Agency Comments and Our Evaluation

We provided a draft of our report to FMS, IRS, and the Recovery Accountability and Transparency Board (Recovery Board) for review and comment. FMS and IRS provided technical comments which were incorporated into this report. IRS further noted that it had taken enforcement and collection actions in all of the 15 cases we investigated. This included filing federal tax liens to protect the government's interest in 13 of the 15 cases, and investigating and asserting the TFRP in 12 of the 15 cases. Of the 15 cases, 6 have established installment agreements to pay their outstanding tax liabilities. Except in cases of bankruptcy or where it has been determined that there is currently no meaningful collection potential, IRS is actively investigating and pursuing collection in the remaining cases.

We received written comments on a draft of this report from the RATB Director, Accountability (see app. II). The Director stated that, as we acknowledged in our report, federal law places considerable restrictions on the disclosure of taxpayer information by IRS to other federal entities, including the Recovery Board. He further stated that should such access to such taxpayer information be made available to the Recovery Board, they could more proactively work to prevent fraud, waste, and abuse of government funds. As far back as 1992, we have said that Congress should consider whether tax compliance should be a prerequisite for receiving a federal contract.[32] In 2004, we recommended that the Director of OMB develop and pursue policy options (in accordance with restrictions on the disclosure of taxpayer information) for prohibiting federal contract awards to contractors in cases in which abuse to the federal tax system has occurred and the tax owed is not contested. Options could include designating such tax abuse as a cause for governmentwide debarment and suspension or, if allowed by statute, authorizing IRS to declare such businesses and individuals ineligible for government contracts.[33] We continue to support efforts to implement this recommendation.

[32]GAO, *Tax Administration: Federal Contractor Tax Delinquencies and Status of the 1992 Tax Return Filing Season*, GAO/T-GGD-92-23 (Washington, D.C.: Mar. 17, 1992).

[33]GAO, *Financial Management: Some DOD Contractors Abuse the Federal Tax System with Little Consequence*, GAO-04-95 (Washington, D.C.: Feb. 12, 2004)

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As agreed with your offices, unless you publicly release its contents earlier we plan no further distribution of this report until 30 days from its date. At that time, we will send copies of this report to the Secretary of the Treasury, the Commissioner of the Financial Management Service, the Commissioner of Internal Revenue, the Chairman of the Recovery Accountability and Transparency Board and other interested parties.

The report is also available at no charge on the GAO Web site at http://www.gao.gov. If you have any questions concerning this report, please contact Gregory D. Kutz at (202) 512-6722 or kutzg@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report.

Gregory D. Kutz
Director
Forensic Audits and Investigative Service

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Appendix I: Objectives, Scope, and Methodology

Our objectives were to: (1) determine, to the extent possible, the magnitude of known tax debt which is owed by Recovery Act contract and grant recipients; and (2) provide examples of Recovery Act contract and grant recipients who have known unpaid federal taxes.[1]

To determine, to the extent possible, the magnitude of known tax debt owed by Recovery Act contract and grant recipients, we obtained and analyzed quarterly recipient reports submitted by contractors and grantees, as available through www.recovery.gov (Recovery.gov) through July 2010.[2] Specifically, we obtained all contract and grant recipient reports from the fourth quarterly submission, and all reports from prior quarterly submissions that were marked as "final" by the recipients.[3] Since Recovery.gov data do not contain taxpayer identification numbers (TINs) required for comparisons against IRS tax debt data, we obtained the Central Contractor Registry (CCR)[4] database in order to obtain the TINs for Recovery Act contract and grant recipients.[5] We matched the Data Universal Numbering System (DUNS) number available in the quarterly recipient reports with CCR to obtain the TINs for the Recovery Act

[1]For the purposes of this report, we refer to prime recipients, subrecipients, and vendors as recipients of Recovery Act funds.

[2]www.recovery.gov is a Web site created under the Recovery Act in order to track and publicly disclose the projects and activities for which Recovery Act funds were expended or obligated and information concerning the amount and use of funds by nonfederal recipients.

[3]The first recipient reports filed in October 2009 cover activity from February 2009 through September 30, 2009. The second quarterly recipient reports were filed in January 2010 and cover activity through December 31, 2009. The third quarterly recipient reports were filed in April 2010 and cover activity through March 31, 2010. The fourth quarterly recipient reports were filed in July 2010 and cover activity through June 30, 2010.

[4]The Central Contractor Registration (CCR) is the primary registrant database for the U.S. federal government. According to the Federal Acquisition Regulation (FAR) 4.1102, prospective contractors shall be registered in the CCR database prior to award of a contract or agreement. Entities applying for grant awards from the federal government also need to register in CCR. All Recovery Act prime recipients were to register in the CCR database. Registrants are responsible for keeping their information current and must renew their CCR records annually.

[5]A TIN is a unique nine-digit identifier assigned to each business and individual that files a tax return. For businesses, the employer identification number assigned by IRS serves as the TIN. For individuals, the Social Security number, assigned by the Social Security Administration, serves as the TIN.

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contract and grant recipients.[6] We were not able to match about 17,000 recipients in Recovery.gov to the CCR database. As such, those 17,000 recipients were not included in our analysis.

We obtained and analyzed known tax debt data from the Internal Revenue Service (IRS) as of September 30, 2009. Using the TIN we electronically matched IRS's tax debt data to the population of Recovery Act contract and grant recipient TINs. To avoid overestimating the amount owed by Recovery Act contract and grant recipients with known unpaid tax debts and to capture only significant tax debts, we excluded from our analysis tax debts meeting specific criteria to establish a minimum threshold in the amount of tax debt to be considered when determining whether a tax debt is significant. The criteria we used to exclude tax debts are as follows:

- tax debts IRS classified as compliance assessments or memo accounts for financial reporting,[7]
- known tax debts from calendar year 2009 tax periods, and,
- recipients with total known unpaid taxes of $100 or less.

The criteria above were used to exclude known tax debts that might be under dispute or generally duplicative or invalid, and known tax debts that are recently incurred. Specifically, compliance assessments or memo accounts were excluded because these taxes have neither been agreed to by the taxpayers nor affirmed by the court, or these taxes could be invalid or duplicative of other taxes already reported. We excluded known tax debts from calendar year 2009 tax periods to eliminate tax debt that may involve matters that are routinely resolved between the taxpayers and IRS, with the taxes paid or abated within a short time. We excluded tax debts of $100 or less because they are insignificant for the purpose of determining the extent of known taxes owed by Recovery Act recipients. Using these criteria, we identified at least 3,700 Recovery Act recipients with federal tax debt.

[6]A DUNS number is a unique nine-digit identification number assigned to firms by Dun & Bradstreet, Inc. A business must have a DUNS number to register in both the CCR database and to submit Recovery Act recipient reports. A subrecipient also needs a DUNS number for recipient reporting but is not required to register in CCR.

[7]Under federal accounting standards, unpaid assessments require taxpayer or court agreement to be considered federal taxes receivables. Compliance assessments and memo accounts are not considered federal taxes receivable because they are not agreed to by taxpayers or the courts.

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To provide examples of Recovery Act recipients who have known unpaid federal taxes, we selected 15 of the approximately 3,700 Recovery Act recipients for a detailed audit and investigation. The 15 recipients were chosen using a nonrepresentative selection approach based on data mining. Specifically, we narrowed the 3,700 recipients with known unpaid taxes to 30 cases based on (1) the amount of known unpaid taxes (including income, payroll, and other taxes); (2) the number of delinquent tax periods; (3) location; and (4) potential disclosure issues. Because we considered the number of delinquent tax periods in selecting these 15 recipients, we were more likely to select recipients who owed primarily payroll taxes; our prior work has shown delinquent payroll taxes to be an indicator of potential abusive or criminal activity. For these 30 cases, we obtained and reviewed copies of automated tax transcripts and other tax records (for example, revenue officer's notes) from IRS as of October 2010, and reviewed these records to exclude contractors or grantees that had recently paid off their unpaid tax balances and considered other factors before reducing the number of Recovery Act recipients to 15 case studies. We did not evaluate the status of collections activities related to penalties assessed against recipient organization officers, only those assessed against the recipient organization itself. Our investigators also contacted several of the recipients and conducted interviews. These case studies serve to illustrate the sizeable amounts of taxes owed by some organizations that received Recovery Act funding and cannot be generalized beyond the cases presented.

We conducted this forensic audit and related investigation from July 2010 through April 2011. We performed this forensic audit in accordance with 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. We performed our related investigative work in accordance with standards prescribed by the Council of the Inspectors General on Integrity and Efficiency.

Data Reliability Assessment

For the IRS unpaid assessments data, we relied on the work we performed during our annual audit of IRS's financial statements. While our financial statement audits have identified some data reliability problems associated with tracing IRS's tax records to source records and including errors and

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delays in recording taxpayer information and payments,[8] we determined that the data were sufficiently reliable to address this report's objectives.

In previous GAO reports, we have reported that fieldwork and initial review and analysis of recipient data from www.recovery.gov indicated that there were a range of reporting and quality issues, such as erroneous or questionable data entries.[9] However, the problems identified in our previous reviews have been associated with job data fields that are not relevant to this review. In addition, for the purposes of this review, we limited the population of recipient data we reviewed to records showing continuity in reporting as demonstrated by consistency in reporting over multiple periods and by excluding certain records containing known data inconsistencies. Therefore, we determined that the data were sufficiently reliable to address our engagement objectives.

[8]GAO, *Financial Audit: IRS's Fiscal Years 2010 and 2009 Financial Statements*, GAO-11-142. (Washington, D.C.: Nov. 10, 2010).

[9]GAO, *Recovery Act: Opportunities to Improve Management and Strengthen Accountability over States' and Localities' Uses of Funds*, GAO-10-999 (Washington, D.C.: Sept. 20, 2010); *Recovery Act: States' and Localities' Uses of Funds and Actions Needed to Address Implementation Challenges and Bolster Accountability*, GAO-10-604 (Washington, D.C.: May 26, 2010); *Recovery Act: One Year Later, States' and Localities' Uses of Funds and Opportunities to Strengthen Accountability*, GAO-10-437 (Washington, D.C.: Mar. 3, 2010); and *Recovery Act: Recipient Reported Jobs Data Provide Some Insight into Use of Recovery Act Funding, but Data Quality and Reporting Issues Need Attention*, GAO-10-223 (Washington, D.C.: Nov. 19, 2009).

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Appendix II: Comments from the Recovery Accountability and Transparency Board

Recovery Accountability and Transparency Board
1717 Pennsylvania Avenue NW, Suite 700
Washington DC 20006-4614

APR 04 2011

Gregory Kutz
Director
Forensic Audits and Investigative Services
U.S. Government Accountability Office
441 G Street NW
Washington, DC 20548

Dear Mr. Kutz:

The Recovery Accountability and Transparency Board is providing these written comments in response to the Draft GAO Report titled "Recovery Act: Thousands of Recovery Act Contract and Grant Recipients Owe Hundreds of Millions in Federal Taxes (GAO-11-485)."

As GAO's report acknowledges, federal law places considerable restrictions on the ability of the Internal Revenue Service (IRS) to disclose taxpayer information to other federal agencies.[1] Accordingly, the Recovery Board, which was established to conduct oversight of Recovery Act expenditures, does not have access to IRS tax information – even where such information relates to recipients of Recovery Act funds. This unavoidable reality has been raised repeatedly by the Treasury Inspector General for Tax Administration, J. Russell George, who as a member of the Recovery Board has worked to support our fraud- and waste-prevention efforts since the Recovery Board's inception more than two years ago. This lack of access to relevant taxpayer data also affects Inspector General offices that oversee Recovery Act programs

The Recovery Board is pleased that GAO, in performing its analysis, utilized recipient data published on our public-facing website, Recovery.gov. Although federal tax laws prevent the Recovery Board from performing such an analysis, we note that our efforts in providing transparency of Recovery Act funds have allowed GAO's oversight to proceed, resulting in this analysis that will ideally lead to agency program improvements and less overall waste.

While GAO's report provides an extrapolation for illustrative purposes from a small sample size, the analysis does highlight a potentially large problem. Yet multiple solutions exist. For example, the Recovery Act and its implementing regulations require reporting only one level

[1] *See, e.g.*, 26 U.S.C. § 6103. One of the rare exceptions to the general prohibition on tax data disclosure is the ability of the IRS to disclose such information to GAO. *See, e.g.*, *id.* at § 6103, IRS Manual 11.3.23.1 *et seq.*, available at http://www.irs.gov/irm/part11/irm_11-003-023.html.

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Gregory Kutz
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below the prime recipient.[2] A requirement for further in-depth reporting on the use of taxpayer dollars could provide much more transparency – and accountability – of these funds.

Access to the very same tax information utilized by GAO in its analysis could likewise greatly assist the Recovery Board in its mission of preventing fraud, waste, and abuse of Recovery funds. The Recovery Board could compare recipient reports to the unpaid tax data and determine whether recipients of Recovery funds owed money to the federal government We could also utilize the unpaid tax data and a host of other risk-relevant data to create a risk-based model upon which government agencies could rely in making their own expenditure determinations. Through such a proactive approach, the Recovery Board could further engage its tools to prevent fraud and waste of government funds, rather than merely detect problems after they occur.

As reflected in GAO's report appendix, the issue of federal money being awarded to federal tax delinquents is longstanding and has been examined by GAO for more than a decade. As a result, the Recovery Board encourages GAO to make recommendations on ways Congress or the administration could prevent those with delinquent federal tax debt from obtaining federal awards through contracts, grants or other assistance. As GAO states, federal law does not prohibit a contractor with unpaid federal taxes from receiving contracts from the government. Similarly, federal regulations do not require contracting officers to specifically consider tax delinquencies when determining whether an entity is responsible to do business with the government unless it was specifically suspended or debarred for certain actions, such as tax evasion. Additionally, there are no laws or governmentwide policies that prohibit the award of grants or other federal assistances to applicants with unpaid federal taxes.

The Board appreciates the opportunity to provide written comments on this important issue.

Sincerely,

John P. Higgins
Director, Accountability

[2] *See, e.g.*, American Recovery and Reinvestment Act of 2009, Pub Law No 111-5, § 1512(c) (Feb 17, 2009); FAR Subpart 4.15 ("American Recovery and Reinvestment Act—Reporting Requirements"); 2 C F.R. Part 176 ("Award Terms for Assistance Agreements That Include Funds Under the American Recovery and Reinvestment Act of 2009, Public Law 111-5")

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United States Government Accountability Office
Washington, DC 20548

June 28, 2011

The Honorable Carl Levin
Chairman
Permanent Subcommittee on Investigations
Committee on Homeland Security and Governmental Affairs
United States Senate

The Honorable Tom Coburn, M.D.
Ranking Member
Permanent Subcommittee on Investigations
Committee on Homeland Security and Governmental Affairs
United States Senate

Dear Chairman Levin and Ranking Member Coburn:

This letter responds to your request for additional information related to the Subcommittee's May 24, 2011 hearing entitled *Stimulus Contractors Who Cheat on Their Taxes: What Happened?* Enclosed is our response to the supplemental questions you submitted for the record, as well as the additional supplemental question that you asked at the hearing regarding false statements by subcontractors or suppliers to the prime contractors. Our response is based largely on information contained in our published reports and other prior work related to contract and grant recipients with unpaid taxes. Our response reflects our views based on that information.

If you have any further questions or would like to discuss these responses, please contact me at (202) 512-9505, or Matthew Valenta, Assistant Director, Forensic Audits and Investigative Service, on (214) 777-5697.

Sincerely yours,

Gregory D. Kutz
Director
Forensic Audits and Investigative Service

Enclosure-7

Permanent Subcommittee on Investigations
EXHIBIT #2

Response to Supplemental Questions for the Record

Submitted by

Senator Carl Levin

Permanent Subcommittee on Investigations

Hearing Entitled

Stimulus Contractors Who Cheat on Their Taxes: What Happened?

May 24, 2011

1. Since 2004, GAO has identified and presented 227 case studies of contractors and grant recipients, including Medicare and Medicaid service providers, that appear to be associated with egregious federal tax delinquency. The 227 case studies are discussed in the following GAO hearing statements: GAO-04-414T (DOD contractors), GAO-05-683T (Civilian contractors), GAO-06-492T (GSA contractors), GAO-07-587T (Medicare Part B providers), GAO-08-618T (Medicare providers), GAO-08-239T (Medicaid providers), and GAO-11-686T (stimulus contractors and grant recipients).

1a. Have any of these contractors or grant recipients received a federal contract or grant after being identified in the relevant GAO hearing statement? Have any of them been denied federal contracts or grants due to nonpayment of federal tax debt? If the answer to either question is yes, please identify how many contractors or grant recipients, and what federal agencies were involved.

Answer:

GAO's access to taxpayer information is established by 26 U.S.C. Section 6103. GAO's access to taxpayer information is limited to the particular engagement for which it was granted and is generally terminated at the completion of the review. Without current access, we cannot determine whether these 227 case studies received or were denied federal contracts or grants after being identified in the relevant GAO hearing statement. Consequently, to perform the work needed to answer this question, the Committee would need to submit a letter to GAO requesting a follow-up review. GAO would also require authorization to access archived taxpayer information granted through the House Ways and Means Committee Chairman, Senate Finance Committee Chairman, or Joint Committee on Taxation (JCT) Chief of Staff. While this request and proper authorization would grant GAO access to archived audit documentation, which includes the taxpayer information, we may still be unable to provide additional information on cases over 5 years old because, in accordance with GAO policies, archived information is destroyed after 5 years.

1b. How many, if any, of these contractors or grant recipients have been suspended or debarred?

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Answer:

GAO's access to taxpayer information is established by 26 U.S.C. Section 6103. GAO's access to taxpayer information is limited to the particular engagement for which it was granted and is generally terminated at the completion of the review. Without current access, we cannot determine whether any of these 227 case studies have been suspended or debarred. Consequently, to perform the work needed to answer this question, the Committee would need to submit a letter to GAO requesting a follow-up review. GAO would also require authorization to access archived taxpayer information granted through the House Ways and Means Committee Chairman, Senate Finance Committee Chairman, or Joint Committee on Taxation (JCT) Chief of Staff. While this request and proper authorization would grant GAO access to archived audit documentation, which includes the taxpayer information, we may still be unable to provide additional information on cases over 5 years old because, in accordance with GAO policies, archived information is destroyed after 5 years.

2. If every prime contractor and grantee included a provision in their contract or purchase agreement with each subcontractor, subgrantee or supplier that the subcontractor, subgrantee or supplier would have to make a representation that they are current on their taxes, or if not, provide information on their delinquent taxes:

2a. Would a misrepresentation by the subcontractor, subgrantee or supplier about their tax status to the prime contractor or grantee be considered a false statement under current Federal law?

Answer:

Under current Federal law, a misrepresentation by a subcontractor, subgrantee or supplier to the prime contractor or grantee would be considered a false statement if the subcontractor, subgrantee or supplier (1) made a statement; (2) the statement was false, fictitious or fraudulent as the subcontractor, subgrantee or supplier knew; (3) the statement was made knowingly and willfully; (4) the statement was within the jurisdiction of a federal agency and (5) the statement was material.[1]

2b. Would failure to respond to such a requirement for representation be considered a violation under current Federal law?

Answer:

Whether a failure to respond would be considered a violation under current Federal law would depend on the facts and circumstances of the case. Under current Federal law, a failure to respond to such a requirement for representation would only be considered a violation of current Federal law if the matter was within the jurisdiction of a federal agency and the failure to respond was found to be tantamount to knowingly and willfully concealing or covering up by any trick, scheme, or device a material fact.[2]

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[1] 18 U.S.C. section 1001(a)(2).

[2] 18 U.S.C. section 1001(a)(1).

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Response to Supplemental Questions for the Record

Submitted by

Senator Tom Coburn

Permanent Subcommittee on Investigations

Hearing Entitled

Stimulus Contractors Who Cheat on Their Taxes: What Happened?

May 24, 2011

1. What legislative or administrative solutions are most viable and cost-effective to prevent the disbursement of federal dollars to entities that owe federal taxes?

Answer:

We did not evaluate the viability and cost-effectiveness of potential legislative and administrative solutions to prevent the disbursement of federal dollars to entities that owe federal taxes. However, we have addressed potential solutions in our prior work. As far back as 1992, we have recommended that Congress should consider whether tax compliance should be a prerequisite for receiving a federal contract, and in November 2007, we recommended measures that could lead to considerations of tax debt in grant award determinations.[3] In April 2011, we reported that current federal law does not prohibit the awarding of contracts or grants to entities because they owe federal taxes. For federal contracts, the Federal Acquisition Register (FAR) requires offerors to certify through the Online Representations and Certifications Application (ORCA) Web site whether or not they have, within a 3-year period preceding the offer, been convicted of or had a civil judgment rendered against them for, among other things, violating federal criminal tax law, or been notified of any delinquent federal taxes greater than $3,000 for which the liability remains unsatisfied. For federal grants, OMB circulars require grant applicants to self-certify on their application (Standard Form 424) whether or not they are currently delinquent on any federal debt, including federal taxes.[4] While there are certification requirements for both contracts and grants, neither federal law nor current governmentwide policies for administering federal contracts or grants prohibit those with unpaid federal taxes from receiving contracts and grants from the federal government. In order to prevent awards of federal dollars to entities that owe federal

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[3] GAO, *Tax Administration: Federal Contractor Tax Delinquencies and Status of the 1992 Tax Return Filing Season*, GAO/T-GGD-92-23 (Washington, D.C.: Mar. 17, 1992).
GAO, *Tax Compliance: Federal Grant and Direct Assistance Recipients Who Abuse the Federal Tax System*, GAO-08-31 (Washington, D.C.: November 16, 2007).

[4] The OMB Circulars are OMB Circular No. A-110, *Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations* (Amended September 30, 1999) and OMB Circular No. A-102, *Grants and Cooperative Agreements with State and Local Governments* (Amended August 29, 1997).

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taxes, Congress could change federal law to prohibit such disbursements to contract offerors and grant applicants. Federal law seeking to achieve these objectives should provide flexibility to agencies, such as exceptions for contractors or grantees critical to national security or when goods or services cannot be obtained from other sources. Due process and other safeguards should be built into the system to ensure that contractors and grant applicants that pay their federal taxes are not inadvertently denied federal contracts and grants.

In the implementation of legislation to prohibit disbursements of federal funds to entities that owe federal taxes, certain issues would need to be considered. For one, FAR requirements, such as certification of tax debt, apply only to prime contract recipients, not subrecipients. Additionally, prior work issued in November 2007 showed that the vast majority of federal grants are given directly to state and local governments, which, in turn, disburses the grants to the ultimate recipients. Detailed payment information on such recipients is not available at the federal level, and is maintained by thousands of state and local entities around the country. We have made no prior recommendation regarding contract and grant subrecipients with tax debt. Finally, legal restrictions currently prohibit IRS from disclosing taxpayer information.[5] Thus, contracting and granting officers do not have access to tax data directly from IRS unless the contractor or grant applicant provides consent. Without access to IRS information, contracting and granting officers are unable to determine the validity of applicants' compliance certifications. This issue could be addressed through a requirement that prospective contractors and grant applicants provide consent to IRS to provide information on their tax status to the contracting or granting officer.

2. Of the 3,700 stimulus contract and grant recipients who owed federal taxes, how many were prime recipients versus sub-recipients and vendors?

Answer:

Our analysis found that about half of the approximately 3,700 stimulus contract and grant recipients who owe federal taxes were prime recipients and the other half were sub-recipients or vendors. Of the $757 million dollars of known unpaid federal debt owed by these 3,700 recipients, sub-recipients and vendors were estimated to owe about $315 million.

3. There has been a great deal of focus on implementing solutions to remedy awarding federal dollars to contractors with tax debt. GAO has recently told subcommittee staff that a significant portion of stimulus funding was awarded

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[5] 26 U.S.C. § 6103.

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to grantees rather than contractors with tax debt. What mechanisms are in place to curb the flow of grant dollars to tax delinquents, what limitations exist and what needs to be done—legislatively or administratively—to strengthen the process?

Answer:

Neither federal law nor current governmentwide policies for administering federal grants or direct assistance prohibit applicants with unpaid federal taxes from receiving grants and direct assistance from the federal government. Even if such requirements did exist, absent consent from the taxpayer, federal law generally prohibits IRS from disclosing taxpayer data and, consequently, federal agencies have no access to tax data directly from IRS.

Federal law and current governmentwide policies, as reflected in OMB Circulars, do not prohibit individuals and organizations with unpaid taxes from receiving grants.[6] OMB Circulars provide only general guidance with regard to considering existing federal debt in awarding grants. Specifically, the Circulars state that if an applicant has a history of financial instability, or other special conditions, the federal agency may impose additional award requirements to protect the government's interests. However, the Circulars do not specifically require federal agencies to take into account an applicant's delinquent federal debt, including federal tax debt, when assessing applications. While they require grant applicants to self-certify in their standard government application (SF 424) whether they are currently delinquent on any federal debt, including federal taxes, the Circulars contain no provision instructing the agencies to verify such certifications or describing how such verification should be done.

Even if requirements to verify applicants' disclosures did exist, federal law poses a significant challenge to federal granting agencies in determining the accuracy of representations made by organizations applying for grants. Specifically, the law does not permit IRS to disclose taxpayer information, including tax debts, to federal agency officials unless the taxpayer consents.[7] Thus, unless an applicant provides consent requesting that IRS provide taxpayer information to federal agencies, certain tax debt information generally can only be discovered from public records when IRS files a tax lien against the property of a tax debtor. In addition, while information on filed tax liens is generally publicly available, IRS does not file tax liens on all tax debtors nor does IRS have a central repository of tax liens to which grant-awarding agencies have access. Further, available information on tax liens may not be current or accurate because other

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[6]The OMB Circulars are OMB Circular No. A-110, *Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations* (Amended September 30, 1999) and OMB Circular No. A-102, *Grants and Cooperative Agreements with State and Local Governments* (Amended August 29, 1997).
[7]26 U.S.C. § 6103.

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studies have shown that IRS has not always released tax liens from property when the tax debt has been satisfied.[8]

4. What information has GAO obtained about FMS' efforts to integrate grant payment systems with FPLP? What is the reason for the delay?

Answer:

As part of this review, we did not evaluate FMS' efforts to integrate grant payment systems with the Federal Payment Levy Program (FPLP) and have no information on the reasons for any delays.

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[8]GAO, *IRS Lien Management Report: Opportunities to Improve Timeliness of IRS Lien Releases*, GAO-05-26R (Washington, D.C.: Jan. 10, 2005) and GAO, *Financial Audit: IRS's Fiscal Years 2006 and 2005 Financial Statements*, GAO-07-136 (Washington, D.C.. Nov. 9, 2006).

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RESPONSES TO SUPPLEMENTAL QUESTIONS FOR THE RECORD
FROM
THE HONORABLE DANIEL I. GORDON
Administrator, Office of Federal Procurement Policy
Office of Management & Budget

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
HEARING ON
STIMULUS CONTRACTORS WHO CHEAT ON THEIR TAXES: WHAT HAPPENED?

Questions from Senator Levin

1. **Over the last five years, from 2005 through the end of 2010, how many Federal contractor or grant recipients have been denied Federal contracts or grants, or been suspended or debarred due to nonpayment of tax debt?**

   At this time, we do not collect information on the number of Federal contractor or grant recipients that have been denied Federal contracts or grants, or have been suspended or debarred due to nonpayment of tax debt. Last year, OFPP conferred with Chief Acquisition Officers and Senior Procurement Executives on actions taken on contracts awarded in FY 2009, the first full year in which prospective contractors were required to certify whether or not they had a tax delinquency. Only one agency, the Department of Defense (DoD), reported referring contractors with tax delinquency certifications to the suspension and debarment official. In one case, the contractor was subsequently debarred. At the same time, OFPP's review also showed that only a small fraction of contract obligations involved Federal funds going to a contractor with a certified tax delinquency, suggesting that self-certification acts as an effective deterrent. If a contractor were found non-responsible based on its tax delinquency, the non-responsibility determination would be reported in the Federal Awardee Performance Information and Integrity System (FAPIIS).

2. **Since 2004, GAO has identified and presented 227 case studies of contractors and grant recipients, including Medicare and Medicaid service providers, that appear to be associated with egregious Federal tax delinquency. The 227 case studies are discussed in the following GAO hearing statements: GAO-04-414T (DOD contractors), GAO-05-683T (Civilian contractors), GAO-06-492T (GSA contractors), GAO-07-587T (Medicare Part B providers), GAO-08-618T (Medicare providers), GAO-08-239T (Medicaid providers), and GAO-11-686T (stimulus contractors and grant recipients). Does OFPP contemplate working with the relevant agencies to determine whether any of these contractors or grant recipients should be suspended or debarred?**

   GAO's report did not identify the names of contractors or grantees, most likely because disclosure of tax return information, which is governed by section 6103 of the Internal Revenue Code, is carefully and narrowly prescribed. More importantly, it would not be appropriate for OFPP, as a policy office, to become involved in evaluating whether an individual contractor should be suspended or debarred. Determinations regarding whether these remedies are necessary to protect the government's interests should be made by the procurement and grant-making agencies, in consultation with the IRS. That said, we have been working with agencies to identify systemic improvements for limiting contractors with serious tax delinquencies from receiving government contracts, including improved sharing of information between the IRS and agency contracting offices. We would welcome the

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EXHIBIT #3

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opportunity to work with this Subcommittee and other members of Congress to craft legislative language, with appropriate safeguards, so that IRS would be authorized to share information to let agencies know if would-be contractors are misrepresenting their tax status and agencies can stop such entities from receiving government contracts.

3. **In February 2010, OFPP conducted a survey of Chief Acquisition Officers and Senior Procurement Executives on their agencies' policies and practices regarding contractor tax delinquencies. Please provide a copy of any aggregated data, analysis, or report describing the survey results.**

A document summarizing OFPP's analysis based on the survey is enclosed.

Questions from Senator Coburn

1. **Please provide a copy of the results of OMB's and IRS' analysis of agencies' practices regarding contractor tax delinquencies including, but not limited to:**
   a. **Which agencies have policies against awarding contracts to tax delinquents? What do those policies say?**
   b. **What percentage of those that certified they had tax debt were denied awards for that reason? What percentage were ultimately given awards?**
   c. **What percentage of the time did IRS report that contractors accurately self-certified their tax debt? What was the sample size? What time period was that for?**

Responses to these questions are provided below. A summary of the analysis prepared by OMB's Office of Federal Procurement Policy is also enclosed. In addition, OMB has conferred with the IRS and they advise that they will forward a summary of their analysis to the Committee.

a. No agency reported issuing policies against awarding contracts to tax delinquents, but several agencies reported taking steps to support the implementation of the new rule in the Federal Acquisition Regulation (FAR), ranging from "alerts" to make sure the workforce is aware of the new FAR provision, to new standard operating procedures requiring contract files to include a copy of ORCA certifications to developing course materials to support training.

b. At this time, we do not collect information on the number of Federal contractor or grant recipients that have been denied Federal contracts or grants, or have been suspended or debarred due to nonpayment of tax debt. As explained in the enclosure, only one agency, the Department of Defense (DoD), reported referring contractors with tax delinquency certifications to the suspension and debarment official. In one case, the contractor was subsequently debarred. At the same time, OFPP's review also showed that only a small

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fraction of contract obligations involved Federal funds going to a contractor with a certified tax delinquency, suggesting that self-certification acts as an effective deterrent. If a contractor were found non-responsible based on its tax delinquency, the non-responsibility determination would be reported in the Federal Awardee Performance and Integrity Information System (FAPIIS).

c. IRS, working with GSA, selected a statistically valid sample of 400 pre-award certifications made by offerors in FY 2009 in GSA's Online Representations and Certifications Application (ORCA), a web-based system that collects representations and certification information government-wide from offerors on Federal procurements. IRS found that the great majority of contractors – 374 of the 400 reviewed, certified accurately on matters concerning Federal tax delinquencies in accordance with the requirements laid out by the Federal Acquisition Regulation (FAR) in FAR clause 52.209-5.

2. **Which agencies systematically conduct random checks to determine if contracting officers are verifying contractor debt and other responsibility factors using Online Representations and Certifications (ORCA) or Federal Awardee Performance and Integrity Information System?**

We do not currently collect this information but intend to work with agencies to gain better insight into these types of oversight practices as well as to evaluate the type of training, developmental activities, or additional tools that can further help contracting officers in making effective responsibility determinations.

3. **What is the penalty for a contractor who fails to disclose the existence of tax debt? Is it a felony to falsely certify?**

The requirement for contractors to certify to a tax delinquency is implemented through the incorporation of FAR clause 52.209-5 into contracts with a value above the simplified acquisition threshold. The clause requires that an offeror or certify that within the three-year period preceding the offer it has, or has not, been notified of any delinquent Federal taxes that exceed $3,000, for which the liability remains unsatisfied. This clause further states that a false certification is subject to prosecution under 18 U.S.C. § 1001, which would classify this offense as a felony. The penalty for knowingly and willfully failing to disclose the existence of a tax debt can include a fine, imprisonment, and the Government's termination of the contract. Furthermore, Sections 9.406-2 and 9.407-2 of the FAR provide that agency officials may debar or suspend a contractor that has delinquent Federal taxes in an amount that exceeds $3,000.

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4. **What requirements exist, if any, for contracting officers to conduct a responsibility determination when exercising contract options?**

   Under current statute and regulation, the concept of responsibility applies to prospective contractors, not current or existing contractors. As a result, once an offeror is determined to be responsible and is awarded a contract, there is no requirement that an agency make additional responsibility determinations during contract performance. See *Advanced Technology Systems, Inc.*, B-296493.6, citing *E. Huttenbauer & Son, Inc.* , B-258018.3, March 20, 1995 (holding that a contracting officer was not required to make a new responsibility determination before deciding whether to exercise an option because the concept of responsibility has no applicability with respect to a contract once that contract has been awarded).

5. **Mr. Gordon testified that the ORCA is not yet publicly available due to "the cost of building out the system." What is the estimated cost? What analysis has OMB conducted to determine whether the benefits outweigh the costs?**

   Tax delinquency certifications are made in ORCA, which is not available to the public. We are currently evaluating whether these certifications can be made available to the public in some format. In this effort we are working with the Board that controls changes to government-wide acquisition systems to identify options -- such as creating an interface to FAPIIS, which now provides public access to information on contractor integrity. We are also working with this Board to identify the associated costs in light of current cost constraints, and timing, taking into account ongoing efforts to integrate the various government-wide systems into one common operating environment, known as the System for Award Management.

6. **In his testimony, Mr. Gordon stated that OMB supports efforts that would authorize increased information sharing between IRS and contracting officers about contractors with tax debt. However, the Treasury IG reported in February 2011 that inconsistencies exist between IRS' and the FAR's definition of a tax delinquency.**

   a. **How would this inconsistency impact proposed efforts to authorize IRS to notify contracting officers if prospective contractors have tax debt?**

      See response below.

   b. **What steps has OMB taken to work with IRS to resolve this inconsistency?**

      We have worked closely with the IRS over the last several months on this issue. It is true that any tax which is not paid in full and on time is treated as delinquent for

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purposes of imposing penalties and interest under the Internal Revenue Code. The IRS has assured us, however, that, given proper statutory authority, it can report on whether prospective contractors meet a particular standard of compliance or delinquency provided the standard is sufficiently clear. Ideally, the statutory standard would be clear enough to allow a straightforward yes/no reply to a contracting officer's inquiry. OMB and Treasury stand ready to work with the Congress to develop such a rule.

Questions from Senator McCaskill

1. **During your testimony before the committee you stated that your office is working to make the system of suspension and debarment more vigorous. Can you provide examples of the steps you are taking to accomplish this goal?**

   Suspension and debarment are important tools to protect our taxpayers from entities who engage in dishonest or illegal conduct. In recent months, OMB has worked with the Interagency Suspension and Debarment Committee (ISDC) to analyze the results of a survey of ISDC members to improve insight into current practices and to identify best practices. While there is much left to be done, the survey showed important indicators of progress and a foundation on which to build. For example, more agencies – including the Deparments of Interior and Transportation, the Agency for International Development and the Small Business Administration, are dedicating greater staff resources to oversee their suspension and debarment activities so that they are positioned to act decisively to root out illegal behavior and irresponsible actors. For example, DOI now has a full time debarment program manager in the Office of Acquisition and Property Management to assist the Suspension and Debarment Official with debarment and suspension actions and has created an electronic case management system to track suspension and debarment actions. USAID has established a "partner compliance and performance oversight" division which works closely with the agency's Office of Inspector General and Office of General Counsel to oversee suspensions and debarments as well as a Suspension and Debarment Task Team led by the Deputy Administrator to provide senior-level guidance. Over the coming months, OMB will work with the ISDC to build on efforts it has been taking to provide a support structure for agency suspension and debarment programs and consider how to ensure the recent achievements made by some agencies are also achieved at other agencies.

   a. **It has been my experience that part of the problem with the suspension and debarment system is that suspension and debarment officials do not feel empowered to make decisions that result in an actual suspension or**

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debarment. This is primarily due to the fact that these officials have been pressured by industry and those within the agency not to make such determinations. Does part of your strategy invigorate the system of suspension and debarment include a process to elevate the status of suspension and debarment officials. If not, why not?

There are different ways in which a suspension and debarment program can be structured and managed, but we agree that successful programs share common characteristics, such as having clear management support, sufficient staff resources to manage cases, and trained staff. We intend to work closely with the ISDC to spread the best practices of successful suspension and debarment programs to all agencies so that they are able to use suspension and debarment remedies to protect taxpayer interests whenever circumstances warrant.

2. **Does the Administration support automatic suspension for those contractors who have been indicted?**

We believe that the government's interests are best served by maintaining the discretion both of our contracting officers to determine, on a case-by-case basis, if a prospective contractor has the requisite business integrity to be determined presently responsible, and of our suspension and debarment officials to determine, based on the specific facts and circumstances, including any mitigating factors, whether suspension or debarment is necessary to protect the interests of the government.

3. **During the hearing you stated that you were supportive of efforts to give the Department of Treasury the ability to share taxpayer information in limited circumstances. As you may know, last Congress, I introduced S. 265, the Contracting and Tax Accountability Act of 2009, that would authorize the Secretary of the Treasury to disclose information describing whether contractors or grantees have a seriously delinquent tax debt. Does the Administration support this approach to addressing the information gap issue that was discussed during the hearing? If not, why not?**

We believe that S. 265 moves in the right direction and is a good starting point for discussion. We would welcome the opportunity to discuss refinements. Legislation needs to be centered around a definition of serious delinquent tax debt that (1) recognizes that the debt is longstanding and the contractor has not reached out to Treasury to resolve the delinquency despite having had a reasonable amount of time to do so, (2) covers amounts that are not insignificant, (3) is shaped in a way that a government official with responsibility and knowledge of tax policies has made a

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determination of the need to protect the government's interests, such as if the IRS filed a notice of lien. The legislation must also permit IRS to share information in a way that continues to maintain privacy considerations, such as conveying information in response to a question with a clear binary response.

a. Would the Administration suggest any changes to this legislation to address the problem of information sharing or any other issue surrounding the problem of contractors or grantees with seriously delinquent tax debt?

Treasury has advised of its desire to work with Congress on revisions regarding how legislation would amend the Internal Revenue Code.

Policies and Practices Regarding Contractor Tax Delinquencies
A Summary Analysis by the Office of Federal Procurement Policy

On January 20, 2010, the President issued a memorandum to agency and department heads reminding them of their obligation to make informed judgments and take appropriate action to protect taxpayers when a tax delinquent contractor is trying to win a Federal contract. The memorandum instructs the Director of the Office of Management and Budget (OMB) to evaluate practices of contracting officers and suspension and debarment officials (SDOs) in response to contractors' certifications of tax delinquencies. This report discusses current agency practices.

I. Background

The Government's primary tool for determining the tax status of a prospective contractor, or offeror, is a certification the contractor must make when it submits an offer in response to an agency's solicitation for goods or services. Pursuant to changes made to the Federal Acquisition Regulation (FAR), which became effective on May 22, 2008, prospective contractors must certify that, within a three-year period preceding submission of their proposal, they have not been notified of any delinquent federal taxes in amounts that exceed $3,000 for which the liability remains unsatisfied.[1] Taxes are delinquent if the tax liability has been assessed and all judicial appeal rights have been exhausted and the taxpayer has failed to pay the tax liability when full payment was due and required.

Contractors must provide certifications in connection with offers made in response to solicitations where the contract value is expected to exceed the simplified acquisition threshold (SAT), which currently is $100,000. They are not required to provide certifications with offers for work below the SAT or for work under task and delivery order contracts. Nor must they prepare a certification in order to receive work under a contract modification.

Offerors enter their certifications into the "Online Representations and Certifications Application," (ORCA), a web-based system that collects representation and certification information government-wide.[2] When an offeror is preparing a proposal that requires a tax certification, the offeror must go into ORCA to make the required certification. Consistent with the terms of the certification, the offeror must notify the contracting officer if, at any time prior to contract award, the offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. The FAR also requires contractors to update the certifications submitted to ORCA "as necessary, but at least annually, to ensure they are kept current, accurate, and complete."[3]

Contracting officers are required to consider a prospective contractor's tax compliance certification as part of the assessment of whether the contractor is "responsible" – a term of art that means a firm is viewed as qualified to do business with the Federal Government – a prerequisite to

[1] The tax certification is part of FAR clause 52.209-5, Certification Regarding Responsibility Matters. The tax certification was added to this clause by FAR Case 2006-011. See 73 Fed. Reg. 21791 (April 22, 2008).
[2] Requirements for contractors to complete annual representations through ORCA are set forth in FAR Subpart 4.12. ORCA may be accessed at http://orca.bpn.gov.
[3] FAR 4.1201(b).

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being awarded a contract. Tax compliance would be appropriately considered in determining if the contractor has a satisfactory record of integrity and business ethics, a critical element of a responsibility determination. An offeror's certification to a tax delinquency may lead or contribute to a determination by the contracting officer that the offeror is non-responsible. It may also be used as grounds for debarment or suspension, subject to due process requirements. If an offeror certifies to a delinquency, the contracting officer must (1) give the contractor an opportunity to demonstrate its responsibility and (2) must notify the suspension or debarment official (SDO) prior to proceeding with a contract award.

II. Study Methodology

To gather information about how agencies handle prospective contractors who certify to having tax delinquencies, OMB's Office of Federal Procurement Policy (OFPP) issued a survey to Chief Acquisition Officers and Senior Procurement Executives. The survey, which included questions to be answered in coordination with agency suspension and debarment officials (SDOs), sought feedback on actions taken on contracts awarded in FY 2009, the first full fiscal year in which the FAR certification was in place. Information was collected to help answer the following three overarching questions:

(1) Did the agency obligate money for contracts to contractors who certified to having tax delinquencies and, if so, why this was done?[4]

(2) Did the agency use the tax delinquency certification as the basis for making any non-responsibility determinations to deny contract awards to tax delinquent contractors?

(3) Did the agency use the tax delinquency certification as the basis for any debarment or suspension actions?

The survey also asked agencies about their internal controls and policies for dealing with certifications attesting to violations of law, in general, and non-compliance with tax laws, in particular.

III. Key Findings

All major buying agencies, including all Cabinet agencies, representing more than 98 percent of total acquisition obligations in FY 2009, responded to the survey. Based on the agency responses and supplemental interviews, OFPP made the following key findings.

Finding #1

[4]To assist agencies, the General Services Administration (GSA) produced a list identifying contractors who either entered into new contracts or orders under contracts -- of any amount -- with the agency, or received work through modification to, or the exercise of an option against, an existing contract, as identified by the Federal Procurement Data System (FPDS) and, on the date the obligation was made, had a certification of tax delinquency on file in ORCA Contractor certifications in ORCA were matched back to FPDS obligations using contractor identification numbers.

Agencies reported that approximately $278 million in FY 2009 was obligated on contracts with contractors who, at the time the funds were obligated, had certified to a tax delinquency. Of that amount, more than $250 million was for contracts (such as task orders or contracts under the simplified acquisition threshold) that are not subject to responsibility determinations or other requirements that would have led a contracting officer to review the contractor's certification in ORCA to determine its tax status.

By matching obligation data in the Federal Procurement Data System (FPDS) with contractor self-certifications on file in ORCA at the time the obligation was made, agencies identified approximately $278 million in obligations on contracts to contractors who, at the time the funds were obligated, had certified to a tax delinquency. This figure represents less than one hundredth of one percent of the $550 billion in contract obligations reported to FPDS in FY 2009. See the Appendix for a breakdown by major buying agency of total dollars obligated in FY 2009 and dollars obligated with a contractor who certified to a tax delinquency.

Finding #2

Agencies did not report denying awards to any contractors that certified to tax delinquencies in FY 2009.

There may have been instances where certifications of tax delinquency led to determinations of non-responsibility. However, many agencies advised us that they could not identify awards (if any) denied based on a non-responsibility determination tied to tax non-compliance because they do not centrally collect information on non-responsibility and could not perform a hand review of their files in the limited time available to address this matter.

Many agencies also pointed out that the very limited amount of information provided in the certification (e.g., attestation of delinquency of $3000 or more) made it difficult to gauge the seriousness of the delinquency and the extent to which it called into question the contractor's integrity and business ethics that might lead to a non-responsibility determination. Several agencies reported reaching out to contractors for additional information. Few reported making requests to Treasury. Historically, disclosure of information concerning tax delinquencies, which is governed by section 6103 of the Internal Revenue Code, has been carefully and narrowly prescribed. Improved sharing of information between the IRS and agency contracting offices could enable the government to further reduce its business with tax delinquent firms.

Finding #3

Agencies rarely reported using a contractor self-certification of tax non-compliance as the basis for a debarment or suspension action.

Only one agency, the Department of Defense (DoD), reported referring contractors with tax delinquency certifications to the SDO. DoD reported six instances where it proceeded with contract award after notifying the SDO. In one case, the contractor was subsequently debarred. The ISDC, like the agencies generally, noted the difficulty associated with taking action based on the certification, given the limited information available on the face of the certification, and the difficulty in formulating a sense of the seriousness of the underlying non-compliance.

Finding #4

Formal agency training of the acquisition workforce on the development and documentation of responsibility determinations is limited.

Despite the important role played by responsibility determinations, many of the agencies that OFPP surveyed when it reviewed agency consideration of contractor tax self-certifications indicated that they do not formally train their personnel on the development and documentation of responsibility determinations or on internal agency policies and practices that they have developed to supplement the FAR's coverage in this area (e.g., checklists, business clearances). Consistent with its leadership responsibilities for the Federal Acquisition Institute and the acquisition workforce

generally, OFPP is working to evaluate the type of training (government-wide or agency specific), developmental activities, or additional tools that can further help contracting officers in making effective responsibility determinations.

Appendix

Contract Obligations (in millions) with Certified Tax Delinquent Contractors

Department Name	FY 09 Total Obligations (in Millions)	FY09 Total Obligations w/ Certified Tax Delinquent (in Millions)	Percentage
CFO Act Agencies	**$525,263**	**$278**	**0.05%**
Department of Defense	$384,169	$217	0.06%
Departement of Energy	$31,691	$2	0.01%
Department of Health and Human Services	$20,001	$1	0.01%
NASA	$15,203	$1	0.00%
Department of Veterans Affairs	$14,590	$13	0.09%
General Services Administration	$14,523	$5	0.03%
Department of Homeland Security	$14,097	$19	0.13%
Department of Justice	$7,610	$5	0.07%
Department of State	$7,508	$2	0.02%
Department of Interior	$5,548	$5	0.08%
USAID	$5,543	$0	0.01%
Department of Agriculture	$5,269	$4	0.07%
Department of Transportation	$5,219	$0	0.01%
Department of Treasury	$4,770	$2	0.04%
Department of Commerce	$3,179	$1	0.03%
Department of Labor	$2,003	$0	0.01%
Environmental Protection Agency	$1,776	$0	0.00%
Department of Education	$1,379	$0	0.00%
Social Security Administration	$1,241	$0	0.00%
Office of Personnel Management	$1,223	$0	0.00%
Department of Housing and Urban Development	$859	$0	0.01%
National Science Foundation	$489	$0	0.02%
Nuclear Regulatory Commission	$211	$0	0.01%
Small Business Administration	$106	$0	0.45%
Other Agencies	**$1,008**	**$1**	**0.08%**
Grand Total	**$550,117**	**$278**	**0.05%**

Sources of data: FPDS, ORCA, agency reports to OFPP