

TESTIMONY OF THE HONORABLE EARL E. DEVANEY
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BEFORE THE COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL
AFFAIRS
UNITED STATES SENATE
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Mr. Chairman and members of the Committee, I want to thank you for the opportunity to appear before you today to provide an update on the recent and planned activities of the Recovery Accountability and Transparency Board (the Board). My testimony today will address the current status and future direction of the Board's missions, and after my opening remarks, I will be glad to answer any questions you have for me.

I would like to begin by addressing some of the suggestions put forward by this Committee when I testified before you in April. One recommendation was that the Board seek the assistance of the American Association of Retired Persons (AARP) and TRIAD in publicizing and creating awareness of Recovery-related scams, given that perpetrators of scams frequently target the senior population. The Board has since reached out to both of these organizations, as well as the Federal Trade Commission (FTC) and the National Association of Attorneys General (NAAG), to establish working relationships and to ensure a general awareness of such schemes. Although we have seen a marked decline in Recovery scams since the initial period of the law's enactment, the Board's relationships with these groups are now in place in the event that new scams arise.

Another suggestion made at the April hearing was that the Board consider employing former journalists to assist with its reporting requirements and to make the Board's website more reader-friendly. Since that hearing, the Board has hired former journalists in various staff positions where their superior writing skills will be put to good use in the Board's required quarterly and annual reports, as well as on the public-facing website, Recovery.gov.

Regarding the evolution of Recovery.gov, I am pleased to report that the Board has taken a number of steps toward implementing necessary improvements and enhancements. For one, the Board has signed an interagency agreement with the Environmental Protection Agency (EPA) that will enable the Office of Management and Budget (OMB) and the Board to collect and display the data required by both the Recovery Act and the implementing guidance issued by OMB. In the earlier developmental stages of Recovery.gov, OMB and the Board's technical staff had identified the EPA's secure Central Data Exchange (CDX) as a "best practice" in the federal government for its ability to receive and publicly report large amounts of data from all 50 states. A pilot project conducted by the Board confirmed that assessment and verified that CDX features low operation and maintenance costs, provides bi-directional data flows, provides for real-time notification and activity tracking, and allows for simplified monitoring and administration. The Board therefore decided to execute a reimbursable agreement with EPA, whereby EPA would create a new task order for inbound Recovery reporting on its existing, competitively bid contract with CGI-Federal, the company that provides support for CDX.

Because of this decision by the Board, recipients of Recovery funds will be able to go online and enter the required information into the website FederalReporting.gov. The information from FederalReporting.gov will then flow into the latest iteration of the public-facing website, which we are referring to as Recovery.gov Version 2.0. In planning to enhance the current Version 1.0 of Recovery.gov, the Board realized that the redesign and upgrade of Recovery.gov was going to be a project of significant magnitude and complexity. The Board's technical team concluded that only companies with the necessary infrastructure, processes, and experienced personnel already in place could successfully perform this cutting-edge, deadline-driven task. The looming risk at this stage of the project is time; the Board understood that time was of the essence because the contract would need to be bid, awarded, and implemented before the October reporting deadline.

The General Services Administration (GSA) – acting for the Board – used its Alliant Government-Wide Acquisition Contract (GWAC) to acquire a vendor to redesign Recovery.gov and to rebuild and upgrade the site's infrastructure. The Alliant contract vehicle is designed specifically to support complex IT initiatives, particularly those that need to incorporate new technologies. Previously, 59 companies had won the right to bid on Alliant task orders. Having now used the Alliant vehicle to solicit bids for the redesign, and following an exhaustive evaluation of the bids received, GSA recently awarded the contract to Smartronix, Inc. of Hollywood, Maryland. Once upgraded, the new Recovery.gov 2.0 will provide visitors with a visually pleasing, user-friendly and highly interactive website with a mapping capacity that will allow them to search for spending all the way down to their own neighborhoods.

Mr. Chairman, some have criticized the costs associated with this contract. However, I would submit that this contract calls for substantially more than a mere website redesign. Rather, the contractor must design, configure, install, secure, operate, and maintain on an around-the-clock basis an entire web infrastructure that will need to support millions of users. Under the contract, Smartronix will be providing cyber-security, infrastructure, systems engineering, and data warehousing for Recovery.gov, as well as ensuring that necessary disaster-recovery precautions are in place by providing a mirrored continuity of operations environment. I want to assure you that the funding for both FederalReporting.gov and Recovery.gov 2.0, even if all available options are exercised, falls well below the Board's appropriation under the Recovery Act and is also well within the initial guiding estimates for these activities as calculated by OMB prior to the law's passage.

Over the next few months, contractors will be working with Board staff to build these two websites, FederalReporting.gov and Recovery.gov 2.0, in order to be prepared for the first reporting deadline. Even before then, though, you will notice significant changes at Recovery.gov. I am happy to report that, starting July 16th, we published on the website what will be a regular feature called the Chairman's Corner. There, I will inform the American public of the achievements and future plans of the Board, as well as changes and developments made to Recovery.gov. One such change, also made last week, was the addition of an interim mapping solution, which allows the American people to look at major contracts awarded in their areas. This improved mapping system will serve as a placeholder until the final, even more versatile mapping solution has been created as part of Recovery.gov 2.0.

As you can sense, I am quite hopeful about the future capabilities of Recovery.gov 2.0, and the data the website will illuminate once Recovery reporting begins in earnest next quarter. However, I am under no illusion that the first quarter – or even first few quarters – of reporting will be entirely free of defects.

This is all new territory. The government has never before required vendors to report to this degree, in such detail. Even with the informative OMB-sponsored town halls on reporting, the rules set forth in the Federal Acquisition Regulation (FAR), and the reporting registry helpdesks that will be ready to receive the influx of new questions, there is still potential for myriad missing data elements, both willfully and innocently omitted. These obstacles will need to be overcome. If recipients do not report the required information – for whatever reason, mistake, neglect, or willfulness – the data on Recovery.gov will not be as insightful as it should be, which is a concern that I and the rest of the Board have. Although existing federal laws, like the false statements statute and the recently amended Civil False Claims Act, may serve as useful tools in deterring willful or reckless noncompliance with the reporting requirements, the most likely outcome may be administrative remedies such as termination of the contract or other negative effects like an adverse past-performance evaluation.

Although the status of Recovery.gov receives a great deal of attention as people attempt to track expenditures made under the Act, that transparency is only part of the Board's mandate. The Board continues to focus on its mission of accountability and the attendant goal of minimizing fraud, waste, and mismanagement of funds. Before I go on, I would like to expand briefly on my view of "waste" in the context of the Board's mandate. When I state that the Board is trying to prevent waste, I am referring to an objective assessment of contracting practices, rather than a subjective viewpoint of the nature of a particular expenditure. My view is that – aside from being mindful of the Recovery Act's flat-out prohibition on funding for aquariums, zoos, and the like – the purpose of the Board is not to weigh in on spending choices that come down to an agency's judgment or opinion. Such decisions are the result of political and policy determinations made by multiple layers of watchful individuals. Instead, when the Board focuses on waste in the spending of Recovery funds, we will be looking at the incurring of unnecessary costs due to ineffective practices or controls.

To achieve our goal of minimizing fraud, waste, and mismanagement of funds, the Board is coordinating its oversight activities with federal agencies, including Inspectors General (IGs), and state officials. For example, the Board asked all 29 IGs at those agencies receiving funds to identify high-risk programs. Each Office of Inspector General made an independent determination of which programs it considered high-risk, and the Board is utilizing that information, among other criteria, in performing its front-end analysis of Recovery awards.

One overarching and widely recognized risk is the lack of procurement professionals in the federal government. Without adequate procurement professionals in place to oversee the spending of funds, the likelihood of fraud, waste, and mismanagement only increases. To that end, the Board is partnering with the Office of Personnel Management (OPM) to host a hiring fair targeting procurement, grant, and auditing personnel. This hiring fair will take place in the D.C. metropolitan area this fall.

As I have said before, the Board's accountability goal is more expansive than merely detecting fraud or waste that has occurred. Rather, given the vast sums that are being distributed, the Board is striving to prevent fraud before it occurs. Given the preponderance of money that will be disbursed by the states, the Board continues to reach out to each state's own Recovery officials, as well as state auditors. Last month, Board staff attended the National State Auditors Association's annual conference and, in addition to answering generalized questions about navigating the federal process, distributed a Board-prepared Recovery contract compliance checklist, which was well-received as a helpful tool. In addition, I spoke at the American Government Auditors' annual meeting in New Orleans alongside a state and city auditor. These speaking opportunities allow me or other Board members to carry our message beyond the Beltway to where the vast majority of oversight is actually taking place. Finally, the Board is compiling a master list of training opportunities offered by various IGs and other oversight authorities, at all levels of government, to assess the need for the Board to fill any gaps or arrange training for requesting entities. As Recovery funds continue to flow down the line, the Board will continue to brainstorm new methods to coordinate with and assist state and local governments.

The Board's Accountability Committee continues to strategize regarding methods of not only receiving reports of fraud, waste, and mismanagement and referring them to the appropriate IG, but also analyzing and developing reports in light of publicly available, open-source data. These analyses, which better extract and harness existing information, will make the Board's referrals more value-added for the IGs and will also contribute greatly to risk-based predictions about any potential fraud.

Already, the Board has made more than 45 referrals to various IGs to ensure heightened scrutiny of specific procurements that the Board's staff has identified as potentially problematic. These referrals range from incidents of administrative oversight to awards that may raise more serious questions requiring resolution.

The Board continues to weigh options for a comprehensive referral management system, which would include a hotline service, through which the public would be able to share potentially crucial information with the Board. This hotline (which will allow for input in all manner of communication) cannot and will not simply be an off-the-shelf, "plain vanilla" hotline, with personnel who do not understand what questions to ask or what information to obtain. The Board faces a new challenge here in that, typically, hotlines are set up to address a single agency or a specific type of funding, and yet the Recovery Act has given the Board oversight responsibility for numerous and varied agency appropriations. For example, a hotline service might easily train its personnel to process information relating just to education grants. In the Board's case, however, any hotline personnel will need to be able to understand and digest information about education grants in addition to federal construction contracts, rural development loans, and broadband technology programs. The Board will strive to ensure that any hotline personnel and technology will be sufficiently prepared to meet this challenge.

Whenever citizens have the potential to assist oversight and enforcement entities, legitimate concerns are raised about whistleblower protection. The Recovery Act explicitly states that employees of non-federal employers cannot be fired, demoted, or otherwise

discriminated against as punishment for disclosing to the Board or several other entities any information that they believe is evidence of fraud, waste, or gross mismanagement of Recovery Act funds. If citizens believe they are being retaliated against for such disclosures, they may either contact the Board or submit a complaint directly to the appropriate IG.

Mr. Chairman, while I was serving as the IG at the Department of the Interior, I believe I had a well-deserved reputation for aggressively investigating whistleblower complaints of federal employees. I intend now to extend that practice outside the federal arena. If citizens trust in their government, they will eagerly participate in the transparency and accountability of the Recovery funds. Because I believe that public contributions to transparency and accountability are critical to the Board's success, I plan to do everything I can to earn and keep safe that public trust.

In conclusion, I look forward to returning to this Committee in the fall as we begin to unveil to the American public the full scope of Recovery spending. Those will be interesting times. I do not claim to be a prognosticator, but I suspect that there will be a strong reaction when the American public sees how the government actually spends its money. Some of the instantaneous reaction may be negative, but I think there will be a substantial positive reaction as well. Whatever the short-term effects, however, I truly believe that the long-term effects of such transparency will be decidedly positive. That is why I remain optimistic that the Board and I will be able to achieve success in this grand experiment created by the Recovery Act, and I firmly believe that what we accomplish here will lay the groundwork for how future government spending is tracked.

Mr. Chairman and members of the Committee, that concludes my prepared testimony. Thank you for this opportunity. I will now be glad to answer any questions you might have.