



Department of Justice

STATEMENT

OF

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DEPUTY ASSISTANT ATTORNEY GENERAL
ANTITRUST DIVISION

BEFORE THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

ENTITLED

"FOLLOW THE MONEY: AN UPDATE ON STIMULUS SPENDING, TRANSPARENCY
AND FRAUD PREVENTION"

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Chairman Lieberman, Ranking Member Collins, and Members of the Committee, thank you for the invitation to provide you with written testimony discussing the proactive efforts of the Department of Justice to protect stimulus funds provided for by the American Recovery and Reinvestment Act of 2009 (Recovery Act) from fraud, waste and abuse.

With the passage of the Recovery Act, the federal government is engaging in substantial spending on needed goods and services to stimulate the economy. The language of the Recovery Act reinforces the clear mandate of the American public that those who act on their behalf to revive the economy with these funds do so responsibly and in a manner always consistent with the best interest of the public. Fraud, waste, and abuse of these stimulus funds will not be tolerated. President Obama and Vice President Biden have publically reinforced this message repeatedly. The Recovery Act represents an unprecedented, critical effort to support the American economy, and we take seriously our duty to protect that public investment. The Department of Justice is engaged in a broad effort to uphold the American public's expectation that our nation's costly investment in economic recovery will not fall victim to fraud, waste and abuse.

The Department of Justice is assisting federal, state, and local agencies in preparing to prevent, detect, and report fraudulent conduct aimed at unlawfully profiting from Recovery Act funds. The Antitrust Division is an important part of this effort. My testimony will provide a general overview of the Department's Recovery Act efforts, and highlight an initiative by the Antitrust Division to prepare procurement and grant officials to detect and report collusive and fraudulent conduct aimed at restraining competition for Recovery Act funds.

I. Overview of the Department of Justice Initiative to Protect Recovery Act Funds

The current financial crisis and government recovery effort requires a coordinated, proactive law enforcement response that draws on all the resources of the federal government. The Department of Justice is marshaling its criminal and civil enforcement resources to (i) investigate and prosecute these cases; (ii) recover stolen funds for victims; (iii) address issues of competition and discrimination in the use of recovery funds; and (iv) train prosecutors, agents, and private sector partners in how to detect and prevent emerging fraud schemes. We intend to draw on all the resources and expertise of the Department, together with our partner agencies and regulatory authorities throughout the Executive Branch to ensure that taxpayer funds are safeguarded from fraud and abuse and that the recovery effort is conducted in an open, competitive and non-discriminatory manner.

Given the substantial amount of funds provided by the Recovery Act, there is the potential for an increase in procurement and grant fraud at the federal and state levels. The Justice Department—through the Criminal, Civil, and Antitrust Divisions, the U.S. Attorneys’ Offices, and the FBI—is prepared to play a major role in investigating and prosecuting fraudulent activities and public corruption relating to Recovery Act funding. Indeed, the Department has an established model for addressing procurement fraud targeting government funding in a consolidated, coordinated, and collaborative fashion. The model draws upon prior experiences and lessons learned from the Department’s National Procurement Fraud Task Force (NPFTF).

The NPFTF, chaired by the Assistant Attorney General for the Criminal Division, was created in 2006 to promote the prevention, early detection, and prosecution of procurement fraud. Procurement and grant frauds are similar offenses to those that we are likely to see under the Recovery Act—that is, where contractors, sub-contractors, or recipients of government assistance commit fraudulent conduct in obtaining or using such funds. The Task Force is designed to leverage the resources of the Federal law enforcement community by partnering with the IGs and other law enforcement agencies. The NPFTF focuses on civil and criminal enforcement where it has the greatest effect, including defective pricing, product substitution, misuse of classified and procurement-sensitive information, false claims, grant fraud, labor mischarging, fraud involving foreign military sales, ethics and conflict of interest violations, bid rigging, and public corruption associated with procurement fraud.

The Task Force efforts have resulted in significant accomplishments, including the following:

- The Department—in coordination with the IG community—has recovered more than \$362,000,000 in civil settlements or judgments arising from procurement fraud matters;
- The Department has brought charges in hundreds of civil and criminal procurement cases since the inception of the Task Force;
- The Task Force significantly increased training for IG agents, auditors, and prosecutors regarding the investigation and prosecution of procurement fraud cases; and
- The Task Force proposed modifications to the Federal Acquisition Regulation (FAR) that significantly improved government efforts to reduce fraud in government contracts.

It should be noted that the Task Force's efforts focused exclusively on federal procurement contracts and did not address grants awarded with financial assistance, which represent a significant portion of funding under ARRA. Working in close partnership with Earl Devaney, Chairman of the Recovery Accountability and Transparency Board (the Recovery Board), and the member IGs, the Department can build upon the NPFTF model to expand efforts in the fight against Recovery Act fraud. Through such enhanced efforts, the Department aims to:

- Assess existing government-wide efforts to combat financial fraud and work with investigators, prosecutors, and regulators to ensure that financial frauds are promptly reported and addressed;
- Increase and accelerate civil and criminal prosecutions and administrative actions to recover ill-gotten gains resulting from financial fraud;
- Educate and inform the public about financial fraud;
- Increase coordination and strengthen partnerships among all law enforcement, investigative, and regulatory agencies to fight financial fraud more effectively; and
- Identify and remove barriers to preventing, detecting, and prosecuting financial fraud.

In furtherance of these goals, the Department worked closely with the Senate Judiciary Committee on the recently enacted Fraud Enforcement and Recovery Act (FERA) to amend the major frauds statute, 18 U.S.C. § 1031, to include fraud involving funds made available under the Recovery Act and the Troubled Assets Relief Program (TARP), including “any grant, contract, subcontract, subsidy, loan, guarantee, insurance or other form of Federal assistance.” This amendment will ensure that Federal prosecutors have jurisdiction to use a potent fraud statute to protect the government assistance provided during this most recent economic crisis, including money from TARP, the Recovery Act, and other rescue and stimulus government assistance packages. The Department has been providing training to the IG community on the new amendments and their role in strengthening the government’s ability to combat Recovery Act fraud, and working with the Recovery Board to ensure that matters are referred to the Department in a timely matter.

The FBI is actively involved in investigating potential fraud and public corruption involving Recovery Act funds. It is working closely with its law enforcement partners on the federal, state, and local level to combat Recovery Act corruption and fraud, as well as providing training and assistance to local law enforcement to monitor the use of government funds. The FBI will aggressively investigate allegations of public officials using Recovery Act funds for personal gain. Through the FBI Directorate of Intelligence and FBI Field Intelligence Groups, the FBI has increased staffing dedicated to providing both tactical and strategic intelligence relating to Recovery Act corruption and fraud. The FBI is increasing its emphasis on government fraud investigations, including fraud relating to the Recovery Act. In addition, the FBI has instituted a training initiative to provide FBI Special Agents and Intelligence Analysts an increased understanding and awareness of stimulus funding and its vulnerability to corruption and fraud. Finally, the FBI is using its community relations and liaisons to increase public awareness and encourage reporting of Recovery Act corruption and fraud.

The Civil Division also plays a major role in redressing fraud on the public treasury and is prepared to do the same with Recovery Act funds. Through enforcement of the False Claims Act (FCA), 31 U.S.C. §§ 3729-3733, the Civil Division’s Commercial Litigation Branch has recovered an average of \$2 billion per year over the last six years. Since 1986, when the FCA was substantially amended, it received more than \$22 billion on behalf of federal agencies that have been victims of fraud. This statutory authority gives DOJ the ability to fight fraud as it

arises, and will allow us to prosecute fraud cases that stem from the Recovery Act that are referred to us by the IGs. In addition, the Civil Division historically has worked closely with many of the agencies receiving Recovery Act funds in combating fraud on their programs. This includes those agencies receiving the largest disbursements under the Recovery Act, such as the Department of Education, the Department of Health and Human Services, and the Department of Transportation.

In addition to suits initiated by DOJ, private plaintiffs—known as “relators” or “whistleblowers”—can bring lawsuits on behalf of the United States under the *qui tam* provisions of the FCA, and the government can intervene in appropriate cases to pursue litigation and a recovery. The Civil Division is currently receiving on average between 300 and 400 newly filed *qui tam* cases per year, and approximately 6,400 *qui tam* suits have been filed since 1986, yielding recoveries of more than \$14 billion during that period. The FCA’s *qui tam* provisions have proven to be an effective inducement for insiders to disclose wrongdoing, and they provide a potentially potent vehicle for combating fraud involving funds authorized by the Recovery Act.

Another way the Department can assist in recovering funds fraudulently obtained under the Recovery Act is through its authorization powers under the Program Fraud Civil Remedies Act (PFCRA), 31 U.S.C. §§ 3801-3812. Under PFCRA, the Assistant Attorney General for the Civil Division may authorize an agency to institute proceedings targeting false statements or claims where the damages do not exceed \$150,000. The Civil Division has been consulting with the IG community and the NPFTF on how to best use this statute to protect Recovery Act funds.

Combining all of these existing and planned efforts, the Department is marshaling and deploying its broad and diversified resources and expertise to meet the public’s expectation that the government will take all necessary steps to protect Recovery Act funds from fraud, waste, and abuse.

II. The Antitrust Division’s Recovery Act Initiative

While prosecution of fraud, waste, and abuse is crucial, prevention is also an essential component of our strategy to protect government resources. As part of the broad efforts by the Department to contribute to the responsible stewardship of stimulus funds, the Antitrust Division quickly pledged its commitment to assist federal, state, and local agencies in ensuring that prophylactic measures are in place to insulate procurement and program funding processes from

bid-rigging and other antitrust violations fraudulent conduct, as well as to ensure that those who seek to corrupt the competitive bidding process are prosecuted to the fullest extent of the law. To this end, the Antitrust Division launched an Economic Recovery Initiative (Recovery Initiative) aimed at training government officials to prevent, detect, and report efforts by parties to unlawfully profit from the stimulus awards before those awards are made and taxpayer money is wasted.

The Antitrust Division investigates and prosecutes as procurement fraud schemes to undermine competitive bidding for government and commercial awards. The Antitrust Division has prosecuted these violations in a range of industries – everything from road building, to military hardware and fuel supplies, to sales of milk to public schools. The Division’s experience battling such offenses has taught us that when lucrative government contracts are at stake and need to be disbursed quickly, the potential risk of collusion and fraud increases dramatically. Importantly, however, these experiences have also taught us that these risks can be dramatically minimized when an early and strong emphasis is placed on prevention and detection.

The Antitrust Division quickly mobilized to develop and implement its Recovery Initiative. The Recovery Initiative is designed to supplement and support the fraud prevention and detection efforts of the Recovery Board, the broad community of IGs for the numerous federal, state, and local agencies, and various state authorities, all of whom are principally responsible for oversight of Recovery Act funds. We ensured that the Recovery Initiative was up and running just one month after the Recovery Act was signed into law on February 17, 2009, so that the public would receive the maximum benefit of these fraud prevention and detection efforts before stimulus money was awarded.

A. “Red Flags of Collusion” Training

A key component of the Antitrust Division’s Recovery Initiative is training agency procurement and grant officials, auditors, and investigators at the national, regional, and local levels on techniques for identifying “red flags of collusion” *before* the award of Recovery Act funds. This training teaches procurement and grant officials to identify collusion warning signs through case illustrations and a four-step analytical process we call M.A.P.S.

The M.A.P.S. analysis teaches individuals to look for particular indicators as they assess four categories of information in connection with awarding a procurement or grant:

MARKET – Trainees are taught to look for indicators of collusion as they determine how many vendors one would expect to compete for the award and which vendors are best positioned to perform the award.

APPLICATIONS – Trainees are taught to closely examine the proposals or applications submitted by the competing vendors and to look for suspicious similarities.

PATTERNS – Trainees are taught to review the outcome of prior awards for the same product or service to identify suspicious bidding and award patterns over time.

SUSPICIOUS BEHAVIOR – Trainees are taught to keep an eye out for suspicious behavior that indicates vendors may have colluded rather than competed for the award.

If they discover any one or a combination of indicators (or “red flags”) in these categories, procurement and grant officials are taught to report those findings to their IG office, the Antitrust Division, or other appropriate authority. Regardless of where an individual is in the spectrum of the procurement or grant process, the M.A.P.S. analysis has proven to be a simple, yet effective tool to uncover indicators that parties are attempting to collude, or have colluded, to defraud the government on a contract or grant award.

B. Partnering with the IG Community and State Authorities

For prevention and detection efforts to be most effective, they must focus equally on training government procurement and grant officials to prevent, detect, and report both “pre-award” and “post-award” indicators. The “red flags of collusion” training offered by the Antitrust Division focuses on pre-award collusion indicators – indicators that arise before a government award is made. Post-award fraud awareness training programs offered by the Department will focus on illegal conduct that occurs after a government award is made, such as fraudulent charges to the government for manpower or materials that were not performed or used in the completion of the government project. Thus, as part of our Recovery Initiative, we are working with the Criminal Division to partner with the IG community and state authorities to combine our pre-award fraud training program with the traditional post-award fraud training provided by those offices.

Since the inception of the Initiative in March 2009, the Antitrust Division has had tremendous success in partnering with the broad network of IGs for the numerous federal, state, and local agencies and state authorities who are overseeing the distribution of Recovery Act funds. We approached these agencies with an offer to help train IG agents and auditors on pre-

award fraud indicators and then to partner with those same agents and auditors to develop a strategy to jointly conduct pre- and post-award fraud awareness briefings for their agency procurement and grant officials. Not surprisingly, given the significant challenge facing the IG community and states to oversee the proper handling of Recovery Act funds, our offer to assist has received an overwhelmingly positive response.

1. *Partnering with Federal Agencies*

On the federal level, the Antitrust Division has worked closely with the Recovery Board and the entire network of IGs for the federal agencies. To date, we have conducted or scheduled training presentations with 18 federal agencies receiving Recovery Act funds, including: Department of Agriculture, Department of Commerce, Department of Defense, Department of Education, Department of Energy, Department of Health and Human Services, Department of Homeland Security, Department of Housing and Urban Development, Department of the Interior, Department of Justice, Department of State, Department of Transportation, Department of the Treasury, Department of Veterans Affairs, Environmental Protection Agency, General Services Administration, National Aeronautics and Space Administration, and Small Business Administration. The Department of Justice is coordinating with the Vice President's Recovery Implementation Office on the risk management program already mandated at ARRA funded agencies.

With the IG offices for those agencies receiving the largest volume of Recovery Act funding, we have developed national strategies to partner on pre- and post-award fraud awareness training for agency procurement and grant officials nationwide. For example, working in partnership with the IG Office for the Department of Transportation (DOT OIG), the Antitrust Division and DOT OIG provided comprehensive fraud awareness training to the entirety of the more than 70 regional offices and over 2,600 employees of the Federal Highways Administration via webcast. We have also been conducting joint, in-person training sessions with DOT OIG around the country for other components of the Department of Transportation, such as the Federal Aviation Administration. Another example of these partnerships in action is the Antitrust Division's work with the IG Office for the Department of Commerce (DOC OIG). To date, the Antitrust Division and DOC OIG have conducted over 20 joint, in-person training sessions around the country for over 350 procurement and grant officials in Commerce's various components.

The Antitrust Division has not, however, limited its attention to just those agencies receiving the most sizeable Recovery Act funding. We have also partnered with the IG offices of federal agencies receiving more modest Recovery Act funding to provide individual training to all of those persons who will be specifically handling Recovery Act funds. One such agency is the Department of Veterans Affairs (VA). In conjunction with the IG Office for the VA, the Antitrust Division has, to date, provided three training programs to over 200 VA agents and procurement officials stationed around the country.

2. *Partnering with the States*

On the state level, we are working with the National Association of Attorneys General (NAAG) and National Governors Association (NGA). In coordination with the NAAG and NGA, we are working closely with appointed state Recovery Czars and state IG and attorney general offices to coordinate training for procurement and grant officials who will be distributing Recovery Act funds at the state and local levels. We have already held or scheduled antitrust training programs for 23 states and we are working to schedule training programs with the remaining states. The states we have worked with thus far are: Alaska, Arizona, Arkansas, California, Florida, Georgia, Hawaii, Idaho, Kentucky, Maryland, Montana, New Jersey, New York, Montana, Ohio, Oregon, Pennsylvania, Texas, Utah, Virginia, Washington, Wisconsin, and Wyoming. We have also conducted training presentations for the territory of Guam.

In addition to providing training to the states, we have played a significant role in assisting states in their efforts to coordinate comprehensive bid-rigging and related fraud training programs that mirror the programs we provide in partnership with IG offices at the federal level. Providing such comprehensive training programs at the state level requires far more coordination among various federal and state components to ensure that a training program covers all appropriate topics, but also does not result in any wasteful overlap of efforts. Given the advanced stage of our Recovery Initiative, we have been able to assist states in the very important role of coordinating these comprehensive training programs. For example, in California, the Antitrust Division worked with the members of the Western Region IG Council and the U.S. Attorney's Office for the Eastern District of California to develop a comprehensive training presentation to California state compliance review officers, procurement and grant officials, auditors, investigators, and department heads. The training included representatives

from multiple agencies who covered pre- and post-award fraud training, as well as various other topics related to oversight of Recovery Act funds.

3. *These Partnerships Are Producing Results*

As a result of our federal, state, and local efforts to date, the Antitrust Division has already conducted nearly 250 training presentations. Through those presentations, we have trained over 13,000 agents, auditors, and procurement and grant officials nationwide. We are scheduled to train thousands of additional procurement and grant officials in the next few months.

C. Troubleshooting Procurement and Program Funding Processes

Beyond our work with the investigative arms of the various agencies and states, our Recovery Initiative sets as a goal connecting our competition experts with agency program, procurement, and grant officials to begin a dialogue about “best practices” agencies may adopt to protect their procurement and program funding processes and to maximize open and fair competition. While we consider this aspect to be a long-term goal of the Recovery Initiative, the Antitrust Division has already been invited to join federal and state agencies in brainstorming ways to further protect their proposed procurement processes for use of Recovery Act funds. For example, the Division was invited to meet with representatives from the Department of Commerce’s Recovery Act Task Force to discuss the National Telecommunications and Information Administration’s (NTIA’s) Broadband Technology Opportunities Program (BTOP). Specifically, the Division was invited to advise the Task Force about the types of collusion and fraudulent schemes that may be employed to target BTOP funds. The Division provided insights to the Task Force on this issue based on its successful investigation and prosecution of collusion and fraudulent schemes used to target an existing government program with a structure similar to that envisioned for the BTOP.

D. Criminal Enforcement

The Department has further solidified its relationships with the various federal and state IG offices and state authorities. These relationships will prove to be critically important when preventive mechanisms fail to adequately protect Recovery Act funds from collusion or fraud, as these agencies and states will know that the Department is here to help them investigate and prosecute any criminal conduct directed at thwarting competition for those funds.

E. Public Outreach

Understanding that the public often serves as the best check and resource for identifying fraud, waste, and abuse of government funds, the Antitrust Division has invited the public to learn more about, and participate in, making the Recovery Initiative a success. Information about the Recovery Initiative is available to the general public on the Department of Justice web site at: http://www.usdoj.gov/atr/public/criminal/economic_recovery.htm. This web site provides the public with information about how to detect possible antitrust violations in connection with Recovery Act funds, including a printable version of the “Red Flags of Collusion” desk reference the Division distributes at training presentations and which agencies have incorporated into publication materials they send to Recovery Act fund recipients. The web site also provides the public with contact email addresses to use to report Recovery Act-related complaints, as well as to request collusion awareness training. A description of the Recovery Initiative and a link to the Antitrust Division web site is also available to the public on the official Recovery Act web site – www.recovery.gov.

III. Conclusion

The Department of Justice is committed to deterring fraudulent and criminal conduct aimed at undermining the government’s procurement processes and the economy at large, through swift and just prosecutions. We appreciate the leadership of the President and the Vice President in calling for continual and vigilant oversight of ARRA spending. The Department’s broad proactive efforts to protect Recovery Act funds, through the Antitrust Division’s Recovery Initiative and other efforts, demonstrate the Department’s equally important commitment to providing government officials the tools they need to prevent and root out these forms of fraudulent and criminal conduct before that conduct results in a single dollar of loss to the American taxpayer.