

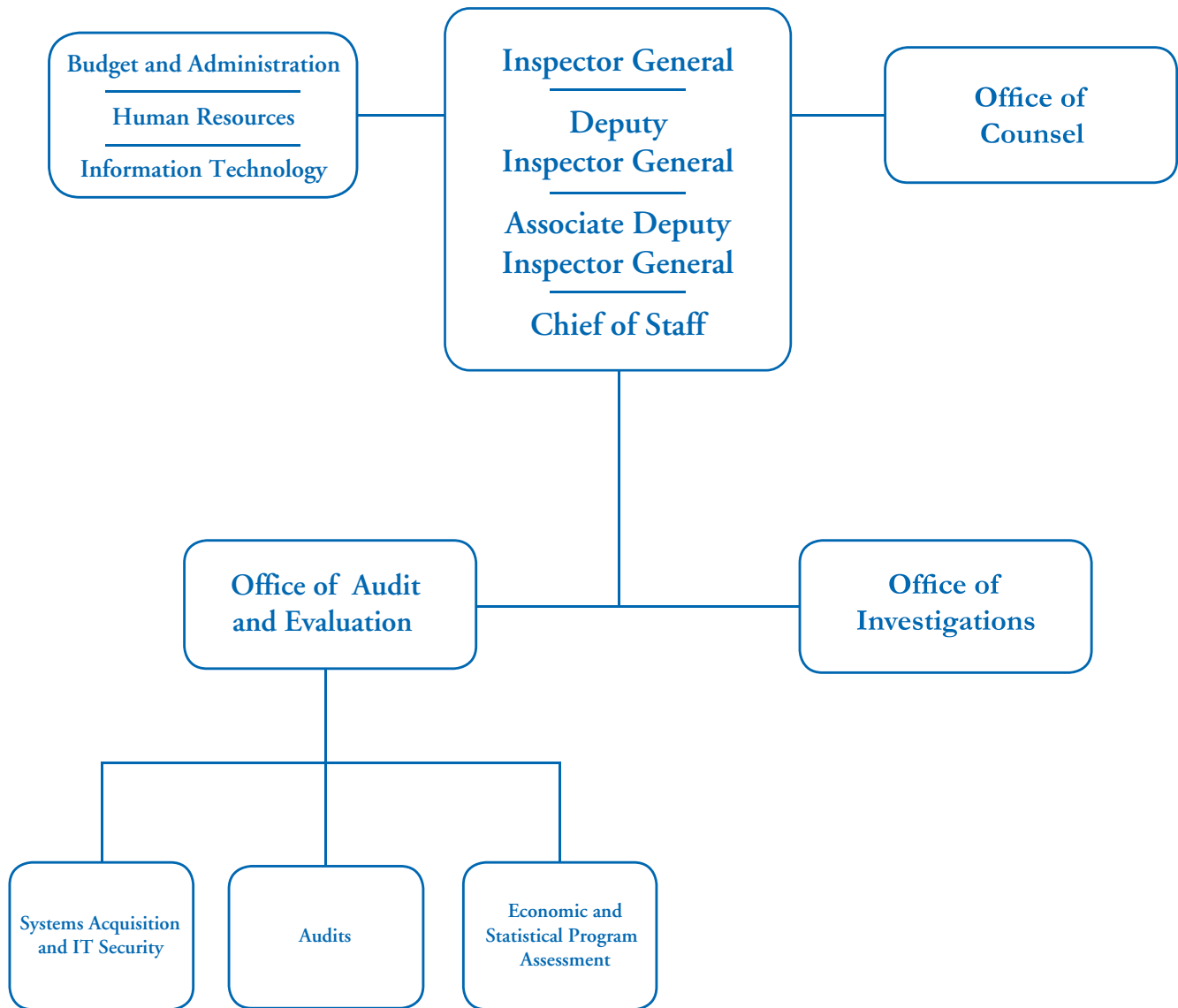
SEMIANNUAL REPORT TO CONGRESS

March 2010



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Office of Inspector General

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Office of Inspector General Semiannual Report to Congress

March 2010

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FROM THE INSPECTOR GENERAL

We are pleased to present the Department of Commerce Office of Inspector General's (OIG) *Semiannual Report to Congress* for the 6 months ending March 31, 2010.

This report summarizes work we completed and initiated during this semiannual period on a number of critical departmental activities. Over the past 6 months, our office issued 20 audit and evaluation reports addressing programs overseen by the Census Bureau, National Institute of Standards and Technology (NIST), National Oceanic and Atmospheric Administration (NOAA), and National Telecommunications and Information Administration. We also worked closely with independent auditors to ensure a timely audit of the Department's FY 2009 consolidated financial statements, resulting in an unqualified audit opinion for the 11th consecutive year.

Our investigative activities during this semiannual period resulted in \$4 million in fines, restitution, and judgments. This amount included more than \$527,000 in restitution that a former United States Patent and Trademark Office (USPTO) employee and her co-conspirator were ordered to pay for their part in an embezzlement scheme. The defendants were each sentenced to 18 months in federal prison for their crime.

We also issued our annual report on the *Top Management Challenges Facing the Department of Commerce*. These challenges include the 2010 Census, information technology (IT) security, acquisition of NOAA's environmental satellites, accountability and transparency of Recovery Act spending, and resource and process issues facing USPTO. During the semiannual period, we carried out con-

siderable oversight of these areas, focusing primarily on the 2010 Census, Recovery Act, and IT security.

Another important area of work in this semiannual report was NOAA's fisheries enforcement programs and operations. At the request of the Under Secretary of Commerce for Oceans and Atmosphere, we evaluated the policies and practices of the Office of Law Enforcement within NOAA's National Marine Fisheries Service and NOAA's Office of General Counsel for Enforcement and Litigation. In January 2010, we reported that NOAA needs to exercise substantially greater management and oversight of its regional enforcement operations, as well as strengthen policy guidance, procedures, and internal controls to address a common industry perception that its civil penalty assessment process is arbitrary and unfair. NOAA responded with a comprehensive action plan to address our recommendations. We will continue to work with NOAA to track its progress in successfully implementing our recommendations and to conduct follow-up work.

We look forward to working with the Department and with Congress in the months ahead to meet the many challenges facing Commerce. We thank the Secretary, senior officials throughout the Department, and members of Congress and their staffs for their support of our work during this reporting period and for their receptiveness to our recommendations for improving Commerce operations.



Todd J. Zinser



COMMERCE
AMONG NATIONS
SHOULD BE FAIR AND
EQUITABLE — FRANKLIN

MAJOR CHALLENGES FOR THE DEPARTMENT

The Reports Consolidation Act of 2000 requires inspectors general to identify the top management challenges facing their departments. For FY 2010, Commerce OIG identified five challenges that require significant Departmental attention and four additional challenges that pertain to internal processes and organization. Most of our audit and evaluation efforts this fiscal year concentrate in these areas. In planning our FY 2011 work, we are, for the first time, conducting a formal risk assessment of Commerce activities to identify those most in need of oversight.

These challenges are discussed below and reflect updates made since their initial publication in January 2010.

1. Decennial Census: Mitigate Issues with the 2010 Decennial While Addressing Future Census Challenges

The mission of the 2010 Census—to succeed in counting each of the over 300 million people in more than 130 million households in the United States once, only once, and in the right place—is a massive undertaking with many moving parts. With a projected life-cycle cost estimate of \$14.5 billion, the bureau must integrate 44 separate operations (with a total of some 9,400 program- and project-level activities).

U.S. residents have by now received their forms, and the Census Bureau has built an extensive communications campaign and partnership program to encourage a prompt and accurate decennial response. The rate at which responses are returned will be critical in determining the overall cost of the census. Households that do not mail back forms will be visited by an enumerator during nonresponse follow-up (NRFU) operations. The most expensive decennial operation, NRFU is now estimated to cost \$2.3 bil-

Top 5 Management Challenges

- 1. Decennial Census:** Mitigate Issues with the 2010 Decennial While Addressing Future Census Challenges
- 2. Information Technology Security:** Continue Enhancing the Department's Ability to Defend Its Systems and Data Against Increasing Cyber Security Threats
- 3. NOAA Environmental Satellites:** Effectively Manage Technical, Budgetary, and Governance Issues Surrounding the Acquisition of NOAA's Two Environmental Satellite Systems
- 4. Recovery Act:** Meet the Challenges of Accountability and Transparency with Effective Oversight of Program Performance, Compliance, Spending, and Reporting
- 5. United States Patent and Trademark Office:** Address the Patent Office's Resource and Process Issues

lion. The bureau cannot predict with certainty the public's response rate and thus the total number of housing units that will have to be visited during this phase. Census estimates that costs will increase by about \$85 million for every percentage point of addresses that census takers have to visit.

While much of the bureau's plan appears to be on schedule, the efficiency and accuracy of NRFU are at some risk, and final decennial costs remain uncertain. The bureau's ability to manage NRFU effectively, and thus control its cost, hinges on two systems: the paper-based operations control system (PBOCS) and the Decennial Applicant, Personnel, and Payroll System (DAPPS). Described by the bureau as the "nerve center" of its field offices, PBOCS manages

enumerator assignments and provides current information on enumerator productivity. DAPPS supports recruiting, applicant, personnel, and payroll processing and is therefore also critical to the smooth functioning of NRFU. Both systems support smaller early field operations such as those in rural areas where Census leaves a form for households to mail back (known as update/leave), doorstep interviews occurring in places such as American Indian reservations (update/enumerate), and counting residents living in group situations and nontraditional households (group quarters enumeration, service-based enumeration, and enumeration of transitory locations). Both systems have experienced problems in testing and, more importantly, during field operations.

Census is on a very tight schedule to complete the PBOCS capabilities needed for NRFU and to resolve existing problems. Once NRFU begins, the system has no margin for error. Yet PBOCS development and testing remain behind schedule, and frequent outages and slow performance are impacting early operations. If not revamped for NRFU, these problems place the schedule and cost of this massive operation at serious risk. As a core requirement with a high level of uncertainty late in the decennial life cycle, PBOCS is one of the most significant decennial challenges facing the Department. While DAPPS also experienced outages and slow performance in early operations, a recent hardware upgrade appears to have significantly improved performance.

To contain decennial costs, better management of census fieldwork is essential. We found inefficiencies in wages, travel, and training during the address canvassing operation. Given the significantly larger scale of NRFU, Census must have effective internal controls in place and ensure that managers meticulously follow them during this operation.

Calendar year 2010 is also a critical time for the 2020 Census. The bureau must begin to develop its 2020 decennial Census plans even though its workforce is already stretched thin by 2010 operations. Our work throughout the decade demonstrates that Census needs to identify more cost-effective approaches to the decennial and seriously consider using such alternatives as administrative records, the Internet, and targeted address canvassing. These and other possible approaches could contain costs while increasing accuracy and efficiency.

2. Information Technology Security: Continue Enhancing the Department's Ability to Defend Its Systems and Data Against Increasing Cyber Security Threats

Cyber attacks and other security threats persistently challenge the Department in ensuring information confidentiality, integrity, and availability. Commerce continues to invest in and otherwise enhance IT security, but more work is needed. The annual *Performance and Accountability Report* has reported IT security as a material weakness since FY 2001. Based on our FY 2009 FISMA assessments, we again recommended—and the Department agreed—that the material weakness remain until more improvements are made.

We completed two United States Patent and Trademark Office assessments during this reporting period. While both revealed improvements, we did not have sufficient evidence of consistent, effective security practices to support removing USPTO's IT security material weakness. However, USPTO's management concluded that IT security issues had been resolved and did not report the material weakness in its FY 2009 *Performance and Accountability Report*.

Our evaluations have focused on the Department's process for planning, implementing, and assessing security controls, including continuous monitoring, for the more than 300 systems employed by various operating units (including USPTO), each with its own management structure. We found deficiencies in security planning (including defining security requirements and implementing controls), assessments (leaving risks inadequately understood), vulnerability remediation (through required plans of action and milestones), and continuous monitoring. In recent years we have increased our efforts to independently assess technical security controls and have consistently found vulnerabilities requiring remediation.

We also found, in an FY 2009 audit, that the Department needs to improve the development, guidance, and performance management of its IT security workforce. The Department has taken positive steps in response, including plans to enhance employee development and training as well as to

require professional certifications for employees with significant IT security responsibilities.

3. NOAA Environmental Satellites: Effectively Manage Technical, Budgetary, and Governance Issues Surrounding the Acquisition of NOAA's Two Environmental Satellite Systems

NOAA is modernizing its environmental monitoring capabilities, in part by spending an estimated total of nearly \$20 billion on two critical satellite systems: the Joint Polar Satellite System (JPSS) and the Geostationary Operational Environmental Satellite-R Series (GOES-R). Both JPSS' predecessor program, the National Polar-orbiting Operational Environmental Satellite System (NPOESS), and GOES-R have a history of cost overruns, schedule delays, and reduced performance capabilities.

As a result of the fall 2009 decision to significantly restructure the NPOESS program, JPSS was established as NOAA's component of the polar environmental satellite system, which is designed to provide global environmental data to monitor Earth, support the nation's economy, and protect lives and property. JPSS is intended to meet a portion of the requirements originally established under the NPOESS program. NPOESS was managed jointly by NOAA, the National Aeronautics and Space Administration (NASA), and the Department of Defense, with NOAA and Defense equally sharing NPOESS costs. Under the restructuring, NOAA/NASA and Defense will acquire satellites separately. The life-cycle cost estimate for JPSS is \$11.9 billion.

At its 1995 inception, NPOESS planned to purchase six satellites at a \$6.5 billion cost, with a first launch in 2008. But problems with a key sensor raised costs and delayed the date of the first launch, even as the number of satellites in the system was reduced to four. In March 2009, with estimated life-cycle costs totaling \$14 billion, the first launch was delayed to 2014 because of continuing sensor problems; the NASA-led NPOESS Preparatory Project (NPP) launch date was also delayed, from 2010 to 2011. NPP was planned as a risk-reduction effort to test NPOESS' new instruments in flight, but will now be used operationally as a gap filler between the current

NOAA polar-orbiting operational environmental satellite and the first JPSS satellite.

The transition to the restructured program will continue into FY 2011. The JPSS program will continue to develop instruments needed to fulfill NOAA's responsibilities. The JPSS management structure will be similar to GOES-R, in which NOAA manages the overall program with assistance from NASA. NOAA will acquire two JPSS satellites and will continue climate sensor acquisitions under the NOAA climate program. Defense is evaluating the best approach for maintaining continuity of its polar satellites. It is critical that NOAA and Defense implement their satellite programs on schedule to reduce the risk of gaps in coverage.

Budget increases, capability reductions, and delays have also plagued the GOES-R program. The projected cost has increased from \$6.2 billion to \$7.7 billion; a major sensor was removed; the number of satellites to be purchased was reduced from four to two; and the launch readiness dates for the first two satellites have slipped by 6 months to October 2015 and February 2017. The GOES-R system is intended to offer an uninterrupted flow of high-quality data for short-range weather forecasting and warning, as well as provide climate research data through 2028. Working with NASA, NOAA is responsible for managing the entire program and for acquiring the ground segment, which is used to control satellite operations and to generate and distribute instrument data products.

According to program documentation, overall GOES-R program acquisition is on track and within budget to meet the revised launch schedule. However, any further delays in the satellite's launch readiness will increase NOAA's risk of not meeting its requirement to have an on-orbit spare and two operational GOES satellites available to monitor the Pacific and Atlantic basins in 2015.

Both the JPSS and GOES-R programs will continue to require close oversight to minimize further disruption to programs and prevent any satellite coverage gaps, which could compromise the United States' ability to forecast weather and monitor climate. Such a compromise would have serious consequences for the nation's safety and security.

4. American Recovery and Reinvestment Act: Meet the Challenges of Accountability and Transparency with Effective Oversight of Program Performance, Compliance, Spending, and Reporting

The Department continues to implement programs under the Recovery Act, which provided Commerce with \$7.9 billion. The OIG Recovery Act oversight priorities include agency and recipient reporting, the Broadband Technology Opportunities Program (BTOP), and NIST and NOAA construction contracts and grants.

The sheer amount of Recovery Act money received by Commerce, coupled with the act's unique requirements, makes ensuring appropriate spending—while also providing economic stimulus as quickly as possible—a particular challenge. Commerce operating units must spend funds appropriately with little time to prepare for the many new and expanded programs, grants, and contracts established under the act.

As of March 31, 2010, the Department had obligated approximately \$2.8 billion and spent approximately \$890 million. Although spending volumes are relatively low, all funds must be obligated by September 30, 2010. The need to distribute funds quickly to communities and businesses increases the risks of fraud, waste, and abuse in both Recovery Act-funded activities and those Commerce operations with more traditional funding mechanisms. Recovery Act operating units need sufficient resources to ensure that programs deliver as intended, while providing oversight to guard against misuse of funds.

The Recovery Act substantially increases the Department's contracting and grants workload, particularly at NIST and NOAA, whose grants and contracts offices must manage not only the more than \$1.4 billion they received under the Recovery Act, but the \$4.7-billion BTOP program as well. NTIA relies on NIST and NOAA for grants administration because it does not have its own staff and systems for this purpose. Such increases place added pressure on these operating units to hire and retain qualified personnel.

The Recovery Act provided a relatively significant funding increase for NIST and NOAA construction projects. To complete them successfully, NIST and NOAA need to dedicate construction managers across Recovery Act grants-, contracts-, and regular appropriation-funded projects. Our oversight will focus on this high-risk area, including assessments of compliance with contract and grant requirements and project results.

We recently reviewed the adequacy of key IT and operational controls of the primary (source) grants, contracts, and/or financial systems for Census, the Economic Development Administration (EDA), NIST, NOAA, and NTIA to determine whether their controls ensure that the Commerce reports posted on *Recovery.gov* are complete, accurate, and reliable. Generally, the Commerce systems we reviewed had adequate data input/edit controls. However, the lack of automated data transmission or interfaces from the grants systems to Commerce's financial system could lead to errors.

Without additional automation, it will be more difficult for Commerce operating units to effectively manage their own reporting with the increased volume of grants and contracts. Ensuring complete and accurate recipient reporting will also be difficult. Additional automation would add reporting process efficiencies and would decrease the risks of reporting errors and delays.

OIG identified several concerns in the BTOP pre-award process and expressed concern with whether NTIA has identified and obtained needed resources to execute a grant program of BTOP's magnitude in the Recovery Act's timeframe. According to the act, BTOP must spend all of its \$4.7 billion in grant funding by September 30, 2010. Over the next 6 months, NTIA must address several challenges as it concurrently monitors first-round grant awards and issues new awards. Challenges include (1) coordinating with other federal organizations supporting contract and grants management and (2) overseeing contractors implementing BTOP. In the next semiannual period, we will issue a report detailing our concerns with BTOP's program management and pre-award process.

A detailed discussion of OIG's Recovery Act oversight begins on page 9.

5. United States Patent and Trademark Office: Address the Patent Office's Resource and Process Issues

With an enacted budget of \$1.7 billion in FY 2010 and a \$2 billion FY 2011 budget request for patent operations, USPTO continues to struggle with increasing patent backlogs and the need to improve patent examination efficiency and quality.

Since FY 2000, the number of patent examiners has more than doubled, from 2,900 to 6,200. But the length of time to process a patent has increased 40 percent from 25 to 35 months. Further, the backlog of applications awaiting review increased 139 percent, from 308,000 to 736,000.

Over the years, USPTO has increased the number of patent examiners to address the growing backlog; however, simply adding to the workforce will not suffice. USPTO must consider how to reform and reengineer various components of the patent application process and must update its IT systems to ensure timely and high-quality application review.

USPTO must also address funding mechanisms and fee structure challenges. USPTO is now funded entirely by application, maintenance, and other fees paid by patent and trademark applicants and owners. Congress sets many of the fees legislatively and establishes a ceiling, through the appropriations process, for the maximum amount of fees USPTO can spend in a given year. For FY 2011, the Administration proposes a 15-percent increase in certain patent fees to generate additional revenue to cover operating expenses. It also proposes that USPTO have authority to set fees and to establish an operating reserve to manage operations on a multiyear basis.

In November 2008, our *Top Management Challenges* report suggested that USPTO's unique financing structure could become increasingly risky. Subsequent downturns in the U.S. and global economies quickly showed the structure's vulnerabilities. In the President's FY 2009 budget, USPTO esti-

mated that it would collect over \$1.8 billion in patent fees. However, by the end of that year, patent fee collections totaled just over \$1.6 billion. Multiple factors contributed to the difference, including a reduction in the number of patent applications filed and a decline in maintenance fees collected for existing patents. To align expenses with actual patent fee collections, USPTO deferred hiring patent examiners and curtailed or suspended overtime and training. USPTO currently projects a FY 2010 surplus, but does not have authority to spend above its legislatively mandated appropriation ceiling.

Potential fee shortfalls and fluctuations introduce inherent instability to the funding structure. This unstable structure increases the risk to USPTO's ability to operate effectively in current and future years, and its capacity to ensure that America's intellectual property system encourages investment in innovation and contributes to a strong global economy. More immediately, USPTO may not be able to process as many patent applications, which will add to the backlog instead of working toward reducing it. In effect, fewer maintenance fees will be available to collect in the future because fewer patents are being issued today.

The Under Secretary of Commerce for Intellectual Property, who is also the Director of USPTO, has publicly acknowledged these and other difficulties. A 5-year plan in the President's FY 2011 budget sets forth bold goals, such as reducing the time it takes for initial patent application review to 10 months (from the present 26 months) by FY 2013. Similarly, by FY 2014, USPTO's goal to decide a patent application is 20 months, down from the present 35.

Other Issues Requiring Significant Management Attention

Centralized Management and Oversight

The Department must continue to centralize management and oversight to make Departmental operations more efficient, consistent, and productive. The Department's operating units have long-standing and independent business models, cultures, and practices. This decentralized structure has hindered

Department efforts to integrate and administer internal processes such as financial services, human resources, grants and contracts management, IT, and major acquisitions. Increased centralization has the potential to yield cost savings.

In 2009, Commerce awarded over \$2.2 billion in grants to some 4,000 recipients, and over \$3.2 billion in contracts to more than 7,000 contractors. Five separate bureaus administer grants and contracts using three different grants systems and four different procurement systems. Additionally, the Department's Office of Acquisition Management has only limited authority over the agency's grants and procurement offices, which further contributes to the Department's inconsistent management approaches and adds to difficulty overseeing operations and programs effectiveness.

Contracts and Grants Management Workforce

Sufficient contracts and grants management workforce staffing has been a long-standing issue for the Department. Now, primarily as a result of the Recovery Act, the Department and its operating units issue more grants and contracts than ever.

According to Department data, more than 1,500 Commerce employees hold certifications in various acquisition positions. While the Department does not track the number of grants personnel, we recently conducted a survey of the sufficiency and qualifications of the Recovery Act acquisition and grants workforce. Based on our survey, the grants workforce for the five Commerce operating units receiving Recovery Act funding totaled over 800 employees. This includes grant officers, grants program managers, and grants specialists.

Despite these numbers, however, a serious shortage of skilled, specially trained staff hampers the Department's ability to appropriately issue and oversee grants and contracts. To ensure that grants and contracts are issued effectively and funds are properly spent, the Department must build up the size and skill of this workforce and improve its oversight processes.

NOAA Headquarters Leadership Structure

NOAA continues to face the challenge of carrying out its multifaceted mission to understand and predict changes in Earth's environment and to conserve and manage coastal and marine resources to meet our nation's economic, environmental, and recreational needs. NOAA is realigning its headquarters leadership structure to streamline decision making and provide greater policy-level attention to day-to-day management and oversight of its programs. The realignment is intended to provide additional strategic guidance and leadership direction for NOAA's stewardship responsibilities, including fisheries.

One of the key mission components is management, research, and services related to the protection and rational use of living marine resources. Our 2008 *Top Management Challenges* report discussed NOAA's need to balance conservation and commercial fishing. Over the past year, we have issued two reports that demonstrate, in particular, the difficulty of achieving this balance. In the first report, we evaluated a series of issues regarding the work and scientific methods of the National Marine Fisheries Service's (NMFS) Northeast Fisheries Science Center. The second report, recently completed, assesses the policies and practices of the Office of Law Enforcement within NMFS and NOAA's Office of General Counsel for Enforcement and Litigation.

Commerce Headquarters Renovation

The Department's headquarters, the General Services Administration (GSA)-owned Herbert C. Hoover Building in Washington, D.C., is undergoing an extensive renovation. The renovation will take about 13 years and is estimated to cost almost \$960 million. The project is being funded mostly by GSA and the Recovery Act. Because of its scale, the renovation has the potential to disrupt Commerce operations and affect its workforce. Accordingly, the Department has a primary interest in ensuring that the renovation is completed on time, within budget, and free of fraud. To meet this goal, Commerce and GSA need to provide comprehensive oversight throughout the project's life cycle.

RECOVERY ACT OVERSIGHT

On February 17, 2009, the President signed the American Recovery and Reinvestment Act (Recovery Act) into law. The statute requires an unprecedented amount of transparency and accountability and sets out specific responsibilities for OIG to oversee the Department's Recovery Act activities and spending.

The Department of Commerce—five operating units and OIG—received \$7.9 billion under the act, which nearly matches the Department's annual appropriation (see Figure 1). As of March 31, 2010, the Department had obligated approximately \$2.8 billion and spent approximately \$890 million (see Figure 2). Operating units believe they are on track to meet the Recovery Act deadline of September 30, 2010, to obligate funds.

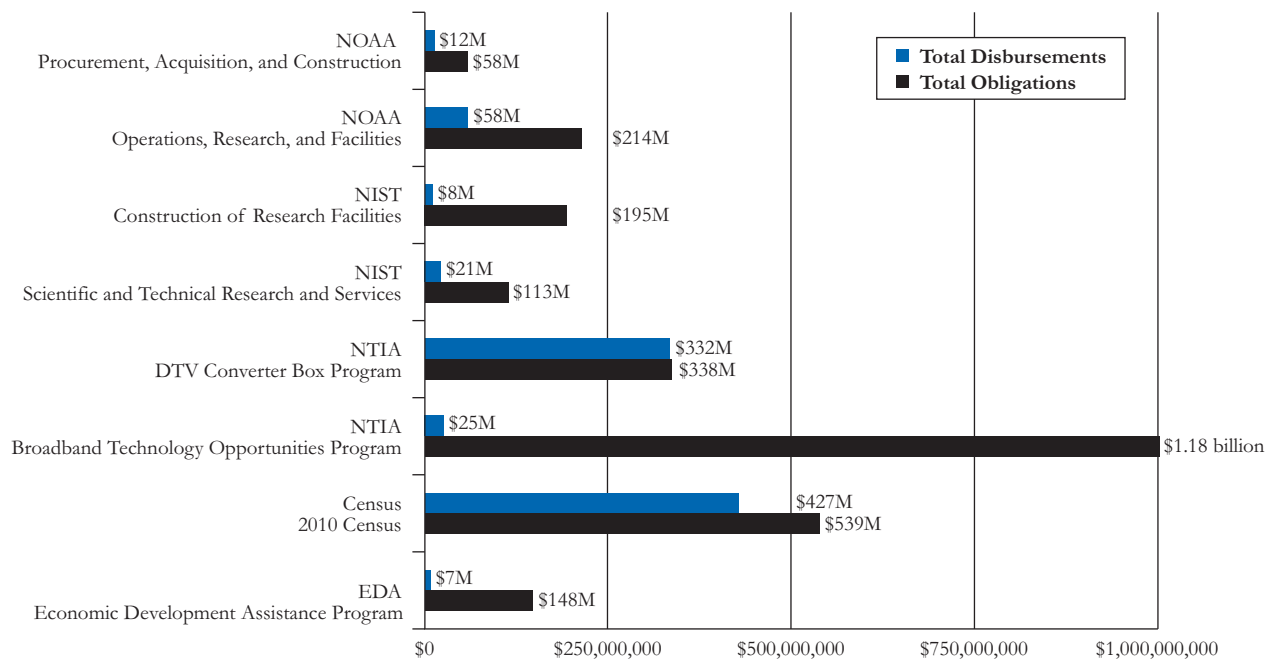
Our oversight program focuses on the highest-risk aspects of the Recovery Act, including the Broadband

Technology Opportunities Program (BTOP), NOAA and NIST construction contracts and grants, ongoing obligations and spending, and the accuracy and timeliness of Department and recipient reporting.

Figure 1: Commerce Stimulus Funding by Operating Unit

NTIA	\$5.3 billion
Census	1.0 billion
NOAA	830 million
NIST	610 million
EDA	150 million
OIG	16 million
Total	\$7.9 billion

Figure 2: Commerce Operating Units' Recovery Act Spending as of March 31, 2010



Data as reported on Recovery.commerce.gov. Per OMB standards, interagency transfers of \$358M and a DTV rescission of \$128M are not included and would impact obligation amounts.

Highlights of OIG Recovery Act Oversight Activities

Monitoring

Obligations/Spending

- Monitored departmental obligations/spending

Recipient Reporting

- Monitored quarterly recipient reporting

Outreach and Training

- Trained more than 650 Commerce employees and briefed potential grant recipients in 18 sessions on:
 - Transparency and accountability in grants management
 - Transparency and accountability in broadband grants
 - Fraud prevention
 - Fraud indicators

Congressional Communications

- IG's letter to Senator Pryor on Recovery Act oversight activities, February 19, 2010
- IG's letter to Senators Mikulski and Shelby on status of NTIA's BTOP, January 22, 2010
- Congressional briefings on Recovery Act programs, including BTOP and NOAA/NIST contract and grant awards

OIG Recovery Act Work Plan

- Issued OIG Recovery Act Agency and Program Oversight Plan (FY 2010)

Audit and Evaluation

Published Reports

- More Automated Processing by Commerce Bureaus Would Improve Recovery Act Reporting (ARR-19779)
- Commerce Has Implemented Operations to Promote Accurate Recipient Reporting, but Improvements Are Needed (ARR-19847)
- Improvements Recommended for Commerce Pre-Award Guidance and NIST and NOAA Processes for Awarding Grants (ARR-19841)
- Review of Contracts and Grants Workforce Staffing and Qualifications in Agencies Overseeing Recovery Act Funds (for Recovery Accountability and Transparency Board)

Selected Work In Progress

- Continued review of pre-award grant processes for NTIA's BTOP
- Commenced review of performance measurement of certain NIST and NOAA Recovery Act programs
- Commenced review of Commerce headquarters renovation

Visit www.oig.doc.gov/recovery/ for more information about OIG Recovery Act activities.

Completed Reports

The Recovery Act established specific reporting requirements for both agencies and fund recipients. Weekly, federal agencies must report key information such as awards, obligations, outlays, and major activities to the public web portal *Recovery.gov*. Quarterly, fund recipients must report to *Recovery.gov* on their projects and activities, as well as the number of jobs funded by stimulus money. An effective internal control structure that detects and prevents errors and omissions in reporting is vital to data integrity.

OIG reviewed key IT and operational controls of the primary grants, contracts, and/or financial systems for Census, EDA, NIST, NOAA, and NTIA to determine whether their controls ensure that the Commerce reports posted on *Recovery.gov* are complete, accurate, and reliable. Generally, the Commerce systems reviewed had adequate data input/edit controls. However, the lack of automated data transmission from the grants systems to Commerce's financial system could lead to errors.

“Without additional automation, it will become more difficult for Commerce agencies to effectively manage their own reporting as the volume of grants and contracts increases ...”

IG testimony before a U.S. Senate Appropriations Subcommittee, March 4, 2010

We reported our findings in *More Automated Processing by Commerce Bureaus Would Improve Recovery Act Reporting* (ARR-19779) and recommended additional automation to add efficiencies to the reporting process and decrease the risks of reporting errors and delays. Operating units are making appropriate system enhancements to address our recommendations. (For more information about these findings, see page 19.)

OIG's report on recipient reporting, *Commerce Has Implemented Operations to Promote Accurate Recipient Reporting, but Improvements Are Needed* (ARR-19847),

recommended more automation to review data, particularly as the volume of grants and contracts significantly increases. The operating units indicated they would monitor the efficiencies and effectiveness of their reporting processes and supplement their review process with additional automation if their manual process did not ensure quality results as volumes increase. (For more information about these findings, see page 20.)

In *Improvements Recommended for Commerce Pre-Award Guidance and NIST and NOAA Processes for Awarding Grants* (ARR-19841), we recommended that the Commerce Office of Acquisition Management (OAM) revise its grants manual so that grant-making operating units at Commerce have standard guidance and procedures to follow, for both Recovery Act awards and all other discretionary awards. We also made recommendations specific to NIST and NOAA. (For more information about these findings, see page 20.)

“The report plays an important role in ensuring that the Board and the IG community understand the potential weaknesses that may exist in the oversight of the [Recovery Act] ... I greatly appreciate the leadership your staff demonstrated in structuring the review and reporting on the results.”

Board Chairman Earl E. Devaney,
in a letter to the IG, March 22, 2010

At the request of the Recovery Accountability and Transparency Board, OIG led a government-wide review to determine whether programs that award Recovery Act contracts and grants have the proper level of workforce staffing, qualifications, and training. The report, *Review of Contracts and Grants Workforce Staffing and Qualifications in Agencies Overseeing Recovery Act Funds*, reveals that the additional workload generated by the Recovery Act has created a strain on the contracts and grants workforce and that the government lacks a standard certifica-

tion and training program within the grants workforce. The report recommends that agencies monitor their staffing for Recovery and non-Recovery Act programs and assess training and certification issues for contracting personnel. (For more information about these findings, see page 21.)

Looking Ahead

Broadband Technology Opportunities Program

Of the \$7.9 billion the Department received through the Recovery Act, NTIA received \$5.3 billion, of which \$4.7 billion was for BTOP. BTOP's objective is to develop and expand broadband services in underserved and unserved areas by deploying infrastructure, enhancing capacity at public computer centers, and promoting sustainable broadband adoption projects. As of March 31, 2010, NTIA had obligated approximately \$1.18 billion, and some \$25 million in BTOP funds had been expended. NTIA has embarked on its second, and final, round of grant awards. All awards must be obligated by September 30, 2010.

BTOP remains a high-risk program. As the largest Recovery Act program at Commerce with multiple inherent risks, BTOP will continue as a high priority throughout the life of the Recovery Act. OIG has closely monitored its processes and implementation thus far. We will review NTIA's BTOP-related post-award activities, including the program's processes for monitoring grants and determining site visits, its grant recipient project reporting, and the technical assistance it provides to recipients. In addition to these monitoring activities, we will identify additional oversight priorities as necessary.

“BTOP, which aims to award approximately \$4.5 billion in grants in less than 18 months, represents a level of grant activity that no Commerce operating unit has ever undertaken.”

IG letter to Senators Barbara Mikulski and Richard Shelby, January 22, 2010

From our work to date on BTOP's program management and pre-award process, we have the following concerns about the program:

- BTOP's size and complexity have significantly challenged NTIA. NTIA's program staffing levels appear to be insufficient to simultaneously perform the necessary first- and second-round award activities. The office relies heavily on a few key individuals and personnel from other agencies to carry out the program's operations.
- NTIA's inconsistent documentation of important information such as policies, procedures, staff roles, and key management decisions could lead to inefficiency and miscommunication.
- The first round of BTOP grant application processing exposed several problems with the online grant intake system, which affected efficiency and users' experiences.
- A shortage of volunteer peer reviewers meant that application review for the first round was delayed. As NTIA manages the second-round process and handles post-award activities for first-round grant recipients, it must be careful to obtain enough reviewers for the workload.
- NTIA will need to closely monitor grantees during post-award operations to ensure they comply with the National Environmental Policy Act.

We briefed NTIA senior management on our results on January 6, 2010. By letter dated January 21, we responded to a request from Senator Barbara Mikulski, chairwoman of the Senate Appropriations Subcommittee on Commerce, Justice, Science, and Related Agencies, to summarize our observations about NTIA's BTOP challenges.

We will issue a review of the program's management and pre-award process in early April 2010. As part of our continued proactive BTOP oversight, we will review the adequacy of NTIA's systems, planning, and resources for performing post-award activities.

NOAA and NIST Contracts and Grants

Construction grants and contracts involve inherent risks, and the two operating units' staff expertise and site visits will be integral to effective oversight. OIG will conduct additional oversight work in the area of high-risk construction contracts and grants. We will also conduct a performance review that includes an assessment of compliance requirements and project results.

Monitoring Obligations and Spending

OIG will continue to focus on the obligations and spending activity of Recovery Act-funded programs within the Department with particular attention to recipient reporting. We will work with the Department's operating units to monitor spending and program activities on a quarterly basis.



TO M M F R

WORK IN PROGRESS

The following Office of Inspector General audits and evaluations were initiated or underway during this reporting period:

Recovery Act Oversight

Review of NTIA's Program Management and Pre-Award Processes for BTOP

Review BTOP to (1) assess how effectively NTIA is implementing the program, (2) evaluate proposed pre-award review measures to ensure effective and fair application and award processes, and (3) evaluate integrity and reliability of the online application system.

Performance Measurement of Certain NIST and NOAA Recovery Act Programs

Review policies, procedures, plans, and metrics related to monitoring and reporting the progress of certain Recovery Act programs. Assess relevant information management systems that support Recovery Act performance measurement tracking and reporting.

Review of the Management of the Herbert C. Hoover Building (HCHB) Renovation Project

Gain an understanding of the HCHB renovation scope and management plan, including internal controls/oversight mechanism, project cost(s), milestones, current challenges, and project management coordination efforts with GSA. Review the project plans, awards, and milestones; interview relevant officials; and evaluate best practices and lessons learned.

Census Bureau

Safeguarding Confidential Decennial Respondent Data

Evaluate the bureau's ability to safeguard secure confidential electronic data supplied by decennial

respondents. Determine which information systems include confidential data; how the data are stored, processed, distributed, and protected; and whether security controls are effectively protecting the data.

Incident Detection and Response Capabilities

Determine Census's cyber attack detection and response capabilities and monitor the bureau's ability and efforts to find, analyze, contain, eradicate, recover from, and properly report incidents such as denials of service, malicious code attacks, unauthorized access, and inappropriate use of data.

2010 Census Field Operations Oversight

Monitor census enumerator operations and local Census offices processes for conformity to specifications, accuracy, and management efficiency. This work will involve almost 100 members of our staff observing field operations at over 70 of the 494 local Census offices.

Fourth Census Quarterly Report

Report on the progress of the 2010 Census with respect to cost, schedule, and risk, as mandated by the explanatory statement that accompanied the Supplemental Appropriations Act of 2008 (P.L. 110-252).

Economic Development Administration

Trade Task Group

Audit cooperative agreements between EDA and the Seattle-based Trade Task Group to determine whether costs claimed under these agreements are reasonable, allowable, and allocable and whether adequate internal controls are in place for the selection of consultants.

National Institute of Standards and Technology

California Manufacturing Extension Partnership (MEP) Cooperative Agreement

Determine whether the recipient of an MEP cooperative agreement in California has complied with all applicable terms, conditions, and NIST operating guidelines.

National Oceanic and Atmospheric Administration

Pacific States Marine Fisheries Commission

Audit two NOAA cooperative agreements and three contract task orders awarded to the Commission. In addition to performance, compliance, and cost-incurred audits of the agreements and task orders, the comprehensive audit includes an audit of 12 cost-reimbursable contracts awarded under the two cooperative agreements and 7 years of Commission indirect cost rates and related proposals.

U.S. Historical Climatology Network's Data Quality and Modernization Efforts

Review the U.S. Historical Climatology Network (USHCN) to determine whether NOAA's efforts to modernize the system will correct data quality issues with current USHCN sites.

NOAA Enforcement Activities

Continue our nationwide review of the policies and practices of NOAA's Office of Law Enforcement and General Counsel for Enforcement and Litigation. Focus on (1) evaluating enforcement operations in a regulatory environment; (2) assessing processes used to establish priorities with respect to enforcement actions and penalties; and (3) reviewing overall accounting and management practices applied to the enforcement function, as well as the use of funds NOAA receives through penalties.

Evaluation of Acquisition of Facilities for the Marine Operations Center-Pacific

Review the procurement of facilities that will house Marine Operations Center-Pacific operations.

Determine whether NOAA's acquisition of the facilities adhered to federal, departmental, and NOAA requirements.

NOAA's Environmental Satellite Programs Survey

Examine the effectiveness of the National Environmental Satellite, Data, and Information Service's activities to acquire and manage the development of the nation's polar and geostationary environmental satellites. Monitor the Joint Polar Satellite System transition and the progress of the Geostationary Operational Environmental Satellite-R Series Program.

National Telecommunications and Information Administration

Second Annual Audit of the Public Safety Interoperable Communications (PSIC) Grant Program

Conduct second annual audit of the PSIC grant program. Assess NTIA's administration of the program and report results to Congress, as required by section 2201 of Implementing Recommendations of the 9/11 Commission Act of 2007 (Title XXII, Pub. L. 110-53).

Audits of PSIC Grants

Continue audits of a sample of PSIC grants as required by the Implementing Recommendation of the 9/11 Commission Act of 2007. Determine the progress recipient states have made to acquire and deploy interoperable communications with PSIC grant funds and whether their use of funds meets all federal requirements.

United States Patent and Trademark Office

Patent Quality Assurance Process

Determine the effectiveness of USPTO's patent quality assurance process in ensuring that established patent examination quality standards are met, and whether the process complies with applicable departmental, bureau, and federal laws, regulations, policies, procedures, and guidelines.

Patent Budget Projections

Determine the effectiveness of USPTO's process to project revenue and expenses for its Patent operations. Determine whether this process enables USPTO to meet its expenses and achieve its mission and strategic goals for Patents.





DEPARTMENT-WIDE MANAGEMENT

The **United States Department of Commerce** creates the conditions for economic growth and opportunity by promoting innovation, entrepreneurship, competitiveness, and stewardship. The Department has three stated strategic goals:

Goal 1: Provide the information and tools to maximize U.S. competitiveness.

Goal 2: Foster science and technological leadership by protecting intellectual property, enhancing technical standards, and advancing measurement science.

Goal 3: Observe, protect, and manage Earth's resources to promote environmental stewardship.

The Department has also established a Management Integration Goal that is equally important to all operating units: Achieve organizational and management excellence.

More Automated Processing by Commerce Bureaus Would Improve Recovery Act Reporting (ARR-19779)

Updated Recovery Act guidance provided by OMB on April 3, 2009, spelled out, among other requirements, each department's responsibility to post financial and activity reports as well as funding notification reports on the public web portal *Recovery.gov*. Although OMB provided specific directions and data requirements in its initial guidance, during our fieldwork the reporting templates were updated to capture additional required information such as expenditures, transfers, or reimbursable agreements between federal agencies.

This evaluation assessed the adequacy of key IT and operational controls to determine whether the controls ensure that the Commerce reports posted on *Recovery.gov* are complete, accurate, and reliable. The

evaluation's scope included the primary (source) grant, contract, and/or financial systems for Census, EDA, NIST, NOAA, and NTIA.

Generally, the 11 Commerce systems we reviewed, which included both source and supporting systems, had adequate data input/edit controls. However, the lack of automated data transmission from the three operating unit grant systems to the Commerce Business System (CBS), the financial system of record from which all Recovery Act reporting originates, could potentially lead to errors. Approximately \$5.2 billion (or 65 percent) of Commerce Recovery Act funds will be provided through grants; thus, more robust controls such as system-to-system interfaces should be employed to reduce the reliance on manual controls. Further, an automated process would be more efficient as volumes increase.

Regarding reporting integrity on *Recovery.gov*, we noted that while the overall amounts on weekly financial and activity reports were reasonably accu-

rate, the report gathering, reconciliation, and dissemination processes are largely manual. With the current low volume of activity, these manual controls are operating acceptably; however, as volumes increase the process may not be sustainable.

Based on our findings, we recommended that:

- The chief financial officers of NOAA, NIST, and EDA work with grants management staff to develop system-to-system interfaces between the three operating units' systems and CBS. These interfaces would process grant activity more efficiently and ensure source systems reconcile to the financial system of record. Manual reconciliations can then supplement or provide a secondary level of control.
- The Commerce Recovery Act Implementation Office evaluate ways to further automate report generation and ensure that consistent processes are used across operating units. In addition, Commerce should consider implementing a central data repository to generate all Recovery Act data. A central repository could serve other purposes even after full implementation of the Recovery Act.

Commerce Has Implemented Operations to Promote Accurate Recipient Reporting, but Improvements Are Needed (ARR-19847)

Commerce and its operating units have proactively ensured that Recovery Act recipients recognize and meet reporting requirements and deadlines. Commerce Recovery Act implementation officials provided policy, guidance, and oversight to grant and contracts officials to facilitate department-wide standard review processes. Operating unit officials established policies and procedures to support compliance with requirements, contacted recipients by telephone and e-mail, provided recipients with training on Recovery Act reporting, and offered recipients tools such as checklists to help guide them through the reporting process.

As requested by the Recovery Accountability and Transparency Board, we completed this audit in early October 2009, prior to the first full, finalized review

cycle at month end. As such, it was too early to determine whether operating unit processes would adequately identify and remediate material omissions and significant data errors in the recipients' reported data. However, we did identify improvements Commerce and its operating units should make to data quality policies and procedures, which is especially important as programs mature and review procedures are fully implemented. Given that the reporting process is in its initial stages, operating units will necessarily need to address certain issues as processes evolve, as our findings detailed.

We recommended that Commerce and its operating units continue to fine-tune their review procedures by:

- providing guidance on what constitutes a material omission and significant error in the recipient-reported data and documenting this in their policies and procedures;
- ensuring that operating units implement an automated means of data review, especially for larger programs with a high volume of recipient reporting; and
- updating and revising policies and procedures as the process matures and more recipient reporting challenges emerge—especially in the areas of sub-recipient reporting and job creation and retention.

Improvements Recommended for Commerce Pre-Award Guidance and NIST and NOAA Processes for Awarding Grants (ARR-19841)

The Recovery Act appropriated \$180 million to NIST for a competitive grant program to construct research science buildings. NIST issued four grant awards of approximately \$56 million for unfunded meritorious proposals previously submitted under the FY 2008 competition and will award approximately \$120 million under a new competition in FY 2010.

From its Recovery Act appropriation, NOAA allocated up to \$167 million for the Habitat Conservation and Restoration Program, a competitive financial

assistance program to assist marine and coastal habitat restorations. NOAA awarded 50 cooperative agreements in FY 2009 using Recovery Act funds.

Our objective was to review the NIST and NOAA award solicitation, selection, and pre-award phases to determine whether the awards were made competitively in accordance with Commerce and Recovery Act requirements. Although we did recommend areas for improvement, our review found that NIST and NOAA complied with Department and Recovery Act competition requirements.

We found that the Commerce Office of Acquisition Management (OAM) has not revised its grants manual to clarify the operating units' responsibility for conducting individual background screenings on applicants and recipients of Commerce grants and cooperative agreements. As a result, NIST and NOAA did not have standard procedures to follow for conducting individual background screenings for the Recovery Act funds.

Based on our findings, we recommended that:

- NIST improve its documentation of the evaluation board selection process to ensure that its financial assistance award decisions are clearly documented.
- NOAA's grants office review prior audit reports as part of its evaluation of an applicant's past performance to determine whether special award conditions are warranted, and include special award conditions to mitigate risks of making an award to an organization with known performance problems.
- OAM revise the grants manual so that the grant-making operating units at Commerce have standard guidance and procedures to follow to conduct individual background screenings. Once the policy is developed, OAM should work with Commerce operating units receiving funds, including NIST and NOAA, to determine whether Recovery Act awards need individual background screenings based on the new policy, and how the Department can best obtain these screenings. Operating units should follow the policy for both Recovery Act awards and all other discretionary awards.

Review of Contracts and Grants Workforce Staffing and Qualifications in Agencies Overseeing Recovery Act Funds

At the request of, and in consultation with, the Recovery Accountability and Transparency Board, we developed a survey of the staffing and qualifications of pertinent federal agencies' contracts and grants workforce. We received over 500 responses from 26 agencies—including the Department of Commerce—completed by one or more contracts and grants offices within those agencies. Although the scope of this survey addressed programs and operations beyond the Department of Commerce, its findings reflect and are applicable to Departmental operating units.

Survey results indicated that agencies government-wide have been staffing up to meet Recovery Act demands. Agencies receiving Recovery Act funding reported that from April through June 2009, they assigned more than 22,000 professional staff to their Recovery Act contracts and grants work (out of a total of nearly 99,000 such personnel). Staffing levels in the acquisitions and grants workforce are expected to increase to just under 25,000 and remain at that level through June 2010.

Survey responses indicate that the additional workload has strained a significant portion of the contracts and grants workforce charged with making Recovery Act awards. Although agencies are prioritizing Recovery Act work and, in many instances, hiring additional staff or realigning work to assist, the added workload has exacted a price. Contract and grant awards are being delayed, as is other work. Employees are working overtime, and oversight and monitoring of awards—especially non-Recovery Act contracts and grants—are expected to decline as many agencies attempt to implement Recovery Act requirements while carrying out their ongoing programs and operations.

While agencies are generally assigning a qualified acquisitions and grants workforce to the Recovery Act, some concern exists that training may be delayed over the coming year as agencies continue to address their increased workloads. The compliance of the contracting workforce with Office of Federal

Procurement Policy certification and training requirements varies considerably, though nearly all Recovery Act contracting officers are certified. And, while no equivalent government-wide standard exists for certification or training within the grants community, about one-third of responding subagencies have established agency-specific requirements for their grants workforce.

Based on our survey results, we recommended that agencies continue to closely monitor their staffing of both Recovery Act and non-Recovery Act work, and make adjustments as necessary to ensure that all contracts and grants are properly awarded and monitored.

We also recommended that agencies assess training and certification issues for their contracting personnel. In particular, agencies should:

- ensure contracting personnel meet continuous learning requirements to maintain their certifications,
- identify contracting officer's (technical) representatives (COTRs/CORs) working on Recovery Act contracts who do not meet certification and/or continuous learning requirements, and take corrective action, and
- determine whether program managers working on major acquisitions under the Recovery Act are certified, and take appropriate steps to certify those who are not.

Absent government-wide standards for grants management personnel, agencies have established their own requirements, which we view as a best practice.

FY 2009 Financial Statement Audits (FSD-19652)

Independent auditor KPMG found that the Department's consolidated financial statements were fairly presented in all material respects and in conformity with U.S. generally accepted accounting principles. KPMG found one instance of material noncompliance with laws, regulations, or contracts: one of NOAA's real property agreements contained an indemnification clause, which is a violation of the

Anti-Deficiency Act. Another concern related to Anti-Deficiency Act compliance at NTIA was referred to the Department's Office of General Counsel.

KPMG found that while the Department has taken positive steps to correct previous findings, there are still vulnerabilities related to various controls over the Department's financial management systems. These weaknesses combine to form a significant deficiency in Commerce's IT controls.

KPMG also audited the Department's special-purpose financial statements and determined its compliance with financial reporting requirements in the Treasury Financial Manual. The Treasury Department uses the audited statements to prepare its Financial Report of the U.S. Government. In its unqualified opinion on the special-purpose statements, KPMG reported no material weaknesses in internal controls and no instances of noncompliance.

We requested that the Department provide us an audit action plan to address the report's findings and delineate the actions the Department plans to take to correct the IT deficiency. We also asked the Department to provide the rationale or legal basis behind its decision should it choose not to implement KPMG's recommendations.

Nonfederal Audit Activities

In addition to undergoing OIG-performed audits, certain Commerce financial assistance recipients are periodically examined by state and local government auditors and by independent public accountants. OMB Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations*, sets forth audit requirements for most of these audits. For-profit organizations that receive Advanced Technology Program (ATP) funds from NIST are audited in accordance with *Government Auditing Standards* and *NIST Program-Specific Audit Guidelines for ATP Cooperative Agreements*, issued by the Department.

We examined 147 audit reports during this semiannual period to determine whether they contained audit findings related to Commerce programs. For 74

of these reports, the Department acts as oversight agency and monitors the audited entity's compliance with OMB Circular A-133 or NIST's program-specific reporting requirements. The other 73 reports are from entities for which other federal agencies have oversight responsibility. We identified 11 reports with findings related to the Department of Commerce.

Congressional Testimony

During the reporting period, the Inspector General testified on the top management challenges facing the Department before the Senate Committee on Appropriations (March 4, 2010). His statement is available at www.oig.doc.gov.

Report Category	OMB A-133 Audits	ATP Program-Specific Audits	Total
Pending (October 1, 2009)	70	22	92
Received	86	9	95
Examined	120	27	147
Pending (March 31, 2010)	36	4	40

The following table shows a breakdown by operating unit of approximately \$400 million in Commerce funds audited.

Agency	Funds
Economic Development Administration	\$53,265,273
International Trade Administration	267,665
Minority Business Development Agency	655,084
National Institute of Standards and Technology ¹	57,684,622
National Oceanic and Atmospheric Administration	129,852,216
National Telecommunications and Information Administration	3,975,076
Multi-Agency	150,174,496
Not Identified by Agency	3,947,274
Total	\$399,821,706

¹ Includes \$55,432,901 in ATP program-specific audits.

We identified a total of \$4,196,902 in federal questioned costs and \$3,816,000 in funds to be put to better use. In most reports, the subject programs were not considered major programs; thus, the audits involved limited transaction and compliance testing against laws, regulations, and grant terms and conditions. The 11 reports with Commerce findings are listed in Appendix B-1.

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CENSUS
BUREAU



ECONOMICS AND STATISTICS ADMINISTRATION

The **Economics and Statistics Administration** analyzes economic activity, formulates policy options, and produces a major share of U.S. government economic and demographic statistics. The chief economist monitors and analyzes economic developments and directs studies that have a bearing on the formulation of economic policy. ESA has two principal organizational units:

Census Bureau is the country's preeminent statistical collection and dissemination agency. The bureau publishes a wide variety of statistical data about the nation's people and economy, conducting approximately 200 annual surveys, in addition to the decennial census of the U.S. population and the quinquennial census of industry.

Bureau of Economic Analysis prepares, develops, and interprets national income and product accounts (summarized by the gross domestic product), as well as aggregate measures of international, regional, and state economic activity.

2010 Census: Quarterly Report to Congress, December 2009 (OIG-19791-2)

Census is moving forward with important decennial operations and activities, including completing two major operations: address canvassing and group quarters validation. Our December 2009 quarterly report noted several risks to the 2010 decennial, including scheduling delays, cost overruns, and complications associated with the development of a paper-based operations control system (PBOCS).

Census must develop PBOCS to manage field operations, since increasing costs and automation problems prompted the bureau to abandon handheld computers in early operations in favor of paper. The compressed schedule renders PBOCS a major risk to the decennial census.

For FY 2010, Census requested about \$674 million in contingency funds for key operations and activi-

The Supplemental Appropriations Act of 2008 and the 2010 Census (P.L. 110-252)

The Supplemental Appropriations Act of 2008 gave the Census Bureau an additional \$210 million to help cover spiraling 2010 decennial costs stemming from the bureau's problematic efforts to automate major field operations, major flaws in its cost-estimating methods, and other issues. The act's explanatory statement required the bureau to submit to Congress a detailed plan and timeline of decennial milestones and expenditures, as well as a quantitative assessment of associated program risks, within 30 days. OIG must provide quarterly reports on the bureau's progress against this plan.

ties, almost 9 percent of its total 2010 Census budget request. The contingency fund, formulated with the advice of Department and Census officials, is based

on the level of risk or uncertainty associated with key decennial activities. Census was able to cover an \$88-million (nearly 25 percent) address canvassing overrun by utilizing several sources, including \$41 million from FY 2009 contingency funds and \$47 million in savings from other operations and activities.

The bureau's process for managing 2010 Census program risks represents a significant improvement over the previous census in 2000. However, because the majority of its time has been spent on contingency planning, the bureau's Risk Review Board (RRB) did not review risk ratings in detail at weekly meetings, as required by Census's risk management plan. The RRB is working on a plan to help Census management complete its contingency plans and actively monitor its risk management activities.

This report did not provide specific recommendations. However, we will continue to monitor specific 2010 Census operations and activities, such as:

- Given the importance of PBOCS in managing Census's fieldwork operations workload, and the short timeframe available for system development, we will continue to monitor and report on PBOCS development and testing in subsequent quarterly reports.
- Because of the address canvassing cost overrun, Census is currently revising nonresponse follow-up (NRFU) cost assumptions, especially the projected mail response rate. We will evaluate NRFU planning efforts, operational effectiveness, and data quality.
- Census used Recovery Act funds to hire additional partnership positions in hard-to-count areas. While we recognize Census's relatively quick recruitment and hiring, we will monitor the adequacy of management and supervisory controls over the partnership workforce.

2010 Census: Quarterly Report to Congress, February 2010 (OIG-19791-3)

About 9,400 key operations and activities make up the Census 2010 program. With such a complex, time-sensitive undertaking, it remains vitally impor-

tant that the Census Bureau operate efficiently and within budget.

During this reporting period, we observed the following:

- PBOCS development and testing have continued to suffer setbacks that will reduce functionality and require workarounds to complete NRFU. PBOCS testing is revealing more and more critical defects as it progresses. Schedule delays have hindered the development of training manuals and technical support guides.
- The bureau conducted two operational load tests of computer networks supporting decennial operations. The tests showed that the networks and devices were able to successfully handle peak loads, but revealed PBOCS and other IT performance problems.
- While Census stayed within budget during our review period, spending among local Census offices (LCOs) remains a concern. The address canvassing operation was 25 percent over budget, and our analysis of travel costs for the operation found wide disparities in wages and mileage reimbursement in some of the LCOs.
- Census has issued a revised cost estimate of \$2.33 billion for NRFU. Any NRFU cost reductions are likely to be partially offset by an estimated increase of \$137 million for the vacant/delete check operation.
- Census's RRB has taken a proactive role in overseeing risk management activities. The RRB has initiated a monthly review of the 25 identified risks on the bureau's risk register. The RRB is reviewing contingency plans for 13 of the risks. At the time of our report, the RRB had finalized four plans, which appear to be adequate to cover the actions Census would need to take should the risks materialize.

This report did not provide recommendations. Rather, we forwarded the Census Bureau a separate document recommending that the following actions be taken:

- Senior executives with the authority to set priorities—such as reallocating resources to where they are most needed, resolving conflicting priorities,

and making major changes to the decennial schedule or plan—should closely monitor PBOCS activities and act to expeditiously reduce operational risk.

- Streamline development and testing by further reducing PBOCS capabilities to the essentials needed for the most important enumeration operations.
- Focus on developing standardized procedural workarounds for PBOCS capabilities that cannot be implemented to support operations.
- Enhance technical support staff and procedures to expeditiously resolve problems in the field.

FY 2009 FISMA Assessment of Field Data Collection Automation System (OAE-19728)

On April 17, 2009, the Field Data Collection Automation (FDCA) system was granted an interim authorization to operate, allowing the system to operate under specific terms and conditions while vulnerabilities were assessed and corrected. On June 17, 2009, the authorizing official granted FDCA full authorization to operate, even though at the time Census had made only minimal progress in correcting system weaknesses. We found that the authorizing official should have extended the interim authorization to operate rather than issuing a full authorization.

Our review also found that FDCA's system security plans and security control assessments were generally adequate but need improvement. The bureau has not established, implemented, and assessed secure configuration settings for all IT products that are part of FDCA. We made recommendations intended to provide increased assurance that the system and its information will be adequately protected for the duration of the census.

FY 2009 Financial Statement Audits (FSD-19651)

Independent auditor KPMG found that Census's balance sheet was fairly presented in all material respects and in conformity with U.S. generally accepted

Federal Information Security Management Act of 2002 (Title III, P.L. 107-347)

The Federal Information Security Management Act of 2002 (FISMA) requires federal agencies to identify and provide security protection of information collected or maintained by it or on its behalf. Inspectors general are required to annually evaluate agencies' information security programs and practices. These evaluations must include testing of a representative subset of systems and an assessment, based on that testing, of the entity's compliance with FISMA and other applicable requirements.

accounting principles. KPMG found no instances of material noncompliance with laws, regulations, or contracts. The audit results indicate that Census's internal control structure facilitates the preparation of reliable financial and performance information.

KPMG's IT review found that while Census has taken positive steps to correct previous IT findings, there are still weaknesses related to IT controls supporting the bureau's financial management systems. Although these weaknesses are not considered a significant deficiency in Census's IT controls, we requested that Census provide us an audit action plan to address the report's findings and delineate the actions it plans to take to correct the IT vulnerabilities. We also asked that Census provide the rationale or legal basis behind its decision should it choose not to implement KPMG's recommendations.

Congressional Testimony

During the reporting period, the Inspector General and the Associate Deputy Inspector General testified on various aspects of the 2010 Census at hearings before the House Committee on Oversight and Government Reform (March 25, 2010, and October 21, 2009) and the Senate Committee on Homeland Security and Governmental Affairs (February 23, 2010, and October 7, 2009). Their statements are available at www.oig.doc.gov.

COMMERCE
DEFIES EVERY WIND
OUTRIDES EVERY
TEMPEST AND INVADES
EVERY ZONE — BANCROFT





NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY

The **National Institute of Standards and Technology** promotes U.S. innovation and industrial competitiveness by advancing measurement science, standards, and technology in ways that enhance economic security and improve quality of life. NIST manages four programs: the Technology Innovation Program, the Manufacturing Extension Partnership program, the Baldrige National Quality Program, and NIST Research Laboratories.

State of Ohio Department of Development MEP Award 70NANB5H1188 (DEN-18604)

In September 2005, NIST awarded an MEP cooperative agreement to the State of Ohio Department of Development (ODOD) to continue operating an existing MEP center. The award funded the period July 1, 2005, through June 30, 2006, and was later extended through June 30, 2007. Total estimated project costs for the 24-month award period were \$27,272,502.

In May 2007, we initiated an audit of the agreement to determine whether the recipient complied with award terms and conditions and NIST operating guidelines for MEP centers. The audit covered the period July 1, 2005, through March 31, 2007, during which time the recipient claimed project costs of \$20,269,989 and received federal reimbursements totaling \$6,517,538.

Our audit questioned \$6,781,041 in costs claimed by ODOD and cost claims of two grant subrecipients, Manufacturing Advocacy and Growth Network (MAGNET) and TechSolve, Inc. The costs in ques-

Manufacturing Extension Partnership (MEP) Program

Congress established the MEP program in 1988 to offer technical and business management assistance to manufacturers, with the goal of improving their profitability, productivity, and global competitiveness.

Operated by NIST, the program provides partial federal funding to 59 nonprofit organizations (at least one in every state) to operate MEP centers that offer an array of services to business and industry clients. The funding is made available through cooperative agreements that require nonfederal matching funds from state or regional partners to support center operations.

tion pertained to contractual claims, salaries and other personnel costs, invalid travel-related claims, and various indirect costs. We also found that the subrecipients did not report program income¹ gener-

¹ Program income is revenue generated from activities conducted under a financial assistance award. The most common form of program income under an MEP award is fees collected from manufacturers for training or other services provided by the MEP center. MEP rules require program income to be used to fund the nonfederal share of allowable costs. Any excess program income must be used to reduce the federal cost share, unless NIST approves carrying the excess forward to pay nonfederal expenses in a subsequent year.

ated under their subawards to ODO; consequently, ODO did not report this information to NIST. The two subrecipients also generated program income in excess of that permissible under the cooperative agreement.

We analyzed MAGNET's and TechSolve's accounting records for the period July 1, 2005, through June 30, 2006, and found the two subrecipients had generated a combined program income of \$1,424,266 in excess of what was required to pay the nonfederal share of project costs.

As a result of the questioned costs and excess program income, ODO received \$2,057,121 more than it should have in federal funds.

We recommended the chief of NIST's Grants and Agreement Management Division:

- disallow \$6,781,041 in questioned costs;
- deduct \$1,424,266 in excess program income from total accepted project costs from ODO's subrecipients; and
- recover \$2,057,121 of excess federal funds from ODO.

Missing Audit Reports from NIST ATP Grant Recipients (ATL-19891)

Established in 1990, the Advanced Technology Program (ATP) works through partnerships with private-sector grant recipients to develop innovative technologies that promise significant commercial payoffs and widespread benefits for the nation. ATP was set up as a cost reimbursement program that granted awards up to 5 years. Some awards require that the grant recipients provide matching funds while others are fully funded by ATP. The program received its final funding in 2007 and is scheduled to close out in 2012.

Under Department and NIST regulations, grant recipients must submit independent audits of project costs to NIST and OIG. The audits must be conducted at certain intervals during the performance of the project and at its completion. NIST's Grants and Agreement Management Division collects and

reviews these reports and maintains the grant files. The reports are among the tools that should be used by NIST project managers and grant officials to ensure federal funds are spent for their intended purpose. OIG reviews the audit reports for completeness and reportable findings and maintains a database of the audit reports.

Our review covered audit reports that were due from the program's inception in 1990 through awards that expired in May 2007. We found that NIST had not met its responsibilities to monitor the ATP awards by collecting recipient audit reports and ensuring that recipients have the required audits conducted. During this time period, NIST identified 213 awards with project costs totaling \$482 million that did not have audit reports as part of their records. NIST did not know whether these grant recipients had actually conducted the audits. By not diligently monitoring audit report submissions, NIST did not ensure that these project costs were properly audited, thereby increasing the risk of misuse of federal funds.

We recommended that the director of NIST require that agency management collect the missing audit reports and provide OIG with copies, suspend funding to grantees that do not provide missing reports, and ensure that NIST meets its monitoring responsibilities. NIST needs to improve its management oversight procedures, not only to correct ATP problems but also to reduce the future risk of misuse of federal funds in ATP's successor program, the Technology Innovation Program.

NIST initiated an effort to deal with the missing reports in 2008 but suspended that effort. We addressed this issue because of its significance and to emphasize that NIST's senior management needs to ensure that the issue is appropriately resolved.

Guilty Plea from NIST Grant Recipient Under Investigation for Grant Fraud

In 2005, OIG received a complaint alleging that a NIST ATP grantee, Whoola Incorporated, was illegally diverting funds received from a \$2 million, 3-year ATP grant to a sister company. In October 2006, the U.S. Attorney's Office for the Northern District

of Texas accepted the case for prosecution. During the investigation, the subject company surrendered to OIG agents 11 computer systems and 5 computer servers, estimated to be worth approximately \$100,000. In July 2009, the company voluntarily repaid \$76,000 in grant funds. In January 2010, in the U.S. District Court for the Northern District of Texas, the principal investigator for the project was charged and pled guilty to one count of violating 18 USC § 666. In the signed plea agreement, the scientist admitted to misappropriating \$70,000 in grant funds. He could face up to 10 years incarceration and fines up to \$250,000. Sentencing is scheduled to occur in May 2010.

1871



BUREAU OF
FISHERIES



NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

The **National Oceanic and Atmospheric Administration** mission is to understand and predict changes in Earth's environment and conserve and manage coastal and marine resources to meet our nation's economic, social, and environmental needs. NOAA does this through six line offices:

National Weather Service reports the weather of the United States and provides weather forecasts and warnings to the general public.

National Ocean Service provides products, services, and information to promote safe navigation, support coastal communities, sustain marine ecosystems, and mitigate coastal hazards.

National Marine Fisheries Service conducts a program of management, research, and services related to the protection and rational use of living marine resources.

National Environmental Satellite, Data, and Information Service observes the environment by operating a national satellite system.

Office of Oceanic and Atmospheric Research conducts research related to the oceans and Great Lakes, the lower and upper atmosphere, space environment, and the Earth.

Office of Program Planning and Integration develops and coordinates NOAA's strategic plan, supports organization-wide planning activities, guides managers and employees on program and performance management, and integrates policy analyses with decision-making.

Review of NOAA Fisheries Enforcement Programs and Operations (OIG-19887)

NOAA is entrusted with broad statutory enforcement powers to promote compliance and deter violations within the nation's fisheries, primarily those involving the commercial fishing industry. This calls for the highest degree of oversight by NOAA leadership to ensure fairness and consistency in enforcement activities and sanctions, promote program integrity and accountability, and avoid even the appearance of abuse of authority. Although

NOAA's enforcement operations have not garnered a great deal of attention from senior management, they have great potential to affect the fishing industry, the livelihood of individual fishermen, and the public's confidence in NOAA and the Department.

We undertook our review at the request of the Under Secretary of Commerce for Oceans and Atmosphere, who also serves as the Administrator of NOAA. She had been contacted by five members of the Massachusetts congressional delegation and state elected officials, as well as by both U.S. Senators and multiple Representatives from North Carolina, recounting

complaints of excessive penalties and retaliatory actions by NOAA fisheries enforcement officials.

The latest of several OIG reviews conducted over the past 12 years on various aspects of NOAA's National Marine Fisheries Service (NMFS) fisheries enforcement issues, we evaluated the policies and practices of NMFS' Office of Law Enforcement (OLE) and NOAA's Office of General Counsel for Enforcement and Litigation (GCEL). Our review focused on evaluating (1) how OLE and GCEL conduct enforcement operations within a regulatory environment; (2) the process used by OLE and GCEL to establish priorities with respect to enforcement actions and penalty assessments, and whether such actions and penalties are within established legal parameters; and (3) the resources applied by NOAA to the enforcement function, including the management and use of funds obtained through imposed penalties.

We found systemic, nationwide issues adversely affecting NOAA's ability to effectively carry out its mission of regulating the fishing industry. These issues have contributed significantly to a highly charged regulatory climate and dysfunctional relationship between NOAA and the fishing industry—particularly in the Northeast Region. If not addressed by NOAA's senior leadership, these issues have the potential to further strain the tenuous relationship that exists in the Northeast Region, and to become problematic in NOAA's other regions.

Our findings reflected that:

- NOAA senior leadership and headquarters elements need to exercise substantially greater management and oversight of regional enforcement operations, to include setting priorities, implementing effective management information systems, and utilizing data to inform management decisions and enforcement activities.
- NOAA needs to strengthen policy guidance, procedures, and internal controls in its enforcement operations to make the civil penalty assessment process more transparent and appear less arbitrary and unfair. NOAA also needs to revise applicable procedural regulations and penalty schedules to provide greater consistency, clarity, and reduce confusion with affected industry parties.
- NOAA needs to reassess its OLE workforce composition (presently 90 percent criminal investigators) to determine if this criminal enforcement-oriented structure is the most effective means to accomplish its primarily regulatory mission (i.e., based on OLE's data, its caseload from January 1, 2007, through June 30, 2009, was about 98 percent non-criminal.)

We recommended that NOAA take the following actions:

- Ensure that NOAA leadership regularly addresses and provides input to enforcement priorities and strategies with regional management, including formal reporting protocols. Given the complexities of NOAA's mission and organization, the industry, and the current enforcement climate, its setting of enforcement priorities should involve integration and coordination with the headquarters fisheries management and science center elements, including the Assistant Administrator for NMFS—to whom OLE reports. Further, NOAA should consider reestablishing the position of ombudsman to serve as an interface with the regulated industry.
- Determine whether NOAA should continue to approach fisheries enforcement from a criminal-investigative standpoint, and, if another approach is determined to be more appropriate, align OLE's workforce composition accordingly. In particular, NOAA should determine whether OLE has an appropriate balance and alignment of uniformed enforcement officers/inspectors and criminal investigators, based on mission need.
- To promote greater transparency, consistency, and oversight in NOAA's enforcement processes and operations, (a) ensure that GCEL develops, implements, and follows an internal operating procedures manual that includes comprehensive processes, methods, and justification for determining civil penalty assessments and fine settlement amounts; (b) institute a mechanism for higher-level review of civil penalty assessment determinations by GCEL attorneys in advance; and (c) ensure that OLE's *National Enforcement Operations Manual* is current, including providing sufficient policy guidance on regulatory and criminal authorities and procedures.

- Ensure follow-through on the GCEL initiatives outlined in its December 1, 2009, memorandum, intended to foster greater industry understanding of and compliance with complex fishing regulations.
- Ensure that GCEL and OLE develop, implement, and effectively utilize reliable, integrated case management information systems.

Based on our results, the following three areas require and will receive additional review by our office:

- *NOAA's Retention of Civil Penalties and Its Asset Forfeiture Fund.* Fishermen and other industry sources expressed concern to us that NOAA's fines are excessive, constituting a form of bounty, because it retains the proceeds from enforcement cases. We determined that NOAA has an asset forfeiture fund comprising such proceeds, with an agency-reported balance of \$8.4 million as of December 31, 2009. The asset forfeiture fund account has weak internal controls, and we could not readily determine how NOAA has utilized these funds. We have commissioned a forensic review of the fund.
- *NOAA's Progress in Addressing OIG's Results.* We will review and report on NOAA's progress in carrying out its actions in response to our findings and recommendations.
- *Individual Complaints.* During our review we received specific complaints from dozens of fishermen, including alleged abuses of authority by NOAA enforcement personnel, disparate treatment, and excessive fines. We are examining these complaints and the corresponding enforcement case files to determine whether any additional action is necessary or recommended, either by our office or by NOAA.

FY 2009 FISMA Assessment of the Environmental Satellite Processing Center (OAE-19730)

During our review of one NOAA system, we found that NOAA's National Environmental Satellite, Data, and Information Service has not followed the required process for certification and accreditation of

its Environmental Satellite Processing Center (ESPC). A lack of proper security planning undermined the effectiveness of the system's security certification, hindering the authorizing official in making a credible, risk-based accreditation decision. The system's plan of action and milestones for remediating vulnerabilities is ineffective.

We recommended that NOAA complete security planning activities, conduct appropriate security control assessments, address system deficiencies, and revise the system's accreditation status to an interim authorization to operate until it has completed these actions.

Investigation of NOAA Ship Repair Yields Cost Savings, Management Improvements

A June 2009 allegation to OIG of software licensing violations by a NOAA contractor for shipboard computer systems led to an investigation that disclosed an organizational conflict of interest. As a result, NOAA's Acquisitions Division excluded the contractor's bids on a major acquisition for NOAA ships. In March 2010, NOAA reported savings of \$537,360, which represented the difference between the excluded contractor's bid and the bid the winner submitted after NOAA re-solicited the contract. To rectify lack of competition findings, NOAA Marine Operations instituted a training program with its contracting officers and contracting officers' technical representatives and tightened the requirements on justifications for non-competitive awards.

Congressional Testimony

The Inspector General testified on NOAA fisheries enforcement before the Senate Committee on Commerce, Science, and Transportation (March 3, 2010), House Committee on Natural Resources (March 3), and House Committee on Oversight and Government Reform (field hearing in Gloucester, Massachusetts, March 2). His statements are available at www.oig.doc.gov.



NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION

The **National Telecommunications and Information Administration** serves as the executive branch's principal advisor to the President on domestic and international telecommunications and information policy issues. NTIA manages the federal use of the electromagnetic spectrum; provides grants for national information and public broadcasting infrastructure projects; and performs telecommunications research and engineering. It works to enhance citizens' access to cable television, telephone, and other telecommunications services; and educates state and local governments and other entities on ways to use information technology and telecommunications more effectively.

Arkansas PSIC Grant Award No. 2007-GS-H7-0012 (DEN-19430)

On September 30, 2007, NTIA awarded an \$11,169,402 PSIC grant to the State of Arkansas to enhance interoperable emergency communications. The original award period ran from October 1, 2007, to September 30, 2010. In November 2009, the President signed an act extending the award period to September 30, 2011, by which time all funds must be expended. The governor of Arkansas designated the Arkansas Department of Emergency Management (ADEM) as Arkansas's state administrative agency to apply for and administer PSIC funds.

Our audit covered the award period of October 1, 2007, through December 31, 2008, during which time Arkansas claimed total costs of \$1,512,347. We found that ADEM generally complied with grant terms and conditions. ADEM asserted that all investments are on schedule to be completed by September 30, 2010.

Digital Television Transition and Public Safety Act of 2005 (P.L. 109-171)

The Digital Television Transition and Public Safety Act of 2005 authorized NTIA, in consultation with the Department of Homeland Security (DHS), to implement the Public Safety Interoperable Communications (PSIC) program—a \$1 billion one-time, formula-based matching grant program intended to enable public safety agencies to establish interoperable emergency communications systems using real-located radio spectrum. NTIA required a minimum 20 percent matching share from nonfederal sources for the acquisition and deployment of communications equipment, and management and administration costs.

The Implementing Recommendations of the 9/11 Commission Act of 2007 require OIG to conduct financial audits, over 4 years, of a representative sample of at least 25 states or territories receiving PSIC grants.

Pennsylvania PSIC Grant Award No. 2007-GS-H7-0028 (DEN-19429)

On September 30, 2007, NTIA awarded a \$34,190,555 PSIC grant to the Commonwealth of Pennsylvania to enhance interoperable emergency communications. The governor of Pennsylvania designated the Pennsylvania Emergency Management Agency (PEMA) as Pennsylvania's state administrative agency to apply for and administer PSIC funds. We audited costs claimed by PEMA to determine whether the recipient complied with NTIA PSIC grant guidelines and DHS award terms and conditions.

Our audit covered the award period of October 1, 2007, through December 31, 2008, during which time PEMA claimed total costs of \$346,850. In general, we found PEMA to be in compliance with requirements. The agency asserted it is on track to complete the project on time.

1802



PATENT
OFFICE



UNITED STATES PATENT AND TRADEMARK OFFICE

The **United States Patent and Trademark Office** administers the nations patent and trademark laws. Patents are granted and trademarks registered under a system intended to provide incentives to invent, invest in research, commercialize new technology, and draw attention to inventions that would otherwise go unnoticed. USPTO also collects, assembles, publishes, and disseminates technological information disclosed in patents.

FY 2009 Financial Statement Audits (FSD-19650)

Independent auditor KPMG found that USPTO's financial statements were fairly presented in all material respects and in conformity with U.S. generally accepted accounting principles. KPMG found no instances of material noncompliance with laws, regulations, or contracts. The audit results indicate that USPTO's internal control structure facilitates the preparation of reliable financial and performance information.

The IT review found that while USPTO has taken positive steps to correct previous findings, there are still several weaknesses in its IT environment. These weaknesses combine to form a significant deficiency in USPTO's IT controls. We requested that USPTO provide an audit action plan to address the report's findings and delineate the actions it plans to take to correct its IT vulnerabilities. We also asked that USPTO provide its rationale or the legal basis behind its decision should it choose not to implement KPMG's recommendations.

FY 2009 FISMA Assessment of the Enterprise UNIX Services System (OAE-19729)

We found that while this system security plan was generally adequate, some inaccuracies need to be addressed. Likewise, security control assessments were generally adequate but improvements are needed. Our control assessment found some vulnerabilities that require remediation. Despite these deficiencies, the authorizing official received sufficient information to make a credible, risk-based decision to approve system operation. We recommended USPTO resolve the issues we identified, utilizing the system's plan of action and milestones accordingly.

FY 2009 FISMA Assessment of the Patent Cooperation Treaty Search Recordation System (OAE-19731)

Although we found minor deficiencies, USPTO's certification and accreditation (C&A) process produced sufficient information to enable the authorizing officials to make a credible, risk-based accreditation decision. Our evaluation of the system's

security controls also found only minor deficiencies. In order to ensure compliance with FISMA requirements, USPTO should resolve the minor deficiencies we reported in our assessment.

Former USPTO Employee and Co-conspirator Sentenced in \$500,000 Embezzlement Scheme

In our September 2009 *Semiannual Report to Congress* (page 37), OIG's Office of Investigations reported that on August 27, 2009, a former USPTO financial analyst pled guilty on charges of conspiracy to commit wire fraud in violation of 18 USC § 1349, in connection with an embezzlement scheme. This followed the August 10, 2009, guilty plea of her co-conspirator, who was not affiliated with the federal government. The former USPTO employee managed an account into which USPTO customers deposited funds for the purpose of paying expenses incurred in processing their patent and trademark applications. From 1998 to 2005, the former USPTO employee transferred funds from this account to accounts controlled by the co-conspirator. The former USPTO employee fraudulently concealed the transfers by making them look like refund payments to USPTO customers. Her co-conspirator then paid a portion of the stolen funds back to her in cash. The former USPTO employee engaged in 32 fraudulent transfers from USPTO totaling \$534,338.55. Twenty-seven of the transactions, accounting for \$451,252.17, involved the co-conspirator.

On November 20, 2009, the former USPTO employee and her co-conspirator were each sentenced to 18 months in prison, followed by three years of supervised release. They were also ordered to jointly and severally pay \$527,478.55 in restitution.

Irregularities in refunds being made from the deposit account were first detected by new management in USPTO's Office of Financial Management. They reported the irregularities to auditors from our Office of Audit and Evaluation. An ensuing investigation conducted by our Office of Investigations uncovered the full extent of the conspiracy and fraudulent acts which were reported to the U.S. Attorney's Office for the Eastern District of Virginia for prosecution.

Contractor Agrees to Major Settlement in Defective Products Case

In August 2006, OIG's Office of Investigations received a civil fraud complaint from a whistleblower alleging that a large contractor, EMC Corporation, knowingly provided USPTO with data storage computers containing a defective microchip manufactured by a subcontractor. The complaint further alleged that the corporation concealed information regarding the defect, resulting in service interruptions at USPTO. In October 2009, the contractor and the U.S. Department of Justice reached a settlement agreement of \$3.5 million, plus interest earned. As provided by the False Claims Act, the whistleblower was awarded 18 percent of the settlement amount.

STATISTICAL DATA

Statistical Overview

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Table 1. Investigative Statistical Highlights for this Period

Investigative Activities	
Investigations opened	9
Investigations closed	6
Arrests	0
Indictments/Informations	1
Convictions	1
Personnel actions	5
Fines, settlements, restitution, judgments, and all other criminal, civil and administrative recoveries	\$4,027,679
Allegations Processed	
Hotline complaints processed	225
Total complaints, all sources	266
Referrals to operating units	163
Evaluated but not accepted for investigation or referral	94

Audit Resolution and Follow-Up

The Inspector General Act Amendments of 1988 require us to present in this report those audits issued before the beginning of the reporting period (October 1, 2009) for which no management decision had been made by the end of the period (March 31, 2010). Seven audit reports remain unresolved for this reporting period (see page 49).

Department Administrative Order 213-5, *Audit Resolution and Follow-up*, provides procedures for management to request a modification to an approved audit action plan or for a financial assistance recipient to appeal an audit resolution determination. The following table summarizes modification and appeal activity during the reporting period.

Table 2. Audit Resolution and Follow-Up

Report Category	Modifications	Appeals
Actions pending (October 1, 2009)	0	2
Submissions	0	0
Decisions	0	2
Actions pending (March 31, 2010)	0	0

Table 3. Audit and Evaluation Statistical Highlights for this Period

Questioned costs	\$6,434,646
Value of audit recommendations that funds be put to better use	5,240,266
Value of audit recommendations agreed to by management	1,912,870

Table 4. Audits with Questioned Costs

Category	Number	Questioned Costs	Unsupported Costs
A. Reports for which no management decision had been made by the beginning of the reporting period	16	\$28,133,341	\$5,066,779
B. Reports issued during the reporting period	11	6,434,646	2,497,620
Total reports (A+B) requiring a management decision during the period ¹	27	34,567,987	7,564,399
C. Reports for which a management decision was made during the reporting period	15	13,051,167	4,964,155
i. Value of disallowed costs		1,907,522	56,132
ii. Value of costs not disallowed		11,143,645	4,908,023
D. Reports for which no management decision had been made by the end of the reporting period	12	21,516,820	2,600,244

¹ One audit report included in this table is also included among reports with recommendations that funds be put to better use (see Table 5). However, the dollar amounts do not overlap.

Table 5. Audits with Recommendations that Funds Be Put to Better Use

Report Category		Number	Value
A.	Reports for which no management decision had been made by the beginning of the reporting period	2	\$1,098,843
B.	Reports issued during the reporting period	2	5,240,266
Total reports (A+B) requiring a management decision during the period ¹		4	6,339,109
C.	Reports for which a management decision was made during the reporting period	1	5,348
	i. Value of recommendations agreed to by management		5,348
	ii. Value of recommendations not agreed to by management		0
D.	Reports for which no management decision had been made by the end of the reporting period	3	6,333,761

¹ One audit report included in this table is also included among reports with questioned costs (see Table 4). However, the dollar amounts do not overlap.

Definitions of Terms Used in the Tables

Questioned cost: a cost questioned by OIG because of (1) an alleged violation of a provision of a law, regulation, contract, grant, cooperative agreement, or other agreement or document governing the expenditure of funds; (2) a finding that, at the time of the audit, such cost is not supported by adequate documentation; or (3) a finding that an expenditure of funds for the intended purpose is unnecessary or unreasonable.

Unsupported cost: a cost that, at the time of the audit, is not supported by adequate documentation. Questioned costs include unsupported costs.

Recommendation that funds be put to better use: an OIG recommendation that funds could be used more efficiently if Commerce management took action to implement and complete the recommendation, including (1) reductions in outlays; (2) deobligation of funds from programs or operations; (3) withdrawal of interest subsidy costs on loans or loan guarantees, insurance, or bonds; (4) costs not incurred by implementing recommended improvements related to Commerce, a contractor, or a grantee; (5) avoidance of unnecessary expenditures identified in pre-award reviews of contracts or grant agreements; or (6) any other savings specifically identified.

Management decision: management's evaluation of the findings and recommendations included in the audit report and the issuance of a final decision by management concerning its response.

Appendix A. Report Types this Period

Type	Number of Reports	Appendix Number
Performance audits	1	A-1
Financial assistance audits	3	A-2
Financial statements audits	6	A-3
Evaluations and inspections	10	A-4
Total	20	

Appendix A-1. Performance Audit

Report Title	Report Number	Date Issued	Funds to Be Put to Better Use
Office of the Secretary			
Commerce Has Implemented Operations to Promote Accurate Recipient Reporting, but Improvements Are Needed	ARR-19847	10.30.09	0

Appendix A-2. Financial Assistance Audits

Report Title	Report Number	Date Issued	Funds to Be Put to Better Use	Amount Questioned	Amount Unsupported
National Institute of Standards & Technology					
State of Ohio Department of Development	DEN-18604	03.29.10	\$1,424,266	\$2,237,744	0
National Telecommunications and Information Administration					
Pennsylvania Public Safety Interoperable Communications Grant	DEN-19429	03.17.10	0	0	0
Arkansas Public Safety Interoperable Communications Grant	DEN-19430	03.22.10	0	0	0

Appendix A-3. Financial Statements Audits

Report Title	Report Number	Date Issued	Funds to Be Put to Better Use
Census Bureau			
FY 2009 Financial Statements Audit Assessment of Information Technology Controls Supporting Financial Management Systems	FSD-19651-01	11.9.09	0
FY 2009 Financial Statements	FSD-19651-02	11.10.09	0
Office of the Secretary			
FY 2009 Financial Statements Audit Assessment of Information Technology Controls Supporting Financial Management Systems	FSD-19652-01	11.09.09	0
FY 2009 Special-Purpose Financial Statements	FSD-19652-03	11.30.09	0
Patent and Trademark Office			
FY 2009 Financial Statements Audit Assessment of Information Technology Supporting Financial Management Systems	FSD-19650-01	11.09.09	0
FY 2009 Financial Statements	FSD-19650-02	11.10.09	0

Appendix A-4. Evaluations and Inspections

Report Title	Report Number	Date Issued	Funds to Be Put to Better Use
Census Bureau			
FY 2009 FISMA Assessment of the Field Data Collection Automation System	OAE-19728	11.20.09	0
2010 Census: Quarterly Report to Congress, December 2009	OIG-19791-2	12.18.09	0
2010 Census: Quarterly Report to Congress, February 2010	OIG-19791-3	02.16.10	0
National Institute of Standards and Technology			
Missing Audit Reports from NIST ATP Grant Recipients	ATL-19891	03.31.10	0
National Oceanic and Atmospheric Administration			
FY 2009 FISMA Assessment of the Environmental Satellite Processing Center	OAE-19730	01.06.10	0
Review of NOAA Fisheries Enforcement Programs and Operations ¹	OIG-19887	01.21.10	0
Office of the Secretary			
Improvements Recommended for Commerce Pre-Award Guidance and NIST and NOAA Processes for Awarding Grants	ARR-19841	10.29.09	0
More Automated Processing by Commerce Bureaus Would Improve Recovery Act Reporting	ARR-19779	12.18.09	0
Patent and Trademark Office			
FY 2009 FISMA Assessment of the Enterprise UNIX Services System	OAE-19729	11.20.09	0
FY 2009 FISMA Assessment of the Patent Corporation Treaty Search Recordation System	OAE-19731	11.20.09	0

¹ Report issued by the Office of Investigations.

Appendix B. Processed Audit Reports

The Office of Inspector General reviewed and accepted 147 audit reports prepared by independent public accountants and local, state, and other federal auditors. The reports processed with questioned costs, recommendations that funds be put to better use, and/or nonfinancial recommendations are listed in Appendix B-1.

Agency	Audits
Economic Development Administration	49
International Trade Administration	1
Minority Business Development Agency	1
National Institute of Standards and Technology ¹	31
National Oceanic and Atmospheric Administration	33
National Telecommunications and Information Administration	3
Multi-Agency	25
No Commerce expenditures	3
Not identified by agency	1
Total	147

¹ Includes 27 Advanced Technology Program (ATP) program-specific audits.

Appendix B-1. Processed Reports with Audit Findings

Report Title	Report Number	Date Issued	Funds to Be Put to Better Use	Amount Questioned	Amount Unsupported
Economic Development Administration					
City of Los Angeles, CA	ATL-09999-10-3566	11.13.09	0	\$1,685,000	1,685,000
Seneca County Industrial Development Agency, NY	ATL-09999-10-3632	11.20.09	0	275,000	0
City of Richmond, IN	ATL-09999-10-3658	01.20.10	0	300,000	0
Central Savannah River Area Regional Development Center, GA	ATL-09999-10-3678	01.20.10	0	424,205	0
Erie County Industrial Development Agency and Affiliates, NY	ATL-09999-10-3669	02.05.10	3,816,000	0	0
Franklin County Community Development Corporation, MA	ATL-09999-10-3687	03.11.10	0	22,963	22,963
National Institute of Standards & Technology					
QD Vision, Inc., MA	ATL-09999-10-3455	11.20.09	0	12,938	12,938
SimQuest International LLC, MD	ATL-09999-10-3459	11.13.09	0	28,381	0
National Oceanic & Atmospheric Administration					
North Pacific Marine Science Foundation, WA	ATL-09999-10-3631	11.05.09	0	25,851	0
Howard University, DC	ATL-09999-10-3578	12.03.09	0	825,029	776,719
Smithsonian Institution, DC	ATL-09999-10-3603	12.16.09	0	597,535	0

Audits Unresolved for More Than 6 Months

Census Bureau

Computer & High Tech Management, Inc.

In our September 2005 *Semiannual Report* (page 14), we reported the results of audits of 2 of the 21 task orders for IT services that Computer & High Tech Management, Inc., was providing to Census. We sought to determine whether the firm had complied with contract terms and conditions and federal regulations and had billed Census for work performed in accordance with specifications of the task order. We found that the firm failed to comply with numerous contract and federal requirements, which caused us to question more than \$10.7 million in direct labor and other reimbursable costs. We have suspended audit resolution on this contract audit pursuant to an agreement with Census.

NIST

Manufacturing Extension Partnership Program

In our March 2009 *Semiannual Report*, we discussed our audits of the operations of three centers, located in South Carolina, Florida, and Massachusetts, that received cooperative agreements under the NIST MEP program. An additional center was audited and results reported in our September 2009 *Semiannual Report*. Our audits questioned over \$20 million in costs claimed. Resolution has proven to be complex, and NIST has not provided us with the initial audit resolution proposals. (ATL-18567, ATL-18568, DEN-18135, DEN-18573)

NOAA

Alaska Eskimo Whaling Commission

As reported in our March 2009 *Semiannual Report*, a single audit review of this NOAA grant questioned costs totaling \$66,353 in expenditures that were not adequately documented. We have suspended audit resolution on this grant audit pursuant to an agreement with NOAA. (ATL-09999-8-3238)

REPORTING REQUIREMENTS

The Inspector General Act of 1978, as amended, specifies reporting requirements for semiannual reports. The requirements are listed below and indexed to the applicable pages of this report.

Section	Topic	Pages
4(a)(2)	Review of Legislation and Regulations	50
5(a)(1)	Significant Problems, Abuses, and Deficiencies	19-40
5(a)(2)	Significant Recommendations for Corrective Action	19-40
5(a)(3)	Prior Significant Recommendations Unimplemented	50
5(a)4	Matters Referred to Prosecutive Authorities	41
5(a)(5) and 6(b)(2)	Information or Assistance Refused	50
5(a)(6)	Listing of Audit Reports	44-48
5(a)(7)	Summary of Significant Reports	19-40
5(a)(8)	Audit Reports—Questioned Costs	42
5(a)(9)	Audit Reports—Funds to Be Put to Better Use	43
5(a)(10)	Prior Audit Reports Unresolved	49
5(a)(11)	Significant Revised Management Decisions	51
5(a)(12)	Significant Management Decisions with which OIG Disagreed	51

Section 4(a)(2): Review of Legislation and Regulations

This section requires the inspector general of each agency to review existing and proposed legislation and regulations relating to that agency's programs and operations. Based on this review, the inspector general is required to make recommendations in the semiannual report concerning the impact of such legislation or regulations on the economy and efficiency of the management of programs and operations administered or financed by the agency or on the prevention and detection of fraud and abuse in those programs and operations. Comments concerning legislative and regulatory initiatives affecting Commerce programs are discussed, as appropriate, in relevant sections of the report.

Section 5(a)(3): Prior Significant Recommendations Unimplemented

This section requires identification of each significant

recommendation described in previous semiannual reports for which corrective action has not been completed. Section 5(b) requires that the Secretary transmit to Congress statistical tables showing the number and value of audit reports for which no final action has been taken, plus an explanation of the reasons why recommended action has not occurred, except when the management decision was made within the preceding year.

To include a list of all significant unimplemented recommendations in this report would be duplicative. Information on the status of any audit recommendations can be obtained through OIG's Office of Audit and Evaluation.

Sections 5(a)(5) and 6(b)(2): Information or Assistance Refused

These sections require a summary of each report to the Secretary when access, information, or assistance

has been unreasonably refused or not provided. There were no instances during this semiannual period and no reports to the Secretary.

Section 5(a)(10): Prior Audit Reports Unresolved

This section requires a summary of each audit report issued before the beginning of the reporting period for which no management decision has been made by the end of the reporting period (including the date and title of each such report), an explanation of why a decision has not been made, and a statement concerning the desired timetable for delivering a decision on each such report. There were one NOAA, four NIST, and two Census reports more than 6 months old.

Section 5(a)(11): Significant Revised Management Decisions

This section requires an explanation of the reasons for any significant revision to a management decision

made during the reporting period. Department Administrative Order 213-5, Audit Resolution and Follow-up, provides procedures for revising a management decision. For financial assistance audits, OIG must concur with any decision that would change the audit resolution proposal in response to an appeal by the recipient. The decisions issued on the two appeals of audit-related debts were finalized with the full participation and concurrence of OIG.

Section 5(a)(12): Significant Management Decisions with Which OIG Disagreed

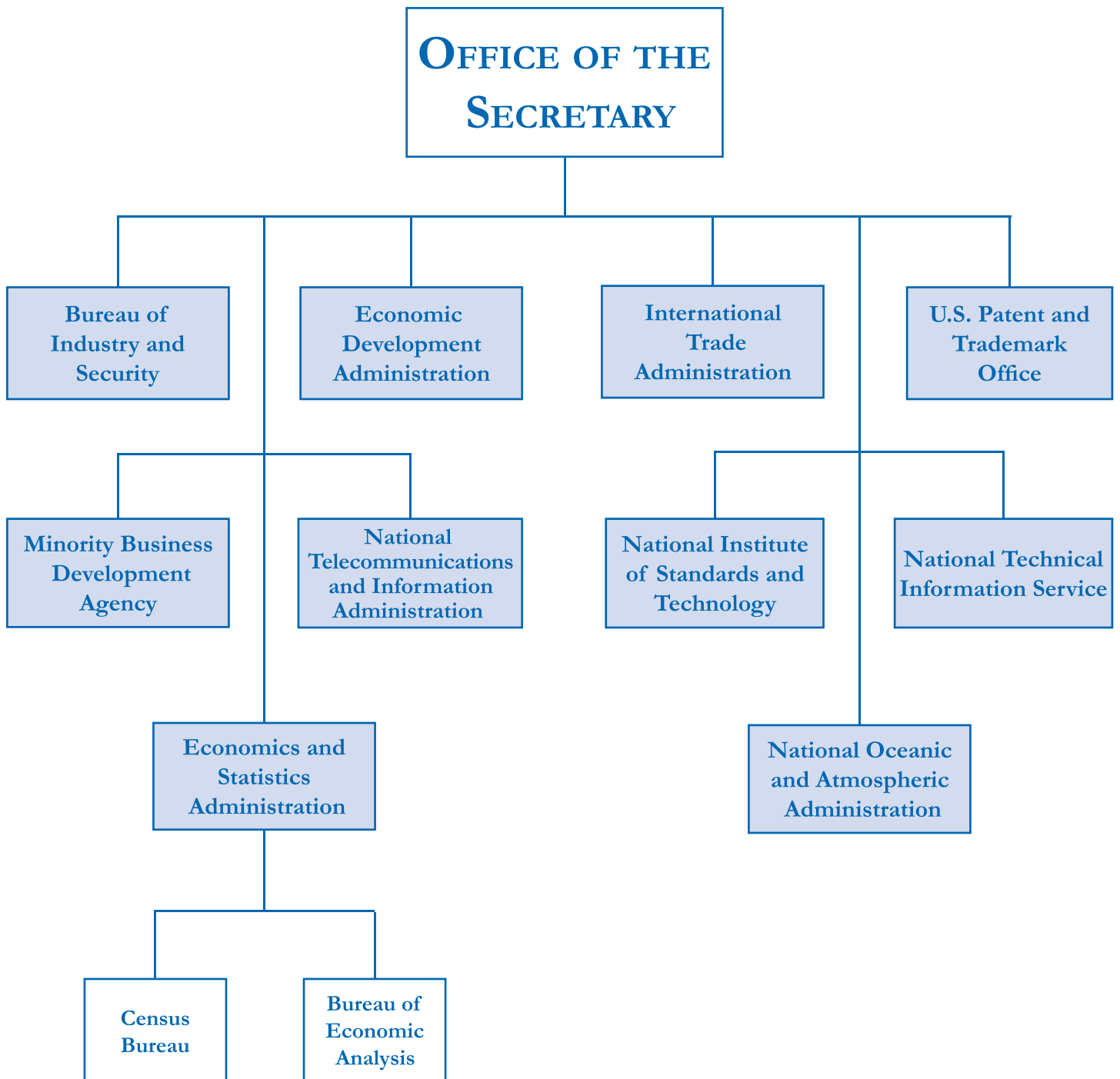
This section requires information concerning any significant management decision with which the inspector general disagrees. Department Administrative Order 213-5 provides procedures for elevating unresolved audit recommendations to higher levels of Department and OIG management, including their consideration by an Audit Resolution Council. During this period no audit issues were referred.

ACRONYMS AND ABBREVIATIONS

ADEM	Arkansas Department of Emergency Management	NASA	National Aeronautics and Space Administration
ATP	Advanced Technology Program	NIST	National Institute of Standards and Technology
BIS	Bureau of Industry and Security	NOAA	National Oceanic and Atmospheric Administration
BTOP	Broadband Technology Opportunities Program	NMFS	National Marine Fisheries Service
C&A	certification and accreditation	NPOESS	National Polar-orbiting Operational Environmental Satellite System
CBS	Commerce Business System	NPP	NPOESS Preparatory Project
COR	contracting officer's representative	NRFU	Nonresponse Follow-up
COTR	contracting officer's technical representative	NTIA	National Telecommunications and Information Administration
DAPPS	Decennial Applicant, Personnel, and Payroll System	OAM	Office of Acquisition Management (Department of Commerce)
DRIS	Decennial Response Integration System	OIG	Office of Inspector General
EDA	Economic Development Administration	OLE	Office of Law Enforcement (NMFS)
ESA	Economics and Statistics Administration	OMB	Office of Management and Budget
FDA	Food and Drug Administration	PBOCS	Paper-based Operations Control System
FDCA	Field Data Collection Automation	PEMA	Pennsylvania Emergency Management Agency
FISMA	Federal Information Security Management Act	PSIC	Public Safely Interoperable Communications
GCEL	Office of General Counsel for Enforcement and Litigation (NOAA)	PSP	Partner Support Program
GSA	General Services Administration	Recovery Act	American Recovery and Reinvestment Act
GOES-R	Geostationary Operational Environmental Satellite-R Series	RRB	Risk Review Board (Census Bureau)
HCHB	Herbert C. Hoover Building	USHCN	U.S. Historical Climatology Network
IG	Inspector General	USPTO	United States Patent and Trademark Office
IT	information technology		
JPSS	Joint Polar Satellite System		
LCO	local Census office		
MEP	Manufacturing Extension Partnership		

U.S. Department of Commerce

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