

April 2011

RECOVERY ACT

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



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Why GAO Did This Study

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

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

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

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

RECOVERY ACT

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

What GAO Found

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

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

Examples of Recovery Act Contract and Grant Recipients with Unpaid Taxes

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

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

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United States Government Accountability Office
Washington, DC 20548

April 28, 2011

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

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

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

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

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

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

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

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

To determine, to the extent possible, the magnitude of known tax debt owed by Recovery Act contract and grant recipients, we obtained and analyzed quarterly spending reports submitted by contractors and grantees⁴ to www.recovery.gov (Recovery.gov) through July 2010.⁵ We also obtained known tax debt data from IRS as of September 30, 2009.⁶ To determine the extent to which Recovery Act contract and grant recipients had known unpaid federal taxes, we used the taxpayer identification number (TIN) as a unique identifier, and electronically matched IRS's tax debt data to the population of Recovery Act contract and grant recipients.⁷ We included only those tax debts from tax year 2008 and before to eliminate tax debt that may involve matters that are routinely resolved between the taxpayers and IRS, with the taxes paid or abated within a short time.

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

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

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

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

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

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

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

We conducted this forensic audit and related investigations from July 2010 through April 2011. We performed this forensic audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our audit findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. We performed our related investigative work in accordance with standards prescribed by the Council of the Inspectors General on Integrity and Efficiency.

Background

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

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

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

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

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

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

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

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

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

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

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

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

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

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

¹³FAR 9.104.

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

Federal Payment Levy Program

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

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

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

¹⁶26 U.S.C. § 6331(h).

¹⁷26 U.S.C. § 6331(h)(3).

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

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

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

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

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

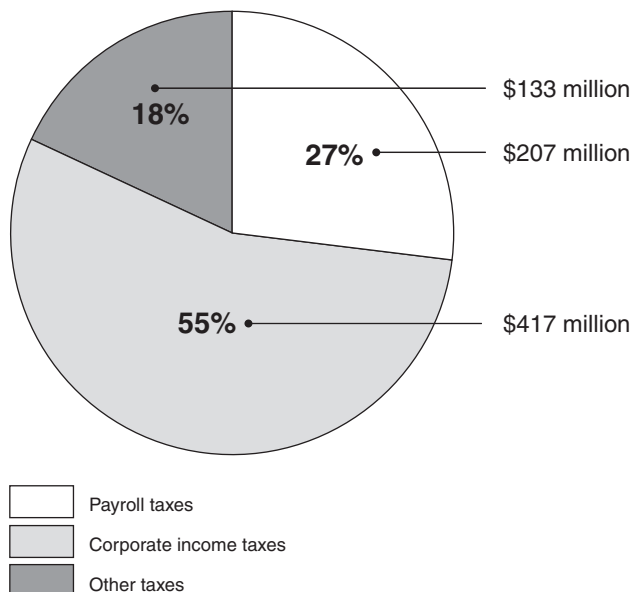
¹⁹An offer in compromise is an agreement between a tax debtor and IRS that resolves the tax debtor's tax debt by accepting less than full payment.

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

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

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

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



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

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

employer is liable for these amounts as well as the employer's matching Federal Insurance Contribution Act contributions for Social Security and Medicare. Individuals within the business (e.g., corporate officers) may be held personally liable for the withheld amounts not forwarded²¹ and assessed a civil monetary penalty known as a trust fund recovery penalty (TFRP). Failure to remit payroll taxes can also be a criminal felony offense punishable by imprisonment of not more than 5 years,²² while the failure to properly segregate payroll taxes can be a criminal misdemeanor offense punishable by imprisonment of up to a year.²³

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

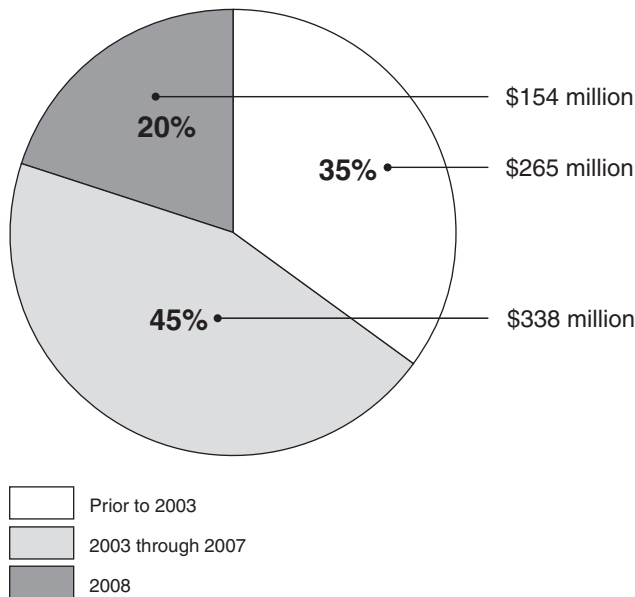
²¹26 U.S.C. § 6672.

²²26 U.S.C. § 7202.

²³26 U.S.C. § 7215 and 26 U.S.C. § 7512 (b).

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Case study	Nature of work	Total Recovery Act awards ^a	Known unpaid federal taxes ^{b, c}	Comments
Case 4	Construction	Over \$1 million	Nearly \$400 thousand	<ul style="list-style-type: none"> Company owes payroll taxes. The company generally did not make any federal tax deposits in the early to mid-2000s. According to IRS records, the company owner claimed that it did not submit taxes because of a lack of competent bookkeeping. The company submitted dishonored checks to IRS for payment of taxes. At the same time the company owed taxes, the company purchased about \$200,000 in vehicles and equipment. IRS established an installment agreement with the company to make monthly payments of \$10,000 after the company made a \$100,000 down payment. As part of this agreement, IRS agreed to not file federal tax liens. According to IRS records, the company claimed they would have gone out of business if a lien was filed because the prime government contractor would have canceled the contract. IRS assessed a TFRP against the owner for failure to pay payroll taxes.
Case 5	Construction	Under \$100 thousand	Over \$2 million	<ul style="list-style-type: none"> Company owes mostly payroll taxes from the mid-2000s. Company loaned hundreds of thousands of dollars to company officers at the same time the company was not paying its taxes. IRS assessed a TFRP against key officers for failure to pay payroll taxes. Company recently entered into negotiations with IRS to repay the debt over a 5-year period. The federal government awarded hundreds of thousands of dollars in nonstimulus funds to the company in the late 2000s. IRS filed federal tax liens against this company.
Case 6	Electrical services	Over \$100 thousand	Over \$1 million	<ul style="list-style-type: none"> Company primarily owes payroll taxes. Company is also delinquent in filing recent quarterly tax returns. IRS agreed to an installment agreement because the company was a major subcontractor on an important project. According to IRS records, it was "in the public's best interest that they complete [the] work." However, the company subsequently defaulted on the installment agreement, including the submission of dishonored checks. IRS records noted that the company was uncooperative; representatives of the company refused to return collections-related phone calls. IRS filed federal tax liens against this company.

Case study	Nature of work	Total Recovery Act awards ^a	Known unpaid federal taxes ^{b, c}	Comments
Case 7	Engineering services	Over \$100 thousand	Over \$6 million	<ul style="list-style-type: none"> • Company generally did not make any federal tax deposits or file quarterly tax returns in the early 2000s. Company has generally not made any federal tax deposits or filed quarterly tax returns for the last several years. • IRS records indicated that this company is an extreme case of noncompliance, which the company attempted to hide by failing to file required tax returns. • Company made an offer in compromise to IRS for about 15 percent of the taxes owed, to be paid over 5 years. IRS denied the offer because the company did not respond to IRS' request for financial information. • At the same time the company was not paying all of its employment taxes, the company purchased three new cars totaling about \$90,000. In addition, the company paid its three officers about \$700,000. • IRS filed federal tax liens against this company.
Case 8	Engineering services	Over \$1 million	Over \$2 million	<ul style="list-style-type: none"> • Company primarily owes payroll taxes for the last several years. • Company received multiple Recovery Act awards. • IRS records showed that this company defaulted on an installment agreement but was subsequently approved for a new installment agreement for tens of thousands of dollars per month. • IRS assessed a TFRP worth nearly \$900,000 against the CEO for failure to pay payroll taxes. • IRS did not initially place liens on the company because of the earlier installment agreement. According to IRS records, the company deals mainly with government contracts and they claimed a lien would have placed them out of business. IRS has since filed federal tax liens against this company.
Case 9	Health care	Over \$100 thousand	Over \$1 million	<ul style="list-style-type: none"> • Nonprofit organization owes mainly payroll taxes for over 25 periods since the late 1990s. Nonprofit organization was also delinquent in filing quarterly tax returns for most of those periods. • IRS established an installment agreement for the nonprofit organization to pay approximately \$1,000 per month toward over \$1 million in unpaid taxes. The agreement defaulted after the organization missed required monthly payments. However, IRS subsequently reinstated the repayment agreement. • IRS filed federal tax liens against this organization.

Case study	Nature of work	Total Recovery Act awards ^a	Known unpaid federal taxes ^{b, c}	Comments
Case 10	Health care	Over \$100 thousand	Over \$4 million	<ul style="list-style-type: none"> Nonprofit organization owes payroll taxes primarily from the mid-2000s. Nonprofit organization stated that it did not make timely federal tax deposits because state and federal agencies were slow on their payments. IRS established an installment agreement with the nonprofit organization for monthly payments of about \$100,000. The nonprofit organization subsequently defaulted. On multiple occasions, the nonprofit organization submitted dishonored checks to IRS for payment of federal taxes. According to IRS records, at the time the nonprofit organization was not paying its federal taxes, the president of the organization was paid an annual salary that was considered very high for the area that it serves. Nonprofit organization proposed a long-term offer in compromise of about 2 million dollars to be paid in installments over approximately 10 years. IRS denied the offer in compromise because the offered terms were not acceptable and a long-term agreement was not in the government's best interest. IRS assessed TFRP's on over five individuals. Most of these individuals have appealed the assessments. Federal government awarded the nonprofit organization hundreds of thousands of dollars in nonstimulus funds in the late 2000s. IRS filed federal tax liens against this organization.
Case 11	Municipality	Under \$100 thousand	Over \$1 million	<ul style="list-style-type: none"> Municipality primarily owes payroll taxes. Municipality did not make any tax payments for at least 5 periods during the mid-2000s. Municipality had a history of late filings of required tax returns. According to IRS records, IRS had determined that certain debts owed by this municipality were uncollectible. IRS filed federal tax liens against this municipality.
Case 12	Security	Over \$100 thousand	Over \$9 million	<ul style="list-style-type: none"> Company primarily owes payroll taxes from the mid-2000s. IRS records indicated that the company paid other creditors and expenses while neglecting to pay federal payroll taxes. According to IRS, the company was uncooperative and had a history of missing deadlines and repeatedly filing appeals. Department of Labor had cited company for violating federal labor laws. IRS assessed a multimillion dollar TFRP against a company executive.

Case study	Nature of work	Total Recovery Act awards^a	Known unpaid federal taxes^{b, c}	Comments
Case 13	Social services	Over \$1 million	Over \$800 thousand	<ul style="list-style-type: none"> • Nonprofit organization primarily owes payroll taxes from the mid to late 2000s. • The nonprofit organization's major sources of income are Medicare and Medicaid. • Nonprofit organization submitted a request for an installment agreement of over \$10,000 per month. IRS was in the process of reviewing the request to determine if it could be granted. • Federal government awarded the nonprofit organization millions of dollars in nonstimulus funds in the late 2000s. • IRS filed federal tax liens against this organization.
Case 14	Social services	Over \$1 million	Over \$2 million	<ul style="list-style-type: none"> • Nonprofit organization primarily owes payroll taxes from the mid to late 2000s. Nonprofit organization did not make any federal tax deposits for several periods. • On multiple occasions, the nonprofit organization defaulted on installment agreements with IRS. IRS records also indicated that the nonprofit organization may have submitted an offer in compromise to delay IRS collection efforts. • An executive was assessed a TFRP. IRS records indicated that this executive was responsible for numerous questionable business expenses. In addition, the executive had numerous transactions with casinos totaling hundreds of thousand of dollars each year. IRS records also indicated that IRS assessed a TFRP on this executive for another entity that went defunct. • IRS records indicated that the nonprofit organization failed to meet employee payroll obligations on numerous occasions in the late 2000s. • According to one executive, the nonprofit received millions of dollars in government grants. • IRS filed federal tax liens against this organization.

Case study	Nature of work	Total Recovery Act awards ^a	Known unpaid federal taxes ^{b, c}	Comments
Case 15	Technical services	Over \$100 thousand	Over \$4 million	<ul style="list-style-type: none"> Company owes payroll taxes from the mid to late 2000s. For several periods, the company did not make any tax deposits. According to IRS records, the company claimed it did not make tax deposits because the government did not give the company an abatement on its taxes.^d IRS assessed a TFRP against a company executive, who owns real estate valued at an estimated \$4 million. This executive also purchased a luxury vehicle at the same time the company was not paying its payroll taxes. The company executive reported hundreds of thousands of dollars in adjusted gross income in a recent tax return. IRS established an installment agreement with the company to make monthly payments of tens of thousands of dollars. IRS records indicated that the company provided unique and essential services to the government. Federal government awarded the company millions of dollars in nonstimulus funds in the late 2000s. IRS filed federal tax liens against this company.

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

Note: All dollar amounts are rounded.

^aTotal Recovery Act awards are based on contractor and grantee recipient reports as of July 2010.

^bRounded known unpaid tax amount as of September 30, 2009. Known unpaid tax amount does include penalty and interest.

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

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

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

Agency Comments and Our Evaluation

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

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

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

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

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

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

A handwritten signature in black ink that reads "Gregory D. Kutz". The signature is written in a cursive style with a large, stylized initial 'G'.

Gregory D. Kutz
Director
Forensic Audits and Investigative Service

Appendix I: Objectives, Scope, and Methodology

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

To determine, to the extent possible, the magnitude of known tax debt owed by Recovery Act contract and grant recipients, we obtained and analyzed quarterly recipient reports submitted by contractors and grantees, as available through www.recovery.gov (Recovery.gov) through July 2010.² Specifically, we obtained all contract and grant recipient reports from the fourth quarterly submission, and all reports from prior quarterly submissions that were marked as “final” by the recipients.³ Since Recovery.gov data do not contain taxpayer identification numbers (TINs) required for comparisons against IRS tax debt data, we obtained the Central Contractor Registry (CCR)⁴ database in order to obtain the TINs for Recovery Act contract and grant recipients.⁵ We matched the Data Universal Numbering System (DUNS) number available in the quarterly recipient reports with CCR to obtain the TINs for the Recovery Act

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

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

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

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

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

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

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

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

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

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

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

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

We conducted this forensic audit and related investigation from July 2010 through April 2011. We performed this forensic audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our audit findings and conclusions based on our audit objectives. We performed our related investigative work in accordance with standards prescribed by the Council of the Inspectors General on Integrity and Efficiency.

Data Reliability Assessment

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

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

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

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

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

Appendix II: Comments from the Recovery Accountability and Transparency Board



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

APR 04 2011

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

Dear Mr. Kutz:

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

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

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

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

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

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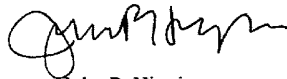
below the prime recipient.² A requirement for further in-depth reporting on the use of taxpayer dollars could provide much more transparency – and accountability – of these funds.

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

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

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

Sincerely,



John P. Higgins
Director, Accountability

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

Related GAO Products

Medicare: Thousands of Medicare Providers Abuse the Federal Tax System. [GAO-08-618](#). Washington, D.C.: June 13, 2008.

Tax Compliance: Federal Grant and Direct Assistance Recipients Who Abuse the Federal Tax System. [GAO-08-31](#). Washington, D.C.: November 16, 2007.

Tax Compliance: Thousands of Organizations Exempt from Federal Income Tax Owe Nearly \$1 Billion in Payroll and Other Taxes. [GAO-07-1090T](#). Washington, D.C.: July 24, 2007.

Tax Compliance: Thousands of Organizations Exempt from Federal Income Tax Owe Nearly \$1 Billion in Payroll and Other Taxes. [GAO-07-563](#). Washington, D.C.: June 29, 2007.

Tax Compliance: Thousands of Federal Contractors Abuse the Federal Tax System. [GAO-07-742T](#). Washington, D.C.: April 19, 2007.

Medicare: Thousands of Medicare Part B Providers Abuse the Federal Tax System. [GAO-07-587T](#). Washington, D.C.: March 20, 2007.

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Tax Debt: Some Combined Federal Campaign Charities Owe Payroll and Other Federal Taxes. [GAO-06-887](#). Washington, D.C.: July 28, 2006.

Tax Debt: Some Combined Federal Campaign Charities Owe Payroll and Other Federal Taxes. [GAO-06-755T](#). Washington, D.C.: May 25, 2006.

Financial Management: Thousands of GSA Contractors Abuse the Federal Tax System. [GAO-06-492T](#). Washington, D.C.: March 14, 2006.

Financial Management: Thousands of Civilian Agency Contractors Abuse the Federal Tax System with Little Consequence. [GAO-05-683T](#). Washington, D.C.: June 16, 2005.

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Debt Collection: Barring Delinquent Taxpayers From Receiving Federal Contracts and Loan Assistance, [GAO/T-GGD/AIMD-00-167](#), Washington, D.C.: May 9, 2000.

Unpaid Payroll Taxes: Billions in Delinquent Taxes and Penalty Assessments Are Owed. [GAO/AIMD/GGD-99-211](#). Washington, D.C.: August 2, 1999.

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

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