

American Recovery and Reinvestment Act Fraud Prevention in the Orphan Site Cleanup Fund



*...American's Protecting
America's Future*



U.S. Environmental Protection Agency
Office of Inspector General
Office of Investigations



American Recovery and Reinvestment Act



Welcome to the Environmental Protection Agency, Office of Investigations, American Recovery and Reinvestment Act Fraud Awareness Training.

This training provides you with information and suggestions to help monitor the use of stimulus funds and to inform you of the potential for fraud, waste, and abuse in Orphan Site Cleanup Fund program.



What is the intent of the American Recovery and Reinvestment Act?



The purposes of the American Recovery and Reinvestment Act are to:

- preserve and create jobs and promote economic recovery.
- assist those most impacted by the recession.
- provide investments needed to increase economic efficiency by spurring technological advances in science and health.
- invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits.
- stabilize state and local government budgets, in order to minimize and avoid reductions in essential services and counterproductive state and local tax increases.



Why should you review this?



You have received funds from EPA through the American Recovery and Reinvestment Act, and it your responsibility to effectively manage these funds.

You'll also need to be aware of the reporting requirements included in the American Recovery and Reinvestment Act. These requirements allow EPA to track the progress of your projects, the amount of money that you spend, and the number of new jobs created.



What will you learn?



You will learn about:

- The Office of Inspector General.
- Reporting requirements under American Recovery and Reinvestment Act.
- How to monitor your project.
- How monitoring can prevent and detect fraud, waste, and abuse.
- What a fraud scheme may look like.
- What to do if you suspect fraud, waste, or abuse.
- Your Whistleblower rights and protections.



Before we get started



- Some terms you need to know:
 - **OIG**-EPA Office of Inspector General.
 - **OI**-Office of Investigations.
 - **OA**-Office of Audit.
 - **OPE**-Office of Program Evaluations.
 - **ARRA**- American Recovery and Reinvestment Act.
 - **OSCF**- Orphan Site Cleanup Fund.



What is the EPA Office of Inspector General?



The Inspector General Act of 1978, as amended, created the Office of Inspectors General in Federal Agencies to conduct audits and investigations to prevent and detect fraud, waste, and abuse and promote economy and efficiency in government programs.

The EPA OIG provides audit, evaluation, and investigative services with the mission and goals of improving environmental quality and human health.



How Does the OIG Contribute to Good Government?



Our work is conducted in accordance with applicable Federal laws, and EPA rules, regulations, policies, and procedures.

We educate EPA officials and other federal, state, local, and tribal leaders receiving EPA funding how to detect and report fraud, waste, and abuse.

We maintain a Hotline for the public to report fraud, waste, and abuse.



How Does the OIG Contribute to Good Government?



We examine Agency programs and operations and make recommendations to improve economy and efficiency

We analyze and advise on government-wide initiatives, including information security, grants management, and financial management

We perform investigations involving predominantly “white collar” crimes and employee misconduct.



What is the Role of the OIG?



The OIG has a prominent role under the Act, which includes education, training, outreach, audit, evaluation, and investigative activities.

Sec. 1515. of the Act allows the OIG:

(1) to examine any records of the contractor or grantee, any of its subcontractors or subgrantees, or any State or local agency administering such contract, that pertain to, and involve transactions relating to, the contract, subcontract, grant, or subgrant; and

(2) to interview any officer or employee of the contractor, grantee, subgrantee, or agency regarding such transactions.



How does OI Accomplish its Mission?



The OIG has access to EPA files and records, as well as those of State, local, tribal and non-profit agencies, contractors and sub-contractors, grantees and sub-grantees, that administer or spend EPA funds.

Statutory Authority allows EPA Criminal Investigators to:

- Administer and Take Oaths
- Serve Subpoenas
- Make Arrests
- Execute Search and Seizure Warrants



Let's review the ARRA reporting requirements



Note: Dates and reporting requirements subject to change. Check www.recovery.gov for latest information

Recipients of ARRA funding will report on the use of funds 10 days after the end of each quarter:

- The total amount of recovery funds received.
- The amount of funds expended or obligated for all projects or activities for which recovery funds were expended, including:
 - Name of the project or activity.
 - Description of the project or activity.
 - Completion status of the project or activity.



More reporting requirements



- An estimate of the number of jobs created and the number of jobs retained by the project.
- The purpose, cost, and reason for funding assessments and cleanups of petroleum contamination through OSCF.
- Detailed information on contracts and subcontracts.

For more detail about your reporting requirements, please visit:

www.recovery.gov



Why Should I Monitor My Project?



As a recipient of ARRA funds, you should monitor your project because:

- You are responsible for completing the project according to the approved plans and specifications.
- The ARRA requires periodic reporting on the status and economic impacts of your project that can only be achieved by monitoring.
- It helps protect the Federal, state and local investment.
- The responsibility to monitor the project begins when the loan or grant is made.
- Monitoring reduces the opportunity for fraud, waste and abuse.
- Federal law requires an audit if you spend over \$500,000 of Federal funds annually...**let us walk you through some of the audit requirements.**



What are the Federal Audit Requirements?



- The Single Audit Act requires an audit if you spend over \$500,000 of Federal funds.
- Your audit must address compliance requirements that apply to your project...here's a website to learn more about the audit and compliance requirements of the Single Audit Act:

www.whitehouse.gov/omb/circulars/a133

Let's talk about how to meet some of those compliance requirements.



How Do I Monitor My Project?



Monitoring involves **management, financial, and technical** staff working together to:

- Prepare and review contract documents to meet project requirements and specifications.
- Perform Due diligence--know something about your contractors (engineers, construction contractors, consultants, and others) that are involved in your project:
 - Financial background
 - Past performance
 - Experience and expertise



How Do I Monitor My Project?



Management involvement:

- Coordinating and overseeing all aspects of the project:
 - Selecting the right people for the right jobs.
 - Overseeing the procurement process.
 - Developing and maintaining good working relationships with the local community, contractors, and Federal and state officials.
- Monitoring should start the day the grant or loan is awarded and includes:
 - Background checks on contractors and consultants.????
 - Being involved in the project from start to finish.
- Don't be afraid to question your contractors--it's your project and your money.



How Do I Monitor My Project?



Financial monitoring:

- Involves reviewing billings and invoices from contractors, subcontractors, engineers, and suppliers
- Things to look for:
 - **Incorrect labor rates**--are you paying for a senior engineer, but getting the services of someone who is less qualified?
 - **Charges for labor**--are the number of labor hours reasonable for the number of people working on the project?
 - **Charges for materials**--are you paying too much or paying for materials that don't meet contract specifications?
 - **Charges for equipment**--were you billed for unused or unnecessary equipment?
 - **Documentation**--are the costs documented? Are any documents missing or altered? Are receipts, invoices, and statements reasonable?



How Do I Monitor My Project?



Technical monitoring:

- Involves conducting on-site inspections, reviewing progress billings from contractors and engineers, and coordinating construction results with financial data and payment requests
- Things to look for:
 - **On-site inspections**--is construction in accordance with plans and specifications? Are contractors using appropriate construction methods? Are change orders appropriate?
 - **Contractor billings**--are billings in line with project completion and milestones? Do materials meet project specifications? Do contractors and subcontractors comply with the Davis Bacon and Buy American provisions, as required by the ARRA?
 - **Coordination with financial staff**--are you working with the financial staff to ensure contractors are paid appropriately?



Can monitoring prevent and detect fraud, waste, and abuse?



Now that you know what monitoring involves, what if you suspect a problem?

- Is it an error?
- Or do you suspect fraud, waste, or abuse?



Can monitoring prevent and detect fraud, waste, and abuse?



While the above occurrences might be indicators of fraud, they could also be the result of weak internal controls or poor business practices.

Weak internal controls are also opportunities for fraud.



So, What is Grant Fraud?



Simply put, fraud is:

Lying, cheating, and stealing in the performance of a government grant, contract, or loan.

There is a fine line between *Fraud* and a *Mistake*...

That line is **Intent!**



What are the Elements of Fraud?



- A Representation
- About a Material Point
- Which is False and Intentional
- Which is Acted Upon
- To the Victim's Damage

Let's discuss these elements in more detail...



What is a Representation?



A *Representation* in the OSCF is a claim from the community to the state for reimbursement of project costs incurred. It is supported by billings and invoices from the prime contractor and subcontractors, engineering firms, consultants, and other parties involved in the project.



What is a Material Point?



- A *Material Point* is a specific issue to which evidence is presented in determining guilt regarding an alleged wrongdoing.
- A contractor's claim is *Material* because of a contractual relationship with the community and the ability to make claims for reimbursement for costs incurred.



What does False and Intentional Mean?



- A claim may be *False* if it does not represent the contractor's actual incurred costs.
- It is *Intentional* if the contractor knowingly claims costs which are not actually incurred.

Remember...the line between a mistake and fraud is
intent!



How is it Acted Upon?



- A false claim is acted upon when the contractor submits a reimbursement request to the community.
- The community relies on the claim to be true and accurate, and makes payment based on the representation.



Who are the Victims of OSCF Fraud?



- As taxpayers, we are all victims of OSCF fraud
- Here's why:
 - When fraud occurs, the Community pays for something it did not receive.
 - The contractor received more money than it was entitled to receive.
 - The OSCF paid the Community for those fraudulent costs.



Now that I know what fraud is, how can it affect my project?



The most common frauds in OSCF involve construction and engineering contracts, and here are a few types of frauds:

False Statements and Claims

False billings/Cost mischarging

Conflicts of Interest

Product Substitution

Bribery and Kickbacks

Bidrigging--Conspiracy or Collusion

Let's discuss these frauds of in more detail...



What are False Claims and Statements?



A **False Claim** is **knowingly** presenting a claim for payment that is not true or accurate.

It also includes **knowingly** making or using false records or statements to obtain payment by the government.

The most common cases involve situations when contractors overcharge for goods or services.

However, knowingly **failing to test** a product (as required by government specifications) or using **substandard** (not meeting specifications) or **defective products** are also false claims or statements.

For example, think of the thousands of different pumps, valves, pipes, electrical components, and other materials in a treatment plant--then think of what could happen if those parts are substandard or defective.



What is Cost mischarging?



Cost mischarging is including the costs for one project on a different project (or both).

Examples are:

- Double/Excessive Billing.
- Charging for employees not working on the project.
- Charging for employee hours to projects not worked.
- Ghost Employees (employees who don't really exist).
- Charging for employee rates not commensurate with their expertise
- Billing an employee's time to multiple contracts.

Can an employee really work 38 hours per day on a project...?



What are Conflicts of Interest?



- A **Conflict of Interest** occurs when an individual or organization has an interest that might compromise their reliability.
- **Conflicts of Interest** may occur when an individual or corporation is in a position to exploit a professional or official capacity to their personal or corporate benefit.
- **Conflicts of Interest** exist even if no improper act results from it, and can create an appearance of impropriety that can undermine confidence in the conflicted individual or organization.

For example, a purchasing manager of an organization has a duty to perform their work with loyalty to that employer, thus choosing sellers who offer the best products at the lowest prices, but might be tempted to have the organization buy, from the manager's sibling, products that are not as good or as cheap.



Here are a few more examples



- A member of the City Council owns a building supply company providing materials to a contractor working on an OSCF project.
- Purchasing materials or services from a firm where a relative is the controlling party.
- Gifts from business associates doing business with the person receiving the gifts. Gifts may include non-tangible things such as airline tickets, vacations, golf outings, etc.



How do I deal with a Conflict of Interest?



- **Avoidance**

- The best way to handle conflicts of interests is to avoid them entirely.

- **Disclosure**

- Disclose any interests that could compromise your integrity and give the appearance of a conflict of interest.

- **Recusal**

- Those with a conflict of interest should not make decisions where such a conflict exists. The need for recusal varies depending upon the circumstance.

For example, the board of a government agency is considering hiring a consulting firm, and a partner of one of the firms is a close relative of a board member. That board member should not vote on which firm is to be selected, and to minimize any conflict, the board member should not participate in any way.



What is Product Substitution?



Product substitution is supplying goods or services that do not meet contract specifications.

For example, a contractor:

- *delivers goods which do not conform to contract requirements without informing the government.*
- *Uses foreign made products where domestic products are required (**Buy American provisions under the Act**)*
- *Uses products that do not meet specifications.*
 - *Thinner wall pipe than specified.*
 - *Roofing: 20 year vs. 40 year.*
 - *Electrical: Substandard pumps, panels, switches.*

Effects:

- *Paying for something not received (pay for a Cadillac but get a Chevy).*
- *Increased maintenance costs (shorter useful life-20 year roof vs. 40 year).*
- *Health, safety, environmental (sewage pump failure causes over-flow).*



What are Bribery and Kickbacks?

Bribery is offering, giving, receiving, or soliciting something of value to influence the actions of an official as part of their public or legal duty. It alters the behavior or decisions of the person receiving the bribe.

Example--a Contractor approaches the Public Works Director about an upcoming project, and offers him money in exchange for an advance copy of the bid package. The Director agrees, resulting in an unfair advantage to the contractor.

Kickback is the result of a government employee receiving or soliciting something of value to influence the outcome.

Example-- the Public Works director approaches a contractor and promises to award the contract in exchange for money or something else of value.



What is Bidrigging?



Bidrigging is collusion between two or more competitors. It is a form of price fixing. It typically involves an agreement in which one party of a group of bidders will be designated to win the government bid.

These frauds generally involve:

***Subcontract bid-rigging**--the conspirators agree not to submit bids, or submit inflated bids, in return for being awarded subcontracts from the successful bidder.*

***Bid suppression**--some conspirators agree not to bid so that another conspirator can win the contract.*

***Complementary bidding**--also called cover bidding--submitting a bid knowing it is too high or has unacceptable conditions.*

***Bid rotation**--bidders “take turns” being the successful bidder.*



Do these frauds occur?



Yes, and here are some actual cases:

False billings and altered invoices:

The project was funded by the State Revolving Fund (SRF), requiring the loan to be repaid by the community over 20 years. The prime contractor was investigated for altering the billings of several subcontractors for labor and materials costs. The prime contractor then billed the community for the inflated costs, resulting in the community paying an additional \$200,000 because of the false invoices and billings.



Do these frauds occur?



Collusion and Conspiracy:

A regional water board received an SRF loan for a sewer project. The Board hired an engineering firm to manage the project, and turned control over to the engineer.

The project engineer advised the community to hire a specific contractor, even though the contractor had filed for bankruptcy and had a poor work history (The community did not do a background check on the contractor). The contractor abandoned the project before completing the work, resulting in over \$500,000 in SRF and community funds expended for work that was not performed.



What are Fraud Indicators?



Fraud indicators may result from weak internal controls, and lead to opportunities to commit fraud. Here are some “Red Flags:”

- Circumvention of competitive bidding requirements (bribery/kickbacks/bidrigging).
- Contractor claims containing altered, missing or inadequate documentation (false claims).
- A contractor's inability to provide supporting documentation (product substitution, false statements).
- Questionable transactions or agreements with related parties (conflicts of interest).
- Contractor timesheets that exceed reasonable periods of time in a workday (cost mischarging).



So you suspect fraud... what do you do next?



What you should do:

- discuss your concerns with the OIG.
- seek answers to your questions in the normal course of business.
- cooperate with the OIG and expect to be contacted and involved.

What you should not do:

- change your normal course of business unless otherwise directed.
- tip off subjects to actual or pending investigation.
- protect a grantee who may be committing fraud.



Let's talk about Whistleblower protections



The ARRA prohibits reprisals against a “whistleblower” of state and local government and contractor employees:

An employee of a non-Federal entity receiving ARRA funds, may not be discharged, demoted, or discriminated against for disclosing any information the employee reasonably believes is evidence of:

- gross mismanagement or gross waste of ARRA funds;
- a substantial and specific danger to public health or safety related to the implementation of the ARRA funds;
- an abuse of authority related to the implementation of the funds;
or
- a violation of law, rule, or regulation related to a contract, grant, or other award of ARRA funds.



Let's talk about Whistleblower protections



An employee who believes that they have been the subject of reprisal can submit a complaint to the OIG. The OIG shall investigate the complaint and submit the findings of the investigation to the person, the person's employer, the head of the appropriate Agency, or the Recovery Accountability and Transparency Board.



Summary



Thank you for taking your time to review this presentation. Hopefully, we have made you aware of your responsibilities to monitor your ARRA funded project and what to do if you suspect fraud, waste or abuse.

EPA's goal is to protect the environment. A large number of communities are receiving ARRA funding. Our job is to help you, the taxpayer, monitor the use of these funds.

If you suspect fraud, waste or abuse, we are only a phone call or email away. Contact us at our regional offices:



OIG Regional Offices



Northeastern Resource Center
Arlington, VA
(703) 347-8740

Central Resource Center
Chicago IL
(312) 886-3108

Eastern Resource Center
Atlanta GA
(404) 562-9857

Western Resource Center
San Francisco, CA
(415) 947-4507

How do I Get Help?

OIG Hotline

1-888-546-8740

On the web:

www.epa.gov/oigearth.hotline.htm

Email:

recoveryreferrals.oig@epa.gov