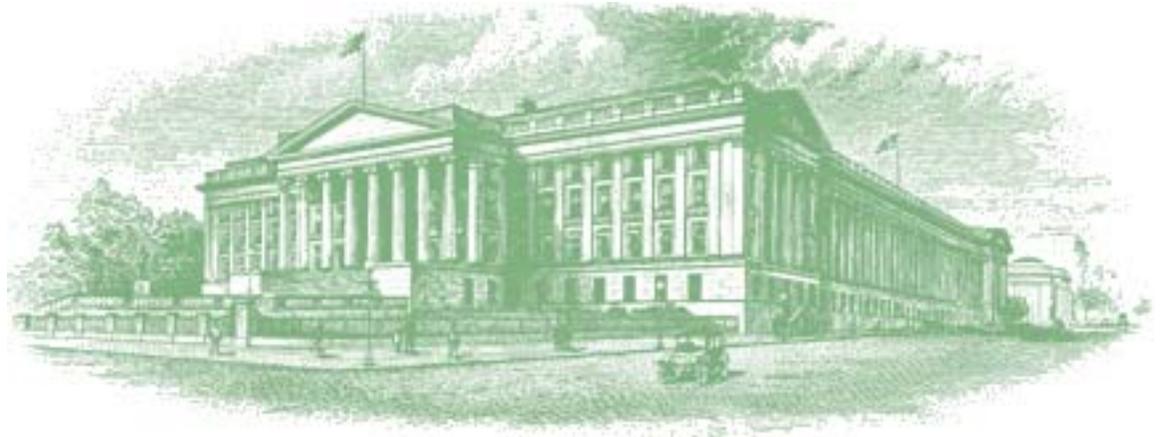




Audit Report



OIG-09-040

Treasury Has Made Progress in Implementing the Specified Energy Property Grant Program

August 5, 2009

Office of
Inspector General

Department of the Treasury

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Abbreviations

DOE	Department of Energy
OFAS	Office of the Fiscal Assistant Secretary
OIG	Treasury Office of Inspector General
OMB	Office of Management and Budget
OTA	Office of Tax Analysis
Recovery Act	American Recovery and Reinvestment Act of 2009

*The Department of the Treasury
Office of Inspector General*

August 5, 2009

Richard L. Gregg
Acting Fiscal Assistant Secretary
Department of the Treasury

This is the first report from our ongoing audit oversight of the Department of the Treasury's implementation of programs and use of funds authorized by the American Recovery and Reinvestment Act of 2009 (Recovery Act).¹ The overall objective of our audit oversight is to evaluate management's accountability, control, and oversight of Recovery Act funds and provide recommendations for improving operations and preventing fraud, waste, and abuse with respect to those funds. In this report, we provide our assessment of Treasury's preparedness to implement and operate a new program to award grants, in lieu of tax credits, for specified energy property consistent with Recovery Act requirements and Office of Management and Budget (OMB) guidance.²

In brief, the Office of the Fiscal Assistant Secretary (OFAS) faces serious challenges in standing-up and implementing the program for responsibly distributing the estimated \$1 billion of Recovery Act funds for the specified energy property. At this time, more than 5 months since the requisite legislation was signed into law, Treasury has made progress but not yet implemented an operational program that fully meets Recovery Act and OMB requirements.

We began our fieldwork in April 2009. The scope of our work during April through June consisted of interviews of key Treasury

¹ Pub. L. No. 111-5, 123 Stat. 115 (Feb. 17, 2009).

² The Recovery Act refers to this program as "Grants for Specified Energy Property in Lieu of Tax Credits." In its public announcements, Treasury refers to the program as "Cash Assistance for Specified Energy Property in Lieu of Tax Credits."

personnel assigned to oversee the energy program; review of applicable guidance, agency-wide and program plans, and available documentation; and continuous correspondence/communication with cognizant Treasury officials. We were also included in daily conference calls between officials from Treasury, OMB, and program offices during which progress and issues with Treasury's implementation of Recovery Act programs were discussed.

We are conducting our ongoing audit oversight, and prepared this report, in accordance with the performance audit standards of 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 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.

Background

The Recovery Act was signed into law on February 17, 2009, to provide relief to the ongoing economic crisis. Part of that relief consists of a grant program intended to encourage taxpayers to continue investing in renewable energy sources. Because the economic crisis had a significant negative effect on some taxpayers' income, their ability to use tax credits to help finance such investments may be limited. Section 1603 of the Recovery Act provides for grants, in lieu of tax credits, to reimburse recipients for a portion of their expense for placing in service certain energy property. Qualifying property is specified in sections 45 and 48 of the Internal Revenue Code of 1986. To be considered for assistance under this program, the Recovery Act requires that applications be received by Treasury before October 1, 2011.

The Secretary of the Treasury is responsible for carrying out the requirements of section 1603 and is appropriated the funds necessary to do so. Treasury's Office of Tax Analysis (OTA) estimates that this program will cost more than \$1 billion and no ceiling has been set on the aggregate amount that can be awarded. Treasury has apportioned \$346 million to meet expected awards in fiscal year 2009.

OFAS has been designated authority for administering and managing the specified energy property program. In its program plan, OFAS established what it considers a considerably aggressive milestone, of June 30, 2009, for making the application package for specified energy property awards publicly available on Treasury's website³.

Audit Results

Treasury Has Made Progress in Implementing the Specified Energy Property Grant Program

OFAS faces serious challenges in implementing the specified energy property program to meet Treasury's responsibilities under the Recovery Act. During the more than 5 months since the law's enactment, OFAS has made progress but not yet implemented an operational program. Additionally, OFAS has not adopted all actions necessary to mitigate implementation risks as required by OMB.

The following are among the risk mitigation actions listed in section 3.8 of OMB M-09-15⁴ that are essential for OFAS to implement the specified energy property program in an effective manner:

(1) determine an award methodology to allow recipients to begin expenditures and activities as quickly as possible⁵, (2) engage in aggressive outreach to potential applicants to begin the application process for timely awards, (3) evaluate workforce needs in order to appoint qualified grant officers and/or program managers, and (4) identify mission-critical human capital needs for Recovery Act implementation and assess the gap between the current workforce and Recovery Act human capital requirements. To identify workforce needs and gaps, the guidance directs agencies to use competency-based workforce planning methodologies, drawing on existing data available in their human resource information

³ Recovery Act Web site for Treasury's Cash Assistance for Specified Energy Property in Lieu of Tax Credit Program is at http://www.recovery.gov/?q=content/program-plan&program_id=7685

⁴ OMB M-09-15, "Updated Implementation Guidance for the American Recovery and Reinvestment Act of 2009" (Apr. 3, 2009).

⁵ Recipients of Recovery Funds under the Specified Energy Property Program are reimbursed an applicable percentage of the expenses incurred for placing in service or beginning construction, during 2009 and 2010, of property qualifying under sections 45 and 48 of the Internal Revenue Code.

systems, learning management systems, competency assessment survey results, and other data sources.

We found several areas of specific concern, discussed below, that OFAS still needs to address.

Implementation Delays

In April 2009, OFAS consulted with the Department of Energy (DOE) for advisory services in starting the specified energy property program, and executed a memorandum of agreement (MOA) between Treasury and DOE to obtain DOE's technical assistance in (1) developing the requirements for application documents, (2) recommending application verification options, and (3) assistance in reviewing applications. The MOA also required DOE to provide scope and cost estimates for its services to be provided during the program execution phase by May 15, 2009. Furthermore, the MOA required DOE to provide Treasury a final application package, along with options for reviewing and verifying information to be provided by applicants, by June 1, 2009.

DOE was unable to meet the May 15 deadline to provide scope and cost estimates because Treasury did not provide DOE necessary and critical information. Specifically, a decision needed to be made whether to design software to capture application data or to purchase commercial software for that purpose and to determine the number of technical staff required to review applications. These factors must be identified before amending the MOA for the specific work requirements and associated costs and DOE's development of a grant management system. In addition, there is no documented plan to test the system before the June 30, 2009, launch date established as a critical milestone by OFAS in its program plan.

DOE provided a draft, rather than final, application package on June 1, 2009. We reviewed the draft application form and found that it did not incorporate all eligibility requirements provided in the Internal Revenue Code and therefore have a concern that DOE and OFAS may be interpreting the eligibility requirements of sections 45 and 48 differently than the Internal Revenue Service. We also noted that the application package did not include the terms and

conditions of the award required by OMB M-09-15. A more comprehensive application package was provided June 22, 2009.

On July 9, 2009, Treasury and DOE publicly announced that an estimated \$3 billion would be made available for the development of renewable energy projects around the country under this program in support of an estimated 5,000 bio-mass, solar, wind, and other types of renewable energy production facilities. Treasury also made available on its website the terms and conditions, guidance, and a sample application in advance of the launch of a web based application that would be made available “in the coming weeks.”⁶

We did not review these material as part of the field work for this report.

Resource Needs

OFAS has not provided adequate explanation of its staffing requirements to implement and operate the specified energy property program. It continues to rely principally on DOE, and with or without DOE’s help, it is unclear how the potentially thousands of applications of varying complexity for awards under this program will be evaluated and managed.

Four OFAS staff are assigned to this program, on a part-time basis because they also have responsibility for other Recovery Act activities assigned to OFAS, primarily another grant in lieu of tax credit program for low-income housing. OFAS also has limited experience in implementing assistance programs and interpreting provisions of the Internal Revenue Code related to specified energy property. Although OFAS plans to outsource the application receipt and review process to DOE, ultimately the responsibility for application approvals and program management remain with Treasury, through OFAS.

We were told that OFAS is not planning to hire additional staff or augment staffing with contractors to run the program.

⁶ The information was posted at www.treas.gov/recovery/1603.shtml. The website also stated that Treasury was not accepting applications at this time.

No Risk Assessments

As of June 30, 2009, Treasury has not completed a program-specific risk assessment and mitigation plan as contemplated in sections 3.9 through 3.13 of OMB M-09-15. Treasury reported in its program plan that program specific-risks would be identified and documented, along with applicable current process internal controls and existing controls, and that risks mitigation plans would be developed by April 15, 2009, as part of its review process. During program implementation, OMB requires agencies to undertake efforts to identify, prioritize, and mitigate implementation risks common to federal spending under the Recovery Act and any agency-specific or program-specific risks. The completed assessment would identify and document (1) program specific risks; (2) applicable current process internal controls; (3) assessment of program specific risks in view of existing controls; and (4) steps to mitigate identified risks and their impacts. Agencies are encouraged to leverage existing practices used to perform assessments required by OMB Circular No. A-123.⁷

We asked OFAS staff whether risk assessments associated with the implementation of the specified energy property program had been performed and were told that OFAS was working on it. Further inquiry of OFAS staff revealed that OFAS had not undertaken its responsibility to assess program specific risks. We were told that OFAS was waiting on information in the finalized MOA with DOE for the application review and award processes before assessing Treasury's program risks.

Failure to perform proper risk assessments and identification of related mitigating controls prior to program implementation may expose Treasury to higher risk of fraud, waste, and abuse. Therefore, it is important to assess risks and develop controls early to help prevent losses and inefficiencies during program award and administration. The initial implementation risk assessment is crucial for Treasury to identify potential problem areas before program award and monitoring. We also believe that it is essential that

⁷ OMB Circular No. A-123, "Management's Responsibility for Internal Control" (Revised Dec. 21, 2004)

those risks be assessed promptly so that appropriate mitigating controls can be considered as part of the planned MOA with DOE.⁸

Recommendations

We recommend that the Acting Fiscal Assistant Secretary do the following:

1. Ensure that OFAS follows OMB guidance for identifying and prioritizing potential risks to the specified energy property program during the planning phase and develop associated mitigating controls. OFAS should coordinate with Treasury's Office of Internal Control to leverage the risk assessment work at the agency level.

Management Response

Management concurred with our recommendation and has taken action by completing a risk assessment and a risk mitigation plan.

OIG Comment

Management's actions meet the intent of our recommendation.

2. Finalize the MOA with DOE for implementing the specified energy property program and ensure that the eligibility requirements are consistent with the approach taken by the Internal Revenue Service. In the event that the planned MOA with DOE is not finalized, ensure that OFAS pursues all options for implementing the specified energy property program.

Management Response

Management concurred with our recommendation and has finalized its agreement with DOE.

⁸ As of July 9, 2009, the date of our audit exit conference on this report, OFAS officials stated that the terms of the MOU had been agreed to but the document had not yet been signed by DOE.

OIG Comment

Management's action meets the intent of our recommendation.

3. Identify and address OFAS workforce needs to properly implement and operate the energy property program using a structured approach as discussed in OMB M-09-15. A process should be implemented to periodically evaluate workforce needs through the life of the program and appropriate documentation should be maintained supporting the analyses performed and actions taken.

Management Response

OFAS management partially concurred with our recommendation. Although management agrees that it is important to identify and address workforce needs and will continue to evaluate its workforce, management states that the current team of four is adequate.

OIG Comment

Management's commitment to continually evaluate its workforce meets the intent of our recommendation, and we will follow up on management's actions in this regard as our audit work on Recovery Act programs continues.

Management's response is provided in Appendix 1.

* * * * *

We appreciate the courtesies and cooperation provided to our staff during this audit. If you wish to discuss this report, you may contact me at (202) 927-5400 or Donna Joseph, Director, at (202) 927-5784.

Marla A. Freedman
Assistant Inspector General for Audits

Appendix 1
Management's Response



ASSISTANT SECRETARY

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

AUG 3 2009

Marla Freedman
Assistant Inspector General for Audit
Department of the Treasury
Office of Inspector General
740 15th Street, N.W., Suite 600
Washington, D.C. 20220

Dear Ms. Freedman:

Thank you for the opportunity to comment on the Draft report titled "Treasury Has Made Progress in Implementing the Specified Energy Property Grant Program."

We concur with two of the recommendations contained in the report and have completed action to address those recommendations as indicated below. We partially concur with the third recommendation as more fully described below.

Recommendation 1: Ensure that OFAS follows OMB guidance for identifying and prioritizing potential risks to the specified energy property program during the planning phase and develop associated mitigating controls. OFAS should coordinate with Treasury's Office of Internal Control to leverage the risk assessment work at the agency level.

Concur. Copies of the risk assessment questionnaire and risk mitigation plan developed by OFAS in coordination with Treasury's Office of Internal Control were provided to you on July 28, 2009. OFAS has carefully considered and attempted to mitigate potential risk throughout the process of developing the program. Potential program risks and the need to address those risks were paramount considerations in the development of the program guidance, application form, terms and conditions and operating procedures for the program.

Recommendation 2: Finalize the MOA with DOE for implementing the specified energy property program and ensure that the eligibility requirements are consistent with the approach taken by the Internal Revenue Service. In the event the planned MOA with DOE is not finalized, ensure that OFAS pursues all options for implementing the specified energy property program.

Concur. A copy of the finalized agreement with the Department of Energy was provided to you on July 28, 2009. We are not aware of any inconsistencies between the eligibility requirements, as outlined in the program guidance, application form and terms and conditions, and those required by statute and the draft report does not provide any specific examples. Counsel from the Internal Revenue Service and Treasury's Office of Tax Policy were instrumental in assisting OFAS with these eligibility requirements to ensure they are consistent with the Internal Revenue Code when appropriate.

Appendix 1
Management's Response

Recommendation 3: Identify and address OFAS workforce needs to properly implement and operate the energy property program using a structured approach as discussed in OMB M-09-15. A process should be implemented to periodically evaluate workforce needs through the life of the program and appropriate documentation should be maintained supporting the analyses performed and actions taken.

Partially concur. OFAS agrees that it is important to identify and address workforce needs to properly implement and operate the program, however we believe we have adequately done so using a less formal approach than contained in the recommendation. We have put together a team that includes an experienced grants manager, a lawyer with experience in grants law, a Certified Public Accountant and a Certified Government Financial Manager. In addition, we have brought in other skill sets as needed from within Treasury and the Department of Energy. We will continue to evaluate workforce needs throughout the life of the program and make adjustments where necessary.

Overall, we believe that OFAS has made tremendous progress in implementing this program. Despite the many complexities, on July 9th, just seven working days after the very aggressive target date set for issuing guidance and only five months after passage of the Recovery Act, we published detailed guidance, an application form, and terms and conditions governing the program and we began receiving applications on July 31, 2009. We have participated in numerous widely attended webinars and other forums to ensure that potential applicants and other interested parties have the information they need to take full advantage of the program.

Sincerely,



Richard L. Gregg
Acting Fiscal Assistant Secretary

Appendix 2
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