

STIMULUS OVERSIGHT PANEL



**Joseph Fisch, Chairman
New York State Inspector General**

**Galen Kirkland
Human Rights Commissioner**

**Barry Kluger
MTA Inspector General**

**James Sheehan
Medicaid Inspector General**

BACKGROUND

On July 9, 2009, Governor David A. Paterson ordered the creation of a Stimulus Oversight Panel (“Panel”) to ensure that the over \$31 billion of federal funds provided to New York State under the American Recovery and Reinvestment Act of 2009 (ARRA) are utilized with transparency and accountability. The Panel is chaired by New York State Inspector General Joseph Fisch and includes state Division of Human Rights Commissioner Galen Kirkland, Metropolitan Transportation Authority Inspector General Barry Kluger and state Medicaid Inspector General James Sheehan. With the signing of Executive Order No. 31 on November 25, 2009, the Panel was formalized and provided expanded jurisdiction over state agencies receiving ARRA funds. The Executive Order charges the Panel with “the prevention and detection of waste, fraud, abuse and mismanagement of ARRA funds, the promotion of transparency and openness,” and the “distribut[ion] [of ARRA funds] in an equitable, fair and non-discriminatory manner.” As the Executive Order also requires the Panel to “report on a quarterly basis on the status of ongoing activities and results of investigations performed under th[e] order to the Deputy Secretary for Infrastructure and Transportation and the Counsel to the Governor,” the Panel has compiled this quarterly report for the first quarter since the formalizing of the Panel via Executive Order No. 31.

Since July 2009, the Panel Members have met numerous times to, among other things, discuss its goals and methods of implementation. The Panel has also formed a “Working Group” comprised of employees of each Panel member, specifically executive staff, senior attorneys, investigators and auditors possessing specialized knowledge of construction, contracts, healthcare fraud and human rights issues. Beginning in July 2009, the Working Group has met, and continues to meet, on a bi-weekly basis to examine the use of ARRA funds by each of the 22 New York State agencies designated to receive them, to develop coordination with other state and federal law enforcement partners responsible for the oversight of ARRA funds, to discuss the progress of investigations whose allegations were received through the Stimulus Complaint hotline, and to initiate proactive reviews when deemed necessary.¹

The Working Group has met with New York State’s Chief Internal Control Officer and Quality Assurance Officer regarding the state’s federal “1512 filing”, and has provided auditors to assist with the October 2009 and February 2010 filings.

The Working Group invites to its bi-weekly meetings each of the 22 New York State agencies receiving ARRA funding, focusing initially on the most vulnerable and/or the recipients of the most sizable grants, to provide an overview of its use of ARRA

¹ Allegations of alleged corruption, fraud, criminal activity, conflicts of interest, abuse or discrimination should be sent directly to the Office of the Inspector General. Complaints can be made by phone (1-800-DO-RIGHT), e-mail inspector.general@ig.state.ny.us, or by written letter to: State Inspector General, Empire State Plaza, Agency Building 2, 16th Floor, Albany, New York 12223. Complaints can also be completed through the State Inspector General’s Web site: <http://www.ig.state.ny.us/complaints/fileComplaint.html>.

funds and the internal controls in place to prevent fraud. To date, the Working Group has met individually with:

- The Division of Housing and Community Renewal (DHCR)
- The Department of State
- The Department of Labor
- The State Education Department
- The State Department of Environmental Conservation/The Environmental Facilities Corporation.

With a view towards expanding and further establishing a collaborative network by which to share information and resources, the Working Group has met with a number of federal, state and city agencies it deems important to successful oversight of ARRA funds. The meetings have included representatives from the Inspector General offices of the U.S. Departments of Education, Transportation, Labor, Health and Human Services, Environmental Protection Agency, and Housing and Urban Development; it also has included members of the Federal Bureau of Investigation, the U.S. Attorney's Office for the Southern District of New York and the New York School Construction Authority. All of these agencies committed to attend quarterly meetings to assess the oversight process. Indeed, since the first meeting, a number of joint investigations have commenced and referrals have been made to federal Inspectors General.

What follows is the areas of focus of each panel member and what has been accomplished since the signing of the Executive Order.

THE NEW YORK STATE INSPECTOR GENERAL

The NYS Inspector General hosts the bi-weekly working group meetings, sets the agenda, schedules participants, and is the investigative body of New York State designated to receive complaints regarding the misuse of ARRA funds. When the NYS Inspector General receives complaints, the germane issues are shared with the Working Group as envisioned by the governor's order; but more importantly, as a means of determining the best course of action through open discourse and the exchange of information. To date, the NYS Inspector General is actively engaged in a number of complex investigations involving the misuse of ARRA funds, some of which include the cooperation of federal prosecutorial agencies.

Aside from the oversight authority and jurisdiction inherent in Governor Paterson's Executive Order, the NYS Inspector General maintains direct jurisdiction over most of the state agencies receiving ARRA funding. Based upon prior investigations and experience with these agencies, the Inspector General has focused on the agencies which have demonstrated the most susceptibility to fraud. Because of DHCR's historic vulnerability and because, to date, DHCR has been allotted \$394 million of ARRA funds, the Inspector General initially has concentrated attention on DHCR's use and control of those funds. DHCR has been charged with distributing these funds in weatherization grants. The weatherization assistance program assists income-eligible families and individuals by reducing their heating/cooling costs and improving the safety of their

homes through energy efficient measures. An Assistant Commissioner of DHCR and its Internal Control Officer appeared before the Working Group to describe the weatherization program and any problems with ARRA distribution and internal controls. Since that initial meeting, the NYS Inspector General has had two additional meetings with DHCR and has joined DHCR in fiscal and program audits of eleven community action groups which have received DHCR weatherization grants.

Specifically, the NYS Inspector General dedicates four staff members to participate in these fiscal field and program audits. The fiscal audits entail on site visits, sometimes comprising two days, to community action groups to perform comprehensive audits of their books and records. The program audits involve the inspections of weatherization work sites to confirm that the improvements being made are in fact completed and completed safely and correctly. These site visits also include interviews of the tenant and homeowner beneficiaries. In partnership with DHCR, the NYS Inspector General has participated in community action group audits in New York, Queens, Kings, Bronx, Niagara, Tompkins, Broome, Tioga, Washington, St. Lawrence, and Warren counties.

Similar to the DHCR, the Department of State has been given \$86.7 million in ARRA funds to distribute through Community Services Block Grants (CSBG), a federal anti-poverty program it administers to provide assistance to states and local communities in reducing poverty and revitalizing low income communities. The CSBGs are intended to create and develop jobs to promote economic recovery; to support anti-poverty programs that address education, housing, nutrition, emergency services and health issues; and to advise on the use of available income. The Deputy Secretary of State and a senior attorney for the Department of State appeared before the Working Group. Since that meeting, the Inspector General has participated in a joint fiscal audit with the Department of State of a community action group receiving ARRA funding.

The Inspector General has focused on these two areas because of their effective overlap – weatherization grants and CSBGs consistently have been distributed to many of the same community action groups throughout the state. Because these community action groups are receiving grant money from different sources with limited collective oversight and accountability, the opportunity for fraud is heightened. Furthermore, having been selected to participate in federal weatherization programs since the late 1970s, most of these community action groups and/or not-for-profit organizations receiving the ARRA funds remain the sole provider for their respective communities and continue to receive funding as a matter of course. Historically, DHCR and Department of State have conducted separate and independent visits of the recipient community action group and have focused solely on the funding it provided rather than examining the overall financial stability and business practices of the community action group possessing multiple funding sources. Problems that may arise due to these separate and independent reviews include the inability to detect double billing of materials, staff and services. In addition, the propriety of the community action group as a whole is not audited which may result in inflated salaries and excessive spending by executive staff. Having now participated in field audits with DHCR and the Department of State, the

NYS Inspector General is working to enhance the field reviews by having both state agencies – and others when appropriate – jointly review its funded community action groups.

Similarly, in the near future, the NYS Inspector General will conduct field audits with the Department of Labor, specifically its Workforce Investment Act Program (WIA) which provides funds to communities to assist with job training and placement.

The NYS Inspector General has also conferred on a number of occasions with the New York State Comptroller's Office which is currently concluding an audit of one community action group which is a participant in the weatherization program and the recipient of stimulus funding. The NYS Inspector General has similarly been coordinating with the U.S. Government Accountability Office (GAO) which is conducting intensive reviews of three additional community action groups. The Inspector General has also met with the New York City Comptroller to enlist assistance with oversight and audits of city agencies who have received ARRA funds.

The NYS Inspector General has developed an in-house training curriculum for presentation to community action groups, not-for-profits and localities receiving ARRA funding. Such presentation will focus on fraud, waste and abuse awareness and includes the creation of a flyer on fraud, waste and abuse to be distributed to all employees of entities receiving ARRA funds. This on-site training will commence shortly. Furthermore, the NYS Inspector General has contacted the New York State Community Action Association to participate in its spring conference.

THE NEW YORK STATE DIVISION OF HUMAN RIGHTS

In addition to participating as a member in the Panel's work described above and identifying recipients for further review of their compliance with civil rights laws, the Division of Human Rights ("Human Rights") has focused on developing a best practices methodology for coordinated civil rights monitoring and enforcement by New York State agencies receiving stimulus money. Initially, Human Rights met with groups advocating for fair distribution, transparency and accountability of stimulus funding to identify issues and researched their recommendations for compliance, data reporting and analysis.

Human Rights also contacted all state agencies which, according to the Economic and Reinvestment Cabinet, are receiving ARRA funds to establish contacts and examine their general civil rights compliance procedures for stimulus contracts and grants. Specifically, Human Rights has engaged the following agencies to discuss their general contracting monitoring procedures for civil rights compliance: City University of New York, Crime Victims Board, Cyber Security and Critical Infrastructure Coordination, Division of Criminal Justice Services, Dormitory Authority, Division of Housing and Community Renewal, Department of Health, Department of Labor, Department of State, Department of Transportation, Empire State Development Corporation, Division of Military and Naval Affairs, Metropolitan Transportation Authority, Office of Temporary

and Disability Assistance, and Office of General Services. Human Rights will be meeting with Higher Education Services Corporation, Office of Children and Family Services, Office for the Aging, and the Education Department.

Based on these discussions, Human Rights determined that while most agencies were aware of their general obligations to comply with the applicable civil rights laws and willing to investigate specific complaints if received, they had not instituted any specific or new procedures for stimulus contracts. Moreover, Human Rights found those agencies which do collect data regarding their contractors' employment practices do not then analyze the data or monitor compliance. Therefore, Human Rights developed a set of best practices for compliance and circulated it to the agencies for comment. To date, Human Rights has not received any feedback indicating an agency's inability to comply other than lack of resources and questions about implementation. In order to address this issue, Human Rights has recommended computerized reporting of data which will feed into a centralized computer resource to compare labor pool availability data with the recipient's reported workforce. These comparisons will "red flag" variances for the agencies and Human Rights to investigate possible discrimination or non-compliance. Human Rights expects that this process will minimize the burden on agencies to compile data and select particular stimulus recipients for further examination. It will also serve as a model system for monitoring civil rights compliance for non-stimulus state contracts and grants.

As part of our oversight, Human Rights has referred to a federal agency a possible civil rights violation regarding the awarding of an ARRA contact to a business fraudulently claiming minority status.

Human Rights will continue to identify particular stimulus recipients or programs for detailed investigation, and will respond to complaints. Furthermore, Human Rights is in the process of creating its own working group of civil rights compliance contacts at the specific agencies receiving ARRA funds to coordinate the implementation of the best practices.

METROPOLITAN TRANSPORTATION AUTHORITY INSPECTOR GENERAL

The MTA Inspector General has partnered with the U.S. Department of Transportation and the U.S. Department of Justice Antitrust Division to conduct fraud-detection training for 330 MTA employees and more training sessions are planned for the near future. The topics include: product substitution, "Buy American," embezzlement, bribery, kickbacks, Disadvantage Business Enterprise (DBE) fraud, testing fraud, change orders, overcharging, prevailing wages, whistle blower protection, and bid rigging and collusion.

The MTA Inspector General also attends construction kickoff meetings for all ARRA projects. At those meetings, the MTA Inspector General, in the presence of MTA

staff, advises all contractors that making a false statement on a DBE progress report or certified payroll is a federal felony; that the MTA Inspector General works closely with the U.S. Department of Transportation Inspector General; and that the MTA Inspector General reviews all reports and change orders. To date, the MTA Inspector General has attended 10 kickoff meetings and 21 progress meetings.

The MTA Inspector General also conducts surprise site inspections of ARRA projects to assess compliance with legal and contractual obligations including appropriate materials, safety obligations, prevailing wage, MBE and DBE requirements, use of identified subcontractors and site security.

In addition to the on-site inspections, the MTA Inspector General conducts targeted reviews and analyses of MTA stimulus projects for fraud, waste and abuse and identifies areas of high risk. When appropriate, further reviews are conducted by the Investigation and/or Audit divisions.

The MTA Inspector General also monitors and examines the MTA Auditor General's reports on stimulus expenditures and job creation to identify "red flags" and areas of high risk, and refers appropriate matters to the Inspector General's Investigation Division for further scrutiny.

The MTA Inspector General will continue to train MTA employees and engage in audits and investigations of all ARRA projects.

NEW YORK STATE OFFICE OF THE MEDICAID INSPECTOR GENERAL

The New York State Office of the Medicaid Inspector General (OMIG) identifies and investigates fraud, waste and abuse in New York State's Medicaid program. With seven offices across the state, OMIG works to protect the integrity of the Medicaid program by preventing instances of improper Medicaid payments before they are made, and also by recovering inappropriate payments made to providers.

Of the \$21 billion of ARRA funds received by New York State, approximately \$6.2 billion have been designated for the Medical Assistance Program (Medicaid). Medicaid funds, including the designated ARRA funds, are administered and distributed by the New York State Department of Health. Prior to receiving this federal stimulus money, the Medicaid Program was funded 50 percent by the federal government and 50 percent by New York State and counties. ARRA funding has reduced the contribution made by the counties, thereby freeing them to use those previously directed funds toward other infrastructure in order to stimulate the local economies. Within this program, OMIG intends to investigate those expenditures to medical facilities including those made under the auspices of Disproportionate Share (DSH) payments.

Secondarily, OMIG, working jointly with the Office of the State Comptroller (OSC), intends to investigate other ARRA funding to existing Medicaid providers. The

OMIG has identified 266 vendors which are enrolled providers in the New York State Medicaid program, that are receiving ARRA funds through the New York State Department of Education and Health and Social Services, including the Office of Temporary and Disability Assistance (OTDA), Office of Children and Family Services (OCFS) and the Office of National and Community Services. Because these vendors are receiving ARRA funds from sources other than the Department of Health, oversight and accountability is limited and the opportunity for fraud is heightened. OMIG has obtained a representative sample of these contracts from OSC to determine, among other things, whether these vendors in fact engage in work rendering them eligible for these contracts and, once found to be legitimate, the vulnerabilities of these vendors for fraud, waste, abuse and mismanagement. To this end, OMIG intends to engage in site visits of these vendors to aid this assessment.