

Testimony of

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before the

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Department of Commerce
Appropriations for Fiscal Year 2011:
Top Challenges Facing the Department

Chairwoman Mikulski, Ranking Member Shelby, and Members of the Subcommittee:

Thank you for inviting us to testify today as you consider the Fiscal Year 2011 appropriations for the Department of Commerce. Today I will highlight five areas that we identify in our recent *Top Management Challenges* report and that the Subcommittee may want to include on its short list of watch items. I will also address several organizational issues and other matters of importance to the Department.

The challenges I will discuss focus on the following five areas:¹

- **Decennial Census:** Mitigating issues with the 2010 decennial while addressing future census challenges.
- **Information Technology (IT) Security:** Continuing to enhance the Department's ability to defend its systems and data against increasing cyber security threats.
- **National Oceanic and Atmospheric Administration (NOAA) Environmental Satellites:** Effectively managing technical, budgetary, and governance issues surrounding the acquisition of NOAA's two environmental satellite programs.

¹A more detailed discussion of these challenges is presented in our January 12, 2010, report, *Top Management Challenges Facing the Department of Commerce*, Final Report No. OIG-19884 (<http://www.oig.doc.gov>).

- **American Recovery and Reinvestment Act:**² Meeting the challenges of accountability and transparency with effective oversight of program performance, compliance, spending, and reporting.
- **United States Patent and Trademark Office (USPTO):** Addressing the Patent Office's resource and process issues.

Most of our audit and evaluation efforts this fiscal year are being expended in these areas. In planning our work for FY 2011, we are, for the first time, conducting a formal risk assessment of Commerce activities to identify those most in need of oversight. Specifics on our current Top Management Challenges follow.

I. Decennial Census:

CENSUS NEEDS TO ENSURE ACCURACY AND CONTAIN 2010 DECENNIAL COSTS WHILE ADDRESSING FUTURE CENSUS CHALLENGES

With a life-cycle cost estimate now projected to total \$14.7 billion, the 2010 Census is a massive undertaking made up of many moving parts. The bureau must integrate 44 separate operations (with a total of some 9,400 program- and project-level activities). In just over a week, the public will begin receiving their census forms in the mail. The rate at which they return their responses will be critical in determining the overall cost of the census. Households that do not mail back their forms will be visited by an enumerator during nonresponse follow-up (NRFU). The most expensive operation of the decennial, it is estimated that NRFU will cost \$2.3 billion.

The FY 2010 decennial budget for carrying out the 2010 Census involving the 10-question short form was \$6.9 billion, which included \$100 million carried over from FY 2009. For FY 2011, the bureau has requested slightly more than \$477 million to complete the 2010 Census.

The mission of the census—to count each of the over 300 million people in more than 130 million households in the United States once, only once, and in the right place—is a daunting task. For decennial field operations, temporary bureau management staff must run just under 500 local offices and manage over 600,000 temporary workers—while recruiting substantially more.

While much of the bureau's plan is on track, NRFU efficiency and accuracy are at some risk, and final decennial costs remain uncertain. The success of NRFU—which begins in just 8 weeks—hinges on how effectively Census controls the enormous NRFU workload and workforce, and it must do so using a Paper-based Operations Control System (PBOCS) which, because of system development problems, will have less functionality than planned and is currently experiencing performance problems. PBOCS is essential for

²American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5.

efficiently making assignments to enumerators, tracking enumeration forms, and reporting on the status of the operation.

➤ ***Cost Containment is Essential for Field Operations, but Requires Strong Budget Estimation Capability and Effective Internal Controls***

The ability to produce valid budget estimates is essential for cost containment. Yet Census reported a 25-percent cost overrun for address canvassing and spent 41-percent less than anticipated for group quarters validation.³ Inaccuracies of this magnitude in estimated budgets, combined with wide variances among early local Census offices in address canvassing costs, indicate significant weaknesses in the bureau's budget estimation capabilities.

Also essential to cost containment is better management of census fieldwork. We found inefficiencies in wages, travel, and training during the address canvassing operation, including workers being paid to attend training classes but who subsequently performed little or no work, workers who made excessive mileage claims, and workers who were reimbursed for mileage at a higher-than-authorized rate. Given the significantly larger scale of NRFU, it is important that Census develop effective internal controls and ensure that managers scrupulously follow them during this operation.

The final decennial cost remains uncertain; three key factors could have significant cost impact. According to the bureau, the mail response rate could have the greatest impact, with enumerator productivity a second major cost driver. The third issue concerns the capabilities and performance of PBOCS for NRFU. This, along with the bureau's ability to implement effective workarounds for PBOCS shortfalls, will determine the ultimate schedule and degree of efficiency, and thus the final cost.

➤ ***OIG Oversight Plan For Decennial Operations***

The Office of Inspector General (OIG) will continue to monitor the bureau's progress on PBOCS and other key decennial activities. In addition, over the next several months, about 100 members of our staff will be participating in what is for us an unprecedented effort in scope and resource commitment to go on the road and observe census workers in action. Such oversight, while census activities are ongoing, will allow us to immediately observe successes as well as any problems that might arise, and notify the bureau without delay.

➤ ***The Groundwork for an Improved and Cost-effective 2020 Census Should be Set This Year***

The cost of the decennial census has doubled every decade since 1970 (not adjusted for inflation). On the current trajectory, the price of the 2020 census could total more than \$30 billion. Census must find ways to rein in costs while maintaining or enhancing accuracy. It is crucial for the bureau to lay the groundwork now for the 2020 census.

³The group quarters validation operation is aimed at verifying information from all potential group quarters—such as dormitories and prisons—nationwide.

The Supplemental Appropriations Act of 2008⁴ gave the Census Bureau an additional \$210 million to help cover spiraling 2010 decennial costs. As directed in the explanatory statement accompanying the Act, OIG has been providing quarterly reports to congressional appropriations committees that assess the bureau’s progress against its 2010 decennial plan. In our first quarterly report, we reported that the bureau’s ability to effectively oversee decennial progress has long been hampered by inherent weaknesses in its systems and information for tracking schedule activities, cost, and risk management actions. Our recommendations to address these problems for the 2020 decennial emphasized the need for an integrated method for planning and tracking of budget, schedule, and progress.

To effectively plan and manage the next decennial, Census needs to significantly improve its cost estimation capabilities and provide a well-documented cost estimate as early as possible. Our first quarterly report also noted that Census needs to develop transparent decision documentation for the 2020 census that clearly identifies the basis for spending decisions and the rationale for changes to plans provided to Congress and other stakeholders.

The findings of our two subsequent quarterly reviews, combined with other evaluations we conducted throughout the decade, demonstrate that Census needs to identify more cost-effective approaches to the decennial and should give serious consideration to the use of such alternatives as administrative records, the Internet, and targeted address canvassing. These and other possible approaches have the potential to contain costs while increasing accuracy and efficiency.

**II. Information Technology (IT) Security:
COMMERCE MUST CONTINUE ENHANCING THE DEPARTMENT’S ABILITY
TO DEFEND ITS SYSTEMS AND DATA AGAINST INCREASING CYBER
SECURITY THREATS**

Commerce’s budgets for information technology have increased since FY 2008, primarily for investments at Census and NOAA (see box). Despite the millions of dollars spent on

Commerce Budget for IT and IT Security			
<i>Fiscal Year</i>	<i>IT Budget (\$ millions)^a</i>	<i>IT Security Budget (\$ millions)^a</i>	<i>Percentage of Budget Spent on IT Security^a</i>
2008	\$1,789	\$116	7%
2009	2,273	170	8%
2010	3,042	240	8%
2011	2,631	307	12%
^a rounded			
Source: Estimates provided by the Department of Commerce, Office of the Chief Information Officer			

cybersecurity, Commerce’s approximately 300 computer systems, many that process and store sensitive mission-critical data, are not always adequately protected.

While maintaining IT security is inherently challenging, Commerce’s decentralized management structure adds to the

⁴Pub. L. No. 110-252, Title II.

difficulty. Commerce operating units have separate management structures that preclude direct accountability to the Department's Chief Information Officer (CIO). This decentralization gives the CIO only limited authority over the daily management of IT security within Commerce's operating units, and adds complexity to Department-wide information security initiatives.

➤ ***Commerce Is Taking Steps to Strengthen Its IT Security Workforce***

An audit we conducted in FY 2009 found that the Department needed to devote more attention to the development, guidance, and performance management of its IT security personnel. We made recommendations to improve employee training, professional development, and performance management. Among the numerous improvements that the Department is now making, it plans to require professional certifications for employees with significant IT security responsibilities. This is a noteworthy step in building a highly competent IT security workforce—one that few, if any, civilian agencies are taking.

➤ ***Departmental Actions to Resolve Material Weakness in IT Security Are Showing Progress, but More Work Will Be Necessary***

The Federal Information Security Management Act of 2002⁵ (FISMA) requires agencies to certify that their systems and data are protected with adequate, functional security controls before systems are authorized (accredited) to operate. If a management control weakness is sufficiently serious that the agency head determines it should be reported in the annual *Performance and Accountability Report*, it is termed a material weakness. IT security has been reported as a material weakness since FY 2001 pursuant to the Federal Managers' Financial Integrity Act of 1982.⁶ While the Department is continuing to make progress, our FY 2009 FISMA review identified vulnerabilities in technical security controls that leave Department systems and data at risk for internal and external malicious attacks. Therefore, we recommended—and the Department agreed—that the material weakness should stand until more improvements are made.

We report on USPTO separately for purposes of FISMA because, as a performance-based organization, it submits a separate *Performance and Accountability Report*. Although the two USPTO systems we evaluated in FY 2009 met FISMA requirements, we did not have sufficient evidence to recommend removal of the material weakness. In our view, the bureau has not demonstrated a consistent, effective process for certification and accreditation, and we continued to identify problems that we reported on in the past. Nevertheless, USPTO management determined that its IT security issues have been adequately resolved and did not report IT security as a material weakness in its FY 2009 *Performance and Accountability Report*—a position with which we disagree.

In this fiscal year, the Department's CIO will begin implementing a 3-year plan that takes a Department-wide, holistic approach to improving Commerce's overall security posture.

⁵Pub. L. No. 107-347, Title III, §§ 301-302, 44 U.S.C. §§ 3541-3549, 40 U.S.C. § 11331.

⁶Pub. L. No. 97-255 (codified as amended in scattered sections of 31 U.S.C.).

The plan addresses continuous monitoring of security controls, situational awareness, incident detection and response, and other aspects of an effective IT security program, including improving IT workforce competencies.

III. National Oceanic and Atmospheric Administration (NOAA) Environmental Satellites: NOAA MUST EFFECTIVELY MANAGE TECHNICAL, BUDGETARY, AND GOVERNANCE ISSUES SURROUNDING THE ACQUISITION OF TWO ENVIRONMENTAL SATELLITE SYSTEMS

NOAA is modernizing its environmental monitoring capabilities, in part by spending an estimated total of nearly \$20 billion on two critical satellite systems: the National Polar-orbiting Operational Environmental Satellite System (NPOESS) and the Geostationary Operational Environmental Satellite-R Series (GOES-R). Space acquisitions such as NPOESS and GOES-R are highly technical and complex; such programs have a history of cost overruns, schedule delays, and reduced performance capabilities.

The NPOESS and GOES-R programs have already suffered significant cost increases and delays. Because of serious problems with NPOESS, the program is beginning to undergo a restructuring, as discussed below. These programs will continue to require close oversight to minimize further disruption to the programs and prevent any gaps in satellite coverage. Such gaps could compromise the United States' ability to forecast weather and monitor climate, which would have serious consequences for the safety and security of the nation.

➤ *NPOESS Background*

The objective of NPOESS was to provide continuous weather and environmental data for longer term weather forecasting and climate monitoring through the coming two decades. NPOESS has been managed jointly by NOAA, the National Aeronautics and Space Administration (NASA), and the Department of Defense. NOAA and Defense shared the cost of the NPOESS program equally. The initial project plan called for the purchase of six satellites at a cost of \$6.5 billion, with a first launch in 2008. But problems with a key sensor raised costs and delayed the date of the first launch, even as the number of satellites in the system was reduced to four.

By December 2008, NPOESS' total estimated life-cycle cost had grown to \$14 billion. NOAA announced in March 2009 that it would delay the first launch to 2014 because of continuing problems with the sensor. It also delayed the planned NPOESS Preparatory Project⁷ launch date from 2010 to 2011.

⁷The NPOESS Preparatory Project was planned as a risk-reduction effort to test NPOESS' new instruments in flight. NASA is taking the lead in this activity.

➤ ***Restructuring of the NPOESS Program Deemed Critical to Its Success***

In the spring of 2009, an independent team was appointed to examine the program's status. The team, comprising satellite experts from industry, academia, and government, found that the NPOESS program had a low probability of success. In the fall of 2009, NOAA, NASA, and Defense worked with the White House Office of Science and Technology Policy and the Office of Management and Budget to select the best option for restructuring. The option chosen, called *Divergence*, was considered the most feasible because it would not require Defense and NOAA to continue to try to resolve their conflicting perspectives and priorities. As a result, NOAA and NASA plan to acquire a separate satellite, called the Joint Polar Satellite System (JPSS).

The three agencies have formed a transition team to implement the *Divergence* plan. Although the complete details of the plan are still being developed, NOAA/NASA intend to use the applicable components for JPSS that were funded and developed under the previous NPOESS structure.

Under *Divergence*, Defense will be responsible for the early morning orbit, Defense and the European Organization for the Exploitation of Meteorological Satellites will cover the mid-morning orbit, and a NOAA/NASA-managed JPSS acquisition will cover the afternoon orbit. The orbits are based on the local time that the satellite crosses the equator as it circles the earth. Satellite coverage in all of these orbits allows the same point on the earth to be sampled frequently enough and at the correct time of day (under sunlight or darkness) to meet each agency's operational requirements, provide sufficient data for both severe storm prediction and detection, and provide climate monitoring for our nation's safety and security.

NOAA, NASA, and Defense will implement the transition plan from now into FY 2011. To accomplish this, NOAA's FY 2011 budget request for JPSS totals \$1.1 billion, a \$679-million increase over the FY 2010 budget. The JPSS program will continue development of the instruments needed for the afternoon orbit. The JPSS management structure is planned to be similar to NOAA's next generation GOES-R, in which NOAA manages the overall program with assistance from NASA. NOAA will acquire two JPSS satellites and will continue climate sensor acquisitions under the NOAA climate program. The cost estimate for JPSS is \$11.9 billion; this includes funding for transition of instrument acquisitions from Defense to NASA, NOAA's share of NPOESS contract termination costs, and procurement of two JPSS satellites.

Defense is also conducting a study to evaluate the best approach for maintaining continuity of its polar satellites. It has two remaining satellites under the ongoing Defense Meteorological Satellite Program (DMSP). The availability of DMSP satellites through 2018 could significantly delay the need to acquire a replacement satellite. However, it is essential that Defense maintain funding to account for the long lead time required to build satellite capability because it remains responsible for data continuity in the early-morning orbit beyond the last DMSP satellite's life span.

➤ ***GOES-R Background***

The GOES-R⁸ system is intended to offer an uninterrupted flow of high-quality data for short-range weather forecasting and warning, as well as provide climate research data through 2028. NOAA is responsible for managing the entire program and for acquiring the ground segment, which is used to control satellite operations and to generate and distribute instrument data products. NOAA awarded the ground segment contract in May 2009, which has a 10-year duration and a total estimated value of \$736 million, if all options are exercised.

NASA's Goddard Space Flight Center in Greenbelt, Maryland, is responsible for acquiring the spacecraft and instruments for the program. In December 2008, NASA's award of the GOES-R spacecraft contract—with a total estimated value of \$1.1 billion for two spacecraft, including the options for two additional spacecraft—was protested by the losing bidder. Work stopped until the protest was withdrawn in August 2009. As a result, launch readiness for the two satellites was deferred by 6 months.⁹

According to program documentation, the overall GOES-R program acquisition is on track and within budget to meet the revised launch schedule for systems engineering and integration and both the flight and ground segments. The next significant program events are the system design reviews for the spacecraft and ground segment, scheduled for this month and next, respectively.

Any further delays in the satellite's launch readiness will increase the risk of NOAA's not meeting its requirement to have an on-orbit spare and two operational GOES satellites available to monitor the Pacific and Atlantic basins in 2015. We will monitor the program's cost and schedule to ensure that the bureau mitigates the risk of any further delays.

⁸Since 1975, the GOES series of satellites have provided the United States with critical meteorological data for weather observation, research, and forecasting. Satellites in production are given letter designations, which are changed to numbers after the satellites reach orbit.

⁹The first satellite's launch date has been delayed from April to October 2015; the second from August 2016 to February 2017.

**IV. American Recovery and Reinvestment Act :
MEETING THE RECOVERY ACT CHALLENGES OF ACCOUNTABILITY AND
TRANSPARENCY WITH EFFECTIVE OVERSIGHT OF PROGRAM
PERFORMANCE, COMPLIANCE, SPENDING, AND REPORTING**

The Department of Commerce received \$7.9 billion in funding under the American Recovery and Reinvestment Act of 2009 (see box). In addition to OIG, five Commerce agencies received stimulus funding. Of the \$5.3 billion going to the National Telecommunications and Information Administration (NTIA), \$4.7 billion was for the Broadband Technology Opportunities Program (BTOP). With the goal of developing and expanding broadband services in areas that have no service or are underserved, as well as improving broadband access among public safety agencies, BTOP is by far Commerce’s most challenging stimulus program.

Commerce Stimulus Funding*	
NTIA	\$5 billion
Census	1 billion
NOAA	830 million
NIST^a	610 million
EDA^b	150 million
OIG	16 million
*rounded	
^a National Institute of Standards and Technology	
^b Economic Development Administration	
Source: OIG	

We have taken several steps to implement an appropriate oversight framework to track the stimulus activities undertaken by Commerce. These steps include the assignment of dedicated Recovery Act staff; advisory participation in Department steering committees and working groups; and development of training programs to include fraud awareness, administration of grants and contracts, and development and execution of a risk-based audit plan. Some of the larger challenges that Commerce faces, as identified by this oversight, are summarized below.

➤ ***Oversight Burden Will Increase in FY 2011***

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

Attached to our testimony is a table that presents Department of Commerce Recovery Act obligations and spending. As of February 19 of this year, the Department had obligated approximately \$2.1 billion in funds and spent approximately \$649 million.

Although spending volumes are currently low, all funds must be obligated by FY 2011. The need to distribute funds quickly to communities and businesses increases the risks for fraud, waste, and abuse in both Recovery Act-funded activities and those Commerce operations with more traditional funding mechanisms. Recovery Act agencies will need sufficient resources to ensure that programs are delivering as intended, while providing oversight to guard against misuse of funds. The Recovery Act substantially increases the Department’s contracting and grants workload, particularly at NIST and NOAA, whose

grants and contracts offices must manage not only the over \$1.4 billion they received under the Recovery Act but also the \$4.7-billion BTOP program. NTIA relies on NIST and NOAA for grants administration because it does not have its own staff and systems for this purpose. Such increases place added pressure on these agencies to hire and retain qualified personnel.

The Recovery Act has provided a relatively significant funding increase for NIST and NOAA construction projects. To complete them successfully, these agencies will need to dedicate construction managers across Recovery Act grants-, contracts-, and regular appropriation-funded projects.

➤ ***Meeting Agency and Recipient Reporting Requirements***

The Recovery Act establishes specific reporting requirements for both agencies and fund recipients. Federal agencies must report key information such as awards, obligations, outlays, and major activities on a weekly basis. Fund recipients need to report on a quarterly basis the projects and activities created and their completion status, as well as jobs funded by stimulus money. Available to the American public, these data reports must accurately reflect the use and impact of Recovery Act funds. An effectively designed internal control structure that detects and prevents errors and omissions is vital to data integrity.

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

Without additional automation, it will become more difficult for Commerce agencies to effectively manage their own reporting as the volume of grants and contracts increases; it will also be difficult to ensure complete and accurate recipient reporting. Additional automation would add efficiencies to the reporting process and decrease the risks of reporting errors and delays.¹⁰

In FY 2009, the Recovery Accountability and Transparency Board asked Inspectors General to audit bureaus receiving Recovery Act funding to assess their ability to perform reviews, identify reporting omissions and errors, and notify recipients who should make appropriate and timely changes. Our audit found that Commerce and its bureaus have proactively ensured that Recovery Act recipients recognize and meet reporting requirements and deadlines. In addition, the Department has provided policy,

¹⁰*More Automated Processing by Commerce Bureaus Would Improve Recovery Act Reporting*, Final Report No. OIG-19779, December 2009 (<http://www.oig.doc.gov/recovery/reports/ARR-19779.pdf>).

guidance, and oversight to bureau grants and contracts officials to facilitate department-wide standard review processes. The Department agreed with our recommendations to fine-tune review procedures.¹¹

➤ ***Effectively Setting Up and Managing the New Broadband Technology Opportunities Program***

A major Recovery Act initiative, NTIA's BTOP, faces significant application and pre-award review challenges to achieving its goals. The program aims to award over \$4.5 billion in grants in fewer than 18 months, a level of grants-award activity that no Commerce operating unit has ever undertaken.

With BTOP, NTIA has had to staff a program office, develop grants program rules and regulations, coordinate activities with several other departments and agencies (including Agriculture and the Federal Communications Commission), award grants, and perform effective oversight activities—all while limiting expenditures to 3 percent of the program's appropriation (\$141 million).

In early January, we met with the Assistant Secretary for Communications and Information to discuss the status of our evaluation. We communicated program challenges that—if unaddressed—we believed could cause NTIA to face difficulties in meeting its statutory deadline of issuing broadband grants by September 30, 2010, and in monitoring the grants after they are awarded. We shared the following concerns:

- NTIA faces operational challenges with its current staffing levels, especially given the program's complexity and deadline.
- Documentation is not consistently available for operational program procedures, program staff roles and responsibilities, and key management decisions.
- NTIA encountered problems with the application-intake system during the first round of the application process because the system was unable to handle the volume of applications submitted; this resulted in extending the deadline for receiving applications. While system modifications were made, there was only a short period of time in which to sufficiently test the system and ensure that adequate functionality and capacity were delivered for the second-round application cycle.
- NTIA also encountered challenges with the application review process. Volunteer peer reviewers failed to complete reviews or submit review scores in a timely manner. Supplemental contract reviewers were subsequently used to complete many of the application reviews. The review of applications was delayed nearly 3 months.

¹¹*Commerce Has Implemented Operations to Promote Accurate Recipient Reporting, but Improvements Are Needed*, Final Report No. OIG-19847, October 30, 2009
(<http://www.oig.doc.gov/recovery/reports/Final%20Audit%20Report%20ARR-19847.pdf>).

As NTIA enters its second round of issuing broadband grants, it needs not only to avoid the problems with applications intake and recruitment of sufficient reviewers but also to enhance internal program management operations for grants already awarded. In our opinion, the program is at risk of not being able to efficiently and effectively issue its second round of awards by the September 30, 2010, statutory deadline while simultaneously providing post-award monitoring of first-round recipients. Continued focus on improving program operations in these areas is critical.

**V. United States Patent and Trademark Office (USPTO):
USPTO MUST ADDRESS ITS RESOURCE AND PROCESS ISSUES**

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

As shown below, since FY 2000, the number of patent examiners has more than doubled, yet the length of time to process a patent has increased 40 percent. Further, the backlog of applications awaiting review increased 139 percent.

**Comparison of Annual Patent Workload and Pendency,
FY 2000 and FY 2009**

	FY 2000	FY 2009	Change
Patent Examiners	2,900	6,200	114%
Total Time to Process	25 months	35 months	40%
Applications Backlog	308,000	736,000	139%
Applications Filed	312,000	486,000	56%

Source: USPTO

Over the years, USPTO has worked to increase the number of patent examiners to address the growing backlog; however, simply adding to the workforce without improving processes and quality control will not suffice. The bureau must consider how to reform and reengineer the various components of the patent application process to ensure timely and high-quality application review. Further, its IT systems need to be updated to ensure that they are able to process increasingly complex applications safely and securely, and provide greater management oversight.

➤ ***Fee Structure, Funding Mechanisms Intertwined***

USPTO must also address challenges with its funding mechanisms and fee structure. It is now funded entirely by application, maintenance, and other fees paid by patent and trademark applicants and owners. Congress is also involved in this process by setting many of the fees legislatively and establishing a ceiling, through the appropriations process, as to the maximum amount of fees USPTO can spend in a given year. For FY

2011, the Administration proposes a 15-percent increase in certain patent fees to generate additional revenue to cover operating expenses. It also proposes that USPTO be given fee-setting authority and the authority to establish an operating reserve to manage operations on a multiyear basis.

In November 2008, our *Top Management Challenges* report suggested that USPTO's unique financing structure could become increasingly risky. Subsequent downturns in the U.S. and global economies quickly showed the structure's vulnerabilities. In the President's FY 2009 budget, the bureau estimated that it would collect over \$1.8 billion in patent fees. However, by the end of that year, patent fee collections totaled just over \$1.6 billion. Multiple factors contributed to this difference, including a reduction in the number of patent applications filed and a decline in maintenance fees collected for existing patents. To align expenses with actual patent fee collections, USPTO took steps that included deferring the hiring of patent examiners, and curtailing or suspending overtime and training.

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

As a result, in our view, the Department and Congress must require transparency and quality with respect to USPTO's cost data. This could include a review of USPTO's cost accounting system and how the system could be used to support decision making in general—and in the event of cost reductions in the future, such as those that were necessary in FY 2009.

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

OTHER CHALLENGES FACING THE DEPARTMENT OF COMMERCE

In addition to these five top management challenges, we have identified several organizational issues facing the Department in the coming year:

➤ *Centralized Management and Oversight*

The Department needs to continue its actions to centralize management and oversight in order to make Departmental operations more efficient, consistent, and productive. The

Department’s operating units have long-standing and independent business models, cultures, and practices. This decentralized structure has created obstacles to Department efforts to integrate and administer internal processes such as financial services, human resources, grants and contracts management, IT, and major acquisitions. Increased centralization has the potential to yield cost savings.

Commerce awarded over \$2.2 billion in grants to some 4,000 recipients and over \$3.2 billion in contracts to over 7,000 contractors during 2009. Grants and contracts are administered by five separate bureaus, using three different grants systems and four different procurement systems. Additionally, the Department’s Office of Acquisition Management has limited authority over the agency’s grants and procurement offices, which further contributes to the inconsistent management approaches across the Department and adds to the difficulty in overseeing the effectiveness of operations and programs.

➤ *Contracts and Grants Management Workforce*

Sufficient staffing for the contracts and grants management workforce has also been a long-standing issue for the Department. Now, primarily as a result of the Recovery Act, the Department and its operating units are issuing more grants and contracts than ever. According to Department data, there are more than 1,500 Commerce employees holding

**Commerce Acquisition Workforce:
Number of Certified Personnel**

<i>Position</i>	<i>Personnel</i>
Contracting Officer/Specialist	180
Contracting Officer’s Representative/ Contracting Officer’s Technical Representative^a	1,313
Program/Project Manager^{a,b}	49
Total	1,542
^a Employees in these positions may not all be currently working on acquisitions. ^b Certifications are only required if managing major acquisitions. <i>Source: Commerce Office of Acquisition Management</i>	

certifications in various acquisition positions (see box). While the Department does not track the number of grants personnel, we recently conducted a survey of the sufficiency and qualifications of the Recovery Act acquisition and grants workforce. Based on our survey, for the five Commerce agencies receiving Recovery Act

funding, the grants workforce totaled over 800 employees. This includes grant officers, grants program managers, and grants specialists.

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

➤ *NOAA Headquarters Leadership Structure*

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

One of the key components of this mission is management, research, and services related to the protection and rational use of living marine resources. We discussed NOAA's need to balance conservation and commercial fishing in last year's *Top Management Challenges* report. Over the past year, we have issued two reports that demonstrate, in particular, the difficulty of achieving this balance. In our first report, we evaluated a series of issues regarding the work and scientific methods of the National Marine Fisheries Service's (NMFS) Northeast Fisheries Science Center.¹² Our second report, which we recently completed, provides an assessment of the policies and practices of the Office for Law Enforcement within NMFS and NOAA's Office of General Counsel for Enforcement and Litigation.¹³

➤ *Commerce Headquarters Renovation*

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

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¹²*Memorandum to National Marine Fisheries Service re: Northeast Fisheries Science Center*, February 26, 2009.

(<http://www.oig.doc.gov/oig/reports/correspondence/Northeast%20Fisheries%20Science%20Center.pdf>).

¹³*Review of NOAA Fisheries Enforcement Programs and Operations*, Final Report No. OIG-19887, January 21, 2010 (<http://www.oig.doc.gov/oig/reports/2010/OIG-19887.pdf>).

In conclusion, Madam Chairwoman, there is no doubt that the Commerce Department faces much important yet challenging work in FY 2011. Accomplishing it will require continual management oversight, and we intend to perform our role as well in monitoring the progress of these essential programs. This concludes my prepared statement. I would be happy to respond to any questions that you or other Members of the Subcommittee may have at this time.

Department of Commerce Recovery Act Spending, as of February 19, 2010 (\$ in millions)

Bureau	Purpose	Total Appropriation	Total Obligations ^a	Total Disbursements	Remaining Unspent	Percentage Remaining
EDA	Economic Investment Economic Adjustment Assistance Program	\$150	\$148	\$6	\$144	96%
Census	2010 Census Additional personnel, training, targeted media purchases, and risk reduction	1,000	340	210	790	79%
NTIA						
Broadband	Competitive grants to accelerate broadband deployment in unserved and underserved areas and to strategic institutions	4,690	705	18	4,672	99%
Digital Television	Digital-to-analog converter box coupon program	650	338	332	318	49%
NIST						
Science/Technical Research/Services	Research, grants, research fellowships, and advanced research/measurement equipment and supplies	220	87	16	204	93%
	Transfer from HHS for the Health Information Technology Program	20	1	1	19	98%
	Transfer from Energy for the Smart Grid Interoperability Framework	10	2	1	9	94%
Construction of Research Facilities	To address NIST's backlog of maintenance and renovation and for construction of new facilities and laboratories	360	186	7	353	98%
NOAA						
Operations, Research, & Facilities	For backlog of research, restoration, navigation, conservation, and management activities	230	212	47	183	80%
Procurement, Acquisition, & Construction	For construction and repair of NOAA facilities, ships, and equipment; to improve weather forecasting; and to support satellite development	600	30	10	590	98%
OIG	ARRA oversight	16 ^b	1	1	15	94%
TOTALS		\$7,946	\$2,050	\$649	\$7,297	92%

See table notes and source, next page

ATTACHMENT TO MARCH 4, 2010, TESTIMONY BY DEPARTMENT OF COMMERCE INSPECTOR GENERAL TODD J. ZINSER ON
FY 2011 APPROPRIATIONS, SENATE SUBCOMMITTEE ON COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES

^aThe obligation amount does not include activity for contracts awarded to other federal agencies and referred to as interagency transfers. This is to remain compliant with OMB reporting guidance, which requires only the receiving agencies of funds to record obligation and spending activity to avoid double-counting of activity across Recovery Act programs. Given this, the obligation and spending levels reported are lower than the activity tracked in Commerce's financial records. The Department estimates amounts not included in the reporting to total \$355 million in obligations, which relate primarily to the NTIA Broadband Technology Opportunities Program and the NOAA Procurement, Acquisition, and Construction programs.

^bIncludes \$6 million from the Recovery Act that is available until September 30, 2013, and \$10 million transferred from the \$4.7-billion NTIA appropriation for oversight of the Broadband Technology Opportunities Program.

Source: Department of Commerce and OIG