



U.S. ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF INSPECTOR GENERAL

Catalyst for Improving the Environment

EPA Should Improve Timeliness for Resolving Audits Under Appeal

Report No. 11-P-0687

September 21, 2011

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Abbreviations

AA	Assistant Administrator
AFC	Audit followup coordinator
CEDI	Caribbean Environment & Development Institute
CFR	Code of Federal Regulations
EPA	U.S. Environmental Protection Agency
FDL	Final Determination Letter
MATS	Management Audit Tracking System
OARM	Office of Administration and Resources Management
OCFO	Office of the Chief Financial Officer
OGC	Office of General Counsel
OGD	Office of Grants and Debarment
OIG	Office of Inspector General
ORC	Office of Regional Counsel
RA	Regional Administrator

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At a Glance

Catalyst for Improving the Environment

Why We Did This Review

We initiated this review to evaluate how efficiently, effectively, and timely the U.S. Environmental Protection Agency (EPA) resolves audits under appeal. Our objectives were to determine whether all of the audits under appeal are included in the Management Audit Tracking System (MATS), whether the applicable policies and procedures are complete and relevant, and how efficiently and effectively the audits under appeal are being resolved.

Background

For purposes of this report, we use the term “audits under appeal” to describe situations in which a grantee disagrees with a Final Determination Letter issued by the Agency sustaining some or all of the questioned costs identified in an audit of a completed grant. The grantee appeals the Final Determination Letter with the Regional Administrator or Assistant Administrator of the issuing EPA office.

For further information, contact our Office of Congressional, Public Affairs and Management at (202) 566-2391.

The full report is at:
www.epa.gov/oig/reports/2011/20110921-11-P-0687.pdf

EPA Should Improve Timeliness for Resolving Audits Under Appeal

What We Found

EPA’s efforts to resolve over \$55 million for audits under appeal in Regions 2 and 5 are not efficient, effective, or timely. During our audit, we found that:

- Inadequate communications between audit followup coordinators and EPA personnel responsible for resolving audits under appeal have resulted in inaccurate information in MATS.
- Policies and procedures for addressing audits under appeal are not complete and relevant; many of the policies for resolving audits under appeal are inconsistent.
- EPA does not adhere to its policies for timely resolution of audits under appeal; as of September 2010, 17 of 30 audits under appeal had been in resolution for 10 to 21 years.

EPA Manual 2750 and the Code of Federal Regulations (CFR), through 40 CFR 31.70, require that appeals be fully and fairly considered and resolved in the earliest practicable timeframe, at the lowest level possible. Because appeals are not being resolved timely, at least \$17.3 million is not available to the government. These funds could potentially be used to protect public health and the environment.

What We Recommend

We recommend that the Office of the Chief Financial Officer ensure that the in-process revisions to EPA Manual 2750 include a communication strategy to ensure that EPA records current data on audits under appeal in MATS, establishes a finite number of reconsideration requests, and provides for consistency among policies for resolving audits under appeal. We also recommend that the Assistant Administrator for Administration and Resources Management reference revisions to EPA Manual 2750 in the Office of Administration and Resources Management’s in-process revisions to the Agency’s *Assistance Administration Manual*. The Agency generally agreed with the report’s findings and overall recommendation for EPA to provide greater structure and consistency to the audit resolution process, but the Agency proposed alternatives to the recommendations. Currently, the Office of Inspector General considers the recommendations to be unresolved with resolution efforts in progress.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

THE INSPECTOR GENERAL

September 21, 2011

MEMORANDUM

SUBJECT: EPA Should Improve Timeliness for Resolving Audits Under Appeal
Report No. 11-P-0687

FROM: Arthur A. Elkins, Jr.
Inspector General

A handwritten signature in black ink, appearing to read "Arthur A. Elkins, Jr.", is written over the printed name.

TO: Barbara J. Bennett
Chief Financial Officer

Craig E. Hooks
Assistant Administrator for Administration and Resources Management

This is our report on the subject audit conducted by the Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA). This report contains findings that describe the problems the OIG has identified and corrective actions the OIG recommends. This report represents the opinion of the OIG and does not necessarily represent the final EPA position. Final determinations on matters in this report will be made by EPA managers in accordance with established audit resolution procedures.

The estimated direct labor and travel costs for this report are \$216,357.

Action Required

The Agency did not agree with recommendations 1 and 2. These recommendations are considered unresolved with resolution efforts in progress. Therefore, in accordance with EPA Manual 2750 regarding unresolved recommendations, you are required to provide a written response to recommendations 1 and 2, including a proposed corrective action plan with planned completion dates, within 90 calendar days of the report date. Your response will be posted on the OIG's public website, along with our memorandum commenting on your response. Your response should be provided as an Adobe PDF file that complies with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended. The final response

should not contain data that you do not want to be released to the public; if your response contains such data, you should identify the data for redaction or removal. We have no objections to the further release of this report to the public. We will post this report to our website at <http://www.epa.gov/oig>.

If you or your staff have any questions regarding this report, please contact Melissa Heist, Assistant Inspector General for Audit, at (202) 566-0899 or heist.melissa@epa.gov; or Richard Eyermann, Director, Efficiency Audits, at (202) 566-0565 or eyermann.richard@epa.gov.

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Purpose

The U.S. Environmental Protection Agency (EPA), Office of Inspector General (OIG), initiated this review to evaluate how efficiently and timely EPA resolves audits under appeal. As of September 17, 2010, the Management Audit Tracking System (MATS) listed 30 grant audits totaling \$61,495,139 in questioned costs that were under appeal. Our objectives were to determine:

- Which audits under appeal are not included in MATS?
- Are the policies and procedures for appeal of Agency decisions complete and relevant?
- How efficiently are audits under appeal being resolved?

Background

For purposes of this report, we use the term “audits under appeal” to describe situations in which a grantee disagrees with a Final Determination Letter (FDL) issued by the Agency sustaining some or all of the questioned costs identified in an audit of a completed grant. The grantee appeals the FDL with the Regional Administrator (RA) or Assistant Administrator (AA) of the issuing EPA office.

Management Audit Tracking System

In accordance with EPA Manual 2750, December 3, 1998, EPA tracks information on audits under appeal in MATS. EPA uses MATS to support the Audit Management Process by which: (1) EPA officials respond to OIG final reports, (2) OIG and EPA officials resolve findings and recommendations contained in reports, and (3) EPA officials implement followup corrective actions.

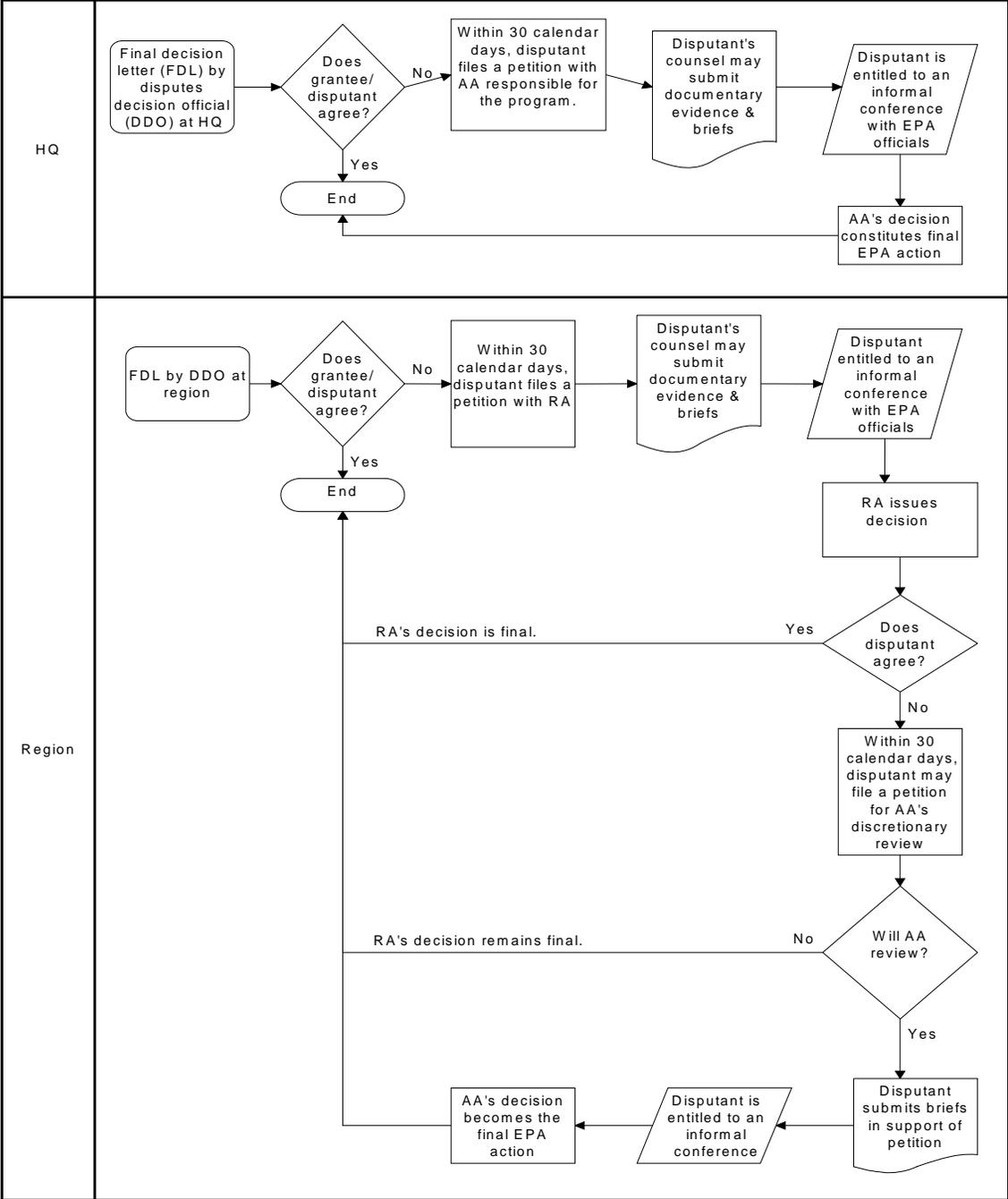
Audit followup coordinators (AFCs) are responsible for entering accurate, complete, and verifiable information into MATS, and maintaining official files containing records of audit reports, management decisions, and certifications of completed corrective actions. *Ensuring the Quality of Data in MATS: OCFO Quality Assurance Plan*, September 30, 2008, details the training requirements for AFCs and the methods used for data quality, such as data entry and review checklists, and periodic spot checks of the documentation contained in the AFCs’ official files compared to the information provided in MATS.

Appeal Resolution Process

Until 2008, EPA resolved audits under appeal in accordance with the procedures cited in EPA’s *Closeout Policy for Grants and Cooperative Agreements*, August 27, 1992. This policy included the closeout requirements basic to all grants and cooperative agreements, the roles and responsibilities of EPA and its recipients, and the specific closeout requirements unique to Superfund, Construction Grants, and the State Revolving Fund Programs. The policy also

included the audit resolution and disputes requirements and criteria. The 1992 closeout policy was superseded when EPA issued Order 5700.6A2, *Policy on Compliance, Review and Monitoring*, effective for closeout procedures on January 1, 2008. The flowchart below is the current process for closing out and resolving an appeal.

Figure 1: The resolution process for audits under appeal



Source: OIG interpretation of 40 Code of Federal Regulations 31.70, Disputes.

Note: DDO is the disputes decision official.

Scope and Methodology

We conducted this performance audit from September 2010 through July 2011 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our 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.

As of September 2010, EPA and its regions had 30 audits under appeal with total questioned costs of \$61,495,139. We selected Regions 2 and 5 for review because 20 appeals, totaling \$55,546,879, were associated with these two regions. Regions 2 and 5 had 66 percent of the appeals with over 90 percent of the total questioned costs. Our sample of 10 appeals consisted of 5 appeals from Region 2 and 5 from Region 5, totaling \$17,301,131 in questioned costs. Appendix A lists the selected audits under appeal.

We conducted interviews and reviewed documentation to understand the tracking process for audits under appeal, the steps in the resolution process, and the applicable EPA or federal policies and procedures. We visited Region 2, Region 5, and EPA offices in New York, New York; Chicago, Illinois; and Washington, DC. We interviewed the AFCs and the staffs of the Offices of Regional Counsel (ORC), the Grants Management Divisions, and program offices of Regions 2 and 5 to determine the process for resolving audits under appeal and the guidance they followed. In addition, we met with management from the Office of General Counsel (OGC) and Office of Grants and Debarment (OGD) at EPA headquarters to determine their roles in the appeal resolution process. During the interviews, we learned that OGC and OGD are currently in the process of revising the Agency's *Assistance Administration Manual*. Subsequently, we learned that the Office of the Chief Financial Officer's (OCFO's) Office of Financial Management was convening a workgroup comprising representatives from Office of Administration and Resource Management (OARM), OGC, OIG, the regions, and program offices to revise EPA Manual 2750.

We reviewed the ORC and AFC files for Regions 2 and 5, including audit reports, FDLs, grantee appeal letters and petitions, RA Dispute Decisions, and miscellaneous correspondence. We also reviewed information on the audits under appeal in MATS.

We assessed the internal controls relevant to our objectives by reviewing the applicable criteria, and during our interviews, we verified regional and headquarters personnel compliance with the criteria. The applicable criteria include:

- EPA Manual 2750, *EPA's Audit Management Process*
- The Code of Federal Regulations (CFR), 40 CFR 31.70, Disputes
- Office of Management and Budget Cost Principles, as promulgated in the CFR
- Regional policies and procedures for reviewing, resolving, and closing audits under appeal
- EPA's *Closeout Policy for Grants and Cooperative Agreements*
- EPA Order 5700.6A2, *Policy on Compliance, Review and Monitoring*
- EPA Region 2 Procedures for Resolution of Assistance Disputes under 40 CFR Part 30¹ Subpart L and 40 CFR 35.3030
- The Memorandum of Understanding Between the Office of Regional Counsel and the Region 5 Offices/Divisions for Grants Law Management
- MATS user's manual

Based on our reviews of regional policies and the documents provided by regional personnel, as well as our interviews with regional personnel, we compared the timelines set forth in the regional guidance to the actual timelines of the audits under appeal.

Results of Review

EPA's efforts to resolve over \$55 million for Regions 2 and 5 audits under appeal are neither efficient nor timely. During our audit, we found that:

- Inadequate communications between AFCs and EPA personnel responsible for resolving audits under appeal have resulted in inaccurate information in MATS.
- Policies and procedures for addressing audits under appeal are not complete and relevant; many of the policies for resolving audits under appeal are inconsistent.
- EPA does not follow its policies for timely resolution for audits under appeal; as of September 2010, 17 of 30 audits under appeal had been in resolution for 10 to 21 years.

Both EPA Manual 2750 and 40 CFR 31.70 require that appeals be fully and fairly considered and resolved in the earliest practicable timeframe, at the lowest level possible. Because appeals are not being resolved timely, at least \$17.3 million that could be used to protect public health and the environment is not available to the government.

¹ Pursuant to 40 CFR 30.63, dispute procedures outlined in 40 CFR 31.70 also apply to grants issued under 40 CFR Part 30.

Not All Audits Under Appeal Are Correctly Recorded in MATS

EPA Manual 2750 requires that OCFO administer MATS to track information on Agency-wide audit corrective actions, audits under appeal, causes of missed deadlines, and questioned costs. OCFO relies on data contained in MATS to prepare end-of-year audit followup reports, which EPA includes in its annual *Performance and Accountability Report* to Congress and the President. AFCs are responsible for maintaining and operating MATS, tracking responses to audit reports from issuance through completion of the corrective action, and monitoring the status of outstanding responses and appeals. Program and regional office AFCs must enter timely, complete, and verifiable information in MATS to ensure the accuracy of EPA's reports to Congress.

MATS did not include or had outdated information for five audits under appeal, all within Region 2. MATS did not include Nassau County, New York, Audit Report No. 1991-100228-320, with total questioned costs of \$1,664,687, because the audit was incorrectly closed in 1994. In addition, on July 20, 2007, Nassau County withdrew its appeals of four other audits, with total questioned costs of \$1,175,691, but Region 2 did not record the withdrawal status in MATS. Of the four withdrawn audits under appeal, three are now closed in MATS and one is in collection. Thus, a net understatement of \$966,059 in questioned costs in Region 2's audits under appeal has been included in Agency end-of-year audit followup reports to Congress from 2007 to the present, and an understatement of \$1,664,687 existed from 1994 to 2007.

We found that the ORCs in Regions 2 and 5 generally were unaware of MATS, of the Agency's reliance on the data in MATS, and of the importance of keeping the AFCs informed of the status of the ongoing appeals. As a result, inadequate communication existed among the parties involved in resolving audits under appeal, particularly regarding the status of the appeals and the importance of accurately reflecting the data in MATS. In Region 2, lack of quarterly status reports to the AFC on all open audits under appeal rendered the AFC unaware that the open audit under appeal, as well as the four withdrawn appeals, were not listed in MATS.

Policies and Procedures for Resolving Audits Under Appeal Are Inconsistent

Policies and procedures for addressing audits under appeal are not complete and relevant, and policies in headquarters and regions are inconsistent. Headquarters policies and procedures lack timelines for resolving the audits under appeal as well as milestones for monitoring the resolution status of the appealed audits. Headquarters policies and procedures are general and only require that appeals be fully and fairly considered and resolved in the earliest practicable timeframe, at the lowest level possible. Specifically, EPA Manual 2750, 40 CFR 31.70, and EPA's *Closeout Policy for Grants and Cooperative Agreements* only require that

appeals be resolved in the earliest practicable timeframe. As a result, delays occurred when the ORCs failed to follow the regional policies and procedures and only complied with those of the Agency.

For example, in the Amherst, New York, and Nassau County, New York, audits under appeal, repeated Requests for Reconsideration of the RA or AA's Dispute Decisions prevented settlement of the appeals. Of the three Nassau County and one Amherst appeals we reviewed, there were 2, 3, 4, and 5 reconsideration or petitions for reconsideration requests filed. These repeated requests were permitted per the *Closeout Policy for Grants and Cooperative Agreements*, which states, "The recipient may request reconsideration of any decision of the RA or AA."

Further, although the 1992 closeout policy was superseded when EPA issued Order 5700.6A2, *Policy on Compliance, Review and Monitoring*, effective for closeout procedures on January 1, 2008, the closeout policy remains posted on the "Closeout Policies Topics" webpage,² and Order 5700.6A2 is not posted.

Although the regions have timelines and milestones set forth in their internal policies and procedures, they are inconsistent and are not followed. For example, Regions 2 and 5 internal policies and procedures have established timelines and milestones of 120 and 180 days, respectively, for the resolution of an audit under appeal. Some of the regional policies and procedures are also outdated, having been written in the 1980s. For example, the Region 5 policies and procedures emphasize the government financial law matters arising under the Construction Grants Program, which no longer exists.

EPA Does Not Achieve Timely Resolution of Audit Appeals

EPA's *Closeout Policy for Grants and Cooperative Agreements* and Order 5700.6A2, *Policy on Compliance, Review and Monitoring*, establish the policies and procedures for closing out the completed grants in our sample. Region 2's Procedures for Resolution of Assistance Disputes under 40 CFR Part 30 Subpart L and 40 CFR 35.3030 set an internal goal to resolve each appeal within 120 days of receipt of the appeal if no informal conference is held or, if a conference is held, within 120 days after the date of the conference. In addition, Region 5's Memorandum of Understanding Between the Office of Regional Counsel and the Region 5 Offices/Divisions For Grants Law Management set a goal of 180 days within which to resolve an appeal.

Seventeen of 30 audits under appeal as of September 2010 had been in the resolution process for 10 to 21 years. We sampled 10 of the 20 audits under appeal in Regions 2 and 5. For these audits under appeal, the grantees filed their appeals from April 1990 to October 2008 in Region 2, and from November 2000 to March 2009 in Region 5.

² <http://intranet.epa.gov/ogd/policy/2.0-Closeout-Topics.htm>.

We identified several causes of delay in resolving the audits under appeal. The policies and procedures are inconsistent on when and how the audits under appeal must be resolved, with some policies including suggested milestones while others omit them. Other causes of delay were changes in program officers and ORC counsel, lost files, or ORC attorneys' workloads, in which work with set deadlines took priority. Three examples of audits under appeal—Amherst, New York; Caribbean Environment & Development Institute (CEDI); and Brazil, Indiana—illustrate the problems with timely resolution. Appendix B provides other examples from our sample of audits under appeal that were not resolved in an efficient, effective, or timely manner.

Region 2

Amherst County, New York, filed its appeal in December 1992 but did not provide the additional supporting documentation for the \$6,061,407 questioned until January 2001. Little interaction between EPA and the grantee took place during an 8-year span (1993–2000). The RA subsequently issued two Dispute Decisions, in November 2001 and January 2002. In February 2002, Amherst filed a Petition for Discretionary Review with the AA, who issued three Dispute Decisions, in April 2007, July 2009, and March 2010. A Request for Reconsideration of the AA's Decision was filed in May 2007, and two Requests for Deviation were filed in May 2007 and December 2008. This appeal remains open.

The CEDI fiscal year 2000 audit under appeal, questioning \$492,250, has been in the resolution process since October 2008. The single audit of CEDI determined that its accounting system was inadequate, with outdated, incomplete, and inaccurate documents. CEDI last submitted documentation in February 2009, but has subsequently been unable to provide adequate documentation proving its claimed incurred costs are reasonable, allowable, and allocable. As of October 2010, the Agency had not established milestones for this appeal and was waiting for CEDI to provide the requested additional documentation. Region 2 OGD and ORC personnel explained that they have to go through due process and work with the grantee. In addition, they explained that CEDI does not understand the requirements for an adequate and compliant accounting system, or what supporting documentation to maintain. This appeal remains open.

Region 5

Brazil, Indiana, filed its initial appeal of the questioned \$4,819,200 in November 2000. From 2000 through 2008, little work was done on resolving the appeal because the ORC attorney was waiting to learn about the status of an Agreed Order between Brazil and the Indiana Department

of Environmental Management certifying the completion of the project. Retirement of the original project officer, misplaced files, slowness of the new project officer in responding to the ORC attorney's questions, and the ORC attorney's workload caused further delays. The RA signed the Dispute Decision in February 2008, but it was misplaced and not issued to the grantee until May 2008. In June 2008, the grantee filed a Petition for Discretionary Review with the AA. A decision was due to be issued by December 2010. A decision was not issued, and this appeal remains open.

Conclusion

Extensive delays in resolving audits under appeal in Regions 2 and 5 have tied up \$17,301,131 in grant funds for up to 21 years, preventing unused funds and all monies owed to EPA from being deobligated or recovered and used on other grants or returned to the government. Further, for the older audits under appeal, historical knowledge and documentation have been misplaced or lost due to departure or retirement of personnel from the grantee, program office, OGD, or ORC. Compliance with the timelines and milestones set forth in the policies and procedures would result in a more efficient, timely, and less expensive resolution process. The resolution process is not timely; the timeframe is case dependent, with appeals lingering for years. This lack of timely resolution has caused serious delays in the recovery of significant amounts EPA believes is owed the federal government.

Recommendations

We recommend that the Chief Financial Officer:

1. In coordination with the Assistant Administrator for Administration and Resources Management, ensure that the in-process revisions to EPA Manual 2750 include:
 - a. A communication strategy among audit followup, counsel, and grants management at the region and headquarters levels to assure entry in MATS of the current status of each audit under appeal
 - b. Limits on the number of times a recipient may request reconsideration of any decision of the RA or AA
 - c. Consistency among policies for resolving audits under appeal and inclusion of:
 - i. Timelines and milestones for each step of the resolution process

- ii. Limits on the number of times that extensions may be granted and the number of times that the grantee may submit additional documentation
- iii. In-house monthly review by the responsible counsel and grants management organizations of the status of the resolution of audits under appeal

We recommend that the Assistant Administrator for Administration and Resources Management:

- 2. Ensure that the in-process revisions to the Agency's *Assistance Administration Manual* include:
 - a. An update to the OGD "Closeout Policies Topics" webpage, adding EPA Order 5700.6A2 and labeling the *Closeout Policy for Grants and Cooperative Agreements* as "rescinded," "superseded," or "expired"
 - b. A reference to the procedures in EPA Manual 2750 that are outlined in recommendation 1
 - c. Uniform procedures for resolving recipient disputes arising from the Agency's assistance agreement audit determinations

Agency Comments and OIG Evaluation

Although the Agency stated that it generally agreed with the draft report's findings and overall recommendation for the EPA to provide greater structure and consistency to the audit resolution process, the Agency proposed several alternatives to the recommendations. Based on the Agency's response, the OIG has revised and separated the recommended corrective actions between OARM and OCFO, and revised several aspects of the recommendations for greater clarity. We believe that our recommendations to incorporate the specified elements into OCFO's EPA Manual 2750 and OARM's *Assistance Administration Manual* will result in the more timely, efficient, and effective resolution of audits under appeal. Currently, the OIG considers the recommendations to be unresolved with resolution efforts in progress. The Agency's response is included in appendix C.

Status of Recommendations and Potential Monetary Benefits

RECOMMENDATIONS						POTENTIAL MONETARY BENEFITS (in \$000s)	
Rec. No.	Page No.	Subject	Status ¹	Action Official	Planned Completion Date	Claimed Amount	Agreed-To Amount
1	8	In coordination with the Assistant Administrator for Administration and Resources Management, ensure that the in-process revisions to EPA Manual 2750 include: <ul style="list-style-type: none"> a. A communication strategy among audit followup, counsel, and grants management at the region and headquarters levels to assure entry in MATS of the current status of each audit under appeal b. Limits on the number of times a recipient may request reconsideration of any decision of the RA or AA c. Consistency among policies for resolving audits under appeal and inclusion of: <ul style="list-style-type: none"> i. Timelines and milestones for each step of the resolution process ii. Limits on the number of times that extensions may be granted and the number of times that the grantee may submit additional documentation iii. In-house monthly review by the responsible counsel and grants management organizations of the status of the resolution of audits under appeal 	U	Chief Financial Officer			
2	9	Ensure that the in-process revisions to the Agency's <i>Assistance Administration Manual</i> include: <ul style="list-style-type: none"> a. An update to the OGD "Closeout Policies Topics" webpage, adding EPA Order 5700.6A2 and labeling the <i>Closeout Policy for Grants and Cooperative Agreements</i> as "rescinded," "superseded," or "expired" b. A reference to the procedures in EPA Manual 2750 that are outlined in recommendation 1 c. Uniform procedures for resolving recipient disputes arising from the Agency's assistance agreement audit determinations 	U	Assistant Administrator for Administration and Resources Management			

¹ O = recommendation is open with agreed-to corrective actions pending
C = recommendation is closed with all agreed-to actions completed
U = recommendation is unresolved with resolution efforts in progress

List of Sampled Audits Under Appeal

Audit number	Region	Audit title	Final Determination Letter issued	Date of grantee appeal letter	No. of days in appeal status past due date	Initial disallowed costs
1990-001114-320	2	Nassau County, New York	09/27/1990	10/24/1990	7,232	\$ 94,722
1989-901299-320	2	Nassau County, New York	03/30/1990	04/30/1990	7,388	4,344,808
1990-001108-320	2	Nassau County, New York	09/17/1990	10/05/1990	7,237	60,921
2006-300069-320	2	Caribbean Environment & Development Institute, FY 2000	09/26/2008	10/17/2008	658	492,250
1992-201155-320	2	Amherst, New York	07/17/1992	08/07/1992	6,572	6,061,407
Region 2 total						\$ 11,054,108
1997-100003-350	5	Brazil, Indiana	11/03/2000	11/30/2000	3,542	\$ 4,819,200
8-200095-350	5	City of Bad Axe, Michigan—Unallowable Costs Claimed Under EPA Grant XP98578301	06/17/2008	07/02/2008	742	211,143
8-200204-350	5	Village of Wellsville, Ohio—Ineligible Costs Claimed Under EPA Grant XP97582801	02/12/2009	03/12/2009	522	647,377
8-300041-350	5	City of Taylor, Michigan—FY 2005	01/29/2008	02/18/2008	895	187,393
9-300007-350	5	Michigan Department of Environmental Quality —FY 2006–2007	03/03/2009	03/27/2009	497	381,910
Region 5 total						\$ 6,247,023
Total sample disallowed costs						\$ 17,301,131

Timeline of Resolution Process for Sampled Audits

Resolution process actions	Region 2					Region 5				
	Nassau County, New York			Caribbean Environment & Development Institute FY 2000	Amherst, New York	Taylor, Michigan	Wellsville, Ohio	Bad Axe, Michigan	Michigan Department of Environmental Quality FY 2006–2007	Brazil, Indiana
Grant No.	C360891-07	C360628-01	C360982-08	CE992069-01/02/03/04/05/06, 820770	C360618-02/03					C180457-04
Audit Report No.	1990-001114	1989-901299	1990-001108	2006-300069	1992-201155	8-300041	8-200204	8-200095	9-300007	1997-100003
Sample No.	1	2	3	4	5	6	7	8	9	10
Final Determination Letter issued	09/27/1990	03/30/1990	09/17/1990	09/26/2008	07/17/1992	01/29/2008	2/12/2009	06/17/2008	03/03/2009	11/03/2000
Grantee requests review of FDL and extension to perfect appeal					08/07/1992					
Region 2 grants extension request					09/02/1992					
Grantee requests additional extension					09/30/1992					
Supplemental information provided					12/09/1992					
Grantee files appeal	10/24/1990	04/30/1990	10/05/1990	10/17/2008	12/09/1992	02/18/2008	3/12/2009	07/02/2008	03/27/2009	11/30/2000
Grantee requests extension to perfect appeal				10/17/2008				08/19/2008		
ORC counsel assigned								10/01/2008		04/11/2001
E-mails trying to locate complete copy of file										04/2001-05/2001
Time extension granted				11/13/2008						
Followup request for review by grantee				12/09/2008						
Scheduling Letter sent by EPA to grantee						05/30/2008				
Documentation submitted	No Dates			02/06/2009		07/08/2008		02/01/2009		05/10/2002
Meeting between EPA and grantee			02/27/1992							07/11/2002
Grantee withdraws appeal for disallowance of \$27,355			04/29/1992							
EPA requests additional information	06/12/1990		06/29/1992							
Supplemental information provided		06/25/1990 10/16/1991 07/20/1992 08/10/1992	07/20/1992 08/10/1992 09/16/1992 09/25/1992							

Resolution process actions	Region 2					Region 5				
	Nassau County, New York			Caribbean Environment & Development Institute FY 2000	Amherst, New York	Taylor, Michigan	Wellsville, Ohio	Bad Axe, Michigan	Michigan Department of Environmental Quality FY 2006–2007	Brazil, Indiana
Grant No.	C360891-07	C360628-01	C360982-08	CE992069-01/02/03/04/05/06, 820770	C360618-02/03					C180457-04
Audit Report No.	1990-001114	1989-901299	1990-001108	2006-300069	1992-201155	8-300041	8-200204	8-200095	9-300007	1997-100003
Sample No.	1	2	3	4	5	6	7	8	9	10
EPA requests additional information			11/17/1992		12/14/1992					
Supplemental information provided			12/09/1992							
EPA internal e-mail									03/03/2010	
ORC e-mails w/ draft Dispute Decision preparing waiver of interest application						07/20/2010 07/22/2010 08/11/2010			10/01/2010	01/18/2007
Case reassigned to new ORC counsel								09/22/2010		
RA Dispute Decision signed										02/11/2008
E-mails sent trying to locate signed and released RA Dispute Decision										03/01/2008
RA Dispute Decision issued	09/24/1993	9/29/1995					09/22/2010			05/22/2008
Petition for Discretionary Review filed with AA	10/22/1993		10/22/1993							06/20/2008
General Request for Reconsideration filed by grantee	10/25/1993	10/30/1995	10/25/1993 10/26/1993							
RA Dispute Decision issued		8/30/2001	09/26/1994							
Petition for Discretionary Review filed with AA		8/30/2001	09/26/1994							
Request for Reconsideration filed			10/26/1994							
Meeting with grantee re another submission	08/15/1996									
Time extension to submit documentation	02/01/1999									
Final submission	03/01/1999		03/01/1999							
Intermittent phone calls and correspondence, no additional information provided					1993–2000					
RA Decision on Petition for Reconsideration	03/13/2000									
RA Dispute Decision issued			09/07/2000							
Region 2 announces intention to consolidate reviews of grants, proposes conference					11/07/2000					
Grantee counsel, by phone, rejects proposed schedule					11/21/2000					
Supplemental information provided					01/18/2001					

Resolution process actions	Region 2					Region 5				
	Nassau County, New York			Caribbean Environment & Development Institute FY 2000	Amherst, New York	Taylor, Michigan	Wellsville, Ohio	Bad Axe, Michigan	Michigan Department of Environmental Quality FY 2006–2007	Brazil, Indiana
Grant No.	C360891-07	C360628-01	C360982-08	CE992069-01/02/03/04/05/06, 820770	C360618-02/03					C180457-04
Audit Report No.	1990-001114	1989-901299	1990-001108	2006-300069	1992-201155	8-300041	8-200204	8-200095	9-300007	1997-100003
Sample No.	1	2	3	4	5	6	7	8	9	10
Conference held					04/24/2001					
Supplemental information provided					06/15/2001					
Grantee submits letter to OGD Director requesting deviation					07/19/2001					
RA Dispute Decision issued					11/19/2001 01/03/2002					
Petition for Discretionary Review for Grant No. C360618-02 filed					02/01/2002					
Followup letter to Petition					02/04/2002 11/03/2003					
Internal EPA Grants letter					08/29/2006					
AA Dispute Decision issued					04/11/2007					
Request for Reconsideration of AA decision					05/17/2007					
Request for deviation from provisions of 40 CFR 30 and 40 CFR 35					05/24/2007					
Appeal withdrawn	07/20/2007									
Followup letter to Petition					12/31/2008					
Request for Deviation letter					12/31/2008					
Letter recommending deviation denial—Region 2 RA to OGD Director					05/19/2009					
AA Dispute Decision issued					07/23/2009 03/01/2010					
Letter recommending deviation denial—Region 2 RA to OGD Director					08/10/2010					
Status	Closed – 01/05/2011	Open	Open	Open	Open	Open	Closed – 09/22/2010	Open	Closed – 10/01/2010	Open

Agency Response and OIG Evaluation



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

August 5, 2011

MEMORANDUM

SUBJECT: Response to Draft Office of Inspector General Audit Report,
Project No. OA-FY10-0205: *EPA Should Improve Timeliness for Resolving Audits Under Appeal*

FROM: Craig E. Hooks, Assistant Administrator
Office of Administration and Resources Management

Barbara J. Bennett
Chief Financial Officer

TO: Melissa M. Heist, Assistant Inspector General for Audits
Office of Inspector General

Thank you for the opportunity to comment on the subject OIG draft Audit Report (Report), dated July 6, 2011. We appreciate the courtesy and open communications the OIG team afforded during the course of the audit.

The expressed purpose of the audit was to evaluate the timeliness and efficiency of the EPA's process for resolving a recipient's dispute arising from the EPA's assistance agreement audit determination (defined in the Report as the "appeals resolution process"). We generally agree with the Report's findings and overall recommendation for the EPA to provide greater structure and consistency to the audit resolution process.

The EPA remains committed to ensuring that recipient audit appeals are resolved in an efficient and timely manner. Since the OIG completed its fieldwork, the agency has continued to take affirmative steps to resolve the audit appeals that were the subject of the OIG's review. For example, many of the appeals in Region 2 were either withdrawn by the recipient or were decided with a partial remand back to Region 2 for reconsideration. With respect to the Nassau County, New York Grant Number C360982-06, referenced on page 5 of the Report, the Regional Administrator recently issued a decision reducing the federal share of disallowed costs to \$0. On June 9, 2011, Region 2 also closed the appeal concerning the Nassau County, New York Grant Number C360982-08.

The Office of Grants and Debarment further issued a deviation that will facilitate the resolution of the remaining Nassau County, New York audit appeals, and is in the final stages of deciding a deviation request that will fully resolve the audit appeal concerning the Amherst, New York Grant Number C360618-02/03. Region 5 has likewise continued to make progress in resolving its pending recipient audit appeals. In addition, on March 28, 2011, the Region 5 Regional Administrator issued uniform regional procedures for resolving assistance agreements audit disputes and appeals in that Region.

Based on our review of the Report, we have a number of comments on the Report's findings and recommendations.

Comments on the Report's Findings

We note that the Report cites the EPA's Closeout Policy for Grants and Cooperative Agreements, issued on August 27, 1992, as the governing policy for resolving assistance agreement audits under appeal. That policy, however, is no longer in effect. The EPA Order 5700.6 A2, entitled "Policy on Compliance, Review and Monitoring," expressly replaced, rescinded and superseded the 1992 Closeout Policy. The now effective EPA Order 5700.6 A2, was originally issued on September 24, 2007, and became effective for closeout procedures on January 1, 2008. The Order essentially establishes the agency's standards for the oversight, monitoring and closeout of EPA assistance agreements. Unlike the former 1992 Closeout Policy, it does not provide specific procedures for resolving audits or recipient disputes arising from audit final determinations. Accordingly, as of January 1, 2008, the 1992 Closeout Policy no longer governs the audit appeals process. We therefore request that in the Final Report, the OIG delete the references for continuing compliance with that Closeout Policy.

OIG Response: The OIG revised the report to clarify that the closeout policy was applicable to the appeals we reviewed that were under appeal before and up to January 1, 2008, at which time EPA Order 5700.6A2 superseded the closeout policy and took effect. Until this response, no mention was made of EPA Order 5700.6A2, and according to the OGD intranet webpage "Closeout Policies Topics" (<http://intranet.epa.gov/OGD/policy/2.0-Closeout-Topics.htm>), the *Closeout Policy for Grants and Cooperative Agreements* is the governing policy. We recommend that OGD update its webpage "Closeout Policies Topics," adding EPA Order 5700.6A2 and labeling the *Closeout Policy for Grants and Cooperative Agreements* as "rescinded," "superseded," or "expired." Further, we have also revised recommendation 1.b. to remove reference to the closeout policy.

We also note that in the second full paragraph on page 7, the Report indicates that Region 2 considered the Caribbean Environmental & Development Institute (CEDI) a "high-risk" grantee. The EPA, however, did not designate CEDI as "high-risk". If it had, then the Agency would have placed CEDI on the reimbursement method of payment with active payment review.

OIG Response: During our meeting with Region 2 OGD and ORC personnel, the Grants and Contracts Management Branch Chief used the phrase "high-risk grantees" when discussing some of the issues the Agency faces with grantees unfamiliar with government accounting requirements; i.e., issues the EPA is having with CEDI. However, since Region 2 explained that CEDI is not a high-risk grantee, we removed the statement in question from the report.

Comments on the Report's Recommendations

Our consolidated comments on the specific Report recommendations and corrective actions initiated or planned are set forth below.

1. *We recommend the Assistant Administrator for Administration and Resources Management and the Chief Financial Officer, jointly assure the in-process revisions to the Agency's Assistance Administration Manual and EPA Manual 2750 include:*
 - a. *a communication strategy that ensures EPA records current data on audits under appeal in MATS.*

Response: We concur with the part of the recommendation calling for revisions to EPA Manual 2750 and a communication strategy to ensure updates in the Management Audit Tracking System (MATS). Providing agencywide audit appeals resolution procedures as part of Manual 2750 will help increase consistency in the resolution process. It will also allow for a more comprehensive "cradle to grave" EPA policy that will provide information on audit follow-up, tracking, resolution and appeal procedures in one central document. The Office of the Chief Financial Officer is currently leading an agencywide workgroup to revise Manual 2750. The OIG is a key participant in the workgroup. The workgroup's efforts had been on hold for several weeks pending the OIG's completion of its own revisions to the OIG's internal audit review and resolution procedures. After discussions between the OIG and OCFO managers, the workgroup resumed the Manual 2750 revision process, with the goal of completing a first draft of the revisions to the Manual by the end of the third quarter of fiscal year (FY) 2012. The Office of Administration and Resources Management will take the lead in developing the assistance agreement audit appeals resolution procedures for final incorporation into the revised Manual 2750. OARM will work together with the Office of General Counsel, OCFO and the Grants Management and Program Offices to develop the procedures. OARM intends to complete the draft of the appeals resolution procedures by the end of the second quarter of FY 2012.

OIG Response: The OIG agrees with the corrective actions covered in the preceding paragraph. Therefore, we revised recommendation 1 to state that OCFO coordinate with OARM to revise EPA Manual 2750 rather than recommending that OCFO and OARM jointly revise 2750 and the *Assistance Administration Manual*. The 2750 Workgroup decided that each type of audit will address the Agency's dispute resolution process. Currently, the draft flowcharts for the assistance agreements and single audits both reference an appeals flowchart for the appeals process that has not yet been drafted. The management action plan in response to the final report should more specifically cover the intended approach for appeals.

Based on the planned incorporation of the appeals audit resolution procedures in Manual 2750, the EPA does not believe that it is necessary to require inclusion of the same procedures in the agency's Assistance Administration Manual at this time. While OGD has initiated a process to revise the Assistance Administration Manual, those revisions will address the broader grants administration process and will entail significantly more coordination and time than would be required for developing the appeals resolution procedures. We therefore request that the OIG delete the recommendation to include the appeals procedures in the EPA's Assistance Administration Manual, since that recommendation would delay implementation of the corrective actions and closeout of this OIG audit. OARM does intend to include the appropriate reference to the appeals procedures in the

revised Assistance Administration Manual. However, as previously mentioned, the Assistance Administration Manual revisions represent a much larger and protracted process that is beyond the scope of the Report.

OIG Response: The OIG agrees that the revised procedures should be in EPA Manual 2750. In the new recommendation 2.b., the OIG recommends that OARM ensure that the *Assistance Administration Manual* references the changes in 2750.

We also request that the OIG revise the recommendation to direct the applicable corrective actions separately to OCFO and OARM. We recognize that the recommendation entails coordination between both offices. However, based on the planned two-tiered corrective action strategy, separating the recommendations will better enable each office to track and be accountable for implementing the corrective action within its respective purview. Specifically, we request that the OIG direct OARM to develop uniform procedures for resolving recipient disputes arising from the agency's assistance agreement audit determinations. We also request that the OIG direct OCFO to incorporate the procedures and requirements for regular MATS update in the revised EPA Manual 2750.

OIG Response: The OIG agrees to separately address corrective actions to OCFO and OARM. Also, in the new recommendation 2.c., the OIG recommends that OARM develop uniform procedures for disputes as suggested in the Agency response.

EPA concurred with recommendation 1.a., calling for a communication strategy to ensure updates in MATS. However, the Agency's proposed corrective actions do not fully address the intent of recommendation 1.a., which was to improve the interoffice communications at both regional and headquarters levels among the AFCs, ORC, and OGD on the status of each audit under appeal. Inadequate communications among EPA personnel responsible for resolving audits under appeal have resulted in inaccurate information in MATS. At the time of this audit, several disputed audits that were withdrawn by the grantee 3 years previously were still listed in MATS, resulting in an overstatement of audits under appeal in MATS. In another instance, an appeal was lost in headquarters for almost a year after the grantee appealed the RA's decision to the AA. The OIG revised recommendation 1.a. to more clearly cover the expectation that the Agency develop a communication strategy among the headquarters and regional AFCs, ORC, and OGD to ensure that the most current data on disputed grant audits are recorded in MATS.

- b. *update of the EPA Closeout Policy for Grants and Cooperative Agreements and revision of the statement, "The recipient may request reconsideration of any decision of the RA or AA," to establish a finite number of reconsideration requests.*

Response: The EPA does not concur with this recommendation. As indicated above, the Closeout Policy is no longer in effect. The audit appeals resolution policy that OARM develops and OCFO incorporates in Manual 2750 will limit the number of reconsideration requests permitted.

OIG Response: The OIG revised this recommendation in accordance with the Agency's request and removed references for continuing compliance with EPA's *Closeout Policy for Grants and Cooperative Agreements*. The OIG revised the recommendation to the OCFO to incorporate in EPA Manual 2750 milestones that limit the number of times a grantee may request reconsideration of RA and AA decisions.

- c. consistency among policies for resolving audits under appeal and inclusion of:*
- i. timelines and milestones for each step of the resolution process;*
 - ii. limits on the number of time extensions may be granted and the number of times that the grantee may submit additional documentation; and*
 - iii. monthly review of the status of the resolution of audits under appeal.*

Response: The EPA agrees in principle that there is a need for greater consistency and structure in the audit appeals resolution process, but has some concerns about the stringency of the deadlines and restrictions contemplated under this recommendation. The fact is that many of the audit appeals take time to resolve because they raise complex legal, technical and factual issues that require the submission and review of extensive documentation and data. They also necessitate broad coordination between various offices, including legal counsel, Programs, and Grants Management Offices. The resolution timeframe for each appeal may vary depending on the nature of the issue and the workload of the EPA personnel involved. In addition, the resolution process may include the consideration of a formal deviation from governing regulations or policies. That would add another layer of review and time to the resolution process. As a result, the appeals process does not lend itself to rigid procedural deadlines or milestones.

Similarly, while it is necessary to prevent recipients from unnecessarily prolonging the appeals resolution process by requesting unwarranted time extensions or submitting unnecessary additional documentation, the adopted restrictions would need to allow some discretion to account for the unique facts and circumstances of individual appeals.

The EPA therefore requests that recommendation c.i and ii be revised to require the adoption of flexible guidelines for establishing timelines for the resolution of individual audit appeals, including the ability to exercise discretion as necessary to take into account the unique facts and circumstances of the appeal.

OIG Response: The OIG did not change the recommendations as requested for two reasons. First, the degree of flexibility allowed in the dispute resolution process is at the Agency's discretion. Second, by setting expectations for timelines and extensions, the Agency sets parameters for exceptions. For example, limiting the number of documentation submissions and requests for reconsideration of RA and AA decisions would reduce the potential for unnecessary delay in the resolution process. At the time of our evaluation, 17 audits had been in appeal status for more than 10 years, and currently, there are 10 that have been in appeal status for more than 10 years.

Finally, the EPA requests that recommendation c.iii be revised to require a minimum of quarterly rather than monthly updates to MATS. A mandatory minimum of quarterly updates is consistent with MATS updating for OCFO's Quarterly Audit Management Progress Reports, and will more appropriately take into account the general phases involved in the appeals resolution process.

OIG Response: The OIG revised this recommendation to clarify that this recommendation covers an in-house monthly status review of disputes by counsel and grants management. We intended this review to facilitate timely resolution and expect that the review is in addition to the quarterly MATS update. Some topics for this review include (1) identification of audits in appeal status, (2) stage of the resolution process, (3) issues delaying the resolution, (4) time extensions, and (5) counsel and grants management workloads.

Thank you again for the opportunity to comment on the Report. If you have any questions concerning this matter, please contact Denise Sirmons at 202-564-6771. You may also contact Alexandria Mincey, the OGD Audit Follow-up Coordinator, at 202-564-5371, or Bernadette Dunn, the OCFO Audit Follow-up Coordinator, at 202-564-4963.

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