

UNITED STATES DEPARTMENT OF AGRICULTURE
OFFICE OF INSPECTOR GENERAL

STATEMENT OF THE HONORABLE PHYLLIS K. FONG
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Committee on Energy and Commerce
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Good morning, Mr. Chairman and Members of the Subcommittee. I thank you for inviting me to testify before you today to discuss the Office of Inspector General's (OIG) oversight of the Department of Agriculture's (USDA) broadband grant and loan programs.

As you know, OIG's mission is to promote the efficiency and effectiveness of USDA programs by performing audits and investigations to reduce fraud, waste, and abuse. We perform audits designed to ascertain if a program is functioning as intended, if program payments are reaching those they are intended to reach, and if funds are achieving the purpose they were intended to accomplish. When we find problems with the programs we oversee, we make recommendations we believe will help the agency better fulfill its mission. We also conduct investigations of individuals who abuse USDA programs—these investigations can result in fines and imprisonment for those convicted of wrongdoing.

When the Recovery Act was passed, Congress provided \$2.5 billion in additional money to fund USDA's broadband programs, as well as \$4.7 billion to the Department of Commerce for similar purposes.¹ The Recovery Act also mandated that the Government Accountability Office (GAO) oversee the expenditure of Recovery Act funds, including broadband funds.²

As USDA-OIG began planning its oversight activities and determining which Recovery Act programs it would review, we coordinated closely with GAO. When GAO concluded that it would perform a multi-department review of broadband that included USDA, we decided that we

¹ The National Telecommunications and Information Administration's Broadband Technology Opportunities Program.

² American Recovery and Reinvestment Act of 2009, Public Law No. 111-5, at Sec. 901, dated Feb. 17, 2009.

would not review the programs again until GAO had finished its work so that we could avoid duplicating each other's efforts.³

However, given the seriousness of the concerns raised by our prior audits and investigations (discussed in more detail below), and the amount of money being spent on broadband, USDA-OIG will be taking up these issues again in our future work. Though we have not fully formulated our scope and approach, we plan to initiate work in this area this year. Our project will likely evaluate Rural Utilities Service's (RUS) current program operations and assess the effectiveness of RUS' corrective actions to address the recommendations set out in our 2005 and 2009 reports.

Audits of USDA's Broadband Grant and Loan Programs

Since 2001, RUS has been responsible for administering USDA's broadband grant and loan programs. The 2002 Farm Bill authorized USDA to provide funds for the cost of construction, improvement, or acquisition of facilities and equipment for broadband service in eligible rural communities.⁴ In 2005, we completed our first review of RUS' administration of those programs.⁵

Of the \$895 million in grants and loans RUS issued from 2001 to 2005, we reviewed \$599 million and questioned the expenditure of \$340 million for reasons including loans that were approved despite incomplete applications, loans that defaulted, and grant funds used for inappropriate purposes. We further found that RUS had not maintained its focus on rural communities lacking preexisting broadband service. In approving broadband grants and loans,

³ To date, we understand that GAO has published several reports dealing with various aspects of the Government's efforts to spur broadband development.

⁴ Farm Security and Rural Investment Act of 2002, Public Law 107-171, dated May 13, 2002.

⁵ "Rural Utilities Service Broadband Grant and Loan Programs," 09601-4-TE, dated September 30, 2005.

RUS used a definition of rural communities that was too broad to distinguish between rural areas and areas that were close to major metropolitan centers. As a result, the agency issued \$103.4 million of its \$895 million in grants and loans (12 percent) to 64 communities near large cities, including \$45.6 million in loans to 19 suburban subdivisions within a few miles of downtown Houston, Texas.

We also questioned RUS' practice of devoting significant portions of its resources to funding competitive service in areas with preexisting broadband access rather than expanding service to communities without existing access. In 2004, we found that 159 of the 240 communities associated with the loans (66 percent) already had preexisting broadband service, despite the fact that the law establishing the broadband program made it clear that these funds were intended to be used first for "eligible rural communities in which broadband service is not available to residential customers."⁶ We also questioned RUS' decision to fund certain providers in rural communities, but not others. This decision could create an uneven playing field for providers already operating without Government subsidies. Why should one provider be given a Government loan or grant when another provider offers service without that assistance? Lending in a rural market with preexisting providers could also set up some of RUS' loans to fail if there are too few subscribers to sustain multiple competing providers.

Our 2005 report made 14 recommendations intended to help RUS improve its administration of the broadband grant and loan programs, and more narrowly focus its resources on rural communities without preexisting broadband service. In its response, RUS did not agree with how OIG portrayed the broadband grant and loan programs, and for the next several years OIG

⁶ Amendments to the Distance Learning and Telemedicine Program, Public Law 106-387, 114 Stat. 1549A-22, dated October 28, 2000; 7 CFR § 1738.11.

worked with RUS to resolve our recommendations. In 2009, we revisited the broadband programs to see what progress RUS had made in responding to these recommendations, and also to respond to requests from Congress for additional information.⁷

We reported that RUS had not taken adequate corrective action for 8 of our 14 recommendations, including those that related most directly to funding projects in areas that were close to major metropolitan areas, and funding projects in areas with preexisting service. From 2005 to 2009, RUS continued providing questionable loans to providers near very large cities or in areas with preexisting service:

- RUS made loans to broadband providers serving 148 communities within 30 miles of cities with 200,000 or more inhabitants, including Chicago and Las Vegas.
- RUS approved 34 of 37 applications for providers in areas where one or more private broadband operators already offered service.
- RUS approved only three applications to areas that were completely without preexisting broadband service.

RUS officials explained that they delayed responding to our recommendations because they believed the 2008 Farm Bill might address some of OIG's issues. The 2008 Farm Bill did provide RUS with a more precise definition of a "rural area,"⁸ as well as guidance on funding grants and loans in areas with preexisting service.⁹ As of January 2011, the Office of the Chief Financial Officer (OCFO) has not accepted RUS' actions as adequate to close 10 of the

⁷ "Rural Utilities Service Broadband Grant and Loan Programs," 09601-8-TE, dated March 31, 2009.

⁸ Public Law 110-234, section 6110, dated May 22, 2008, defined a "rural area" as a city, town, or incorporated area with fewer than 20,000 inhabitants, that is not in an urbanized area contiguous and adjacent to a city or town with more than 50,000 inhabitants. In addition, the Secretary may identify areas as not being rural if they are a collection of census blocks that are contiguous to each other.

⁹ Public Law 110-234, section 6110, dated May 22, 2008, stated that RUS should provide loans to projects in communities where three or more providers are not already providing service.

14 original recommendations from our 2005 report (including those pertaining to its definition of rural and how it makes loans to areas that already have service). OCFO has also not accepted RUS' action as adequate to close the additional recommendation from our 2009 report (which pertained to defining a loan in default).

Investigations of USDA's Broadband Grant and Loan Programs

OIG investigations have revealed that broadband providers receiving RUS grants and loans have not always dealt fairly with the Government, and have sometimes committed crimes. For example, an investigation conducted jointly with the Federal Bureau of Investigation found that a company in Austin, Texas, submitted fraudulent claims for equipment purchases and services on its rural broadband Internet project. In December 2007, a Federal court in Lubbock, Texas, sentenced two company officers to 60 months of probation and ordered restitution of \$429,159 for theft of public money. The agency also debarred the company and its owner from participation in Federal Government programs for 5 years.

Similarly, we found that a company in West Virginia schemed to defraud RUS of funds intended to construct a wireless broadband system in Ohio and West Virginia. The company fraudulently disbursed RUS loan funds based on phony invoices submitted for payment, and also illegally paid funds to an Ohio company where former officials of the West Virginia company later became employed. Corporate officials, a board member, and the Ohio company were charged with a variety of crimes including mail fraud, theft, bribery, money laundering, aiding and abetting, perjury, and obstruction of justice. They eventually pled guilty to money laundering conspiracy for their involvement in misappropriating more than \$2.4 million.

Conclusion

These audits and investigations illustrate the ongoing challenges RUS faces in effectively implementing the broadband program. USDA-OIG is committed to providing appropriate oversight for this important program and to working with RUS as it brings broadband to rural markets that would otherwise not have access to this important technology.

This concludes my written statement. I want to again thank the Chair and the Subcommittee for the opportunity to testify today. We welcome any questions you may have.