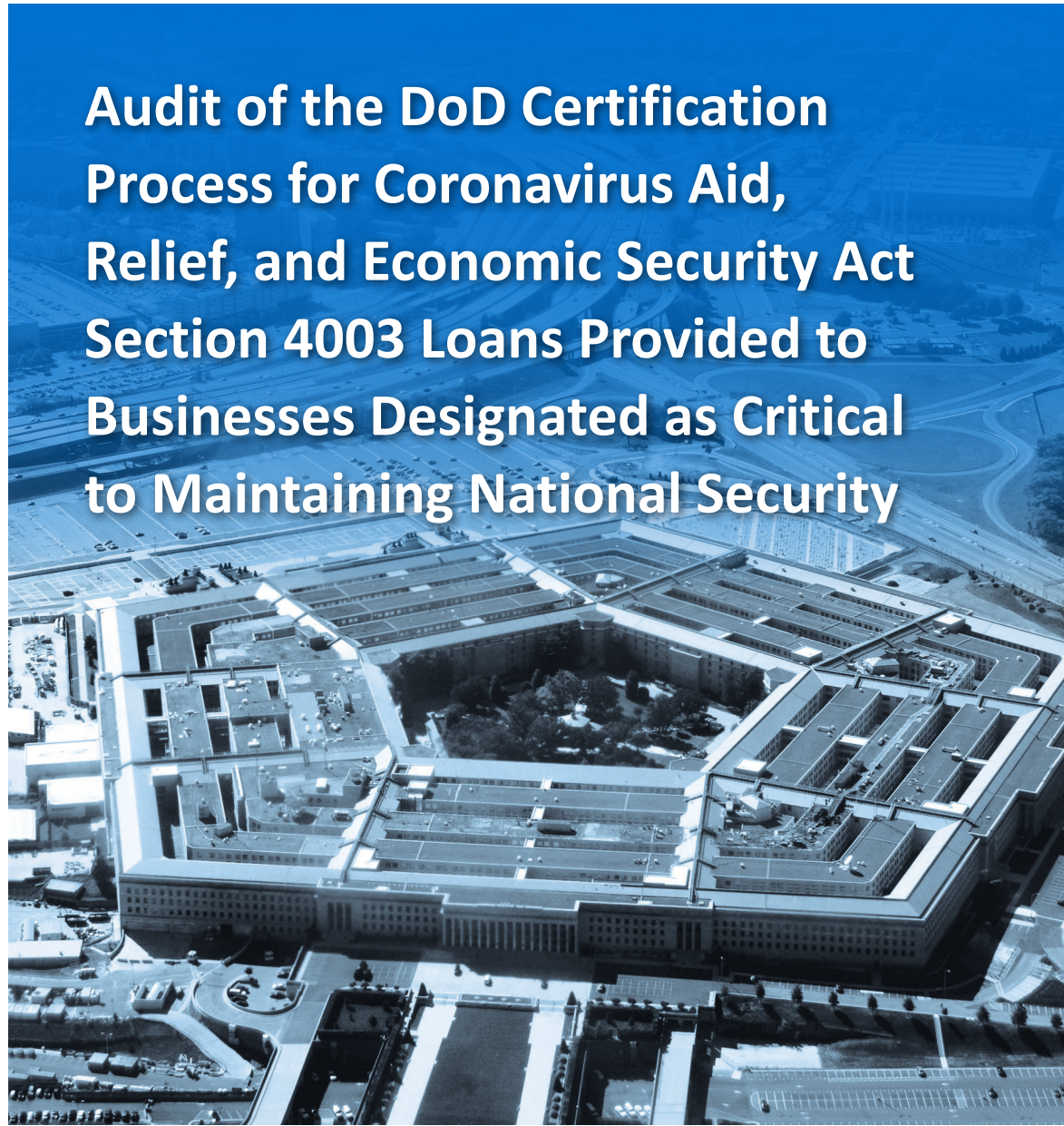




INSPECTOR GENERAL

U.S. Department of Defense

SEPTEMBER 20, 2022



Audit of the DoD Certification Process for Coronavirus Aid, Relief, and Economic Security Act Section 4003 Loans Provided to Businesses Designated as Critical to Maintaining National Security





Results in Brief

Audit of the DoD Certification Process for Coronavirus Aid, Relief, and Economic Security Act Section 4003 Loans Provided to Businesses Designated as Critical to Maintaining National Security

September 20, 2022

Objective

The objective of this audit was to determine whether DoD officials adequately supported decisions when verifying and certifying businesses as critical to maintaining national security for loans under Section 4003 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act).

Background

Section 4003 of the CARES Act authorized the Treasury Department to make loans, loan guarantees, and other investments that provided liquidity to eligible businesses related to losses incurred because of the coronavirus disease-2019 pandemic. The CARES Act permitted the Secretary of the Treasury to issue as much as \$17 billion in loans and loan guarantees to businesses critical to maintaining national security.

The Treasury Department recognized businesses critical to maintaining national security as businesses that either had a DX-priority rated contract, a type of contract that provides support to certain national defense and energy programs, or had a top secret facility security clearance. DoD officials were responsible for verifying that businesses had DX-priority contracts or top secret facility clearances. Businesses that did not apply under DX-priority contracts or top secret facility clearances sought acceptance to the loan program through DoD certification. The Secretary of the Treasury accepted that a business was critical to maintaining national security based on a certification from the Secretary of Defense or the Director of National Intelligence.

Background (cont'd)

The Office of the Under Secretary of Defense for Acquisition and Sustainment (OUSD[A&S]) conducted the analysis for the verification and certification processes for the DoD, and Treasury Department officials, using information provided by the DoD, decided whether to approve the loans and loan guarantees.

Finding

OUSD(A&S) officials did not adequately support their verifications that businesses held DX-priority contracts or top secret facility clearances, and their recommendations to the Secretary of Defense and Deputy Secretary of Defense to certify businesses as critical to maintaining national security for loans under Section 4003 of the CARES Act. Of the 74 businesses Treasury Department officials provided to the DoD for review, OUSD(A&S) officials verified the DX-priority or top secret facility clearances for 16 businesses, and based on recommendations from the OUSD(A&S), the Secretary of Defense or Deputy Secretary of Defense certified to Treasury officials that 19 other businesses were critical to maintaining national security. Furthermore, the Secretary of Defense's memorandum to the Secretary of the Treasury certified a 20th business not included in the OUSD(A&S) recommendations. The DoD did not verify or certify the remaining 38 businesses to receive consideration for loans under Section 4003 of the CARES Act.

OUSD(A&S) officials were unable to adequately support their verifications and certifications because officials did not:

- define in writing how to determine whether a business was "critical to maintaining national security," when certifying businesses; and
- have sufficient documentation that supported the implementation of consistent screening criteria to verify businesses' DX-priority or top secret facility clearances, or to recommend to the Secretary of Defense or Deputy Secretary of Defense that businesses were critical to maintaining national security.



Results in Brief

Audit of the DoD Certification Process for Coronavirus Aid, Relief, and Economic Security Act Section 4003 Loans Provided to Businesses Designated as Critical to Maintaining National Security

Finding (cont'd)

As a result, the OUSD(A&S) implemented a process that was inconsistent and ineffective for verifying or certifying businesses as critical to maintaining national security, thus possibly enabling unqualified businesses to receive Section 4003 CARES Act loans. OUSD(A&S) officials were unable to fully support the rationale used during the analysis or decision-making process. Ultimately, Treasury Department officials made the final decision to approve Section 4003 loans; however, Treasury officials relied on the analysis performed by OUSD(A&S) officials to initiate the loan underwriting process. Furthermore, the DoD's lack of a documented definition and documentation trail put the Treasury Department at risk of potentially providing loans to companies that were not critical to maintaining national security.

Recommendations

We recommend that the Deputy Assistant Secretary of Defense (Industrial Policy):

- perform an after-action review to document decisions, actions, best practices and lessons learned when operating in a pandemic environment or other national emergency in which the DoD is tasked to provide critical information and analysis to support decisions in a short timeframe; and
- develop and implement a standard operating procedure to retain documentation to support business decisions when certifying data points to another Federal agency.

Management Comments and Our Response

The Principal Deputy Assistant Secretary of Defense (Industrial Base Policy), responding for the Deputy Assistant Secretary of Defense (Industrial Policy), agreed with the recommendations. The Principal Deputy Assistant Secretary provided an after action review that was completed on August 5, 2022, and a standard operating procedure dated August 12, 2022, which will be implemented when the DoD is required to provide certifying data points to another Federal agency. The Principal Deputy Assistant Secretary's comments and actions taken addressed the specifics of the recommendations; therefore, we consider the recommendations closed.

Please see the Recommendations Table on the next page for the status of the recommendations.

Recommendations Table

Management	Recommendations Unresolved	Recommendations Resolved	Recommendations Closed
Deputy Assistant Secretary of Defense (Industrial Policy)	None	None	1.a, 1.b

Note: The following categories are used to describe agency management’s comments to individual recommendations.

- **Unresolved** – Management has not agreed to implement the recommendation or has not proposed actions that will address the recommendation.
- **Resolved** – Management agreed to implement the recommendation or has proposed actions that will address the underlying finding that generated the recommendation.
- **Closed** – DoD OIG verified that the agreed upon corrective actions were implemented.





**INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
4800 MARK CENTER DRIVE
ALEXANDRIA, VIRGINIA 22350-1500**

September 20, 2022

MEMORANDUM FOR UNDER SECRETARY OF DEFENSE FOR ACQUISITION AND SUSTAINMENT

SUBJECT: Audit of the DoD Certification Process for Coronavirus Aid, Relief, and Economic Security Act Section 4003 Loans Provided to Businesses Designated as Critical to Maintaining National Security (Report No. DODIG-2022-131)

This final report provides the results of the DoD Office of Inspector General's audit. We previously provided copies of the draft report and requested written comments on the recommendations. We considered management comments on the draft report when preparing the final report. These comments are included in the report.

The two recommendations in this report are considered closed as discussed in the Recommendations, Management Comments, and Audit Response section of this report.

We appreciate the cooperation and assistance received during the audit. Please direct questions to me at [REDACTED]

A handwritten signature in black ink, reading "Carol N. Gorman".

Carol N. Gorman
Assistant Inspector General for Audit
Cyberspace Operations & Acquisition,
Contracting, and Sustainment

Contents

Introduction

Objective	1
Background	1
Review of Internal Controls	6

Finding. Inadequate Support Provided for Decisions to Verify and Certify Businesses as Critical to Maintaining National Security

8

Inadequate Verification and Certification of Businesses Critical to Maintaining National Security	9
Inadequate Definition for Businesses Critical to Maintaining National Security and Insufficient Support	9
Treasury Department Loans	17
Conclusion	17
Recommendations, Management Comments, and Our Response	18

Appendixes

Appendix A. Scope and Methodology	20
Internal Control Assessment and Compliance	20
Universe Information	20
Review of Documentation and Interviews	21
Use of Computer-Processed Data	21
Appendix B. Prior Coverage	22
Appendix C. Key Organizations and Offices Involved in the Section 4003 Loan Program	29
Appendix D. DoD Businesses Certified as Critical to Maintaining National Security	31
Appendix E. Section 4003 Loan Recipients	33

Management Comments

Deputy Assistant Secretary of Defense (Industrial Policy)	34
---	----

Acronyms and Abbreviations

35

Introduction

Objective

The objective of this audit was to determine whether DoD officials adequately supported decisions when verifying and certifying businesses as critical to maintaining national security for loans under Section 4003 of the Coronavirus Aid, Relief, and Economic Security Act.¹ See Appendix A for scope and methodology, and Appendix B for prior coverage.

Background

Coronavirus disease–2019 (COVID-19) is an infectious disease that can cause a wide spectrum of symptoms. On March 11, 2020, the World Health Organization declared the COVID-19 outbreak a pandemic. A pandemic is a global outbreak of a disease that can infect people and spread between people sustainably. On March 13, 2020, the President of the United States declared the COVID-19 outbreak an emergency.

Special Inspector General for Pandemic Recovery

Section 4018 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) established the Special Inspector General for Pandemic Recovery (SIGPR) to provide oversight of relief spending. By express incorporation, SIGPR also has the duties, responsibilities, powers, and authorities granted inspectors general under the Inspector General Act of 1978, as amended, (5 U.S.C. Appendix), including broad subpoena authority. SIGPR conducts, supervises, and coordinates audits and investigations of the making, purchase, management, and sale of loans, loan guarantees, and other investments by the Secretary of the Treasury under any program established by the Secretary, and the management by the Secretary of any program established, under subtitle A of title IV of Division A of the CARES Act.

We conducted this audit in conjunction with and with assistance from SIGPR, which is also conducting an audit of loans made under Section 4003 of the CARES Act. SIGPR's audit objective is to review Treasury's process for providing loans to air carrier and related businesses as well as businesses critical to maintaining national security. The Treasury Department relied on the DoD's assessment and designation of certain applicants as businesses "critical to maintaining

¹ Public Law 116-136, "The Coronavirus Aid, Relief, and Economic Security Act," March 27, 2020. As of January 8, 2021, Congress stopped all emergency lending programs under Section 4003 of the CARES Act. On December 27, 2020, the President enacted Public Law 11-260, "Consolidated Appropriations Act, 2021," § 1003(b) prohibiting CARES Act lending facilities from being restarted or replicated without congressional approval, and rescinded the remaining unobligated balance of the \$500 billion previously available.

national security” in determining whether the applicants were eligible for a loan. The Secretary of Defense and the Deputy Secretary of Defense signed memorandums to recommend and certify businesses for the loan program based on the analysis performed by Office of the Under Secretary of Defense for Acquisition and Sustainment (OUSD[A&S]) officials. We coordinated with the SIGPR audit team throughout the course of our audit.

Section 4003 of the CARES Act

Section 4003 of the CARES Act authorized the Treasury Department to make loans, loan guarantees, and other investments that provided liquidity to eligible businesses related to losses incurred because of COVID-19. The CARES Act permitted the Secretary of the Treasury to issue up to \$17 billion in loans and loan guarantees for businesses critical to maintaining national security. Borrowers can apply for loans to obtain liquidity to offset covered losses, which include losses incurred directly or indirectly because of the COVID-19 pandemic, as determined by the Treasury Department. Treasury Department officials opened an online portal in April 2020 for businesses to apply for loans under Section 4003 of the CARES Act. According to a Treasury Department official, they extended the initial deadline for application portal submission, from May 1, 2020, until August 3, 2020. According to a Treasury Department official, the original idea was that major DoD suppliers would need the funds; however, the larger companies found financial resources elsewhere.

Section 4003 of the CARES Act specified several requirements applicable to these loans and loan guarantees. Among other requirements under the statute, borrowers had to:

- be a business critical to maintaining national security;
- maintain employment levels as of March 24, 2020, to the extent practicable, and not reduce their employment levels by more than 10 percent from the levels on such date, until September 30, 2020;
- agree to restrictions on employee compensation, not to repurchase stock, except to the extent required under a contractual obligation in effect as of March 27, 2020, and agree not to pay dividends or make other capital distributions with respect to the approved businesses’ common stock until 12 months after the repayment of the loan; and
- allow the Treasury Department to receive a warrant or equity instrument in the business if it was public, or a warrant, equity instrument, or senior debt instrument if the business was private, to compensate taxpayers.

In addition, a credit committee mostly composed of senior Treasury Department officials reviewed the outcomes of the underwriting stage and determined whether to recommend loan approval. The Secretary of the Treasury approved loans greater than \$300 million, and the Under Secretary of International Affairs approved all others.

The Treasury Department recognized a business designated as critical to maintaining national security interest as either having a DX-priority rated contract or a top secret facility security clearance.² DoD officials were responsible for verifying DX-priority contracts or top secret facility clearances. If a business did not meet either criterion when applying to the program, the business requested acceptance through DoD certification. The Secretary of the Treasury accepted that a business was critical based on a certification from the Secretary of Defense or the Director of National Intelligence (DNI) that a business was critical to maintaining national security.³

In December 2020, Congress issued amendments to the CARES Act in the Consolidated Appropriations Act, 2021. One amendment added a definition for aerospace-related businesses “critical to maintaining national security.” The amended definition states:

the term ‘businesses critical to maintaining national security’ means those businesses that manufacture or produce aerospace-related products, civil or defense, including those that design, integrate, assemble, supply, maintain, and repair such products, and other businesses involved in aerospace-related manufacturing or production as further defined by the Secretary, in consultation with the Secretary of Defense and the Secretary of Transportation. For purposes of the preceding sentence, aerospace related products include, but are not limited to, components, parts, or systems of aircraft, aircraft engines, or appliances for inclusion in an aircraft, aircraft engine, or appliance.

Prior to this amendment for aerospace-related businesses, the CARES Act did not include language defining “critical to maintaining national security” for any business sector. Congress issued the amendment after the Treasury Department finalized all loans for businesses critical to maintaining national security under Section 4003 of the CARES Act.⁴

² DX-priority contracts provide support to certain national defense and energy programs.

³ A Treasury Department official stated that a DNI official was offered the opportunity to certify businesses for the loan program, and the DNI official declined to take action. In addition, the DNI was not the appropriate authority to verify DX-priority and top secret clearance because the DX-priority rating is a DoD rating system, and the top secret applicants were all unrelated to the DNI. The audit team also clarified that the DoD did not work with the DNI for any certifications.

⁴ The Treasury Department finalized loan agreements between July 7, 2020 and November 13, 2020. The President signed Public Law 116-260, “Consolidated Appropriations Act, 2021” on December 27, 2020.

The DoD's Role in the Loan Process

As part of the Treasury Department's process to make these decisions, Treasury Department officials relied on assistance from the DoD to assess applicants' relevance to national security. Treasury Department officials forwarded a list of businesses applying to the loan program to the DoD for analysis before the Treasury approved loan applications. The Secretary of Defense or the Deputy Secretary of Defense each signed a memorandum certifying businesses as critical to maintaining national security for the loan program, based on analysis performed by the OUSD(A&S). See Appendix C for a detailed description of the offices and organizations involved in the Section 4003 review process.

OUSD(A&S) officials verified DX-priority rated contracts and top secret facility clearances, and certified to the Treasury Department, that other, select businesses were critical to maintaining national security. Businesses applied to the loan program directly through the Treasury Department, which then provided the DoD 74 businesses for review. OUSD(A&S) officials were responsible for the analysis of businesses for the DoD, and sorted businesses into two categories: those having DX-priority or top secret facility clearance, and those needing DoD certification as a business critical to maintaining national security. Specifically, the DoD verified whether 24 applicants had DX-priority contracts or top secret facility clearances, and assessed another 50 applicants to certify if they were critical to national security.⁵ The Acting Deputy Assistant Secretary of Defense (Industrial Policy) stated that if a business did not meet the requirements for DX-priority or top secret facility clearance, the business was considered for certification as critical to maintaining national security.

OUSD(A&S) officials researched and worked with other DoD Components to verify the DX-priority contracts and top secret facility clearances. OUSD(A&S) officials stated that they transmitted information regarding the verification of businesses' DX-priority and top secret facility clearance to Treasury officials. To certify a business, DoD officials used screening criteria from another section of the CARES Act to determine eligibility. Once OUSD(A&S) determined eligibility, the DoD issued two memorandums to the Treasury Department certifying that 20 businesses were critical to maintaining national security. A Treasury Department official then decided, using the memorandums provided by the DoD as part of the Treasury approval process, whether to approve loans and loan guarantees.

⁵ The DoD certified two applications as critical to maintaining national security even though the applications initially requested DX-priority. For clarity, the report counts the two applications as DoD certifications, not DX-priority. OUSD(A&S) had the authority to certify businesses as they saw fit; therefore, the switch was immaterial.

DX-Priority and Top Secret Facility Clearance

DX-Priority is a rating from the Department of Commerce Bureau of Industry and Security's Defense Priorities & Allocation System. The Defense Priorities & Allocation System assigns priority ratings to all prime contracts, subcontracts, or purchase-order contracts in support of an authorized program, and assigns a DX rating to programs with the highest national priority. The USD(A&S) nominates orders to the Secretary of Defense for approval of DX-rated orders.

DX-priority contracts provide support to certain national defense and energy programs. For example, military aircraft production, ammunition, and programs that maximize domestic energy supplies are programs that qualify as a high national priority.

Top secret facilities are determined by facility clearance. A facility clearance is an administrative determination that allows a business access to classified information or the award of a classified contract. To obtain a top secret facility clearance, the Defense Counterintelligence and Security Agency Facility Clearance Branch must first receive a request from a Government contracting activity or a cleared contractor who will sponsor the facility for a facility clearance under the National Industrial Security Program. The facility clearance will allow for performance on a classified Government contract once properly obtained. The classification levels in the National Industrial Security Program are confidential, secret, and top secret. The requirements of the classified contract determine the facility clearance level a facility. The National Industrial Security Program applies to all Executive branch departments and agencies and to all cleared contractor facilities located within the United States and its territories. Contractors are eligible for custody (possession) of classified material at the cleared facility if they have a facility clearance, and if the cognizant security agency approves the storage capability at the facility.

DoD Screening Criteria for Businesses Applying for DoD Certification

The USD(A&S) implemented a process to screen businesses under Section 4003 of the CARES Act previously used for Section 3610 and explained that the screening criteria outlined in the process did not specifically qualify or

disqualify any businesses but served as a screening tool to certify businesses.⁶ The June 18, 2020 action memorandum from the Acting Deputy Assistant Secretary of Defense (Industrial Policy) to the USD(A&S), titled “Process and Criteria for DoD Certification for Sec 4003 CARES Act Treasury Loans,” outlined five screening criteria for OUSD(A&S) officials to use for screening businesses that applied. The Acting Deputy’s memorandum outlined the following screening criteria.

- Do applicants supply to the DoD?
- Are applicants owned in whole or part by China or Russia?
- Are applicants participating in any other COVID-19-related loan or grant program?
- Are there alternate sources for the goods or services provided?
- Are applicants supplying a commodity (for example tennis shoes)?

OUSD(A&S) officials also explained that if a business was not a DoD supplier or is owned by an adversarial country, OUSD(A&S) disqualified the business from further considerations for a certification.

Officials from OUSD(A&S), and other Service components reviewed the businesses, and both the Secretary of Defense and the Deputy Secretary of Defense certified businesses based on that research. The Secretary of Defense certified 4 businesses as critical to maintaining national security on June 26, 2020, and the Deputy Secretary of Defense certified an additional 16 businesses on August 7, 2020.

Review of Internal Controls

DoD Instruction 5010.40 requires DoD organizations to implement a comprehensive system of internal controls that provides reasonable assurance that programs are operating as intended and to evaluate the effectiveness of the controls.⁷ We identified internal control weaknesses with the DoD’s process for reviewing businesses for the Treasury Department under the Section 4003 loan program. Specifically, DoD officials adapted the screening steps previously applied to another section of the CARES Act, but did not formally document the process used by OUSD(A&S) officials to certify businesses applying under Section 4003

⁶ DoD officials applied screening criteria from Section 3610 of the CARES Act to Section 4003 of the CARES Act. Section 3610 authorizes, but does not require, agencies to reimburse any paid leave, including sick leave, a contractor provides to keep its employees or subcontractors in a ready state, including protecting the life and safety of Government and contractor personnel, but in no event beyond September 30, 2020. The Acting Deputy Assistant Secretary of Defense (Industrial Policy) stated that the memorandum contained an error and the actual process used was previously developed for the CARES Act Defense Production Act Title III grants. The Title III program works in partnership with the Services, other government agencies, and industry to engage with domestic companies to mitigate the risk of lagging and non-existent critical industrial capacity by negotiating grants, purchase commitments, loans, or loan guarantees with the domestic companies.

⁷ DoD Instruction 5010.40, “Managers’ Internal Control Program Procedures,” May 30, 2013, (Incorporating Change 1, June 30, 2020).

as critical to maintaining national security. Furthermore, OUSD(A&S) officials did not have a documented definition for determining if a business was critical to maintaining national security; and did not maintain full documentation to support their decisions to verify DX-priority and top secret facility clearance or recommendations that the Secretary of Defense or Deputy Secretary of Defense certify businesses applying to the loan program. We will provide a copy of the final report to the senior official responsible for internal controls in OUSD(A&S).

Finding

Inadequate Support Provided for Decisions to Verify and Certify Businesses as Critical to Maintaining National Security

OUSD(A&S) officials did not adequately support their verifications that businesses held DX-priority contracts or top secret facility clearances, and their recommendations to the Secretary of Defense and Deputy Secretary of Defense to certify businesses as critical to maintaining national security for loans under Section 4003 of the CARES Act. Of the 74 businesses that Treasury Department officials provided to the DoD for review, OUSD(A&S) officials verified the DX-priority or top secret facility clearance for 16 businesses, and based on recommendations from the OUSD(A&S), the Secretary of Defense or Deputy Secretary of Defense certified to Treasury officials that 19 other businesses were critical to maintaining national security. Furthermore, the Secretary of Defense's memorandum to the Secretary of the Treasury certified a 20th business not included in the OUSD(A&S) recommendations. The DoD did not verify or certify the remaining 38 businesses to receive consideration for loans under Section 4003 of the CARES Act.

OUSD(A&S) officials were unable to adequately support their verifications and certification process because officials did not:

- define in writing how to determine whether a business was “critical to maintaining national security” when certifying businesses; and
- have sufficient documentation that supported the implementation of consistent screening criteria to verify businesses' DX-priority or top secret facility clearances, or to recommend to the Secretary of Defense or Deputy Secretary of Defense that businesses were critical to maintaining national security.

As a result, the OUSD(A&S) officials implemented a process that was inconsistent and ineffective for verifying or certifying businesses as critical to maintaining national security, thus possibly enabling unqualified businesses to receive Section 4003 CARES Act loans. OUSD(A&S) officials did not fully support the rationale officials used during the analysis or decision-making process. Ultimately, Treasury Department officials made the final decision to approve Section 4003 loans; however, Treasury officials relied on the analysis performed by OUSD(A&S) officials to initiate the loan underwriting process. In the event of a future declaration of a State of National Emergency, the DoD may be required

to make decisions on which businesses are critical to maintaining national security. OUSD(A&S) officials will be unable to use the Section 4003 CARES Act loan program as an example because of the lack of supporting documentation preserved throughout the process. Furthermore, the DoD's lack of a documented definition and documentation trail put the Treasury Department at risk of potentially providing loans to companies that were not critical to maintaining national security.

Inadequate Verification and Certification of Businesses Critical to Maintaining National Security

OUSD(A&S) officials did not fully support their verifications and certifications of businesses as critical to maintaining national security. Treasury Department officials provided 74 businesses for OUSD(A&S) officials to review for potential

OUSD(A&S) officials did not fully support their verifications and certifications of businesses as critical to maintaining national security.

loans under Section 4003 of the CARES Act. From the 74 businesses, OUSD(A&S) officials verified that 16 businesses had DX-priority contracts or top secret facility clearance, but did not maintain complete documentation to support the review or their

communications with Treasury Department officials. Furthermore, the Secretary of Defense and the Deputy Secretary of Defense, each issued a memorandum to the Secretary of Treasury, dated June 26, 2020, and August 7, 2020, certifying that a total of 20 businesses were critical to maintaining national security.⁸ However, OUSD(A&S) officials did not provide documentation to fully support their process or analysis for the businesses they recommended to the Secretary of Defense or Deputy Secretary of Defense to certify.

Inadequate Definition for Businesses Critical to Maintaining National Security and Insufficient Support

Although OUSD(A&S) officials conducted the screening of businesses as critical to maintaining national security under the certification provision in Treasury's definition, neither OUSD(A&S) nor Treasury officials established a more specific documented definition. Additionally, OUSD(A&S) officials did not maintain documentation to support their determinations related to the applicants DX-priority or top secret facility clearance. Furthermore, OUSD(A&S) officials did not maintain complete documentation to fully support the process for obtaining

⁸ The Secretary of Defense certified 4 businesses in the June 26, 2020 memorandum and the Deputy Secretary of Defense certified 16 businesses in the August 7, 2020 memorandum.

a DoD certification that a business was “critical to maintaining national security.” Specifically, OUSD(A&S) officials did not maintain; complete records of their communications with the Services to confirm active DoD contracts, research into businesses’ other CARES Act funding, or the existence of alternative sources of supply. An OUSD(A&S) official stated that documentation could not be provided because officials verbally discussed this information and did not document support of their conclusions.

Designation of Businesses as Critical to Maintaining National Security Not Defined

OUSD(A&S) officials did not document a definition or a specific set of screening criteria that each business must meet to be qualified as “critical to maintaining national security” under Section 4003 of the CARES Act. Furthermore, Section 4003 of the CARES Act did not define “critical to maintaining national security.”⁹ Treasury Department officials outlined guidance specific to businesses requesting loans as a DX-priority rated contractor or those operating in a top secret facility; however, Treasury officials deferred to the DoD for how to determine if the businesses pursuing certification were critical to maintaining national security. Treasury Department officials requested DoD officials certify that businesses were critical to maintaining national security; however, because OUSD(A&S) officials did not document the process used to determine a business was “critical to maintaining national security,” the effectiveness and accuracy of the certification was potentially impaired. OUSD(A&S) officials used a 5-step screening criteria process that did not necessarily disqualify a business from receiving a certification or specifically define how a business met the definition of “critical to maintaining national security.”

The Treasury Department Definition of Critical to Maintaining National Security

The Treasury Department defined a business as critical to maintaining national security as a business:

- performing under a DX-priority rated contract or order under the Defense Priorities and Allocations System regulations; or
- operating under a valid top secret facility security clearance under the National Industrial Security Program regulations.

⁹ The CARES Act did not define “critical to maintaining national security” until Congress amended the CARES Act in the Consolidated Appropriations Act, 2021 on December 27, 2020. The amendment was limited to aerospace-related businesses and signed into law after the Treasury Department officials finalized all loan agreements. USD(A&S) did not define “critical to maintaining national security.”

The Treasury Department did not disqualify businesses that did not meet either of the two criteria for loans if the DoD or the DNI certified that the businesses were critical to maintaining national security. However, Treasury Department officials did not outline specific criteria detailing how a business qualified as critical to maintaining national security. A Treasury Department official explained that the DoD certification option was an alternative option that allowed DoD officials to create their own definition for businesses that were critical to maintaining national security.

DoD Definition of Critical to Maintaining National Security

OUSD(A&S) officials conducted research to recommend which businesses the Secretary of Defense and Deputy Secretary of Defense should certify to the Treasury Department as critical to maintaining national security, without a formalized definition of what constituted a business as “critical to maintaining national security.” An OUSD(A&S) official stated that the only action OUSD(A&S) officials took, was to screen each business based on a list of screening criteria used for another CARES Act program. The June 18, 2020 action memorandum from the Acting Deputy Assistant Secretary of Defense (Industrial Policy) [DASD(IP)] to the OUSD(A&S), outlined the following screening criteria.

- Do applicants supply to the DoD?
- Are applicants owned in whole or part by China or Russia?
- Are applicants participating in any other COVID-19-related loan or grant program?
- Are there alternate sources for the goods or services provided?
- Are applicants supplying a commodity (for example tennis shoes)?¹⁰

According to OUSD(A&S) officials, the first screening criterion was a requirement. The second screening criterion would disqualify a business from certification. The last three criteria did not disqualify a business from certification, but instead informed the DoD’s decision. OUSD(A&S) officials stated they used the information gathered from the screening criteria to recommend which businesses the Secretary of Defense and Deputy Secretary of Defense should certify to the Treasury Department as “critical to maintaining national security” under Section 4003 of the CARES Act. In June 2022, the Acting Deputy Assistant Secretary (Industrial Policy) provided a verbal definition of “critical to maintaining national security” and confirmed that officials did not document that definition before screening businesses. Without a formal written definition of “critical to maintaining national

¹⁰ The DoD defined commodity as “available commercially, not DoD specific.”

security,” or a clear implementation of a fully supported process to make that determination, OUSD(A&S) officials could not demonstrate that their actions resulted in the correct identification of businesses eligible for the loan program.

Insufficient Documentation to Support Verification or the Screening Criteria Applied to Businesses and Rationale for Certifications

OUSD(A&S) officials did not have documentation to fully support their verification of the businesses applying under the DX-priority or top secret facility clearance.

OUSD(A&S) officials did not have documentation to fully support their verification of the businesses applying under the DX-priority or top secret facility clearance.

Furthermore, OUSD(A&S) officials did not have the documentation to support the implementation of a consistent method to determine whether the Secretary of Defense and the Deputy Secretary of Defense should have

certified businesses for the Section 4003 loan program. OUSD(A&S) officials stated that they applied screening criteria from a previous program to screen businesses requesting DoD certification; however, they did not fully document the research and analysis performed to show how the screening criteria were applied to each business. OUSD(A&S) officials provided a limited number of examples of analysis done for businesses; however, officials were unable to provide complete documentation to ensure the steps were consistently performed for each business.

DX-Priority or Top Secret Facility Clearance Verification

Treasury Department officials requested that DoD officials verify the DX-priority or top secret facility clearance of 24 businesses applying to the Section 4003 loan program. An OUSD(A&S) official stated that OUSD(A&S) officials verified the DX-priority status of the businesses by checking with the respective program offices the business supplied to, and then cross-referenced the information with the approved DX-programs. For the businesses that applied under top secret facility clearance, OUSD(A&S) officials stated that they asked the Defense Counterintelligence and Security Agency officials to verify the applicants’ status. OUSD(A&S) officials sent the results of the DX-priority statuses and top secret facility verifications to the Treasury Department and confirmed that 16 out of the 24 businesses had an active DX-priority contract or order, or top secret facility clearance. However, OUSD(A&S) officials did not fully document the process or support they used in the verification process.

Treasury Department officials approved loans for 5 of the 24 DX-priority or top secret facility businesses. The 19 businesses that did not receive loans either did not continue through the application process or verification process, or were

denied loans by Treasury officials. Common reasons Treasury officials denied the loans included lacking DX-priority contracts or top secret facility clearances, failure to meet credit requirements, missed deadlines, or duplicate applications.

OUSD(A&S) officials did not maintain complete documentation to support their verification of the DX-priority status or communications with the Defense Counterintelligence and Security Agency officials who assisted in validating top secret facility clearances.

Unsupported Implementation of Screening Criteria for Section 4003 Loans

OUSD(A&S) officials did not provide complete documentation to support the consistent implementation of the screening criteria used to assess the businesses that applied for the Section 4003 loan program as “critical to maintaining national security.” According to OUSD(A&S) officials, they recommended that the Secretary of Defense and the Deputy Secretary of Defense certify 19 of the 50 applicants using the five screening criteria.¹¹ However, OUSD(A&S) officials stated that meeting all five screening criteria was not required and the information gathered in the screening process was only used to inform the DoD officials’ decisions during the certification process.

CONFIRMATION OF CONTRACT STATUS FOR THE 20 COMPANIES CERTIFIED BY THE SECRETARY OF DEFENSE AND DEPUTY SECRETARY OF DEFENSE

OUSD(A&S) officials stated that ensuring affiliation to the DoD through a business’s contract status was the initial step of the screening process for consideration for certification. However, after many requests for documentation by the audit team, OUSD(A&S) officials only provided incomplete documentation supporting their analysis because officials conducted their research verbally and recorded few details. Additionally, OUSD(A&S) officials stated that they contacted the Services to confirm that businesses pursuing certification were current contract holders.

We queried the System for Award Management (SAM.gov) Data Bank to determine whether the 20 businesses certified by the Secretary of Defense and the Deputy Secretary of Defense had contracts in place between FY 2019 and August 7, 2020, the application deadline for applying for a loan.¹² We also reviewed contract product and service descriptions to determine whether the businesses were supplying goods or services related to the DoD’s mission.

¹¹ The USD(A&S)’s recommendation package to the Secretary of Defense and Deputy Secretary of Defense did not include YRC Worldwide, Inc. (Yellow Corporation). However, the Secretary of Defense’s June 26, 2020 memorandum to the Department of Treasury included YRC Worldwide, Inc. as one of the certified businesses.

¹² The SAM.gov is an official website of the U.S. Government. It provides users access to contract information and actions including searching for entity registration and exclusion records, and accessing publically available award data via data extracts and system accounts.

We determined that 15 of the 20 businesses the Secretary of Defense and the Deputy Secretary of Defense certified had current contracts with the DoD. During our review, we identified contract product or service descriptions through a review of the Product Service Codes that indicated that the 15 businesses with current DoD contracts were supplying goods or services that were traditionally associated with the DoD mission.¹³ The Product Service Codes indicated the businesses produced primary products that included repair or alteration of miscellaneous buildings; airframe structural components; rivets; travel agents; research and development, defense other: applied research/exploratory development; semiconductor devices and associated hardware; quality control, alarm, signal, and security detection systems; and information technology supplies. See Appendix D for the Product Service Codes for the businesses certified as critical to maintaining national security. The five remaining businesses did not have current contracts with the DoD; however, we did not confirm whether the five businesses were subcontractors to the DoD because that information is not available in SAM.gov. These five businesses needed to provide goods or services to the DoD to remain eligible to continue through the loan program. However, OUSD(A&S) officials were not able to provide documentation that showed that these five businesses provided goods or services to the DoD.

ADDITIONAL CRITERIA IN THE SCREENING PROCESS

OUSD(A&S) officials provided a spreadsheet listing the business and the Service it contracted with, but did not provide complete supporting documentation identifying the contract number, purpose of the contract, or who within the Service provided the information. OUSD(A&S) officials stated that if the Services confirmed a business's contract status, the process for certification continued. OUSD(A&S) officials stated they relied on information provided by the Services to confirm contract status; however, officials did not provide complete documentation to support that businesses had current DoD contracts. According to OUSD(A&S) officials, their screening criteria also included:

- using the Exiger Database to confirm ownership was not Russian, Chinese, or another country adversarial to the United States,¹⁴
- a review to make sure the business did not receive funds from another COVID-19 loan, grant, or funding program,

¹³ Also referred to as federal supply codes, product service codes are used by the United States Government to describe the products, services, and research and development purchased by the Government.

¹⁴ Exiger designed artificial intelligence to think and make decisions like a human researcher. Exiger's due diligence software is a specialty research engine that uses artificial intelligence to find the most significant risks. Exiger's database retrieves and interprets data from any source, identifies relevant information, and ranks the information based on risk to help prioritize review and accelerate adjudication (a decision).

- a determination of whether there were alternative sources for what the business supplied, and
- a determination of whether the business provided a commodity.

If a business was owned in whole or part by China, or Russia, OUSD(A&S) officials stated that they did not continue the process to certify the business; however, officials only provided documentation to support the 20 businesses certified. OUSD(A&S) officials stated that they used the Exiger database to screen those 20 businesses to confirm country of ownership. For each of the 20 businesses certified, OUSD(A&S) officials provided documentation to support that the business address was within the United States.

OUSD(A&S) officials also stated that the remaining three screening criteria did not disqualify businesses from the process, but rather that officials used the screening criteria to gather key insights that could inform the decision to certify a business. However, OUSD(A&S) officials did not provide documentation to support their analysis and conclusions related to those screening criteria.

Insufficient Documentation to Support Certification

OUSD(A&S) officials did not provide complete documentation to support their determinations to certify businesses as critical to maintaining national security for

OUSD(A&S) officials did not provide complete documentation to support their determinations to certify businesses as critical to maintaining national security for the loan program under Section 4003 of the CARES Act.

the loan program under Section 4003 of the CARES Act. The June 18, 2020 action memorandum from the Acting DASD(IP) to the USD(A&S) outlined the five screening criteria previously used for Section 3610 of the CARES Act as the screening criteria to use for Section 4003 of the CARES Act. OUSD(A&S) officials

maintained adequate documentation to support their determinations for only one of the five screening criteria in the process, which was confirmation of business's ownership status. For the four remaining screening criteria, OUSD(A&S) officials provided incomplete examples of documentation to support their analysis and confirmation that the business held contracts with DoD, the status of a business's participation in other loan programs, whether alternative sources for the item were available, and whether the contracts were for commodities.

OUSD(A&S) officials stated they contacted officials from the Services to confirm that a business had an open or relevant, valid contract, which would support certification as critical to maintaining national security. However, OUSD(A&S) officials stated they did not have documentation supporting those communications.

Without proper documentation of the research and analysis performed, the DoD was not able to substantiate its rationale for the certifications it provided to the Treasury Department. Therefore, DoD officials risked certifying businesses that were not critical to maintaining national security, and therefore not qualified to receive a loan under Section 4003 of the CARES Act. The DASD(IP) should perform an after-action review to document decisions, actions, best practices, and lessons learned when operating in a pandemic environment or other national emergency in which DoD is tasked to provide critical information and analysis to support decisions in a short timeframe. In addition, the DASD(IP) should develop and implement a standard operating procedure to retain documentation to support business decisions, when certifying data points to another Federal agency.

Secretary of Defense and Deputy Secretary of Defense Certified 20 Businesses as Critical to Maintaining National Security

The Secretary of Defense and the Deputy Secretary of Defense certified 20 of the 50 businesses as critical to maintaining national security based in part on the analysis and conclusions presented by OUSD(A&S) officials. The USD(A&S) provided recommendations for certification to the Secretary of Defense and Deputy Secretary of Defense in 2 memorandums listing the names of 19 businesses along with a short paragraph explaining only the basic background information for 3 of the businesses. The Secretary of Defense's June 26, 2020 memorandum to the Secretary of Treasury certified a 20th business not included in the OUSD(A&S) recommendations. An OUSD(A&S) official stated the Industrial Base Council initially reviewed the first few businesses before sending the list of vetted businesses to the Secretary of Defense and the Deputy Secretary of Defense for certification before determining that the Industrial Base Council would rely on the recommendations of the Joint Industrial Base Working Group; however, OUSD(A&S) officials did not provide documentation to support any such review.¹⁵ Treasury Department officials issued loans to 6 of the 20 businesses certified by DoD officials. Treasury Department officials did not approve loans for the 14 remaining businesses, for various reasons including failure to meet credit standards, failure to provide requested documentation, not completing the process to obtain a Section 4003 CARES Act loan, or failing to meet employment standards. See Appendix D for a list of the businesses certified by the DoD.

¹⁵ The Industrial Base Council is the DoD's top level review board for industrial base decision making. See Appendix C for more information.

Treasury Department Loans

OUSD(A&S) officials verified the DX-priority or top secret facility clearance of 16 businesses. In addition, the Secretary of Defense and the Deputy Secretary of Defense certified 20 businesses as critical to maintaining national security. Ultimately, Treasury Department officials issued loans to 11 businesses, valued at \$735,934,400. Of the 11 loans, the Treasury Department issued 5 to businesses OUSD(A&S) officials validated as DX-priority or top secret facility clearance holders and 6 to businesses that the DoD certified as critical to maintaining national security. See Appendix E for details on the Treasury Department loans under Section 4003 of the CARES Act.

The Treasury Department releases monthly updates on its website on the status of each Section 4003 CARES Act loan.¹⁶ As of July 1, 2022, DoD verified and certified businesses that received loans under the program had a total outstanding balance of \$748,552,551. Businesses with verified DX-priority contracts or top secret facility clearances had a total outstanding balance of \$15,634,697; and business that received a DoD certification had a total outstanding balance of \$732,917,854. Two businesses determined to be critical to maintaining national security have repaid their loans in full.¹⁷ Of the 11 loans, 4 businesses have not made any payments toward the principal and interest. We did not audit the loan process or terms and conditions of the loans. We are not making a recommendation to the DoD to perform a complete reverification and recertification of businesses because the loan program has closed and, in most cases, repayment of loans has already begun.

Conclusion

Section 4003 of the CARES Act established a loan program to be a lender of last resort to businesses that were critical to maintaining national security. The DoD and the Treasury Department worked together to process businesses for the Section 4003 CARES Act loan program. The DoD and Treasury used their connections and expertise to research and analyze businesses. Both Department's conclusions contributed to the final determination on the businesses loan approval. Treasury Department officials requested assistance from the DoD in two areas. Those were to verify businesses that claimed to be DX-priority rated contract holders or claimed to hold a top secret facilities clearance, and to certify businesses as critical to maintaining national security. OUSD(A&S) officials implemented

¹⁶ <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-industry/loans-to-air-carriers-eligible-businesses-and-national-security-businesses>.

¹⁷ The businesses are Semahtronix LLC and Channel One Holdings, Inc. (Core Avionics); both determined to be critical to maintaining national security by being a DX-priority rated contract holder. The loans were issued for \$1,999,100 and \$6,000,000 plus interest.

a process for verifying DX-priority and top secret facility clearances, analyzed businesses for DoD, and agreed on screening criteria for determining certifications. However, OUSD(A&S) officials implemented a process that was inconsistent and ineffective without a documented audit trail. Furthermore, OUSD(A&S) officials did not formally define “critical to maintaining national security,” while still recommending the Secretary of Defense and Deputy Secretary of Defense certify to the Treasury Department that businesses were critical to maintaining national security. Without proper documentation and a clear definition, the USD(A&S) may have recommended that the Secretary of Defense and Deputy Secretary of Defense certify businesses that were not critical to maintaining national security. In addition, without a proper audit trail of decisions made, OUSD(A&S) officials will be unable to support their analyses and conclusions in the event of the issuance of the loans for the DoD certification is questioned. While Treasury Department officials made the final decision on whether to issue loans and loan guarantees, Treasury officials relied on the information received from the DoD to inform those decisions.

Recommendations, Management Comments, and Our Response

Recommendation 1

We recommend that the Deputy Assistant Secretary of Defense (Industrial Policy):

- a. Perform an after-action review to document decisions, actions, best practices, and lessons learned when operating in a pandemic environment or other national emergency, in which the DoD is tasked to provide critical information and analysis to support decisions in a short timeframe.**

Deputy Assistant Secretary of Defense (Industrial Policy) Comments

The Principal Deputy Assistant Secretary of Defense (Industrial Base Policy), responding for the Deputy Assistant Secretary of Defense (Industrial Policy), agreed, stating that Industrial Policy officials completed an after-action review on August 5, 2022.

Our Response

Comments from the Principal Deputy Assistant Secretary addressed the specifics of the recommendation. We verified that the after-action review included documentation of decisions, best practices, and lessons learned when operating in a pandemic

environment or other national emergency, in which the DoD is tasked to provide critical information and analysis to support decisions in a short timeframe. Therefore, the recommendation is closed and no further comments are required.

- b. Develop and implement a standard operating procedure to retain documentation to support business decisions, when certifying data points to another Federal agency.**

Deputy Assistant Secretary of Defense (Industrial Policy) Comments

The Principal Deputy Assistant Secretary of Defense (Industrial Base Policy), responding for the Deputy Assistant Secretary of Defense (Industrial Policy), agreed, stating that Industrial Policy officials developed a standard operating procedure as of August 12, 2022, which will be implemented when the DoD is required to provide certifying data points to another Federal agency.

Our Response

Comments from the Principal Deputy Assistant Secretary addressed the specifics of the recommendation. We verified that the standard operating procedure requires retention of documentation to support business decisions when certifying data points to another Federal agency. Therefore, the recommendation is closed and no further comments are required.

Appendix A

Scope and Methodology

We conducted this performance audit, from May 2021 through July 2022, issued 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.

The announced objective of this audit was to determine the effectiveness of the DoD's processes to certify and approve businesses critical to maintaining national security for loans under Section 4003 of the CARES Act. We revised the objective to determine whether DoD officials adequately supported decisions when verifying and certifying businesses as critical to maintaining national security for loans under Section 4003 of the CARES Act.

Internal Control Assessment and Compliance

We assessed internal controls and compliance with laws and regulations necessary to satisfy the audit objective. In particular, we assessed control activities and communication. Specifically, we found issues in the underlying principles of designing control activities, implementing control activities, and external communication significant to determine the effectiveness of the DoD's processes to verify and certify businesses as critical to maintaining national security for loans under Section 4003 of the CARES Act. However, because our review was limited to these internal control components and underlying principles, it may not have disclosed all internal control deficiencies that may have existed at the time of this audit.

Universe Information

We received a list of 74 businesses from the Treasury Department that applied for a loan under section 4003 of the CARES Act.¹⁸ Based on the data provided, we determined that 24 were reviewed for verification of DX-priority or top secret facility clearance, and 50 of the businesses were reviewed for certification by the DoD as critical to maintaining national security. OUSD(A&S) officials verified that the business held a DX-priority or had a top secret facility clearance for 16 of the 24 businesses. The Secretary of Defense and the Deputy Secretary

¹⁸ The Treasury Department received 77 applications from 74 businesses and forwarded the applications to the OUSD. Duplicate applications provided additional information or changed key information.

of Defense, based on the recommendations of the USD(A&S), certified 19 of the 50 businesses as critical to maintaining national security. The Secretary of Defense's memorandum to the Secretary of the Treasury certified a 20th business not included in the OUSD(A&S) recommendations. The Treasury Department issued 11 loans, valued at \$735,934,400. Of the 11 loans, 5 were to businesses that had a DX-priority contract or a top secret facility clearance, and 6 were to businesses certified by the DoD as critical to maintaining national security.

Review of Documentation and Interviews

We obtained and reviewed the limited documentation provided by OUSD(A&S) officials to verify businesses DX-priority contracts or top secret facility clearance. We also obtained and reviewed the limited documentation provided by OUSD(A&S) officials used to certify businesses as critical to maintaining national security. The documentation reviewed included reports that identified country of ownership. We downloaded information from the SAM.gov Data Bank to confirm if companies certified as critical to maintaining national security supplied to the DoD.

We also reviewed the following criteria and guidance:

- The Coronavirus Aid, Relief, and Economic Security Act (CARES Act)
- Title 15 Code of Federal Regulations Part 700, Defense Priorities and Allocation Systems
- Federal Acquisition Regulation Subpart 2.101, "Definitions"
- National Industrial Security Program Operating Manual
- Defense Counterintelligence And Security agency Facility Clearance License Handbook
- Action Memo from Acting DASD(IP) to USD(A&S), "Process and Criteria for DoD Certification for Sec 4003 CARES Act Treasury Loans," June 18, 2020

We met with OUSD(A&S) officials involved in the verification and certification processes for businesses requesting loans through Section 4003 of the CARES Act. We also met with a Treasury Department official that oversaw the implementation of Section 4003 of the CARES Act. We coordinated with SIGPR personnel throughout the audit process.

Use of Computer-Processed Data

We did not use computer-processed data to perform this audit.

Appendix B

Prior Coverage

During the last 5 years, the Government Accountability Office (GAO), DoD Office of Inspector General (DoD OIG), Small Business Administration Office of Inspector General (SBA OIG), Treasury Office of Inspector General, and Special Inspector General for Pandemic Recovery (SIGPR) issued 14 reports discussing loans under the Coronavirus Aid, Relief, and Economic Security Act.

Unrestricted GAO reports can be accessed at <http://www.gao.gov>. Unrestricted DoD OIG reports can be accessed at <http://www.dodig.mil/reports.html/>. Unrestricted SBA OIG reports can be accessed at <https://www.sba.gov/about-sba/oversight-advocacy/office-inspector-general/reports>. Unrestricted Treasury OIG reports can be accessed at <https://oig.treasury.gov/other-reports-testimonies>. Unrestricted SIGPR reports can be accessed at <https://www.sigpr.gov/reports>.

GAO

Report No. GAO-22-105051, “Additional Actions Needed to Improve Accountability and Program Effectiveness of Federal Response,” October 2021

Treasury developed and applied a four-pronged approach to compliance monitoring that used real-time monitoring of loans for aviation and other eligible businesses. The approach to address noncompliance with loan agreement terms and conditions varied depending on the situation. Treasury anticipates the loan program may make money for taxpayers, but has not developed policies and procedures to guide when it will act on the warrant. The GAO made three relevant recommendations: the Secretary of the Treasury should design and document timely and sufficient policies and procedures for monitoring recipients of Coronavirus State and Local Fiscal Recovery Funds; develop policies and procedures to determine when to act on warrants obtained as part of the loan program for aviation and other eligible businesses to benefit the taxpayers; and develop policies and procedures to determine when to act on warrants obtained as part of the Payroll Support Program.

Report No. GAO-21-449T, “Small Business Administration: Steps Needed to Address COVID-19 Loans’ Susceptibility to Fraud,” March 25, 2021

In April 2020, the Small Business Administration (SBA) quickly implemented the Paycheck Protection Program (PPP) and expedited the processing of Economic Injury Disaster Loans and a new Economic Injury Disaster Loans advance program. SBA officials implemented these important programs to

assist businesses in surviving during the challenging COVID-19 pandemic. In an effort to move quickly on these initiatives, the SBA put limited internal controls in place, leaving both programs susceptible to fraud. The GAO determined that given the immediate need for PPP loans, the SBA implemented limited safeguards for approving PPP loans. The GAO reported in January 2021 that the SBA had provided about 5,000 advances totaling about \$26 million and approved at least 3,000 loans totaling about \$156 million to potentially ineligible businesses. The GAO recommended in June 2020 that the SBA develop plans to assess PPP risks, and that the SBA conduct portfolio-level analysis to detect potentially ineligible applications.

Report No. GAO-21-180, "Federal Reserve Lending Programs: Use of CARES Act-Supported Programs Has Been Limited and Flow of Credit Has Generally Improved," December 2020

Section 4003(b)(4) of the CARES Act made available up to \$454 billion and potentially certain other amounts for the Treasury to support Federal Reserve lending facilities in providing liquidity to the financial system that provides credit to these entities. The GAO determined that the use of these CARES Act-supported facilities was relatively limited. According to representatives from small business associations, banks, and state and local governments, the terms and conditions for some facilities are deterrent for some potential participants. The GAO further determined corporate bond spreads had improved since the onset of disruptions to the corporate bond market resulting from the COVID-19 pandemic. Overall, the facilities had limited activity relative to their capacity. Lastly, the GAO determined small businesses had been particularly vulnerable to large and sustained losses of revenue resulting from COVID-19, and they generally lacked available funding in the credit market. Of particular concern were the effects of social distancing directives, including temporary closures and modified operations. With declining revenues, many small businesses furloughed employees. The GAO made no recommendations for corrective actions in the report.

Report No. GAO-21-198, "Financial Assistance: Lessons Learned from CARES Act Loan Program for Aviation and Other Eligible Businesses," December 10, 2020

The GAO examined, among other things, eligible businesses' participation in the CARES Act loan program and lessons learned from the program for Congress and the Treasury. The GAO reviewed Treasury documents and data on applications received and loans executed and interviewed Treasury officials on the design and implementation of the program. The GAO also interviewed eight industry associations, eight passenger air carrier officials, and other selected applicants to gather their views on the program. The GAO issued

multiple lessons learned from this report including using multiple programs to better accommodate businesses of varied types and sizes; setting and communicating clear program goals could better align lender and borrower expectations; and communicating clear timelines for action can help align lender and borrower expectations.

Report No. GAO-21-117T, “Small Business Administration: COVID-19 Loans Lack Controls and Are Susceptible to Fraud,” October 1, 2020

This testimony discusses fraud risks associated with the SBA’s PPP and Economic Injury Disaster Loans programs. It is largely based on the GAO’s reports in June 2020 (GAO-20-625) and September 2020 (GAO-20-701) that addressed the Federal response, including by the SBA, to the economic downturn caused by COVID-19. The GAO determined that given the immediate need for these loans, the SBA worked to streamline the program so that lenders could begin distributing these funds as soon as possible. In addition, the SBA’s efforts to expedite processing of Economic Injury Disaster Loans—such as the reliance on self-certification—may have contributed to increased fraud risk in that program as well. In its June 2020 report, the GAO recommended that the SBA develop and implement plans to identify and respond to risks in PPP to ensure program integrity, achieve program effectiveness, and address potential fraud. The SBA neither agreed nor disagreed, but the GAO believes implementation of this recommendation is essential.

DoD OIG

Report No. DODIG-2022-102, “DoD Cooperative Agreements With Coronavirus Aid, Relief, and Economic Security Act Obligations,” June 8, 2022

The DoD obligated CARES Act funding to cooperative agreements for expenses incurred in preventing, preparing for, or responding to COVID-19. Specifically, for the 36 cooperative agreements we reviewed, the DoD Components complied with CARES Act requirements when they obligated \$127.1 million in CARES Act funding for COVID-19-related purposes. The DoD Components complied with requirements by adequately justifying that the funds were for a purpose permitted by the CARES Act. Of the \$127.1 million in CARES Act funding that the DoD Components obligated, they expended \$90.3 million to protect DoD military and civilian personnel and their families and safeguard National Security capabilities.

Report No. DODIG-2021-081, “Audit of the DoD Coronavirus Aid, Relief, and Economic Security Act Awards to the Defense Industrial Base,” May 20, 2021

The DoD awarded CARES Act funding to sustain or increase the Defense Industrial Base in accordance with Federal regulations and Defense Production Act authorities for the six awards we reviewed. This occurred because DoD officials implemented processes to identify appropriate Defense Production Act Title III projects to receive CARES Act funding. In addition, DoD officials complied with the Federal Acquisition Regulation and the Code of Federal Regulations when awarding the CARES Act funding to existing contracts and new technology investment agreements. As a result, the six Defense Industrial Base companies we reviewed will receive \$206.8 million in CARES Act funding to help them overcome the financial distress caused by the COVID-19 pandemic and sustain projects that are critical to national defense.

Report No. DODIG-2021-030, “Audit of Department of Defense Implementation of Section 3610 of the Coronavirus Aid, Relief, and Economic Security Act,” December 9, 2020

For the 37 contracts reviewed, DoD OIG determined that the majority of contracting officers ensured that contractors provided necessary supporting documentation, claimed only 40 hours per week for each employee, charged billing rates in line with the contract rates, and excluded profit from their request for reimbursement. Furthermore, the majority of contracting officers justified that contractors needed to be kept in a ready state and obtained information from the contractors on other relief claimed or received. The DoD OIG determined contracting officers had to rely on contractors to self-certify that the section 3610 costs claimed were the only reimbursement that contractors were receiving for the paid leave and that contractors were not being reimbursed from any other source of COVID-19 relief for the same leave expenses. The DoD OIG also found the DoD’s use of section 3610 authority was limited; as of September 30, 2020, only 96 of the 781 DoD affected contractors received assistance through section 3610. In addition, tracking and identifying DoD contracts using section 3610 was not easy because not all contracts using section 3610 authority were clearly identified in DoD information systems and some contracts were mislabeled as using section 3610 authority when they did not use it.

SBA OIG

Report No. SBA-21-11, "Evaluation of SBA's Award Procedures for the Coronavirus Aid, Relief, and Economic Security Act Entrepreneurial Development Cooperative Agreements," March 30, 2021

SBA OIG evaluated the SBA's handling of economic relief funding to educate, train, and advise small business owners and entrepreneurs on practices necessary to reduce the economic effects of the COVID-19 pandemic. SBA OIG's objective was to determine whether the SBA awarded the CARES Act entrepreneurial development cooperative agreements and grants in accordance with applicable Federal laws, regulations, and other guidance. The SBA OIG determined that program officials established performance goals and identified performance indicators; however, the SBA should clearly define the performance goals and set targets. The SBA OIG recommended that the SBA should enforce standard operating performance goals and performance targets, and the SBA should collect and analyze the CARES Act entrepreneurial development cooperative agreement recipient's performance results to establish a framework for setting goals for future disasters.

Treasury OIG

Report No. Treasury OIG-21-025 Interim Audit Update "Air Carrier and Contractor Certifications for Payroll Support Program," March 31, 2021

The objective of the audit was to assess the accuracy, completeness, and sufficiency of air carriers' and contractors' (applicants/recipients) "sworn" financial statements or other data used to certify the wages, salaries, benefits, and other compensation amounts submitted and approved by the Treasury. The scope of the audit includes, but is not limited to, certified applications submitted by non-241 passenger and air cargo carriers and contractors, financial statements, tax returns, and other documentation provided to the Treasury during the period March 30, 2020 through April 27, 2020 under the Payroll Support Program established by the CARES Act. The Treasury OIG determined that employer-side payroll taxes and corporate officer compensation were included in the awardable amounts of salaries, wages, and benefits on applications. Furthermore, the Treasury OIG determined that for the CARES Act, Payroll Support Program application, and agreement, neither employer-side payroll taxes nor corporate officer compensation are permitted to be included as part of the awardable amounts.

SIGPR

Independent Review of 4003(b) Loan Recipient's Validation Memo – Map Large, Inc., July 11, 2022

On April 27, 2020, Map Large applied for a \$10 million loan Section 4003 of the CARES Act. On November 2, 2020, Map Large and the Department of the Treasury agreed to a loan of that same amount. During the application period, applicants were required to submit documents through a Treasury web portal. For each applicant to move forward in the loan process, they had to provide a financial plan, Internal Revenue Service Form 941s, and financial statements, among other documentation. Depending on the applicant's type of business additional documentation was also required. For instance, businesses critical to maintaining national security had to provide proof of a DX-priority rated contract, a top secret facility security clearance, or a recommendation and certification from the Secretary of Defense or the Director of National Intelligence. All documentation provided was to be maintained by Treasury. Once the required documentation was compiled, Treasury verified and recorded it using a Validation Memo. A completed and signed Validation Memo allowed the applicant to move forward to the loan underwriting process. SIGPR officials determined that they are not aware of any material modifications that should be made to the Validation Memo Treasury completed for Map Large to comply with Treasury's Underwriting Guide.

Alert Memorandum: Delays in the Quarterly Monitoring of Borrowers' Compliance with Loan Requirements, May 24, 2022

SIGPR determined Treasury has not conducted timely monitoring of loans made under Section 4003(b)(1)–(3) of the CARES Act for Calendar Year 2021 Quarters 1, 2, and 3. Additionally, Treasury does not have a policy to guide its monitoring of borrowers' compliance with requirements for these loans. If Treasury is not reviewing borrowers' answers timely, Treasury may be delayed in detecting and responding to borrowers' lack of compliance with loan requirements or jeopardized ability to repay their loans. SIGPR found no evidence of Treasury's monitoring between July 2021 and March 7, 2022, when SIGPR first questioned the lack of monitoring in an email to Treasury officials. Based on the information made available to SIGPR, Treasury's monitoring of Calendar Year 2021 occurred in March 2022 and April 2022, which is a year after Quarter 1 ended and 9 months after borrowers submitted the answers. In the meantime, borrowers submitted answers for Calendar Year 2021 Quarters 2 and 3, and Treasury did not begin to review those answers until April 2022. On April 25, 2022, Treasury officials informed SIGPR that Treasury

was still in the process of drafting a policy for the monitoring program; over 2 years since the CARES Act was passed. Treasury needs a formal policy that includes requirements, responsibilities, and timelines to ensure that monitoring is completed timely and effectively. The Treasury agreed with and implemented both recommendations made by SIGPR.

Quarterly Report to the United States Congress January 1, 2021 - March 31, 2021

Audit of the Direct Loan Program Sections 4003(b)(1)–(3) of the CARES Act authorized the Treasury to provide loans, loan guarantees, and other investments to passenger air carriers and related businesses, cargo air carriers, and businesses critical to maintaining national security. To assess the program’s effectiveness, the Office of Audits sent a survey to all 35 Direct Loan Program borrowers. The borrowers’ responses to the survey should provide information necessary to make recommendations for any future programs of a similar nature. Furthermore, the office will analyze the survey responses for any information that may warrant future oversight work. Survey responses were due by the end of April.

Special Inspector General for Pandemic Recovery Initial Report to Congress August 3, 2020

On July 8, 2020, the Treasury made its first direct loan under CARES Act § 4003. The loan was made to YRC, a large trucking firm critical to maintaining national security. Timely and complete access to information is critical to effective oversight. For that reason, CARES Act § 4018(d)(1) grants SIGPR all “authorities provided in Section 6 of the Inspector General Act,” which, in turn, grants SIGPR timely access to documents and materials available to the Treasury that relate to programs under SIGPR’s jurisdictional purview. Yet SIGPR was not specifically included in the list of entities provided access to loan information from YRC. SIGPR recommended that in future loan agreements, the Treasury expressly include SIGPR in the list of entities entitled to “timely and unrestricted access” to information from the borrower. The Treasury agreed to implement the change in future agreements.

Appendix C

Key Organizations and Offices Involved in the Section 4003 Loan Program

Office of the Under Secretary of Defense for Acquisition and Sustainment

According to its mission statement, OUSD(A&S) enables the delivery and sustainment of secure and resilient capabilities to the warfighter and international partners quickly and cost effectively. The mission statement outlines the six goals and priorities of the OUSD(A&S) as speed, resiliency, safety, capability, partnership, and development.

According to an OUSD(A&S) official, DoD officials verified the status of businesses with DX-priority rated contracts or orders, or those who held a top secret facility clearance and reported this information back to the Treasury. Additionally, OUSD(A&S) officials initially screened businesses provided by the Department of Treasury that requested DoD certification as critical to maintaining national security to receive consideration for loans under Section 4003 of the CARES Act. According to OUSD(A&S) officials, officials from the Industrial Base Council reviewed certification recommendations. The Secretary of Defense and Deputy Secretary of Defense certified that the businesses were critical to maintaining national security.

Industrial Base Council

According to its 2020 mission and purpose, the Industrial Base Council functions as the principal advisory forum on prioritized industrial base matters for the Office of the Secretary of Defense and DoD component heads to facilitate fulfilling their collective industrial base functions and responsibilities.¹⁹

According to OUSD(A&S) officials, the Industrial Base Council reviewed the list of businesses before OUSD(A&S) sent the list of businesses to the Office of the Secretary of Defense for certification.

Industrial Base Council goals are to:

- provide an aggregated assessment to Congress of industrial base risk,
- prioritize and align industrial base efforts to DoD's strategic priorities,

¹⁹ The Industrial Base Council's 2020 charter defines the defense industrial base as, "The total industrial capacity and capability to provide goods and services to meet current and future U.S. Government requirements, including research and development, design, production, deployment, and sustainment."

- develop protocols for leveraging the full authority of the DoD to act decisively to mitigate industrial base risk, and
- develop policy and information planning, programming, budgeting, and execution processes to address industrial base vulnerabilities.

Congressional Oversight Commission

Congress responded to the economic and public health crises of the COVID-19 pandemic with four economic stabilization and health funding bills, which the President signed into law. Of the four, the CARES Act, enacted March 27, 2020, authorized Treasury Department officials to offer up to \$17 billion in loans, loan guarantees, and other investments to provide liquidity to businesses determined to be “critical to maintaining national security,” to cover losses incurred as a result of coronavirus. Section 4020 of the CARES Act created the Congressional Oversight Commission to conduct oversight of the Department of Treasury and the Board of Governors of the Federal Reserve System. The Commission is composed of five members selected by the majority and minority leadership of the House and the Senate, and must provide reports to Congress every 30 days until termination, September 30, 2025.²⁰ The focus of the Commission is to report to Congress the impact, effectiveness, and transparency of the loan programs.

²⁰ Monthly reports can be accessed at <https://coc.senate.gov/reports>. The reports are not limited to Section 4003 loans and contain other CARES Act information.

Appendix D

DoD Businesses Certified as Critical to Maintaining National Security

The following table contains information on each of the businesses certified as critical to maintaining national security by the Secretary of Defense and the Deputy Secretary of Defense. The table details the name or identifier of the applicant business, the Service the business has a contract with, if the audit team was able to confirm an active or recently completed contract by searching SAM.gov Data Bank, the product service code for the contractor according to the SAM.gov Data Bank, and the Section 4003 CARES Act loan amount disbursed by the Department of Treasury.

Business ¹	Service Contract With	Contract Confirmed in betaSAM	Product Service Code ⁶	Loan Amount
Channel Logistics, LLC	Air Force	Yes	AD92-Research and Development (R&D) Defense Other (Applied Research/Exploratory Development)	\$2,500,000
Meridian Rapid Defense, LLC	Air Force	Yes	H163-Quality Control-Alarm, Signal, and Security Detection Systems	7,100,000
oVio Technologies, Inc.	Air Force	Yes	AD92-R&D Defense Other (Applied Research/Exploratory Development)	1,186,900
Spin Launch	Army	No	— ⁷	2,519,200
Visual Semantics, Inc.	Air Force SBIR ²	Yes	AD92-R&D Defense Other (Applied Research/Exploratory Development)	1,053,200
YRC Worldwide, Inc. (Yellow Corporation)	TRANSCOM ³	No	— ⁷	700,000,000
Contractor 1	Navy	Yes	Z2JZ-Repair or Alteration of Miscellaneous Buildings	No Loan
Contractor 2	Gov't Travel Agency	Yes	V302-Transportation/Travel, Relocation: Travel Agent	No Loan
Contractor 3	Air Force	Yes	AD92-R&D Defense Other (Applied Research/Exploratory Development)	No Loan
Contractor 4	Air Force	Yes	AD92-R&D Defense Other (Applied Research/Exploratory Development)	No Loan
Contractor 5	Navy	Yes	5320-Rivets	No Loan

DoD Businesses Certified as Critical to Maintaining National Security (cont'd)

Business ¹	Service Contract With	Contract Confirmed in betaSAM	Product Service Code ⁶	Loan Amount
Contractor 6	Army	Yes	AD92-R&D Defense Other (Applied Research/ Exploratory Development)	No Loan
Contractor 7	OSD Defense Production Act Title III ⁴	No	— ⁷	No Loan
Contractor 8	Air Force	No	— ⁷	No Loan
Contractor 9	Multiple ⁵	Yes	5961-Semiconductor Devices and Associated Hardware	No Loan
Contractor 10	Navy & Army	No	— ⁷	No Loan
Contractor 11	Army	Yes	7045-Information Technology Supplies	No Loan
Contractor 12	Air Force	Yes	1560-Airframe Structural Components	No Loan
Contractor 13	Air Force	Yes	AD92-R&D Defense Other (Applied Research/ Exploratory Development)	No Loan
Contractor 14	Air Force	Yes	AD92-R&D Defense Other (Applied Research/ Exploratory Development)	No Loan
Total				\$714,359,300

¹ The names of contractors who backed out or were denied from the Section 4003 CARES Act program are redacted to align with the Treasury's efforts to avoid risking damage to the reputation of businesses in this program. A formal "denial" for a loan from the Treasury department may cause reputational damage even though denials in the Section 4003 program were not necessarily based on negative aspects of the company.

² Air Force Small Business Innovation Research program.

³ Subcontractor to Crowley, who contracts with the U.S. Transportation Command.

⁴ Office of the Secretary of Defense, Defense Production Act Title III program provides the President broad authority to ensure the timely availability of essential domestic industrial resources to support national defense and homeland security requirements.

⁵ Contracts with all Military Services.

⁶ Some contractors have multiple Product Service Codes.

⁷ Some contractors were subcontractors and therefore; do not have a specific Product Service Code.

Source: The DoD OIG.

Appendix E

Section 4003 Loan Recipients

The following chart contains the businesses that received Section 4003 CARES Act loans, the method of determining how they were critical to maintaining national security, and the loan amount as of September 1, 2021.

Business	Qualification Basis	Loan Amount
Channel Logistics, LLC	DoD certification	\$2,500,000
Channel One Holding, Inc. (Core Avionics & Industrial, Inc.)	DX-priority	6,000,000
Map Large, Inc.	Top secret facility	10,000,000
Meridian Rapid Defense Group, LLC	DoD certification	7,100,000
oVio Technologies, Inc.	DoD certification	1,186,900
Semahtronix, LLC	DX-priority	1,999,100
Semantic AI, Inc.	DX-priority	506,300
Spin Launch	DoD certification	2,519,200
Visual Semantics, Inc.	DoD certification	1,053,200
Wiser Imagery Services, LLC	Top secret facility	3,069,700
YRC Worldwide (Yellow Corporation)	DoD certification	700,000,000
Total		\$735,934,400

Source: The DoD OIG.

Management Comments

Deputy Assistant Secretary of Defense (Industrial Policy)



INDUSTRIAL BASE POLICY

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE
3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3010

MEMORANDUM FOR INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE

SUBJECT: Response to Department of Defense Inspector General Draft Report for Project D2021-D000AV-0121.000, "Audit of Department of Defense Certification Process for Coronavirus Aid, Relief, and Economic Security Act Section 4003 Loans Provided to Businesses Designated as Critical to Maintaining National Security."

As requested, I am providing responses to the general content and recommendations contained in the subject report.

Recommendation 1:

We recommend that the Deputy Assistant Secretary of Defense (Industrial Policy):

- a. Perform an after-action review to document decisions, actions, best practices, and lessons learned when operating in a pandemic environment or other national emergency, in which the Department of Defense (DoD) is tasked to provide critical information and analysis to support decisions in a short timeframe.
- b. Develop and implement a standard operating procedure to retain documentation to support business decisions, when certifying data points to another Federal agency.

Response:

- a. Concur. The after-action review has been conducted, and is complete as of August 5, 2022.
- b. Concur. A standard operating procedure has been developed as of August 12, 2022, and will be implemented if/when DoD is required to provide certifying data points to another Federal agency.

Please contact our Chief Technology Officer, [REDACTED] at [REDACTED] or [REDACTED] if additional information is required.

Michael J. Vaccaro
Performing the Duties of Principal Deputy
Assistant Secretary of Defense for Industrial
Base Policy

Acronyms and Abbreviations

CARES Act The Coronavirus Aid, Relief, and Economic Security Act

DASD(IP) Deputy Assistant Secretary of Defense (Industrial Policy)

DNI Director of National Intelligence

GAO Government Accountability Office

OUSD(A&S) Office of the Under Secretary of Defense for Acquisition and Sustainment

PPP Paycheck Protection Program

SAM System for Award Management

SBA Small Business Administration

SIGPR Special Inspector General for Pandemic Recovery



Whistleblower Protection

U.S. DEPARTMENT OF DEFENSE

Whistleblower Protection safeguards DoD employees against retaliation for protected disclosures that expose possible fraud, waste, and abuse in Government programs. For more information, please visit the Whistleblower webpage at <http://www.dodig.mil/Components/Administrative-Investigations/Whistleblower-Reprisal-Investigations/Whistleblower-Reprisal/> or contact the Whistleblower Protection Coordinator at Whistleblowerprotectioncoordinator@dodig.mil

**For more information about DoD OIG
reports or activities, please contact us:**

Congressional Liaison
703.604.8324

Media Contact
public.affairs@dodig.mil; 703.604.8324

DoD OIG Mailing Lists
www.dodig.mil/Mailing-Lists/

Twitter
www.twitter.com/DoD_IG

DoD Hotline
www.dodig.mil/hotline



DEPARTMENT OF DEFENSE | OFFICE OF INSPECTOR GENERAL

4800 Mark Center Drive
Alexandria, Virginia 22350-1500
www.dodig.mil
DoD Hotline 1.800.424.9098

