



Office of the Special Inspector General for
Pandemic Recovery
Office of Audits

Audit of the U.S. Department of the Treasury's Process for Its Direct Loan to YRC Worldwide, Inc. Under Section 4003 of the CARES Act

Report Number SIGPR-A-22-005
May 11, 2023



Executive Summary

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Why We Performed This Audit

We performed this audit as part of our ongoing audit work relating to Section 4003, Division A, Title IV, Subtitle A of the Coronavirus Aid, Relief, and Economic Security Act of 2020. For all other loan recipients that received funding under Section 4003, the U.S. Department of the Treasury (Treasury) followed its published policies by completing a Validation Memo, which compiled information enabling Treasury to make a determination if the applicant should be considered for underwriting of the loan. YRC Worldwide, Inc.'s (Yellow) loan was approved prior to Treasury's published policies and therefore did not have a Validation Memo prior to its loan approval.

What We Found

We identified internal control weaknesses in the development and implementation of Treasury's approach to reviewing, approving, and disbursing a \$700 million direct loan to Yellow. Treasury did not have specific, measurable objectives, nor did it have finalized loan approval policies and procedures in place prior to the approval and disbursement of Yellow's loan. Treasury also developed a definition of "businesses critical to maintaining national security," under which Yellow's eligibility was determined, which had a broader scope than the definition later added as an amendment to 15 U.S.C. 9041 by the Consolidated Appropriations Act, 2021.

What We Recommended

We recommend that Treasury officials:

1. Finalize/codify program objectives in its policies and procedures before any new programs are established and executed.
2. Ensure that appropriate policies and procedures are in place prior to rolling out new programs where American tax dollars are at risk.
3. Develop a contingency plan for financial disasters that provides a framework for future direct lending programs to reduce implementation time and the possibility of errors or omissions.
4. Develop a "Lessons Learned" report that discusses the strengths and weaknesses/successes and failures of the processes used to approve Yellow's National Security Loan Program loan.

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Introduction

We performed an audit of the U.S. Department of the Treasury's (Treasury) process for its \$700 million loan to YRC Worldwide, Inc. (Yellow). This project is in lieu of an attestation review of Yellow's Validation Memo, as Treasury did not complete a Validation Memo for Yellow.

Purpose

We performed this audit as part of our ongoing audit work relating to Section 4003, Division A, Title IV, Subtitle A of the Coronavirus Aid, Relief, and Economic Security (CARES) Act. Treasury followed its published policies and completed a Validation Memo, which compiled information enabling Treasury to determine if the applicant should be considered for underwriting of the loan, for all other loan recipients that received funding under Section 4003. Yellow did not have a Validation Memo prior to its loan approval.

Objective

The objective of SIGPR's *Audit of the U.S. Department of the Treasury's Process for Its Direct Loan to YRC Worldwide, Inc. Under Section 4003 of the CARES Act* is to determine if Treasury followed requirements under Section 4003 of the CARES Act and other appropriate regulations and guidance.

See **Appendix A** – Scope and Methodology for additional details.

Background

The CARES Act became law on March 27, 2020.¹ The CARES Act provided over \$2 trillion in relief to respond to the COVID-19 outbreak and its impact on individuals; businesses; public health; state, local, and tribal government; and federal agencies. Section 4003 of the CARES Act authorized Treasury to make loans, loan guarantees, and other investments to provide liquidity to eligible businesses related to losses resulting from the COVID-19 pandemic. Loans to eligible businesses were limited as follows: \$25 billion for passenger air carriers, ticket agents, and aircraft repair stations; \$4 billion for cargo air carriers; and \$17 billion for businesses critical to maintaining national security.²

Treasury created two programs to facilitate the issuance of these loans – the Air Carrier Loan Program (ALP) and the National Security Loan Program (NSLP). Loans under these programs were designed to have up to a 5-year maturity with a single lump sum payment due at the end of the loan term. Borrowers were charged interest using the London Interbank Offered Rate (LIBOR) plus an additional 2.5 to 3.5 percent for

¹ Pub. L. 116-136

² Id. § 4003(b)(1) – (3)

secured loans or an additional 5.5 percent for unsecured loans. Furthermore, the CARES Act required the Secretary of the Treasury to receive a warrant, equity interest, or senior debt instrument from each borrower, for the benefit of taxpayers.³ Borrowers receiving these loans were also subject to limitations on certain employee compensation.⁴

Treasury approved 22 loans worth approximately \$21.2 billion to passenger air carriers, ticket agents, and repair stations; 2 loans worth \$2.1 million to cargo air carriers; and 11 loans worth approximately \$735.9 million to businesses critical to maintaining national security. However, only 1 of the 7 largest air carriers drew more than 10 percent of its available funds. The opportunity for eligible businesses to apply for one of these direct loans expired on December 31, 2020. See **Table 1** for a summary of direct loans made pursuant to CARES Act section 4003(b)(1)-(3).

Table 1 – Summary of Section 4003 Direct Loans

CARES Act Section	Loan Category	Appropriated Funds	Total Value of Loans ^a	Actual Disbursements	Number of Loans Made
4003(b)(1)	Passenger air carrier, ticket agent, or repair station	\$25 billion	\$21.2 billion (84.8 percent)	\$1.9 billion (7.6 percent)	22
4003(b)(2)	Cargo air carrier	\$4 billion	\$2.1 million (0.1 percent)	\$2.1 million (0.1 percent)	2
4003(b)(3)	Business critical to maintaining national security	\$17 billion	\$735.9 million (4.3 percent)	\$717.0 million (4.2 percent)	11
Totals ^b		\$46 billion	\$21.9 billion (47.6 percent)	\$2.7 billion (5.9 percent)	35

Source: SIGPR Office of Audits generated.

^a Amounts and utilization rates as a percentage of appropriated amounts have been rounded.

^b Numbers may not add up due to rounding.

Yellow's Direct Loan

On April 29, 2020, Yellow applied for a NSLP loan under Application Number NSL-200428000022. Treasury agreed to a \$700 million loan, in two tranches, on July 8, 2020. Tranche A would provide \$300 million to meet Yellow's near-term contractual obligations and non-vehicle capital expenditures. Tranche B would provide \$400 million

³ Id. § 4003(d)

⁴ Id. § 4004

for capital investments subject to Treasury’s approval of capital plans developed by Yellow. An initial disbursement of \$245 million was made on July 9, 2020.

Tranche A’s interest rate is equal to LIBOR plus 1.5 percent cash interest and 2.0 percent payment-in-kind interest. Tranche B’s interest rate is equal to LIBOR plus 3.5 percent cash interest. Both tranches have a maturity date of September 30, 2024, and their loan agreements include certain restrictions on employee compensation, stock repurchases, dividends, and reductions in employment levels as required by the CARES Act. Treasury received an equity interest of 29.6 percent of Yellow’s common stock on a fully diluted basis. Additionally, Treasury was granted third liens on existing company assets and first liens on newly purchased assets pledged as collateral.

Results

We identified internal control weaknesses in the development and implementation of Treasury’s approach to reviewing, approving, and disbursing a \$700 million direct loan to Yellow. Treasury did not have specific, measurable objectives, nor did it have finalized loan approval policies and procedures in place prior to the approval and disbursement of Yellow’s loan. Treasury also developed its own definition of “businesses critical to maintaining national security,” under which Yellow’s eligibility was determined, which had a broader scope than the definition later added as an amendment to 15 U.S.C. 9041 by the Consolidated Appropriations Act, 2021.

Finding 1 – Treasury officials did not define traditional credit program metrics which makes program effectiveness difficult to measure.

The overall effectiveness of the loan is difficult to measure until the loan is repaid or the borrower defaults because Treasury did not articulate specific and measurable objectives and associated performance measures (metrics) prior to the approval and disbursement of a \$700 million loan to Yellow. *Preparation, Submission, and Execution of the Budget* (OMB Circular A-11) states that “the aim of risk management is to ensure that risks are identified at project inception and their potential impacts allowed for and accepted, where possible, so that the risks or their impacts are minimized.” Additionally, the Circular requires a risk management plan that “establishes the purpose, objective, and goals of [a] project,” “establishes monitoring metrics,” and “defines how risk will be monitored throughout the project life-cycle,” among other things.⁵ *Standards for Internal Control in the Federal Government* (the Green Book) states “management should define objectives clearly to enable the identification of risks and define risk tolerances.”⁶ *Policies for Federal Credit Programs and Non-Tax Receivables* (OMB Circular A-129) states “agencies must have and should codify clearly-defined lines of authority and communication. Through these structures, management should establish explicit programmatic policy goals and acceptable risk thresholds, and metrics to evaluate the

⁵ OMB Circular A-11 at 59 of Capital Programming Guide

⁶ GAO 14-704G §6.01

program's effectiveness against these goals and assess the program on an on-going basis.”⁷ Additionally, OMB Circular A-123 states that “specific objectives must be identified and documented to facilitate identification of risks to strategic, operations, reporting, and compliance [objectives].” Here, OMB defines operations objectives as “relating to the effective and efficient use of the Agency’s resources related to administrative and major program operations....”⁸

The CARES Act provides a broad objective under Section 4003(a); however, this broad objective does not identify specific, measurable objectives which aid in the determination of the overall effectiveness of the program. Specifically, the CARES Act states:

In GENERAL. – Notwithstanding any other provisions of law, to provide liquidity to eligible businesses, States, and municipalities related to losses incurred as a result of coronavirus, the Secretary is authorized to make loans, loan guarantees, and other investments in support of eligible businesses....

According to Treasury officials, “the success of this emergency program...is based on the overall ability of the domestic airline industry to survive the pandemic with operating capabilities necessary to support future economic growth.” Department officials also described the program as a “one-time, emergency credit program to provide general purpose liquidity, which Treasury implemented as a backstop facility in the event that credit could not be obtained through banks and market sources during the pandemic.” When asked if program officials had defined metrics or performance measures to evaluate the program’s performance, Department officials responded that “Treasury did not define traditional credit program metrics” and “did not establish quantitative goals for deploying the \$46 billion in lending authority available to the program.” Instead, officials described the approach to measuring the program’s performance as determining the “extent to which large potential applicants could obtain credit elsewhere through market financings, the speed with which actual borrowers can prepay the loan and substitute private credit, the extent to which smaller applicants will repay their loans at maturity, and the size of the long-term gains from the taxpayer protection instruments received from program participants.”

NSLP loans mature up to 5 years from their closing dates. Payment-in-kind interest of 3 percent is also deferred to maturity. This deferred interest increases a borrower’s “total outstanding loan amount.” As of March 15, 2023, over 2.5 years into its loan, Yellow had an outstanding loan balance of \$729.2 million, made \$54.8 million in interest payments, and repaid \$230 in principal.⁹ The single \$230 principal payment was made on June 13, 2021.¹⁰

⁷ OMB Circular A-129 at 10

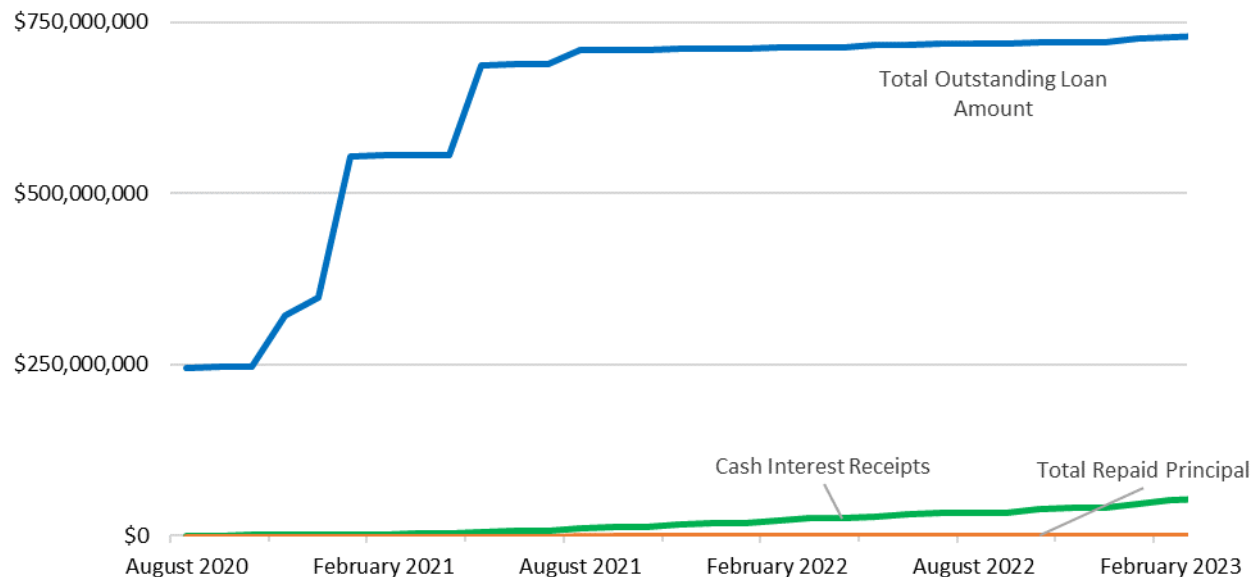
⁸ OMB Circular A-123 at 16

⁹ *Report Under Section 4026(b)(1)(C) of the CARES Act on Loans to Air Carriers, Eligible Businesses, and National Security Businesses* (January 1, 2023). Available at <https://home.treasury.gov/system/files/136/4026b1CLoanReport01012023.pdf>

¹⁰ *Id.* at 8 (footnote 26)

Figure 1. Yellow Corp. Outstanding Loan Amount, Cash Interest Receipts, and Total Repaid Principal

As of March 15, 2023



Source: SIGPR Office of Audits generated from information published in Treasury’s 4026(b)(1)(C) Loan Reports between August 7, 2020, and March 15, 2023.

Finding 2 – Treasury officials approved and disbursed Yellow’s \$700 million loan before National Security Loan Program policies or procedures were finalized and in effect.

Treasury was exposed to increased compliance risk and other risks¹¹ when Treasury officials approved and disbursed a \$700 million direct loan to Yellow prior to finalizing the ALP Underwriting Guide and other appropriate internal policies and procedures. Yellow’s direct loan was approved and disbursed July 8-9, 2020. However, Treasury officials stated that the “Air Carrier Loan Program Underwriting Guide...was finalized on July 14, 2020” and that “the National Security Loan Program generally followed this process, with some minor adjustments.” When asked to clarify whether the Yellow direct loan was approved without a written policy or processes in place to guide decision-making and manage risks, Treasury officials responded that “[current] Treasury staff remaining from that time period have limited insight into the underwriting process that occurred for [Yellow]. To the best of our understanding, the [Yellow] direct loan was approved before written policies/procedures were finalized due to the perceived exigencies of the situation. Treasury’s action Memo approving the [Yellow] loan...describes the underwriting process and analysis for the loan.”

¹¹ According to the Comptroller’s Handbook, management practices may need to address some or all of the following risks – credit, market, operating or transaction, reputation, strategic, compliance, legal, liquidity, and other risks depending on the nature and scope of an institution’s activities. (Bank Supervision Process at 74).

Yellow was the first applicant to receive funding through the ALP/NSLP – months before any other applicant. Yellow’s loan process was different from other loan applicants/recipients. For instance, Treasury did not complete a Validation Memo for Yellow. According to Treasury’s Underwriting Guide, a review team would gather required information and then evaluate an application using the Validation Memo. The Validation Memo split the evaluation process into the following sections:

1. Validation Memo Overview;
2. Eligibility Review;
3. Applicant Information; and
4. Requested Attachments

Each section contained key information collected during the intake of loan applications including, but not limited to:

- Loan amounts requested;
- Whether the applicant was a public or private company;
- Whether there was an existing application for other CARES Act funding, such as the Payroll Support Program;
- Names of parents and affiliate companies; and
- Various financial documentation supporting the need for a loan, among other things.

Other differences with Yellow’s loan process and/or loan agreement include Yellow being authorized to use loan proceeds for capital expenditures, Treasury receiving shares of common stock, and loan proceeds being issued under two different tranches with different terms and conditions.

Treasury officials indicated that there was an urgency to disburse funding as soon as possible, stating, “Due to the emergency and one-time nature of the program, numerous aspects of the program were developed and implemented simultaneously and as soon as practicable, including program policies, underwriting standards, application procedures, information technology support, staffing, contracting, and operating procedures, among others.” However, many of these aspects were not completed prior to the approval and disbursement of Yellow’s loan.

OMB Circular A-129 states that “agencies must implement budget policies and management practices that ensure the goals of credit programs are met.” GAO’s Green Book states that management should implement control activities through policies. Treasury’s Office of the Comptroller of the Currency (OCC) defines compliance risk as “the risk to current or projected financial condition and resilience arising from violations of laws or regulations, or from nonconformance with prescribed practices, internal...policies and procedures, or ethical standards.”¹² OCC adds that compliance

¹² *Comptroller’s Handbook: Bank Supervision Process* (OCC Publication Version 1.1, September 2019) at 27

risk also includes “the exposure to litigation (known as legal risk) from all aspects of banking, traditional and nontraditional.”¹³

The Federal Financial Institutions Examination Council (FFIEC) – a formal interagency body empowered to prescribe uniform principles, standards, and report forms for the federal examination of financial institutions by the OCC and other organizations and to make recommendations to promote uniformity in the supervision of financial institutions – has developed uniform reporting systems for federally supervised financial institutions. Among these systems, the Uniform Financial Institutions Rating System (UFIRS) – also commonly known as CAMELS¹⁴ – allows supervisory agencies to evaluate financial institutions in a comprehensive and uniform manner and ensure attention is focused on financial institutions exhibiting financial and operational weaknesses or adverse trends. Under this system, OCC evaluates several factors including, but not limited to:

- The adequacy of underwriting standards, soundness of credit administration practices, and appropriateness of risk identification practices;
- The adequacy of loan and investment policies, procedures, and practices;
- The adequacy of internal controls and management information systems;
- The adequacy of, and conformance with, appropriate internal policies and controls addressing the operations and risks of significant activities;
- The adequacy of audits and internal controls to promote effective operations and reliable financial and regulatory reporting; safeguard assets; and ensure compliance with laws, regulations, and internal policies; and
- Responsiveness to recommendations from auditors and supervisory authorities.

Because the ALP, NSLP, and the offices charged with the programs’ management are not strictly “financial institutions,” they are not subject to OCC and FFIEC oversight. However, these best practices and mandates imposed on private sector entities illustrate the importance of having internal policies and procedures in place before undertaking any fiduciary activities.

Other Matters

The CARES Act explicitly provided the Secretary of the Treasury discretion to determine whether an “applicant is an eligible business for which credit is not reasonably available at the time of the transaction.”¹⁵ However, different definitions of the term “business critical to maintaining national security” were used to determine loan applicant eligibility under Section 4003 between passage of the CARES Act on March 27, 2020, and passage of the Consolidated Appropriations Act, 2021, on December 27, 2020. The clear differences between the definitions used to determine applicant eligibility during the loan application period and the definition eventually published in the Consolidated

¹³ Ibid. at 28

¹⁴ The acronym CAMELS refers to the assessment of six components of a bank’s performance: Capital adequacy, Asset quality, Management, Earnings, Liquidity, and Sensitivity to market risk.

¹⁵ Pub. L. 116-136 §4003(c)(2)(A)

Appropriations Act of 2021 demonstrates the need for improved communication and coordination between Department officials, legislators, and other applicable stakeholders.

OMB Circular A-129 states, “Federal credit granting agencies...shall determine whether applicants comply with statutory, regulatory, and administrative eligibility requirements for loan assistance.”¹⁶ The CARES Act tasked the Secretary of the Treasury with publishing “procedures for application and minimum requirements...for making loans, loan guarantees, or other investments under paragraphs (1), (2), and (3) of subsection (b)”...“as soon as practicable, but in no case later than 10 days after the date of enactment of this Act.”¹⁷ However, the original text of the CARES Act did not define “businesses critical to maintaining national security.” In a statement before the Congressional Oversight Commission on December 10, 2020, then-Secretary Mnuchin stated

...after consulting with the Department of Defense and the Office of Director of National Intelligence, Treasury issued guidance on April 10, 2020, providing that a company can fall within this definition [of businesses critical to maintaining national security] if it meets at least one of three criteria:

1. The applicant business performs under a “DX”-priority rated contract or order under the Defense Priorities and Allocations System regulations (15 CFR part 700);
2. The applicant business operates under a valid top secret facility security clearance under the National Industrial Security Program regulations (32 CFR part 2004); or
3. Based on a recommendation and certification by the Secretary of Defense or the Director of National Intelligence that the applicant business is critical to maintaining national security, the Secretary of the Treasury determines that the applicant business is critical to maintaining national security.

When asked whether there was any communication or coordination with members of Congress or their staffs, the Office of Management and Budget, the Federal Credit Policy Council, or any other stakeholders to define this term and determine eligibility for a direct loan under CARES Act section 4003(b)(3), Treasury officials stated that they were “unaware of any consultation with members of Congress or their staffs.” Additionally, “Treasury officials did not consult with the FCPC or OMB.”

A separate audit, conducted by the U.S. Department of Defense Office of Inspector General, found that “[Department of Defense] 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.”¹⁸ Furthermore,

¹⁶ *Policies for Federal Credit Programs and Non-Tax Receivables* (OMB Circular No. A-129, January 2013) at 8.

¹⁷ Pub. L 116-136 §4003(c)(1)(B)

¹⁸ *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* (DODIG-2022-131, September 20, 2022) at 10.

DoD OIG auditors determined this lack of documentation “potentially impaired...the effectiveness and accuracy of the [DoD] certification.” Instead, the report found, DoD officials screened businesses using criteria developed for a separate CARES Act program. Those criteria were as follows:

- 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)?¹⁹

On December 27, 2020, Congress passed the Consolidated Appropriations Act of 2021 which amended the CARES Act to formally include a definition for businesses critical to maintaining national security. The amendment states:

(11) Aerospace-related businesses critical to maintaining national security. – 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.

Although the CARES Act explicitly provided the Secretary of the Treasury wide discretion to determine applicant eligibility for loans under Section 4003, the differences in these definitions of “businesses critical to maintaining national security” highlight the risk of making direct loans and loan guarantees to potentially ineligible borrowers when borrower eligibility is subjective or ambiguous.

¹⁹ According to the report, the DoD defined commodity as “available commercially, not DoD specific.”

Conclusion

Treasury met the requirements of Section 4003 of the CARES Act. However, the exigency of the coronavirus pandemic applied pressures that increased risks to the success of the direct loan programs established under Section 4003. We identified internal control weaknesses in the development and implementation of Treasury's approach to reviewing, approving, and disbursing a \$700 million direct loan to Yellow. Specifically, Treasury did not have specific, measurable objectives, nor did it have finalized loan approval policies and procedures in place prior to the approval and disbursement of Yellow's loan. Furthermore, ambiguity in the meaning of the term "businesses critical to maintaining national security" may have led to an overly broad pool of applicants for Section 4003.

While the use of emergency funding to provide loans, loan guarantees, and other investments in support of eligible businesses was imperative at the beginning of the pandemic, it did not imply that Treasury circumvent federal rules and regulations. In the event of similar emergency funding needs in the future, Treasury should seek to improve its emergency lending strategies.

Recommendations

We recommend that Treasury officials:

1. Finalize/codify program objectives in its policies and procedures before any new programs are established and executed.
2. Ensure that appropriate policies and procedures are in place prior to rolling out new programs where American tax dollars are at risk.
3. Develop a contingency plan for financial disasters that provides a framework for future direct lending programs to reduce implementation time and the possibility of errors or omissions.
4. Develop a "Lessons Learned" report that discusses the strengths and weaknesses/successes and failures of the processes used to approve Yellow's NSLP loan.

Agency Comments

Treasury officials agreed, in general, with our findings and two recommendations. However, the officials noted that, in their opinion, certain situations necessitate the concurrent design and implementation of some programs. Treasury's management response is included in its entirety in **Appendix B**.

SIGPR Response

While Treasury generally agreed with our report's findings and recommendations, we identified some inconsistencies in Treasury's response.

Relating to the definition of "critical to maintaining national security" Treasury states that "Because the statute did not define the phrase...Treasury worked with DOD and the

Director of National Intelligence to develop an appropriate definition.” Treasury then states that “the definition of this term that Treasury applied in the program was the definition in the statute at the time and Treasury was in regular contact with members of Congress during the NSLP implementation period.” These two statements are contradictory – either the statute did not define the phrase, or Treasury applied the definition in the statute at the time. SIGPR believes that the CARES Act, as originally written, did not define the term “businesses critical to maintaining national security,” based on our audit work.

After the completion of our audit fieldwork, Treasury informed us there were several letters between members of Congress and Treasury regarding Yellow. However, these discussions only related to the eventual approval of Yellow’s loan. We did not identify any discussions relating to the clarification of any specific terms within the Act. Therefore, it is likely that only aerospace-related firms would have been eligible for a direct loan under Section 4003 had Congress not waited to define the term “businesses critical to maintaining national security” as a CARES Act amendment in the Consolidated Appropriations Act, 2021.

Treasury’s response also states that during certain emergency situations, such as the initial response to the pandemic in 2020, it may be necessary to design programs concurrently with their implementation. While we agree, Treasury approved only Yellow’s loan prior to establishing formal policies and procedures. None of the other Tier 1 borrowers, most of which applied for emergency lending before Yellow, had received loan approval until at least 81 days after Yellow.

Table 2 – Comparison of Tier 1 Applicant Application and Loan Agreement Dates

Borrower	Application Date	Loan Agreement Date
American Airlines, Inc.	4/18/2020	9/25/2020
United Airlines, Inc.	4/17/2020	9/28/2020
Frontier Airlines, Inc.	4/16/2020	9/28/2020
Hawaiian Airlines, Inc.	4/17/2020	9/25/2020
Alaska Airlines, Inc.	4/17/2020	9/28/2020
SkyWest Airlines, Inc.	4/24/2020	9/29/2020
JetBlue Airways Corporation	4/29/2020	9/28/2020
Yellow Corporation (Formerly YRC Worldwide, Inc.)	4/29/2020	7/7/2020

Source: SIGPR Office of Audits generated based on Section 4003 loan application data.

In Treasury’s response, Treasury officials note that “regulators overseeing private financial institutions issuing credit are not tasked with providing emergency lending to businesses critical to national security in the midst of a pandemic....” We agree. However, the standards we cited as illustrative examples are regulations that the regulators, specifically OCC and FFIEC, enforce on private entities that issue loans and, therefore, provide examples of best practices for organizations to follow prior to

engaging in the business of lending. The question of whether the U.S. Department of the Treasury is exempt from similar risk mitigation measures due to defined exigencies is a policy matter and beyond the scope of our audit.

Finally, the response provided to our final recommendation that Treasury document the strengths and weaknesses of the processes used to approve Yellow's loan omits one other outcome - the possibility that Yellow defaults on its loan. As mentioned in our report, Yellow has only made one principal payment of \$230 to date and its loan balance has increased nearly \$30 million. With the lack of defined metrics and objectives to measure the effectiveness of the loan, waiting until the loan reaches maturity, is fully paid off, or defaults to evaluate the strengths and weaknesses of the loan is reactive at best and may not be the best course of action to protect taxpayer funds.

Audit Team

This audit was managed and conducted by the individuals listed below:

Michael Sinclair	Audit Manager
Reynaldo Gonzales	Auditor-In-Charge

Appendix A – Scope and Methodology

Scope and Methodology

Our objective was to determine if the U.S Department of the Treasury followed the requirements under Section 4003(b) of the CARES Act and other appropriate regulations and guidance in its processing of Yellow’s NSLP loan.

To accomplish our objective, we:

- Interviewed Treasury’s program officials charged to handle Yellow’s loan;
- Reviewed the CARES Act Section 4003(b) requirements, OMB Circulars A-123 and A-129, and Standards for Internal Control in the Federal Government (the Green Book);
- Reviewed Treasury’s Air Carrier Loan Program Underwriting Guides;
- Reviewed Yellow’s loan application and loan agreement;
- Reviewed Congressional testimony by Treasury regarding Yellow’s loan; and
- Reviewed DoDIG Report 2022-131

We conducted this performance audit between April 2022 and March 2023 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.

Internal Control

We assessed internal control and compliance relating to the context of our audit against *Standards for Internal Control in the Federal Government* (GAO-14-704G) and with laws and regulations necessary to satisfy the audit objective. The methodology above describes the scope of our assessment and the report findings include any internal control deficiencies we identified. Our assessment is not intended to provide assurance on Treasury’s internal control structure as a whole. Treasury management is responsible for establishing and maintaining an effective system of internal control.

Appendix B – Agency Comments



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

April 26, 2023

Theodore R. Stehney
Assistant Inspector General for Auditing
Special Inspector General for Pandemic Recovery
2051 Jamieson Avenue
Alexandria, VA 22314

Dear Mr. Stehney:

I write regarding the Special Inspector General for Pandemic Recovery's (SIGPR) Draft Report: *Audit of the U.S. Department of the Treasury's Process for Its Direct Loan to YRC Worldwide, Inc. Under Section 4003 of the CARES Act* (Draft Report). The U.S. Department of the Treasury (Treasury) appreciates SIGPR's efforts.

Background on Treasury's National Security Loan Program (NSLP)

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) was enacted on March 27, 2020, to provide emergency assistance in response to the unprecedented challenges presented by the COVID-19 public health emergency. The CARES Act allocated \$17 billion to Treasury to make loans and loan guarantees for businesses critical to maintaining national security. Because the statute did not define the phrase "critical to maintaining national security," Treasury worked with the Department of Defense and the Office of the Director of National Intelligence to develop an appropriate definition. Pursuant to that definition, a business would qualify as "critical to maintaining national security" if, at the time of application, it was (1) performing under a "DX"-priority rated contract or order under the Defense Priorities and Allocations System regulations (15 CFR part 700); or (2) operating under a valid top secret facility security clearance under the National Industrial Security Program regulations (32 CFR part 2004). A business not meeting either of these criteria could still be considered for an NSLP loan if, based on a recommendation and certification by the Secretary of Defense or the Director of National Intelligence ("DNI") that the applicant business was critical to maintaining national security, the Secretary of the Treasury determined that the business was critical to maintaining national security.

During the course of the program, Treasury agreed to lend \$736 million to 11 businesses. Currently, approximately \$763 million (including accrued interest) remains outstanding to nine borrowers.

The Draft Report

The Draft Report finds that "Treasury met the requirements of Section 4003 of the CARES Act," and acknowledges that the exigencies of the coronavirus pandemic applied pressures to Treasury in its design and implementation of the NSLP, along with numerous other programs. The

CARES Act tasked Treasury with designing and implementing multiple programs on an extremely abbreviated timetable.¹ The loan to YRC Worldwide (YRC) was made in this context.

With respect to findings, the Draft Report cites, as illustrative examples, standards that it acknowledges do not apply as a legal matter. Specifically, the Draft Report cites to guidance issued by the Office of the Comptroller of the Currency and the Federal Financial Institutions Examination Council to illustrate the importance of finalizing policies and procedures before undertaking fiduciary activities. We note, however, that regulators overseeing private financial institutions issuing credit are not tasked with providing emergency lending to businesses critical to national security in the midst of a pandemic, and these guidance documents are thus of limited utility even as illustrative examples. The Draft Report also notes that Congress amended the definition of a “business critical to maintaining national security” in December 2020, after Treasury was no longer considering or making loans under the NSLP. The definition of this term that Treasury applied in the program was the definition in the statute at the time, and Treasury was in regular contact with members of Congress during the NSLP implementation period.² We therefore disagree with the Draft Report’s conclusion that the subsequent change in law demonstrated a need for improved coordination between the Department and Congress.

SIGPR’s Recommendations

SIGPR’s first two recommendations are forward-looking and would apply to future emergency lending programs. SIGPR recommends that in such circumstances, Treasury should ensure that appropriate policies and procedures are in place before rolling out new programs, and should finalize and codify program objectives in such policies and procedures. In general, we agree with those recommendations. However, we note that in certain emergency situations, such as in the initial response to the pandemic in 2020, it may be necessary to design programs concurrently with their implementation. In such circumstances, Treasury seeks to protect taxpayer funds while still working expeditiously to implement the will of Congress and to protect the national interest.

SIGPR’s third recommendation is that Treasury should develop a contingency plan for financial disasters that would provide a framework for future direct lending programs. To implement this recommendation, Treasury will compile the program documents, policies, and procedures from prior lending programs (such as the NSLP, the Air Carrier Loan Program, and the Troubled

¹ For example, the CARES Act allocated \$31 billion to Treasury to provide payroll support for air carriers and aviation contractors, and required that Treasury publish streamlined and expedited procedures for such businesses to request assistance within five days after enactment, and begin making initial payments to applicants whose requests had been approved within 10 days after enactment. CARES Act, Pub. Law 116-136, 134 Stat. 498, § 4113(b)(1)(B). Similarly, the CARES Act allocated \$150 billion for Treasury to make Coronavirus Relief Fund payments to states, tribes, and local governments, and prescribed that Treasury should pay all such recipients within 30 days after enactment. *Id.*, 134 Stat. 502, § 601(b)(1).

² Between the passage of the CARES Act and the Consolidated Appropriations Act, Secretary Mnuchin testified before Congress on at least five occasions.

Asset Relief Program) so that they will be readily available to future policymakers in the event of a future financial crisis.

SIGPR's final recommendation is that Treasury prepare a report discussing the strengths and weaknesses of the processes used to approve YRC's NSLP loan. At this time, Treasury's Office of Recovery Programs is focused on continuing to implement coronavirus relief programs and to monitor the compliance of participants in those programs. Once the YRC loan has reached maturity or is fully repaid, Treasury will be in a better position to determine any strengths or weaknesses of its processes, and will evaluate at that time whether to prepare such a report. We appreciate, however, the reports issued on the YRC loan by SIGPR, the Congressional Oversight Commission, and the House Select Subcommittee on the Coronavirus Crisis.

* * *

Treasury appreciates SIGPR's work, and we look forward to working with you as you continue to evaluate the lending programs created by the CARES Act.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Leibenluft', written in a cursive style.

Jacob Leibenluft
Chief Recovery Officer

Appendix C – Report Distribution

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