



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

# Weaknesses in Treasury's CARES Act Loan Monitoring

Report Number SIGPR-A-22-002-2  
May 31, 2023



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## **Executive Summary**

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### **Weaknesses in Treasury's CARES Act Loan Monitoring**

Report Number SIGPR-A-22-002-2

May 31, 2023

### **Why We Performed This Audit**

Our audit was focused on the Department of the Treasury's (Treasury) CARES Act loans to passenger air carriers, repair station operators, ticket agents, cargo air carriers, and businesses critical to maintaining national security. Specifically, we looked at how Treasury monitored borrowers' compliance with the requirements of the CARES Act and the terms and conditions of the borrowers' loan agreements.

Our objectives were to:

1. Determine if Treasury had a sufficient policy in place to guide its monitoring; and
2. Determine if Treasury monitored borrowers' compliance with the requirements of the CARES Act and the terms and conditions of the borrowers' loan agreements and followed up to resolve any issues that they detected.

### **What We Found**

We found that Treasury did not conduct timely monitoring of loans made under Section 4003(b)(1)-(3) of the CARES Act for Calendar Year 2021 Quarters 1, 2, and 3. Although the first quarter covered by Treasury's monitoring program was Calendar Year 2020 Quarter 4, Treasury did not create a policy to guide the monitoring program until May 2022. Without timely monitoring, Treasury cannot detect and appropriately respond to loan borrowers' lack of compliance with loan requirements or jeopardized ability to repay the loans.

We also found that though Treasury has a program to monitor borrowers' compliance, the level of monitoring varies widely among loan requirements. We did not find evidence of a risk assessment that would show the likelihood or impact of non-compliance for each requirement. Such an analysis could have led Treasury to increase its monitoring in any high-risk or medium-risk areas. For requirements with weaker monitoring, Treasury may not catch areas of non-compliance.

### **What We Recommended**

We recommend that Treasury:

1. Update its monitoring policy to add deadlines to avoid significant monitoring delays;
2. Ensure that it has an effective policy in place to monitor any future emergency loan programs in a timely manner; and
3. Conduct a risk assessment of loan requirements to determine whether any areas of monitoring should increase for future quarterly reviews.

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## **Introduction**

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We performed an audit of Department of the Treasury's (Treasury) monitoring of CARES Act loans to passenger air carriers, repair station operators, ticket agents, cargo air carriers, and businesses critical to maintaining national security.

### **Purpose**

We performed this audit as an offshoot to the Special Inspector General for Pandemic Recovery's (SIGPR) overall audit of CARES Act loans to passenger air carriers, repair station operators, ticket agents, cargo air carriers, and businesses critical to maintaining national security (SIGPR-A-22-001). Splitting off the monitoring portion to another audit allowed for a smaller scope.

### **Objectives**

Our objectives were to:

1. Determine if Treasury had a sufficient policy in place to guide its monitoring; and
2. Determine if Treasury monitored borrowers' compliance with the requirements of the CARES Act and the terms and conditions of the borrowers' loan agreements and followed up to resolve any issues that they detected.

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

### **Background**

The Coronavirus Aid, Relief, and Economic Security Act of 2020 (CARES Act) was signed into law on March 27, 2020. The CARES Act authorized Treasury to make loans, loan guarantees, and other investments to provide liquidity to eligible businesses related to losses incurred as a result of the coronavirus pandemic.<sup>1</sup> To help stabilize the airline industry and businesses critical to maintaining national security, the CARES Act appropriated \$46 billion. For these businesses, Treasury made 35 loans totaling \$2.7 billion. As of April 1, 2023, \$974 million is outstanding.

Treasury monitors borrowers' compliance through a multi-pronged approach. In Salesforce, the borrowers answer questions related to loan requirements on a quarterly basis.<sup>2</sup> Additionally, Treasury reconciles principal and interest payments as they are collected by its administrative agent. The administrative agent also monitors and collects collateral certificates provided by borrowers and will alert Treasury to any breach in obligation on the part of the borrower. Treasury's Asset Management also conducts monitoring. This office is responsible for communicating with the borrowers on a regular basis. They review U.S. Securities and Exchange Commission reports for publicly traded

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<sup>1</sup> Pub. L 116-136 § 4003

<sup>2</sup> Salesforce is a customer relationship management software platform.



companies and conduct analysis to keep Treasury management apprised of the current finances of the borrowers.

A Treasury official stated to SIGPR that the goal of Treasury's monitoring program is to ensure borrowers comply with loan agreements and the CARES Act. Treasury also uses monitoring to determine whether borrowers are engaging in activities that would prevent them from successfully repaying the loans.

On May 24, 2022, SIGPR issued an alert memorandum to Treasury.<sup>3</sup> SIGPR alerted Treasury that its monitoring of borrowers' compliance with CARES Act and loan requirements was delayed for Calendar Year 2021 Quarters 1, 2, and 3. 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. SIGPR recommended Treasury create and finalize a monitoring policy and a plan of action to ensure that monitoring is done in a timely manner. On May 17, 2022, Treasury agreed with the recommendations.

The alert memorandum can be found in ***Appendix B***.

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<sup>3</sup> *Alert Memorandum: Delays in the Quarterly Monitoring of Borrowers' Compliance with Loan Requirements* (SIGPR-22-001-1). May 24, 2022.

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## Results

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Treasury did not have a sufficient policy in place to guide the monitoring of its Section 4003(b)(1)-(3) loans, which caused delays in Calendar Year 2021 monitoring in Salesforce. Though policies were created later, the policies do not include provisions to ensure that monitoring activities are completed timely. Furthermore, while Treasury has a program to monitor the borrowers' compliance with loan requirements, the level of monitoring varies widely among loan requirements, and there is no risk assessment to support the different levels of monitoring.

### **Finding 1 – Treasury lacked a formal policy to guide the monitoring program, which led to delays in quarterly reviews.**

Treasury did not conduct timely monitoring in Salesforce for loans made under Section 4003(b)(1)-(3) of the CARES Act for Calendar Year 2021 Quarters 1, 2, and 3. Until May 2022, Treasury had not yet created a policy to guide the monitoring program. Without timely monitoring, Treasury cannot detect and appropriately respond to loan borrowers' lack of compliance with loan requirements or jeopardized ability to repay the loans. Of the \$2.7 billion that Treasury loaned, \$974 million remains outstanding as of April 1, 2023.

Treasury uses the Salesforce platform to monitor borrowers' compliance with loan requirements. Every quarter, borrowers answer questions about their use of loan proceeds, executive compensation, equity, dividends, and other areas of compliance. Borrowers can also upload financial statements and other supporting documentation. Business rules that Treasury created in Salesforce can flag certain answers as potential indicators of non-compliance. Treasury staff can then identify whether the borrower provided an explanation, review the explanation, and then determine a course of action.

We found that Treasury's monitoring in Salesforce was significantly delayed for Calendar Year 2021 Quarters 1, 2, and 3. Specifically, we found no evidence of Treasury's monitoring in Salesforce between July 2021 and March 7, 2022. Treasury's monitoring of Calendar Year 2021 in Salesforce occurred in March 2022 and April 2022, which is a year after Quarter 1 ended and nine months after borrowers submitted the answers. In the meantime, borrowers had submitted answers for Calendar Year 2021 Quarters 2 and 3, and Treasury did not begin to review these answers until April 2022.

On May 24, 2022, SIGPR issued an alert memorandum titled *Delays in the Quarterly Monitoring of Borrowers' Compliance with Loan Requirements*. The memorandum stated that Treasury had not conducted monitoring timely. SIGPR recommended that Treasury create and finalize a policy to guide the monitoring program, and that Treasury create and implement a plan of action to complete monitoring timely moving forward. Treasury agreed with our recommendations. The alert memorandum and Treasury's response in their entirety can be found in **Appendix B** of this report.

As of May 3, 2022, the date SIGPR provided Treasury a draft of the alert memorandum, Treasury was still in the process of drafting a policy for the monitoring program. Beginning

in May 2022 Treasury began issuing a series of policies and procedures starting on May 16 with the issuance of *4003 Aviation Program Interim Compliance Testing Process Overview*. On July 15, 2022, Treasury issued *Award Management Policy for Financial Assistance Recovery Programs*. On August 8, 2022, Treasury issued a pre-decisional draft of *Compliance Testing Procedures*. On January 24, 2023, Treasury issued *Data Validation, Compliance Testing, and Noncompliance Remediation Procedures*. While these policies document Treasury's approach to compliance testing, including personnel roles and responsibilities, they do not provide timeframes for completion of compliance testing activities. Therefore, these policies do not hold Treasury accountable for completing monitoring activities timely, putting Treasury at continued risk of falling behind again.

At a meeting with SIGPR officials on December 1, 2021, Treasury's Acting Deputy Compliance Officer stated that Treasury established a monitoring program to ensure borrowers comply with loan agreements and the CARES Act, and to determine whether borrowers are engaging in activities that may prevent them from paying back the loan to Treasury. However, if the monitoring program is not effective, Treasury may not detect and appropriately respond to potential instances of borrower non-compliance or jeopardized ability to pay back the loan.

Office of Management and Budget (OMB) Circular A-129 states that it is the responsibility of departments and agencies to manage credit programs "to protect the Government's assets and to minimize losses in relation to social benefits provided."

According to the Government Accountability Office's (GAO) *Standards for Internal Control in the Federal Government*:

Management designs control activities in response to the entity's objectives and risks to achieve an effective internal control system. Control activities are the policies, procedures, techniques, and mechanisms that enforce management's directives to achieve the entity's objectives and address related risks.

Furthermore, "management evaluates and documents internal control issues" and "should remediate identified internal control deficiencies on a timely basis."

The policies guiding Treasury's monitoring program do not include provisions to ensure that monitoring activities are completed timely. Therefore, Treasury could fall behind on monitoring again. Such delays weaken Treasury's ability to detect and appropriately respond to borrowers' noncompliance with loan requirements or jeopardized ability to repay the loans.

**Finding 2 – Treasury's monitoring is not sufficient to detect instances of non-compliance with all loan requirements.**

Though Treasury has a program to monitor borrowers' compliance, the level of monitoring varies widely among loan requirements. According to the GAO's *Standards for Internal*

*Control in the Federal Government*, management designs control activities in response to the entity's objectives and risks to achieve an effective internal control system. We did not find evidence of a risk assessment that would show the likelihood or impact of non-compliance for each requirement. Such an analysis could have led Treasury to increase its monitoring in any high-risk or medium-risk areas. For requirements with weaker monitoring, Treasury may not catch areas of non-compliance.

To test Treasury's monitoring of borrowers' compliance with loan requirements, we sampled 17 of the 35 borrowers and examined Treasury's monitoring activities for Calendar Year 2021 Quarter 2. We tested the following requirements and evaluated Treasury's monitoring, as follows:

Figure 1 – Requirements Tested and Assessed Levels of Monitoring

Loan Requirement Category	Assessed Level of Monitoring
Interest and Principal	High
Executive Compensation	Medium
Collateral Coverage Ratio <sup>4</sup>	Medium
Dividends and Buybacks	Low
Maintaining Assets	Low
Collateral	Low
Lobbying	Very Low
Insurance	Very Low
Obligations, Restricted Payments, and Junior Debts	None

Figure 2 – SIGPR's Definitions for its Assessed Levels of Monitoring

High	No additional controls are needed to have reasonable assurance of compliance.
Medium	Good controls, but certain controls do not apply to all borrowers or certain documentation is missing.
Low	If a borrower self-certifies compliance without any documentation, the business rules in Salesforce will not flag this answer, and we did not see any evidence of additional monitoring.
Very Low	Treasury's question to borrowers in Salesforce does not include the key words of the requirement, or the answers and lack of supporting documentation make the question meaningless.
None	Treasury told us that Treasury and the administrative agent do not monitor this requirement.

See **Appendix C** for the details of each loan requirement.

<sup>4</sup> The collateral coverage ratio can be calculated by dividing the appraised value of the loan collateral by the outstanding balance of the loan.

We assessed Treasury's monitoring of interest and principal payments to be at a high level. Though no interest or principal payments are due yet, Treasury successfully monitors principal and interest payments through its administrative agent's reporting. The cash journal and accrued income reports show principal and interest payments, as well as the total principal and accrued interest that each borrower still owes.

We assessed Treasury's monitoring of executive compensation to be at a medium level. On a quarterly basis, borrowers self-certify compliance with limits on certain compensation in Salesforce. Additionally, Treasury requested payroll information from certain borrowers. Treasury also engaged outside experts to provide interpretations regarding the requirements and certain borrowers' compliance. We concluded that Treasury's monitoring of this requirement was thorough for certain, but not all, borrowers.

We assessed Treasury's monitoring of collateral coverage ratio to be at a medium level. Each quarter, applicable borrowers must certify in Salesforce whether they have maintained a collateral coverage ratio above 1.6. Treasury also requires those borrowers to provide proof of the ratio, which usually includes an appraisal of the collateral, a calculation of the ratio, and a certificate. However, one or more of these documents were missing from some borrowers in our testing sample.

We assessed Treasury's monitoring of dividends, buybacks, maintaining assets, and collateral to all be at a low level. Borrowers are prompted to certify their compliance with these requirements in Salesforce quarterly and are not required to provide any supporting documentation if borrowers certify they are in compliance.

It is common for Treasury to rely exclusively on self-certification from borrowers in Salesforce. While the Salesforce platform allows Treasury to require borrowers to submit supporting documentation, Treasury makes little use of this feature. For Calendar Year 2021 Quarter 2, the borrowers in our sample averaged just three uploaded attachments in Salesforce despite answering 26 review questions.

We assessed Treasury's monitoring of lobbying and insurance to both be at a very low level. The Salesforce question that Treasury officials told us covers the lobbying requirement does not explicitly address lobbying. To address the insurance requirement, Treasury asks borrowers to submit a copy of their collateral insurance. However, we found no evidence that borrowers uploaded this documentation in Calendar Year 2021 Quarter 2; all borrowers indicated that this item was not applicable. Treasury informed us that the administrative agent does not monitor insurance other than collateral insurance. The loan requirements state that borrowers must maintain insurance typical for their industries in types and amounts to protect against loss or damage. Treasury's monitoring does not adequately determine compliance with these requirements.

Finally, Treasury does not monitor whether borrowers have paid obligations, including tax liabilities, that if not paid could result in material adverse effects. Likewise, Treasury does not monitor whether the borrower made restricted payments or prepaid junior debt.



Weak monitoring may not detect instances of non-compliance with requirements in the CARES Act and loan agreements. For many of the requirements we tested, Salesforce shows that borrowers received a passing grade for their responses. However, given the lack of supporting documentation, we do not see evidence that borrowers actually met the requirements.

A risk assessment would assist Treasury in determining which requirements to monitor and what evidence should be reviewed in assessing compliance. We asked Treasury to provide evidence that such an assessment was used to inform the monitoring program. Treasury's response stated that early in the implementation of the loan program, Treasury reviewed the statutory requirements, loan agreements, and other available information to make a risk-based decision about how to design their compliance testing framework. However, the documents Treasury provided in response to our request did not show a risk assessment; there was no analysis of the likelihood or impact of noncompliance for each requirement. Furthermore, there was no analysis or reasoning for what requirements were to be tested and to what extent. Treasury only assessed higher risk for a borrower if its answers in Salesforce were flagged as potential indicators of non-compliance.

As stated in Finding 1, GAO's *Standards for Internal Control in the Federal Government* states that "[m]anagement designs control activities in response to the entity's objectives and risks to achieve an effective internal control system." Also from Finding 1, OMB Circular A-129 states that it is the responsibility of departments and agencies to manage credit programs "to protect the Government's assets and to minimize losses in relation to social benefits provided." It further states that agencies shall design and administer Federal credit programs "in a manner that most effectively and efficiently achieves policy goals while minimizing taxpayer risk." To achieve this goal, agencies shall, among other activities:

Operate each credit program under a robust management and oversight structure, with clear and accountable lines of authority and responsibilities for administering programs and independent risk management functions; monitoring programs in terms of programmatic goals and performance within acceptable risk thresholds; and taking action to improve or maintain efficiency and effectiveness.

Agencies should also mitigate risk by "making sure that lenders and servicers participating in Federal credit programs meet all applicable financial and programmatic requirements."

We found that Treasury monitors borrowers' compliance through various methods. The main methods include self-certifying answers in Salesforce, payment data and certifications collected through Treasury's administrative agent, and financial monitoring by Treasury's Asset Management. This monitoring is supposed to ensure that the requirements of the loan agreements are followed by every borrower; however, it is not sufficient. There are gaps in their monitoring that make it impossible to ensure the borrowers are following the loan agreements.

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## Conclusion

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Treasury did not have a sufficient policy in place to guide the monitoring of its Section 4003(b)(1)-(3) loans, which caused delays in Calendar Year 2021 monitoring. Though policies were created later, the policies do not include provisions to ensure that monitoring activities are completed timely. Adding deadlines to policies and preparing for future loan programs would put Treasury in position to effectively monitor current and future loan programs. Treasury has a program to monitor the borrowers' compliance with loan requirements. However, the level of monitoring varies widely among loan requirements. Conducting a risk assessment could support decisions to increase monitoring of certain requirements to better detect instances of non-compliance.

## Recommendations

We recommend that Treasury:

1. Update its monitoring policy to add deadlines to avoid significant monitoring delays;
2. Ensure that it has an effective policy in place to monitor any future emergency loan programs in a timely manner; and
3. Conduct a risk assessment of loan requirements to determine whether any areas of monitoring should increase for future quarterly reviews.

## Agency Comments

Treasury generally agreed with the findings and the intent of the recommendations. However, for Finding 1, Treasury's response stated that the monitoring delay was a decision made to prioritize other work given resource constraints. Treasury's management response is included in its entirety in **Appendix D**.

## SIGPR Response

In its response to the Draft Report, Treasury states that it did not complete its monitoring in Salesforce between July 2021 and March 7, 2022 because a risk-based decision was made to pause these reviews due to resource constraints. SIGPR previously requested documentation from Treasury to support this assertion. The documentation Treasury provided does not provide adequate information to warrant a revision of the finding. Specifically, it does not provide a detailed justification for the pause, include a timeframe for the pause, show formal approval of the decision, or mention how Treasury will mitigate the risks of delaying monitoring.

Furthermore, SIGPR interviewed Treasury officials about the monitoring program multiple times during that period, and those officials did not mention that monitoring activities had been paused. Treasury officials acknowledged the monitoring delays only after SIGPR discovered a lack of activity in Salesforce and brought it to the attention of Treasury officials on March 7, 2022. Treasury stated that "[o]nce those processes were in place

and Treasury's resource constraints had eased, our monitoring personnel reviewed the previously submitted data and cleared the backlog." However, this did not occur until after SIGPR discovered the 9 months of inactivity.

Treasury's response also states that the delays only impacted Salesforce monitoring and that other monitoring activities conducted by Treasury's administrative agent and Asset Management group continued during that period. However, the majority of the loan requirements SIGPR tested were not monitored outside of Salesforce. Therefore, while Salesforce monitoring was paused, Treasury was not systematically monitoring these requirements.

### **Audit Team**

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

Timothy Keeler	Audit Manager
Dana Fitzpatrick	Auditor-In-Charge
Connor Steggerda	Management Analyst

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## **Appendix A – Scope and Methodology**

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### **Scope and Methodology**

We conducted this performance audit between February 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.

We assessed how Treasury monitored borrowers' compliance with the requirements of the CARES Act and the terms and conditions of the loan agreements for CARES Act loans to passenger air carriers, repair station operators, ticket agents, cargo air carriers, and businesses critical to maintaining national security. Specifically, our audit focused on Calendar Year 2021 Quarter 2. However, upon discovering delays in Treasury's monitoring of these borrowers for that quarter in Salesforce, we also examined Calendar Year 2020 Quarter 4 and Calendar Year 2021 Quarters 1 and 3 to determine the extent of the delays.

To accomplish our objectives, we:

- Reviewed monitoring information in Salesforce for a sample of borrowers for Calendar Year 2020 Quarter 4 and Calendar Year 2021 Quarters 1, 2, and 3;
- Interviewed Treasury officials responsible for the monitoring program;
- Interviewed Treasury officials responsible for developing a policy to guide the monitoring program;
- Reviewed policies created by Treasury to guide the monitoring program; and
- Reviewed relevant CARES Act requirements, loan requirements, GAO guidance, and OMB guidance.

### **Internal Control**

We assessed internal control and compliance with laws and regulations necessary to satisfy the audit objectives. In particular, we assessed internal control significant to our objectives. However, because our audit was limited in scope, it may not have disclosed all internal control deficiencies that may have existed at the time of this audit. Any internal control deficiencies we found are discussed in the Results section of this report.

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## ***Appendix B – Alert Memorandum***

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

# Alert Memorandum: Delays in the Quarterly Monitoring of Borrowers' Compliance with Loan Requirements

Report Number SIGPR-A-22-002-1  
May 24, 2022



*SIGPR-A-22-002-1*



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## Appendix B – Alert Memorandum


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

May 24, 2022

TO: Jacob D. Leibenluft  
Chief Recovery Officer  
U.S. Department of the Treasury

FROM:   
Theodore R. Stehney  
Assistant Inspector General for Auditing

SUBJECT: Alert Memorandum: Delays in the Quarterly Monitoring of  
Borrowers' Compliance with Loan Requirements  
SIGPR-A-22-002-1

The purpose of this memorandum is to notify you of specific concerns we identified during our ongoing Audit of the Department of the Treasury's (Treasury) Monitoring of Direct Loan Program Borrowers' Compliance with the CARES Act and Loan Agreements (A-22-002).

Treasury has not conducted timely monitoring of loans made under Section 4003(b)(1)-(3), Division A, Title IV, Subtitle A of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) for Calendar Year 2021 Quarters 1, 2, and 3. We 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. Without timely monitoring, Treasury may be delayed in detecting and responding to borrowers' lack of compliance with loan requirements or jeopardized ability to repay their loans.

#### Background

Section 4003, Division A, Title IV, Subtitle A of the CARES Act authorizes the Treasury to make loans, loan guarantees, and other investments to provide liquidity to eligible businesses related to losses incurred as a result of the coronavirus pandemic. Sections 4003(b)(1)-(3) appropriated \$46 billion to help stabilize the airline industry and businesses critical to maintaining national security. SIGPR is tasked to provide oversight of CARES Act programs. As of May 1, 2022, \$1.0 billion in loans is outstanding.

At the entrance conference on December 1, 2021, Treasury's Acting Deputy Compliance Officer informed SIGPR that the goal of its monitoring program is to ensure recipients comply with loan agreements and the CARES Act. The Acting Deputy Compliance Officer added that Treasury also uses monitoring to determine whether borrowers are getting into trouble that may prevent them from paying back the loan to Treasury.

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## Appendix B – Alert Memorandum

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

Office of Management and Budget Circular A-129 states that it is the responsibility of departments and agencies to manage credit programs “to protect the Government’s assets and to minimize losses in relation to social benefits provided.” It further states that agencies shall design and administer Federal credit programs “in a manner that most effectively and efficiently achieves policy goals while minimizing taxpayer risk.” To achieve this goal, agencies shall, among other activities:

Operate each credit program under a robust management and oversight structure, with clear and accountable lines of authority and responsibilities for administering programs and independent risk management functions; monitoring programs in terms of programmatic goals and performance within acceptable risk thresholds; and taking action to improve or maintain efficiency and effectiveness.

Agencies should also mitigate risk by “making sure that lenders and servicers participating in Federal credit programs meet all applicable financial and programmatic requirements.”

According to the Government Accountability Office’s *Standards for Internal Control in the Federal Government*:

Management designs control activities in response to the entity’s objectives and risks to achieve an effective internal control system. Control activities are the policies, procedures, techniques, and mechanisms that enforce management’s directives to achieve the entity’s objectives and address related risks.

The objectives of the Audit of the Department of the Treasury’s Monitoring of Direct Loan Program Borrowers’ Compliance with the CARES Act and Loan Agreements (A-22-002) are to:

1. Determine if Treasury had a sufficient policy in place to guide its monitoring.
2. Determine if Treasury monitored borrowers’ compliance with the requirements of the CARES Act and the terms and conditions of the borrowers’ loan agreements and followed up to resolve any issues that they detected.

The audit team has reviewed monitoring information in Salesforce for a sample of borrowers for Calendar Year 2020 Quarter 4 and Calendar Year 2021 Quarters 1, 2, and 3. The audit team met with Treasury officials responsible for developing a policy to guide the monitoring program.

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## Appendix B – Alert Memorandum

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

#### Specific Concerns

During our audit fieldwork, we identified specific concerns that warrant your immediate attention. These concerns are described below and will be further explored as we continue with audit fieldwork.

#### **Delays in Treasury's quarterly monitoring of borrowers' compliance with loan requirements.**

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. As described above in the **Background** section, Office of Management and Budget Circular A-129 and the Government Accountability Office's *Standards for Internal Control in the Federal Government* place on Treasury the responsibility of designing control activities and monitoring programs in terms of programmatic goals and performance within acceptable risk thresholds. Treasury's lack of a monitoring policy could be the cause of the delayed monitoring. 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.

Treasury uses the Salesforce platform to monitor borrowers' compliance with loan requirements. Quarterly, borrowers answer questions about their use of loan proceeds, executive compensation, equity, dividends, and other areas of compliance. Borrowers can also upload financial statements and other supporting documentation. Business rules that Treasury created in Salesforce can flag certain answers as potential indicators of non-compliance. Treasury staff can then identify whether the borrower provided an explanation, review the explanation, and then determine a course of action.

Treasury's deadline for borrowers to submit answers to monitoring questions in Salesforce for Calendar Year 2020 Quarter 4 was April 25, 2021. At a meeting with SIGPR in June 2021, Treasury officials stated they would complete monitoring testing for Calendar Year 2020 Quarter 4 in July 2021, three months after borrower submissions were due. In Salesforce, it is unclear if that goal was met, as it appears some work has been done in April 2022. Additionally, Treasury's monitoring has been significantly delayed beyond this three-month timeframe and backed up for the subsequent quarters.

We 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. Treasury informed us that as of April 1, 2022, its Calendar Year 2021 Quarter 1 monitoring was ongoing and that it had not yet started its Calendar Year 2021 Quarters 2 and 3 monitoring. At a meeting on April 25, 2022, Treasury officials informed us that Treasury had completed its Calendar Year 2021 Quarter 2 monitoring and was close to completing its Calendar Year 2021 Quarter 3 monitoring.

Treasury's deadline for borrowers to submit answers to monitoring questions in Salesforce for Calendar Year 2021 Quarter 1 was June 30, 2021. Had Treasury followed



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## Appendix B – Alert Memorandum

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

the same timeline as it stated to SIGPR in the June 2021 meeting, it would have finished its monitoring review by October 2021. However, based on the information made available to us, 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 have submitted answers for Calendar Year 2021 Quarters 2 and 3, and Treasury did not begin to review these answers until April 2022. If Treasury is not reviewing this information timely, Treasury may be delayed in detecting and responding to borrowers' lack of compliance with loan requirements or jeopardized ability to repay their loans.

At a meeting on April 25, 2022, over 2 years since the CARES Act was passed, Treasury officials informed us that Treasury was still in the process of drafting a policy for the monitoring program. Treasury needs a formal policy that includes requirements, responsibilities, and timelines to ensure that monitoring is completed timely and effectively.

### Conclusion

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.

### Recommendations

The Special Inspector General for Pandemic Recovery recommends that Treasury take immediate action to:

1. Create and finalize a policy to guide the monitoring program for loans made under Sections 4003(b)(1)-(3) of the CARES Act to ensure that monitoring is conducted timely.
2. Create and implement a plan of action to complete monitoring timely moving forward and provide that plan to SIGPR.

### Agency Comments to the Draft Alert Memorandum

Treasury's Chief Recovery Officer agreed with our recommendations. Treasury's written comments are included as **Appendix B**.

### Compliance Statement

In accordance with generally accepted government auditing standards (GAGAS), during an audit, the auditors may provide interim reports of significant matters to appropriate entity and oversight officials. Such communication alerts officials to matters needing immediate attention and allows them to take corrective action before the final report is completed.

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## ***Appendix B – Alert Memorandum***

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### **Office of the Special Inspector General for Pandemic Recovery**

The related ongoing audit, when completed, will comply with GAGAS. The associated performance audit report that will be issued in the future will incorporate the issues discussed in this alert memorandum.

#### **Audit Team**

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

Timothy Keeler	Audit Manager
Dana Fitzpatrick	Auditor-In-Charge



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## ***Appendix B – Alert Memorandum***

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Office of the Special Inspector General for Pandemic Recovery

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### ***Appendix A - Memorandum Distribution***

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Chief Recovery Officer – U.S. Department of the Treasury

Office of General Counsel – U.S. Department of the Treasury

Inspector General – Special Inspector General for Pandemic Recovery

Office of General Counsel – Special Inspector General for Pandemic Recovery

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## Appendix B – Alert Memorandum

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Office of the Special Inspector General for Pandemic Recovery

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### Appendix B – Agency Comments

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DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C.

May 17, 2022

Theodore R. Stehney  
Assistant Inspector General for Auditing  
Special Inspector General for Pandemic Recovery  
2051 Jamieson Avenue, Suite 600  
Alexandria, VA 22314

Dear Mr. Stehney:

I write regarding the Special Inspector General for Pandemic Recovery's (SIGPR) draft alert memorandum entitled *Delays in the Quarterly Monitoring of Borrowers' Compliance with Loan Requirements*, dated May 3, 2022 (Draft Report). The U.S. Department of the Treasury (Treasury) appreciates SIGPR's efforts.

Since March 2020, Treasury has played a critical role in implementing numerous programs and initiatives under three statutes – the Coronavirus Aid, Relief, and Economic Security (CARES) Act; the Consolidated Appropriations Act, 2021; and the American Rescue Plan Act of 2021 – to tackle the economic effects of the COVID-19 pandemic and bring critical aid to the American people. The Draft Report focuses on one of these programs, loans authorized under Section 4003 of Division A of the CARES Act (the Direct Loan Program) to passenger air carriers and other eligible businesses.

Under the CARES Act, Congress appropriated up to \$46 billion to help stabilize the aviation industry and businesses critical to maintaining national security. Treasury created the Direct Loan Program in response and entered into loan agreements with 35 eligible borrowers. While these loan agreements authorized the borrowers to borrow up to \$21.9 billion, less than \$2.7 billion was actually disbursed to borrowers. As the aviation sector has recovered, most of Treasury's largest borrowers have fully repaid their loans. Currently, there are 22 borrowers with loans outstanding, with a total principal amount of approximately \$1.0 billion.<sup>1</sup>

Borrowers under the Direct Loan Program are required to comply with numerous requirements set out in the CARES Act, including restrictions on stock repurchases, capital distributions, and executive compensation, all of which are enumerated in the loan agreements between Treasury and the borrowers. In addition, to ensure that taxpayer interests are appropriately protected, many of the borrowers were required to grant Treasury equity or equity warrants and to pledge sufficient collateral to cover their loan amounts.

To monitor its borrowers and outstanding loans, Treasury engages in a four-pronged approach. First, Treasury's financial agent monitors and collects certificates from borrowers (including collateral certificates) and alerts Treasury to potential breaches of borrower obligations. Second,

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<sup>1</sup> The most recent transaction summary report on the status of the Direct Loan Program is available at <https://home.treasury.gov/system/files/136/4026b1CLoanReport05012022.pdf>

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## Appendix B – Alert Memorandum

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Office of the Special Inspector General for Pandemic Recovery

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### Appendix B – Agency Comments

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Treasury reconciles principal and interest payments as they are collected by Treasury's financial agent. Third, Treasury reviews the financial statements and public reports filed with the Securities and Exchange Commission by borrowers on a quarterly basis, to keep current Treasury's credit assessment of the borrowers. Finally, on a quarterly basis, Treasury conducts testing of borrower compliance with respect to requirements under the loan agreements. To implement this fourth prong, Treasury requires the borrowers to respond to a series of questions via an online template, and to provide documentation regarding the borrowers' compliance, as appropriate. Treasury compliance analysts review these responses to confirm that the borrowers remain in compliance with the CARES Act restrictions and the terms of the loan agreements. Where borrowers are found to be out of compliance, Treasury will work to either remediate the issue or, where appropriate, take additional action.

The Draft Report makes two recommendations regarding the Direct Loan Program. We address each of them in turn.

**Recommendation #1 – Create and finalize a policy to guide the monitoring program for loans made under Sections 4003(b)(1)-(3) of the CARES Act to ensure that monitoring is conducted timely.**

Treasury agrees with this recommendation and has implemented it. As noted above, Treasury has required borrowers, since the outset of the Direct Loan Program, to submit information and documents on a quarterly basis. As we have discussed with SIGPR's auditors, Treasury's monitoring of Direct Loan Program borrowers has generally followed the existing policies Treasury established for the similar, but far larger, Payroll Support Program.<sup>2</sup> In addition, Treasury has now finalized policies for its monitoring of the Direct Loan Program. These policies have been provided to SIGPR under separate cover.

**Recommendation #2 – Create and implement a plan of action to complete monitoring timely moving forward and provide that plan to SIGPR.**

Treasury agrees with this recommendation and has implemented it. When Congress enacted the Consolidated Appropriations Act, 2021 and the American Rescue Plan Act of 2021, it made Treasury responsible for administering 10 additional pandemic relief programs beyond the five programs created under the CARES Act. Treasury undertook a risk-based, data-driven approach to determine how best to allocate its limited resources across these programs efficiently and effectively. Treasury initially prioritized the establishment of compliance processes for the larger programs, which in the aggregate involved the disbursement of federal funds hundreds of times the total amount of loans in the Direct Loan Program. Now, however, Treasury's compliance monitoring staff routinely test borrower submissions for the Direct Loan Program. While there was a backlog in Treasury's testing of data from prior quarters, that backlog has now been fully cleared. Treasury is currently reviewing submissions from the fourth quarter of 2021, the most recent quarter for which Treasury has received complete data.

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<sup>2</sup> Information regarding the Payroll Support Program is available at <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-american-industry/airline-and-national-security-relief-programs>.

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## ***Appendix B – Alert Memorandum***

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Office of the Special Inspector General for Pandemic Recovery

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### ***Appendix B – Agency Comments***

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\* \* \*

Thank you for the opportunity to review the Draft Report and for your consideration of our comments.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Leibenluft".

Jacob Leibenluft  
Chief Recovery Officer

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## **Appendix C – Description of Loan Requirements**

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During the audit, SIGPR tested Treasury’s monitoring of loan requirements. The loan requirements are summarized in the table below. Not all 35 loans necessarily contain each loan requirement.

<b>Requirement Category</b>	<b>Loan Requirement</b>
Interest and Principal	Borrowers are required to make principal and interest payments.
Executive Compensation	Borrowers must adhere to CARES Act limits on compensation and severance for employees and officers whose 2019 total compensation exceeded \$425,000.
Collateral Coverage Ratio	Borrowers must maintain a collateral coverage ratio of at least 1.6.
Dividends and Buybacks	Borrowers cannot pay dividends or engage in buybacks until 12 months after the loan is repaid.
Maintaining Assets	Borrowers must maintain all or substantially all of their assets.
Collateral	Borrowers must deliver an appraisal to the Administrative Agent if additional collateral is pledged
	Borrowers cannot create a lien upon their collateral.
	Borrowers cannot dispose of their collateral unless they follow the loan’s procedures for doing so.
Lobbying	Borrowers cannot use the CARES Act funds to pay for lobbying.
Insurance	Borrowers must maintain insurance typical for their industry in types and amounts to protect against loss or damage.
Obligations, Restricted Payments, and Junior Debts	Borrowers must pay their obligations, including tax liabilities, that if not paid, could result in Material Adverse Effect.
	Borrowers cannot make any restricted payments.
	Borrowers cannot prepay any junior debts.



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## Appendix D – Agency Comments

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DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

May 12, 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) April 28, 2023, Draft Report: *Weaknesses in Treasury's CARES Act Loan Monitoring* (Draft Report). The U.S. Department of the Treasury (Treasury) appreciates SIGPR's efforts.

### **Background on Treasury's Direct Loan Program Under the CARES Act**

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 provided funds for Treasury to make loans and loan guarantees to eligible businesses, specifically passenger air carriers and related businesses (up to \$25 billion), cargo air carriers (up to \$4 billion), and businesses critical to maintaining national security (up to \$17 billion). Under this loan program, Treasury provided an emergency credit line for large and small businesses unable to obtain credit elsewhere during the height of the pandemic, thereby reducing COVID-19-driven bankruptcies, protecting pensions, and, together with the Payroll Support Program also authorized by the CARES Act, avoiding long-term reductions in aviation capacity.

The CARES Act required borrowers to agree to maintain their employment levels as of March 24, 2020, until September 30, 2020, to the extent practicable. In accordance with the statute, borrowers also were required to agree to certain employee compensation restrictions; agree not to repurchase stock; and agree not to pay dividends or make other capital distributions until 12 months after the loan is no longer outstanding. Treasury imposed additional requirements on borrowers through the terms of the loan and guarantee agreements.

Further, the CARES Act required that Treasury receive certain financial protections in making a loan, in the form of a warrant or equity interest if the borrower was a public company, or a warrant, equity interest, or senior debt instrument if the borrower was a private company.

During the course of the program, Treasury authorized up to \$21.9 billion in loans and ultimately disbursed approximately \$2.7 billion in loans to 35 eligible businesses. A majority of these funds have already been repaid, and approximately \$1 billion remains outstanding to 21 borrowers.

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## **Appendix D – Agency Comments**

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### **The Draft Report**

The Draft Report acknowledges that Treasury monitors its borrowers' compliance with the requirements of the CARES Act and the loan agreements through a multipronged approach. Each quarter, Treasury requires borrowers to respond to a compliance questionnaire that is administered through Treasury's award management system. Borrowers are also required to submit certain documents, including collateral coverage ratio certificates, to Treasury's financial agent and the collateral agent responsible for managing assets pledged under the loan agreements. Treasury's financial agent collects principal and interest payments on loans that are reconciled by Treasury. In addition, Treasury communicates regularly with borrowers and reviews financial statements and borrowers' reports filed with the Securities and Exchange Commission for publicly traded companies.

With respect to the findings in the Draft Report, SIGPR observes that Treasury did not review data collected in the award management system during the period from July 2021 through March 7, 2022 – an observation that was previously noted in SIGPR's alert memorandum of May 24, 2022. The Draft Report states that these delays were because Treasury had not yet finalized a formal policy to establish deadlines for the monitoring of the program. In actuality, as we explained both to SIGPR's auditors and in our letter of May 17, 2022, Treasury's decision to pause review of this data was part of an effort to prioritize the most urgent programmatic needs during the pandemic, in the context of resource constraints. When Congress enacted the Consolidated Appropriations Act, 2021, in December 2020 and the American Rescue Plan Act of 2021 in March 2021, it made Treasury responsible for administering 10 additional pandemic relief programs beyond the five programs created by the CARES Act. These new programs provided for Treasury to disburse nearly \$500 billion of additional funds, compared to the roughly \$1.3 billion that remained outstanding under the CARES Act loan program as of July 2021. Because Treasury's monitoring personnel resources were significantly constrained at that time, we made a risk-based decision for staff to prioritize the establishment of compliance processes for these newer, and much larger, programs. Once those processes were in place and Treasury's resource constraints had eased, our monitoring personnel reviewed the previously submitted data and cleared the backlog. We further note that this pause impacted only one of the four prongs of Treasury's monitoring approach; the monitoring conducted by Treasury's financial agent and Asset Management group continued throughout that time period.

The Draft Report also finds, correctly, that Treasury monitors some loan requirements more thoroughly than others. In particular, the Draft Report states that Treasury's monitoring of principal and interest payments is at a high level, Treasury engaged outside experts to assess certain borrowers' compliance with executive compensation requirements, and borrowers are required to provide documentation regarding collateral pledged to Treasury. As the Draft Report relates, early in the implementation of the loan program, Treasury reviewed the statutory requirements, loan agreements, and other available information to make a risk-based decision about how to design a compliance testing framework. However, SIGPR did not find that Treasury's internal documentation rose to the level of a formal risk assessment. Treasury's monitoring policies and decisions about what requirements to test and what documents to require from borrowers reflect the output of Treasury's assessment of risk.

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## Appendix D – Agency Comments

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### SIGPR's Recommendations

SIGPR recommends that Treasury update its monitoring policy to add deadlines to avoid significant monitoring delays, and also that Treasury should conduct a risk assessment of loan requirements to determine whether any areas of monitoring should increase for future quarterly reviews. Building on the work done previously to develop policies for monitoring based on risk, Treasury recently completed revised policies for its administration of loans made under the loan program. We have provided these policies to you under separate cover. These new policies are expected to decrease monitoring response times and improve risk mitigation by leveraging the expertise and scale of an external financial agent for portfolio monitoring, consistent with commercial best practices. In particular, these policies set forth how the loans will be administered, including the responsibilities of different Treasury units and outside financial agents and advisors to administer and manage loan payments, lien release requests, waivers and amendments of the loan agreements, potential noncompliance, and remediation. By implementing these policies – and continuing to work to document and finalize other procedures – Treasury expects to further mitigate risk and to prevent significant monitoring delays.

SIGPR also recommends that in future emergency lending programs, Treasury should ensure that it has effective policies in place to monitor such programs in a timely manner. In general, we agree with that recommendation, and we will endeavor to implement it to the extent practicable for future emergency lending programs. In such circumstances, Treasury seeks to protect taxpayer funds while working expeditiously to implement the will of Congress and to protect the national interest.

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We look forward to working with you further as you continue to evaluate the lending programs created by the CARES Act.

Sincerely,



Jacob Leibenluft  
Chief Recovery Officer

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## ***Appendix E – Report Distribution***

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Chief Program Officer – U.S. Department of the Treasury

Office of General Counsel – U.S. Department of the Treasury

Inspector General – Special Inspector General for Pandemic Recovery

Assistant Inspector General for Auditing – Special Inspector General for Pandemic Recovery

Office of General Counsel – Special Inspector General for Pandemic Recovery