



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



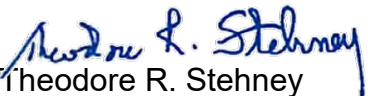
SIGPR-A-22-002-1



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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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.



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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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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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
Dana Fitzpatrick

Audit Manager
Auditor-In-Charge



Appendix A - Memorandum Distribution

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



Appendix B – Agency Comments



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.¹

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,

¹ 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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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.² 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.

² 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>.



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,

Jacob Leibenluft
Chief Recovery Officer