DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

OFFICE OF
INSPECTOR GENERAL

March 31, 2021

OIG-21-025

MEMORANDUM FOR JOHN TREVOR NORRIS
ACTING ASSISTANT SECRETARY FOR MANAGEMENT

FROM: Deborah L. Harker /s/
Assistant Inspector General for Audit

SUBJECT: Interim Audit Update – Air Carrier and Contractor Certifications for Payroll Support Program

On April 13, 2020, we initiated an audit of "Air Carrier Worker Support" certifications under Title IV, Subtitle B, of the *Coronavirus Aid, Relief, and Economic Security Act* (CARES Act). [1] Section 4113 (d) of Subtitle B assigned the Department of the Treasury (Treasury) Office of Inspector General (OIG) with responsibility to audit the certifications required to be submitted by non-241 carriers and contractors.[2] The objective of our audit is to assess the accuracy, completeness, and sufficiency of air carriers' and contractors' (applicants/recipients) "sworn" financial statements or other data used to certify the wages, salaries, benefits, and other compensation amounts submitted and approved by Treasury. The scope of our audit includes, but is not limited to, certified applications submitted by non-241 passenger and air cargo carriers and contractors, financial statements, tax returns, and other documentation provided to Treasury during the period March 30, 2020 through April 27, 2020 under the Payroll Support Program (PSP1) established by the CARES Act.

As part of our work to date, we reviewed (1) Title IV, Subtitle B, *Air Carrier Worker Support* of the CARES Act; (2) Treasury's *Guidelines and Application Procedures for Payroll Support to Air Carriers and Contractors under Division A, Title IV, Subtitle B of the Coronavirus Aid, Relief and Economic Security Act*; (3) Treasury's *Q&A: Payroll Support to Air Carriers and Contractors*; and (4) the *Payroll Support Program Agreement;* and interviewed Treasury officials and employees responsible for implementing PSP1 payments. We selected a non-statistical sample of 5

[1] P. L. 116-136 (March 27, 2020).
[2] Air carriers that are not required to report salaries and wages to the Department of Transportation (DOT) under 14 CFR Part 241, "Uniform System of Accounts and Reports for Large Certificated Air Carriers" defines "*Air carrier, large certificated*".

passenger air carriers, 4 cargo air carriers, and 7 contractors for audit.[3] Of the 16 air carriers and contractors selected, as of the date of this interim report, we reviewed documentation to support requested payroll support amounts for 7 recipients (5 passenger carriers, 1 cargo carrier, and 1 contractor). For each of these seven recipients, we (1) reviewed the *Payroll Support Application Form for Air Carriers and Contractors* submitted to Treasury; (2) reviewed "sworn" financial statements and documents[4] to support the requested payroll assistance amount on each of their applications; and (3) interviewed as well as corresponded with recipients' representatives responsible for the completion and submission of "sworn" financial statements.

Based on our audit work to date, we have identified pervasive issues with the calculation of payroll amounts reported to Treasury by non-241 passenger air carriers and contractors. These payroll amounts impacted the accuracy of recipient award amounts. We notified Treasury of these matters in December 2020, and according to management, Treasury implemented a number of measures in its Payroll Support Program Extension[5] (PSP2) application process to identify and correct PSP1 award amounts. However, due to the systemic nature of our finding and upcoming payments to be issued under PSP2, we are sharing our initial findings and recommendations prior to the completion of all audit work. We believe this interim reporting is important for your consideration prior to making additional payments to non-241 passenger air carriers and contractors under PSP2. As we receive confirmation from Treasury that award amounts have been corrected, we will resume work on our audit of non-241 passenger air carriers and contractors certifications.

[3] There are 611 PSP1 recipients that include passenger and cargo air carriers (241 and non-241 air carriers) and contractors. For passenger air carriers, our selection was made from a universe of non-241 carriers with an invoice date of April 20, 2020. We divided this universe into five tiers based on payment amount and selected the carrier with the highest payment amount in each tier for our sample. For cargo air carriers and contractors, our selection was made from a universe of non-241 cargo air carriers and contractors with an invoice date as of July 14, 2020. We divided the cargo air carriers into four tiers based on payment amount and contractors into five tiers based on payment amount. We selected the cargo air carrier and contractor with the highest payment amount from each tier.
[4] The audit team reviewed documentation including, but not limited to, general ledgers, payroll registers, trial balances, human resource records, organizational charts, income statements, and furlough records.
[5] Under Title IV, Subtitle A, *Airline Worker Support Extension* of the Consolidated Appropriations Act, 2021 (P. L. 116-260), additional financial assistance was provided for the continuation of payment of employee wages, salaries, and benefits to (1) passenger air carriers, in an aggregate amount up to $15 billion; and (2) contractors, in an aggregate amount up to $1 billion.

Background

Title IV, Subtitle B, of the CARES Act, *Air Carrier Worker Support,* requires Treasury to provide financial assistance to passenger and cargo air carriers and respective contractors that must exclusively be used for the continuation of payments of employees' wages, salaries, and benefits. Financial assistance is to be provided to:

(1) passenger air carriers, in an aggregate amount up to $25 billion;
(2) cargo air carriers, in the aggregate amount up to $4 billion; and
(3) contractors, in an aggregate amount up to $3 billion.

Section 4113 of Subtitle B, *Procedures for Providing Payroll Support,* requires that Treasury shall provide financial assistance to passenger air carriers that report salaries and benefits to the Department of Transportation (DOT) (referred to as 241 carriers)[6], in an amount equal to the salaries and benefits reported to DOT for the period April 1, 2019 through September 30, 2019. For air carriers that do not report such data to DOT (referred to as non-241 carriers) and contractors, financial assistance is required to be in an amount that the air carrier or contractor certifies using sworn financial statements or other appropriate data as the amount of wages, salaries, benefits, and other compensation paid to employees during the period of April 1, 2019 through September 30, 2019. To be eligible for payments, air carriers and contractors must enter into agreements with the Treasury Secretary certifying they meet certain required assurances and terms and conditions.

On March 30, 2020 Treasury posted the *Guidelines and Application Procedures for Payroll Support to Air Carriers and Contractors*, which included the *PSP Application* for PSP1 on its website, and as part of the application, recipients were required to submit a summary of salaries and wages, benefits, and other compensation (Table 1) on a monthly basis for the period of April 2019 through September 2019. The

[6] 14 CFR, Part 241 "Uniform System of Accounts and Reports for Large Certificated Air Carriers" defines "*Air carrier, large certificated"* as an air carrier holding a certificate issued under 49 U.S.C 41102, as amended, that: (1) operates aircraft designed to have a maximum passenger capacity of more than 18,000 pounds; or (2) conducts operations where one or both terminals of a flight stage are outside the 50 states of the United States, the District of Columbia, the Commonwealth of Puerto Rico and the U.S. Virgin Islands. These air carriers are required to report financial information to DOT Sec. 407 states, "(a) The [National Transportation Safety] Board is empowered to require annual, monthly, periodical, and special reports from any air carrier; to prescribe the manner and form in which such reports shall be made; and to require from any air carrier specific answers to all questions upon which the Board may deem information to be necessary. Such reports shall be under oath whenever the Board so requires. The Board may also require any air carrier to file with it a true copy of each or any contract, agreement, understanding, or arrangement, between such air carrier and any other carrier or person, in relation to any traffic affected by the provisions of this Act."

amounts submitted on the application were considered "sworn" financial statements. In addition, on April 20, 2020, Treasury published a sample *Payroll Support Program Agreement* on its website which provided definitions and terms and conditions for participation in PSP1. Treasury required applicants to submit completed PSP1 applications by April 27, 2020. After Treasury reviewed and approved an application, both parties were required to sign the *PSP Agreement*.

Table 1. Payroll Support Application Awardable Amounts Table

Month	Salaries and Wages	Benefits	Other Compensation	Monthly Total
April 2019				
May 2019				
June 2019				
July 2019				
August 2019				
September 2019				
			Total	

Source: *Payroll Support Application Form for Air Carriers and Contractors, March 30, 2020*

Treasury Office of Inspector General Finding

We identified two recurring issues in the 7 recipients where we completed our testing. The issues found impacted the payment amounts issued to all non-241 passenger and cargo air carrier and contractor PSP1 recipients. Specifically, employer-side payroll taxes and corporate officer compensation were included in the awardable amounts of salaries and wages and benefits on applications. Six recipients included either employer-side payroll taxes or corporate officer compensation in calculating the awardable amount section of their *PSP Application* and one recipient included both employer-side payroll taxes and corporate officer compensation in its calculation of the awardable amount. According to the CARES Act, *PSP Application,* and *Payroll Support Program Agreement*, neither employer-side payroll taxes nor corporate officer compensation are permitted to be included as part of the awardable amounts. The inclusion of employer-side payroll taxes and corporate officer pay in the awardable amount calculation resulted in an overstatement of the "requested amount" per passenger and cargo air carrier and contractors on the *PSP Application*. The range of overstatement in the seven air carriers and contractors reviewed ranges between approximately $47,000 (1.49 percent of the requested amount) and $10.4 million (6.55 percent of the requested amount). Therefore, each of these recipients requested and received more financial assistance than allowed per the CARES Act.

Furthermore, because the total amount requested by all passenger air carrier and contractor applicants under PSP1 exceeded the total available financial assistance ($25 billion and $3 billion, respectively), Treasury applied a pro rata rate to all passenger air carrier and contractor applicants' awardable amounts. The pro rata rates were determined based on the amount by which the total requested financial assistance in each group (passenger air carrier and contractor) exceeded the total available amount. Passenger air carriers and contractors submitting unallowable employer-side payroll taxes and corporate officer compensation as part of their application resulted in Treasury reducing the pro rata rate below the amount it would have been if the application amounts had been correct. This may have resulted in incorrect payments to all non-241 passenger air carriers and contractors.

Corporate Officer Compensation

According to the *PSP Application*, "*The maximum potential amount of payroll assistance that may be awarded to an applicant is equal to the compensation paid by the applicant to its employees from April 1, 2019, through September 30, 2019, as determined by the Treasury Department in its sole discretion, referred to as the "awardable amount." Compensation includes salaries, wages, bonuses, and similar payments. In completing the table below, amounts must reflect ONLY employees as defined in the Act and the Guidelines*." Both the CARES Act and the *PSP Application* define an employee as an individual, other than a corporate officer, who is employed by an air carrier or a contractor. The definition states that recipients are to exclude corporate officers in the determination of what is considered an employee. However, the two documents do not specifically define "corporate officer," which left the interpretation open to each recipient. The *PSP Agreement,* published on April 20, 2020, subsequently defined "corporate officer" as the recipient's president; any vice president in charge of a principal business unit, division, or function (such as sales, administration or finance); any other officer who performs a policy-making function; or any other person who performs similar policy making functions for the recipient. Executive officers of subsidiaries or parents of the recipient may be deemed corporate officers of the recipient if they perform such policy-making functions for the recipient.

When we inquired as to why corporate officer compensation was included on applications, recipient representatives in our sample provided various reasons. Some representatives noted that Treasury's guidance was not clear on the definition of corporate officers and they did not consider individuals with a title of

"Vice President" as a corporate officer while others inadvertently included corporate officer compensation in error.

Employer-side Payroll Tax

The CARES Act defines awardable amounts to be the amount of wages, salaries, benefits, and other compensation *paid to* employees during the period of April 1, 2019 through September 30, 2019. The *PSP Application* further clarifies this as, "*remuneration paid by the applicant to its employees for personal services and includes salaries, wages, overtime pay, cost-of-living differentials, and other similar compensation, as distinguished from per diem allowances or reimbursement for expenses incurred by personnel for the benefit of the applicant.*" While the CARES Act and *PSP Application* do not explicitly state that the recipient should exclude employer-side payroll taxes, it does state that only wages, salaries and benefits are allowable. In the *PSP Agreement,* Treasury management subsequently defined the terms wages, salary, and benefit as *"excluding any Federal, state, or local payroll taxes paid by the Recipient."*

In our review of documentation and in discussions with recipient representatives in our sample, several companies informed us that employer-side payroll taxes were included in applications because the application did not explicitly state that employer-side payroll taxes were not allowable. In one case, a contractor accidently rolled employer-side payroll taxes into the requested amount. This contractor was unaware that the employer-side payroll taxes were rolled into benefit amounts in the application until conducting a review of documents requested under audit.

Treasury Review of PSP Applications

In the review of *PSP Applications*, Treasury did not perform a review of non-241 air carriers and contractors' awardable amount calculation specifically to ensure that applicants excluded employer-side payroll taxes and corporate officer compensation as defined within the agreement. Treasury distributed financial assistance to non-241 applicants without the recalculation of the awardable amounts as certified by applicants.

When asked why Treasury approved applications that included corporate officer compensation and employer-side payroll taxes in awardable amounts, Treasury officials stated they gave applicants different opportunities to understand that the definition of employees did not include corporate officers. Additionally, Treasury's application review process did not include verification of each applicant's requested amounts against source documents that could have been submitted to Treasury by each applicant, such as general ledgers, payroll registers, and trial balances.

Instead, to confirm the awardable amounts submitted by applicants, Treasury performed a comparison between the Form IRS-941[7] "wages, tips, and other compensation" and the requested amount per the *PSP Application* for April 1, 2019 through September 30, 2019, excluding benefits. If the test resulted in a variance in salaries and wages that exceeded 20 percent, Treasury would perform outreach to the applicant to question the variance. The outreach email for variances exceeding 20 percent would notify the applicant that they "may have included a substantial amount of employee compensation that was not included as employee compensation on [their] IRS Form 941." This email also notified the applicant that Treasury would halt all payments to the applicant until the applicant either submits a revised calculation or confirms to Treasury that they only included employees, and no independent contractors. If the test resulted in a variance in salaries and wages between 5 percent and 20 percent, Treasury would reach out to the applicant to remind them that certain ineligible expenses may not be included. This outreach email would notify the applicant that they may have "included employee compensation that was not included on [the] IRS Form 941." Treasury sent out two different versions of the emails mentioned above, one in May 2020 and another in July 2020. The May 2020 version did not mention the exclusion of corporate officers; however, the July 2020 version notified applicants that "calculations should exclude compensation of corporate officers." Only 1 of the 7 air carriers and contractors that we reviewed received the July 2020 version of the email.

We re-performed the test described by Treasury for the seven non-241 air carriers and contractors in question, and found that 5 of the 7 fell into the 5 percent to 20 percent category. One applicant fell into the over 20 percent category and one applicant was at an overall 4 percent variance barely under the 5 percent threshold. Even though six of the air carriers and contractors would have required follow-up by Treasury, the review and follow-up process implemented by Treasury did not detect the inclusion of the two identified types of prohibited items in any of the seven applicants.

Treasury OIG Recommendation

We have reason to believe these issues are pervasive throughout payments to non-241 PSP1 recipients. Accordingly, we recommend that Treasury management (1) review payments issued under PSP1 to ensure awarded amounts are allowable per the CARES Act and Treasury guidance; and (2) remedy the incorrect amounts awarded under PSP1.

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[7] Employers use IRS Form 941 to 1) Report income taxes, Social Security tax, or Medicare tax withheld from employee's paychecks and 2) pay the employer's portion of Social Security or Medicare tax. Employers also report salaries and wages on IRS Form 941.

Management's Response

In a written response, Treasury management acknowledged that the seven recipients audited impermissibly included employer-side payroll taxes or corporate officer compensation in their calculation of the "awardable amount" on their PSP1 application. Management stated that this violated the program terms and conditions and is inconsistent with Treasury's public guidance, resulting in an overstatement of requested PSP1 amounts. Management noted that they have taken remedial actions requiring all PSP1 applicants that applied for PSP2 to include a certification whether their PSP1 amounts included employer-side payroll taxes or corporate officer compensation. Companies that included those amounts, and are due to receive additional funds under PSP1, PSP2, or PSP3,[8] will have those payments reduced to offset ineligible expenses. Additionally, Treasury is requiring all aviation contractors that received PSP1 awards to provide detailed certifications regarding the calculations of requested amounts. Any contractor recipient that fails to validate their PSP1 calculations will have further disbursements withheld and Treasury will reduce further payments to offset any overpayment for misstatements of awardable amounts. Management expressed that they are committed to working with Treasury OIG to protect the integrity of the PSP and other CARES Act programs. Management's response is included, in its entirety, as attachment 1.

OIG Comment

Management's written response meets the intent of our recommendations with respect to planned corrective actions to remediate potential overpayments to passenger air carriers and contractors under PSP1 that are eligible to receive additional funding under PSP1, PSP2 or PSP3. However, the response did not provide planned corrective actions to address potential overpayments to cargo air carriers that may not receive additional funds under PSP1 and are not eligible for funding under PSP2 and PSP3. Furthermore, the response did not address the review of passenger air carriers and contractors that received PSP1 funding and may not receive additional funding under PSP1, PSP2, or PSP3. Accordingly, we followed up with management officials who stated that Treasury is in the process of identifying cases of potential overstatements in award amounts for PSP1 recipients that would not receive future payments from Treasury. This universe includes PSP1 applicants that (1) did not apply to PSP2; (2) were not eligible for PSP2 funding; or (3) did not have additional payments pending [under PSP1]. In all, this includes all cargo air carriers and some passenger air carriers and contractors.

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[8] Under Title VII, Subtitle C, Section 7301 *Air Transportation Payroll Support Program Extension* of the American Rescue Plan Act of 2021 (P. L. 117-2), an additional $15 billion in financial assistance was provided for the continuation of payment of employee wages, salaries, and benefits to entities that participated in PSP2.

To remedy the issue of overstatements in award amounts to these recipients, management is setting up a portal that will include definitions of employer-side payroll taxes and corporate officers. Recipients will be required to use the portal to identify any errors in their original application submitted to Treasury for PSP1 funding. For any errors identified, Treasury will take recoupment action as appropriate. If recipients fail to provide the requested information, Treasury has remedies available under the PSP Agreement to address non-compliance. While management did not have an expected completion date for launching the portal, we were informed that it is nearing completion as of the date of this report.

Overall, management's planned corrective actions, both written and communicated in our follow-up, meets the intent of our recommendations. Management will need to include specific actions to address each audit recommendation with expected implementation dates, in the Joint Audit Management Enterprise System (JAMES), Treasury's audit recommendation tracking system.

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We conducted this performance audit 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 objective. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

We assessed internal controls and compliance with laws and regulations necessary to satisfy the audit objective. In particular, we assessed the internal control component *Control Activities* and its underlying principles "Design Control Activities" and "Implement Control Activities." As summarized in this report, we noted a deficiency in Treasury's internal controls surrounding the review of application data and calculation of award amounts. Because our review was limited to this internal control component and underlying principles, it may not have disclosed all internal control deficiencies that may have existed at the time of this audit.

We appreciate the courtesies and assistance provided by your staff. Should you have any questions regarding this memorandum, please contact me at (202) 486-1420 or Eileen Kao, Audit Director, at (202) 607-9519.

cc: Treasury
Treasury Secretary
Deputy Secretary
Treasury Audit Liaison
Office of Strategic Planning and Performance Improvement
Office of the Deputy Chief Financial Officer, Risk and Control Group

Office of Management and Budget
OIG Budget Examiner

United States Senate
Committee on Homeland Security and Governmental Affairs
Committee on Finance
Committee on Appropriations
Committee on the Budget

United States House of Representatives
Committee on Oversight and Reform
Committee on Financial Services

Attachment 1: Management Response

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

March 12, 2021

Deborah L. Harker
Assistant Inspector General for Audit
Department of the Treasury – Office of Inspector General
1500 Pennsylvania Avenue
Washington, DC 20220

Dear Ms. Harker:

I write regarding the Office of Inspector General's (OIG) draft interim audit update entitled *Air Carrier and Contractor Certifications for Payroll Support Program* (Draft Update). The U.S. Department of the Treasury appreciates OIG's efforts and has provided technical comments under separate cover.

The bipartisan Coronavirus Aid, Relief, and Economic Securities Act (CARES Act) was enacted rapidly to provide emergency assistance in response to the unprecedented challenges presented by the COVID-19 public health emergency. The CARES Act established the Payroll Support Program (PSP1) to provide financial assistance to America's passenger air carriers, cargo air carriers, and aviation contractors.

In light of the emergency circumstances, Treasury acted with extraordinary speed to implement PSP1, publishing program guidelines and application procedures just one business day after the enactment of the CARES Act. Only four days later, Treasury published another document addressing frequently asked questions regarding the application process. In the months since, Treasury has disbursed more than $28.6 billion to over 600 businesses in PSP1, supporting hundreds of thousands of American jobs.

In December 2020, the Consolidated Appropriations Act, 2021, created the Payroll Support Program Extension (PSP2) for passenger air carriers and certain contractors. Treasury issued public guidance regarding PSP2 just two days after the statute was enacted, and Treasury has already disbursed over $10.8 billion to over 250 passenger air carriers and contractors under PSP2. The American Rescue Plan Act of 2021 provided an additional $15 billion (PSP3) for Treasury to make additional payments to entities that participated in PSP2.

The Draft Update identifies two issues with respect to the amounts that PSP1 recipients included in their applications to Treasury. According to your audit work, the seven recipients that you have audited impermissibly included employer-side payroll taxes or corporate officer compensation in their calculation of the "awardable amount" on their PSP1 application. This would have violated the program terms and conditions and been inconsistent with Treasury's public guidance, resulting in an overstatement of the amount of PSP1 funds those applicants requested. While Treasury conducted extensive, multi-layered reviews of each PSP1 application prior to approval, those reviews did not identify these instances where applicants incorrectly included ineligible amounts in their calculations.

Immediately after OIG notified Treasury of these issues, Treasury began working to address them. As an initial matter, we can confirm that these issues do not affect any of the larger passenger air carriers, which together received approximately 85% of the total PSP1 funds that have been disbursed. Treasury also took a series of remedial actions. First, Treasury required all PSP1 applicants that applied for PSP2 to include in their PSP2 certification whether their PSP1 amounts included employer-side payroll taxes or corporate officer compensation. Companies that did include those amounts will, depending on whether they are due to receive additional funds under PSP1, PSP2, or PSP3, have those payments reduced to offset ineligible expenses. Treasury continues to consider additional remedial actions that can be taken with respect to these ineligible expenses. Second, Treasury is requiring all aviation contractors that received PSP1 awards to provide detailed certifications regarding how they calculated the amounts they requested in PSP1. Any contractor recipients that fail to validate their PSP1 calculations in accordance with these requirements will have further disbursements withheld, and any contractor recipients that misstated their awardable amount will have further payments reduced to offset the overpayment.

We look forward to working with you to protect the integrity of the PSP and other CARES Act programs.

Sincerely,

John Trevor Norris
Acting Assistant Secretary for Management