



Audit Report



OIG-22-041

CORONAVIRUS DISEASE 2019 PANDEMIC RELIEF PROGRAMS

Audit of Air Carrier Worker Support Certifications - XOJET Aviation, LLC

September 28, 2022

Office of Inspector General
Department of the Treasury

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OFFICE OF
INSPECTOR GENERAL

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

September 28, 2022

**MEMORANDUM FOR JACOB LEIBENLUFT
CHIEF RECOVERY OFFICER**

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

SUBJECT: Audit of Air Carrier Worker Support Certifications - XOJET
Aviation, LLC

Attached is our audit report for the *Audit of Air Carrier Worker Support Certifications - XOJET Aviation, LLC* (XOJET) (OIG-22-041; dated September 28, 2022). Under a contract monitored by our office, Saggar & Rosenberg, P.C. (S&R), a certified independent public accounting firm, performed the audit. The objective of this audit was to assess the accuracy, completeness, and sufficiency of XOJET's sworn financial statement or other data used to certify the wages, salaries, benefits, and other compensation amounts submitted and approved by the Department of the Treasury (Treasury) for the Air Carrier Payroll Support Program (PSP1). The scope of this audit covered the time period from April 1, 2019 through September 30, 2019 and included the certified PSP1 Application, sworn financial statements, tax returns, and other documentation submitted to Treasury.

In its audit report, S&R found XOJET incorrectly compiled data used for the Awardable Amounts section of the PSP1 Application, resulting in a \$220,228 overstatement. Specifically, the:

- Inclusion of unallowable corporate officer compensation in its PSP1 requested awardable amount, resulted in a (b) (4) overstatement; and
- Differences between accrual-based general ledger compensation used to prepare the PSP1 Application and the actual compensation paid, resulted in a (b) (4) understatement.

Treasury's awards to passenger air carriers under PSP1 included a 78.2 percent pro rata distribution of application amounts. Applying this formula, XOJET received a \$172,218 overpayment from Treasury.

Accordingly, S&R recommends that Treasury's Chief Recovery Officer:

- Seek reimbursement of the \$172,218 overpayment of PSP1 financial assistance; and
- Review XOJET's requested amount for unallowable expenses, under the Payroll Support Program Extension (PSP2)¹ authorized by the Consolidated Appropriations Act, 2021 and the Payroll Support Program 3 (PSP3)² authorized by the American Rescue Plan Act of 2021, and seek reimbursement for the overpayment, if applicable.

Our contract required that the audit be performed in accordance with generally accepted government auditing standards. In connection with the contract, we reviewed S&R's report and related documentation and inquired of its representatives. Our review, as differentiated from an audit performed in accordance with generally accepted government auditing standards, was not intended to enable us to express an opinion on XOJET's compliance with Treasury's PSP1 policies and procedures. S&R is responsible for the attached auditor's report and the conclusions expressed therein. Our review found no instances in which S&R did not comply, in all material respects, with generally accepted government auditing standards.

We appreciate the courtesies and cooperation provided to S&R and our staff during the audit. If you have any questions or require further information, please contact me at (202) 486-1420, or a member of your staff may contact Lisa DeAngelis, Deputy Assistant Inspector General for Audit, at (202) 487-8371.

Attachment

cc: Jason Morrow, Attorney Advisor, Department of the Treasury
Jeff Davis, Partner, Saggat & Rosenberg, P.C.

¹ The Consolidated Appropriations Act, 2021 (P.L. 116-260), enacted on December 27, 2020, created the *Airline Worker Support Extension* for passenger air carriers and certain contractors. Treasury referred to this as Payroll Support Program Extension (PSP2).

² The American Rescue Plan of 2021 (P.L. 117-2), enacted on March 11, 2021, created the *Air Transportation Payroll Support Program Extension* authorizing Treasury to provide additional assistance to passenger air carriers and contractors that received financial assistance under PSP2. Treasury referred to this as Payroll Support Program 3 (PSP3).

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Abbreviations

CARES Act	Coronavirus Aid, Relief, and Economic Security Act
COVID-19	Coronavirus Disease 2019
DOT	Department of Transportation
GAO	Government Accountability Office
GMJ	GMJ Air Shuttle Management, LLC
Guidelines	Guidelines and Application Procedures for Payroll Support to Air Carriers and Contractors
IRS	Internal Revenue Service
JAMES	Joint Audit Management Enterprise System
OIG	Treasury Office of Inspector General
PSP1	Payroll Support Program, CARES Act
PSP2	Payroll Support Program Extension, Consolidated Appropriations Act, 2021
PSP3	Payroll Support Program 3, American Rescue Plan Act of 2021
SOC 1	System and Organizational Controls
S&R	Saggar & Rosenberg, P.C.

Treasury
XOJET

Department of the Treasury
XOJET Aviation, LLC

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September 28, 2022

Jacob Leibenluft
Chief Recovery Officer
Department of the Treasury

This report presents the results of our audit of XOJET Aviation, LLC (XOJET) certifications made to the Department of the Treasury (Treasury) as part of its participation in the Air Carrier Payroll Support Program (PSP1). This audit was mandated by Title IV, Subtitle B, *Air Carrier Worker Support, of the Coronavirus Aid, Relief, and Economic Security Act* (CARES Act).³ Under the CARES Act, Treasury was to provide \$32 billion in financial assistance to passenger air carriers, cargo air carriers, and certain contractors to be exclusively used for the continuation of payment of employee wages, salaries, and benefits, in response to the economic impact of the Coronavirus Disease 2019 (COVID-19).⁴ Furthermore, the Treasury Office of Inspector General (OIG) is required to audit certifications made by passenger and cargo air carriers that do not report salaries and benefits to the Department of Transportation (DOT) (hereinafter referred to as non-241 air carriers)⁵ and contractors.

Under a contract with OIG, Saggarr & Rosenberg, P.C. (S&R) conducted this audit. Our audit objective was to assess the accuracy, completeness, and sufficiency of XOJET's sworn financial statement or other data used to certify the wages, salaries, benefits, and other compensation amounts submitted and approved by Treasury for PSP1. The scope of our audit covered the time period from April 1, 2019 through September 30, 2019 and included the certified PSP1 Application, sworn financial

³ P.L. 116-136 (March 27, 2020).

⁴ The financial assistance provided under the CARES Act was split between Passenger Air Carriers (\$25 billion), Cargo Air Carriers (\$4 billion), and Contractors (\$3 billion).

⁵ Passenger and cargo air carriers that are not required to report salaries and wages to DOT under 14 CFR, Part 241, "Uniform System of Accounts and Reports for Large Certificated Air Carriers".

statements, tax returns, and other documentation submitted to Treasury on April 3, 2020.⁶

To accomplish the objective, we reviewed applicable laws and regulations; and Treasury's policies and procedures, including but not limited to, the Title IV, Subtitle B, *Air Carrier Worker Support* of the CARES Act, *Guidelines and Application Procedures for Payroll Support to Air Carriers and Contractors* (Guidelines), PSP1 Agreement, and *Frequently Asked Questions: Application Procedures for Payroll Support to Air Carriers and Contractors*. We interviewed key personnel from XOJET, Treasury, and contracted consultants⁷ engaged by Treasury to evaluate certified company applications. We conducted our fieldwork from September 2021 through February 2022. Appendix 1 contains a more detailed description of our objective, scope, and methodology.

Results in Brief

In brief, S&R found that XOJET, a passenger air carrier, reported correct information for three of the four sections reviewed on their PSP1 Application.⁸ These sections are: (1) Applicant Information, (2) Applicant Type, and (3) Certification. We also found that XOJET incorrectly compiled data used for the Awardable Amounts section, resulting in a \$220,228 overstatement. Specifically, we found (1) inclusion of corporate officer compensation, resulting in a (b) (4) overstatement, and (2) differences between accrual-based general ledger compensation used to prepare the PSP1 Application and the actual compensation paid, resulting in a (b) (4) understatement. Treasury's awards to passenger air carriers under PSP1 included a 78.2 percent pro rata distribution of application amounts. Applying this formula, we found that XOJET received a \$172,218 overpayment from Treasury. As a result, we question the costs totaling \$172,218 and recommend that the Chief Recovery Officer seek reimbursement of the \$172,218

⁶ XOJET submitted the PSP1 Application and related supporting documentation on April 3, 2020.

⁷ Summit Consulting, LLC.

⁸ The PSP1 Application is comprised of eight sections. Four sections - Financial Institution Information, Employment Levels, Taxpayer Protection, and Additional Information, were not subject to audit procedures. Details regarding the sections not reviewed can be found in appendix 1.

overpayment to XOJET for PSP1. Additionally, we recommend that Treasury review XOJET's requested amount for unallowable expenses, under the Payroll Support Program Extension (PSP2)⁹ authorized by the Consolidated Appropriations Act, 2021 and the Payroll Support Program 3 (PSP3)¹⁰ authorized by the American Rescue Plan Act of 2021 and seek reimbursement for overpayment, if applicable.

Appendix 2 contains more details on questioned costs.

As part of our reporting process, we provided XOJET management an opportunity to comment on a draft of this report. In a written response, XOJET management stated that it agreed there was an unintentional overstatement of \$220,228 in the requested amount. Also, XOJET management noted that the company made the conservative and intentional decision to exclude (b) (4) in compensation paid to employees from one of its subsidiaries, which it believed were eligible expenses per Treasury's Guidelines. XOJET management noted while the eligible expenses were excluded from the application, the company submits that these expenses should be netted with the overstatement identified in the audit findings, which would remove the Treasury overpayment of \$172,218 to XOJET.

The XOJET subsidiary discussed in XOJET's management response is compensation that was not within our audit scope because the subsidiary was not part of XOJET's PSP1 Application that was submitted and approved by Treasury. Additional details regarding the excluded subsidiary is included in the background section of this report. XOJET management's response, in its entirety, is included as appendix 3 of this report.

In a written response, Treasury management concurred with our recommendations and agreed that any overpayments of PSP funds should be recouped. Treasury stated it will conduct a review of the

⁹ The Consolidated Appropriations Act, 2021 (P.L. 116-260), enacted on December 27, 2020, created the *Airline Worker Support Extension* for passenger air carriers and certain contractors. Treasury referred to this as Payroll Support Program Extension (PSP2).

¹⁰ The American Rescue Plan of 2021 (P.L. 117-2), enacted on March 11, 2021, created the *Air Transportation Payroll Support Program Extension* authorizing Treasury to provide additional assistance to passenger air carriers and contractors that received financial assistance under PSP2. Treasury referred to this as Payroll Support Program 3 (PSP3).

findings, consider any response from the recipient, and seek recoupment of any amounts that Treasury determines have been overpaid. Also, Treasury will review awardable amounts requested under PSP2 and PSP3 and seek recoupment where appropriate. Treasury management will need to record an estimated completion date for these actions in the Joint Audit Management Enterprise System (JAMES). Management's planned corrective actions meet the intent of our recommendations. Treasury management's response, in its entirety, is included as appendix 4 of this report.

Background

Title IV, Subtitle B, of the CARES Act, *Air Carrier Worker Support*, requires Treasury to provide financial assistance to air carriers and 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 an aggregate amount up to \$4 billion; and
- (3) contractors, in an aggregate amount up to \$3 billion.

According to the CARES Act, Treasury is required to provide financial assistance to air carriers that report salaries and benefits to the DOT (referred to as 241 carriers),¹¹ 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

¹¹ 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. XOJET is not a Large Certificated Air Carrier.

during the period of April 1, 2019 through September 30, 2019. The amounts submitted on the application to Treasury were considered sworn financial statements. To be eligible for payments, air carriers and contractors had to enter into agreements with Treasury certifying that they meet certain required assurances, terms, and conditions.

On March 30, 2020, Treasury posted on its website the Guidelines, which included the PSP1 Application. The PSP1 Application is comprised of eight sections:

1. Application Information – (1) applicant name; (2) taxpayer identification number and address; and (3) contact person’s name, title, phone number, and email address.
2. Applicant Type – selection of applicant type whether its passenger air carrier, cargo air carrier, or contractor. Additionally, if the applicant is a contractor, this section would identify the contractor’s service functions and the name of the air carrier or airport to which services are provided. Finally, this section includes affiliate and parent company information.
3. Financial Institution Information – (1) the applicant’s banking account number and routing number; and (2) the financial institution’s name, address, and telephone number.
4. Employment Levels – applicant’s average number of employees for 2019 and involuntary reductions after March 1, 2020.
5. Awardable Amounts – applicant’s sworn financial statement consisting of salaries, wages, benefits, and other compensation for the period April 1, 2019 through September 30, 2019.
6. Taxpayer Protection – a table that outlines in detail the proposed financial instrument to be issued to Treasury.
7. Additional Information – applicant’s verification of submitting its Internal Revenue Service (IRS) Form 941 – *Employer’s Quarterly Federal Tax Return*¹² covering the period April 1, 2019 through

¹² IRS Form 941 is a tax form that businesses file quarterly to report income taxes, Social Security taxes, and Medicare taxes they withheld from employee paychecks.

September 30, 2019 along with the PSP1 Application submitted to Treasury.

8. Certification – names, titles, and signatures of two certifying officials¹³ and the applicant name and application submission date.

On April 18, 2020, Treasury published a sample PSP1 Agreement on its website, which provided definitions, terms, and conditions for participation in PSP1, and required applicants to submit completed applications by April 27, 2020. After Treasury reviewed and approved an application, both parties were required to sign the PSP1 Agreement.

Treasury Disbursement Processes

In an effort to disburse PSP1 payments to passenger air carrier applicants as quickly as possible and prior to the application deadline of April 27, 2020, Treasury applied an initial estimated pro rata rate of 76 percent to the awardable amount because not all applications had been submitted at the time. After the application deadline, Treasury determined the total amount requested by all passenger air carrier applicants was approximately \$31.8 billion, which exceeded the \$25 billion available financial assistance. Because its initial estimated pro rata rate was too low, Treasury calculated an additional 2.2 percent, the top-off amount, for passenger air carriers making the final pro rata rate 78.2 percent. Treasury disbursed an initial lump sum payment of one-third of the awardable amount, followed by four equal subsequent payments to ensure it provided sufficient and timely financial assistance corresponding to the applicants' payroll schedule. In instances where Treasury needed to perform additional follow-up with passenger air carriers or needed additional time to approve applications, Treasury compressed the payment schedule on a case by case basis. Generally, Treasury disbursed the top-off amounts for passenger air carriers in September 2020, however, XOJET received its top-off amount in October 2020. Treasury officials told us that if recoupment was necessary for an applicant's inclusion of unallowable expenses such as corporate officer compensation and

¹³ The certifying officials attested under penalty of perjury that the information and certifications provided in the application and its attachments are true and correct.

employer-side payroll taxes in the application, the recoupment method was dependent on timing. If the need for recoupment was known prior to the top-off distribution then the recoupment was offset from the top-off payment. For recoupment amounts not known until after the top-off payment, Treasury has not made a decision how those funds will be collected and whether those funds will be reallocated at a later date.

PSP1 Interim Audit Report

In a prior audit report,¹⁴ OIG identified two recurring issues affecting the payment amounts administered to all PSP1 recipients for non-241 air carriers and contractors. Specifically, employer-side payroll taxes and corporate officer compensation were included in the awardable amounts for some recipients. Treasury management acknowledged that the recipients audited included unallowable employer-side payroll taxes or corporate officer compensation in their calculation of the “awardable amounts” on their PSP1 applications and agreed to (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.

XOJET Aviation, LLC

Headquartered in Fort Lauderdale, Florida, XOJET operates branded charter fleets, a dedicated corporate shuttle, and offers aircraft management solutions.

XOJET, a non-241 passenger air carrier, applied for PSP1 along with two subsidiaries: (1) XO Crew Resources, LLC and (2) GMJ Air Shuttle Management, LLC (GMJ) for financial assistance of (b) (4) on April 3, 2020. However, XOJET withdrew its request for GMJ’s financial assistance of (b) (4); revising the requested amount to (b) (4) on September 18, 2020, as illustrated below in Table 1.

¹⁴ OIG-21-025, *Interim Audit Update – Air Carrier and Contractor Certifications for Payroll Support Program (Interim Audit)*, March 31, 2021.

Table 1: Application Amounts

Entity	PSP1 Application	Withdrawn Application	Remaining Application
XOJET Aviation	(b) (4)	\$0	(b) (4)
XO Crew Resources	(b) (4)	\$0	(b) (4)
GMJ Air Shuttle	(b) (4)	(b) (4)	\$0
Total	(b) (4)		

Source: PSP1 Application data submitted to Treasury

XOJET received the passenger air carrier top-off for a total award of \$15,184,348, or 78.2 percent of the company’s requested amount. Disbursements by Treasury to XOJET were as follows:

- June 17, 2020 – \$6,573,280.85
- July 7, 2020 – \$2,191,093.61
- August 6, 2020 – \$2,191,093.61
- September 4, 2020 – \$2,191,093.62
- September 30, 2020 – \$1,610,605.31
- October 6, 2020 – \$427,181.15

In addition to PSP1, Treasury awarded XOJET \$10,271,765 under PSP2 and \$9,580,475 under PSP3. PSP2 and PSP3 were not the subject of this audit.

Audit Results

We found that XOJET reported correct information for three of the four sections reviewed on its PSP1 Application. These sections are: (1) Applicant Information, (2) Applicant Type, and (3) Certification. We compared information provided in each section of the PSP1 Application to supporting documentation including air carrier certificates, tax forms, and executive-level business charts, among other items.

We also found that XOJET reported incorrect information in the Awardable Amounts section. The company included unallowable corporate officer compensation, resulting in an overstatement of (b) (4). However, XOJET’s accrual-based financial accounting data used to prepare the PSP1 Application was less than the actual compensation paid to its employees by (b) (4), resulting in a net overstatement of \$220,228. Table 2 illustrates a monthly breakdown of XOJET’s overstated amounts.

Table 2: Aggregate Overstatement by Month

Month	PSP1 Application	Awardable Amount Re-Calculated by S&R	Variance
April 2019	(b) (4)	(b) (4)	(b) (4)
May 2019	(b) (4)	(b) (4)	(b) (4)
June 2019	(b) (4)	(b) (4)	(b) (4)
July 2019	(b) (4)	(b) (4)	(b) (4)
August 2019	(b) (4)	(b) (4)	(b) (4)
September 2019	(b) (4)	(b) (4)	(b) (4)
TOTAL	(b) (4)	(b) (4)	\$(220,228)

Source: S&R Calculation of Awardable Amount

Since Treasury disbursed PSP1 funds pro rata for passenger air carriers at 78.2 percent of the requested awardable amount, XOJET received an overpayment of \$172,218.

Finding 1

Inaccurate Compilation of the PSP1 Application Awardable Amount

Corporate Officer Compensation

Both the CARES Act and Treasury’s Guidelines define “employee” as “an individual, other than a corporate officer, who is employed by an air carrier or contractor in the United States (including its territories and possessions).” In addition, the signed PSP1 Agreement, effective date June 15, 2020, subsequently defines a corporate officer as, “with respect to the Recipient, its

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.”

We identified ten XOJET executives through discussions with management and review of XOJET’s 2019 organizational chart. The ten executives also operated in the same executive capacity for the XOJET subsidiary, XO Crew Resources, LLC, which did not have separate company executives. Five of those executives met the definition of a corporate officer per the PSP1 Agreement and the compensation related to those individuals should have been excluded from the awardable amount on the PSP1 Application. XOJET included compensation totaling (b) (4) in the awardable amount table of the PSP1 Application for “Salaries and Wages” and “Benefits” for the five executives. Specifically, compensation paid to two Chief Operating Officers, one Chief Administrative Officer, one Senior Vice President of Flight Operations, and the Chief Human Resources Officer. Table 3 illustrates a monthly breakdown of XOJET’s overstated awardable amount for corporate officer compensation.

Table 3: Corporate Officer Inclusion

Month	Non-allowable Corporate Officer Compensation in the PSP1 Application
April 2019	(b) (4)
May 2019	(b) (4)
June 2019	(b) (4)
July 2019	(b) (4)
August 2019	(b) (4)
September 2019	(b) (4)
TOTAL	(b) (4)

Source: S&R Calculation of Awardable Amount

Although the employees who prepared the PSP1 Application are no longer with the company, current XOJET management stated that it was not aware of restrictions placed on corporate officer compensation. In addition, current XOJET management stated that since the application figures for “Salaries and Wages” and “Benefits” agreed to the company’s accrual-based general ledger accounting data with minor differences, management did not believe deliberate additions or exclusions were made to the data to ensure compliance with the PSP1 Agreement requirements.

Accrual-Based Application Understated the Awardable Amount

XOJET prepared the PSP1 Application using data from its accrual-based financial accounting system, System Application & Products (SAP). Although creating the PSP1 Application using accrual-based financial information was not a prohibited compilation method under Treasury’s PSP1 Application guidelines, the actual amount of wages, salaries, benefits, and other compensation paid to company employees exceeded the amounts requested in the PSP1 Application, understating the requested awardable amount by (b) (4), as illustrated in Table 4.

Table 4: PSP1 Accrual-Based Application Compared to Actual Supported Costs

Category	PSP1 Application Using Accrual Data	Actual Supported Compensation	Variance
Salaries/Wages	(b) (4)	(b) (4)	(b) (4)
Benefits	(b) (4)	(b) (4)	(b) (4)
Total	(b) (4)	(b) (4)	(b) (4)

Source: S&R Calculation of Awardable Amount.

The employees who prepared the PSP1 Application are no longer with the company; however, when we inquired about the reason that the application was prepared using accrual-based financial accounting data as opposed to actual compensation paid, current XOJET management stated that it believed the accrual-based data was readily available and served as a rational basis for its financial assistance request.

Although the inclusion of corporate officers in the PSP1 Application resulted in an overstatement of (b) (4) in requested PSP1 amounts, the net impact of this overstatement was offset by differences between actual amounts paid to employees and the application figures compiled using accrual-based financial accounting data. As a result, the residual net overstatement is \$220,228, as illustrated in Table 5 below.

Table 5: Aggregate Overstatement

Description	Salaries/Wages	Benefits	Total
Actual Supported Compensation (Table 4)	(b) (4)	(b) (4)	(b) (4)
Less: Corporate Officers (Table 3)	(b) (4)	(b) (4)	(b) (4)
Allowable Compensation	(b) (4)	(b) (4)	(b) (4)
Accrual-based Application	(b) (4)	(b) (4)	(b) (4)
Net Overstatement	(b) (4)	(b) (4)	\$(220,228)

Sources: S&R Calculation of Awardable Amount; Table 3; and Table 4.

Since Treasury disbursed PSP1 funds pro rata for passenger carriers at 78.2 percent of the requested awardable amount, XOJET received an overpayment of \$172,218.

To remedy the findings listed in the prior OIG audit report,¹⁵ Treasury required PSP2 applicants to re-certify their PSP1 awardable amounts. XOJET certified to Treasury under PSP2, that its PSP1 Application did not include corporate officer compensation. Treasury stated it relies on applicants' certifications that they did not include unallowable expenses (i.e. corporate officer compensation and employer-side payroll taxes) and no further validation checks were performed; as a result, the company likely included corporate officer compensation in its PSP2 and PSP3 financial assistance request.

¹⁵ OIG-21-025, *Interim Audit Update – Air Carrier and Contractor Certifications for Payroll Support Program (Interim Audit)*, March 31, 2021.

Recommendations

S&R recommends that Treasury's Chief Recovery Officer:

1. Seek reimbursement of the \$172,218 overpayment of PSP1 financial assistance.

Management Response

Treasury will conduct a review of the findings, consider any response from the recipient, and seek recoupment of any amounts that Treasury determines have been overpaid.

S&R Comment

Management's planned corrective actions meet the intent of our recommendation. Treasury management will need to record an estimated completion date for these actions in JAMES.

2. Review XOJET's requested amount for unallowable expenses under PSP2 and PSP3, and seek reimbursement for the overpayment, if applicable.

Management Response

Treasury will review awardable amounts requested under PSP2 and PSP3 and seek recoupment where appropriate.

S&R Comment

Management's planned corrective actions meet the intent of our recommendation. Treasury management will need to record an estimated completion date for these actions in JAMES.

* * * * *

We appreciate the courtesies and cooperation provided to our staff during the audit. A distribution list for this report is provided as appendix 5.

Saggar & Rosenberg, P.C. /s/

Appendix 1: Objective, Scope, and Methodology

Our objective was to assess the accuracy, completeness, and sufficiency of XOJET Aviation, LLC's (XOJET) sworn financial statement or other data used to certify the wages, salaries, benefits, and other compensation amounts submitted and approved by the Department of the Treasury (Treasury).

The scope of our audit covered the time period from April 1, 2019 through September 30, 2019 and included the certified Payroll Support Program (PSP1) Application, sworn financial statements, tax returns, and other documentation submitted to Treasury on April 3, 2020.¹⁶

To accomplish this objective, Saggari & Rosenberg, P.C. (S&R) performed the following activities during audit fieldwork conducted remotely, due to the Coronavirus Disease 2019 (COVID-19) pandemic from September 2021 through February 2022:

- Reviewed applicable Federal laws, regulations, and guidance, including:
 - *Title IV, Subtitle B, Air Carrier Worker Support, of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act);*¹⁷ and
 - 14 CFR, Part 241,¹⁸ *Uniform System of Accounts and Reports For Large Certificated Air Carriers*, amended August 12, 2022.
- Reviewed Treasury's policies, procedures, and guidance related to PSP1:
 - *Guidelines and Application Procedures for Payroll Support to Air Carriers and Contractors*, (Guidelines) which included the PSP1 Application, March 30, 2020;

¹⁶ XOJET submitted the PSP1 Application and related supporting documentation on April 3, 2020.

¹⁷ P.L. 116-136 (March 27, 2020).

¹⁸ 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. XOJET is not a Large Certificated Air Carrier.

Appendix 1: Objective, Scope, and Methodology

- PSP1 Agreement;
 - *Question and Answer: Payroll Support to Air Carriers and Contractors*, (April 2, 2020, April 3, 2020, and April 20, 2020 versions); and
 - *Frequently Asked Questions: Application Procedures for Payroll Support to Air Carriers and Contractors*, April 3, 2020.
- Performed 100 percent testing for four of the eight sections of the PSP1 Application, specifically, the Applicant Information, Applicant Type, Awardable Amounts, and Certification sections. The other four sections were not reviewed because the Taxpayer Protection section generally applied to 241 air carriers, with exceptions; the Employment Levels, Financial Institution Information, and Additional Information sections had no impact on Treasury’s determination of recipients’ award amounts.
 - Interviewed key Treasury personnel and contracted consultants¹⁹ engaged by Treasury to aid in its evaluation of the air carriers’ and the contractors’ certified applications and other data.
 - Interviewed XOJET representatives responsible for the sworn financial statement. The amounts submitted in the Awardable Amounts section of the PSP1 Application were considered the sworn financial statement.
 - Reviewed sworn financial statements and documents to support the requested payroll support amount. The documentation included general ledger data, company pay registers, benefit invoices, Internal Revenue Service (IRS) Form 941 – *Employer’s Quarterly Federal Tax Return*,²⁰ filings, 2019 IRS Form 851 – *Affiliation Schedule*,²¹ and organizational hierarchy information.

¹⁹ Summit Consulting, LLC.

²⁰ IRS Form 941 is a tax form that businesses file quarterly to report income taxes, Social Security taxes, and Medicare taxes they withheld from employee paychecks.

²¹ IRS Form 851 is a tax form that a parent corporation of an affiliated group files with its consolidated income tax return to (1) identify the common parent corporation and each member of the affiliated group; (2) report the amount of overpayment credits, estimated tax payments, and tax deposits attributable to each corporation; and (3) determine that each subsidiary corporation qualifies as a member of the affiliated group.

Appendix 1: Objective, Scope, and Methodology

- Reviewed Government Accountability Office’s (GAO) *Standards for Internal Control in the Federal Government*²² to identify the components of internal control that are significant to the audit objective. Understanding internal control within the context of an entity’s internal control framework can help auditors determine whether internal control deficiencies exist. We concluded that one of the five internal control components, Control Activities, as related to XOJET’s payroll systems, was significant to the audit objective.²³ This component states that control activities are the actions management establishes through policies and procedures to achieve objectives and respond to risks in the internal control system, which includes the entity’s information system. To assess the controls over XOJET’s payroll systems, we examined XOJET’s response to Data Supplier Questionnaires,²⁴ reviewed a System and Organizational Controls 1 (SOC 1),²⁵ and interviewed XOJET’s management responsible for generating and using the data. Additional details regarding our assessment of the reliability of the data is reported in the section below.
- Reviewed GAO’s *Assessing Data Reliability*²⁶ guidance, which states that a data reliability determination does not involve attesting to the overall reliability of the data or database. For this audit, the audit team has only determined the reliability of the specific data sources needed to support the findings, conclusions, or recommendations in the context of the audit objective. XOJET prepared the PSP1 Application using information from the accrual-based accounting system of record, System Application & Products (SAP). We compared payroll details generated from ADP, LLC (ADP) payroll registers at the individual employee level, as well as third-party vendor benefit invoices, from April 1, 2019 through September 30, 2019 to the amounts presented in the Awardable Amounts section of the PSP1 Application.

²² GAO-14-704G (September 2014).

²³ The five components of internal control are Control Environment, Risk Assessment, Control Activities, Information and Communication, and Monitoring.

²⁴ A Data Reliability Assessment is completed to assess the reliability of data originating from a system to determine if it is reliable for the purposes of the audit. The Data Supplier Questionnaire would be one of the tools used during the Data Reliability Assessment.

²⁵ SOC 1 reports address a company’s internal control over financial reporting, which pertains to the application of checks-and-limits. Essentially, it is the audit of a third-party vendor’s accounting and financial controls.

²⁶ GAO-20-283G (December 2019).

Appendix 1: Objective, Scope, and Methodology

To assess data reliability of these sources, we examined XOJET's response to the Data Supplier Questionnaires for SAP and ADP, reviewed the ADP SOC 1, and interviewed XOJET's management responsible for generating and using the data. Based on our assessment, we determined that the data was sufficiently reliable to support the findings and conclusions to answer the objective of this audit.

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 objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Appendix 2: Schedule of Monetary Benefits

According to the Code of Federal Regulations,²⁷ a questioned cost is a cost that is questioned by the auditor because of an audit finding:

- (a) which resulted from a violation or possible violation of a statute, regulation, or the terms and conditions of a Federal award, including for funds used to match Federal funds;
- (b) where the costs, at the time of the audit, are not supported by adequate documentation; or
- (c) where the costs incurred appear unreasonable and do not reflect the actions a prudent person would take in the circumstances.

Questioned costs are to be recorded in the Department of the Treasury's (Treasury) Joint Audit Management Enterprise System. The amount will also be included in the Office of Inspector General (OIG) Semiannual Report to Congress. It is Treasury management's responsibility to report to Congress on the status of the agreed to recommendations with monetary benefits in accordance with Section 5(b) of the Inspector General Act of 1978, as amended.

<u>Recommendation</u>	<u>Questioned Costs</u>
Recommendation No. 1	\$172,218

The questioned cost represents amounts provided by Treasury under the Payroll Support Program (PSP1). As discussed in Finding 1, XOJET Aviation, LLC overstated its PSP1 Application awardable amount to Treasury by \$220,228 due to (1) the inclusion of corporate officer compensation, and (2) differences between accrual-based compensation and actual compensation. However, since Treasury disbursed PSP1 funds pro rata for passenger air carriers at 78.2 percent of the requested awardable amount, the questioned cost related to the overstated PSP1 Application is \$172,218.

²⁷ 2 CFR § 200.84 – Questioned Cost

Appendix 3: XOJET Management Response



September 7, 2022

DEPARTMENT OF THE TREASURY

Re: Audit of Air Carrier Worker Support-XOJET Aviation, LLC

In response to the Formal Draft Audit Report, the Company's response to Saggari & Rosenberg's recommendations are as follows:

1. Seek reimbursement of the \$172,218 overpayment of PSP1 financial assistance.

Management Response: The Company agrees there was an unintentional overstatement in the awardable amounts section of \$220,228 based on the current scope of the audit which excluded GMJ, a qualified passenger air carrier and fully owned subsidiary of XOJET Aviation, LLC. The Company would like to highlight that it removed GMJ's salaries and benefits from the awardable amount submitted to Treasury. Although the Company made the conservative and intentional decision to exclude GMJ wages and benefits from the PSP application, the Company believes the GMJ wages and benefits were eligible expenses per the PSP guidelines. GMJ gross wages for the application period were (b) (4). While the eligible expenses were excluded from the application, the Company submits these expenses should be included as an understatement of gross wages per the audit findings. This inclusion of GMJ wages would remove the Treasury overpayment to XOJET of \$172,218.

2. Review XOJET's requested amount for unallowable expenses under PSP2 and PSP3, and seek reimbursement for the overpayment, if applicable.

Management Response: No comments.

Regards,

Christopher Converse
CFO, XOJET Aviation

1901 W. Cypress Creek Road 6th Floor, Fort Lauderdale, FL 33309, United States

Appendix 4: Treasury Management Response



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

September 23, 2022

Deborah L. Harker
Assistant Inspector General for Audit
U.S. Department of the Treasury – Office of Inspector General
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

Dear Ms. Harker:

I write regarding the Office of Inspector General's (OIG) draft Audits of Air Carrier Worker Support Certifications (Draft Reports) regarding three recipients under Treasury's Payroll Support Program: (1) XOJET Aviation, LLC, (2) Pegasus Elite Aviation, Inc., and (3) Alpine Aviation, Inc. The U.S. Department of the Treasury (Treasury) appreciates OIG's efforts.

Background on the Payroll Support Program

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 established the Payroll Support Program (PSP1) to provide financial assistance to America's passenger air carriers, cargo air carriers, and certain 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 three days later, Treasury published additional guidance about the application process. Treasury has disbursed more than \$28 billion to over 600 businesses in PSP1, directly supporting more than 600,000 American jobs.

In December 2020, the Consolidated Appropriations Act, 2021, created the Payroll Support Program Extension (PSP2) for eligible passenger air carriers and certain aviation contractors. Treasury issued public guidance regarding PSP2 just two days after the statute was enacted, and Treasury has disbursed over \$15 billion to over 480 passenger air carriers and contractors under PSP2. In March 2021, the American Rescue Plan Act of 2021 provided an additional \$15 billion for Treasury to make further payments to entities that participated in PSP2 (PSP3).

The CARES Act set forth two different methodologies for calculating awardable amounts under PSP1. For the largest air carriers, which received 90% of the total funds disbursed under PSP1, PSP1 amounts were based on reports the carriers had filed with the U.S. Department of Transportation under 14 C.F.R. part 241. In contrast, smaller air carriers and aviation contractors were required to certify, using sworn financial statements or other appropriate data, the amount for wages, salaries, benefits, and other compensation that they paid to their employees during the period from April 1 to September 30, 2019. For these smaller companies, the PSP1 application

and Treasury guidance made clear that awardable amounts should not include, *inter alia*, (1) employer-side payroll taxes, which are not paid to employees, and (2) compensation paid to corporate officers and non-employee contractors. Before accepting PSP2 applications, Treasury published additional guidance further emphasizing that such amounts should not be included in the companies' awardable amount calculations.¹ In both PSP1 and PSP2, Treasury required two officials of each applicant, including one corporate officer, to certify that the information provided in its application was correct and does not contain any materially false or fraudulent statements.

In April 2020, OIG began a series of audits of PSP1 recipients to determine whether they had properly calculated their requested awardable amounts. In March 2021, OIG issued an Interim Audit Update, notifying Treasury that a number of recipients being audited had impermissibly included on their PSP1 application the employer-side payroll taxes or corporate officer compensation in their calculation of the awardable amount, which would have resulted in an overstatement of the amount of PSP1 funds requested. In response, Treasury promptly took a series of remedial actions, including requiring that all PSP1 recipients re-certify whether their awardable amounts included employer-side payroll taxes or corporate officer compensation. Where companies informed Treasury that they had improperly included those amounts, Treasury either withheld future disbursements or began pursuing debt recoupment.

OIG's Findings and Recommendations

The Draft Reports describe the work performed by OIG's contractor to determine whether the requested awardable amounts complied with Treasury's program requirements. The Draft Reports note the extensive fieldwork conducted for this review between September 2021 and February 2022, including interviewing the PSP1 recipients' management and reviewing a wide range of the companies' financial records and corporate documents. With respect to the companies listed above, OIG found that the recipients had overstated their awardable amounts due to the improper inclusion of corporate officer compensation, employer-side payroll taxes, or both. In addition, OIG questioned one recipient's use of accrual-based general ledger accounting data rather than actual compensation paid. OIG recommends that Treasury (1) seek reimbursement of \$1,367,211 of overpayments of PSP1 assistance, and (2) review any requested amounts from these recipients for PSP2 and PSP3 assistance to determine whether any additional overpayments occurred.

Treasury agrees with OIG that any overpayments of PSP funds should be recouped. Treasury will conduct a review of the findings, consider any response from the recipient, and seek recoupment of any amounts that Treasury determines have been overpaid. Treasury will also review awardable amounts requested under PSP2 and PSP3 and seek recoupment where appropriate.

* * *

¹ Because awardable amounts in PSP3 were calculated as a percentage of each company's PSP2 award, companies were not required to calculate awardable amounts for PSP3.

Treasury appreciates OIG's work on these engagements. We look forward to working with you to protect the integrity of the PSP and other CARES Act programs.

Sincerely,



Jacob Leibenluft
Chief Recovery Officer

Appendix 5: Report Distribution

Department of the 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

XOJET Aviation, LLC

President and Chief Operating Officer

Office of Management and Budget

OIG Budget Examiner

United States Senate

Committee on Homeland Security and Governmental Affairs
Committee on Finance
Committee on Banking, Housing, and Urban Affairs
Committee on Commerce, Science, and Transportation
Committee on Appropriations
Committee on the Budget

United States House of Representatives

Committee on Oversight and Reform
Committee on Financial Services
Committee on the Budget
Committee on Transportation and Infrastructure

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