



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

OFFICE OF
INSPECTOR GENERAL

May 17, 2021

OIG-CA-21-020

MEMORANDUM FOR JACOB LEIBENLUFT
CHIEF RECOVERY OFFICER

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

SUBJECT: American Rescue Plan- Application of Lessons Learned From
the Coronavirus Relief Fund

The *Coronavirus Aid, Relief, and Economic Security Act* (CARES Act) assigned the Department of the Treasury (Treasury) Office of Inspector General (OIG) with responsibility for monitoring and oversight of the receipt, disbursement, and use of Coronavirus Relief Fund (CRF) monies.¹ The CRF was appropriated \$150 billion for Treasury to make payments to States, Tribal governments, units of local government, the District of Columbia, and U.S. Territories. Treasury OIG was given authority to recoup funds in the event that it is determined a recipient of a CRF payment failed to comply with the *Uses of Funds* requirements of subsection 601(d) of the Social Security Act, as amended, (42 U.S.C. 801(d)).

Through our CRF monitoring and oversight work to date, we have identified certain lessons learned with respect to the implementation and administration of the CRF program. We believe that these lessons learned are valuable for management's consideration in implementing the *American Rescue Plan Act* (ARP)² programs. Accordingly, we are sharing this report with recommendations for your awareness and consideration.

Background

Treasury was required to make CRF payments no later than 30 days after the date of enactment of the CARES Act and in accordance with the requirements outlined in Title V, of which \$3 billion was reserved for payments to the District of Columbia and U.S. Territories and \$8 billion was reserved for payments to Tribal

¹ CRF was established under Title VI of the Social Security Act, as amended by Title V of Division A of the CARES Act, P.L. 116-136 (March 27, 2020)

² P. L. 117-2 (March 11, 2021) established the *Coronavirus State and Local Fiscal Recovery Fund*, the *Emergency Rental Assistance Program*, the *Homeowner Assistance Program*, and the *State Small Business Credit Initiative Program*. Treasury OIG has oversight responsibility for these programs.

governments. No State was to receive a payment of less than \$1.25 billion. On April 16, 2020, Treasury began making payments to eligible CRF recipients as direct payments without agreements or terms and conditions established between Treasury and the recipients.

The CARES Act stipulates that CRF recipients must use the funds to cover only those costs that (1) are necessary expenditures incurred due to the public health emergency with respect to Coronavirus Disease 2019 (COVID-19); (2) were not accounted for in the budget most recently approved as of March 27, 2020; and (3) were incurred between March 1, 2020 and December 30, 2020. The *Consolidated Appropriations Act, 2021*³ extended the covered period and allowed CRF recipients to use proceeds to cover costs incurred between March 27, 2020 and December 31, 2021.

Lessons Learned

The following lessons learned stem from our work in monitoring and overseeing the \$150 billion in CRF funding. We believe these are important lessons that can aid in implementation of the ARP programs.

Need for Clear and Timely Guidance

The CARES Act required Treasury to provide financial assistance to eligible CRF recipients no later than 30 days after the enactment of the CARES Act on March 27, 2020. Recipients were able to use the funds to assist in their response to the ongoing COVID-19 pandemic. While the funds were quickly disbursed, guidance to recipients on eligible uses of CRF was iterative. The CARES Act did not require Treasury to publish regulations on CRF. In lieu of regulations, Treasury published *Coronavirus Relief Fund Guidance for State, Territorial, Local, and Tribal Governments* (CRF Guidance) and *Coronavirus Relief Fund Frequently Asked Questions* (CRF FAQs) during the period of April 2020 through October 2020. Prior to the extension of CRF through December 31, 2021, recipients could only use CRF payments to cover costs that were incurred between March 27, 2020 and December 30, 2020. Given this short window of time for recipients to use their CRF payments, recipients were looking for timely guidance on eligible costs and definitions of key terms.

Treasury issued the first iteration of its CRF Guidance on April 22, 2020, with two subsequent versions, before the last version issued on September 2, 2020. Treasury issued its first iteration of the CRF FAQs on April 22, 2020, but issued seven additional versions, with the last issued on October 19, 2020. Both the CRF Guidance and CRF FAQs were updated to reflect the extension of CRF through

³ P. L. 116-260 (December 27, 2020).

December 31, 2021 and re-published together in the Federal Register on January 15, 2021.⁴ Overall, CRF recipients faced challenges identifying eligible uses of their CRF payments with frequent updates to guidance. Through communication channels established by our office (CARES@oig.treas.gov email address, CARES Call Center, and CARES online Helpdesk), our office received approximately 500 questions concerning eligible uses of CRF proceeds.

The lack of comprehensive, timely guidance on eligible uses caused confusion among recipients, and in some cases was a factor in ineligible uses of CRF payments. For ARP programs, we recommend that Treasury management finalize guidance concurrent with funds distribution in order to facilitate efficient administration of programs and minimize recipient confusion and misuse of funds. In addition, FAQs are an effective tool to clarify existing guidance, but should not be used to establish new guidance.

Management's Response

In its written response, Treasury management generally agreed with our recommendation and listed actions being taken with the Coronavirus State and Local Fiscal Recovery Fund (Fiscal Recovery Fund) established by ARP. Specifically, Treasury will issue an interim final rule (IFR) to provide further guidance on eligible uses and define key terms before Fiscal Recovery Fund payments are made and expects to issue subsequent guidance that will elaborate on the IFR. Management's response is included, in its entirety, as attachment 1.

OIG Comment

Management's response meets the intent of our recommendation. Management will need to include its specific actions to address this recommendation with expected implementation dates in the Joint Audit Management Enterprise System (JAMES), Treasury's audit recommendation tracking system.

Need for Agreements with Terms and Conditions

In its implementation of CRF, Treasury did not treat the CRF distributions as grants, but instead issued CRF as direct payments to recipients without agreements and terms and conditions in place. In addition, Treasury did not stand up a program office for administering the CRF. On May 27, 2020, we issued an interim audit report on Treasury's implementation of the CRF highlighting our concerns over the lack of agreements and requirements for accountability on the part of CRF recipients. This report is discussed below in more detail in the section on *Balancing Data Reporting & Transparency and Recipient Burden*.

⁴ https://home.treasury.gov/system/files/136/CRF-Guidance-Federal-Register_2021-00827.pdf.

We believe that grant agreements, or other suitable agreements, including terms and conditions, are important for the ARP programs to ensure compliance with reporting requirements, among other things. This concept is stressed in Office of Management and Budget's (OMB) Memorandum M 21-20 (M-21-20), *Promoting Public Trust in the Federal Government through Effective Implementation of the American Rescue Plan Act and Stewardship of the Taxpayer Resources* (March 19, 2021). The following excerpt is from OMB M-21-20.

"To provide the highest integrity in the management of financial assistance, agencies must apply the requirements of title 2 of the Code of Federal Regulations, Grants and Agreements (2 CFR) to Federal financial assistance funded through the ARP to the maximum extent authorized by law. For any new programs authorized and appropriated by the ARP, agencies must submit their proposed implementation plan of 2 CFR to OMB for approval, by emailing such plans to ARP.implementation@omb.eop.gov, prior to submitting an Assistance Listing for review. Those plans should identify whether there are any required exceptions to the application of the requirements of 2 CFR, given the unique nature and goals of a given program or because the application of requirements in 2 CFR would pose insurmountable challenges to program implementation."

Accordingly, we recommend that Treasury management (1) document its analysis of the applicability of grant requirements under 2 CFR for each ARP program in its implementation plan as required by OMB M-21-20, (2) apply the requirements of 2 CFR to Federal financial assistance funded through the ARP to the maximum extent authorized by law, and (3) require signed agreements documenting standard terms and conditions before disbursing ARP funds to recipients.

Management's Response

In its written response, Treasury management generally agreed with our recommendation. Management confirmed that before receiving payment, Fiscal Recovery Fund recipients will be required to certify their agreement with payment terms and conditions, including acceptance of the provisions of the IFR and applicable requirements of Title 2 of the Code of Federal Regulations. Management's response is included, in its entirety, as attachment 1.

OIG Comment

Management's response meets the intent of our recommendation. Management will need to include its specific actions to address this recommendation with expected implementation dates in JAMES.

Balancing Data Reporting & Transparency and Recipient Burden

On May 27, 2020, we issued *Interim Audit Update – Coronavirus Relief Fund Recipient Reporting*⁵ as part of our audit of CRF implementation. In our report, we noted that Treasury had not notified CRF recipients of reporting requirements outlined in Sections 15010⁶ and 15011^{7,8} of Division B, Title V of the CARES Act and had not provided a user-friendly means for recipients to meet reporting requirements. In response, Treasury's Office of General Counsel provided a legal analysis stating that the reporting requirements outlined in Section 15011 of the CARES Act applied to providers and recipients of "large covered funds," which do not include funds made available under provisions of Division A of the CARES Act, where CRF appears. Treasury asserted that the only covered funds in the CARES Act are provided under Division B.

While Treasury's position on the applicability of these requirements to CRF was an early Treasury OIG concern, we addressed it by assuming responsibility for developing the GrantSolutions portal⁹ for recipient reporting. The information collected from recipients in the portal facilitates population of the Pandemic Response Accountability Committee (PRAC) website, responses to stakeholder reporting requests, and analyses needed for Treasury OIG oversight. To reduce recipient reporting burden, OMB's M-21-20 requires agencies to consult with the

⁵ *Interim Audit Update – Coronavirus Relief Fund Recipient Reporting* (OIG-20-036; May 27, 2020).

⁶ Section 15011 of the CARES Act defines large covered funds as covered funds that amount to more than \$150,000.

⁷ Section 15011 of the CARES Act defines a covered recipient as any entity that receives large covered funds and includes any State, the District of Columbia, and any territory or possession of the United States. Large covered funds are defined as covered funds that amount to more than \$150,000.

⁸ Section 15011 of the CARES Act requires each covered recipient to submit to Treasury and the Pandemic Response Accountability Committee (PRAC), no later than 10 days after the end of each calendar quarter, a report that contains (1) the total amount of large covered funds received from Treasury; (2) the amount of large covered funds received that were expended or obligated for each project or activity; (3) a detailed list of all projects or activities for which large covered funds were expended or obligated; and (4) detailed information on any level of subcontracts or subgrants awarded by the covered recipient or its subcontractors or subgrantees.

⁹ A grant management service provider under the U.S. Department of Health and Human Services.

relevant Quality Services Management Offices (QSMO),¹⁰ prior to developing new or modernized technology to support execution of ARP. The Department of Health and Human Services (HHS) is the designated agency for the Grants Management QSMO, and GrantSolutions is HHS' award management system that provides end-to-end management capabilities for financial assistance awards. PRAC officials have stated that they consider the CRF GrantSolutions information as a best practice dataset for transparency and reporting. Treasury officials are considering various software options for ARP recipient reporting and administration, including GrantSolutions and Salesforce.¹¹ These officials have told us that a decision has not been made on whether to use the existing CRF GrantSolutions reporting portal or move forward with another software solution such as Salesforce for recipient reporting under ARP programs. We believe that the best results for the ARP programs will be achieved in the area of reporting and transparency if Treasury works collaboratively with the PRAC and Treasury OIG to ensure that requirements for recipient reporting systems, including stakeholder needs are defined and understood before implementing a reporting system and approach.

According to OMB Circular No. A-130 (A-130), *Managing Information as a Strategic Resource* (July 2016), with respect to information technology (IT) investment management, agencies are required to: (1) conduct definitive technical, cost, and risk analyses of alternative design, implementation, sustainment, maintenance, re-competition, and retraining costs, scaled to the size and complexity of individual requirements; (2) consider existing Federal contract solutions or shared services when developing planned information systems, available within the same agency, from other agencies, or from the private sector to meet agency needs to avoid duplicative IT investments; and (3) ensure that decisions to improve existing information systems with custom-developed solutions or to develop new information systems are initiated only when no existing alternative private sector or governmental source can efficiently meet the need, taking into account long-term sustainment and maintenance. Furthermore, OMB Circular No. A-11 (A-11), *Preparation, Submission, and Execution of the Budget* (March 2021), states that each IT investment should demonstrate the enabling and improvement of mission and program performance by providing meaningful data and agencies must demonstrate how the investment supports a business line or enterprise service performance goal as documented in the agency's enterprise

¹⁰ The Office of Management and Budget's (OMB) M-19-16, *Centralized Mission Support Capabilities for the Federal Government* (April 26, 2019), describes the process and desired outcomes for shared services and establishes a process for designating agencies as QSMOs. An agency QSMO offers solutions that, over time, will standardize processes, reduce the technology footprint, and reduce Government-wide operating costs. Once an opportunity for centralization or sharing is identified, OMB will designate a lead agency as the QSMO to take responsibility for establishing and/or managing such capabilities.

¹¹ Salesforce is a customer relationship management platform that Treasury used in its application process for CRF recipients.

architecture or strategic plans. Documents used to manage the planning, development, implementation, and operation of IT investments and documents that demonstrate the outcomes of agency decisions should be maintained and readily available.

Accordingly, we recommend that Treasury management conduct and document an IT investment analysis as required by OMB's M-21-20, A-130, and A-11 before making the decision to implement the grants QSMO system, GrantSolutions, Salesforce, or another solution for the execution of ARP programs.

Management's Response

In its written response, Treasury management generally agreed with our recommendation. Treasury is considering various options for a Fiscal Recovery Fund reporting system and is undertaking a systems analysis in line with OMB guidance and IT management best practices. Treasury will work with OIG to help ensure that any transition in reporting requirements or systems leverages the lessons learned by OIG from managing CRF reporting and provides a satisfactory experience for recipients. Management's response is included, in its entirety, as attachment 1.

OIG Comment

Management's response meets the intent of our recommendation. Management will need to include its specific actions to address this recommendation with expected implementation dates in JAMES.

Outreach

With monitoring responsibility over the receipt, disbursement, and uses of CRF monies, our office conducted outreach sessions with CRF recipients as well as State, Local, and Tribal budget, accounting, and auditing professional organizations, reaching thousands of stakeholders. From the stakeholder outreach sessions, we received approximately 400 questions on the eligibility of CRF costs and questions on reporting requirements. To address recipient and stakeholder questions, our office created communication channels through a CARES@oig.treas.gov mailbox, a CARES Call Center, and an online CRF Helpdesk.

In addition, our office issued a number of guidance documents on reporting and record retention requirements to include the *Department of the Treasury Office of Inspector General Coronavirus Relief Fund Frequently Asked Questions Related to Reporting and Recordkeeping*.¹²

¹² *Department of the Treasury Office of Inspector General Coronavirus Relief Fund Frequently Asked Questions Related to Reporting and Recordkeeping* (OIG-CA-20-028, November 25, 2020).

We believe it is critical to take a proactive approach in conducting outreach and technical assistance to stakeholders and recipients in order to avoid misinterpretations of eligible uses of funds, reporting requirements, and record retention requirements.

Need for Performance Measures

Treasury did not require recipient reporting of performance measures for the CRF. As a result, there is no consistent way to assess the impact of CRF funding on assisting with the pandemic. While Section 15011 of the CARES Act requires quarterly reporting on the estimated number of jobs created or retained by a project or activity, a majority of CRF recipients are not using the funds for job-related purposes. Performance metrics are generally required under grant programs; however, because CRF is not structured like a grant program, results are not being measured. OMB M-21-20 stresses the importance of performance measures. It states, "*Performance planning, management, and agency reporting for ARP funding should be incorporated into agencies' existing organizational performance management routines. Public reporting should also be integrated with required performance planning and reporting to ensure alignment with the overarching agency strategic goals and objectives.*" We believe recipients' reporting of performance measures under the ARP will allow transparency around the results of pandemic relief funding.

Accordingly, we recommend that Treasury management (1) develop performance metrics to measure the effectiveness of ARP program funding in assisting with pandemic relief goals and (2) include recipient reporting requirements in written agreements to facilitate this process and ensure that needed information is collected quarterly.

Management's Response

In a written response, Treasury management generally agreed with our recommendation. Treasury will require large Fiscal Recovery Fund recipients to provide the public and Treasury with an annual performance report of the projects they are undertaking with award funds and how they are planning to ensure program outcomes are achieved in an effective, efficient, and equitable manner; the report will include key performance indicators identified by recipients and Treasury. Management's response is included, in its entirety, as attachment 1.

OIG Comment

Management's response meets the intent of our recommendation. Management will need to include its specific actions to address this recommendation with expected implementation dates in JAMES.

In conclusion, we believe that Treasury should use these lessons learned over the past year to mitigate operational and compliance risks when implementing ARP programs. If you have any questions regarding this memorandum, please contact me at (202) 486-1420.

cc: Treasury
Secretary
Deputy Secretary
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.

May 7, 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 report entitled *American Rescue Plan- Application of Lessons Learned From the Coronavirus Relief Fund* (Draft Report). Treasury appreciates OIG's efforts to promote the successful implementation of the American Rescue Plan Act of 2021 (ARPA).

ARPA established the Coronavirus State Fiscal Recovery Fund (Fiscal Recovery Fund) to provide support to state, local, and Tribal governments in their efforts to contain COVID-19 and in responding to the impact of COVID-19 on their communities, residents, and businesses. The Fiscal Recovery Fund builds on and expands the support provided to these governments over the last year, including through the Coronavirus Relief Fund (CRF). Established by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), the CRF has provided critical funding to states, local governments, and Tribal governments for necessary expenditures to address the public health emergency. Treasury is committed to ensuring the Fiscal Recovery Fund provides the American people the additional support they need in an effective and timely manner while also minimizing opportunities for waste, fraud, and abuse.

Treasury generally agrees with the recommendations in the Draft Report, which call for Treasury's implementation of the Fiscal Recovery Fund to include (1) clear and timely guidance, (2) agreements with terms and conditions, (3) an IT investment decision conducted in accordance with the Office of Management and Budget's IT management guidance and best practices, (4) proactive outreach to stakeholders and recipients, and (5) performance measures. Indeed, Treasury is already taking actions to this effect. Specifically, Treasury is:

1. **Providing recipients with clear and timely guidance.** Treasury will issue an interim final rule (IFR) shortly to provide further guidance on eligible uses and define key terms before payments are made. Treasury expects to issue subsequent guidance thereafter that will elaborate on specific elements set forth in the IFR.
2. **Requiring recipients to certify agreements with terms and conditions.** Before receiving payment, recipients will be required to certify their agreement with payment terms and conditions, including acceptance of the provisions of the IFR and applicable requirements of Title 2 of the Code of Federal Regulations. We expect to issue subsequent guidance that will further elaborate on recipients' compliance responsibilities.

3. **Conducting a reporting system alternatives analysis.** For CRF, OIG assumed responsibility for issuing reporting guidance to recipients and development and operations of the reporting portal. For the Fiscal Recovery Fund, Treasury will fulfill these responsibilities. Treasury is considering various options for performing this function and is undertaking a systems analysis in line with Office of Management and Budget guidance and IT management best practices. Treasury will work with OIG to help ensure that any transition in reporting requirements or systems leverages the lessons learned by OIG from managing CRF reporting and provides a satisfactory experience for recipients.
4. **Proactively engaging with stakeholders.** Since the passage of ARPA, Treasury has conducted significant outreach with stakeholders in advance of finalizing the program regulations and guidance, including outreach sessions with State, Local, and Tribal governments and related professional organizations. Treasury will also operate a contact center to coincide with the launch of the Fiscal Recovery Fund. The contact center will provide both call and email support. Stakeholders will be provided with the contact center information at program launch and throughout the submission process.
5. **Developing performance indicators to provide transparency and facilitate program oversight.** Treasury will require large recipients to provide the public and Treasury with an annual performance report with information on the projects recipients are undertaking with award funds and how they are planning to ensure program outcomes are achieved in an effective, efficient, and equitable manner. The report will include key performance indicators identified by recipients and mandatory indicators identified by Treasury in specific eligible use categories.

Treasury is committed to proper implementation and oversight of all of the economic relief programs associated with the coronavirus pandemic, including the Fiscal Recovery Fund, and it has recently established an Office of Recovery Programs (ORP) to perform this critical work. We appreciate the opportunity to comment on the Draft Report, and we look forward to working with you as we implement the Fiscal Recovery Fund so that it delivers critical and urgent support to the American people while also giving them confidence in the oversight and management of the funds.

Sincerely,



Jacob Leibenluft
Chief Recovery Officer