

U.S. Department of Energy
Office of Inspector General

Statement
of
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US Department of Energy

before the

U.S. House of Representatives
Committee on Energy and Commerce
Subcommittee on
Oversight and Investigations

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Introduction

Chairman Palmer, Vice Chairman Balderson, Ranking Member Clarke, and members of the sub-committee – thank you for inviting me to testify today on the oversight work that the Department of Energy Office of Inspector General (OIG) is performing regarding the Department’s Loan Programs Office (LPO).

In July 2022, the OIG warned in a special report,¹ about the risks for potential conflicts of interest and undue influence in the LPO. We further raised our concern associated with “Fast Moving Funds” when the then Inspector General, Teri Donaldson testified before this same Subcommittee in March 2023. She also appeared before the House Committee on Oversight and Accountability, Subcommittee on Economic Growth, Energy Policy, and Regulatory Affairs; the House Committee on Science, Space, and Technology; and the Senate Committee on Energy and Natural Resources to share these same concerns. Some of the OIG’s main concerns stem from the historic expansion of the LPO, as authorized in the Infrastructure Investment and Jobs Act (IIJA), the Inflation Reduction Act (IRA), and the 2023 Consolidated Appropriations Act. By my accounting, these three bills authorized an estimated \$385 billion of expanded lending authority.

I appear before you today to report that the OIG now observes potential problems regarding conflicts of interest and accelerated loan closures. The OIG also identified concerns during individual file reviews.

¹ *Special Report on Prospective Considerations for the Loan Authority Supported Under the Loan Programs Office to Improve Internal Controls and Prevent Fraud, Waste, and Abuse* (<https://www.energy.gov/ig/articles/special-report-doe-oig-22-34>)

Documentation and Controls Over Potential Conflicts of Interest in the LPO

As identified in the OIG's December 17, 2024, Memorandum for the Under Secretary of Energy for Infrastructure,² the LPO has not implemented controls sufficient to assure a regulatory and contractually compliant and effective system to manage organizational conflicts of interest. This poses a significant risk of fraud, waste, and abuse.

The LPO contracts with more than 300 contractor and subcontractor personnel to assist with loan application processing. These personnel support the LPO's review of loan applications with expertise in legal, engineering/technical, market analysis, and financial/credit aspects of loan applications as a key component of the LPO loan processing and due diligence. Also, as part of loan application packages, prospective borrowers provide the LPO with "third-party" expert reports, covering such topics as financial and credit issues and analysis, engineering and technical analysis, and market analysis. Although these third-party experts contract with the LPO, which relies upon their work as essential components of the loan application process, the prospective borrowers pay for the third-party experts' services. The OIG has an ongoing audit of the controls over potential conflicts of interest for the LPO's support contractors. In the December 2024, interim report, we noted the following:

1. The LPO does not ensure that contracting officers and their representatives identify and evaluate potential conflicts of the third-party experts. The OIG audit team observed that, although required by the Federal Acquisition Regulations, LPO did not identify and evaluate potential conflicts of interest of third-party experts that work with LPO, its contractors, and its prospective borrowers. Proper management of conflicts of interest requires identifying all parties involved in the process on both

² *Interim Findings – The Department's Loan Programs Office Is Not Managing Organizational Conflicts of Interest in Compliance With Regulations and Contractual Obligations*, December 17, 2024 (www.energy.gov/ig/articles/interim-findings-department-energy-loan-programs-office-conflicts-interest)

sides of the transaction. The federal contracting officers have an affirmative obligation to do so, but this was not done.

2. The LPO did not ensure that the contracting officers and their representatives adequately track conflict of interest disclosures or waiver requests, and did not share and cross-check that information with appropriate parties across multiple divisions of the LPO. By failing to track the parties involved in these transactions, as well as the disclosures and waiver requests, the LPO has functionally abandoned any responsibility for neutralizing or mitigating conflicts of interest.
3. LPO's contract with its support services contractor required them to develop and submit an Organizational Conflict of Interest Management Plan outlining its strategy for identifying, disclosing, and mitigating potential conflicts of interest. Although the contractor submitted a plan in October 2017, the OIG audit team found that the LPO's contracting officer's representative, who handled day-to-day oversight of the contract, did not have a copy of this plan and had taken no action to verify implementation. We found that the LPO was unaware that the contractor had not implemented crucial aspects of the plan, such as the training requirement, which for most organizations, is a key component for preventing organizational conflicts of interest. In particular, the contractor was unable to show the OIG records to indicate that it had provided training to its due diligence experts as to what constitutes a conflict of interest, and what disclosures, mitigation steps, and other measures may be needed.

Although no specific conflict of interest was identified during the course of our work, the OIG's concern that there was no infrastructure in place to identify conflicts of interest led to our recommendation to pause loan completions, pending a thorough review of the conflict-of-interest

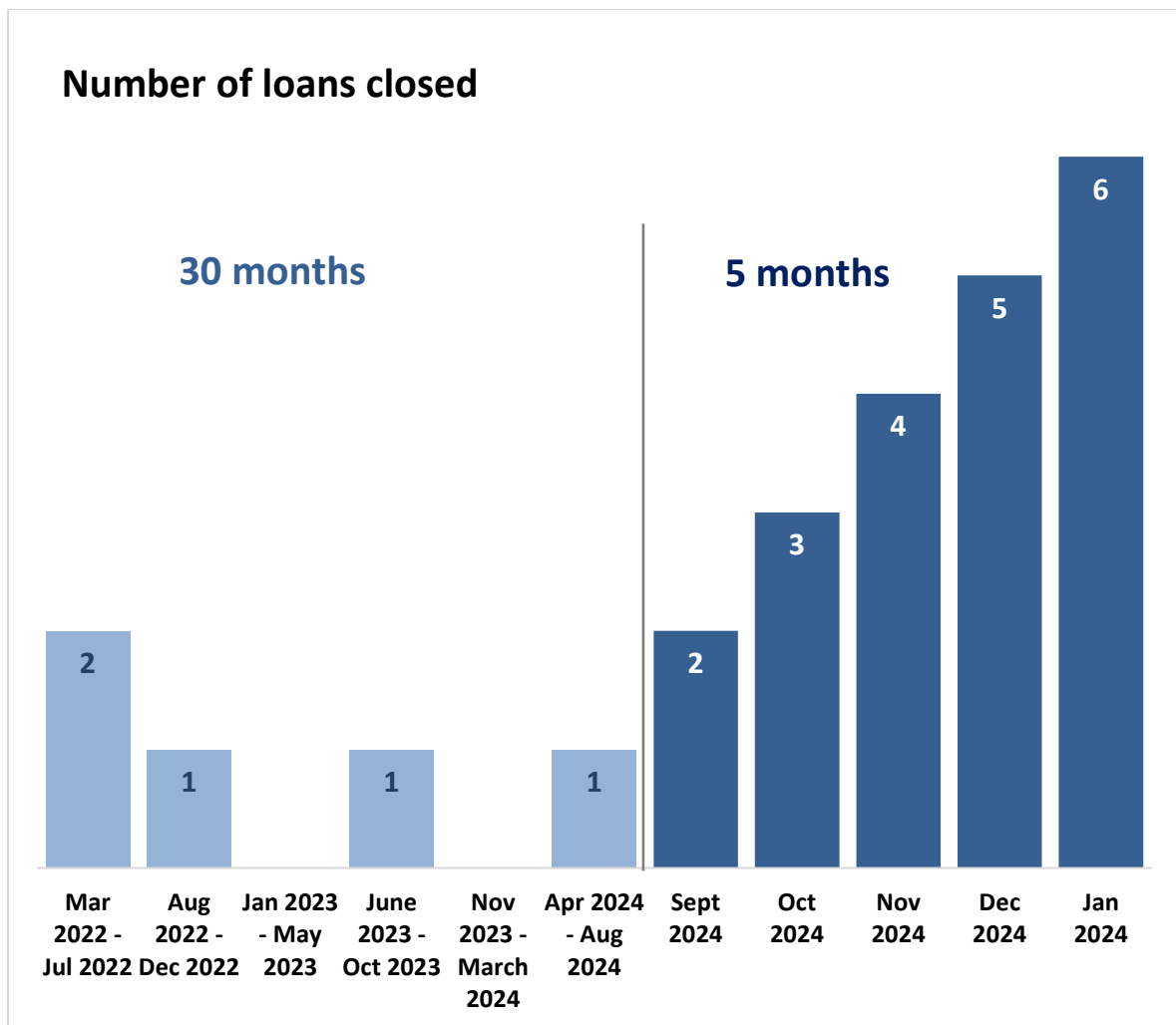
risk mitigation process. In response to our interim report, Departmental management disagreed with the findings and recommendations. At that time, the Department did not pause loan completions and, in fact, appears to have accelerated the issuance of loans and loan guarantees.

The current Department leadership acknowledges the risks associated with the issues we identified and has: 1) paused all new loan actions, and 2) developed and begun to implement a corrective action plan to address the weaknesses identified in our report. We are in receipt of LPO's draft corrective action plan and are providing comments to Departmental leadership on their plan's responsiveness to our findings. I must again note that this audit has not identified instances of actual conflicts of interest, in part, because LPO did not have the documentation that would have enabled the OIG to perform this analysis. The OIG did identify a couple of undisclosed related party issues that may warrant further scrutiny by LPO management to determine whether a conflict existed.

One final note on the OIG's Conflicts of Interest oversight – the OIG has a separate audit on this issue that is focused on the Federal LPO staff. We cannot yet share any results for this project, as it is ongoing, but will be happy to communicate our results with this subcommittee when we are finished.

Fast Moving Funds

Between November 2024 and January 2025, the Department appears to have accelerated its processing and approving of loans and loan guarantees that were under review. We observed a significant increase in loan closure actions over the last several months, as shown in the following table.



Between December 2024 and January 2025, LPO completed loans worth more than \$46 billion. The increase in pace underscores our concerns about whether it is possible to conduct robust due diligence to protect taxpayer dollars under such time pressures. The OIG recently began an effort to assess the facts and circumstances surrounding the accelerated completion and approval of loan application packages, and whether any processes were truncated. When we have completed our work, we will certainly communicate the results to this subcommittee.

OIG Loan File Reviews Identified Concerns

The OIG hired outside consultants with expertise in large project capital financing due diligence to review two recently completed loan agreements. For both projects, LPO's own hired experts identified and articulated serious red flags before the loans were closed. I cannot go into the details of these facts in this venue, because the data we reviewed is business sensitive and proprietary. However, multiple risks were identified that call into question the projects' financial and performance viability.

I can discuss how the LPO employs risk mitigation strategies and how they aligned with the two loans files our team reviewed. One mitigation measure involves structuring in "offtake contracts" or guaranteed sales agreements to assure revenue for the project. Other mitigation measures involve structuring into construction contracts terms and commitments that are written in a way to mitigate the risk of cost overruns. The projects we examined included mitigation measures for both offtake contracts and construction contracts, but their terms fell far short of the intent of such arrangements to ensure fiscal protection, often covering only 25 percent or less of needed revenue and cost. Furthermore, the mitigation measures were largely arranged with related parties relying upon shaky financial positions. The LPO's own expert advisors duly identified and called out the loan applicants' mitigation measures as insufficient and posed risks to the viability of the financial side of the project, which could result in bankruptcy.

In looking through LPO Credit Review Board meeting minutes, we observed that the LPO may not have done a thorough job of vetting, debating and weighing the loan application against the risk of default. Rather, the documented meeting minutes indicated a cursory review and willingness to approve the loan application despite the risks. Also, we observed that the LPO did not update some of their data and analysis for evolving market conditions and changes in the political landscape that would inform the long-term prospects of repayment of the loans.

The calculations performed by the OIG's consultant indicate that these losses can far exceed the anticipated losses that LPO calculated with its Credit Subsidy calculation process.

Last week, the OIG provided LPO leadership with information and analysis regarding the facts and circumstances identified by the OIG's consultant for these two loan file reviews for their information and action.

Closing Remarks

I would like to recognize the bipartisan efforts of this Committee to provide oversight on the Department, advance transparency for the taxpayer, and improve the integrity of Departmental programs. Thank you for your continued support for the independent oversight work performed by the DOE OIG. We look forward to continuing to work on behalf of the taxpayers to ensure that the Department's programs are operating effectively and efficiently, and to prevent and detect fraud, waste, and abuse. I appreciate the opportunity to testify here today, and I look forward to answering your questions.