



**Testimony of
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**Before the
House Financial Services Committee
Subcommittee on Oversight and
Investigations
U.S. House of Representatives**

**Hearing on “Holding the Biden
Administration Accountable for
Wasteful Spending and Regulatory
Overreach”**

March 8, 2023

Chairman Huizenga, Ranking Member Green, and members of the subcommittee, thank you for the opportunity, along with Mark Bialek, the Inspector General for the Federal Reserve Board and Consumer Financial Protection Bureau, and Rebecca Sharek, the Assistant Inspector General for Audit for the Securities and Exchange Commission, to discuss our oversight work to address wasteful spending in pandemic recovery programs.

In addition, recognizing the Committee's concerns regarding the Treasury Financial Crimes Enforcement Network (FinCEN) stewardship of Bank Secrecy Act (BSA) information, I offer an update of our current and planned oversight work.

The Department of the Treasury (Treasury or the Department) has been instrumental to the implementation of economic relief provisions of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), the Consolidated Appropriations Act of 2021 (CAA, 2021), and the American Rescue Plan Act (ARPA). As a result, Treasury's responsibilities and workloads have expanded enormously since 2020. Treasury is tasked with disbursing over \$655 billion¹ in aid to more than 35,000 recipients, including state, local, territorial, and tribal government entities in a relatively short period of time.

My office is responsible for oversight of 12 pandemic recovery funding programs, created by the pandemic legislation. My testimony today will focus on four programs where our oversight has found improper payments, fraud, questioned costs, and internal control concerns. These programs include the Air Carrier Payroll Support Program, the Coronavirus Relief Fund, the Emergency Rental Assistance Program, and the State and Local Fiscal Recovery Fund. Through my office's work we have identified questioned costs of \$2.6 billion thus far for unsupported and unallowable charges to the Coronavirus Relief Fund, and based on data available at this time, we estimate that improper overpayments for the Air Carrier Payroll Support Program could approach \$100 million.

Treasury Office of Inspector General Overview

My office provides independent audit and investigative oversight of Treasury's programs and operations and that of its bureaus, excluding the Internal Revenue Service (IRS), the Troubled Asset Relief Program, and certain pandemic programs under the jurisdiction of the Special Inspector General for Pandemic Recovery. Our current on-board staffing level is 242 including 180 personnel in the Office of Audit and 43 personnel in the Office of Investigations. As a result of the pandemic, my office has hired staff and re-oriented our work plans to meet these expanded responsibilities. In addition to traditional oversight, my office was given non-traditional statutory

¹ Amount excludes Economic Impact Payments distributed by the Internal Revenue Service and support to small businesses under the Paycheck Protection Program administered by the Small Business Administration.

responsibilities for the Coronavirus Relief Fund and the Emergency Rental Assistance Program including programmatic monitoring and recoupment authorities.

In July 2021 we established a data analytics capacity within our Office of Audit which enables us to better manage the enormous quantities of pandemic information we collect, and to use the data to better understand how the programs are operating, and identify problem areas in the programs. Our annual budget for fiscal year 2023 is \$48.8 million, and during 2020 and 2021, my office received \$47.1 million in dedicated no-year and multi-year funding for oversight of 4 of the 12 pandemic programs. Notably, we did not receive any dedicated funding for oversight of the \$350 billion State and Local Fiscal Recovery Fund.

Improper Payments and Fraud

Improper payments are any payments that should not have been made or were made in an incorrect amount, such as overpayments and underpayments. All fraud is an improper payment (since it should not have been paid out), but not all improper payments are fraud - it may be a mistake by an agency or a result of confusion about payment guidance. In pandemic programs, every dollar reaching an ineligible recipient or disbursed contrary to the program's purpose lessens the effectiveness of the program and reduces its success. Reducing improper payments across government programs ensures taxpayer dollars are used more effectively and efficiently. Programs must have proper controls in place to reduce improper payments, and detect and prevent fraud. Each year my office audits Treasury's improper payment program. With the exception of the IRS, Treasury has complied with improper payment statutes.

The Department has long held that the four refundable tax credits (RTCs)—the Earned Income Tax Credit, American Opportunity Tax Credit, Additional Child Tax Credit, and net Premium Tax Credit—which have error rates similar in concept to “significant improper payments,” are not “payments” as intended under the improper payments legislation but are more appropriately addressed in the tax gap estimate. Treasury officials assert that erroneous claims for RTCs are more appropriately referred to as “overclaims.” Treasury officials believe that legislative change is needed related to these issues.

In addition, the Government Accountability Office (GAO) recommended that for new programs, certain changes should be made in improper payment reporting. Specifically, GAO recommended that all new Federal programs distributing more than \$100 million in any one fiscal year be designated as “susceptible to improper payments,” and, thus, subject to more timely improper payment reporting requirements; and agencies should be required to report improper payment information in their annual financial reports. We agree with these recommendations. Treasury received approval from the Office of Management and Budget (OMB) in April 2022 waiving compliance with certain improper payment requirements for pandemic programs. We have found significant improper payments in the Air Carrier Payroll Support Program and do not agree that the requirements should have been waived.

Treasury's Do Not Pay Program

In April 2011, Treasury's Bureau of the Fiscal Service (Fiscal Service) established the Do Not Pay Business Center to support Federal agencies in their efforts to reduce the number of improper payments made through programs funded by the Federal Government. The Do Not Pay Business Center includes the Do Not Pay portal and Data Analytics Services to help agencies identify ineligible recipients and prevent fraud or errors before making payments or awards.

Since 2014, my office has conducted three audits² related to the Do Not Pay Program and currently has a corrective action verification underway. In our past work, we noted that Fiscal Service was facing challenges in obtaining better death information, including full access to the Social Security Administration's Death Master File, for the Do Not Pay Business Center. Additionally, Fiscal Service has not obtained complete access to the Department of Housing and Urban Development (HUD) database, Credit Alert Interactive Voice Response System (CAIVRS) regarding information reported by the Department of Education.

HUD's CAIVRS is a shared database comprised of information reported from six Federal agencies and it is required by the Improper Payments Elimination and Recovery Improvement Act of 2012 to be reviewed by the program prior to the release of any Federal funds to eligible recipients. We encouraged Fiscal Service to continue working with the Department of Education to obtain full access to the required CAIVRS dataset.

To overcome the challenges of obtaining better death data, Fiscal Service submitted legislative proposals to Congress seeking access to the full Death Master File. On December 27, 2020, Congress enacted the CAA, 2021, which amended the Social Security Act to allow the Social Security Administration to share its full death data with the Do Not Pay program for a 3-year period starting no later than December 27, 2023. As this access is only temporary, Fiscal Service plans to seek a permanent legislative change for access to the full death data. We concur with the Department's decision to pursue a permanent legislative change for this necessary information to prevent improper payments.

Questioned Costs

In addition to our work related to Treasury's management of improper payments and the Do Not Pay program, we also review the pandemic programs for questioned costs. According to the Code of Federal Regulations,³ a questioned cost is a cost that is questioned by the auditor because of an audit finding:

² OIG-15-006, (November 6, 2014), OIG-16-042, (May 18, 2016), and OIG-20-025, (January 28, 2020)

³ 2 CFR § 200.84 – Questioned Cost

- (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.

In our work on pandemic programs, the questioned costs primarily relate to the grantees' use of Federal funds. As mentioned previously, the majority of grantees for Treasury pandemic programs are state, local, tribal, and territorial governments.

Overview of Specific Programs

My office has been engaged in pandemic oversight since the passage of the CARES Act in March 2020. Significant statutorily mandated work has been performed on the Air Carrier Payroll Support Program, the Coronavirus Relief Fund, and the Emergency Rental Assistance Program. Although my office does not have specific statutory mandates related to the State and Local Fiscal Recovery Program, we are performing self-directed work on this \$350 billion pandemic program. We have found improper payments including fraud, questioned costs, and root causes of these issues. In coordination with the Department, we will aggressively seek recoupment from the appropriate parties for monetary improper payments and grantee costs that we question and that are ultimately disallowed.

Air Carrier Payroll Support Programs

The CARES Act Air Carrier Payroll Support Program (PSP) required Treasury to provide financial assistance to passenger and cargo air carriers and respective contractors for the continuation of payments of employees' wages, salaries, and benefits. CAA, 2021 and ARPA provided additional funding for PSP for a total of \$63 billion under all three acts. The legislation required Treasury to provide financial assistance to passenger air carriers that report salaries and benefits to the Department of Transportation (DOT) (referred to as 241 carriers). For air carriers that do not report such data to DOT (referred to as non-241 carriers) and contractors, financial assistance is provided based on information provided by the air carrier or contractor using sworn financial statements or other appropriate data as to the amount of wages, salaries, benefits, and other compensation paid to employees.

Treasury Office of Inspector General (OIG) is statutorily mandated to conduct certification audits of non-241 carriers and contractors to assess the accuracy, completeness, and sufficiency of "sworn" financial statements or other data used to certify the wages, salaries, benefits, and other compensation amounts submitted to and approved by Treasury. In our oversight of the first air carrier payroll support program

under the CARES Act, we identified a systemic problem in how the non-241 air carriers and contractors were reporting their eligible expenses for executive compensation and employer side payroll taxes, which would serve as the basis for their receipt of funds. Treasury relied upon awardee self-certification of these amounts.

We noted that pervasive improper payments were being made as a result of unclear guidance on the definition of executive compensation and the treatment of employer side payroll taxes in the application for funds. In addition, the use of self-certified financial data related to executive compensation and other costs contributed to the improper payments. We brought this to the attention of the program's administrators at Treasury in December 2020, which led to attempts to clarify guidance and have non-241 recipients and contractors re-certify their information. Again, this certification was a self-certification with no independent Treasury review of the financial information.

As our work has continued, we have determined that the corrective action employed by Treasury was only partially effective and we are currently working with the Department to get a statistically reliable estimate of improper payments. Amounts awarded for non-241 carriers and contractors approximates \$9.6 billion. Based on data available at this time, we estimate that improper overpayments could approach \$100 million. We have and will continue to recommend that Department officials seek recoupment from the appropriate parties for these improper payments.

Coronavirus Relief Fund

The CARES Act established the Coronavirus Relief Fund (CRF) and appropriated \$150 billion for making payments to states, territories, tribal governments, and qualifying units of local government. CRF awardees were to use funds provided 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 31, 2021, or December 31, 2022 for tribal entities. All non-tribal awardees are in the closeout phase and tribal governments are expected to closeout awards by July 10, 2023.

In addition to traditional audit and investigative oversight, the legislation gave my office expanded statutory responsibilities for CRF, including programmatic monitoring and recoupment authorities when we have determined that funds have not been used in accordance with program requirements. Carrying out this expanded responsibility, my office stood up the online portal for quarterly reporting from the states, territories, tribes, and local governments. The CARES Act was enacted on March 27, 2020, and we had the reporting portal available for over 800 awardees by September 1, 2020.

Through our reviews of quarterly awardee reporting, audits, and desk reviews, we have identified questioned costs of \$2.6 billion thus far for unsupported and unallowable charges to CRF. We expect additional questioned costs as we complete our work over the next two years. We have over 40 desk reviews and audits of CRF awardees

underway. Desk reviews are a part of our monitoring authority over the CRF program. We select a sample of CRF transactions and review the recipients' documentation to sufficiently support the use of funds. This sampling of a recipient's uses of CRF funds enables us to determine the level of risk of unauthorized or improper use, so as to focus our full-scope audit resources most efficiently.

Our CRF work thus far has identified internal control deficiencies or other noncompliance matters, including:

- Expenditures outside the period of performance (services or purchases before/after the allowable periods to obligate funds)
- Lack of supporting documentation
- Non-compliance with procurement policies and procedures to include verifying vendor suspension and debarment status
- Inadequate sub-recipient monitoring
- Unallowable costs charged
- Payroll expenses not supported – documentation that expenses are substantially dedicated to COVID-19 response

While these findings relate to the CRF program, due to the similarities in the grantee population, we believe that these types of findings will likely occur in other Treasury programs if not corrected by grantees.

During the closeout of this program my office is working the remaining 115 of over 425 hotline complaints received, completing audits and desk reviews, focusing on Single Audit Act findings resolution, and ensuring that all questioned costs are identified. Please note that for questioned costs, during closeout we will allow the grantee to correct any documentation deficiencies and replace unallowable costs with other allowable costs that have not been charged to other Federal programs. Once a cost is questioned, we will work with the Department on a determination of disallowance after receiving any additional information from the grantee. And once a cost is disallowed we will seek recoupment on behalf of the Federal Government. Due to our process to work with grantees on questioned costs for support or other allowable charges, we do not anticipate that the full \$2.6 billion of questioned costs will be recouped.

Emergency Rental Assistance Programs

Treasury established the Emergency Rental Assistance Program (ERA) authorized under CAA, 2021 and ARPA. Total appropriations of \$47 billion were approved for grants to states, territories, tribal governments, and units of local government with populations of 200,000 or greater to pay for rent, utilities, and other housing-related expenses and arrears for eligible households. My office is conducting an audit of Treasury's implementation of the program where we have noted concerns with an overall delayed stand-up of the grantee reporting portal and Treasury's compliance monitoring functions, thus impeding monitoring and audit activities.

The ERA program has generated a large amount of media coverage and critical comment, in addition to the receipt by our Office of Investigations hotline of approximately 2,000 complaints alleging ineligible recipients, improper uses of funds, or problems with program administration. We have developed a cross-functional review team, consisting of auditors, investigators, and legal personnel, to review, process, and resolve these complaints. Complaints are recommended for an audit, investigation, or referral to the grantee, Treasury program office, or local law enforcement.

This cross-functional review team was fully staffed as of February 2023. To date, of the over 2000 complaints received, 514 are in process, and over 300 have been reviewed by staff and are ready for management to recommend final disposition. The cross-functional review team receives approximately 100-150 ERA complaints per month. We expect that our work in this area over the next year will uncover fraud and questioned costs. In coordination with the Department, we will aggressively seek recoupment from the appropriate parties.

The ERA legislation gives my office recoupment authority only for the first ERA program authorized under CAA, 2021. The later extension authorized under ARPA leaves recoupment in the discretion of the Department. While we would hope that my office and the Department will be in agreement on a recoupment rule, this potential dichotomy does exist. My office will aggressively seek recoupment from the appropriate parties in accordance with our authority under CAA, 2021. In addition, we encourage state, local, territorial, and tribal authorities to pursue available prosecution and civil remedies to protect their equities in these funding programs, as the Federal Government cannot and should not substitute for state law enforcement resources.

State and Local Fiscal Recovery Program.

ARPA authorized \$350 billion for payments to states, territories, tribes, and local governments to support the COVID-19 public health response and support economic recovery including assistance to households, small businesses and nonprofits, aid to impacted industries, and premium pay to eligible workers. Recipients must obligate all funds by December 31, 2024 and expend funds by December 31, 2026.

In May 2021 my office advised the Department of how lessons learned in its administration of the CRF could improve the stand-up and administration of the State and Local Fiscal Recovery Fund (SLFRF) program. We noted the value and necessity of clear and timely guidance to recipients on proper uses and compliance with reporting requirements; the value of formal agreements with terms and conditions in order to mandate conditions for receipt of funds; the need to balance transparency and recipient burden in reporting; and the need for outreach by program administrators and establishment of performance metrics for the program.

Treasury OIG is currently conducting an audit of Treasury's implementation of the SLFRF program where we have noted concerns with an overall delayed stand-up of

Treasury's portal for grantee reporting and Treasury's compliance monitoring functions, thus impeding monitoring and audit activities.

Conclusion – Pandemic Recovery Program Oversight

Emergencies such as COVID-19 heighten oversight challenges as agencies work to stand-up programs and distribute large-scale funding quickly. My office has identified lessons learned that are consistent with findings made by GAO and the Council of the Inspectors General on Integrity and Efficiency's (CIGIE) Pandemic Response Accountability Committee (PRAC). Specifically, we found:

- Agencies should not solely rely on self-certification by entities without other validation controls
- Relief guidance needs to be accurate and issued quickly
- Failure by agencies and grantees to implement or effectively modify critical internal controls created risks for pandemic programs
- Failure to stand up timely reporting capabilities created program monitoring challenges and increased program risk
- Watchdogs need timely access to data to find fraud
- Program integrity is enhanced by the availability of civil remedies, including the Program Fraud Civil Remedies Act (PFCRA) and suspension and debarment; as well as a commitment to civil and criminal enforcement by the Department of Justice and by state, territorial, local, and tribal authorities.

Our pandemic oversight, monitoring, and recoupment work will continue for several more years. Thus far, we have found PSP improper overpayments that could approach \$100 million and estimated questioned costs for the CRF program of \$2.6 billion. In addition, we are at the early stages of working over 2000 complaints on the ERA program and await reliable data for both the ERA and SLFRF programs to enable our oversight activities.

As mentioned, my office has noted concerns with an overall delayed stand-up of Treasury's portal for grantee reporting and Treasury's compliance monitoring functions for the ERA and SLFRF programs, thus impeding monitoring and audit activities. The use of data analytics and risk modeling is critical in efficiently and effectively conducting oversight activities.

With the proper resources, my office is well-positioned and committed to ensuring that essential pandemic funding is used properly and reaches the intended recipients.

Oversight of the Financial Crimes Enforcement Network

Treasury OIG has underway a series of related audit engagements that address FinCEN's management of the BSA Database; specifically, our audit objective is to determine if FinCEN manages BSA data access, use, and retention in compliance with laws, regulations, and Treasury policies and procedures.

This work has been separated into four major sections: (a) Suppression; (b) User Access; (c) Memoranda of Understanding (MOUs), including Bulk Data; and (d) Monitoring. Suppression is FinCEN's process to restrict users' access to specific records in the BSA database. An example of when this is necessary is when a law enforcement agency does not want to reveal a clandestine agent's identity. Bulk Data Access, also known as Integrated Agency Access is provided in accordance with an MOU. It provides the requesting agency access to a full download of BSA information on a regular basis rather than individual FinCEN Query searches. With bulk data access, FinCEN can no longer (i) control users' access to that data, and (ii) review users' activity on external systems. For this reason and others, it is critical that FinCEN has updated MOUs with its users and that data is monitored for proper access and use.

Suppression

My office has found that FinCEN's processing and documentation of requests for suppression was untimely and inadequate and FinCEN did not ensure all agencies using bulk data removed suppressed records from their databases. Regarding FinCEN's processes for receiving, vetting, and managing recipients' requests for suppression of information in BSA reports, our work demonstrates that FinCEN:

- does not have a dedicated email for receiving suppression requests. Requests are received, tracked, documented, and initiated solely by the FinCEN Resource Center Director;
- does not consistently conduct and maintain complete records reflecting internal deliberations and outgoing communications; and
- has not established a timeliness metric for accomplishing requested suppression of records.

User Access

My office's audit of user access to BSA data looks at FinCEN's process to grant and disable users' access. Approximately 13,000 external users have direct access to FinCEN's database and approximately 15,000 users from 11 external agencies have access to bulk BSA data housed on external/non-FinCEN systems. We found that FinCEN:

- does not track and enforce requirements to control, and cancel when necessary, access to shared BSA information;
- has not ensured external agencies provided proper notification when disabling accounts;
- has not ensured that BSA data user access was disabled timely or appropriately;
- has not maintained proper records of internal FinCEN users' disabled dates; and

- has not required external agency coordinators to identify in the FinCEN Portal whether users have background checks.

MOUs

Our work on MOUs covers FinCEN's process to establish and memorialize written agreements with agencies requesting direct access to the BSA database. FinCEN has approximately 470 MOUs, mainly with local, state, and federal law enforcement and Intelligence components. Our work found that FinCEN:

- did not execute and maintain/update MOUs in accordance with Standard Operating Procedures (SOP). SOPs did not clearly identify the type of access they apply to or cover all types of access offered,
- did not maintain updated and adequate SOPs, and did not periodically assess agencies' need for bulk data, and
- could not readily account for all MOUs in place.

At least one instance of bulk data provision has occurred without execution of an MOU. MOUs are not routinely updated, and the body of MOUs needs more rigorous tracking as well as a means to determine the continuing need and justification for provision of BSA bulk data to other organizations.

Monitoring

Lastly, my office's work on monitoring addresses FinCEN's process to ensure its BSA database is accessed only by authorized users for authorized purposes. In addition, monitoring helps ensure that users are complying with their MOU obligations. Our work found that FinCEN;

- did not inspect user agencies use of data in accordance with policies and procedures,
- did not document supervisory reviews of its monitoring process,
- did not adequately or regularly review anomalous user query activity, and
- does not have a penalty table to address MOU violations.

In particular, FinCEN did not monitor bulk data users' activity. This is concerning because once FinCEN provides an agency with bulk data access, it can no longer control that agency's users' access to that data, nor review those users' search and download activity on their external agencies' bulk data systems.

Our field work is largely completed, as are our discussions with FinCEN management. We have over 30 findings and recommendations for FinCEN management as a result of these audits. We expect that our audit reports on these engagements will be issued throughout 2023, starting in the spring.

Thank you for the opportunity to present our oversight program. I'm ready to address your questions about our work.

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Mr. Delmar is an attorney with over 40 years of federal and military experience. Currently, he serves as the Acting Inspector General of the Treasury, and leads 240 auditors, investigators, program analysts, attorneys, and support professionals in the oversight of Treasury programs and operations. He has led the expansion of professional staffing and development of audit and investigative protocols to provide oversight of new pandemic-related fund disbursement programs, successfully managing the transition of the office to a completely remote work environment in response to the COVID-19 pandemic, despite undertaking significantly expanded oversight jurisdiction and assuring continuation of existing oversight responsibilities. He also supported the stand-up and operation of the Pandemic Response Accountability Committee (PRAC) established by the Coronavirus Aid, Relief, and Economic Security Act to bring together the Inspectors General of affected federal agencies.

Mr. Delmar brings significant experience to his role as Acting Inspector General, a role he has filled since 2019, having been Counsel to the Inspector General since 1999. In that capacity, he provided comprehensive legal services to the investigative, audit, management and Equal Employment Opportunity programs of Treasury Office of Inspector General (OIG) advising on audit standards, criminal law and procedure, procurement law, personnel law, and other statutes, regulations, and policies relevant to OIG operations and Treasury programs.

As Deputy Inspector General, he has individually conducted special inquiries responsive to Congressional, Intelligence Community, and Office of Special Counsel requests.

Prior to his appointment as Counsel and Deputy Inspector General, he spent 10 years as a Technical Assistant and Branch Chief with the Criminal Tax Division in the Internal Revenue Service (IRS) Office of Chief Counsel, where he reviewed proposed criminal tax prosecutions and provided training to investigators and attorneys on tax, money laundering, Bank Secrecy Act, and forfeiture law, in addition to supervising attorney staff.

Mr. Delmar has also served as a Trial Attorney with the IRS Office of Chief Counsel and the Tax Division of the Department of Justice. He is retired from the Judge Advocate General's Corps, U.S. Navy Reserve.

Mr. Delmar is a graduate of Georgetown University and the New York University School of Law.