OFFICE OF
INSPECTOR GENERAL

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

May 27, 2020

OIG-20-036

MEMORANDUM FOR DANIEL J. KOWALSKI
COUNSELOR TO THE SECRETARY

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

SUBJECT: Interim Audit Update – Coronavirus Relief Fund Recipient Reporting

On March 30, 2020, we initiated an audit of the Department of the Treasury's (Treasury) implementation of the Coronavirus Relief Fund under Title VI of the Social Security Act, as amended by Title V of the *Coronavirus Aid, Relief, and Economic Security Act* (CARES Act), hereinafter referred to as Title V of the CARES Act.[1] The objective of our audit is to assess Treasury's implementation activities to include the establishment of policies, procedures, and other terms and conditions for making payments to States and Tribal governments and to units of local governments that are required to certify proposed use of funds. The scope of our audit includes, but is not limited to, Treasury's implementation activities from March 27, 2020, date of enactment, through April 27, 2020, the date mandated for making Coronavirus Relief Fund payments.

As part of our audit work to date, we (1) reviewed Title V provisions of the CARES Act related to administering payments from the Coronavirus Relief Fund; (2) reviewed an example of a state and a local government electronic payment form submitted for Coronavirus Relief Fund payments; (3) reviewed Treasury's *Coronavirus Relief Fund Guidance for State, Territorial, Local, and Tribal Governments;* (4) reviewed Treasury's *Coronavirus Relief Fund Frequently Asked Questions;* (5) reviewed Treasury's certification form for units of local government recipients; and (6) interviewed as well as corresponded with Treasury officials responsible for implementing the Coronavirus Relief Fund payments.

Based on our audit work to date, and due to the importance of transparency and accountability surrounding the use of relief funds, we are sharing our initial finding and recommendation prior to completion of all audit work. We believe this interim reporting is important for your consideration prior to making additional payments to Coronavirus Relief Fund recipients.

[1] P.L. 116-136 - *The Coronavirus Aid, Relief, and Economic Security Act*

Background

Title V of the CARES Act establishes the Coronavirus Relief Fund and appropriates $150 billion for making payments to States, Tribal governments and qualifying units of local government. It also requires the Secretary of the Treasury to make payments no later than 30 days after the date of enactment. Payments are to be made in accordance with requirements outlined in Title V, of which $3 billion is reserved for payments to the District of Columbia and U.S. territories and $8 billion is reserved for payments to Tribal governments. No State will receive a payment of less than $1.25 billion.

The CARES Act stipulates that a State, Tribal government, and unit of local government shall use the funds provided under a payment made under Title V to cover only those costs of the State, Tribal government, or unit of local government 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.

Treasury Office of Inspector General (OIG) Finding

To meet the requirement in the CARES Act that payments be made to recipients of the Coronavirus Relief Fund within 30 days of enactment, Treasury provided an electronic form on its website for recipients to submit payment information and supporting documentation. Treasury required governments to submit completed payment materials before April 18, 2020. Qualifying units of local government were also required to complete a certification stating among other things, that the funds provided will only be used for eligible purposes in accordance with the CARES Act. Treasury requested qualifying units of local government to submit their certifications between April 13, 2020 and April 18, 2020. State recipients were not required to complete a certification prior to receiving funds. After receiving recipient payment information and supporting documentation, Treasury disbursed initial payments from the Coronavirus Relief Fund. Treasury disbursed funds in the form of direct payments rather than financial assistance (i.e., grants). Other than the certifications made by qualifying units of local government, there were no other agreements or terms and conditions established between Treasury and the Coronavirus Relief Fund recipients. Without any terms and conditions in place for receipt of Coronavirus Relief Funds, Treasury has not notified recipients of the reporting requirements outlined in Section 15011 of the CARES Act, *Reporting on*

the Use of Funds. Furthermore, as required by the CARES Act, Treasury has not provided user-friendly means for recipients to meet reporting requirements.

Section 15011 of the CARES Act, requires each covered recipient[2] to submit to Treasury and the Pandemic Response Accountability Committee (PRAC),[3] no later than 10 days after the end of each calendar quarter, a report that contains (1) the total amount of large covered funds[4,5] 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. Section 15011 further requires Treasury, in coordination with the PRAC and the Office of Management and Budget (OMB), to provide user-friendly means for covered recipients to meet Section 15011 reporting requirements.

On April 10, 2020, OMB issued M-20-21, *Implementation Guidance for Supplemental Funding Provided in Response to the Coronavirus Disease 2019 (COVID-19).* Appendix A of this guidance, *Agency Reporting Instructions for COVID-19-Related Funding* describes steps agencies should take to implement the requirements of Sections 15010 and 15011 of the CARES Act including the requirements that Federal agencies and recipients report on the use of covered funds, and agencies, in coordination with OMB and the PRAC, must provide user-friendly means for recipients to meet these requirements.

As covered recipients, the recipients of the Coronavirus Relief Fund are required to follow the reporting requirements outlined above. Treasury's decision to disburse funds from the Coronavirus Relief Fund in the form of direct payments instead of grants limits the ability of recipients to report under existing mechanisms as outlined in OMB's M-20-21. In addition, without the use of agreements with terms

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[2] Section 15011 of P.L. 116-136 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.

[3] Section 15010 of P.L. 116-136 established the Pandemic Response Accountability Committee within the Council of Inspectors General on Integrity and Efficiency to promote transparency and conduct and support oversight of covered funds and the coronavirus response to (1) prevent and detect fraud, waste, abuse, and mismanagement; and (2) mitigate major risks that cut across program and agency boundaries.

[4] Section 15010 of P.L. 116-136 defines covered funds as any funds, including loans, that are made available in any form to any non-Federal entity, not including an individual, under Public Laws 116-123, 127, and 136, as well as any other law which primarily makes appropriations for Coronavirus response and related activities.

[5] Section 15011 of P.L. 116-136 defines large covered funds as covered funds that amount to more than $150,000.

and conditions requiring recipient reporting, as well as the prescribed means for recipients to report, there is the risk that reporting will not be done as required by the CARES Act resulting in a lack of transparency surrounding recipients' use of funds. As Treasury has already disbursed Coronavirus Relief Fund payments to certain covered recipients, unless mechanisms are immediately established to require and receive recipient reporting, there will be a loss of transparency and accountability over the use of Coronavirus Relief Fund payments.

Treasury Office of General Counsel Response to Finding

We shared our concerns over the lack of transparency and accountability on the part of recipients with Treasury officials. In a response dated May 7, 2020, (included as attachment 1), the Office of General Counsel provided a legal analysis of the applicability of the reporting requirements outlined in Section 15011 of the CARES Act, as they relate to the Coronavirus Relief Fund. In the legal analysis, it is noted that the CARES Act, which does not require grant or other agreements with recipient governments, makes the reporting requirements in Section 15011 applicable only to providers and recipients of "large covered funds," which do not include funds made available under provisions of Division A[6] of the CARES Act, where Title V appears. The analysis also asserted that, while Section 15011's reporting requirements do not apply beyond Division B of the CARES Act, the programs established under Division A are nevertheless subject to substantial oversight and transparency measures tailored to the individual programs involved. Agency Counsel asserts that the structure of the CARES Act thus reinforces what the definition of covered funds plainly says: the only covered funds in the CARES Act are provided under Division B. Nevertheless, Treasury officials expressed commitment to facilitating our office's oversight role over Title V, including working with our office on developing recipient reporting needs.

Treasury OIG Recommendation

Reasonable minds could differ on Agency Counsel's legal analysis, including the distinctions between CARES Act Divisions A and B. The Coronavirus Relief Fund program at issue here, while contained in Division A, clearly involves an appropriation of funds, as do programs funded in Division B. The impact of Agency

[6] The CARES Act is organized in two Divisions. Division A, *Keeping Workers Paid and Employed, Health Care System Enhancements, and Economic Stabilization,* contains six titles, including Title V, *Coronavirus Relief Funds.* Division B, *Emergency Appropriations for Coronavirus Health Response and Agency Operations* provides supplemental appropriations. Section 15011 of the CARES Act is in Division B.

Counsel's position on this parsing of Division A and B of the CARES Act is that it negates Coronavirus Relief Fund recipient reporting requirements outlined in Section 15010 and 15011 of Division B. This position negatively impacts our office's ability to efficiently and effectively carry out oversight responsibilities.[7] Notwithstanding this, we choose to focus on the Office of General Counsel's analysis and stated commitment to facilitate OIG's important oversight and monitoring role for Coronavirus Relief Funds and to work with OIG on our reporting needs.

Accordingly, we recommend that Treasury management support our office in accomplishing our monitoring and oversight responsibilities in the following ways: (1) assist in communications with Coronavirus Relief Fund recipients on matters that include, but are not limited to, communications of reporting and record keeping requirements and other audit inquiries, as needed; (2) ensure that Treasury maintains communication channels with recipients to obtain and address post-payment inquiries regarding specific payments; and (3) continue to update Coronavirus Relief Fund guidance and disseminate to recipients as needed.

Management's Response

In a written response, management expressed its commitment, among other things, to ensuring transparency, accountability, and adherence to all statutory requirements in connection with the CARES Act and stated that it has taken steps to effectuate reporting and oversight measures. Management also stated that Treasury personnel involved in CARES Act implementation will continue to work with OIG in furtherance of our shared commitment to these ends. Management acknowledged that the inapplicability of section 15011 will affect the OIG's oversight role and noted strong support in OIG's ability to request and access any necessary CRF recipient information to perform critical Title V responsibilities. With respect to the report's recommendation, management stated appreciation of the productive discussions with OIG on implementation issues and welcomes the opportunity to consider a more specific proposal from OIG concerning its recipient reporting needs and is confident that both Treasury and OIG can develop an approach that meets shared objectives and responsibilities. Management's response is included, in its entirety, as attachment 2.

[7] Title V of the CARES Act subsection (f) assigned Treasury OIG with responsibility for monitoring and oversight of the receipt, disbursement, and use of funds and recoupment authority if the Treasury OIG determines that a State, Tribal government, or unit of local government has failed to comply with subsection (d) of the Act. This unique authority gives Treasury OIG the ability to monitor recipients and establish reporting and record keeping requirements.

OIG Comment

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

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We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

We assessed internal controls and compliance with laws and regulations necessary to satisfy the audit objective. In particular, we assessed the internal control component *Control Activities* and its underlying principles "Design Control Activities" and "Implement Control Activities." We noted no deficiencies in internal control as a result of our review. However, because our review was limited to this internal control component and underlying principles, it may not have disclosed all internal control deficiencies that may have existed at the time of this audit.

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

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

Attachment 1: Treasury Office of General Counsel Legal Analysis

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

GENERAL COUNSEL

May 7, 2020

TO: Office of the Inspector General

FROM: Office of General Counsel

SUBJECT: Coronavirus Relief Fund Recipient Reporting

We appreciate the opportunity to review the draft memorandum (dated May 2, 2020) prepared by the Office of the Inspector General (OIG) concerning aspects of Treasury's implementation of the Coronavirus Relief Fund (Fund), which is established under Title V[1] of Division A of the Coronavirus Aid, Relief, and Economic Security (CARES) Act. This memorandum provides comments on the draft from Treasury's Office of General Counsel. The Office of General Counsel within the Office of Management and Budget (OMB) has reviewed this memorandum and concurs in its conclusions.

Pursuant to the terms of Title V of Division A of the CARES Act, Treasury has made direct payments from the Fund to State, local, and Tribal governments. The OIG draft states that making direct payments to these entities, rather than providing funds as grants pursuant to grant agreements, "limits the ability of recipients to report under existing mechanisms" and that "without the use of agreements with terms and conditions requiring recipient reporting, as well as the prescribed means for recipients to report, there is the risk that reporting will not be done as required by the CARES Act." Draft at 3-4. It opines that Treasury has "neither notified nor required recipients of the reporting requirements outlined in Section 15011 of the CARES Act" and "has not provided user friendly means for recipients to meet reporting requirements." *Id.* at 2-3. It recommends that Treasury "immediately enter into agreements with Coronavirus Relief Fund recipients to require recipient reporting of large covered funds" and work with OMB and the Pandemic Response Accountability Committee (PRAC) "to provide user-friendly means for recipients to report their data as required by Section 15011 of the CARES Act." *Id.* at 4.

Treasury is fully committed to ensuring appropriate transparency, accountability, and adherence to all statutory requirements in connection with the CARES Act and has taken steps to effectuate reporting and oversight measures established under the statute. Treasury personnel involved in CARES Act implementation will continue to work with OIG in furtherance of the shared commitment to these ends and welcome additional input from OIG on appropriate measures to pursue them, particularly measures to facilitate OIG's unique statutory role in auditing use of Title V funds.

As explained below, however, the Office of General Counsel respectfully disagrees with the legal analysis underlying OIG's draft memorandum. The CARES Act, which does not require grant or other agreements with recipient governments, makes the reporting requirements in section 15011 applicable only to providers and recipients of "large covered funds," which do not

[1] Although the OIG draft refers to the Fund as being established under Title VI of the CARES Act, it is Title V of the CARES Act's Division A that creates the Fund.

include funds made available under provisions of Division A of the Act, where Title V appears. Nevertheless, while the draft memorandum's legal assertions are incorrect, Treasury remains open as always to considering OIG's policy recommendations concerning program integrity across all Department functions and values the expertise and engagement of the OIG team.

BACKGROUND

The CARES Act is organized into two divisions. Division A contains six titles, each of which lays out one or more major federal initiatives to respond to the COVID-19 emergency. A handful of sections within Division A also include budgetary appropriations, but the overwhelming focus of Division A is on the substantive authorities and terms on which various federal programs are to operate. Division B, the emergency supplemental appropriations portion of the Act, is markedly different from Division A. It conforms to the style of appropriations legislation, with unenumerated headings for most individual outlays, and contains virtually no programmatic or regulatory language.

Coronavirus Relief Fund

Title V of Division A provides for payments of $150 billion to State, local, Tribal, and other governmental entities, which it accomplishes by adding a new provision to the Social Security Act. *See* 42 U.S.C. § 801. Payments made from the Fund may only be used for costs incurred due to the coronavirus emergency that were not accounted for in the recipient's most recent budget and that were incurred during the period from March to December 2020, but otherwise the statute sets out no further restrictions on the use of funds. *See id.* § 801(d).

Title V provides a simple allocation formula for States—which receive the overwhelming bulk of the amounts available from the Fund—that does not involve any direct consideration of an individual recipient's need. Under that formula, each State is to be paid an amount proportionate to its relative share of the population, subject to both a minimum allotment amount and a limited offset, also based on population, for payments made directly to local governments within the State. *See id.* § 801(c). Local governments are eligible for payment if their population is greater than 500,000 and certify that their proposed uses of Fund payments are consistent with the restrictions applicable to the Fund generally. *See id.* § 801(b), (e)-(f). The statute does not impose any certification requirement on States or even require that they request payment from the Fund, nor does it call for any evaluation of a State's intended uses prior to making payment. Instead, Title V provides that the Secretary of the Treasury "shall pay" applicable amounts within 30 days of the statute's enactment. *See id.* § 801(b)(1).

In lieu of before-the-fact examination, Title V establishes a recoupment mechanism to review uses of payment amounts after distribution has been made. *See id.* § 801(f). The statute authorizes OIG to conduct "monitoring and oversight" of the use Fund payments by recipients. *Id.* If OIG determines that a State, Tribal, or local government has not used the funds in a manner consistent with the statutory conditions on their use, payment amounts that have been improperly used are to be booked as debts. *Id.* To support these activities, the statute includes a provision appropriating OIG an additional $35 million. *Id.*

Section 15011 Reporting

Section 15011, which is contained in Division B of the CARES Act, establishes two ongoing reporting obligations in connection with "large covered funds," which are "covered

funds" of more than $150,000. CARES Act § 15011(a)(3). First, section 15011 requires every agency to give monthly reports on "any obligation or expenditure of large covered funds, including loans and awards." *Id.* § 15011(b)(1). These reports are to be provided to OMB, the Bureau of Fiscal Service, PRAC, and "the appropriate congressional committees," *id.*, defined as the House and Senate Appropriations Committees, the Senate Homeland Security and Government Affairs Committee, the House Oversight and Reform Committee, and "any other relevant congressional committee of jurisdiction." *Id.* §§ 15011(a)(1), 15010(a)(2).

Second, section 15011 requires any entity that receives large covered funds (including states, territories, possessions, and the District of Columbia) to submit quarterly reports to PRAC and to each agency from which it has received such funds providing the total amount of such funds received from the agency and information about the use of those funds. *Id.* §§ 15011(b)(2), 15011(a)(2). Specifically, the required reports must include a detailed list of all projects or activities for which large covered funds were expended or obligated that, for each project or activity, gives a name and description, the amount of large covered funds expended or obligated, and where applicable, an estimate of the number of jobs created or retained. *Id.* § 15011(b)(2). The required reports must also include information relating to subcontracts or subgrants for purposes of compliance with the Federal Funding Accountability and Transparency Act of 2006 (31 U.S.C. 6101 note). *Id.*

ANALYSIS

OIG's draft faults Treasury for disbursing funds under Title V of Division A without entering into recipient agreements that require reporting, in order to ensure notice of and compliance with requirements under section 15011. That conclusion rests on a misunderstanding of the relevant provisions of the CARES Act.

As a threshold matter, Congress did not call for Title V to operate as a grant program or require Treasury to condition the receipt of funds on terms and conditions specified by the Department. Congress designed Title V as a streamlined means to provide quick funding to State, local, and Tribal governments. *Accord In re Medicaid*, 57 Comp. Gen. 710 (1978) (upholding Treasury determination that payments to States under non-discretionary statutory formula are not grants or contracts). The statute sets out a simple and essentially mechanical formula for State and local government allocations. It does not set up a process requiring Fund recipients to apply for or request payment. Other than for local governments, no certification is required, and the local government certification does not entail substantive review. Nothing in Title V requires Treasury to condition the availability of funds on a recipient's commitment to the recordkeeping, reporting, and auditing provisions of a typical grant agreement.

More fundamentally, there is no basis to conclude that Title V payments should be conditioned on compliance with reporting requirements imposed by section 15011 because the section 15011 requirements are not applicable to Title V. As noted, section 15011 reporting obligations apply to "covered funds" of more than $150,000. *See* CARES Act § 15011(a)(1). The term "covered funds" is in turn defined in section 15010 to mean "any funds, including loans, that are made available in any form to any non-Federal entity, not including an individual," under "this Act"; the Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020; the Families First Coronavirus Response Act; and "any other Act primarily making appropriations for the Coronavirus response and related activities." *Id.* § 15010(a)(6).

The reference to "this Act" does not include Title V. A footnote included in the OIG draft states that covered funds are funds made available "under Public Laws 116-123, 127, and 136 [i.e., the CARES Act], as well as any other law which primarily makes appropriations for Coronavirus response and related activities." Draft at 3 n.4. But section 3 of the CARES Act states that "[e]xcept as expressly provided otherwise, any reference to 'this Act' contained in any division of this Act shall be treated as referring only to the provisions of that division." Accordingly, the reference to "this Act" in the definition of covered funds in Division B can only be construed to refer to funds made available under provisions within that division, and thus would not extend to payments from the Coronavirus Relief Fund established under Title V of Division A.

Nor are Title V payments captured by the residual clause applicable to funds made available under "any other Act primarily making appropriations for the Coronavirus response and related activities." As a matter of ordinary language and plain meaning, Division A is not itself an "act." Division A is not separately given a name at all, while Division B is given a name ("Emergency Appropriations for Coronavirus Health Response and Agency Operations") that does not include the word "act"—unlike the five other naming provisions in the CARES Act. *Compare* CARES Act § 23008 *with id.* §§ 1, 2101, 3001, 3501, 4001. More broadly, relying on the combination of the "this act" and "other Act" provisions would be a very strange way for Congress to indicate that covered funds include all funds made available under the CARES Act as a whole. The natural reading of the residual clause is that it was intended to capture any subsequent supplemental appropriations acts, carrying forward to any future legislation the reporting structures applicable to the CARES Act's supplemental appropriations division. If Congress wanted to include all CARES Act funds, it would have been far more straightforward to refer to the CARES Act directly, rather than to Division B, followed by citations to two prior enactments, and then to a residual clause at the end incidentally capturing Division A.[2]

In addition, the residual provision refers to other acts "primarily making appropriations for the Coronavirus response and related activities." The primarily clause imposes a further limit on the "other act" category, and even if Division A were considered an "act," it would still fail to satisfy the "primarily making appropriations" condition. Unlike Division B, which is almost exclusively concerned with appropriations connected with the Coronavirus response, Division A is primarily programmatic. Although appropriations provisions are scattered across its various Titles, the bulk of its text is concerned with authorities, obligations, and the establishment and operation of federal programs. Division B is half the length of Division A but contains roughly three times as many specific appropriations authorizations. The reference to acts primarily making Coronavirus appropriations targets legislation like Division B, not programmatic provisions like those that predominate in Division A.

While section 15011's reporting requirements do not apply beyond Division B, the programs established under Division A are nevertheless subject to substantial oversight and transparency measures, tailored to the individual programs involved. As noted, Title V assigns OIG a special role in connection with the recoupment mechanism, and plainly reflects congressional attention

[2] Construing the "other Act" to refer to the CARES Act itself, rather than Division A, would be an equally peculiar way to seek to reach the provisions of Division A. Moreover, while the CARES Act, unlike Division A, is clearly an "act," it is also clearly not an "other" act. Indeed, reading "other Act" to include both divisions of the CARES Act would render the reference to "this Act" in Division B's definition of covered funds superfluous.

to the question of ensuring oversight and compliance with statutory aims. *Id.* § 5001(a). In combination with Title V's general emphasis on simplicity and expediency, it reflects a larger policy to minimize reporting burdens on States and other recipient entities, tied to the nature of the inter-governmental relief program Congress sought to establish.

Treasury's other Division A programs also have oversight and reporting structures that are custom-fitted to their particular needs. Title IV provides a clear illustration. For loans, loan guarantees, and other investments under section 4003 (subtitle A):

- Congress established a Special Inspector General for Pandemic Recovery within Treasury (SIGPR) in connection with section 4003. *See id.* § 4018. The SIGPR will make quarterly reports to Congress, *id.* § 4018(f), in addition to having all the functions and reporting responsibilities of inspectors general. *Id.* § 4018(c)(3).
- Congress also created a Congressional Oversight Commission that will, among other responsibilities, make monthly reports about section 4003 programs. *Id.* § 4020.
- The Federal Reserve is required report to Congress on each loan, loan guarantee, or other investment made under section 4003(b)(4) within 7 days and thereafter at 30-day intervals. *Id.* § 4026(b)(2).
- Treasury is required to report to Congress on each loan, loan guarantee, or other investment made under section 4003(b)(1)-(3) within 7 days and thereafter at 30-day intervals. *Id.* § 4026(b)(2).
- For loans issued under section 4003(b)(1)-(3), Treasury is required to include on its website:
    - All criteria, guidelines, eligibility requirements, and application materials for any loan or loan guarantee program. *Id.* § 4026(d).
    - Within 24 hours of entry into any contract for the administration of such programs, a copy of the contract. *Id.* § 4026(e).
    - Within 72 hours of issuance, detailed information about any issued loan, including the recipient's name, the amount of the loan, and the applicable interest rate. *Id.* § 4026(a).
- On a quarterly basis, the Secretary and the Chairman of the Federal Reserve System will testify before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives regarding the obligations of Treasury and the Federal Reserve, and transactions entered into, under subtitle A of Title V. *Id.* § 4026(c).
- Section 4003 gives Treasury discretion to set the terms and conditions of section 4003 loans and loan guarantees, including requirements for audits, which Treasury will use to ensure necessary reporting. *Id.* § 4003(c)(a).
- Treasury will post a monthly, detailed financial statement for the Exchange Stabilization Fund on its website, as well as an annual report on the operations of

the ESF, which will be available here: https://home.treasury.gov/policy-issues/international/exchange-stabilization-fund/esf-reports.

A different set of reporting and oversight measures apply to the Payroll Support Program under section 4112 of Title IV (subtitle B):

- Treasury provides Payroll Support through a financial assistance agreement that requires recipients to make regular reports, provides access to Treasury OIG, and creates remedies for noncompliance, including clawbacks for misspent funds.
- Treasury will shortly begin reporting awards into USASpending and on its website.
- Treasury is required to report to Congress on the Payroll Support Program in November 2020 and to update that report a year later. *Id.* § 4118.
- OIG is assigned a specific role in auditing certifications made by recipients of Payroll Support. *Id.* § 4113.

As this overview of major oversight and reporting mechanisms under Title IV indicates, Congress considered the need for accountability and transparency in establishing the different programs set forth in Division A of the CARES Act and sought to create oversight and reporting structures appropriate to their respective needs. The Treasury Department was deeply involved in the negotiation of many of these provisions and is familiar with the legislative intent underlying them.

In contrast to the subject-matter and organization of Division A, Division B overwhelmingly consists of a laundry list of appropriations across a broad span of federal operations. By imposing special reporting requirements tied to "this Act"—*i.e.,* Division B— section 15011 creates a set of centralized reporting rules applicable to these comparatively discrete funding measures. The structure of the CARES Act thus reinforces what the definition of covered funds plainly says: the only covered funds in the CARES Act are provided under Division B.

CONCLUSION

For the reasons discussed, the OIG draft's assumption that section 15011's reporting requirements apply to funds provided under Title V of Division A is incorrect. Treasury is nonetheless committed to facilitating OIG's important oversight and monitoring role for Title V, including working with OIG on its reporting needs. Treasury has published extensive program guidance on its website, including guidance on permissible uses of funds. That guidance is available here: https://home.treasury.gov/policy-issues/cares/state-and-local-governments. Treasury personnel involved with Title V implementation welcome the opportunity to work with OIG on additional guidance, where appropriate, to help ensure that all statutory purposes of Title V are met.

Attachment 2: Management Response

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

May 22, 2020

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

Dear Ms. Harker:

Thank you for the opportunity to review the Treasury Office of Inspector General's (OIG) interim audit update on Coronavirus Relief Fund (CRF) recipient reporting (the Audit Update). The Audit Update reviews Treasury's implementation of Title V of Division A of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), under which Treasury has made direct payments to State, local, and Tribal governments, and in particular discusses issues related to the creation of requirements for CRF recipients to report on use of funds.

Treasury is fully committed to ensuring appropriate transparency, accountability, and adherence to all statutory requirements in connection with the CARES Act and has taken steps to effectuate reporting and oversight measures established under the statute. Treasury personnel involved in CARES Act implementation will continue to work with OIG in furtherance of our shared commitment to these ends.

After the enactment of the CARES Act, Treasury acted swiftly to develop and issue detailed guidelines governing permissible uses of Title V funds and to distribute emergency fiscal assistance to eligible state, local, and tribal governments as expeditiously as possible. The Audit Update suggests that, before distributing those funds, Treasury should have imposed on those governments the specific reporting requirements set forth in section 15011 of the CARES Act, while stating that "reasonable minds may differ" on whether those requirements actually apply to Title V.

As explained at length in prior correspondence with your office, the specific reporting obligations imposed by section 15011 of the CARES Act do not apply to recipients of CRF payments. Section 15011's reporting obligations attach to recipients of funds made available under "this Act," but section 15011 is part of Division B of the CARES Act and section 3 of the CARES Act unambiguously states that any reference to "this Act" applies only to provisions of the division of the CARES Act in which the term is used. Title V of Division A is therefore beyond the reach of section 15011. Nor can Title V be considered an "other Act primarily making appropriations for the Coronavirus response and related activities" under section 15011, since it is not itself an Act of Congress, is not separate from the CARES Act, and (unlike Division B) does not primarily make appropriations. The scope of the section 15011 obligations makes sense in light of the different reporting, transparency, and oversight provisions applicable to the diverse programs established within Division A, which are generally tailored to respond to the particular structure of the provisions and programs to which they apply.

The Audit Update expresses concerns about how the inapplicability of section 15011 will affect OIG's responsibilities under Title V. While Treasury cannot change section 15011 of the statute, we strongly support OIG's ability to request and access any necessary CRF recipient information to perform its critical Title V responsibilities. We would welcome more specific guidance from OIG on the nature of its reporting needs, and we are committed to facilitating OIG's statutory role with respect to Title V. We also note that Title V spending will be reported through USAspending to provide substantial transparency.

The Audit Update recommends that Treasury support OIG's responsibilities "in the following ways (1) assist in communications with Coronavirus Relief Fund recipients on matters that include, but are not limited to, communications of reporting and record keeping requirements and other audit inquiries, as needed; (2) ensure that Treasury maintains communication channels with recipients to obtain and address post-payment inquiries regarding specific payments; and (3) continue to update Coronavirus Relief Fund guidance and disseminate to recipients as needed." Treasury offices involved in Title V implementation appreciate the productive discussions with your office on implementation issues and remain open to these general recommendations. Recognizing that some of OIG's recipient information needs may be best addressed through information collections by and communications with OIG, we would welcome the opportunity to consider a more specific proposal from OIG concerning its recipient reporting needs under Title V. We are confident that Treasury and OIG can develop an approach that meets our shared objectives and responsibilities.

Thank you again for the opportunity to review and comment on the Audit Update.

Sincerely,

Daniel J. Kowalski

Daniel J. Kowalski
Counselor to the Secretary