



Audit Report



OIG-13-038

RESTORE ACT: Treasury Missed Its Statutory Deadline for Establishing Procedures Governing RESTORE Act Programs and Activities

April 17, 2013

Office of
Inspector General

Department of the Treasury

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DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

OFFICE OF
INSPECTOR GENERAL

April 17, 2013

OIG-13-038

MEMORANDUM FOR RICHARD L. GREGG
FISCAL ASSISTANT SECRETARY

FROM: Marla A. Freedman /s/
Assistant Inspector General for Audit

SUBJECT: Treasury Missed Its Statutory Deadline for Establishing
Procedures Governing RESTORE Act Programs and Activities

This memorandum presents the results of our audit oversight work to date of the Department of Treasury's (Treasury) implementation of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act).¹ The RESTORE Act established the Gulf Coast Restoration Trust Fund (Trust Fund) within Treasury for the purpose of providing funds for the environmental and economic restoration of the Gulf Coast region² which was damaged by the April 2010 Deepwater Horizon oil spill. Deposits into the Trust Fund will be comprised of 80 percent of the administrative and civil penalties paid after July 6, 2012, pursuant to a court order or negotiated settlement under Federal Water Pollution Control Act.³ It has been estimated that billions of dollars may eventually be deposited into the Trust Fund.

Among its administrative responsibilities, the Secretary of the Treasury, in consultation with the Secretary of the Interior and the Secretary of Commerce, was required to establish procedures for depositing amounts in and expending amounts from the Trust Fund including procedures for determining compliance and auditing requirements of programs and activities established under the RESTORE Act. Additionally, the Secretary was required to establish procedures for identifying and allocating funds available to the Secretary under other provisions of law to pay the administrative expenses for management of the Trust Fund.

We are reporting on our on-going audit work because of the urgency for Treasury to establish procedures governing the Trust Fund programs and activities prior to receiving deposits into and incurring expenditures from the Trust Fund. Under the RESTORE Act, procedures were to be established by January 2, 2013, 180 days

¹ Pub. L. 112-141, 126 Stat. 588-607 (July 6, 2012)

² Alabama, Florida, Louisiana, Mississippi, and Texas

³ Pub. L. 92-500 (as amended)

after the statute's enactment. Treasury, however, has not concluded its consultative process with the Department of Commerce (Commerce) and the Department of the Interior (Interior) and has significantly lagged in establishing those procedures. Accordingly, the ability to fund RESTORE Act programs and activities timely upon receipt of administrative and civil penalties is at risk.

In performing our audit work, we reviewed the RESTORE Act and Treasury's draft regulations, and interviewed key Treasury officials. We also met with Commerce officials to obtain their perspectives on the status of the Treasury procedures and the stand-up and administration of the Gulf Coast Ecosystem Restoration Council (Council).⁴ We performed this fieldwork from September 2012 through January 2013.

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

Treasury Missed Its Statutory Deadline for Establishing Procedures Governing RESTORE Act Programs and Activities

Treasury did not meet a key statutory requirement to establish procedures for Trust Fund administration within 180 days after enactment of the RESTORE Act (by January 2, 2013). In October 2012, Treasury provided our office a draft Notice of Proposed Rulemaking to govern the investment and use of amounts deposited to the Trust Fund. Treasury officials previously told us that they expected to issue the draft regulations for a 30 day public comment period in November 2012 and issue the final regulations by the January 2, 2013, deadline. However, the draft regulations have not been issued for public comment due to delays in concluding the consultative process with Commerce and Interior. Among several outstanding issues to be resolved is the administration of the 35 percent share of Trust Fund receipts that are to be provided to the Gulf Coast States in equal shares for

⁴Section 1603 of the RESTORE Act created the Council comprised of the Secretaries of the Interior, Army, Commerce, and Agriculture, the Administrator of the Environmental Protection Agency, the head of the department housing the Coast Guard (currently the Secretary of the Department of Homeland Security), and the governors of Alabama, Florida, Louisiana, Mississippi, and Texas. The Acting Secretary of Commerce was selected by member states and appointed by the President as Chairperson of the Council.

expenditure for ecological and economic restoration (hereinafter referred to as the "Direct Component").

Treasury officials informed us in March 2013 that while Treasury had been working on revisions to the draft regulations, none had been circulated outside of Treasury since the October 2012 draft. Consequently, regulations were not finalized by the mandated deadline. We were also told that certain matters with the administration of the Trust Fund were under review by the Office of Management and Budget (OMB) and the Department of Justice.

The need to conclude the consultative process and finalize the RESTORE Act regulations is imperative in light of the Department of Justice's civil settlement with the Transocean defendants,⁵ the first among several defendants. Additionally, there is ongoing litigation with the other defendants that may reach settlements in 2013. Without a finalized regulation, distributing funds for eligible programs and activities authorized under the RESTORE Act may be delayed.

As part of our oversight responsibilities for all projects, programs, and activities funded under the RESTORE Act, we are continuing our audit of Treasury's implementation activities. We plan as our next focus to determine whether Treasury has established the necessary accounts and internal policies, procedures, and assignment of responsibilities so that it can promptly effect allocations from the Trust Fund in accordance with the Act as deposits are received. To the extent that the accounts, policies, procedures, and assignment of responsibilities are not yet in place, we encourage Treasury to establish them with all deliberate speed.

Recommendation

We recommend that the Fiscal Assistant Secretary continue to work with Commerce, Interior, and OMB to expedite the issuance of the RESTORE Act regulations.

We provided a draft of this memorandum to Treasury management for comment. In its response, provided as Attachment 1, management stated that as recommended, it will continue to work with Commerce, Interior, and OMB to complete the

⁵ On January 3, 2013, the Department of Justice lodged a proposed consent decree with the Transocean defendants (Transocean Deepwater Inc., Transocean Offshore Deepwater Drilling Inc., Transocean Holdings LLC, and Triton Asset Leasing GmbH) in the U.S. District Court, Eastern District of Louisiana. Under the proposed decree, among other things, the Transocean defendants will pay a \$1 billion civil penalty plus interest under the Federal Water Pollution Control Act. The civil settlement was approved on February 19, 2013, and the first installment of \$323,392,876.71 was deposited into the Trust Fund on March 21, 2013.

procedures expeditiously and publish them for public comment. Management views this consultation process as critical to the success of RESTORE Act programs.

Management's commitment to completing the consultation process as quickly as possible meets the intent of our recommendation. Treasury will need to identify and record planned completion dates for taking specific corrective actions in the Joint Audit Management Enterprise System (JAMES), the Department's audit recommendation tracking system.

We appreciate the courtesies and cooperation provided to our staff during the audit. A list of the recipients of this memorandum is provided as Attachment 2. If you have any questions, you may contact me at (202) 927-5400 or Donna Joseph, Audit Director, at (202) 927-5784.

Attachments



ASSISTANT SECRETARY

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

April 11, 2013

Marla A. Freedman
Assistant Inspector General for Audit
Office of the Inspector General
U.S. Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20036

Dear Ms. Freedman:

Thank you for the opportunity to review the draft audit memorandum, *Treasury Missed Its Statutory Deadline for Establishing Procedures Governing RESTORE Act Programs and Activities*. Treasury recognizes the importance of establishing timely and appropriate procedures for the Gulf Coast Restoration Trust Fund. As recommended, we will continue to work with the Commerce Department, Interior Department, and the Office of Management and Budget to complete these procedures expeditiously and publish them for public comment.

The RESTORE Act requires Treasury to establish procedures after consultation with the Commerce and Interior Departments. We view this consultation process as critical to the success of RESTORE Act programs. Congress recognized in the RESTORE Act that these Federal agencies have a special expertise in the Gulf Coast region, as do other Federal agencies with responsibilities under the Act. Congress also recognized that the Gulf Coast States have a central role in directing environmental and economic restoration efforts. Accordingly, Treasury has engaged in a broad consultation process. Our team has met with the Federal agencies and the Gulf Coast States in regional meetings on several occasions, listened to public comments on the RESTORE Act, and regularly engaged with the Gulf Coast Restoration Council. We have circulated two complete drafts of the procedures to the Federal agencies and reviewed multiple rounds of comments. Given the potential size of the Gulf Coast Restoration Trust Fund, this robust consultation process is a prudent step towards realizing the important goals of the Act.

We appreciate the comments we received from the Inspector General's office on the draft procedures and look forward to completing the consultation process as quickly as possible.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard L. Gregg".

Richard L. Gregg
Fiscal Assistant Secretary

Department of the Treasury

Deputy Secretary
Fiscal Assistant Secretary
Deputy Assistant Secretary, Fiscal Operations and Policy
Office of Strategic Planning and Performance Management
Office of the Deputy Chief Financial Officer, Risk and Control
Group

Office of Management and Budget

OIG Budget Examiner

Gulf Coast Ecosystem Restoration Council