



Memorandum

Date: June 17, 2020

Subject: INFORMATION: Key Potential Risk Areas for the Department of Transportation in Overseeing CARES Act Requirements

From: Howard R. "Skip" Elliott 
Acting Inspector General

To: The Secretary

The United States transportation system is central to the American economy as it facilitates the Nation's jobs, businesses, and way of life. The transportation industry has been one of the hardest hit by the Coronavirus Disease 2019 (COVID-19) pandemic. As such, implementing the Coronavirus Aid, Relief, and Economic Security (CARES) Act¹ is among the Department of Transportation's (DOT) highest priorities in this time of national emergency.

The CARES Act provides DOT with over \$36 billion to prevent, prepare for, and respond to COVID-19 across all modes of transportation.² To its credit, DOT swiftly distributed these funds and has begun implementing the Act's requirements to provide much-needed relief to American workers, families, and businesses. We support these efforts and are ready to work together with the Department to help ensure these funds achieve their vital purpose.

As the Department is aware, the volume of CARES Act funds and the speed with which the funds have been disbursed creates oversight challenges. Therefore, to support the Department in meeting its mission while promoting effective stewardship of significant taxpayer dollars, we are providing a summary of five key risk areas for DOT's consideration in bolstering its oversight of CARES Act grantees and contractors. These potential risk areas and our suggested actions to mitigate those risks are drawn largely from our prior work assisting DOT with

¹ Pub. L. 116-136 (2020).

² Pursuant to the Act, the Secretary has also been coordinating with the Secretary of the Treasury with respect to the Department of Treasury's role in providing approximately \$29 billion in loans and loan guarantees and \$32 billion for air carrier industry worker support in the form of financial assistance for wages, salaries, and benefits.

oversight of a significant influx of funds for economic stimulus and emergency relief.³

Specifically, the areas we identified include:

- Effectively managing grants to support the Nation's airports
- Adapting existing stewardship and oversight approaches while making prudent use of waivers in surface transportation
- Executing contracts and grants effectively to achieve transportation program and project outcomes
- Tracking and monitoring CARES Act funds while ensuring the availability and integrity of DOT's financial management systems
- Increasing outreach and education to transportation agencies to prevent and detect fraud, waste, and abuse

By maintaining focus on these risk areas early on and putting in place key internal controls, DOT can promote efficiencies; help ensure compliance; and better prevent fraud, waste, and abuse. Meeting these goals will maximize the efficacy of CARES Act funds in our Nation's time of crisis.

Effectively Managing Grants To Support the Nation's Airports

The CARES Act awarded \$10 billion in grants-in-aid for more than 3,000 eligible commercial and general aviation airports nationwide. These funds are intended to support airports' continuing operations and replace lost revenue resulting from the sharp decline in passenger traffic and other airport business due to COVID-19. Since the Act's passage on March 27, 2020, the Federal Aviation Administration (FAA) has allocated \$9.5 billion in formula grants for airport capital expenditures, operating expenses including payroll and utilities, and debt payments. FAA also allocated \$500 million for supplemental airport infrastructure improvements through the Agency's Airport Improvement Program (AIP).

To promote effective stewardship of these grants, the Agency will need to ensure recipient airports use the funds only for their intended purpose and meet CARES Act and AIP requirements. For example, the CARES Act includes a workforce

³ This work includes oversight related to the American Recovery and Reinvestment Act of 2008 and the Disaster Relief Appropriations Act of 2013.

retention requirement⁴ through December 31, 2020, for most airports accepting CARES Act grants. It will also be critical that FAA ensure that airport sponsors adhere to Federal laws and regulations and applicable airport sponsor assurances. Additionally, FAA will need to confirm that airports have controls in place to prevent payments for ineligible services or services not received, payments with insufficient documentation, duplicate payments, or payments in incorrect amounts. Based on our past work, such controls could include performing reviews of a representative sample of grant payments and increasing oversight and enforcement of airport grant record keeping.

Another focus area for FAA is to verify that grantees do not use CARES Act funds to cover prior year work or accept single bids without seeking lower prices—a key risk we found during American Recovery and Reinvestment Act (ARRA) audits.⁵ Actions to help mitigate this risk include thoroughly reviewing payment reimbursement requests and performing a cost analysis in cases involving a single bidder. Additionally, the CARES Act authorizes the Federal share of approved project costs to be increased to 100 percent, eliminating the local share of the costs.⁶ As a result, FAA could face risks related to controlling project costs, since localities are less incentivized to do so. Therefore, the Agency will benefit from enforcing policies that require program managers to verify the appropriateness of grant fund expenditures and oversee airport sponsors or contractors to review cost increases.

Finally, FAA will be overseeing the vast number of grants with its limited resources. This underscores the importance of following a risk-based oversight approach, assigning the appropriate risk level to grantees, and adjusting the Agency's oversight accordingly. Our prior work⁷ found instances where FAA's incorrect risk assessment of grantees resulted in inadequate oversight, thereby increasing the risk of improper payments.⁸ The Agency has since revised its procedures for AIP grantee oversight to include conducting ongoing risk assessments of all airport sponsors and requiring grantees to provide supporting documents electronically with payment requests. However, because the CARES Act quickly provides a large infusion of funds to airports for multiple purposes, with disparate requirements and restrictions, existing risk assessments may not be current. To help mitigate risk, FAA could strengthen its strategy to include

⁴ The workforce retention requirement provides that airport sponsors must continue to employ, through December 31, 2020, at least 90 percent of the number of individuals employed as of March 27, 2020. The workforce retention requirement does not apply to non-hub or non-primary airports.

⁵ *ARRA Lessons Learned: Opportunities Exist for FAA To Further Improve Its Oversight of Airport Grant Payments* (OIG Report No. AV2013071, April 18, 2013). OIG reports are available on our website at <http://www.oig.dot.gov/>.

⁶ Under normal circumstances, AIP grant recipients contribute a matching percentage of the project costs.

⁷ *Improper Payments Identified in FAA's Airport Improvement Program* (OIG Report No. F12011023), December 1, 2010.

⁸ According to the Office of Management and Budget, improper payments include payments to ineligible recipients, duplicate payments, payments in incorrect amounts, payments for ineligible services or services not received, or payments having insufficient documentation.

more detailed documentation reviews of payment reimbursement requests that identify financial errors and inconsistencies and thereby detect and prevent improper payments.

Adapting Existing Stewardship and Oversight Approaches While Ensuring Prudent Use of Waivers in Surface Transportation

Through the CARES Act, surface transportation agencies received an extraordinary amount of funding as well as the authority to temporarily waive existing Federal regulations in specific areas. In particular, the Federal Transit Administration (FTA) was provided \$25 billion to help the Nation's public transit agencies mitigate the impacts of COVID-19, including support for their operating expenses. The Act provided another approximately \$1 billion to the Federal Railroad Administration to similarly support Amtrak, as well as smaller amounts to the Maritime Administration and the Federal Motor Carrier Safety Administration.⁹ As such, these agencies may be challenged to leverage existing stewardship and oversight mechanisms under potential COVID-19 constraints.

For example, while FTA expeditiously allocated CARES Act funding, our past and ongoing work examining FTA's about \$10 billion in Hurricane Sandy funding has shown that transit agencies can take years to spend large amounts. Hence, ongoing FTA oversight is required to ensure the funds are spent as effectively as possible.¹⁰ Implementing strong controls for accurately tracking and reporting on funding progress will enhance transparency and mitigate risk, especially given that the CARES Act provides substantially more funding across a wider breadth of recipients compared with the Hurricane Sandy efforts.

In addition, COVID-19's impact on in-person operations and travel may impact traditional oversight processes for FTA and other CARES Act-funded surface transportation agencies. For example, FTA is providing CARES Act funds through

⁹ The Maritime Administration received \$3,134,000 for operations and training and an additional \$1,000,000 for State maritime academy operations and the Federal Motor Carrier Safety Administration received \$150,000 for motor carrier safety operations and programs.

¹⁰ Our past work supporting FTA's Hurricane Sandy funding oversight includes *FTA's Limited Oversight of Grantees' Compliance With Insurance Requirements Puts Federal Funds and Hurricane Sandy Insurance Proceeds at Risk* (OIG Report No. ST2020005), October 30, 2019, and *FTA Has Not Fully Implemented Key Internal Controls for Hurricane Sandy Oversight and Future Emergency Relief Efforts* (OIG Report No. ST2015046), June 12, 2015.

its Urbanized Area and Rural Formula programs,¹¹ which use comprehensive triennial reviews for oversight. These reviews cover recipient management practices as well as compliance with program and administrative requirements across a broad spectrum of topic areas. Traditionally, these include an in-person review, which may not be possible at this time given COVID-19 restrictions. Therefore, FTA and other agencies may need to adjust existing oversight approaches to ensure recipients meet Federal requirements and use funds only for eligible purposes.

Further, to account for conditions caused by COVID-19, the CARES Act allows the Secretary of Transportation to waive, at least temporarily, certain existing Federal requirements. For example, the Act allows the Secretary to waive grant requirements for the State highway safety programs that the National Highway Traffic Safety Administration (NHTSA) administers.¹² However, to ensure there is no long-term impact on program effectiveness, especially with regard to public safety, it will be vital for the Department to monitor the use and impact of these waivers and provide transparency, including meeting congressional reporting requirements under the Act. More specifically, the Act requires the Secretary to periodically submit a report to Congress that describes each waiver or requirement postponement for the NHTSA highway safety grants. To enhance monitoring of waiver use, this reporting could be expanded to cover waivers issued for other Operating Administrations as well.

Executing Contracts and Grants Effectively To Achieve Transportation Program and Project Outcomes

Given the large influx of funds the CARES Act provides, the Department will need to award and administer contracts and grants effectively to achieve the Act's intended outcomes. However, our past work highlights risks DOT may face when awarding and administering CARES Act-funded contracts and grants, including ensuring required cost estimates and justifications are in place and fostering competition to the extent practicable. For example, in a prior audit of FAA's

¹¹ The Urbanized Area Formula Funding program (49 U.S.C. 5307) makes Federal resources available to urbanized areas and to governors for transit capital and operating assistance in urbanized areas and for transportation-related planning. The Formula Grants for Rural Areas program provides capital, planning, and operating assistance to States to support public transportation in rural areas with populations of less than 50,000, where many residents often rely on public transit to reach their destinations.

¹² For example, under the CARES Act, NHTSA waived the requirements that it must conduct and States must participate in at least three high visibility enforcement campaigns (in the areas of occupant protection and impaired driving) and the requirement to participate in the Click It or Ticket national mobilization this fiscal year (FY 2020). NHTSA's reasons for waiving these requirements included that State and local law enforcement personnel, by large measure, were not available to participate in the campaigns set for April and May because they were diverted to work on State COVID-19 responses.

competitive award practices for its major program contracts,¹³ we found that FAA put up to \$4.9 billion at risk by awarding some competitive contracts without developing required Government cost estimates and not ensuring several noncompetitive awards were adequately justified. In addition, while full competition may not always be achievable, an audit of contracts awarded under the Federal Highway Administration's (FHWA) ARRA grants¹⁴ showed that even minimal increases in the number of bids received could have a significant impact. Specifically, prices for contracts with one or two bids averaged 11 percent higher than prices for contracts with three bids—for a total projected price difference of at least \$179 million. DOT could help mitigate these cost risks and ensure more effective use of CARES funds by assessing pricing and competition trends and sharing best practices across all Operating Administrations and their grantees.

It is also vital that DOT provide effective oversight and clear direction to contractors and grantees on desired outcomes, along with requirements for supporting and reporting expenditures. Our prior work has identified several weaknesses in the Department's ability to do so. For example, during a prior Hurricane Sandy audit,¹⁵ we found an FTA grantee inappropriately spent more than \$17 million that had to be returned to the Federal Government. This occurred in part because FTA did not verify grantees used Hurricane Sandy relief funds only for eligible expenditures. In a separate audit, we found that the Department did not routinely direct grantees to provide support showing that their cost reimbursement requests were reasonable or allowable. DOT may be better positioned to mitigate risks by establishing controls such as a risk-based methodology for regularly reviewing grantee reimbursement requests.

Another major potential risk area underscoring all of DOT's CARES Act efforts will be ensuring that personnel and support staff awarding and administering Federal funds are fully qualified, properly trained, and appropriately managed. For example, our prior work found instances where individuals made awards for either DOT or a grantee but did not have the appropriate authority or training to do so. In addition, prior OIG audits have shown that some DOT agencies did not ensure that oversight support staff consistently documented their reviews or that resulting recommendations were tracked and resolved. Given that the shortened timeframes for implementing the CARES Act may compound these risks, it is vital that DOT takes steps to mitigate them, such as tracking oversight recommendations to resolution.

¹³ *FAA's Competitive Award Practices Expose Its Major Program Contracts to Cost and Performance Risks* (OIG Report No. ZA2020020), March 9, 2020.

¹⁴ *Lessons Learned From ARRA: Improved FHWA Oversight Can Enhance States' Use of Federal-Aid Funds* (OIG Report No. ZA-2012-084), April 5, 2012.

¹⁵ *FTA Can Improve Its Oversight of Hurricane Sandy Relief Funds* (OIG Report No. ZA2016077), July 21, 2016.

Tracking and Monitoring CARES Act Funds and Ensuring the Availability and Integrity of DOT's Financial Management Systems

Effective stewardship of CARES Act funds greatly depends on DOT's ability to effectively track and monitor its spending. However, DOT may face risks in enforcing grantees to submit quality data on their spending. For example, our recent review of DOT's implementation of the Digital Accountability and Transparency Act (DATA Act)¹⁶ found that although the quality of DOT's data was considered "higher," some required contract and grant expenditure data were not submitted completely, accurately, or timely. To help mitigate risks and enhance accountability as DOT quickly disburses CARES Act funds, it will be critical to implement data quality procedures for tracking and monitoring.

In addition, to reduce the risk of improper payments, DOT can enhance its efforts to detect errors in tracking and monitoring grant activities. For example, our most recent Improper Payments Elimination and Recovery Act (IPERA) report¹⁷ found that some improper payments were due to administrative or process errors that State or local agency grantees made, as well as their insufficient documentation. Overall, we reported that DOT complied with IPERA requirements and had an overall improper payment rate below 10 percent. However, the drastic increase in disbursements and volume of transactions under the CARES Act could make it difficult for DOT to continue maintaining its overall low improper payment rates. Implementing robust procedures to detect improper payments could help mitigate this risk.

An additional potential risk area facing the Department will be ensuring the confidentiality, availability, and integrity of its financial management IT systems used to process CARES Act grants and monitor and distribute payments. With multiple financial management systems involved, the tracking and monitoring of DOT's CARES Act funds may face security risks. For instance, an attacker may exploit vulnerabilities to take control over certain systems, cause a denial of service attack, or gain unauthorized access to critical files and data. To better protect the data integrity and confidentiality of sensitive information and mitigate risks to its financial management IT systems, DOT will need to effectively select, assess, and monitor its security controls and effectively detect and correct weaknesses. For example, it will be vital to consistently update financial management systems with critical software patches whenever a security flaw is uncovered. Also, to mitigate data availability risks, DOT must ensure adequate

¹⁶ *Quality Control Review of the Independent Auditor's Review of DOT's DATA Act Implementation* (OIG Report No. QC2020004), October 29, 2019.

¹⁷ *DOT's Fiscal Year 2019 IPERA Compliance Review* (OIG Report No. FS2020029), April 27, 2020.

disaster recovery plans are in place to quickly restore these systems in the event of an unexpected disruption.

Increasing Outreach and Education to Transportation Agencies To Prevent and Detect Fraud, Waste, and Abuse

The volume of CARES Act funds and the speed with which they are disbursed puts these funds at a higher than usual risk for fraud, waste, and abuse by the recipients. DOT can help mitigate this risk by increasing its outreach and education efforts to enhance understanding among DOT staff, grantees, and their contractors on how to recognize, prevent, and report potential fraud to the appropriate authorities, including our office. These added outreach efforts will likely result in an increase in reporting of suspected mismanagement and indicators of criminal activity related to DOT-disbursed CARES Act funds. Based on our prior experience with assisting DOT's oversight of large funding amounts such as through ARRA and other initiatives, early detection and intervention is essential to the mitigation of the misuse of funds.

It will also be essential for DOT, when notified of wrongdoing by grantees and/or their contractors, to take timely action to suspend and/or debar these individuals or firms that have defrauded the Government or are otherwise known to be irresponsible. This action will better protect DOT and its grantees from doing business with fraudulent or unethical firms or individuals in the future.

Conclusion

COVID-19 has had a wide-reaching and devastating impact across the transportation industry and our economy. In response, DOT has taken quick and important action to distribute CARES Act funds and implement the Act's requirements. Our office is committed to assisting the Department in its efforts to maximize the efficacy of these funds and meet its mission in our Nation's time of need.

In fulfillment of our own responsibilities pertaining to the CARES Act, we will announce future work related to oversight of the Act as needed.¹⁸ We look forward to continuing to work with DOT in support of our shared goal to

¹⁸ The Act also provides funding to our office for additional oversight activities.

safeguard these critical funds from fraud, waste, and abuse and accelerate our Nation's economic recovery.

If you have any questions or concerns, please contact OIG's Principal Assistant Inspector General for Auditing and Evaluation, Barry DeWeese, at (202) 366-1302, or Principal Assistant Inspector General for Investigations, Elise Chawaga, at (202) 366-0423.

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