



**Testimony of Sean Moulton, Senior Policy Analyst
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For the House Committee on Oversight and Accountability
February 1, 2023**

Chairman Comer, Ranking Member Raskin, and members of the Committee, thank you for your attention to federal pandemic spending and the need for greater oversight. The Project On Government Oversight (POGO) appreciates the opportunity to submit this statement.

POGO is a nonpartisan independent watchdog that investigates and exposes waste, corruption, abuse of power, and when the government fails to serve the public or silences those who report wrongdoing. We champion reforms to achieve a more effective, ethical, and accountable federal government that safeguards constitutional principles.

Insufficient Guardrails for Federal Pandemic Spending

The federal response to COVID-19 in the spring of 2020 was chaotic on many levels. Speed of spending was prioritized above almost everything else. And that emphasis on speed meant that often, even commonsense protections were not implemented before money started going out.

The Small Business Administration launched the Paycheck Protection Program, the single largest COVID assistance program, in early April 2020, just days after Congress authorized it in late March.¹ However, just as the program launched, the Small Business Administration's Office of the Inspector General issued two white papers offering important lessons learned from audits of other economic stimulus loans and disaster loans.² The reports clearly warned about possible financial loss if there weren't clear program requirements, if participants weren't properly vetted and required to submit documentation, and if the program issued loans to those who did not suffer economic losses from the disaster.

The Paycheck Protection Program proceeded without regard to the lessons learned and offered money on an essentially "first come, first served" basis, with no requirement to demonstrate economic harm or loss and little to no vetting of borrowers. The argument was that, had the Small Business Administration taken weeks to set up the bureaucratic infrastructure to better

¹ Small Business Administration, "SBA's Paycheck Protection Program for Small Businesses Affected by the Coronavirus Pandemic Launches," Press Release, April 3, 2020, <https://www.sba.gov/article/2020/apr/03/sbas-paycheck-protection-program-small-businesses-affected-coronavirus-pandemic-launches>.

² Small Business Administration Office of the Inspector General, *White Paper: Risk Awareness and Lessons Learned from Prior Audits of Economic Stimulus Loans*, 20-11 (April 3, 2020), https://www.sba.gov/sites/default/files/2020-04/SBA_OIG_WhitePaper_20-11_508.pdf; Small Business Administration Office of the Inspector General, *White Paper: Risk Awareness and Lessons Learned from Audits and Inspections of Economic Injury Disaster Loans and Other Disaster Lending*, 20-12 (April 3, 2020), https://www.sba.gov/sites/default/files/2020-04/SBA_OIG_WhitePaper_20-12_508_0.pdf.

target loans and prevent fraud before lending the funds, the economy would have further suffered.

While it is certainly true that speed and inclusiveness were more important at that moment, the level of waste and fraud that occurred raises serious concerns. If much of the assistance was wasted by going to large, still profitable companies or was lost to fraudsters claiming to be nonexistent companies, then did the speed really help?

Fundamental checks and balances were not used for much of this spending. For example, the Treasury operates a Do Not Pay list, which contains information on debarred entities, plus data on dead persons and borrowers with delinquent or defaulted federal loans. Despite having this long-standing resource readily available, COVID assistance programs, including the Paycheck Protection Program, did not check against the list before sending out money to recipients. The Small Business Administration inspector general found that some \$3.6 billion in Paycheck Protection Program loans went to recipients on the Treasury's Do Not Pay list.³ Along similar lines, the Pandemic Response Accountability Committee recently flagged \$5.4 billion in loan payments that went to questionable Social Security numbers.⁴

We recommend Congress ensure that strong standard protections such as recipient verification and consultation with Do Not Pay lists, Social Security rolls, and other sources are better integrated into all federal programs and are prepared for scaling up to faster spending rates during crises. Congress should also include provisions that make it clearer that fundamental checks and balances against waste and fraud must be used, even for urgent spending efforts during disasters.

Another major gap in the oversight of COVID funds was the far too limited funding authorized for inspectors general offices across the government. While the Coronavirus Aid, Relief, and Economic Security (CARES) Act did provide several inspectors general offices with budget increases, those increases did not keep pace with the larger amounts of spending the offices were tasked with overseeing.

For example, the newly formed Pandemic Response Accountability Committee, which provided oversight for \$5 trillion in federal COVID spending, received \$120 million in funding. Comparatively, the Recovery Accountability and Transparency Board, which helped provide oversight for \$800 billion in federal stimulus spending from 2009, received \$175 million.⁵ So, the Pandemic Response Accountability Committee received \$55 million less than the Recovery Accountability and Transparency Board to oversee six times more spending.

³ Small Business Administration Office of Inspector General, *Management Alert: Paycheck Protection Program Loan Recipients on the Department of Treasury's Do Not Pay List*, 21-06 (January 11, 2021), <https://www.sba.gov/sites/default/files/2021-01/SBA%20OIG%20Report%2021-06.pdf>.

⁴ Pandemic Response Accountability, Council of the Inspectors General on Integrity and Efficiency, *Fraud Alert: PRAC Identifies \$5.4 Billion in Potentially Fraudulent Pandemic Loans Obtained Using Over 69,000 Questionable Social Security Numbers*, Council of the Inspectors General on Integrity and Efficiency, PRAC 2023-02, (January 30, 2023), <https://www.pandemicoversight.gov/media/file/prac-fraud-alert-potential-ssn-fraud1.pdf>.

⁵ "Statement of Michael E. Horowitz, Chair, Pandemic Response Accountability Committee, Inspector General, U.S. Department of Justice before the U.S. House of Representatives Select Subcommittee on the Coronavirus Crisis concerning 'Examining Federal Efforts To Prevent, Detect, And Prosecute Pandemic Relief Fraud To Safeguard Funds For All Eligible Americans,'" U.S. Department of Justice, Office of the Inspector General, June 14, 2022, <https://oig.justice.gov/sites/default/files/2022-06/6-14-2022.pdf>.

The Small Business Administration Office of the Inspector General has also underscored the disconnect between the oversight work ahead of them and the office's current resources. From early April to early May 2020, the Small Business Administration lent out an amount worth more than 20 times what it had lent out in any single year.⁶ Later, the Small Business Administration IG office received a tidal wave of complaints through its hotline. In the first year after the start of the program, the Small Business Administration watchdog office's hotline received "a 19,500% increase over prior years," according to a congressional memo.⁷ The office is in possession of over 40,000 actionable complaints that could amount to a century's worth of investigative work.⁸ The Small Business Administration inspector general has limited the number of cases each of his agents can work at any one time to avoid burnout.⁹

The Infrastructure Investment and Jobs Act took a potentially better approach to allocation of funds for offices of inspector general. Rather than allocating flat amounts to inspectors general, the law included requirements that a percentage of the total amount authorized for each program be allocated to the agency inspector general for oversight. The inspector general funding provisions ranged from setting aside one-tenth of one percent to one-half of one percent of the funds authorized for specific infrastructure programs. This approach gives Congress a clearer tool to ensure that oversight funding keeps pace with the amount of spending being monitored. The percentage could be adjusted based on contributing factors such as past performance, speed of spending, and other considerations.

We urge Congress to closely link increases in spending — whether in response to a crisis such as the COVID-19 pandemic or hurricane recovery, or because of new major government efforts such as the infrastructure investment — with comparable increases in resources for IG offices conducting oversight of the spending. Properly resourced inspectors general are a vital component to ensure accountability of federal programs. But when the rate of federal award spending vastly outstrips the rate of oversight spending, significant increases in waste and fraud will almost certainly be the result.

Improper Implementation of Included Guardrails

Additionally, several oversight protections included in COVID legislation failed to materialize. These fumbled efforts for transparency and accountability represent failures in both implementation and congressional oversight. As the executive branch passed over or minimized intended oversight mechanisms, Congress should have stepped in with reinforced requirements

⁶ Small Business Administration Office of the Inspector General, *Flash Report: Small Business Administration's Implementation of the Paycheck Protection Program Requirements*, 20-14, (May 8, 2020), https://www.sba.gov/sites/default/files/2020-05/SBA_OIG_Report_20-14_508.pdf.

⁷ Majority Staff of Select Subcommittee on the Coronavirus Crisis to Members of the Select Subcommittee on the Coronavirus Crisis about "Lowering the Guardrails: How the Trump Administration Failed to Prevent Billions in Pandemic Small Business Fraud," March 25, 2021, <https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/2020-03-25%20Staff%20Memo%20-%20Small%20Business%20Fraud.pdf>.

⁸ CNN, "Billions in pandemic fraud requires '100 years' of investigative work," August 8, 2022, <https://www.cnn.com/videos/business/2022/08/27/smr-pandemic-fraud-epidemic.cnn>.

⁹ David A. Farenthold, "Prosecutors Struggle to Catch up to a Tidal Wave of Pandemic Fraud," *New York Times*, updated August 18, 2022, <https://www.nytimes.com/2022/08/16/business/economy/covid-pandemic-fraud.html>.

and penalties for non-compliance, especially given the unprecedented amounts of money involved.

The first example of failed oversight involves recipient reporting that was required under the CARES Act. The law included detailed reporting provisions meant to ensure that this extraordinary level of government spending would get more than the ordinary level of transparency and accountability. However, in a guidance memo to federal agencies on how to report on allocation of relief funds, the Office of Management and Budget defied Congress and derailed the new reporting despite clear requirements in the CARES Act.¹⁰

Congress explicitly required in the CARES Act that agencies collect new information from recipients of \$150,000 or more in relief funds. This information would provide greater detail regarding the use of funds and thereby greater accountability. Specifically, the law required recipients of \$150,000 or more in COVID federal assistance to report the following information on a quarterly basis to the Pandemic Response Accountability Committee and the agency that awarded the funds:

- total funds received from the agency;
- how much of that money has been spent or obligated to a particular project or activity to date
- a detailed explanation of those projects or activities, including the name of the project, a description, and the estimated number of jobs created or retained by the project or activity; and
- detailed information about any subcontracts or subgrants awarded.

These provisions were crafted to mirror recipient reporting that had been required under the American Recovery and Reinvestment Act of 2009.¹¹ The reporting and other transparency requirements were largely credited with reducing the amount of fraud that occurred within the more than \$800 billion of economic stimulus spending the legislation authorized.

Despite those requirements, the Office of Management and Budget issued guidance in April 2020, just days after the law was signed, stating that it “does not expect that additional reporting by agencies or recipients should be necessary to meet the requirements” of the CARES Act. The office claimed that the types of spending data agencies are already required to report through USASpending.gov could provide the full scope of data now required by the CARES Act.

That was and remains incorrect.

Data reported on USASpending.gov does not include data reported by recipients of federal funds and therefore would provide no details on specific projects or jobs created using coronavirus relief funds. And while the website does have data on subawards, it is generally fraught with

¹⁰ Russell T. Vought, Acting Director, Office of Management and Budget, to Heads of Departments and Agencies about “Implementation Guidance for Supplemental Funding Provided in Response to the Coronavirus Disease 2019 (COVID-19),” April 10, 2020, <https://www.whitehouse.gov/wp-content/uploads/2020/04/Implementation-Guidance-for-Supplemental-Funding-Provided-in-Response.pdf>.

¹¹ American Recovery and Reinvestment Act of 2009, H.R. 1, 111th Cong., § 1512 (2009), <https://www.congress.gov/bill/111th-congress/house-bill/1/text>.

errors, including missing data and duplicate transactions that often make it appear that several times more money was spent in subawards than the government provided in the original award.¹²

The failure to collect the intended recipient information left Congress, the administration, and the public with a massive data gap around COVID spending that prevented anyone from knowing in greater detail just how the money was being used and what impact it was having.

Another oversight failure stemmed from a legal interpretation of a simple structural anomaly in the CARES Act. The law included a short reference line at the start of the legislative provisions that stated that any reference to “this Act” only applied to provisions in that division of the law. The Treasury’s general counsel argued that the CARES Act’s oversight and recipient reporting requirements did not apply to any of the pandemic relief funds the law appropriates to the Treasury because the requirements were in Division B of the law and the Treasury programs were legislated in Division A.¹³

While the general counsel’s reading of the law is technically accurate, it nevertheless appears to be contrary to the intent of Congress. The law states that the Pandemic Response Accountability Committee, whose members must include the Treasury’s inspector general, shall report on “covered funds” under the CARES Act itself, as well as the Coronavirus Preparedness and Response Supplemental Appropriations Act, the Families First Coronavirus Response Act, or “any other Act primarily making appropriations for the Coronavirus response and related activities.” The statutory language is clear in applying the reporting requirements to all programs funded by the CARES Act as well as to programs in the two previous pieces of coronavirus relief legislation and any subsequent relief legislation.

The interpretation would have effectively exempted more than \$1 trillion in COVID spending from the reporting requirement, if the Trump administration had implemented the required recipient reporting. This would have excluded some of the biggest COVID relief programs, including the Paycheck Protection Program, the Exchange Stabilization Fund for distressed sectors of the economy, and the Coronavirus Relief Fund to the States.

Because the recipient reporting never materialized, the problematic interpretation became a moot issue. But Congress never stepped in to correct the coverage and ensure that those programs would be included in the reporting. Similarly, Congress never forced the administration to follow through on the recipient reporting they had already legally required.

When Congress is authorizing disaster spending or a significant increase in federal spending for another reason, oversight requirements should be drafted with great clarity to convey the full scope of activity expected by Congress. Loopholes that exempt large portions of spending from the intended review and reporting should be immediately closed. Congress needs to follow spending authorization with strong, consistent oversight of an administration’s implementation. Poor or questionable interpretations by an administration that will limit the transparency and

¹² Sean Moulton, “Blueprint to Fix Reporting of Federal Spending,” Project on Government Oversight, August 2, 2021, <https://www.pogo.org/analysis/2021/08/blueprint-to-fix-reporting-of-federal-spending>.

¹³ Deborah L. Harker, Assistant Inspector General for Audit, Department of the Treasury Office of Inspector General, to Daniel J. Kowalski, Counselor to the Secretary, about “Interim Audit Update – Coronavirus Relief Fund Recipient Reporting,” May 27, 2020, <https://oig.treasury.gov/sites/oig/files/2020-12/OIG-20-036.pdf>.

accountability around the spending should be strongly countered by Congress, and if need be, clarified with additional legislation.

Deficiencies in Current Award Reporting

Another significant failure in our oversight of COVID spending stems from our flawed reporting system to track federal awards. While there were failures to implement new reporting requirements to gather greater details, the existing system has long-standing deficiencies that prevent the data from being used properly to evaluate federal spending.

Linda Miller, who served for a year as deputy executive director of the Pandemic Response Accountability Committee, shared her perspective on spending oversight problems in an op-ed. “Nearly all aspects of collecting and using data in the government are broken,” she concluded.¹⁴ And she isn’t wrong. Information currently collected about federal awards is neither detailed nor reliable enough to answer fundamental oversight questions. What impact did this spending have on employment? Were some communities missed by this program? How equitably were these funds distributed? We do not know.

This problem is well illustrated by our long-deficient tracking of subaward information, a critical component of federal spending. Many federal awards go to state or local agencies, which then distribute them to specific recipients or locations. Therefore, subaward data is a critical link in the chain of transactions, one that would allow us to follow federal dollars further, better see which communities programs are reaching and which communities are left out, and better measure the equity and impact of federal spending. But this link remains broken, as the subaward data collected remains wholly unreliable. Many programs, for example, are missing almost all data about subawards, while other programs create multiple records about the same subaward.¹⁵ While audits of the quality of spending data overall, conducted under the Digital Accountability and Transparency Act, have ushered in modest improvements in the quality of data for prime awards, those audits have ignored the most broken component of federal spending data — subawards.¹⁶ The reporting of subaward data must be fixed if the public is to understand where their tax dollars ultimately go.

Another major data gap that became clear during the COVID-19 pandemic spending is that the federal government does not track as much information about assistance awards (grants, loans, direct payments, insurance awards, and others) as it collects for contracts. Agencies don’t report demographic information like the gender, ethnicity, or veteran status of business owners who receive assistance as part of their awards tracking. Nor do they systematically collect data on the industry sector of recipients. No information is collected to determine whether a business receiving assistance is a Historically Underutilized Business Zone Firm, a Labor Surplus Area

¹⁴ Linda Miller, “What I Learned Helping Lead Oversight of \$5 Trillion in Pandemic Relief,” *Government Executive*, June 25, 2021, <https://www.govexec.com/management/2021/06/what-i-learned-helping-lead-oversight-5-trillion-pandemic-relief/174966/>.

¹⁵ Moulton, “Blueprint to Fix Reporting of Federal Spending” [see note 12].

¹⁶ Paula M. Rascona et. al, Government Accountability Office, *DATA Act: OIGs Reported That Quality of Agency-Submitted Data Varied, and Most Recommended Improvements*, GAO 20-540 (July 2020), <https://www.gao.gov/products/gao-20-540>.

Firm, or an 8(a) Business Development Program participant.¹⁷ All of these data points and more have been collected for years for each federal contract.

This enormous loophole means there is no good way to evaluate assistance spending for equity and effectiveness. It also makes it nearly impossible to measure whether agencies are meeting congressional mandates to prioritize traditionally underserved communities, where those statutory directives exist.

Our tracking and reporting system also fails to collect key data points that we know from experience are needed to properly evaluate federal awards. For example, a common inquiry around federal spending, including disaster and stimulus spending, is its impact on employment or small businesses. In fact, some federal programs, like the COVID assistance Paycheck Protection Program, are targeted to support job creation and retention. Even so, it is almost impossible to answer whether these job support programs work, because we don't currently track any employment numbers for recipients of federal awards. There is no way to determine if a recipient of a federal award has one employee, 100 employees, or even 10,000.

Another common, and foundational, question about government awards that goes unanswered because the government doesn't collect the data is, "How many people did this help?" If the award covers school books, how many students are getting them? If the award provides job training, how many people will receive it? The reality is that sometimes the important measure isn't how much of a product the government provides but how many people benefit. Knowing that a half-mile bridge was repaired might not sound like much. But knowing that millions of people depend on the bridge to commute to and from work can change our perspective on the federal award that funded the repair. Similarly, tracking this data would also mean that big contracts and awards that benefit very few people, such as the famous "Bridge to Nowhere," can be better identified and brought into question.¹⁸ Despite the importance of understanding the impact of federal awards, no metric quantifying benefit has ever been attempted.

Congress and the administration should work together to address these reporting needs. The subaward reporting should be fixed as soon as possible and regular monitoring should be put in place to evaluate how agencies are doing in their reporting requirements for subawards. Congress should close the assistance award loophole and ensure that data points collected for contracts are collected for assistance awards to businesses. New requirements should be made to collect data on jobs or employment, an estimate of the number of people benefiting, and other important missing metrics. Without these improvements in federal award data, we will never be able to fully account for federal awards.

¹⁷ These are just a few examples of different business designations. The Small Business Administration oversees the HUBZone program and the 8(a) Business Development Program to assist small businesses in underutilized areas or disadvantaged small business owners. The Department of Labor issues the annual Labor Surplus Area list, which details locations that have had unemployment rates 20% or more above the average for two years. See "HubZone Program," U.S. Small Business Administration, accessed January 10, 2023, <https://www.sba.gov/federal-contracting/contracting-assistance-programs/hubzone-program>; "8 (a) Business Development Program," U.S. Small Business Administration, accessed January 10, 2023, <https://www.sba.gov/federal-contracting/contracting-assistance-programs/8a-business-development-program>; "Labor Surplus Area: Fiscal Year 2023," U.S. Department of Labor, accessed January 10, 2023, <https://www.dol.gov/agencies/eta/lssa>.

¹⁸ Ronald Utt, "The Bridge To Nowhere: A National Embarrassment," October 20, 2005, The Heritage Foundation, <https://www.heritage.org/budget-and-spending/report/the-bridge-nowhere-national-embarrassment>.

Conclusion

POGO strongly recommends Congress consider the following steps:

- Strengthen standard protections such as recipient verification and the use of Do Not Pay lists, Social Security rolls, and other governmental data sources and require the use of these protections in all federal programs. The protections should be designed to scale up to faster spending rates during crises.
- Include provisions in all disaster or large spending authorizations that make it clearer that fundamental checks and balances against waste and fraud must be used even during times of urgent spending.
- Closely link increases in spending with comparable increases in resources for inspector general offices conducting oversight of the spending.
- Ensure that oversight requirements are drafted with great clarity to convey the full scope of activity expected by Congress.
- Strong congressional oversight of an administration's implementation should follow any major spending authorizations with a focus to close any unintended loopholes and correct any problematic interpretations by an administration.
- Fix subaward reporting as soon as possible and establish regular monitoring of agencies' performance in subaward reporting.
- Close the assistance award loophole and ensure that data points collected for contracts are collected for assistance awards to businesses.
- Require the collection of new data on employment, the number of people benefiting from an award, and other important missing metrics.

Thank you for allowing POGO to submit a statement for the record. We are happy to work with the Committee as it moves forward to expose COVID-related fraud and explores solutions to prevent it from occurring in the future.