Audit Report

OIG-23-024

CORONAVIRUS DISEASE 2019 PANDEMIC RELIEF PROGRAMS

Audit of Air Carrier Worker Support Certifications - Constant Aviation, LLC

April 21, 2023

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 21, 2023

MEMORANDUM FOR **JACOB LEIBENLUFT**
CHIEF RECOVERY OFFICER

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

SUBJECT: Audit of Air Carrier Worker Support Certifications – Constant Aviation, LLC

Attached is our audit report for the *Audit of Air Carrier Worker Support Certifications - Constant Aviation, LLC* (Constant) (OIG-23-024; dated April 21, 2023). Under a contract monitored by our office, Saggar & Rosenberg, P.C. (S&R), a certified independent public accounting firm, performed the audit. The objective of this audit was to assess the accuracy, completeness, and sufficiency of Constant's sworn financial statement or other data used to certify the wages, salaries, benefits, and other compensation amounts submitted and approved by the Department of the Treasury (Treasury) for the Air Carrier Payroll Support Program (PSP1). The scope of this audit covered the time period from April 1, 2019 through September 30, 2019 and included the certified PSP1 Application, sworn financial statements, tax returns, and other documentation submitted to Treasury.

In its audit report, S&R found Constant incorrectly compiled data used for the Awardable Amounts section of the PSP1 Application, resulting in a $57,781 overstatement. Specifically, the:

- Inclusion of unallowable corporate officer compensation, resulted in a [redacted] overstatement;
- Data errors, resulted in a [redacted] understatement; and
- Reporting conservative benefit cost estimates, resulted in a [redacted] understatement.

Treasury's awards to contractors under PSP1 included a 90 percent pro rata distribution of application amounts. Applying this formula, Constant received a $52,003 overpayment from Treasury.

Accordingly, S&R recommends that Treasury's Chief Recovery Officer:

- Seek reimbursement of the $52,003 overpayment for PSP1 financial assistance; and

- Review Constant's requested amount for unallowable expenses, under the Payroll Support Program Extension (PSP2)[1] authorized by the Consolidated Appropriations Act, 2021 and the Payroll Support Program 3 (PSP3)[2] authorized by the American Rescue Plan Act of 2021, and seek reimbursement for the overpayment, if applicable.

Our contract required that the audit be performed in accordance with generally accepted government auditing standards. In connection with the contract, we reviewed S&R's report and related documentation and inquired of its representatives. Our review, as differentiated from an audit performed in accordance with generally accepted government auditing standards, was not intended to enable us to express an opinion on Constant's compliance with Treasury's PSP1 policies and procedures. S&R is responsible for the attached auditor's report and the conclusions expressed therein. Our review found no instances in which S&R did not comply, in all material respects, with generally accepted government auditing standards.

We appreciate the courtesies and cooperation provided to S&R and our staff during the audit. If you have any questions or require further information, please contact me at (202) 486-1420, or a member of your staff may contact Lisa DeAngelis, Deputy Assistant Inspector General for Audit, at (202) 487-8371.

Attachment

cc: Jason Morrow, Attorney Advisor, Department of the Treasury
Victoria Collin, Chief Compliance and Finance Officer, Department of the Treasury
Jeff Davis, Partner, Saggar & Rosenberg, P.C.

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[1] The Consolidated Appropriations Act, 2021 (P.L. 116-260), enacted on December 27, 2020, created the *Airline Worker Support Extension* for passenger air carriers and certain contractors. Treasury referred to this as Payroll Support Program Extension (PSP2).

[2] The American Rescue Plan of 2021 (P.L. 117-2), enacted on March 11, 2021, created the *Air Transportation Payroll Support Program Extension* authorizing Treasury to provide additional assistance to passenger air carriers and contractors that received financial assistance under PSP2. Treasury referred to this as Payroll Support Program 3 (PSP3).

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Abbreviations

CARES Act	Coronavirus Aid, Relief, and Economic Security Act
Constant	Constant Aviation, LLC.
COVID-19	Coronavirus Disease 2019
DOT	Department of Transportation
GAO	Government Accountability Office
Guidelines	Guidelines and Application Procedures for Payroll Support to Air Carriers and Contractors
IRS	Internal Revenue Service
OIG	Treasury Office of Inspector General
PSP1	Payroll Support Program, CARES Act
PSP2	Payroll Support Program Extension, Consolidated Appropriations Act, 2021
PSP3	Payroll Support Program 3, American Rescue Plan Act of 2021
S&R	Saggar & Rosenberg, P.C.

SOC 1	System and Organizational Controls
Treasury	Department of the Treasury

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SAGGAR & ROSENBERG, P.C.
Assurance • Tax • Consulting

April 21, 2023

Jacob Leibenluft
Chief Recovery Officer
Department of the Treasury

This report presents the results of our audit of Constant Aviation, LLC's (Constant) certifications made to the Department of the Treasury (Treasury) as part of its participation in the Air Carrier Payroll Support Program (PSP1). This audit was mandated by Title IV, Subtitle B, *Air Carrier Worker Support,* of the *Coronavirus Aid, Relief, and Economic Security Act* (CARES Act).[3] Under the CARES Act, Treasury was to provide $32 billion in financial assistance to passenger air carriers, cargo air carriers, and certain contractors to be exclusively used for the continuation of payment of employee wages, salaries, and benefits, in response to the economic impact of the Coronavirus Disease 2019 (COVID-19).[4] Furthermore, the Treasury Office of Inspector General (OIG) is required to audit certifications made by passenger and cargo air carriers that do not report salaries and benefits to the Department of Transportation (DOT) (hereinafter referred to as non-241 air carriers)[5] and contractors.

Under a contract with OIG, Saggar & Rosenberg, P.C. (S&R) conducted this audit. Our audit objective was to assess the accuracy, completeness, and sufficiency of Constant's sworn financial statement or other data used to certify the wages, salaries, benefits, and other compensation amounts submitted and approved by Treasury for PSP1. The scope of our audit covered the time period from April 1, 2019 through September 30, 2019 and included the certified PSP1 Application, sworn financial

[3] P.L. 116-136 (March 27, 2020).
[4] The financial assistance provided under the CARES Act was split between Passenger Air Carriers ($25 billion), Cargo Air Carriers ($4 billion), and Contractors ($3 billion).
[5] Passenger and cargo air carriers that are not required to report salaries and wages to DOT under 14 CFR, Part 241, "Uniform System of Accounts and Reports for Large Certificated Air Carriers".

statements, tax returns, and other documentation submitted to Treasury on April 3, 2020.[6]

To accomplish the objective, we reviewed applicable laws and regulations; and Treasury's policies and procedures, including but not limited to, the Title IV, Subtitle B, *Air Carrier Worker Support* of the CARES Act, *Guidelines and Application Procedures for Payroll Support to Air Carriers and Contractors* (Guidelines), PSP1 Agreement, and *Frequently Asked Questions: Application Procedures for Payroll Support to Air Carriers and Contractors.* We interviewed key personnel from Constant, Treasury, and contracted consultants engaged by Treasury to evaluate certified company applications. We conducted our fieldwork from September 2021 through March 2022. Appendix 1 contains a more detailed description of our objective, scope, and methodology.

Results in Brief

In brief, S&R found that Constant, a contractor, reported correct information for three of the four sections reviewed on its PSP1 Application.[7] These sections are: (1) Applicant Information, (2) Applicant Type, and (3) Certification. We also found that Constant incorrectly reported information in the Awardable Amounts section, resulting in a total overstatement of $57,781. Specifically, we found (1) the inclusion of corporate officer compensation, resulting in a [redacted] overstatement, (2) data errors, resulting in a [redacted] understatement, and (3) reporting conservative benefit cost estimates, resulting in a [redacted] understatement. Treasury's awards to contractors under PSP1 included a 90 percent pro rata distribution of application amounts. Applying this formula, we found that Constant received a $52,003 overpayment from Treasury. As a result, we question the costs totaling $52,003 and recommend that the Treasury Chief Recovery Officer seek reimbursement of the $52,003 overpayment to Constant for PSP1. Additionally, we recommend that Treasury review Constant's requested amount for unallowable expenses,

[6] Constant submitted the PSP1 Application and related supporting documentation on April 3, 2020.

[7] The PSP1 Application is comprised of eight sections. Four sections - Financial Institution Information, Employment Levels, Taxpayer Protection, and Additional Information, were not subject to audit procedures. Details regarding the sections not reviewed can be found in appendix 1.

under the Payroll Support Program Extension (PSP2)[8] authorized by the Consolidated Appropriations Act, 2021 and the Payroll Support Program 3 (PSP3)[9] authorized by the American Rescue Plan Act of 2021, and seek reimbursement for overpayment, if applicable.

Appendix 2 contains more details on questioned costs.

As part of our reporting process, we provided Constant management an opportunity to comment on a draft of this report. While Constant management does not contest the recommendations in the report, management would like to explain its position regarding who was and was not a corporate officer of Constant for the purposes of the PSP1 Application.

Constant management stated that it finds the definition of corporate officer to be inconsistent on both technical and practical grounds. Management acknowledged that while the definition does refer to "vice president", it further specifies that a vice president must be *"in charge of a principal business unit, division or function"* and that qualifying language acknowledges the possible existence of vice presidents who were not in charge of a principal business unit, division, or function. Based on Constant management's interpretation of the definition, it presumes those employees would not fall within the definition of a corporate officer unless they also performed a policy-making function. Constant management further stated that an employee's level of authority, not title, ought to be what really determines the status as a corporate officer for PSP purposes.

Under Constant management's interpretation, many of the employees identified in the report do not qualify as corporate officers, despite their titles, since virtually all major decisions at Constant, and all policy-making authority, lay with its Chief Executive Officer. Management further stated that while certain employees received "Vice President" titles for status, recognition,

[8] The Consolidated Appropriations Act, 2021 (P.L. 116-260), enacted on December 27, 2020, created the *Airline Worker Support Extension* for passenger air carriers and certain contractors. Treasury referred to as Payroll Support Program Extension (PSP2).

[9] The American Rescue Plan of 2021 (P.L. 117-2), enacted on March 11, 2021, created the *Air Transportation Payroll Support Program Extension* authorizing Treasury to provide additional assistance to passenger air carriers and contractors that received financial assistance under PSP2. Treasury referred to as Payroll Support Program 3 (PSP3).

or external credibility, these individuals were not formally appointed by Constant's board of managers, and their titles did not carry any inherent authority to set company policy or make major decisions on behalf of Constant. Constant management stated that most of these employees had no autonomous authority to sign or approve material contracts, make significant purchases, or make hiring, firing or compensation decisions.

We disagree with Constant management's statement that the employee's level of authority or policy making capability determines the status of a corporate officer for PSP1 Application purposes. Neither the PSP1 Application instructions (referred to as "Guidelines" in this report) nor the PSP1 Agreement required corporate officers to set company policy, be appointed by board members, possess autonomous authority to sign or approve material contracts, make significant purchases, or make hiring, firing or compensation decisions. The PSP1 Agreement defines a corporate officer as, "*with respect to the Recipient, its president; any vice president in charge of a principal business unit, division, or function (such as sales, administration or finance); any other officer who performs a policy-making function; or any other person who performs similar policy making functions for the Recipient. Executive officers of subsidiaries or parents of the Recipient may be deemed Corporate Officers of the Recipient if they perform such policy-making functions for the Recipient".* In the report, we noted that ten executives that met the definition of corporate officers are the President; Vice President of Air Services; Vice President of Sales; Vice President of Aircraft On Ground Lines; Vice President of Constant Aviation Rotable Exchange; Vice President of Human Resources; Vice President of Quality, Safety, and Training; and three Vice Presidents of Operations. Constant management's response, in its entirety, is included as appendix 3 of this report.

In a written response, Treasury management concurred with our recommendations and agreed that any overpayments of PSP funds should be recouped. Treasury stated it will conduct a review of the findings, consider any response from the recipient, and seek recoupment of any amounts that Treasury determines have been overpaid. Also, Treasury will review awardable amounts requested under PSP2 and PSP3 and seek recoupment where appropriate. Treasury management will need to record an estimated completion date for these actions in the Joint Audit Management Enterprise

System (JAMES). Management's planned corrective actions meet the intent of our recommendations. Treasury management's response, in its entirety, is included as appendix 4 of this report.

Background

Title IV, Subtitle B, of the CARES Act, *Air Carrier Worker Support*, requires Treasury to provide financial assistance to air carriers and contractors that must exclusively be used for the continuation of payments of employees' wages, salaries, and benefits. Financial assistance is to be provided to:

(1) passenger air carriers, in an aggregate amount up to $25 billion;
(2) cargo air carriers, in an aggregate amount up to $4 billion; and
(3) contractors, in an aggregate amount up to $3 billion.

According to the CARES Act, Treasury is required to provide financial assistance to air carriers that report salaries and benefits to the DOT (referred to as 241 carriers),[10] in an amount equal to the salaries and benefits reported to DOT for the period April 1, 2019 through September 30, 2019. For air carriers that do not report such data to DOT (referred to as non-241 carriers), and contractors, financial assistance is required to be in an amount that the air carrier or contractor certifies using sworn financial statements or other appropriate data as the amount of wages, salaries, benefits, and other compensation paid to employees during the period of April 1, 2019 through September 30, 2019. The amounts submitted on the application to Treasury were considered sworn financial statements. To be eligible for payments, air carriers and contractors must enter into agreements with

[10] 14 CFR, Part 241 "Uniform System of Accounts and Reports for Large Certificated Air Carriers" defines "Air carrier, large certificated" as an air carrier holding a certificate issued under 49 U.S.C 41102, as amended, that: (1) operates aircraft designed to have a maximum passenger capacity of more than 18,000 pounds; or (2) conducts operations where one or both terminals of a flight stage are outside the 50 states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands. These air carriers are required to report financial information to DOT. Constant is not a Large Certificated Air Carrier.

Treasury certifying that they meet certain required assurances, terms, and conditions.

On March 30, 2020, Treasury posted on its website the Guidelines, which included the PSP1 Application. The PSP1 Application is comprised of eight sections:

1. Applicant Information — (1) applicant name; (2) taxpayer identification number and address; and (3) contact person's name, title, phone number, and email address.

2. Applicant Type — selection of applicant type whether it is passenger air carrier, cargo air carrier, or contractor. Additionally, if the applicant is a contractor, this section would identify the contractor's service functions and the name of the air carrier or airport to which services are provided. Finally, this section includes affiliate and parent company information.

3. Financial Institution Information — (1) the applicant's banking account number and routing number; and (2) the financial institution's name, address, and telephone number.

4. Employment Levels — applicant's average number of employees for 2019 and involuntary reductions after March 1, 2020.

5. Awardable Amounts — applicant's sworn financial statement consisting of salaries, wages, benefits, and other compensation for the period April 1, 2019 through September 30, 2019.

6. Taxpayer Protection — a table that outlines in detail the proposed financial instrument to be issued to Treasury.

7. Additional Information — applicant's verification of submitting its Internal Revenue Service (IRS) Form 941 – *Employer's Quarterly Federal Tax Return*[11] covering the period April 1, 2019 through September 30, 2019 along with the PSP1 Application submitted to Treasury.

[11] IRS Form 941 is a tax form that businesses file quarterly to report income taxes, Social Security taxes, and Medicare taxes they withheld from employee paychecks.

8. Certification — names, titles, and signatures of two certifying officials[12] and the applicant name and application submission date.

On April 18, 2020, Treasury published a sample PSP1 Agreement on its website, which provided definitions, terms, and conditions for participation in PSP1, and required applicants to submit completed applications by April 27, 2020. After Treasury reviewed and approved an application, both parties were required to sign the PSP1 Agreement.

Treasury Disbursement Processes

In an effort to disburse PSP1 payments to contractor applicants as quickly as possible and prior to the application deadline of April 27, 2020, Treasury applied an initial estimated pro rata rate of 69.7 percent to the awardable amount because not all applications had been submitted at the time. After the application deadline, Treasury determined the total amount requested by all contractors was approximately $4.1 billion, which exceeded the $3 billion available financial assistance. Because its initial estimated pro rata rate was low, Treasury calculated an additional 20.3 percent, the top-off amount, for contractors making the final pro rata rate 90 percent. Treasury explained that 17 contractors did not accept the top-off amount; as such, the final awardable amount for those contractors was 69.7 percent. Treasury disbursed an initial lump sum payment of one-third of the awardable amount, followed by four equal subsequent payments to ensure it provided sufficient and timely financial assistance corresponding to the applicants' payroll schedule. In instances where Treasury needed to perform additional follow-up with contractors or needed additional time to approve applications, Treasury compressed the payment schedule on a case by case basis. Generally, Treasury disbursed the top-off amounts for contractors in February 2021. Treasury officials told us that if recoupment was necessary for an applicant's inclusion of unallowable expenses such as corporate officer compensation and employer-side payroll taxes in the application, the recoupment method was dependent on timing. If the need for recoupment was

[12] The certifying officials attested under penalty of perjury that the information and certifications provided in the application and its attachments are true and correct.

known prior to the top-off distribution then the recoupment was offset from the top-off payment. For recoupment amounts not known until after the top-off payment, Treasury has not made a decision how those funds will be collected and whether those funds will be reallocated at a later date.

PSP1 Interim Audit Report

In a prior audit report,[13] OIG identified two recurring issues affecting the payment amounts administered to all PSP1 recipients for non-241 air carriers and contractors. Specifically, employer-side payroll taxes and corporate officer compensation were included in the awardable amounts for some recipients. Treasury management acknowledged that the recipients audited included unallowable employer-side payroll taxes or corporate officer compensation in their calculation of the "awardable amount" on their PSP1 applications and agreed to (1) review payments issued under PSP1 to ensure awarded amounts are allowable per the CARES Act and Treasury guidance; and (2) remedy the incorrect amounts awarded under PSP1.

Constant Aviation, LLC

Headquartered in Cleveland, Ohio, Constant is a contractor that provides an array of services for numerous corporate aircrafts, including maintenance, avionics, engineering, and support.

Constant submitted its PSP1 Application totaling [redacted] on April 3, 2020. Constant received the contractor top-off for a total award of $30,049,303.19, or 90 percent of the company's requested amount. Treasury's disbursements to Constant were as follows:

- May 26, 2020 - $7,757,171.97
- June 04, 2020 - $3,878,585.99
- July 07, 2020 - $3,878,585.99

[13] OIG-21-025, *Interim Audit Update – Air Carrier and Contractor Certifications for Payroll Support Program (Interim Audit)*, March 31, 2021.

- August 06, 2020 - $3,878,585.99
- September 04, 2020 - $3,878,585.98
- February 16, 2021 - $6,777,787.27

In addition to PSP1, Treasury awarded Constant $10,149,987 under PSP2 and $10,149,987 under PSP3. PSP2 and PSP3 were not the subject of this audit.

Audit Results

We found that Constant reported correct information for three of the four sections reviewed on its PSP1 Application. These sections are: (1) Applicant Information, (2) Applicant Type, and (3) Certification. We compared information provided in each section of the PSP1 Application to supporting documentation including contracts with air carriers, general ledger data, company sworn financial statements, IRS Form 941, executive-level business charts, payroll registers, and third-party benefit invoices.

We also found that Constant reported incorrect information in the Awardable Amounts section. The company included unallowable corporate officer compensation, resulting in an overstatement of [redacted]. However, the overstatement was partially offset by data errors and reporting conservative benefit cost estimates totaling [redacted], resulting in a net overstatement of $57,781. Table 1 illustrates a monthly breakdown of Constant's overstated amounts.

Table 1. Aggregate Overstatement by Month

Month	PSP1 Application	Re-Calculated Awardable Amount	Variance
April 2019	[redacted]	[redacted]	[redacted]
May 2019	[redacted]	[redacted]	[redacted]
June 2019	[redacted]	[redacted]	[redacted]
July 2019	[redacted]	[redacted]	[redacted]
August 2019	[redacted]	[redacted]	[redacted]
September 2019	[redacted]	[redacted]	[redacted]
TOTAL	[redacted]	[redacted]	**$(57,781)**

Source: S&R Calculation of Awardable Amount

Since Treasury disbursed PSP1 funds pro rata for contractors at 90 percent of the requested awardable amount, Constant received an overpayment of $52,003.

Finding 1 Inaccurate Compilation of the PSP1 Application Awardable Amount

Corporate Officer Compensation

Both the CARES Act and Treasury's Guidelines define "employee" as "*an individual, other than a corporate officer, who is employed by an air carrier or contractor in the United States (including its territories and possessions).*" In addition, the signed PSP1 Agreement, effective date May 21, 2020, subsequently defines a corporate officer as, "*with respect to the Recipient, its president; any vice president in charge of a principal business unit, division, or function (such as sales, administration or finance); any other officer who performs a policy-making function; or any other person who performs similar policy making functions for the Recipient. Executive officers of subsidiaries or parents of the Recipient may be deemed Corporate Officers of the Recipient if they perform such policy-making functions for the Recipient.*"

We identified thirteen Constant executives through discussions with management and review of Constant's 2019 organizational chart. All thirteen of the executives met the definition of a corporate officer per the PSP1 Agreement. We found that Constant included unallowable corporate officer compensation paid to ten of its thirteen corporate officers, resulting in an overstatement of [redacted]. The ten executives were the President, Vice President of Air Services, Vice President of Sales, Vice President of Aircraft On Ground Lines, Vice President of Constant Aviation Rotable Exchange, Vice President of Human Resources, Vice President of Quality, Safety, and Training, and three Vice Presidents of Operations. However, Constant properly excluded compensation paid to its Chief Executive Officer and two Chief Financial Officers that were employed between April 2019 and September 2019. Table 2 illustrates a monthly breakdown of Constant's overstated amounts for corporate officer compensation.

Table 2. Corporate Officer Inclusion

Month	Unallowable Corporate Officer Compensation in the PSP1 Application
April 2019	[redacted]
May 2019	[redacted]
June 2019	[redacted]
July 2019	[redacted]
August 2019	[redacted]
September 2019	[redacted]
TOTAL OVERSTATEMENT	[redacted]

Source: S&R Calculation of Awardable Amount

Constant management stated that they had a different interpretation of a corporate officer based on the definition in the PSP1 Agreement. In addition, Constant management stated that they did not consider individuals with a title of "Vice President" of a particular business line as a corporate officer if they did not have policy making capabilities.

Understatements to the Awardable Amount on the PSP1 Application

Treasury's Guidelines define wages, salaries, benefits, and other compensation as *"remuneration paid by the applicant to its employees for personal services and includes salaries, wages, overtime pay, cost-of-living differentials, and other similar compensation, as distinguished from per diem allowances or reimbursement for expenses incurred by personnel for the benefit of the applicant."* In addition, the Guidelines define Awardable Amounts as *"an amount that such contractor certifies, using sworn financial statements or other appropriate data, as the amount of wages, salaries, benefits, and other compensation that such contractor paid its employees during the time period."*

Data Errors for Salaries and Wages and Other Compensation

Constant made a data compilation error during the application process that ultimately reduced the overall requested amount. We found that total gross pay from company pay registers exceeded the amount recorded in the awardable amount table in the PSP1 Application. Specifically, data errors in the PSP1 Application for June 2019 and September 2019 resulted in an understatement of [redacted] in requested amounts related to wages, salaries, and other compensation, as shown below in Table 3.

Table 3. Data Errors

Month	Requested Salaries and Wages and Other Compensation	Actual Salaries and Wages and Other Compensation	Understatement
April 2019	[redacted]	[redacted]	-
May 2019	[redacted]	[redacted]	-
June 2019	[redacted]	[redacted]	[redacted]
July 2019	[redacted]	[redacted]	-
August 2019	[redacted]	[redacted]	-
September 2019	[redacted]	[redacted]	[redacted]
TOTAL	[redacted]	[redacted]	[redacted]

Source: S&R Calculation of Awardable Amount

Constant management stated that data compilation errors stemmed from unintentional oversight during the application process.

Benefit Request Calculations

Constant prepared the "Benefits" section of the Awardable Amounts table using 401K employer matching contributions, amounts paid to third-party life insurance providers, and estimated employee healthcare costs at the employee level that would be provided under The Consolidated Omnibus Budget Reconciliation Act[14] elections, rather than actual medical benefits paid for healthcare. However, the actual allowable benefit compensation, which does not include unallowable corporate officer compensation, exceeded the amount requested on the PSP1 Application and ultimately reduced the awardable amount related to benefits, as shown below in Table 4.

[14] P.L. 99-272 (April 7, 1986).

Table 4. Benefit Request Comparison

Month	Requested Benefits	Allowable Benefit Costs	Understatement
April 2019	[redacted]	[redacted]	[redacted]
May 2019	[redacted]	[redacted]	[redacted]
June 2019	[redacted]	[redacted]	[redacted]
July 2019	[redacted]	[redacted]	[redacted]
August 2019	[redacted]	[redacted]	[redacted]
September 2019	[redacted]	[redacted]	[redacted]
TOTAL	[redacted]	[redacted]	[redacted]

Source: S&R Calculation of Awardable Amount

Constant management stated that it used the Consolidated Omnibus Budget Reconciliation Act healthcare benefit estimates as opposed to actual healthcare payments made on behalf of company employees to exercise conservatism when preparing the PSP1 Application.

In total, the [redacted] overstatement for corporate officer compensation, [redacted] understatement due to data errors, and [redacted] understatement due to reporting conservative benefit cost estimates, resulted in an aggregate overstatement of $57,781. Since Treasury disbursed PSP1 funds pro rata for contractors at 90 percent of the requested amount, Constant received an overpayment of $52,003.

To remedy the findings listed in the prior OIG audit report,[15] Treasury required PSP2 applicants to re-certify their PSP1 awardable amounts. Constant certified to Treasury under PSP2, that its PSP1 Application did not include corporate officer compensation. Treasury stated it relies on applicants' certifications that they did not include unallowable expenses (i.e. corporate officer compensation and employer-side payroll taxes) and no further validation checks were performed; as a result, the company

[15] OIG-21-025, *Interim Audit Update – Air Carrier and Contractor Certifications for Payroll Support Program (Interim Audit)*, March 31, 2021.

likely inappropriately included corporate officer compensation in its PSP2 and PSP3 financial assistance request.

Recommendations

S&R recommends that Treasury's Chief Recovery Officer:

1. Seek reimbursement of the $52,003 overpayment of PSP1 financial assistance.

   Management Response

   Treasury will conduct a review of the findings, consider any response from the recipient, and seek recoupment of any amounts that Treasury determines have been overpaid.

   OIG Comment

   Management's planned corrective actions meet the intent of our recommendation. Treasury management will need to record an estimated completion date for these actions in JAMES.

2. Review Constant's requested amount for unallowable expenses, under PSP2 and PSP3, and seek reimbursement for the overpayment, if applicable.

   Management Response

   Treasury will review awardable amounts requested under PSP2 and PSP3 and seek recoupment where appropriate.

   OIG Comment

   Management's planned corrective actions meet the intent of our recommendation. Treasury management will need to record an estimated completion date for these actions in JAMES.

* * * * * *

We appreciate the courtesies and cooperation provided to our staff during the audit. A distribution list for this report is provided as appendix 5.

Saggar & Rosenberg, P.C. /s/

Appendix 1: Objective, Scope, and Methodology

Our objective was to assess the accuracy, completeness, and sufficiency of Constant Aviation, LLC's (Constant) sworn financial statement or other data used to certify the wages, salaries, benefits, and other compensation amounts submitted and approved by the Department of the Treasury (Treasury).

The scope of our audit covered the time period from April 1, 2019 through September 30, 2019 and included the certified Payroll Support Program (PSP1) Application, sworn financial statements, tax returns, and other documentation submitted to Treasury on April 3, 2020.[16]

To accomplish this objective, Saggar & Rosenberg, P.C. (S&R) performed the following activities during audit fieldwork conducted remotely, due to the Coronavirus Disease 2019 (COVID-19) pandemic from August 2021 through March 2022:

- Reviewed applicable Federal laws, regulations, and guidance, including:
  - *Title IV, Subtitle B, Air Carrier Worker Support,* of the *Coronavirus Aid, Relief, and Economic Security Act* (CARES Act);[17] and
  - 14 CFR, Part 241,[18] *Uniform System of Accounts and Reports for Large Certificated Air Carriers*, August 12, 2022.
- Reviewed Treasury's policies, procedures, and guidance related to PSP1:
  - *Guidelines and Application Procedures for Payroll Support to Air Carriers and Contractors* (Guidelines), which included the PSP1 Application, March 30, 2020;

[16] Constant submitted the PSP1 Application and related supporting documentation on April 3, 2020.
[17] P.L. 116-136 (March 27, 2020).
[18] 14 CFR, Part 241 "Uniform System of Accounts and Reports for Large Certificated Air Carriers" defines "Air carrier, large certificated" as an air carrier holding a certificate issued under 49 U.S.C 41102, as amended, that: (1) operates aircraft designed to have a maximum passenger capacity of more than 18,000 pounds; or (2) conducts operations where one or both terminals of a flight stage are outside the 50 states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands. These air carriers are required to report financial information to the Department of Transportation. Constant is not a Large Certificated Air Carrier.

  - PSP1 Agreement;
  - *Question and Answer: Payroll Support to Air Carriers and Contractors,* (April 2, 2020, April 3, 2020 and April 20, 2020 versions); and
  - *Frequently Asked Questions: Application Procedures for Payroll Support to Air Carriers and Contractors,* April 3, 2020.

- Performed 100 percent testing for four of the eight sections of the PSP1 Application including, specifically, the Applicant Information, Applicant Type, Awardable Amount, and Certification sections. The other four sections were not reviewed because the Taxpayer Protection section generally applied to 241 air carriers, with exceptions; the Employment Levels, Financial Institution Information, and Additional Information sections had no impact on Treasury's determination of recipients' award amounts.
- Interviewed key Treasury personnel and contracted consultant personnel engaged by Treasury to aid in its evaluation of the air carriers' and the contractors' certified applications and other data.
- Interviewed Constant representatives responsible for the completion and submission of the sworn financial statements in the Awardable Amounts section of the PSP1 Application.
- Reviewed sworn financial statements and documents to support the requested payroll support amount. The documentation included general ledger data, company pay registers, benefit invoices, organizational hierarchy information, and Internal Revenue Service (IRS) Form 941 – *Employer's Quarterly Federal Tax Return.*[19]
- Reviewed Government Accountability Office's (GAO) *Standards for Internal Control in the Federal Government*[20] to identify the components of internal control that are significant to the audit objective. Understanding internal control within the context of an entity's internal control framework can help auditors determine whether internal control deficiencies exist. We concluded that one of the five internal control components,

[19] IRS Form 941 is a tax form that businesses file quarterly to report income taxes, Social Security taxes, and Medicare taxes they withheld from employee paychecks.
[20] GAO-14-704G (September 2014).

Control Activities, as related to Constant's payroll system, was significant to the audit objective.[21] This component states that control activities are the actions management establishes through policies and procedures to achieve objectives and respond to risks in the internal control system, which includes the entity's information system. To assess the controls over Constant's payroll system, we examined Constant's response to a Data Supplier Questionnaire,[22] reviewed a System and Organizational Controls 1 (SOC 1),[23] and interviewed Constant's management responsible for generating and using the data. Additional details regarding our assessment of the reliability of the data is reported in the section below.

- Reviewed GAO's *Assessing Data Reliability*[24] guidance, which states that a data reliability determination does not involve attesting to the overall reliability of the data or database. For this audit, the audit team has only determined the reliability of the specific data sources needed to support the findings, conclusions, or recommendations in the context of the audit objective. Constant prepared the PSP1 Application using information from the company payroll system, estimated healthcare coverage costs, 401K employer match contributions, and the company portion of life insurance premiums. S&R compared details generated from the payroll registers at the individual employee level, as well as third-party vendor benefit invoices from April 2019 through September 2019 to the amounts presented in the Awardable Amounts section of the PSP1 Application.

  To assess data reliability of these sources, we examined Constant's response to the Data Supplier Questionnaire for the payroll system, reviewed the payroll provider's SOC 1, and interviewed Constant's management responsible for generating and using the data. Based on our assessment, we determined

[21] The five components of internal control are Control Environment, Risk Assessment, Control Activities, Information and Communication, and Monitoring.

[22] A Data Reliability Assessment is completed to assess the reliability of data originating from a system to determine if it is reliable for the purposes of the audit. The Data Supplier Questionnaire would be one of the tools used during the Data Reliability Assessment.

[23] SOC 1 report addresses a company's internal control over financial reporting, which pertains to the application of checks-and-limits. Essentially, it is the audit of a third-party vendor's accounting and financial controls.

[24] GAO-20-283G (December 2019).

that the data was sufficiently reliable to support the findings and conclusions to answer the objective of this audit.

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 that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Appendix 2: Schedule of Monetary Benefits

According to the Code of Federal Regulations,[25] a questioned cost is a cost that is questioned by the auditor because of an audit finding:

(a) which resulted from a violation or possible violation of a statute, regulation, or the terms and conditions of a Federal award, including for funds used to match Federal funds;

(b) where the costs, at the time of the audit, are not supported by adequate documentation; or

(c) where the costs incurred appear unreasonable and do not reflect the actions a prudent person would take in the circumstances.

Questioned costs are to be recorded in the Department of the Treasury's (Treasury) Joint Audit Management Enterprise System. The amount will also be included in the Office of Inspector General (OIG) Semiannual Report to Congress. It is Treasury management's responsibility to report to Congress on the status of the agreed to recommendations with monetary benefits in accordance with Section 5(b) of the Inspector General Act of 1978, as amended.

Recommendation	Questioned Costs
Recommendation No. 1	$52,003

The questioned cost represents amounts provided by Treasury under the Payroll Support Program (PSP1). As discussed in Finding 1, Constant Aviation, LLC overstated its PSP1 Application awardable amount to Treasury by $57,781 due to (1) the inclusion of corporate officer compensation; (2) data errors understatement; and (3) reporting of conservative benefit cost estimates. However, since Treasury disbursed PSP1 funds pro rata for contractors at 90 percent of the requested amount, the questioned cost related to the overstated PSP1 Application is $52,003.

[25] 2 CFR § 200.84 – Questioned Cost.

Appendix 3: Constant Management Response

Constant Aviation PSP Audit – Management Response

Constant Aviation, LLC ("Constant," "us" or "we") submits this management response to the discussion draft of the Audit Report (the "Report") circulated to us on March 3, 2023, following Saggar & Rosenberg's ("S&R") audit of Constant in respect of its initial Payroll Support Program ("PSP") application. While we are not contesting formally the recommendations set forth in the Report, we would like to take this opportunity to explain once again our position on the question of who was and was not a "Corporate Officer" of Constant for the purposes of its initial PSP application. We previously raised this issue in written and oral conversations with S&R and Treasury personnel during the course of the audit, and while Treasury's position on this question has been made clear to us, it is important to us that our position be included in the final audit record.

Under the applicable PSP agreements, a "Corporate Officer is, with respect to a recipient of PSP funds,

> . . . its president; any vice president in charge of a principal business unit, division, or function (such as sales, administration or finance); any other officer who performs a policy-making function; or any other person who performs similar policy making functions . . .

Treasury has communicated to us its position that any individual who holds a job title that includes the designator "Vice President" is a "Corporate Officer" for the purposes of the PSP program, regardless of that person's actual duties, and that any such person should have been excluded from certain calculations made in connection with Constant's PSP application.

We find that interpretation to be inconsistent with the definition cited above on both technical and practical grounds. While the definition does refer to a "vice president," it further specifies that that vice president must be "in charge of a principal business unit, division or function . . . ." That qualifying language acknowledges the possible existence of "vice presidents" who were <u>not</u> "in charge of a principal business unit, division or function . . . ." Presumably those employees would not fall within the definition of a "Corporate Officer" unless they also performed a policy-making function. Indeed, the definition's reference to a "policy-making function" and its willingness to look beyond titles in that regard ("any other person who performs similar policy making functions") makes clear that an employee's level of authority, not their title, ought to be what really determines their status as a "Corporate Officer" for PSP purposes. Under Treasury's interpretation of the definition, this happens in only one direction -- to exclude more individuals from PSP eligibility – but we believe the language of the definition permits this analysis in both directions.

The practical effect of Treasury's interpretation of the definition of "Corporate Officer" is to exclude from the payroll support eligibility many aviation industry employees who would have been eligible for such support <u>but for</u> titles assigned to them well before the advent of COVID-19 or the CARES Act. We find that result to be unnecessarily arbitrary in a way that undermines a core policy goal of PSP indicated in its name: payroll support. Under Treasury's interpretation, policy-making employees who were equally situated in every way except for title would both have been excluded from PSP benefits, but if their authority did not rise to that level, one would have been eligible for support while the other – through no fault of her own – would not. If the qualifications inserted into the definition of "Corporate Officer" are flexible enough to ensure the exclusion of all policy-making employees regardless of their formal titles, we believe it is consistent with the policy goals of PSP

for the same qualifications to be flexible enough to ensure the inclusion of all otherwise-eligible employees regardless of their formal titles.

Under our interpretation, many of the Constant employees identified in the Audit Report do not qualify as "Corporate Officers" despite their titles. In 2019, the relevant period for PSP calculations, virtually all major decisions at Constant, and certainly all "policy-making authority," lay with its Chief Executive Officer. Certain Constant employees received "Vice President" titles for status, recognition or external credibility, but these individuals were not formally appointed by Constant's board of managers, and their titles did not carry any inherent authority to set company policy or make major decisions on behalf of Constant. Most of these employees had no autonomous authority to sign or approve material contracts, make significant purchases, or make hiring, firing or compensation decisions. Despite our acceptance of the Audit Report's recommendations regarding these employees, we continue to believe that they should not have been categorized as "Corporate Officers" for PSP application purposes.

We understand that a policy excluding certain employees from the benefits provided by PSP requires that a definitional line be drawn. We also understand that drawing that line at certain formal titles, regardless of function, is attractive from an administrative perspective. However, once the line is qualified by reference to other criteria beyond a simple title, we believe it is reasonable, fair, and consistent with PSP's policy goals that those other criteria should serve to inform all determinations and not just those on one side of the line.

We appreciate S&R's and Treasury's professionalism and willingness throughout the audit process to discuss our concerns on this question, and we appreciate the opportunity to include our position in the formal record.

Appendix 4: Treasury Management Response

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

April 10, 2023

Deborah L. Harker
Assistant Inspector General for Audit
U.S. Department of the Treasury – Office of Inspector General
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

Dear Ms. Harker:

I write regarding the Office of Inspector General's (OIG) draft *Audit of Air Carrier Worker Support Certifications* regarding Constant Aviation, LLC (the Recipient), a recipient of funds under Treasury's Payroll Support Program (Draft Report). The U.S. Department of the Treasury (Treasury) appreciates OIG's efforts.

Background on the Payroll Support Program

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) was enacted on March 27, 2020, to provide emergency assistance in response to the unprecedented challenges presented by the COVID-19 public health emergency. The CARES Act established the Payroll Support Program (PSP1) to provide financial assistance to America's passenger air carriers, cargo air carriers, and certain aviation contractors.

In light of the emergency circumstances, Treasury acted with extraordinary speed to implement PSP1, publishing program guidelines and application procedures just one business day after the enactment of the CARES Act. Only three days later, Treasury published additional guidance about the application process. In less than one month, Treasury entered into agreements to disburse tens of billions of dollars under the program. Treasury has disbursed more than $28 billion to over 600 businesses in PSP1, directly supporting more than 600,000 American jobs.

In December 2020, the Consolidated Appropriations Act, 2021, created the Payroll Support Program Extension (PSP2) for eligible passenger air carriers and certain aviation contractors. Treasury issued public guidance regarding PSP2 just two days after the statute was enacted, and Treasury has disbursed over $15 billion to over 480 passenger air carriers and contractors under PSP2. In March 2021, the American Rescue Plan Act of 2021 provided an additional $15 billion for Treasury to make further payroll support payments to entities that participated in PSP2 (PSP3). Treasury has disbursed over $14.5 billion to over 480 passenger air carriers and contractors under PSP3.

The CARES Act set forth two different methodologies for calculating awardable amounts under PSP1. For the largest air carriers, which received approximately 89% of the total PSP assistance, the PSP1 amounts were based on reports the carriers had filed with the U.S. Department of Transportation under 14 C.F.R. part 241. In contrast, the statute required Treasury to provide

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financial assistance to smaller air carriers and aviation contractors in an amount that the applicants certified, using sworn financial statements or other appropriate data, as the amount of wages, salaries, and benefits that they paid to their employees during the time period from April 1, 2019, through September 30, 2019. For these smaller companies, the PSP1 application and Treasury's guidelines made clear that the awardable amounts should not include, inter alia, (1) any employer-side payroll taxes, which are not paid to employees, and (2) compensation paid to corporate officers and non-employee contractors. Before accepting PSP2 applications, Treasury published additional guidance further emphasizing that such amounts should not be included in the companies' awardable amount calculations.[1] In both PSP1 and PSP2, Treasury required two officials of each applicant, including at least one corporate officer, to certify that the information provided in the application was correct and did not contain any materially false or fraudulent statements.

In April 2020, OIG began a series of audits of PSP1 recipients to determine whether they had properly calculated their requested awardable amounts. In March 2021, OIG issued an Interim Audit Update, notifying Treasury that a number of recipients being audited had impermissibly included, in their PSP1 applications, employer-side payroll taxes or corporate officer compensation in the calculation of the awardable amount, which may have resulted in an overstatement of the amount of PSP1 funds requested. In response, Treasury promptly took a series of remedial actions, including requiring that all PSP1 applicants receiving awards on the basis of self-certification re-certify whether their awardable amounts included employer-side payroll taxes or corporate officer compensation. Where a company informed Treasury that it had improperly included those amounts in its application, Treasury either withheld future PSP1 disbursements or began pursuing debt recoupment.

OIG's Findings and Recommendations

The Draft Report describes the work performed by OIG's contractor to determine whether the Recipient's requested awardable amount complied with the guidelines provided by Treasury. The Draft Report notes the extensive fieldwork conducted for this review between September 2021 and March 2022 to determine the accuracy of the information in the Recipient's PSP1 application submitted to Treasury, including interviewing the Recipient's management and collecting and reviewing a wide range of the company's financial records and corporate documents. OIG found that the Recipient overstated its requested awardable amounts due to the improper inclusion of corporate officer compensation. OIG recommends that Treasury (1) seek reimbursement of $52,003 of overpayments of PSP1 assistance, and (2) review any requested amounts from the Recipient for PSP2 and PSP3 assistance to determine whether overpayments occurred.

Treasury agrees with OIG that any overpayments of PSP funds should be reimbursed. Treasury will review OIG's findings, consider any response from the Recipient, and seek recoupment of any amounts that Treasury determines have been overpaid. Treasury will also review awardable amounts requested under PSP2 and PSP3 and seek recoupment where appropriate.

[1] Because awardable amounts in PSP3 were calculated as a percentage of each company's PSP2 award, companies were not required to calculate awardable amounts for PSP3.

* * *

Treasury appreciates OIG's work on these engagements. We look forward to working with you to protect the integrity of the PSP and other recovery programs.

Sincerely,

Jacob Leibenluft
Chief Recovery Officer

Appendix 5: Report Distribution

Department of the Treasury

Treasury Secretary
Deputy Secretary
Treasury Audit Liaison
Office of Strategic Planning and Performance Improvement
Office of the Deputy Chief Financial Officer, Risk and Control Group

Constant Aviation, LLC

Manager

Office of Management and Budget

OIG Budget Examiner

United States Senate

Committee on Homeland Security and Governmental Affairs
Committee on Finance
Committee on Banking, Housing, and Urban Affairs
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