



INVESTIGATIVE REPORT

Lori Torres, Inspector General

OFFICE: INDIANA STATE EXECUTIVE BRANCH AGENCIES
TITLE: FEDERAL COVID-19 LEGISLATION FUNDS MONITORING REPORT
CASE ID: 2020-04-0101
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Inspector General's Chief Legal Counsel, Tiffany Mulligan, and Indiana Inspector General, Lori Torres, report as follows:

The Indiana General Assembly charged the Office of Inspector General (OIG) with addressing fraud, waste, abuse and wrongdoing in state executive branch agencies. Ind. Code § 4-2-7-2(b). The OIG investigates criminal activity and ethics violations by state employees. Ind. Code § 4-2-7-3(3). The OIG may recommend policies and carry out other activities designed to deter, detect and eradicate fraud, waste, abuse, mismanagement and misconduct in state government. Ind. Code § 4-2-7-3(2). The OIG also may advise an agency on implementing policies and procedures to prevent and reduce the risk of wrongful acts within the agency. Ind. Code § 4-2-7-3(8).

I. Background

On March 6, 2020, Indiana Governor Eric Holcomb declared a public emergency in the State of Indiana in response to the coronavirus disease 2019 (COVID-19) outbreak in the United States and due to confirmed cases of COVID-19 within Indiana. In the weeks following the Governor's declaration, the United States government enacted several key pieces of legislation in response to the nationwide outbreak, including: the Coronavirus Preparedness and Response

Supplemental Appropriations Act¹; the Families First Coronavirus Response Act²; the Coronavirus Aid, Relief, and Economic Security (CARES) Act³; and the Paycheck Protection Program and Healthcare Enhancement Act⁴ (collectively referred to in this Investigative Report as “the federal COVID-19 legislation”). These laws provide economic support to families, workers, small businesses and health care providers who are fighting COVID-19.

The federal COVID-19 legislation also provides significant funding to the states, as well as to local and tribal governments⁵. According to the National Conference of State Legislators, the CARES Act provides an estimated \$2 trillion dollar stimulus package, which includes a \$150 billion Coronavirus Relief Fund (CVRF) and \$45 billion Disaster Relief Fund directed to state, local and tribal governments⁶. According to the State Budget Agency (SBA), the State of Indiana received approximately \$2.4 billion⁷ in CVRF funds. SBA estimates that Indiana will receive over \$3.5 billion⁸ in federal funds from all of the federal COVID-19 legislation combined. The federal government is granting some of these funds through new awards and some of these funds as supplements to existing federal awards to various state agencies.

¹ The Coronavirus Preparedness and Response Supplemental Appropriations Act became Public Law 116-123 on March 6, 2020.

² The Families First Coronavirus Response Act became Public Law 116-127 on March 18, 2020.

³ The CARES Act became Public Law 116-136 on March 27, 2020.

⁴ The Paycheck Protection Program and Healthcare Enhancement Act became Public Law 116-139 on April 24, 2020.

⁵ The OIG has jurisdiction over only the executive branch of state government. The OIG does not have jurisdiction over local units of government; therefore, this Monitoring Report focuses on the compliance efforts and recommendations for the executive branch of state government.

⁶ *COVID-19 Stimulus Bill: What it Means for States*, National Conference of State Legislators, April 2, 2020, <https://www.ncsl.org/ncsl-in-dc/publications-and-resources/coronavirus-stimulus-bill-states.aspx>.

⁷ The State of Indiana received approximately \$2.6 billion total in CVRF funds. The City of Indianapolis qualified to receive a portion of this money directly due to its population. This reduced the overall amount that came directly to the State to \$2.4 billion.

⁸ SBA reports that this amount does not include unemployment dollars. SBA explained that unemployment dollars flow from the federal government to a state contractor who administers the funds directly to the individual recipients.

The OIG recognizes that a large influx of government funds often invites waste, fraud and abuse. The purpose of this Monitoring Report is to provide an overview of the State of Indiana's efforts to ensure proper use of federal funds and compliance with the requirements of the federal COVID-19 legislation. This Monitoring Report also provides recommendations on how the State can guard against waste, fraud and abuse while utilizing money from the federal COVID-19 legislation to fight the effects of COVID-19 in Indiana.

II. Compliance Efforts

Shortly after passage of the federal COVID-19 legislation, the OIG reached out to the Indiana Office of Management and Budget (OMB) to discuss oversight of federal funds coming into the State of Indiana as a result of the legislation. OMB welcomed the OIG's participation in discussions on how the State of Indiana would monitor and ensure proper use of these federal funds. Following this initial conversation, representatives of several relevant state agencies; including the OIG, the State Board of Accounts (SBOA), the Auditor of the State (AOS) and SBA; held virtual meetings on a regular basis to discuss receipt of federal funds and compliance efforts to ensure funds are used appropriately.

On April 13, 2020, SBA provided a guidance memorandum⁹ to all state agencies responsible for implementing programs and activities funded with federal dollars to fight COVID-19. The memorandum requires state agencies to maintain all documentation required to meet the federal reporting and auditing requirements of the federal COVID-19 legislation. The memorandum also requires all state agencies requesting federal financial assistance to undergo the

⁹ This memorandum can be found at: <https://www.in.gov/sba/2811.htm>.

normal SBA approval process¹⁰. This involves sending all requests to a centralized email account for review and approval and sending SBA a spending plan for the award.

As noted in the April 13, 2020 SBA memorandum, SBA created a specific legal fund for all COVID-19 related spending. In meetings with the OIG, SBA staff explained that the State is using this fund for all COVID-19 spending, except for certain spending from the Indiana Department of Workforce Development and Medicaid funds from the Indiana Family and Social Services Administration. Each agency receiving federal COVID-19 legislation funds has its own fund or funds that are derived from the legal fund. The new legal fund allows the State to better track receipt of COVID-19 funds, including both new federal awards and supplements to existing federal awards. The individual funds for each state agency allow the State to better track receipt of COVID-19 funds by agency.

SBA's April 13, 2020 memorandum also alerts state agencies to a quarterly reporting requirement in the CARES Act for all direct recipients of funds. In addition to this requirement, SBA asked all state agencies receiving federal funds from federal COVID-19 legislation to provide brief monthly updates on the status of their CARES Act programs. This additional communication between OMB and state agencies receiving federal funds provides another mechanism for OMB to monitor and track state agencies' receipt of federal funds under the federal COVID-19 legislation.

In addition to SBA's efforts to track receipt of funds under the federal COVID-19 legislation, AOS created a specific incident code under which to track COVID-19 expenses. On March 6, 2020, AOS sent a memorandum¹¹ to all state agency Chief Financial Officers and fiscal agents asking state agencies to use the incident code to track employee time and other expenses in

¹⁰ Under Ind. Code § 4-3-24-5, a state agency may not apply for or accept federal assistance without approval of SBA.

¹¹ The AOS memorandum can be found at: <https://www.in.gov/sba/2811.htm>.

the State's human resources and financial reporting system. The incident code will allow the State to track the number of employee hours and financial resources spent on COVID-19 related issues.

Multiple state agencies and offices have created websites to provide the state and local government and the general public with guidance and information on how the State is managing funds received from the federal COVID-19 legislation. SBA created a "COVID-19 Financial Management" page¹², which currently contains Financial Management Circulars and guidance memorandums from SBA and AOS. The SBA page also contains a link to the Indiana Finance Authority's (IFA) website with information on the Coronavirus Relief Fund Program for Indiana's counties, cities and towns. SBOA also has a substantial amount of information related to COVID-19 on its website¹³. The SBOA website includes multiple memoranda providing instruction and guidance to local units of government.

III. Recommendations

The OIG acknowledges that the public health emergency created by COVID-19 has presented massive and unprecedented challenges to state agencies over the last several months. Both the federal and state governments' responses to the emergency have been rapidly changing to address new challenges that occur. The federal government provided minimal guidance on how to comply with the federal COVID-19 legislation early on but recently released guidance that provides some instruction to recipients of funds. Although questions still exist, multiple state agencies are working to ensure that the federal funds received under this legislation are used appropriately. The OIG offers the following recommendations to help with these efforts.

¹²The page can be found at: <https://www.in.gov/sba/2811.htm>.

¹³ SBOA's information on COVID-19 can be found at the bottom of the page on the following website: <https://www.in.gov/sboa/>.

Recommendation 1

All state agencies receiving funds under the federal COVID-19 legislation should maintain complete, accurate and detailed records of all receipts and expenditures of federal funds received as required by SBA's April 13, 2020 memorandum. Although the incident code created by AOS will help the State track the number of hours and amount of resources spent on COVID-19 related issues, the incident code is limited in what information it will track. Individual state agencies are responsible for documenting the specifics of how they spend the resources they receive under the federal COVID-19 legislation. Maintaining complete, accurate and detailed records of expenditures will allow both state and federal oversight agencies to review an agency's use of federal funds and determine whether the agency used the funds appropriately. It also will help increase the public's confidence in how the State is managing these funds.

Recommendation 2

OMB should continue to educate state agencies who receive federal funds under the COVID-19 legislation on the reporting requirements in the legislation. In SBA's April 13, 2020 memorandum, SBA alerted state agencies that Section 15011 of the CARES Act requires quarterly reporting by direct recipients of CARES Act funds. The OIG recognizes that SBA continues to seek guidance from the federal oversight agencies on what should be included in these reports. OMB should continue to make state agencies aware of these requirements.

State agencies who receive federal funds under the federal COVID-19 legislation are responsible for ensuring they comply with the laws' reporting requirements. State agencies should identify staff who are responsible for meeting the reporting requirements and have a process in place to ensure full compliance with the requirements. State agencies also should consider publishing their reports on their website for added transparency.

Recommendation 3

During the remainder of the public health emergency, state agencies should follow all applicable contracting and procurement rules when purchasing goods or services with federal COVID-19 legislation funds unless doing so would hinder the agency's ability to respond to the public health crisis. In Executive Order (EO) 20-02, Governor Holcomb suspended the procurement rules "as they apply to the purchase of goods, equipment and services by state and local government entities needed to respond to the COVID-19 public health emergency" during the duration of the public health emergency¹⁴. Although suspension of the procurement rules allowed state and local entities to purchase emergency supplies quickly, state agencies should avoid relying on the suspension to make purchases outside of the procurement rules unless absolutely necessary. Instead state agencies should comply with as many of the procurement rules as possible, even while the rules are suspended. State agencies, in coordination with the Indiana Department of Administration (IDOA), should fully vet all contractors and vendors before awarding a contract. Adhering to state contracting rules and ensuring contractors are fully vetted before contracts are executed will help the State reduce instances of fraud by state contractors.

For state agencies who have procured or will procure goods or services without compliance with the procurement rules under EO 20-02, these agencies should be transparent to the public on how they procured such goods and services. State agencies should maintain detailed records of the contracting process they used to select the contractor, such as the number of vendors contacted and what criteria the agency used to award the contract. State agencies should make this

¹⁴Governor Holcomb declared a thirty-day public health emergency on March 6, 2020 in EO 20-02. He extended the public health emergency three times: first, effective April 5, 2020, through May 5, 2020 in EO 20-17; second, on May 1, 2020 in EO 20-25 through June 4, 2020; and third, on June 3, 2020 in EO 20-30 through July 4, 2020, unless further renewed.

information available to the public unless they have a compelling reason not to do so, such as compliance with privacy laws.

Recommendation 4

State agencies also should take special care to guard against conflicts of interests in selecting contractors. Ind. Code § 4-2-6-9 prohibits a state officer, employee or special state appointee from participating in a decision or vote, or a related matter, if he or she knows that any of the following have a financial interest in the decision or vote: himself or herself; his or her immediate family member; a business organization in which he or she serves as an officer, member, director, trustee, partner or employee; or any person with whom he or she is negotiating or has an arrangement concerning prospective employment. The rule requires the individual who identifies a potential conflict of interests to make certain disclosures under the rule, and in most cases, it requires the state agency to screen the individual from matters in which he or she has a conflict of interests.

All state officers, employees and special state appointees are trained on Ind. Code § 4-2-6-9 and other conflict of interests rules when they complete the OIG's online Code of Ethics¹⁵ training; therefore, they should already be aware of the Code of Ethics' conflicts of interests provisions. Due to the emergency nature of purchasing for COVID-19 related goods and services, state agencies may need to take additional steps to guard against conflicts of interests as defined in the Code of Ethics, as well as any appearance of impropriety. These steps might include reminding employees involved in the contracting process of the Code of Ethics rules and ensuring that multiple employees are involved in the contracting process.

¹⁵ The Code of Ethics is found in Ind. Code 4-2-6 and 42 IAC 1. All state employees and special state appointees are required to complete ethics training every two years in accordance with 42 IAC 1-4-1. The most recent administration of this state-wide training was in October 2019.

Recommendation 5

State agencies who receive federal funds under the federal COVID-19 legislation should be aware of the protections and penalties that exist for misuse of government funds and for violating provisions in the federal COVID-19 legislation. These protections and penalties include whistleblower protections laws¹⁶; federal and state criminal offenses, such as theft¹⁷ and official misconduct¹⁸; and federal and state false claims actions¹⁹.

State agencies should be aware that federal and state oversight agencies, including federal and state Inspectors General and SBOA, will review how state agencies utilize funds received as a result of the federal COVID-19 legislation. Federal and state oversight agencies likely will seek remedies when agencies have misused funds or allowed contractors to misuse funds through inadequate controls.

Recommendation 6

OMB should continue to maintain the centralized website for information on financial management of COVID-19 funding and regularly update the website with new developments. OMB should provide as much information as possible on the website to keep the public apprised of how the State is managing funds received from the federal COVID-19 legislation.

Recommendation 7

The OIG encourages state employees as well as the public to report any misuse of federal COVID-19 legislation funds by state agency or state contractors to the OIG. The OIG maintains the confidentiality of the identity of a person who submits a complaint to the OIG pursuant to Ind.

¹⁶ See Ind. Code § 4-2-6-13.

¹⁷ Indiana's criminal offence of theft is found in Ind. Code § 35-43-4-2.

¹⁸ Indiana's criminal offence of official misconduct is found in Ind. Code § 35-44.1-1-1.

¹⁹ See Ind. Code 5-11-5.5, 5-11-5.7 and 31 U.S.C. §§ 3729 – 3733.

Code § 4-2-7-8. Furthermore, Ind. Code § 4-2-6-13 prohibits a state officer, employee or special state appointee from retaliating against a current or former state employee or special state appointee for filing a complaint with the OIG or providing information to the OIG. Individuals can report wrongdoing to the OIG through its online hotline reporting system²⁰.

IV. Conclusion

The OIG recognizes that the COVID-19 crisis has required all levels of government to take unprecedented steps to fight the global pandemic and its effects. The federal COVID-19 legislation has provided significant financial resources to the State of Indiana for this purpose. As any large increase in government spending can invite waste, fraud and abuse, the State of Indiana must take steps to carefully monitor and guard against such wrongdoing.

The State already has made significant efforts to ensure the State is complying with federal COVID-19 legislation and that federal funds are spent appropriately. The OIG encourages state agencies to continue these efforts and to follow the recommendations outlined in this Monitoring Report. State agencies also should look for additional steps to guard against waste, fraud and abuse. To this end, the OIG and other oversight agencies will continue to monitor, investigate and audit use of the federal funds received from the federal COVID-19 legislation as appropriate.

Dated: June 5, 2020

APPROVED BY:



Lori Torres, Inspector General

²⁰The OIG's online hotline reporting system can be found at: <https://www.in.gov/ig/2330.htm>