
February 14, 2023

Performance Audit
Recommendations and
Corrective Actions for Audit:
21-04

COVID-19 EMERGENCY
ECONOMIC RECOVERY
GRANT PROGRAM:
AGENCY OF COMMERCE
AND COMMUNITY
DEVELOPMENT

Some Ineligible Businesses Received
Awards and Round 2.0 Awards
Increased Profitability for Many of the
Businesses Reviewed Instead of
Redressing Financial Harm

Dated: September 21, 2021

Overview

The State Auditor's Office (SAO) makes recommendations designed to improve the operations of state government. For our work to produce benefits, auditees or the General Assembly must implement these recommendations, although we cannot require them to do so. Nevertheless, a measure of the quality and persuasiveness of our performance audits is the extent to which these recommendations are accepted and acted upon. The greater the number of recommendations that are implemented, the more benefit will be derived from our audit work.

In 2010, the SAO began to follow-up on the recommendations issued in our performance audits. Experience has shown that it takes time for some recommendations to be implemented. For this reason, we perform our follow-up activities one and three years after the calendar year in which the audit report is issued. Our annual performance reports summarize whether we are meeting our recommendation implementation targets.

<http://auditor.vermont.gov/about-us/strategic-plans-and-performance-reports>

This report addresses the requirements of Act 155 (2012) to post the results of our recommendation follow-up work on our website. The report does not include follow-up on recommendations issued as part of the state's financial statement audit and the federally mandated Single Audit, which are performed by a contractor. However, our current contract for this work requires the contractor to provide the results of its recommendation follow-up.

Rec #	Recommendation	Follow-Up Date	Status	Review Comments
1	If additional business financial assistance programs are administered, develop and document a) procedures that include verification for all eligibility criteria and b) guidelines for agency staff that contain explicit direction on how to assess all eligibility criteria.	2022	Implemented	The Agency of Commerce and Community Development (ACCD) administered a business financial assistance grant program, called the Economic Recovery Bridge Program, after the audit report was published. The application reviewer instruction manual for this program included explicit directions for staff on how to assess all eligibility criteria.
No further follow-up is required because the recommendation was implemented.				
2	Coordinate with the Department of Taxes, Secretary of State, and the COVID-19 Financial Office to determine the appropriate action to take for the 194 businesses that did not meet all eligibility criteria at the time they applied to the ERG program. Actions should be documented and could include, but are not limited to, ensuring businesses resolve the issue that made them ineligible or recouping the ERG award.	2022	Not Implemented	ACCD provided the Department of Taxes and the Secretary of State with a list of businesses that did not meet all the eligibility criteria at the time they applied for the ERG program. However, ACCD did not provide any documentation indicating it had coordinated with these entities to determine the appropriate action to take regarding these businesses. Additionally, ACCD stated they provided technical assistance to businesses that contacted ACCD after receiving a letter from the State Auditor's Office (SAO). However, this letter only communicated that SAO was obligated under state law to release the business's name as a result of a public information request. Regardless, ACCD did not document which businesses requested assistance or what assistance ACCD provided.
		2024		The three-year recommendation follow-up for this audit will be conducted in 2024.
3	Report to the Secretary of State businesses that do not have legal authority to conduct business in Vermont under their business name .	2022	Implemented	ACCD provided the Secretary of State with a list of the business identified in the audit that did not appear to have legal authority to conduct business in Vermont under their business name.
No further follow-up is required because the recommendation was implemented.				
4	Coordinate with the Department of Labor and the COVID-19 Financial Office to determine if the three businesses on the State's debarment list for labor law violations were eligible for an ERG award at the time of their application. Take appropriate action based on that determination and document the results.	2022	Implemented	ACCD technically implemented our recommendation by consulting with VDOL, but we do not agree that the various explanations provided by ACCD justify the awards. Initially, ACCD asserted that the ERG program is a beneficiary program and the State's grant policies, which prohibit awards to businesses on the State's debarment list, were not applicable. However, Act 115, which established the ERG program, contained the requirement for compliance with State and Federal employment and labor laws so whether the program is a beneficiary or grant program is irrelevant. ACCD also pointed out that the businesses were no longer on the debarment list. Applicants were required to be in compliance with State and Federal employment and labor laws at the time of application for an ERG award, thus current statute does not matter. Lastly, ACCD indicated that they consulted with the Vermont Department of Labor and concluded that the businesses' violations and associated fines and penalties were not sufficiently egregious to withhold an ERG award. Act 115 did not establish a sliding scale for severity of violations, rather it required compliance with employment and labor laws period.
No further follow-up is required because the recommendation was implemented.				

Rec #	Recommendation	Follow-Up Date	Status	Review Comments
5	Coordinate with the Department of Taxes and the COVID-19 Financial Office to determine if the two businesses identified in this report are domiciled in Vermont. Take appropriate action based on that determination and document the results.	2022	Not Implemented	ACCD stated it did not coordinate with the Department of Taxes after the audit to determine if the two businesses were domiciled in Vermont and indicated that the Department of Taxes does not perform domicile checks. In addition, ACCD reiterated the information that it used at the time of application to support its determination that the two businesses were domiciled in Vermont and did not assess other available data that indicated the primary place of business was outside Vermont. For example, one company's annual federal filing showed that the principal officer and the books and records were located in Washington D.C. According to the FAQs posted to ACCD's website throughout the period of the ERG program, if the business operates in more than one state, several factors are considered to determine primary place of business, including where the management of the business functions, where books and records are kept, and where the senior officers conduct central business affairs.
		2024		The three-year recommendation follow-up for this audit will be conducted in 2024.
6	Coordinate with the COVID-19 Financial Office to determine if the two businesses identified in this report adequately demonstrated a loss due to the impact of COVID-19. Take appropriate action based on that determination and document the results.	2022	Implemented	ACCD contacted the CFO, but the CFO stated that they relied on program managers to apply CFO guidance and would not review application level data. In addition, ACCD stated that based on the application review and a management review, the businesses had adequately demonstrated a loss due to the impact of COVID-19 during the period target period reviewed for the ERG program. While ACCD attempted to work with the CFO and ACCD management reviewed the original assessment, we disagree with the agency's conclusion. For both businesses, the revenue "loss" used to qualify for the ERG award appears to be simply the result of earning revenue in different periods. One business experienced a delay in an expected payment in 2020 and the other acknowledged in their application that part of the reduction in 2020 revenue was due to a delay in installing product for customers. Delays are different than losses and the application materials contained sufficient information for ACCD to make this distinction and incorporate it in the assessment of award.
		No further follow-up is required because the recommendation was implemented.		

Rec #	Recommendation	Follow-Up Date	Status	Review Comments
7	Coordinate with the COVID-19 Financial Office to determine if the four businesses identified in this report received an award based on inaccurate financial information. Document the results, and if the businesses were not eligible or the award amounts were incorrect, take appropriate action.	2022	Not Implemented	<p>ACCD stated that it had reported eight businesses to the Office of the Attorney General based on concerns related to potential false or fraudulent information in the businesses' ERG application, including one of the four businesses that we flagged. However, ACCD asserted that the three other businesses received the correct award amount. These three businesses operated across multiple states but had applied and received awards based on financial information from only their Vermont-based operations. ACCD stated that it made a policy decision to only base awards on COVID-related impact sustained by the Vermont operations. However, ACCD did not provide guidance or direction to all applicants at the time of the ERG program that only Vermont-based financial information would be considered in the application (e.g., operations located in Vermont). Rather, ACCD communicated that a business' domicile (primary place of business) would determine eligibility. We found no evidence during the audit that ACCD's award determination processes included identifying discrete Vermont-based operations for businesses that operated in Vermont and other states. For at least one of the three businesses we identified, the COVID-related impact to the business' Vermont operations was partially offset by operations outside of Vermont. In other words, the business appeared to have less need for an award.</p>
		2024		The three-year recommendation follow-up for this audit will be conducted in 2024.
8	Recoup award overpayments for the six businesses that understated or did not disclose their PPP loans in ACCD's application system.	2022	Implemented	<p>ACCD stated that it had reviewed recently published data from the Small Business Administration related to the status of the federal PPP loans and made the following determinations:</p> <ul style="list-style-type: none"> • Two businesses had received an incorrect ERG award amount and agreed to repay the extra award amount. • Three businesses had received an incorrect award amount that ACCD determined to be de minimus (<\$500) and ACCD would not seek reimbursement. • One business reported its PPP loan as uncategorized income, reducing the amount of lost revenue calculated, which reduced the amount of the ERG award to the business. Thus, the ERG award amount was accurate.
		No further follow-up is required because the recommendation was implemented.		

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9	For the 401 businesses in Round 1.0 with award amounts that exceed the revenue loss data reported in the application system, review the monthly profit and loss statements submitted with the application to determine whether there is sufficient documentary evidence to support the award amount. To the extent the awards exceed revenue losses reported in the application system and documented in the profit and loss statements, repay the excess to the federal government and recoup the excess award amounts from businesses, if possible	2022	Not Implemented	<p>According to ACCD, Round 1.0's calculation of revenue loss (comparing 2020 revenue to 2019 revenue) and use of 10 percent of 2019 revenue to determine award amount was not an effort to award the actual loss but rather to identify those businesses that needed assistance with the costs of COVID-related disruptions. Further, ACCD claims there was no way to know if the actual disruption costs equaled the amount of award at the time of issuance and since the awards were beneficiary payments there was no requirement to conduct followup to validate that the awards equated to the costs of business disruption.</p> <p>U.S. Treasury guidelines only allowed awards to small businesses to reimburse the costs of business interruptions and 10 percent of 2019 revenue may not be representative of this cost. As a result, ACCD's rationalizations for failing to obtain appropriate evidence that awards were limited to the cost of business interruption are problematic. The CFO evaluated the ERG program shortly after the program began and identified the disconnect between revenue loss and award amount as a risk, noting that if a business' loss due to COVID-19 business interruptions is lower than 10 percent of 2019 annual revenue, it raises a red flag for CRF eligibility. Further, the CFO noted the use of federal COVID-19 funds "appears to only be appropriate to cover the losses that a business has incurred/will incur due to COVID-19." To address this risk, in September 2020, the CFO required ACCD to ensure awards did not exceed the businesses' losses incurred due to COVID-19 business interruptions. Our audit highlighted the same risk and identified 401 businesses whose losses were lower than their award amounts. To date, ACCD has not provided evidence that steps have been taken to remediate the risk identified by the CFO or to address our recommendation to ensure the agency has sufficient documentary evidence to support award amounts to the 401 businesses or recoup excess award amounts.</p>
		2024		The three-year recommendation follow-up for this audit will be conducted in 2024.
LEG & ACCD-1	If future rounds of ERG program or a similar business assistance programs are administered, consider other methods of calculating financial harm to better target awards and adjust program guidelines accordingly.	2022	Implemented	The Legislature established a new program, Economic Recovery Bridge Grants, through Act 9 in 2021. Businesses were eligible for an award through this program if they could demonstrate a tax loss due to the COVID-19 public health emergency.
No further follow-up is required because the recommendation was implemented.				
LEG-1	Require ACCD to provide periodic reports to the Legislature on 1) the agency's post-award monitoring program, including any action taken, or pending action, and 2) action taken in response to audit recommendations.	2022	Not Implemented	It does not appear that the Legislature established any requirements related to the post-award monitoring program or in response to the audit recommendations.
		2024		