

The Eighth Report of the Congressional Oversight Commission

December 31, 2020

Commission Members
U.S. Representative French Hill
U.S. Representative Donna E. Shalala
U.S. Senator Pat Toomey

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INTRODUCTION

This is the eighth report of the Congressional Oversight Commission (“Commission”) created by the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”).¹ The Commission’s role is to conduct oversight of the implementation of Division A, Title IV, Subtitle A of the CARES Act (“Subtitle A”) by the U.S. Department of the Treasury (“Treasury”) and the Board of Governors of the Federal Reserve System (“Federal Reserve”). Subtitle A provides \$500 billion to the Treasury for lending and other investments “to provide liquidity to eligible businesses, States, and municipalities related to losses incurred as a result of coronavirus.”²

Of this amount, \$46 billion is set aside for the Treasury itself to provide loans or loan guarantees to certain types of companies. Up to \$25 billion is available for passenger air carriers, eligible businesses certified to inspect, repair, replace, or overhaul services, and ticket agents. Up to \$4 billion is available for cargo air carriers, and up to \$17 billion is available for businesses “critical to maintaining national security.”³ Any unused portions of this \$46 billion, and the remaining \$454 billion, may be used to support emergency lending facilities established by the Federal Reserve.

The CARES Act charges the Commission with submitting regular reports to Congress on:

- The Federal Reserve’s use of its authority under Subtitle A, including the use of contracting authority and administration of the provisions of Subtitle A.
- The impact of loans, loan guarantees, and investments made under Subtitle A on the financial well-being of the U.S. economy.
- The extent to which the information made available on transactions under Subtitle A has contributed to market transparency.
- The effectiveness of loans, loan guarantees, and investments made under Subtitle A in minimizing long-term costs to the taxpayers and maximizing the benefits for taxpayers.⁴

In its first report to Congress on May 18, 2020, the Commission stated that it is responsible for answering two basic questions:

- What are the Treasury and the Federal Reserve doing with \$500 billion of taxpayer money?

¹ CARES Act, Pub. L. No. 116-136, § 4020, 134 Stat. 281 (2020).

² *Id.* § 4003(a).

³ *Id.* § 4003(b). In addition, Division A, Title IV, Subtitle B of the CARES Act (“Subtitle B”) authorized the Treasury to provide up to \$32 billion in financial assistance to passenger air carriers, cargo air carriers, and certain airline industry contractors that must be exclusively used for the continuation of payment of employee wages, salaries, and benefits. Of this amount, up to \$25 billion is available for passenger air carriers; up to \$4 billion is available for cargo air carriers; and up to \$3 billion is available for certain airline industry contractors. Subtitle B is not within the jurisdiction of the Commission.

⁴ *Id.* § 4020.

- Who is that money helping?⁵

At this time, the emergency lending facilities established by the Federal Reserve that are receiving CARES Act funds are:

Primary Market Corporate Credit Facility (“PMCCF”) and Secondary Market Corporate Credit Facility (“SMCCF”): Through a special purpose vehicle (“SPV”), the PMCCF enables the Federal Reserve to purchase newly issued corporate bonds and portions of syndicated loans, and the SMCCF enables the Federal Reserve to purchase previously issued corporate bonds and exchange-traded funds (“ETFs”) that invest in corporate bonds.⁶ The Treasury initially announced it intended to make a total equity investment of \$75 billion in the SPV, which can collectively support up to \$750 billion in purchases.⁷ As of December 23, 2020, the Treasury had invested \$37.5 billion.⁸ As of the last disclosure, there had been no purchases by the PMCCF.⁹ As of December 23, the SMCCF had an outstanding amount of bond ETFs and individual corporate bond purchases of \$14.2 billion.¹⁰ Upon the Treasury’s request, the Federal Reserve agreed to return the Treasury’s excess unused capital in the PMCCF and SMCCF in connection with the facilities’ December 31, 2020 expiration.¹¹

Main Street Lending Program (“MSLP”): The MSLP is comprised of five facilities—three dedicated to for-profit businesses and two dedicated to non-profit organizations. The Federal Reserve, through an SPV, acquires loans issued by lenders to small and medium-sized businesses and non-profit organizations with up to 15,000 employees or

⁵ Congressional Oversight Commission, *Questions About the CARES Act’s \$500 Billion Emergency Economic Stabilization Funds*, May 18, 2020, at 5, https://coc.senate.gov/sites/default/files/2020-08/20200518_Congressional_Oversight_Committee_1st_Report.pdf.

⁶ Board of Governors of the Federal Reserve System, *Primary Market Corporate Credit Facility Term Sheet*, July 28, 2020, <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200728a9.pdf>; Board of Governors of the Federal Reserve System, *Secondary Market Corporate Credit Facility Term Sheet*, July 28, 2020, <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200728a1.pdf>.

⁷ Board of Governors of the Federal Reserve System, *Secondary Market Corporate Credit Facility Term Sheet*, July 28, 2020, <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200728a1.pdf>.

⁸ Board of Governors of the Federal Reserve System, Statistical Release H.4.1, *Factors Affecting Reserve Balances of the Depository Institutions and Condition Statement of Federal Reserve Banks*, Dec. 28, 2020, at n.14, <https://www.federalreserve.gov/releases/h41/>. The SPV for the PMCCF and the SMCCF is Corporate Credit Facilities LLC.

⁹ Board of Governors of the Federal Reserve System, *Periodic Report: Update on Outstanding Lending Facilities Authorized by the Board under Section 13(3) of the Federal Reserve Act*, Dec. 11, 2020, <https://www.federalreserve.gov/monetarypolicy/files/pdcf-mmlf-cpff-pmccf-smccf-talf-mlf-ppplf-msnlf-mself-msplf-nonlf-noelf-12-11-20.pdf#page=7>.

¹⁰ Board of Governors of the Federal Reserve System, Statistical Release H.4.1, *Factors Affecting Reserve Balances of the Depository Institutions and Condition Statement of Federal Reserve Banks*, Dec. 28, 2020, at n.4, <https://www.federalreserve.gov/releases/h41/>. The SPV is the Corporate Credit Facilities LLC.

¹¹ U.S. Department of the Treasury, *Letter from Treasury Secretary Steven T. Mnuchin to Chair Jerome Powell*, Nov. 19, 2020, <https://home.treasury.gov/system/files/136/letter11192020.pdf>; Board of Governors of the Federal Reserve System, *Letter from Chair Jerome Powell to Treasury Secretary Steven T. Mnuchin*, Nov. 20, 2020, <https://www.federalreserve.gov/foia/files/mnuchin-letter-20201120.pdf>

2019 revenues of \$5 billion or less. The Treasury initially announced it intended to make an equity investment of \$75 billion in this program, which can support up to \$600 billion in lending.¹² All MSLP facilities are operational and are able to purchase eligible loans submitted by lenders registered to participate in the program. As of December 14, 2020, 644 lenders had registered to participate in the program which has not received new submissions.¹³ As of December 23, 2020, the Treasury had invested \$37.5 billion.¹⁴ As of December 23, 2020, the Federal Reserve held \$14.5 billion in loan participations purchased under the MSLP.¹⁵ Upon the Treasury's request, the Federal Reserve agreed to return the Treasury's excess unused capital in the MSLP in connection with the facility's initial December 31, 2020 expiration.¹⁶ However, the Federal Reserve announced on December 29, 2020 that the program would be extended until January 8, 2021 to have enough time to process all loans received.

Municipal Liquidity Facility ("MLF"): Announced on April 9, 2020, the MLF enables the Federal Reserve, through a SPV, to purchase short-term notes issued by state and local governments. The Treasury initially announced it intended to make an equity investment of \$35 billion in the SPV, which can support up to \$500 billion in lending.¹⁷ As of December 23, 2020, the Treasury invested \$17.5 billion.¹⁸ As of December 23, 2020, the MLF has purchased \$6.4 billion in municipal notes.¹⁹ Upon the Treasury's request, the Federal Reserve agreed to return the Treasury's excess unused capital in the MLF in connection with the facility's December 31, 2020 expiration.²⁰

¹² Federal Reserve Bank of Boston, *Main Street Lending Program For-Profit Businesses Frequently Asked Questions*, July 31, 2020, <https://www.bostonfed.org/mslp-faqs>; Federal Reserve Bank of Boston, Aug. 6, 2020, <https://www.bostonfed.org/-/media/Documents/special-lending-facilities/mslp/legal/frequently-asked-questions-faqs-nonprofit.pdf>.

¹³ The lender registration summary data was provided by the Federal Reserve on November 28, 2020. Registered lenders that are accepting new applicants are listed on a state-by-state basis at: <https://www.bostonfed.org/supervision-and-regulation/supervision/special-facilities/main-street-lending-program/information-for-borrowers.aspx>.

¹⁴ Board of Governors of the Federal Reserve System, Statistical Release H.4.1, *Factors Affecting Reserve Balances of the Depository Institutions and Condition Statement of Federal Reserve Banks*, Dec. 28, 2020, at n.14, <https://www.federalreserve.gov/releases/h41/>. The SPV for the MSLP is MS Facilities LLC.

¹⁵ *Id.* at table 4.

¹⁶ U.S. Department of the Treasury, *Letter from Treasury Secretary Steven T. Mnuchin to Chair Jerome Powell*, Nov. 19, 2020, <https://home.treasury.gov/system/files/136/letter11192020.pdf>; Board of Governors of the Federal Reserve System, *Letter from Chair Jerome Powell to Treasury Secretary Steven T. Mnuchin*, Nov. 20, 2020, <https://www.federalreserve.gov/foia/files/mnuchin-letter-20201120.pdf>

¹⁷ Board of Governors of the Federal Reserve System, *Municipal Liquidity Facility Term Sheet*, Aug. 11, 2020, <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200811a1.pdf>; Federal Reserve Bank of New York, *FAQs: Municipal Liquidity Facility*, Aug. 11, 2020, <https://www.newyorkfed.org/markets/municipal-liquidity-facility/municipal-liquidity-facility-faq>.

¹⁸ Board of Governors of the Federal Reserve System, Statistical Release H.4.1, *Factors Affecting Reserve Balances of the Depository Institutions and Condition Statement of Federal Reserve Banks*, Dec. 28, 2020, at n.14, <https://www.federalreserve.gov/releases/h41/>. The SPV for the MLF is Municipal Liquidity Facility LLC.

¹⁹ *Id.* at table 4.

²⁰ U.S. Department of the Treasury, *Letter from Treasury Secretary Steven T. Mnuchin to Chair Jerome Powell*, Nov. 19, 2020, <https://home.treasury.gov/system/files/136/letter11192020.pdf>; Board of Governors of the Federal

Term Asset-Backed Securities Loan Facility (“TALF”): The TALF enables the Federal Reserve, through an SPV, to make loans to U.S. companies secured by asset-backed securities (“ABS”) backed by student loans, auto loans, credit card loans, commercial mortgages, leveraged loans, loans guaranteed by the Small Business Administration, and certain other assets.²¹ The Treasury’s \$10 billion equity investment in this facility can provide up to \$100 billion in lending.²² TALF had a total outstanding amount of \$3.7 billion in loans as of December 23, 2020.²³ Upon the Treasury’s request, the Federal Reserve agreed to return the Treasury’s excess unused capital in the TALF in connection with the facility’s December 31, 2020 expiration.²⁴

The Treasury’s Loans for National Security Businesses

The Treasury also has \$17 billion available to make loans to businesses critical to maintaining national security under Subtitle A. As of December 8, 2020, the Treasury reported that it has provided national security loans to eleven businesses, totaling \$735.9 million.²⁵ One business, YRC Worldwide, Inc., accounts for 95% of the total outstanding.²⁶ This loan program will expire on December 31, 2020.²⁷ Secretary Mnuchin confirmed that, “everything is finished. Treasury approved 11 loans, and there are no other loans.”²⁸

The Treasury’s Loans for the Airline Industry

Reserve System, *Letter from Chair Jerome Powell to Treasury Secretary Steven T. Mnuchin*, Nov. 20, 2020, <https://www.federalreserve.gov/foia/files/mnuchin-letter-20201120.pdf>.

²¹ Board of Governors of the Federal Reserve, *Term Asset-Backed Securities Loan Facility Term Sheet*, July 28, 2020, <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200728a6.pdf>.

²² Board of Governors of the Federal Reserve System, Statistical Release H.4.1, *Factors Affecting Reserve Balances of the Depository Institutions and Condition Statement of Federal Reserve Banks*, Dec. 28, 2020, at n.14, <https://www.federalreserve.gov/releases/h41/>; Board of Governors of the Federal Reserve, *Term Asset-Backed Securities Loan Facility Term Sheet*, July 28, 2020, <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200728a6.pdf>.

²³ Board of Governors of the Federal Reserve System, Statistical Release H.4.1, *Factors Affecting Reserve Balances of the Depository Institutions and Condition Statement of Federal Reserve Banks*, Dec. 28, 2020, at table 4, <https://www.federalreserve.gov/releases/h41/>.

²⁴ U.S. Department of the Treasury, *Letter from Treasury Secretary Steven T. Mnuchin to Chair Jerome Powell*, Nov. 19, 2020, <https://home.treasury.gov/system/files/136/letter11192020.pdf>; Board of Governors of the Federal Reserve System, *Letter from Chair Jerome Powell to Treasury Secretary Steven T. Mnuchin*, Nov. 20, 2020, <https://www.federalreserve.gov/foia/files/mnuchin-letter-20201120.pdf>.

²⁵ U.S. Department of the Treasury, *Loans to Air Carriers, Eligible Businesses, and National Security Businesses*, last visited Dec. 24, 2020, <https://home.treasury.gov/policy-issues/cares/preserving-jobs-for-american-industry/loans-to-air-carriers-eligible-businesses-and-national-security-businesses>.

²⁶ U.S. Department of the Treasury, *Loans to Air Carriers, Eligible Businesses, and National Security Businesses*, last visited Dec. 24, 2020, <https://home.treasury.gov/policy-issues/cares/preserving-jobs-for-american-industry/loans-to-air-carriers-eligible-businesses-and-national-security-businesses>.

²⁷ U.S. Department of the Treasury, *Letter from Treasury Secretary Steven T. Mnuchin to Chair Jerome Powell*, Nov. 19, 2020, <https://home.treasury.gov/system/files/136/letter11192020.pdf>.

²⁸ Congressional Oversight Commission hearing on the National Security Loan Program, 116th Cong. (Dec. 10, 2020) (Testimony of Secretary Steven Mnuchin, Treasury), at 33.

In addition, the Treasury has available \$29 billion to make loans to the airline industry under Subtitle A, with \$25 billion available to passenger air carriers, including related businesses, and \$4 billion available to cargo air carriers.²⁹ As of November 30, 2020, the Treasury reported that it has provided twenty-four such loans to companies the Treasury characterizes as airlines, ticket agents, a repair station, and a cargo air carrier.³⁰ Those loans total \$21.2 billion.³¹ This loan program will expire on December 31, 2020.³²

Recent Hearing

On December 10, 2020, the Commission held a public hearing regarding the national security loan program, at which Treasury Secretary Steven Mnuchin testified. The Commission has also invited the Director of National Intelligence John Ratcliffe and Undersecretary Ellen Lord of the Department of Defense (“DOD”) to testify. The Office of the Director of National Intelligence (“ODNI”) has told the Commission that it has not designated any company as “critical to maintaining national security” nor has it provided any input with respect to any DOD company designations. While Undersecretary Lord declined to participate in the hearing on December 10, 2020, she participated in a teleconference with the Commission on December 18, 2020 and the Commission subsequently submitted questions to Undersecretary Lord. Her responses are attached as Appendix A.

The Commission’s December 10 hearing was livestreamed on the Commission’s website, <http://coc.senate.gov>, and a preliminary transcript of the hearing is available in Appendix B.

Commissioner Bharat Ramamurti

Commissioner Ramamurti recently announced he would be joining President-Elect Biden’s Administration as the Deputy Director of the National Economic Council and stepped down from his role on the Commission. The Commission thanks Commissioner Ramamurti for his public service and dedication to the Commission’s work and wishes him well in his new role.

In this report, we provide an in-depth analysis of the Treasury’s national security loan program. We also provide updates regarding recent key actions taken by the Treasury and the Federal Reserve regarding each of the above lending programs and facilities under Subtitle A, as well as updates regarding the Commission’s oversight activities.

²⁹ CARES Act § 4003. Related businesses are eligible businesses that are certified under part 145 of title 14, Code of Federal Regulations, and approved to perform inspection, repair, replace, or overhaul services, and ticket agents (as defined in Section 40102 of Title 49 of the United States Code).

³⁰ U.S. Department of the Treasury, *Loans to Air Carriers, Eligible Businesses, and National Security Businesses*, last visited Nov. 30, 2020, <https://home.treasury.gov/policy-issues/cares/preserving-jobs-for-american-industry/loans-to-air-carriers-eligible-businesses-and-national-security-businesses> (see “Transaction Summary” of each transaction for more details).

³¹ *Id.*

³² U.S. Department of the Treasury, *Letter from Treasury Secretary Steven T. Mnuchin to Chair Jerome Powell*, Nov. 19, 2020, <https://home.treasury.gov/system/files/136/letter11192020.pdf>.

The Commission received the Treasury's credit memoranda for the additional ten national security loans and the DOD's follow-up questions with relevant documents requested on December 23, 2020. The Commission had previously only received the YRC credit memorandum. The Commission continues to analyze these documents and may have additional questions or provide additional reporting as warranted in future reports.

EXECUTIVE SUMMARY

This eighth report of the Commission is a continuation of the seventh report which focused on the Treasury and the DOD's \$700 million loan to YRC Worldwide, Inc. ("YRC"), which was made under the loan program "for businesses critical to maintaining national security." This report also analyzes part of the additional ten smaller loans also executed as part of this program.

Under the program, the Treasury determines the rates and conditions of the loans, while the DOD or ODNI determine whether the business is critical to maintaining national security.

The seventh report highlighted how the DOD did not provide the Commission a satisfactory explanation for how the companies who received these loans were critical to national security. In response, the Commission invited the Treasury, the DOD and the ODNI to testify at a hearing.

On December 10, 2020, the Commission held a public hearing regarding the national security loan program with Treasury Secretary Steven Mnuchin testifying. DOD's Undersecretary Lord participated in a teleconference with the Commission on December 18, 2020 and submitted answers to the Commission's questions for the record following the teleconference. The ODNI told the Commission that it has not designated any company as "critical to maintaining national security" nor has provided any input with respect to any DOD company designations.

Through the Commission's interactions with the Treasury and DOD, the Commission was able to get better answers to the outstanding questions surrounding the terms and conditions of the loans, how a company is determined to be critical to national security and the underlying financial health and growth of the companies receiving the loans.

As outlined in the last report, the Commission is concerned the Treasury may have put the taxpayers in a precarious position. Based on additional analysis, the Commission recommends the Treasury and DOD evaluate their criteria related to their underwriting analysis and national security designation. Specifically, the Commission believes that the DOD should have used a more robust criteria and process for recommending and certifying that a business is critical to maintaining national security and should apply those parameters consistently. The Treasury should better understand the underlying collateral when underwriting a loan and better measure the incurred losses caused by COVID.

NATIONAL SECURITY LOAN PROGRAM

Background on Designating a National Security Business

The CARES Act authorized the Department of the Treasury (“Treasury”) to make up to \$17 billion in loans and loan guarantees in support of “businesses critical to maintaining national security” related to “losses incurred as a result of coronavirus.”³³ The statute does not define a business critical to maintaining national security, so on April 10, 2020, the Treasury issued guidance defining this term. At the Commission’s December 10, 2020 hearing, Treasury Secretary Steven Mnuchin testified that the Treasury consulted with the Department of Defense (“DOD”) and the Office of the Director of National Intelligence (“ODNI”) to develop this guidance.³⁴

Under the guidance, a business is critical to maintaining national security if:

1. it performs under a “DX”-priority rated contract or order under the Defense Priorities and Allocations System regulations (15 CFR part 700);
2. it operates under a valid top secret facility security clearance under the National Industrial Security Program regulations (32 CFR part 2004); or
3. the Secretary of the Treasury determines that the applicant is critical to maintaining national security based on a recommendation and certification from the Secretary of Defense or the Director of National Intelligence that the business is critical to maintaining national security.³⁵

Secretary Mnuchin testified at the Commission’s December 10, 2020 hearing that these criteria were developed because “there would be small companies that had top secret clearances, and we did not want them to go out of business and have all these people disappear.”³⁶

The Treasury has made five national security loans to companies that were designated as businesses critical to maintaining national security based on the first two criteria described above and six based on the third criteria. All of these companies were designated as a result of a recommendation and certification from DOD. ODNI has informed the Commission that it has not provided the Treasury with any recommendation and certification to designate a business as critical to maintaining national security and has not provided any input with respect to any DOD recommendations and certifications. Overall, DOD recommended and certificated 20 companies as critical to maintaining national security for the national security loan program. The Treasury

³³ CARES Act, Pub. L. No. 116-136, § 4003, 134 Stat. 281 (2020).

³⁴ Congressional Oversight Commission hearing on the National Security Loan Program, 116th Cong. (Dec. 10, 2020) (Prepared Testimony of Secretary Steven Mnuchin, Treasury), at 1.

³⁵ Treasury, *Q&A: Loans to Air Carriers and Eligible Businesses and National Security Businesses*, Updated as of April 10, 2020, <https://home.treasury.gov/system/files/136/CARES-Airline-Loan-Support-Q-and-A-national-security.pdf>, see page 1, question 4.

³⁶ Congressional Oversight Commission hearing on the National Security Loan Program, 116th Cong. (Dec. 10, 2020) (Testimony of Secretary Steven Mnuchin, Treasury), at 42.

ultimately made national security loans to six out of these 20 companies. See Appendix C for an overview of the 11 loans the Treasury has made through the national security loan program.

During the Commission’s December 10, 2020 hearing, Rep. Donna Shalala asked Secretary Mnuchin about the Treasury’s process for designating a business as critical to maintaining national security based on a recommendation and certification by DOD. She asked whether the Treasury qualifies the recommendations and certifications from DOD or accepts them wholesale.³⁷ In response, Secretary Mnuchin stated that “from a practical stand point, we did not second-guess the ODNI or DOD, so we did not do additional diligence.”³⁸ Rep. Shalala also asked whether the Treasury ever disagreed with DOD’s recommendations and certifications.³⁹ Secretary Mnuchin responded that Treasury did not. He stated: “We relied upon it, and I have written certifications from DOD... We do not have the expertise at Treasury to analyze that.”⁴⁰

Further, when the Commission questioned the DOD about this, they stated in the follow-up answers that DOD was “not involved in creating the guidance or definitions used by Treasury for its application process.”⁴¹ Additionally, Undersecretary Lord referred the Commission to the Treasury for additional analysis regarding the national security designation.⁴²

The Commission finds something amiss as to which agency was ultimately responsible for the national security designation. The Commission believes the Treasury should have worked with DOD and ODNI to establish more specific criteria for determining what businesses were critical to maintaining national security and/or Treasury should have required DOD and ODNI to provide Treasury with more analysis than simply a statement that a business was critical to maintaining national security.

DOD explained to the Commission in an October 22, 2020 letter that it used the following criteria to evaluate whether a business is critical to maintaining national security:⁴³

1. Does the company currently supply to DOD via a direct contract or through a sub-contract?
2. Is the company owned in whole or in part by China or Russia?
3. Is the company participating in any other COVID-19 related loan or grant program?

³⁷ Congressional Oversight Commission hearing on the National Security Loan Program, 116th Cong. (Dec. 10, 2020) (Statement of Representative Donna Shalala), at 39.

³⁸ Congressional Oversight Commission hearing on the National Security Loan Program, 116th Cong. (Dec. 10, 2020) (Testimony of Secretary Steven Mnuchin, Treasury), at 39.

³⁹ Congressional Oversight Commission hearing on the National Security Loan Program, 116th Cong. (Dec. 10, 2020) (Statement of Representative Donna Shalala), at 39.

⁴⁰ Congressional Oversight Commission hearing on the National Security Loan Program, 116th Cong. (Dec. 10, 2020) (Testimony of Secretary Steven Mnuchin, Treasury), at 39 and 40.

⁴¹ Congressional Oversight Commission Follow-Up Questions Submitted to the Honorable Ellen Lord. (December 23, 2020) at Question 7.

⁴² Congressional Oversight Commission Follow-Up Questions Submitted to the Honorable Ellen Lord. (December 23, 2020) at Question 1.

⁴³ Treasury, *Letter from U.S. Department of the Treasury to Congressional Oversight Commission*, July 30, 2020.

4. Are there alternate sources for the item a company supplies?
5. Is what the company supplies a commodity or commercially available item?

DOD stated that criterion 1 is a requirement, criterion 2 would preclude a company from certification, and criteria 3, 4, and 5 inform DOD's decision of whether to recommend and certify that a company is critical to maintaining national security.

In the Commission's view, DOD's criteria and process for determining whether a business is critical to maintaining national security is inadequate. Based on DOD's criteria, countless contractors and subcontractors connected to DOD's \$597 billion in annual spending could qualify as a business critical to maintaining national security.⁴⁴ If Congress had wanted the national security loan program to apply to such a wide scope of businesses it would have used statutory language referring to DOD contractors and subcontractors generally as it did in other provisions in the CARES Act.⁴⁵ But Congress did not do that in Section 4003(b)(3) of the CARES Act. Rather it used more targeted language—"businesses critical to maintaining national security"—that clearly has a more narrow meaning than DOD contractors and subcontractors generally.

The Commission raised this point with Undersecretary Lord during their briefing on December 18, 2020 and in the subsequent questions for the record. In her written response, Undersecretary Lord simply stated that "DOD has visibility into some, but not all, subcontractors"⁴⁶ which the Commission finds as an inadequate understanding of DOD's contracting services. Specifically, as it relates to YRC, Undersecretary Lord continually emphasized the extensive amount of work DOD does to ensure effective and efficient oversight of their prime contractors. However, all oversight of subcontractors is left to the prime contractors, yet YRC, which is a subcontractor of Crowley Logistics, the prime contractor to the DOD, was deemed as critical to national security even though the DOD did not even question Crowley Logistics about the nature of YRC's financial health, business or operations for DOD.

Furthermore, the Commission believes the DOD provides a very weak case for YRC as it relates to questions four and five of the above criteria. For example, there are many other companies that provide less-than-truckload ("LTL") services aside from YRC and services, like LTL trucking, could be considered a commodity. When questioned about this, the DOD stated,

⁴⁴ Bloomberg Government, *BGOV200 Federal Industry Leaders 2019*, https://data.bloomberglp.com/bna/sites/3/2020/06/2020-BGOV200-Report.pdf?utm_campaign=BGOV_Confirmations_Report&utm_medium=email&utm_source=Eloqua, at 1.

⁴⁵ CARES Act, Pub. L. No. 116-136, § 3610, 134 Stat. 281 (2020). This section, Federal Contractor Authority, is an example of CARES Act language targeted to affected government contractors in general, and the section applies to government contractors whose employees or subcontractors cannot perform work on a site that has been approved by the federal government

⁴⁶ Congressional Oversight Commission Follow-Up Questions Submitted to the Honorable Ellen Lord. (December 23, 2020) at Question 9

“DOD did not inquire with other LTL service providers to determine whether they could have stepped in to satisfy DOD requirements should YRC cease operating.”⁴⁷

Based on the analysis above, the Commission believes DOD should have used a more robust criteria and process for recommending and certifying that a business is critical to maintaining national security. Additionally, the Commission believes DOD applies their national security designation inconsistently and encourages them to reevaluate their process in the future.

Loan Purpose: COVID-19-related Losses

The CARES Act authorized the Treasury to make loans “to provide liquidity to eligible businesses . . . related to losses incurred as a result of the coronavirus.”⁴⁸ The CARES Act also provides that loans made to provide such liquidity “shall be made . . . in such form and on such terms and conditions . . . as the Secretary determines appropriate.”⁴⁹ The Treasury’s application for national security loans contains a section entitled “Covered Losses” that requests information about a company’s COVID-19-related losses. This section asks applicants to report 2019 revenues and expenses, and to list “each category of revenue loss or new unbudgeted expense that the [company] has incurred or expects to incur directly or indirectly as a result of the coronavirus through March 30, 2021, and the actual or expected revenue loss or new expense for each category.”⁵⁰ The categories of covered losses identified in the applications are:

1. Losses of revenue related to reductions in demand or delayed contracts; and
2. Increased expenses relating to higher fixed costs, unexpected expenses, or purchase of work from home equipment.

At the Commission’s December 10, 2020 hearing, Secretary Mnuchin discussed how the Treasury approached whether a company’s losses were incurred as a result of the coronavirus. He stated “the intent was supposed to be COVID. When COVID impacted the entire business, it was very difficult to figure out COVID versus non-COVID.”⁵¹ While the Commission agrees that reconciling covered losses is a difficult exercise, a review of the national security applications showed that seven of the 11 national security loans were made to companies that reported covered losses at, or exceeding, 2019 revenues. One company, SpinLaunch Inc., reported covered losses to be at levels 14,000% greater than 2019 revenues. Additionally, five companies were granted loans in excess of 2019 revenues. In one instance, a company reported COVID-19 losses higher than their 2019 revenues, yet Earnings Before Interest, Taxes, Depreciation, and Amortization (“EBITDA”), and profitability was projected to increase steadily

⁴⁷ Congressional Oversight Commission Follow-Up Questions Submitted to the Honorable Ellen Lord. (December 23, 2020) at Question 2a.

⁴⁸ CARES Act, Pub. L. No. 116-136, § 4003(a), 134 Stat. 281 (2020).

⁴⁹ CARES Act, Pub. L. No. 116-136, § 4003(c)(1)(a), 134 Stat. 281 (2020).

⁵⁰ Treasury, *Treasury Loan Application Form for Businesses Critical to Maintaining National Security*, April 23, 2020, <https://home.treasury.gov/system/files/136/Loan-Application-Form-for-Businesses-Critical-to-Maintaining-National-Security.pdf>.

⁵¹ Congressional Oversight Commission hearing on the National Security Loan Program, 116th Cong. (Dec. 10, 2020) (Testimony of Secretary Steven Mnuchin, Treasury), at 29.

from 2020 through 2022. In several loans, companies reported loan proceeds that were expected to be used to finance unexpected increased demand for their products due to COVID-19.

As it relates to YRC, the Commission believes Tranche A made a good faith effort to provide funding in response to offset losses incurred by COVID-19. However, Tranche B funds are for the purchase of new tractors and trailers in accordance with the company's capital expenditures plan. The Commission believes this type of lending is beyond the scope of the CARES Act funding as it is not being used to COVID-19 losses.

Overall, the Commission did not find a strong link between reported COVID-19 losses, loan size, and other projections Treasury used in its underwriting process.

Credit Underwriting Process and Results

In addition to being designated as critical to maintaining national security and demonstrating covered losses, companies also had to pass the Treasury's credit underwriting criteria to obtain a national security loan. At the Commission's December 10, 2020 hearing, Secretary Mnuchin explained the Treasury's approach to credit underwriting for the national security loan program. He stated: "What we tried to do was establish a process so that we were not picking winners or losers. The criteria [that] was there had to be a designation or one of the specific criteria for national security. When it did that, we put it through a credit underwriting, and there was credit determinations both for some of the smaller ones on an unsecured loan and some of the bigger ones...But we made sure that the loans fit our credit criteria and rejected many that did not."⁵²

In a letter to the Commission dated July 30, 2020, the Treasury outlined the credit test it used in reviewing applications for national security loans. According to the Treasury, a company passed this credit test if it met any two of the following criteria:

Credit Criteria:	Required Level:
Leverage (existing debt / 2019 adjusted EBITDA ⁵³)	Must be < 6.0x
Debt service coverage (2019 adjusted EBITDA / 2020 existing debt service)	Must be > 1.5x
Collateral (secured debt / tangible assets)	Must be < 75%

⁵² Congressional Oversight Commission hearing on the National Security Loan Program, 116th Cong. (Dec. 10, 2020) (Testimony of Secretary Steven Mnuchin, Treasury), at 29 and 30.

⁵³ CFA Institute, *Financial Statements*, <https://www.cfainstitute.org/-/media/documents/support/programs/investment-foundations/7-financial-statements.aspx?la=en&hash=19AC47831720AC9675778BBB6C15BE6CFF4BAF75>, see page 203, Earnings before interest, taxes, depreciation, and amortization (EBITDA) is an important measure of income. EBITDA is operating income before depreciation and amortization expenses are deducted. The amounts of depreciation and amortization are not cash flows, and they are determined by the choice of accounting method rather than by operating decisions. EBITDA is useful because it offers a closer approximation of operating cash flow than EBIT. It is an indicator of the company's operating performance and its management's ability to generate revenues and control expenses that are related to its operations.

The first criterion in the Treasury’s credit test—“leverage”—indicates how much debt a business can prudently take on without endangering its operations. The second criterion in the credit test —“debt service coverage”—measures the ability of a business to make principal and interest payments based on its level of operating cash. The last criterion in the credit test—“collateral,”—measures the value of a company’s assets available to the Treasury in the event of its default on a loan.

Specifically for YRC, the documentation provided by Treasury related to the firm’s loan application outlines how it meets these collateral tests. The Commission, however, upon careful review of the collateral detail, debt service and cash obligations contained in the attachments doubts the reliability and adequacy of the underlying assumptions of cash flow and tangible asset values. In addition, as noted in the Commission’s Fourth Report, the terms of the YRC loan are comparable to the terms required under the Main Street Lending Program and it is not clear why these programs offer different credit underwriting criteria.⁵⁴

Following a review of Treasury’s credit evaluation memoranda, the Commission concludes that every loan, except for the YRC loan, was underwritten to growth stage companies. The Commission believes the credit evaluation process Treasury created is not suitable for these types of companies. Certain companies did not have positive EBITDA and were not expected to be cash flow positive and thus the underwriting tests could not be utilized. In those instances, loan size was based on expected collateral security. Six of the 11 loan recipients had also received Paycheck Protection Program (PPP) loans and it is not clear to the Commission that this program was intended for businesses of this size. Of note, securing a PPP loan would satisfy DOD’s question 3, outlined above, asking about a company’s participation in other COVID-19 related loan or grant programs – again further underscoring the DOD’s inconsistent designation process.

In addition, downside revenue scenario analysis was not conducted on any of the 11 loan recipients and the Commission does not find that the liquidity analysis conducted instead was sufficient to determine if the loan would be repaid.

Background on National Security Loan Application Process

On April 23, 2020, the Treasury released an application for businesses seeking national security loans.⁵⁵ The application asks a business applying for a loan for contact information, ownership structure, balance sheet composition, current restrictions on debt, available loan security, available loan guarantees, credit ratings, a business plan, a financial plan, tax information, and information relating to number of employees. The business then uploads the

⁵⁴ Congressional Oversight Commission, the Fourth Report of the Congressional Oversight Commission, Aug. 21, 2020, https://coc.senate.gov/sites/default/files/2020-08/COC%204th%20Report_08.21.2020%20with%20Appendix%208-27%20update.pdf, see 66.

⁵⁵ Treasury, *Treasury Loan Application Form for Businesses Critical to Maintaining National Security*, April 23, 2020, <https://home.treasury.gov/system/files/136/Loan-Application-Form-for-Businesses-Critical-to-Maintaining-National-Security.pdf>.

requested materials to a loan application portal created by the Treasury. See Appendix D for a sample application.

During the application process, a business must provide the Treasury with appropriate financial instruments that, in the sole determination of the Treasury Secretary, provide for a reasonable participation in equity appreciation or a reasonable interest rate premium appropriate for the benefit of taxpayers.⁵⁶ In practice, a business that is publicly traded must provide warrants or an equity interest. For a business that is not publicly traded, the Treasury Secretary may accept senior debt instruments or other interests, including payment-in-kind interest.

Of note, Secretary Mnuchin recommended during the Commission's December 10, 2020 hearing that "next year whoever is Treasury Secretary [should] seriously look at selling this loan, recovering what I think will be a profit to taxpayers, because this [YRC loan] was a success. But we do not want to be in the long-term business of lending to this type of company or any of the national security companies. But, fortunately, we have made a significant profit,⁵⁷ and taxpayers should get paid back."⁵⁸ The Commission echoes Secretary Mnuchin's comments and recommends the Treasury try to sell the loan to avoid any losses to taxpayers.

Per the "Financial Agency Agreement for Independent Financial Advice on Programs for Businesses Critical to National Security under the CARES Act," the Treasury retained Perella Weinberg Partners LP as the Financial Advisor for the National Security Loans for a \$500,000 fee for the initial term.⁵⁹ Rep. Hill has followed up the hearing with a question for the record inquiring if there were any additional fees provided based on analysis each application, whether or not a loan was funded, etc. which is attached as Appendix E.

⁵⁶ Treasury, *Treasury Loan Application Form for Businesses Critical to Maintaining National Security*, April 23, 2020, <https://home.treasury.gov/system/files/136/Loan-Application-Form-for-Businesses-Critical-to-Maintaining-National-Security.pdf>, see page 9, *Taxpayer Protection*.

⁵⁷ Due to the appreciation in the price of YRC's common stock from the time of the Treasury's equity participation on July 8, 2020, when the loan was executed, at \$2.55 per share versus the price of \$5.55 per share on December 10, 2020.

⁵⁸ Congressional Oversight Commission hearing on the National Security Loan Program, 116th Cong. (Dec. 10, 2020) (Testimony of Secretary Steven Mnuchin, Treasury), at 37.

⁵⁹ https://home.treasury.gov/system/files/136/FAA-Financial-Advisor-Business-National-Security-FINAL-Signed_0.pdf

TREASURY AND FEDERAL RESERVE RECENT DEVELOPMENTS

In December, the Treasury and the Federal Reserve took a number of actions under Division A, Title IV, Subtitle A of the CARES Act. We describe the key recent developments below. All of the Treasury and Federal Reserve’s Subtitle A programs are currently set to expire on December 31, 2020.⁶⁰

Primary Market Corporate Credit Facility (“PMCCF”)

There have been no new Federal Reserve announcements regarding the PMCCF. As of the Federal Reserve’s last disclosure, the PMCCF has not made any purchases.⁶¹

Secondary Market Corporate Credit Facility (“SMCCF”)

As of November 27, 2020, the SMCCF had purchased corporate bonds from more than 530 different issuers.⁶² The amortized cost for these bonds was \$5.15 billion.⁶³ The chart below lists the SMCCF’s 10 largest individual bond holdings by issuer as of November 27, 2020.⁶⁴ The bonds of these 10 issuers make up 15.6% of the SMCCF’s total individual bond holdings.

Issuer	Sector	Amortized Cost (U.S. \$ Million)	Percentage of SMCCF’s Individual Bond Holdings
AT&T Inc.	Communications	\$91.6	1.78%
Volkswagen Group of America Finance LLC	Consumer Cyclical	89.8	1.74%
Daimler Finance North America LLC	Consumer Cyclical	88.8	1.72%
Toyota Motor Credit Corp.	Consumer Cyclical	87.9	1.71%

⁶⁰ U.S. Department of the Treasury, *Letter from Treasury Secretary Steven T. Mnuchin to Chair Jerome Powell*, Nov. 19, 2020, <https://home.treasury.gov/system/files/136/letter11192020.pdf>; Board of Governors of the Federal Reserve System, *Letter from Chair Jerome Powell to Treasury Secretary Steven T. Mnuchin*, Nov. 20, 2020, <https://www.federalreserve.gov/foia/files/mnuchin-letter-20201120.pdf>. The Commission’s jurisdiction extends only to Subtitle A programs and thus does not include the Commercial Paper Funding Facility, which is currently set to expire on March 17, 2021. Board of Governors of the Federal Reserve, *Commercial Paper Funding Facility: Program Terms and Conditions*, July 23, 2020, <https://www.federalreserve.gov/monetarypolicy/files/monetary20200723a1.pdf>.

⁶¹ Board of Governors of the Federal Reserve System, *Periodic Report: Update on Outstanding Lending Facilities Authorized by the Board under Section 13(3) of the Federal Reserve Act*, Dec. 11, 2020, <https://www.federalreserve.gov/monetarypolicy/files/mslp-transaction-specific-disclosures-12-11-20.xlsx>.

⁶² Board of Governors of the Federal Reserve System, *Periodic Report: Update on Outstanding Lending Facilities Authorized by the Board under Section 13(3) of the Federal Reserve Act (Transaction-specific Disclosures)*, Dec., 11 2020, <https://www.federalreserve.gov/monetarypolicy/files/smccf-transaction-specific-disclosures-12-11-20.xlsx>.

⁶³ *Id.*

⁶⁴ *Id.*

Issuer	Sector	Amortized Cost (U.S. \$ Million)	Percentage of SMCCF's Individual Bond Holdings
Verizon Communications Inc.	Communications	86.3	1.67%
Apple Inc.	Technology	82.5	1.60%
Comcast Corp.	Communications	80.3	1.56%
BMW US Capital LLC	Consumer Cyclical	66.7	1.29%
General Electric Co.	Capital Goods	66.4	1.29%
Ford Motor Credit Co. LLC	Consumer Cyclical	64.2	1.24%

As of November 27, 2020, the SMCCF had purchased 112.8 million shares of bond Exchange Traded Funds (“ETFs”).⁶⁵ The facility made no bond ETF purchases since its July 30, 2020 disclosure.⁶⁶ The SMCCF has purchased shares from 16 bond ETFs with a market value of \$8.8 billion as of November 27, 2020.⁶⁷

Noting that primary market investment-grade corporate bond rates were below pre-pandemic levels, the Commission recommended in its Fifth Report that the SMCCF cease making purchases at that time.⁶⁸ Notwithstanding that recommendation, the Federal Reserve has continued to purchase approximately \$20 million worth of corporate bonds per day, prompting the Commission to reiterate its recommendation that the SMCCF cease making purchases in a statement dated November 10, 2020.⁶⁹

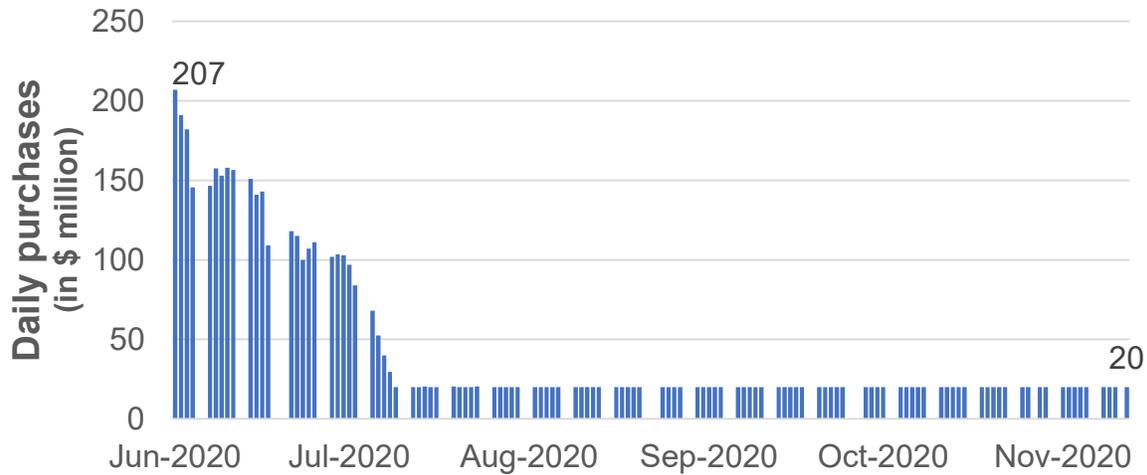
⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ The Fifth Report of the Congressional Oversight Commission, Oct. 15, 2020, at 43, https://coc.senate.gov/sites/default/files/2020-10/15Oct2020_The%20Fifth%20Report%20FINAL%20Updated%20Appendix%2010-20%20update.pdf.

⁶⁹ Congressional Oversight Commission, *Oversight Commission Issues Statement on SMCCF*, Nov. 10, 2020, <https://coc.senate.gov/oversight-commission-issues-statement-smccf>.



Main Street Lending Program (“MSLP”)

On October 30, 2020, the Federal Reserve announced that it lowered the minimum loan size from \$250,000 to \$100,000 for three of the five Main Street facilities available to for-profit and non-profit borrowers—i.e., the Main Street New Loan Facility, Main Street Priority Loan Facility, and Nonprofit Organization New Loan Facility.⁷⁰ It also adjusted fees for loans less than \$250,000 made pursuant to these facilities “to encourage the provision of these smaller loans.”⁷¹

As of November 30, 2020, eligible lenders made 646 loans through the MSLP.⁷² These loans totaled \$6.3 billion, with \$6.0 billion in Federal Reserve participation.⁷³ Businesses in 48 states participated in the program, led by Texas with 18.4%, followed by California with 14.8%, Florida with 14.6%, and Georgia with 5.4% of the loan proceeds.⁷⁴ Loan sizes ranged from \$232,690 to \$300 million.⁷⁵

⁷⁰ Board of Governors of the Federal Reserve System, *Federal Reserve Board adjusts terms of Main Street Lending Program to better target support to smaller businesses that employ millions of workers and are facing continued revenue shortfalls due to the pandemic*, Oct. 30, 2020, <https://www.federalreserve.gov/newsevents/pressreleases/monetary20201030a.htm>.

⁷¹ *Id.*

⁷² Board of Governors of the Federal Reserve System, *Periodic Report: Update on Outstanding Lending Facilities Authorized by the Board under Section 13(3) of the Federal Reserve Act (Transaction-specific Disclosures)*, Dec. 11, 2020, <https://www.federalreserve.gov/monetarypolicy/mainstreetlending.htm>.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

As of November 30, 2020, three nonprofit organizations have participated in the program.⁷⁶ These nonprofit loans totaled \$8.0 million, with approximately \$7.6 million in Federal Reserve participation.⁷⁷

As of December 23, 2020, the MSLP has loaned approximately \$14.2 billion, which is less than 2% of its lending capacity.⁷⁸

The Federal Reserve announced on December 29, 2020 that the termination date for the program would be extended until to January 8, 2021 to be able to process all loans received by December 14, 2020.

Municipal Liquidity Facility (“MLF”)

To date, the Federal Reserve has purchased notes from two borrowers through the MLF—one from the state of Illinois, and the other from New York’s Metropolitan Transportation Authority (“MTA”).⁷⁹ On June 5, 2020, Illinois borrowed \$1.2 billion from the MLF through the sale of a one-year note, making it the facility’s first participant.⁸⁰ On December 22, 2020, Illinois borrowed an additional \$2 billion through the MLF.⁸¹ On August 18, 2020, the MTA, which runs the largest transit system in the United States, borrowed \$450.7 million from the MLF through the sale of a three-year note.⁸² On November 18, 2020, the MTA authorized borrowing of up to an additional \$2.9 billion from the MLF.⁸³

⁷⁶ Board of Governors of the Federal Reserve System, *Periodic Report: Update on Outstanding Lending Facilities Authorized by the Board under Section 13(3) of the Federal Reserve Act (Transaction-specific Disclosures)*, Nov. 24, 2020, <https://www.federalreserve.gov/monetarypolicy/mainstreetlending.htm>.

⁷⁷ *Id.*

⁷⁸ Board of Governors of the Federal Reserve System, Statistical Release H.4.1, *Factors Affecting Reserve Balances of the Depository Institutions and Condition Statement of Federal Reserve Banks*, Dec. 28, 2020, at n.14, <https://www.federalreserve.gov/releases/h41/>. The SPV for the PMCCF and the SMCCF is Corporate Credit Facilities LLC.

⁷⁹ Board of Governors of the Federal Reserve System, *Periodic Report: Update on Outstanding Lending Facilities Authorized by the Board under Section 13(3) of the Federal Reserve Act (Transaction-specific Disclosures)*, Dec. 11, 2020, <https://www.federalreserve.gov/monetarypolicy/files/mlf-transaction-specific-disclosures-12-11-20.xlsx>.

⁸⁰ Shruti Singh & Amanda Albright, *Illinois Becomes First to Tap Fed Loans After Yields Surge*, Bloomberg, June 2, 2020, <https://www.bloomberg.com/news/articles/2020-06-02/illinois-becomes-first-to-tap-fed-loans-after-bond-yields-surge>.

⁸¹ Fitch Ratings, *Illinois' MLF Borrowing Reflects Deep Challenges, but Options Remain*, Dec. 22, 2020, <https://www.fitchratings.com/research/us-public-finance/illinois-mlf-borrowing-reflects-deep-challenges-options-remain-22-12-2020>.

⁸² Karen Pierog & Jonnelle Marte, *New York transit agency turns to Fed for \$450 million borrowing*, Reuters, Aug. 18, 2020, <https://www.reuters.com/article/us-usa-newyork-fed-debt/new-york-transit-agency-turns-to-fed-for-450-million-borrowing-idUSKCN25E2R3>; Amanda Albright & Danielle Moran, *New York's MTA Becomes Second to Tap Fed as Banks Demand Higher Yields*, Bloomberg, Aug. 18, 2020, <https://www.bloomberg.com/news/articles/2020-08-18/ny-mta-becomes-second-to-tap-fed-as-banks-demand-higher-yields?srnd=economics-vp&sref=hKSAni5g>.

⁸³ Reuters, *New York transit agency to borrow a second time from Fed program*, Nov. 18, 2020, <https://www.reuters.com/article/us-health-coronavirus-new-york-transit/new-york-transit-agency-to-borrow-a-second-time-from-fed-program-idUSKBN27Y2TB>.

Term Asset-Backed Securities Loan Facility (“TALF”)

On December 11, 2020, the Federal Reserve disclosed transaction-specific data about the TALF’s activities through November 27, 2020.⁸⁴ As of November 27, 2020, the TALF had made 208 loans totaling \$3.9 billion to 20 different borrower funds.⁸⁵ Several of these loans have been repaid and 190 loans totaling \$2.6 billion are currently outstanding.⁸⁶ The funds use TALF loans to purchase securities backed by certain types of consumer and business loans. The chart below illustrates the current collateral sector breakdown of those underlying loans as of November 27, 2020.⁸⁷

Collateral Sector	TALF Loan Amount (in \$ million)	% of Total TALF Loans
Small Business Administration Loans	\$2,024.4	51.8
Commercial Mortgage	1,158.1	29.6
Leveraged Loan	327.6	8.4
Private Student Loans	289.2	7.4
Premium Finance	106.9	2.7
Total	3,906.0	100.0

The following chart shows the five funds to whom the TALF has lent the most money as of November 27, 2020.⁸⁸

TALF Borrower Fund	TALF Loan Amount (in \$ million)
Alta Fundamental Advisers SP LLC - Belstar-Alta Series 1	\$1,908.6
MacKay Shields TALF 2.0 Opportunities Master Fund LP	837.3
Palmer Square TALF Opportunity Sub LLC	221.6
Alta Fundamental Advisers SP LLC - Belstar-Alta Series 2	216.4
BlackRock Securitized Investors, LP	113.5

⁸⁴ Board of Governors of the Federal Reserve System, *TALF Transaction-specific Disclosures*, Dec. 11, 2020, <https://www.federalreserve.gov/monetarypolicy/files/talf-transaction-specific-disclosures-12-11-20.xlsx>.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

The following chart shows the five asset-backed securities issuers that have received the most TALF support as of November 27, 2020.⁸⁹

Asset-backed Securities Issuer	TALF Loan Amount (in \$ million)
Small Business Administration	\$2,024.4
Golub Capital Partners TALF 2020-1 LLC	327.6
Navient Private Education Refi Loan Trust 2020-F	213.4
PFS Financing Corp	106.9
CSAIL 2019-C16 Commercial Mortgage Trust	72.9

Treasury Loans for National Security Businesses

On July 8, 2020, the Treasury finalized a \$700 million loan to YRC. Beginning on October 30, 2020, the Treasury announced an additional ten national security loans, totaling \$35.9 million.⁹⁰ This report describes these eleven loans in-depth. A summary of the transactions is provided in Appendix C.

Treasury Loans for the Airline Industry

As of December 8, 2020, the Treasury had made a total of twenty-four airline-industry loans, totaling \$21.2 billion. Of those loans, the Treasury has categorized one, a \$1.8 million loan to Legacy Airways, LLC, as a loan to a cargo air carrier pursuant to CARES Act § 4003(b)(2). The Treasury has classified the remaining twenty-three loans as § 4003(b)(1) loans to passenger air carriers and related businesses.⁹¹ The table below summarizes the loan transactions to date.⁹² On November 30, 2020, the Commission submitted questions to the Treasury regarding these loans

Earlier this month the United States Government Accountability Office (“GAO”) released a report on “Lessons Learned from CARES Act Loan Program for Aviation and other Eligible Businesses” that included an analysis of the airline and national security loans. The

⁸⁹ *Id.*

⁹⁰ U.S. Department of the Treasury, *Loans to Air Carriers, Eligible Businesses, and National Security Businesses*, last visited Nov. 30, 2020, <https://home.treasury.gov/policy-issues/cares/preserving-jobs-for-american-industry/loans-to-air-carriers-eligible-businesses-and-national-security-businesses>.

⁹¹ *Id.*

⁹² *Id.*

report had three findings for the Treasury related to improving loan program and clearer communication of the program goals and timelines.⁹³

⁹³ United States Government Accountability Office, *FINANCIAL ASSISTANCE Lessons Learned from CARES Act Loan Program for Aviation and Other Eligible Businesses*, <https://www.gao.gov/assets/720/711174.pdf> at 2.

Borrower	City, State	U.S. empl., March 2020	Loan amount	Interest rate (LIBOR+%)	Maturity date	Compensation for Treasury	Loan collateral
American Airlines	Fort Worth, TX	157,000	\$7,500,000,000	3.50%	6/30/2025	Warrants for common stock equal to 10% of loan amount.	Loyalty program.
United Airlines	Chicago, IL	93,000	\$7,500,000,000	3.00%	9/26/2025	Warrants for common stock equal to 10% of loan amount.	European and South American routes as well as certain aircraft and simulators.
JetBlue Airways	Long Island City, NY	23,000	\$1,948,000,000	2.75%	9/29/2025	Warrants for common stock equal to 10% of loan amount.	Loyalty program as well as certain aircraft and engines.
Alaska Airlines	Seattle, WA	22,000	\$1,928,000,000	2.50%	9/26/2025	Warrants for common stock equal to 10% of loan amount.	Loyalty program as well as certain aircraft and engines.
Hawaiian Airlines	Honolulu, HI	7,400	\$622,000,000	2.50%	6/30/2024	Warrants for common stock equal to 10% of loan amount.	Loyalty program as well as certain aircraft.
Frontier Airlines	Denver, CO	5,000	\$574,000,000	2.50%	9/26/2025	Warrants for common stock equal to 10% of loan amount.	Loyalty program.
SkyWest Airlines	St. George, UT	15,000	\$725,000,000	3.00%	9/29/2025	Warrants for common stock equal to 10% of loan amount.	Certain engines, airframes, and rotatable parts.
Mesa Airlines, Inc.	Phoenix, AZ	3,540	\$200,000,000	3.50%	10/30/2025	Warrants for common stock equal to 10% of loan amount.	Aircraft, engines, accounts receivables, and other equipment.
Sun Country, Inc.	Minneapolis, MN	1,630	\$45,000,000	3.50%	10/26/2025	3% payment-in-kind interest.	Loyalty program.
Ovation Travel Group	New York, NY	250	\$20,000,000	5.50%	10/15/2025	3% payment-in-kind interest.	Unsecured senior debt.
Eastern Airlines, LLC	Wayne, PA	137	\$15,000,000	3.50%	10/28/2025	3% payment-in-kind interest.	Aircraft, engines, and accounts receivables.
Caribbean Sun Airlines, Inc.	Virginia Garden, FL	173	\$15,000,000	3.50%	11/5/2025	3% payment-in-kind interest.	Aircraft, engines, and rotatable parts.
Timco Engine Center, Inc.	Oscoda, MI	25	\$8,390,240	3.50%	11/5/2025	3% payment-in-kind interest.	Engines, parts, accounts receivables, and other equipment and inventory.
Allflight Corporation	Kent, WA	35	\$4,721,260	3.50%	11/5/2025	3% payment-in-kind interest.	Inventory, engines, equipment, and spare parts.
Aviation Management & Repairs, Inc.	Fort Pierce, FL	6	\$4,026,705	3.50%	11/5/2025	3% payment-in-kind interest.	Aircraft, accounts receivable, engines, parts, and other equipment.

Southern Airways Express, LLC	Pompano Beach, FL	458	\$1,838,501	3.50%	10/28/2025	3% payment-in-kind interest.	Aircraft, engines, parts, and other equipment.
Legacy Airways, LLC	Conroe, TX	19	\$1,817,306	5.50%	10/20/2025	3% payment-in-kind interest.	Unsecured senior debt.
American Jet International Corp.	Houston, TX	44	\$1,162,124	3.50%	11/5/2025	3% payment-in-kind interest.	Secured by accounts receivable.
Bristin Travel, LLC	Fayetteville, AR	12	\$549,651	3.50%	10/26/2025	3% payment-in-kind interest.	Accounts receivable.
Island Wings, Inc.	Ft. Lauderdale, FL	not disclosed	\$294,350	3.50%	11/5/2025	3% payment-in-kind interest.	Aircraft.
Aero Hydraulics, Inc.	Fayetteville, GA	2	\$450,000	5.50%	10/23/2025	3% payment-in-kind interest.	Unsecured senior debt.
Republic Airlines, Inc.	Indianapolis, IN	6,700	\$77,000,000	3.50%	11/6/2025	Warrants for common stock equal to 10% of loan amount.	Spare parts and tooling inventory.
Thomas Global Systems, LLC	Irvine, CA	20	\$1,400,000	3.50%	11/7/2025	3% payment-in-kind interest.	Accounts receivable.
Elite Airways, LLC	Portland, ME	110	\$2,630,274	3.50%	11/7/2025	3% payment-in-kind interest.	Equipment and spare parts.
Total		335,561	\$21,196,280,411				

Appendix A:
Answers to Follow-Up Questions Submitted to the Honorable Ellen
Lord at the Department of Defense

CONGRESSIONAL OVERSIGHT COMMISSION

Briefing via Teleconference of December 18, 2020:

Examination of National Security Loans and Loan Guarantees Authorized by the CARES Act

**Follow-Up Questions Submitted to the Honorable Ellen M. Lord
Under Secretary of Defense for Acquisition and Sustainment
U.S. Department of Defense
December 23, 2020**

Question 1: On December 10, 2020, Secretary Mnuchin testified to the Congressional Oversight Commission (“Commission”) that the U.S. Department of the Treasury (“Treasury”) deferred to the U.S. Department of Defense (DOD) and that Treasury “relied upon” the DOD for the designations and “did not second-guess the DNI or DOD.” In your opening statement you implied that you believe the CARES Act contemplated that the Treasury Department should have had more involvement in the national security determination. Do you believe the Treasury Department should have done additional analysis regarding whether a company is critical to national security?

Answer: To be clear, I never stated that the Treasury Department should have had more involvement in the national security determination. Treasury’s loan application states: “Applicants that do not satisfy either of these two criteria [DX rated contract or Top Secret cleared facility] may be considered if, based on a recommendation and certification by the Secretary of Defense or the Director of National Intelligence that the applicant business is critical to maintaining national security, the Secretary of the Treasury determines that the applicant business is critical to maintaining national security.” (emphasis added). As such, I respectfully refer the Commission to the Treasury Department for further information regarding what analysis it did or did not undertake.

Question 2: On October 22, 2020, you told the Commission that one of the criteria for whether a business is critical to maintaining national security is whether “there [are] alternate sources for the item.” You replied in the negative, and further stated that the DOD did not consider replacement services or service providers for YRC Worldwide, Inc (“YRC”). Yet, you also stated that there are five other companies that provide less-than-truckload (LTL) services for the DOD, including FedEx, UPS, and others.

- a. Did the DOD inquire whether any of those five other companies could have stepped in to provide the services that YRC provides to the DOD and/or to DOD contractors?

Answer: DoD did not inquire with other LTL service providers to determine whether they could have stepped in to satisfy DoD requirements should YRC cease operating. The Department’s role was limited to determining whether a company was critical to maintaining national security.

- b. Is there any reason those five other companies could not perform the services that YRC performs?

Answer: See the answer to a. DoD respectfully refers the Commission to other LTL providers for further information.

- c. Do you acknowledge that your stated designation criteria of whether “there [are] alternate sources for the item” requires consideration of whether another company could step in and provide the services YRC provides to the DOD and/or to DOD contractors?

Answer: That particular criterion does not preclude a company from certification, but instead helps inform the Department's decision, along with a multitude of other information. DoD was aware that there were other companies that provide the services YRC provides, as our primes already use some of those other companies, in addition to YRC.

- d. Given that on October 22, 2020 you stated that you did *not* consider replacement services or service providers for YRC, do you acknowledge that you did not follow your own designation criteria of considering whether “there [are] alternate sources for the item”?
Answer: See the answer to c.
- e. How can you determine whether a company is critical to national security without assessing whether another company could provide the same services?
Answer: See the answer to c.
- f. If the DOD could have found replacement services for YRC, would it still have designated YRC as critical to national security?
Answer: Yes, see the answer to c. YRC's status as "critical to national security" is a function of its providing services to DoD; it is not necessary that it be a unique provider of such services.
- g. In response to a question from the Commission regarding whether the DOD considered replacement services when deciding whether YRC was critical to national security, you responded “No. DOD does not contract with YRC directly.” Why do you believe YRC’s status as a subcontractor is relevant to whether the DOD should have considered replacement services?
Answer: Since YRC provides the predominance of its services to the Department as a subcontractor, in those cases, the Department is not in the position of selecting YRC or any other sources for subcontracted services. It is the business of the prime.
- h. Similarly, you also stated that another criteria for companies being critical to national security is “supplying a commodity.” While you cited a product such as “duct tape,” commodities can also be in the form of services such as LTL trucking. Since LTL trucking services are available from multiple providers and at very competitive prices, please provide your rationale for approving YRC as critical to national security as well as any internal DOD correspondence to that effect.
Answer: Similar to the alternate sources criterion, the commodity criterion does not preclude a company from certification, but instead helps inform the Department's decision, along with a multitude of other information.

Question 3: At the Commission’s hearing with Secretary Mnuchin on December 10, 2020, in response to questions about the DOD’s designation of YRC as critical to maintaining national security, Secretary Mnuchin responded, “I hope the Pentagon looks at all of their critical vendors and looks at [their] financial condition and spreading risk. Had they not had this type of exposure, perhaps they would not have certified it.” In your October 22, 2020 written responses to the Commission, you stated that the DOD did not have any contingency plans if YRC went out of business – even though YRC had been in financial trouble for years.

- a. Did the DOD examine the financial health of national security loan applicants before deeming them critical to national security?
Answer: Treasury performed financial screening of companies DoD recommended as part of Treasury’s process to issue a loan.
- b. Does the DOD consider the financial health of its contractors and their subcontractors to be relevant to whether there is a risk to national security?
Answer: It is one of the many criteria DoD uses to assess companies in our supply chain.
- c. What processes and safeguards do you recommend implementing to reduce risk to national security stemming from financially unstable DOD contractors and subcontractors?
Answer: Enabling financial assistance for financially troubled suppliers, such as grants and loans from DoD or other sources, is one of the mechanisms DoD uses. This should continue going forward.

Question 4: Treasury provided the Commission a copy of a one-page letter from the DOD, dated June 26, 2020, that designated four companies as critical to national security, including YRC. That letter was signed by Secretary Esper and offered to provide the Treasury “any additional information ... to process the applications” of the companies listed. Did the DOD provide Treasury with any additional information, either in writing or through conversations? If so, what information was provided and by whom?

Answer: No additional information was provided.

Question 5: Several national security loan recipients appear to provide products or services that are merely in the start-up phase – i.e., companies that are either working on a prototype or are still in the early stages of commercializing their products. Four companies (SpinLaunch, Channel Logistics, Ovio Technologies, and Visual Semantics) have less than \$1 million in revenues each. How do you square the mere *future possibility* that a company will have a useful product or service with the statutory requirement that a loan recipient be “critical to *maintaining* national security”? The CARES Act’s language seems to require that the loan applicant be critical to national security *already*.

Answer: National security requires not just maintaining current capabilities, but also developing and implementing new technologies that enable the United States to maintain a competitive edge against its adversaries.

Question 6: The DOD certified 20 companies as critical to national security, but only 6 of those companies received loans. Secretary Mnuchin testified last week that the other companies did not pass Treasury’s underwriting standards. Has the inability of those companies to get loans impacted the DOD? If not, do you still believe they are critical to national security?

Answer: We were only recently informed of Treasury’s final decisions for these loans, so the Department will need to assess the impacts.

Question 7: At the Commission’s hearing with Secretary Mnuchin last week, he testified that “after consulting with the DOD and the Office of Director of National Intelligence (DNI), Treasury issued guidance” defining which “businesses were critical to maintaining national security.” Please explain the process of creating that definition. Also, whose recommendation was it to include the third criteria – designation based on a recommendation and certification by the DOD or DNI – and what was the reasoning?

Answer: DoD was not involved in creating the guidance or definitions used by Treasury for its application process.

Question 8: In written responses, the DOD informed the Commission that YRC provides services to the DOD through its prime contractor, Crowley Logistics (“Crowley”). Did the DOD have discussions with Crowley before designating YRC as critical? If so, what was discussed?

Answer: Yes, US Transportation Command contacted Crowley regarding the anticipated effect of YRC ceasing LTL services.

Question 9: During the briefing, there was quite a bit of discussion about prime contractors versus subcontractors. Under Secretary Lord emphasized the extensive amount of work the DOD does to ensure effective and efficient oversight of their prime contractors. However, they have no oversight over their subcontractors and leave that to the prime contractors. How then can the DOD justify a subcontractor as critical to national security if they have no understanding of, oversight over or accountability mechanism with respect to the company?

Answer: DoD does have visibility into some, but not all, sub-contractors, although we don’t dictate which ones prime contractors must use. In this case, DoD used data TRANSCOM obtained on Crowley and YRC usage as part of the decision process.

Question 10: In written responses, you previously said that “the Government is not privy to the amount of cargo Crowley or other DOD prime contract shippers book with YRC or other subcontractors, as we do not track this information on an ongoing basis. The 68 percent cited elsewhere represents a snapshot in time provided after inquiries were made of USTRANSCOM, who did a one-time request for that data when the YRC's loan request was received.”

a. If that's the case, is it possible that the snapshot was taken at a time when YRC's services were unusually high?

Answer: TRANSCOM provided data from 2019 and 2020, which showed that YRC usage was, and continues to remain, high.

b. Why does the DOD believe a one-time snapshot is sufficient to determine how critical a vendor is to national security?

Answer: See the answer to a.

c. Did the Industrial Policy Team consult Crowley on whether YRC should be deemed critical to national security?

Answer: A commercial company would not be able to make national security determinations. Therefore, the Industrial Base Council (IBC) did not consult Crowley, relying instead on TRANSCOM's data.

Question 11: Please provide the following follow-up items:

a. Undersecretary Lord stated that, if possible, she would provide any industrial policy memo(s) sent to Undersecretary Lord and Secretary Esper (including pre-decisional or final memos).

Answer: Please find memo of June 18, 2020, attached.

b. Under Secretary Lord stated that she would follow-up regarding how many former DOD employees are currently employed by Crowley or YRC. Please provide us a copy of your inquiry to Crowley and YRC. Please ask Crowley and YRC to include anyone not employed directly, but retained on a contract basis or interfaces regularly with DOD.

Answer: Because DoD does not keep this data, we respectfully refer the Commission to Crowley and YRC for such company specific employee data.

c. Please provide a copy of DOD's contract with Crowley Logistics.

Answer: Please find FY2020 Crowley contracts attached.

d. On November 17, 2020, the Commission asked you to “produce to the Commission copies of all communications and records of communication between the Treasury Department and Department of Defense regarding the loan to YRC Worldwide, Inc.--whether electronic, telephonic, or otherwise, and including any notes or logs of communications.” You have not responded whether you will do so. Please state whether you intend to produce these documents.

Answer: The Department has been completely transparent regarding this matter, and will continue to address any follow-up questions the Commission may have. The attached June 18, 2020, memo is the primary DoD document that memorializes the Department's decision making regarding this matter. The Department's certification letter to Secretary Mnuchin of June 26, 2020, is included attached.

Appendix B:
Preliminary Transcript of National Security Loan Program Hearing
on December 10, 2020

1 EXAMINATION OF CARES ACT FUNDING

2 - - -

3 THURSDAY, DECEMBER 10, 2020

4 Congressional Oversight Commission,
5 Washington, D.C.

6 The Commission met, pursuant to notice, at 10:01 a.m.,
7 in Room SD-215, Dirksen Senate Office Building, and via
8 Webex, Hon. Pat Toomey, Acting Chairman, presiding.

9 Present: Senator Toomey, Representative Hill,
10 Representative Shalala, and Mr. Ramamurti.

11 OPENING STATEMENT OF SENATOR TOOMEY

12 Senator Toomey. This hearing will come to order.
13 Welcome to the third hearing of the Congressional Oversight
14 Commission. I want to welcome the Treasury Secretary back.
15 Good to see you again, Mr. Secretary.

16 The Commission was created by the CARES Act to provide
17 oversight for temporary emergency lending authorized by
18 Section 4003 of the CARES Act. Section 4003 authorized the
19 Treasury to spend up to \$500 billion on loans, loan
20 guarantees, and other investments, and, I quote, "to provide
21 liquidity to eligible businesses, States, and municipalities
22 related to losses incurred as a result of the coronavirus."

23 Today's hearing will focus on the Treasury's National
24 Security Loan Program. The CARES Act provided Treasury with
25 \$17 billion, and I quote, "to make loans and loan guarantees

1 for businesses critical to maintaining national security."

2 To date, Treasury has made \$736 million in national
3 security loans to 11 companies; \$700 million of that went to
4 a single trucking company, YRC Worldwide.

5 Our sole witness today is the Treasury Secretary,
6 Secretary Steven Mnuchin. Again, welcome, Secretary. Thank
7 you for joining us.

8 I should point out the Commission also invited the
9 Department of Defense and the Office of the Director of
10 National Intelligence to participate. The Defense
11 Department responded that it is unable to attend this
12 hearing. As a result, the Commission plans to host a
13 separate teleconference with DOD regarding the National
14 Security Loan Program. DOD is currently resisting making
15 public the official transcript record of that
16 teleconference. The Commission strongly urges DOD to
17 reconsider that position. The Commission and DOD have a
18 responsibility to inform the public how taxpayer funds are
19 being used, especially given the concerns that have been
20 raised about the YRC loan.

21 The Office of the Director of National Intelligence
22 also responded that it has been unable to attend this
23 hearing. That said, ODNI has told the Commission that it
24 has not designated any company as "critical to maintaining
25 national security" nor has provided any input with respect

1 to any DOD company designations.

2 This Commission currently does not have a Chairman. In
3 the absence of a Chair, the Commissioners have agreed to
4 each give a 1-minute opening statement, followed by two 5-
5 minute rounds of questions. I will serve as Acting Chair
6 for this hearing, and I now recognize myself for my opening
7 statement.

8 In March, unprecedented turmoil in credit markets
9 threatened the ability of businesses, States, and
10 municipalities to obtain capital. Credit markets were on
11 the verge of shutting down, and without intervention,
12 private credit was very likely going to stop flowing to
13 businesses, States, and municipalities.

14 Congress did not want these economic disruptions to
15 result in gaps in our national security. There was a very
16 real concern that essential national defense firms could
17 even collapse.

18 The CARES Act program announcements succeeded in
19 stabilizing the markets and averted a crisis in the national
20 security sector. In fact, the top five national security
21 firms raised over \$40 billion in bond sales since March.

22 So since creditworthy firms have generally been able to
23 access private markets, only those with lower-grade credit
24 or limited access to credit in the first place appear to
25 have applied for national security loans. Of the 11

1 businesses that have used the national security loan
2 program, 5 had negative profits in 2019 before the
3 coronavirus struck. At least three are early-stage
4 companies, including SpinLaunch, Inc., an essentially pre-
5 revenue venture whose products are commercially unproven.

6 While I am glad that the national security sector is
7 now stable, I would like to understand better why the
8 Treasury made loans to what appear to be startups and what
9 may have been or close to a fundamentally insolvent company
10 like the YRC. The question in my mind is whether or not
11 these loans adhere to the criteria set out under the CARES
12 Act and whether or not they were a prudent use of taxpayer
13 funds.

14 I will now turn to Commissioner Ramamurti to give his
15 opening statement.

16 OPENING STATEMENT OF MR. RAMAMURTI

17 Mr. Ramamurti. Thank you, Mr. Chairman. My questions
18 today will focus on the National Security Loan Program, but
19 in my opening statement I want to address Secretary
20 Mnuchin's termination of the CARES Act lending programs.

21 Despite the Secretary's claims, the CARES Act did not
22 require him to end the programs this year. The Secretary
23 admits as much when he says he based his decision not on
24 what the law actually says, but on his interpretation of
25 Congress' intent.

1 In quite the coincidence, the Secretary decided that
2 this is what Congress intended only after the election of
3 Joe Biden. Before the election, the Treasury's position was
4 that it could extend the programs if market conditions
5 required it. This was a political decision, one intended to
6 hamstring the incoming administration even as COVID deaths
7 are spiking and the economic recovery is slowing.

8 Let me put it this way: Does anyone think that
9 Treasury would have ended these programs if Donald Trump was
10 reelected?

11 Thankfully, the Biden administration is not bound by
12 the Secretary's decision. The new administration can and,
13 in my view, should restart the programs, reclaim the money
14 Congress has set aside in the CARES Act and use it to offer
15 more help to small businesses and State and local
16 governments.

17 Thank you, Mr. Chairman.

18 Senator Toomey. I will recognize Representative Hill.

19 OPENING STATEMENT OF MR. HILL

20 Mr. Hill. Thank you, Mr. Chairman, and, Mr. Secretary,
21 thank you and your staff for the extraordinary work during
22 this tragic year of 2020 and all your leadership.

23 Today we are going to explore the national security
24 lending process under the CARES Act, and I am particularly
25 concerned about the YRC Worldwide loan. YRC has been in

1 poor financial condition for quite some time, and the
2 company has actually been shrinking since 2007. This
3 company has been rated speculative by Moody's and Standard &
4 Poor's for nearly 20 years and has been hanging on by a
5 thread since the global financial crisis.

6 The only way YRC has survived for the last 10 years is
7 through bailouts by the Government and the private equity
8 industry, which we will discuss more this morning. Based on
9 an analysis from your credit memorandum and publicly
10 available investment research, YRC is staying afloat by
11 providing the cheapest pricing, which also means typically
12 the worst service. For context, YRC charges about 18 cents
13 for every pound shipped across the country versus an average
14 of the mid-20s for the rest of the less-than-truckload
15 industry. Having analyzed this data, reviewed the
16 collateral, it makes me realize that, were I still in
17 finance, I would not have made this loan.

18 I look forward to our discussion this morning. I yield
19 back.

20 Senator Toomey. Thank you, Congressman Hill.

21 Representative Shalala.

22 OPENING STATEMENT OF MS. SHALALA

23 Ms. Shalala. Well, thank you. Secretary Mnuchin, I
24 want to start by thanking you for your service these past
25 four years to our country. I also want to add my deep

1 disappointment in your recent decision to terminate these
2 emergency lending programs. I understand that you interpret
3 the statute to mean that Congress intended to terminate the
4 programs on December 31st. But certainly we did not intend
5 for you to prematurely claw back the funds.

6 Treasury has already committed to investing in the
7 programs at a time when American small businesses, cities,
8 States, and workers are still struggling desperately. If
9 the Main Street and Municipal Lending Programs are
10 underutilized, it is because the terms were too stringent,
11 not because there was not a need. Keeping these facilities
12 open was projected to cost taxpayers virtually nothing while
13 closing them puts up a roadblock for the next Treasury
14 Secretary to get our economy back on track. This decision
15 is especially concerning when contrasted with your
16 generosity in the National Security Loan Program, in
17 particular, the \$700 million YRC loan, which does put
18 taxpayers at a real risk of loss.

19 I look forward to hearing from you.

20 Senator Toomey. Thank you, Representative Shalala.

21 All members' statements will be added to the hearing
22 record. We will now proceed to Secretary Mnuchin's
23 testimony. At the end of the testimony, we will begin the
24 first of two rounds of questions for Secretary Mnuchin.

25 Secretary Mnuchin, you may proceed.

1 STATEMENT OF THE HONORABLE STEVEN T. MNUCHIN,
2 SECRETARY, U.S. DEPARTMENT OF THE TREASURY

3 Secretary Mnuchin. Thank you very much. Senator
4 Toomey, Representative Hill, Representative Shalala, and
5 Commissioner Ramamurti, I am pleased to join you today to
6 discuss the Treasury Department's work on executing the
7 National Security Loan Program established under the CARES
8 Act. Treasury has worked diligently to implement every
9 piece of the CARES Act, including the National Security Loan
10 Program.

11 The CARES Act provided up to \$17 billion in loans to
12 businesses critical to maintaining national security related
13 to losses incurred as a result of COVID. The CARES Act
14 authorized Treasury to make loans and loan guarantees for
15 maintaining national security. The statute, however, does
16 not define that term. Therefore, after consulting with the
17 Department of Defense and the Office of the Director of
18 National Intelligence, Treasury issued guidance on April
19 10th providing that a company can fall within the definition
20 if it meets at least one of the three criteria:

21 Number one, the applicant business performs under the
22 "DX"-priority rated contract or order under the Defense
23 Priorities and Allocations System regulations (15 CFR part
24 700);

25 Number two, the applicant operates under a valid top

1 secret facility security clearance under the National
2 Industrial Security Program regs (32 CFR part 2004);

3 Or, number three, based upon the recommendation and
4 certification by the Secretary of Defense or the Director of
5 National Intelligence that the applicant business is
6 critical to maintaining national security, the Secretary of
7 the Treasury determines that the applicant business is
8 critical to maintaining national security.

9 If a company met at least one of these, Treasury
10 conducted a detailed financial and legal review. To date,
11 we approved 11 loans, nearly \$736 million. Information on
12 the companies and dollar amounts is on our website,
13 Treasury.gov. Many of the companies we initially expected
14 to take part in the program were able to raise funds in the
15 capital markets, leaving most of the funds unused. I urge
16 Congress to reallocate these funds to provide relief for
17 aviation industry workers who continue to struggle through
18 no fault of their own, small business, and other important
19 issues.

20 In conclusion, I would like to thank the Commission for
21 working with us to provide vital economic relief to American
22 workers, families, and businesses. I hope that the
23 extensive amount of information Treasury has provided and
24 will continue to provide will be helpful.

25 And let me just say although the topic of today's

1 hearing is not the 13(3) facility, I would be more than
2 happy to answer any questions on the 13(3) facility, and let
3 me reiterate that Treasury's obligation is to manage these
4 programs under the law as the law is written and interpreted
5 by us and our legal department, and that is what we have
6 done. And I have never made comments that we would have
7 extended this and changed that view.

8 So thank you very much.

9 [The prepared statement of Secretary Mnuchin follows:]

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1 Senator Toomey. Thank you, Mr. Secretary.

2 I will recognize myself for my 5 minutes of questions,
3 and I want to give you a chance to explain in some detail
4 how you came to this decision with respect to the 13(3)
5 facilities. I have questions about the defense lending, but
6 since two of my colleagues have raised this, I feel a need
7 to address this.

8 First of all, let me be very unequivocal about this.
9 Mr. Secretary, you did exactly the right thing. You did
10 what the law required in both ending these programs and
11 requiring a return of the money. I was one of the small
12 number of Senators who were in the room with you as we
13 negotiated the specific terms of this. There is nothing
14 ambiguous about this. And had you done anything to the
15 contrary, it would have been outrageous and a violation of
16 the law and certainly the intent of Congress. This is not
17 speculative on my part. Every single Republican on the
18 Senate Banking Committee signed a letter affirming that you
19 did the right thing for the right reasons. And when you
20 think about what an extraordinary set of powers Congress
21 handed over to the Treasury and the Fed at a moment of
22 crisis, absolutely unprecedented ability to potentially make
23 literally trillions of dollars of credit available, had you
24 not followed the law and returned that money, canceled these
25 programs and asked for the return of that money, what future

1 Congress would ever give flexibility to a Treasury Secretary
2 and a future Federal Reserve Chairman in a moment of crisis?

3 I want to remind my colleagues this legislation was
4 passed in March when we were in an unprecedented turmoil.
5 Credit markets were threatening to drive us into a
6 depression. The financial circumstances were worse than the
7 financial crisis of 2008. And so we decided to set up a
8 temporary facility to restore the normal functioning of the
9 markets. That was its purpose: stabilize the credit
10 markets, allow private credit to flow to businesses, States,
11 and municipalities.

12 Well, it turns out it worked even better than we had
13 hoped, at least better than I had. Markets did not just
14 restore their normal liquidity. They set new records. It
15 was remarkably successful.

16 Now, here is the important thing. We have some folks
17 who think that these facilities should be used as a way to
18 subsidize preferred borrowers, maybe municipalities that
19 have been irresponsible, may even be insolvent. Maybe it is
20 a way to subsidize certain preferred companies that are in
21 industries that are favorably looked upon. That is
22 absolutely not what these programs were for. They were for
23 restoring a functioning market, and that is why the statute
24 called for them to come to an end, and that is why the
25 Secretary did exactly the right thing by ending them. And,

1 frankly, it would be outrageous for any future Secretary to
2 attempt to restart them.

3 I have 2 minutes left in my questioning, and so I am
4 going to turn this over to you, Mr. Secretary, to explain to
5 us how and why you came to the decision you did.

6 Secretary Mnuchin. Thank you very much. The decision
7 on the 13(3) facilities?

8 Senator Toomey. Yes.

9 Secretary Mnuchin. Okay. Thank you very much. Let me
10 refer you to the CARES Act, and there are three provisions
11 of the CARES Act that work together. And, Senator Toomey,
12 as you know--you recall this because you and I were in the
13 room, and we actually drafted this. Senator Crapo was with
14 me as well. I sat with Senator Crapo right outside Senator
15 Schumer's office with Senator Schumer's staff very late that
16 night going through line by line.

17 So the first part, Section 4029, which everybody can
18 look at, has a December 31, 2020, date. Obviously, there
19 was some relevance or there would not have been the point of
20 putting it in. It is very clear: "Except as provided in
21 (b), on December 31, 2020, the authority...to make new loans
22 shall terminate."

23 It also references 4027. So under 4027, what it says
24 is that if there are existing loans outstanding, we can
25 continue to make advances under existing loans. And then

1 the final part I would just comment, there is a provision
2 that when the money comes back under waterfall, how it
3 works. I have made no judgment as to whether it goes into
4 the ESF or whether it goes into the general fund. As a
5 matter of fact, a lot of it will stay in the ESF as unused
6 funds.

7 For people who think there is another interpretation,
8 the only logical thing is that 4029 does not apply to
9 indirect commitments as well as direct commitments, and it
10 would imply that money I put in the Fed, if it were just
11 sitting there, could be used. That was not the intent that
12 you and I discussed. It is not in the law. And if Congress
13 wants to reallocate this money for the Fed instead of
14 reallocating it for unemployment and PPP loans and others,
15 Congress can do that now.

16 Thank you, Mr. Senator.

17 Senator Toomey. Thank you very much, Mr. Secretary.

18 Commissioner Ramamurti.

19 Mr. Ramamurti. Thanks. I have questions about the YRC
20 Loan, but just briefly to address this point, first, I have
21 heard in many different contexts from my Republican and
22 conservative friends that to interpret a statute, the thing
23 you do is look at the text of the statute, not at
24 congressional intent. And I think there is not an objective
25 lawyer in town, frankly, or in the country that I have heard

1 from that reads the text of the law the way that the
2 Secretary has. And I will say respectfully I think that my
3 Republican colleagues here and in the Senate felt the same
4 way, because recall in the fall they offered an amendment to
5 the CARES Act that actually would have terminated the
6 lending programs in January, but that amendment did not
7 pass. And so I think I will just leave it there instead of
8 going back and forth on this.

9 So, Mr. Secretary, in the CARES Act, Congress gave you
10 the authority to make direct loans to companies critical to
11 national security. By far the biggest loan you have made
12 for \$700 million, or 70 times larger than the next largest
13 loan, is to a trucking company called "YRC," which helps the
14 Defense Department ship basic supplies between military
15 bases. So I am glad that this loan has helped put off job
16 losses and health care cuts and retirement cuts for
17 truckers.

18 But it was not just the company's workers that
19 benefitted from this loan. The company's creditors on Wall
20 Street made out great, too, and so I want to dig into why
21 you chose to give such a big and generous loan to this
22 specific company, a company that this Commission has said
23 has a weak connection to national security.

24 So at the time that you made this loan to YRC in July,
25 were you aware that Apollo Global Management, a big private

1 equity firm, was YRC's biggest creditor with as much as \$600
2 million at stake?

3 Secretary Mnuchin. Yes, I was. But I just want to
4 state for the record, I have consulted with my General
5 Counsel. My General Counsel agrees with our reading of the
6 13(3), and if a future Treasury Department wants to break
7 the law and have a different interpretation, Congress will
8 deal with that.

9 Mr. Ramamurti. Just on that point, Secretary Mnuchin--
10 Secretary Mnuchin. In all due respect, you are not the
11 person who I am relying upon for legal advice. I have a
12 legal department that I relied upon, and we are following
13 the law.

14 Mr. Ramamurti. I appreciate that. And just to turn
15 back to this, but, quickly, is that a written memo that the
16 General Counsel provided to you on this topic?

17 Secretary Mnuchin. He has provided me verbal advice,
18 and we are going to follow it up with a memo. And if the
19 Commission would like it, once the memo is complete, we are
20 more than happy to--

21 Mr. Ramamurti. Yes, I think we would all agree that
22 that would be a useful thing to have.

23 Okay. So back to the question. You were aware that
24 Apollo was YRC's biggest creditor.

25 Secretary Mnuchin. Of course I was.

1 Mr. Ramamurti. And you also knew, according to written
2 responses that Treasury has provided to this Commission,
3 that YRC was likely to file for bankruptcy if it did not
4 receive a loan from the Government.

5 Secretary Mnuchin. Yes, I was aware of that.

6 Mr. Ramamurti. And YRC going through bankruptcy would
7 have potentially cost Apollo hundreds of millions of
8 dollars. But--

9 Secretary Mnuchin. That I was not aware of. That is
10 subjective. I never did that analysis.

11 Mr. Ramamurti. Okay.

12 Secretary Mnuchin. I think it would not have cost
13 them, but I do think it would have been bankrupt and the
14 company would have fired lots of people.

15 Mr. Ramamurti. Sure. But Apollo got lucky because not
16 only did you give YRC a loan, you gave them a great deal, as
17 the Commission has concluded on a bipartisan basis. In
18 fact, even though taxpayers are ponying up \$700 million,
19 Apollo, not American taxpayers, gets the first claim on
20 YRC's existing assets if it goes bankrupt. Is that right?

21 Secretary Mnuchin. So would you like me to give our
22 analysis on why we made the loan?

23 Mr. Ramamurti. No. I just simply want an answer to
24 the question about does Apollo retain first priority on
25 YRC's--

1 Secretary Mnuchin. On certain assets it does, and on
2 certain assets we have a first priority lien.

3 Mr. Ramamurti. Only on assets that are purchased using
4 the Treasury--

5 Secretary Mnuchin. Again, there is Term A and there is
6 a Term B, and there is different collateral. We would be
7 happy to go through the detailed analysis with you.

8 Mr. Ramamurti. Okay.

9 Secretary Mnuchin. You can see I brought plenty of
10 information. I tried to--I did not realize Representative
11 Hill was going to have as much as well. I wanted to be
12 prepared.

13 Mr. Ramamurti. Okay. I appreciate that. So the
14 answer sounds like, yes, that on most of the assets that
15 exist now, Apollo retains first priority. And there are
16 other signs of special treatment. According to a GAO report
17 released this morning, Treasury "did not follow the standard
18 process established for evaluating applications for the YRC
19 loan." The GAO found that Treasury fast-tracked YRC's
20 application even though "Treasury did not fast-track any
21 other applications, though other businesses faced similar
22 circumstances." So, again, we have a fast-tracked,
23 extremely generous loan that just so happened to help the
24 private equity giant Apollo.

25 So, Mr. Secretary, were you aware before you made this

1 loan that Apollo has close personal ties to Jared Kushner,
2 the President's son-in-law and senior adviser?

3 Secretary Mnuchin. So let me submit for the record a
4 letter from Peter DeFazio and Sam Graves. Let me also
5 submit for the record a letter from Ron Wyden and Pat
6 Roberts. I have many other letters that I would be more
7 than happy to submit afterwards, but let me just say we had
8 tremendous interest from Congress asking us to expedite
9 this. We also had a certification from the Department of
10 Defense that the loan qualified. So, of course, we were
11 going to prioritize this because, as you said, there was a
12 tremendous risk to the Department of Defense and a
13 tremendous risk to the number of jobs.

14 [The letters follow:]

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1 Mr. Ramamurti. So, Mr. Secretary, I understand all of
2 that, but my question was: Were you aware at the time you
3 made this loan that Apollo has close ties to Jared Kushner?

4 Secretary Mnuchin. When you say "close ties," what is
5 the definition of "close ties"?

6 Mr. Ramamurti. Were you aware that in 2017 Apollo
7 loaned the Kushner companies \$184 million--

8 Secretary Mnuchin. I was not aware of that.

9 Mr. Ramamurti. You were not aware of that, which was
10 reported in the New York Times in--

11 Secretary Mnuchin. I may have read it in the press at
12 some point, but I am not involved nor did I take that into
13 consideration, nor prior to you asking me that would I have
14 known that.

15 Mr. Ramamurti. Sorry, Mr. Chairman. Briefly, to
16 finish up here, Mr. Secretary, can I just ask on the record,
17 did Mr. Kushner or anyone from his staff ever reach out to
18 you about providing a loan to YRC?

19 Secretary Mnuchin. He or nobody on his staff ever
20 reached out to me.

21 Mr. Ramamurti. And so--

22 Senator Toomey. Thank you. We will have another
23 round.

24 Representative Hill.

25 Mr. Hill. Thank you, Mr. Chairman.

1 Mr. Secretary, when you received this request from YRC
2 and the DOD certified that it was essential to national
3 security, were you under an obligation to also determine
4 that the applicant's business was essential to national
5 security sort of independent of the certification?

6 Secretary Mnuchin. I was not. We relied upon the
7 certification. If you have questions about that, you should
8 ask DOD. We published regulations and we followed them.

9 Mr. Hill. Yes. And so in looking at the YRC loan
10 structure for Tranche A, which is the working capital
11 tranche, as Commissioner Ramamurti suggested, Treasury is in
12 a junior position there in the collateral pool, and you have
13 also asked for equity compensation in addition to the
14 payment-in-kind interest and the current pay interest on the
15 note. From my review of the collateral pool, it does not
16 look like it is at all adequately secured for covering both
17 Apollo and Tranche A plus the other obligations of the
18 company. And I just would ask your view. Did you look at
19 the collateral pool? And do you believe that the collateral
20 protected the American taxpayers?

21 Secretary Mnuchin. The answer to that is yes. We did
22 a thorough analysis of the collateral pool. We consulted
23 with Perella Weinberg, who was our financial adviser on this
24 loan and all the national security loans. And let me just
25 comment we did get equity, and our equity is currently worth

1 \$100 million.

2 Mr. Hill. That is because the stock has increased
3 because the Treasury now has made this loan, and I agree the
4 company was certainly near bankruptcy before the credit.

5 When I look at the collateral pool, it is stated in the
6 Wasserstein Perella material it is at \$1.5 billion, securing
7 \$1.3 billion in debt, so in that sense, on the face of it,
8 using book values that Wasserstein Perella had, it is
9 covered. But, of course, when you underwrite a loan, you do
10 not use book value and 100 cents on the dollar when you look
11 at collateral pools. You would discount it based on normal
12 business traditions and underwriting. And when I look at
13 the accounts receivable, they were given 100 cents on the
14 dollar instead of, say, 80 cents on the dollar. When I look
15 at the real estate value, it was given 100 cents on the
16 dollar valuation. And then in the existing fleet, which as
17 noted in Tranche B lending, the YRC fleet is old, and that
18 is what these collateral documents cover, all the tractors
19 and trailers. And when you look at that, there is no way
20 that it is worth the face value of \$312 million.

21 So my point is when I look at that, I find a collateral
22 value of about \$1.1 billion, so under the combined lending
23 amount. I just would urge Treasury to reassess that
24 collateral. I think you are vulnerable there, and if this
25 company does not hit its projections, then your equity

1 value, which does have a positive gain now, will not in 4
2 years. What is your reaction to that analysis?

3 Secretary Mnuchin. Representative Hill, let me explain
4 to you that I was chairman of a bank, an OCC bank, and I am
5 the first one to say if my bank had been underwriting this
6 loan, we would not have made this loan. So let me be clear.
7 The purpose of these facilities--now, that does not mean I
8 do not think we are secured and will not get our money back.
9 But as you recall, both Congress and outsiders encouraged us
10 to take losses. So when we did the neutral analysis, we are
11 not in any way saying this was a market loan. As a matter
12 of fact, had it been a market loan, the Treasury would not
13 have been involved.

14 Now, I do believe that ultimately Treasury and the
15 taxpayers will be very well compensated because the economy
16 came back quicker than people thought and the businesses
17 come back quicker. We analyzed it, and in many scenarios we
18 thought we would lose money. And, again, I am happy to
19 submit letters for the record from both Republicans and
20 Democrats that encouraged us on Main Street that we should
21 lose money. This loan was priced at a premium to the Main
22 Street pricing. This loan--you know, I was not operating a
23 hedge fund at Treasury. I was not operating an OCC bank. I
24 would be more than happy to go through--

25 Mr. Hill. Let me reclaim my time. Thank you for that

1 view.

2 When you look at this company, it has been bailed out
3 before under pressure from Jimmy Hoffa and the unions in
4 2008-2009. Banks were compelled by Government to
5 intervention in the Treasury then and Congress then to bail
6 this company out in a debt-for-equity swap in 2010. And
7 despite having all of its debt wiped out then, the same
8 important characteristics, this company finds itself exactly
9 in the same position before the pandemic.

10 So let me yield back, Mr. Chairman, but I still have
11 concerns about this credit.

12 Senator Toomey. Thank you, Representative Hill.

13 Representative Shalala.

14 Ms. Shalala. Thank you. I think I will slightly
15 change the subject.

16 The CARES Act requires borrowers under the National
17 Security Loan Program to maintain its March 2020 employment
18 levels until September 30, 2020. Treasury contractually
19 extended this requirement in the national security loan
20 documents. Why did Treasury extend unemployment level
21 requirements in this program but not in its Airline Loan
22 Program? And, also, why didn't it work with the Federal
23 Reserve to impose employment level requirements on the other
24 lending programs like Main Street? And why did Treasury
25 only extend the requirement through September 30, 2021, in

1 most cases? Why not for the entire duration of the loan?
2 And how did Treasury ensure that none of the borrowers
3 reduced their employment level prior to getting a national
4 security loan? And how will Treasury monitor the borrower's
5 compliance with this requirement on a go-forward basis?

6 Secretary Mnuchin. I can answer all the questions, but
7 since there were a lot of them, I am not sure I--maybe I can
8 do them one at a time.

9 Ms. Shalala. Okay.

10 Secretary Mnuchin. I may ask you just to repeat them,
11 but let me do the last one, which I just recalled. How will
12 we monitor? We have hired a group of dedicated people at
13 Treasury who will be responsible for monitoring all the
14 direct loans. So whether it is a national security loan or
15 an aviation loan, those will be monitored and go through a
16 quarterly certification process with appropriate people.

17 If you just want to give me the rest of--

18 Ms. Shalala. Yes. The first question was about the
19 employment level requirements in the National Security
20 Program that were not extended in the Airline Loan Program?

21 Secretary Mnuchin. I do not want to defer the
22 question, but we are happy to follow up with you. It is a
23 highly technical issue. The intent of all these programs--
24 well, the intent of the direct programs clearly was that
25 companies should not terminate people if they were taking

1 these programs. There was an unintended consequence in some
2 of the contractors' programs, which, again, is somewhat
3 technical, I am happy to follow up with your office on.

4 Ms. Shalala. I am happy to have your follow-up. I do
5 not see what is technical about you did it in the National
6 Security Program; you did not do it in the airline
7 employers--

8 Secretary Mnuchin. We did do it in the airline
9 employers. There is a difference between the contractors.
10 Again, in the case of the contractors, it took a longer
11 period of time. But once people entered into loans, there
12 was that commitment.

13 Ms. Shalala. Okay. And on the second question, why
14 did you only extend the requirement through September 30,
15 2021, in most cases? Why not for the entire duration of the
16 loan?

17 Secretary Mnuchin. I believe that was--yes, YRC was
18 extended a year beyond the legislation. But I believe what
19 you are referring to, there was a requirement in the
20 legislation. Other than YRC, I believe we just followed the
21 legislation.

22 Ms. Shalala. But you could have protected employment
23 through the duration of these loans.

24 Secretary Mnuchin. We could have, and had Congress
25 intended us to do that, it would have been written in. YRC

1 was the one situation because it was such a big loan, we
2 felt a need to add it on. And I think you asked me a
3 question about Main Street, why that was not included.

4 Ms. Shalala. Yes.

5 Secretary Mnuchin. There were very specific
6 discussions in the crafting of this with the Finance
7 Committee, and there was a requirement, what I call kind of
8 the "Warner Provision" that was added. But, specifically,
9 the Main Street Program, because it was not a direct loan
10 program, there was a desire to get the money out without
11 that requirement. That was specifically discussed with both
12 Republicans and Democrats in the Senate.

13 Ms. Shalala. I yield back.

14 Senator Toomey. Thank you, Representative Shalala.

15 We will begin now our second round of questions, and I
16 will begin. Mr. Secretary, the CARES Act states that
17 Section 4003 loans are, and I quote, "to provide liquidity
18 to eligible businesses...related to losses incurred as a
19 result of coronavirus." So certainly we are familiar with
20 many businesses and many different industries where they
21 have had losses that result from lost revenue from the
22 revenue they would have otherwise had. And certainly it is
23 plausible that companies would have higher expenses in
24 dealing with this coronavirus.

25 But it appears that a majority of the firms that

1 received these national security loans projected COVID-
2 related losses to be greater than their entire 2019
3 revenues. That just seems a little bit odd. And based on
4 the limited information that we have been able to see, it
5 appears that at least two of the companies that received
6 these loans are essentially startups and appear to be either
7 entirely or very nearly pre-revenue companies. SpinLaunch,
8 for instance, is a tech startup with, my understanding is,
9 thus far commercially unproven technologies still. oVio
10 Technologies is a software company, and the loan amounts for
11 both of those companies were substantially greater than
12 their entire 2019 revenues.

13 So could you shed some light on how these loan amounts
14 relate to the losses they incurred as a result of the
15 coronavirus if they were not forecast to have any revenue
16 anyway? Or perhaps suddenly in 2020 they were supposed to
17 be revenue positive. The information that we got does not
18 shed any light on this. So could you tell us how these
19 slightly counterintuitive circumstances make sense?

20 Secretary Mnuchin. Senator Toomey, let me just first
21 say, as you said in your opening comment, the good news is
22 that the markets recovered, and so many of the companies
23 that we thought we would have to make loans to were able to
24 borrow in the markets, companies like Boeing and GE that we
25 thought were going to be major military contractors.

1 So the good news is we only ended up with 74
2 applicants. Of the 74 applicants, we only approved 11 of
3 them. So as you can see, we rejected plenty of loans.

4 What we tried to do was establish a process so that we
5 were not picking winners or losers. The criteria was there
6 had to be a designation or one of the specific criteria for
7 national security. When it did that, we put it through a
8 credit underwriting, and there was credit determinations
9 both for some of the smaller ones on an unsecured loan and
10 some of the bigger ones.

11 As you said, you know, the intent was supposed to be
12 COVID. When COVID impacted the entire business, it was very
13 difficult to figure out COVID versus non-COVID. But we made
14 sure that the loans fit our credit criteria and rejected
15 many that did not. But I understand your comment and, you
16 know, would be happy to follow up with you on it.

17 Senator Toomey. So my understanding is that there is
18 some backup information that would get into some of the
19 details such as whether a company that had zero revenue in
20 2019 was actually projecting revenue in 2020 that did not
21 arrive because maybe they are contractors with the
22 municipalities that canceled the contract. So it is
23 entirely plausible, but we cannot see what happened. So if
24 you can provide us with additional specifics on these
25 applications, that would be very helpful.

1 Secretary Mnuchin. I would be happy to. There is a
2 credit memo on every loan. We are happy to provide it to
3 you. And, again, on the objective criteria, we provided to
4 do it. On some of the things that you are talking about, it
5 was a little bit harder to differentiate what was COVID-
6 related and was not COVID-related when the businesses were
7 highly impacted.

8 [The information follows:]

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1 Senator Toomey. Thank you.

2 Commissioner Ramamurti.

3 Mr. Ramamurti. Thank you, Mr. Chairman.

4 Just to pick up where we left off last time, Mr.
5 Secretary, you mentioned that there had been no
6 communications with the White House or Jared Kushner about
7 the YRC loan. So can you commit now to reviewing all of the
8 documents in your possession and turning over to this
9 Commission any correspondence, including phone call notes
10 and emails, with the White House relating to YRC? And if
11 there is none, that is fine. But can you commit to do that?

12 Secretary Mnuchin. Actually, I just want to correct
13 the record. You did not ask me about the entire White
14 House. You asked me if there was anybody on Jared Kushner's
15 staff or Jared Kushner that I spoke to, and the answer to
16 that was no. I did not respond to the entire White House.

17 Mr. Ramamurti. Okay. But in terms of the question I
18 just asked, are you willing to turn over any of the
19 correspondence you may have had with the White House on this
20 topic?

21 Secretary Mnuchin. You have to ask me--what is the
22 question? Because you are now asking me a different
23 question than you asked before. I just wanted to correct
24 it. But, yes, any correspondence that related to Jared
25 Kushner or his staff, which are none, I would be happy to

1 turn over because that does not exist.

2 Mr. Ramamurti. Okay. The White House more broadly?

3 Secretary Mnuchin. I will consult with our legal
4 department.

5 Mr. Ramamurti. Thanks.

6 Secretary Mnuchin. I think as you know we have certain
7 privileged claims with the White House.

8 Mr. Ramamurti. I understand, but thank you for taking
9 a look at that, and we will follow up on that. Look, I
10 think at best this is a loan, as some of my colleagues have
11 said, that puts nearly \$1 billion of public money at risk
12 with minimal protections, and that helps a private equity
13 giant that was sitting on billions of dollars of its own
14 money. And at worst, I think this generous loan was rushed
15 into place to benefit a firm with close personal ties to the
16 President's family, and I think that this warrants further
17 investigation by this Commission.

18 So I want to take a look at some of the national
19 security loans other than the YRC loan. Of course, none of
20 them are nearly as big as the \$700 million loan to YRC, but
21 the GAO report that came out this morning raises some
22 concerns about the process.

23 So as you noted, the Defense Department has certified
24 20 companies as critical to national security, and you have
25 provided loans to 11 of those companies. And I just want to

1 understand why you chose to support the companies that you
2 did. Those nine companies that have been certified as
3 critical to national security but that have not yet received
4 loans, are you currently negotiating with them on loan
5 terms? Or what is the status of those nine companies?

6 Secretary Mnuchin. So, first, I just want to say on
7 the first part, again, although I think because the economy
8 has recovered, taxpayers will do very well on this loan, I
9 want to acknowledge this was a risky loan. I also want to
10 say our intent was not to bail out any hedge funds. If we
11 want to be criticized, perhaps it is the influence from many
12 of the Democrats who wanted us to save union jobs. And,
13 again, we were very focused on saving jobs because this was
14 a national security loan, which was the intent of the
15 program.

16 I think your other question is the program is over, it
17 is done, there is nothing else left.

18 Mr. Ramamurti. So you are not currently in
19 negotiations with those nine companies?

20 Secretary Mnuchin. No. Everything is finished.
21 Treasury approved 11 loans, and there are no other loans,
22 and I encourage Congress to reallocate the money.

23 Mr. Ramamurti. So these companies that were found to
24 be critical for national security, what is the status of
25 them? Have they all gotten support from the private

1 markets? Or what is the situation?

2 Secretary Mnuchin. I believe they did not pass our
3 underwriting. Again, it was very simple. Companies either
4 passed or did not pass the underwriting once they made it
5 through the criteria.

6 Mr. Ramamurti. Okay. So I want to go through some of
7 the weaknesses that the GAO has identified in the process
8 for providing these loan. The first weakness is that the
9 Treasury failed to focus on "providing assistance in a
10 timely fashion." So, for comparison, the YRC loan took you
11 70 days from application to execution. The next fastest
12 loan you made took nearly 2-1/2 times that long with
13 applicants having to wait 5 or 6 months for those loans. So
14 why did it take so long for you to get aid to those
15 companies that were deemed critical to our national
16 security?

17 Secretary Mnuchin. Well, I think that is a reasonable
18 criticism. I just want to put this into context. Treasury
19 had huge obligations as a result of the CARES Act. We had
20 to create a PPP program with SBA from scratch. We had to do
21 payroll support loans. We prioritized the aviation industry
22 over national security, again, given the number of jobs
23 there were in the aviation industry. So had we had more
24 resources--a lot of the people at Treasury could not come
25 into the building. So, yes, I feel badly that it took us as

1 long as it did, but we executed a lot of programs in record
2 times. And, yes, obviously, as it related to the national
3 security, once we got to national security, we prioritized
4 the larger loan over the other ones.

5 Mr. Ramamurti. Thank you. One other question. The
6 GAO specifically notes that you approved the YRC loan while
7 your internal program guidance was "still in draft form and
8 subject to change," and that your incremental approach to
9 finalizing the program rules "may have weakened the
10 consistency with which Treasury reviewed and analyzed loan
11 applications." So did you use the same application review
12 process and criteria for these other loans that you applied
13 to YRC?

14 Secretary Mnuchin. I would say we are happy to respond
15 in writing to the GAO issue, and we will copy you on that.

16 [The information follows:]

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1 Mr. Ramamurti. Thank you, Mr. Secretary.

2 Senator Toomey. Thank you,

3 Commissioner Ramamurti.

4 Representative Hill.

5 Mr. Hill. Thank you, Chairman.

6 Mr. Secretary, I want to read you some quotes here from
7 a news article, Associated Press: "Publicly traded trucking
8 company YRC will ask for \$1 billion in aid from the Federal
9 bailout fund." Shares of YRC have "plummeted." Those sound
10 familiar, and they might sound like they are from a post-
11 CARES Act headline, but they are actually from the
12 Associated Press May 15, 2009.

13 Later that year, banks and investment banks were
14 compelled to do a debt-for-equity swap with YRC led by their
15 union, Jimmy Hoffa speaking on behalf of organized labor,
16 pressing them, saying that he was successful in getting this
17 done in Washington.

18 When you were reviewing this credit application, were
19 you aware of this debt-for-equity swap and the trouble YRC
20 had at the end of the financial crisis?

21 Secretary Mnuchin. I believe the team was. I was not
22 specifically aware of that.

23 Mr. Hill. So in addition to the valuation questions on
24 the collateral pool I talked about, I wonder if the team had
25 had conversations with the other senior creditors for

1 Tranche A on a different sharing arrangement before you
2 agreed to the terms.

3 Secretary Mnuchin. Well, I can tell you we obviously
4 had discussions with other creditors because we needed
5 inter-creditor agreements and other issues. I personally do
6 not recall any of those conversations. Adam Lerrick, who
7 led the team, was here and can follow up with your office.
8 And, again, let me just reiterate, Representative Hill and
9 others. This was a risky loan. We have been fortunate that
10 the economy recovered and that the equity is doing well, and
11 I am going to recommend that next year whoever is Treasury
12 Secretary seriously look at selling this loan and recovering
13 what I think will be a profit to taxpayers, because this was
14 a success. But we do not want to be in the long-term
15 business of lending to this type of company or any of the
16 national security companies. But, fortunately, we have made
17 a significant profit, and taxpayers should get paid back.

18 Mr. Hill. Well, I appreciate that, and we will be
19 having a meeting, the Commission will, next week with the
20 Department of Defense because the whole issue, when you look
21 at this underwriting situation, you have to ask yourself:
22 Why did the Pentagon get dependent through its prime
23 contractor, Crowley, for 68 percent of its less-than-
24 truckload needs on a company that was essentially near
25 bankruptcy and has been in, as I say, junk financial

1 condition for 20 years? I find that--not a Treasury
2 question here, and I respect that, but certainly a question
3 that this Commission will be interested in when we meet with
4 the Treasury Department on why the DOD would be so dependent
5 on such a weak company when there are many companies,
6 including union companies, for my friends on the other side
7 of the aisle, that have tremendous financial strength that
8 provide LTL services.

9 What recommendations would you make, now having gone
10 through this CARES Act, when it comes to drafting this kind
11 of language in the future for future Treasury Secretaries?
12 Would you have a different caveat than simply having the DOD
13 Secretary certify that a company is essential to national
14 security? And in your personal view, do you think an LTL
15 trucking company is essential to national security?

16 Secretary Mnuchin. Let me just say, if I had to do it
17 all over again, I would use the same criteria. Again, I
18 think the intent when we did this was there were going to be
19 some big companies, but, again, we set up the intent early
20 on. It is not my position to comment on the DOD
21 certification, although I will make a comment that I do
22 agree with. I hope that the Pentagon looks at all of their
23 critical vendors and looks at the financial condition and
24 spreading risk. Had they not had this type of exposure,
25 perhaps they would not have certified it.

1 Mr. Hill. I think that is a fair point, and I yield
2 back, Mr. Chairman.

3 Senator Toomey. Thank you, Representative Hill.
4 Representative Shalala.

5 Ms. Shalala. Thank you. I want to follow up on that
6 definition. How did Treasury create its definition for
7 national security loans? Did you consult with the
8 Department of Defense and the Director of National
9 Intelligence or anyone else?

10 Secretary Mnuchin. We did. As I said in my opening
11 statement, we consulted with them before we put out the
12 regulations.

13 Ms. Shalala. The language of the definition that the
14 Treasury Secretary determines that the applicant is critical
15 to maintaining national security is based on a
16 recommendation and certification of the DOD or DNI implies
17 that Treasury has the final say in which businesses are
18 designated. Is that really the case?

19 Secretary Mnuchin. From a technical statement, it may
20 be the case. But from a practical statement, we did not
21 second-guess the DNI or DOD, so we did not do additional
22 diligence.

23 Ms. Shalala. So you did not ever disagree with the DOD
24 on designations?

25 Secretary Mnuchin. We did not. We relied upon it, and

1 I have written certifications from the DOD. I would be
2 happy to put them in the record. But once we received them,
3 that was their expertise. We do not have the expertise at
4 Treasury to analyze that.

5 Ms. Shalala. Do you think that the definition or the
6 alternative process requiring certification by DOD or DNI
7 deterred business from applying?

8 Secretary Mnuchin. I do not.

9 Ms. Shalala. Finally, you have been actually quite
10 candid about what you would do in the future. While I have
11 serious questions along with my fellow Commissioners about
12 the National Security Loan Program and the YRC loan in
13 particular, clarify for us, looking back, would you do it
14 all again? Would you do something different with the YRC
15 loan or the lending program or really any of the other
16 emergency loan programs?

17 Secretary Mnuchin. So I just want to put this in
18 context. Congress allocated close to \$3 trillion for CARES-
19 related items in the most difficult part of the economic
20 environment that this country has faced since the Great
21 Depression, not recession.

22 Of course, in a different environment we can look back,
23 and hopefully in future times Congress can do different
24 things. I would just say on the \$500 billion that was
25 allocated to me, between direct and indirect, we could have

1 made \$5 trillion of loans. This was an enormous amount of
2 responsibility.

3 I have been criticized by the right; I have been
4 criticized by the left. There were people who said to me I
5 was not taking enough losses; there were people who have
6 said to me I have taken too many losses.

7 So, again, I think this has been a great success. The
8 good news is most of this money did not need to be used and
9 can go back for taxpayers. And, Acting Chair Toomey, I
10 would be happy, since it is such a small group today, to
11 take a third round of questions. I want to make sure that
12 the committee has as much time for oversight as is needed
13 for us to be able to answer whatever there is today.

14 Ms. Shalala. Well, reclaiming my time, I just want to
15 make sure that I understand, because we need to learn from
16 your experience with these loans. What would you do
17 differently in the National Security Program in particular
18 that you would recommend to us that should be included in
19 legislation, for example, so that we do not get a YRC in the
20 future?

21 Secretary Mnuchin. Well, again, you are assuming we
22 should not get a YRC in the future. You know, as I have
23 said, there are plenty of people who are very senior people
24 in Congress on both sides, Republicans and Democrats, that
25 encouraged me. I am actually quite proud of the fact that

1 we did YRC. It saved lots and lots and lots of jobs. And I
2 can tell you I have received calls from the company, from
3 truckers, from other people who really appreciate this. So
4 I actually expect that taxpayers will get back their money,
5 will make money.

6 I can tell you the original concept of the national
7 security loans was for critical suppliers, and we thought--
8 we were worried about Boeing. I can tell you Senator Warner
9 came up with the idea, which I thought was a great idea, of
10 there would be small companies that had top secret
11 clearances, and we did not want them to go out of business
12 and have all these people disappear.

13 So I actually think the program has worked, and, again,
14 I am more than happy to stay here so nobody needs to worry
15 about reclaiming their time. I want to make sure you have
16 more than enough time to ask me questions.

17 Ms. Shalala. Thank you. I yield back.

18 Senator Toomey. Thank you, Representative Shalala.

19 So my understanding is the House has called a vote. I
20 do not have further questions, so I will pass on another
21 round for myself. But with the unanimous consent of the
22 four of us, I would suggest we give Representative Hill and
23 Representative Shalala additional time, if you would like to
24 take it now, so that you could use that time and still make
25 the vote. And then I would then recognize Commissioner

1 Ramamurti. Is that okay?

2 Mr. Hill. I do not have any more questions.

3 Senator Toomey. Okay. Representative Shalala?

4 Ms. Shalala. Just a statement. I realize that you get
5 enormous pressure from Members of Congress, and as someone
6 that had to sit in one of those seats at one point and say
7 no to Members of Congress, sometimes we are right and
8 sometimes we are wrong, and we rely on the judgment of the
9 Secretaries to make those decisions. And sometimes moving
10 too fast under great pressure is dangerous, and so I just
11 want to put that on the record, that I think your answers to
12 the questions about how you managed this are fine. But I am
13 not impressed when Members of Congress are putting Cabinet
14 Secretaries under pressure, because I rely on all of you to
15 make a good judgment on whether you have the time to make
16 the right decision.

17 Thank you.

18 Secretary Mnuchin. And I would just agree with you,
19 and we do not make decisions solely based upon pressure, or
20 we would have made thousands of loans. I would merely again
21 just highlight, of the 74 loans, we only made 11. We turned
22 down lots of loans that had Congress write us letters, and,
23 again, I appreciate the opportunity to answer any more
24 questions you or others have.

25 Senator Toomey. So I will now recognize for an

1 additional 5 minutes Commissioner Ramamurti.

2 Mr. Ramamurti. Thanks. This should not take the whole
3 5 minutes. But I just want to, since it came up today, talk
4 through the termination question again.

5 So the way that this program works, right, is that the
6 money that Congress authorizes goes to the Treasury
7 Department, the Treasury Department makes a loan or an
8 investment into a Special Purpose Vehicle created by the
9 Fed, and then that Special Purpose Vehicle in turn makes
10 loans to the public or to Main Street businesses? Is that
11 right, Mr. Secretary?

12 Secretary Mnuchin. As it relates to the Fed facility,
13 that is accurate.

14 Mr. Ramamurti. Okay. So basically there is a two-step
15 process here. There is a Treasury investment into an SPV
16 created by the Fed, and then there is a set of loans that
17 goes from the SPV to the public.

18 Now, what the CARES Act says is that after December
19 31st of this year, there can be no new investments with that
20 money by the Treasury Department. So how do you get from
21 that text to saying that there shall be no new loans by the
22 Fed, using money that has already been invested by the
23 Treasury Department?

24 Secretary Mnuchin. So, Mr. Commissioner--and, again, I
25 am happy to spend as much time as you want on this--the

1 Treasury put up 100 percent of the equity in the SPV. Okay?
2 That SPV is owned by the Treasury Department. That SPV is
3 governed by a term sheet and an LLC agreement. So our view
4 is that the requirements are both direct and indirect, so
5 that, again--and let me just be clear. You have described
6 an alternative reading. So if one viewed that alternative
7 reading, that would have meant that I could make \$500
8 billion of investment on day one, and if you believe that
9 reading, that would mean that there would be no December
10 31st date. I would say that is just a preposterous
11 interpretation. If that had been the case, Congress never
12 would have put in the December 31st. Your reading, which
13 certain people have read, is an obvious loophole.

14 Again, if someone else wants to take that reading,
15 which I think is not the legal interpretation, they can do
16 that. I am not going to do that. I was trusted by Congress
17 with \$500 billion. Lots of Democrats came out and said,
18 "How could the Treasury Secretary have a slush fund?" I
19 will responsibly read the letter of the law as interpreted
20 by me and my General Counsel and fulfill the obligation.
21 And, by the way, if Congress wants to extend these programs,
22 Congress has every right to do that.

23 Now, I would also just add, because Senator Toomey was
24 the person who I believe asked for the amendment to be put
25 in, and, Senator Toomey, I will let you speak. But in our

1 conversations, you were concerned that someone could somehow
2 or another interpret a loophole that was not intended of
3 what we negotiated. And I think it was a belt and
4 suspenders. It was not an acknowledgment that that was the
5 right reading, but, Senator Toomey, I will let you speak for
6 yourself.

7 Senator Toomey. Well, I want to let Commissioner
8 Ramamurti finish his time, if he would like.

9 Mr. Ramamurti. Thank you. I appreciate it.

10 Senator Toomey. And then I will respond.

11 Mr. Ramamurti. Sure. I mean, look, what you--number
12 one, it seems like what you are--you are saying that it is a
13 valid and credible reading of the statute to read as the
14 alternative--

15 Secretary Mnuchin. I am not. I want to correct that.
16 I have never said it is valid. What I am saying is if that
17 is your reading--okay?--which certain people have said--I am
18 not saying it is valid. As a matter of fact, I want to be
19 on the record. I think it is invalid. Our General Counsel
20 thinks it is invalid. Every single Republican on the Senate
21 Finance Committee that was involved in this thinks it is
22 invalid.

23 Again, it would be--if one takes that interpretation,
24 it would have to be an obvious loophole. That is what I am
25 saying.

1 Mr. Ramamurti. So, look, I think what you call a
2 "loophole" I would call the plain reading of the statute,
3 and I think that--

4 Secretary Mnuchin. Commissioner, were you involved in
5 the drafting--

6 Mr. Ramamurti. No, but, look, the whole point of this--
7 -

8 Secretary Mnuchin. Have you got outside legal counsel
9 that advised you on the draft--

10 Mr. Ramamurti. Yes. Yes, I think there have been
11 several law professors who have looked at--

12 Secretary Mnuchin. Just as you have asked for us to
13 have a memo, we would be happy for you to get an outside
14 legal opinion, send it to us. I am happy to have my General
15 Counsel--

16 Mr. Ramamurti. Sure.

17 Secretary Mnuchin. --view it and respond to you.

18 Mr. Ramamurti. Okay. Look, my point is that there
19 have been several finance lawyers who have looked at this
20 language, not--look, they were not in the room, but that is
21 why we look at the text of statutes, not congressional
22 intent. I hear that from my Republican colleagues all the
23 time.

24 Secretary Mnuchin. Does that mean you acknowledge it
25 would be a loophole--

1 Mr. Ramamurti. No, I do not. I hardly think it is a
2 loophole. I think it makes complete sense for Congress--

3 Secretary Mnuchin. Well, why would it make--

4 Mr. Ramamurti. --to create a program that says--

5 Secretary Mnuchin. Why, if there is a December--then
6 what was the intent of the December 31st--

7 Mr. Ramamurti. Sure, I will explain what I think is a
8 reasonable interpretation of the statute. As of December
9 31st, the Treasury Department cannot create new facilities
10 with this money that was allocated by Congress. Separately,
11 Congress said in the very same statute that the money
12 remains with the Treasury Department until 2026, at which
13 point it goes back to the general fund, which to me
14 indicates an intent of Congress that the money should remain
15 available to the Treasury Department up until 2026, which to
16 me contemplates this program existing well past 2021. That
17 is in the statute, and I think that if you look at the Fed's
18 response to your letter asking for the money back, it is
19 quite clear that they do not agree with your interpretation
20 with the statute either. They are deferring to it, but they
21 said that if it was up to them, they would extend these
22 facilities.

23 So I know I am over my time, but that is all I wanted
24 to say. Thank you.

25 Secretary Mnuchin. Senator Toomey, can I just make one

1 comment?

2 Senator Toomey. Secretary Mnuchin.

3 Secretary Mnuchin. I just want to correct the record,
4 and you can speak to Chair Powell or the Fed, but since I
5 speak to him all the time, and we have spoken, what the Fed
6 has said--okay? The Fed has not said that is their
7 interpretation of the legal view. What the Fed has said is
8 that if there were no restriction, as a general matter, they
9 like to leave facilities outstanding. And that is why, as
10 deferential to the Fed, the facilities that use pre-CARES
11 Act money were extended. And, obviously, if this was
12 politically motivated, why would I have extended any
13 facilities?

14 Senator Toomey. Thank you, Mr. Secretary. Let me
15 comment on this discussion briefly.

16 First of all, I think the alternative interpretation of
17 the statute that Commissioner Ramamurti has articulated is
18 not the correct interpretation at all, and I do think it is
19 important to point out that it would necessarily lead to an
20 absurd outcome--absurd in the context of the clear fact that
21 the entire purpose of this facility was to solve an
22 immediate credit liquidity crisis, not to provide an ongoing
23 multiyear set of tools for the Fed to decide whom to
24 subsidize in the future. The latter never crossed anybody's
25 mind in the room. I can assure everybody of that. And in

1 my interpretation, the letter of the law correctly calls for
2 this to end.

3 So Commissioner Ramamurti asked the question: Then why
4 the amendment that changes language in a recent piece of
5 legislation? That was my amendment, and the reason I wanted
6 it is precisely because this argument is taking place,
7 precisely because there are people out there who have this
8 other interpretation. And I would rather avoid the risk of
9 having to litigate, which is what would happen if somebody,
10 a future Treasury Secretary, for instance, decided that this
11 invalid interpretation was the one that was going to govern
12 their behavior. We would be mired in litigation for who
13 knows how long if someone were to go down that road.

14 So I thought the best and simplest solution is
15 eliminate even the possibility for this, which I believe to
16 be an invalid interpretation.

17 That said, Mr. Secretary, thank you for joining us. On
18 behalf of the Congressional Oversight Commission, we
19 appreciate your time and responsiveness. Members of the
20 Commission may submit any additional questions for the
21 record.

22 The hearing is adjourned.

23 [Whereupon, at 11:04 a.m., the Commission was
24 adjourned.]

25

Appendix C:
National Security Loan Program Transactions Summary

Borrower	City, State	U.S. empl., March 2020	Loan amount	Interest rate (LIBOR+%)	Compensation for Treasury	Loan collateral	How qualified for "critical to maintaining national security"
YRC Worldwide Inc.	Overland Park, KS	30,000	\$700,000,000	3.50%	29.6% of common stock, on a fully diluted basis.	Third lien and certain equipment purchased under tranche B.	DoD designation
Map Large, Inc.	Atlanta, GA	37	\$10,000,000	5.50%	3% payment-in-kind interest.	Unsecured senior debt.	Top secret clearance
Meridian Rapid Defense Group, LLC	Pasadena, CA	14	\$7,100,000	5.50%	3% payment-in-kind interest.	Unsecured senior debt.	DoD designation
Core Avionics & Industrial, Inc.	Tampa, FL	25	\$6,000,000	5.50%	3% payment-in-kind interest.	Unsecured senior debt.	DX priority-rated contract
Wiser Imagery Services, LLC	Murfreesboro, TN	135	\$3,069,700	5.50%	3% payment-in-kind interest.	Unsecured senior debt.	Top secret clearance
SpinLaunch, Inc.	Long Beach, CA	66	\$2,519,200	3.50%	3% payment-in-kind interest.	All assets of the company.	DoD designation
Channel Logistics, LLC	Camden, NJ	6	\$2,500,000	3.50%	3% payment-in-kind interest.	All assets of the company.	DoD designation
Semahtronix, LLC	Flippin, AR	172	\$1,999,100	3.50%	3% payment-in-kind interest.	All assets of the company.	DX priority-rated contract
Ovio Technologies, Inc.	Newport Beach, VA	6	\$1,186,900	5.50%	3% payment-in-kind interest.	Unsecured senior debt.	DoD designation
Visual Semantics, Inc.	Austin, TX	9	\$1,053,200	5.50%	3% payment-in-kind interest.	Unsecured senior debt.	DoD designation
Semantic AI, Inc.	San Diego	51	\$506,300	3.50%	3% payment-in-kind interest.	All assets of the company.	TS clearance; DX priority-rated contract
Total		30,521	\$735,934,400	3.58%			

Appendix D:
Sample Application to Treasury

OMB Approved No. 1505-0263
Expiration Date: 09/30/2020

**TREASURY LOAN APPLICATION FORM
for Businesses Critical to Maintaining National Security**

April 23, 2020

This application form is for informational purposes only, to enable potential applicants to begin preparing the required information. Treasury is not accepting applications at this time. In the coming days, Treasury will provide a web-based form for application submissions.

This application is for loans from the U.S. Department of the Treasury to eligible businesses that are critical to maintaining national security (“Borrowers”).

Borrowers are encouraged to submit their completed application materials by 3:00 p.m. EDT on May 1, 2020, for expedited review. Applications received after 3:00 p.m. on May 1, 2020, may not be considered, but the Treasury Department may, in its discretion and subject to the availability of funds, consider such applications for approval.

The definitions of the terms contained in this application appear in Division A, Title IV, Subtitle A of the Coronavirus Aid, Relief and Economic Security Act, Pub. L. 116-136 (Mar. 27, 2020) (the “Act”), and in the Procedures and Minimum Requirements for Loans to Air Carriers and Eligible Businesses and National Security Businesses under Division A, Title IV, Subtitle A of the Act, as updated (the “Procedures”).

BORROWER INFORMATION

- Borrower’s Name
- Borrower’s Taxpayer ID Number
- Borrower’s DUNS Number
- Borrower’s Address
- Contact Person’s Name
- Contact Person’s Title

- Contact Person's Phone
- Contact Person's E-mail

Provide a general description of the Borrower's corporate structure, including type of business entity (LLC, corporation, sole proprietorship, etc.) and tax classification (C Corporation, S Corporation, partnership, etc.) and whether the Borrower is publicly or privately owned.

- Corporate Structure
- Ownership Structure (choose one)
 - Public
 - Private
- Borrower's Jurisdiction of Organization or Formation
- Names and Jurisdiction of Organization or Formation of Parent Companies and Material Affiliates (including companies that control, are controlled by, or are under common control with the Borrower) (if applicable)
- Top-Level Parent's Jurisdiction of Organization or Formation (if applicable)

Identify the primary and secondary North American Industry Classification System (NAICS) codes for the Borrower.

Did the Borrower apply for or receive loans provided or guaranteed under the Act?

BORROWER PROFILE

Does the Borrower perform under a DX priority rated contract or order under the Defense Priorities and Allocations System regulations (15 CFR part 700)?

- If yes, please describe these contracts/orders.

Does the Borrower currently operate under a valid Top Secret facility security clearance pursuant to the National Industrial Security Program regulations (32 CFR Part 2004)?

- If yes, please describe this Top Secret facility security clearance, provide the relevant CAGE code(s), and attach the relevant form DD-254, Contract Security Classification Specification.

If the response to either of these criteria above is classified, please contact the Treasury Department at CARESActNationalSecurity@Treasury.gov for more information.

Applicants that do not satisfy either of these two criteria may be considered if, based on a recommendation and certification by the Secretary of Defense or the Director of National Intelligence that the applicant business is critical to maintaining national security, the Secretary of the Treasury determines that the applicant business is critical to maintaining national security. The Treasury Department will process such applications upon receipt of such certification.

DEBT, ASSETS, AND EQUITY

Debt. Provide a description of the Borrower's outstanding secured and unsecured debt, including debt securities, notes, loans, and bank lines of credit.

- Debt
 - Type
 - Current Amount Outstanding
 - Maximum Commitments Available
 - Seniority [Secured/Senior Unsecured/Subordinated]
 - Lien Ranking
 - Maturity Date(s)
- Lines of Credit
 - Current Amount Outstanding
 - Maximum Commitments Available
 - Maturity Date(s)
- Other Material Indebtedness
 - Description
 - Current Amount Outstanding
 - Maximum Commitments Available

- Maturity Date(s)
- Total Debt Currently Outstanding
- Total Debt Commitments Currently Available

Intercompany Debt and Guarantees. Provide a description of the existing intercompany debt and guarantee arrangements of the Borrower and any of its subsidiaries, with current amounts outstanding.

- Intercompany Debt and Guarantees

Restrictions on Indebtedness. Provide a description of any restrictions on the Borrower or any of its subsidiaries incurring additional indebtedness.

- Restrictions on Indebtedness

Restrictions on Collateral. Provide a description of any restrictions on the Borrower or any of its subsidiaries granting additional security interests in collateral.

- Restrictions on Collateral
- Does the Borrower have a judgment lien against the Borrower's property for a debt owed to the United States?

Debt Service. Provide, for the Borrower and its subsidiaries on a consolidated basis, the amounts of principal and interest currently scheduled to be paid on outstanding debt for the next 3 years.

- 2020
- 2021
- 2022

Assets. Provide the total assets in the Borrower's 2019 financial statements.

- Total Assets

Available Security. Provide a brief description of the type and general value of all assets, property, and revenue streams of the Borrower and its affiliates available to be pledged to secure the loan to the Borrower.

- Type of Asset, Property, Revenue Streams
- General Value
- Available Payment Seniority / Lien Rank
- If Applicable, Debt Instruments Secured By Asset

Available Guarantees. Provide a list of the parent companies, subsidiaries, and affiliates of the Borrower that will provide guarantees and indicate whether such persons have other material debt.

Equity. List each class of outstanding equity interests in the Borrower.

- Common Stock
- Preferred Stock

Ratings. Provide the Borrower's issuer credit rating and issue level ratings for any senior unsecured debt as of December 31, 2019, from any Nationally Recognized Statistical Ratings Organizations (NRSROs).

- Issuer Credit Ratings
- Issue Ratings for Senior Unsecured Debt

FINANCIAL INSTITUTION INFORMATION

(For electronic payment. The account listed below should be the same account used by the Borrower to make tax payments to the IRS.)

Routing Transit Number	
Borrower's Account Number	Checking or savings
Financial Institution Name	
Financial Institution Address	
Financial Institution Telephone Number	
Primary contact at financial institution for payment process validation (name, title, email, and phone number)	

UNITED STATES OPERATIONS

Describe the operations of the Borrower in the United States.

List the number of employees of the Borrower based in the United States (including territories or possessions) on March 24, 2020. For purposes of these calculations, include full-time, part-time, temporary, and leased employees, but do not include independent contractors or corporate officers.

- U.S. employees

List the number of employees of the Borrower on March 24, 2020.

- Worldwide employees

Describe any changes to the Borrower's U.S. employment levels between March 24, 2020 and the date of this application.

- Planned Employment Changes

Describe any changes that are planned in the Borrower's U.S. employment levels between the date of this application and December 31, 2020.

- Planned Employment Changes

COVERED LOSSES

List the Borrower's revenue and expenses in 2019 and in the first quarter of 2020.

- 2019 Revenue
- 2019 Expenses
- Q1 2020 Revenue
- Q1 2020 Expenses

List each category of revenue loss or new unbudgeted expense that the Borrower has incurred or expects to incur directly or indirectly as a result of the coronavirus through March 30, 2021, and the actual or expected revenue loss or new expense for each category. Categories of revenue losses or new unbudgeted expenses may include, for example, reduced demand, unavailability of credit, and new medical expenses.

Revenue Losses

- Category Description
- Amount

New, Unbudgeted Expenses

- Category Description
- Amount

FINANCIAL PLAN

Provide a separate document containing a financial plan that includes each of the following components.

- (1) *Use of Proceeds* – an itemized description of the purposes for which the Borrower will use the loan proceeds.
- (2) *Financial Needs* – quantitative information on the Borrower's total financial needs for the remainder of 2020, including expected revenues, expenses, and types and amounts of expected borrowing, and how the loan fits within those needs.
- (3) *Operating Plan* – a discussion of the Borrower's (and any subsidiary's) operating plan for the remainder of 2020, if the loan is approved. Include a description of any changes to management, employment, as well as any strategic focuses or significant ventures or transactions.

(4) *Cost Restructuring* – a description of any plans the Borrower (and any subsidiary) has to restructure its obligations or contracts with creditors, vendors, or employees to improve the Borrower’s financial condition in 2020.

(5) *Prudent Borrowing* – a justification based on the Borrower’s financial needs and operating plan demonstrating that the loan is prudently incurred.

(6) *Stock Buybacks* – a description of any contractual commitment in effect as of March 27, 2020, obligating the Borrower or any affiliate thereof to purchase, before January 1, 2026, an equity security that is listed on a national securities exchange of the Borrower or any parent company of the Borrower.

(7) *Lack of Credit Elsewhere* – evidence based on market conditions, the Borrower’s circumstances, or relationships with existing or potential creditors that credit is not reasonably available to the Borrower elsewhere.

ADDITIONAL INFORMATION TO UPLOAD

Borrowers must upload copies of the following information.

The Borrower’s most recently completed IRS Form 941 “Employers Quarterly Federal Tax Return.”

The consolidated financial statements of the Borrower for the previous three years that (if available) have been audited by an independent certified public accountant, including any associated notes and auditor’s report.

The consolidated financial statements of the Borrower’s corporate parents, if any, for the previous three years that (if available) have been audited by an independent certified public accountant, including any associated notes and auditor’s report.

Any interim financial statements of the Borrower for the current fiscal year, including any associated notes.

Please list any outstanding liens with the Federal Government.

TAXPAYER PROTECTION

To receive a loan, each Borrower must provide the Treasury Department with appropriate financial instruments that, in the sole determination of the Secretary, provide for a reasonable participation in equity appreciation or a reasonable interest rate premium appropriate for the benefit of taxpayers.

If the Borrower has issued securities that are traded on a national securities exchange, the Borrower must provide a warrant or equity interest in the Borrower unless the Secretary determines in his discretion that the Borrower cannot feasibly issue warrants or other equity interests. For other Borrowers, the Secretary may, in his discretion, accept senior debt instruments or warrants or other equity interests.

Each Borrower must provide information in the following table that describes in sufficient detail its proposed financial instruments under this requirement. Each Borrower will be notified whether the proposed financial instruments are acceptable prior to application approval.

Borrower Name:
Type of Financial Instrument:
Amount, Value, or Price of the Financial Instrument, as Appropriate:
Seniority or Priority of the Financial Instrument Relative to Other Equity and Debt of the Borrower:
Term or Duration of the Financial Instrument, if Applicable:
Other Terms and Conditions that Could Affect the Value of the Financial Instrument:

ADDITIONAL INFORMATION

Supplementary Information. In order to evaluate the Borrower's application, the Treasury Department may request additional information from the Borrower. Failure to provide any information requested by the Treasury Department may result in a rejection of the Borrower's application.

CERTIFICATION

I certify under penalty of perjury that the information and certifications provided in the application and its attachments are true and correct. **WARNING:** Anyone who knowingly submits a false claim or makes a false statement is subject to criminal and/or civil penalties, including confinement for up to 5 years, fines, and civil penalties. (18 U.S.C. §§ 287, 1001; 31 U.S.C. §3729, 3802).

Name of First Certifying Official	
Title of First Certifying Official	
Signature of First Certifying Official	
Phone Number of First Certifying Official	
E-mail of First Certifying Official	
Name of Second Certifying Official	
Title of Second Certifying Official	
Phone Number of Second Certifying Official	
E-mail of Second Certifying Official	
Signature of Second Certifying Official	
Borrower Name	
Date	

PAPERWORK REDUCTION ACT NOTICE

The information collected will be used for the U.S. Government to process requests for support. The estimated burden associated with this collection of information is two hours per response. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Privacy, Transparency and Records, Department of the Treasury, 1500 Pennsylvania Ave., N.W., Washington, D.C. 20220. **DO NOT** send the form to this address. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Appendix E:
Questions for the Record Submitted to Treasury by Rep. Hill

CONGRESSIONAL OVERSIGHT COMMISSION
Questions for the U.S. Treasury Regarding National Security Loans

**Questions for the Record Submitted to U.S. Treasury
from Congressman French Hill**

Question 1: Per the “Financial Agency Agreement for Independent Financial Advice on Programs for Businesses Critical to National Security under the CARES Act,” the Treasury retained Perella Weinberg Partners LP as the Financial Advisor for the National Security Loans for a \$500,000 fee for the initial term. How long was the term and were there any extensions of the periods? Were there any contingency fees based on the amount of loans executed, or otherwise? Over the period of the program ending December 31, 2020, what was the total amount paid to Perella Weinberg Partners LP?

Question 2: YRC Tranche B funds are to be used to finance the purchase of tractors and trailers in accordance with the company’s capital expenditures plan. In my view, this type of lending should be left to the private sector as this serves as business growth capital, not temporary emergency pandemic-related funding. Thus, Tranche B appears beyond the scope for the intent of the CARES Act funding. Could you please opine on the Treasury’s rationale for this type of loan?