



OFFICE OF THE SPECIAL INSPECTOR GENERAL  
FOR PANDEMIC RECOVERY

# Special Inspector General for Pandemic Recovery Initial Report to Congress

August 3, 2020



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# INTRODUCTORY MESSAGE

## **An Introductory Message from Inspector General Brian D. Miller**

It is an honor to present this 60-day report, which highlights the important work that the Office of the Special Inspector General for Pandemic Recovery (SIGPR) has begun. As detailed in the report, SIGPR's Office of Investigations has begun work on 12 open matters. SIGPR already has had a formal recommendation accepted and implemented by the Department of the Treasury. Further, we have two recommendations for Congress.

I am thankful for such a dedicated and talented group of public servants who have sacrificed to come to work with me as the staff of this brand-new office. Moreover, having started service with me so recently, their ability to help me produce this report over the past days—in the midst of a pandemic and without a common space to work or even meet together—is truly remarkable. To my new staff: Thank you.

I am ever mindful of how important the Office of the SIGPR is in our Nation's history and to our Nation's economic health and recovery. Congress is spending trillions of dollars to address our economic crisis, and SIGPR is a key part of making sure that those dollars are well-spent. Every dollar lost to fraud or abuse is a dollar that deserving American families and businesses need.

Most importantly, SIGPR parsed the CARES Act to ensure that SIGPR is following the law as written. In our view, the text of the CARES Act does not issue SIGPR as expansive a jurisdictional mandate as some have suggested or, indeed, as I might wish it to be. SIGPR wants to be certain that it is not exercising authority it doesn't have. As explained in the report, our legal analysis is an invitation to Congress to clarify the CARES Act where warranted. We understand that others may disagree, but this is our best reading of the text.

I hold all government officials, including myself, to a high standard. Basic to the integrity of any governmental official is following the law as written and not exercising authority Congress did not grant. We govern only by the consent of the governed, and the attempt to exercise authority not granted would violate that most inviolable of first principles. Accordingly, unless and until Congress grants us additional authority, we will follow the law as written and not as we wish it to be.

In setting up an office from nothing, I am personally working through the intricacies of the bureaucracy during a pandemic. Starting an office from scratch is a struggle in the best of times. But every step of every administrative task is more complicated now. Congress created SIGPR to combat the fraud, waste, and abuse that thrives in the conditions created by the pandemic—the conditions that precipitated passage of the CARES Act in the first place. As described in this report, however, that very pandemic has complicated virtually every step of creating the Office of the SIGPR. I have worked long and hard these past 60 days—joined recently by my senior staff—to build an office ready and able to implement the mission of the Office of the SIGPR as expressed by the text of the CARES Act, but starting an office from scratch in these conditions is an arduous task that necessarily takes more time than anyone wants.

Despite these difficulties, the Office of the SIGPR is making progress in hiring, budgeting, acquiring physical space to meet and work, setting up the IT infrastructure to share information within the office, and connecting with other agencies and the public. SIGPR will always strive to ensure that the American taxpayer gets its best return on investment.



Brian D. Miller  
August 3, 2020





# EXECUTIVE SUMMARY

The Special Inspector General for Pandemic Recovery (SIGPR) was established by Section 4018 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). Under the CARES Act, SIGPR has the duty to conduct, supervise, and coordinate audits and investigations of the making, purchase, management, and sale of loans, loan guarantees, and other investments by the Secretary of the Treasury under any program established by the Secretary under Division A of the CARES Act, as well as the management by the Secretary of any program established under Division A of the CARES Act.

By express incorporation, SIGPR also has the duties, responsibilities, powers, and authorities granted inspectors general under the Inspector General Act of 1978, including broad subpoena authority.

Nine days after the CARES Act was signed into law, the President nominated Brian D. Miller—a former Inspector General of the General Services Administration—to be Special Inspector General. Two months later, on June 2, 2020, IG Miller was confirmed. Immediately upon confirmation, IG Miller began the process of hiring a seasoned and well-respected senior leadership team.

Despite the difficulties inherent in standing up a new office in the midst of a global pandemic, this team of IG-community and law-enforcement veterans has moved quickly to process the complexities of the CARES Act and the Government’s implementation of it, initiate outreach to law-enforcement partners and other oversight entities, and begin identifying areas for preliminary inquiry.

## CARES ACT OVERSIGHT

When there is an express mandate to disburse trillions of taxpayer dollars, oversight and accountability are invaluable because fraud, waste, and abuse are inevitable. Congress understood this when it created multiple oversight entities under the CARES Act and charged existing entities with additional oversight. But while redundancies reinforce accountability, efficiency and fairness counsel in favor of clarity and deconfliction.

Interpreting the text of the CARES Act, SIGPR therefore uses this initial report to offer its best, objective understanding of the jurisdictional contours for each of the entities assigned a major oversight role by the CARES Act and invites Congress to clarify the areas where potential ambiguities remain. As for itself, SIGPR concludes it has jurisdiction over Division A loans, loan guarantees, and other investments by the Secretary of the Treasury, and programs managed by the Secretary. SIGPR concludes it does not have jurisdiction over any programs in Division B.

Of the oversight entities referenced in the CARES Act, the Pandemic Response Accountability Committee (PRAC) appears to have the most expansive jurisdiction, with its broad oversight mandate related to various appropriations and the Federal Government’s response to the nationwide public health emergency of COVID-19. The Congressional Oversight Commission, on the other hand, is given a quite narrow remit, with its jurisdiction expressly limited to Subtitle A of Title IV, within Division A. And finally, GAO’s new CARES Act oversight jurisdiction broadly covers Division B of the CARES Act, but does not appear to reach Division A.

## HIGHLIGHTS

In light of the importance of oversight and accountability to a robust national recovery, SIGPR has worked diligently in the first 60 days to build its staff and infrastructure and, critically, to begin providing effective oversight within its areas of core statutory jurisdiction. Indeed, in the short time since IG Miller's confirmation, SIGPR has located temporary and long-term office space, obtained from OPM waivers for three Federal retirees, hired a senior leadership team, held briefings, attended meetings, and joined working groups involving Offices of Inspector General, PRAC members, law-enforcement personnel, and enforcement entities such as FinCEN, the FBI, and the Department of Justice.

In fact, SIGPR has already entered into formal agreements with two U.S. Attorney Offices, and the office is in talks with the SEC, FinCEN, and other partners.

SIGPR has also hired a core leadership team, including a Deputy Inspector General, a Chief of Staff, a Chief Counsel, an Assistant Inspector General for Auditing, an Assistant Inspector General for Investigations, an Assistant Inspector General for Data Analysis, Deconfliction, Integration, and Whistleblower Protection, an Assistant Inspector General for Administration, a CIO, and a CISO. Additional Counsel, Investigators, and Auditors are currently in the hiring process, and several data analysts and evaluators are being recruited as well.

Importantly, SIGPR's Hotline is operational at [202-927-7899](tel:202-927-7899), and a website is under development. Building on its network of oversight relationships, SIGPR has initiated twelve investigations and has reviewed well over 10,000 pages of requested documents.

## REPORTABLE FINDINGS

The CARES Act requires this initial report to Congress within 60 days of the Special Inspector General's confirmation, and then quarterly reports thereafter. SIGPR reports must include detailed information about Treasury's loan programs and investments under CARES Act Section 4003, data regarding which entities have received those loans and investments, the current status of those transactions, and other information. The information relating to these reporting requirements that SIGPR has obtained in the first 60 days is discussed more fully in this report, but an overview of the relevant categories and amounts of obligations by Treasury to date is reflected in the following table:

| Funding Program  | Obligation Amount |
|--|-------------------|
| Direct Loans to Passenger Air Carriers and Related Businesses        | \$0               |
| Direct Loans to Cargo Air Carriers                                   | \$0               |
| Direct Loans to Businesses Critical to Maintaining National Security | \$700,000,000     |
| Main Street Lending Program (MS Facilities, LLC)                     | \$75,000,000,000  |
| Term Asset-Backed Securities Facility (TALF II, LLC)                 | \$10,000,000,000  |



| Funding Program   | Obligation Amount |
|---|-------------------|
| Primary Market Corporate Credit Facility (Corporate Credit Facilities, LLC)   | \$50,000,000,000  |
| Secondary Market Corporate Credit Facility (Corporate Credit Facilities, LLC) | \$25,000,000,000  |
| Municipal Liquidity Facility (Municipal Liquidity Facility, LLC)              | \$35,000,000,000  |

## RECOMMENDATIONS

Finally, based on its first 60 days of research, outreach, and analysis, SIGPR provides three recommendations in this report. First, SIGPR has already recommended that, in future loan agreements, Treasury expressly include SIGPR in the list of entities entitled to “timely and unrestricted access” to information from the borrower. Treasury agreed to implement the change in future agreements. Second, SIGPR recommends that Congress take up S.3751, the Special Inspector General for Pandemic Recovery Expedited Hiring Authorities Act of 2020, sponsored by Senator Grassley. Finally, SIGPR recommends that Congress consider the various CARES Act relief programs, how they overlap, whether the overlap is in the public interest, and whether legislative clarification is warranted.

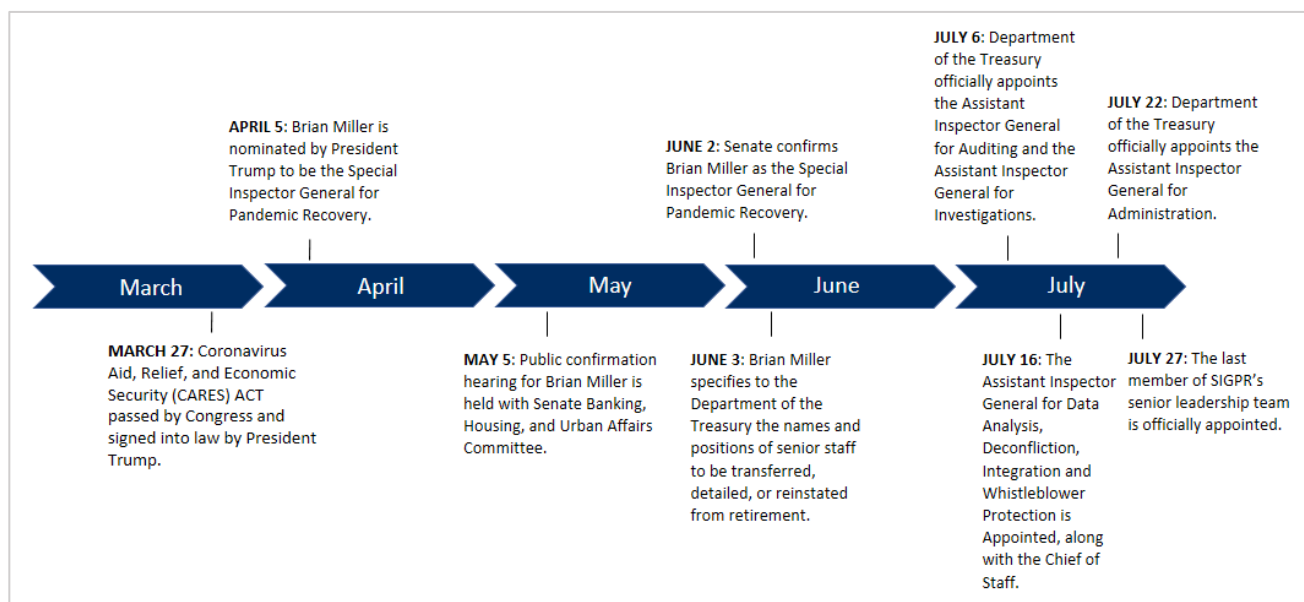


# OFFICE OF THE SPECIAL INSPECTOR GENERAL FOR PANDEMIC RECOVERY

## Creation and Statutory Authority

### Creation Key Timeline

The President signed the CARES Act into law on March 27, 2020. Just nine days later, the President nominated Brian D. Miller to serve as the Special Inspector General for Pandemic Recovery (SIGPR), a new office created by the CARES Act. IG Miller was confirmed 58 days later, and his senior leadership began to on-board more than 30 days after that.



### SIGPR Creation Timeline

### Statutory Authority

SIGPR was created by Section 4018 of the CARES Act to serve as one of a host of entities charged with CARES Act oversight.<sup>1</sup> Specifically, SIGPR is tasked with the duty to conduct, supervise, and coordinate audits and investigations of the making, purchase, management, and sale of loans, loan guarantees, and other investments by the Secretary of the Treasury under any program established by the Secretary under Division A of the CARES Act, as well as the duty to conduct, supervise, and coordinate audits and investigations of the management by the Secretary of any program established under Division A of the CARES Act.

Importantly, the CARES Act provides that “the Special Inspector General shall have the authorities provided in section 6 of the Inspector General Act of 1978.” CARES Act § 4018(d)(1). Through this express incorporation of the Inspector General Act, the CARES Act grants SIGPR broad subpoena authority. See 5a U.S.C. § 6(a)(4).

<sup>1</sup> The relevant text of Section 4018 of the CARES Act is provided at Appendix A.

## SIGPR in Context: CARES Act Jurisdiction & Reporting

As mentioned, SIGPR is but one of many entities either expressly or inherently tasked with oversight of the Government’s implementation of the CARES Act and the conduct of private actors who seek participation in the Act’s trillions of dollars of funding. To help situate SIGPR within the broader context of the CARES Act’s programmatic framework and the major oversight entities, to facilitate oversight collaboration and deconfliction, to inform the American taxpayers, and to provide Congress an opportunity to clarify ambiguities, SIGPR provides the following legal analysis of the oversight jurisdiction for the major oversight entities created by the CARES Act and the basic reporting requirements placed upon those entities. A matrix of these jurisdictional and reporting conclusions is included at Appendix B.

### *SIGPR jurisdiction*

Section 4018 of the CARES Act, which falls under Division A, Title IV, Subtitle A, provides:

It shall be the duty of the Special Inspector General to . . . conduct, supervise, and coordinate audits and investigations of the making, purchase, management, and sale of loans, loan guarantees, and other investments made by the Secretary of the Treasury under any program established by the Secretary under this Act, and the management by the Secretary of any program established under this Act . . . .

[CARES Act § 4018](#)(c)(1). Based on this passage, there are three requisite elements to SIGPR’s jurisdiction under the CARES Act. First, there is an activity element, which limits SIGPR’s jurisdiction to the following activities: the making, purchase, management, and sale of loans, loan guarantees, and other investments, as well as the management of programs. Second, there is an institutional element, which limits SIGPR’s jurisdiction to only those activities described above that are carried out by the Secretary of the Treasury. Third, there is a divisional element, which limits SIGPR’s jurisdiction to only those activities described above that are done pursuant to a program established under “this Act.” *Id.*

a. The outer limits of SIGPR jurisdiction: “this Act”

Turning directly to the third element, plain text confirms that SIGPR’s jurisdiction extends to all relevant activity carried out by the Secretary of the Treasury pursuant to programs created under Division A of the CARES Act. The most forceful evidence of this is that Section 3 of the CARES Act states, “Except as expressly provided otherwise, any reference to ‘this Act’ contained in any division of this Act shall be treated as referring only to the provisions of that division.” *Id.* [§ 3](#). Section 4018(c)(1)’s reference to “this Act” is “contained in” Division A.<sup>2</sup> Applying Section

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<sup>2</sup> A review of the uses of the term “division” within the CARES Act confirms that such term refers to “Division A” or “Division B” and not some smaller section thereof. A contrary interpretation would render certain at least one provision unintelligible. See CARES Act § 6002.

3’s definitional rule to Section 4018, SIGPR’s duties must “be treated as referring only to the provisions of” Division A of the CARES Act.<sup>3</sup>

There is a small potential for ambiguity in Section 4018(c)(1)’s reference to “this Act” because Title IV, Subtitle A—wherein Section 4018 appears—is given the short title “Coronavirus Economic Stabilization Act of 2020.” *Id.* [§ 4001](#). But several textual clues support the plain-reading conclusion that Section 3’s definitional rule governs. For example, throughout Title IV, Subtitle A, Congress repeatedly used the phrase “this subtitle,” rather than “this Act,” to refer to the provisions of Subtitle A specifically. In Section 4001, Congress gave “[t]his subtitle” the short title Coronavirus Economic Stabilization Act of 2020. *Id.* In the very next section, Congress wrote, “In this subtitle,” followed by a list of definitions for terms appearing in Subtitle A. *Id.* [§ 4002](#). And in Section 4020, Congress established the Congressional Oversight Commission and charged it with “conduct[ing] oversight of the implementation of *this subtitle* by the Department of the Treasury and the Board of Governors of the Federal Reserve System,” *id.* [§ 4020](#)(b)(1)(A) (emphasis added), and “review[ing] the implementation of *this subtitle* by the Federal Government,” *id.* [§ 4020](#)(b)(1)(C) (emphasis added).

Accordingly, Sections 4001, 4002, and 4020 show that, when Congress intended to refer to only Subtitle A, it appropriately used the phrase “this subtitle.” And Section 4020 in particular demonstrates that Congress knew exactly how to craft a jurisdictional statement limited to Subtitle A. It is therefore difficult to see how Congress could have intended the defined term “this Act” to refer only to Subtitle A when used in Section 4018(c)(1) while elsewhere Congress used the phrase “this subtitle” to do that. Plus, reading the defined term “this Act” to convey the same meaning as the undefined phrase “this subtitle” would result in impermissible surplusage. The surplusage canon holds that, “[i]f possible, every word and every provision is to be given effect.” ANTONIN SCALIA & BRYAN A. GARNER, *READING LAW: THE INTERPRETATION OF LEGAL TEXTS* 174 (2012). This “canon is well known.” *Id.* at 179. For this reason, the Supreme Court has consistently expressed a “reluctance to treat statutory terms as surplusage.” [Babbitt v. Sweet Home Chapter of Communities for a Great Oregon](#), 515 U.S. 687, 698 (1995); see also [Williams v. Taylor](#), 529 U.S. 362, 364 (2000) (calling it “the cardinal principle of statutory construction that courts must give effect, if possible, to every clause and word of a statute”).

Finally, Section 3 may be overridden only where “*expressly* provided otherwise.” CARES Act § 3 (emphasis added). Nothing about Section 4001 giving a short title to Subtitle A *expressly* abrogates Section 3’s definitional rule. As the Supreme Court stated over 70 years ago, a legal text’s titles and headings “cannot undo or limit that which the text makes plain.” SCALIA & GARNER, *supra*, at 221 (quoting [Brotherhood of R.R. Trainmen v. Baltimore & Ohio R.R.](#), 331 U.S. 519, 528–29 (1947)). In other words, “a title or heading”—like the short title given Subtitle A—

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<sup>3</sup> This conclusion accords with that of the Treasury Office of General Counsel, expressed in a letter to the Treasury Office of Inspector General, wherein the Office of General Counsel reasoned that the term “covered funds” was limited to Division B of the CARES Act by force of applying Section 3’s definitional rule to “the reference to ‘this Act’ in the definition of covered funds in Division B.” Letter from Department of the Treasury Office of General Counsel to Department of the Treasury Office of the Inspector General, at 4 (May 7, 2020). Just as “this Act” refers to Division B when used to define “covered funds” in a Division B provision, it refers to Division A when used to describe SIGPR’s duties and jurisdiction in Division A provisions.



“should never be allowed to override the plain words of a text,” such as the Section 3’s definitional rule. *Id.* at 222. This is especially true here, where Congress went on to use the phrase “this subtitle” several times in Subtitle A to refer to Subtitle A. If Congress understood Section 4001 to expressly abrogate Section 3’s definitional rule, using the specific phrase “this subtitle” would have been unnecessary.

\* \* \*

In sum, the phrase “this Act” in Section 4018(c)(1) must be read as referring to Division A of the CARES Act. First, Section 3 provides the definitional rule that “any reference to ‘this Act’ contained in any division of [the CARES Act] shall be treated as referring only to the provisions of that division,” and Section 4018 is “contained in” Division A. Second, Congress repeatedly used the phrase “this subtitle” within Title IV, Subtitle A to refer to Subtitle A, indicating Congress would have used “this subtitle” rather than “this Act” if it had wanted to refer to Subtitle A rather than Division A.<sup>4</sup> Third, neither Section 4001 nor any other provision of Title IV “expressly” abrogates Section 3’s general definitional rule.

b. The functional limits of SIGPR jurisdiction

The divisional element makes Division A of the CARES Act the outer limit of SIGPR jurisdiction. But functionally, the activity and institutional elements sharply narrow that jurisdiction. The institutional element is straightforward: it limits SIGPR’s jurisdiction to the relevant activities carried out by the Secretary of the Treasury.<sup>5</sup>

The activity element of SIGPR’s jurisdiction limits the office’s reach to the making, purchase, management, and sale of loans, loan guarantees, and other investments, as well as the management of programs, established under “this Act.” The “loans, loan guarantees, and other investments” language tracks the language in Subtitle A, Section 4003, Emergency Relief and Taxpayer Protections. There, “the Secretary is authorized to make loans, loan guarantees, and other investments in support of eligible businesses, States, and municipalities . . .” [CARES Act § 4003\(a\)](#). And Subsection 4003(b) is entitled “Loans, Loan Guarantees, and other Investments.” *Id.* [§ 4003\(b\)](#). This phrase is used throughout Section 4003 and does not appear to be used elsewhere in the CARES Act. As a result, despite SIGPR’s jurisdiction potentially reaching all of Division A, the portion of the activity element covering loans, loan guarantees, and other investments made by the Secretary is likely constrained, as a practical matter, to Section 4003.

The latter portion of the activity element, however, gives SIGPR jurisdiction over “the *management* by the Secretary of *any program* established under this Act.” *Id.* [§ 4018\(c\)\(1\)](#)

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<sup>4</sup> The only uses of “this Act” in Subtitle B are as part of the broader phrase “enactment of this Act” as used to set deadlines or establish other temporal cutoffs. See [CARES Act §§ 4113\(b\)\(1\)\(B\)](#), [4113\(b\)\(2\)](#), [4116\(a\)](#), and [4118\(b\)](#). Indeed, most of the instances of “this Act” within the CARES Act are contained within a larger phrase, such as “the date of enactment of this Act,” a particular numbered section “of this act,” or “under this heading in this Act.” These uses do not call into question the plain-text conclusion that the use of “this Act” in Section 4018(c)(1) of Subtitle A is subject to the definitional rule of Section 3.

<sup>5</sup> The institutional element does not, however, limit SIGPR’s ability to review the conduct of other actors involved in the relevant activities and programs created or carried out by the Secretary.

(emphasis added). The broad language of this residual clause is not obviously constrained to Subtitle A, let alone Section 4003. But it is constrained to only those programs managed by the Secretary. Which programs are managed by the Secretary is ultimately a factual question that will require ongoing analysis.

If Congress did not intend the residual clause to grant SIGPR jurisdiction over programs created under provisions beyond Subtitle A, or otherwise intended the residual clause to ensure SIGPR oversight of particular programs, Congress may clarify that by amending the text of the CARES Act.

### *SIGPR reporting*

Section 4018(f) establishes SIGPR's CARES Act reporting requirements. Under this provision, SIGPR is to submit a report within 60 days after "the date on which the Special Inspector General is confirmed"—and every "calendar quarter" thereafter—that "summariz[es] the activities of the Special Inspector General during the 3-month period ending on the date on which the Special Inspector General submits the report." [CARES Act § 4018](#)(f)(1)(A). This report must be submitted to "the appropriate committees of Congress." *Id.*

Section 4018(f)(1)(B) states that SIGPR's reports must include "a detailed statement of all loans, loan guarantees, other transactions, obligations, expenditures, and revenues associated with any program established by the Secretary under section 4003, as well as the information collected under subsection (c)(1)." *Id.* [§ 4018](#)(f)(1)(B). The information to be collected under subsection (c)(1) includes the following:

- "A description of the categories of the loans, loan guarantees, and other investments made by the Secretary";
- "A listing of the eligible businesses receiving loan[s], loan guarantees, and other investments made under each category described in subparagraph (A)";
- "An explanation of the reasons the Secretary determined it to be appropriate to make each loan or loan guarantee under this Act, including a justification of the price paid for, and other financial terms associated with, the applicable transaction";
- "A listing of, and detailed biographical information with respect to, each person hired to manage or service each loan, loan guarantee, or other investment made under section 4003"; and
- An "estimate of the total amount of each loan, loan guarantee, and other investment made under this Act that is outstanding, the amount of interest and fees accrued and received with respect to each loan or loan guarantee, the total amount of matured loans, the type and amount of collateral, if any, and any losses or gains, if any, recorded or accrued for each loan, loan guarantee, or other investment."

*Id.* [§ 4018](#)(c)(1)(A)–(E). Accordingly, the specifically enumerated reporting requirements in Section 4018(f)(1)(B) focus exclusively on Section 4003 and on loans, loan guarantees, and

other investments by the Secretary, a phrase that itself closely tracks the language of Section 4003. These particularized reporting requirements could raise the question whether Congress intended SIGPR to investigate activities not arising under Section 4003.

While requirements enumerated in Section 4018(f)(1)(b) are mandatory, there is no textual reason that they are limiting. Moreover, Section 4018(f)(1)(A) requires SIGPR's reports to "summariz[e] the activities of the Special Inspector General," suggesting Congress broadly intended SIGPR to report on *all* its activities, not only Section 4003-related information.

If, however, Congress intended Section 4018(f)(1)(B)'s reporting requirements to suggest a limit on SIGPR's oversight jurisdiction to Section 4003 programs, Congress may clarify that by amending the text of the CARES Act.

### ***PRAC jurisdiction***

CARES Act § 15010 creates the Pandemic Response Accountability Committee (PRAC) and defines its powers and responsibilities. The PRAC's mandate includes oversight of "covered funds and the Coronavirus response," CARES Act [§ 15010\(d\)\(1\)\(A\)](#), and includes the authority to investigate, audit, and review those matters, *id.* [§ 15010\(e\)\(1\)](#). "Covered funds" means "any funds, including loans, that are made available in any form to any non-Federal entity, not including an individual" under the "this Act," the Coronavirus Preparedness and Response Supplemental Appropriations Act, [Pub. L. No. 116-123](#), the Families First Coronavirus Response Act, [Pub. L. No. 116-127](#), and any other act primarily making appropriations for the coronavirus response. *Id.* [§ 15010\(a\)\(6\)](#) As discussed in the section on SIGPR's jurisdiction, "this Act" refers to the specific CARES Act division in which the term "this Act" appears. The definition of "covered funds" appears in Division B, meaning the PRAC's "covered funds" oversight extends only to those funds appropriated in CARES Act Division B.

The PRAC, however, has oversight authority of all CARES Act divisions through its oversight authority of "the Coronavirus response," broadly defined as "the Federal Government's response to the nationwide health emergency declared by the Secretary of Health and Human Services, retroactive to January 27, 2020, pursuant to section 319 of the Public Health Services Act ([42 U.S.C. 247d](#)), as a result of confirmed cases of the novel coronavirus (COVID-19) in the United States." *Id.* [§ 15010\(a\)\(7\)](#). Nothing limits the scope of "the Coronavirus response" in terms of funding, meaning the PRAC may oversee government actions regardless of whether those actions involve "covered funds." The PRAC's "Coronavirus response" oversight thus includes many other programs.

### ***PRAC reporting***

The PRAC's reporting requirements are very general. The CARES Act requires the PRAC to submit to Congress and the President "management alerts on potential management, risk, and funding problems that require immediate attention," *id.* [§ 15010\(d\)\(2\)\(A\)\(i\)](#), and to "submit to Congress such other reports or provide such periodic updates on the work of the Committee as

the Committee considers appropriate on the use of covered funds and the Coronavirus response,” *id.* [§ 15010\(d\)\(2\)\(A\)\(ii\)](#).

The PRAC also must make a biannual report to Congress and the President, but that report only requires the PRAC to “summarize the findings of the Committee.” *Id.* [§ 15010\(d\)\(2\)\(B\)\(i\)](#). The CARES Act provides no other specifics about the subject matter or details concerning the “findings” made and reported by the PRAC. In the biannual report, the PRAC must also “identify[] and quantify[] the impact of any tax expenditures or credits authorized under this Act to the extent practicable,” despite the absence of anything in the CARES Act specifically directing the PRAC to oversee or investigate tax matters. *Id.* [§ 15010\(d\)\(2\)\(B\)\(ii\)](#).

### ***Congressional Oversight Commission jurisdiction***

CARES Act § 4020 establishes the Congressional Oversight Commission, composed of five members of the House of Representatives and Senate. It indicates that the Commission is to “conduct oversight” of the implementation of “this subtitle” by the Department of the Treasury and the Board of Governors of the Federal Reserve System specifically, and to “review” the implementation of “this subtitle” by the Federal Government. [CARES Act § 4020\(b\)\(1\)\(A\), \(C\)](#). “[T]his subtitle” refers to Subtitle A, as discussed above. *Id.* [§ 4001](#). It is unclear why Congress included both subsection (b)(1)(A) and (b)(1)(C), because it appears that the former may be wholly included in the latter. But it may have been to stress a particular focus of the Commission. Nevertheless, Subsection (b)(1)(C) ostensibly encompasses the activities of any Federal Government actor that implements Subtitle A.

### ***Congressional Oversight Commission reporting***

CARES Act § 4020(b)(1)(B) provides that one of the duties of the Commission is to submit to Congress the report specified in the same section, addressing four enumerated topics. That is the only reporting required. The report is to be submitted every 30 days, starting within 30 days of “the first exercise by the Secretary and the Board of Governors of the Federal Reserve System of the authority under [CESA].” *Id.* [§ 4020\(b\)\(2\)\(B\)](#). The Commission’s reporting obligations have begun, and it filed its first report on May 18, 2020. Reports will accordingly be expected on the 18th day of each month.

### ***GAO jurisdiction***

The United States Government Accountability Office (GAO), through the Comptroller General, is assigned an expansive oversight role in Section 19010, which appears in Division B of the CARES Act.<sup>6</sup> Section 19010(b) provides,

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<sup>6</sup> Congress expressly authorized two GAO studies and one GAO report within three different sections of CARES Act Division A. See CARES Act §§ 3225 (Reauthorization of Healthy Start Program), 3814 (Extension and Expansion of Community Mental Health Services Demonstration Program), and 3851 (Regulation of Certain Nonprescription Drugs that are Marketed Without an Approved Drug Application). But those narrowly tailored studies and report relate to specific, non-economic-relief programs—two of which preexisted the CARES Act—and are different in

The Comptroller General shall conduct monitoring and oversight of the exercise of authorities, or the receipt, disbursement, and use of funds made available, under this Act or any other Act to prepare for, respond to, and recover from the Coronavirus 2019 pandemic and the effect of the pandemic on the health, economy, and public and private institutions of the United States, including public health and homeland security efforts by the Federal Government and the use of selected funds under this or any other Act related to the Coronavirus 2019 pandemic and a comprehensive audit and review of charges made to Federal contracts pursuant to authorities provided in the Coronavirus Aid, Relief, and Economic Security Act.

[CARES Act § 19010](#)(b). Disentangling this jurisdictional statement, it appears GAO has authority under the CARES Act to “conduct monitoring and oversight” of the following issues:

- i. The “exercise of authorities” under “this Act or any other Act to prepare for, respond to, and recover from the Coronavirus 2019 pandemic,” “including public health and homeland security efforts by the Federal Government and the use of selected funds under this or any other Act related to the Coronavirus 2019 pandemic”;
- ii. The “receipt, disbursement, and use of funds made available[] under this Act or any other Act to prepare for, respond to, and recover from the Coronavirus 2019 pandemic,” “including public health and homeland security efforts by the Federal Government and the use of selected funds under this or any other Act related to the Coronavirus 2019 pandemic.”

*Id.* It also appears GAO has the following authority under the CARES Act:

- iii. To conduct a “comprehensive audit and review of charges made to Federal contracts pursuant to authorities provided in the Coronavirus Aid, Relief, and Economic Security Act.”

*Id.*

As with other oversight entities addressed by the CARES Act, the key to understanding the contours of GAO’s CARES Act oversight jurisdiction lies in the language of two clauses: (1) “this Act or any other Act to prepare for, respond to, and recover from the Coronavirus 2019 pandemic,” and (2) “this or any other Act related to the Coronavirus 2019 pandemic.” Following Section 3’s definitional rule and the analysis applied with respect to other entities, the phrase “this Act” must be taken to mean Division B of the CARES Act because the reference appears in Division B. See [CARES Act § 3](#) (“Except as expressly provided otherwise, any reference to ‘this Act’ contained in any division of this Act shall be treated as referring only to the provisions of that division.”).

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kind than the new and broader CARES Act oversight authority that Congress granted GAO in Section 19010. The analysis in this section purports to analyze only the latter.



Under the guidance of Section 3, GAO’s oversight jurisdiction vis-à-vis the CARES Act thus appears to be limited to Division B of the CARES Act. But there is a legitimate possibility for ambiguity as to whether GAO has jurisdiction over any of the programs or provisions of Division A of the CARES Act by way of the residual clauses of Section 19010(b)—namely, “any other Act to prepare for, respond to, and recover from the Coronavirus 2019 pandemic” and “any other Act related to the Coronavirus 2019 pandemic.” In other words, the question is: Does Division A of the CARES Act, or any other act of Congress created therein, qualify as “any other Act” related to the Coronavirus 2019 pandemic?

To this question, SIGPR believes the answer is “no.” If Congress’s intention was to grant GAO jurisdiction over Division A through the phrase “any other Act,” after already granting it jurisdiction over Division B through the phrase “this Act,” then what Congress wanted to do was grant GAO jurisdiction over the entirety of the CARES Act. But if that were the case, it is hard to imagine why Congress would not simply state that GAO has jurisdiction over “the CARES Act,” rather than awkwardly attempting to stitch that jurisdiction together through a combination of the defined phrase “this Act” and the undefined phrase “any other Act.”<sup>7</sup> And had Congress intended to grant GAO jurisdiction over certain *subparts* of Division A in addition to Division B, it would have been much more straightforward and natural for Congress to identify those subparts—which it had before it to identify by name—rather than using the catchall phrase married with the defined phrase.

Plus, if “any other Act” captured Division A, it would be because that phrase captured all of the CARES Act. But if that were true, Congress’s use of “this Act” to cover Division B would be rendered surplusage because Division B would itself be captured by “any other Act.”

SIGPR therefore believes the best reading is that the “any other Act” catchall phrase is designed to capture other, non-CARES Act legislation responding to the coronavirus pandemic (legislation that, unlike the CARES Act, does not deploy multiple oversight mechanisms) and any future such legislation. If, however, Congress intended the residual “any other Act” clauses to implicitly grant GAO oversight authority over Division A, or some subparts of Division A, Congress may clarify that by amending the text of the CARES Act.

### **GAO reporting**

Under Section 19010(c), GAO has three separate reporting requirements: regular briefings, regularly published reports, and periodic supplemental reports. Specifically, Section 19010(c)(1) requires GAO to “offer regular briefings”—i.e., on a monthly basis or more

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<sup>7</sup> This accords with the legal analysis conducted by the Treasury Office of General Counsel (OGC) on a similar issue in a letter dated May 7, 2020 to the Treasury’s Office of Inspector General. There, OGC concluded, among other things, that “[a]s a matter of ordinary language and plain meaning, Division A is not itself an ‘act,’” and that “relying on the combination of the ‘this act’ and ‘other Act’ provisions would be a very strange way for Congress to” stitch together a reference to the entirety of the CARES Act. Letter from Department of the Treasury Office of General Counsel to Department of the Treasury Office of the Inspector General, at 4 (May 7, 2020).

frequently—“to the appropriate congressional committees regarding Federal public health and homeland security efforts.” The “appropriate congressional committees” include:

- The Senate Appropriations Committee;
- The Senate Homeland Security and Governmental Affairs Committee;
- The House Appropriations Committee;
- The House Homeland Security Committee;
- The House Oversight and Reform Committee; and
- The House Energy and Commerce Committee.

[CARES Act § 19010](#)(a)(1). These briefings must be provided from the “date of enactment of this Act” to “the date on which the national emergency declared by the President under the National Emergencies Act” with respect to COVID-19 expires.

Under Section 19010(c)(2), GAO is required to publish reports on GAO’s “ongoing monitoring and oversight efforts,” which shall be submitted to the “appropriate congressional committees” and posted to GAO’s website. The reports are to be submitted and published “along with any audits and investigations conducted” by GAO. These reports are to be submitted and published monthly, starting 90 days after “enactment of this Act” and ending one year after “enactment of this Act”; the reports are then to be submitted and published “on a periodic basis.” *Id.* [§ 19010](#)(c)(2)(A), (B).

Finally, Section 19010(c)(3) requires GAO to “submit to the appropriate congressional committees additional reports as warranted by the findings of the monitoring and oversight activities of the Comptroller General.”

### SIGPR in Context: CARES Act Division A Programs

| Name of Program  | Section | Brief Summary  | Implementing Authority  |
|--|---------|--|---|
| <b>Title I, the Keeping American Workers Paid and Employed Act</b> |         |  |   |
| Paycheck Protection Program (PPP)                                  | 1102    | Provides forgivable small business loans to cover payroll and other costs. Borrowers must have 500 or fewer employees or otherwise meet the SBA's size standard for the industry in which the entity operates. | Amends Section 7(a) of the Small Business Act (15 U.S.C. 636(a)). Provides the authority for the Administrator of the U.S. <b>SBA</b> to guarantee loans under the Paycheck Protection Program. |
| Entrepreneurial Development  | 1103    | Authorizes SBA to provide additional financial awards to resource partners to provide counseling, training, and education on SBA resources.  | Administered and developed by <b>SBA</b> .  |

| Name of Program  | Section | Brief Summary   | Implementing Authority   |
|--|---------|---|--|
| State Trade Expansion Program (STEP)   | 1104    | Authorizes reimbursement of any recipient of assistance under section 22(l) of the Small Business Act (15 U.S.C. 649(l)) for financial losses relating to a foreign trade mission or a trade show exhibition that was cancelled solely due to the coronavirus public health emergency.  | Under Sec. 1104(b), the <b>SBA</b> Administrator shall authorize and manage reimbursements.  |
| Waiver of Matching Funds Requirement under the Women's Business Center Program | 1105    | Eliminates the non-federal match requirement for Women's Business Centers (WBC) for a period of three months.   | Administered by <b>SBA</b> . Waives section 29(c)(1) of the Small Business Act (15 U.S.C. 656(c)(1)).  |
| Minority Business Development Agency   | 1108    | Authorizes \$10 million for the Minority Business Development Agency within the Department of Commerce to provide grants to Minority Business Centers and Minority Chambers of Commerce for the purpose of providing counseling, training, and education on federal resources and business response to COVID-19 for small businesses. | Eliminates the <b>SBA</b> Minority Business Center program's non-federal match requirement for a period of three months and allows for centers to waive fee-for-service requirements through September 2021. |
| Emergency Economic Injury Disaster Loans (EIDL)                                | 1110    | Provides emergency loans and grants.  | Administered by the SBA.   |
| Small Business Debt Relief Program   | 1112    | Provides immediate relief to small businesses with non-disaster SBA loans (7(a), 504, and microloans).  | Requires <b>SBA</b> to pay principal, interest, and fees on certain SBA loans for a period of six months.  |
| <b>Title II, Assistance for American Workers, Families, and Businesses</b>     |         |   |  |
| Pandemic Unemployment Assistance Program (PUA)                                 | 2102    | Provides workers who are unemployed due to Covid-19 with up to 39 weeks of unemployment benefits.   | The <b>Department of Labor</b> shall establish a process for making assistance under this section available for weeks beginning on or after January 27, 2020, and before the date of enactment of this Act.  |

| Name of Program  | Section | Brief Summary   | Implementing Authority   |
|--|---------|---|--|
| Temporary Financing of Short-Time Compensation Payments  | 2108    | This program provides funding to support “short-time compensation” programs, where employers reduce employee hours instead of laying off workers and the employees with reduced hours receive a pro-rated unemployment benefit. This provision would pay 100 percent of the costs they incur in providing this short-time compensation through December 31, 2020.   | Payments made to a State shall be payable by way of reimbursement in such amounts as the <b>Department of Labor</b> estimates the State will be entitled to receive.                     |
| <b>Title III, Supporting America's Health Care System in the Fight Against the Coronavirus</b>   |         |   |  |
| Telehealth network and telehealth resource centers grant programs  | 3212    | Authorizes Health Resources and Services Administration (HRSA) grant programs that promote the use of telehealth technologies for health care delivery, education, and health information services. Telehealth offers flexibility for patients with, or at risk of contracting, COVID-19 to access screening or monitoring care while avoiding exposure to others.  | Amends Section 330I of the Public Health Service Act (42 U.S.C. 254c–14), which authorizes Health Resources and Services Administration (HRSA) grant programs as managed by <b>HHS</b> . |
| Rural health care services outreach, rural health network development, and small health care provider quality improvement grant programs | 3213    | Authorizes HRSA grant programs to strengthen rural community health by focusing on quality improvement, increasing health care access, coordination of care, and integration of services. Rural residents are disproportionately older and more likely to have a chronic disease, which could increase their risk for more severe illness if they contract COVID19. | Amends Section 330A of the Public Health Service Act (42 U.S.C. 254c), which authorizes HRSA grant programs for rural communities as managed by <b>HHS</b> .                             |
| Reauthorization of Healthy Start program   | 3225    | This program provides grants to improve access to services for women and families who need additional support during the COVID-19 emergency.  | Amends Section 330H of the Public Health Service Act (42 U.S.C. 254c–8), which manages allocation of Healthy Start program grants by the HRSA as managed by <b>HHS</b> .                 |

| Name of Program  | Section | Brief Summary   | Implementing Authority  |
|--|---------|---|---|
| Importance of the Blood Supply                                       | 3226    | Program to improve awareness of the importance and safety of blood donation and the continued need for blood donations during the COVID-19 public health emergency.   | Directs the Secretary of <b>HHS</b> to carry out this initiative.   |
| Nursing workforce development  | 3404    | Updates Title VIII of the PHSA which pertains to nurse workforce training programs, which pertains to programs to support clinician training and faculty development, including the training of practitioners in family medicine, general internal medicine, geriatrics, pediatrics, and other medical specialties. | Amends Title VIII of the Public Health Service Act (42 U.S.C. 296 et seq.) and pertains to workforce training programs managed by <b>HHS</b> .                    |
| HBCU Capital Financing Program                                       | 3512    | Loan payment deferral for Historically Black Colleges and Universities (HBCUs) during the national emergency period so HBCUs can devote financial resources to COVID-19 efforts.  | Authorizes the <b>Secretary of Education</b> to defer payments on current HBCU Capital Financing loans.   |
| Extension of Funding Outreach and Assistance for Low-Income Programs | 3803    | Extends funding for beneficiary outreach and counseling related to low-income programs through November 30 <sup>th</sup> , 2020.  | Takes effect as if included in the enactment of Title II of the Further Consolidated Appropriations Act, 2020 (Public Law 116–94), which pertains to <b>HHS</b> . |
| Extension of Money Follows the Person Demonstration Program          | 3811    | Extends the Medicaid Money Follows the Person demonstration program that helps patients transition from the nursing home to the home setting through November 30, 2020.   | Amends Section 6071(h) of the Deficit Reduction Act of 2005 (42 U.S.C. 1396a note), which directs <b>HHS</b> to manage the programs.                              |



| Name of Program  | Section | Brief Summary  | Implementing Authority   |
|--|---------|--|--|
| Extension of sexual risk avoidance education program   | 3821    | This section extends the Sexual Risk Avoidance Education (SRAE) program through November 30, 2020 at current funding levels.   | Amends Section 510 of the Social Security Act (42 U.S.C. 710) and extends Sexual Risk Avoidance Education programming managed by <b>HHS</b> .            |
| Extension of personal responsibility education program   | 3822    | This section extends the Personal Responsibility Education Program (PREP) through November 30, 2020 at current funding levels. PREP provides states, community groups, tribes, and tribal organizations with grants to implement evidence-based, or evidence informed, innovative strategies for teen pregnancy and HIV/STD prevention, youth development, and adulthood preparation for young people. | Amends Section 513 of the Social Security Act (42 U.S.C. 713) and extends Personal Responsibility Education Program which is managed by <b>HHS</b> .     |
| Extension of the Temporary Assistance for Needy Families Program (TANF) and Related Programs                                     | 3824    | Activities authorized by part A of title IV and section 1108(b) of the Social Security Act shall continue through November 30, 2020, in the manner authorized for fiscal year 2019, and out of any money in the Treasury of the United States not otherwise appropriated, there are hereby appropriated such sums as may be necessary for such purpose.  | Extends activities authorized by part A of title IV and section 1108(b) of the Social Security Act and the TANF program which is managed by <b>HHS</b> . |
| Extension for community health centers, the National Health Service Corps, and teaching health centers that operate GME programs | 3831    | Extends mandatory funding for community health centers, the National Health Service Corps, and the Teaching Health Center Graduate Medical Education Program at current levels through November 30, 2020.  | Authorized under sections 330 through 340 of the Public Health Service Act (42 U.S.C. 254 through 256), which is managed by <b>HHS</b> .                 |
| Extension of Diabetes programs   | 3832    | Extends mandatory funding for the Special Diabetes Program for Type I Diabetes and the Special Diabetes Program for Indians at current levels through November 30, 2020.   | Amends Section 330B (b)(2)(D) of the Public Health Service Act (42 U.S.C. 254c-2(b)(2)(D)), which is managed by <b>HHS</b> .                             |

| Name of Program  | Section | Brief Summary   | Implementing Authority   |
|--|---------|---|--|
| <b><i>Title IV, Economic Stabilization and Assistance to Severely Distressed Sectors of US Economy</i></b> |         |   |  |
| <b>Subtitle A</b>  |         |   |  |
| Air Carrier Loan Program and Federal Reserve Funding (Exchange Stabilization Fund)                         | 4003    | Allocates \$500 billion to Treasury's Exchange Stabilization Fund. Up to \$46 billion is reserved for loans and loan guarantees to passenger air carriers and certain related businesses, cargo air carriers, and businesses critical to maintaining national security. \$454 billion is reserved to make loans and loan guarantees to, and other investments in, Federal Reserve liquidity facilities. | Under this section, the <b>Department of the Treasury</b> may enter into agreements to make loans or loan guarantees and may make investments into the Federal Reserve's facilities. |
| Suspension of Certain Aviation Excise Taxes  | 4007    | Excise tax holiday for commercial aviation during the pandemic. Excise taxes are applied to the transportation of persons (i.e., ticket tax), the transportation of property (i.e., cargo tax), and aviation fuel.  | No tax shall be imposed under section 4261 or 4271 of the Internal Revenue Code.   |
| Debt Guarantee Authority   | 4008    | Allows FDIC to insure temporarily non-interest-bearing transaction accounts and allows the National Credit Union Administration to temporarily increase share insurance coverage for noninterest-bearing transaction accounts.  | Authorizes the <b>FDIC</b> to temporarily establish a debt guarantee program to guarantee debt of solvent insured depositories and depository institution holding companies.         |
| Non-Applicability of Restrictions on ESF During National Emergency   | 4015    | Temporarily suspends the statutory limitation on the use of the Exchange Stabilization Fund for guarantee programs for the United States money market mutual fund industry. Any guarantee shall be limited to the total value of a shareholder's holdings in a participating fund as of the close of business on the day before the announcement of the guarantee.                                      | Directs appropriation of any funds that are used for the <b>Treasury</b> Money Market Funds Guaranty Program for the United States money market mutual fund industry.                |

| Name of Program                                 | Section | Brief Summary   | Implementing Authority  |
|---|---------|---|---|
| Special Inspector General for Pandemic Recovery | 4018    | SIGPR shall conduct, supervise and coordinate audits and investigations of the making, purchase, management, and sale of loans, loan guarantees, and other investments made by the Secretary of the Treasury under any program established by the Secretary under this act.   | The Special Inspector General for Pandemic Recovery shall be appointed by the President and shall conduct, supervise, and coordinate audits and investigations of the making, purchase, management, and sale of loans, loan guarantees, and other investments made by the Treasury Secretary.   |
| Temporary Moratorium on Eviction Filings        | 4024    | For 120 days beginning on the date of enactment, landlords are prohibited from initiating legal action to recover possession of a rental unit or to charge fees, penalties, or other charges to the tenant related to such nonpayment of rent where the landlord's mortgage on that property is insured, guaranteed, supplemented, protected, or assisted in any way by HUD, Fannie Mae, Freddie Mac, the rural housing voucher program, or the Violence Against Women Act of 1994. | Covers housing program (as defined in section 41411(a) of the Violence Against Women Act of 1994 (34 U.S.C. 12491(a))); or the rural housing voucher program under section 542 of the Housing Act of 1949 (42 U.S.C. 1490r) or has a Federally backed mortgage loan; or Federally backed multifamily mortgage loan as managed by <b>HUD</b> . |
| <b>Subtitle B</b>                               |         |   |   |
| Payroll Support Program (PSP)                   | 4113    | Provides financial assistance for the exclusive use of employee wages, salaries, and benefits in the amounts of up to \$25 billion for passenger air carriers, up to \$4 billion for cargo air carriers, and up to \$3 billion for airline contractors. Provides for \$100 million for administrative fees associated with providing the financial assistance.  | Financial assistance provided to an air carrier or contractor under this subtitle shall be in such form, on such terms and conditions as the <b>Treasury</b> determines appropriate.  |

| Name of Program   | Section | Brief Summary   | Implementing Authority   |
|---|---------|---|--|
| <b>Title V, Coronavirus Relief Funds</b>                          |         |   |  |
| Coronavirus Relief Fund   | 5001    | Provides \$150 billion to States, Territories, local governments, and Tribal governments to use for expenditures incurred due to COVID-19.                                      | Amounts appropriated for fiscal year 2020 under section 601(a)(1) of the Social Security Act shall be subject to the requirements contained in Public Law 116–94 as managed by the <b>Treasury</b> . |
| <b>Title VI, Miscellaneous Provisions</b>                         |         |   |  |
| COVID-19 Borrowing Authority for the United States Postal Service | 6001    | Provides \$10 billion of borrowing authority for the USPS to respond to the effects of the pandemic while preserving authority of the Treasury to set up the terms of the loan. | The Secretary of the Treasury may lend up \$10 billion at the request of the <b>Postal Service</b> , upon terms and conditions mutually agreed upon by the Secretary and the Postal Service.         |

## SIGPR Mission and Core Values

The role and mission of the Office of the Special Inspector General for Pandemic Recovery (SIGPR) is to safeguard the people’s tax dollars appropriated by Congress through the CARES Act. SIGPR strives to ensure that the American taxpayer gets the best return on investment by efficiently rooting out fraud, waste, and abuse. The importance of this mission in our Nation’s history and to our Nation’s economic health and recovery cannot be overstated. Congress is spending trillions of dollars to address our economic crisis, and SIGPR is a key part of making sure that those dollars are used for their proper purpose: restoring our robust economy and sustaining every American during these challenging times. Every dollar lost to fraud or abuse is a dollar that deserving American families and businesses need.

Fidelity to our Constitution and the laws of our great Nation is a core SIGPR value. The mission of the office is not to correct every wrong or solve every problem. Instead, through a specific statutory mandate, SIGPR serves the people of the United States, who not only send their hard-earned money to the Federal Government as taxpayers but, most importantly, also govern our Nation through their democratically elected representatives. These elected representatives and the President of the United States are directly accountable to the people of the United States. Government must be by the consent of the governed. Consequently, all government officials must be careful to exercise only the authority ultimately given by the consent of the governed and remember that what they do is on the behalf of the American taxpayers.

In carrying out its mission, SIGPR’s goal is to treat everyone with respect, to operate with the utmost integrity, and to be fair, objective, and independent.



# MANAGEMENT AND ADMINISTRATION



## Building an Office from the Ground Up: Staffing

On June 5, 2020, Brian Miller was sworn in as the Special Inspector General for Pandemic Recovery, becoming the office's first and only employee. He had no human resources officer, no contracting officer, no budget officer, and no information officer. Without his own human resources officer, standing up the office required assistance from staff at the Department of the Treasury who, from an organizational standpoint, did not report to IG Miller. Without a contracting officer, bringing on contractors was a challenge. Without a budget officer, projecting how resources would be allocated took far more time than it otherwise would have and slowed SIGPR's progress toward the priority of investigative factfinding. And without an information officer, planning for the use and security of information technology was a guessing game.

In an attempt to hit the ground running, IG Miller began recruiting an experienced senior leadership team upon his confirmation. The assistance that team could provide, however, was severely limited until their entry on duty. And regardless of how long that process might have taken in normal times, it was particularly slow during the pandemic, with key support functions running on limited hours and partial staffs largely working remotely.

As a result, IG Miller remained the sole SIGPR employee until July 6, 2020—more than 30 days after IG Miller's confirmation—when he was finally joined by his first two employees: Assistant Inspector General for Investigations Thomas Caulfield and Assistant Inspector General for Auditing Theodore Stehney. Both AIGI Caulfield and AIGA Stehney are reinstated retired career Senior Executive Service (SES) employees. Between IG Miller, AIGI Caulfield, and AIGA Stehney, SIGPR immediately boasted over a century of career Federal service.

The hiring process, which had kept SIGPR at one employee until less than 30 days before the office's first statutorily mandated report to Congress, was extremely cumbersome. As an example of the difficulties encountered, resumes for both AIGI Caulfield and AIGA Stehney were presented to Treasury Human Resources on June 3, 2020. Yet a month later, on July 2, 2020, IG Miller was notified by Treasury Human Resources that neither individual could be hired by July 6, 2020, the individuals' intended start date. Over the July 4<sup>th</sup> holiday weekend, however, senior officials at the Office of Personnel Management expedited the necessary paperwork, allowing AIGI Caulfield and AIGA Stehney to enter on duty on July 6, 2020. Despite the fact that it took over a month to reinstate two SES employees, and only after the last-minute assistance of senior OPM officials, SIGPR was informed that the hiring of AIGI Caulfield and AIGA Stehney was extremely fast under the circumstances.

The hiring of other senior staff did not go as quickly as for the AIGI and AIGA. Although IG Miller submitted to Treasury Human Resources resumes for the Assistant Inspector General for Data Analysis, Deconfliction, Integration, and Whistleblower Protection Coordinator (a former Inspector General); the Chief of Staff; and the Chief Counsel on June 3, 2020, they did not enter on duty until mid-July. Other key officials remain suspended in the pipeline. And even the Assistant Inspector General for Administration, who was simply transferred from another Office of Inspector General, had to wait weeks to begin.



To “expedite” hiring, Treasury suggested detailing an HR specialist to SIGPR. But after serving with SIGPR for just eight days, the detailee took two weeks of leave before then terminating the detail—leaving the office with no dedicated HR specialist. As a result, the processing of potential detailees and other new hires was significantly delayed.

Notably, one individual who wanted to transfer from another agency’s Office of Inspector General to SIGPR became frustrated by the HR process and Treasury’s HR vendor and, as a result, ultimately chose not to join SIGPR. Still others were dissuaded by the lengthy delays in getting hired and therefore accepted other employment opportunities. Each hiring setback further impeded SIGPR’s ability to fully operationalize and initiate the important work of investigating fraud, waste, and abuse under the CARES Act.

Among other rippling effects on SIGPR’s ability to stand up the organization, the office has been unable to advertise for or hire the services of a Contracting Officer. A Contracting Officer is the gate keeper to contracting, with authority from the Federal Government to enter into contracts on behalf of their organization.

Without a Contracting Officer, SIGPR is unable to enter into contracts, unable to procure the goods and services necessary to establish and operate the organization, and, most importantly, unable to acquire the services of experts and consultants that are vital to meeting the office’s statutory mission. To put it graphically, SIGPR cannot even produce a color copy of this report—because the office would need a Contracting Officer to purchase color printers and color copiers—let alone procure basic law-enforcement equipment or badges and credentials with the proper security features for its Special Agents.

Even for those who are ultimately hired, there remains a lengthy and disjointed onboarding process. This includes awaiting clearance from the Office of Security Personnel, asset provisioning, and issuance of a Personal Identity Verification (PIV) card, among other things. Even for the individuals on detail from other Federal agencies, the provisioning and clearance processes remain incomplete.

Without flexible hiring authority, SIGPR will continue to work through the cumbersome Federal hiring process at the expense of more meaningful oversight.<sup>8</sup> Despite the present obstacles, IG Miller has hired an experienced senior leadership team and is now in the process of hiring additional staff.

### **Building an Office from the Ground Up: Office Space**

The Department of the Treasury provided IG Miller with an office in the Main Treasury building. SIGPR, however, had to locate and lease additional space for staff. In the absence of such additional space, simply planning a meeting at which the new SIGPR employees and leadership could physically meet each other (many for the first time) took significant time and effort. An

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<sup>8</sup> As noted in the Recommendations to Congress, *see infra*, SIGPR recommends Congress pass S.3751, a bill introduced by Senator Grassley to provide SIGPR greater hiring flexibility.

initial leadership meeting ultimately took place in a conference room of the United States Attorney's Office in Alexandria, Virginia.

After reviewing many potential sites, SIGPR obtained a sublease from the Patent and Trademark Office (PTO) in Alexandria, Virginia. The PTO has proven to be an effective partner with SIGPR, offering interim space to meet immediate and long-term workspace needs in concert with the General Services Administration.

### **Building an Office from the Ground Up: Budgetary Constraints**

Congress appropriated \$25 million to SIGPR, which will remain available until expended. See CARES Act § 4018(g)(1). The volume and sensitivity of data to be analyzed within the scope of SIGPR's statutory responsibility, however, is substantial. Data analytics will therefore be key to enabling SIGPR to conduct audits and analysis thoroughly and appropriately. Yet a robust data-analytics capability will cost more than can be allocated from the initial \$25 million budget. The start-up costs for a sufficiently robust IT infrastructure are estimated at \$32 to \$46 million over five years, with those costs front-loaded. Accordingly, SIGPR will require a supplemental appropriation to enable it to conduct robust data analytics.



# SIGPR OFFICES AND ACTIVITIES

## SIGPR Offices

### *Audits*

The SIGPR Office of Audits has the mission to conduct audits of loans, loan guarantees, and other investments made by Treasury under any program established by Treasury under Division A of the CARES Act and to perform audits of the management by Treasury of programs established under Division A of the CARES Act. The SIGPR Office of Audits will operate under the authorities and responsibilities of the Inspector General Act of 1978. See CARES Act § 4018(c)(3). These duties include making recommendations to agency leadership to promote economy and efficiency in agency administration, prevent and detect fraud and abuse, and facilitate the identification and prosecution of participants in fraud or abuse. Audits, reviews, and other services will be performed in accordance with the Generally Accepted Government Auditing Standards (GAGAS) and the Council of Inspector General on Integrity and Efficiency (CIGIE) Quality Standards for Inspection and Evaluation as appropriate.<sup>9</sup> The Office of Audits will work in close partnership with the other members of the SIGPR team, the Pandemic Response Accountability Committee (PRAC), other Offices of Inspector General, and other entities of the Federal Government as necessary to meet its statutory mission.

The Office of Audits is currently staffed with an Assistant Inspector General for Auditing (AIGA), who started on July 5, 2020. The Treasury Department is currently in the process of developing and certifying position descriptions for the Office of Audits, the initial step in staffing up the organization. Once these position descriptions are certified, the Office of Audits will initiate an extensive recruitment process to build a diverse organization staffed with auditors and management analysts.

The Office of Audits will begin the process of developing an Audit Plan to identify projects that represent the highest priorities for assessing the relevant financial-assistance programs and any other programs established under Division A of the CARES Act that are managed by Treasury.

The Office of Audits will also begin the process of developing the operational policies and procedures as required under GAGAS, CIGIE, and other professional standards necessary to operate a fully functioning office of audits.

### *Investigations*

The SIGPR Office of Investigation (OI) has the mission to be both proactive and reactive in the prevention, detection, and investigation of fraud or corruption involving CARES Act funds and programs within SIGPR's jurisdiction. The OI is currently staffed with an Assistant Inspector General for Investigation (AIGI), who started on July 5, 2020. There is, however, extensive ongoing recruitment to build a diverse OI of Special Agents (SAs) and Investigative Analysts (IAs). Once staffed, the OI will work in close partnership with the other members of SIGPR,

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<sup>9</sup> Quality Standards for Inspection and Evaluation, Council of the Inspectors General on Integrity and Efficiency (2012), available at <https://www.ignet.gov/sites/default/files/files/iestds12.pdf>.

thereby leveraging a broad array of expertise and perspective in developing and working even the most sophisticated investigations.

The CARES Act incorporates the traditional law-enforcement powers for SAs contained in Section 6 of the Inspector General Act of 1978 (the “IG Act” or “Section 6”), specifically the authority to carry firearms, make arrests, and execute warrants. SIGPR SAs are thus authorized to perform their duties with the same law-enforcement powers as SAs in the other major Offices of Inspector General. But in doing so, SIGPR SAs must comply with other major provisions of Section 6. Most importantly, they will conduct themselves and their investigations in accordance with the Attorney General Guidelines for Office of Inspector General with Statutory Law Enforcement Authority.<sup>10</sup>

While the OI will, of course, pursue any wrongdoers within SIGPR’s jurisdiction, the OI will be focusing much of its early efforts on any potential fraudulent or corrupt activity related to the making, purchasing, managing, and/or sale of loans, loan guarantees, and other investments made by the Secretary of the Treasury under any program established by the Secretary under Division A of the CARES Act.

Initially, the OI will concentrate on those funds identified within Division A, Title IV, Subtitle A (Coronavirus Economic Stabilization Act of 2020), which principally provides \$500 billion to the Department of the Treasury’s Exchange Stabilization Fund. These funds roughly include up to \$46 billion for emergency relief to distressed industries—including airlines, businesses important to maintaining national security, and other eligible businesses—with the remaining \$454 billion to be used to capitalize a menu of Federal Reserve lending and liquidity facilities designed to support eligible businesses, states and municipalities, and critical financial markets. Those who make intentional, material misrepresentations regarding any Subtitle A application process or in their financial reporting to Treasury may be in violation of several criminal statutes, including securities fraud, wire fraud, mail fraud, and false statements. The OI intends to investigate these potential crimes vigorously.

In the interests of maximizing criminal and civil enforcement, the OI has and will continue to coordinate closely with other law-enforcement agencies with the goal of forming law-enforcement partnerships, including task-force relationships, across the federal government to leverage SIGPR’s expertise and unique position. The OI is currently a member of the CARES Act Department of Justice COVID-19 Working Group, the Federal Bureau of Investigation (FBI) COVID-19 Working Group, the CIGIE Financial Oversight AIGI Working Group, and various federal OIG Investigation COVID-19 working groups.

The OI has obtained formal commitments from the U.S. Attorney’s Offices in the Eastern District of Virginia and the District of Massachusetts, the FBI Economic Crime Unit, and several of the CIGIE Offices of Inspector General to work in partnership with the OI to investigate any

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<sup>10</sup> Attorney General Guidelines for Offices of Inspector General with Statutory Law Enforcement Authority, Office of the Attorney General (Dec. 8, 2003), *available at* <https://www.ignet.gov/sites/default/files/files/QAR%20INV%20AG%20Guidelines%20Statutory%20Law%20Enforcement%202003%20Appendix%20F.pdf>.

allegation of fraud or corruption related to CARES Act funds. Over the next several months, the OI will be building more partnerships with other law-enforcement personnel, U.S. Attorney's Offices, and oversight entities, not only at the federal level, but also the state and local levels.

With regard to reporting potential misconduct, the OI will take the lead in responding to referrals made to SIGPR's Hotline through telephone, e-mail, website, and in-person complaints, abiding by all applicable whistleblower protections set forth in the Inspector General Act of 1978, as amended.

Through the OI's own investigative resources and through partnerships with relevant law-enforcement agencies and oversight bodies, OI personnel—along with the entire SIGPR team—are committed to robust criminal- and civil-enforcement efforts against those, whether inside or outside of government, who are involved in fraud or corruption relating to CARES Act funds.

In the OI's short time of existence, it has initiated twelve preliminary inquiries—seven of which are proactive and related to Title IV loan applications, five of which are reactive to information provided by concerned individuals (one related to a state's unemployment benefits, three related to business loans, and one related to identity theft) all of which will be worked with the appropriate jurisdiction.

In coordination with the Office of Data Analysis, Deconfliction, Integration, and Whistleblower Protection, the OI has established a telephonic Hotline (**202-927-7899**) for whistleblowers and reports of fraud, waste, and abuse. The two offices are in the process of establishing a Hotline and Whistleblower reporting mechanism through a SIGPR dedicated website thereby ensuring easy and quick notifications to the OI of concerns from citizens. With these tools in place, the OI anticipates a significant influx of inquiries and investigations.

### ***Data Analysis, Deconfliction, Integration, and Whistleblower Protection***

IG Miller recognized an important function for SIGPR leadership to provide is deconfliction among the many external oversight bodies covered under the CARES Act, as suggested in the jurisdictional analysis above. The Data Analysis, Deconfliction, Integration, and Whistleblower Protection (DADI) office is managed by an Assistant Inspector General—a retired Inspector General from state/local government—who started on July 16, 2020.

This office has the responsibility to ensure that all relevant activities under Division A of the CARES Act are monitored, tracked, and analyzed, as well as to identify potential allegations of misconduct and make recommendations. This responsibility also includes deconfliction between SIGPR and other oversight bodies, including the PRAC, the Congressional Oversight Commission, and GAO, to ensure efficiency and avoid duplication of effort. In addition, this office is also responsible for special projects, Congressional coordination, and conducting evaluations in accordance with professional standards.

This office will issue management alerts and other time-sensitive reports that capture systemic and urgent issues; utilize data analytics and data-mining capabilities to identify CARES Act funding trends and anomalies; and deliver prompt, actionable reports to support SIGPR's actions before its stakeholders. Additionally, the AIG for DADI serves as the Whistleblower



Protection coordinator to meet the requirements under Section 116(b) of the Whistleblower Protection Enhancement Act of 2012, including educational briefings for senior officials.

This office will work closely with the Special IG and other office leadership to seek remedies where fraud, abuse, and misconduct are substantiated; to develop and organize risk analyses or studies of patterns and practices; and to make recommendations to improve overall CARES Act operations. As stated above, the DADI office will consult with the OI—which is responsible for managing the SIGPR Hotline—on the telephonic Hotline (**202-927-7899**) for whistleblowers and reports of fraud, waste, and abuse.

### Building Partnerships

Upon confirmation, IG Miller immediately reached out to other organizations involved in overseeing the CARES Act as well as other law-enforcement agencies that can help SIGPR provide effective oversight. Among other things, SIGPR has entered into formal agreements with multiple Offices of the United States Attorney.<sup>11</sup> SIGPR is also coordinating with other Federal agencies, such as the Financial Crimes Enforcement Network (FinCEN) and the Securities Exchange Commission and has been in touch with law firms and consulting firms regarding data analytics.

Additionally, to raise awareness and facilitate productive relationships, IG Miller has been a featured speaker to working groups of the FBI, working groups of the Executive Office of United States Attorneys, and the White Collar Chiefs of United States Attorney's Offices. IG Miller is also actively coordinating with the relevant components of the United States Department of Justice and has reached out to several Offices of Inspector General and the Comptroller General. Notably, IG Miller was a featured speaker at GAO's National Intergovernmental Audit Forum's biennial conference, which had auditors from state and local governments as well. As of the time of the preparation of this report, the Biennial Conference expected over 3,600 attendees.

As a member of the PRAC, IG Miller participates in the PRAC's work and coordinates closely with its other members. In fact, IG Miller is a featured speaker at the August 4, 2020 PRAC meeting. IG Miller has also spoken with the PRAC's acting Chair, Michael Horowitz. SIGPR also participates in the CIGIE.

Importantly, other members of SIGPR senior leadership have begun outreach, too. For example, the AIGA has arranged to coordinate with GAO and is a member of CIGIE's Federal Audit Executive Counsel. The AIGI is currently a member of the DOJ COVID-19 Working Group, the FBI COVID-19 Working Group, the PRAC Law Enforcement Coordination Committee, the Council of Inspectors General for Financial Oversight AIGI Working Group, and the CIGE AIGI COVID-19 Sub-Committee. And the AIG for Data Analysis, Deconfliction, Integration, and Whistleblower Protection Coordinator is a member of CIGIE's Inspection and Evaluation

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<sup>11</sup> See, e.g., Press Release, U.S. Attorney Announces MOU with Special Inspector General for Pandemic Recovery, U.S. Dep't Justice (July 17, 2020), <https://www.justice.gov/usao-edva/pr/us-attorney-announces-mou-special-inspector-general-pandemic-recovery>.

Committee, PRAC's data analytics working group, CIGIE's Whistleblower Working Group, and the Data Analytics Working Group (DAWG).

Finally, SIGPR has received numerous briefings from Treasury officials, other Inspectors General, FinCEN, the PRAC, and CIGIE. IG Miller greatly appreciates the support and assistance of other Treasury Inspectors General, such as Russell George, Treasury Inspector General for Tax Administration; Rich Delmar, acting Treasury Inspector General; and Christy Goldsmith Romero, Special Inspector General for the Troubled Asset Relief Program. The SIGPR team also extends deep appreciation to the staffs of these offices for assisting the various SIGPR members at the working level. SIGPR's active efforts at building effective partnerships are designed to facilitate collaboration and effective investigations while ensuring deconfliction where possible and appropriate.



# SIGPR FINDINGS AND REPORTABLE DEVELOPMENTS AND ACTIVITIES

The CARES Act expressly requires SIGPR to include in its regular reports to Congress “a detailed statement of all loans, loan guarantees, other transactions, obligations, expenditures, and revenues associated with any program established by the Secretary under section 4003, as well as the information collected under subsection (c)(1).” CARES Act § 4018(f)(1)(B). Accordingly, below is an explanation of what SIGPR understands to be the categories of loans and other investments<sup>12</sup> made by the Secretary to date under CARES Act § 4003, including, where applicable and known, a summary listing of the loans and investments made under each category and program and the eligible businesses to whom loans were made. More detailed loan information and a brief explanation of the reasons the Secretary of the Treasury determined each loan to be appropriate are provided in the appendices.<sup>13</sup>

## Direct Loans

### Introduction

CARES Act § 4003(a) authorizes the Treasury “to make loans, loan guarantees, and other investments in support of eligible business, States, and municipalities that do not, in the aggregate, exceed \$500,000,000,000.” The CARES Act further categorizes these loans and investments into four areas. The first three, codified in § 4003(b)(1)–(3), provide loans and loan guarantees to passenger air carriers and related businesses (\$25 billion), cargo air carriers (\$4 billion), and businesses critical to maintaining national security (\$17 billion). The final area, codified in § 4003(b)(4), authorizes investment in the Federal Reserve’s various liquidity programs established under Section 13(3) of the Federal Reserve Act (\$454 billion).

On March 30, 2020, the Treasury first announced its guidelines for businesses interested in applying for loans under CARES Act § 4003(b).<sup>14</sup> Those guidelines incorporate a number of mandatory loan terms and conditions from the CARES Act, with many designed to protect the taxpayers’ contribution to the programs. Before making each loan, the Treasury must determine, or the borrower must agree, that:

- *Unavailable Credit Elsewhere.* Credit is not otherwise “reasonably available” for the borrower at the time of the loan, § 4003(c)(2)(A);
- *Prudent Borrowing.* The loan is being “prudently incurred” by the borrower, § 4003(c)(2)(B);
- *Sufficient Security or Rate.* The loan is “sufficiently secured” or “made at a rate” that both “reflects the risk of the loan” and, “to the extent practicable, not less than an

<sup>12</sup> The Treasury has not established a program for “loan guarantees” under CARES Act § 4003.

<sup>13</sup> Information described by CARES Act § 4018(c)(1)(D) will be included in SIGPR’s first quarterly report, to be published in September 2020.

<sup>14</sup> 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 Coronavirus Aid, Relief, and Economic Security Act, dated March 30, 2020, <https://home.treasury.gov/system/files/136/Procedures%20and%20Minimum%20Requirements%20for%20Loans.pdf>

interest rate based on market conditions for comparable obligations prevalent prior to the outbreak” of COVID-19, § 4003(c)(2)(C);

- *Term.* The term of the loan must be “as short as practicable and in any case not longer than 5 years,” § 4003(c)(2)(D);
- *No Purchases of Borrower’s Stock.* Until a date 12 months after the loan has been repaid, neither the borrower nor any affiliated person or business, may purchase the borrower’s (or any parent company’s) stock that is listed on a national securities exchange, unless required by a preexisting contractual obligation, § 4003(c)(2)(E);
- *No Dividends.* Until a date 12 months after the loan has been repaid, the borrower may not pay a dividend or other capital distribution on its common stock, § 4003(c)(2)(F);
- *Maintain Employment Levels.* The borrower, until September 30, 2020, “shall maintain its employment levels as of March 24, 2020, to the extent practicable, and in any case shall not reduce its employment levels by more than 10 percent of the levels on such date,” § 4003(c)(2)(G);
- *U.S. Business.* The borrower certifies “that it is created or organized in the United States or under the laws of the United States and has significant operations in and a majority of its employees based in the United States,” § 4003(c)(2)(H);
- *Covered Losses.* The borrower “must have incurred or is expected to incur covered losses such that the continued operations of the business are jeopardized, as determined by the Secretary,” § 4003(c)(2)(I);
- *Equity Interest or Senior Debt Provided to the Government.* The Treasury must “receive a warrant or equity interest” in the borrower if the borrower “has issued securities that are traded on a national securities exchange”; otherwise, the Treasury must “receive a warrant or equity interest” in the borrower or “a senior debt instrument” from the borrower. Issuance of the warrant, equity, or debt “shall be designed to provide for a reasonable participation by the Secretary, for the benefit of taxpayers, in equity appreciation in the case of a warrant or other equity interest, or a reasonable interest rate premium, in the case of a debt instrument,” § 4003(d)(1)–(2);
- *No Loan Forgiveness.* The principal amount of any loan cannot be reduced through loan forgiveness, § 4003(d)(3);
- *Limitation on Employee Compensation.* CARES Act § 4004 requires borrowers to limit compensation for certain employees as follows:
  - No officer or employee of the borrower “whose total compensation exceeded \$425,000 in calendar year 2019,” may receive “total compensation which exceeds” the amount the officer or employee received in calendar year 2019, for a period beginning on the date the loan agreement was executed and ending one year after the loan is repaid.
  - No officer or employee of the borrower may receive “severance pay or other benefits upon termination of employment” with the borrower “which exceeds twice the maximum total compensation received by the officer or employee from the eligible business in calendar year 2019,” for a period beginning on

- the date the loan agreement was executed and ending one year after the loan is repaid.
- No officer or employee of the borrower “whose total compensation exceeded \$3,000,000 in calendar year 2019,” may receive “total compensation in excess of the sum of . . . \$3,000,000” and “50 percent of the excess over \$3,000,000 of the total compensation received by the officer or employee from the eligible business in calendar year 2019,” for a period beginning on the date the loan agreement was executed and ending one year after the loan is repaid.
- *Continuation of Air Service.* If a borrower is an air carrier, the borrower must maintain scheduled air services deemed necessary by the Secretary of Transportation to ensure service to any location served by the borrower before March 1, 2020, § 4005; and
- *Conflicts of Interest.* Direct loans, like all transactions described in CARES Act § 4003, may not be made to “covered entities” under the CARES Act’s conflict of interest provision in § 4019. The provision defines a “covered entity” as one where the President, Vice President, head of an Executive Department, member of Congress, or a certain family members holds 20% or more of any class of equity interest in the entity receiving the loan or involved in the § 4003 transaction.

### ***Air Carrier Loan Program (ALP)***

CARES Act § 4003(b)(1)–(2) allocates \$25 billion for loans and loan guarantees to passenger air carriers, aviation maintenance facilities certified under 14 C.F.R. Part 145, and air transportation ticket agents. An additional \$4 billion is allocated for cargo air carriers. While the Treasury has received loan applications for these programs, it has not yet executed any loan agreements. On July 2, 2020, however, the Treasury announced that it had signed letters of intent outlining basic loan terms with five major airlines: American Airlines, Frontier Airlines, Hawaiian Airlines, Sky West Airlines, and Spirit Airlines.<sup>15</sup> On July 7, 2020, the Treasury announced that Alaska Airlines, Delta Air Lines, JetBlue Airways, United Airlines, and Southwest Airlines have likewise signed letters of intent.<sup>16</sup>

In future reports, after Treasury has issued loans under Section 4003(b)(1)–(2), detail concerning loans issued under this authority will be provided in an appendix.

### ***Businesses Critical to National Security***

CARES Act § 4003(b)(3) allocates up to \$17 billion for loans and loan guarantees to “businesses critical to maintaining national security.” The CARES Act does not define the term “businesses critical to maintaining national security”; however, the Treasury established criteria for making this determination in its Frequently Asked Questions for the § 4003 loans on April 10, 2020:

<sup>15</sup> Treasury and Five Major Airlines Agree on Loan Terms, July 2, 2020, <https://home.treasury.gov/news/press-releases/sm1050>.

<sup>16</sup> Statement from Secretary Steven T. Mnuchin on CARES Act Loans to Major Airlines, July 7, 2020, <https://home.treasury.gov/news/press-releases/sm1054>.



A business critical to maintaining national security is one that, unless otherwise approved as set forth below, is at the time of the business's application:

- (1) performing under a "DX"-priority rated contract or order under the Defense Priorities and Allocations System regulations (15 C.F.R. part 700); or
- (2) operating under a valid top secret facility security clearance under the National Industrial Security Program regulations (32 C.F.R. part 2004).

Applicants that do not satisfy either of these two criteria may be considered for loans 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.<sup>17</sup>

The following table summarizes the § 4003(b)(3) loans to date. Further detail concerning the loans is provided in Appendix C.

| Recipient          | Loan Date | Maturity Date | Maximum Potential Principal Loan Amount | Interest and Fees Accrued as of July 24, 2020 |
|--------------------|-----------|---------------|---|---|
| YRC Worldwide, Inc | 7/8/2020  | 9/24/2024     | \$700,000,000                           | \$490, 000                                    |

## Other Investments Under Section 4003

### Introduction

CARES Act § 4004(b)(4) allocates \$454 billion for "loans and loan guarantees to, and other investments in, programs or facilities established by the Board of Governors of the Federal Reserve System for the purpose of providing liquidity to the financial system that supports lending to eligible business, States, or municipalities" by "purchasing obligations or other interests" directly from the issuer or through secondary markets, and "making loans, including loans or other advances secured by collateral."

The Federal Reserve has established several liquidity programs, described in detail below, using its emergency lending powers under Section 13(3) of the Federal Reserve Act, codified at 12 U.S.C. § 343(3). That provision, used extensively during the 2008 financial crises and amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1375, allows the Federal Reserve to lend money in "unusual and exigent circumstances" to participants in "any program or facility with broad-based eligibility" who are "unable to secure adequate credit accommodations from other banking institutions." The Federal Reserve,

<sup>17</sup> Q&A: Loans to Air Carriers and Eligible Businesses and National Security Businesses, Updated as of April 10, 2020, at 1, <https://home.treasury.gov/system/files/136/CARES-Airline-Loan-Support-Q-and-A-national-security.pdf>.

however, may not lend to insolvent entities, and its programs must be approved by the Secretary of the Treasury.

Thus far, the Treasury has committed \$195 billion (of the allocated \$454 billion) to support the Federal Reserve’s liquidity programs. The Treasury provides those funds to a limited liability company, referred to as a special purpose vehicle (SPV), formed and controlled by one of the individual Federal Reserve Banks to administer its assigned liquidity programs. The Federal Reserve Bank responsible for the given program then contributes additional Federal Reserve funds to the SPV to arrive at the total amount of funds available through the program to support market liquidity.

The Treasury’s contribution from the CARES Act is intended to protect the Federal Reserve from losses. When executing a given transaction through one of the liquidity programs, the Federal Reserve uses a “gearing ratio” to determine how much of the transaction will involve CARES Act funds versus Federal Reserve funds. For higher risk transactions, the Federal Reserve will use a lower ratio of Federal Reserve funds to CARES Act funds, thus reducing the Federal Reserve’s exposure to loss. The basic functioning of the Federal Reserve’s “gearing ratio” is explained in its responses to questions from the Congressional Oversight Commission, which are disclosed in that commission’s July 20, 2020 report.<sup>18</sup>

On its website, the Federal Reserve Board provides extensive information about its SPVs and programs, including very detailed terms and conditions for loans and other transactions. The Federal Reserve Board also provides detailed information about each transaction in spreadsheet form so that one can, for example, evaluate the individual loans made by the TALF program.<sup>19</sup> The Federal Reserve regularly updates this information and posts it under the “Policy Tools” section of its website.<sup>20</sup>

The following table summarizes Treasury’s investments in the SPVs to date.

| Recipient                         | Total Treasury Commitment | Gain/(Loss) |
|-----------------------------------|---------------------------|-------------|
| Corporate Credit Facilities, LLC  | \$75,000,000,000          | \$0         |
| Municipal Liquidity Facility, LLC | \$35,000,000,000          | \$0         |
| TALF II, LLC                      | \$10,000,000,000          | \$0         |
| MS Facilities, LLC                | \$75,000,000,000          | \$0         |

The following paragraphs describe the SPVs and the programs they administer.

<sup>18</sup> The Third Report of the Congressional Oversight Commission, July 20, 2020, at 3, [https://www.toomey.senate.gov/files/documents/Oversight%20Commission%20-%203rd%20Report%20\(FINAL\)\\_7.20.20.pdf](https://www.toomey.senate.gov/files/documents/Oversight%20Commission%20-%203rd%20Report%20(FINAL)_7.20.20.pdf).

<sup>19</sup> See TALF Transaction-specific Disclosures (XLSX), dated July 1, 2020, at <https://www.federalreserve.gov/publications/files/talf-transaction-specific-disclosures-7-10-20.xlsx>.

<sup>20</sup> Board of Governors of the Federal Reserve System website, Policy Tools, <https://www.federalreserve.gov/monetarypolicy/policytools.htm>.

### ***Corporate Credit Facilities, LLC***

Corporate Credit Facilities, LLC was formed by the Federal Reserve Bank of New York on April 31, 2020 to operate the Primary Market Corporate Credit Facility (PMCCF) and the Secondary Market Corporate Credit Facility (SMCCF). The Treasury has committed \$50 billion to support the PMCCF and \$25 billion to support the SMCCF. With additional funds from the Federal Reserve, the facilities can purchase up to \$750 billion in debt securities under these programs.

The PMCCF will purchase corporate bonds as the sole investor in a bond issuance. The facility may also purchase syndicated loans or bonds at issuance. The bonds and loans must have a maturity of four years or less, and the facility is limited to purchasing 25% of any syndicated loan or bond. To be eligible for the program, an issuer must have an investment-grade credit rating as of March 22, 2020. The facility will cease purchasing securities on December 31, 2020.<sup>21</sup> As of July 10, 2020, the PMCCF has made no transactions.

The SMCCF will purchase the following debt securities on the secondary market:

- Individual corporate bonds having a remaining maturity of five years or less that were issued by businesses with investment-grade credit ratings as of March 22, 2020;
- Corporate bond exchange-traded funds (ETFs) whose objective is to provide broad exposure to the U.S. corporate bond market, including exposure to both investment-grade and high-yield bonds; and
- Individual corporate bonds with remaining maturity of five years or less that would create a bond portfolio reflecting a broad market index of the U.S. corporate bond market.

The facility will cease purchasing securities on December 31, 2020.<sup>22</sup> Detailed transaction information for the SMCCF's purchases is available on the Federal Reserve's website.<sup>23</sup>

### ***Municipal Liquidity Facility, LLC***

Municipal Liquidity Facility, LLC was formed by the Federal Reserve Bank of New York on May 1, 2020 to operate the Municipal Liquidity Facility (MLF). The Treasury has committed \$35 billion to support this program. With additional funding from the Federal Reserve, the facility will have up to \$500 billion to support state and local governments and related entities.

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<sup>21</sup> See Terms Sheet, Primary Market Corporate Credit Facility, at <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200629a1.pdf> for additional details. See also Press Release, Board of Governors of the Federal Reserve System (July 28, 2020), <https://www.federalreserve.gov/newsevents/pressreleases/monetary20200728a.htm> (announcing “an extension through December 31 of [the] lending facilities that were scheduled to expire on or around September 30”).

<sup>22</sup> See Term Sheet, Secondary Market Corporate Credit Facility, at <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200615a1.pdf> for additional details.

<sup>23</sup> Board of Governors of the Federal Reserve System website, Policy Tools, Secondary Market Corporate Credit Facility, <https://www.federalreserve.gov/monetarypolicy/smccf.htm>.

The facility will purchase various revenue, tax, and bond anticipation notes issued by states, the District of Columbia, large cities and counties, multi-state entities, and revenue bond issuers. The notes must mature within three years of issuance, and the issuing entity generally must have an investment-grade credit rating at the time of issuance. Issuers must use the proceeds of the notes to alleviate cash flow problems resulting from reduced tax revenue, increased expenses, or similar financial problems related to the COVID-19 pandemic. The facility will cease purchasing notes on December 31, 2020.<sup>24</sup> Transaction-specific details for the MLF are available on the Federal Reserve's website and updated regularly.<sup>25</sup>

As of July 10, 2020, the Federal Reserve reported only one transaction for the MLF. On June 2, 2020, the MLF purchased a \$1.2 billion note from the State of Illinois. The note matures on June 5, 2021 and bears a rate of 3.82%.

### ***TALF II, LLC***

TALF II, LLC was formed by the Federal Reserve Bank of New York on April 13, 2020 to operate the Term Asset-Backed Securities Facility, or TALF. (The original TALF, LLC was established during the 2008 financial crisis). The Treasury has committed \$10 billion to support this program. With additional funding from the Federal Reserve, the facility will have up to \$100 billion to support TALF lending.

TALF, LLC will make three-year, nonrecourse loans to borrowers who issue asset-backed securities to serve as collateral for the loans. An asset-backed security is one composed of a pool of debt obligations. The security's value and performance depend on the value and performance of the underlying pool of debt. Asset-backed securities eligible to serve as collateral for a TALF loan include asset-backed securities based on auto loans and leases, student loans, credit card receivables, floorplan loans, commercial mortgages, collateralized loan obligations, and other common credit arrangements. TALF will accept as collateral only those asset-backed securities with the highest investment-grade rating.<sup>26</sup> TALF will cease purchasing securities on December 31, 2020. Transaction-specific details for the TALF are available on the Federal Reserve's website and updated regularly.<sup>27</sup>

### ***MS Facilities, LLC***

MS Facilities, LLC was formed by the Federal Reserve Bank of Boston on May 18, 2020 to operate the Federal Reserve's various Main Street Lending Programs (MSLP). Treasury has

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<sup>24</sup> See Term Sheet, Municipal Liquidity Facility, at <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200603a1.pdf> for additional details.

<sup>25</sup> Board of Governors of the Federal Reserve System website, Policy Tools, Municipal Liquidity Facility, at <https://www.federalreserve.gov/monetarypolicy/muni.htm>.

<sup>26</sup> See Term Sheet, Term Asset-Backed Securities Loan Facility, at <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200512a1.pdf> for additional details.

<sup>27</sup> Board of Governors of the Federal Reserve System website, Policy Tools, Term Asset-Backed Loan Facility, at <https://www.federalreserve.gov/monetarypolicy/talf.htm>.

committed \$75 billion to support the programs. With additional funds from the Federal Reserve, the Main Street Lending Program will support up to \$600 billion in lending.

The MSLP will support private lending to medium and small-sized businesses by purchasing 95% participations in loans that are made by private lenders and conform to the terms of an MSLP program. The private lender must retain a 5% participation in the loan. The loans may be secured or unsecured. The Federal Reserve Bank of Boston has published the following graphic showing the operation of the MSLP<sup>28</sup>:



MSLP will cease purchasing loan participations on December 31, 2020. Additional terms for each program apply as follows:

### Loans to for-profit businesses

The MSLP offers three loan programs to for-profit business: Main Street New Loan Facility (MSNLF), Main Street Priority Loan Facility (MSPLF), and Main Street Expanded Loan Facility (MSELF). Each program has the following basic terms:

<sup>28</sup> Federal Reserve Bank of Boston, The Federal Reserve's Main Street Lending Program, at <https://www.bostonfed.org/supervision-and-regulation/supervision/special-facilities/main-street-lending-program/main-street-lending-program-overview.aspx>

|                       |   |
|-----------------------|---|
| Loan Term             | 5 years   |
| Employees and Revenue | Either 15,000 or fewer employees, or 2019 revenue of \$5 billion or less  |
| Rate                  | Adjustable Rate of LIBOR (1 or 3 mo.) plus 3%                             |
| Interest Deferral     | Deferred for 1 year   |
| Principal Deferral    | Deferred for 2 years, 15% due in each of years 3 and 4, 70% due in year 5 |

The MSNLF and MSPLF differ in the size of loans available and in additional terms to compensate for the greater exposure to loss in the larger MSPLF loans. Both programs offer new loans, as opposed to refinancing old ones, which is the aim of the third facility discussed below. The MSNLF has a minimum loan amount of \$250,000. The maximum is the lesser of \$35 million or an amount that would not cause the borrower's total outstanding and undrawn debt to exceed four times the borrower's 2019 earnings before adjusted interest, taxes, depreciation, and amortization (EBITDA). The new loan need not be senior to the borrower's other debt, but it must not be contractually subordinated to the borrower's other debt.<sup>29</sup>

Like the MSNLF, the minimum MSPLF loan is \$250,000. The maximum, however, is the lesser of either \$50 million or an amount that would not cause the borrower's total outstanding and undrawn debt to exceed six times the borrower's 2019 adjusted EBITDA. The MSPLF compensates for the higher loan amount by requiring the loan to be either equal (*pari passu*) or senior in priority to the borrower's other debts, with the exception of mortgage debt. Unlike MSNLF loans, MSPLF loans have some level of repayment preference among the borrower's various debts in the event the borrower becomes insolvent.<sup>30</sup>

While MSNLF and MSPLF support new loans, MSELF loans allow businesses to refinance existing loans or revolving credit facilities. The MSELF portion of the refinancing must be a term loan and must be senior or *pari passu* in priority to the borrower's other debt, with the exception of mortgage debt. The minimum MSELF loan is \$10 million. The maximum is the lesser of \$300 million or an amount that would not cause the borrower's total outstanding and undrawn debt to exceed six times the borrower's 2019 adjusted EBITDA.<sup>31</sup>

<sup>29</sup> See Term Sheet, Main Street New Loan Facility, at <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200608a1.pdf> for additional details.

<sup>30</sup> See Term Sheet, Main Street Priority Loan Facility, at <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200608a2.pdf> for additional details.

<sup>31</sup> See Term Sheet, Main Street Existing Loan Facility, at



### Loans to nonprofit organizations

MSLP offers two loan programs to nonprofit organizations: Nonprofit Organization New Loan Facility (NONLF) and Nonprofit Organization Expanded Loan Facility (NOELF). Like the MSLP programs available to for-profit businesses, the MSLP programs available to nonprofit organizations offer support for both new loans (NONLF) and refinancing for existing loans (NOELF). Also like the MSLP loans to for-profit business, MSLP loans to nonprofit organizations have some common terms:

|                       |  |
|-----------------------|--|
| Loan Term             | 5 years  |
| Minimum Employees     | At least 10 employees  |
| Employees and Revenue | Either 15,000 or fewer employees, or 2019 revenue of \$5 billion or less   |
| Financial Conditions  | <ul style="list-style-type: none"> <li>• Total non-donation revenues of at least 60% of expenses for 2017 through 2019</li> <li>• At least a 2% operating margin for 2019</li> <li>• At least 60 days current cash on hand</li> <li>• Ratio of cash, investments, and other repayment resources to outstanding debt and certain other liabilities of greater than 55%</li> </ul> |
| Endowment Cap         | Less than \$3 billion  |
| Rate                  | Adjustable Rate of LIBOR (1 or 3 mo.) plus 3%  |
| Interest Deferral     | Deferred for 1 year  |
| Principal Deferral    | Deferred for 2 years, 15% due in each of years 3 and 4, 70% due in year 5  |

The NONLF minimum loan amount is \$250,000. The maximum loan amount is the lesser of \$35 million or the borrower's average quarterly revenue in 2019. The new loan need not be senior to the borrower's existing debt, but it may not be contractually subordinated to that existing debt.<sup>32</sup>

<https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200608a3.pdf> for additional details.

<sup>32</sup> See Term Sheet, Nonprofit Organization New Loan Facility, at <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200717a2.pdf> for additional details.

NOELF loans, like MSELF loans, allow borrowers to refinance existing loans or revolving credit facilities. The NOELF portion of the refinancing must be a term loan and must be senior or *pari passu* in priority to the borrower's other debt, with the exception of mortgage debt. The minimum NOELF loan is \$10 million. The maximum is the lesser of \$300 million or borrower's average quarterly revenue in 2019.<sup>33</sup>

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<sup>33</sup> See Term Sheet, Nonprofit Organization Existing Loan Facility, at <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200717a1.pdf>



# RECOMMENDATIONS

## Recommendations to the Department of the Treasury

On July 8, 2020, Treasury made its first direct loan under CARES Act § 4003. The loan was made to YRC Worldwide, Inc., a large trucking firm critical to maintaining national security. Section 6.19 of the loan agreement, entitled “Treasury Access,” required YRC to:

Provide Treasury, the Treasury Inspector General, and such other entities as authorized by Treasury timely and unrestricted access to all documents, papers, or other records, including electronic records, of the Borrower related to the Loans, to enable Treasury and the Treasury Inspector General to make audits, examinations, and otherwise evaluate the Borrower’s compliance with the terms of this Agreement. This right also includes timely and reasonable access to the Lender’s and its Affiliates’ personnel for the purpose of interview and discussion related to such documents.

Timely and complete access to information is critical to effective oversight. For that reason, CARES Act § 4018(d)(1) grants SIGPR all “authorities provided in Section 6 of the Inspector General Act,” which, in turn, grants SIGPR timely access to documents and materials available to Treasury that relate to programs under SIGPR’s jurisdictional purview. Yet SIGPR was not specifically included in the list of entities provided access to loan information from YRC.

**Recommendation:** SIGPR recommended that in future loan agreements, Treasury expressly include SIGPR in the list of entities entitled to “timely and unrestricted access” to information from the borrower. Treasury agreed to implement the change in future agreements.

SIGPR’s recommendation and Treasury’s response are included as Appendix D.

## Recommendations to Congress

### *Hiring authority*

As detailed above, *see infra* Part II.A, SIGPR has faced significant headwinds in attempting to staff up quickly so that the office can turn its collective focus to finding and exposing fraud, waste, and abuse under the CARES Act. While the office has worked diligently to meet its statutory mandates with a limited roster, additional hiring authority and flexibility would provide a tremendous boost to the office’s ability to conduct critically needed oversight.

**Recommendation:** SIGPR recommends that Congress take up S.3751, the Special Inspector General for Pandemic Recovery Expedited Hiring Authorities Act of 2020, sponsored by Senator Grassley. SIGPR thanks Senator Grassley for introducing the bill, as well as Senators Hassan, Crapo, Ernst, and Booker for their co-sponsorship of it.

### *Multiple-dipping under the CARES Act*

In responding to the coronavirus pandemic, Congress created numerous financial-support programs that provide assistance to a wide array of interests. Often, an individual or entity may receive assistance from more than one program. An individual may benefit both from a

personal Economic Impact Payment of \$1,200 and enhanced benefits from the CARES Act's unemployment-compensation provisions. For another example, some healthcare providers received funds through the Department of Health and Human Services CARES Act Provider Relief Fund while also receiving a Paycheck Protection Program loan. If used appropriately, neither form of support requires repayment. And some hospitals that received hundreds of millions of dollars from the Provider Relief Fund may still qualify, or may believe they qualify, for a loan under the Federal Reserve's Main Street Lending Program.

Creating multiple programs resulting in multiple forms of financial support to a single individual or entity may well be sound policy. But in such circumstances, the risk of fraud and abuse increases and questions arise. It is not obvious, for example, why an air carrier should receive *both* a Paycheck Protection Program loan *and* a Payroll Support Program payment. Yet several have. Those air carriers, moreover, may arguably have a *third* funding source available to them: Treasury's direct loans under CARES Act § 4003, or the Federal Reserve's Main Street Lending Program.<sup>34</sup> And though they are ineligible for the Paycheck Protection Program, the nine air carriers with the largest anticipated Payroll Support Program payments—totaling \$22.4 billion of the allotted \$25 billion—have all signed letters of intent to participate in Treasury's direct loan program under CARES Act § 4003—a program falling within SIGPR's core jurisdiction and that allocates \$25 billion for loans to passenger air carriers and related businesses.

The questions raised by the potential for widespread double- and triple-dipping under the CARES Act are particularly acute with respect to the various CARES Act loan programs because Congress has positioned both Treasury and the Federal Reserve as lenders of last resort. Direct loans under CARES Act § 4003, for example, are expressly limited to borrowers “for which credit is not reasonably available at the time of the transaction.” CARES Act § 4003(c)(2)(A). And emergency lending by the Federal Reserve is expressly limited to borrowers who are “unable to secure adequate credit accommodations from other banking institutions.” 12 U.S.C. § 343(3)(A).

These express statutory limitations raise the question whether a loan applicant that has received or expects to receive millions of dollars under other CARES Act programs can reasonably certify to a lack of access to adequate capital. SIGPR intends to monitor this issue.

**Recommendation:** SIGPR recommends that Congress consider the various CARES Act relief programs, how they overlap, whether the overlap is in the public interest, and whether legislative clarity is warranted.

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<sup>34</sup> Recipients of CARES Act § 4003 loans are ineligible for the Main Street Lending Program.





# APPENDICES



## APPENDIX A

## CARES Act, Division A, Title IV

## SEC. 4018. SPECIAL INSPECTOR GENERAL FOR PANDEMIC RECOVERY.

(a) Office of Inspector General.--There is hereby established within the Department of the Treasury the Office of the Special Inspector General for Pandemic Recovery.

(b) Appointment of Inspector General; Removal.--

(1) In general.--The head of the Office of the Special Inspector General for Pandemic Recovery shall be the Special Inspector General for Pandemic Recovery (referred to in this section as the ``Special Inspector General''), who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) Nomination.--The nomination of the Special Inspector General shall be made on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations. The nomination of an individual as Special Inspector General shall be made as soon as practicable after any loan, loan guarantee, or other investment is made under section 4003.

(3) Removal.--The Special Inspector General shall be removable from office in accordance with the provisions of section 3(b) of the Inspector General Act of 1978 (5 U.S.C. App.).

(4) Political activity.--For purposes of section 7324 of title 5, United States Code, the Special Inspector General shall not be considered an employee who determines policies to be pursued by the United States in the nationwide administration of Federal law.

(5) Basic pay.--The annual rate of basic pay of the Special Inspector General shall be the annual rate of basic pay for an Inspector General under section 3(e) of the Inspector General Act of 1978 (5 U.S.C. App.).

(c) Duties.--

(1) In general.--It shall be the duty of the Special Inspector General to, in accordance with section 4(b)(1) of the Inspector General Act of 1978 (5 U.S.C. App.), conduct, supervise, and coordinate audits and investigations of the making, purchase, management, and sale of loans, loan guarantees, and other investments made by the Secretary of the Treasury under any program established by the Secretary under this Act, and the management by the Secretary of any program established under this Act, including by collecting and summarizing the following information:

(A) A description of the categories of the loans, loan guarantees, and other investments made by the Secretary.

(B) A listing of the eligible businesses receiving loan, loan guarantees, and other investments made under each category described in subparagraph (A).

(C) An explanation of the reasons the Secretary determined it to be appropriate to make each loan or loan guarantee under this Act, including a justification of the price paid for, and other financial terms associated with, the applicable transaction.

(D) A listing of, and detailed biographical information

with respect to, each person hired to manage or service each loan, loan guarantee, or other investment made under section 4003.

(E) A current, as of the date on which the information is collected, estimate of the total amount of each loan, loan guarantee, and other investment made under this Act that is outstanding, the amount of interest and fees accrued and received with respect to each loan or loan guarantee, the total amount of matured loans, the type and amount of collateral, if any, and any losses or gains, if any, recorded or accrued for each loan, loan guarantee, or other investment.

(2) Maintenance of systems.--The Special Inspector General shall establish, maintain, and oversee such systems, procedures, and controls as the Special Inspector General considers appropriate to discharge the duties of the Special Inspector General under paragraph (1).

(3) Additional duties and responsibilities.--In addition to the duties described in paragraphs (1) and (2), the Special Inspector General shall also have the duties and responsibilities of inspectors general under the Inspector General Act of 1978 (5 U.S.C. App.).

(d) Powers and Authorities.--

(1) In general.--In carrying out the duties of the Special Inspector General under subsection (c), the Special Inspector General shall have the authorities provided in section 6 of the Inspector General Act of 1978 (5 U.S.C. App.).

(2) Treatment of office.--The Office of the Special Inspector General for Pandemic Recovery shall be considered to be an office described in section 6(f)(3) of the Inspector General Act of 1978 (5 U.S.C. App.) and shall be exempt from an initial determination by the Attorney General under section 6(f)(2) of that Act.

(e) Personnel, Facilities, and Other Resources.--

(1) Appointment of officers and employees.--The Special Inspector General may select, appoint, and employ such officers and employees as may be necessary for carrying out the duties of the Special Inspector General, subject to the provisions of title 5, United States Code, governing appointments in the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of that title, relating to classification and General Schedule pay rates.

(2) Experts and consultants.--The Special Inspector General may obtain services as authorized under section 3109 of title 5, United States Code, at daily rates not to exceed the equivalent rate prescribed for grade GS-15 of the General Schedule by section 5332 of that title.

(3) Contracts.--The Special Inspector General may enter into contracts and other arrangements for audits, studies, analyses, and other services with public agencies and with private persons, and make such payments as may be necessary to carry out the duties of the Inspector General.

(4) Requests for information.--

(A) In general.--Upon request of the Special Inspector General for information or assistance from any department, agency, or other entity of the Federal Government, the head of that department, agency, or entity shall, to the extent

practicable and not in contravention of any existing law, furnish that information or assistance to the Special Inspector General, or an authorized designee.

(B) Refusal to provide requested information.--Whenever information or assistance requested by the Special Inspector General is, in the judgment of the Special Inspector General, unreasonably refused or not provided, the Special Inspector General shall report the circumstances to the appropriate committees of Congress without delay.

(f) Reports.--

(1) Quarterly reports.--

(A) In general.--Not later than 60 days after the date on which the Special Inspector General is confirmed, and once every calendar quarter thereafter, the Special Inspector General shall submit to the appropriate committees of Congress a report summarizing the activities of the Special Inspector General during the 3-month period ending on the date on which the Special Inspector General submits the report.

(B) Contents.--Each report submitted under subparagraph (A) shall include, for the period covered by the report, a detailed statement of all loans, loan guarantees, other transactions, obligations, expenditures, and revenues associated with any program established by the Secretary under section 4003, as well as the information collected under subsection (c)(1).

(2) Rule of construction.--Nothing in this subsection may be construed to authorize the public disclosure of information that is--

(A) specifically prohibited from disclosure by any other provision of law;

(B) specifically required by Executive order to be protected from disclosure in the interest of national defense or national security or in the conduct of foreign affairs; or

(C) a part of an ongoing criminal investigation.

(g) Funding.--

(1) In general.--Of the amounts made available to the Secretary under section 4027, \$25,000,000 shall be made available to the Special Inspector General to carry out this section.

(2) Availability.--The amounts made available to the Special Inspector General under paragraph (1) shall remain available until expended.

(h) Termination.--The Office of the Special Inspector General shall terminate on the date 5 years after the enactment of this Act.

(i) Council of the Inspectors General on Integrity and Efficiency.--The Special Inspector General shall be a member of the Council of the Inspectors General on Integrity and Efficiency established under section 11 of the Inspector General Act of 1978 (5 U.S.C. App.) until the date of termination of the Office of the Special Inspector General.

(j) Corrective Responses to Audit Problems.--The Secretary shall--

(1) take action to address deficiencies identified by a report or investigation of the Special Inspector General; or

(2) with respect to a deficiency identified under paragraph (1), certify to the Committee on Banking, Housing, and Urban Affairs of the Senate, the Committee on Finance of the Senate, the Committee on Financial Services of the House of Representatives,

and the Committee on Ways and Means of the House of Representatives  
that no action is necessary or appropriate.

## APPENDIX B

## CARES ACT OVERSIGHT MATRIX

| <u>Entity</u> | <u>Jurisdictional Mandate</u>  | <u>Reporting Requirements</u>   |
|---------------|--|---|
| SIGPR         | <ul style="list-style-type: none"> <li>• Conduct, supervise, and coordinate audits and investigations of the making, purchase, management, and sale of loans, loan guarantees, and other investments by the Secretary under any program established by the Secretary under Division A of the CARES Act.</li> <li>• Conduct, supervise, and coordinate audits and investigations of the management by the Secretary of any program established under Division A of the CARES Act.<sup>35</sup></li> </ul> | <ul style="list-style-type: none"> <li>• A quarterly report to Congress that includes:             <ul style="list-style-type: none"> <li>○ A statement of all loans, loan guarantees, other transactions, obligations, expenditures, and revenues associated with any program established by the Secretary under section 4003;</li> <li>○ The categories of loans, loan guarantees, and other investments made by the Secretary;</li> <li>○ The eligible businesses receiving the relevant loans, loan guarantees, and other investments;</li> <li>○ Why the Secretary deemed it appropriate to make each loan or loan guarantee on the agreed terms;</li> <li>○ A list with biographical information of each person hired to manage or service</li> </ul> </li> </ul> |

<sup>35</sup> Section 4018(c)(1) of the CARES Act provides SIGPR’s jurisdictional mandate. The most important aspect of the jurisdictional statement is a divisional element that limits SIGPR’s jurisdiction to the relevant activities carried out by the Secretary of the Treasury pursuant to a program established under “this Act.” [CARES Act § 4018](#)(c)(1). Section 3 of the CARES Act states, “Except as expressly provided otherwise, any reference to ‘this Act’ contained in any division of this Act shall be treated as referring only to the provisions of that division.” *Id.* [§ 3](#). Section 4018(c)(1)’s reference to “this Act” is “contained in” Division A. Applying Section 3’s definitional rule to Section 4018, SIGPR’s duties must “be treated as referring only to the provisions of” Division A of the CARES Act—no less and no more.

| <u>Entity</u> | <u>Jurisdictional Mandate</u>   | <u>Reporting Requirements</u>   |
|---------------|---|---|
|               |   | <p>each loan, loan guarantee, or other investment made under section 4003; and</p> <ul style="list-style-type: none"> <li>○ An estimate of the amount of each loan, loan guarantee, and other investment that is outstanding, the amount of interest and fees accrued and received with respect to each loan or loan guarantee, the total amount of matured loans, the type and amount of collateral, if any, and any losses or gains, if any, recorded or accrued for each loan, loan guarantee, or other investment.</li> </ul> |
| <b>PRAC</b>   | <ul style="list-style-type: none"> <li>• Conduct oversight, audits, reviews, and investigations into the use of funds appropriated for the coronavirus response that are made available in any</li> </ul> | <ul style="list-style-type: none"> <li>• Report periodic management alerts on risk and funding problems requiring immediate attention, as well as other periodic reports on other subjects the PRAC deems necessary.</li> <li>• Report biannually to Congress and the President on PRAC findings, including the impact of tax expenditures and credits.</li> </ul>  |



| <u>Entity</u>                             | <u>Jurisdictional Mandate</u>   | <u>Reporting Requirements</u>   |
|---|---|---|
|   | <p>form, including loans, to any non-Federal entity.<sup>36</sup></p> <ul style="list-style-type: none"> <li>Conduct oversight, audits, reviews, and investigations into the Federal Government’s response to the coronavirus pandemic.</li> </ul>  |   |
| <b>Congressional Oversight Commission</b> | <ul style="list-style-type: none"> <li>Conduct oversight of the implementation of the Coronavirus Economic Stabilization Act of 2020 by the Treasury and the Board of Governors of the Federal Reserve System, including their efforts under Subtitle A to provide economic stability in response to COVID-19.</li> </ul> | <ul style="list-style-type: none"> <li>A report to Congress every 30 days that includes: <ul style="list-style-type: none"> <li>The use by the Secretary and the Board of Governors of the Federal Reserve of CESA authority, including contracting authority and administration of CESA’s provisions;</li> </ul> </li> </ul> |

<sup>36</sup> The CARES Act uses the term “covered funds” to refer to funds appropriated under CARES Act Division B, the Coronavirus Preparedness and Response Supplemental Appropriations Act, the Families First Coronavirus Response Act, and any other act primarily making appropriations for the coronavirus response. CARES Act § 15010(a)(6). Interested federal agencies differ on whether “covered funds” includes funds appropriated under CARES Act Division A for programs such as the Paycheck Protection Program, the Coronavirus Relief Fund, or the Treasury’s various loan and investment programs in CARES Act Title IV. The CARES Act, however, also broadly authorizes the PRAC to oversee the “Coronavirus response,” id. § 15010(d)(1)(A), which is “the Federal Government’s response to the nationwide health emergency” resulting from “confirmed coronavirus cases in the United States,” id. § 15010(a)(7), without regard for whether that response involves “covered funds.”

| <u>Entity</u> | <u>Jurisdictional Mandate</u>  | <u>Reporting Requirements</u>   |
|---------------|--|---|
|               | <ul style="list-style-type: none"> <li>Review the implementation of Subtitle A by the Federal Government.</li> </ul>   | <ul style="list-style-type: none"> <li>The impact of loans, loan guarantees, and investments made under CESA on the financial well-being of the people of the United States and the economy, financial markets, and financial institutions;</li> <li>The extent to which the information made available on transactions under CESA has contributed to market transparency;</li> <li>The effectiveness of loans, loan guarantees, and investments made under CESA on minimizing costs and maximizing benefits to taxpayers.</li> </ul> |
| <b>GAO</b>    | <ul style="list-style-type: none"> <li>Oversight of authorities exercised under Division B of the CARES Act or any other Act to prepare for, respond to, and recover from the Coronavirus 2019 pandemic, including public health and homeland security efforts by the Federal Government and the use of selected funds under CARES Act, Division B, or any other Act related to the Coronavirus 2019 pandemic.</li> <li>Oversight of the funds made available under Division B of the CARES Act, or any</li> </ul> | <ul style="list-style-type: none"> <li>Regular briefings—i.e., on a monthly basis or more frequently—to the appropriate congressional committees regarding Federal public health and homeland security efforts.</li> <li>Monthly reports<sup>37</sup> on GAO’s ongoing monitoring and oversight efforts shall be submitted to the appropriate congressional committees and posted to GAO’s website; the reports are to be accompanied by any audits and investigations conducted by GAO.</li> </ul>                                   |

<sup>37</sup> These “monthly” reports are to be submitted and published monthly starting 90 days after “enactment of this Act” and ending one year after “enactment of this Act”; the reports are then then to be submitted and published “on a periodic basis. [CARES Act § 19010\(c\)\(2\)\(A\), \(B\)](#).

| <u>Entity</u>       | <u>Jurisdictional Mandate</u>   | <u>Reporting Requirements</u>   |
|---------------------|---|---|
|                     | <p>other Act to prepare for, respond to, and recover from the Coronavirus 2019 pandemic, including public health and homeland security efforts by the Federal Government and the use of selected funds under this or any other Act related to the Coronavirus 2019 pandemic.</p> <ul style="list-style-type: none"> <li>• Conduct a comprehensive audit and review of charges made to Federal contracts pursuant to authorities provided in the Coronavirus Aid, Relief, and Economic Security Act.</li> </ul>  | <ul style="list-style-type: none"> <li>• Submit to the appropriate congressional committees additional reports as warranted by the findings of the monitoring and oversight activities of the Comptroller General.</li> </ul> |
| <b>Treasury OIG</b> | <ul style="list-style-type: none"> <li>• Audit the certifications made by air carriers and supporting contractors stating the amount of wages, salaries, benefits, and other compensation paid for the period April 1, 2019 through September 30, 2019 for purposes of determining amounts payable under the Air Carrier Worker Support program (<a href="#">CARES Act, Title IV, Subtitle B</a>).</li> <li>• Conduct monitoring and oversight of the Coronavirus Relief Fund for State, Tribal, and local governments (<a href="#">CARES Act, Title V</a>).</li> </ul> | <ul style="list-style-type: none"> <li>• The CARES Act does not create new reporting requirements for the Treasury OIG.</li> </ul>  |

## APPENDIX C

## LOANS ISSUED UNDER CARES ACT § 4003(b)(3)

YRC Worldwide, Inc.

| Maximum<br>Potential<br>Principal Loan<br>Amount | Principal<br>Disbursed | Principal<br>Outstanding | Interest<br>and Fees<br>Accrued<br>as of July<br>24, 2020 | Interest<br>and Fees<br>Received | Gain/(Loss) |
|--|------------------------|--------------------------|---|----------------------------------|-------------|
| \$700,000,000                                    | \$236,174,924.95       | \$236,174,924.95         | \$490,000   | \$0                              | \$0         |

Collateral and Taxpayer Compensation

The Treasury is making the loan in two tranches: Tranche A for \$300,000,000 and Tranche B for \$400,000,000. Both tranches are secured by a junior security interest in substantially all of YRC Worldwide's assets and a senior security interest in undisbursed loan proceeds. Tranche B is further secured by a senior security interest in certain truck and trailers belonging to YRC. The loan matures on September 30, 2024.

In addition to these security interests, Treasury received YRC Worldwide, Inc. common stock equal to 29.6% of the company's fully-diluted stock.<sup>38</sup>

Secretary's Justification

On July 1, 2020, the Treasury issued a press release announcing this loan, and noting it was made "based on a certification by the Secretary of Defense that YRC is critical to maintaining national security."<sup>39</sup> The press release further noted that:

YRC is a leading provider of critical military transportation and other hauling services to the U.S. government and provides 68% of less-than-truckload services to the Department of Defense. This loan will enable YRC to maintain approximately 30,000 trucking jobs and continue to support essential military supply chain operations and the transport of industrial, commercial, and retail goods to more than 200,000 corporate customers across North America.

<sup>38</sup> See Transaction Summary, available at <https://home.treasury.gov/system/files/136/YRC-Transaction-Summary.pdf>, for additional details. The complete loan agreement is available at <https://home.treasury.gov/system/files/136/YRC-Documentation.pdf>

<sup>39</sup> Treasury to Provide Loan to YRC Worldwide, July 1, 2020, available at <https://home.treasury.gov/news/press-releases/sm1049>

The press release also quoted the Secretary: “This loan will enable a critical vendor to the Department of Defense to maintain significant employment while providing appropriate compensation to taxpayers.”

SIGPR requested that Treasury provide the certification from the Department of Defense certifying that YRC is an entity critical to national security, and Treasury agreed to do so. The certification is included on the following page with the names redacted of the three companies that have not yet executed, and ultimately may not execute, a loan agreement with Treasury.

## Department of Defense Certification



SECRETARY OF DEFENSE  
1000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1000

JUN 26 2020

The Honorable Steven Mnuchin  
Secretary of the Treasury  
U.S. Department of the Treasury  
Washington, DC 20220

Dear Mr. Secretary:

The Department of Defense has been collaborating with the Treasury Department in executing loans under section 4003(b) of the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Public Law 116-136. Certain criteria were set forth in the Treasury's loan application that would allow companies to qualify for these loans. One of these requires the Department of Defense to provide recommendation and certification that the applicant business is critical to maintaining national security. We have determined that the following four companies meet this requirement, and accordingly I provide my certification that the following four companies are critical to maintaining national security. These companies are:

REDACTED

REDACTED

REDACTED

- Yellow Roadway Corporation Worldwide

Please let me know if you require any additional information from the Department of Defense to process the applications from these companies. We look forward to continuing our partnership on these activities as we help our defense industrial base recover from impacts due to coronavirus disease 2019.

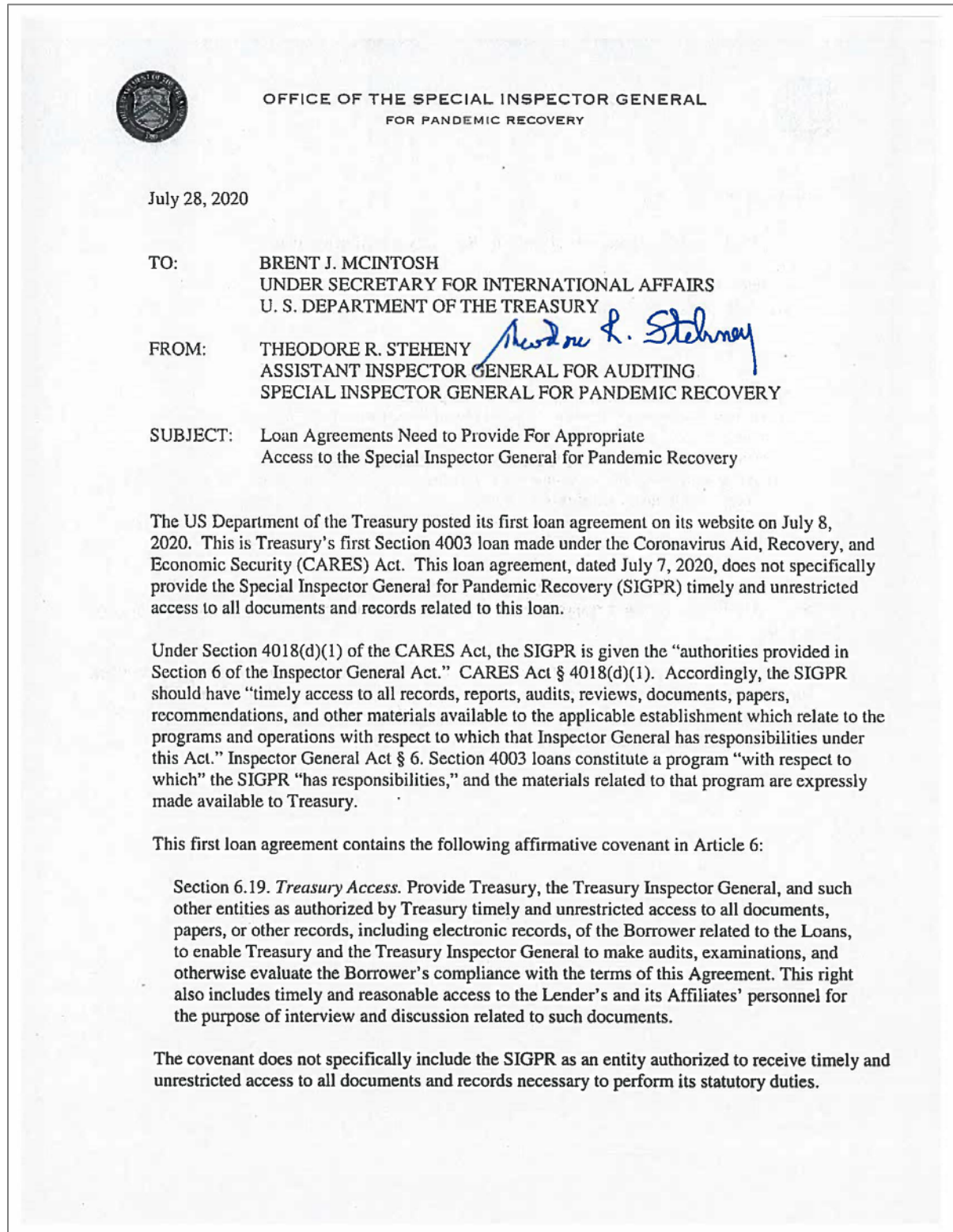
Sincerely,

A handwritten signature in black ink, reading "Mark T. Esper", is located below the "Sincerely," text.



## APPENDIX D

Letter to Under Secretary for International Affairs from Assistant Inspector General for Audits





OFFICE OF THE SPECIAL INSPECTOR GENERAL  
FOR PANDEMIC RECOVERY

RECOMMENDATION

The Special Inspector General for Pandemic Recovery recommends that:

The Under Secretary for International Affairs should ensure that Treasury modifies this covenant, wherever it appears, to specifically include the Special Inspector General for Pandemic Recovery as follows:

Section 6.19. *Treasury Access.* Provide Treasury, the Treasury Inspector General, the Special Inspector General for Pandemic Recovery, and such other entities as authorized by Treasury timely and unrestricted access to all documents, papers, or other records, including electronic records, of the Borrower related to the Loans, to enable Treasury, Treasury Inspector General, and the Special Inspector General for Pandemic Recovery to make audits, examinations, and otherwise evaluate the Borrower's compliance with the terms of this Agreement. This right also includes timely and reasonable access to the Lender's and its Affiliates' personnel for the purpose of interview and discussion related to such documents.

Otherwise the Treasury should certify to Congress that Treasury determines no action is necessary. Please provide a response to this recommendation along with any proposed corrective action.

This review was conducted by the Special Inspector General for Pandemic Recovery in accordance with the Council of the Inspectors General on Integrity and Efficiency Quality Standards for Inspection and Evaluation (January 2012). To accomplish our review, we researched applicable laws and reviewed loan agreements established by Treasury.

## Letter to Assistant Inspector General for Audits from Under Secretary for International Affairs



DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C.

UNDER SECRETARY

July 30, 2020

Theodore R. Steheny  
Assistant Inspector General for Auditing  
Special Inspector General  
for Pandemic Recovery

Re: Information Access for Special Inspector General for Pandemic Recovery

Dear Mr. Steheny:

I write in response to your memorandum dated July 28, 2020, which sets forth a recommendation from the Special Inspector General for Pandemic Recovery (SIGPR) regarding SIGPR's authority to access information from businesses that receive loans from the Treasury Department under section 4003 of the Coronavirus Aid, Recovery, and Economic Security (CARES) Act. We share your desire to ensure that SIGPR has access to all documents and records necessary to perform its statutory duties, and as such we gladly accept SIGPR's recommendation.

As of the date of this letter, Treasury has entered into one loan agreement under section 4003. That agreement requires the borrower to provide Treasury, the Treasury Inspector General, and such other entities as authorized by Treasury with access to the borrower's documents, records, and personnel, to enable compliance audits. SIGPR's recommendation is that this type of covenant should be expanded to list SIGPR as well, which will help enable SIGPR to receive information directly from borrowers. Treasury is committed to transparency and effective oversight, and we will incorporate SIGPR's proposed revisions into our future loan agreements under section 4003.

Treasury is working diligently to implement the CARES Act to get much-needed relief to millions of Americans and businesses as quickly as possible. We appreciate SIGPR's efforts to ensure that these programs are efficient and effective.

Please feel free to contact Treasury's Office of General Counsel at (202) 622-0283 if you have any questions about this letter.

Sincerely,

Brent J. McIntosh  
Under Secretary for International Affairs



