

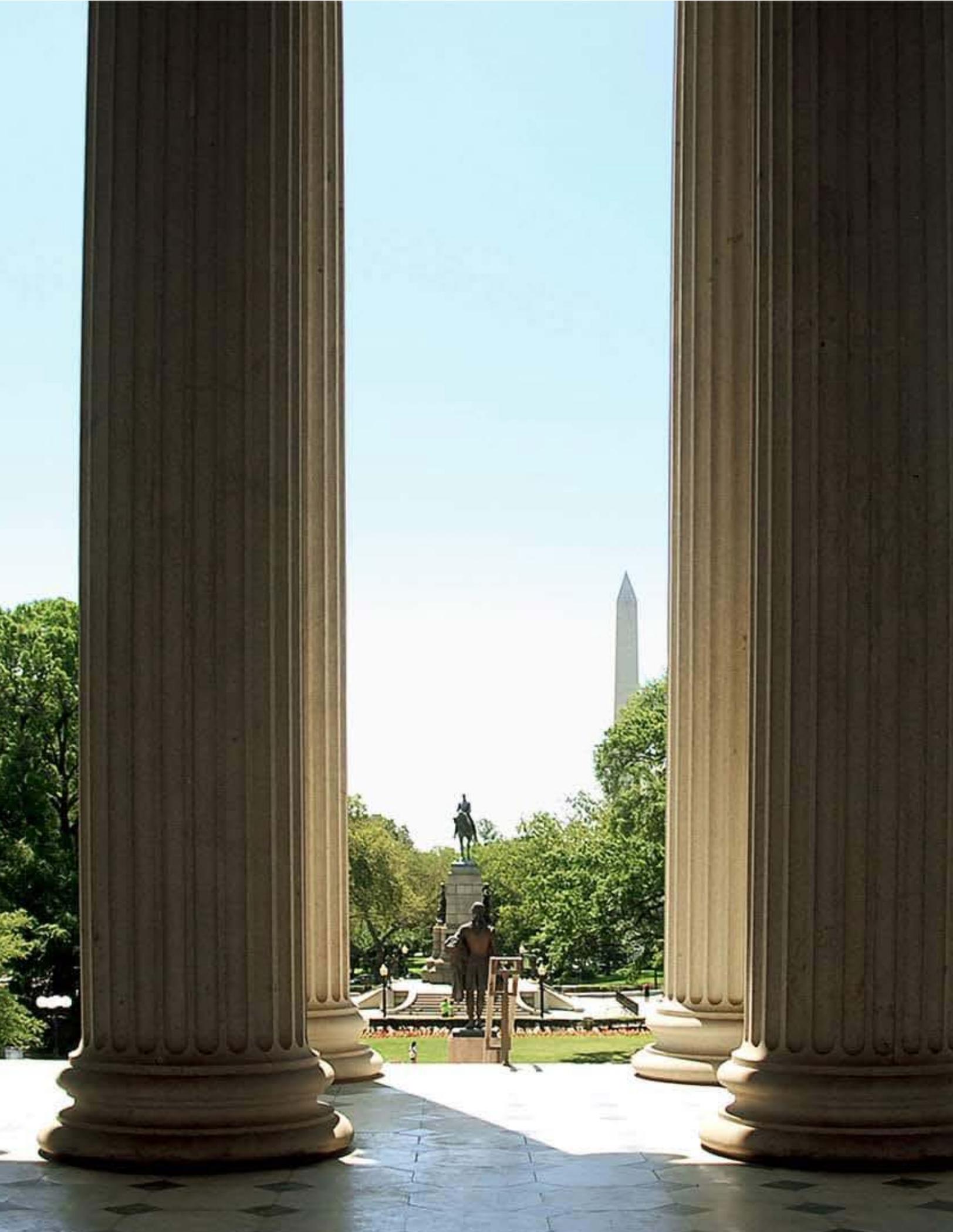


**Office of the Special Inspector General for
Pandemic Recovery**

Quarterly Report to the United States Congress

September 30, 2020





CONTENTS

INTRODUCTORY MESSAGE	1
EXECUTIVE SUMMARY	5
OFFICE OF THE SPECIAL INSPECTOR GENERAL FOR PANDEMIC RECOVERY	9
Statutory Authority	10
SIGPR in Context: Jurisdictional Updates	10
SIGPR in Context: Reporting Requirements	21
SIGPR in Context: CARES Act Program Eligibility & Oversight	25
SIGPR Mission and Core Values	37
MANAGEMENT AND ADMINISTRATION	38
Building Momentum: Budgetary Updates	39
Building Momentum: IT Updates	39
SIGPR OFFICES AND ACTIVITIES	41
SIGPR Offices	42
Building Partnerships	45
SIGPR FINDINGS AND REPORTABLE DEVELOPMENTS	47
Direct Loans	48
Other Investments Under Section 4003	52
RECOMMENDATIONS	62
Recommendations to Congress	63
APPENDICES	64
APPENDIX A	65
APPENDIX B	69
APPENDIX C	77



INTRODUCTORY MESSAGE

An Introductory Message from Inspector General Brian D. Miller

Our Nation's economic health and recovery require that CARES Act funds are available to those who need them the most. This is no small task. Unlike past stimulus legislation, the CARES Act creates a complex network of programs, each involving different agencies targeting different sectors of society with different types of funding. And while the Small Business Administration's Paycheck Protection Program (PPP) and Economic Injury Disaster Loans (EIDL) receive the lion's share of publicity, those programs represent only a fraction of the funding and programming put in place by the CARES Act.

Take, for example, the \$500 billion made available to the Secretary of the Treasury for direct loans to critical industries and investments in facilities established by the Federal Reserve. The Secretary's investments in the facilities alone could result in up to \$2.3 trillion in financing.¹ Or take the Payroll Support Program, which authorizes the Secretary to provide up to \$32 billion in funding to preserve jobs in the aviation industry. Or take the Coronavirus Relief Fund, which authorizes the Secretary to provide another \$150 billion in direct funding to states, municipalities, and Tribal governments. The Special Inspector General for Pandemic Recovery (SIGPR) oversees all these programs.

To do our part in protecting taxpayers' hard-earned dollars, our office has begun building critical relationships that will help us identify areas of risk while leveraging existing institutional knowledge and infrastructure. For example, overseeing the Secretary's investments into Federal Reserve facilities—and ensuring those facilities are not defrauded—requires close coordination between SIGPR and the Federal Reserve Inspector General (Fed IG). Critically, while SIGPR and the Fed IG each have discrete institutional interests,² we share the same goal: to protect taxpayer dollars and ensure CARES Act funds reach the individuals and entities they are intended to help.

With that goal in mind, the Fed IG, Mark Bialek, and I have developed an active and effective partnership, and our staffs now meet (virtually) and talk regularly, too. I want to thank IG Bialek and his staff for their crucial support and expertise.

I also want to thank my fellow Treasury IGs for their strong support and assistance. Russell George, Treasury Inspector General for Tax Administration, has provided invaluable advice to our office as we continue to get up and running. Likewise, Christy Romero, Special IG for the Troubled Asset Relief Program, has helped in many ways—her team recently provided SIGPR with a copy of its Case Management System software and has offered ongoing subject matter

¹ Press Release, Treasury and Federal Reserve Board Announce New and Expanded Lending Programs to Provide up to \$2.3 Trillion in Financing, U.S. Dep't Treasury (Apr. 9, 2020), <https://home.treasury.gov/news/press-releases/sm968>.

² This reflects that the Federal Reserve and the Treasury have different institutional interests. For example, any losses incurred by Treasury-backed Section 13(3) facilities would be borne first not by the Federal Reserve, but by the Department of the Treasury, which holds a "first loss" position.

expertise during CMS project planning and implementation. Lastly, Rich Delmar, acting IG at Treasury, has kindly offered our office help on several fronts as well. I am dedicated to establishing regular lines of communication with these parties to ensure we operate efficiently within the Department of the Treasury. Importantly, many other Inspectors General have also assisted our office as we continue to look for opportunities to partner on identifying and combatting fraud, waste, and abuse.

We continue to work closely with FinCEN, one of our office's first strategic partners. I want to thank the Director of FinCEN, Ken Blanco, and his team for their help and a very productive collaboration. We anticipate an even more productive relationship moving forward. Finally, I must thank the U.S. Patent and Trademark Office, which, by providing office space, has been instrumental in enabling our office to begin its work.

Thank you to those who read SIGPR's initial report³ and sent comments. Positive feedback included praise for how we situated SIGPR's role and jurisdiction within the overall oversight landscape of the CARES Act. We heard from many individuals who found our comprehensive matrix and supporting legal analysis helpful. While others were less encouraging, their feedback helpfully confirms that SIGPR is correct to flag legal ambiguities in the statute.

SIGPR continues to work closely with our Department of Justice (DOJ) and U.S. Attorney partners. Frequent teleconferences with senior officials have cemented our partnerships and allowed us to explore how we might be most effective. Recently, my senior staff and I had the opportunity to meet in person with United States Attorneys and others from DOJ at the annual conference for United States Attorneys, held this year in Alexandria, Virginia. At the conference, I spoke to the White-Collar Crime Subcommittee and had the unique opportunity to brainstorm innovative solutions with key United States Attorneys in a separate meeting.

I am very excited to formally announce the newest addition to our team: Tracy Doherty-McCormick. Now serving as our General Counsel, Tracy joins us from her position as First Assistant United States Attorney for the Eastern District of Virginia, where she also served as Acting United States Attorney. I am deeply honored that Tracy and so many other exceptional public servants have joined SIGPR.

I am ever mindful of the importance of the work of the Office of the Special Inspector General for Pandemic Recovery in our Nation's history and for our Nation's economic health and recovery. Trillions of taxpayer dollars are being disbursed to address our economic crisis, and SIGPR is a key part of making sure those dollars are well spent. Every dollar wasted or lost to fraud is a dollar that a deserving American needs.

³ Special Inspector General for Pandemic Recover, Initial Report to Congress (Initial Report) (Aug. 3, 2020), https://www.sigpr.gov/sites/sigpr/files/2020-09/SIGPR-Initial-Report-to-Congress-August-3-2020_0.pdf.

With these concerns in mind, I provide the first quarterly report pursuant to Section 4018(f)(1)(A) of Public Law 116-136 (15 U.S.C. § 9053(f)(1)(A)).⁴



Brian D. Miller
September 30, 2020

⁴ A great deal of lending activity occurred in the closing days of this calendar quarter. In order to fully capture and report on all activity within future calendar quarters, and consistent with the practice of other offices of inspectors general, SIGPR will be submitting its future quarterly reports no later than 30 days after the end of each calendar quarter.



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 made 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 to be Special Inspector General. Two months later, on June 2, 2020, IG Miller was confirmed. IG Miller immediately began the process of hiring a seasoned and well-respected senior leadership team, and on August 3, 2020, SIGPR submitted its initial report to Congress.⁵

In the short time since SIGPR submitted its initial report, the office has continued to analyze its statutory jurisdiction, delve into the programs it oversees, build partnerships with other inspectors general and law-enforcement agencies, and develop an organizational plan for conducting audits and investigations.

CARES ACT OVERSIGHT

In its initial report, SIGPR offered its best, objective understanding of the jurisdictional contours for each of the entities assigned a major oversight role by the CARES Act and invited Congress to clarify potential ambiguities. As for itself, SIGPR concluded it has jurisdiction over Division A loans, loan guarantees, and other investments made by the Secretary of the Treasury, and Division A programs managed by the Secretary. SIGPR concluded it does not have jurisdiction over any programs in Division B.

Here, SIGPR takes the next logical step by applying its previous analysis to determine which Division A programs satisfy SIGPR's jurisdictional requirements. Doing so, SIGPR concludes four Division A programs clearly fall within its **core jurisdiction**:

1. Loans, loan guarantees, and other investments by the Secretary of the Treasury under **Division A, Title IV, Subtitle A, section 4003**;
2. The Payroll Support Program under **Division A, Title IV, Subtitle B**;
3. The Coronavirus Relief Program under **Division A, Title V**; and
4. Loans by the Secretary to the United States Postal Service under **Division A, Title VI**.

It remains unclear whether SIGPR has jurisdiction over the Paycheck Protection Program (PPP), but SIGPR offers what it believes to be the factors that weigh in favor of and against such jurisdiction. Again, SIGPR invites Congress to clarify lingering ambiguities or incorrect legal conclusions.

⁵ Initial Report, *supra* note 3.

SIGPR also provides in this report a new oversight matrix. This matrix summarizes the basic eligibility requirements and use restrictions for the major programs under Division A of the CARES Act. The matrix reflects SIGPR's view that each condition attached to a CARES Act dollar—and especially certifications related to those conditions—presents an opportunity for fraud.

HIGHLIGHTS

Over the past eight weeks, SIGPR has worked diligently to better understand the programs within its core jurisdiction, build strategic partnerships with interested parties, and develop an organizational plan for identifying fraud, waste, and abuse.

To better understand how the relevant programs function, SIGPR has, among other things, received briefings from the Federal Reserve Bank of Boston, reviewed documents produced by the Department of the Treasury, and participated in a host of informative discussions with senior management and special agents at the Federal Reserve and Treasury Offices of Inspector General. This approach reflects a larger reality: Effective oversight of the trillions of dollars flowing through CARES Act-funded programs hinges on transparency and cooperation not only as between agencies and their respective inspectors general, but also as between inspectors general themselves.

Elsewhere on the partnership front, SIGPR now has a formal memorandum of understanding with the Financial Crimes Enforcement Network and six U.S. Attorney's Offices, with more to come. SIGPR is also working closely with senior

leadership in the front offices of the Department of Justice and the U.S. Securities and Exchange Commission.

Notably, SIGPR officially launched its website this quarter, which can be found at www.sigpr.gov. The website includes information on whistleblower protections and how to report fraud, waste, and abuse. Individuals may also reach SIGPR's telephonic Hotline at [202-927-7899](tel:202-927-7899).

Leveraging these tools and relationships, SIGPR's Office of Investigations has initiated a total of 21 preliminary investigations into allegations of improper activity. Of those, SIGPR has referred seven to other IGs with proper jurisdiction. SIGPR is currently working one investigation jointly with a partner United States Attorney's office. And as SIGPR continues to build out its operational infrastructure, it will take a data-driven approach to generating and referring future investigative leads.

In sum, SIGPR's strategic partnerships and law-enforcement mindset continue to bear fruit.

REPORTABLE FINDINGS

SIGPR's quarterly reports to Congress include detailed information about Treasury's loans and investments under CARES Act Section 4003, data regarding the entities that have received such loans and investments, the financial status of those transactions, and other information. The information SIGPR has obtained in this regard is discussed more fully throughout this report, but an overview of the relevant categories and amounts of obligations by Treasury to date is reflected in the following table⁶:

⁶⁶ Treasury recently announced that it has concluded loans under CARES Act § 4003 with seven air carriers. Press

Funding Program	Obligation Amount
Direct Loans to Passenger Air Carriers and Related Businesses	\$5,897,000,000
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)	\$37,506,756,581
Term Asset-Backed Securities Facility (TALF II, LLC)	\$10,000,000,000
Primary and Secondary Market Corporate Credit Facility (Corporate Credit Facilities, LLC)	\$37,508,197,253
Municipal Liquidity Facility (Municipal Liquidity Facility, LLC)	\$17,500,000,000

RECOMMENDATIONS

Finally, SIGPR provides two congressional recommendations in this report. First, SIGPR recommends that Congress amend the CARES Act, or otherwise agree, to allow SIGPR to submit its quarterly reports to Congress no later than 30 days after the end of a calendar quarter. This would accord with the practice of other inspectors general that produce statutorily required reports. Second, SIGPR again recommends that Congress take up S.3751, the Special Inspector General for Pandemic Recovery Expedited Hiring Authorities Act of 2020, sponsored by Senator Grassley. The hiring flexibility offered by this bill would greatly improve SIGPR's ability to fulfill its mission.

Release, Treasury Concludes Loans to Seven Major Airlines, Supports Additional Relief for Aviation Industry Workers, U.S. Dep't Treasury (Sept. 29, 2020), <https://home.treasury.gov/news/press-releases/sm1140>. The data reported in the table here incorporates the known loan amounts to American Airlines, Inc., and Hawaiian Airlines, Inc., but SIGPR does not yet have data on the loans to the remaining five air carriers.



OFFICE OF THE SPECIAL INSPECTOR GENERAL FOR PANDEMIC RECOVERY

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.⁷ Specifically, 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 made 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.

The CARES Act provides that “the Special Inspector General shall have the authorities provided in section 6 of the Inspector General Act of 1978.”⁸ Through this express incorporation of the Inspector General Act, the CARES Act grants SIGPR broad subpoena authority.⁹

SIGPR in Context: Jurisdictional Updates

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 Act¹⁰

In its initial report to Congress, SIGPR interpreted this and other jurisdictional statements to situate itself within the broader oversight architecture of the CARES Act. SIGPR offered “its best, objective understanding of the jurisdictional contours” of the CARES Act to open a dialog about complex provisions with ambiguous language.¹¹ Among other goals, SIGPR intended its non-binding analysis “to inform the American taxpayers[] and to provide Congress an opportunity to clarify ambiguities.”¹² SIGPR heard from many individuals that the comprehensive matrix and supporting legal analysis were helpful. Other feedback was less enthusiastic but helpfully served to confirm that SIGPR is correct to flag certain legal ambiguities.

⁷ The text of Section 4018 of the CARES Act is provided at Appendix A.

⁸ CARES Act § 4018(d)(1).

⁹ See 5a U.S.C. § 6(a)(4).

¹⁰ CARES Act § 4018(c)(1).

¹¹ Initial Report, *supra* note 3, at 5.

¹² *Id.* at 10.

The primary takeaway from SIGPR’s initial report, however, is that SIGPR’s two prongs of jurisdiction cover:

1. 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 Division A; and
2. the management by the Secretary of any program established under Division A.

Applying that framework here, SIGPR concludes that the direct-loans and investments under Title IV, Subtitle A; the Payroll Support Program under Title IV, Subtitle B; the Coronavirus Relief Fund under Title V; and loans to the United States Postal Service under Title VI all fall within SIGPR’s core jurisdiction. SIGPR continues to work through its potential jurisdiction over the Paycheck Protection Program.

SIGPR’s Core Jurisdiction

Title IV, Subtitle A—Loans and Investments. Subtitle A of Title IV allocates \$500 billion to the Secretary of the Treasury for direct loans to the airline and national-security industries and for investments into liquidity facilities established by the Federal Reserve. The Secretary’s investments into the Federal Reserve’s facilities could result in up to \$2.3 trillion in financing.¹³

Paragraphs 4003(b)(1)–(3) authorize the Secretary to provide loans and loan guarantees to passenger air carriers, cargo air carriers, and businesses critical to maintaining national security. SIGPR has jurisdiction over these funding programs by virtue of both prongs of its jurisdiction.

At the threshold, the 4003(b)(1)–(3) programs involve the making and management of loans and loan guarantees. Next, the loans and loan guarantees, by statute, are “made by the Secretary.” They are also made by the Secretary under a “program established by the Secretary.” That is to say, the Secretary of the Treasury, and not any other individual or entity, establishes the system and processes to be used for soliciting, receiving, and processing applications, as well as the processes for executing and servicing any loans or loan guarantees awarded. Further, the Secretary establishes these programs under Division A of the CARES Act. Thus, all elements of the first prong of SIGPR’s jurisdiction are satisfied. Separately, because the programs are established under Division A, SIGPR also has jurisdiction over the loan programs under the second prong of its jurisdiction, which covers “the management by the Secretary of any program established under” Division A.

Paragraph 4003(b)(4) authorizes the Secretary “to make loans and loan guarantees to, and other investments in,” programs and facilities established by the Federal Reserve to provide emergency liquidity to specific financial markets and industries. The facilities established by the Federal Reserve for this purpose are established under Section 13(3) of the Federal Reserve Act.

¹³ Press Release, Treasury and Federal Reserve Board Announce New and Expanded Lending Programs to Provide up to \$2.3 Trillion in Financing, U.S. Dep’t Treasury (Apr. 9, 2020), <https://home.treasury.gov/news/press-releases/sm968>.

As it relates to SIGPR’s jurisdiction, two facts are worth noting: (1) the Secretary has invested in special purpose vehicles (SPVs) associated with some, but not all, of the Federal Reserve’s Section 13(3) facilities,¹⁴ and (2) the Federal Reserve, not the Secretary, manages the facilities.

Given that the facilities are managed by the Federal Reserve, the question arises whether SIGPR has jurisdiction over only the Secretary’s investments into the facilities, or also over the facility-level transactions. This question is important because SIGPR’s ability to identify fraud and other illicit activity by private parties would be strengthened by its ability to exercise jurisdiction over facility-level transactions.

SIGPR’s jurisdiction over the Secretary’s investments into the facilities is clear. These are “loans, loan guarantees, or other investments”; they are “made by the Secretary”; and they are made under a “program established by the Secretary under” Division A of the CARES Act. Notably, Congress did not define the term “program,” as used in this jurisdictional element. But it is evident the Secretary has established a “program” of investing into select facilities.

The word “program” is defined as “a plan or system under which action may be taken toward a goal.”¹⁵ The “plan or system” in this case is the Secretary’s formal processes for determining which Section 13(3) facilities to approve for creation, the facilities in which to invest, when to invest, how much to invest, and on what terms the investments will be made.¹⁶ The terms of investment in particular involve detailed and systematic planning between Treasury and the Federal Reserve, resulting in an Investment Memorandum of Understanding and Limited Liability Company Agreement for each facility the Secretary pledges to support. These documents cover issues like the legal structure and management of the facilities and facility funds, interest accrual, securities redemptions, and the Secretary’s reservation of rights.¹⁷ This all reflects that the Secretary’s investment of CARES Act funds into select Section 13(3) facilities, as every American taxpayer should hope, occurs by way of a regimented “plan or system under which action [is] taken toward a goal”—in a word, a “program.”¹⁸ And that “program” is established by the Secretary under Division A—specifically, paragraph 4003(b)(4).

This then leaves the question whether SIGPR has jurisdiction over the transactions of the Section 13(3) facilities in which the Secretary invests. SIGPR believes it does. Since subsection 4018(c) gives SIGPR jurisdiction over the “management . . . of . . . investments made by the Secretary,”¹⁹ SIGPR has jurisdiction over the Federal Reserve’s management of the SPVs in

¹⁴ SIGPR may refer to the Secretary “investing in” certain Section 13(3) facilities but understands this technically involves the Secretary investing in a special purpose vehicle created to carry out the facility’s transactions.

¹⁵ *Program*, Merriam-Webster.com (2020), <https://www.merriam-webster.com/dictionary/program>.

¹⁶ *See, e.g.*, Press Release, Treasury and Federal Reserve Board Announce New and Expanded Lending Programs to Provide up to \$2.3 Trillion in Financing, U.S. Department of the Treasury (Apr. 9, 2020), <https://home.treasury.gov/news/press-releases/sm968>.

¹⁷ *See, e.g.*, Municipal Liquidity Facility, Federal Reserve Bank of New York (last visited Sept. 25, 2020), <https://www.newyorkfed.org/markets/municipal-liquidity-facility>.

¹⁸ *Program*, *supra* note 15.

¹⁹ CARES Act § 4018(c)(1).

which Treasury has invested. In other words, when a Federal Reserve Bank manages an SPV—including by conducting particular transactions—into which the Secretary has invested, the Bank is managing the Secretary’s investment. Notably, the remainder of the first prong is satisfied according to the same analysis as just described above—i.e., the investments managed by the Federal Reserve are made under the program established by the Secretary for investing in Section 13(3) facilities. Accordingly, SIGPR believes it has jurisdiction over the Section 13(3) facilities in which the Secretary invests and intends to exercise this jurisdiction to identify fraud against the Federal Reserve, Secretary of the Treasury, and American taxpayer.

In sum, SIGPR’s jurisdiction over section 4003 programs involves overseeing an appropriation of \$500 billion for loans and investments that may ultimately lead to more than \$2 trillion in financing. The sheer size of the section 4003 programming, and the risk for fraud associated with such a large volume of financing, will place a significant demand on SIGPR’s resources and require continued partnership with the Fed IG and others.

Title IV, Subtitle B—Payroll Support Program. Subtitle B of CARES Act, Division A, Title IV is titled “Air Carrier Worker Support” and empowers the Secretary to establish the program known as the Payroll Support Program (PSP). This program provides up to \$25 billion for passenger air carriers, \$4 billion for cargo air carriers, and \$3 billion for eligible industry contractors to be used primarily to service payroll costs.²⁰ As of September 3, 2020, Treasury had provided relief under the PSP to 343 passenger air carriers, 36 cargo air carriers, and 216 contractors.²¹

Under the PSP, Treasury provides air carriers and contractors with assistance in amounts equal to what those entities spent on wages, salaries, and benefits in the six-month period from April 1, 2019, through September 30, 2019.²² Congress specifically directed the Treasury IG to audit certifications that air carriers and contractors must make under subsection 4113(a) concerning the amounts they spent on wages, salaries, and benefits during that period.²³ But the PSP also requires that air carriers and contractors satisfy a host of important conditions not listed in subsection 4113(a) in order to receive assistance. For example, “[t]o be eligible for financial assistance” under the PSP, an applicant must agree or certify that it will refrain from involuntary furloughs through September 30, 2020, and refrain from stock buybacks or dividend payments through September 30, 2021.²⁴ Air carriers and contractors receiving PSP assistance also must agree to certain limitations on the compensation they can pay to their executives during the period from March 24, 2020, through March 24, 2022.²⁵ Further,

²⁰ *Id.* § 4112(a).

²¹ See Payroll Support Program Payments, U.S. Dep’t Treasury (last accessed September 15, 2020), <https://home.treasury.gov/policy-issues/cares/preserving-jobs-for-american-industry/payroll-support-program-payments>.

²² CARES Act § 4113(a).

²³ *Id.* § 4113(d).

²⁴ *Id.* § 4114(a)(1)-(3).

²⁵ *Id.* § 4116.

recipients of PSP funding agree to “use the Payroll Support exclusively for the continuation of payment of Wages, Salaries, and Benefits to the Employees of the Recipient.”²⁶

SIGPR shares core jurisdiction over the PSP under the second prong of its jurisdictional mandate. That is because the statutory provisions creating the PSP fall within Division A of the CARES Act—i.e., the program is established under Division A—and because the PSP is managed by the Secretary.²⁷ Moreover, because the Secretary has received warrants from some PSP participants—i.e., the Secretary has made “investments” in those entities—SIGPR also has jurisdiction over those particular transactions under the first prong of its jurisdiction.

While Congress charged the Treasury IG with auditing a specific set of certifications air carriers and contractors make under subsection 4113(a), SIGPR believes its jurisdiction covers the additional certifications and requirements under Sections 4114, 4115, and 4116, as well as under the terms of the Payroll Support Program Agreement, which present opportunities for fraud and other illegal conduct. And because Congress expressly authorized the Treasury IG to “audit certifications made *under subsection (a)*” of Section 4113,²⁸ but did not assign Treasury IG a role under any other section or subsection of the PSP, SIGPR intends to monitor the certifications and agreements that air carriers and contractors make concerning use of funds, involuntary furloughs, stock buybacks, dividend payments, and executive compensation to receive PSP assistance, as well as recipient compliance with those certifications and agreements. Further, to the extent a PSP recipient provides the Secretary a note or warrant in exchange for PSP assistance, SIGPR intends to report on that investment in SIGPR’s quarterly reports.²⁹

Title V—Coronavirus Relief Fund. Title V of CARES Act, Division A amends the Social Security Act to create what is known as the Coronavirus Relief Fund—a \$150 billion appropriation to aid states and municipalities. This provision of the CARES Act authorizes the Secretary to “pay each State and Tribal government, and each unit of local government that meets [certain] condition[s] . . . the amount determined for the State, Tribal government, or unit of local government” according to parameters set forth within Title V.³⁰ The Coronavirus Relief Fund falls within SIGPR’s core jurisdiction because the statutory provisions creating it are within Division A of the CARES Act—i.e., the program is established under Division A—and because the program is managed by the Secretary.³¹

²⁶ Payroll Support Program Agreement, Terms and Conditions, <https://home.treasury.gov/system/files/136/Form-of-PSP-Agreement.pdf>.

²⁷ See CARES Act § 4018(c)(1) (“It shall be the duty of the Special Inspector General to . . . conduct, supervise, and coordinate audits and investigations of . . . the management by the Secretary of any program established under this Act.”); *id.* § 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.”).

²⁸ *Id.* § 4113(d) (emphasis added).

²⁹ See *id.* §§ 4018(c)(1), 4018(f)(1)(B).

³⁰ *Id.* § 5001(a).

³¹ See *id.* §§ 3, 4018(c)(1).

The Coronavirus Relief Fund involves several certifications and limitations that present opportunities for fraud, waste, and abuse. As part of the Secretary’s management of this program, for example, Treasury has explained that “Funds may not be used to fill shortfalls in government revenue to cover expenditures that would not otherwise qualify under the statute,” “that payments be used only to cover costs that were not accounted for in the budget most recently approved as of March 27, 2020,” and “that payments from the Fund may only be used to cover costs that were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020.”³² SIGPR believes these kinds of requirements and limitations deserve careful attention.

Congress specifically provided that “[t]he Inspector General of the Department of the Treasury shall conduct monitoring and oversight of the receipt, disbursement, and use of funds made available under this section.”³³ Consistent with this mandate, Treasury IG has already issued important reporting and record-retention guidance to Fund recipients.³⁴ Congress also specifically provided, however, that “[n]othing in this subsection”—that is, the subsection assigning Treasury IG a monitoring and oversight role—“shall be construed to diminish the authority of *any* Inspector General.”³⁵ That would include SIGPR, meaning the paragraph assigning Treasury IG an oversight role with respect to the Coronavirus Relief Fund may not be construed to diminish SIGPR’s authority to exercise concurrent jurisdiction over the program.

Nevertheless, given Treasury IG’s active work on this program, SIGPR’s emphasis on deconfliction, and the need for oversight as it relates to other CARES Act funding, SIGPR does not intend to prioritize directing its limited resources to Coronavirus Relief Fund issues at this time.

Title VI—Loans to the United States Postal Service. Title VI of CARES Act, Division A provides that “the Secretary of the Treasury may lend up to [\$10,000,000,000] at the request of the Postal Service, upon terms and conditions mutually agreed upon by the Secretary and the Postal Service.”³⁶ On July 29, 2020, Treasury announced “it had reached an agreement with the United States Postal Service (USPS) on the material terms and conditions of a loan of up to \$10 billion to the USPS under Section 6001.”³⁷

³² Coronavirus Relief Fund Guidance for State, Territorial, Local, and Tribal Governments, U.S. Dep’t Treasury, at 1–2 (Sept. 2, 2020), <https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Guidance-for-State-Territorial-Local-and-Tribal-Governments.pdf>.

³³ Social Security Act (SSA) § 601(f)(1).

³⁴ See Memorandum for Coronavirus Relief Fund Recipients, U.S. Dep’t Treasury Office of Inspector General (July 2, 2020), <https://home.treasury.gov/system/files/136/IG-Coronavirus-Relief-Fund-Recipient-Reporting-Record-Keeping-Requirements.pdf>.

³⁵ SSA § 601(f)(4) (emphasis added).

³⁶ CARES Act § 6001(b)(2).

³⁷ Press Release, Treasury and United States Postal Service Reach Agreement on Terms of CARES Act Loan, U.S. Dep’t Treasury (July 29, 2020), <https://home.treasury.gov/news/press-releases/sm1071>.

As with the direct loans under paragraphs 4003(b)(1)–(3), Treasury’s agreed loan with USPS falls within SIGPR’s core jurisdiction. First, the transaction involves the making and management of a loan. Next, the loan is made by the Secretary. The loan is also made by the Secretary under a program established by the Secretary. That is, the Secretary of the Treasury, and not any other individual or entity, established the processes to be used in determining whether, on what terms, and how much to loan the USPS. And the Secretary established this program under Division A of the CARES Act. Thus, all elements of the first prong of SIGPR’s jurisdiction are satisfied. Because the program was established under Division A, SIGPR also has jurisdiction over the loan program under the second prong, which covers “the management by the Secretary of any program established under” Division A.

* * *

These four areas of programming alone involve nearly \$700 billion in potential direct funding, with the possibility of supporting well over \$2 trillion in financing. If Congress did not intend to grant SIGPR jurisdiction over any of these programs, or if Congress otherwise intended to limit SIGPR’s core jurisdiction, Congress may clarify that by amending the text of the CARES Act.

Lingering Ambiguities

In SIGPR’s view, the foregoing programs clearly fall within SIGPR’s core jurisdiction. The status of other programs, however, remains unclear, and ambiguities linger that may warrant legislative clarification.

The Paycheck Protection Program (PPP) is the primary example of a program over which SIGPR’s jurisdiction remains unclear. It is safe to say SIGPR does not have jurisdiction over the PPP under the first prong of its jurisdiction, because the program does not involve loans, loan guarantees, or other investments made by the Secretary under a program established by the Secretary.³⁸ To the contrary, the Small Business Administration (SBA), not the Secretary, “is empowered . . . to make loans” for the PPP,³⁹ and the SBA, not the Secretary, “may guarantee covered loans” under the program.⁴⁰ There do not appear to be “other investments” related to the PPP.

Whether the PPP satisfies the second prong of SIGPR’s jurisdiction is an open question. Under this prong, SIGPR would have jurisdiction over any “management by the Secretary” of the PPP.⁴¹ The critical question is whether, or to what extent, the Secretary manages the program.

Some factors suggest the SBA, not the Secretary, manages the PPP. Foremost among these factors is that, as mentioned above, the CARES Act amends the Small Business Act to ostensibly assign the major PPP operational functions to the SBA. As noted, the SBA makes and guarantees

³⁸ See CARES Act § 4018(c)(1).

³⁹ 15 U.S.C. § 636(a).

⁴⁰ CARES Act § 1102(a)(2).

⁴¹ *Id.* § 4018(c)(1).

the loans made available by the PPP.⁴² And when it comes to the loan-forgiveness process—the marquee feature of the PPP—Congress charged the SBA with “issu[ing] guidance and regulations implementing” the process⁴³; “remit[ting] to the lender” any forgiven loan amount⁴⁴; conducting advanced purchases of covered loans according to reports submitted to the SBA from lenders approved for that purpose by the SBA⁴⁵; determining a recipient’s status as a seasonal employer⁴⁶; and identifying and requiring any additional necessary documentation not required by statute for forgiveness applications.⁴⁷ Consistent with this authority, the SBA has issued several interim final rules regarding the functioning of the PPP.⁴⁸ In sum, the CARES Act consistently contemplates the SBA as running the day-to-day functioning of the PPP, and the SBA has acted in accord with that view.

Other factors, however, strongly suggest the Secretary, too, has a role in managing the PPP. For example, the CARES Act expressly provides that the SBA *and* “the Secretary of the Treasury may prescribe regulations granting de minimis exemptions from the” CARES Act’s statutory limits on forgivable loan amounts.⁴⁹ The Secretary has exercised this authority to issue relevant, interim final rules jointly with the SBA.⁵⁰ Even more probative, Section 1109 of the CARES Act—in Title I, which creates the PPP—is titled, “United States Treasury Program Management Authority.”⁵¹ Among other things, this section obligates the Secretary, “in consultation with the [SBA] Administrator, and the Chairman of the Farm Credit Administration,” to establish criteria and promulgate guidance for “lenders that do not already participate in lending under programs of the Administration, to participate in the paycheck protection program.”⁵² The Secretary has exercised this authority as well, issuing interim final rules on point *without* the SBA.⁵³

Notably, subsection 1109(h) provides that the SBA “shall administer the program established under this section” “[w]ith guidance from the Secretary.”⁵⁴ Assuming this provision means the

⁴² See *id.* § 1102(a)(2); 15 U.S.C. § 636(a).

⁴³ CARES Act § 1106(k).

⁴⁴ *Id.* § 1106(c)(3).

⁴⁵ *Id.* § 1106(c)(4).

⁴⁶ See, e.g., *id.* § 1106(d)(2)(A)(ii)(II),

⁴⁷ *Id.* § 1106(e)(4).

⁴⁸ See, e.g., Lender Forms and Guidance, U.S. Small Business Administration (last visited Sept. 20, 2020), <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program#section-header-9>.

⁴⁹ CARES Act § 1106(d)(6).

⁵⁰ See, e.g., 85 FR 33004 (May 28, 2020), <https://www.federalregister.gov/documents/2020/06/01/2020-11536/business-loan-program-temporary-changes-paycheck-protection-program-requirements-loan-forgiveness>.

⁵¹ CARES Act § 1109.

⁵² *Id.* § 1109(b).

⁵³ See, e.g., 85 CFR 23917 (Apr. 30, 2020), <https://www.federalregister.gov/documents/2020/04/30/2020-09239/small-business-administration-business-loan-program-temporary-changes-paycheck-protection>.

⁵⁴ CARES Act § 1109(h). Unsurprisingly, there is ambiguity surrounding which “program” this provision refers to.

SBA administers the “program” of authorizing new lenders to facilitate PPP loans, a few takeaways emerge. Section 1109 assigns “Management Authority” to the Secretary, which appears to come in the form of issuing rules and providing the SBA “guidance,” and subsection 1109(h) assigns the SBA the role of “Program Administration,” which appears to come in the form of carrying out operational duties like “the making and purchasing of guarantees on loans.”⁵⁵ One can easily see how the structure created by subsection 1109(h)—the Secretary manages and the SBA administers—might be analogized to the structure of the PPP as a whole. After all, the SBA administers the PPP by carrying out the major operational duties like guaranteeing and forgiving loans while the Secretary has issued rules for the PPP—both on its own and in consultation with the SBA—and has otherwise provided the SBA guidance on program administration.

There is more. Even some PPP guidance the SBA has posted was developed “in consultation with the Department of the Treasury.”⁵⁶ And when certain PPP loan-level data was released publicly, that data was hosted by the Department of the Treasury.⁵⁷ Not to mention, Section 1107 gives Treasury \$25M “for carrying out section 1109.”⁵⁸ That is the same sum of money allotted to SIGPR to operate for five years, suggesting Congress anticipated Treasury would have a substantial and active role in the PPP.

Finally, other factors are perhaps a wash. For example, the SBA hosts a public webpage dedicated to the PPP.⁵⁹ But so does Treasury.⁶⁰ The SBA’s webpage includes a host of PPP rules, forms, and guidance papers—but so does Treasury’s PPP webpage.

At bottom, much of Title I of the CARES Act strongly indicates Congress contemplated that the SBA would run the PPP. But as the foregoing factors show, that may not answer the ultimate question whether, or to what extent, there is “management by the Secretary” associated with the program. Some factors suggest the Secretary merely has a sizeable consulting role in the PPP but that the SBA “manages” the program—even if it does so with guidance and assistance

Most likely, it refers to the “program” of allowing “insured depository institutions, insured credit unions, institutions of the Farm Credit System chartered under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.), and other lenders that do not already participate in lending under programs of the Administration, to participate in the paycheck protection program.” *Id.* § 1109(b).

⁵⁵ *Id.* § 1109(h).

⁵⁶ See, e.g., Paycheck Protection Program Loans Frequently Asked Questions (FAQs), U.S. Small Business Administration (Aug. 11, 2020), <https://www.sba.gov/sites/default/files/2020-08/Final%20PPP%20FAQs%20%28August%2011%2C%202020%29-508.pdf>.

⁵⁷ SBA Paycheck Protection Program Loan Level Data, U.S. Dep’t Treasury (last visited Sept. 20, 2020), <https://home.treasury.gov/policy-issues/cares-act/assistance-for-small-businesses/sba-paycheck-protection-program-loan-level-data>.

⁵⁸ CARES Act § 1107(a).

⁵⁹ Paycheck Protection Program, U.S. Small Business Administration (last visited Sept. 20, 2020), <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program>.

⁶⁰ The CARES Act Provides Assistance to Small Businesses, U.S. Dep’t Treasury (last visited Sept. 20, 2020), <https://home.treasury.gov/policy-issues/cares/assistance-for-small-businesses>.

from the Secretary. Yet other factors strongly suggest the Secretary, both textually and practically, has a major management role in the PPP. It is also worth noting that SIGPR has received and responded to several letters from Congressional members suggesting that at least some in Congress believe the legislation they passed granted SIGPR jurisdiction over the PPP.⁶¹

* * *

Considering the difficulty and importance of this issue, SIGPR will continue to collect and assess relevant information and intends to provide a definitive position on its legal jurisdiction over the PPP in a later quarterly report. If, however, Congress specifically intended to grant SIGPR jurisdiction over the PPP—or, if Congress specifically intended to omit the PPP from SIGPR’s jurisdiction—Congress may clarify that by amending the text of the CARES Act.

Therefore, under paragraph 4018(c)(1), SIGPR concludes for now that it has clear jurisdiction—with the caveats described above relating to concurrent jurisdiction, priorities, and lingering ambiguities—over at least the following:

- Title IV, Subtitle A loans and loan guarantees made by the Secretary to passenger air carriers, cargo air carriers, and businesses critical to maintaining national security pursuant to paragraphs 4003(b)(1)–(3) and the management of those Section 13(3) facilities in which the Secretary has invested pursuant to paragraph 4003(b)(4);
- Title IV, Subtitle B assistance to aviation industry workers under the PSP;
- Title V aid to states, municipalities, and Tribal governments under the Coronavirus Relief Fund; and
- Title VI loans to the U.S. Postal Service.

SIGPR’s Jurisdiction is not Expanded by Collectible Information

There is another point of potential ambiguity in SIGPR’s jurisdiction. In its initial report, SIGPR did not address the relationship between the list of information in subparagraphs (c)(1)(A)–(E) and the jurisdictional mandate found in the first part of paragraph 4018(c)(1). SIGPR addresses that issue here and concludes that the list does not expand SIGPR’s jurisdiction.

Under paragraph 4018(c)(1), SIGPR is to conduct audits and investigations “including by collecting and summarizing” five subcategories of information. The first four of these subcategories are relatively straightforward:

⁶¹ SIGPR received a letter from Senator Elizabeth Warren asserting SIGPR has jurisdiction “to investigate *any* fraud, waste and abuse of” CARES Act funds. (Emphasis added.) SIGPR also received a letter from Senator Kelly Loeffler and others asserting SIGPR has “the authority to investigate and audit all loans made or managed by the Secretary of the Treasury, including those made under the Paycheck Protection Program.” These letters are included in Appendix B.

- (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 4003.⁶²

Because each of these subcategories either explicitly relates to section 4003 or to “loans, loan guarantees, and other investments made by the Secretary,” the scope of the information under these subcategories clearly relates to activities within SIGPR’s jurisdiction. The last subcategory—subparagraph 4018(c)(1)(E)—is not so limited, but rather includes:

- (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.⁶³

On its face, subparagraph 4018(c)(1)(E) could be read as reaching beyond the two prongs of SIGPR’s jurisdiction. That is because, as a literal matter, the phrase “loan, loan guarantee, and other investment made under this Act” is not necessarily constrained to loans, loan guarantees, or other investments made *by the Secretary* or as part of a program managed by the Secretary.

At this juncture, an apparent conflict arises from the fact that the jurisdictional statement in paragraph 4018(c)(1)—which appears to be narrower than the scope of the list—authorizes SIGPR to exercise that jurisdiction “including by” collecting the information listed in subparagraphs 4018(c)(1)(A)–(E)—which appears to be broader than the scope of SIGPR’s jurisdiction. Thus, there is ambiguity in what “including by” means.

The term “including” can ordinarily be read in two ways: 1) with the items following as illustrative examples of what precedes, such that the items should be interpreted as narrower than what precedes; or 2) as the functional equivalent of the term “and,” such that the items following it add to what precedes.⁶⁴ Context informs which sense of the term applies.

⁶² CARES Act § 4081(c)(1)(A)–(D).

⁶³ *Id.* § 4018(c)(1)(E) (emphasis added).

⁶⁴ See, e.g., *Arizona State Bd. For Charter Sch. v. U.S. Dep’t of Educ.*, 464 F.3d 1003, 1007–09 (9th Cir. 2006); *Adams v. Dole*, 927 F.2d 771 (4th Cir. 1991).

For several reasons, SIGPR believes it is better here to read “including” as introducing illustrative examples. First, paragraph 4018(c)(1), preceding the list, functions as the main statement of jurisdiction for SIGPR. It would be counterintuitive to implicitly expand that jurisdiction with a demonstrative list rather than doing so explicitly in the preceding subsection outlining what SIGPR is to investigate and audit. Second, subparagraph 4018(c)(1)(E) seems to make the most sense when read as continuing and complementing subparagraphs 4018(c)(1)(A)–(D). For example, subparagraph 4018(c)(1)(E) concerns reporting loan amounts and other *financial* information but does not require reporting the kind of identifying and decisional information required by subparagraphs (c)(1)(A)–(D). But (A) through (D) relate to information about programs falling within the jurisdiction of SIGPR under the main statement in (c)(1). It would be odd for Congress to provide in subparagraphs (c)(1)(A)–(D) for collecting information about funding recipients, types, and decisional processes—but not financial data—only for loans and investments *by the Secretary*, but then provide in subparagraph (c)(1)(E) for collecting only financial data—but not information about funding recipients, types, and decisional processes—for all loans and investments made under Division A, whether involving the Secretary or not. On the other hand, it makes very good sense that Congress intended subparagraphs (c)(1)(A)–(E) to be read as a whole and as painting a full picture for all the loans, loan guarantees, and other investments made by the Secretary under Division A programs or as part of a Division A program managed by the Secretary.

Accordingly, SIGPR believes that its jurisdiction is defined by the first part of Section 4018(c)(1) and is not expanded by the list in subparagraphs 4018(c)(1)(A)–(E).

SIGPR in Context: Reporting Requirements

In its initial report to Congress, SIGPR discussed its reporting requirements under CARES Act subparagraph 4018(f)(1)(B). The discussion there primarily concerned whether the requirements in that subparagraph, which closely track the language of section 4003, reflected an intent by Congress to limit SIGPR’s jurisdiction to only section 4003 activities. SIGPR concluded that the reporting obligations should not be read to limit SIGPR’s jurisdiction. Here, SIGPR presents new analysis on whether the *reporting* requirements in subparagraph 4018(f)(1)(B)—and the provisions it cites—impose upon SIGPR certain *data-collection* requirements.

The CARES Act directs SIGPR to submit quarterly reports that include information on only a subset of the programs potentially within its jurisdiction. Those reports “shall include” two categories of information:

1. “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,” and
2. “the information collected under subsection (c)(1).”⁶⁵

⁶⁵ CARES Act § 4018(f)(1)(B).

The first category of reportable information includes:

- loans and loan guarantees for passenger air carriers and related businesses, made under paragraph 4003(b)(1);
- loans and loan guarantees for cargo air carriers, made under paragraph 4003(b)(2);
- loans and loan guarantees for businesses critical to maintaining national security, made under paragraph 4003(b)(3); and
- the Secretary’s investments into facilities established by the Board of Governors of the Federal Reserve System for the purpose of providing liquidity to the financial system, made under paragraph 4003(b)(4).⁶⁶

As it relates to the first category of reportable information, then, the phrasing of subparagraph 4018(f)(1)(B) means that SIGPR’s quarterly reports “shall include” this section 4003 data. The phrasing of 4018(f)(1)(B) as it relates to the second category of reportable information, however, is more ambiguous.

In providing that SIGPR’s quarterly reports “shall include . . . the information collected under subsection (c)(1),” subparagraph 4018(f)(1)(B) plainly requires SIGPR to report any information collected under (c)(1) but does not itself appear to require SIGPR to collect that information in the first place. The duty to *report* what is collected, in other words, is not itself a duty to *collect*. This naturally raises the question whether the language of paragraph 4018(c)(1) obligates SIGPR to collect the relevant information.

The jurisdictional statement in paragraph 4018(c)(1) assigns SIGPR the “duty” to conduct audits and investigations, “including by collecting and summarizing” the information listed in subparagraphs 4018(c)(1)(A)–(E). The relationship between “collecting and summarizing” information and SIGPR’s duty to “conduct, supervise, and coordinate audits and investigations” is somewhat ambiguous. There are two possibilities here: 1) SIGPR *must* collect and summarize the information listed in (c)(1)(A)–(E) as part of its “duty” to conduct audits and investigations, regardless of whether SIGPR believes such collection will further those functions, or 2) “collecting and summarizing” the information is one way SIGPR *may* conduct audits and investigations, subject to SIGPR’s determination that collecting such information will further an audit or investigation. There are reasons for each interpretation.

Weighing in favor of the mandatory reading is that, as discussed above, the word “including” in paragraph 4018(c)(1) serves an illustrative function, so that what follows the word is illustrative of what precedes it. What precedes the word “including,” in this case, is SIGPR’s mandate, which provides, in part, “[i]t shall be the duty of the Special Inspector General to . . . conduct, supervise, and coordinate audits and investigations.”⁶⁷ Because “collecting and summarizing” the (c)(1)(A)–(E) list of information follows the word “including,” that activity is illustrative of SIGPR’s “duty” to “conduct, supervise, and coordinate audits and investigations.” That is,

⁶⁶ See SIGPR in Context: Jurisdictional Updates, *supra*.

⁶⁷ CARES Act § 4018(c)(1).

collecting and summarizing the listed information is *included* in the duty to audit and investigate. The clearest way to express this interpretation is with the operative language of paragraph 4018(c)(1): “It shall be the duty of the Special Inspector General to . . . conduct, supervise, and coordinate audits and investigations . . . , including by collecting and summarizing the” information listed in subparagraphs (c)(1)(A)–(E).

Moreover, the specificity with which subparagraphs (c)(1)(A)–(E) are written is inconsistent with the idea that SIGPR may exercise discretion over whether to collect the information and for which transactions. For example, subparagraph (c)(1)(B) requires SIGPR to collect information on “*each* category described in subparagraph (A).”⁶⁸ Subparagraph (c)(1)(C) requires SIGPR to collect information on “the reasons the Secretary determined it to be appropriate to make *each* loan or loan guarantee under this Act.”⁶⁹ Subparagraph (c)(1)(D) requires SIGPR to collect information on “*each* person hired to manage or service *each* loan, loan guarantee, or other investment made under section 4003.”⁷⁰ And subparagraph (c)(1)(E) requires SIGPR to collect information on “*each* loan, loan guarantee, and other investment made under this Act that is outstanding.”⁷¹ Thus, the language of subparagraphs (c)(1)(A)–(E) seems to contemplate SIGPR collecting information on *each* loan and investment, not simply the loans and investments SIGPR chooses to be the subject of a particular audit or investigation.

Weighing in favor of the permissive reading is the fact that SIGPR does not read the (c)(1)(A)–(E) list following the phrase “including by” literally, because, as discussed earlier, doing so would mean collecting information beyond the scope of SIGPR’s jurisdiction. In that light, it cannot be that SIGPR *must* collect and summarize all the information in the (c)(1)(A)–(E) list. Because SIGPR must exercise judgment in determining the scope of information (c)(1)(A)–(E) authorizes it to collect, it is reasonable also to exercise judgment in determining *whether* to collect such information. Importantly, SIGPR’s ability to exercise its own judgment in determining whether to collect certain authorized information in furtherance of audits and investigations accords with the latitude afforded IGs under the Inspector General Act of 1978 to decide which audits and investigations to pursue and how best to pursue them. As a practical matter, moreover, SIGPR lacks the budget and resources to audit and investigate *each* loan and investment made by the Secretary. And in the course of any particular audit or investigation, it often would make no sense to collect information about loans or investments that are not the subject of the audit or investigation.⁷²

⁶⁸ *Id.* § 4018(c)(1)(B) (emphasis added).

⁶⁹ *Id.* § 4018(c)(1)(C) (emphasis added).

⁷⁰ *Id.* § 4018(c)(1)(D) (emphasis added).

⁷¹ *Id.* § 4018(c)(1)(E) (emphasis added).

⁷² One concern is that, if the statute required SIGPR to submit quarterly reports of the information under subparagraphs 4018(c)(1)(A)–(E) as part of SIGPR’s duty to conduct specific audits and investigations, then the reporting requirements of subparagraph 4018(f)(1)(B) effectively would require SIGPR to publicly reveal the existence and contents of open audits and investigations.

Either way, the reporting requirements in subparagraph 4018(f)(1)(B) should not drive the decision over which interpretation of paragraph 4018(c)(1) prevails.⁷³ But because SIGPR finds that most of the information described in subparagraphs 4018(c)(1)(A)–(E) would be helpful to understanding the programs under SIGPR’s core jurisdiction and identifying opportunities for fraud, SIGPR will endeavor to collect and report that information so long as it furthers SIGPR’s overall statutory mission.

⁷³ Even assuming the CARES Act *requires* collection of all the information in subparagraphs 4018(c)(1)(A)–(E), that does not necessarily answer *when* it should be collected.

SIGPR in Context: CARES Act Program Eligibility & Oversight

Name of Program	CARES Act Section	Brief Summary	Program Eligibility Restrictions	Oversight Entities
<i>Title I, the Keeping American Workers Paid and Employed Act</i>				
Paycheck Protection Program (PPP)	1102	The Paycheck Protection Program is designed to provide a direct incentive for small businesses to keep their workers on the payroll. SBA will forgive loans if all employee retention criteria are met, and the funds are used for eligible expenses. ⁷⁴	<ul style="list-style-type: none"> • Borrower must be a business concern, nonprofit organization, veterans organization, or Tribal business concern. 15 U.S.C. § 636(a)(36)(D)(i). • Borrower, together with its affiliates, must not have more than 500 employees. 15 U.S.C. § 636(a)(36)(D)(i)(I); 13 C.F.R. § 121.301(a)(2). <ul style="list-style-type: none"> ◦ There are limited exceptions to this requirement. 15 USC § 636(a)(36)(D)(i)(II). • Loan must be used for payroll costs, group healthcare benefit costs, mortgage interest, rent, utilities, and interest on debt incurred prior to February 15, 2020. 15 U.S.C. § 636(a)(36)(F). • Borrower must certify that “the uncertainty of current economic conditions makes necessary the loan request to support the ongoing operations of the [borrower].” 15 U.S.C. § 636(a)(36)(G)(i)(I); 13 C.F.R. § 121.301(a)(2). • Borrower must not have another application pending for another PPP loan or receive amounts 	SBA OIG ⁷⁵

⁷⁴ Paycheck Protection Program, U.S. Small Business Administration (last visited Sept. 28, 2020), <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program>.

⁷⁵ The oversight entities listed in this chart are limited to those entities expressly assigned a program-specific role by the CARES Act or that otherwise have institutional responsibility for the agency charged with program implementation. It is for that reason the chart does not include the Pandemic Response Accountability Committee (PRAC). SIGPR takes no position on the PRAC’s jurisdiction over the listed programs. Although SIGPR is a member of the PRAC, SIGPR does not speak for the PRAC. The contents of this report do not necessarily represent the views of the PRAC.

Name of Program	CARES Act Section	Brief Summary	Program Eligibility Restrictions	Oversight Entities
			<p>under another PPP loan for the same purpose and duplicative of amounts applied for or received under a covered loan. 15 U.S.C. § 636(a)(36)(G)(i)(III-IV).</p>	
<p>Emergency Economic Injury Disaster Loans (EIDL)</p>	<p>1110</p>	<p>The EIDL program is designed to provide economic relief to businesses that are currently experiencing a temporary loss of revenue due to COVID-19.⁷⁶ It provides \$10,000 emergency grants for small businesses and expands eligibility for SBA disaster loans.</p>	<ul style="list-style-type: none"> • Grant recipient may use the funds for any allowable purpose for a loan under 15 U.S.C. § 636(b)(2), including to provide paid sick leave to employees unable to work because of COVID-19, to maintain payroll, to meet increased costs because of supply chain disruptions, to cover rent or mortgage payments, or to repay obligations that cannot be met due to revenue losses. CARES Act § 1110(e)(4). • Grant recipient or borrower, together with its affiliates, must be a business, cooperative, or employee stock ownership plan with not more than 500 employees. CARES Act § 1110(a)(2); 13 C.F.R. § 121.301(a)(2). • Grant recipient or borrower must have been in business prior to January 31, 2020. CARES Act § 1110(c)(2). • Grant recipient or borrower must have “suffered a substantial economic injury as a result of” COVID-19. CARES Act § 1110(f)(5); 15 U.S.C. § 636(b)(2)(D). 	<p>SBA OIG</p>

⁷⁶ Economic Injury Disaster Loans, U.S. Small Business Administration (last visited Sept. 29, 2020), <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/economic-injury-disaster-loans>.

Name of Program	CARES Act Section	Brief Summary	Program Eligibility Restrictions	Oversight Entities
<i>Title II, Assistance for American Workers, Families, and Businesses</i>				
<p>Pandemic Unemployment Assistance Program (PUA)</p>	<p>2102</p>	<p>Provides workers who are unemployed due to Covid-19 with up to 39 weeks of unemployment benefits.</p>	<ul style="list-style-type: none"> • Limited to individuals who are not eligible for regular compensation or extended benefits under state or federal law or under CARES Act § 2107, including because they have exhausted such benefits. CARES Act § 2102(a)(3)(A)(i). • Limited to individuals who are otherwise able and available to work but are unemployed or unable to work due to COVID-19. CARES Act § 2102(a)(3)(A)(ii). • Limited to 39 weeks of benefits, including any weeks for which the individual receives regular benefits. CARES Act § 2102(c)(2). 	<p>Labor OIG</p>

Name of Program	CARES Act Section	Brief Summary	Program Eligibility Restrictions	Oversight Entities
<p>Pandemic Emergency Unemployment Compensation Program</p>	<p>2107</p>	<p>Provides States with funding to pay individuals for 13 additional weeks of unemployment compensation at the State level plus \$600, as well as administrative costs for implementation.</p>	<ul style="list-style-type: none"> Limited to individuals who have exhausted all rights to regular compensation under State and Federal law with respect to a benefit year and have no rights to regular compensation with respect to a week under such laws. CARES Act § 2107(a)(2)(A)–(B). Limited to individuals able, available, and actively seeking to work. CARES Act § 2107(a)(2)(D). Limited to 13 weeks of benefits. CARES Act § 2017(b)(2). 	<p>Labor OIG</p>
<p><i>Title IV, Economic Stabilization and Assistance to Severely Distressed Sectors of US Economy</i></p>				
<p>Subtitle A</p>				
<p>Loans, Loan Guarantees, and other Investments by the Secretary of the Treasury</p>	<p>4003(b)(1)–(3)</p>	<p>Allocates up to \$46 billion for loans and loan guarantees to passenger air carriers, certain businesses certified to provide inspection and repair services, ticket agents, cargo air carriers, and businesses critical to maintaining national security.</p>	<ul style="list-style-type: none"> Limited to businesses “for which credit is not reasonably available at the time of the transaction.” CARES Act § 4003(c)(2)(A). “[T]he duration of the loan or loan guarantee is as short as practicable and in any case not longer than 5 years.” CARES Act § 4003(c)(2)(D). Recipient must agree that: <ul style="list-style-type: none"> until 12 months after the date the loan or loan guarantee is no longer outstanding, neither the recipient nor any affiliate may purchase an equity security that is listed on a national securities exchange of the recipient or any parent company of the recipient, with some exceptions; 	<p>SIGPR; Congressional Oversight Commission</p>

Name of Program	CARES Act Section	Brief Summary	Program Eligibility Restrictions	Oversight Entities
			<ul style="list-style-type: none"> ○ until 12 months after the date the loan or loan guarantee is no longer outstanding, the recipient shall not pay dividends or make other capital distributions with respect to the common stock of the recipient; ○ until September 30, 2020, the recipient 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 from the levels on such date. CARES Act § 4003(c)(2)(E)–(G). ● Limited to businesses “created or organized in the United States or under the laws of the United States and ha[ve] significant operations in and a majority of [their] employees based in the United States.” CARES Act § 4003(c)(2)(H). ● The “business 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.” CARES Act § 4003(c)(2)(I). 	

Name of Program	CARES Act Section	Brief Summary	Program Eligibility Restrictions	Oversight Entities
Loans, Loan Guarantees, and other Investments by the Secretary of the Treasury	4003(b)(4)	Allocates at least \$454 billion to backstop emergency lending and liquidity facilities set up by the Federal Reserve under section 13(3) of the Federal Reserve Act.	<ul style="list-style-type: none"> Limited to “businesses that are created or organized in the United States or under the laws of the United States and that have significant operations in and a majority of its employees based in the United States.” CARES Act § 4003(c)(3)(C). 	SIGPR (for the listed facilities in which Treasury has invested under 4003(b)(4)); Congressional Oversight Commission; Fed Reserve OIG
	<i>Main Street Lending Program</i>	Supports lending to small and medium-sized businesses and nonprofit organizations that were in sound financial condition before the onset of the COVID-19 pandemic. The MSLP includes five facilities: the MSNLF, MSELF, MSPLF, NONLF, and NOELF. The Federal Reserve Bank of Boston has established one SPV to manage and operate all five facilities. ⁷⁷	<ul style="list-style-type: none"> At least 10 employees, but either 15,000 or fewer employees or 2019 revenue of \$5 billion or less.⁷⁸ Non-profit organizations are further limited by the following requirements: <ul style="list-style-type: none"> Total non-donation revenues of at least 60% of expenses for 2017 through 2019 At least a 2% operating margin for 2019 At least 60 days current cash on hand Ratio of cash, investments, and other repayment resources to outstanding debt and certain other liabilities of greater than 55%. 	

⁷⁷ Periodic Report: Update on Outstanding Lending Facilities Authorized by the Board under Section 13(3) of the Federal Reserve Act, Federal Reserve Board (Sept. 7, 2020), <https://www.federalreserve.gov/publications/files/pdcf-mmlf-cpff-pmccf-smccf-talf-mlf-ppplf-msnlf-mself-mslpf-nonlf-noelf-9-8-20.pdf#page=7>.

⁷⁸ For specific terms of the Main Street programs available to for-profit companies, see the relevant term sheets at: <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200728a3.pdf>; <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200728a2.pdf>; <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200728a2.pdf>. For programs available to non-profit organizations, see the

Name of Program	CARES Act Section	Brief Summary	Program Eligibility Restrictions	Oversight Entities
			<ul style="list-style-type: none"> Established prior to March 13, 2020. Not engaged in business activity that would make the borrower ineligible for an SBA loan under 13 C.F.R. § 120.110 (b)–(j) and (m)–(s). Created or organized in the United States or its laws with significant operations and a majority of employees based in the United States. Not also participating in other Main Street programs or the Primary Market Corporate Credit Facility. Has not received other support under Title IV, Subtitle A of the CARES Act. 	
	<p><i>Corporate Credit Facilities</i></p>	<p>The Board has authorized two facilities to support credit to large employers—the PMCCF for new bond and loan issuances and the SMCCF to provide liquidity for outstanding corporate bonds (together, corporate credit facilities, or the CCFs). The Federal Reserve Bank of New York (FRBNY) has established one SPV to</p>	<ul style="list-style-type: none"> Created or organized in the United States or its laws with significant operations and a majority of employees based in the United States.⁸⁰ Had an investment grade credit rating on March 22, 2020, and at least a rating of BB-/Ba3 at the time of issuing securities to the facility. Not an insured depository institution, depository institution holding company, or a subsidiary of such an organization, as defined by the Dodd-Frank Act. 	

relevant term sheets at: <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200728a10.pdf>; <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200728a11.pdf>.

⁸⁰ For specific terms of the Primary Corporate Credit Facility, see <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200728a9.pdf>. For specific terms of the Secondary Corporate Credit Facility, see <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200728a1.pdf>.

Name of Program	CARES Act Section	Brief Summary	Program Eligibility Restrictions	Oversight Entities
		manage and operate the CCFs. ⁷⁹	<ul style="list-style-type: none"> • Has not received specific support from the CARES Act or subsequent federal legislation. • Satisfies the conflict-of-interest requirements under CARES Act Section 1019. 	
	<i>Municipal Liquidity Facility</i>	Supports lending to state, city, and county governments, certain multistate entities, and other issuers of municipal securities. The FRBNY operates the facility. ⁸¹	<ul style="list-style-type: none"> • Must be one of the following:⁸² <ul style="list-style-type: none"> ○ a state; ○ a city exceeding 250,000 residents or is designated to participate in the facility by the state governor; ○ a county exceeding 500,000 residents or is designated to participate in the facility by the state governor; ○ a multi-state entity; or ○ a state or political subdivision agency that issues bonds secured by revenue from a government-owned source and is designated by the state government to participate in the facility. • States, cities, and counties must have an investment-grade credit rating as of April 8, 2020, and at the time of issuance to the facility, must have a credit rating of at least BB-/Ba3. • Multi-state entities and agencies issuing bonds secured by revenue from a government-owned 	

⁷⁹ Periodic Report, *supra* note 77.

⁸¹ Periodic Report, *supra* note 78.

⁸² For specific terms of the Municipal Liquidity Facility, see <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200811a1.pdf>.

Name of Program	CARES Act Section	Brief Summary	Program Eligibility Restrictions	Oversight Entities
			source must have a credit rating a A-/A3 as of April 8, 2020 and must maintain at least an investment-grade credit rating at the time of issuance to the facility.	
	TALF II	The FRBNY lends to an SPV, which makes loans to U.S. companies secured by certain AAA-rated asset-backed securities (ABS) backed by recently originated consumer and business loans. ⁸³	<ul style="list-style-type: none"> • Created or organized in the United States or its laws with significant operations and a majority of employees based in the United States.⁸⁴ • Maintain an account with a TALF Agent designated by the facility. • Sponsor or manager has not received other support under Title IV, Subtitle A of the CARES Act. 	
Subtitle B				
Payroll Support Program (PSP)	4112	Provides financial assistance to be used exclusively for employee wages, salaries, and benefits. Allocates up to \$25 billion for passenger air carriers, up to \$4 billion for cargo air carriers, and up to \$3 billion for airline contractors.	<ul style="list-style-type: none"> • Applicants may receive funds in the amount of wages, salaries, benefits, and other compensation they certify (or previously reported) they paid their employees during the period from April 1, 2019, through September 30, 2019. CARES Act § 4113(a)(1)–(3). • Applicants must “enter into an agreement with the Secretary, or otherwise certify” that they will: <ul style="list-style-type: none"> ○ refrain from conducting involuntary furloughs or reducing pay rates and benefits until September 30, 2020; 	SIGPR; Treasury OIG

⁸³ Periodic Report, *supra* note 78.

⁸⁴ For specific terms of the TALF program, see <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200728a6.pdf>.

Name of Program	CARES Act Section	Brief Summary	Program Eligibility Restrictions	Oversight Entities
			<ul style="list-style-type: none"> ○ through September 30, 2021, refrain from purchasing an equity security of the applicant or the parent company of the applicant that is listed on a national securities exchange; ○ through September 30, 2021, refrain from paying dividends, or making other capital distributions, with respect to the common stock (or equivalent interest) of the air carrier or contractor; and ○ meet the requirements of sections 4115 and 4116. CARES Act § 4114(a)(1)–(4). ● During the 2-year period beginning March 24, 2020, and ending March 24, 2022, no officer or employee of the applicant whose total compensation exceeded \$425,000 in calendar year 2019 (with some exceptions) <ul style="list-style-type: none"> ○ will receive total compensation which exceeds, during any 12 consecutive months of such 2-year period, the total compensation received in calendar year 2019; ○ will receive severance pay or other benefits upon termination of employment which exceeds twice the maximum total compensation received by the officer or employee in calendar year 2019. 	

Name of Program	CARES Act Section	Brief Summary	Program Eligibility Restrictions	Oversight Entities
			<ul style="list-style-type: none"> • During the 2-year period beginning March 24, 2020, and ending March 24, 2022, no officer or employee of the eligible business whose total compensation exceeded \$3,000,000 in calendar year 2019 may receive during any 12 consecutive months of such period total compensation in excess of the amounts specified by the CARES Act. CARES Act § 4106(a)(1)–(3). • “The Recipient shall use the Payroll Support exclusively for the continuation of payment of Wages, Salaries, and Benefits to the Employees of the Recipient.”⁸⁵ 	
<i>Title V, Coronavirus Relief Funds</i>				
Coronavirus Relief Fund	5001	Provides \$150 billion to States, Territories, and Tribal governments to use for expenditures incurred due to COVID-19.	<ul style="list-style-type: none"> • Limited to use for necessary expenditures incurred due to COVID-19 that were not accounted for in the most recent budget and incurred between March 1 and December 30, 2020. SSA § 601(d). <ul style="list-style-type: none"> ○ Funds may not be used to fill shortfalls in government revenue to cover expenditures that would not otherwise qualify under the statute.⁸⁶ 	SIGPR; Treasury OIG

⁸⁵ Payroll Support Program Agreement, Terms and Conditions, U.S. Dep’t Treasury (last visited Sept. 30, 2020), <https://home.treasury.gov/system/files/136/Form-of-PSP-Agreement.pdf>.

⁸⁶ Coronavirus Relief Fund Guidance for State, Territorial, Local, and Tribal Governments, U.S. Dep’t Treasury (Sept. 2, 2020), <https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Guidance-for-State-Territorial-Local-and-Tribal-Governments.pdf>.

Name of Program	CARES Act Section	Brief Summary	Program Eligibility Restrictions	Oversight Entities
			<ul style="list-style-type: none"> ○ A cost is “not accounted for in the most recent budget” if either (a) the cost cannot lawfully be funded using a line item, allotment, or allocation within that budget or (b) the cost is for a substantially different use from any expected use of funds in such a line item, allotment, or allocation.⁸⁷ 	
<i>Title VI, USPS Loans</i>				
Loans to USPS	6001	Authorizes the U.S. Postal Service to borrow, and the Secretary of the Treasury to lend, up to \$10 billion to fund operating expenses.	<ul style="list-style-type: none"> • Funds must “be used for such operating expenses.” CARES Act § 6001(b)(1)(A). • Funds “may not be used to pay any outstanding debt of the Postal Service.” CARES Act § 6001(b)(1)(B). 	SIGPR; Treasury OIG

⁸⁷ *Id.*

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 Momentum: Budgetary Updates

Congress appropriated \$25 million to SIGPR, and that amount will remain available until expended.⁸⁸ SIGPR expects that this funding will sustain operations through FY 2021. In order to fund ongoing operations beyond FY 2021, SIGPR has requested that the Office of Management and Budget include a \$25 million appropriation in the proposed President's Budget for FY 2022.

Building Momentum: IT Updates

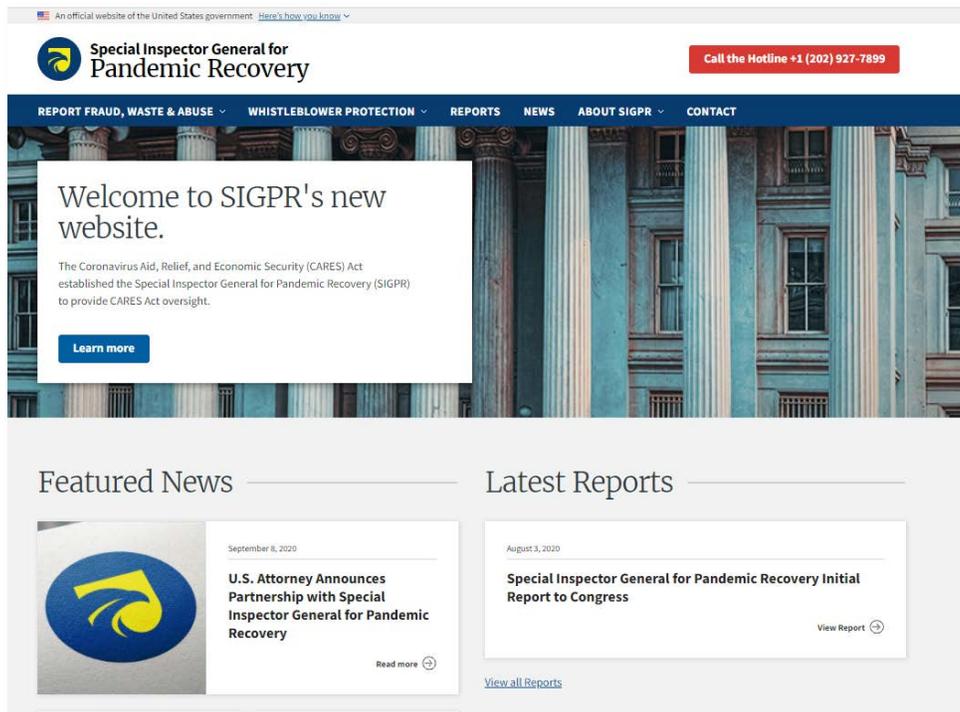
SIGPR operates in Alexandria, Virginia, using office space provided by the US Patent and Trademark Office (USPTO). The USPTO has been very generous in allowing SIGPR to use its existing internet resources, computer monitors, office furniture, wired telephones, and printers. Pursuant to Treasury guidelines, however, SIGPR must secure other items like laptops and mobile phones from the Departmental Offices of Treasury. Complicating the establishment of a robust IT program is that SIGPR's arrangement with the USPTO will end once SIGPR is up and running on Treasury's highly secure network. At that time, SIGPR will be required to obtain *all* peripherals from the Departmental Offices of Treasury, meaning SIGPR will be required to switch out telephones, monitors, printers, docking stations, cabling, and servers over the coming weeks.

To accomplish this, SIGPR secured the services of an experienced Chief Information Officer (CIO) on detail from the Department of the Interior. The CIO is working with multiple federal entities, including the Council of the Inspectors General on Integrity and Efficiency, the Pandemic Response Accountability Committee, various Treasury offices, the U.S. Department of the Treasury Inspector General of Tax Administration, the U.S. Department of the Treasury Office of Inspector General, the Office of the Special Inspector General for the Troubled Asset Relief Program, and the USPTO. Through its engagement with these organizations, SIGPR has obtained, or is in the process of obtaining, mission-essential services, including end-user technologies, enterprise networking, data management, data analytics, information security, case management, cloud computing, hosting infrastructure, and our "sigpr.gov" domain and website. The CIO's efforts have created a platform for planning future geospatial, data management, and analytics initiatives.

On September 18, 2020, under the leadership of the Assistant IG for Data Analytics, Evaluations & Special Projects, SIGPR launched its website. SIGPR commends the Department of Treasury's IT services group for its strong partnership and invaluable support in expeditiously creating the new website for SIGPR's content. The website contains information about the office; how to

⁸⁸ See CARES Act § [4018\(g\)\(1\)](#).

report fraud, waste, or abuse to SIGPR; whistleblower protection; SIGPR reports; and related news. The website can be found at www.sigpr.gov. An image of the homepage is below.





SIGPR OFFICES AND ACTIVITIES

SIGPR Offices

SIGPR continues to be both proactive and reactive in the prevention, detection, and investigation of fraud, waste, and abuse involving CARES Act funds and programs within SIGPR's jurisdiction.

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 Office of Audits operates under the authorities, duties, and responsibilities of Sections 4 and 6 of the Inspector General Act of 1978.⁸⁹ 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.⁹⁰ 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.

Staffing and Recruitment Efforts. The Office of Audits is currently staffed with an Assistant Inspector General for Auditing (AIGA), who started on July 5, 2020, and one staff member who reported for duty on September 28, 2020.

In August, the Office of Audits began the recruitment process to build a diverse organization. In mid-August, the Office of Audits initiated recruitment actions for two non-audit positions; one action was successfully completed, and one action is currently in process. On August 11, 2020, we requested position descriptions (PDs) for GS-511 Auditors from Treasury's Administrative Resource Center. We received non-supervisory PDs on August 20, and we received supervisory PDs for GS-511 grades 13, 14, and 15 on August 25. On August 28, the Office of Audits initiated its first two recruitment actions for Supervisory GS-511 auditor positions; both actions are currently in process.

With one staff member reporting for duty and the remaining three pending hires expected to report in October, the Office of Audits is beginning the process of developing the operational policies and procedures that are necessary under GAGAS, CIGIE, and other professional standards to operate a fully functioning office of audits. The Office of Audits is also beginning the process of developing an Audit Plan to identify projects that represent the highest priorities

⁸⁹ See CARES Act § 4018(c)(3).

⁹⁰ 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>.

for assessing the relevant financial-assistance programs and any other programs established under Division A of the CARES Act that are managed or funded by Treasury.

In addition, the Office of Audits is in the early stages of recruiting staff to assemble the first audit team. The office expects these staff members to be on board during the first quarter of FY 2021; and the timing of these recruitment actions should coincide with the establishment of our Audit Policy, Procedures, and Audit Plan. The office will assess additional staffing needs on an ongoing basis, taking into consideration budget resources and the demands of SIGPR's workload.

Investigations

The Office of Investigations (OI) continues to be SIGPR's primary recipient for allegations of improper or illegal activity relating to the issuance and administration of CARES Act funds. OI, however, remains staffed with only an Assistant Inspector General for Investigation (AIGI), who was hired on July 5, 2020, because hiring mission-critical Special Agents (SAs) has been constrained by a cumbersome hiring process.⁹¹

As SIGPR noted in its initial report,⁹² 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. In doing so, SIGPR SAs will comply with Section 6 and the Attorney General Guidelines for Office of Inspector General with Statutory Law Enforcement Authority.⁹³

SIGPR's most recent hiring challenge came on August 24, 2020, when Treasury Human Resources asked SIGPR to submit documentation seeking Assistant Secretary for Management approval of coverage for its Special Agent positions under the special law enforcement retirement provisions as generally required under Treasury Order 102-01. This request apparently resulted in some initial confusion between SIGPR's statutory authority to establish law enforcement positions and the Department's authority to determine coverage under the special law enforcement retirement provisions. From SIGPR's perspective, these issues are functionally inseparable. Treasury Human Resources initially failed to grant SIGPR's request for an exception under Treasury Order 102-01, effectively preventing SIGPR from establishing and filling law enforcement positions.

⁹¹ As noted in the Recommendations to Congress, *see infra*, SIGPR again recommends Congress pass S.3751, a bill to provide SIGPR critically needed hiring flexibility.

⁹² Initial Report, *supra* note 3, at 32.

⁹³ 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>.

SIGPR understands the Deputy Assistant Secretary for Human Resources has now coordinated the exemption that SIGPR initially requested in late August. This exemption will allow SIGPR to exercise its statutory authority to establish and fill law enforcement positions. With this issue resolved, SIGPR is now moving forward with hiring special agents.

The OI staffing strategy is to hire SAs with experience investigating banking and other financial crimes. OI will also target SAs that have graduated from the Federal Law Enforcement Training Center or its equivalent, enabling OI to comply with the Attorney General Guidelines for Offices of Inspector General with Statutory Law Enforcement Authority. A team of such graduates, with banking and financial-crimes experience, will allow OI to become as operationally effective as possible in the quickest possible manner.

Despite administrative headwinds, OI has initiated 21 preliminary investigations into allegations of improper activity. Of the 21 investigations, 14 were reported to the SIGPR from sources outside the office. Of those, seven were referred to other OIGs with proper jurisdiction, four were closed due to insufficient information to initiate investigative activity, and three remain under further review. One of the three investigations currently under review is being worked jointly with a partner United States Attorney's office. And to avoid relying exclusively on external reports concerning possible misconduct or improper use of CARES Act funds, OI has initiated seven proactive reviews—in partnership with other SIGPR components—of loan applications submitted in connection with the Secretary's direct lending program under CARES Act § 4003.

The receipt, assessment, management and documentation of reported allegations, along with documenting investigative activity, are critical to complying with the legal requirements and professional standards applicable to all federal law-enforcement offices. For these reasons, and to be good stewards of U.S. tax dollars, the SIGPR OI has elected to utilize the SIGTARP OI automated Case Management System (CMS). The SIGTARP CMS was designed to satisfy both the Attorney General Guidelines for Offices of Inspector General with Statutory Law Enforcement Authority and the CIGIE Investigative Standards. Versions of SIGTARP's CMS have been used successfully throughout the federal government for over ten years. With SIGTARP's assistance implementing the CMS, which will be hosted and managed by TIGTA, SIGPR anticipates substantial savings on software and personnel costs as well as reduced operational risk.

In coordination with the SIGPR Office of Data Analytics, Evaluations & Special Projects, the OI has established a telephonic Hotline (**202-927-7899**) for whistleblowers and reports of fraud, waste, and abuse. SIGPR's new website (www.sigpr.gov) also features a link for processing whistleblower complaints and reports of fraud. With these tools in place, OI anticipates a significant influx of investigative leads.

Data Analytics, Evaluations & Special Projects

The Office of Data Analytics, Evaluations & Special Projects (DAESP) is working with OI to build an efficient complaint-intake process to be included in the CMS, as described above.

With budgetary constraints at the forefront of strategic planning, SIGPR decided this reporting cycle to restructure the Office of Data Analysis, Deconfliction, Integration, and Whistleblower Protection (DADI) into a new office—the Office of Data Analytics, Evaluations & Special Projects. Building a robust data center to support data analytics will fall under DAESP’s new operational purview.

DAESP remains a staff of one (the Assistant Inspector General) due to continued hiring challenges. Because DAESP owns responsibility for a wide range of issues and projects, the office needs employees who can cover an array of assignments. Finding existing position descriptions from Treasury that reflect this need has been difficult, however, and the process of creating and receiving approval for new position descriptions would create yet an additional layer of complexity and delay. At present, using Treasury’s existing position descriptions, DAESP is actively recruiting a Chief Data Officer. Legislative support for critically needed hiring flexibility would be greatly appreciated.⁹⁴

DAESP will represent SIGPR on the Treasury Transition Council and will coordinate SIGPR’s strategic planning session in October. DAESP will continue to work closely with SIGPR 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, DAESP will consult with OI on SIGPR’s telephonic Hotline (**202-927-7899**) for whistleblowers and reports of fraud, waste, and abuse.

Building Partnerships

SIGPR continues to be proactive in building partnerships with U.S. Attorney’s Offices, various components within the Department of Justice (DOJ), the U.S. Marshal in the Eastern District of Virginia, and other offices of Inspector General, among others. Frequent teleconferences with senior officials at DOJ, and with others, have allowed SIGPR to focus in on how it can be most effective at providing investigative and case-development support. Recently, SIGPR senior staff had the opportunity to meet in person with United States Attorneys and others from the DOJ at the annual conference for United States Attorneys. At the conference, IG Miller and senior staff spoke to the White-Collar Crime Subcommittee and had the unique opportunity to host a later brainstorming session with key United States Attorneys. SIGPR now has memoranda of understanding with six United States Attorney’s Offices.

SIGPR also continues to build relationships with its fellow Treasury IGs: TIGTA, SIGTARP, and the Treasury IG. SIGPR is dedicated to establishing regular lines of communication with these

⁹⁴ As noted in the Recommendations to Congress, *see infra*, SIGPR again recommends Congress pass S.3751, a bill to provide SIGPR critically needed hiring flexibility.

parties to ensure the offices operate efficiently within the Department of the Treasury. SIGPR continues to participate in CIGIE and the PRAC.

One of SIGPR's first partnerships was established with FinCEN, and that partnership continues to bear fruit. And SIGPR is especially appreciative of its special relationship with the U.S. Patent and Trademark Office, which, by providing office space, has been instrumental in enabling SIGPR to pursue its mission.

SIGPR has also expanded its partnerships with and outreach to the private sector. For example, SIGPR has arranged an information-sharing agreement with the Financial Industry Regulatory Authority (FINRA), the government-authorized, not-for-profit organization that oversees U.S. financial broker-dealers. SIGPR recently reached out to the American Bankers Association and the Independent Community Bankers of America. Additionally, IG Miller was a featured speaker in a Maryland Association of CPAs government contracts conference and will be addressing the New York City Bar Association on October 1. These relationships will allow SIGPR to build a network of sources to identify improper and illegal activity involving CARES Act funds.

SIGPR has become a member of the PRAC training subcommittee, the PRAC law enforcement coordination subcommittee, and will soon join the PRAC data analytics/proactive measures subcommittee. This is in addition to the subcommittees of which SIGPR is already a member—for example, the Department of Justice COVID-19 Working Group and the Federal Bureau of Investigation COVID-19 Fraud Working Group.

In close partnership with the Federal Reserve Board OIG, SIGPR staff have been briefed by the Federal Reserve Bank of Boston on the operational details of the Main Street Lending Program. SIGPR will soon be briefed by the Federal Reserve Bank of New York on the various CARES Act programs being administered through their Bank. These briefings help SIGPR to better understand the processes in place for administering funds and conducting transactions under CARES Act-authorized programs.

Additionally, SIGPR has been active with various committees to maintain constant deconfliction among oversight bodies to include:

- PRAC weekly website working group;
- CIGIE and PRAC leadership meetings;
- PRAC data sharing working group;
- CIGIE Inspections & Evaluations subcommittee;
- Chief Data Officer Treasury, TIGTA, SIGTARP and SIGPR OIGs sub-group; and
- Whistleblower Protection Coordinators working group.



SIGPR FINDINGS AND REPORTABLE DEVELOPMENTS

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).”⁹⁵ Accordingly, below is an explanation of what SIGPR understands to be the categories of loans and other investments⁹⁶ made to date by the Secretary under CARES Act § 4003, including, where applicable and known, a summary listing of the loans and investments made under each category and the eligible businesses to whom loans were made.

Direct Loans

Introduction

CARES Act § 4003(a) authorizes the Secretary “to make loans, loan guarantees, and other investments in support of eligible businesses, 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 paragraphs 4003(b)(1)–(3), cover 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).⁹⁷ The final area, codified in paragraph 4003(b)(4), authorizes the Secretary to invest in the Federal Reserve’s various liquidity programs established under Section 13(3) of the Federal Reserve Act (\$454 billion).

On March 30, 2020, Treasury first announced its guidelines for businesses interested in applying for loans under CARES Act § 4003(b)(1)–(3).⁹⁸ Those guidelines incorporate several mandatory loan terms and conditions from the CARES Act, with many designed to protect American taxpayers. 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);

⁹⁵ CARES Act § 4018(f)(1)(B).

⁹⁶ Treasury has not established a program for “loan guarantees” under CARES Act § 4003.

⁹⁷ Treasury has posted on its website the contracts it has entered into in connection with the administration of loans under section 4003(b)(1), (2), and (3). See Other Program, U.S. Dep’t Treasury (last visited Sept. 25, 2020), <https://home.treasury.gov/data/other-programs>.

⁹⁸ 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, U.S. Dep’t Treasury (Mar. 30, 2020), <https://home.treasury.gov/system/files/136/Procedures%20and%20Minimum%20Requirements%20for%20Loans.pdf>.

- *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 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 a borrower to limit compensation for certain employees during the period beginning on the date the loan agreement is executed and ending one year after the loan is repaid, as follows:
 - No officer or employee of the borrower “whose total compensation exceeded \$425,000 in calendar year 2019,” may receive annual “total compensation which exceeds” the amount the officer or employee received in calendar year 2019, and such officer or employee shall not 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”;
 - 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.”
- *Continuation of Air Service.* If the borrower is an air carrier, it 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 section 4019. The provision defines a “covered entity” as one where the President, Vice President, head of an Executive Department, member of Congress, or certain family members hold 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, plus \$4 billion for cargo air carriers. On July 2, 2020, 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.⁹⁹ On July 7, 2020, the Treasury announced that Alaska Airlines, Delta Air Lines, JetBlue Airways, United Airlines, and Southwest Airlines likewise signed letters of intent.¹⁰⁰

⁹⁹ Press Release, Treasury and Five Major Airlines Agree on Loan Terms, U.S. Dep’t Treasury (July 2, 2020), <https://home.treasury.gov/news/press-releases/sm1050>.

¹⁰⁰ Press Release, Statement from Secretary Steven T. Mnuchin on CARES Act Loans to Major Airlines, U.S. Dep’t Treasury (July 7, 2020), <https://home.treasury.gov/news/press-releases/sm1054>.

On September 25, 2020, Treasury finalized loan agreements with American Airlines, Inc., and Hawaiian Airlines, Inc. On September 29, 2020, Treasury officially announced its loans to those two airlines and five others, for a total of seven.¹⁰¹ As of the time of the finalization of this report, however, Treasury had only posted loan details for the two loans to American Airlines, Inc., and Hawaiian Airlines, Inc.¹⁰²

Because SIGPR is not afforded an opportunity to fully analyze the activity of a calendar quarter before its quarterly report is due to Congress, SIGPR will provide further detail concerning these loans in an appendix to its next quarterly report.¹⁰³

The following table summarizes the 4003(b)(1) loans to date.

Recipient	Loan Date	Maturity Date	Initial Principal Loan Amount ¹⁰⁴	Total Anticipated Principal Loan Amount	Interest and Fees Accrued as of September 25, 2020
American Airlines, Inc	9/25/2020	6/30/2025	\$5,477,000,000	\$7,500,000,000 ¹⁰⁵	<i>Unknown</i>
Hawaiian Airlines, Inc.	9/25/2020	6/30/2024	\$420,000,000	\$622,000,000 ¹⁰⁶	<i>Unknown</i>

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, Treasury established criteria for making this determination in its Frequently Asked Questions guidance issued on April 10, 2020:

¹⁰¹ See Press Release, Treasury Concludes Loans to Seven Major Airlines, Supports Additional Relief for Aviation Industry Workers, U.S. Dep’t Treasury (Sept. 29, 2020), <https://home.treasury.gov/news/press-releases/sm1140>.

¹⁰² Loans to Air Carriers, Eligible Businesses, and National Security Businesses, U.S. Dep’t Treasury (last visited Sept. 28, 2020), <https://home.treasury.gov/policy-issues/cares/preserving-jobs-for-american-industry/loans-to-air-carriers-eligible-businesses-and-national-security-businesses>.

¹⁰³ See *infra*, Recommendations to Congress.

¹⁰⁴ Treasury reports that these loan amounts “may be increased, subject to certain conditions and satisfactory documentation.” Loans to Air Carriers, *supra* note 103 n. 5, 6.

¹⁰⁵ See Transaction Summary for American Airlines, U.S. Dep’t Treasury (last visited Sept. 28, 2020), <https://home.treasury.gov/system/files/136/American-Airlines-Summary.pdf>.

¹⁰⁶ See Transaction Summary for Hawaiian Airlines, U.S. Dep’t Treasury (last visited Sept. 28, 2020), <https://home.treasury.gov/system/files/136/Hawaiian-Airlines-Summary.pdf>.

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.¹⁰⁷

The following table summarizes the sole 4003(b)(3) loan to date.¹⁰⁸ Further detail concerning this loan 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	9/30/2024	\$700,000,000	\$572, 000

Other Investments Under Section 4003

Introduction

CARES Act § 4004(b)(4) allocates at least \$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

¹⁰⁷ Q&A: Loans to Air Carriers and Eligible Businesses and National Security Businesses, U.S. Dep’t Treasury, at 1 (Apr. 10, 2020), <https://home.treasury.gov/system/files/136/CARES-Airline-Loan-Support-Q-and-A-national-security.pdf>.

¹⁰⁸ At SIGPR’s request, Treasury provided SIGPR access to nonpublic information on applicants to Treasury’s loan programs under section 4003. SIGPR’s review of this nonpublic information revealed several application rejections and withdrawals that SIGPR intends to investigate further to identify any patterns of conduct that may indicate fraudulent or other illicit activity on the part of program applicants and participants.

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

Thus far, Treasury has invested \$102.5 billion (of the allocated \$454 billion) of CARES Act funds to support the Federal Reserve’s liquidity programs. These programs include the Main Street Lending Program, the Primary and Secondary Corporate Credit Facilities, the Municipal Liquidity Facility, and the Term Asset-Backed Securities Loan Facility. For each program, Treasury invests in a limited liability company, known as a special purpose vehicle (SPV), that is managed by one of the individual Federal Reserve Banks.

Treasury’s investment of CARES Act funds in Federal Reserve SPVs is intended to protect the Federal Reserve from losses. For each SPV into which the Secretary has agreed to invest, the Secretary has entered into a formal “Investment Memorandum of Understanding” and is party to an appropriate Limited Liability Company Agreement.¹⁰⁹

The Federal Reserve Bank responsible for a given facility lends each SPV funds to be used in specific transactions that support market liquidity. When structuring a given facility, the Secretary and the Federal Reserve decide on a “gearing ratio” of Federal Reserve lending to Treasury loss-absorbing capital. For each facility, application of the gearing ratio to the amount invested by the Secretary thus reflects the agencies’ calculation of the amount of lending the facility can support without a likelihood of capital losses beyond the amount invested by the Secretary. The basic functioning of this “gearing ratio” is explained in the agencies’ responses to questions from the Congressional Oversight Commission, which are disclosed in that commission’s July 20, 2020 report.¹¹⁰

On its website, the Federal Reserve Board provides extensive information about its SPVs and liquidity facilities, including detailed terms and conditions for loans and other transactions. The

¹⁰⁹ See Main Street Lending Program Facility Agreements, Federal Reserve Bank of Boston (last visited Sept. 27, 2020), <https://www.bostonfed.org/supervision-and-regulation/supervision/special-facilities/main-street-lending-program/facility-agreements.aspx>; Term Asset-Backed Securities Loan Facility, Federal Reserve Bank of New York (last visited Sept. 27, 2020), <https://www.newyorkfed.org/markets/term-asset-backed-securities-loan-facility>; Municipal Liquidity Facility, Federal Reserve Bank of New York (last visited Sept. 27, 2020), <https://www.newyorkfed.org/markets/municipal-liquidity-facility>; Secondary Market Corporate Credit Facility, Federal Reserve Bank of New York (last visited Sept. 27, 2020), <https://www.newyorkfed.org/markets/secondary-market-corporate-credit-facility> (this MOU relates to both the Secondary Corporate Credit Facility and the Primary Market Corporate Credit Facility).

¹¹⁰ The Third Report of the Congressional Oversight Commission, Treasury and Federal Reserve Answers to Tier 2 Questions, at 3 (July 20, 2020), https://coc.senate.gov/sites/default/files/2020-08/20200720_Congressional_Oversight_Commission_3rd_Report.pdf.

Federal Reserve Board also provides detailed information about each transaction in spreadsheet form so that one can evaluate the individual loans made by a Section 13(3) facility’s SPV.¹¹¹ The Federal Reserve regularly updates this information and posts it under the “Policy Tools” section of its website.¹¹²

The following table summarizes the total amount of CARES Act funds Treasury has previously indicated it will invest in the SPVs.¹¹³

Recipient	Maximum Intended Treasury Investment
Corporate Credit Facilities, LLC	\$75,000,000,000
Municipal Liquidity Facility, LLC	\$35,000,000,000
TALF II, LLC	\$10,000,000,000
MS Facilities, LLC	\$75,000,000,000

The following table summarizes the total amount of CARES Act funds Treasury had invested in each SPVs as of September 24, 2020.¹¹⁴

Recipient	Treasury Investment as of September 24, 2020
Corporate Credit Facilities, LLC	\$37,508,197,253
Municipal Liquidity Facility, LLC	\$17,500,000,000
TALF II, LLC	\$10,000,000,000
MS Facilities, LLC	\$37,506,756,581

The following table summarizes the portfolio holdings of the facilities as of the September 24, 2020, release of the Federal Reserve’s balance sheet.¹¹⁵ The balances reflect that the Secretary has not yet made the maximum intended investment in each facility.

¹¹¹ See, e.g., TALF Transaction-specific Disclosures, dated September 8, 2020, at <https://www.federalreserve.gov/monetarypolicy/talf.htm>; Main Street Facilities Transaction-specific Disclosures, dated September 8, 2020, at <https://www.federalreserve.gov/monetarypolicy/mainstreetlending.htm>; Secondary Market Corporate Credit Facility Transaction-specific Disclosures, dated September 8, 2020, at <https://www.federalreserve.gov/monetarypolicy/smccf.htm>; Municipal Liquidity Facility Transaction-specific Disclosures, dated September 8, 2020, at <https://www.federalreserve.gov/monetarypolicy/muni.htm>.

¹¹² Policy Tools, Board of Governors of the Federal Reserve System, <https://www.federalreserve.gov/monetarypolicy/policytools.htm>.

¹¹³ The amounts listed are taken from the term sheets cited in the facility discussions below.

¹¹⁴ See Periodic Report: Update on Outstanding Lending Facilities Authorized by the Board under Section 13(3) of the Federal Reserve Act (Sept. 7, 2020), <https://www.federalreserve.gov/publications/files/pdof-mmlf-cpff-pmccf-smccf-talf-mlf-ppplf-msnlf-mself-mslpf-nonlf-noelf-9-8-20.pdf>.

¹¹⁵ See Federal Reserve Statistical Release, H.4.1, Factors Affecting Reserve Balances, <https://www.federalreserve.gov/releases/H41/current/>.

Facility	Outstanding Amount of Purchased Loan Participations, Notes, and Other Securities	Treasury Contributions and Other Assets	Total
Corporate Credit Facilities, LLC	\$12,911,000,000	\$32,061,000,000	\$44,972,000,000
Municipal Liquidity Facility, LLC	\$1,651,000,000	\$14,895,000,000	\$16,546,000,000
TALF II, LLC	\$2,896,000,000	\$8,535,000,000	\$11,431,000,000
MS Facilities, LLC	\$1,837,000,000	\$37,518,000,000	\$39,355,000,000

The following paragraphs describe the functioning of these facilities.

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). Treasury has indicated it will invest up to \$50 billion to support the PMCCF and \$25 billion to support the SMCCF;¹¹⁶ Treasury has invested \$37.5 billion in the facilities to date.¹¹⁷ The facilities are structured to purchase up to \$750 billion in debt securities under these programs.

The PMCCF may 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, 2020.¹¹⁸ As of August 31, 2020, the PMCCF had not closed any transactions.¹¹⁹

The SMCCF may 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;

¹¹⁶ Term Sheet, Primary Market Corporate Credit Facility (July 28, 2020), <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200728a9.pdf>.

¹¹⁷ Periodic Report, *supra* note 115.

¹¹⁸ *See id.*; *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”).

¹¹⁹ *See* Periodic Report, *supra* note 115.

- 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, 2020.¹²⁰ Detailed transaction information for the SMCCF's purchases is available on the Federal Reserve's website.¹²¹

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). Treasury has indicated it will invest up to \$35 billion to support the Municipal Liquidity Facility;¹²² Treasury has invested \$17.5 billion in the facility to date.¹²³ The facility is structured to offer up to \$500 billion in support to state and local governments and related entities.

The facility may 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, 2020.¹²⁴ Transaction-specific details for the MLF are available on the Federal Reserve's website and updated regularly.¹²⁵

As of September 8, 2020, the Federal Reserve reported only two transactions 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 3.36%.¹²⁶ On August 18, 2020, the MLF purchased a \$450

¹²⁰ See Term Sheet, Secondary Market Corporate Credit Facility, Board of Governors of the Federal Reserve System (June 15, 2020), <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200615a1.pdf>.

¹²¹ Secondary Market Corporate Credit Facility, Board of Governors of the Federal Reserve System (last visited Sept. 27, 2020), <https://www.federalreserve.gov/monetarypolicy/smccf.htm>.

¹²² Term Sheet, Municipal Liquidity Facility, Board of Governors of the Federal Reserve System (Aug. 11, 2020), <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200811a1.pdf>.

¹²³ Periodic Report, *supra* note 115.

¹²⁴ See Term Sheet, Municipal Liquidity, *supra* note 123.

¹²⁵ Policy Tools, Municipal Liquidity Facility, Board of Governors of the Federal Reserve System, <https://www.federalreserve.gov/monetarypolicy/muni.htm>.

¹²⁶ This rate was adjusted downward from 3.82% on August 27, 2020. See *id.*

million note from Metropolitan Transit Authority (New York). The note matures on August 1, 2023, and bears a rate of 1.93%.

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.) Treasury has indicated it will invest up to \$10 billion to support TALF;¹²⁷ Treasury has invested \$10 billion in the facility to date.¹²⁸ The facility is structured to offer up to \$100 billion in TALF lending.

TALF II, LLC, makes 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.¹²⁹ 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.¹³⁰

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 facilities under the Main Street Lending Program (MSLP). Treasury has indicated it will invest up to \$75 billion to support the MSLP;¹³¹ Treasury has invested \$37.5 billion in the program's single common SPV to date.¹³² The Main Street Lending Program is structured to offer up to \$600 billion in lending.

The MSLP supports private lending to medium- and small-sized businesses by purchasing 95% participations in loans that conform to the terms of an MSLP program. The private lender

¹²⁷ Term Sheet, Term Asset-Backed Securities Loan Facility, Board of Governors of the Federal Reserve System (July 28, 2020), <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200728a6.pdf>.

¹²⁸ Periodic Report, *supra* note 115.

¹²⁹ See Term Sheet, Term Asset-Backed Securities Loan Facility, Board of Governors of the Federal Reserve System (July 28, 2020), <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200728a6.pdf>.

¹³⁰ Policy Tools, Term Asset-Backed Loan Facility, Board of Governors of the Federal Reserve System, <https://www.federalreserve.gov/monetarypolicy/talf.htm>.

¹³¹ Term Sheet, Main Street New Loan Facility, Board of Governors of the Federal Reserve System (July 28, 2020), <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200728a3.pdf>.

¹³² Periodic Report, *supra* note 114.

retains a 5% participation in the loan. Loans may be secured or unsecured. The Federal Reserve Bank of Boston has published the following graphic showing the operation of the MSLP¹³³:



Transaction-specific details for the MSLP are available on the Federal Reserve’s website and updated regularly.¹³⁴ 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:

Loan Term	5 years
Employees and Revenue	Either 15,000 or fewer employees, or 2019 revenue of \$5 billion or less

¹³³ The Federal Reserve’s Main Street Lending Program, Federal Reserve Bank of Boston, <https://www.bostonfed.org/supervision-and-regulation/supervision/special-facilities/main-street-lending-program/main-street-lending-program-overview.aspx>.

¹³⁴ Policy Tools, Main Street Lending Program, Board of Governors of the Federal Reserve System, <https://www.federalreserve.gov/monetarypolicy/mainstreetlending.htm>.

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 expanding existing 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.¹³⁵

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 *pari-passu* (on equal footing) 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.¹³⁶

While MSNLF and MSPLF support new loans, MSELF loans allow businesses to expand 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.¹³⁷

¹³⁵ See Term Sheet, Main Street New Loan Facility, Board of Governors of the Federal Reserve System (June 8, 2020), <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200608a1.pdf>.

¹³⁶ See Term Sheet, Main Street Priority Loan Facility, Board of Governors of the Federal Reserve System (June 8, 2020), <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200608a2.pdf>.

¹³⁷ See Term Sheet, Main Street Existing Loan Facility, Board of Governors of the Federal Reserve System (June 8, 2020), <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200608a3.pdf>.

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 expansion of 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"> • Total non-donation revenues of at least 60% of expenses for 2017 through 2019 • At least a 2% operating margin for 2019 • At least 60 days current cash on hand • Ratio of cash, investments, and other repayment resources to outstanding debt and certain other liabilities of greater than 55%
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 may not be contractually subordinated to that debt.¹³⁸

¹³⁸ See Term Sheet, Nonprofit Organization New Loan Facility, Board of Governors of the Federal Reserve System (July 17, 2020), <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200717a2.pdf>.

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 the borrower's average quarterly revenue in 2019.¹³⁹

¹³⁹ See Term Sheet, Nonprofit Organization Existing Loan Facility, Board of Governors of the Federal Reserve System (July 17, 2020), <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200717a1.pdf>.



RECOMMENDATIONS

Recommendations to Congress

SIGPR Quarterly Report Schedule

Under Section 4018(f) of the CARES Act, SIGPR must submit a report to Congress every “calendar quarter” 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). Consistent with the requirements of Section 4018(f), SIGPR is submitting this report on September 30, 2020—the end of the third “calendar quarter.”

Most other federal inspectors general, however, are authorized to issue their reports 30 to 45 days after their reporting period ends. This additional time between the conclusion of a reporting period and the date of submission provides an adequate opportunity to analyze and compile information collected during the applicable reporting period, ensuring completeness and accuracy for Congress.

The requirement for SIGPR to submit a report on the day the reporting period ends is unworkable. As SIGPR is preparing to submit this report, Treasury is announcing new loans to major airlines. Yet SIGPR has no time to analyze or even include meaningful data on these new loans. As it stands, SIGPR must end its data collection and analysis approximately 15 days prior to the conclusion of the reporting period to meet its statutory submission deadline.

Providing SIGPR additional time to develop and issue its quarterly report would ensure the completeness of SIGPR’s quarterly data and provide Congress a more accurate picture of the quarter’s activity.

Recommendation: SIGPR recommends that Congress amend the CARES Act, or otherwise agree, to allow SIGPR to submit its quarterly reports to Congress no later than 30 days after the end of a calendar quarter. This would accord with the practice of other inspectors general that produce statutorily required reports. Without objection, SIGPR plans to issue its next quarterly report by January 31, 2021.

Hiring Authority

As detailed above, *see infra* SIGPR Offices and Activities, 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 reiterates its recommendation 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.



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

Letter from Senator Elizabeth Warren

ELIZABETH WARREN
MASSACHUSETTS

COMMITTEES
BANKING, HOUSING, AND URBAN AFFAIRS
HEALTH, EDUCATION, LABOR, AND PENSIONS
ARMED SERVICES
SPECIAL COMMITTEE ON AGING

United States Senate

UNITED STATES SENATE
WASHINGTON, DC 20510-2105
P: 202-224-4543

2400 JFK FEDERAL BUILDING
15 NEW SUDBURY STREET
BOSTON, MA 02203
P: 617-585-3170

1550 MAIN STREET
SUITE 406
SPRINGFIELD, MA 01103
P: 413-788-2690

www.warren.senate.gov

July 15, 2020

The Honorable Brian D. Miller
Special Inspector General for Pandemic Recovery
U.S. Department of Treasury
1500 Pennsylvania Ave. NW
Washington, DC 20220

Dear Special Inspector General Miller:

I write regarding a recent report that identifies a “Covid Lobbying Palooza” involving dozens of lobbyists with connections to President Donald Trump’s “campaigns, inaugural committee, presidential transition team, or his administration” that have been lobbying the federal government on behalf of clients applying for or receiving, coronavirus disease 2019 (COVID-19) related federal aid.¹ These Trump-connected lobbyists have been “lobbying to obtain special industry carveouts for aid, government approval of their clients’ products and, most commonly, COVID-related aid across a myriad of programs,” and have reportedly secured at least \$10.5 billion in COVID-19 related grants, loans, and corporate bond purchases for close to 30 clients in the last few months.² Several may have violated Executive Order 13770 issued by President Trump, which restricts lobbying by appointees who leave the Trump administration.³

This special interest lobbying by former Trump administration and campaign insiders presents serious concerns about real and perceived conflicts of interest and merits important oversight by your office. As the Special Inspector General appointed to investigate any fraud, waste and abuse of *Coronavirus Aid, Relief, and Economic Security Act* (CARES Act) funds,⁴ it is critical that your office examine the details of this influence-peddling to ensure that taxpayer funds are distributed in a manner that best serves families and our economy, rather than the personal financial interests of well-connected insiders. Congress intended CARES Act funding to provide broad, fair, and necessary economic assistance to citizens, workers, small businesses, and large employers to help them survive the economic collapse caused by the coronavirus pandemic. Congress did not design the CARES Act to line the pockets of President Trump’s associates and the businesses that hire them to lobby on their behalf.

¹ Public Citizen, “COVID Lobbying Palooza,” July 2020, <https://www.citizen.org/wp-content/uploads/Covid-Lobbying-Palooza.pdf>.

² *Id.*

³ President Donald J. Trump, Executive Order 13770, entitled “Ethics Commitments by Executive Branch Appointees,” January 27, 2017, available at: <https://www.whitehouse.gov/presidential-actions/executive-order-ethics-commitments-executive-branch-appointees/>.

⁴ Public Law No: 116-136, Section 4018, available at: <https://www.congress.gov/bill/116th-congress/house-bill/748/>.

A new report published by *Public Citizen* earlier this month reveals that the \$2.2 trillion CARES Act has been plagued by a “lobbying bonanza”⁵ and identifies 27 companies that hired at least one Trump-connected lobbyist and ultimately received millions in federal aid. For instance, several of the largest recipients of federal grants and loans identified in the report were represented by a single lobbying firm, Brownstein Hyatt Faber Schreck (Brownstein Hyatt), a firm that employs several Trump-connected lobbyists, including two former senior Trump administration officials and a former Trump campaign fundraiser.⁶

In total, Brownstein Hyatt reportedly represents 45 clients on COVID related issues including two private equity firms—Apollo Global Management and Colony Capital—and several of their portfolio companies. Over the last several months, Apollo Global Management, one of the largest private equity firms in the world, and a company that has extensive financial connections to Jared Kushner, a top adviser to and son-in-law of President Trump,⁷ has been able to secure over \$760 million in federal grants and loans for its health care companies and over \$60 million for one of its airline carriers.⁸ For its services lobbying on behalf of Apollo and its affiliates, Brownstein Hyatt received almost \$1 million in the first quarter of 2020 alone.⁹

The Office of the Special Inspector General for Pandemic Recovery has a mandate to “promote economy, efficiency, and effectiveness in the administration of, and ... to prevent and detect fraud and abuse in” use of CARES Act funds,¹⁰ and to “conduct, supervise, and coordinate audits and investigations of the making, purchase, management, and sale of loans, loan guarantees, and other investments” made through programs established by the Act.¹¹ During your Senate nomination hearing on May 5, 2020, you committed to me, on the record, that you would investigate instances where companies lobbying Congress or the White House receive COVID-19 related financial aid and guaranteed that you would “request and then subpoena” information not made readily available by the Trump administration in order to conduct thorough investigations and make the information available to the public.¹²

We had the following exchange during that hearing:

⁵ Associated Press, “Trump-connected lobbyists reap windfall in federal virus aid,” Brian Slodysko, July 7, 2020, <https://apnews.com/2edf8670a491a702ecfb7312f507f83a>.

⁶ Brownstein Hyatt Faber Schreck, “Geoffrey G. Burr,” accessed on July 15, 2020, <https://www.bhfs.com/people/policy/gburr>; Brownstein Hyatt Faber Schreck, “Emily Felder,” accessed on July 15, 2020, <https://www.bhfs.com/people/attorneys/c-f/efelder>; Washington Post, “Trump victory could mean big business for K Street,” Catherine Ho, November 9, 2016, <https://www.washingtonpost.com/news/powerpost/wp/2016/11/09/trump-blasted-lobbyists-on-the-campaign-trail-but-his-victory-could-mean-big-business-for-k-street/>.

⁷ Letter from Senator Warren et al. to Mr. Leon Black, Chairman, CEO and Director of Apollo Global Management LLC, April 13, 2018, <https://www.warren.senate.gov/oversight/letters/warren-cummings-carper-peters-press-citigroup-and-apollo-on-concerns-about-kushner-family-business-loans>.

⁸ Public Citizen, “COVID Lobbying Palooza,” July 2020, pp.35-36, <https://www.citizen.org/wp-content/uploads/Covid-Lobbying-Palooza.pdf>.

⁹ Public Citizen, “COVID Lobbying Palooza,” July 2020, <https://www.citizen.org/wp-content/uploads/Covid-Lobbying-Palooza.pdf>.

¹⁰ See, e.g., Inspector General Act of 1978, §2(2), as referenced in Public Law No: 116-136, § 4018(c)(3).

¹¹ Public Law No: 116-136, Section 4018, available at: <https://www.congress.gov/bills/116/congress/house-bill/748/>.

¹² U.S Senate Committee on Banking, Housing, and Urban Affairs, “Nomination Hearing,” May 05, 2020, <https://www.banking.senate.gov/hearings/04/28/2020/nomination-hearing>.

WARREN: What I'm trying to ask is do you think lobbying and then getting money is a potential for abuse that you would investigate?

MILLER: It's possible, Senator.

WARREN: It's possible and so if it is possible, would you investigate?

MILLER: And I would investigate it if it were lobbying Congress or the White House.

WARREN: Good. That's all I wanted. And then a third one. And that is, even if the Treasury Department doesn't put any restrictions in the loan documents or ask for information about how the money would be used or restrict corporate lobbying or avoid potential conflicts of interest, will you request that information from the companies that receive loans under this program?

MILLER: I will investigate all potential conflicts of interest and if they don't--if I don't have the information through the Department of Treasury, I will request and then subpoena the information if I don't get it.

WARREN: Good, and will you make that information public so that taxpayers can see what's going on?

MILLER: My goal is to make all information public and to inform the taxpayer. The only possible exception, Senator, would be if it is part of a criminal referral to the Department of Justice.

The lobbying and influence peddling revealed by this new report is exactly the scenario that we discussed during your confirmation hearing. I therefore request that you honor your commitment and conduct a thorough investigation of the role lobbyists and former Trump administration and campaign insiders are playing in helping companies secure CARES Act related financial aid, and the process through which federal executive departments and agencies responsible for the dispensation of CARES Act grants, loans, and corporate bond purchases are addressing conflicts of interest and ethics issues. In particular, I request that your upcoming inaugural quarterly report to Congress and all the following quarterly reports—as mandated by the CARES Act¹³—include, an analysis of:

¹³ Public Law No: 116-136, Section 4018, available at: <https://www.congress.gov/bill/116th-congress/house-bill/748/>.

1. The role lobbyists are playing in the dispensation of CARES Act funds – and whether the involvement of lobbyists has influenced decision-making in any specific cases.
2. Whether there are specific or systemic ethics and conflicts of interest issues related to the dispensation of these CARES Act funds, and whether any conflict of interest law, rule, or executive orders may have been violated by individuals lobbying for or distributing CARES Act funds.
3. Whether the processes and procedures in place for officials in federal executive departments and agencies responsible for the dispensation of CARES Act funds to make decisions on grants, loans and corporate bond purchases are sufficient to prevent potential conflicts of interest or ethics problems.
4. The extent to which Treasury Department officials are following existing policies and procedures.
5. Whether Treasury Department and agency officials are making decisions in a transparent process, based on consistent application of factual analysis, free of political interference from individuals inside or outside the administration.

Thank you for your attention to this matter.

Sincerely,



Elizabeth Warren
United States Senator

Letter from Senator Kelly Loeffler, et al.



August 6, 2020

The Honorable Brian D. Miller,
Special Inspector General for Pandemic Recovery
U.S. Department of the Treasury
1500 Pennsylvania Ave. NW
Washington, DC 20220

Dear Special Inspector General Miller,

As the newly confirmed Special Inspector General for Pandemic Recovery (SIGPR), you have the authority to investigate and audit all loans made or managed by the Secretary of the Treasury, including those made under the Paycheck Protection Program (PPP). We write, therefore, to ask that you review the loans made to at least 43 Planned Parenthood affiliates.¹ Specifically, we ask that you investigate how these affiliates were able to obtain PPP loans despite their ineligibility under the Small Business Administration's (SBA) affiliation rules,² whether any Planned Parenthood affiliates knowingly provided false information in their PPP loan applications, and to what extent the parent organization, Planned Parenthood for America (PPFA), was involved in the application process for said loans.

On May 19, 2020, SBA sent a letter to a number of Planned Parenthood affiliates who had received PPP loans informing them that it had made a preliminary determination that the affiliates did not qualify for the loans and all funds must be returned.³ SBA's preliminary determination found that the affiliates did not qualify under affiliation rules, citing specifically to affiliation arising from management.⁴

In support of its preliminary determination, SBA cited a number of areas in which PPFA exercises control over its affiliates as described by PPFA's bylaws. The cited control included: requirements outlined in PPFA's bylaws dictating a certification process for becoming a Planned Parenthood affiliate; a requirement that affiliate bylaws conform to PPFA policies; and 17 "affiliation mandates" affiliates must abide by covering core medical functions. In addition, SBA found that PPFA requires reaccreditation of affiliates and reserves the right to strip them of

¹ See SBA Paycheck Protection Program Loans of \$150,000 and Above by State, available at <https://home.treasury.gov/policy-issues/cares-act/assistance-for-small-businesses/sba-paycheck-protection-program-loan-level-data>

² See Affiliation Rules Applicable to U.S. Small Business Administration Paycheck Protection Program, Apr. 3, 2020, available at <https://home.treasury.gov/system/files/136/Affiliation%20rules%20overview%20%28for%20public%29.pdf>

³ Sarah McCammon, Trump Administration To Planned Parenthood: Return Coronavirus Relief Funds, NPR.org, May 21, 2020.

⁴ See e.g. Letter to Dr. Laura Meyers, Planned Parenthood of Metropolitan Washington, Inc., from William Manger, Associate Administrator, U.S. Small Business Administration, May 19, 2020, available at <https://www.documentcloud.org/documents/6922122-SBA-Letter-Planned-Parenthood-DC.html>

affiliation with PPFA or eject them from the PPFA network.⁵ Taken together, along with SBA's correct assertion that the receipt of these loans by Planned Parenthood affiliates violates the intent of Congress in creating the PPP loans⁶, these facts clearly show that these affiliates should neither have been deemed eligible nor received taxpayer funds in the form of PPP loans.

Statements made by Planned Parenthood suggest that the submissions were done with prior knowledge that the organizations were not eligible for the PPP loans. As noted in a letter to Attorney General William Barr signed by 27 Senators, including many of the undersigned here, Planned Parenthood Action Fund, the political action committee for Planned Parenthood, expressly acknowledged that the CARES Act "gives the Small Business Administration broad discretion to exclude Planned Parenthood affiliates and other non-profits serving people with low incomes and deny them benefits under the new small business loan program."⁷ This acknowledgement raises serious questions about not only the intent of Planned Parenthood affiliates in submitting PPP applications, but also the role that PPFA played in inducing or encouraging affiliates to apply for loans in deliberate violation of law.

We therefore ask you to conduct a thorough investigation of all PPP loans applied for and received by any Planned Parenthood affiliate, to determine how those affiliates were able to obtain PPP loans, and if any of their applications were submitted with information that was known or should have been known to be false, and make any civil or criminal referrals that you deem necessary and proper. We also ask that you review the extent to which PPFA was involved in the submission of any affiliate applications containing false or incorrect information. If such involvement is found, we ask that you consider whether it should be referred as a violation of 18 U.S.C. §371 or any other criminal or civil statute.

Sincerely,



Kelly Loeffler
United States Senator



James E. Risch
United States Senator



Steve Daines
United States Senator



Mike Braun
United States Senator

⁵ *Id.*

⁶ *Id.*

⁷ Letter to the Honorable William Barr, Attorney General, U.S. Department of Justice, from Tom Cotton, Senator, et. al., May 21, 2020.



James M. Inhofe
United States Senator



Marsha Blackburn
United States Senator



Thom Tillis
United States Senator



M. Michael Rounds
United States Senator



Kevin Cramer
United States Senator



James Lankford
United States Senator



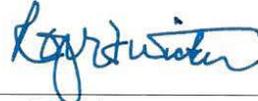
John Barrasso
United States Senator



Roy Blunt
United States Senator



Bill Cassidy, M.D.
United States Senator



Roger F. Wicker
United States Senator



Rob Portman
United States Senator



John Thune
United States Senator



Josh Hawley
United States Senator



John Hoeven
United States Senator



John Boozman
United States Senator



Ben Sasse
United States Senator



Tom Cotton
United States Senator



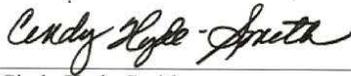
Tim Scott
United States Senator



Jerry Moran
United States Senator



Lindsey O. Graham
United States Senator



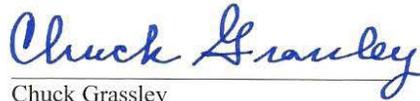
Cindy Hyde-Smith
United States Senator



Deb Fischer
United States Senator



Rick Scott
United States Senator



Chuck Grassley
United States Senator



Michael B. Enzi
United States Senator

APPENDIX C

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

YRC Worldwide, Inc.

Maximum Potential Principal Loan Amount	Principal Disbursed	Total Loan Amount Outstanding	Interest and Fees Accrued as of Sept. 6, 2020	Interest and Fees Received	Gain/(Loss)
\$700,000,000	\$245,000,000	\$246,145,000	\$572,000	\$572,000	\$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 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.¹⁴⁰

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."¹⁴¹ 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

¹⁴⁰ 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>

¹⁴¹ Treasury to Provide Loan to YRC Worldwide, July 1, 2020, available at <https://home.treasury.gov/news/press-releases/sm1049>

supply chain operations and the transport of industrial, commercial, and retail goods to more than 200,000 corporate customers across North America.

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 was included in SIGPR’s initial report to Congress.

