



Office of the Special Inspector General for
Pandemic Recovery

Quarterly Report to the United States Congress

October 1, 2020 - December 31, 2020





MISSION

SIGPR strives to ensure that the American taxpayer gets the best return on investment by promoting the economy, efficiency, effectiveness, and integrity of CARES Act funds and programs.

VISION

To safeguard CARES Act funds and programs.

VALUES

Accountability

SIGPR will hold itself and others to the highest personal, professional, and ethical standards.

Integrity

SIGPR will demonstrate the highest levels of professionalism, independence, fairness, and quality in its work and operations.

Independence

SIGPR will maintain its independence by objectively following the facts and the law.

Effectiveness

SIGPR will leverage strategic partnerships to protect funds and programs from fraud and promote best practices in the management of program operations.

Fidelity to the Law

SIGPR will follow and apply the law fairly.

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INTRODUCTORY MESSAGE

Message from the Special Inspector General

As we begin to turn the corner on the global pandemic—and the economic fallout from it—it is important that Americans be able to maintain confidence in their government and its institutions. That is as true with respect to CARES Act implementation as it is in any other context. The CARES Act is hundreds of pages long, established dozens of programs administered by myriad agencies, and pushed out trillions of taxpayer dollars. Such an undertaking demands transparency and accountability. Congress understood this when it created an oversight trifecta—the Office of the Special Inspector General for Pandemic Recovery, the Pandemic Response Accountability Committee, and the Congressional Oversight Commission—to complement existing offices of inspector general in rooting out fraud, waste, and abuse under the CARES Act.

As I have explained in previous reports, the oversight architecture created by the CARES Act is complex. But so is the CARES Act. The unprecedented challenges of a global pandemic required unprecedented solutions, and those unprecedented solutions require unprecedented oversight.

The concept of a Special IG, of course, is not unprecedented—nor are its challenges. Special IGs like SIGPR are asked to parachute into an existing agency that has existing inspectors general to execute a specific mission with a limited budget and limited time. And in many ways, Special IGs are at an institutional disadvantage. That is why my goal from the beginning has been to partner with other offices of inspector general and law enforcement agencies. This partnership-driven approach has, by and large, been extremely fruitful. It has allowed SIGPR to pursue its unique mission, and support the missions of its partners, while leveraging the resources and expertise of existing entities and their exceptional staff to achieve the shared goal of ensuring the integrity of the programs under our jurisdiction.

With this framework in mind, I am pleased to report that SIGPR is actively engaged in numerous proactive initiatives to develop and refer leads, including through ongoing audit and investigations work. As discussed more fully in the report, SIGPR accomplished the following:

- We uncovered and developed new investigative leads relating to suspected fraud under various CARES Act programs through our internal proactive efforts, and **referred 69 leads** to law enforcement partners, including fellow inspectors general.
- We initiated **five new preliminary investigations**, four of which were generated internally by our proactive efforts, with three of the five currently being worked with U.S. Attorneys' Offices.
- We **received and vetted 27 complaints**, two of which were referred to law enforcement partners and one of which was opened internally.
- We **developed "risk scores" for a Main Street Lending Program dataset**, which identified potential leads for further review and/or referral.

In this report, we also present new data on the loans and other investments made by the Secretary of the Treasury under Title IV of the CARES Act. We provide a high-level overview of one of our office's many investigative tools. And we include a brief analysis of "multiple-

dipping,” where an entity obtains funding from two or more CARES Act programs. The creation of multiple programs resulting in multiple forms of financial support to one entity may be sound policy, but it also increases the risk of fraud and abuse. We will continue to monitor closely this area of risk.

As I explained in the last two reports to Congress, SIGPR necessarily spent much of its nascent stage navigating the challenges of standing up an office in the midst of a pandemic. But our early efforts have borne fruit. And what I hope this report makes clear is that our office is operational and formidably aggressive. In partnership where possible, we continue to follow the facts through audits and investigations to uncover large-scale fraud, waste, and abuse.

That is where things stand, and that is where things are going. We are proud of what we have achieved in a matter of months and look forward to doing much more to protect the federal treasury, defend the American taxpayers, and bring bad actors to justice. So, as families across the country are focused on the health and well-being of their loved ones, know this: SIGPR and its partners are working together tirelessly to protect your hard-earned money and ensure the federal relief Congress provides gets to those it is designed to help.

Congress expects it, and you deserve it.



Brian D. Miller
Special Inspector General
January 31, 2021



OFFICE OF THE SPECIAL INSPECTOR GENERAL FOR PANDEMIC RECOVERY

Statutory Authority

In March 2020, Congress reached a bipartisan agreement that provided relief to Americans suffering during the pandemic, passing the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Public Law 116-136. The CARES Act established an oversight framework with jurisdictional overlap. As part of this framework, Section 4018 of the CARES Act charges SIGPR specifically to conduct audits and investigations of (1) 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; and (2) the management by the Secretary of the Treasury of programs established under Division A of the CARES Act.¹ The CARES Act also provides that “the Special Inspector General shall have the authorities provided in Section 6 of the Inspector General Act of 1978” (IG Act).² Through this express incorporation of the IG Act, the CARES Act grants SIGPR broad subpoena authority.³

Strategic Plan

During this reporting quarter, SIGPR finalized its strategic plan. The plan includes the following mission, vision, values, goals, and objectives for Fiscal Years 2021–23.

Mission: SIGPR strives to ensure that the American taxpayer gets the best return on investment by promoting the economy, efficiency, effectiveness, and integrity of CARES Act funds and programs.

Vision: To safeguard CARES Act funds and programs.

Values: Accountability, Integrity, Independence, Effectiveness, Fidelity to Law

GOALS AND OBJECTIVES

To help fulfill its mission, SIGPR has established four strategic goals with objectives and strategies.

GOAL 1: HIGH IMPACT WORK. Audits and investigations will deliver timely, relevant, and high impact results.

GOAL 2: INTEGRITY IN OVERSIGHT WORK. Audits and investigations will deliver accurate, professional, independent, and actionable work products.

GOAL 3: INCLUSIVENESS AND INNOVATION. Promote a diverse and inclusive culture that is innovative, high performing, and engaged.

GOAL 4: EFFECTIVE COLLABORATION AND OUTREACH. Work with oversight partners and others to ensure efficiency, effectiveness, and transparency in SIGPR’s work.

SIGPR’s strategic goals and objectives

¹ CARES Act § 4018(c)(1).

² CARES Act § 4018(d)(1).

³ See 5a U.S.C. § 6(a)(4).

SIGPR in Action

SIGPR's formative efforts have borne fruit: the office is operational and aggressively identifying fraud, waste, and abuse. SIGPR's proactive initiatives continue to develop leads, as we pursue ongoing audit work and investigations. As discussed below, SIGPR's work has produced results. Specifically, it has:

- Uncovered and developed new investigative leads relating to suspected fraud under various CARES Act programs through SIGPR's internal proactive efforts, referring 69 of those leads to law enforcement partners, including fellow inspectors general.
- Initiated five new preliminary investigations, four of which were generated internally by SIGPR's proactive efforts, with three of the five currently being worked with U.S. Attorneys' Offices;
- Received and vetted 27 complaints during this quarter, referring two to law enforcement partners and opening another internally; and
- Developed "risk scores" for a Main Street Lending Program dataset, which identified potential leads for further review and referrals.

As noted in its first two reports to Congress, SIGPR necessarily spent much of its nascent stage recruiting employees, navigating administrative and logistical issues (such as acquiring office space and developing information technology infrastructure), building partnerships to leverage institutional knowledge and law-enforcement capabilities, mastering the details of the hundreds of billions of dollars in CARES Act programming under its jurisdiction, and methodically developing strategies to detect and expose illegal conduct. This critical front-end work, though encumbered by the challenges of a global pandemic, has prepared the office for its vital oversight work.

SIGPR highlights two areas of focus below: multiple-dipping under the CARES Act and reporting under the Bank Secrecy Act.

Multiple-Dipping Under the CARES Act

In its [Initial Report to Congress](#), SIGPR identified "multiple-dipping" by CARES Act participants as a key issue to watch.⁴ SIGPR cautioned that the existence of "multiple programs resulting in multiple forms of financial support to a single individual or entity" creates an increased "risk of fraud and abuse."⁵ This increased risk is highlighted by various CARES Act rules that speak directly to the issue of multiple-dipping, as well as rules regarding the related issue of a CARES Act recipient's adequate access to capital.

It is worth noting that no individual or entity may receive money from the federal government twice for the same purpose. For example, and as reported in the table below, on June 18, 2020, the Office of Management and Budget (OMB) issued guidance addressing administrative relief

⁴ See Initial Report to Congress, Special Inspector General for Pandemic Recovery, at 49–50 (Aug. 3, 2020), https://www.sigpr.gov/sites/sigpr/files/2020-09/SIGPR-Initial-Report-to-Congress-August-3-2020_0.pdf.

⁵ *Id.* at 50.

designed to assist recipients of certain federal grants. Part of the relief discussed in the OMB guidance allowed certain grantees “to continue to charge salaries and benefits to active Federal awards,” even while those grantees were forced to suspend project activity.⁶ But the guidance specifically warned that “payroll costs paid with the Paycheck Protection Program (PPP) loans or any other federal CARES Act programs must not be also charged to current federal awards as it would result in the Federal Government paying for the same expenditures twice.”⁷ This general principle makes sense: if an individual or entity receives funding from the federal government twice for the same purpose, only one of the funding streams can be put to the use for which it was granted, meaning the second funding stream represents waste, at best, or fraud, at worst.

Against the backdrop of this general principle come program-specific rules delineated by the text of the CARES Act. Some rules unambiguously bar certain forms of double-dipping. For instance, a recipient of a direct Department of the Treasury (Treasury) loan made under Section 4003 may not also participate in the Federal Reserve’s Main Street Lending Program (MSLP). Other rules do not necessarily bar specific instances of double or multiple-dipping but do raise the possibility that participation in one or more CARES Act programs could render an individual or entity ineligible for other programs due to express rules regarding an applicant’s access to capital. As SIGPR stated in its Initial Report to Congress, such “express statutory limitations raise the question whether a loan applicant that has received or expects to receive millions of dollars under other CARES Act programs can reasonably certify to a lack of access to adequate capital.”⁸

To follow up on the concerns about multiple-dipping that SIGPR raised in its Initial Report to Congress, SIGPR further analyzed the issue and has engaged in a proactive initiative to identify areas of potential waste, fraud, or abuse. The table below, also found in Appendix A, summarizes the most relevant program-specific rules relating to capital access and multiple-dipping under the CARES Act. While the table includes rules and information on programs not directly under SIGPR’s jurisdiction, the rules are relevant to SIGPR’s oversight if an individual or entity could violate such rules by participation in a program over which SIGPR does have jurisdiction.

CARES Act Program	Rules Relating to Access to Multiple Streams of Funds
<p>Section 4003 Loans (Title IV, Subtitle A)</p>	<ul style="list-style-type: none"> <p>Credit Availability Review. A borrower is eligible if “credit is not reasonably available” to the borrower “at the time of the” loan.ⁱ Treasury “and its financial and legal advisors will take into account evidence from the prospective borrower’s particular circumstances, including its relationships with existing and potential creditors, as well as general market conditions.”ⁱⁱ</p> <p>Additional stipulations for non-air-carrier businesses. Businesses may be eligible if they are non-air-carrier U.S. businesses that “have not otherwise received adequate economic</p>

⁶ Memorandum to the Heads of Executive Departments and Agencies M-20-26, Office of Management and Budget, at Appendix A (June 18, 2020), <https://www.whitehouse.gov/wp-content/uploads/2020/06/M-20-26.pdf>.

⁷ *Id.*

⁸ Initial Report to Congress, *supra* note 4, at 50.

CARES Act Program	Rules Relating to Access to Multiple Streams of Funds
	<p>relief in the form of loans or loan guarantees provided under the CARES Act that are certified under 14 CFR Part 145 and approved to perform inspection, repair, replace, or overhaul services ('Part-145 certified repair station operators'); ticket agents as defined in 49 U.S.C. § 40102; or businesses critical to maintaining national security.”ⁱⁱⁱ</p> <ul style="list-style-type: none"> • Federal Reserve Facilities. A recipient of a loan under Section 4003 is not eligible to receive support under the Main Street Lending Program or either of the Corporate Credit Facilities.
<p>Main Street Lending Program (MSLP) (Title IV, Subtitle A)</p>	<ul style="list-style-type: none"> • PPP Recipients: The Federal Reserve has taken the position^{iv} that “a Business that has received PPP loans, or that has affiliates that have received PPP loans, is permitted to borrow under Main Street, provided that the Business is an Eligible Borrower.”^v An MSLP borrower, however, must complete a certification form reporting its PPP debt load.^{vi} • Economic Injury Disaster Loan (EIDL) Recipients: Similarly, a business receiving a loan under the SBA’s “EIDL program can be an Eligible Borrower under Main Street if it meets the Eligible Borrower criteria.”^{vii} • An entity eligible for more than one of the Main Street Lending Program facilities—the Main Street Priority Loan Facility (MSPLF); the Main Street New Loan Facility (MSNLF); the Main Street Expanded Loan Facility (MSELF); the Nonprofit Organization New Loan Facility (NONOLF); or the Non-profit Organization Expanded Loan Facility (NOELF)—may only participate in one. • An entity that participates in any one of the Main Street Lending Programs cannot also participate in the Primary Market Corporate Credit Facility or the Secondary Market Corporate Credit Facility.^{viii} An entity that participates in either the NONOLF or the NOELF may not also participate in the Municipal Liquidity Facility.^{ix}
<p>Primary Market Corporate Credit Facility (PMCCF) (Title IV, Subtitle A)</p>	<ul style="list-style-type: none"> • An eligible entity “may not participate in the PMCCF and a Main Street Lending Facility.”^x • An eligible entity “must not have received specific support pursuant to the CARES Act or any subsequent^{xi} federal legislation.” • An eligible entity may “utilize tax credits or tax relief in the CARES Act and still participate in the CCFs.”^{xii} • Secondary Market Corporate Credit Facility (SMCCF) Participants Subject to Per-Issuer Limits. An eligible entity may “participate in . . . the PMCCF at the same time its bonds have been or are being purchased by the SMCCF . . . but the collective purchases by the PMCCF and SMCCF of an eligible issuer’s debt are subject to the per-issuer limits described in the respective Term Sheets.”^{xiii}
<p>Secondary Market Corporate Credit Facility (SMCCF) (Title IV, Subtitle A)</p>	<ul style="list-style-type: none"> • An “eligible issuer must not have received specific support pursuant to the CARES Act or any subsequent federal legislation.”^{xiv} • “An issuer may utilize tax credits or tax relief in the CARES Act and still participate in the CCFs.”^{xv} • PMCCF Participants Subject to Per-Issuer Limits. “An eligible issuer [may] participate in . . . the PMCCF at the same time its bonds have been or are being purchased by the SMCCF . . .

CARES Act Program	Rules Relating to Access to Multiple Streams of Funds
<p>Term Asset-Backed Securities Facilities (TALF II) (Title IV, Subtitle A)</p>	<p>. but the collective purchases by the PMCCF and SMCCF of an eligible issuer’s debt are subject to the per-issuer limits described in the respective Term Sheets.”^{xvi}</p> <ul style="list-style-type: none"> • Credit Availability Review. “Under the Board’s Regulation A, the New York Fed must obtain evidence that participants in the TALF are unable to secure adequate credit accommodations from other banking institutions Lack of adequate credit does not mean that no credit is available. Credit may be available, but inadequate in its amount, price, or terms.”^{xvii} • “SBA Pool Certificates that include PPP loans in the underlying collateral pool are eligible ABS.”^{xviii} • Procedure for Requesting Multiple Loans. “An eligible borrower may request an unlimited number of loans at each subscription date If a borrower requests loans through multiple TALF Agents, it must deliver the collateral for each loan through the respective TALF Agent, unless the collateral is a new issuance delivered by the underwriter/other syndicate desk.”^{xix} • ABS Issued by Recipients of Loans under Section 4003(b)(1)-(3). “Eligible ABS do not include ABS issued by or sponsored by (or, in the case of CLOs, with collateral managers which are) U.S. entities that have received specific support pursuant to Section 4003(b)(1)-(3) of the Coronavirus Aid, Relief, and Economic Security Act of 2020 (Subtitle A of Title IV of the CARES Act).”^{xx}
<p>Payroll Support Program (PSP) (Title IV, Subtitle B)</p>	<ul style="list-style-type: none"> • No Express Prohibitions on Other CARES Act Support. Treasury appears to have issued no specific guidance, stating only that “[a]n air carrier or contractor that has applied for or received support under other provisions of the CARES Act is precluded, by virtue of such application or support, from applying for and receiving Payroll Support. The eligibility criteria for other CARES Act support programs are set forth in the Act and any applicable guidance or regulations.”^{xxi}
<p>Coronavirus Relief Fund (Title V)</p>	<ul style="list-style-type: none"> • Local Governments Eligibility. The CARES Act does not explicitly prevent local governments (regardless of their eligibility for direct assistance) from receiving Coronavirus Relief Fund payments from state governments, so long as the funds are used for eligible purposes.
<p>Paycheck Protection Program (PPP)</p>	<ul style="list-style-type: none"> • Loan Must Be New in Purpose and Amount. “An eligible recipient applying for a covered loan shall make a good faith certification” <ul style="list-style-type: none"> ○ “that the eligible recipient does not have an application pending for a loan under this subsection for the same purpose and duplicative of amounts applied for or received under a covered loan”^{xxii} ○ “during the period beginning on February 15, 2020 and ending on December 31, 2020, that the eligible recipient has not received amounts under this subsection for the same purpose and duplicative of amounts applied for or received under a covered loan.”^{xxiii} • SBA Guidance Regarding EIDL Recipients. <ul style="list-style-type: none"> ○ “Nothing in this paragraph shall prohibit a recipient of an economic injury disaster loan made under subsection (b)(2) during the period beginning on January 31, 2020 and ending on the date on which covered loans are made available that is for a purpose other than paying payroll costs and other

CARES Act Program	Rules Relating to Access to Multiple Streams of Funds
	<p>obligations described in subparagraph (F) from receiving assistance under this paragraph.”^{xxiv}</p> <ul style="list-style-type: none"> ○ “Borrowers can apply for both the PPP and EIDL, although funds from both cannot be used for the same purpose.”^{xxv} ○ “If you took out an Economic Injury Disaster Loan (EIDL) between February 15, 2020 and June 30, 2020 and you want to refinance that loan into a PPP loan, you would add the outstanding loan amount to the payroll sum.”^{xxvi} <ul style="list-style-type: none"> ● Rules for Current Federal Awards. “[P]ayroll costs paid with the Paycheck Protection Program (PPP) loans or any other Federal CARES Act programs must not be also charged to current Federal awards as it would result in the Federal government paying for the same expenditures twice.”^{xxvii} ● MSLP Recipients: The Federal Reserve has taken the position that “a Business that has received PPP loans, or that has affiliates that have received PPP loans, is permitted to borrow under Main Street, provided that the Business is an Eligible Borrower.”^{xxviii} But an MSLP borrower must complete a certification form reporting its PPP debt load.^{xxix}
<p>Economic Injury Disaster Loan (EIDL)</p>	<ul style="list-style-type: none"> ● SBA Guidance Regarding PPP Recipients. “Borrowers can apply for both the PPP and EIDL, although funds from both cannot be used for the same purpose.”^{xxx} ● New SBA Loans Must Be Separate. “Each SBA Disaster Loan is a separate loan; they cannot be consolidated or used to pay off earlier loans. If you qualify for another SBA disaster loan due to a different declared disaster in your area, the new loan must be used for the purposes listed in your loan closing documents, which may include working capital or physical damage repairs. It cannot be used to refinance or payoff existing SBA disaster loans from previous disaster events, including COVID-19.”^{xxxi} ● A business that already has both an EIDL loan and a PPP loan “may still qualify for a new SBA disaster loan for losses resulting from a declared disaster in your community.”^{xxxii} ● Main Street Lending. A business receiving a loan under the SBA’s “EIDL program can be an Eligible Borrower under Main Street if it meets the Eligible Borrower criteria.”^{xxxiii}

ⁱ CARES Act § 4003(c)(2)(A).

ⁱⁱ <https://home.treasury.gov/system/files/136/CARES-Airline-Loan-Support-Q-and-A-national-security.pdf>.

ⁱⁱⁱ <https://home.treasury.gov/system/files/136/CARES-Airline-Loan-Support-Q-and-A-national-security.pdf>.

^{iv} The Federal Reserve’s position on the eligibility of PPP and EIDL recipients for the MSLP appears to stem from an interpretation of CARES Act § 4002(4)(B) that is at odds with how the Department of the Treasury has interpreted that same provision. CARES Act § 4002(4)(B) defines the term “eligible business” as a non-air-carrier “United States business that has not otherwise received adequate economic relief in the form of loans or loan guarantees provided under this Act.” In its guidance regarding the loan program under Title IV, Subtitle A, Treasury further defines the term “eligible business,” in part, as non-air-carrier “businesses certified by the Department of Transportation under 14 C.F.R. Part 145 . . . that have not otherwise received adequate economic relief in the form of loans or loan guarantees under other programs authorized by the Act.” 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, at 2 (March 30, 2020), <https://home.treasury.gov/system/files/136/Procedures%20and%20Minimum%20Requirements%20for%20Loans.pdf>. That guidance defines “the Act” as the entire CARES Act. *Id.* at 1. Accordingly, it appears Treasury understands the definition of “eligible business,” as provided in CARES Act § 4002(4)(B), to exclude otherwise qualifying non-air-carrier businesses that have

received an adequate loan or loan guarantee under *any* program established under the CARES Act. This would not allow an MSLP applicant to have participated in the PPP. The Federal Reserve’s guidance, however, provides that an MSLP applicant “must not have received specific support pursuant to the Coronavirus Economic Stabilization Act of 2020 (Subtitle A of Title IV of the CARES Act),” which the Federal Reserve clarifies to mean that “[a] Business is not eligible [for the MSLP] if it has received support pursuant to Section 4003(b)(1)-(3) of the CARES Act.” Main Street Lending Program FAQs, For-Profit Businesses, Board of Governors of the Federal Reserve System, at 27 (Dec. 29, 2020), <https://www.bostonfed.org/mslp-faqs>. Accordingly, it appears the Federal Reserve understands the definition of “eligible business,” as provided in CARES Act § 4002(4)(B), to exclude only those otherwise qualifying non-air-carrier businesses that have received an adequate loan or loan guarantee under Title IV, Subtitle A. This would allow an MSLP applicant to have participated in the PPP.

^v <https://www.bostonfed.org/mslp-faqs>.

^{vi} <https://www.bostonfed.org/-/media/Documents/special-lending-facilities/mslp/legal/ppp-forgiveness-form.pdf?la=en>.

^{vii} <https://www.bostonfed.org/mslp-faqs>.

^{viii} <https://www.newyorkfed.org/markets/primary-and-secondary-market-faq/corporate-credit-facility-faq>.

^{ix} <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20201030a4.pdf>;

<https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20201030a5.pdf>.

^x <https://www.newyorkfed.org/markets/primary-and-secondary-market-faq/corporate-credit-facility-faq>.

^{xi} Notably, the prohibition against receiving specific support under “subsequent federal legislation” appears to be unique to the Corporate Credit Facilities and is not incorporated into the Federal Reserve’s guidance regarding other facilities—nor is such a prohibition included in Treasury’s guidance, which, as explained above, deviates slightly from the guidance issued by the Federal Reserve.

^{xii} <https://www.newyorkfed.org/markets/primary-and-secondary-market-faq/corporate-credit-facility-faq>.

^{xiii} <https://www.newyorkfed.org/markets/primary-and-secondary-market-faq/corporate-credit-facility-faq>.

^{xiv} <https://www.newyorkfed.org/markets/primary-and-secondary-market-faq/corporate-credit-facility-faq>. “To participate in the PMCCF as an issuer or in the SMCCF as an issuer of eligible individual corporate bonds, the issuer must certify that it has not received specific support pursuant to the CARES Act. This issuer certification is not required in connection with the SMCCF broad market index purchase program. “Specific support” in this context means specific support pursuant to Section 4003(b)(1)-(3) of the Coronavirus Economic Stabilization Act of 2020 (Subtitle A of Title IV of the CARES Act) An issuer will not be eligible for the PMCCF or SMCCF if it has received a loan, loan guarantee, or other investment from the Treasury Department under Section 4003(b)(1)-(3).” *Id.*

^{xv} <https://www.newyorkfed.org/markets/primary-and-secondary-market-faq/corporate-credit-facility-faq>.

^{xvi} <https://www.newyorkfed.org/markets/primary-and-secondary-market-faq/corporate-credit-facility-faq>.

^{xvii} <https://www.newyorkfed.org/markets/term-asset-backed-securities-loan-facility/term-asset-backed-securities-loan-facility-faq>.

^{xviii} <https://www.newyorkfed.org/markets/term-asset-backed-securities-loan-facility/term-asset-backed-securities-loan-facility-faq>.

^{xix} <https://www.newyorkfed.org/markets/term-asset-backed-securities-loan-facility/term-asset-backed-securities-loan-facility-faq>.

^{xx} <https://www.newyorkfed.org/markets/term-asset-backed-securities-loan-facility/term-asset-backed-securities-loan-facility-faq>.

^{xxi} <https://home.treasury.gov/system/files/136/QandA-Payroll-Support-to-Air-Carriers-and-Contractors.pdf>.

^{xxii} CARES Act § 1102 (15 USC 636(a)(36)(G)(i)(III)).

^{xxiii} CARES Act § 1102 (15 USC 636(a)(36)(G)(i)(IV)).

^{xxiv} CARES Act § 1102 (15 USC 636(a)(36)(Q)).

^{xxv} <https://www.sba.gov/sites/default/files/2020-11/COVID%20EIDL%20FAQ%20rev%20112320-508.pdf>.

^{xxvi} https://www.sbc.senate.gov/public/_cache/files/2/9/29fc1ae7-879a-4de0-97d5-ab0a0cb558c8/1BC9E5AB74965E686FC6EBC019EC358F.the-small-business-owner-s-guide-to-the-cares-act-final.pdf.

^{xxvii} <https://www.whitehouse.gov/wp-content/uploads/2020/06/M-20-26.pdf>.

^{xxviii} <https://www.bostonfed.org/mslp-faqs>.

^{xxix} <https://www.bostonfed.org/-/media/Documents/special-lending-facilities/mslp/legal/ppp-forgiveness-form.pdf?la=en>.

^{xxx} <https://www.sba.gov/sites/default/files/2020-11/COVID%20EIDL%20FAQ%20rev%20112320-508.pdf>. SBA also previously provided the following guidance: “Note that businesses that received an EIDL Advance in addition to the PPP loan will have the amount of the EIDL Advance subtracted from the forgiveness amount of their PPP loan.” The rule underlying that guidance, however, has since been repealed, and the repeal is intended to apply retroactively. See Economic Aid Act § 333(c), (d).

^{xxxi} <https://www.sba.gov/sites/default/files/2020-11/COVID%20EIDL%20FAQ%20rev%20112320-508.pdf>.

^{xxxii} <https://www.sba.gov/sites/default/files/2020-11/COVID%20EIDL%20FAQ%20rev%20112320-508.pdf>.

^{xxxiii} <https://www.bostonfed.org/mslp-faqs>.

Financial Investigations Under the Bank Secrecy Act

One of the early partnerships SIGPR established was with Treasury’s Financial Crimes Enforcement Network (FinCEN). In August 2020, SIGPR entered a Memorandum of Understanding (MOU) with FinCEN, which authorized SIGPR users to access FinCEN’s database of Bank Secrecy Act (BSA) reports and its accompanying query tools. Shortly thereafter, SIGPR began a robust and ongoing analysis of BSA information in pursuit of fraud, waste, and abuse in CARES Act programs under SIGPR’s jurisdiction.

For years, law enforcement agencies at all levels have proactively analyzed reports of suspicious financial activity submitted to FinCEN under the BSA. Those reports, submitted by financial institutions acting to protect the integrity of the U.S. financial system, have led to successful prosecutions of terrorism financiers, fraudsters of all types, human traffickers, drug kingpins, money launderers, and countless other criminals.

BSA History

In 1970, Congress first mandated routine financial reporting by enacting the Currency and Foreign Transactions Reporting Act, Pub. L. No. 91-508, 84 Stat 1118, which required financial institutions to make reports and keep records “where such reports or records have a high degree of usefulness in criminal, tax, and regulatory investigations. . . .”⁹ Congress later expanded and codified these provisions in Title 31 of the United States Code, as part of what is commonly known as the “Bank Secrecy Act,” or BSA.

The BSA requires banks, casinos, jewelers, pawnbrokers, loan companies, car dealerships, and certain other businesses to file reports concerning currency transactions in accord with regulations established by the Treasury Secretary. The BSA also gives the Secretary broad authority to require various institutions to file reports beyond those concerning currency transactions, so long as those additional reports “have a high degree of usefulness in criminal, tax, and regulatory investigations.”¹⁰ BSA regulations now require reporting on a variety of financial matters, including reports of suspicious financial activity, regardless of whether the activity involves a currency transaction.

Reports and Filings Required by BSA Regulations

Regulations governing BSA reports reside in Title 31, Subtitle B, Chapter X of the Code of Federal Regulations. The following paragraphs describe significant reports required by the BSA.

Suspicious Activity Report (SAR). The following financial institutions are required to file a SAR: Banks, including Bank and Financial Holding Companies; Casinos and Card Clubs; Money Services Businesses; Brokers or Dealers in Securities; Mutual Funds; Insurance Companies; Futures Commission Merchants and Introducing Brokers in Commodities; Residential Mortgage Lenders and Originators, and Housing Government Sponsored Enterprises.

⁹ Currency and Foreign Transactions Reporting Act, Pub. L. No. 91-508, 84 Stat 1118, § 202.

¹⁰ 31 U.S.C. § 5311.

Currency Transaction Report (CTR). Generally, financial institutions that are required to file a CTR include banks, other types of depository institutions, casinos and card clubs, brokers or dealers in securities, money transmitters, currency exchangers, check cashers, and issuers/sellers/payers of money orders and traveler’s checks. Only those casinos, gambling casinos, or card clubs in the United States that have gross annual gaming revenues in excess of \$1 million are financial institutions for purposes of the FinCEN CTR.

Form 8300. Any person in a trade or business who, in the course of that trade or business, receives more than \$10,000 in cash in a single transaction or in two or more related transactions, must file FinCEN Form 8300.

Currency or Monetary Instrument Report (CMIR). (a) Each person who physically transports, mails, or ships, or causes to be physically transported, mailed, or shipped currency or other monetary instruments in an aggregate amount exceeding \$10,000 at one time from the United States to any place outside the United States or into the United States from any place outside the United States, and (b) each person who receives in the United States currency or other monetary instruments in an aggregate amount exceeding \$10,000 at one time which have been transported, mailed, or shipped to the person from any place outside the United States.

Foreign Bank and Financial Account Report (FBAR). A United States person that has a financial interest in or signature authority over foreign financial accounts must file an FBAR if the aggregate value of the foreign financial accounts exceeds \$10,000 at any time during the calendar year.

These reports are of significant value to investigators working to identify criminal activity and its tainted financial spoils. Investigating suspicious financial transactions—the day-to-day work of “following the money”—will often uncover a range of criminal activity, from narcotics trafficking, to terrorism financing, to federal-program fraud. And even those not directly responsible for these offenses may nonetheless face criminal money-laundering charges for transactions using money derived from criminal activity. BSA regulations require filing a SAR when an institution believes an individual is dealing in funds derived from criminal proceeds or conducting financial transactions that suggest an effort to conceal the nature or ownership of those funds. These activities relate directly to conduct prohibited by 18 U.S.C. §§ 1956 and 1957, the federal code’s principal criminal money-laundering provisions.

Identifying suspicious activity and making reports are important first steps. Importantly, these reports are collected and organized in a comprehensive database, providing effective search tools to investigators. To that end, BSA regulations mandate that institutions file their reports with FinCEN, a Treasury bureau described in more detail below.

FinCEN Background

Former Treasury Secretary Nicholas F. Brady created FinCEN in 1990 with Treasury Order 105-08, assigning FinCEN’s director the responsibility of coordinating a diverse staff of financial experts “to centralize and combine expertise on both national and international financial

systems and the detection and prevention of money laundering and other financial crimes.”¹¹ It was given responsibility for centralizing the collection and dissemination of BSA reports and providing “research, analytical, and information services” to financial institutions, regulators, and law enforcement.¹²

In Title III of the USA PATRIOT Act of 2001, Congress significantly strengthened federal money-laundering laws, enhancing FinCEN’s role in combating financial crimes. Among its provisions, the Act required financial institutions to implement robust anti-money laundering programs, including increased due-diligence procedures when reviewing customer activity. These measures greatly enhanced the value of BSA reports filed by financial institutions, effectively making those institutions partners in detecting financial crimes.

Today, FinCEN is the world’s premier financial-intelligence organization, providing invaluable data and intelligence services to a wide array of law-enforcement agencies. In 2019, depository institutions filed over 1 million SARs with FinCEN. Innovative search capabilities allow law-enforcement agencies to query these filings proactively in their efforts to detect, investigate, and prosecute all manner of financial and other crimes, as well as the accompanying illicit efforts to launder the proceeds from these activities.

FinCEN and the Coronavirus Pandemic

With this history and mission, it comes as no surprise that in the Nation’s response to the coronavirus pandemic, FinCEN has been and continues to be a leader in combating fraud, waste, and abuse. On May 18, 2020, FinCEN issued its first advisory to BSA filers, warning them of “rising medical scams related to the COVID-19 pandemic.” The advisory identified numerous “red flags” that FinCEN found indicative of scams related to fake cures, vaccines, and treatments for COVID-19. FinCEN also identified warning signs for fraud and price-gouging in the sale of personal protective equipment. FinCEN issued subsequent advisories in July 2020, warning filers of various cybercrime, imposter, and money-mule schemes designed to exploit the pandemic. Most recently, FinCEN advised filers to beware of unemployment-insurance fraud.

CARES Act crimes are financial crimes, making FinCEN a natural partner for SIGPR in fulfilling its mission. All the programs at the core of SIGPR’s jurisdiction involve financial institutions either disbursing funds or receiving funds tied to CARES Act appropriations. Those financial institutions play an important role in identifying and reporting suspicious financial activity associated with CARES Act programs. When an institution files a SAR, it identifies one or more categories of suspicious activity implicated by the conduct described in the SAR. In the SARs filed since passage of the CARES Act, institutions have selected suspicious activity categories related to loan fraud, government program fraud, bribery, embezzlement, and similar misconduct more than 300,000 times. Should any of that activity involve CARES Act funds under SIGPR’s jurisdiction, SIGPR will vigorously investigate.

¹¹ Treasury Order 105-08, 3(a), Establishment of the Financial Crimes Enforcement Network, April 15, 1990.

¹² *Id.* at 3(f).



SIGPR OFFICES AND ACTIVITIES

SIGPR Offices

SIGPR employs proactive efforts to prevent, detect, and investigate fraud, waste, and abuse involving CARES Act funds and programs within SIGPR's jurisdiction. These include the following:

- The Office of Audits has reviewed volumes of information to conduct data analysis for audit and evaluative work of CARES Act programs: it will continue to make investigative referrals;
- The Office of Investigations has fielded and vetted numerous allegations, to include those stemming from SIGPR's proactive efforts based on its own review of voluminous documents, to identify potential fraud for referral or internal follow-up; and
- All offices have coordinated and communicated with partners to leverage the expertise and resources essential for a start-up organization with limited resources, while SIGPR continues to onboard staff and build an organizational infrastructure during a pandemic.

SIGPR's aggressive preparation—while investigations and audits are by necessity and design conducted behind the scenes—will remain largely invisible to the public until charges or complaints are filed or audits are announced. Much of this was made possible only because SIGPR initially built the in-house organizational framework and legal expertise necessary to support, sufficiently understand, and interpret newly enacted laws and programs, as well as their terms and conditions. Ferreting out financial fraud is complex and takes time.

Audits

The Office of Audits conducts audits, reviews, and evaluations of loans, loan guarantees, and other investments made by Treasury under any program established under Division A of the CARES Act as well as Treasury's management of programs established under Division A of the CARES Act.¹³

Ongoing Activities

As the Office of Audits team takes shape, one of its first tasks has been to identify the many datasets that will make up the initial areas for evaluation. As such, it has populated databases with CARES Act funding recipient information. These datasets are derived from several programs, including the Main Street Lending Program (MSLP), the Coronavirus Relief Fund, and Section 4003 loans. They contain more than 24.1 million rows of data, totaling more than \$96.85 billion in CARES Act funding.

The Office of Audits will take an analytic approach to individually “risk score” these datasets and use the risk assessments to decide on areas to review. This approach will be based on a detailed analysis to pinpoint financial risks of all CARES Act programs—a process that is critically important to the mission of SIGPR. The Office of Audits will also refer instances of suspected abuse that fall outside the scope of its mandate to other SIGPR offices or outside agencies.

¹³ CARES Act § 4018(c)(1).

In addition, this data-driven process will allow audit teams to deliver a premier, qualitative view of financial processes and results. A natural by-product of the evaluation process is to generate vital insights and provide potential investigative leads. This information will enable audit team members to consider key performance indicators of multiple operational aspects, as well as variances, relationships, patterns and anomalies. It will eventually offer new objectives and overall perspectives on the use of CARES Act funding.

Thus far, the Office of Audits has developed “risk scores” for the MSLP dataset and has already identified instances and potential leads for further review and referrals. Soon, the office will expand the currently available informational fields to obtain and merge additional datasets and produce an even more robust and extensive analysis. This will aid the Office of Audits’ ability to review compliance and determine if CARES Act funds are being used as Congress intended for the American people.

Currently, the Office of Audits is also surveying more focused reviews. It is in the preliminary stages of evaluating how state and local governments are complying with the CARES Act. To accomplish this, it is concentrating on numerous alleged instances of abuse, as reported both publicly and privately through the confidential SIGPR hotline. The Office of Audits will then determine whether reported allegations fall within SIGPR’s jurisdiction and merit deployment of additional resources to develop a full-scale project.

Finally, the Office of Audits is working diligently in close partnership with other members of SIGPR’s team, the Pandemic Response Accountability Committee (PRAC), other offices of inspectors general, and other federal government entities as necessary to meet its statutory obligations. The office also provides analytical support to SIGPR’s Office of Investigations to assist its investigative efforts.

Policy and Procedure Development

Audits, reviews, and other services will be performed in accordance with Generally Accepted Government Auditing Standards (GAGAS) and Council of the Inspectors General on Integrity and Efficiency (CIGIE) Quality Standards for Inspection and Evaluation, as appropriate.¹⁴ The Office of Audits also operates under the authorities, duties, and responsibilities of Sections 4 and 6 of the IG Act.¹⁵ These responsibilities 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. To this end, relevant policies and procedures must be established and implemented.

In December 2020, the Office of Audits began developing policies and procedures in compliance with GAGAS standards to address audit-level assignments. On December 18, 2020, it issued its Evaluations Policies and Procedures Manual (EPPM), which applies to evaluations performed by the Office of Audits and ensures compliance with CIGIE standards. The EPPM is designed to maintain the integrity of the project teams’ internal operations, as well as the Office of Audits’

¹⁴ Quality Standards for Inspection and Evaluation, Council of the Inspectors General on Integrity and Efficiency (Jan. 2012), available at <https://www.ignet.gov/sites/default/files/files/iestds12.pdf>.

¹⁵ See CARES Act § 4018(c)(3).

functions. All Office of Audits' staff participating in evaluations must comply with this manual's procedures to ensure that evaluations meet CIGIE standards.

As a logical extension of its new policies and procedures, the Office of Audits is developing an audit plan that will identify high priority projects. These projects will assess the relevant financial assistance programs and any others established by Division A of the CARES Act that are managed or funded by Treasury.

Additionally, the Office of Audits is in the process of developing a curriculum of mandatory continuing professional education courses. This curriculum will ensure that its staff maintain the core competencies required to perform the assigned work in accordance with applicable standards, as well as an ample knowledgebase pertinent to the subject matters under review.

Staffing and Recruitment Efforts

The Office of Audits is continuing to recruit and build a diverse organization. As of December 31, 2020, it is staffed with an Assistant Inspector General for Auditing and five staff members. It is in the process of onboarding four additional audit staff. Additional staffing needs will be continuously assessed, taking into consideration appropriated resources and SIGPR's workload demands.

Investigations

The Office of Investigations prevents, detects, and investigates allegations of fraud, abuse, or misconduct involving CARES Act funds and programs within SIGPR's jurisdiction. In addition, the office manages SIGPR's hotline.

During this quarter, the office received 27 complaints. In addition, as of this reporting period, the Office of Investigations has initiated five preliminary investigations, four of which were initiated through SIGPR's own proactive efforts. SIGPR is working in partnership with U.S. Attorney's Offices on three of them. These investigations relate to activities that, collectively, potentially represent millions of dollars of questionable expenditures related to funds distributed under the CARES Act.

The Office of Investigations continues to participate in several working groups to remain current on fraud and corruption schemes investigated throughout the federal law enforcement community. As an example, these working groups include the CIGIE Financial Oversight Assistant Inspector General for Investigations Working Group and federal OIG Investigation COVID-19 working groups, including PRAC subcommittees. The Office of Investigations has also formed new referral protocols with the Office of Compliance Inspections and Examinations (OCIE) of the Securities and Exchange Commission (SEC) and Treasury's suspension and debarment unit in the Office of the Procurement Executive. These new referral protocols have already produced eight referrals to SIGPR. The office also continues to coordinate closely with other law-enforcement agencies with the goal of forming law-enforcement partnerships, including task-force relationships, across the federal government.

The Office of Investigations continues to recruit and focus on staffing. During the latter part of this reporting period, a special agent with more than 20 years of law enforcement experience

joined the Office of Investigations staff. Three more investigative staff, including an investigative research specialist, joined the office in January 2021. With these additional members, the office can leverage a broad array of expertise and perspectives in developing and working on complex investigations.

The Office of Investigations is committed to robust criminal and civil enforcement efforts against those involved in fraud or corruption relating to CARES Act funds. As a team, the office will remain agile, determined, and focused on returning ill-gotten CARES Act funds to the American taxpayers, and will help ensure that those stealing them suffer appropriate criminal or civil consequences.

Administration

The Office of Administration provides comprehensive administrative support to all components within SIGPR.

Budget Update

Congress appropriated \$25 million to SIGPR, and that amount will remain available until expended.¹⁶ SIGPR expects this funding to sustain operations through Fiscal Year (FY) 2021. To fund ongoing operations beyond FY 2021, SIGPR asked the Office of Management and Budget to include a \$25 million appropriation in the proposed President's Budget for FY 2022.

SIGPR remains judicious, paying close attention to the expenditure of appropriated funds. It has realized substantial savings by opting for used furniture, cubicles, chairs, and other office-related items. Pursuant to an inter-agency agreement, SIGPR leases office space and used furnishings from the U.S. Patent and Trademark Office (USPTO). The savings will be used for mission-critical expenditures, including staffing, rent, and travel. Administrative and information technology (IT) services provided by Treasury are alone estimated to cost approximately \$5 million annually.

Information Technology Update

SIGPR's partnership and agreement with the USPTO has been instrumental in establishing SIGPR's IT operations and has afforded SIGPR staff the time and space to establish its own IT division.

The detail of SIGPR's first Chief Information Officer (CIO) ended on November 25, 2020. SIGPR's permanent CIO joined the team on December 20, 2020, and SIGPR has continued to aggressively stand up an IT division internally to provide infrastructure and user services. The division will leverage the Department of the Treasury's technologies and off-the-shelf solutions for SIGPR's mission-essential investigative case management system, audit report system, and data analytics platform.

Treasury's network has been installed at SIGPR's office space, and SIGPR continues to work with Treasury to secure items such as laptops, monitors, and mobile phones for each new hire as part of the fee-for-service cost structure imposed across all of Treasury's bureaus. To save

¹⁶ See CARES Act § 4018(g)(1)-(2).

valuable funds, SIGPR has opted to use mobile phones instead of installing an additional VOIP or landline system. Treasury's IT help desk has provided able assistance to SIGPR by responding to many requests for IT support.

Staffing Update

The hiring process continues to pose challenges, but SIGPR remains steadfast in recruiting highly qualified and talented staff with the knowledge, skills, and abilities to support its critical oversight mission. As of December 31, 2020, SIGPR had 24 full-time equivalent (FTE) employees on board and three detailees. By the end of January, SIGPR on boarded 34 FTE, and by September 30, 2021, SIGPR is projected to have 66 FTE.

Building Partnerships

SIGPR continues to build partnerships to strategically leverage resources and capabilities in support of lead-development, audits, investigations, and case referrals. In addition to its partnerships with FinCEN and the SEC, SIGPR has MOUs with 11 United States Attorney's Offices. The office also continues to strengthen relationships with other law enforcement entities and fellow IGs. SIGPR is especially grateful to the Federal Reserve OIG, which has been a critical partner, graciously offering collaboration, assistance, and support.

During this reporting period, SIGPR entered an agreement with the Federal Trade Commission (FTC) to access the FTC's Consumer Sentinel Network, which holds information from more than 45 contributing entities, including federal agencies, state Attorneys General, the Better Business Bureau, Microsoft's Cyber Crime Center, Western Union, and Money Gram, as well as consumer complaints. SIGPR has also partnered with an informal collaboration of federal, state, and local law enforcement and financial institutions, facilitating a deeper relationship with financial institutions' respective anti-money laundering units.

In addition, SIGPR is collaborating with entities within Treasury. SIGPR and Treasury's Enterprise Data Management team are currently focused on project planning, requirements definition, dataset identification, and data enrichment in the following three core work streams: data management, data analytics, and data visualization. SIGPR is also working with Treasury's Do Not Pay Business Center to identify potential transactions at high risk of fraud, waste, and abuse, including eligibility and improper payment issues.

In its continued effort to develop partnerships and ensure deconfliction, in addition to efforts discussed above, SIGPR participates in the following:

- Treasury's Chief Data Officers Community Committee;
- CIGIE's Data Analytics Working Group and Whistleblower Coordinator Working Group;
- PRAC's Training Subcommittee, Law Enforcement Coordination Subcommittee, and Data Sharing and Resources work groups;
- That Inter-OIG Pandemic Multi-Dipping Work Group; and
- The Pandemic Oversight Website Committee.

SIGPR's early focus on building partnerships has allowed SIGPR—a brand new agency looking to build cases with existing federal agencies and OIGs—to thoughtfully develop front-end investigative strategies that facilitate efficient lead-development, with an eye toward developing investigations that SIGPR will later refer to U.S. Attorney's Offices. In fact, SIGPR is currently working with three U.S. Attorney's Offices on investigations, two of which were generated by SIGPR's proactive efforts.

One specific example of success on this front has been SIGPR's relationship with the Federal Reserve OIG and the Federal Reserve Board's Office of General Counsel—a productive working relationship that itself was facilitated by SIGPR's relationship with the Federal Reserve IG and his team. As SIGPR identifies and reviews suspicious transactions within the handful of Section 13(3) facilities under SIGPR's jurisdiction, the offices have developed a process for obtaining documents and information relating to such transactions through formal requests. This process has proven effective and, in SIGPR's view, is an example of successfully leveraging partnerships to further both oversight and government efficiency. As a result of this process, SIGPR is often able to obtain critical information without issuing subpoenas. This also means SIGPR is frequently able to obtain such information more quickly than would be the case with subpoenas.

Finally, SIGPR's emphasis on partnerships also includes serving as a good steward of investigative leads that, while perhaps not implicating programs under SIGPR's jurisdiction, may be reviewed and developed by other agencies and offices of inspector general. To date, SIGPR has referred more than 76 investigative leads to its law-enforcement partners, including fellow inspectors general.



SIGPR FINDINGS AND REPORTABLE DEVELOPMENTS

The CARES Act 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).”¹⁷ Accordingly, below are the categories of loans and other investments¹⁸ made by the Secretary under CARES Act § 4003, including, where applicable and known, a list of the loans and investments made under each category and the eligible businesses to which loans were made. In addition, a short section below also describes three letters SIGPR sent to Treasury as part of its oversight activities relating to developments publicly reported.

Direct Loans and Other Investments

Introduction

Passed as part of the CARES Act in March 2020, Section 4003(a) authorized 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 categorized these loans and investments into four areas. The first three, codified in Sections 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).¹⁹ The fourth area, codified in Section 4003(b)(4), authorized 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 December 27, 2020, the Consolidated Appropriations Act, 2021, amended the CARES Act to rescind unobligated balances of funds (\$429 million) in these programs.²⁰ It also specified that after December 31, 2020, the Federal Reserve “shall not make any loan, purchase any obligation, asset, security, or other interest, or make any extension of credit” through the liquidity programs or facilities in which Treasury had invested CARES Act appropriated-money, except for facilities in the Main Street Lending Program, discussed further below, that were authorized to purchase loans until January 8, 2021 for applications submitted by December 14, 2020.²¹

An overview of the relevant categories and amounts of Treasury’s obligations under CARES Act § 4003(b)(1)-(4) through December 31 is reflected in the following table:

¹⁷ CARES Act § 4018(f)(1)(B).

¹⁸ Treasury has not established a program for “loan guarantees” under CARES Act § 4003.

¹⁹ 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 Jan. 4, 2021), <https://home.treasury.gov/data/other-programs>.

²⁰ See Consolidated Appropriations Act, 2021, Public Law 116-260, Division N §§ 1003, 1005.

²¹ *Id.*, § 1005.

Funding Program	Obligation Amount
Direct Loans to Passenger Air Carriers and Related Businesses	\$21,152,937,504
Direct Loans to Cargo Air Carriers	\$2,111,656
Direct Loans to Businesses Critical to Maintaining National Security	\$735,934,400
Main Street Lending Program (MS Facilities, LLC)	\$37,512,126,522
Term Asset-Backed Securities Facility (TALF II, LLC)	\$10,000,000,000
Primary and Secondary Market Corporate Credit Facility (Corporate Credit Facilities, LLC)	\$37,513,567,436
Municipal Liquidity Facility (Municipal Liquidity Facility, LLC)	\$17,500,000,000

Direct Loans

On March 30, 2020, Treasury first announced guidelines for businesses interested in applying for loans under CARES Act § 4003(b)(1)-(3).²² Those guidelines incorporated several mandatory loan terms and conditions, with many designed to protect American taxpayers. Before making each loan, Treasury was required to determine, or the borrower must have agreed to, the following:

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

²² 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>.

- *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.* 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, 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 Section 4003 transaction.

On April 14, 2020, Treasury entered into an agreement with The Bank of New York Mellon (BNYM) to perform custodian and infrastructure services, and to act as a financial agent, in connection with Treasury’s loans under Section 4003(b)(1)–(3).²³ It has managed risk and exercised oversight of these loans through the following means:²⁴

- Adherence to an underwriting guide that defines a credit review process, involving key elements of the underwriting, credit analysis, and approval process, including legal and financial due diligence. More specifically, in accordance with the advice of financial and legal advisors, Treasury follows a process to consider loan applications that included the following: (a) designing and applying credit standards that were uniformly applied to all loan applicants; (b) conducting due diligence on loan applications; and (c) forming credit committees that consisted of senior Treasury officials to consider each potential loan.
- Treasury also exercised oversight of loans made under Section 4003(b)(1)–(3) by monitoring submissions and communications from the debtor, including between the debtor and BNYM; monitoring public borrowers’ filings with the Securities and Exchange Commission; engaging directly with borrowers as appropriate; and monitoring other relevant public sources of information.

Air Carrier Loan Program

Passed as part of the CARES Act in March 2020, Section 4003(b)(1)–(2) allocated \$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, as well as \$4 billion for cargo air carriers.

The following table summarizes the Section 4003(b)(1)-(2) loans as of January 4, 2021.²⁵

²³ Financial Agency Agreement for Custodian and Infrastructure Services for Programs Under the Coronavirus Aid, Relief, and Economic Security Act, <https://home.treasury.gov/system/files/136/BNY-Mellon-Custodian-FAA-for-CARES-Act-Custodian-EXECUTED-04-14-2020.pdf>.

²⁴ 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 may review further to identify any patterns of conduct that may indicate fraudulent or other illicit activity on the part of program applicants and participants.

²⁵ Loans to Air Carriers, Eligible Businesses, and National Security Businesses, U.S. Dep’t Treasury (Last visited January 8, 2021), <https://home.treasury.gov/policy-issues/cares/preserving-jobs-for-american-industry/loans-to-air-carriers-eligible-businesses-and-national-security-businesses>.

SIGPR FINDINGS AND REPORTABLE DEVELOPMENTS

Recipient	Loan Date	Maturity Date	Total Anticipated Loan Amount	Disbursements ²⁶	Total Outstanding Loan Amount ²⁷	Cash Interest Receipts
Aero Hydraulics, Inc.	10/26/2020	10/24/2025	\$450,000	\$450,000	\$455,751	\$0
Alaska Airlines, Inc.	9/28/2020 (amended 10/30/2020)	9/26/2025	\$1,928,000,000	\$135,000,000	\$135,000,000	\$0
Allflight Corporation	11/5/2020	11/5/2025	\$4,721,260	\$4,721,260	\$4,721,260	\$22,948
American Airlines, Inc.	9/26/2020 (amended 10/21/2020)	6/30/2025	\$7,500,000,000	\$550,000,000	\$550,000,000	\$0
American Jet International Corp	11/5/2020	11/5/2025	\$1,162,124	\$1,162,124	\$1,162,124	\$6,300
Aviation Management & Repairs, Inc.	11/5/2020	11/5/2025	\$4,026,705	\$4,026,705	\$4,048,535	\$0
Bristin Travel, LLC	10/26/2020	10/24/2025	\$549,651	\$549,651	\$554,773	\$0
Caribbean Sun Airlines, Inc.	11/5/2020 (amended 12/7/2020)	11/5/2025	\$6,768,749	\$6,768,749	\$6,778,872	\$0
Eastern Airlines, LLC	10/28/2020	10/28/2025	\$15,000,000	\$15,000,000	\$15,134,400	\$0
Elite Airways, LLC	11/9/2020 (amended 12/1/2020)	11/7/2025	\$2,630,274	\$2,630,274	\$2,637,158	\$0
Frontier Airlines, Inc.	9/28/2020	9/26/2025	\$574,000,000	\$150,000,000	\$150,000,000	\$0
Hawaiian Airlines, Inc.	9/25/2020 (amended 10/23/2020)	6/28/2024	\$622,000,000	\$45,000,000	\$45,000,000	\$0
Island Wings, Inc.	11/5/2020	11/5/2025	\$294,350	\$294,350	\$295,781	\$0
Jetblue Airways Corporation	9/29/2020 (amended 11/3/2020)	11/29/2025	\$1,948,000,000	\$115,000,000	\$115,000,000	\$0
Legacy Airways, LLC	10/20/2020	10/25/2025	\$1,817,306	\$1,817,306	\$1,841,844	\$0
Mesa Airlines, Inc.	10/30/2020	10/30/2025	\$195,000,000	\$195,000,000	\$195,705,106	\$0
Ovation Travel Group, Inc.	10/15/2020	10/15/2025	\$20,000,000	\$20,000,000	\$20,294,156	\$0
Republic Airways, Inc.	11/6/2020	11/6/2025	\$58,000,000	\$58,000,000	\$58,000,000	\$30,047
Skywest Airlines, Inc.	9/29/2020 (amended 10/28/2020)	9/29/2025	\$725,000,000	\$60,000,000	\$60,000,000	\$0
Southern Airways Express, LLC	10/28/2020	10/28/2025	\$1,838,501	\$1,838,501	\$1,838,501	\$16,473
Sun Country, Inc.	10/26/2020	10/24/2025	\$45,000,000	\$45,000,000	\$45,419,375	\$0
Thomas Global Systems, LLC	11/9/2020	11/7/2025	\$1,400,000	\$1,400,000	\$1,407,590	\$0

²⁶ “Disbursements” includes all loan disbursements.

²⁷ “Total Outstanding Loan Amount” includes all loan disbursements and increases of loan principal amount arising from payment-in-kind (PIK) interest, less any repayments of principal.

Recipient	Loan Date	Maturity Date	Total Anticipated Loan Amount	Disbursements ²⁶	Total Outstanding Loan Amount ²⁷	Cash Interest Receipts
Timco Engine Center, Inc.	11/5/2020	11/5/2025	\$8,390,240	\$8,390,240	\$8,435,727	\$0
United Airlines, Inc.	9/28/2020 (amended 11/6/2020 and 12/8/2020)	9/26/2025	\$7,491,000,000	\$520,000,000	\$520,000,000	\$0

Businesses Critical to National Security

Passed as part of the CARES Act in March 2020, Section 4003(b)(3) allocated \$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,” but Treasury established criteria for making this determination in its Frequently Asked Questions guidance issued on April 10, 2020:

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.²⁸

The following table summarizes the Section 4003(b)(3) loans as of January 4, 2021.

Recipient	Loan Date	Maturity Date	Total Anticipated Loan Amount	Disbursements ²⁹	Total Outstanding Loan Amount ³⁰	Cash Interest Receipts
Channel Logistics, LLC	11/12/2020	11/12/2025	\$2,500,000	\$2,500,000	\$2,500,000	\$15,400
Core Avionics & Industrial, Inc.	11/5/2020	11/5/2025	\$6,000,000	\$6,000,000	\$6,000,000	\$58,133
Map Large, Inc.	11/2/2020	10/31/2025	\$10,000,000	\$10,000,000	\$10,104,036	\$0

²⁸ 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>.

²⁹ “Disbursements” includes all loan disbursements.

³⁰ “Total Outstanding Loan Amount” includes all loan disbursements and increases of loan principal amount arising from payment-in-kind (PIK) interest, less any repayments of principal.

Recipient	Loan Date	Maturity Date	Total Anticipated Loan Amount	Disbursements ²⁹	Total Outstanding Loan Amount ³⁰	Cash Interest Receipts
Meridian Rapid Defense Group, LLC	10/30/2020	10/30/2025	\$7,100,000	\$7,100,000	\$7,100,000	\$79,019
Ovio Technologies, Inc.	11/2/2020	10/31/2025	\$1,186,900	\$1,186,900	\$1,199,248	\$0
Semahtronix, LLC	11/13/2020	11/13/2025	\$1,999,100	\$1,999,100	\$2,009,175	\$0
Semantic AI, Inc.	11/13/2020	11/13/2025	\$506,300	\$506,300	\$509,324	\$0
SpinLaunch, Inc.	11/13/2020	11/13/2025	\$2,519,200	\$2,519,200	\$2,519,200	\$12,697
Visual Semantics, Inc.	10/30/2020	10/30/2025	\$1,053,200	\$1,053,200	\$1,053,200	\$11,722
Wiser Imagery Services, LLC	10/30/2020	10/30/2025	\$3,069,700	\$3,069,700	\$3,103,864	\$0
YRC Worldwide Inc.	7/8/2020	9/30/2024	\$700,000,000	\$551,300,000	\$553,594,683	\$1,437,191

Other Investments

Passed as part of the CARES Act in March 2020, Section 4004(b)(4) allocated 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 businesses, 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 established several liquidity programs (Federal Reserve facilities), described in detail below, using its emergency lending powers under Section 13(3) of the Federal Reserve Act, codified at 12 U.S.C. § 343(3). That provision, used extensively during the 2008 financial crisis 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.

On November 30, 2020, Federal Reserve Chair Jerome H. Powell agreed to return Treasury's unobligated CARES Act funds in the Federal Reserve facilities³¹ after receiving a request from then-Secretary of the Treasury Steven Mnuchin.³² According to a letter sent from Treasury to SIGPR on January 19, 2021, any concerns that the CARES Act did not require the discontinuation of these Federal Reserve facilities was rendered moot³³ following enactment of the Consolidated Appropriations Act, 2021, which as noted earlier in the report, rescinded

³¹ Letter from Chair Jerome H. Powell to then-Secretary Steven Mnuchin regarding emergency lending facilities (Nov. 20, 2020), <https://www.federalreserve.gov/foia/files/mnuchin-letter-20201120.pdf>.

³² Letter from then-Secretary Steven Mnuchin to Chair Jerome H. Powell on the Status of Facilities Authorized Under Section 13(3) of the Federal Reserve Act (Nov. 19, 2020), <https://home.treasury.gov/system/files/136/letter11192020.pdf>.

³³ Letter from J. Stern, the Department of Treasury, Office of General Counsel, to Brian Miller, SIGPR (Jan. 19, 2021).

unobligated CARES Act funds for the Federal Reserve facilities, and terminated the Federal Reserve’s authority to make new loans, asset purchases, or modifications through them.³⁴ This letter was transmitted to SIGPR by the previous administration on its final day, and it does not necessarily reflect the views of the current administration.

Before the Consolidated Appropriations Act, 2021, Treasury had invested \$102.5 billion of CARES Act funds to support the Federal Reserve facilities. These included 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 invested in a limited liability company, known as a special purpose vehicle (SPV), which purchased specified assets or made loans to borrowers and is managed by one of the individual Federal Reserve Banks.

Treasury held 99.9% equity in the Federal Reserve SPVs, and its investment of CARES Act funds into them was intended to protect the Federal Reserve from losses. For each SPV into which the Secretary invested, the Secretary entered a formal “Investment Memorandum of Understanding” and was party to an appropriate Limited Liability Company Agreement.³⁵

The Federal Reserve Bank responsible for a given facility lent each SPV funds to be used in specific transactions that supported market liquidity. When structuring a given facility, the Secretary and the Federal Reserve had decided 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 reflected the agencies’ calculation of the amount of lending the facility could 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.³⁶

On its website, the Federal Reserve Board provides extensive information about its SPVs and facilities, including detailed terms and conditions for loans and other transactions. The Federal Reserve Board also provides detailed information about each transaction in spreadsheet form so that one can evaluate the individual loans made by a Section 13(3) facility’s SPV.³⁷ The

³⁴ See *supra* at 23, nn. 20-21.

³⁵ See Main Street Lending Program Facility Agreements, Federal Reserve Bank of Boston, <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, <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, <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).

³⁶ 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.

³⁷ See, e.g., TALF Transaction-specific Disclosures, dated December 11, 2020, at <https://www.federalreserve.gov/monetarypolicy/talf.htm>; Main Street Facilities Transaction-specific Disclosures, dated January 8, 2021, at <https://www.federalreserve.gov/monetarypolicy/mainstreetlending.htm>; Secondary Market Corporate Credit Facility Transaction-specific Disclosures, dated December 11, 2020, at

Federal Reserve regularly updates this information and posts it under the [“Policy Tools” section](#) of its website.³⁸

The following table summarizes the total amount of CARES Act funds Treasury had originally indicated it would invest in the SPVs.³⁹

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 that Treasury invested in each SPV as of December 31, 2020.⁴⁰

Recipient	Treasury Investment as of December 31, 2020
Corporate Credit Facilities, LLC	\$37,515,069,773
Municipal Liquidity Facility, LLC	\$17,500,000,000
TALF II, LLC	\$10,000,000,000
MS Facilities, LLC	\$37,513,628,791

The following table summarizes the portfolio holdings of the facilities as of the December 31, 2020 release of the Federal Reserve’s balance sheet.⁴¹

Facility	Outstanding Amount of Purchased Loan Participations, Notes, and Other Securities	Treasury Contributions and Other Assets	Total
Corporate Credit Facilities, LLC	\$14,315,000,000	\$32,217,000,000	\$46,532,000,000
Municipal Liquidity Facility, LLC	\$6,283,000,000	\$14,995,000,000	\$21,278,000,000
TALF II, LLC	\$3,552,000,000	\$9,112,000,000	\$12,664,000,000
MS Facilities, LLC	\$16,385,000,000	\$37,688,000,000	\$54,073,000,000

The following paragraphs describe the functioning of these facilities, which have terminated.

<https://www.federalreserve.gov/monetarypolicy/smccf.htm>; Municipal Liquidity Facility Transaction-specific Disclosures, dated December 11, 2020, at <https://www.federalreserve.gov/monetarypolicy/muni.htm>.

³⁸ Policy Tools, Board of Governors of the Federal Reserve System, <https://www.federalreserve.gov/monetarypolicy/policytools.htm>.

³⁹ The amounts listed are taken from the term sheets cited in the facility discussions below.

⁴⁰ See Periodic Report: Update on Outstanding Lending Facilities Authorized by the Board under Section 13(3) of the Federal Reserve Act (Jan. 11, 2021), <https://www.federalreserve.gov/publications/files/pdcf-mmlf-cpff-pmccf-smccf-talf-mlf-ppplf-msnlf-mself-msplf-nonlf-noelf-01-11-21.pdf>

⁴¹ See Federal Reserve Statistical Release, H.4.1, Factors Affecting Reserve Balances, <https://www.federalreserve.gov/releases/H41/>.

Corporate Credit Facilities, LLC

Corporate Credit Facilities, LLC, was formed by the Federal Reserve Bank of New York on April 31, 2020, to operate the Primary Market Corporate Credit Facility (PMCCF) and the Secondary Market Corporate Credit Facility (SMCCF). The facilities were structured to purchase up to \$750 billion in debt securities under these programs. Treasury originally indicated it would invest up to \$50 billion to support the PMCCF and \$25 billion to support the SMCCF;⁴² Treasury invested \$37.5 billion in the facilities.⁴³

The PMCCF was intended to purchase corporate bonds as the sole investor in a bond issuance. The facility was also able to purchase syndicated loans or bonds at issuance. The bonds and loans must have had a maturity of four years or less, and the facility was limited to purchasing 25% of any syndicated loan or bond. To be eligible for the program, an issuer must have had an investment-grade credit rating as of March 22, 2020. The facility ceased purchasing securities on December 31, 2020. As of December 31, 2020, the PMCCF did not close any transactions.⁴⁴

The SMCCF was authorized to purchase the following debt securities on the secondary market:

- Individual corporate bonds having a remaining maturity of five years or less that were issued by businesses with investment-grade credit ratings as of March 22, 2020;
- Corporate bond exchange-traded funds (ETFs) whose objective is to provide broad exposure to the U.S. corporate bond market, including exposure to both investment-grade and high-yield bonds; and
- Individual corporate bonds with a 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 ceased purchasing securities on December 31, 2020. Detailed transaction information for the SMCCF's purchases is available on [the Federal Reserve's website](#).⁴⁵

Municipal Liquidity Facility, LLC

Municipal Liquidity Facility, LLC, was formed by the Federal Reserve Bank of New York on May 1, 2020, to operate the Municipal Liquidity Facility (MLF). The facility was structured to offer up to \$500 billion to support state and local governments and related entities. Treasury originally indicated it would invest up to \$35 billion to support the Municipal Liquidity Facility;⁴⁶ Treasury invested \$17.5 billion in the facility.⁴⁷

The facility was able to 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

⁴² Term Sheet, Primary Market Corporate Credit Facility (July 28, 2020), <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200728a9.pdf>.

⁴³ Periodic Report, *supra* note 40.

⁴⁴ See Periodic Report, *supra* note 40.

⁴⁵ Secondary Market Corporate Credit Facility, Board of Governors of the Federal Reserve System (last visited Jan. 11, 2020), <https://www.federalreserve.gov/monetarypolicy/smccf.htm>.

⁴⁶ 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>.

⁴⁷ Periodic Report, *supra* note 40.

issuers. The notes must have matured within three years of issuance, and the issuing entity generally must have had an investment-grade credit rating at the time of issuance. Issuers were required to 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 ceased purchasing notes on December 31, 2020.⁴⁸ Transaction-specific details for the MLF are available on the [Federal Reserve's website](#).⁴⁹

As of December 31, 2020, the Federal Reserve reported four transactions for the MLF. They are described in the following table.

Issuer Name	Closing Date	Value of note [\$ value]	Current outstanding amount of note	Maturity date of note	Interest rate
State of Illinois	6/5/2020	\$1,200,000,000	\$925,000,000.	6/5/2021	3.36%
State of Illinois	12/17/2020	\$2,000,000,000	\$2,000,000,000	12/15/2023	3.42%
Metropolitan Transportation Authority (NY)	8/26/2020	\$450,720,000	\$450,720,000	8/1/2023	1.93%
Metropolitan Transportation Authority (NY)	12/17/2020	\$2,907,280,000	\$2,907,280,000	12/15/2023	1.33%

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 Loan Facility, or TALF. (The original TALF, LLC, was established during the 2008 financial crisis). Treasury originally intended to and did invest \$10 billion in the facility.⁵⁰ The facility was structured to offer up to \$100 billion in TALF lending.

TALF II, LLC, made three-year, nonrecourse loans to borrowers who issued 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 that were eligible to serve as collateral for a TALF loan included 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 accepted as collateral only those asset-backed securities with the highest investment-grade rating.⁵¹

TALF stopped making loans on December 31, 2020. Transaction-specific details for the TALF are available on [the Federal Reserve's website](#).⁵²

⁴⁸ See Term Sheet, Municipal Liquidity, *supra* note 47.

⁴⁹ Policy Tools, Municipal Liquidity Facility, Board of Governors of the Federal Reserve System, <https://www.federalreserve.gov/monetarypolicy/muni.htm>.

⁵⁰ Periodic Report, *supra* note 40.

⁵¹ 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>.

⁵² Policy Tools, Term Asset-Backed Loan Facility, Board of Governors of the Federal Reserve System, <https://www.federalreserve.gov/monetarypolicy/talf.htm>.

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). The Main Street Lending Program was structured to offer up to \$600 billion in lending. Treasury originally indicated it would invest up to \$75 billion to support the MSLP;⁵³ Treasury invested \$37.5 billion in the program’s single common SPV.⁵⁴

The MSLP supported private lending to medium-sized and small businesses by purchasing 95% participations in loans that conformed to the terms of an MSLP program. The private lender 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 MSLP.⁵⁵



Transaction-specific details for the MSLP are available on [the Federal Reserve’s website](#) and updated regularly.⁵⁶

The Consolidated Appropriations Act, 2021, clarified that the Federal Reserve facilities in which Treasury had made investments of CARES Act funds could make no loans or purchase obligations after December 31, 2020, and rescinded unobligated funds. However, Congress permitted the five Main Street facilities to purchase loan participations until January 8, 2021 for

⁵³ 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>.

⁵⁴ Periodic Report, *supra* note 40.

⁵⁵ 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>.

⁵⁶ Policy Tools, Main Street Lending Program, Board of Governors of the Federal Reserve System, <https://www.federalreserve.gov/monetarypolicy/mainstreetlending.htm>.

applications submitted by December 14, 2020.⁵⁷ Authority for the MSLP then terminated. Additional terms for each program applied as follows.

Loans to for-profit businesses

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

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

The MSNLF and MSPLF differed 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 offered new loans, as opposed to expanding existing ones such as the third facility did, discussed below. From October 30, 2020 on, the MSNLF and the MSPLF had a minimum loan amount of \$100,000.⁵⁸

The maximum MSNLF loan was 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 needed not be senior to the borrower’s other debt, but it could not be contractually subordinated to the borrower’s other debt.⁵⁹

The maximum MSPLF loan was 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 compensated 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, except for mortgage debt. Unlike MSNLF loans, MSPLF loans had some level of repayment preference among the borrower’s various debts in the event the borrower became insolvent.⁶⁰

⁵⁷ Consolidated Appropriations Act, 2021, §§ 1003, 1005.

⁵⁸ The minimum loan amount for MSNLF and the MSPLF was decreased from \$250,000 to \$100,000 on October 30, 2020 (See Federal Reserve Board press release (Oct. 30, 2020)), <https://www.federalreserve.gov/newsevents/pressreleases/monetary20201030a.htm>; see also Periodic Report: Update on Outstanding Lending Facilities Authorized by the Board under Section 13(3) of the Federal Reserve Act (Nov. 6, 2020), <https://www.federalreserve.gov/publications/files/pdcf-mmlf-cpff-pmccf-smccf-talf-mlf-ppplf-msnlf-mself-msplf-nonlf-noelf-11-9-20.pdf#page=7>

⁵⁹ See Term Sheet, Main Street New Loan Facility, Board of Governors of the Federal Reserve System (Dec. 29, 2020), <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20201229a1.pdf>

⁶⁰ See Term Sheet, Main Street Priority Loan Facility, Board of Governors of the Federal Reserve System (Dec. 29, 2020), <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20201229a2.pdf>

While MSNLF and MSPLF supported new loans, MSELF loans allowed businesses to expand existing loans or revolving credit facilities. The MSELF portion of the refinancing must have been a term loan and senior or *pari-passu* in priority to the borrower’s other debt, except for mortgage debt. The minimum MSELF loan was \$10 million. The maximum was 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.⁶¹

Loans to nonprofit organizations

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

Loan Term	Five 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 (one month or three months) plus 3%
Interest Deferral	Deferred for one year
Principal Deferral	Deferred for years 1 and 2, 15% due in each of years 3 and 4, 70% due in year 5

From October 30, 2020 on, the NONLF minimum loan amount was \$100,000.⁶² The maximum loan amount was the lesser of \$35 million or the borrower’s average quarterly revenue in 2019. The new loan did not need to be senior to the borrower’s existing debt but could not be contractually subordinated to that debt.⁶³

NOELF loans, like MSELF loans, allowed borrowers to refinance existing loans or revolving credit facilities. The NOELF portion of the refinancing must have been a term loan and senior or *pari-passu* in priority to the borrower’s other debt, except for mortgage debt. The minimum NOELF

⁶¹ See Term Sheet, Main Street Expanded Loan Facility, Board of Governors of the Federal Reserve System (December 29, 2020), <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20201229a3.pdf>

⁶² The minimum loan amount for the NONLF was decreased from \$250,000 to \$100,000 on October 30, 2020 (See Federal Reserve Board press release (October 30, 2020)), Periodic Report, *supra* note 58.

⁶³ See Term Sheet, Nonprofit Organization New Loan Facility, Board of Governors of the Federal Reserve System (December 29, 2020), <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20201229a4.pdf>.

loan was \$10 million. The maximum was the lesser of \$300 million or the borrower's average quarterly revenue in 2019.⁶⁴

Letters of Inquiry

In addition to the above information, on which SIGPR regularly reports, SIGPR transmitted three formal requests for information to Treasury officials in the prior administration during the reporting period and in the weeks leading up to submission of this report.

In its first letter, dated December 15, 2021, SIGPR requested a briefing and asked specific questions relating to the then-Secretary's request⁶⁵ that the Federal Reserve return unused Treasury funds appropriated by the CARES Act for the Federal Reserve facilities. SIGPR's second letter, dated December 18, 2020, followed up on this letter, requesting Treasury to identify the specific CARES Act provisions and any related legal analysis underlying the then-Secretary's requested return of the unused funds. SIGPR's letters are included in Appendix B.

On January 6, 2021, SIGPR transmitted a letter to Treasury's Office of General Counsel, requesting information regarding changes to the rules governing the Main Street Lending Program that had been discussed in recent news reports.⁶⁶ SIGPR's letter is included in Appendix C.

⁶⁴ See Term Sheet, Nonprofit Organization Expanded Loan Facility, Board of Governors of the Federal Reserve System (December 29, 2020), <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20201229a5.pdf>.

⁶⁵ Letter from then-Secretary Mnuchin to Chair Powell on the Status of Facilities Authorized Under Section 13(3) of the Federal Reserve Act (November 19, 2020), <https://home.treasury.gov/system/files/136/letter11192020.pdf>.

⁵⁹ "Texas Fracking Billionaires Drew Covid-19 Aid While Investing in Rivals." The Wall Street Journal, Dec. 27, 2020. <https://www.wsj.com/articles/texas-fracking-billionaires-drew-covid-19-aid-while-investing-in-rivals-11609070400>.



APPENDICES

Appendix A

Program-Specific Rules Relating to Capital Access and Multiple-Dipping Under the CARES Act

CARES Act Program	Rules Relating to Access to Multiple Streams of Funds
<p>Section 4003 Loans (Title IV, Subtitle A)</p>	<ul style="list-style-type: none"> • Credit Availability Review. A borrower is eligible if “credit is not reasonably available” to the borrower “at the time of the” loan.^{xxxiv} Treasury “and its financial and legal advisors will take into account evidence from the prospective borrower’s particular circumstances, including its relationships with existing and potential creditors, as well as general market conditions.”^{xxxv} • Additional stipulations for non-air-carrier businesses. Businesses may be eligible if they are non-air-carrier U.S. businesses that “have not otherwise received adequate economic relief in the form of loans or loan guarantees provided under the CARES Act that are certified under 14 CFR Part 145 and approved to perform inspection, repair, replace, or overhaul services (‘Part-145 certified repair station operators’); ticket agents as defined in 49 U.S.C. § 40102; or businesses critical to maintaining national security.”^{xxxvi} • Federal Reserve Facilities. A recipient of a loan under Section 4003 is not eligible to receive support under the Main Street Lending Program or either of the Corporate Credit Facilities.
<p>Main Street Lending Program (MSLP) (Title IV, Subtitle A)</p>	<ul style="list-style-type: none"> • PPP Recipients: The Federal Reserve has taken the position^{xxxvii} that “a Business that has received PPP loans, or that has affiliates that have received PPP loans, is permitted to borrow under Main Street, provided that the Business is an Eligible Borrower.”^{xxxviii} An MSLP borrower, however, must complete a certification form reporting its PPP debt load.^{xxxix} • Economic Injury Disaster Loan (EIDL) Recipients: Similarly, a business receiving a loan under the SBA’s “EIDL program can be an Eligible Borrower under Main Street if it meets the Eligible Borrower criteria.”^{xl} • An entity eligible for more than one of the Main Street Lending Program facilities—the Main Street Priority Loan Facility (MSPLF); the Main Street New Loan Facility (MSNLF); the Main Street Expanded Loan Facility (MSELF); the Nonprofit Organization New Loan Facility (NONOLF); or the Non-profit Organization Expanded Loan Facility (NOELF)—may only participate in one. • An entity that participates in any one of the Main Street Lending Programs cannot also participate in the Primary Market Corporate Credit Facility or the Secondary Market Corporate Credit Facility.^{xli} An entity that participates in either the NONOLF or the NOELF may not also participate in the Municipal Liquidity Facility.^{xlii}

CARES Act Program	Rules Relating to Access to Multiple Streams of Funds
<p>Primary Market Corporate Credit Facility (PMCCF) (Title IV, Subtitle A)</p>	<ul style="list-style-type: none"> • An eligible entity “may not participate in the PMCCF and a Main Street Lending Facility.”^{xliii} • An eligible entity “must not have received specific support pursuant to the CARES Act or any subsequent^{xliv} federal legislation.” • An eligible entity may “utilize tax credits or tax relief in the CARES Act and still participate in the CCFs.”^{xlv} • Secondary Market Corporate Credit Facility (SMCCF) Participants Subject to Per-Issuer Limits. An eligible entity may “participate in . . . the PMCCF at the same time its bonds have been or are being purchased by the SMCCF . . . but the collective purchases by the PMCCF and SMCCF of an eligible issuer’s debt are subject to the per-issuer limits described in the respective Term Sheets.”^{xlvi}
<p>Secondary Market Corporate Credit Facility (SMCCF) (Title IV, Subtitle A)</p>	<ul style="list-style-type: none"> • An “eligible issuer must not have received specific support pursuant to the CARES Act or any subsequent federal legislation.”^{xlvii} • “An issuer may utilize tax credits or tax relief in the CARES Act and still participate in the CCFs.”^{xlviii} • PMCCF Participants Subject to Per-Issuer Limits. “An eligible issuer [may] participate in . . . the PMCCF at the same time its bonds have been or are being purchased by the SMCCF . . . but the collective purchases by the PMCCF and SMCCF of an eligible issuer’s debt are subject to the per-issuer limits described in the respective Term Sheets.”^{xlix}
<p>Term Asset-Backed Securities Facilities (TALF II) (Title IV, Subtitle A)</p>	<ul style="list-style-type: none"> • Credit Availability Review. “Under the Board’s Regulation A, the New York Fed must obtain evidence that participants in the TALF are unable to secure adequate credit accommodations from other banking institutions Lack of adequate credit does not mean that no credit is available. Credit may be available, but inadequate in its amount, price, or terms.”ⁱ • “SBA Pool Certificates that include PPP loans in the underlying collateral pool are eligible ABS.”ⁱⁱ • Procedure for Requesting Multiple Loans. “An eligible borrower may request an unlimited number of loans at each subscription date If a borrower requests loans through multiple TALF Agents, it must deliver the collateral for each loan through the respective TALF Agent, unless the collateral is a new issuance delivered by the underwriter/other syndicate desk.”ⁱⁱⁱ • ABS Issued by Recipients of Loans under Section 4003(b)(1)-(3). “Eligible ABS do not include ABS issued by or sponsored by (or, in the case of CLOs, with collateral managers which are) U.S. entities that have received specific support pursuant to Section 4003(b)(1)-(3) of the Coronavirus Aid, Relief, and Economic Security Act of 2020 (Subtitle A of Title IV of the CARES Act).”ⁱⁱⁱⁱ
<p>Payroll Support Program (PSP) (Title IV, Subtitle B)</p>	<ul style="list-style-type: none"> • No Express Prohibitions on Other CARES Act Support. Treasury appears to have issued no specific guidance, stating only that “[a]n air carrier or contractor that has applied for or received support under other provisions of the CARES Act is precluded, by virtue of such application or support, from applying for and receiving Payroll Support. The eligibility

CARES Act Program	Rules Relating to Access to Multiple Streams of Funds
	<p>criteria for other CARES Act support programs are set forth in the Act and any applicable guidance or regulations.”^{liv}</p>
<p>Coronavirus Relief Fund (Title V)</p>	<ul style="list-style-type: none"> • Local Governments Eligibility. The CARES Act does not explicitly prevent local governments (regardless of their eligibility for direct assistance) from receiving Coronavirus Relief Fund payments from state governments, so long as the funds are used for eligible purposes.
<p>Paycheck Protection Program (PPP)</p>	<ul style="list-style-type: none"> • Loan Must Be New in Purpose and Amount. “An eligible recipient applying for a covered loan shall make a good faith certification . . .” <ul style="list-style-type: none"> ○ “that the eligible recipient does not have an application pending for a loan under this subsection for the same purpose and duplicative of amounts applied for or received under a covered loan . . .”^{lv} ○ “during the period beginning on February 15, 2020 and ending on December 31, 2020, that the eligible recipient has not received amounts under this subsection for the same purpose and duplicative of amounts applied for or received under a covered loan.”^{lvi} • SBA Guidance Regarding EIDL Recipients. <ul style="list-style-type: none"> ○ “Nothing in this paragraph shall prohibit a recipient of an economic injury disaster loan made under subsection (b)(2) during the period beginning on January 31, 2020 and ending on the date on which covered loans are made available that is for a purpose other than paying payroll costs and other obligations described in subparagraph (F) from receiving assistance under this paragraph.”^{lvii} ○ “Borrowers can apply for both the PPP and EIDL, although funds from both cannot be used for the same purpose.”^{lviii} ○ “If you took out an Economic Injury Disaster Loan (EIDL) between February 15, 2020 and June 30, 2020 and you want to refinance that loan into a PPP loan, you would add the outstanding loan amount to the payroll sum.”^{lix} • Rules for Current Federal Awards. “[P]ayroll costs paid with the Paycheck Protection Program (PPP) loans or any other Federal CARES Act programs must not be also charged to current Federal awards as it would result in the Federal government paying for the same expenditures twice.”^{lx} • MSLP Recipients: The Federal Reserve has taken the position that “a Business that has received PPP loans, or that has affiliates that have received PPP loans, is permitted to borrow under Main Street, provided that the Business is an Eligible Borrower.”^{lxi} But an MSLP borrower must complete a certification form reporting its PPP debt load.^{lxii}
<p>Economic Injury Disaster Loan (EIDL)</p>	<ul style="list-style-type: none"> • SBA Guidance Regarding PPP Recipients. “Borrowers can apply for both the PPP and EIDL, although funds from both cannot be used for the same purpose.”^{lxiii} • New SBA Loans Must Be Separate. “Each SBA Disaster Loan is a separate loan; they cannot be consolidated or used to pay off earlier loans. If you qualify for another SBA disaster loan due to a different declared disaster in your area, the new loan must be used for the purposes listed in your loan closing documents, which may include working capital or physical damage repairs. It cannot be used to refinance or payoff existing SBA disaster loans from previous disaster events, including COVID-19.”^{lxiv}

CARES Act Program	Rules Relating to Access to Multiple Streams of Funds
	<ul style="list-style-type: none"> <li data-bbox="505 275 1409 331">• A business that already has both an EIDL loan and a PPP loan “may still qualify for a new SBA disaster loan for losses resulting from a declared disaster in your community.”^{lxxv} <li data-bbox="505 363 1443 420">• Main Street Lending. A business receiving a loan under the SBA’s “EIDL program can be an Eligible Borrower under Main Street if it meets the Eligible Borrower criteria.”^{lxxvi}

^{lxxiv} CARES Act § 4003(c)(2)(A).

^{lxxv} <https://home.treasury.gov/system/files/136/CARES-Airline-Loan-Support-Q-and-A-national-security.pdf>.

^{lxxvi} <https://home.treasury.gov/system/files/136/CARES-Airline-Loan-Support-Q-and-A-national-security.pdf>.

^{lxxvii} The Federal Reserve’s position on the eligibility of PPP and EIDL recipients for the MSLP appears to stem from an interpretation of CARES Act § 4002(4)(B) that is at odds with how the Department of the Treasury has interpreted that same provision. CARES Act § 4002(4)(B) defines the term “eligible business” as a non-air-carrier “United States business that has not otherwise received adequate economic relief in the form of loans or loan guarantees provided under this Act.” In its guidance regarding the loan program under Title IV, Subtitle A, Treasury further defines the term “eligible business,” in part, as non-air-carrier “businesses certified by the Department of Transportation under 14 C.F.R. Part 145 . . . that have not otherwise received adequate economic relief in the form of loans or loan guarantees under other programs authorized by the Act.” 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, at 2 (March 30, 2020), <https://home.treasury.gov/system/files/136/Procedures%20and%20Minimum%20Requirements%20for%20Loans.pdf>. That guidance defines “the Act” as the entire CARES Act. *Id.* at 1. Accordingly, it appears Treasury understands the definition of “eligible business,” as provided in CARES Act § 4002(4)(B), to exclude otherwise qualifying non-air-carrier businesses that have received an adequate loan or loan guarantee under *any* program established under the CARES Act. This would not allow an MSLP applicant to have participated in the PPP. The Federal Reserve’s guidance, however, provides that an MSLP applicant “must not have received specific support pursuant to the Coronavirus Economic Stabilization Act of 2020 (Subtitle A of Title IV of the CARES Act),” which the Federal Reserve clarifies to mean that “[a] Business is not eligible [for the MSLP] if it has received support pursuant to Section 4003(b)(1)-(3) of the CARES Act.” Main Street Lending Program FAQs, For-Profit Businesses, Board of Governors of the Federal Reserve System, at 27 (Dec. 29, 2020), <https://www.bostonfed.org/mslp-faqs>. Accordingly, it appears the Federal Reserve understands the definition of “eligible business,” as provided in CARES Act § 4002(4)(B), to exclude only those otherwise qualifying non-air-carrier businesses that have received an adequate loan or loan guarantee under Title IV, Subtitle A. This would allow an MSLP applicant to have participated in the PPP.

^{lxxviii} <https://www.bostonfed.org/mslp-faqs>.

^{lxxix} <https://www.bostonfed.org/-/media/Documents/special-lending-facilities/mslp/legal/ppp-forgiveness-form.pdf?la=en>.

^{xl} <https://www.bostonfed.org/mslp-faqs>.

^{xli} <https://www.newyorkfed.org/markets/primary-and-secondary-market-faq/corporate-credit-facility-faq>.

^{xlii} <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20201030a4.pdf>;

<https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20201030a5.pdf>.

^{xliiii} <https://www.newyorkfed.org/markets/primary-and-secondary-market-faq/corporate-credit-facility-faq>.

^{xliv} Notably, the prohibition against receiving specific support under “subsequent federal legislation” appears to be unique to the Corporate Credit Facilities and is not incorporated into the Federal Reserve’s guidance regarding other facilities—nor is such a prohibition included in Treasury’s guidance, which, as explained above, deviates slightly from the guidance issued by the Federal Reserve.

^{xlv} <https://www.newyorkfed.org/markets/primary-and-secondary-market-faq/corporate-credit-facility-faq>.

^{xlvi} <https://www.newyorkfed.org/markets/primary-and-secondary-market-faq/corporate-credit-facility-faq>.

^{xlvii} <https://www.newyorkfed.org/markets/primary-and-secondary-market-faq/corporate-credit-facility-faq>. “To participate in the PMCCF as an issuer or in the SMCCF as an issuer of eligible individual corporate bonds, the issuer must certify that it has not received specific support pursuant to the CARES Act. This issuer certification is not required in connection with the SMCCF broad market index purchase program. “Specific support” in this context means specific support pursuant to Section 4003(b)(1)-(3) of the Coronavirus Economic Stabilization Act of 2020 (Subtitle A of Title IV of the CARES Act) An issuer will not be eligible for the PMCCF or SMCCF if it has received a loan, loan guarantee, or other investment from the Treasury Department under Section 4003(b)(1)-(3).” *Id.*

^{xlviii} <https://www.newyorkfed.org/markets/primary-and-secondary-market-faq/corporate-credit-facility-faq>.

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- xlix <https://www.newyorkfed.org/markets/primary-and-secondary-market-faq/corporate-credit-facility-faq>.
- l <https://www.newyorkfed.org/markets/term-asset-backed-securities-loan-facility/term-asset-backed-securities-loan-facility-faq>.
- li <https://www.newyorkfed.org/markets/term-asset-backed-securities-loan-facility/term-asset-backed-securities-loan-facility-faq>.
- lii <https://www.newyorkfed.org/markets/term-asset-backed-securities-loan-facility/term-asset-backed-securities-loan-facility-faq>.
- liii <https://www.newyorkfed.org/markets/term-asset-backed-securities-loan-facility/term-asset-backed-securities-loan-facility-faq>.
- liv <https://home.treasury.gov/system/files/136/QandA-Payroll-Support-to-Air-Carriers-and-Contractors.pdf>.
- lv CARES Act § 1102 (15 USC 636(a)(36)(G)(i)(III)).
- lvi CARES Act § 1102 (15 USC 636(a)(36)(G)(i)(IV)).
- lvii CARES Act § 1102 (15 USC 636(a)(36)(Q)).
- lviii <https://www.sba.gov/sites/default/files/2020-11/COVID%20EIDL%20FAQ%20rev%20112320-508.pdf>.
- lix https://www.sbc.senate.gov/public/_cache/files/2/9/29fc1ae7-879a-4de0-97d5-ab0a0cb558c8/1BC9E5AB74965E686FC6EBC019EC358F.the-small-business-owner-s-guide-to-the-cares-act-final.pdf.
- lx <https://www.whitehouse.gov/wp-content/uploads/2020/06/M-20-26.pdf>.
- lxi <https://www.bostonfed.org/mslp-faqs>.
- lxii <https://www.bostonfed.org/-/media/Documents/special-lending-facilities/mslp/legal/ppp-forgiveness-form.pdf?la=en>.
- lxiii <https://www.sba.gov/sites/default/files/2020-11/COVID%20EIDL%20FAQ%20rev%20112320-508.pdf>. SBA also previously provided the following guidance: “Note that businesses that received an EIDL Advance in addition to the PPP loan will have the amount of the EIDL Advance subtracted from the forgiveness amount of their PPP loan.” The rule underlying that guidance, however, has since been repealed, and the repeal is intended to apply retroactively. See Economic Aid Act § 333(c), (d).
- lxiv <https://www.sba.gov/sites/default/files/2020-11/COVID%20EIDL%20FAQ%20rev%20112320-508.pdf>.
- lxv <https://www.sba.gov/sites/default/files/2020-11/COVID%20EIDL%20FAQ%20rev%20112320-508.pdf>.
- lxvi <https://www.bostonfed.org/mslp-faqs>.

Appendix B

Letter to General Counsel from Special Inspector General, December 15, 2020



Office of the Special Inspector General for Pandemic Recovery

December 15, 2020

The Honorable Brian Callanan
General Counsel
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Mr. Callanan:

My office respectfully requests a full briefing on the Secretary's request that the Federal Reserve return to the U.S. Department of the Treasury (Treasury) \$429 billion in unused Treasury funds appropriated by the Coronavirus Aid, Relief, and Economic Security (CARES) Act. *See* Letter from Steven T. Mnuchin, Sec'y, Treas., to Jerome H. Powell, Chair, Fed. Res. (November 19, 2020). In advance of a briefing, I wanted to provide an opportunity to prepare written responses to the following questions.

According to the Secretary's letter, the decision to seek the return of "unused funds to the Treasury" will allow Congress to re-appropriate "\$429 billion in excess Treasury funds for the Federal Reserve facilities." Given that CARES Act § 4003(b)(4) appropriates \$454 billion for the Secretary to invest in Federal Reserve facilities, leaving the full \$102.5 billion the Secretary has already invested into the facilities in place would mean the Secretary would have only \$351.5 billion to return to Congress. Therefore, the letter indicates the Secretary expects the Federal Reserve to return portions of the funds already invested.

1. In asking the Federal Reserve to return "unused" or "excess" funds to the Treasury, how did Treasury determine what constituted "unused" or "excess" Treasury funds? In addition:
 - What are the amounts of Treasury's unused funds specific to each of the relevant programs—Primary Market Corporate Credit Facility (PMCCF), Secondary Market Corporate Credit Facility (SMCCF), Municipal Liquidity Facility (MLF), Main Street Lending Program (MSLP), and Term Asset-Backed Securities Loan Facility (TALF)—currently on the Federal Reserve's balance sheet and/or referenced in the Secretary's letter to Chairman Powell?
 - Do any unused funds being returned by the Federal Reserve include related reinvestment earnings because they accrued to the Treasury?
2. How did the Treasury determine the amount of Treasury's investments that needed to remain with each facility to protect the Federal Reserve against potential losses from the transactions the facilities have already concluded? What amount did Treasury project was needed for this purpose?

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3. How did the Treasury account for the unknown size and number of transactions each facility will conclude between the date the Secretary sent the letter to the Federal Reserve requesting a specific sum of funds returned and the date (December 31, 2020) the facilities will cease conducting new transactions? What amount did Treasury project was needed for this purpose?
4. Did the Treasury account for amounts that will or may be needed pursuant to CARES Act §§ 4027, 4029 for modifications, restructurings, amendments, options, warrants, and costs that arise after December 31, 2020? What amount did Treasury project was needed for these purposes? May money be used for these purposes only if the CARES Act money remains in the Exchange Stabilization Fund, or could money in the Treasury general fund or elsewhere be used?
5. Since the LLC agreements for each facility stipulate the Secretary's capital contributions, will those agreements be amended or terminated to allow the return of invested funds to the Treasury?

Thank you for considering this request. I look forward to hearing from you on scheduling the briefing, and I welcome any written responses you may provide in advance.

Sincerely,



Brian D. Miller
Special Inspector General for Pandemic Recovery

Letter to General Counsel from Special Inspector General, December 18, 2020



Office of the Special Inspector General for Pandemic Recovery

December 18, 2020

The Honorable Brian Callanan
General Counsel
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Mr. Callanan,

In addition to my earlier inquiries regarding the Secretary's request that the Federal Reserve return to the U.S. Department of the Treasury approximately \$429 billion in unused funds appropriated by the Coronavirus Aid, Relief, and Economic Security (CARES) Act, our office has another request for information. In your response to our December 15, 2020, inquiries, please identify the precise provisions of the CARES Act that require the return of unused funds, along with any other legal analysis or explanatory information that you believe to be helpful on this legal question.

Thank you for considering this request. I look forward to hearing from you regarding this important issue.

Sincerely,

A handwritten signature in blue ink, appearing to read "B. Miller", is positioned above the typed name.

Brian D. Miller
Special Inspector General for Pandemic Recovery

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Appendix C

Letter to General Counsel from Special Inspector General, January 6, 2021



Office of the Special Inspector General for Pandemic Recovery

January 6, 2021

The Honorable Brian Callanan
 General Counsel
 U.S. Department of the Treasury
 1500 Pennsylvania Avenue, NW
 Washington, DC 20220

Dear Mr. Callanan:

Recent public reporting has raised questions about changes made to the Main Street Lending Program after United States Senator Ted Cruz wrote to Secretary Mnuchin and Chairman Powell on April 24, 2020, urging changes designed to ensure access to capital for businesses in the oil and gas industry. The public reporting focuses on two specific changes to the program's rules that Senator Cruz requested and that were ultimately adopted: increasing the maximum permissible loan amount and allowing borrowers to use Main Street loans to refinance pre-existing debt.

While the recent reporting does not allege misconduct, it does concern the management of investments made by the Secretary under CARES Act § 4003(b)(4)—an area of core jurisdiction for the Special Inspector General for Pandemic Recovery. Accordingly, responses to the following inquiries would be helpful to more fully report to Congress and the American taxpayers on the management of the Secretary's investments into the Main Street Lending Program:

1. Provide any written communications from the Office of Senator Ted Cruz to the Secretary concerning the subject matter discussed by the April 24, 2020 letter from Senator Cruz to Secretary Mnuchin and Chairman Powell.
2. Provide the rationale for the decision to adopt the changes requested by Senator Cruz—namely, to increase the maximum permissible loan amount and allow borrowers to use Main Street loans to refinance pre-existing debt.
3. What role, if any, did the Secretary play in adopting these two changes?
4. If you know, please provide a list of the companies that participated in the Main Street program only as a result of the changes.
 - Please include the amount of each loan given to each company as well as the companies' respective industries.
 - Please describe the role, if any, the Secretary plays in deciding which companies receive loans and the amounts given.

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Thank you for considering this request. I look forward to hearing from you regarding this issue.

Sincerely,



Brian D. Miller
Special Inspector General for Pandemic Recovery



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