



OFFICE OF THE SPECIAL INSPECTOR GENERAL FOR
PANDEMIC RECOVERY

Quarterly Report to the United States Congress

July to September 2021





MESSAGE FROM THE SPECIAL INSPECTOR GENERAL FOR PANDEMIC RECOVERY

When the COVID-19 pandemic threatened to wreak havoc on the health and economic well-being of the American people, Congress passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act to invest trillions of dollars to address these extraordinary challenges. Unfortunately, this vital investment of taxpayer dollars has been put at risk of fraud, waste, and abuse by bad actors, who seek to gain at the expense of those most in need. We at the Office of the Special Inspector General for Pandemic Recovery (SIGPR) have pursued our mission aggressively and proactively to detect and investigate such wrongdoing.

Starting from scratch just over a year ago, we have built sustainable programs and an exceptional organization, including some of the country's finest and most accomplished attorneys, auditors, investigators, and other professionals, to relentlessly pursue fraud, waste, and abuse in pandemic relief monies. SIGPR stands ready at a critical juncture. Now that interest payments on relevant loans are becoming due, fraud and other abuses are becoming more evident.

Our audit team continued looking at the investment of the Treasury in the Main Street Lending Program (MSLP) and the Treasury Department's Direct Loan Program, issued two alert memorandums, published its Direct Loan Program survey results, and released its Fiscal Year 2022 audit plan. Our investigative team vetted 242 hotline complaints and initiated 13 new preliminary inquiries and full investigations, bringing the total number of open investigative matters to 27 – an increase in our investigatory casework of approximately 35 percent from the previous quarter. We built more than 80

percent of SIGPR's investigations internally through our proactive initiatives, which we continue to develop and refine.

The pace of our audit work has been particularly brisk. SIGPR held entrance conferences with Treasury officials on July 1, 2021, and with Federal Reserve officials on August 31, 2021, to discuss our audit of Treasury's investment in the MSLP. In August 2021, we distributed a survey to the program's 319 lenders and the borrowers of 1,830 loans. The feedback we receive will allow us to assess the program and guide future audit work. On September 23, 2021, we published the results of our survey sent to Direct Loan Program applicants. We will use these results to identify relevant trends and identify program areas requiring additional oversight. Finally, we issued our Fiscal Year 2022 audit plan on September 29, 2021, and we will scope any audit we announce within the jurisdictional bounds authorized by the CARES Act.

SIGPR has jurisdiction over the Treasury Department's investment into the MSLP, which was designed to provide financial support to small and medium-sized businesses and their employees during the worst of the pandemic. Among the many terms unique to the MSLP due to its emergency nature is that principal and interest payments were deferred. As a result, many Main Street borrowers have only recently had to make their first interest payment. Many more borrowers will have to make their first interest payment in the coming months, even as principal will not become due. Unfortunately, the program has already suffered its first losses – and may soon suffer far more. In fact, an evaluation of loan participations purchased by MS Facilities LLC – the special purpose vehicle in which Treasury has a remaining investment of approximately \$16.5 billion – has resulted in it recording a loan loss allowance of \$2.5 billion as of June 30, 2021, and, as of September 30, 2021, approximately \$12 million in actual loan losses. These losses make the work that we do more urgent.

SIGPR continues to work through issues uniquely inherent to the position of a new office that parachutes into existing agency constructs. We appreciate the professionalism of our colleagues in working through these issues. In particular, last quarter we worked with Treasury's Office of General Counsel to adjust certain protocols in accessing information during an audit. Treasury's Acting General Counsel circulated a memorandum to relevant

officials highlighting their responsibility to cooperate fully with SIGPR, emphasizing the need for timely access to all information, and advising employees that they are entitled to communicate directly with SIGPR without permission from any Treasury official to do so.

Finally, our experience in combatting fraud, not only as part of SIGPR, but also as former prosecutors, inspired us to submit another legislative proposal for Congress's consideration.¹ SIGPR is responsible not only for identifying and bringing cases against entities that steal CARES Act funds, but also for recovering the stolen money. Accordingly, SIGPR proposes new legislation that will enhance the ability of the government – and not just SIGPR – to recover stolen CARES Act and other federal funds for victims, including the U.S. government and private lenders.

I remain grateful to the professional and hardworking team at SIGPR and our partners at offices of inspectors general, law enforcement, and other agencies for their dedication to working on behalf of the American taxpayer. We will continue our unrelenting fight for the American people and to protect tax dollars from fraud, waste, and abuse.

Respectfully,



Brian D. Miller
October 29, 2021

¹ In addition to legislative proposals directly related to SIGPR and the CARES Act, we have previously recommended statutory updates that we believe would aid federal efforts to detect and prosecute fraud. Our quarterly report dated April 30, 2021, included proposals to expand access to information for inspectors general, to amend the venue requirements of the federal wire fraud statute, and to amend the notice provisions of the Right to Financial Privacy Act of 1978. See Special Inspector General for Pandemic Recovery, *Quarterly Report to the United States Congress* 37–46 (Apr. 30, 2021).

PROFILE

ABOUT

SIGPR is an independent organization within the U.S. Department of the Treasury whose mission is to promote the economy, efficiency, effectiveness, and integrity of CARES Act funds and programs. SIGPR was established by Section 4018 of the CARES Act with duties, responsibilities, and authority under the Inspector General Act of 1978.

STAFFING AND BUDGET

Congress appropriated \$25 million to SIGPR for the entirety of its five-year term, or about \$5 million per year. SIGPR requested \$25 million in its Fiscal Year 2022 budget request, which was included in the President's Budget. The receipt of additional funding is critical to SIGPR's success.

As of September 30, SIGPR had 55 full-time employees onboard.

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SECTION 1

SIGPR OVERSIGHT

SIGPR employs proactive efforts to prevent, detect, and investigate fraud, waste, and abuse involving CARES Act funds and programs within SIGPR’s jurisdiction.

Below is a summary of SIGPR’s activities during the reporting period.

- The Office of Audits continued its audits of the Direct Loan Program and Main Street Lending Program, issued two alert memorandums, published its Direct Loan Program survey results, and released its Fiscal Year 2022 audit plan.
- The Office of Investigations vetted 242 hotline complaints, and initiated 13 new preliminary and full investigations, bringing the total number of open investigative matters to 27 — an increase in casework of approximately 35 percent from the previous quarter. SIGPR developed more than 80 percent of its investigations internally through proactive initiatives, which it continues to develop and refine.

Audits

The Office of Audits conducts audits and evaluations of loans, loan guarantees, and other investments made by the U.S. Department of the Treasury under programs within SIGPR’s jurisdiction.²

Engagements

During this quarter, the Office of Audits worked on the following projects:

Audit of the Direct Loan Program. The Office of Audits continued its review of the Direct Loan Program. This program was established under the CARES Act and authorized Treasury to provide loans, loan guarantees, and other investments to passenger air carriers and related businesses, cargo air carriers, and businesses critical to maintaining national security.

On August 2, 2021, the Office of Audits issued an [Alert Memorandum](#) for a Direct Loan Program recipient that failed to provide responses to information requested by SIGPR. Treasury’s Office of Recovery Programs issued a Notice of Non-Compliance on August 3, 2021, demanding that the loan recipient provide the requested information within 30 days.

On September 8, 2021, the Office of Audits issued another [Alert Memorandum](#), stating that the loan recipient had failed to comply with Treasury’s Notice of Non-Compliance. Treasury contacted the loan recipient, and SIGPR received the information on September 13, 2021.

² See CARES Act § 4018(c)(1).

On September 23, 2021, the Office of Audits published its [survey results for both approved and non-approved Direct Loan Program applicants](#). The survey results are a compilation and summary of Direct Loan Program feedback that SIGPR requested from air passenger carriers and related businesses, air cargo carriers, and businesses critical to maintaining national security. The Office of Audits is using the survey responses to identify trends, both positive and negative, associated with the Direct Loan Program and identify program areas requiring additional oversight.

SIGPR continues to partner with the Department of Defense Office of Inspector General in its audit of national security designations for businesses. This joint effort is evaluating how the Department of Defense determined that businesses were critical to maintaining national security for loans under Section 4003 of the CARES Act.

Audit of the Main Street Lending Program. The MSLP was established to support lending to small and mid-sized businesses and nonprofit organizations, with Treasury investing more than \$16.5 billion to support MSLP loans. The Office of Audits held entrance conferences with Treasury officials on July 1, 2021, and with Federal Reserve officials on August 31, 2021, to discuss audit objectives and establish points of contact for the audit.

In late August 2021, the audit team distributed a survey to the program's 319 lenders and the borrowers of the 1,830 loans. Responses will be used to assess (1) the overall ease and efficiency that lenders and borrowers experienced with the administration of the MSLP and (2) compliance with the requirements set forth in the CARES Act. The Office of Audits expects to receive feedback that will allow it to assess the program and guide future audit work.

Data Analysis

The Office of Audits continues to work on data analytics concerning programs within SIGPR's oversight jurisdiction. In its analytical work, the Office of Audits:

- creates robust risk assessment metrics by identifying, cleansing, normalizing, and joining relevant data to determine areas of program weakness;
- maintains a growing library of relevant data tables to accommodate emerging needs for analytic support to identify anomalies;
- creates interactive dashboards and visualizations to assist users in determining program areas for audits, investigations, and evaluations;

- shares analytic methodologies and processes with various other government agencies, including the Department of Homeland Security, Department of Defense, Department of State, and others; and
- collaborates with various inter-governmental agencies, committees, and third-party vendors to stay informed about emerging analytic technologies, tools, techniques, and methodologies.

The current supporting informational datasets, as compiled and developed by the Office of Audits, has expanded to nearly 72 million rows of data, covering billions of dollars in CARES Act funding. The Office of Audits continues to develop risk assessment models to identify areas of potential vulnerabilities and financial risk in CARES Act programs under its purview.

The Office of Audits has developed a suite of custom proactive analysis and technical support tools to address the needs of SIGPR in combating abuse, fraud schemes, and waste of taxpayer funds.

Fiscal Year 2022 Audit Plan

The Office of Audits issued its [Fiscal Year 2022 audit plan](#) on September 29, 2021. To identify potential areas for audit in the next fiscal year, the Office of Audits met with the Department of the Treasury’s Chief Recovery Officer and the White House’s team responsible for overseeing the implementation of the American Rescue Plan Act of 2021. SIGPR will of course scope any audit it announces within its jurisdictional authority under the CARES Act.

Specifically, Section 4018 of the CARES Act sets forth that in addition to the duties and responsibilities of inspectors general under the Inspector General Act of 1978, SIGPR shall “conduct, supervise, and coordinate audits and investigations of the making, purchase, management, and sale of loans, loan guarantees, and other investments made by the Secretary of the Treasury under any program established by the Secretary under this Act, and the management by the Secretary of any program established under this Act.” SIGPR will also deconflict and coordinate with the Office of Inspector General for the Board of Governors of the Federal Reserve System and other interested parties, as it refines the focus of its audits.

Investigations

The Office of Investigations conducts criminal and civil investigations regarding allegations of fraud, waste, abuse, or misconduct involving CARES Act funds and programs within SIGPR’s jurisdiction. In addition, the office

manages SIGPR's hotline, which serves as a primary avenue for reporting fraud, waste, abuse, or misconduct.

Investigative Activities

The Office of Investigations routinely collaborates with the rest of the SIGPR team, including auditors, analysts, and attorneys, to vet complaints, develop proactive initiatives, and pursue investigations.

In addition, SIGPR's investigations are conducted in partnership with various U.S. Attorneys' Offices, the U.S. Department of Justice (DOJ), and other federal law enforcement partners.

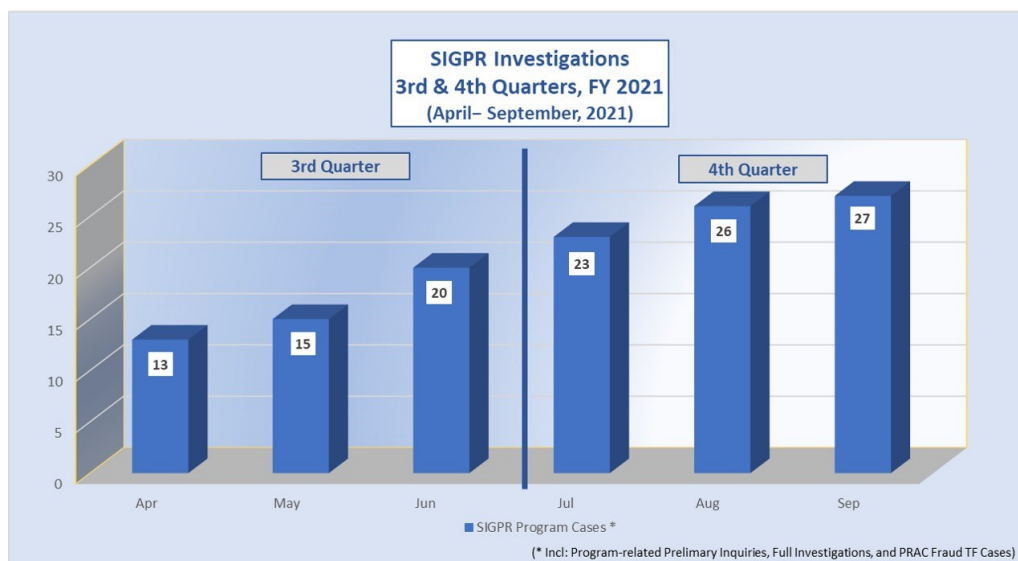
During this reporting period, the office continued its investigative and proactive efforts to uncover and vigorously pursue fraud and wrongdoing related to CARES Act funding under title IV, subtitle A. The following table highlights SIGPR's investigative activities for the period.

SIGPR Investigative Activity – July through September 2021

Hotline Complaints	
Hotline Complaints Received	242
Referrals to Other Agencies	42
Preliminary Inquiries	
Opened	8
Closed (or Converted to Full Investigation)	4
Ongoing	12
Investigations	
Opened	5
Closed	2
Ongoing*	15

* SIGPR Program-related cases including PRAC Fraud Task Force investigations

Throughout the quarter, the Office of Investigations continued to expand its investigative oversight work through SIGPR's collaborative and proactive efforts. As of September 30, SIGPR's casework, involving both preliminary inquiries and full investigations, had increased by approximately 35 percent from the previous quarter.



Pandemic Response Accountability Committee Fraud Task Force

In January 2021, the Pandemic Response Accountability Committee (PRAC) established a Fraud Task Force to serve as a resource for the Inspector General (IG) community by surging investigative resources into the areas of greatest need. Currently, the area of greatest need is pandemic loan fraud. Agents from Offices of Inspectors General across the government are detailed to work on Task Force cases. These agents have partnered with prosecutors at DOJ's Fraud Section and at U.S. Attorneys' Offices across the country.

The PRAC extended its authority to investigate pandemic-related fraud to SIGPR through a Memorandum of Understanding. As of September 30, SIGPR has four agents assigned to the PRAC Fraud Task Force on a part-time basis. These agents are assigned Paycheck Protection Program cases while continuing to work their SIGPR investigative caseload. This initiative allows SIGPR to make a broader contribution to the IG community by assisting with a range of critical investigations that might otherwise remain unstaffed.

SIGPR Hotline Activity

The SIGPR hotline accepts reports of potential fraud, waste, abuse, and mismanagement related to CARES Act funding, programs, and personnel. The hotline also accepts whistleblower complaints from federal employees, former federal employees, employment applicants, employees of contractors, subcontractors, grantees and subgrantees, and personal service contractors, all of whom wish to report fraud, waste, abuse, mismanagement, or reprisal actions under the jurisdiction of SIGPR.

During this reporting period, SIGPR received 242 hotline complaints, of which all but two pertained to matters outside SIGPR's jurisdiction, as indicated in the table below.

**Complaints by Category
Received July through September 2021**

Category	Total
Title I – Paycheck Protection Program	23
Title IV, Subtitle A – Direct Loans and Investments	2
Title IV, Subtitle B – Payroll Support Program	1
Title V – Coronavirus Relief Fund	13
Other	
Economic Impact Payments	16
Emergency Income Disaster Loans	4
Income Tax Related	8
Non-Program Related	124
Rental and Housing Assistance Programs	28
Unemployment Insurance Programs	23
Grand Total	242

More than half of the complaints received were determined to be non-program related, as indicated in the chart below.





SECTION 2

FINDINGS AND DEVELOPMENTS

The CARES Act requires SIGPR to regularly report “a detailed statement of all loans, loan guarantees, other transactions, obligations, expenditures, and revenues associated with any program established by the Secretary under section 4003, as well as the information collected under subsection (c)(1).”³

Accordingly, below are the categories of loans and other investments made by the Treasury under CARES Act section 4003,⁴ 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.

Direct Loans and Other Investments

Introduction

CARES Act 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 divided these loans and investments into four categories. The first three, described 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).⁵ The fourth category, described in section 4003(b)(4), authorized the Secretary to invest in various liquidity programs established by the Federal Reserve under section 13(3) of the Federal Reserve Act (\$454 billion).

The Consolidated Appropriations Act, 2021, amended the CARES Act to rescind unobligated balances of funds (\$429 billion) in these programs.⁶ 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 funds, except for facilities in the Main Street Lending Program, that were authorized to purchase loans until

³ CARES Act § 4018(f)(1)(B).

⁴ Treasury did not establish a program for “loan guarantees” under CARES Act section 4003.

⁵ Treasury has posted on its website the contracts it has entered in connection with the administration of loans under section 4003(b)(1), (2), and (3). See U.S. Dep’t Treasury, [Other Programs](#).

⁶ See Consolidated Appropriations Act, 2021, Pub. L. 116-260, div. N §§ 1003, 1005.

January 8, 2021, for applications submitted by December 14, 2020.⁷

An overview of the relevant categories and amounts of Treasury's investments remaining under CARES Act section 4003(b)(1)–(4) through September 30 is reflected in the following table:

Funding Program	Outstanding Amount as of September 30, 2021
Direct Loans to Passenger Air Carriers and Related Businesses	\$400,334,324
Direct Loans to Cargo Air Carriers	\$2,277,180
Direct Loans to Businesses Critical to Maintaining National Security	\$744,096,711
Funding Program	Treasury Investment Remaining as of September 30, 2021
Main Street Lending Program (MS Facilities, LLC)	\$16,585,741,118
Term Asset-Backed Securities Loan Facility (TALF II, LLC)	\$3,500,000,000 (plus interest)
Primary and Secondary Market Corporate Credit Facility (Corporate Credit Facilities, LLC)	\$0
Municipal Liquidity Facility (Municipal Liquidity Facility, LLC)	\$6,300,000,000 (plus interest)

Direct Loans

On March 30, 2020, Treasury first announced guidelines for businesses interested in applying for loans under CARES Act section 4003(b)(1)–(3).⁸ Those guidelines incorporated several mandatory loan terms and conditions, with many designed to protect American taxpayers. A summary of these terms and conditions can be accessed in SIGPR's previous quarterly reports.

Air Carrier Loan Program

CARES Act section 4003(b)(1)–(2) allocated \$25 billion for loans and loan

⁷ *Id.* § 1005.

⁸ U.S. Dep't Treasury, [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](#) (Mar. 30, 2020).

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 current through this quarter.⁹ Of note, Alaska Airlines Inc., American Airlines Inc., Hawaiian Airlines Inc., JetBlue Airways Corporation, Ovation Travel Group Inc., Republic Airways, Inc., SkyWest Airlines Inc., Sun Country Inc., and United Airlines Inc. paid in full all outstanding principal and interest.

Recipient	Loan Date	Maturity Date	Total Loan Amount	Disbursements ¹⁰	Total Outstanding Loan Amount ¹¹	Cash Interest Receipts
Aero Hydraulics, Inc.	10/26/2020	10/24/2025	\$450,000	\$450,000	\$486,502	\$0
Alaska Airlines, Inc.	9/28/2020 (amended 10/30/2020 and 1/15/2021)	9/26/2025	\$1,928,000,000	\$135,000,000	\$0	\$2,538,900
Allflight Corporation	11/5/2020	11/5/2025	\$4,721,260	\$4,721,260	\$4,721,260	\$262,736
American Airlines, Inc.	9/26/2020 (amended 10/21/2020 and 1/15/2021)	6/30/2025	\$7,500,000,000	\$550,000,000	\$0	\$10,257,500
American Jet International Corp	11/5/2020	11/5/2025	\$1,162,124	\$1,162,124	\$1,162,124	\$65,328
Aviation Management & Repairs, Inc.	11/5/2020	11/5/2025	\$4,026,705	\$4,026,705	\$4,154,550	\$0

⁹ U.S. Dep’t Treasury, Loans to Air Carriers, Eligible Businesses, and National Security Businesses <https://home.treasury.gov/policy-issues/cares/preserving-jobs-for-american-industry/loans-to-air-carriers-eligible-businesses-and-national-security-businesses>.

¹⁰ “Disbursements” includes all loan disbursements.

¹¹ “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 Loan Amount	Disbursements ¹⁰	Total Outstanding Loan Amount ¹¹	Cash Interest Receipts
Bristin Travel, LLC	10/26/2020	10/24/2025	\$549,651	\$549,651	\$573,790	\$9,320
Caribbean Sun Airlines, Inc.	11/5/2020 (amended 12/7/2020)	11/5/2025	\$6,768,749	\$6,768,749	\$7,129,025	\$0
Eastern Airlines, LLC	10/28/2020	10/28/2025	\$15,000,000	\$15,000,000	\$15,916,146	\$0
Elite Airways, LLC	11/9/2020 (amended 12/1/2020)	11/7/2025	\$2,630,274	\$2,630,274	\$2,773,377	\$0
Frontier Airlines, Inc.	9/28/2020 (amended 1/15/2021)	9/26/2025	\$574,000,000	\$150,000,000	\$150,000,000	\$4,004,000
Hawaiian Airlines, Inc.	9/25/2020 (amended 10/23/2020 and 1/15/2021)	6/28/2024	\$622,000,000	\$45,000,000	\$0	\$450,450
Island Wings, Inc.	11/5/2020	11/5/2025	\$294,350	\$294,350	\$311,059	\$0
JetBlue Airways Corporation	9/29/2020 (amended 11/3/2020 and 1/15/2021)	11/29/2025	\$1,948,000,000	\$115,000,000	\$0	\$3,330,113
Legacy Airways, LLC	10/20/2020	10/25/2025	\$1,817,306	\$1,817,306	\$1,966,121	\$0
Mesa Airlines, Inc.	10/30/2020	10/30/2025	\$195,000,000	\$195,000,000	\$201,227,290	\$0
Ovation Travel Group, Inc.	10/15/2020	10/15/2025	\$20,000,000	\$20,000,000	\$0	\$181,881
Republic Airways, Inc.	11/6/2020	11/6/2025	\$58,000,000	\$58,000,000	\$0	\$1,622,308
SkyWest Airlines, Inc.	9/29/2020 (amended 10/28/2020 and 1/15/2021)	9/29/2025	\$725,000,000	\$60,000,000	\$0	\$1,196,767

Recipient	Loan Date	Maturity Date	Total Loan Amount	Disbursements ¹⁰	Total Outstanding Loan Amount ¹¹	Cash Interest Receipts
Southern Airways Express, LLC	10/28/2020	10/28/2025	\$1,838,501	\$1,838,501	\$1,838,501	\$109,848
Sun Country, Inc.	10/26/2020	10/24/2025	\$45,000,000	\$45,000,000	\$0	\$77,125
Thomas Global Systems, LLC	11/9/2020	11/7/2025	\$1,400,000	\$1,400,000	\$1,480,297	\$0
Timco Engine Center, Inc.	11/5/2020	11/5/2025	\$8,390,240	\$8,390,240	\$8,871,462	\$0
United Airlines, Inc.	9/28/2020 (amended 11/6/2020, 12/8/2020, and 1/15/2021)	9/26/2025	\$7,491,000,000	\$520,000,000	\$0	\$9,517,733

Businesses Critical to National Security

CARES Act section 4003(b)(3) allocated \$17 billion for loans and loan guarantees to “businesses critical to maintaining national security.” The following table summarizes the section 4003(b)(3) loans current through this quarter.¹² Of note, Semahtronix, LLC, paid in full all outstanding principal and interest.

Recipient	Loan Date	Maturity Date	Total Loan Amount	Disbursements ¹³	Total Outstanding Loan Amount ¹⁴	Cash Interest Receipts
Channel Logistics, LLC	11/12/2020	11/12/2025	\$2,500,000	\$2,500,000	\$2,500,000	\$142,372
Core Avionics & Industrial, Inc.	11/5/2020	11/5/2025	\$6,000,000	\$6,000,000	\$5,449,195	\$188,933

¹² YRC Worldwide changed its name to Yellow Corporation.

¹³ “Disbursements” includes all loan disbursements.

¹⁴ “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 Loan Amount	Disbursements ¹³	Total Outstanding Loan Amount ¹⁴	Cash Interest Receipts
Map Large, Inc.	11/2/2020	10/31/2025	\$10,000,000	\$10,000,000	\$10,785,798	\$0
Meridian Rapid Defense Group, LLC	10/30/2020	10/30/2025	\$7,100,000	\$7,100,000	\$7,579,067	\$79,019
Ovio Technologies, Inc.	11/2/2020	10/31/2025	\$1,186,900	\$1,186,900	\$1,280,166	\$0
Semahtronix, LLC	11/13/2020	11/13/2025	\$1,999,100	\$1,999,100	\$0	\$777
Semantic AI, Inc.	11/13/2020	11/13/2025	\$506,300	\$506,300	\$535,633	\$0
SpinLaunch, Inc.	11/13/2020	11/13/2025	\$2,519,200	\$2,519,200	\$2,519,200	\$140,644
Visual Semantics, Inc.	10/30/2020	10/30/2025	\$1,053,200	\$1,053,200	\$1,124,264	\$11,722
Wiser Imagery Services, LLC	10/30/2020	10/30/2025	\$3,069,700	\$3,069,700	\$3,313,295	\$0
Yellow Corporation	7/8/2020	9/30/2024	\$700,000,000	\$700,000,000	\$709,010,093	\$13,538,685

Other Investments

CARES Act section 4003(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.”

Several liquidity programs (Federal Reserve facilities) were established pursuant to section 13(3) of the Federal Reserve Act.¹⁵ That provision, used extensively during the 2008 financial crisis and amended by the Dodd-Frank

¹⁵ See 12 U.S.C. § 343(3).

Wall Street Reform and Consumer Protection Act,¹⁶ 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.”¹⁷ The Federal Reserve, however, may not lend to insolvent entities, and its programs must be approved by the Secretary of the Treasury.

The following table summarizes the total amount of remaining CARES Act funds that Treasury invested in each Special Purpose Vehicle (SPV) as of September 30, 2021.¹⁸

Recipient	Treasury Investment Remaining as of September 30, 2021
Corporate Credit Facilities, LLC	\$0
Municipal Liquidity Facility, LLC	\$6,300,000,000 (plus interest)
TALF II, LLC	\$3,500,000,000 (plus interest)
MS Facilities, LLC	\$16,585,741,118

On September 24, 2021, in connection with the wind down of Corporate Credit Facilities operations, the SPV distributed to the Department of the Treasury the preferred equity account balance of \$13,898,155,655. This represents the value of the SPV’s associated investment in nonmarketable Treasury securities (and interest thereon) and cash.

An evaluation of loan participations purchased by the Main Street Facilities, LLC, resulted in it recording, in July 2021, a loan loss allowance in the amount of \$2.5 billion as of June 30, 2021. This allowance for loan losses is estimated based upon its holdings as of June 30, 2021, and does not indicate actual losses experienced by the program. As of September 30, 2021, Main Street Facilities, LLC, has recognized approximately \$12 million in actual loan losses.

These facilities have stopped extending loans or purchasing obligations. Transaction-specific details for the facilities are available on the [Federal Reserve’s website](#). The Federal Reserve has indicated that because the Main

¹⁶ Pub. L. 111-203, 124 Stat. 1375.

¹⁷ See 12 U.S.C. § 343(3); 12 C.F.R. § 201.4(d).

¹⁸ See [Periodic Report: Update on Outstanding Lending Facilities Authorized by the Board under Section 13\(3\) of the Federal Reserve Act](#) (October Periodic Report) (Oct. 13, 2021).

Street Lending Program ceased purchasing participations on January 8, 2021, it will not provide additional transaction-specific disclosures about the Main Street Lending Program on a periodic basis going forward.

TREASURY



SECTION 3

CHALLENGES AND
PROPOSALS

Access to Information

Treasury's Office of General Counsel (OGC) has generally served as a liaison with oversight bodies. On May 6, 2021, SIGPR's Office of Audits held an entrance conference with Treasury officials, including Treasury's OGC, regarding SIGPR's audit of Treasury's Direct Loan programs under the CARES Act. In learning that this was also Treasury's practice with respect to follow-up audit requests, SIGPR reached out to Treasury to find out what that meant in practice for activities like audits, where timely direct access to program officials is essential and professionally required. Following multiple discussions with Treasury OGC that began in June 2021, SIGPR reports the following resolution to its questions about OGC's involvement in SIGPR audits.

First, Treasury's Acting General Counsel circulated a memorandum to remind relevant officials of Treasury's responsibility to cooperate fully with SIGPR and emphasized SIGPR's need for timely access to all information, including information that is privileged, confidential, or otherwise exempt from disclosure. The memorandum advised employees that they are entitled to communicate directly with SIGPR, do not need permission from anyone to do so, and that employees always have a right to communicate directly with SIGPR. Previously, Treasury had circulated similar memoranda with respect to cooperating with other Inspectors General, and here, Treasury not only considered an example and draft that SIGPR provided but also incorporated SIGPR's input into its memorandum.

Second, Treasury and SIGPR established that SIGPR would send requests for information, documents, or interviews to individual Treasury program staff members via email, copying OGC staff, in keeping with current practice. Treasury also informed SIGPR that it expects that Treasury program staff members will send substantive responses to information requests directly back to SIGPR via email, copying OGC staff. OGC will also be present for interviews of Treasury staff when appropriate, including when requested by the interviewee. OGC will also assist with coordinating the logistics of requests from SIGPR.

Restitution

SIGPR is responsible not only for identifying and bringing cases against entities that steal CARES Act funds, but also for recovering the stolen money. Identifying crooks and bringing them to justice is important, but recovering

the money that they have stolen and returning it to their victims – i.e., providing restitution to victims – is equally important. Unfortunately, in a criminal case, law enforcement and other agencies of the government often lack sufficiently effective tools to preserve assets for restitution. Accordingly, SIGPR proposes new legislation that will enhance the ability of the government – and not just SIGPR – to recover stolen CARES Act and other federal funds for victims, including the U.S. government and private lenders.

In a civil case, such as a defaulted student loan or a contract dispute, where there is evidence that the defendant is concealing or dissipating assets or taking similar action, the United States may obtain a prejudgment remedy against the defendant. Remedies available include attachment, receivership, garnishment, or sequestration. These prejudgment remedies exist as part of the Federal Debt Collections Procedures Act of 1990,¹⁹ but do not apply to criminal cases.

The full or partial compensation for loss paid by a criminal to a victim that is ordered as part of a criminal sentence or as a condition of probation is generally referred to as “restitution.” Since the 1996 enactment of the Mandatory Victims Restitution Act,²⁰ the imposition of restitution has been required for many types of crimes, including fraud. Courts must impose restitution in the full amount of the victim’s loss.²¹ However, the government’s ability to actually collect restitution once a defendant has been convicted and sentenced remains elusive. The uncollected restitution debt balance continues to grow and now exceeds \$110,000,000,000.²²

In order to preserve assets for restitution directly to victims, changes to the U.S. Code are required. Indeed, in the context of criminal prosecutions for theft of CARES Act or other federal funds, defendants can dissipate their assets because the United States does not obtain any enforcement right for restitution until after the defendant has been sentenced and judgment has been entered. Upon the entry of judgment, the United States is not authorized even to seek a writ of garnishment – the most common method of

¹⁹ 28 U.S.C. § 3001 et seq.

²⁰ 18 U.S.C. § 3663A.

²¹ 18 U.S.C. § 3664(f)(1)(A).

²² See *Federal Criminal Restitution – Most Debt is Outstanding and Oversight of Collections Could Be Improved* – GAO-18-203 (Feb. 2018); *Review of the Debt Collection Program of the United States Attorneys’ Offices* – Office of the Inspector General – Department of Justice (June 2015).

securing assets in restitution cases - until more than 30 days after the entry of judgment.²³ Accordingly, it long has been recognized that the lack of mechanisms available to ensure that assets are preserved for restitution is a major impediment to the effective collection of restitution.²⁴

The current law that attempts to address this problem is ineffective. Under the Anti-Fraud Injunction Act, the United States may file in connection with a fraud offense a separate civil action to obtain an order preventing the defendant from dissipating assets if the defendant "is alienating or disposing of property, or intends to alienate or dispose of property."²⁵

This law has several shortcomings. First, Section 1345 requires proof that the defendant "is alienating . . . or intends to alienate" property. This limitation undercuts the viability of the remedy because by the time investigators find that a defendant is or intends to alienate his property, it usually is too late to preserve it. No preservation order is available if the offender has already alienated the property, absent some proof that he intends to further alienate. Second, the preservation authorized under § 1345 occurs only after the court "proceed[s] as soon as practicable to the hearing and determination of such action." Providing notice to a thief of a pending hearing in a new civil action to preserve his stolen property is likely to expedite the dissipation or hiding of the assets, or their transfer beyond the jurisdiction of the court, the very conduct that § 1345 seeks to prevent. Indeed, the filing of a lawsuit under the Anti-Fraud Injunction statute is the equivalent of a warning to an offender to dispose of or secrete assets as quickly as possible, before the court can act on the government's request to preserve assets. Third, § 1345 requires the filing of a separate civil action. That creates delay by triggering discovery obligations and forcing the criminal prosecutor to seek assistance from civil colleagues who are unfamiliar with the case.

In light of these problems, this law is rarely used. SIGPR staff includes present and former prosecutors as skilled and experienced as any in the country, and they have never used it. An informal survey of Assistant U.S. Attorneys who work on debt collection for the Department of Justice has

²³ 28 U.S.C. § 3205(b)(1)(B).

²⁴ See *Federal Criminal Restitution - Most Debt is Outstanding and Oversight of Collections Could Be Improved* - GAO-18-203 (Feb. 2018); *Review of the Debt Collection Program of the United States Attorneys' Offices* - Office of the Inspector General - Department of Justice (June 2015).

²⁵ 18 U.S.C. § 1345(a)(2).

confirmed the impracticalities of the current Anti-Fraud Injunction statute.

Consequently, prosecutors usually have no way to preserve assets for the purpose of fulfilling a restitution order, even if those assets are the proceeds of the offense charged and traceable to stolen CARES Act or other federal funds, short of resorting to asset forfeiture tools.²⁶

Preservation of assets often is possible in criminal forfeiture cases. The U.S. Code provides:

Upon application of the United States, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action necessary to preserve the availability of property described in subsection (a) of this section for forfeiture ...

21 U.S.C. § 853(e)(l). The Supreme Court has found such prejudgment restraints to be constitutional - and indeed mandatory - when a court finds the government has satisfied the requisite threshold.²⁷

However, while most frauds investigated by SIGPR will likely trigger criminal forfeiture, this procedure is likewise insufficient to ensure restitution. Though criminal forfeiture procedures, including the use of prejudgment restraints, have been used widely to seize and preserve assets and to return assets to crime victims, such forfeiture procedures cannot be used in every case for which restitution may be imposed. That is because forfeiture tools cannot be used to preserve assets for restitution until after conviction, unless the government can prove before trial that the assets are directly traceable to the offense. However, in many fraud cases the assets that are directly traceable to the offense have been dissipated or hidden or otherwise used in such a way that they cannot be readily identified by the government before trial as directly traceable to the fraud. If assets are not restrained prior to trial, a defendant facing criminal forfeiture is likely to dissipate or hide those assets

²⁶ Pursuant to *Luis v. United States*, 136 S.Ct. 1083 (2016), a court may be barred from restraining for restitution assets that are not directly traceable to stolen funds but that are needed for retention of counsel of choice. The CARES Act funds particularly within SIGPR's jurisdiction, however, are likely to be funds obtained by corporations participating in loan programs authorized under Section 4018 of the CARES Act. SIGPR expects that, at least with respect to defendants in this context, assets are likely to exist in the control of the corporate borrowers in amounts that exceed the funds needed to retain counsel of choice. Nothing in this proposal would contravene the holding in *Luis*.

²⁷ *United States v. Monsanto*, 491 U.S. 600 (1989).

before trial starts.

In addition, forfeited assets legally belong to the United States, rather than to victims themselves.²⁸ The Department of Justice often grants petitions of private lenders for recovery of stolen funds, but those grants are by grace, not by law.²⁹

Thus, under current law, there is no effective statutory provision that requires a defendant charged with an offense for which restitution is likely to be ordered to preserve his assets for restitution. The legislative changes contained in this proposal will further the government's ability actually to recover stolen CARES Act funds for victims.

SIGPR proposes a new section 18 U.S.C. § 3664A, which would provide that a district court "shall enter a restraining order or injunction, require the execution of a satisfactory performance bond or take any other action necessary to preserve the availability of any property traceable to the commission of the offense(s) charged." Additionally, under our proposal, the court "may issue any order necessary" to preserve assets that are not traceable to the offense charged. An order entered pursuant to this section would remain in effect through the conclusion of the criminal case, including sentencing, unless modified by the court. However, defendants' rights are also assured. The section provides that a defendant can challenge the restraint if 1) the assets are not directly traceable to stolen property and he has no other assets to retain defense counsel or necessary living expenses and 2) the defendant makes a prima facie showing that there is no probable cause to justify the restraint. Furthermore, third parties who have a legal interest in the restrained property may move to modify or vacate the restraining order on the ground that the order causes a substantial hardship to them and that less intrusive means exist to preserve property for

²⁸ One of the main CARES Act programs overseen by SIGPR is the Main Street Lending Program. Pursuant to that program, losses from loan fraud are mostly borne by the U.S. Treasury, but small portions of the losses on bad loans are still borne by the private banks that made the loans (and then sold 95 percent of such loans to a special purpose vehicle set up by the Federal Reserve Bank of Boston). Regardless of whether the Treasury or a private bank suffers a loss as a result of a crime, there is always a victim who suffers a financial loss.

²⁹ See, e.g., *United States v. Sanjar*, 876 F.3d 725 (5th Cir. 2017) (applying forfeited funds to restitution may be "sensible policy," but Congress left it to the Attorney General to decide whether to implement it); *United States v. Joseph*, 743 F.3d 1350, 1354-55 (11th Cir. 2014) (once property has been ordered forfeited, "the Attorney General alone has discretion to determine whether to retain forfeited property or apply it toward the restitution owed to the victims of a defendant's offense"); *United States v. Pescatore*, 637 F.3d 128, 131 (2d Cir. 2011); *United States v. Gonzalez-Torres*, 656 Fed. Appx. 844 (9th Cir. 2016) (only the Attorney General – not the courts – can apply forfeited funds to restitution).

restitution.

This new section provides the authority to preserve assets specifically to satisfy a restitution order similar to the authority that already exists in asset forfeiture cases. At the same time, by permitting defendants to challenge the restraint, it balances the rights of defendants who have not yet been convicted of a crime with the needs of crime victims, including the United States.

Proposed 18 U.S.C. § 3664A(a)(l) provides that upon a finding of probable cause that a defendant, if convicted, would have to satisfy an order of restitution, a district court shall "enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action necessary to preserve the availability of any property traceable to the commission of the offense(s) charged." The quoted language is drawn from Section 413(e) of the Controlled Substances Act, 21 U.S.C. § 853(e)(l), which provides that a court in a criminal case may restrain property prior to trial to ensure that it is available to satisfy an order of forfeiture to the United States in the event the defendant is convicted. Subsection (a)(l) makes explicit, as the courts have correctly held in construing section 853(e)(1), that such orders may be entered by the court *ex parte*, and that entry of such orders as to traceable assets upon proper application by the government is intended by Congress to be mandatory.³⁰ In addition, subsection (a)(l) provides that the court, if it determines that it is in the interests of justice to do so, must issue any order necessary to preserve any assets that may be used to satisfy such restitution order even if those assets are not traceable to the offenses charged. This is consistent with the collection of civil debt, which is not limited to assets traceable to the civil wrongdoing.

Proposed 18 U.S.C. § 3664A(a)(2) applies to Section 3664A(a)(l) the asset forfeiture pretrial restraint procedures in Section 853(e).

Proposed 18 U.S.C. § 3664A(a)(3) provides that instead of issuing a restraining order, a court may authorize the United States to seize monetary instruments or other property.

Proposed 18 U.S.C. § 3664A(b) codifies the protections for defendants required by *United States v. Jones*, 160 F.3d 641 (10th Cir. 1998), and *United States v. Farmer*, 274 F.3d 800 (4th Cir. 2001). A defendant has a right to a post-restraint hearing if he (a) establishes by a preponderance of the

³⁰ See *United States v. Monsanto*, 491 U.S. 600, 612-13 (1989).

evidence that there are no assets, other than the restrained property, available to him to retain counsel or to provide for a reasonable living allowance and (b) makes a prima facie showing that there is bona fide reason to believe that the court's ex parte finding of probable cause to restrain the property was in error. At all stages of this post-restraint hearing process, the government has the right to rebut the defendant's evidence and to cross-examine any witness.

If the court determines that the defendant has established that he has no other assets available to retain counsel or provide for reasonable living expenses and that there is a prima facie reason to doubt the court's ex parte finding of probable cause, the court may hold a hearing to reexamine whether there is probable cause for an asset preservation order. If the court again finds probable cause, the protective order must remain in effect. If the court finds that no probable cause exists as to some or all of the property, or determines that more property has been seized and restrained than may be needed to satisfy a restitution order, it must modify the protective order to the extent necessary to release the property that should not have been restrained.

While providing these protections for defendants, the subsection also ensures that these hearings cannot be used to undermine the government's case. First, the court may not entertain challenges to the grand jury's finding of probable cause regarding the criminal offense giving rise to a potential restitution order. Second, the court must also take whatever steps may be necessary to prevent the use of such hearings to obtain disclosure of evidence or the identities of witnesses earlier than required by the Federal Rules of Criminal Procedure and other applicable law. This provision is consistent with the decision in *Kaley v. United States*, 571 U.S. 320 (2014).

Proposed 18 U.S.C. § 3664A(c) provides that a third party who has a legal interest in restrained property may move to modify or vacate the restraining order on the grounds that the order causes a substantial hardship to the party and less intrusive means exist to preserve property for restitution. In such a case, the court must modify the order to the extent that it is possible to do so while still preserving the asset.

Proposed 18 U.S.C. § 3664A(d) provides that district courts have jurisdiction to enter orders for preservation of assets for restitution without regard to the location of any property that may be subject to restitution under this section. This proposed subsection is drawn from Section 853(l) and is necessary to

ensure that the court has the power to effectuate its orders.

Proposed 18 U.S.C. § 3664A(e) provides that nothing in the section shall be construed to preclude the government from seeking the restraint, seizure, or forfeiture of property, real or personal. This proposed subsection is necessary to ensure that the addition of this new restraint provision for restitution does not diminish the government's ability to seek the forfeiture of property, and to preserve and seize property alleged to be forfeitable, as permitted by law.

Proposed 18 U.S.C. § 3664A(f) provides that nothing in this new section of the U.S. Code creates an enforceable right of a party to force the government to seek seizure or restraint of property for restitution. This subsection makes clear that prosecutors retain discretion to seek the preservation of assets for restitution only in those cases where they determine that it is appropriate to do so.

Proposed 18 U.S.C. § 3664A(g) authorizes a court to appoint a receiver to locate, take custody of, and, after entry of a restitution order, distribute assets of the defendant. In some cases, such as those involving offenses with exceedingly numerous victims or defendants with numerous or especially difficult assets to manage and liquidate, specialized assistance may be needed to assist with asset preservation for restitution.

SIGPR proposes amendment of the Anti-Fraud Injunction Act to permit the Attorney General to commence a civil action to enjoin a person who "has committed, is committing or about to commit a federal offense that may result in an order of restitution"; and to permit the court to prevent the dissipation of assets in any case where it has the power to enjoin the commission of an offense — not just, as current law authorizes, in banking or health care fraud cases.

18 U.S.C. § 1345 would be amended to permit the Attorney General to commence a civil action to enjoin a person who "has alienated or disposed of property, is alienating or disposing of property, or intends to alienate or dispose of property which may result in an order of restitution." Additionally, 18 U.S.C. § 1345(a)(2) would be amended to permit the court to restrain the dissipation of assets in any case where it has the power to enjoin the commission of an offense — not just, as current law authorizes, in banking or health care fraud cases.

SIGPR proposes amendments to the Mandatory Victims Restitution Act (MVRA) to improve collection procedures, with the major changes proposed to 18 U.S.C. § 3664(f). Most importantly, revised paragraph 3664(f)(2) would address long-standing problems with restitution enforcement identified in the Government Accountability Office and Department of Justice Inspector General reports above, to clarify that the Attorney General may enforce restitution judgments immediately upon imposition. Although various statutes provide the Attorney General with this authority, some circuit courts of appeal have interpreted one clause within 18 U.S.C. § 3664(f)(2), providing that "the court shall ... specify in the restitution order the manner in which, and the schedule according to which, the restitution is to be paid," to require that a mandatory payment schedule be set at the time of sentencing. Moreover, in some instances, courts have declined to permit the government to enforce a restitution order as long as a defendant was making the nominal monthly payment ordered at sentencing. Therefore, the current legislative scheme impedes the effective enforcement of restitution. The enforcement of restitution would be enhanced substantially if Congress were to amend 18 U.S.C. § 3664(f)(2) to clarify that restitution is due immediately upon the imposition of a restitution order,³¹ notwithstanding any directive as to periodic payments, as is the case with an ordinary civil judgment. In other words, a directive as to periodic restitution payments should be a floor rather than a ceiling on how much a convicted defendant must pay toward a restitution obligation. Proposed § 3664(f)(6) therefore deletes from the statute the requirement that the district court "shall ... specify in the restitution order ... the schedule according to which, the restitution is to be paid ... " while still permitting a court to order a minimum periodic payment, while making it clear that any such directive shall not limit the government's ability to utilize the existing restitution collection procedures in the Federal Debt Collection Procedure Act, 28 U.S.C. § 3001, et seq.

This section makes several changes to 18 U.S.C. § 3664(f), one of the central provisions establishing the procedures for collection of restitution.

Revised section 3664(f)(2) clarifies that the Attorney General may enforce

³¹ A provision that restitution is due and payable immediately does not set up a defendant for some sanction if he fails to pay the full amount of restitution immediately. It simply means that a defendant make his best effort to pay restitution beginning immediately. *United States v. Khan*, 550 Fed. Appx. 2, 4 (D.C. Cir. 2013) ("order that the restitution is 'immediately payable . . . has been construed to mean 'payment to the extent that the defendant can make in good faith, beginning immediately.'" (citations omitted) (collecting cases); *United States v. Sensmeier*, 361 F.3d 982, 991 (7th Cir. 2004) (immediate payment does not mean immediate payment in full, but rather payment to the extent that the defendant can make in good faith, beginning immediately).

restitution judgments immediately upon imposition. As explained above, the current legislative scheme, as interpreted by the courts over time, impedes the effective enforcement of criminal restitution. The enforcement of restitution on behalf of victims would be substantially enhanced if Congress were to amend 18 U.S.C. § 3664(f)(2) to clarify that restitution is due immediately upon the imposition of a restitution order, as is the case with an ordinary civil judgment.

Revised section 3664(f)(3) presents a checklist of what the court must order from the defendant (e.g., a good faith effort to pay restitution and notice of any change in residence or financial circumstances) in order to improve collection procedures.

Proposed section 3664(f)(4) allows federal prosecutors access to financial information about the defendant. It provides that "for the purposes of enforcing the restitution order, the United States Attorney may receive, without the need for a court order, any financial information concerning the defendant obtained by a grand jury, United States Probation Office, or the Bureau of Prisons...." This provision is necessary because in some districts, Probation Officers must seek permission from a judge in individual cases to share financial information from defendants who are required to provide the information to the court as part of the presentence report preparation process. While the court properly should restrict access to financial information to third parties, i.e., other litigants or private parties, the U.S. Attorney's Office is not a third party. It is the entity charged with collecting restitution. 18 U.S.C. § 3664(m)(1)(A). This sharing of financial information only occurs after a conviction and is essential to assisting the government in the collection of restitution. A statute expressly providing access, to the U.S. Attorney's Office only, to financial information concerning the defendant obtained by the Probation Office, without the need for a specific court order, would expedite the response process of the federal judiciary on an issue that is directly related to its mission. Information sought under this new provision would include such items as the affidavit the defendant is required to submit to the court under 18 U.S.C. § 3664(d)(3), the Probation Office's Form 48A (Personal Financial Statement), and the defendant's monthly reports showing employment and income. It would not include the Probation Officer's analysis of the financial information or any of the Probation Officer's recommendations to the court.

Proposed section 3664(f)(5) provides, inter alia, that the court may "at any time prior to the termination of the restitution obligation under section 3613

of this title, impose or modify special payment directions upon the defendant." This change is necessary to clarify the powers of the district court. A district court clearly has the statutory power to enforce the other non-supervisory terms of its sentence, including terms imposing a fine or restitution, notwithstanding the fact that a term of probation or supervised release has expired. For example, current 18 U.S.C. § 3664(k) (permitting an adjustment in payment schedules when there is a change in a defendant's economic circumstances), 18 U.S.C. § 3613A (permitting an adjustment in payment schedules when the defendant is in default), and 28 U.S.C. § 3204 (permitting an installment payment order when a defendant receives income not subject to garnishment, or is diverting or concealing earnings) are not limited to the period of probation or supervised release, except for those relatively few cases where restitution is imposed solely as a condition of probation or supervised release.

Proposed subparagraph 3664(f)(6) is drawn from current subparagraph 3664(f)(2), with some important modifications. Current 18 U.S.C. § 3664(f)(2) has undermined the efforts of the United States to enforce restitution because it provides that "the court shall ... specify in the restitution order the manner in which, and the schedule according to which, the restitution is to be paid ... " Courts of appeal have interpreted this provision as requiring the imposition, at every sentencing, of an exclusive court-imposed payment plan that limits the ability of the United States to enforce restitution using other available civil and administrative enforcement methods. As a result, district courts generally impose minimal payment plans upon the defendant that thereafter cannot be changed except by the court and upon a showing of a substantial change in the defendant's economic circumstances. Therefore, proposed subparagraph 3664(f)(6) deletes from the statute the requirement that the district court "shall...specify in the restitution order... the schedule according to which, the restitution is to be paid... "

Nevertheless, district courts have an inherent responsibility to ensure that their own judgments are enforced, especially in criminal cases. Thus, proposed 18 U.S.C. § 3664(f)(6) permits -but does not require- district courts to enter payment directions. The term "payment directions" is used instead of "the schedule" to clarify that the courts' orders with regard to payments are merely a supplemental tool that may be used to assist in the enforcement of the restitution judgment. The term "the schedule" suggests exclusiveness; it is that suggestion of exclusiveness that has deprived the Attorney General of the ability to enforce restitution using

otherwise available and reasonable means, effectively shielding criminal debtors from the same debt collection mechanisms that routinely apply to civil debtors.

Proposed 18 U.S.C. § 3664(f)(6) also substitutes the word "may" for "shall" before the criteria to be considered in imposing payment directions. Numerous courts of appeal have remanded for resentencing payment schedules that, in the view of the court, the district court failed to establish with sufficient detail for the defendant to actually meet the payment schedule. However, requiring district judges to make express written findings inevitably results in payment schedules for minimal amounts or no payment directions at all. Before a district court imposes a payment directive, the court should consider the economic circumstances of the defendant, including circumstances described in the Presentence Report (PSR). However, there is no need to require specific fact finding before imposing reasonable payment directions upon a defendant who has already been convicted of a federal offense and ordered to pay restitution. Indeed, many courts of appeal have recognized that the adoption of a PSR, after the parties have been permitted to file objections, satisfies the requirement in current law for the court to make findings regarding a defendant's needs and ability to pay. Under the proposed provision, defendants would still have the right to object to PSR findings, but the proposal would avoid what has essentially become a trap for an unwary district judge who fails to make specific factual findings resulting in re-sentencings.

Finally, language from current 18 U.S.C. § 3664(n) is moved into proposed 18 U.S.C. § 3664(f)(6). Current subsection 3664(n) relates to defendants who receive substantial resources from any source, such as an inheritance or settlement. It requires that such a person "shall be required to apply the value of such resources to any restitution or fine still owed." However, it is limited to defendants who are incarcerated. The proposed revision, in the last sentence of proposed 18 U.S.C. § 3664(f)(6), would require all defendants who have an outstanding restitution obligation, regardless of whether they are incarcerated or on supervised release, to apply windfall income to their restitution debt.

Proposed 18 U.S.C. § 3664(f)(7) states that the ability of the Attorney General to maintain an Inmate Financial Responsibility Program (IFRP) through the Bureau of Prisons (BOP) is not limited. Some appeals courts have held, as a result of current subsection 3664(f)(2) described above, that district courts

have the exclusive power to require payment. This effectively prohibits the BOP from enforcing final restitution orders through its long-established IFRPs, on the theory that an IFRP trespasses upon the district court's sole power to enforce restitution obligations. The proposal would affirm the IFRP program.

Proposed 18 U.S.C. § 3664(f)(8) requires that if the court imposes some limitation on the ability of the United States to enforce a judgment, such as a stay of enforcement when the defendant pursues an appeal, it must do so expressly, for good cause stated on the record.

Absent exceptional circumstances, as determined by the court, the court must require a deposit with the clerk's registry, the posting of a bond, or "impose some additional restraints upon the defendant to prevent the defendant from dissipating assets." As with other proposed revisions, this provision is to better align the enforcement of criminal restitution with civil debt collection, rather than limiting the government's ability to collect restitution to a greater degree than exists with civil debt collection.

The following section sets forth SIGPR's recommended statutory amendments:

Legislative Proposal on Improving Restitution for Victims of Crimes

Bill Text

A bill to improve the collection of restitution for victims of crime.

SECTION 101: CREATION OF 18 U.S.C. § 3664A

(a) IN GENERAL.-Chapter 232 of title 18, United States Code, is amended by inserting the following section after section 3664:

"3664A. Preservation of Assets for Restitution.

"(a) Protective orders to preserve assets.

"(1) Upon the Government's *ex parte* application and a finding of probable cause to believe that a defendant, if convicted, will be ordered to satisfy an order of restitution for an offense punishable by imprisonment for more than one year, the court shall enter a restraining order or injunction, require the execution of a satisfactory performance bond or take any other action necessary to preserve the availability of any property traceable to the

commission of the offense(s) charged. Additionally, the court, if it determines that it is in the interests of justice to do so, shall issue any order necessary to preserve any non-exempt assets (as defined in 18 U.S.C. § 3613) of the defendant which may be used to satisfy such restitution order. Applications and orders under this section shall issue —

“(A) upon the filing of an indictment or information charging a violation of this subchapter or subchapter II for which criminal restitution may be ordered under this section and alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to restitution under this section; or

“(B) prior to the filing of such an indictment or information, if, after notice to persons appearing to have an interest in the property and opportunity for a hearing, the court determines that —

“(i) there is a substantial probability that the United States will prevail on the issue of restitution and that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for restitution; and

“(ii) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered:

“Provided, however, That an order entered pursuant to subparagraph (B) shall be effective for not more than ninety days, unless extended by the court for good cause shown or unless an indictment or information described in subparagraph (A) has been filed.

“(2) A temporary restraining order under this subsection may be entered upon application of the United States without notice or opportunity for a hearing when an information or indictment has not yet been filed with respect to the property, if the United States demonstrates that there is probable cause to believe that the property with respect to which the order is sought would, in the event of conviction, be subject to restitution under this section and that provision of notice will jeopardize the availability of the property for restitution. Such a temporary order shall expire not more than fourteen days after the date on which it is entered, unless extended for good cause shown or unless the party against whom it is entered consents to an extension for a longer period. A hearing requested concerning an order entered under this paragraph shall be held at the earliest possible time and prior to the

expiration of the temporary order.

“(3) The court may receive and consider, at a hearing held pursuant to this subsection, evidence and information that would be inadmissible under the Federal Rules of Evidence.

“(4) Order to repatriate and deposit. —

“(A) In general. —

“Pursuant to its authority to enter a pretrial restraining order under this section, the court may order a defendant to repatriate any property that may be seized and subject to restitution, and to deposit that property pending trial in the registry of the court, or with the United States Marshals Service or the Secretary of the Treasury, in an interest-bearing account, if appropriate.

“(B) Failure to comply. —

“Failure to comply with an order under this subsection, or an order to repatriate property under subsection (p), shall be punishable as a civil or criminal contempt of court, and may also result in an enhancement of the sentence of the defendant under the obstruction of justice provision of the Federal Sentencing Guidelines.

“(5) If the property in question is a monetary instrument (as defined in Section 1956(c)(5) of this title) or funds in electronic form, the protective order issued pursuant to (1) may take the form of a warrant authorizing the Government to seize the property and to deposit it into an interest-bearing account in the Registry of the Court in the district in which the warrant was issued, or into another such account maintained by a substitute property custodian, as the court may direct.

“(6) A post-indictment protective order entered pursuant to (1) shall remain in effect through the conclusion of the criminal case, including sentencing and any post-sentencing proceedings, and until seizure or other disposition of the subject property, unless modified by the court upon a motion by the Government or pursuant to subsections (b) or (c).

“(b) Defendant's right to a hearing.

“(1) In the case of a pre-indictment protective order entered pursuant to (a)(l), the defendant's right to a post-restraint hearing shall be governed by Sections 413(e)(l)(B) and (2) of the Controlled Substances Act (21 U.S.C. §

853(e)(l)(B) and (2)).

"(2) In the case of a post-indictment protective order entered pursuant to (a)(1), the defendant shall have a right to a post-restraint hearing regarding the continuation or modification of the order if the defendant -

"(A) establishes by a preponderance of the evidence that there are no assets, other than the restrained property not directly traceable to the funds allegedly stolen, available to the defendant to retain counsel in the criminal case or to provide for a reasonable living allowance for the necessary expenses of the defendant; and

"(B) makes a prima facie showing that there is bona fide reason to believe that the court's ex parte finding of probable cause under (a)(l) was in error.

"(3) If the court determines that the defendant has satisfied the requirements of (2)(A) and (B), it may hold a hearing to determine whether there is probable cause to believe that the defendant, if convicted, will be ordered to satisfy an order of restitution for an offense punishable by imprisonment for more than one year, and that the seized or restrained property may be needed to satisfy such restitution order. If the court finds probable cause that the funds are directly traceable to stolen funds, the protective order must remain in effect. If the court finds that no probable cause exists as to some or all of the property, or determines that more property has been seized and restrained than may be needed to satisfy a restitution order, it must modify the protective order to the extent necessary to release the property that should not have been restrained.

"(4) The court must afford the Government an opportunity to present rebuttal evidence and to cross-examine any witness that the defendant may present if the court conducts an evidentiary hearing on these issues.

"(5) In any pre-trial hearing on protective orders issued under (a)(l), the court may not entertain challenges to the grand jury's finding of probable cause regarding the criminal offense giving rise to a potential restitution order. The court must take whatever steps may be necessary to prevent the use of such hearings to obtain disclosure of evidence or the identities of witnesses earlier than required by the Federal Rules of Criminal Procedure and other applicable law.

"(c) Third party's right to post-restraint hearing.

(1) A person other than the defendant who has a legal interest in property affected by a protective order issued under (a)(l) may move to modify the order on the grounds that-

"(A) the order causes an immediate and irreparable hardship to the moving party; and

"(B) less intrusive means exist to preserve the property for the purpose of restitution.

"If, after considering any rebuttal evidence offered by the Government, the court determines that the moving party has made the required showings, the court may modify the order to mitigate the hardship to the extent that it is possible to do so while preserving the asset for restitution.

"(2) Except as provided in (1) and (3), a person other than a defendant has no right to intervene in the criminal case to object to the entry of any order issued under this section or otherwise to object to an order directing a defendant to pay restitution.

"(3) If, at the conclusion of the criminal case, the court orders the defendant to use particular assets to satisfy an order of restitution, including assets that have been seized or restrained pursuant to this section, the court must give persons other than the defendant the opportunity to object to the order on the ground that the property belonged in whole or in part to the third party and not to the defendant, as provided in Section 413(n) of the Controlled Substances Act (21 U.S.C. § 853(n)).

"(d) Geographic scope of order.

"(1) The district courts of the United States shall have jurisdiction to enter orders as provided in this section without regard to the location of the property subject to the order.

"(2) If the property subject to an order issued under this section is located outside of the United States, the order may be transmitted to the central authority of any foreign state for service in accordance with any treaty or other international agreement.

"(e) No effect on forfeiture.

Nothing in this section shall be construed to preclude the Government from seeking the seizure, restraint or forfeiture of assets under the asset forfeiture

laws of the United States.

"(f) Limitation on rights conferred.

Nothing in this section shall be construed to create any enforceable right to have the Government seek the seizure or restraint of property for restitution.

"(g) Receivers.

"(l) A court issuing an order under this section may appoint a receiver as provided for in section 1956(b)(4) to collect, marshal, and take custody, control, and possession of all assets of the defendant, wherever located, that have been restrained in accordance with this section.

"(2) The receiver shall have the power to distribute property in its control under subparagraph (1) to each victim identified in an order of restitution at such time, and in such manner, as the court may authorize.

"(h) CONFORMING AMENDMENT - The section analysis for chapter 232 of title 18, United States Code, is amended by inserting the following after the entry for Section 3664:

'3664A. Preservation of Assets for Restitution.'"

SECTION 102: AMENDMENTS TO THE ANTI-FRAUD INJUNCTION STATUTE

Title 18 U.S.C. § 1345(a)(2) of the Anti-Fraud Injunction Statute would be amended to read as follows:

If a person has alienated or disposed of property, is alienating or disposing of property, or intends to alienate or dispose of property which may result in an order of restitution, the Attorney General may commence a civil action in any Federal court —

to enjoin such alienation or disposition of property; or

(B) for an order to —

(i) prohibit any person from withdrawing, transferring, removing, dissipating, or disposing of any such property or property of equivalent value; and

(ii) appoint a temporary receiver to administer such restraining order.

SECTION 103. AMENDMENTS TO 18 U.S.C. § 3664(f)

Subsection 3664(f) of title 18 of the United States Code is amended by striking current subparagraph 3664(f)(2) and all of the succeeding text and inserting, after "... in determining the amount of restitution" the following:

"(C) Each restitution order shall a) contain information sufficient to identify each victim to whom restitution is owed, b) require that a copy of the court order be sent to each such victim, and c) inform the same of his obligations to notify the appropriate entities of any change in his address. It shall be the responsibility of each victim to notify the Attorney General, or the appropriate entity of the court, by means of a form to be provided by the Attorney General or the court, of any change in the victim's mailing address while restitution is still owed the victim.

The confidentiality of any information relating to a victim shall be maintained.

"(f)(2) The court shall order that the restitution imposed is due in full immediately upon imposition. Notwithstanding any other provision of law, any schedule of payments directed by the court shall not preclude the United States from enforcing the collection of restitution by any other provision of law.

"(f)(3) The court shall direct the defendant -

"(A) to make a good-faith effort to satisfy the restitution order in the shortest time in which full restitution can be reasonably made and to refrain from taking any action that conceals or dissipates the defendant's assets or income. Compliance with all payment directions imposed as provided by subparagraphs (f)(4) and (f)(5) shall be prima facie evidence of a good faith effort, unless it is shown that the defendant has concealed or dissipated assets;

"(B) to notify the court of any change in residence; and,

"(C) to notify the United States Attorney for the district in which the defendant was sentenced of any change in residence, and of any material change in economic circumstances that might affect the defendant's ability to pay restitution.

"(f)(4) For the purpose of enforcing the restitution order, the United States Attorney may receive, without the need for a court order, any financial

information concerning the defendant obtained by the grand jury that indicted the defendant for the crime for which restitution has been awarded, the United States Probation Office, or the Bureau of Prisons. A victim may also provide financial information concerning the defendant to the United States Attorney.

"(f)(5) At sentencing or at any time prior to the termination of the restitution obligation under section 3613 of this title, the court may impose special payment directions upon the defendant or modify such directions. The court may direct the defendant to make a single, lump-sum payment, partial payments at specified intervals, in-kind payments, or a combination of payments at specified intervals and in-kind payments. The length of time over which scheduled payments are established shall be the shortest time in which full payment reasonably can be made. In-kind payments may be in the form of the return of property, replacement of property, or, if the victim agrees, services rendered to the victim or a person or organization other than the victim. The court may direct the defendant to repatriate any property that constitutes proceeds of the offense of conviction, or property traceable to such proceeds. The court may direct the defendant to surrender to the United States, or to the victim(s) named in the restitution order, any interest of the defendant in any non-exempt asset. The court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of property for restitution.

"(f)(6) In determining whether to impose or modify specific payment directions, the court may consider the need to provide restitution to the victims of the offense; the financial ability of the defendant; the economic circumstances of the defendant, including the financial resources and other assets of the defendant and whether any of those assets are jointly controlled; projected earnings and other income of the defendant; any financial obligations of the defendant, including obligations to dependents; whether the defendant has concealed or dissipated assets or income; and any other appropriate circumstances. Any substantial resources from any source, including inheritance, settlement, or other judgment, shall be applied to any outstanding restitution obligation.

"(f)(7) Court-imposed special payment directions shall not limit the ability of the Attorney General to maintain an Inmate Financial Responsibility Program through the Bureau of Prisons which encourages sentenced inmates to meet their financial obligations.

"(f)(8) The ability of the Attorney General to enforce restitution obligations as provided in subsection 3664(f)(2) shall not be limited by an appeal, or the possibility of a correction, modification, amendment, adjustment, or re-imposition, unless the court expressly so orders for good cause shown and stated on the record. Absent exceptional circumstances as determined by the court, the court's order limiting enforcement shall - (i) require the defendant to deposit, in the registry of the district court, any amount of the restitution that is due; (ii) require the defendant to post a bond or other security to ensure payment of the restitution that is due; or (iii) impose additional restraints upon the defendant to prevent the defendant from transferring or dissipating assets. No such order shall restrain the ability of the United States to continue its investigation of the defendant's financial circumstances, conduct discovery, record a lien, or seek any injunction or other relief from the court."



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