

Coronavirus

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CARES Act Oversight Provisions

The oversight provisions of the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act" or the "Act") provide broad authority and significant investigative powers to both newly established and existing entities in response to the coronavirus ("COVID-19") pandemic. The Act provides over \$2 trillion in federal funding and economic relief measures, including a \$500 billion financial support program administered by the U.S. Department of the Treasury (the "Treasury Department"), and \$58 billion of specific loan and grant programs for air carriers and related industries. To oversee the implementation and administration of these programs and the significant amount of federal funding involved, the Act provides for oversight from both newly established and existing entities, including:

- 1. a Special Inspector General for Pandemic Recovery;**
- 2. a five-member Congressional Oversight Commission;**
- 3. a Pandemic Response Accountability Committee; and**
- 4. the Government Accountability Office ("GAO").**

Given their broad authority and significant investigative powers, both administrating agencies and affected private sector stakeholders should expect aggressive, sustained oversight scrutiny from these entities.

Congress is not standing still in the meantime. Several congressional committees have been sending oversight letters to companies on a range of COVID-19-related issues in recent weeks. In an effort to take charge of congressional oversight in the House of Representatives, Speaker Nancy Pelosi (D-CA) announced on April 2, the formation of a Select Committee on the Coronavirus Crisis, to be chaired by House Majority Whip Jim Clyburn (D-SC). Speaker Pelosi stated that the Select Committee would be "empowered to examine all aspects" of the federal COVID-19 response and have subpoena power to carry out its oversight duties.¹ Should Congress pass additional stimulus measures in the coming months, it is likely that oversight bodies would receive additional resources and potentially expanded authorities, in addition to possible coordination with the new House Select Committee. The article below provides an overview of each oversight entity's charge under the Act.



SPECIAL INSPECTOR GENERAL FOR PANDEMIC RECOVERY

The CARES Act establishes an Office of the Special Inspector General for Pandemic Recovery (“SIGPR”) within the Treasury Department to “conduct, supervise, and coordinate audits and investigations of the making, purchase, management, and sale of loans, loan guarantees, and other investments made by the Secretary of the Treasury under any program established by the Secretary under this Act, and the management by the Secretary of any program established under this Act.”² As with federal agency Inspectors General, the SIGPR will be appointed by the President and confirmed by the Senate.³ The Act provides the SIGPR with a \$25 million budget and includes provisions authorizing the SIGPR to retain experts and consultants and enter into contracts with private contractors providing “audits, studies, analyses, and other services” as necessary to carry out the SIGPR’s duties.⁴

In addition to granting the SIGPR the investigative powers authorized under section 6 of the Inspector General Act of 1978, the Act also directs federal agencies to provide any requested information or assistance to the SIGPR, “to the extent practicable.”⁵ If, in the SIGPR’s “judgement,” requested information or assistance is “unreasonably refused” by a federal agency or department, the Act directs the SIGPR to report the circumstances to the appropriate congressional committees “without delay.”⁶ It is important to note that this particular provision has drawn strong opposition from the White House, with President Trump targeting it in his March 27 bill signing statement: “I do not understand, and my Administration will not treat, this provision as permitting the SIGPR to issue reports to the Congress without the presidential supervision required by the Take Care Clause, Article II, section 3.”⁷ The President’s signing statement has since prompted calls from key congressional Democrats for the Administration to adhere to the Act’s oversight provisions and nominate a candidate for the SIGPR position as soon as possible.⁸

CONGRESSIONAL OVERSIGHT COMMISSION

A Congressional Oversight Commission (the “Commission”) will serve as the legislative branch’s primary mechanism to oversee the Treasury Department’s and Federal Reserve Board’s implementation of the Act’s economic stabilization and assistance measures. The Commission will be comprised of five members, including a chairperson. The Speaker of the House of Representatives, the House Minority Leader, the Senate Majority Leader, and the Senate Minority Leader will each appoint one member to the Commission, with the Chairperson jointly appointed by the House Speaker and Senate Majority Leader, after consultation with the House and Senate Minority Leaders.⁹ Commission appointments should occur relatively soon, particularly since the Act requires the Commission to submit its first report to Congress within 30 days of the first release of Treasury Department funds.¹⁰

The Commission is directed to provide Congress with monthly reports on the effectiveness and impacts of the loans and investments made under the Act and is authorized to hold hearings and take testimony. While the Act does not provide the Commission with subpoena power, the Chairperson is authorized to obtain information directly from any federal department or agency as necessary to carry out its prescribed duties.¹¹

PANDEMIC RESPONSE ACCOUNTABILITY COMMITTEE

While the SIGPR and Congressional Oversight Commission are primarily tasked with overseeing the Treasury Department’s implementation and administration of CARES Act loans and investments, a newly established Pandemic Response Accountability Committee (the “Committee” or “PRAC”) will also have specified oversight authority over private entities receiving funds under the CARES Act, as well as previous and future coronavirus response appropriations bills. Established within the Council of the Inspectors General on Integrity and Efficiency (“CIGIE”), the PRAC is comprised of nine specified federal agency Inspectors General with the CIGIE Chairperson responsible for selecting the PRAC Chair.¹² On March 30, CIGIE Chair Michael Horowitz announced the appointment of Glenn Fine, currently the acting inspector general for the Department of Defense, to serve as PRAC Chair.¹³



In addition to its federal agency oversight authority, the PRAC has been granted significant investigative powers to audit and investigate private entities, including the authority to issue and enforce subpoenas to compel the testimony of “persons who are not Federal officers or employees.”¹⁴ In instances when requested information or assistance is “unreasonably refused or not provided, the Committee “shall immediately report the circumstances to the appropriate congressional committees,”¹⁵ including the House and Senate Committees on Appropriations, the Senate Committee on Homeland Security and Governmental Affairs, the House Committee on Oversight and Reform, as well as “any other relevant congressional committee of jurisdiction.”¹⁶

GOVERNMENT ACCOUNTABILITY OFFICE (“GAO”)

The CARES Act also provides \$20 million in supplemental funding to the Government Accountability Office (“GAO”) for monitoring and oversight of CARES Act spending, including periodic briefings and reports to Congress. Notably, the Act specifies that GAO “shall have access to records, upon request,” from both government agencies and private entities, as well as the authority to conduct interviews.¹⁷ The Act also provides GAO with the authority to inspect facilities at which government or non-governments entities “carry out their responsibilities related to the Coronavirus 2019 epidemic.”¹⁸

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As the country emerges from this crisis, companies should recognize that the work of these oversight entities will significantly affect and likely propel parallel investigations by congressional oversight committees, as well as federal and state enforcement agencies. As House Oversight and Reform Committee Chair Carolyn Maloney (D-NY) recently stated, “There is no doubt that the administration has mishandled this entire crisis, and our committee will certainly be engaged in robust oversight to review what happened and how to avoid these mistakes in the future.”¹⁹ We will provide additional analysis of the roles, authorities, and implications of these oversight bodies under the CARES Act as companies engage or prepare to engage with the Administration and individual agencies in response to the COVID-19 pandemic.

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¹ C-SPAN “House Speaker Weekly Briefing via Conference Call (April 2, 2020), available at <https://www.c-span.org/video/?470905-1/speaker-pelosi-create-house-select-committee-coronavirus-audio-only>.

² CARES Act, § 4018(c)(1).

³ CARES Act, § 4018(b)(1).

⁴ CARES Act, § 4018(e).

⁵ CARES Act, § 4018(e)(4)(A).

⁶ CARES Act, § 4018(e)(4)(B).

⁷ Statement by the President (March 27, 2020), available at <https://www.whitehouse.gov/briefings-statements/statement-by-the-president-38/>.

⁸ Senate Committee on Banking, Minority Press Release (March 31, 2020), available at <https://www.banking.senate.gov/newsroom/minority/brown-senate-democrats-call-on-mnuchin-to-defend-the-creation-of-a-special-inspector-general-for-pandemic-recovery-sigpr-from-being-undermined-by-the-trump-administration>.

⁹ CARES Act, § 4020(c).

¹⁰ CARES Act, § 4020(b)(2)(B).

¹¹ CARES Act, § 4020(e)(4).

¹² CARES Act, § 15010(c).

¹³ CIGIE Press Release (March 30, 2020), available at <https://www.ignet.gov/sites/default/files/files/PRAC-press-release.pdf>.

¹⁴ CARES Act, § 15010(e)(3)(A).

¹⁵ CARES Act, § 15010(e)(3)(C).

¹⁶ CARES Act, § 15010(a)(2).

¹⁷ CARES Act, § 19010(d).

¹⁸ CARES Act, § 19010(d)(4).

¹⁹ <https://www.politico.com/news/2020/04/01/congress-new-coronavirus-role-2-trillion-watchdog-157893>.