



**Testimony of Danielle Brian, Executive Director
Project On Government Oversight
before the Senate Homeland Security and Governmental Affairs Committee
on Oversight of COVID-19 Financial Relief Packages
July 28, 2020**

Chairman Johnson, Ranking Member Peters, and Members of the Committee, thank you for the opportunity to testify today on oversight of coronavirus relief funding. I am Danielle Brian, executive director of the Project On Government Oversight (POGO). POGO is a nonpartisan independent watchdog that investigates and exposes waste, corruption, abuse of power, and when the government fails to serve the public or silences those who report wrongdoing. We champion reforms to achieve a more effective, ethical, and accountable federal government that safeguards constitutional principles.

Amid the global pandemic, Congress has responded admirably with legislation to shore up our economy, creating necessary oversight mechanisms, as well as a clear intent to direct emergency funds primarily to those who needed help the most. However, in some cases, there has been a disconnect between that intent and the execution of the relief packages. We must act now to evaluate what needs to be fixed, and who has been left behind, before it is too late. And if the public and key oversight bodies are left in the dark about how these relief packages are or are not helping those who need them most, that work will be nearly impossible. The consequences of flaws in the COVID-19 relief programs are not merely the squandering of taxpayer funds, but the devastating impact on the lives and livelihoods of Americans through inadequate availability of public health services, the permanent shuttering of businesses, and the resulting rise in unemployment.

Whether it is the fault of Congress in legislative drafting, or the result of willful disregard on the part of federal agencies in execution, it is clear that some who received funds through these programs were not the intended beneficiaries. Rather than preference being afforded to the small businesses the pandemic put most in jeopardy of going under because they only had a few weeks' savings in the bank, wealthy institutions and individuals with easy access to capital were first in line for the emergency programs thanks to preexisting relationships.

The importance of shining a light on how these programs are working has never been clearer. It is only because of the hard-fought—but still inadequate—disclosure of the larger Paycheck Protection Program (PPP) loans that we know about institutions with billion-dollar endowments or access to capital having received loans intended for struggling small businesses. For example, through these limited disclosures, POGO, along with the Anti-Corruption Data Collective, recently uncovered that millions of dollars' worth of PPP loans went to Chinese state-owned

companies.¹ As Congress evaluates next steps, it is all the more important to be concerned about what we don't yet know. While the limited transparency around the Small Business Administration's PPP loan program has allowed for much-needed public scrutiny, the programs administered by the Treasury Department and the Federal Reserve involve even larger sums of taxpayer dollars and are far more opaque to the public and more insulated from necessary oversight.

Congress has appropriated nearly \$3 trillion in new spending to aid the economy, help workers, and offer a lifeline to struggling businesses, large and small, through the Coronavirus Aid, Relief, and Economic Security Act, or CARES Act, and other legislation.² Of those funds, POGO is currently able to track where about \$1.5 trillion has gone. According to the Small Business Administration, about \$131 billion are still available in the PPP program.³ However, at least \$1.3 trillion remain unaccounted for—meaning we can't track whether the agencies have committed or distributed those funds yet or not, let alone who they have been distributed to. This is a self-inflicted wound that Congress and federal agencies can and should address. In addition to detecting and deterring fraud, we also want you as Members of Congress to be able to show your constituents the positive impacts these programs have had on them.

In an effort to ensure accountability of the relief funds, Congress created three new oversight mechanisms: the Special Inspector General for Pandemic Recovery, the Congressional Oversight Commission, and the Pandemic Response Accountability Committee. However, each oversight mechanism has faced challenges that have resulted in less transparency and oversight than Congress intended. The current degree of transparency and oversight is also far less than taxpayers deserve, and far less than the American people need to be able to trust their government is acting in their best interest during this crisis. Continued aid may be necessary to combat the ongoing effects of the pandemic, and in order for it to be more effective, Congress must address the challenges hindering oversight mechanisms from protecting public funds from waste, fraud, and abuse, and ensuring that the funds go where they are most needed.

This hearing is very timely, as you can both ensure future funds reach the intended recipients, and you can still repair some of the shortcomings of the new oversight mechanisms before it's too late. I therefore urge Congress to include the following crucial reforms in the next piece of legislation addressing the coronavirus emergency:

- Give the Special Inspector General for Pandemic Recovery emergency hiring authorities.
- Expand the jurisdiction of the Congressional Oversight Commission beyond the \$500 billion provided to the Treasury Department. The Commission cannot adequately

¹ Nick Schwellenbach and David Szakonyi, "Millions in PPP Loans Went to Chinese State-Owned Companies," Project On Government Oversight, July 23, 2020. <https://www.pogo.org/investigation/2020/07/millions-in-ppp-loans-went-to-chinese-state-owned-companies/>

² In addition to the CARES Act, Congress passed the Coronavirus Preparedness and Response Supplemental Appropriations Act ([Pub. Law 116-123](#)) on March 6, 2020; the Families First Coronavirus Response Act ([Pub. Law 116-127](#)) on March 16, 2020; and the Paycheck Protection Program and Health Care Enhancement Act ([Pub. Law 116-139](#)) on April 24, 2020.

³ Small Business Administration, *Paycheck Protection Program (PPP) Report*, July 17, 2020, 9. <https://home.treasury.gov/system/files/136/SBA-Paycheck-Protection-Program-Loan-Report-Round2.pdf>

evaluate the effectiveness of these programs in isolation without also examining other relief programs.

- Direct the Office of Management and Budget to rescind its April 10 guidance that prevents the collection of reports on the use of these relief funds from the recipients of these funds, and direct the office to issue new guidance that instructs agencies to collect all data Congress spelled out in the CARES Act.
- Direct the Pandemic Response Accountability Committee to establish a portal for quarterly reporting of all large recipients of covered funds, and direct agencies to have all covered recipients reporting data through the portal. This will require additional appropriations for the Pandemic Response Accountability Committee.
- Clarify that the recipient reporting requirements in Section 15011 of the CARES Act apply to all federal spending related to the coronavirus response.
- Provide clear direction to the administration to allocate all remaining funds appropriated to the Treasury Department or the Small Business Administration in a way that prioritizes traditionally underserved markets such as Black- and women-owned businesses, as well as businesses in rural communities.
- Codify existing Federal Reserve transaction disclosures into law and require greater clarity and detail to the data that the Federal Reserve discloses.
- Eliminate the provision in the CARES Act that exempts securities transactions made by the Federal Reserve’s lending facilities from requiring loan conditions on stock buybacks, employee retention, and executive compensation.

Oversight Mechanisms

The challenges facing the oversight mechanisms tasked with overseeing coronavirus relief spending are troubling, and we’re already seeing their effects. For example, the lack of insight into the effectiveness of the Treasury and Federal Reserve programs is compounded by the slow start of the two oversight mechanisms created by Congress dedicated to these programs, the Special Inspector General for Pandemic Recovery and the Congressional Oversight Commission.

While we are pleased that the Senate confirmed the new special inspector general for pandemic recovery, this watchdog can only be effective if he’s afforded the tools to do his job. Having not been granted the flexibility to circumvent the lengthy federal bureaucratic hiring process, the special inspector general’s work has been hindered by lack of staff, and he has not been able to begin fulfilling reporting requirements.⁴ POGO has previously called for emergency hiring authorities for the special inspector general for pandemic recovery, and it is overdue for Congress to grant this power.⁵ Former Special Inspector General for the Troubled Asset Relief Program Neil Barofsky told POGO, “without special hiring authorities, it will be impossible [for

⁴ Alexander Bolton, “Battle brewing on coronavirus relief oversight,” *The Hill*, July 15, 2020. <https://thehill.com/homenews/senate/507380-battle-brewing-on-coronavirus-relief-oversight>

⁵ Tim Stretton, “Priorities for Phase 4 COVID-19 Response Funding Bill (May 2020),” Project On Government Oversight, May 7, 2020. <https://www.pogo.org/resource/2020/05/priorities-for-phase-4-covid-19-response-funding-bill-may-2020/>

the special inspector general for pandemic recovery] to attract the quality of staff needed to do this job.”⁶

While four of the five members have been named to the Congressional Oversight Commission, it is still without a chair.⁷ While the commission has already issued three illuminating reports,⁸ it is essential for the commission to be fully operative given its mission to oversee the Treasury’s and the Federal Reserve’s loan programs, which total half a trillion dollars.⁹

Furthermore, Congress should expand the Congressional Oversight Commission’s jurisdiction beyond the economic impact of the Treasury Department’s and Federal Reserve’s implementation of the CARES Act.¹⁰ The law mandates that the commission assess the effectiveness of the Treasury Department’s and Federal Reserve’s relief programs in stabilizing the economy, but these programs do not work in a vacuum. Expanding the commission’s jurisdiction to explicitly include evaluating the economic impact of some of the other relief programs authorized and appropriated by Congress will provide Congress with a fuller picture of the impact of these legislative efforts.

Finally, the Pandemic Response Accountability Committee has faced two significant challenges to its ability to oversee all the federal programs involved in the coronavirus response. First, the Office of Management and Budget greatly undermined the recipient reporting mandated in the CARES Act. Second, the Treasury Department determined that those statutorily mandated reporting requirements, which are central to the committee’s oversight mandate, do not apply to

⁶ Adam Zagorin, “Former Bailout Cop Stood Up to Senior Feds and Bonus-Hungry Insurance Execs. Now He Tells POGO How to Oversee the \$2 Trillion CARES Package,” Project On Government Oversight, April 8, 2020. <https://www.pogo.org/analysis/2020/04/former-bailout-cop-stood-up-to-senior-feds-and-bonus-hungry-insurance-execs-now-he-tells-pogo-how-to-oversee-the-2-trillion-cares-package/>

⁷ Letter from civil society organizations to Speaker of the House Nancy Pelosi and Senate Majority Leader Mitch McConnell regarding the Congressional Oversight Commission, July 1, 2020. <https://www.americanoversight.org/document/letter-to-congress-regarding-covid-19-congressional-oversight-commission>

⁸ Representative French Hill et al., Congressional Oversight Commission, *Questions About CARES Act’s \$500 Billion Emergency Economic Stabilization Funds: The First Report of the Congressional Oversight Commission* (May 18, 2020). https://www.toomey.senate.gov/files/documents/COC%201st%20Report_05.18.2020.pdf; Representative French Hill et al., Congressional Oversight Commission, *The Second Report of the Congressional Oversight Commission* (June 18, 2020). [https://www.toomey.senate.gov/files/documents/Congressional%20Oversight%20Commission%20Report%20\(June%2018,%202020\).pdf](https://www.toomey.senate.gov/files/documents/Congressional%20Oversight%20Commission%20Report%20(June%2018,%202020).pdf); Representative French Hill et al., Congressional Oversight Commission, *The Third Report of the Congressional Oversight Commission* (July 20, 2020). [https://www.toomey.senate.gov/files/documents/Oversight%20Commission%20-%203rd%20Report%20\(FINAL\)_7.20.20.pdf](https://www.toomey.senate.gov/files/documents/Oversight%20Commission%20-%203rd%20Report%20(FINAL)_7.20.20.pdf)

⁹ Coronavirus Aid, Relief, and Economic Security Act, H.R. 748, 116th Cong., § 4003(a) (2020). <https://www.congress.gov/bill/116th-congress/house-bill/748/text/enr#HDDFB122B6A424BFF8065C447BD095E38>

¹⁰ Coronavirus Aid, Relief, and Economic Security Act, H.R. 748, 116th Cong., § 4020(a)(1)(A) (2020). <https://www.congress.gov/bill/116th-congress/house-bill/748/text/enr#H791EB785EA7A43DE83C63318669513A9>

the vast majority of programs authorized by Congress to provide relief by those affected by the coronavirus.¹¹

I strongly urge you to address each of these issues in the next round of coronavirus legislation to ensure the oversight mechanisms are equipped to handle their important missions.

Office of Management and Budget Guidance

The Pandemic Response Accountability Committee is the one oversight mechanism that was created to oversee the entire federal response to the coronavirus. The committee consists of 21 inspectors general tasked with preventing and detecting fraud, waste, abuse, and mismanagement, and mitigating major risks that cut across program and agency boundaries. At the same time, those individual inspectors general will continue overseeing their agencies' programs for potential waste, fraud, and abuse and providing recommendations to address. For example, the Department of Labor's inspector general has already identified steps that can be taken by the agency and Congress to decrease the potential for improper payments and fraud in the Pandemic Unemployment Assistance Fund.¹²

To aid in this new work, Congress codified two reporting requirements related to coronavirus funds. First, agencies must report to the Pandemic Response Accountability Committee and Congress any obligation or expenditure of \$150,000 or more, including loans and awards. Second, recipients, including businesses and organizations, of \$150,000 or more in CARES Act funding are required to report quarterly the total received from each agency, total obligations to projects, project descriptions, and the number of jobs retained and created using the funds.¹³ This recipient reporting requirement does not extend to individuals.¹⁴ Congress included these detailed reporting provisions in the CARES Act to ensure that the extraordinary level of government spending of taxpayer dollars would get a higher level of transparency and accountability. However, in a guidance memo to federal agencies on how to report the allocation of relief funds, the Office of Management and Budget ignored a number of the CARES Act's clear reporting requirements.

¹¹ Tom Hamburger et al., "Inspectors general warn that Trump administration is blocking scrutiny of coronavirus rescue programs," *Washington Post*, June 15, 2020.

<https://www.washingtonpost.com/business/2020/06/15/inspector-general-oversight-mnuchin-cares-act/>

¹² Memorandum from Assistant Inspector General Office of Audit Elliot P. Lewis to Assistant Secretary of Employment and Training Administration on the need to institute proactive measures to detect and prevent improper payments and fraud in the Pandemic Unemployment Assistance Program, May 26, 2020, 4.

<https://www.oversight.gov/sites/default/files/oig-reports/Alert%20Memorandum%20The%20Pandemic%20Unemployment%20Assistance%20Program%20Needs%20Proactive%20Measures%20to%20Detect%20and%20Prevent%20Improper%20Payments%20and%20Fraud.pdf>

¹³ Coronavirus Aid, Relief, and Economic Security Act, H.R. 748, 116th Cong., § 15011(2) (2020).

<https://www.congress.gov/bill/116th-congress/house-bill/748/text/enr#HAA593B47781C4232B34E69FE434AEA95>

¹⁴ Coronavirus Aid, Relief, and Economic Security Act, H.R. 748, 116th Cong., § 15010(a)(6) (2020).

<https://www.congress.gov/bill/116th-congress/house-bill/748/text/enr#H890C3ABDD0194B4A86A0135D19D000A0>

The office told agencies that with just a few slight modifications, they could use the existing process under the Federal Funding and Transparency Act, as amended by the Digital Accountability and Transparency Act, to collect the reporting required under the CARES Act using the government's USASpending.gov infrastructure.¹⁵ However, awards reported on USASpending do not include information on jobs created or retained, meaning Congress and the American people are currently getting no data on the jobs supported by CARES Act funding. With preserving jobs, keeping people on payroll, and supporting the economy among the main objectives of the CARES Act, this is a glaring error that urgently needs to be corrected.

Using the existing USASpending infrastructure also effectively guarantees that the Pandemic Response Accountability Committee and the public will get only scant information about what each award was used for, rather than the detailed project descriptions the CARES Act requires. As POGO has previously reported and commented on to the Treasury Department, "Agencies often offer no description of specific grant or loan awards, but only list the program under which the award was made or the general mission of the program."¹⁶ Essentially, agencies, including the Treasury Department, will make only a slight modification to USASpending for CARES Act reporting: Individuals will be able to filter USASpending data to view CARES Act-specific funding awards and other coronavirus response spending beginning in July.¹⁷ But that is insufficient. Without recipient reporting, we—and the Pandemic Response Accountability Committee—will have no way of knowing whether recipients have spent the funds as intended. The lack of oversight practically invites the misuse of these funds.

After finding that the Treasury Department had not provided an adequate reporting mechanism for recipients of federal coronavirus aid funding, the department's office of inspector general announced earlier this month it is creating its own reporting structure for state, tribal, and local government recipients under Title V of the CARES Act to meet the law's quarterly reporting requirements.¹⁸ The inspector general directed recipients to file an interim report by July 17, and expects the new reporting platform to be ready by the end of September.¹⁹

While the platform will be an important development for transparency into these funds, it does not make sense for each agency watchdog to have to create its own recipient reporting portal.

¹⁵ Memorandum from Acting Director of the Office of Management and Budget Russell T. Vought to heads of departments and agencies about implementation guidance for supplemental funding provided in response to the coronavirus disease 2019 (COVID-19), April 10, 2020, 5. <https://www.whitehouse.gov/wp-content/uploads/2020/04/Implementation-Guidance-for-Supplemental-Funding-Provided-in-Response.pdf>

¹⁶ Sean Moulton, "Administration Seeks to Minimize Transparency of Coronavirus Relief Funds," Project On Government Oversight, May 13, 2020. <https://www.pogo.org/analysis/2020/05/administration-seeks-to-minimize-transparency-of-coronavirus-relief-funds/>

¹⁷ "Coming to USASpending in July -- New Tools to Search and Display COVID-19 Spending Data," USASpending.gov. <https://www.usaspending.gov/#/> (accessed July 22, 2020); Memorandum from Russell T. Vought to heads of departments and agencies, 5 [see note 15].

¹⁸ Memorandum from Assistant Treasury Inspector General for Audit Deborah L. Harker to Counselor to the Treasury Secretary Daniel J. Kowalski concerning interim audit update – coronavirus relief fund recipient reporting, May 27, 2020, 2. <https://www.treasury.gov/about/organizational-structure/ig/Audit%20Reports%20and%20Testimonies/OIG-20-036.pdf>

¹⁹ Memorandum from Deputy Treasury Inspector General Richard K. Delmar concerning coronavirus relief fund reporting and record retention requirements, July 2, 2020, 2. <https://www.oversight.gov/sites/default/files/oig-reports/OIG-CA-20-021.pdf>

This is a wildly inefficient solution, and makes it more difficult to get consistent data across agency portals and different programs. The simplest option is to task the Pandemic Response Accountability Committee with creating a portal for all recipient data and have the Office of Management and Budget direct agencies to require recipients report to this portal. This will require the office to rescind its earlier guidance that directed agencies not to collect any new information from recipients.²⁰ The committee has the expertise to do the auditing and it is more efficient to have one body collecting the data rather than separate agencies or offices of inspectors general having their own unique reporting structures.

Congress should direct the Office of Management and Budget to rescind its current guidance and replace it with new guidance that directs agencies to collect all the data types Congress included in the CARES Act, and instruct the agencies how to collect this statutorily required information. This is exactly what the Office of Management and Budget did in the implementation of the American Recovery and Reinvestment Act of 2009.²¹ In addition, Congress should direct the Pandemic Response Accountability Committee to create a centralized portal for all recipients to report the use of COVID-19 relief funds from agencies across the federal government. Additional appropriations may be necessary to support this directive.

Division A/B Oversight Loophole

After the Office of Management and Budget's guidance memo dealt a serious blow to the collection of the data that's central to robust oversight of this emergency spending, a legal interpretation from the Treasury's general counsel in May compounded the problem, effectively exempting more than \$1 trillion from the requirement that recipients of these funds report to the agencies and watchdogs how federal relief funds were used.²² The Treasury's general counsel argued that the CARES Act's recipient reporting requirements—which constitute the law's central transparency and accountability provision—do not apply to any of the pandemic relief funds the law appropriates to Treasury because the requirements and the funds are legislated in different sections of the CARES Act.²³

While the general counsel's reading of the law is technically accurate, it nevertheless appears to be contrary to the intent of Congress. The law states that the Pandemic Relief Accountability Committee, whose members must include the Treasury's inspector general, shall report on "covered funds" under the CARES Act itself, as well as the Coronavirus Preparedness and

²⁰ Memorandum from Russell T. Vought to heads of departments and agencies, 5 [see note 15].

²¹ Memorandum from Office of Management and Budget Director Peter R. Orszag to heads of departments and agencies on implementing guidance for the reports on use of funds pursuant to the American Recovery and Reinvestment Act of 2009, June 22, 2009, 1.

https://obamawhitehouse.archives.gov/sites/default/files/omb/assets/memoranda_fy2009/m09-21.pdf

²² "Treasury and the Office of Management and Budget have determined, based on the plain text of the statute, that certain recipient reporting requirements under section 15011 in Division B of the CARES Act do not apply to programs under Division A of the statute." Letter from Principal Deputy Assistant Secretary of the Treasury to Representative Carolyn B. Maloney about Treasury's views on the PRAC's jurisdiction, July 2, 2020, 1.

<https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2020-07-02%20UST%20Letter%20to%20CW%20Maloney.pdf>

²³ Memorandum from Deborah L. Harker to Daniel J. Kowalski, 4 [see note 18].

Response Supplemental Appropriations Act, the Families First Coronavirus Response Act, or “any other Act primarily making appropriations for the Coronavirus response and related activities.”²⁴ The statutory language is clear in applying the reporting requirements to all programs funded by the CARES Act as well as to programs in the two previous pieces of coronavirus relief legislation and any subsequent relief legislation. Congress included these recipient reporting requirements in the language creating the Pandemic Response Accountability Committee because this data will be a critical component of the committee’s cross-program and cross-agency oversight responsibilities. Furthermore, Treasury’s interpretation would limit the recipient reporting requirements to the section of the CARES Act that primarily appropriates funds to agencies for salaries and administrative expenses—appropriations that would not be subject to these reporting requirements in the first place.

If left uncorrected, Treasury’s interpretation would exclude from the recipient reporting requirements some of the biggest financial relief packages passed to date, which would improperly shield them from the oversight mandated by law. Division A programs, which Treasury interprets as exempt from the requirements, include the \$659 billion Paycheck Protection Program to help small businesses and their employees²⁵; the \$500 billion infusion to the Treasury’s Exchange Stabilization Fund to help economically distressed sectors of the economy²⁶; the \$150 billion bailout to state, tribal, and local governments²⁷; and the Federal Pandemic Unemployment Compensation program that provides an extra \$600 per week in unemployment benefits on top of what individuals receive from their state unemployment office.²⁸ Division B programs, on the other hand, provided supplemental appropriations to government agencies, including the Departments of Justice, Agriculture, and Commerce, to pay salaries and other administrative expenses.

In lieu of the reporting requirements that would include job-creation numbers for each program, the Treasury’s general counsel suggested that reporting requirements to the other oversight mechanisms in the law provide sufficient accountability and oversight for over \$1 trillion in emergency aid.²⁹ These include the newly created Special Inspector General for Pandemic Recovery and the Congressional Oversight Commission, as well as other periodic reports to be submitted to Congress and published on Treasury’s website. While these oversight bodies were

²⁴ Coronavirus Aid, Relief, and Economic Security Act, H.R. 748, 116th Cong., § 15010(6) (2020).

<https://www.congress.gov/bill/116th-congress/house-bill/748/text/enr#H890C3ABDD0194B4A86A0135D19D000A0>

²⁵ Coronavirus Aid, Relief, and Economic Security Act, H.R. 748, 116th Cong., § 1102 (2020).

<https://www.congress.gov/bill/116th-congress/house-bill/748/text/enr#HADF71F625F384BFAA1F32CA6240F4352>; Paycheck Protection Program and Health Care Enhancement Act, H.R. 266 116th Cong., § 101(a)(1) (2020). <https://www.congress.gov/116/plaws/publ139/PLAW-116publ139.pdf>

²⁶ Coronavirus Aid, Relief, and Economic Security Act, H.R. 748, 116th Cong., § 4003(a) (2020).

<https://www.congress.gov/bill/116th-congress/house-bill/748/text/enr#HDDFB122B6A424BFF8065C447BD095E38>

²⁷ Coronavirus Aid, Relief, and Economic Security Act, H.R. 748, 116th Cong., § 601(a)(1) (2020).

<https://www.congress.gov/bill/116th-congress/house-bill/748/text/enr#HF70084214955401B91B89575FD450AB5>

²⁸ Coronavirus Aid, Relief, and Economic Security Act, H.R. 748, 116th Cong., § 2104(b)(B) (2020).

<https://www.congress.gov/bill/116th-congress/house-bill/748/text/enr#H211538351C124AECAA3AFFE0E8397A4>

²⁹ Memorandum from Deborah L. Harker to Daniel J. Kowalski, 11,12 [see note 18].

specifically created to have direct oversight of Treasury Department and Federal Reserve programs, neither has the express mission of detecting and mitigating possible waste, fraud, and abuse of these programs. Congress created the Pandemic Response Accountability Committee to do just that. This recipient reporting is a critical tool for that oversight.

The leaders of the Pandemic Recovery Accountability Committee have expressed alarm in response to the administration’s legal opinion regarding the exclusion of the Treasury’s programs from these reporting requirements and the impact it may have on oversight. On June 11, acting committee chair Michael E. Horowitz and committee executive director Robert Westbrooks wrote to four congressional committee chairs expressing concern about the administration’s opinions and the separation of oversight between Divisions A and B of the CARES Act. They raised concerns that the alternative reporting Treasury believes will be sufficient for oversight does not provide the “breadth and depth of reporting needed for the PRAC to fully carry out” its mission as articulated by Congress. “If this interpretation of the CARES Act were correct,” they wrote, “it would raise questions about the PRAC’s authority to conduct oversight of Division A funds,” and it “would present potentially significant transparency and oversight issues.”³⁰

Even if the alternative reporting requirements and oversight mechanisms were fully operational, they do not represent sufficient oversight over the major programs that Treasury would have excluded from the recipient reporting requirements. Most notably, the Small Business Administration’s Paycheck Protection Program does not currently fall under the jurisdiction of either the Special Inspector General for Pandemic Recovery or the Congressional Oversight Commission.

Although Treasury acknowledged earlier this month that the Pandemic Response Accountability Committee’s jurisdiction extends to the entire CARES Act—meaning that the committee can review Division A program spending—the department also doubled down on its assertion that the Division A program recipients are not subject to the recipient reporting requirements in the law.³¹

To help improve transparency and oversight of the use of funds, Congress should amend the CARES Act by explicitly stating that the recipient reporting requirements apply to Division A programs. Given the massive amount of funding appropriated by the CARES Act, especially in Division A, the public needs to be able to trust that this spending will be subject to rigorous, independent oversight. If Congress clarifies agencies’ requirements to submit data collected from recipients to the Pandemic Response Accountability Committee, the committee will be better

³⁰ Letter from Acting PRAC Chair Justice Department Inspector General Michael E. Horowitz and PRAC Executive Director Robert A. Westbrooks to Representatives Carolyn B. Maloney and Nita M. Lowy and Senators Ron Johnson and Richard Shelby about the Treasury’s interpretation of the PRAC, June 11, 2020, 2. <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/Letter%20from%20CIGIE%20PRAC%20-%202020-11-20.pdf>

³¹ Letter from Principal Deputy Assistant Secretary of the Treasury to Carolyn B. Maloney, 1 [see note 22].

equipped to catch waste and deter fraud before it happens, as the Recovery Accountability and Transparency Board accomplished in the wake of the Great Recession.³²

Inspector General Independence

The Pandemic Response Accountability Committee is made up of inspectors general, a position that has recently been under assault by the president. Oversight of the ongoing coronavirus response and spending must not only be informed by as much data as possible, but must be independent from any political influence in order to properly deter waste, fraud, and abuse.³³ In order to ensure the Pandemic Response Accountability Committee is able to conduct oversight independently, Congress must provide some safeguards against the unwarranted removal of an inspector general. The Supreme Court's recent decision in *Seila Law LLC v. Consumer Financial Protection Bureau* could help clear the way for Congress to do so with confidence that it is on solid constitutional ground.³⁴ The court relied on an analysis that supports the position we at POGO have long held—that giving inspectors general protections against retaliatory removals would be constitutional under the Supreme Court's existing precedent regarding the president's removal authorities. As nine former inspectors general recently wrote to Congress, “Without these protections, IGs may be reticent to follow an investigation to its conclusion if it could put them at odds with political leadership—something that has the potential to influence the conduct and outcome of IG audits and investigations.”³⁵

I firmly believe that presidents should remove inspectors general who are no longer fulfilling their important missions. Taxpayers deserve no less. However, removing an effective inspector general without demonstrating that the inspector general is no longer able to conduct rigorous oversight undermines the foundation of independent oversight. I strongly urge this committee to extend for-cause removal protections to inspectors general, as the Congress has done for other independent executive branch positions.

Access to Paycheck Protection Program Data

The Paycheck Protection Program provides a useful case study on the value of transparency and oversight of emergency aid.

³² Michael Grunwald, “Five myths about Obama’s stimulus,” *The Washington Post*, August 10, 2012. https://www.washingtonpost.com/opinions/five-myths-about-obamas-stimulus/2012/08/10/7935341e-e176-11e1-ae7f-d2a13e249eb2_story.html

³³ Danielle Brian, “It’s more clear now than ever: Inspectors general need stronger protections,” Project On Government Oversight, April 13, 2020. <https://www.pogo.org/analysis/2020/04/its-more-clear-now-than-ever-inspectors-general-need-stronger-protections/>; Dylan Hedtler-Gaudette, “The Purse Is Mightier than the Sword. Now Congress Needs to Use It,” Project On Government Oversight, April 16, 2020. <https://www.pogo.org/analysis/2020/04/the-purse-is-mightier-than-the-sword-now-congress-needs-to-use-it/>

³⁴ Rebecca Jones, “*Seila Law v. CFPB*: What’s Unconstitutional for One May Not Be Unconstitutional for All,” Project On Government Oversight, July 1, 2020. <https://www.pogo.org/analysis/2020/07/seila-law-v-cfpb-whats-unconstitutional-for-one-may-not-be-unconstitutional-for-all/>

³⁵ Letter from former inspectors general to congressional leadership to pass overdue reforms to the inspector general system, May 5, 2020. <https://www.pogo.org/letter/2020/05/former-inspectors-general-call-on-congress-to-pass-overdue-reforms-to-ig-system/>

Created as part of the Small Business Administration’s 7(a) loan program, the Paycheck Protection Program provides direct loans to small businesses hurt by the pandemic. Congress used the 7(a) program because these loans are issued through banks and credit unions and would be the quickest way for businesses to get the loans, rather than Congress setting up an entirely new program with direct funding coming from the government. The program is one of the largest relief spending packages; after the program’s initial \$349 billion was quickly depleted, Congress increased its funding to a total of \$659 billion.³⁶ A key part of the program is the option for these loans to turn into grants if employers use them to retain and rehire workers.³⁷ But the opportunity for virtually free federal grants means the program is more likely to be a target for waste, fraud, and abuse.

The attractiveness of what could essentially be free money didn’t go unnoticed by larger companies. For example, companies such as Ruth’s Chris Steak House, Shake Shack, and the Los Angeles Lakers applied for loans through the program and received millions of taxpayer dollars in loans intended to rescue small businesses.³⁸ Media reports led to public criticism of those and other companies, leading some to return the money.³⁹ The tangible results of transparency and oversight of these funds cannot be ignored.

The loan application all business owners had to fill out to receive a PPP loan states that the information will be made public. The last page of the loan application reads, “Information about approved loans that will be automatically released includes, among other things ... the names of the borrowers ... the collateral pledged to secure the loan, the amount of the loan, its purpose in general terms and the maturity.”⁴⁰

That’s why it was perplexing to hear Treasury Secretary Steven Mnuchin announce on June 10, that the administration would not publicize the recipients of the PPP loans to protect “proprietary information,” saying that, “in many cases for sole proprietors and small businesses, it is

³⁶ Lisa Desjardins, “It took 13 days for the Paycheck Protection Program to run out of money. What comes next?,” *PBS*, April 16, 2020. <https://www.pbs.org/newshour/politics/it-took-13-days-for-the-paycheck-protection-program-to-run-out-of-money-what-comes-next>; Sylvian Lane, “Emergency small business loan program reopens under crush of demand,” *The Hill*, April 27, 2020. <https://thehill.com/policy/finance/494821-small-business-coronavirus-loan-program-reopens-under-crush-of-demand>

³⁷ Coronavirus Aid, Relief, and Economic Security Act, H.R. 748, 116th Cong., § 1106 (2020). <https://www.congress.gov/bill/116th-congress/house-bill/748/text/enr#H2A93DA7DFCA5414E9AEBF383EBAA0B77>

³⁸ Jim Zarroli, “Even The Los Angeles Lakers Got A PPP Small Business Loan,” *NPR*, April 27, 2020. <https://www.npr.org/sections/coronavirus-live-updates/2020/04/27/846024717/even-the-la-lakers-got-a-ppp-small-business-loan>

³⁹ Thomas Franck, “Companies returned \$30 billion in small-business loans from Paycheck Protection Program,” *CNBC*, July 6, 2020. <https://www.cnb.com/2020/07/06/companies-returned-30-billion-in-small-business-loans-from-ppp.html>

⁴⁰ “Paycheck Protection Program Borrower Application Form,” Small Business Administration, 4. <https://www.sba.gov/sites/default/files/2020-04/PPP%20Borrower%20Application%20Form.pdf> (accessed July 20, 2020)

confidential information.”⁴¹ The claim that the names of the loan recipients are proprietary and confidential is not only unsupported by the language on the loan application, but is also contrary to government transparency laws. The Treasury Department and the Small Business Administration have since partially reversed their decision to keep all recipients confidential, and have released some PPP loan data after criticism from Congress and civil society, including POGO.⁴² But this release is not enough to satisfy legal requirements.

The Federal Funding Accountability and Transparency Act, Digital Accountability and Transparency Act, and Freedom of Information Act (FOIA) all require public disclosure of recipients of funding streams like the small business loans. The administration must follow these laws when it comes to reporting of PPP loan recipients, and that holds true even though the CARES Act does not explicitly lay out certain reporting elements. For example, the Federal Funding Accountability and Transparency Act mandates the public disclosure of several data elements on the USASpending.gov website, such as the entity receiving a federal award—including loans—and the amount of that award.⁴³ While the Federal Funding Accountability and Transparency Act and the Digital Accountability and Transparency Act specifically require proactive reporting, FOIA only requires reporting upon request, which five news organizations and POGO are suing to enforce.⁴⁴

Given that existing laws require comprehensive transparency and disclosure around this type of spending, it appears clear that Congress’s intent was for the PPP program to be subject to that same degree of transparency. In addition to three laws that would already require disclosure, the Small Business Administration has disclosed decades’ worth of this type of data on 7(a) small business loans as well as other types of small business loans.⁴⁵

As mentioned above, in a welcome reversal, the Small Business Administration, in a statement with Treasury, announced on June 19 it would indeed disclose some details for some of the PPP loans.⁴⁶ The loan data was released on July 6.⁴⁷ As the Small Business Administration and Treasury detailed in their announcement, the data includes the names of businesses that received

⁴¹ Jonathan O’Connell, “Mnuchin loosens restrictions on small-business loans to ease forgiveness, but borrowers to remain secret,” *Washington Post*, June 10, 2020. <https://www.washingtonpost.com/us-policy/2020/06/10/mnuchin-small-business-paycheck-protection-program/>

⁴² Sarah Ferris, Melanie Zanona, and Zachary Warmbrodt, “Members of Congress took small-business loans — and the full extent is unknown,” *Politico*, July 16, 2020. <https://www.politico.com/news/2020/06/16/congress-small-business-loan-320625>; Project On Government Oversight, “Administration’s Decision to Hide Loan Data is Unacceptable,” Press Release, June 11, 2020. <https://www.pogo.org/press/release/2020/administrations-decision-to-hide-loan-data-is-unacceptable/>

⁴³ Federal Funding Accountability and Transparency Act, S. 2590, 109th Cong., § 2(b)(1) (2009). <https://www.congress.gov/109/plaws/publ282/PLAW-109publ282.pdf>

⁴⁴ Aaron Gregg, “The Post among five news organizations suing Small Business Administration for access to loan data,” *Washington Post*, May 12, 2020. <https://www.washingtonpost.com/business/2020/05/12/sba-foia-lawsuit/>

⁴⁵ “FOIA,” Small Business Administration. <https://www.sba.gov/about-sba/open-government/foia#section-header-32> (accessed July 18, 2020)

⁴⁶ Department of the Treasury, “SBA and Treasury Announce Enhanced Transparency Regarding the Paycheck Protection Program,” Press Release, June 19, 2020. <https://home.treasury.gov/news/press-releases/sm1041>

⁴⁷ Department of the Treasury, “SBA and Treasury Announce Release of Paycheck Protection Program Loan Data,” Press Release, July 6, 2020. <https://home.treasury.gov/news/press-releases/sm1052>

loans greater than \$150,000, as well as the businesses' addresses, zip codes, business type, demographic data, nonprofit information, jobs supported, and loan amount ranges.⁴⁸ Rather than releasing the names of the recipients of loans less than \$150,000, the Small Business Administration only released totals of loans aggregated by zip code, industry, business type, and demographic categories.

It's important to note that, based on the Small Business Administration's own data from last month, 86% of the loans issued are below the \$150,000 threshold.⁴⁹ That means the administration has not committed to disclose loan data for more than 4 million loans.

While the administration's decision to release some of the data is a win for transparency and a step in the right direction, the agencies should still follow existing law and release the recipient names and exact loan amounts for all Paycheck Protection Program loans. The assertion that this information must be concealed in order to protect borrowers' proprietary information, despite the laws mandating its disclosure, is unpersuasive. Borrowers knew when applying that this information would *automatically* be made public.

Accuracy of Paycheck Protection Program Data

Another critically important issue around PPP transparency is ensuring the accuracy of the data that has already been released. The initial data release includes errors that will undermine oversight if uncorrected. In one example, a woman from Wisconsin was reportedly listed as receiving a loan for her business between \$5 million and \$10 million, despite having actually received less than \$2,300.⁵⁰ In some cases, companies, such as scooter rental company Bird Rides Inc., appear in the data but say they did not apply for or receive aid.⁵¹

More troubling still is the data involving the number of jobs supported by the program. This month's data release includes many blanks and zeros under the "jobs retained" column. As the *Washington Post* noted, there is no job data at all for more than 875,000 loans.⁵² Breaking that number down, out of all the loans for which data was released—almost 4.9 million loans—the number of "jobs retained" is listed as 0 for 554,146 and blank for 324,122.⁵³ When a reporter asked Wells Fargo, one of the banks issuing PPP loans, why it had issued 3,900 loans with no

⁴⁸ The loan ranges are: \$150,000 to \$350,000; \$350,000 to \$1 million; \$1 million to \$2 million; \$2 million to \$5 million; and \$5 million to \$10 million.

⁴⁹ Small Business Administration, *Paycheck Protection Program (PPP) Report*, 6 [see note 3].

⁵⁰ Dan Mangan, "Small business coronavirus relief loan database contains some big errors, firms say," *CNBC*, July 7, 2020. <https://www.cnbc.com/2020/07/06/ppp-small-business-coronavirus-loan-database-contains-errors.html>

⁵¹ Mark Niquette, Matt Townsend, and Hannah Levitt, "PPP loan data errors raise questions about relief effectiveness," *Los Angeles Times*, July 13, 2020. <https://www.latimes.com/business/story/2020-07-13/ppp-data-errors-coronavirus>; Andrew J. Hawkins, "The federal government says Bird got at least a \$5 million bailout loan, but the company denies it," *The Verge*, July 6, 2020. <https://www.theverge.com/2020/7/6/21314829/bird-covid-ppp-loan-names-av-lidar-scooter-mobility-layoffs>

⁵² Jonathan O'Connell et al, "Faulty data collection raises questions about Trump's claims on PPP program," *Washington Post*, July 14, 2020. <https://www.washingtonpost.com/business/2020/07/14/ppp-job-claims-sba/>

⁵³ Mark Niquette, et al, "PPP loan data errors raise questions about relief effectiveness" [see note 51].

payroll information listed, Wells Fargo said, “it won’t be required until the application process for loan forgiveness.”⁵⁴

This is exactly why Congress should resist proposals to streamline forgiveness applications that provide blanket wholesale forgiveness of Paycheck Protection Program loans. Such proposals would mean Congress wouldn’t know how effective the more than half trillion-dollar government program was at preserving jobs. If businesses don’t have to have their loans reviewed before being turned into grants, the government will essentially be granting permission for individuals to commit waste, fraud, and abuse of taxpayer money.

At a hearing before the House Committee on Small Business earlier this month, Small Business Administration head Jovita Carranza said that the agency has “provided the opportunity for business or lenders who believe that their reported information is inaccurate to contact us, and we will work with them to fix it.”⁵⁵

The inconsistencies in the data that has been released underscore the need for the detailed recipient reporting, described above, to be provided to the Pandemic Response Accountability Committee. Recipient reporting will help verify the information the Small Business Administration and Treasury publish.

Finally, with respect to PPP data, it’s worth noting that labeling the data point in question “jobs retained” is misleading. There is no way for the government to know right now, while businesses are still using the loans, how many jobs a disbursed loan has actually protected until business owners later submit documentation for the loans to be forgiven and turned into grants. The current jobs-retained figures only show the number of employees businesses estimated the loans will support, not the actual number supported during the term of their loan.⁵⁶

There is no doubt the PPP loans have supported many small businesses at a time of extreme economic uncertainty. There is also no doubt that not every small business that applied for the first round of loans received one when they needed it. With nearly one-fifth of small businesses in this country claiming they’d have to close after two months of revenue loss, these loans are a lifeline to the economy.⁵⁷

However, this program and other financial aid programs are supported by a financial system that rewards those who are already well-banked and well-lawyered, often at the expense of underserved and rural markets. The Small Business Administration inspector general found that “Because SBA did not provide guidance to lenders about prioritizing borrowers in underserved and rural markets, these borrowers, including rural, minority, and women-owned businesses may

⁵⁴ Jonathan O’Connell et al, “Faulty data collection raises questions” [see note 52].

⁵⁵ *Oversight of the Small Business Administration and Department of Treasury Pandemic Programs: Hearing before the House Committee on Small Business*, 116th Cong. (January 29, 2019). <https://youtu.be/9sOMzcaQFnI?t=1590>

⁵⁶ Alexander Bolton, “Battle brewing on coronavirus relief oversight” [see note 4].

⁵⁷ Board of Governors of the Federal Reserve Banks, *2020 Report on Employer Firms: Small Business Credit Survey* (April 7, 2020), 5. <https://www.fedsmallbusiness.org/medialibrary/FedSmallBusiness/files/2020/2020-sbcs-employer-firms-report.pdf>

not have received the loans as intended.”⁵⁸ It is crucial that Congress even more clearly spell out its intent to prioritize these traditionally underserved business owners in all future aid programs. Explicit direction as to how agencies should prioritize distribution of federal dollars under emergency spending programs like the PPP is a foundational element to effective oversight that will result in a Congress better equipped to respond to future emergencies.

Relief programs like the Paycheck Protection Program are especially important for communities of color, who have been disproportionately affected economically by the pandemic. A *Washington Post* poll in May found that since the pandemic began, 20% percent of Hispanic adults and 16% percent of Black adults reported being laid off or furloughed, compared to 11% percent of white adults.⁵⁹ As the pandemic continues, it is urgent for Congress to ensure that relief funding goes to those who need it most. And indeed, addressing the lack of oversight now will lead to greater effectiveness of these programs for all Americans.

Federal Reserve Transparency and Accountability

The CARES Act authorized \$454 billion for Treasury to support Federal Reserve lending facilities, through which Federal Reserve funding programs provide financing to various sectors of the economy.⁶⁰ In April, the Federal Reserve announced it would voluntarily make information available regarding transactions from its lending facilities. This information includes the names and details of participants in each facility; the amounts borrowed and interest rates charged; and the overall costs, revenues, and fees for each facility.⁶¹ Congress should codify these disclosures as reporting requirements into law. Without proper disclosures, Congress can’t fully assess if these funds have truly gone to benefiting workers and the economy, rather than shareholders.

While we commend the Federal Reserve for increasing transparency regarding its transactions, Congress should also require greater clarity and detail on the data that the Federal Reserve discloses. POGO found that the Federal Reserve’s data does not explain all of the transaction fields it uses, and there are no award or transaction IDs to help keep track of awards over time. And a close look at the Federal Reserve’s Paycheck Protection Program Liquidity Facility dataset reveals that there appear to have been repayments of loans, but rather than posting the

⁵⁸ Small Business Administration Office of Inspector General, *Small Business Administration’s Implementation of the Paycheck Protection Program Requirements*, 20-14 (May 8, 2020), 4.

https://www.sba.gov/sites/default/files/2020-05/SBA_OIG_Report_20-14_508.pdf

⁵⁹ Tracy Jan and Scott Clement, “Hispanics are almost twice as likely as whites to have lost their jobs amid pandemic, poll finds,” *Washington Post*, May 6, 2020.

<https://www.washingtonpost.com/business/2020/05/06/layoffs-race-poll-coronavirus/>

⁶⁰ Coronavirus Aid, Relief, and Economic Security Act, H.R. 748, 116th Cong., § 4003(b)(4) (2020).

<https://www.congress.gov/bill/116th-congress/house-bill/748/text/enr#HDDFB122B6A424BFF8065C447BD095E38>

⁶¹ Board of Governors of the Federal Reserve System, “Federal Reserve Board outlines the extensive and timely public information it will make available regarding its programs to support the flow of credit to households and businesses and thereby foster economic recovery,” Press Release, April 23, 2020.

<https://www.federalreserve.gov/newsevents/pressreleases/monetary20200423a.htm>

repayment as a separate transaction the Federal Reserve just removes the original loans from the data.⁶²

An important condition Congress placed on CARES Act aid was the requirement for companies to preserve jobs and limit dividends, executive compensation, and stock buybacks. But Congress exempted security transactions from having to include these requirements.⁶³ As a result, the Federal Reserve does not require these conditions because it does not consider bond purchases as loans.⁶⁴ As corporations receive large sums of taxpayer-backed funds through the Federal Reserve, Congress should ensure these funds go to helping those who need it to boost the economy, and not shareholders. Congress should repeal Section 4003(c)(3)(A)(i) of the CARES Act, and subject all Federal Reserve securities transactions to Section 4003(c)(3)(A)(ii).

Conclusion

Chairman Johnson, Ranking Member Peters, and Members of the Committee, thank you for holding this important hearing on the need to improve oversight, accountability, and transparency of COVID-19 relief funding. When Congress passed the CARES Act, lawmakers knew trillions of dollars in new federal spending would be essential to stabilize the economy, rescue workers and the unemployed, and provide essential public health resources. At the same time, massive amounts of government funding being distributed quickly are ripe for waste, fraud, and abuse. In order for the public to have confidence that these programs have accomplished their mission, Congress must repair the oversight and reporting mechanisms.

In response to the lack of transparency and effective oversight of these emergency funds, POGO will be launching a comprehensive COVID-19 relief spending tracker over the next few weeks.⁶⁵ Currently, we have identified \$1.5 trillion in spending which includes more than 5.2 million transactions, across 35 agencies, and more than 150 federal programs. As more data and details are disclosed, these numbers will continue to grow. POGO's tracker is meant to complement federal reporting, not to stand in for statutory reporting requirements. We aim to increase the transparency and accountability of the government's ongoing relief efforts.

As Congress crafts another COVID-19 relief spending bill, it should apply lessons learned from the past few months. Congress should hold the administration accountable for how it is spending the money Congress already appropriated, and clarify its intent regarding the transparency and reporting of funds. By doing so now, and by setting up proper oversight mechanisms that accurately track and report spending, Congress will have a model in place for future economic

⁶² "Coronavirus Disease 2019 (COVID-19)," The Board of Governors of the Federal Reserve System, July 10, 2020. <https://www.federalreserve.gov/reports-to-congress-covid-19.htm>

⁶³ Letter from Americans for Financial Reform and other organizations to congressional leadership urging Congress include conditions for all companies that receive federal financial support, May 27, 2020, 1. <https://ourfinancialsecurity.org/wp-content/uploads/2020/05/AFREF-CARES-Sign-on-Ltr-NMCR.pdf>

⁶⁴ Memorandum from House Financial Services Majority Staff to Members on the House Financial Services Committee about June 17, 2020 hearing, "Monetary Policy and the State of the Economy," 5, June 12, 2020. <https://financialservices.house.gov/uploadedfiles/hhrg-116-ba00-20200617-sd002.pdf>

⁶⁵ Project On Government Oversight, "POGO to Launch COVID-19 Relief Spending Tracker," Press Release, April 28, 2020. <https://www.pogo.org/analysis/2020/04/pogo-to-launch-covid-19-relief-spending-tracker/>

crises and any disasters that will require quick relief spending. POGO stands ready to assist you in this effort, and I am happy to answer any questions you may have. Thank you.