



Office of the Special Inspector General for Pandemic Recovery

The Honorable Elizabeth Warren
United States Senate
131 Russell Senate Office Building
Washington, DC 20510

September 22, 2020

Dear Senator Warren,

Thank you for your July 15, 2020 letter regarding alleged conflicts of interest and ethics violations connected to the funds appropriated by Congress to combat the economic fallout from the coronavirus pandemic.

Like you, I am acutely aware of the risk that conflicts of interest may arise in the context of CARES Act, Division A programs over which I have statutory jurisdiction. As an inspector general with law-enforcement authority, however, I must ensure that my team's investigations are properly predicated. As I committed to you during my confirmation process, "I will look into conflicts of interests as legally appropriate."¹

While I also promised to give due respect to Congressional requests for investigations,² I have stated publicly that properly predicated investigations require an "independent basis for review" that is "clear and clearly stated."³ An IG must determine proper predication without regard to impermissible considerations, such as political affiliation. To reiterate my response to you during my confirmation, "IGs should be independent from politics,"⁴ and "[a]ll audits and investigations should be the IG's independent work."⁵

As an inspector general, I therefore eschew all politics. My independence is critical to my success, which is why I avoid taking actions that give the appearance of political preference or favoritism. I also guard my independence by never overstepping the authority given to me by the CARES Act. In other words, I take jurisdiction very seriously. That is why I recently declined an investigative

¹ Brian D. Miller, Questions for the Record from Sen. Elizabeth Warren, Committee on Banking, Housing, and Urban Affairs, Nomination Hearing, Question 30 (May 5, 2020).

² *Id.* at Question 24.

³ Brian D. Miller, *Independence of inspectors general should not be compromised by Congress*, The Hill (Aug. 13, 2018), <https://thehill.com/opinion/white-house/401491-independence-of-inspectors-general-should-not-be-compromised-by-congress>.

⁴ Questions for the Record, *supra* note 1, at Question 20.

⁵ *Id.* at Question 22.

request from a large group of Republican Senators involving issues important to their constituents but beyond my statutory reach.⁶

It is not that, as an IG, I will never work on an issue that may have political ramifications. In fact, a commitment to political independence means just the opposite. And as my record as an IG demonstrates,⁷ I will charge ahead whenever the objective facts and evidence warrant, despite any potential political consequences.

Your letter, however, does not provide an independent basis for investigation. Although I share your concern generally that conflicts of interest be appropriately monitored, your letter, and the *Public Citizen* report on which it relies, presents a handpicked set of facts and allegations about lobbyists with a certain political affiliation while omitting that lobbyists of a different political affiliation are also engaged in CARES Act-related lobbying—often as part of a bipartisan team. This suggests the investigative requests presented in your letter are imbued with political bias, and where law-enforcement authorities are involved, “[a]ny hint of bias must never be allowed.”⁸

Because I know this matter is important to you, please allow me to explain some of what I see as shortcomings in the information you provided in your letter. I believe an objective review of publicly available facts and evidence demonstrates that the letter is insufficient to justify opening an investigation.⁹

Your discussion of Brownstein Hyatt Farber Schreck, LLP provides a good example of why IGs must evaluate all the available facts before opening an audit or investigation. The descriptions of the firm’s lobbying activities found in your letter and the *Public Citizen* article leave one believing that Brownstein Hyatt is effectively an arm of the current administration because some of its employees are former administration officials or fundraisers. Marc Lampkin, for example, is regularly identified as an active administration-connected lobbyist. True enough, he is listed by the Center for Responsive Politics as having filed the most lobbying-disclosure reports of any Brownstein Hyatt employee for the CARES Act.¹⁰

⁶ See Letter from Brian D. Miller, Special Inspector General for Pandemic Recovery, to Kelly Loeffler, United States Senator (Aug. 12, 2020).

⁷ Citizens for Responsibility and Ethics in Washington (CREW) has documented my willingness to conduct properly predicated investigations without political fear or favor. See CREW, *Those Who Dared: 30 Officials Who Stood Up for Our Country*, at 34, available at <https://s3.amazonaws.com/storage.citizensforethics.org/wp-content/uploads/2016/07/20021536/30%20Officials%20Who%20Stood%20Up%20for%20Our%20Country%20REPORT.pdf>.

⁸ Miller, *supra* note 3.

⁹ Having been presented with a letter that offers the public only some of the facts, I also fear I may be seen as acting politically unless I explain my position. So, I am doing so in advance of my upcoming quarterly report.

¹⁰ Center for Responsive Politics, Lobbyists lobbying on H.R.748: CARES Act (last accessed Sept. 13, 2020), https://www.opensecrets.org/federal-lobbying/bills/lobbyists?start=50&page_length=25&cycle=2020&id=hr748-116&.

But even a quick review of publicly available information shows Brownstein Hyatt's Nadeam Elshami is a close second.¹¹ Unlike Mr. Lampkin, Mr. Elshami is a recent employee of a prominent politician, having served as Democratic House Speaker Nancy Pelosi's chief of staff and senior communications advisor from 2007 through 2017.¹² Mr. Lampkin and Mr. Elshami appear together as co-lobbyists numerous times in Brownstein Hyatt's coronavirus¹³ lobbying-disclosure reports, including those for Apollo Global Management.¹⁴ You mentioned Apollo in your letter but did not mention that the Apollo lobbying team included Mr. Elshami.

Notably, Brownstein Hyatt lobbyists are not even close to being the most prolific on CARES Act matters. According to the Center for Responsive Politics, David Castagnetti and David R. Thomas each had nearly three times the lobbying reports as Mr. Lampkin.¹⁵ Mr. Castagnetti describes himself as a "trusted Democratic advisor" whose career "has put him at the highest levels of politics, business and government."¹⁶ Mr. Thomas describes himself as "a top Democratic strategist" who previously served as "Deputy Director of Legislative Affairs for Vice President Al Gore" and as Chief of Staff to House Impeachment Manager Zoe Lofgren (D-CA).¹⁷

While I agree lobbying can distort the policymaking process and may even be unlawful in some circumstances, these additional facts demonstrate that public records do not support opening an investigation or audit based on the misleading narrative that "lobbyists who worked for Trump's campaigns, committees and administration are feasting on the public health emergency."¹⁸ Indeed, targeting individuals based on political affiliation under the guise of lobbying concerns is the exact sort of partisanship and favoritism IGs must avoid. And no one can reasonably conclude that whether a given lobbying activity is worthy of investigation depends on the political affiliations of those involved. At any rate, CARES Act-related lobbying—like all lobbying—is an entirely bipartisan activity.

Take, for example, the CARES Act Provider Relief Fund, which provided support for the health care industry. While I lack statutory jurisdiction over the Provider Relief Fund, the program is of

¹¹ *Id.*

¹² See Nadeam A. Elshami, Policy Director, Brownstein Hyatt Farber Schreck (last accessed Sept. 13, 2020), <https://www.bhfs.com/people/policy/nelshami>; Nadeam Elshami, LinkedIn (last accessed Sept. 13, 2020), <https://www.linkedin.com/in/nadeam-elshami>.

¹³ Some reports reference the CARES Act by name; some reference lobbying on "coronavirus" or "COVID-19 response" issues but do not specifically say "CARES Act."

¹⁴ Brownstein Hyatt Farber Schreck, LLP, Lobbying Report (April 20, 2020), <https://soprweb.senate.gov/index.cfm?event=getFilingDetails&filingID=2ED5052A-FDEE-46D1-89C8-A703C6E17B0F&filingTypeID=51>.

¹⁵ Center for Responsive Politics, Lobbyists lobbying on H.R.748: CARES Act (last accessed Sept. 13, 2020), <https://www.opensecrets.org/federal-lobbying/bills/lobbyists?cycle=2020&id=hr748-116>.

¹⁶ Mehlman Castagnetti Rosen & Thomas, Bipartisan Team (last accessed Sept. 13, 2020), <https://mehlmancastagnetti.com/bipartisan-team/>.

¹⁷ *Id.*

¹⁸ COVID Lobbying Palooza, Public Citizen (July 2020) (alterations made to capitalization), <https://www.citizen.org/wp-content/uploads/Covid-Lobbying-Palooza.pdf>.

interest to me because health care providers can potentially receive hundreds of millions of dollars from the fund as well as hundreds of millions of dollars from the Federal Reserve’s liquidity programs under CARES Act § 4003—programs over which I have jurisdiction. I noted my concern about potential “double-dipping” into CARES Act funds in my initial report to Congress.

In the initial Provider Relief Fund distribution, HHS disbursed \$58 million to Massachusetts General Hospital—one of several hospitals in the Mass General Brigham system. On April 23, you and Senator Markey wrote to HHS Secretary Alexander Azar, claiming “the manner in which HHS has disbursed these funds to health care providers in hard-hit states such as Massachusetts has not adequately addressed their needs.”¹⁹ You then “call[ed] on HHS to recognize this shortcoming and make needed adjustments to future Provider Relief Fund disbursements.”²⁰

A week after your letter, Mass General Brigham hired BGR Government Affairs lobbyists to “[p]rovide strategic counsel and policy analysis related to federal payment and policy issues impacting hospitals.”²¹ The registration and subsequent disclosures make no mention of the CARES Act, but it is hard to imagine what “payment and policy issues” unrelated to the CARES Act would require the services of a lobbying team consisting of Haley Barbour (former Republican governor of Mississippi),²² Bob Wood (former Bush Administration official),²³ and Remy Brim (your legislative assistant and senior health policy advisor from 2013 and 2016).²⁴ Mass General Brigham hired this bipartisan lobbying team even though it already had a different lobbying firm and its own in-house lobbyist covering various CARES Act matters, including relief to health care providers.²⁵

¹⁹ Letter from Elizabeth Warren, United States Senator, and Edward J. Markey, United States Senator, to Alex Azar, Secretary of the United States Department of Health and Human Services (April 23, 2020), <https://www.warren.senate.gov/imo/media/doc/MA%20Priorities%20in%20Provider%20Relief%20Fund.pdf>.

²⁰ *Id.*

²¹ BGR Government Affairs, Lobbying Registration (May 1, 2020), <https://soprweb.senate.gov/index.cfm?event=getFilingDetails&filingID=1B93E9C8-CAD7-4128-9C50-C374D51FC8EB&filingTypeID=2>.

²² Governor Haley Barbour, Founding Partner, BGR Group (last accessed Sept. 14, 2020), <https://bgrdc.com/team-member-post/governor-haley-barbour/>.

²³ Bob Wood, President and CEO, BGR Group (last accessed Sept. 14, 2020), <https://bgrdc.com/team-member-post/bob-wood/>. Notably, Bob Wood was chief of staff to HHS Secretary Tommy Thompson during the second Bush administration at the same time now-Secretary Azar was Thompson’s general counsel.

²⁴ Remy L. Brim, Ph.D., Health and Life Sciences Practice Co-Head, BGR Group (last accessed Sept. 13, 2020), <https://bgrdc.com/team-member-post/remy-brim-ph-d/>; Remy Brim, LinkedIn (last accessed Sept. 13, 2020), <https://www.linkedin.com/mwlite/in/remylbrim>.

²⁵ See, e.g., O’Neill, Athy & Casey, P.C., Lobbying Report (April 19, 2020), <https://soprweb.senate.gov/index.cfm?event=getFilingDetails&filingID=3D64628A-3120-4459-8372-320EAB58A033&filingTypeID=51>; Partners HealthCare, Lobbying Report (April 23, 2020), <https://soprweb.senate.gov/index.cfm?event=getFilingDetails&filingID=75652C0D-2172-44DB-A5A3-E51FBFFD89F0&filingTypeID=51>; Mass General Brigham (formerly Partners HealthCare), Lobbying Report (July 6, 2020), <https://soprweb.senate.gov/index.cfm?event=getFilingDetails&filingID=ADFA0837-E0DB-424B-B4B4-56933B6E3227&filingTypeID=60>.

HHS presently reports that Massachusetts General Hospital's General Distribution total is at least \$153.7 million, nearly \$100 million more than its first distribution. All the hospitals in the Mass General Brigham system have received a total of about \$343 million in General Distributions from the Provider Relief Fund. The bottom line is that the hospital system received a greater share of the provider relief fund after your letter and after hiring the BGR lobbying team that included your former staffer. As this example demonstrates, lobbying is a thoroughly bipartisan affair, making IG investigations predicated on party affiliation especially inappropriate.

As I stated at the outset, I am aware of the risk that conflicts of interest will arise in the context of CARES Act, Division A programs over which I have statutory jurisdiction. And I will continue monitoring and reporting on the issue as appropriate in my subsequent quarterly reports.²⁶

During my confirmation process, I promised to "always pay due respect to congressional requests as I did in my decade of experience as General Services Administration IG."²⁷ But I also promised to "independently assess my office's abilities, resources, and priorities, and conduct those investigations supported by an independent factual predicate."²⁸ In short, publicly available records reveal that your letter and the *Public Citizen* article on which it relies present a select universe of facts drawn purely along political lines. Unless the position is that only lobbyists with a particular political affiliation should be investigated for CARES Act-related lobbying, your letter does not identify a "clear and clearly stated" independent basis to open an investigation.

Senator Warren, I stand ready to work with you to protect the taxpayers' hard-earned money in accordance with the principles I have outlined in this letter. But, respectfully, I cannot open targeted investigations and issue subpoenas based on *Public Citizen's* article and the distorted view of the facts it presents.

Sincerely,



Brian Miller, Inspector General
Special Inspector General for Pandemic Recovery

²⁶ To avoid ambiguity regarding the term "conflict of interest," I use the term to refer to potential violations of Federal law. See *e.g.*, 18 U.S.C. § 208.

²⁷ Questions for the Record, *supra* note 1, at Question 24.

²⁸ *Id.*

ELIZABETH WARREN
MASSACHUSETTS

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July 15, 2020

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

Dear Special Inspector General Miller:

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

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

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

² *Id.*

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

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

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

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

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

We had the following exchange during that hearing:

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

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

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

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

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

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

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

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

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

MILLER: It's possible, Senator.

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

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

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

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

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

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

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

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

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

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Elizabeth Warren", written over a horizontal line.

Elizabeth Warren
United States Senator