



## Office of the Special Inspector General for Pandemic Recovery

December 29, 2023

Hon. Maggie Hassan  
Chair, Emerging Threats and Spending Oversight Subcommittee  
Homeland Security and Governmental Affairs Committee  
United States Senate  
324 Hart Senate Office Building  
Washington, DC 20510

Hon. Mitt Romney  
Ranking Member, Emerging Threats and Spending Oversight Subcommittee  
Homeland Security and Governmental Affairs Committee  
United States Senate  
Russell Senate Office Building, SR-354  
Washington, DC 20510

**Re: Follow-up to SIGPR Subcommittee Appearance on November 14, 2023**

Dear Chair Hassan and Ranking Member Romney:

During my appearance before the Homeland Security and Governmental Affairs Emerging Threats and Spending Oversight Subcommittee on November 14, 2023, you and your colleagues expressed great interest in “lessons learned” relating to the execution of the various relief programs created by the CARES Act. In addition, members of the subcommittee raised a number of questions relating to potential fraud in the administration of the Coronavirus Relief Fund (CRF) created by the CARES Act. I am writing to follow up on those particular inquiries.

**Lessons Learned from Oversight of CARES Act Programs**

SIGPR is currently undertaking what we anticipate will be a series of reports setting forth “lessons learned” based on SIGPR’s oversight work. The first of those reports will be issued in January 2024, but we wish to share with you now what we believe to be three of the most important lessons learned: (1) the need for an “access to records clause” in all federal program agreements; (2) the need for Treasury to develop a contingency plan for use in the event that it acts again as a direct lender as part of an economic relief program; and (3) the need to develop more detailed and robust guidance for Treasury to use in the future for administration of such direct loan programs.

***Access to Records.*** SIGPR recommends that Congress mandate the inclusion of an “access to records clause” in all agreements signed between Federal entities, relief program beneficiaries, and any additional stakeholders. The CARES Act granted SIGPR access to “information or assistance from any department, agency, or other entity of the Federal Government...” (15 U.S.C. § 9053(e)(4)) but it did not provide access to information held by private entities. This has complicated and slowed SIGPR’s collection of information about Main Street Lending Program loans for purposes of both audits and investigations. To gain such information, SIGPR has had to resort to time-consuming remedies and resource-intensive tools,

including the preparation and issuance of 63 Inspector General subpoenas (as of December 13, 2023), to obtain information from the Federal Reserve Bank of Boston and the lending banks. By mandating the inclusion of an “access to records clause” in agreements, Congress will ensure that oversight entities can effectively and timely perform their jobs without needing to overcome unnecessary obstacles arising out of questions of jurisdiction.

**Treasury as a Lender.** Treasury should develop a contingency plan that considers direct loan program objectives and risks that can be used for future economic crises. By requiring Treasury to do so ahead of time, Congress can minimize the likelihood that risks will be overlooked in the rush toward program implementation. In the CARES Act, Congress positioned Treasury as a commercial lender with respect to direct loan programs, but Treasury was not subject to the same sort of oversight or regulatory standards that governmental entities such as the Federal Financial Institutions Examination Council (FFIEC) and Treasury’s Office of the Comptroller of the Currency (OCC) apply to private commercial lenders. If Congress believes that Treasury will need to act as a commercial lender in the future, Treasury (and other agencies and external stakeholders, as applicable) should use inter-crisis periods to develop and then refine a framework of oversight and standards that can be used to quickly set up programs in times of crisis.

**Direct Loan Guidance.** Treasury’s guidance for implementing and administering direct loan programs is sparse. The limited guidance made it difficult for SIGPR to perform its statutory audits, evaluations, and reviews to determine program effectiveness and may have limited the speed and quality of Treasury’s program implementation. Therefore, Congress should encourage a review of *Principles of Federal Appropriations Law*,<sup>1</sup> other Federal laws and regulations, and relevant GAO and OMB guidance to determine whether updates to guidance appropriate for direct loans is necessary or desirable. This effort can help establish a framework for future direct loan programs and identify risks to aid policymakers in their decision to create direct lending programs or not.

### **Information Relating to Fraud in the CRF Program**

Another subject in which you and colleagues expressed interest during the hearing was the possibility of fraud that has occurred in the Coronavirus Relief Fund (CRF). Title VI of the Social Security Act, as amended by Title V of Division A of the CARES Act established the CRF and appropriated \$150 billion for making payments to states, tribal governments, units of local government, the District of Columbia, and United States territories. Payments were made in accordance with requirements outlined in Title V of which \$3 billion was reserved for payments to the District of Columbia and U.S. territories and \$8 billion was reserved for payments to tribal

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<sup>1</sup> <https://www.gao.gov/legal/appropriations-law/red-book>. *Principles of Federal Appropriations Law*, also known as the Red Book, is GAO’s multi-volume treatise concerning federal fiscal law. The Red Book provides text discussion with reference to specific legal authorities to illustrate legal principles, their application, and exceptions. These references include GAO decisions and opinions, judicial decisions, statutory provisions, and other relevant sources. The Red Book contains guidance for grants, cooperative agreements, and guaranteed and insured loans. However, there is almost no guidance for direct loans.

governments. Further, no state received a payment less than \$1.25 billion. The CARES Act assigned the Department of the Treasury Office of Inspector General with responsibility for compliance monitoring and oversight of the receipt, disbursement, and use of CRF payments. Treasury OIG also was assigned authority to recoup CRF proceeds in the event that it was determined that a recipient of a CRF payment failed to comply with applicable requirements.

The CARES Act, as amended, stipulated that CRF recipients shall use the funds provided under a payment made under Title V to cover only those costs that:

- (1) are necessary expenditures incurred due to the public health emergency with respect to COVID-19;
- (2) were not accounted for in the budget most recently approved as of March 27, 2020; and
- (3) were incurred between March 1, 2020 and December 31, 2021.

The statute also required periodic reporting from the prime CRF recipients that included the specific expenditure category towards which ultimate beneficiary of the funds applied those funds, as well as further detailed information about those expenditures. We have included a list of the permissible expenditure categories in Appendix A to this letter.

In 2023, the Treasury OIG directed a series of “desk reviews” of a sample of CRF recipients carried out by the audit, advisory, and accounting services firm, Castro & Company LLC. The purpose of the desk reviews was to “evaluate the prime recipient’s documentation supporting the uses of CRF proceeds as reported [to Treasury through its designee] and assess risk of unallowable use of funds.” The sample size of a CRF recipient’s reviewed contracts, grants, loans, transfers to other governments, direct payments, and aggregate reporting was “based on risks identified in other audit reports, . . . reporting deficiencies identified by the monitoring/approval team, and anomalies identified by the Data Analytics manager.”

Treasury OIG caused the performance of 25 desk reviews, reviewing the receipt of a total of \$48.7 billion in CRF proceeds (32.46 percent of the total) by eight states, seven tribes, four counties, three cities, two territories, and one town. These desk reviews identified \$2.2 billion (4.52% of reviewed CRF proceeds) in “questioned costs” and 11 entities with high risk of unallowable use of CRF funds. The table on the attached Appendix B summarizes the findings of these desk reviews.

As you know, in the absence of new legislation, SIGPR may not undertake investigations into the possibility of CRF fraud—following an opinion by the Department of Justice. Moreover, we do not mean to suggest by this letter that any such fraud has, in fact, been committed by the CRF recipients that were the subject of the Treasury OIG desk reviews. Without further investigation, for example, it is not possible to determine whether some or all of the discrepancies identified by the desk reviews are attributable to fraud or just poor record-keeping, and do not, in fact, indicate criminal conduct by the CRF recipients or the entities to which those

recipients distributed funds. We are bringing this information to your attention solely because of your expression of interest in potential CRF fraud during my recent subcommittee appearance.

I hope that this information is helpful to you and your staff. Please let me know if there is any information on any other subject that you would like to receive from us.

Respectfully,

A handwritten signature in blue ink, appearing to read 'B. Miller', with a long horizontal flourish extending to the right.

Brian D. Miller  
Special Inspector General

## **APPENDIX A**

Permissible expenditures included:

- (1) Administrative Expenses;
- (2) Budgeted Personnel and Services Diverted to a Substantially Different Use;
- (3) COVID-19 Testing and Contact Tracing;
- (4) Economic Support (Other than Small Business, Housing, and Food Assistance);
- (5) Expenses Associated with the Issuance of Tax Anticipation Notes;
- (6) Facilitating Distance Learning;
- (7) Food Programs;
- (8) Housing Support;
- (9) Improve Telework Capabilities of Public Employees;
- (10) Medical Expenses;
- (11) Nursing Home Assistance;
- (12) Payroll for Public Health and Safety Employees;
- (13) Personal Protective Equipment;
- (14) Public Health Expenses;
- (15) Small Business Assistance;
- (16) Unemployment Benefits; and
- (17) Workers' Compensation.

## **APPENDIX B**

U.S. Treasury Department OIG-Contracted Desk Reviews					
Letter Date	Letter Recipient	Recipient's Total CRF Allocation	Questioned Costs	Risk of Unallowable Use of Funds	Audit Recommended
08/09/23	Commonwealth of Virginia	\$ 3,109,502,836	\$ 870,559,763	High	Yes
07/07/23	Los Angeles County, CA	\$ 1,057,341,431	\$ 249,052,032	High	Yes
08/08/23	Navajo Nation Tribal Government	\$ 714,189,631	\$ 80,844,219	High	Yes
06/29/23	Lancaster County, PA	\$ 95,224,629	\$ 38,793,071	High	Yes
08/08/23	Commonwealth of Puerto Rico	\$ 2,240,625,864	\$ 33,681,692	High	Yes
07/07/23	Turtle Mountain Bank of Chippewa Indians	\$ 54,827,702	\$ 32,333,620	High	Yes
07/21/23	State of Texas	\$ 8,038,314,290	\$ 17,288,575	High	Yes
08/08/23	Commonwealth of Northern Mariana Islands	\$ 36,284,218	\$ 11,146,813	High	Yes
07/28/23	Native Village of Point Hope	\$ 2,348,063	\$ 2,348,064	High	Conditional
07/20/23	City of Dallas, TX	\$ 234,443,127	\$ 2,211,594	High	Yes
06/26/23	Chippewa Cree Tribe	\$ 19,333,069	\$ 75,091	High	Yes
07/27/23	State of Ohio	\$ 3,754,114,827	\$ 86,801	Low	No
07/07/23	State of California	\$ 9,525,564,743	\$ 6,952	Low	No
01/31/23	Broward County, FL	\$ 340,744,702	\$ -	Low	No
06/27/23	City of New York	\$ 1,454,710,277	\$ -	Low	No
06/26/23	State of Illinois	\$ 3,518,945,365	\$ -	Low	No
02/14/23	State of New York	\$ 5,135,624,853	\$ -	Low	No
06/27/23	The Cherokee Nation, OK	\$ 410,906,000	\$ -	Low	No
01/09/23	Town of Hempstead, NY	\$ 133,832,095	\$ -	Low	No
07/20/23	San Bernardino County, CA	\$ 380,408,020	\$ 4,151,612	Moderate	Conditional
07/26/23	State of Tennessee	\$ 2,363,433,874	\$ 1,162,364	Moderate	Conditional
07/21/23	Pleasant Point Indian Reservation	\$ 4,929,535	\$ 339,672	Moderate	Conditional
07/21/23	City of Phoenix, AZ	\$ 293,320,141	\$ 147,379	Moderate	Conditional
03/28/23	Fort McDermitt Paiute-Shoshone Tribe	\$ 6,978,459		Moderate	No
07/20/23	State of Florida	\$ 5,855,807,379	\$ 893,154,358	not specified	not specified
		\$ 48,781,755,130	\$ 2,237,383,673		

Please note that the “letter date” in the chart above refers to the letter issued at the conclusion of each desk review.