

Clients & Friends Memo

COVID-19 Update: Meet the Special Inspector General for Pandemic Recovery

May 6, 2020

The Senate Banking Committee reconvened in person and by video on Tuesday, May 5, 2020, to hold a hearing on President Trump's nomination of Brian D. Miller to serve as the Special Inspector General for Pandemic Recovery ("**SIGPR**"). Mr. Miller, a former prosecutor and Inspector General for the General Services Administration, has served as Senior Associate Counsel and Special Assistant to President Trump since December 2018. However, upon Senate confirmation, Mr. Miller will undertake an immense new role: providing independent oversight of more than \$500 billion in Treasury Department funding aimed at supporting businesses and municipalities impacted by the COVID-19 pandemic. As a follow-up to Cadwalader's recent Clients & Friends Memo, [Federal Investigators Prepare to Investigate and Prosecute Fraud in Emergency Loan Programs](#),¹ which outlined the roles of federal inspectors general in detecting fraud and abuse in various pandemic relief programs, this article provides a more in-depth look at the SIGPR's role in overseeing relief provided under the Title IV of the CARES Act.

The SIGPR's Oversight of Treasury Department Relief

The CARES Act created the SIGPR – a new, independent inspector general within the Treasury Department – to provide oversight of Treasury Department loans, loan guarantees and other investments made under Title IV of the CARES Act. Specifically, this encompasses oversight of (1) \$29 billion in Treasury Department loans or loan guarantees for air carriers and related businesses, (2) \$17 billion in Treasury Department loans or loan guarantees to businesses that are "critical to maintaining national security," and (3) \$454 billion in Treasury Department investments in emergency Federal Reserve facilities ("**13(3) facilities**") that support eligible businesses, States, municipalities and Tribal governments. Treasury Department investments in 13(3) facilities, alone, could support more than \$6 trillion in loans and other liquidity.²

¹ See Cadwalader, Wickersham & Taft, LLP *COVID-19 Update: Federal Investigators Prepare to Investigate and Prosecute Fraud in Emergency Loan Programs* (Apr. 24, 2020), available at <https://www.cadwalader.com/resources/clients-friends-memos/covid-19-update-federal-investigators-prepare-to-investigate-and-prosecute-fraud-in-emergency-loan-programs>.

² Cadwalader has issued a series of Clients & Friends memo describing the CARES Act and other pandemic relief, including Federal Reserve 13(3) facilities. See, e.g., *COVID-19 Update: Federal Reserve Announces Main Street Lending Program*

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Transparency of Treasury Department Spending

The Coronavirus Aid, Relief, and Economic Security Act (the “**CARES Act**”) directs the SIGPR to collect and summarize information relating to the Treasury Department’s activities under Title IV. This responsibility includes (i) a description of the categories of loans, loan guarantees and other investments made by the Treasury Department, (ii) a listing of the businesses that receive support under each category, (iii) an explanation of the Treasury Department’s rationale for entering into each transaction, (iv) information associated with managers or servicers hired in connection with each transaction, and (v) an estimate of the amount outstanding and any loss or gain recognized from each transaction. The SIGPR is also directed to publish quarterly reports to Congress regarding the Treasury Department’s investments under Title IV. During the May 5, 2020 Senate confirmation hearing, Mr. Miller committed to work closely with the Pandemic Response Accountability Committee (“**PRAC**”), a committee of inspectors general established by the CARES Act to coordinate and support oversight of all federal pandemic relief programs.³ The PRAC website (<https://pandemic.oversight.gov>) will soon include detailed information about recipients of pandemic relief in a user-friendly and searchable format, as required by the CARES Act. However, it is unclear at this time if the PRAC website or the SIGPR website will include all of the detailed information required to be collected about each Treasury Department investment.

Recommendations to Prevent and Detect Fraud and Abuse

The SIGPR is responsible for making recommendations to improve the administration and prevent fraud and abuse of Treasury Department loans, loan guarantees and other investments made under Title IV of the CARES Act, and for reporting out those recommendations to Congress on a semi-annual basis. The SIGPR’s recommendations will presumably highlight any weaknesses or failures of restrictions on Treasury Department investments – such as those relating to stock buybacks, dividend payments, executive compensation and maintaining employment levels. For example, the Special Inspector General of the Troubled Asset Relief Program (“**SIGTARP**”), on which the SIGPR is modeled, consistently published observations and recommendations relating to executive compensation paid by institutions that received federal support through the \$800 billion Troubled Asset Relief Program.⁴

(Apr. 16, 2020), available at <https://www.cadwalader.com/resources/clients-friends-memos/covid-19-update-federal-reserve-announces-main-street-lending-program>. Cadwalader has developed a compendium of Clients & Friends memos related to the COVID-19 pandemic, available at <https://www.cadwalader.com/resources/resources/>.

³ Both the Inspector General for the Federal Reserve Board of Governors and the Deputy Inspector General for the Treasury Department have been named to the PRAC. Michael Horowitz, Inspector General of the Department of Justice (“**DOJ**”) and a former Cadwalader partner, is currently serving as Acting Chair of the PRAC.

⁴ See, e.g., SIGTARP, *Extent of Federal Agencies’ Oversight of AIG Compensation Varies, and Important Challenges Remain* (Oct. 14, 2009), available at https://www.sigtarp.gov/Audit%20Reports/Extent_of_Federal_Agencies%27_Oversight_of_AIG_Compensation_Varied_and_Important_Challenges_Remain_10_14_09.pdf; SIGTARP, *Treasury Continues to Approving Excessive Pay for Top*

Audits, Investigations and Referrals of Criminal Activity

The SIGPR is also directed by the CARES Act to supervise, conduct and coordinate audits and investigations of the Treasury Department's investments under Title IV. As described in [Federal Investigators Prepare to Investigate and Prosecute Fraud in Emergency Loan Programs](#),⁵ the SIGPR is authorized to issue subpoenas and to obtain information or assistance upon request from any department, agency, or other entity of the federal government. Should any request be unreasonably refused or not provided, the SIGPR is required under the CARES Act to report to Congress. This reporting requirement to Congress, rather than an agency head as required of others inspectors general, is the subject of a signing statement by President Trump. Mr. Miller committed at the May 5, 2020 hearing to act independently and to notify Congress as required by the law, but it remains unclear at this time what impact, if any, the President's signing statement will have on the enforcement of SIGPR subpoenas and requests for information.

The SIGPR also has direct law enforcement authority reserved only to certain inspectors general, including independent authority to seek and execute search and arrest warrants; however, the SIGPR must expeditiously refer any criminal activity identified to the DOJ for prosecution. If the SIGTARP's activities since 2008 are any indication, the SIGPR is likely to pursue fraud investigations aggressively and refer hundreds of criminal investigations to the DOJ for prosecution. To date, SIGTARP investigations have resulted in over 430 criminal prosecutions by the DOJ and more than 370 convictions for bank fraud, securities fraud, money laundering, mortgage fraud, conspiracy and other criminal offenses.⁶

During the May 5, 2020 hearing, Mr. Miller stated that, if confirmed, his office will investigate potential fraud and abuse of the Treasury Department's investments to its fullest authority.

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Executives at Bailed-Out Companies (Jan. 28, 2013), available at https://www.sigtar.gov/Audit%20Reports/2013_SIGTARP_Bailout_Pay_Report.pdf.

⁵ *Federal Investigators Prepare to Investigate and Prosecute Fraud in Emergency Loan Programs*, *supra* note 1.

⁶ See SIGTARP Semiannual Report to Congress (Oct. 30, 2019), available at https://www.sigtar.gov/Quarterly%20Reports/October_30_2019_Report_to_Congress.pdf; SIGTARP Financial Institution Crimes & Fines Database, available at <https://www.sigtar.gov/Pages/wd9er7g.aspx>.

If you have questions about your participation in an emergency program administered by the Treasury Department or the Federal Reserve under Title IV of the CARES Act, including the risk of investigation and liability, the attorneys listed below have experience defending allegations of fraud and would be happy to respond to your questions or concerns.

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