

*The Legal Intelligencer*

# Stimulus Fraud Part 4: CARES Act Oversight Provisions and Agency Collaboration

July 08, 2020

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In this final installment, we will look at the CARES Act's oversight provisions and the ways in which government agencies will likely collaborate to investigate and prosecute those who attempt to take advantage of the act's funding provisions.

In Part I of our series, we analyzed the spending features of the COVID-19 stimulus packages and introduced the Troubled Asset Relief Program (TARP) as the closest historical analogue to them. In Part II, we discussed TARP in greater detail and highlighted the various ways fraudsters exploited it. Part III examined coordination among various federal agencies and the prosecutions that coordination produced as foreshadowing of what we expect will occur with respect to the COVID-19 stimulus programs. In this final installment, we will look at the CARES Act's oversight provisions and the ways in which government agencies will likely collaborate to investigate and prosecute those who attempt to take advantage of the act's funding provisions.

## INTRODUCTION

As discussed in the last installment, government oversight of the TARP program provides valuable lessons. The Special Inspector General for the Troubled Asset Relief Program (SIGTARP) has, for more than 10 years, investigated criminal conduct in connection with TARP. Section 121 of the Emergency Economic Stabilization Act of 2008 (EESA) established the office as a law enforcement office, granting it the power to search, seize and arrest. Since its establishment in 2008, SIGTARP has coordinated—and continues to coordinate—with the Department of Justice (DOJ), Federal Bureau of Investigations (FBI), Securities Exchange Commission (SEC), Internal Revenue Service, Financial Crimes Enforcement Network, Small Business Administration (SBA) and other federal and state investigative agencies to investigate criminal conduct in conjunction with TARP. Thus, SIGTARP leverages preexisting law enforcement resources to build a robust oversight structure.

Congress did not task SIGTARP alone with overseeing the stimulus program. Rather, Congress rightfully recognized that the unprecedented massive influx of monetary relief into the economy would be accompanied by a significant risk of waste, fraud, and abuse. Thus, Congress created the Congressional Oversight Panel (COP), a bi-partisan panel charged with “providing public accountability for Treasury’s use of its TARP authority.” The COP was authorized to hold hearings, review official data, and issue reports on the actions taken by Treasury and financial institutions pursuant to TARP. In its final report, issued March 16, 2011, the COP noted that “TARP has become one of the most thoroughly scrutinized government programs in U.S. history.” Yet, the COP cited that government oversight as the driving force behind improving

TARP, thus increasing taxpayer returns. For example, in July 2009, a COP report found that Treasury was only recovering 66 percent of funds possible through its sale of stock options through the Capital Purchase Program. As a result, Treasury altered the approach taken and subsequent sales resulted in a recovery of 103 cents on the dollar. As dictated by statute, the COP terminated in April 2011.

## INVESTIGATION OF CARES ACT FRAUD

Similar to TARP, the CARES Act provides for oversight through three regulatory bodies: a Special Inspector General for pandemic recovery; the Pandemic Response Accountability Committee; and a Congressional Oversight Committee.

**Special Investigator General for Pandemic Recovery (SIGPR).** The CARES Act, much like TARP, establishes a new independent IG: the SIGPR. Similar to SIGTARP, Congress tasked SIGPR with auditing and investigating CARES Act loans and investments. SIGPR is appointed by the President, with the advice and consent of the Senate. The CARES Act directs SIGPR to “conduct, supervise, and coordinate audits and investigations of Title IV of the CARES Act as well as any other programs the Treasury establishes under the act.” The act requires that SIGPR maintain certain information regarding the Treasury Department’s programs and transactions pursuant to the act. Additionally, SIGPR must submit quarterly reports to Congress summarizing its activities. The quarterly report must also include a statement of the transactions made during the preceding quarter. The act provides SIGPR with an appropriation of \$25 million, and dictates that it shall terminate in 2025. Additionally, it grants SIGPR with the independent authority to obtain and execute search and arrest warrants.

On June 2, the Senate confirmed Brian D. Miller, a member of the White House counsel’s office, as the first SIGPR. Prior to serving in the White House, Miller served as a federal prosecutor for 15 years. Previously, Miller served as an inspector general, as in 2005, President George W. Bush appointed Miller to serve as the inspector general for the General Services Agency (GSA). Miller served in this role from 2005 to 2014. As the GSA-IG, Miller is known for leading a year-long investigation into spending by the agency’s leadership. The investigation focused on a lavish four-day conference held in Las Vegas that cost tax payers almost \$1 million and culminated in the resignation of the agency’s administrator.

During his recent Senate confirmation hearings, Miller promised to “conduct every audit and investigation with fairness and impartiality.” He also vowed to be “vigilant to protect the integrity and independence of the Office of [SIGPR]” and pledged to “seek the truth in all matters that come before [him] and to use [his] authority and resources to uncover fraud, waste, and abuse.” Following confirmation, Miller will likely begin hiring federal law enforcement agents from federal and state agencies and auditors to conduct criminal and regulatory investigations.

**The Pandemic Response Accountability Committee.** The CARES Act created the Pandemic Response Accountability Committee (PRAC) and charged it with coordinating and supporting the oversight of all federal pandemic relief programs. To fulfill this function, Congress allocated the PRAC an \$80 million budget. DOJ Inspector General Michael Horowitz is the acting chair of the committee, which is composed of 10 inspector generals, including the inspector generals of the Departments of Defense, Education, Health and Human Services, Homeland Security, Justice, Labor and the Treasury. Also on the committee are the inspector general of the Small Business Administration and the Treasury Inspector General for Tax Administration. The CARES Act did not, however, establish the PRAC as a stand-alone organization. Rather, the act created the PRAC as a committee of the Council of Inspector General on Integrity and Efficiency, the independent entity within the executive branch established in 2008 to “address integrity, economy, and effectiveness issues that transcend individual government agencies.”

The PRAC is responsible for auditing and reviewing the federal response to COVID-19, as well as for coordinating with other inspector generals on these activities. The CARES Act mandates that the PRAC make regular reports to both the public and Congress regarding its activities, and obligates the committee to report to Congress if information or assistance is “unreasonably refused or not provided.” Further, the CARES Act provides that the PRAC may issue and enforce subpoenas and hold public hearings.

**Congressional Oversight Commission.** Lastly, the CARES Act established a Congressional Oversight Commission (the commission) to oversee the Treasury and Federal Reserve’s implementation of the stimulus package. The commission—which will ultimately comprise five members selected by majority and minority leadership from both the House and Senate—has the authority to hold hearings, take testimony, and receive evidence. The act mandates that the commission submit a report to Congress every 30 days regarding CARES Act funds that have been distributed and the impact and effectiveness of the loans made pursuant to the program. The commission is authorized to operate until Sept . 30, 2025.

**House Select Committee on the Coronavirus Crisis.** In addition to the three oversight bodies created by the CARES Act itself, the House established the House Select Committee on the Coronavirus Crisis. The committee—which was modeled after the special committee to Investigate the National Defense Program, established to oversee spending as the entire nation mobilized for World War II—is chaired by James E. Clyburn, the majority whip (D-SC). With regards to stimulus funds, the select committee is charged with investigating “the efficiency, effectiveness, equity and transparency of the use of taxpayer funds and relief programs to address the coronavirus crisis,” and “reports of waste, fraud, abuse, price gouging, profiteering, or other abusive practices related to the coronavirus crisis.”

## **CARES ACT ENFORCEMENT ACTIVITY**

Despite a nascent enforcement infrastructure, CARES Act fraud enforcement has started off with an expected bang. DOJ has made it clear that it will take swift action against individuals and entities who fraudulently take advantage of CARES Act funds. In a March 16 memorandum to all U.S. Attorneys, Attorney General William Barr wrote “it is essential that the Department of Justice remain vigilant in detecting, investigating and prosecuting wrongdoing related to [COVID-19].” He directed each U.S. Attorneys’ Office “to prioritize the detection, investigation, and prosecution of all criminal conduct related to the current pandemic.” To that end, on May 5, the DOJ filed its first charges against individuals who were alleged to have filed fraudulent applications for SBA PPP loans under the CARES Act. The DOJ alleged that the two individuals conspired to obtain PPP loans, representing that they had dozens of employees earning wages at four different business entities. The indictment alleges, however, that there were no employees working for any of the businesses. In announcing the charges, the U.S. Attorney for Rhode Island cited Barr’s direction to prioritize criminal conduct related to the pandemic. Moreover, the indictment was the product of a partnership between the SBA’s Inspector General’s office and the DOJ, as the SBA-IG noted, the “SBA-OIG and its law enforcement partners are actively working together to root out fraud in SBA’s programs and bring those responsible to justice.” Thus, the DOJ and the SBA-OIG have made it clear that they will be swift to collaborate and prosecute those who seek to take advantage of the PPP.

Similarly, on May 13, the DOJ announced charges against an Atlanta reality-TV star in conjunction with the PPP. According to the indictment, the individual submitted a PPP loan application certifying that he had a certain number of employees and that the funds would be used to “retain workers and maintain payroll or make mortgage interest payments, lease payments, and utility payments.” Yet, after obtaining more than \$2 million in PPP funds, the individual allegedly used more than \$1.5 million on personal expenses, including jewelry and child support payments.

Since the CARES Act was enacted, the DOJ has initiated at least 39 criminal prosecutions throughout the country. The SEC has also been active, initiating at least 26 enforcement actions during the same period. And, these actions have come during the height of the pandemic as federal agencies use unorthodox means of investigating and securing indictments. In fact, in many jurisdictions, grand juries have been suspended and access to magistrates to obtain warrants is limited. Moreover, the majority of these enforcement actions and investigations were initiated prior to the confirmation of Miller as SIGPR and were spearheaded by federal agencies that were not tasked with the sole responsibility of investigating CARES Act fraud. For example, the DOJ directed its Market Integrity and Major Fraud Unit to oversee investigations related to the PPP. The SBA, which administers the PPP, announced recently that it would investigate all PPP loans greater than \$2 million.

Thus, in the months and years to come, we can expect that CARES Act enforcement efforts will skyrocket. This will be especially true as SIGPR is fully staffed and becomes operational, and the PRAC's coordination efforts are refined. Under normal circumstances, it would take time for a new enforcement agency to ramp up. Given the current state of affairs, it may take SIGPR even more time to become the robust oversight entity contemplated by the act. Miller anticipates hiring 75 to 100 employees to support SIGPR, an effort that will surely take time, especially during the pandemic. Yet, what is clear, is that various governmental agencies such as the SBA-OIG, the FBI, and the DOJ are investigating and pursuing claims that individuals and entities have fraudulently obtained, or attempted to obtain, funds pursuant to the CARES Act. And, if SIGTARP is illustrative, SIGPR will be an active enforcement entity for many years to come.

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