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New House committee on coronavirus may shift investigatory landscape for federal fund recipients

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With Congress continuing to pass additional stimulus to supplement the more than \$2 trillion under the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), the U.S. House of Representatives’ [new Select Subcommittee on the Coronavirus Crisis](#) has the potential to shift the center of public oversight activity from the Treasury Department to Congress.

Created on April 23 by the House’s passage of a bill sponsored by House Rules Committee Chairman Jim McGovern (D-MA), this subcommittee of the Oversight and Reform Committee is chaired by Minority Whip James Clyburn (D-S.C.), enjoys [the power to subpoena documents and depose witnesses](#), and will start with a \$2M budget to undertake its work.

This Committee’s creation suggests that a number of CARES Act fund recipients may be facing their most visible oversight from a congressional inquiry rather than from an agency enforcement proceeding. Speaker Pelosi [explained](#) that the panel’s goal is to ensure that the funds that “Congress has dedicated to this battle—and any additional funds Congress provides in future legislation—are spent wisely and effectively.” The subcommittee is intended to follow the mold of the World War II-era Truman Committee, which investigated profiteering, price gouging, and other abuses related to government defense funding. It will be comprised of seven Democrats, [including](#) three chairs of existing House committees: Oversight Committee Chair [Carolyn Maloney \(D-NY\)](#), Financial Services Committee Chair [Maxine Waters \(D-CA\)](#), Small Business Committee Chair [Nydia Velazquez \(D-NY\)](#), and Reps. [Jamie Raskin \(D-MD\)](#), [Bill Foster \(D-IL\)](#), and [Andy Kim \(D-NJ\)](#), as well as up to five Republicans who have not yet been named.

As outlined in a previous alert, [businesses receiving funds through the CARES Act will be facing careful oversight scrutiny built into the legislation](#), including through the new office of Special Inspector General for Pandemic Recovery (SIGPR), which is tasked with conducting, supervising, and coordinating audits and investigations of the making, purchase, management, and sale of loans, loan guarantees, and other investments made under the Cares Act and which is required to file quarterly reports with Congress that provide the details of all loans, loan guarantees, and other investments. The legislation has provided \$25M for the SIGPR to perform its work.

The CARES Act also provides for oversight to reside in three other entities:

- [The Pandemic Response Accountability Committee](#). This panel of two dozen federal inspectors general charged with coordinating work to investigate the coronavirus relief effort is a committee of the [Council of the Inspectors General on Integrity and Efficiency](#) (CIGIE), an independent entity established within the executive branch.
- [The COVID-19 Congressional Oversight Commission](#). This five-person panel is responsible for conducting oversight of the Treasury Department, the Federal Reserve, and the agencies' implementation of the CARES Act. The members, [Sen. Pat Toomey \(R-PA\)](#), [Bharat Ramamurti \(D\)](#), [Rep. Donna Shalala \(D-FL\)](#), and [Rep. French Hill \(R-AR\)](#) have been named by the Senate Majority and Minority Leaders and the House Speaker and Minority Leader respectively. The Speaker and Senate Majority Leader will jointly select the chair.
- [The U.S. Government Accountability Office \(GAO\)](#). The CARES Act provides \$20M for this legislative branch agency to conduct oversight of the programs covered by the CARES Act. It will issue a report on its oversight of CARES Act spending 90 days after enactment and issue bi-monthly reports through the first year. GAO has already [begun](#) focusing on “the testing for the virus, the availability of personal protective equipment as well as infection control at nursing homes.”

It is yet to be seen how the new House Select Subcommittee will undertake its charge in light of social distancing. One [method recently employed](#) by the Senate Commerce Committee is a “paper hearing” in which opening statements and testimony were submitted and posted on the committee’s website and witnesses were asked to submit written answers to members’ questions within 96 business hours. Subjects of oversight should be prepared for responding to such non-traditional requests in light of the current public health protocols.

Regardless of how congressional investigators proceed, CARES Act funding recipients can take a number of steps now to help position themselves well to respond if such inquiries follow:

- Continually reconfirm accuracy of financial records; care should be taken to have independently audited financials. If amendments or corrections to submissions to the government are contemplated, counsel should be consulted to assess potential impacts.
- Carefully vet communications with granting agencies or lenders; any representation or certification to a government agency (whether on a conference call, in an email, or a Zoom meeting) can give rise to a False Claims Act violation allegation if not truthful. Potential inconsistencies with any prior applications or submissions should be carefully investigated before the representation or certification is conveyed to an agency.
- Segregate and track the use of CARES Act funding in separate accounts, and ensure staff and compliance personnel are well versed in permissible uses of such funds. Identify an individual charged with routinely and periodically assuring compliance.
- Enhance overall compliance operations; documenting efforts to step up internal watchdog functions, including vigorous responses to anonymous complaints, will be key in demonstrating

a culture of responsiveness and special diligence around CARES Act funds.

- Review and update document preservation policies and procedures in light of specific CARES Act requirements; most forms of relief obligate recipients to retain certain records, such as those that support any statement in an application, certification, or agreement for specified periods that may exceed routine document destruction practices.
- Demonstrate progress on a plan to achieve repayment by carefully documenting hires, costs, and other business expenses, which can underline a business' determination to qualify for forgiveness or repayment from the outset.

CARES Act funding recipients may receive inquiries from any of these congressional or agency oversight authorities, and response strategies will vary substantially. Nixon Peabody's experienced [Congressional Investigations Team](#) is prepared to advise clients in handling such requests.

For more information on the content of this alert, please contact our [Coronavirus Response Team](#), your Nixon Peabody attorney, or:

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