

April 9, 2020

Steven Mnuchin
Secretary of the Treasury
Department of the Treasury
1500 Pennsylvania Ave., NW
Washington, DC 20220

Jerome Powell
Chairman
Board of Governors of the Federal Reserve System
20th Street and Constitution Ave., NW
Washington, DC 20551

Re: Public Disclosure Obligations under the CARES Act

Dear Secretary Mnuchin and Chairman Powell:

Citizens for Responsibility and Ethics in Washington (“CREW”) writes to urge you to diligently comply with critical transparency requirements established by the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), the largest economic stimulus bill in American history. This landmark legislation grants the Secretary of the Treasury (the “Secretary”) and the Board of Governors of the Federal Reserve System (the “Federal Reserve”) broad authority to distribute up to \$500 billion in “[I]oans, loan guarantees, and other investments” to businesses in response to the economic fallout from the COVID-19 pandemic.¹ As a crucial check on that authority, the CARES Act also creates rigorous public disclosure requirements so that oversight bodies and the public can meaningfully evaluate, on a timely basis, how you are spending half a trillion in taxpayer dollars. The possibility for corruption, waste, fraud, and abuse is immense with a massive and quickly implemented stimulus package like this one, so transparency and accountability are particularly essential. Unfortunately, President Trump has indicated in words and actions an intention to resist disclosure and independent oversight in connection with this stimulus, which makes your compliance with disclosure requirements all the more important.

To ensure the law is carried out as intended, CREW plans to closely scrutinize your compliance with the CARES Act’s disclosure provisions, and will, where necessary, take appropriate action to compel such compliance. Below we have highlighted a few of the most important disclosure obligations that CREW will be actively monitoring in the months ahead. In addition to diligently complying with these obligations as they arise, we urge you to take basic steps to ensure effective dissemination of this information to the public, including promptly establishing dedicated webpages for CARES Act disclosures on your websites, which it appears the Department of the Treasury has not yet done.

¹ CARES Act, Pub. L. No. 116-136, § 4003.

The Federal Reserve’s Disclosure Obligations for Transactions under § 4003(b)(4)

Paragraph (4) of § 4003(b) of the CARES Act allots \$454 billion to be used for “loans and loan guarantees to, and other investments in, programs or facilities established by” the Federal Reserve “for the purpose of providing liquidity to the financial system that supports lending to eligible businesses, States, or municipalities.”²

Section 4026 of the Act, in turn, requires the Federal Reserve to provide relevant congressional committees with certain reports “not later than 7 days after [it] authorizes a new facility or other financial assistance” for purposes of distributing § 4003(b) funds.³ Those reports must include “the justification for the exercise of authority to provide such assistance”; “the identity of the recipients of such assistance”; “the date and amount of the assistance, and form in which the assistance was provided”; and “the material terms of the assistance.”⁴ The Federal Reserve must also provide reports with such details to Congress “every 30 days” as to all “outstanding loans or financial assistance” from § 4003(b) funds.⁵ Finally, the Federal Reserve must publish any of the foregoing reports on its website “[n]ot later than 7 days after” their submission to Congress.⁶

The Secretary’s Disclosure Obligations for Transactions under § 4003(b)(1)-(3)

Paragraphs (1), (2), and (3) of § 4003(b) of the CARES Act allot \$46 billion for the Secretary to distribute to “passenger air carriers” and related businesses, “cargo air carriers,” and “businesses critical to maintaining national security.”⁷ Section 4026, in turn, imposes several disclosure requirements for transactions under § 4003(b)(1)-(3).

First, “[n]ot later than 72 hours after” any such transaction, the Secretary “shall publish on the website of the Department of the Treasury” a “plain-language description of the transaction, including the date of application, date of application approval, and identity of the counterparty”; “the amount of the loan or loan guarantee”; “the interest rate, conditions, and any other material or financial terms associated with the transaction, if applicable”; and “a copy of the relevant and final term sheet, if applicable, and contract or other relevant documentation regarding the transaction.”⁸

Second, the Secretary must provide periodic reporting of these transactions to both Congress and the public. Specifically, “not later than 7 days after the Secretary makes” any transaction under § 4003(b)(1)-(3), the “Secretary shall submit” to relevant congressional

² *Id.* § 4003(b)(4).

³ *Id.* § 4026(b)(2)(A) (providing that the Federal Reserve “shall provide . . . such reports as are required to be provided under section 13(3) of the Federal Reserve Act (12 U.S.C. 343(3))”).

⁴ 12 U.S.C. § 343(3)(C)(i).

⁵ CARES Act § 4026(b)(2)(A)(ii); 12 U.S.C. 343(3)(C)(ii).

⁶ CARES Act § 4026(b)(2)(B).

⁷ *Id.* § 4003(b)(1)-(3).

⁸ *Id.* § 4026(a).

committees a “report” summarizing the overall distribution of funds under § 4003(b)(1)-(3), including “an overview of actions taken by the Secretary under” those provisions; “the actual obligation, expenditure, and disbursements of the funds during such period”; and “a detailed financial statement with respect to” those distributions.⁹ The Secretary must then “publish such report” on the Treasury website “[n]ot later than 7 days after the date on which the Secretary submits” the report to Congress—i.e., 14 days after the reportable transaction.¹⁰ Separate and apart from the reporting obligations to Congress, the Secretary must continuously publish on the Treasury website, “[e]very 30 days during such time as a loan or loan guarantee” under § 4003(b)(1)-(3) is outstanding, a report containing the same programmatic information required in the congressional reports.¹¹

Third, the Secretary must post to the Treasury website “all criteria, guidelines, eligibility requirements, and application materials for the making of any loan or loan guarantee under” § 4003(b)(1)-(3).¹²

Finally, Secretary must post to the Treasury website a copy of any contract executed “in connection with the administration of any loan or loan guarantee authorized” under § 4003(b)(1)-(3) “[n]o later than 24 hours after the Secretary enters into [the] contract.”¹³

The above is far from an exhaustive list of the CARES Act’s disclosure obligations, but they are among the most critical in evaluating the law’s early implementation. For example, these disclosures will enable oversight entities, CREW, and the public to assess whether the Secretary has distributed taxpayer funds to entities with actual or perceived conflicts of interests, including entities legally disqualified from receiving such funds under § 4019 of the CARES Act. The disclosures will also shed light on the types of “terms and conditions” the Secretary “determines appropriate” to impose on loans.¹⁴ It is therefore imperative that both the Secretary and the Federal Reserve strictly adhere to the Act’s disclosure requirements, and take reasonable steps to ensure that such disclosures are promptly, conveniently, and widely disseminated to the public. Not only is this required by law, it is compelled by basic tenets of transparency and accountability in government. It is crucial that the public have confidence that the programs created by this stimulus legislation are being administered in the best interests of the American people; adherence to the legislation’s disclosure provisions is essential to providing that confidence.

⁹ *Id.* § 4026(b)(1)(A).

¹⁰ *Id.* § 4026(b)(1)(B).

¹¹ *Id.* § 4026(b)(1)(C).

¹² *Id.* § 4026(d).

¹³ *Id.* § 4026(e).

¹⁴ *Id.* § 4003(c)(1).

Secretary Mnuchin
Chairman Powell
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Sincerely,

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

Noah Bookbinder
Executive Director