

United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

June 25, 2020

Memorandum

To: Members, Committee on Financial Services
From: FSC Majority Staff
Subject: June 30, 2020, “Oversight of the Treasury Department’s and Federal Reserve’s Pandemic Response”

The Committee on Financial Services will hold a hearing entitled, “Oversight of the Treasury Department’s and Federal Reserve’s Pandemic Response,” Tuesday, June 30, 2020 at 12:30 p.m. in the Capitol Visitor Center Congressional Auditorium (CVC-200). Members who wish to participate remotely may do so via Cisco Webex. This single-panel hearing will have the following witnesses:

- **The Honorable Steven Mnuchin**, Secretary, U.S. Department of the Treasury
- **The Honorable Jerome Powell**, Chair, Board of Governors of the Federal Reserve System

Overview

The Coronavirus Disease 2019 (COVID-19) pandemic has had profound health, economic and financial impacts globally and in the United States. According to the Centers for Disease Control and Prevention (CDC), as of June 25, there have been more than 2.3 million cases and 121,000 deaths in the United States.¹ On June 5, the U.S. Bureau of Labor Statistics (BLS) reported that the unemployment rate in May was 13.3 percent, 9.7 percent higher than in May 2019.²

In response to the pandemic, Congress has enacted a series of laws, including the Coronavirus Aid, Relief, and Economic Security Act (CARES Act),³ which was signed into law on March 27, 2020. The CARES Act directs the U.S. Department of the Treasury (Treasury) and the Board of Governors of the Federal Reserve System (Federal Reserve or Fed) to take a series of actions to assist those affected by the economic impact of COVID-19, including consumers, businesses, non-profit organizations, states, territories, and municipalities. The law requires the Treasury Secretary and Federal Reserve Chair to testify quarterly before the Committee regarding, “the obligations of the Department of the Treasury and the Federal Reserve System, and transactions entered into, under this [CARES] Act.”⁴ This hearing satisfies the statutory requirement. Below is background on the various funds and authorities Congress charged Treasury and the Federal Reserve to administer.

¹ CDC, “[Cases in the U.S.](#),” (last accessed June 25, 2020).

² BLS, “[The Employment Situation – May 2020](#),” (June 5, 2020). Also see Sarah Chaney and Eric Morath, “[April Unemployment Rate Rose to a Record 14.7%](#),” Wall Street Journal (May 8, 2020). For more information on the global and U.S. economic impacts observed thus far, see CRS, “[COVID-19: U.S. Economic Effects](#),” (May 13, 2020), and CRS, “[Global Economic Effects of COVID-19](#),” (June 19, 2020).

³ [P.L. 116-136](#)

⁴ §4026(c) of the CARES Act. The two witnesses testified on May 19, 2020, before the U.S. Senate Committee on Banking, Housing, and Urban Affairs under the same mandate. See <https://www.banking.senate.gov/hearings/the-quarterly-cares-act-report-to-congress>.

Emergency Relief for Businesses, Nonprofits, States, Territories, & Municipalities

Congress appropriated \$500 billion to the Treasury’s Economic Stabilization Fund to provide loans, loan guarantees or other investments, either directly or through programs and facilities administered by the Federal Reserve, to eligible businesses, nonprofits, states, territories, and municipalities as provided under Title IV of the CARES Act.⁵

Treasury Emergency Lending Programs for Certain Industries

Of the \$500 billion, Treasury can make up to \$25 billion available to passenger airlines, up to \$4 billion to cargo airlines, and up to \$17 billion to businesses critical to maintaining national security. Treasury can make the remainder—\$454 billion plus whatever is not used to assist the specified industries—available to support Federal Reserve lending facilities. The authority to enter into new transactions terminates on December 31, 2020. Recipients are legally required to repay assistance with interest. Separate from the \$500 billion, Title IV of the CARES Act provides up to \$32 billion to continue payment of employee wages, salaries, and benefits at airline-related industries. As of May 12, Treasury has approved over \$25 billion in Payroll Support Program assistance to 352 applicants, including the major passenger air carriers, more than 260 smaller passenger air carriers, and a number of cargo air carriers and contractors.⁶ Pursuant to section 4117 of the CARES Act, Treasury determined that eligible recipients that receive a certain amount of support are required to provide financial instruments as taxpayer compensation.⁷

Federal Reserve Emergency Lending Programs and Facilities

During the 2008 financial crisis, the Federal Reserve used “emergency lending” authorities granted to it under Section 13(3) of the Federal Reserve Act to rescue AIG and finance JP Morgan’s purchase of Bear Stearns, among other things. Through the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), Congress restricted the use of this authority to ensure emergency lending facilities are, among other things, broadly available to institutions, which the Fed interprets to be available to at least 5 institutions. The Federal Reserve also has broad flexibility to impose various terms and conditions for loans it provides. Pursuant to Dodd-Frank, the consent of the Secretary of the Treasury is required to establish any 13(3) facility, and the Federal Reserve must provide frequent reports to Congress on these activities. Beginning on March 17, the Fed began setting up a wide range of facilities aimed at addressing severe liquidity constraints in financial markets. For a full overview of these facilities, see the House Financial Services Committee memo for the June 17 hearing on “Monetary Policy and the State of the Economy.”⁸ Since that memo was published, the Fed has announced the following updates to its emergency lending facilities:

Main Street Lending Program (MSLP): The MSLP, administered by the Federal Reserve Bank of Boston, became operational and available to lenders on June 15. Also on June 15, the Fed proposed additional facilities for certain non-profit organizations with between 50 and 15,000 employees, so long as those non-profits were structured either as 501(c)3 or 501(c)19 organizations.⁹

Secondary Market Corporate Credit Facility (SMCCF): On June 15, the Fed announced that it would supplement the SMCCF’s purpose of exchanged-traded funds with individual purchases of corporate

⁵ Treasury, “[Update on Treasury Implementation of the Payroll Support Program for the Aviation Industry](#),” (May 12, 2020), Congressional Research Service (CRS), “[Treasury and Federal Reserve Financial Assistance in Title IV of the CARES Act \(P.L. 116-136\)](#),” (Apr. 28, 2020).

⁶ *Id.*

⁷ Treasury, “[Payroll Support Program Payments](#),” (accessed on June 24, 2020).

⁸ House Financial Services Committee hearing [memo](#) for hearing entitled, “[Monetary Policy and the Economy](#),” (June 17, 2020).

⁹ Fed, “[Main Street Lending Program](#),” (June 15, 2020)

bonds within a Broad Market Index comprised of corporate bonds that meet the criteria specified in the SMCCF's term sheet.¹⁰ The index is designed to make sure that the purchases are not skewed disproportionately toward any particular sector.

Paycheck Protection Program (PPP) for Small Businesses and Nonprofits

The CARES Act established the Paycheck Protection Program (PPP) that is administered by the Small Business Administration (SBA) in coordination with the Treasury Department. The PPP provides forgivable loans to small businesses and certain non-profit organizations through financial institutions, including banks and credit unions. The initial \$349 billion of funds for PPP were exhausted on April 16. Congress then passed the Paycheck Protection Program and Health Care Enhancement Act (Enhancement Act) to provide an additional \$310 billion to the PPP, including a \$60 billion set-aside for depository institutions with less than \$50 billion in assets as well as Community Development Financial Institutions (CDFIs), minority depository institutions (MDIs), certified development companies (CDCs), and microlenders.¹¹ On June 5, Congress enacted the Paycheck Protection Program Flexibility Act, sponsored by Rep. Dean Phillips, into law to provide additional flexibility in the use of PPP funds, though SBA interprets their authority to approve new loans as expiring after June 30.¹² Approximately \$128 billion in PPP funds remained as of June 20.¹³

Coronavirus Relief Fund for States, Territories, and Tribal Areas

Under Title V of the CARES Act, the law directs Treasury to administer the \$150 billion Coronavirus Relief Fund and distribute funds to governments in states, territories, and tribal areas.¹⁴ The law allocates the funds as follows: (1) \$139 billion is allocated to state governments in the 50 states, with allocations based on their populations and with no state receiving less than \$1.25 billion; (2) \$8 billion is set aside for governments in tribal areas; and (3) \$3 billion is allotted to governments in territories, including the District of Columbia and Puerto Rico. This assistance is provided to state governments. Local governments serving a population of at least 500,000, as measured in the most recent census data, may elect to receive assistance directly from Treasury, though such direct local assistance reduces the allocation that is made to the state government. As of May 30, \$147 billion of the funds have been spent.¹⁵

Economic Impact Payment for Individuals and Families

Section 2201 of the CARES Act directed the Internal Revenue Service (IRS), in conjunction with the Treasury Department's Bureau of the Fiscal Service, to provide economic impact payments (EIPs), direct payments, or stimulus payments.¹⁶ Most payments were automatically issued to households in 2020 if they filed a 2019 income tax return (or a 2018 return if a 2019 return has not been filed) and are being distributed through direct deposit, Direct Express debit card, EIP Prepaid Card, or by paper check. The last reported figures from June 2020 reveal the delivery (not necessarily the receipt by individuals) of 159 million EIPs worth more than \$267 billion with an additional \$2.5 billion delivered to individuals in territories.¹⁷ While stimulus payments are protected from offset due to most obligations to the federal

¹⁰ Federal Reserve Bank of New York, "[FAQs: Primary and Secondary Market Corporate Credit Facility](#)," (June 15, 2020),.

¹¹ FSC Majority Staff, "[Paycheck Protection Program and Health Care Enhancement Act – One Pager](#)," (Apr. 22, 2020).

¹² See Sullivan & Cromwell, "[Key Changes Enacted in the Paycheck Protection Program Flexibility Act of 2020](#)," (June 6, 2020).

¹³ SBA, "[PPP Report – Approvals through June 20, 2020](#)," (June 20, 2020).

¹⁴ CRS, "[The Coronavirus Relief Fund \(CARES Act, Title V\): Background and State and Local Allocations](#)," (Apr. 14, 2020).

¹⁵ For more information, including data on allocations and payments made under this program, see Treasury, "[The CARES Act Provides Assistance for State, Local, and Tribal Governments](#)," (last accessed June 25, 2020).

¹⁶ Most individuals received \$1,200 (\$2,400 for married taxpayers filing a joint tax return) and \$500 per eligible child (generally a dependent child 16 years or younger). These amounts phase out at a rate of 5% of adjusted gross income above \$75,000 (\$112,500 for head of household filers and \$150,000 for married joint returns).

¹⁷ IRS, "[Treasury, IRS Announce Delivery of 159 Million Economic Impact Payments](#)," (June 3, 2020).

government, such as unpaid federal taxes, they are not protected from garnishment by third-party debt collectors or creditors for unpaid debt – this practice would be prohibited under the Heroes Act approved by the House on May 15, 2020. Additionally, some financial institutions have seized stimulus payments for negative account balances to offset debts owed to them, leading in less funds going to struggling individuals and households.¹⁸

Regulatory Developments by the Federal Reserve

The CARES Act directed the Federal Reserve and other prudential regulators to, among other things, work with borrowers adversely impacted by providing mortgage forbearance and other prudent arrangements by suspending accounting and reporting guidance related to troubled debt.¹⁹ In addition, the CARES Act temporarily reduces capital requirements for certain community banks with assets under \$10 billion.²⁰ Since enactment of the CARES Act, other notable Federal Reserve developments include recently issued reports on financial stability and their supervisory and regulatory activities.²¹ Furthermore, on June 25, the Federal Reserve and other regulators finalized rules further modifying the Volcker Rule²² and the swap margin rule.²³ The Fed also announced stress testing results for the largest banks, and given that some banks would approach minimum capital levels in several scenarios, the Fed is requiring large banks to suspend share buybacks, cap dividend payments, and requiring banks to resubmit their capital plans later this year.²⁴

Oversight of the CARES Act

Section 19010 of the CARES Act requires the Government Accountability Office (GAO) to conduct oversight of the federal government’s response to the public health and economic crises caused by the coronavirus pandemic.²⁵ The CARES act further requires the GAO to publish bi-monthly reports on its efforts, the first of which was published on June 25, 2020. While the GAO noted that its oversight efforts are ongoing, it found that federal agencies necessarily prioritized the swift distribution of funds and implementation of new programs, but did little to facilitate transparency and accountability of the government’s response.²⁶ For example, the GAO found that the Internal Revenue Service (IRS) and Treasury acted quickly to disburse more than 160 million economic impact payments worth \$269 billion, but distributed \$1.4 billion to individuals who were deceased,²⁷ and had challenges delivering payments to some individuals, including recipients without bank accounts and some whose income came solely from federal benefits.²⁸

In addition, the CARES Act created a Congressional Oversight Commission to monitor \$500 billion in lending and other investments authorized through Section 4003. On June 18, the Congressional Oversight Commission issued its second report, which analyzed the Treasury and Fed’s lending to date.²⁹ The Commission found that although “the majority of [the Fed’s] lending facilities are not operational, and the

¹⁸ Emily Flitter and Alan Rappeport, [Some Banks Keep Customers’ Stimulus Checks if Accounts Are Overdrawn](#), The New York Times (Apr. 16, 2020).

¹⁹ CARES Act §4013.

²⁰ CARES Act §4012.

²¹ See Federal Reserve’s *Supervision and Regulation Report* (May 2020).

²² <https://www.federalreserve.gov/newsevents/pressreleases/bcreg20200625a.htm>

²³ <https://www.federalreserve.gov/newsevents/pressreleases/bcreg20200625b.htm>

²⁴ <https://www.federalreserve.gov/newsevents/pressreleases/bcreg20200625c.htm>

²⁵ CARES Act §19010.

²⁶ U.S. Government Accountability Office, [COVID-19: Opportunities to Improve Federal Response and Recovery Efforts](#) (Jun. 25, 2020).

²⁷ *Id.*

²⁸ *Id.*

²⁹ “The Second Report of the Congressional Oversight Commission,” Congressional Oversight Commission, (June 18, 2020),

[https://www.toomey.senate.gov/files/documents/Congressional%20Oversight%20Commission%20Report%20\(June%2018,%202020\).pdf](https://www.toomey.senate.gov/files/documents/Congressional%20Oversight%20Commission%20Report%20(June%2018,%202020).pdf).

facilities have made a total of \$6.7 billion in purchases,” the “mere announcement that it was establishing these facilities has helped improve the condition and performance of financial markets.”

Legislation

- **H.R. 6800, the Heroes Act (Lowey).** The bill includes provisions that would provide: nearly \$1 trillion state, local, territorial and tribal governments to pay first responders and health workers; \$175 billion to support renters and homeowners; an additional stimulus payment of \$1,200 per family member; an extension of enhanced unemployment benefits to January 2021; a new employee retention tax credit; extend, expand, and make transparent the PPP and Economic Injury Disaster Loan (EIDL) program; an expansion of the Main Street Lending Program to support small businesses, non-profits, and public universities; an expansion of the Municipal Liquidity Facility to support territories and more local governments, and the creation of new facilities to support mortgage servicers and landlords.³⁰
- **H.R. 6852, To prohibit the Secretary of the Treasury and the Board of Governors of the Federal Reserve System from waiving provisions related to COVID-19 emergency relief and taxpayer protections related to such relief (Ocasio-Cortez).** The bill prohibits the Treasury Secretary from waiving the CARES Act restrictions on executive compensation, stock buybacks and dividend payments for Federal Reserve programs or facilities.
- **H.R. 7046, To amend the Bank Holding Company Act of 1956 to place certain limitations on commodity ownership and to repeal the merchant banking authority, and for other purposes (Casten).** This bill would limit the ability of banks to engage in commercial activity, for example through the ownership of oil, gas, and other commodities, and codify the Federal Reserve’s 2016 proposed rule on commodities ownership.
- **H.R. _____, the Risk Management for Derivatives Clearing Organizations Act (Clever).** This legislation would grant all derivatives clearinghouse organizations (DCOs) registered with the Commodity Futures Trading Commission (CFTC) and clearing agencies registered with the Securities and Exchange Commission (SEC) access to deposits accounts and payments services offered by the Federal Reserve, while requiring registered DCOs and clearing agencies to comply with enhanced prudential standards pursuant to Title VIII of the Dodd-Frank Act.
- **H.R. _____, the Uplifting Our Local Communities Act (Tlaib).** This legislation would expand the Federal Reserve’s Municipal Lending Facility by increasing the eligibility to a greater number of cities and counties, as well as territories, lengthening eligible bond maturity to ten years. In addition, the Fed would be directed to establish a facility to support municipal capital expenditures, infrastructure projects, and other long-term general obligations at low and stable interest rates.
- **HR _____, the Strengthening Protection for America’s Workers Act (Discussion Draft)** The bill requires that any corporation receiving federal aid comply with several conditions on the aid, including maintaining their workforces, worker pay, and collective bargaining agreements at their pre-crisis levels.

³⁰ For more information, see <https://appropriations.house.gov/news/press-releases/house-democrats-introduce-the-heroes-act>, <https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=406565>, and <https://smallbusiness.house.gov/news/documentsingle.aspx?DocumentID=3274>.