The Seventh Report of the Congressional Oversight Commission

November 30, 2020

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TABLE OF CONTENTS

Appendix L: Letter from Treasury Department to Congressional Oversight Commission, dated November 23, 2020

Appendix M: Letter from Department of Defense to Congressional Oversight Commission, dated November 23, 2020

Appendix N: Letter from Congressional Oversight Commission to Department of Defense Undersecretary Ellen Lord, Director of Intelligence John Ratcliffe, and Treasury Secretary Steven T. Mnuchin, dated November 30, 2020

Appendix O: Letter from Congressional Oversight Commission to Treasury Secretary Steven T. Mnuchin, dated November 30, 2020

INTRODUCTION

This is the seventh report of the Congressional Oversight Commission ("Commission") created by the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act").[1] The Commission's role is to conduct oversight of the implementation of Division A, Title IV, Subtitle A of the CARES Act ("Subtitle A") by the U.S. Department of the Treasury ("Treasury") and the Board of Governors of the Federal Reserve System ("Federal Reserve"). Subtitle A provides $500 billion to the Treasury for lending and other investments "to provide liquidity to eligible businesses, States, and municipalities related to losses incurred as a result of coronavirus."[2]

Of this amount, $46 billion is set aside for the Treasury itself to provide loans or loan guarantees to certain types of companies. Up to $25 billion is available for passenger air carriers, eligible businesses certified to inspect, repair, replace, or overhaul services, and ticket agents. Up to $4 billion is available for cargo air carriers, and up to $17 billion is available for businesses "critical to maintaining national security."[3] Any unused portions of this $46 billion, and the remaining $454 billion, may be used to support emergency lending facilities established by the Federal Reserve.

The CARES Act charges the Commission with submitting regular reports to Congress on:

- The Federal Reserve's use of its authority under Subtitle A, including the use of contracting authority and administration of the provisions of Subtitle A.
- The impact of loans, loan guarantees, and investments made under Subtitle A on the financial well-being of the U.S. economy.
- The extent to which the information made available on transactions under Subtitle A has contributed to market transparency.
- The effectiveness of loans, loan guarantees, and investments made under Subtitle A in minimizing long-term costs to the taxpayers and maximizing the benefits for taxpayers.[4]

In its first report to Congress on May 18, 2020, the Commission stated that it is responsible for answering two basic questions:

- What are the Treasury and the Federal Reserve doing with $500 billion of taxpayer money?

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[1] CARES Act, Pub. L. No. 116-136, § 4020, 134 Stat. 281 (2020).
[2] *Id.* § 4003(a).
[3] *Id.* § 4003(b). In addition, Division A, Title IV, Subtitle B of the CARES Act ("Subtitle B") authorized the Treasury to provide up to $32 billion in financial assistance to passenger air carriers, cargo air carriers, and certain airline industry contractors that must be exclusively used for the continuation of payment of employee wages, salaries, and benefits. Of this amount, up to $25 billion is available for passenger air carriers; up to $4 billion is available for cargo air carriers; and up to $3 billion is available for certain airline industry contractors. Subtitle B is not within the jurisdiction of the Commission.
[4] *Id.* § 4020.

- Who is that money helping?[5]

At this time, the emergency lending facilities established by the Federal Reserve that are receiving CARES Act funds are:

> Primary Market Corporate Credit Facility ("PMCCF") and Secondary Market Corporate Credit Facility ("SMCCF"): Through a special purpose vehicle ("SPV"), the PMCCF enables the Federal Reserve to purchase newly issued corporate bonds and portions of syndicated loans, and the SMCCF enables the Federal Reserve to purchase previously issued corporate bonds and exchange-traded funds ("ETFs") that invest in corporate bonds.[6] The Treasury initially announced it intended to make a total equity investment of $75 billion in the SPV, which can collectively support up to $750 billion in purchases.[7] As of November 25, 2020, the Treasury had invested $37.5 billion.[8] As of the last disclosure, there had been no purchases by the PMCCF.[9] As of November 25, 2020, the SMCCF had an outstanding amount of bond ETFs and individual corporate bond purchases of $13.9 billion.[10] Upon the Treasury's request, the Federal Reserve agreed to return the Treasury's excess unused capital in the PMCCF and SMCCF in connection with the facilities' December 31, 2020 expiration.[11]
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> Main Street Lending Program ("MSLP"): The MSLP is comprised of five facilities—three dedicated to for-profit businesses and two dedicated to non-profit organizations. The Federal Reserve, through an SPV, acquires loans issued by lenders to small and medium-sized businesses and non-profit organizations with up to 15,000 employees or

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[5] Congressional Oversight Commission, *Questions About the CARES Act's $500 Billion Emergency Economic Stabilization Funds*, May 18, 2020, at 5, https://coc.senate.gov/sites/default/files/2020-08/20200518_Congressional_Oversight_Committee_1st_Report.pdf.

[6] Board of Governors of the Federal Reserve System, *Primary Market Corporate Credit Facility Term Sheet,* July 28, 2020, https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200728a9.pdf; Board of Governors of the Federal Reserve System, *Secondary Market Corporate Credit Facility Term Sheet*, July 28, 2020, https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200728a1.pdf.

[7] Board of Governors of the Federal Reserve System, *Secondary Market Corporate Credit Facility Term Sheet*, July 28, 2020, https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200728a1.pdf.

[8] Board of Governors of the Federal Reserve System, Statistical Release H.4.1, *Factors Affecting Reserve Balances of the Depository Institutions and Condition Statement of Federal Reserve Banks*, Nov. 27, 2020, at n.14, https://www.federalreserve.gov/releases/h41/. The SPV for the PMCCF and the SMCCF is Corporate Credit Facilities LLC.

[9] Board of Governors of the Federal Reserve System, *Periodic Report: Update on Outstanding Lending Facilities Authorized by the Board under Section 13(3) of the Federal Reserve Act*, Nov. 23, 2020, https://www.federalreserve.gov/publications/files/pdcf-mmlf-cpff-pmccf-smccf-talf-mlf-ppplf-msnlf-mself-msplf-nonlf-noelf-11-24-20.pdf.

[10] Board of Governors of the Federal Reserve System, Statistical Release H.4.1, *Factors Affecting Reserve Balances of the Depository Institutions and Condition Statement of Federal Reserve Banks*, Nov. 27, 2020, at n.4, https://www.federalreserve.gov/releases/h41/. The SPV is the Corporate Credit Facilities LLC.

[11] U.S. Department of the Treasury, *Letter from Treasury Secretary Steven T. Mnuchin to Chair Jerome Powell*, Nov. 19, 2020, https://home.treasury.gov/system/files/136/letter11192020.pdf; Board of Governors of the Federal Reserve System, *Letter from Chair Jerome Powell to Treasury Secretary Steven T. Mnuchin*, Nov. 20, 2020, https://www.federalreserve.gov/foia/files/mnuchin-letter-20201120.pdf

2019 revenues of $5 billion or less. The Treasury initially announced it intended to make an equity investment of $75 billion in this program, which can support up to $600 billion in lending.[12] All MSLP facilities are operational and are able to purchase eligible loans submitted by lenders registered to participate in the program. As of November 15, 2020, 606 lenders had registered to participate in the program.[13] Of those, only 195 have publicized that they are accepting loan applications from new for-profit customers and only 151 have publicized that they are accepting loan applications from new non-profit customers.[14] As of November 25, 2020, the Treasury had invested $37.5 billion.[15] As of November 25, 2020, the Federal Reserve held $5.8 billion in loan participations purchased under the MSLP.[16] Upon the Treasury's request, the Federal Reserve agreed to return the Treasury's excess unused capital in the MSLP in connection with the facility's December 31, 2020 expiration.[17]

Municipal Liquidity Facility ("MLF"): Announced on April 9, 2020, the MLF enables the Federal Reserve, through a SPV, to purchase short-term notes issued by state and local governments. The Treasury initially announced it intended to make an equity investment of $35 billion in the SPV, which can support up to $500 billion in lending.[18] As of November 25, 2020, the Treasury invested $17.5 billion.[19] As of November 25, 2020, the MLF has purchased $1.65 billion in municipal notes.[20] Upon the Treasury's request, the Federal Reserve agreed to return the Treasury's excess unused capital in the MLF in connection with the facility's December 31, 2020 expiration.[21]

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[12] Federal Reserve Bank of Boston, *Main Street Lending Program For-Profit Businesses Frequently Asked Questions*, July 31, 2020, https://www.bostonfed.org/mslp-faqs; Federal Reserve Bank of Boston, Aug. 6, 2020, https://www.bostonfed.org/-/media/Documents/special-lending-facilities/mslp/legal/frequently-asked-questions-faqs-nonprofit.pdf.

[13] The lender registration summary data was provided by the Federal Reserve on November 16, 2020. Registered lenders that are accepting new applicants are listed on a state-by-state basis at: https://www.bostonfed.org/supervision-and-regulation/supervision/special-facilities/main-street-lending-program/information-for-borrowers.aspx.

[14] *Id.*

[15] Board of Governors of the Federal Reserve System, Statistical Release H.4.1, *Factors Affecting Reserve Balances of the Depository Institutions and Condition Statement of Federal Reserve Banks*, Nov. 27, 2020, at n.14, https://www.federalreserve.gov/releases/h41/. The SPV for the MSLP is MS Facilities LLC.

[16] *Id.* at table 4.

[17] U.S. Department of the Treasury, *Letter from Treasury Secretary Steven T. Mnuchin to Chair Jerome Powell*, Nov. 19, 2020, https://home.treasury.gov/system/files/136/letter11192020.pdf; Board of Governors of the Federal Reserve System, *Letter from Chair Jerome Powell to Treasury Secretary Steven T. Mnuchin*, Nov. 20, 2020, https://www.federalreserve.gov/foia/files/mnuchin-letter-20201120.pdf

[18] Board of Governors of the Federal Reserve System, *Municipal Liquidity Facility Term Sheet,* Aug. 11, 2020, https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200811a1.pdf; Federal Reserve Bank of New York, *FAQs: Municipal Liquidity Facility,* Aug. 11, 2020, https://www.newyorkfed.org/markets/municipal-liquidity-facility/municipal-liquidity-facility-faq.

[19] Board of Governors of the Federal Reserve System, Statistical Release H.4.1, *Factors Affecting Reserve Balances of the Depository Institutions and Condition Statement of Federal Reserve Banks*, Nov. 27, 2020, at n.14, https://www.federalreserve.gov/releases/h41/. The SPV for the MLF is Municipal Liquidity Facility LLC.

[20] *Id.* at table 4.

[21] U.S. Department of the Treasury, *Letter from Treasury Secretary Steven T. Mnuchin to Chair Jerome Powell*, Nov. 19, 2020, https://home.treasury.gov/system/files/136/letter11192020.pdf; Board of Governors of the Federal

Term Asset-Backed Securities Loan Facility ("TALF"): The TALF enables the Federal Reserve, through an SPV, to make loans to U.S. companies secured by asset-backed securities ("ABS") backed by student loans, auto loans, credit card loans, commercial mortgages, leveraged loans, loans guaranteed by the Small Business Administration, and certain other assets.[22] The Treasury's $10 billion equity investment in this facility can provide up to $100 billion in lending.[23] TALF had a total outstanding amount of $3.6 billion in loans as of November 25, 2020.[24] Upon the Treasury's request, the Federal Reserve agreed to return the Treasury's excess unused capital in the TALF in connection with the facility's December 31, 2020 expiration.[25]

The Treasury's Loans for National Security Businesses

The Treasury also has $17 billion available to make loans to businesses critical to maintaining national security under Subtitle A. As of November 30, 2020, the Treasury reported that it has provided national security loans to eleven businesses, totaling $735.9 million.[26] One business, YRC Worldwide, Inc., accounts for 95% of the total outstanding.[27] This loan program will expire on December 31, 2020.[28]

The Treasury's Loans for the Airline Industry

In addition, the Treasury has available $29 billion to make loans to the airline industry under Subtitle A, with $25 billion available to passenger air carriers, including related

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Reserve System, *Letter from Chair Jerome Powell to Treasury Secretary Steven T. Mnuchin*, Nov. 20, 2020, https://www.federalreserve.gov/foia/files/mnuchin-letter-20201120.pdf.

22 Board of Governors of the Federal Reserve, *Term Asset-Backed Securities Loan Facility Term Sheet*, July 28, 2020, https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200728a6.pdf.

23 Board of Governors of the Federal Reserve System, Statistical Release H.4.1, *Factors Affecting Reserve Balances of the Depository Institutions and Condition Statement of Federal Reserve Banks*, Nov. 27, 2020, at n.14, https://www.federalreserve.gov/releases/h41/; Board of Governors of the Federal Reserve, *Term Asset-Backed Securities Loan Facility Term Sheet*, July 28, 2020, https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200728a6.pdf.

24 Board of Governors of the Federal Reserve System, Statistical Release H.4.1, *Factors Affecting Reserve Balances of the Depository Institutions and Condition Statement of Federal Reserve Banks*, Nov. 27, 2020, at table 4, https://www.federalreserve.gov/releases/h41/.

25 U.S. Department of the Treasury, *Letter from Treasury Secretary Steven T. Mnuchin to Chair Jerome Powell*, Nov. 19, 2020, https://home.treasury.gov/system/files/136/letter11192020.pdf; Board of Governors of the Federal Reserve System, *Letter from Chair Jerome Powell to Treasury Secretary Steven T. Mnuchin*, Nov. 20, 2020, https://www.federalreserve.gov/foia/files/mnuchin-letter-20201120.pdf.

26 U.S. Department of the Treasury, *Loans to Air Carriers, Eligible Businesses, and National Security Businesses*, last visited Nov. 30, 2020, https://home.treasury.gov/policy-issues/cares/preserving-jobs-for-american-industry/loans-to-air-carriers-eligible-businesses-and-national-security-businesses.

27 U.S. Department of the Treasury, *Loans to Air Carriers, Eligible Businesses, and National Security Businesses*, last visited Nov. 30, 2020, https://home.treasury.gov/policy-issues/cares/preserving-jobs-for-american-industry/loans-to-air-carriers-eligible-businesses-and-national-security-businesses.

28 U.S. Department of the Treasury, *Letter from Treasury Secretary Steven T. Mnuchin to Chair Jerome Powell*, Nov. 19, 2020, https://home.treasury.gov/system/files/136/letter11192020.pdf.

businesses, and $4 billion available to cargo air carriers.[29] As of November 30, 2020, the Treasury reported that it has provided twenty-four such loans to companies the Treasury characterizes as airlines, ticket agents, a repair station, and a cargo air carrier.[30] Those loans total $21.2 billion.[31] This loan program will expire on December 31, 2020.[32]

Upcoming Hearing

On December 10, 2020, the Commission will hold a public hearing regarding the national security loan program, at which Treasury Secretary Steven Mnuchin will testify. The Commission has also invited Director of National Intelligence John Ratcliffe and Undersecretary Ellen Lord of the Department of Defense to testify. Director Ratcliffe has not yet responded. Undersecretary Lord initially responded that she was unavailable for a public hearing, but the Commission hopes that she will revisit that position so that the public may hear the Department of Defense's perspective on the national security loan program.

The Commission will announce further details regarding the December 10 hearing in the coming weeks. The hearing will be livestreamed on the Commission's website, http://coc.senate.gov.

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In this report, we provide an in-depth analysis of the Treasury's National Security Loan to YRC Worldwide, Inc. We also provide updates regarding recent key actions taken by the Treasury and the Federal Reserve regarding each of the above lending programs and facilities under Subtitle A, as well as updates regarding the Commission's oversight activities.

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[29] CARES Act § 4003. Related businesses are eligible businesses that are certified under part 145 of title 14, Code of Federal Regulations, and approved to perform inspection, repair, replace, or overhaul services, and ticket agents (as defined in Section 40102 of Title 49 of the United States Code).

[30] U.S. Department of the Treasury, *Loans to Air Carriers, Eligible Businesses, and National Security Businesses*, last visited Nov. 30, 2020, https://home.treasury.gov/policy-issues/cares/preserving-jobs-for-american-industry/loans-to-air-carriers-eligible-businesses-and-national-security-businesses (*see* "Transaction Summary" of each transaction for more details).

[31] *Id.*

[32] U.S. Department of the Treasury, *Letter from Treasury Secretary Steven T. Mnuchin to Chair Jerome Powell*, Nov. 19, 2020, https://home.treasury.gov/system/files/136/letter11192020.pdf.

EXECUTIVE SUMMARY

This seventh report of the Commission focuses on the Treasury and the Department of Defense's $700 million loan to YRC Worldwide, Inc. ("YRC"), which was made under the loan program "for businesses critical to maintaining national security." Under the program, the Treasury determines the rates and conditions of the loans, while the Department of Defense or Director of National Intelligence determine whether the business is critical to maintaining national security. In YRC's case, the Department of Defense made the national security designation.

The Department of Defense has yet to provide the Commission a satisfactory explanation for how YRC is critical to national security. YRC is merely the fourth largest less-than-truckload shipping provider in the United States (i.e., shipments where smaller cargos from multiple customers are combined on one trailer), and it is not the only provider of such services to the Department of Defense. The Department of Defense has informed the Commission that in assessing whether YRC is critical to maintaining national security, the Department of Defense did not even consider whether the services it obtains from YRC could be obtained elsewhere. In short, the Department of Defense's responses to the Commission's inquiries regarding why this company was deemed critical to maintaining national security raise more questions than they provide answers.

The Commission also has serious concerns about the Treasury's decisions regarding the terms and conditions of the loan. YRC has been operating at a loss and has had poor credit ratings—both before and during the pandemic. The Treasury's equity stake in the company may ultimately be worth nothing, given the risk that YRC defaults on the loan and the fact that the Treasury's lien position is less favorable than that of YRC's other creditors. Meanwhile, the interest rate the Treasury provided to YRC is several orders of magnitude lower than that YRC obtained pre-pandemic and is also significantly lower than rates currently offered to borrowers with the same poor credit rating as YRC. The Commission is concerned that the Treasury may have put taxpayers in a precarious position.

Given these significant concerns, the Commission believes it imperative that the public have the opportunity to hear from the officials involved in extending the YRC loan. The Commission appreciates Secretary Mnuchin's willingness to testify at a December 10, 2020 hearing regarding the YRC and other national security loans, and it strenuously encourages the Department of Defense and the Director of National Intelligence to also make themselves available.

DISCUSSION OF TREASURY'S NATIONAL SECURITY LOAN TO YRC WORLDWIDE, INC.

The CARES Act provides the Treasury up to $17 billion for loans and loan guarantees to businesses critical to maintaining national security.[33] The Treasury administers the program, including determining the rates and conditions of the loans.[34] However, with respect to whether a company is critical to maintaining national security, the Treasury has stated that it defers to the Department of Defense or the Director of National Intelligence regarding the company's national security designation.[35]

The Treasury's first national security loan—which remains the largest of the loans—was a $700 million loan made to YRC Worldwide, Inc. ("YRC") on July 8, 2020. In this report, the Commission focuses on the YRC loan, because the Commission continues to have serious concerns about whether that loan was properly and prudently incurred. The Commission summarizes the other national security loans that have been made to date in the Recent Developments section of this report, and the Commission is continuing to examine those loans.

YRC is the fifth-largest U.S. trucking company and the fourth-largest less-than-truckload U.S. shipping provider (i.e., where smaller cargos from multiple customers are combined on one trailer).[36] Headquartered in Overland Park, Kansas, YRC has about 30,000 employees, the vast majority of whom are union workers.[37] Prior to and throughout the COVID-19 pandemic, YRC has been in poor financial health as evidenced by their poor credit ratings and weak liquidity. The chart below outlines Moody's credit ratings and speculative grade liquidity ("SGL") for YRC.[38]

	Pre-COVID-19	**Start of COVID-19**	**During COVID-19**
Credit Rating	B2	Caa1	Caa1
SGL	SGL-3	SGL-4	SGL-3

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[33] CARES Act, Pub. L. No. 116-136, § 4003(b)(3), 134 Stat. 281 (2020).
[34] U.S. Department of the Treasury, *Treasury Loan Application Form for Businesses Critical to Maintaining National Security*, Apr. 23, 2020, https://home.treasury.gov/system/files/136/Loan-Application-Form-for-Businesses-Critical-to-Maintaining-National-Security.pdf.
[35] U.S. Department of the Treasury, *Q&A: Loans to Air Carriers and Eligible Businesses and National Security Businesses*, updated as of Apr. 10, 2020, at 1-2, https://home.treasury.gov/system/files/136/CARES-Airline-Loan-Support-Q-and-A-national-security.pdf.
[36] Jennifer Smith, *Trucker YRC Seeks to Defer Millions in Benefits Payments*, Wall Street Journal, June 18, 2020, https://www.wsj.com/articles/trucker-yrc-seeks-to-defer-millions-in-benefits-payments-11592508252.
[37] Letter from U.S. Department of the Treasury to Congressional Oversight Commission, dated July 30, at 1, attached as Appendix A of this report.
[37] *Id*. at 3.
[38] Moody's Investors Service, *Rating Symbols and Definitions*, Sept. 30, 2020, https://www.moodys.com/sites/products/AboutMoodysRatingsAttachments/MoodysRatingSymbolsandDefinitions.pdf.

YRC entered into a new labor agreement on April 1, 2019,[39] and on September 11, 2019 it refinanced a $600 million term loan with Apollo Global Management, LLC ("Apollo Global"), extending the final maturity by two years to June 2024.[40] These actions were needed to achieve greater operational flexibility and to provide increased liquidity for YRC, because YRC has been operating at a loss for some time. YRC's latest quarterly financial report shows that it continues to operate at a loss.[41] A large portion of the company's cash flow goes toward paying 33 separate multi-employer pension funds and various single-employer pension plans.[42] YRC expects required pension contributions in 2020 to be approximately $152.4 million.[43] This amount was $129 million in 2019, $130 million in 2018, and $143 million in 2017. YRC's pension obligations were underfunded by $228.8 million in 2019, $198.3 million in 2018, and by $230.1 million in 2017.

On April 29, 2020, YRC applied for a loan from the Treasury's National Security Businesses loan program.[44] Executed July 7, 2020, the Treasury loan to YRC is for $700 million, broken up into two tranches: (1) $300 million in tranche A and (2) $400 million in tranche B, both due September 30, 2024. Interest for tranche A is LIBOR plus 3.5% (split between 1.5% cash interest and 2.0% payment-in-kind ("PIK") interest) and interest for tranche B is LIBOR plus 3.5% (all cash). Additionally, the Treasury received a 29.6% equity stake in the company.[45]

The Commission's third report, dated July 20, 2020, outlined questions the Commission raised with the Treasury and the Department of Defense regarding its concerns with this loan. The Treasury provided written responses on September 4, 2020, describing the terms and conditions of the loan but deferred to the Department of Defense regarding the basis for the national security designation.[46] As outlined in the Commission's sixth report, the Department of Defense did not respond timely to the Commission's queries. The Commission finally received a

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[39] International Brotherhood of Teamsters, *National Master Freight Agreement*, Mar. 27, 2020, https://www.teamsterslocal120.org/wp-content/uploads/2019/04/mas-nmfa-yrcw_2019-2024.pdf.
[40] YRC Worldwide Inc., *News Release: YRC Worldwide Announces New Term Loan Agreement*, Sept. 11, 2019, http://investors.yrcw.com/news-releases/news-release-details/yrc-worldwide-announces-new-term-loan-agreement#:~:text=(NASDAQ%3A%20YRCW)%20announced%20today,%24600%20million%20facility%20which%20provides.
[41] YRC Worldwide Inc., *2020 Q3 Quarterly Report (Form 10-Q)*, Nov. 2, at 11, http://investors.yrcw.com/node/28211/html.
[42] YRC Worldwide Inc., *2019 Annual Report (Form 10-K)*, Mar. 11, 2020, at 15-16, http://investors.yrcw.com/static-files/ed493dd1-4f8e-4393-af3e-c882f174b7a9.
[43] *Id*.
[44] U.S. Department of the Treasury, *Loans to Air Carriers, Eligible Businesses, and National Security Businesses*, last visited Nov. 30, 2020, https://home.treasury.gov/policy-issues/cares/preserving-jobs-for-american-industry/loans-to-air-carriers-eligible-businesses-and-national-security-businesses.
[45] YRC Worldwide Inc., *UST Tranche A Term Loan Credit Agreement*, July 7, 2020, at 55, https://home.treasury.gov/system/files/136/YRC-Documentation.pdf.
[46] Letter from U.S. Department of the Treasury to Congressional Oversight Commission, dated Sept. 4, 2020, attached as Appendix F to this report.

response from the Department of Defense on October 22, 2020. Those responses are attached to this report as Appendix G.

The Commission finds the Department of Defense's delay inexcusable and its answers incomplete. To give just one example, the Department of Defense states that one of its criteria for a national security designation is whether "there are alternate sources for the item," yet it simultaneously states "no" in response to the question asking whether it considered alternate service providers.[47] The Department of Defense also states that although YRC has struggled for years, it "did not develop any contingency plans" in the event YRC reduces or ceases its operations.[48] In short, the Department of Defense's responses raise more questions than answers about the basis for YRC's designation as critical to maintaining national security.

The Commission also continues to have serious concerns about the terms and conditions of the loan. The Commission believes that the interest rate and equity may not be sufficient forms of taxpayer protection. The YRC loan has an interest rate of LIBOR+3.5%, which the Commission believes to be too low when compared to the 14% interest rate on YRC's Apollo Global loan,[49] and compared to the secondary market rate of 5.68% for loans with B-/B3 rated borrowers.[50] The Commission also questions the Treasury's equity assessment. The Treasury believes the equity investment could yield 12% per annum under the four-year holding period, based on advice from its financial advisor.[51] However, given YRC's speculative grade credit rating of Caa1, the Commission believes there is a risk that YRC defaults on the loan and/or the equity may be worth nothing. A recent study released by Moody's found that the default rate for Caa-rated borrowers averaged 10.4% from 1920 to 2019.[52]

Additionally, the Commission believes the Treasury's lien position puts the Treasury at a less-favorable condition when compared to YRC's other creditors. YRC's term loan with Apollo Global and its asset based lending ("ABL") facility are cross-collateralized and share first-priority and second-priority liens on the majority of YRC's assets.[53] The Treasury holds only a

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[47] Letter from Department of Defense to Members of Congressional Oversight Commission, dated Oct. 22, 2020, at 1, 3, attached as Appendix G of this report.
[48] *Id*. at 3.
[49] U.S. Securities and Exchange Commission, *YRC Worldwide Inc. Form 8-K*, Apr. 7, 2020, at 2, https://www.sec.gov/Archives/edgar/data/716006/000119312520101347/d904124d8k.htm.
[50] Bloomberg, *Composite B- BVAL Yield Curve 4Y*, July 3, 2020, retrieved Nov. 18, 2020 from Bloomberg terminal.
[51] Letter from U.S. Department of the Treasury to Congressional Oversight Commission, dated Sept. 4, 2020, attached as Appendix F to this report.
[52] Moody's Investors Service, *Annual default study: Defaults will edge higher in 2020*, Jan. 30, 2020, https://www.moodys.com/research/Annual-default-study-Defaults-will-edge-higher-in-2020-Excel--PBC_1216444.
[53] Letter from U.S. Department of the Treasury to Congressional Oversight Commission, dated July 30, 2020, at 3-4, attached as Appendix A to this report; Letter from Congressional Oversight Commission to Treasury Secretary Steven Mnuchin, dated August 7, 2020, at 3, attached as Appendix B to this report; Letter from U.S. Department of the Treasury to Congressional Oversight Commission, dated Sept. 4, 2020, at 5-6, attached as Appendix F to this report.

third-priority lien on assets under tranche A, and a first-priority lien only on equipment purchased using funds from tranche B.[54]

Lastly, YRC has other obligations that come due prior to the loan's maturity of September 30, 2024. When coupled with the high credit risk and third-lien position, the Commission believes the Treasury may have put taxpayers in a precarious position.

Given these significant outstanding concerns and questions, the Commission has invited the Treasury Secretary Steven Mnuchin, Undersecretary Ellen Lord of the Department of Defense, and Director of National Intelligence John Ratcliffe to testify at a public hearing on December 10. The Commission looks forward to further analysis of the YRC loan and the other national security loans provided by the Treasury during that hearing.

[54] Letter from U.S. Department of the Treasury to Congressional Oversight Commission, dated Sept. 4, 2020, at 5-6, attached as Appendix F to this report.

TREASURY AND FEDERAL RESERVE RECENT DEVELOPMENTS

In October and November, the Treasury and the Federal Reserve took a number of actions under Division A, Title IV, Subtitle A of the CARES Act. We describe the key recent developments below. All of the Treasury and Federal Reserve's Subtitle A programs are currently set to expire on December 31, 2020.[55]

Primary Market Corporate Credit Facility ("PMCCF")

There have been no new Federal Reserve announcements regarding the PMCCF. As of the Federal Reserve's last disclosure, the PMCCF has not made any purchases.[56]

Secondary Market Corporate Credit Facility ("SMCCF")

As of November 13, 2020, the SMCCF had purchased corporate bonds from more than 530 different issuers.[57] The amortized cost for these bonds was $4.96 billion.[58] The chart below lists the SMCCF's 10 largest individual bond holdings by issuer as of November 13, 2020.[59] The bonds of these 10 issuers make up 15.6% of the SMCCF's total individual bond holdings.

Issuer	Sector	Amortized Cost (U.S. $ Million)	Percentage of SMCCF's Individual Bond Holdings
AT&T Inc.	Communications	$88.5	1.79%
Volkswagen Group of America Finance LLC	Consumer Cyclical	86.8	1.75%
Toyota Motor Credit Corp.	Consumer Cyclical	85.9	1.73%
Daimler Finance North America LLC	Consumer Cyclical	84.7	1.71%

[55] U.S. Department of the Treasury, *Letter from Treasury Secretary Steven T. Mnuchin to Chair Jerome Powell*, Nov. 19, 2020, https://home.treasury.gov/system/files/136/letter11192020.pdf; Board of Governors of the Federal Reserve System, *Letter from Chair Jerome Powell to Treasury Secretary Steven T. Mnuchin*, Nov. 20, 2020, https://www.federalreserve.gov/foia/files/mnuchin-letter-20201120.pdf. The Commission's jurisdiction extends only to Subtitle A programs and thus does not include the Commercial Paper Funding Facility, which is currently set to expire on March 17, 2021. Board of Governors of the Federal Reserve, *Commercial Paper Funding Facility: Program Terms and Conditions*, July 23, 2020, https://www.federalreserve.gov/monetarypolicy/files/monetary20200723a1.pdf.
[56] Board of Governors of the Federal Reserve System, *Periodic Report: Update on Outstanding Lending Facilities Authorized by the Board under Section 13(3) of the Federal Reserve Act*, Nov. 23, 2020, https://www.federalreserve.gov/publications/files/pdcf-mmlf-cpff-pmccf-smccf-talf-mlf-ppplf-msnlf-mself-msplf-nonlf-noelf-11-24-20.pdf.
[57] Board of Governors of the Federal Reserve System, *Periodic Report: Update on Outstanding Lending Facilities Authorized by the Board under Section 13(3) of the Federal Reserve Act (Transaction-specific Disclosures)*, Nov. 24, 2020, https://www.federalreserve.gov/monetarypolicy/smccf.htm.
[58] *Id*.
[59] *Id*.

Issuer	Sector	Amortized Cost (U.S. $ Million)	Percentage of SMCCF's Individual Bond Holdings
Verizon Communications Inc.	Communications	80.9	1.63%
Apple Inc.	Technology	79.4	1.60%
Comcast Corp.	Communications	75.9	1.53%
BMW US Capital LLC	Consumer Cyclical	64.5	1.30%
General Electric Co.	Capital Goods	63.3	1.28%
Ford Motor Credit Co. LLC	Consumer Cyclical	61.1	1.23%

As of November 13, 2020, the SMCCF had purchased 112.8 million shares of bond ETFs.[60] The facility made no bond ETFs purchases since its July 30, 2020 disclosure.[61] The SMCCF has purchased shares from 16 bond ETFs with a market value of $8.67 billion as of November 13, 2020.[62]

On November 6, 2020, the Federal Reserve announced that it widened the eligibility criteria for counterparties to support the SMCCF in furtherance of "its commitment to support diversity, inclusion, and opportunity."[63] According to the Federal Reserve, the below additional eligible sellers for the SMCCF "represent a diverse range of market participants in terms of firm size, business model, and ownership, including Minority, Women, and Veteran Business Enterprises":[64]

CastleOak Securities, L.P.
Great Pacific Securities
SMBC Nikko Securities America, Inc.
U.S. Bancorp Investments, Inc.

Noting that primary market investment-grade corporate bond rates were below pre-pandemic levels, the Commission recommended in its Fifth Report that the SMCCF cease making purchases at that time.[65] Notwithstanding that recommendation, the Federal Reserve continued to purchase approximately $20 million worth of corporate bonds per day, prompting the Commission to reiterate its recommendation that the SMCCF cease making purchases in a statement dated November 10, 2020.[66]

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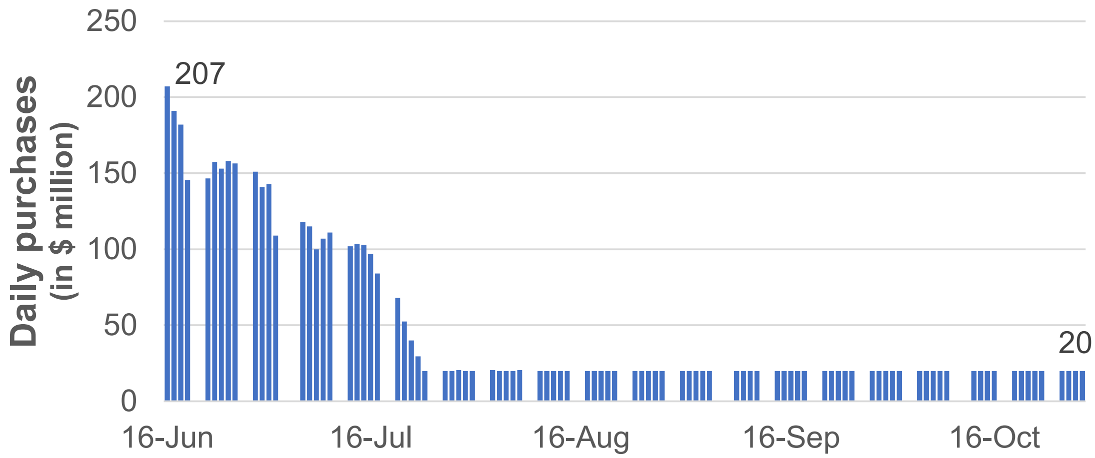
[60] *Id.*
[61] *Id.*
[62] *Id.*
[63] The Federal Reserve Bank of New York, *New York Fed Selects Additional Firms To Broaden its Counterparty Base for CPFF and SMCCF*, Nov. 6, 2020, https://www.newyorkfed.org/newsevents/news/markets/2020/20201106.
[64] *Id.*
[65] The Fifth Report of the Congressional Oversight Commission, Oct. 15, 2020, at 43, https://coc.senate.gov/sites/default/files/2020-10/15Oct2020_The%20Fifth%20Report%20FINAL%20Updated%20Appendix%2010-20%20update.pdf.
[66] Congressional Oversight Commission, *Oversight Commission Issues Statement on SMCCF*, Nov. 10, 2020, https://coc.senate.gov/oversight-commission-issues-statement-smccf.



Main Street Lending Program ("MSLP")

In its Fourth Report, the Commission stated that "[t]he Federal Reserve and Treasury should consider whether to further reduce the minimum loan size" below $250,000 and noted that they "could consider creative administrative fee models, such as fees inversely proportional to loan size, so that lenders have better incentives to onboard smaller borrowers."[67] On October 30, 2020, the Federal Reserve announced that it lowered the minimum loan size from $250,000 to $100,000 for three of the five Main Street facilities available to for-profit and non-profit borrowers—i.e., the Main Street New Loan Facility, Main Street Priority Loan Facility, and Nonprofit Organization New Loan Facility.[68] It also adjusted fees for loans less than $250,000 made pursuant to these facilities "to encourage the provision of these smaller loans."[69] Specifically, for loans less than $250,000, (a) the requirement that lenders pay the Federal Reserve a transaction fee of 1% of the principal amount of the loan was removed; (b) the origination fee payable by borrowers to lenders was increased from up to 1% (for loans greater than $250,000) to up to 2% of the principal amount of the loan; and (c) the loan servicing fee payable by the Federal Reserve to the lender was increased from 0.25% per annum (for loans greater than $250,000) to 0.50% per annum.[70]

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[67] The Fourth Report of the Congressional Oversight Commission, Aug. 21, 2020, at 32, https://coc.senate.gov/sites/default/files/2020-08/COC%204th%20Report_08.21.2020%20with%20Appendix%208-27%20update.pdf.

[68] Board of Governors of the Federal Reserve System, *Federal Reserve Board adjusts terms of Main Street Lending Program to better target support to smaller businesses that employ millions of workers and are facing continued revenue shortfalls due to the pandemic*, Oct. 30, 2020, https://www.federalreserve.gov/newsevents/pressreleases/monetary20201030a.htm.

[69] *Id*.

[70] Board of Governors of the Federal Reserve System, *Main Street Lending Program Frequently Asked Questions (FAQs)*, Oct. 30, 2020, https://www.federalreserve.gov/monetarypolicy/mainstreetlending.htm; Board of Governors of the Federal Reserve System, *Main Street for Nonprofit Organizations Frequently Asked Questions (FAQs)*, Oct. 30, 2020, https://www.federalreserve.gov/monetarypolicy/mainstreetlending.htm.

Also on October 30, 2020, the Federal Reserve and the Treasury issued updated guidance clarifying that "Paycheck Protection Program loans of up to $2 million may be excluded for purposes of determining the maximum loan size under the Main Street Lending Program, if certain requirements are met."[71] The Federal Reserve believes these changes will "better target support to smaller businesses that employ millions of workers and are facing continued revenue shortfalls due to the pandemic."[72]

As of November 12, 2020, eligible lenders made 522 loans through the MSLP.[73] These loans totaled $5.2 billion, with $5.0 billion in Federal Reserve participation.[74] Businesses in 43 states participated in the program, led by Texas with 20.1%, followed by California with 16.1%, Florida with 13.9%,[75] and Georgia with 6.3% of the loan proceeds.[76] Loans' sizes ranged from $250,000 to $300 million.[77]

Although the MSLP's nonprofit facilities were fully operational on September 4, 2020,[78] as of November 13, 2020, only two nonprofit organizations have participated in the program.[79] These nonprofit loans totaled $4.9 million, with approximately $4.7 million in Federal Reserve participation.[80]

As noted in the Commission's last report, a notable portion of MSLP loans were issued by one bank, City National Bank of Florida ("City National"). The Commission's staff recently spoke with representatives of City National regarding its success in implementing the program. City National indicated that the bank's early investment in understanding the MSLP, training its staff on the program's requirements, and establishing processes to support the program was fundamental to its ability to extend loans to a large number of regional borrowers impacted by the COVID-19 crisis.

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[71] Board of Governors of the Federal Reserve System, *Federal Reserve Board adjusts terms of Main Street Lending Program to better target support to smaller businesses that employ millions of workers and are facing continued revenue shortfalls due to the pandemic*, Oct. 30, 2020, https://www.federalreserve.gov/newsevents/pressreleases/monetary20201030a.htm.
[72] *Id*.
[73] Board of Governors of the Federal Reserve System, *Periodic Report: Update on Outstanding Lending Facilities Authorized by the Board under Section 13(3) of the Federal Reserve Act (Transaction-specific Disclosures)*, Nov. 24, 2020, https://www.federalreserve.gov/monetarypolicy/mainstreetlending.htm.
[74] *Id*.
[75] One loan issued to multiple borrowers in Florida and Ohio (i.e., 1st All Data Recovery, LLC, I & D Belkin, LLC, and 1st All File Recovery USA, Inc.) in the total principal amount of $5.6 million was not included in this calculation.
[76] *Id*.
[77] *Id*.
[78] The Federal Reserve Bank of Boston, *Fed's Main Street Lending Program is now fully operational for loans to nonprofit organizations,* Sept. 4, 2020, https://www.bostonfed.org/news-and-events/press-releases/2020/feds-main-street-lending-program-is-now-fully-operational-for-loans-to-nonprofit-organizations.aspx?utm_source=email-alert&utm_medium=email&utm_campaign=mslp&utm_content=mslp-pr-200904.
[79] Board of Governors of the Federal Reserve System, *Periodic Report: Update on Outstanding Lending Facilities Authorized by the Board under Section 13(3) of the Federal Reserve Act (Transaction-specific Disclosures)*, Nov. 24, 2020, https://www.federalreserve.gov/monetarypolicy/mainstreetlending.htm.
[80] *Id*.

City National expressed concern that a number of loans it is currently in the process of underwriting may not be able to close and fund prior to the December 31, 2020 expiration of the MSLP. On November 25, 2020, the Federal Reserve announced that in order to provide time for processing, lenders should submit eligible loans on or before December 14, 2020, and lenders not yet registered should initiate registration on or before December 4, 2020.[81]

Municipal Liquidity Facility ("MLF")

To date, the Federal Reserve has purchased only two notes through the MLF—one from the state of Illinois, and the other from New York's Metropolitan Transportation Authority ("MTA").[82] On June 5, 2020, Illinois borrowed $1.2 billion from the MLF through the sale of a one-year note, making it the facility's first participant.[83] Illinois will pay an interest rate of 3.36% on this note.[84] On August 18, 2020, the MTA, which runs the largest transit system in the United States, borrowed $450.7 million from the MLF through the sale of a three-year note.[85] The MTA will pay the MLF 1.93% on the note.[86]

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[81] Federal Reserve Bank of Boston, *New Main Street FAQ Provides Guidance on Termination of the Facilities at Year End*, Nov. 25, 2020, https://www.bostonfed.org/-/media/Documents/special-lending-facilities/mslp/legal/frequently-asked-questions-faqs.pdf.

[82] Board of Governors of the Federal Reserve System, *Periodic Report: Update on Outstanding Lending Facilities Authorized by the Board under Section 13(3) of the Federal Reserve Act (Transaction-specific Disclosures)*, Nov. 24, 2020, https://www.federalreserve.gov/monetarypolicy/muni.htm; Karen Pierog & Jonnelle Marte, *New York transit agency turns to Fed for $450 million borrowing*, Reuters, Aug. 18, 2020, https://www.reuters.com/article/us-usa-newyork-fed-debt/new-york-transit-agency-turns-to-fed-for-450-million-borrowing-idUSKCN25E2R3.

[83] Shruti Singh & Amanda Albright, *Illinois Becomes First to Tap Fed Loans After Yields Surge*, Bloomberg, June 2, 2020, https://www.bloomberg.com/news/articles/2020-06-02/illinois-becomes-first-to-tap-fed-loans-after-bond-yields-surge.

[84] Board of Governors of the Federal Reserve System, *MLF Transaction-specific Disclosures*, Oct. 8, 2020, https://www.federalreserve.gov/publications/files/mlf-transaction-specific-disclosures-10-8-20.xlsx. Illinois reportedly was originally set to pay 3.82% on its 1-year note. *See* Shruti Singh & Amanda Albright, *Illinois Becomes First to Tap Fed Loans After Yields Surge,* Bloomberg, June 2, 2020, https://www.bloomberg.com/news/articles/2020-06-02/illinois-becomes-first-to-tap-fed-loans-after-bond-yields-surge. It appears that the revision stems from the Federal Reserve applying its revised pricing retroactively. *See* Board of Governors of the Federal Reserve, *Municipal Liquidity Facility Term Sheet*, Aug. 11, 2020, https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200811a1.pdf (revised term sheet providing that "An Eligible Issuer that has issued Eligible Notes to the SPV may elect to reprice such Eligible Notes based on pricing revisions to Appendix B. The new pricing will be based on the applicable ratings at the time of the repricing.").

[85] Karen Pierog & Jonnelle Marte, *New York transit agency turns to Fed for $450 million borrowing*, Reuters, Aug. 18, 2020, https://www.reuters.com/article/us-usa-newyork-fed-debt/new-york-transit-agency-turns-to-fed-for-450-million-borrowing-idUSKCN25E2R3; Amanda Albright & Danielle Moran, *New York's MTA Becomes Second to Tap Fed as Banks Demand Higher Yields,* Bloomberg, Aug. 18, 2020, https://www.bloomberg.com/news/articles/2020-08-18/ny-mta-becomes-second-to-tap-fed-as-banks-demand-higher-yields?srnd=economics-vp&sref=hKSAni5g.

[86] Board of Governors of the Federal Reserve System, *MLF Transaction-specific Disclosures*, Oct. 8, 2020, https://www.federalreserve.gov/publications/files/mlf-transaction-specific-disclosures-10-8-20.xlsx.

Term Asset-Backed Securities Loan Facility ("TALF")

On November 24, 2020, the Federal Reserve disclosed transaction-specific data about the TALF's activities through November 13, 2020.[87] As of November 13, 2020, the TALF had made 206 loans totaling $3.9 billion to 19 different borrower funds.[88] Those 19 funds reported 83 material investors, nearly half of whom are located overseas.[89] The funds use TALF loans to purchase securities backed by certain types of consumer and business loans. The chart below illustrates the current collateral sector breakdown of those underlying loans as of November 13, 2020.[90]

Collateral Sector	TALF Loan Amount (in $ million)	% of Total TALF Loans
Small Business Administration Loans	$2,024.4	52.2
Commercial Mortgage	1,158.1	29.8
Leveraged Loan	327.6	8.4
Private Student Loans	263.2	6.8
Premium Finance	106.9	2.8
Total	3,880.4	100.0

The following chart shows the five funds to whom the TALF has lent the most money as of November 13, 2020.[91]

TALF Borrower Fund	TALF Loan Amount (in $ million)
Alta Fundamental Advisers SP LLC - Belstar-Alta Series 1	$1,908.6
MacKay Shields TALF 2.0 Opportunities Master Fund LP	837.3
Palmer Square TALF Opportunity Sub LLC	221.6
Alta Fundamental Advisers SP LLC - Belstar-Alta Series 2	216.4
BlackRock Securitized Investors, L.P.	113.5

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[87] Board of Governors of the Federal Reserve System, *TALF Transaction-specific Disclosures*, Nov. 24, 2020, https://www.federalreserve.gov/publications/files/talf-transaction-specific-disclosures-11-24-20.xlsx.
[88] *Id.*
[89] *Id.*
[90] *Id.*
[91] *Id.*

The following chart shows the five asset-backed securities that have received the most TALF support as of November 13, 2020.[92]

Asset-backed Securities Issuer	TALF Loan Amount (in $ million)
Small Business Administration	$2,024.4
Golub Capital Partners TALF 2020-1 LLC	327.6
Navient Private Education Refi Loan Trust 2020-F	213.4
PFS Financing Corp	106.9
CSAIL 2019-C16 Commercial Mortgage Trust	72.9

On November 20, 2020, the Federal Reserve announced that it widened the eligibility criteria for agents to support the TALF in furtherance of "its commitment to support diversity, inclusion, and opportunity."[93] The Federal Reserve added just one TALF agent, Loop Capital Markets LLC.[94]

Treasury Loans for National Security Businesses

As described in-depth above, on July 8, 2020, the Treasury finalized a $700 million loan to YRC, about which the Commission has serious concerns. Beginning on October 30, 2020, the Treasury announced an additional ten national security loans, totaling $35.9 million.[95] The Commission is currently in the process of reviewing these loans and will coordinate with the Treasury regarding any questions. A summary of the transactions reported as of November 30, 2020 is provided in the table below.

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[92] *Id.*

[93] The Federal Reserve Bank of New York, *New York Fed Selects Additional Firms to Broaden its Counterparty Base for Agency CMBS and TALF*, Nov. 20, 2020, https://www.newyorkfed.org/newsevents/news/markets/2020/20201120.

[94] *Id.*

[95] U.S. Department of the Treasury, *Loans to Air Carriers, Eligible Businesses, and National Security Businesses*, last visited Nov. 30, 2020, https://home.treasury.gov/policy-issues/cares/preserving-jobs-for-american-industry/loans-to-air-carriers-eligible-businesses-and-national-security-businesses.

Borrower	City, State	U.S. employees, March 2020	Loan amount	Interest rate (LIBOR+%)	Maturity date	Compensation for Treasury	Loan collateral
YRC Worldwide Inc.	Overland Park, KS	30,687	$700,000,000	3.50%	9/30/2024	29.6% of common stock, on a fully diluted basis.	Certain equipment purchased under tranche B.
Map Large, Inc.	Atlanta, GA	37	$10,000,000	5.50%	10/31/2025	3% payment-in-kind interest.	Unsecured senior debt.
Meridian Rapid Defense Group, LLC	Pasadena, CA	14	$7,100,000	5.50%	10/30/2025	3% payment-in-kind interest.	Unsecured senior debt.
Core Avionics & Industrial, Inc.	Tampa, FL	25	$6,000,000	5.50%	11/5/2025	3% payment-in-kind interest.	Unsecured senior debt.
Wiser Imagery Services, lLC	Murfreesboro, TN	135	$3,069,700	5.50%	10/25/2025	3% payment-in-kind interest.	Unsecured senior debt.
Ovio Technologies, Inc.	Newport Beach, VA	6	$1,186,900	5.50%	11/2/2025	3% payment-in-kind interest.	Unsecured senior debt.
Visual Semantics, Inc.	Austin, TX	9	$1,053,200	5.50%	10/30/2025	3% payment-in-kind interest.	Unsecured senior debt.
Channel Logistics, LLC	Camden, NJ	6	$2,500,000	3.5%	11/12/2025	3% payment-in-kind interest.	All assets of the company.
Semahtronix, LLC	Flippin, AR	172	$1,999,100	3.5%	11/13/2025	3% payment-in-kind interest.	All assets of the company.
Semantic AI, Inc.	San Diego, CA	51	$506,300	3.5%	11/13/2025	3% payment-in-kind interest.	All assets of the company.
SpinLaunch, Inc.	Long Beach, CA	66	$2,519,200	3.5%	11/13/2025	3% payment-in-kind interest.	All assets of the company.
Total		**30,521**	**$735,934,400**				

Treasury Loans for the Airline Industry

Since the Commission's last report, the Treasury has made an additional twelve loans to airline-industry companies.[96] The Treasury has also revised upward the amounts of several existing loans, increasing United Airlines's loan from $5.2 billion to $7.5 billion, JetBlue Airways's loan from $1.1 billion to $1.9 billion, Alaska Airlines's loan from $1.3 billion to $1.9 billion, and SkyWest Airlines's loan from $573 million to $725 million.[97]

As of November 30, 2020, the Treasury had made a total of twenty-four airline-industry loans, totaling $21.2 billion. Of those loans, the Treasury has categorized one, a $1.8 million loan to Legacy Airways, LLC, as a loan to a cargo air carrier pursuant to CARES Act § 4003(b)(2). The Treasury has classified the remaining twenty-three loans as § 4003(b)(1) loans to passenger air carriers and related businesses.[98] The table below summarizes the loan transactions to date.[99] On November 30, 3030, the Commission submitted questions to the Treasury regarding these loans, with responses requested by December 8, 2020. The Commission's questions are attached to this report as Appendix O.

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[96] *Compare* The Sixth Report of the Congressional Oversight Commission, at 16, https://coc.senate.gov/sites/default/files/2020-10/The%20Sixth%20Report_Final%20%28002%29_0.pdf; *with* U.S. Department of the Treasury, *Loans to Air Carriers, Eligible Businesses, and National Security Businesses*, last visited Nov. 30, 2020, https://home.treasury.gov/policy-issues/cares/preserving-jobs-for-american-industry/loans-to-air-carriers-eligible-businesses-and-national-security-businesses.
[97] *Id.*
[98] *Id.*
[99] *Id.*

Borrower	City, State	U.S. employees, March 2020	Loan amount	Interest rate (LIBOR+%)	Maturity date	Compensation for Treasury	Loan collateral
American Airlines	Fort Worth, TX	157,000	$7,500,000,000	3.50%	6/30/2025	Warrants for common stock equal to 10% of loan amount.	Loyalty program.
United Airlines	Chicago, IL	93,000	$7,500,000,000	3.00%	9/26/2025	Warrants for common stock equal to 10% of loan amount.	European and South American routes as well as certain aircraft and simulators.
JetBlue Airways	Long Island City, NY	23,000	$1,948,000,000	2.75%	9/29/2025	Warrants for common stock equal to 10% of loan amount.	Loyalty program as well as certain aircraft and engines.
Alaska Airlines	Seattle, WA	22,000	$1,928,000,000	2.50%	9/26/2025	Warrants for common stock equal to 10% of loan amount.	Loyalty program as well as certain aircraft and engines.
Hawaiian Airlines	Honolulu, HI	7,400	$622,000,000	2.50%	6/30/2024	Warrants for common stock equal to 10% of loan amount.	Loyalty program as well as certain aircraft.
Frontier Airlines	Denver, CO	5,000	$574,000,000	2.50%	9/26/2025	Warrants for common stock equal to 10% of loan amount.	Loyalty program.
SkyWest Airlines	St. George, UT	15,000	$725,000,000	3.00%	9/29/2025	Warrants for common stock equal to 10% of loan amount.	Certain engines, airframes, and rotable parts.
Mesa Airlines, Inc.	Phoenix, AZ	3,540	$200,000,000	3.50%	10/30/2025	Warrants for common stock equal to 10% of loan amount.	Aircraft, engines, accounts receivables, and other equipment.
Sun Country, Inc.	Minneapolis, MN	1,630	$45,000,000	3.50%	10/26/2025	3% payment-in-kind interest.	Loyalty program.
Ovation Travel Group	New York, NY	250	$20,000,000	5.50%	10/15/2025	3% payment-in-kind interest.	Unsecured senior debt.
Eastern Airlines, LLC	Wayne, PA	137	$15,000,000	3.50%	10/28/2025	3% payment-in-kind interest.	Aircraft, engines, and accounts receivables.
Caribbean Sun Airlines, Inc.	Virginia Garden, FL	173	$15,000,000	3.50%	11/5/2025	3% payment-in-kind interest.	Aircraft, engines, and rotable parts.
Timco Engine Center, Inc.	Oscoda, MI	25	$8,390,240	3.50%	11/5/2025	3% payment-in-kind interest.	Engines, parts, accounts receivables, and other equipment and inventory.
Allflight Corporation	Kent, WA	35	$4,721,260	3.50%	11/5/2025	3% payment-in-kind interest.	Inventory, engines, equipment, and spare parts.
Aviation Management & Repairs, Inc.	Fort Pierce, FL	6	$4,026,705	3.50%	11/5/2025	3% payment-in-kind interest.	Aircraft, accounts receivable, engines, parts, and other equipment.
Southern Airways Express, LLC	Pompano Beach, FL	458	$1,838,501	3.50%	10/28/2025	3% payment-in-kind interest.	Aircraft, engines, parts, and other equipment.
Legacy Airways, LLC	Conroe, TX	19	$1,817,306	5.50%	10/20/2025	3% payment-in-kind interest.	Unsecured senior debt.
American Jet International Corp.	Houston, TX	44	$1,162,124	3.50%	11/5/2025	3% payment-in-kind interest.	Secured by accounts receivable.
Bristin Travel, LLC	Fayetteville, AR	12	$549,651	3.50%	10/26/2025	3% payment-in-kind interest.	Accounts receivable.
Island Wings, Inc.	Ft. Lauderdale, FL	not disclosed	$294,350	3.50%	11/5/2025	3% payment-in-kind interest.	Aircraft.
Aero Hydraulics, Inc.	Fayetteville, GA	2	$450,000	5.50%	10/23/2025	3% payment-in-kind interest.	Unsecured senior debt.
Republic Airlines, Inc.	Indianapolis, IN	6,700	$77,000,000	3.50%	11/6/2025	Warrants for common stock equal to 10% of loan amount.	Spare parts and tooling inventory.
Thomas Global Systems, LLC	Irvine, CA	20	$1,400,000	3.50%	11/7/2025	3% payment-in-kind interest.	Accounts receivable.
Elite Airways, LLC	Portland, ME	110	$2,630,274	3.50%	11/7/2025	3% payment-in-kind interest.	Equipment and spare parts.
Total		**335,561**	**$21,196,280,411**				

Appendix A:
Letter from U.S. Department of the Treasury
to Congressional Oversight Commission, dated July 30, 2020

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

July 30, 2020

The Honorable French Hill
U.S. House of Representatives
Washington, DC 20515

The Honorable Donna E. Shalala
U.S. House of Representatives
Washington, DC 20515

Mr. Bharat Ramamurti
Commissioner
Washington, DC 20515

The Honorable Pat Toomey
United States Senate
Washington, DC 20510

Dear Members of the Congressional Oversight Commission:

The Third Report of the Congressional Oversight Commission, dated July 20, 2020, discusses the loans that the Department of the Treasury recently agreed to make to YRC Worldwide Inc. (YRC) under section 4003(b)(3) of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). It also expresses the Commission's interest in learning more about these loans.

In the spirit of transparency and cooperation, although the Commission has not requested further information from Treasury, Secretary Mnuchin wanted to share the enclosed material regarding the YRC loans to assist the Commission in its work.

If you have further questions, please direct your staff to contact the Office of Legislative Affairs.

Sincerely,

Frederick W. Vaughan

Frederick W. Vaughan
Principal Deputy Assistant Secretary
Office of Legislative Affairs

Enclosure

Information on Treasury Loans to YRC Worldwide Inc.

I. Background

CARES Act Loans to National Security Businesses

Under section 4003(b)(3) of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), the Department of the Treasury is authorized to make loans in support of "businesses critical to maintaining national security" related to "losses incurred as a result of coronavirus." The CARES Act does not define the scope of such businesses, so on April 10, 2020—two weeks after the statute was enacted—Treasury issued guidance defining this term.[1] Under the guidance, a company falls within this definition if:

> (1) it performs under a "DX"-priority rated contract or order under the Defense Priorities and Allocations System regulations (15 CFR part 700);
>
> (2) it operates under a valid top secret facility security clearance under the National Industrial Security Program regulations (32 CFR part 2004); or
>
> (3) the Secretary of the Treasury determines that the applicant is critical to maintaining national security based on a recommendation and certification from the Secretary of Defense or the Director of National Intelligence that the business is critical to maintaining national security.

In accordance with the CARES Act and Treasury's guidance, on June 26, 2020, the Secretary of Defense made a recommendation and certification regarding YRC Worldwide Inc. (YRC) to the Secretary of the Treasury. Based on that recommendation and certification, the Secretary of the Treasury determined, on July 8, 2020, that YRC is a business critical to maintaining national security.

Background on YRC

YRC is the second largest "less-than-truckload" (LTL) carrier and the fifth largest trucking firm in the United States. It carries 68% of the Department of Defense's LTL shipments and is the leading transportation provider to the Department of Homeland Security and U.S. Customs and Border Protection. YRC employs 30,000 people and plays an essential role in the supply chain of the U.S. economy, with more than 200,000 corporate customers nationwide. As the COVID-19 pandemic hit the U.S. economy, YRC's shipments fell almost 30% from March 13, 2020 to April 10, 2020. YRC's revenue is projected to fall 16% in 2020 compared to 2019.

YRC's fall in revenue created a liquidity crisis that forced the company to delay payments for employee health insurance and pension contributions. The company's major health insurance

[1] Treasury, Q&A: Loans to Air Carriers and Eligible Businesses and National Security Businesses Updated as of April 10, 2020, https://home.treasury.gov/system/files/136/CARES-Airline-Loan-Support-Q-and-A-national-security.pdf.

provider notified 12,000 of the company's employees of the termination of their coverage effective July 5, 2020. Our understanding is that the withdrawal of health insurance coverage would have led to a strike of the company's 25,000 unionized employees and a bankruptcy filing, which would have disrupted the operations of critical federal agencies and the U.S. supply chain, undermining the economic recovery.

Members of Congress on both sides of the aisle wrote to Treasury to relay such facts and circumstances and to encourage Treasury to give "full and fair consideration" to YRC's request for liquidity under section 4003 of the CARES Act.[2]

II. TREASURY LOANS TO YRC

Credit Underwriting Criteria

Treasury adopted a credit test for loans under section 4003(b)(3) of the CARES Act. An applicant passes this test if it meets any two of the following three criteria. As indicated in this table, YRC met all three of the criteria.

Credit Criteria:	**Required Level:**	**YRC Level:**
Leverage (existing debt / 2019 adjusted EBITDA)	Must be < 6.0x	4.2x
Debt service coverage (2019 adjusted EBITDA / 2020 existing debt service)	Must be > 1.5x	1.9x
Collateral (secured debt / tangible assets)	Must be < 75%	45%

Key Terms of the Loans to YRC

The CARES Act provides that loans made by Treasury under section 4003(b)(3) "shall be made … in such form and on such terms and conditions and contain such covenants, representations, warranties, and requirements (including requirements for audits) as the Secretary determines appropriate."[3]

The loans from Treasury to YRC will be made in two tranches. Tranche A provides $300 million to meet certain of YRC's near-term contractual obligations, working capital needs, and certain non-vehicle capital expenditures, with an interest rate equal to LIBOR plus 3.5%, consisting of 1.5% cash and 2.0% payment in kind. Tranche B provides $400 million for specific capital investments in tractors and trailers made pursuant to capital plans subject to approval by Treasury, with an interest rate equal to LIBOR plus 3.5% in cash. Both tranches mature on September 30, 2024.

[2] *See* Letter from Representative Sharice Davids, U.S. House of Representatives, to Secretary Mnuchin, Apr. 2, 2020; Letter from the Chairman Peter A. DeFazio and Ranking Member Sam Graves, Committee on Transportation and Infrastructure, U.S. House of Representatives, to Secretary Mnuchin, Apr. 17, 2020; Letter from Senators Ron Wyden and Pat Roberts, United States Senate, to Secretary Mnuchin, Apr. 17, 2020; Letter from Representative Albio Sires, U.S. House of Representatives, to Secretary Mnuchin, Apr. 22, 2020; Letter from Rep. Bill Pascrell, Jr., U.S. House of Representatives, to Secretary Mnuchin, May 5, 2020; *see also* Letter from Rep. Donald M. Payne, Jr., U.S. House of Representatives, to Secretary Mnuchin, Apr. 20, 2020.

[3] CARES Act, sec. 4003(c)(1)(A).

The interest rate of LIBOR plus 3.5% on the YRC loans was set to be above the interest rate of LIBOR plus 3% applicable to loans made by banks participating in the Federal Reserve's Main Street Lending Program (MSLP). The MSLP was established to provide bridge financing to companies of speculative-grade credit risk whose revenues were negatively affected by the economic impact of the COVID-19 crisis. The duration of Treasury's loans to YRC and of loans under the MSLP are comparable. The interest rate under the MSLP was set by the Federal Reserve at a penalty rate, and the interest rate on the YRC loan is 0.5 percentage points higher.

Disbursements to YRC under the Tranche B loan can only be used for the acquisition of tractors and trailers and are subject to a capital expenditure (CapEx) plan that must be approved by the Treasury on an ongoing basis. Each quarter, YRC will prepare a revised CapEx plan to be approved by the Treasury based on the company's most recent financial and operating results and updated projections of performance. Disbursements under the Tranche B loan for the subsequent quarter will be based upon the updated CapEx plan approved by the Treasury.

The loan agreements also include covenants by YRC to comply with certain restrictions on employee compensation, stock repurchases, dividends, and reductions in employment levels, as required by the CARES Act.

Collateralization of Treasury Loans to YRC

As the Commission's report notes, loans made by Treasury under section 4003(b)(3) are required to be either (1) sufficiently secured (as determined by the Secretary, in his discretion), or (2) made at a rate that (a) reflects the risk of the loan and (b) is, to the extent practicable, not less than an interest rate based on market conditions for comparable obligations prevalent prior to the COVID-19 outbreak. Treasury's loans have a significant level of collateralization, which, in addition to the interest payable on the loans, helps protect Treasury against potential losses. The Secretary therefore determined that these loans are sufficiently secured.

Following is a summary of the amount of existing collateral available to secure Treasury's loans to YRC, based on an analysis of Treasury's external financial advisors and an assumed drawing of the maximum of $450 million under YRC's existing asset-backed loan (ABL) facility.

<u>YRC Existing Collateral Pledged to Secure Existing Debt (Excluding Treasury Loan)</u>

Existing Fleet:	$312.2 million (appraised value)
Real Estate:	$735.1 million (appraised value)
Accounts Receivable:	$529.4 million
Total Existing Collateral:	*$1,576.7 million*

<u>Existing Debt (Excluding Treasury Loan) Secured by YRC Existing Collateral</u>

Term Loan:	$581.0 million
ABL (Maximum Draw):	$450.0 million
Total Debt Secured by Existing Collateral:	*$1,031.0 million*

<u>Excess Existing Collateral Securing Treasury Loan:</u>

Total Existing Collateral:	$1,576.7 million (see above)
Total Existing Debt:	$1,031.0 million (see above)
Total Excess Existing Collateral Securing Treasury Loan:	*$545.7 million*

This excess existing collateral of $545.7 million secures both Treasury's $300 million Tranche A loan and $400 million Tranche B loan.

In addition, if any funds are disbursed under the Tranche B loan, the Tranche B loan has a first-priority lien on all equipment (tractors and trailers) purchased with proceeds of that loan, in addition to Treasury's lien on the excess collateral described above. For example, if $400 million of the Tranche B loan is disbursed, there will be additional newly purchased tractors and trailers with a purchase cost of $400 million securing the Tranche B loan on a first-lien basis. Assuming a 20% discount for the liquidation value of this collateral, the first-priority lien would provide Treasury with an additional $320.0 million in security. In this case, Treasury would have collateral of $865.7 million ($545.7 million of excess existing collateral plus $320.0 million of newly purchased tractors and trailers) securing its $700 million loan—a collateralization level of 124%.

Taxpayer Compensation

Treasury can make a loan under section 4003(b)(3) of the CARES Act to a company with publicly traded securities only if Treasury receives warrants or equity interests in the business (or senior debt instruments, if the company cannot feasibly issue warrants or equity interests).[4] To satisfy this requirement, Treasury received shares equal to 29.56% of YRC's common stock on a fully diluted basis, held in a voting trust. These common shares provide additional compensation to taxpayers, in addition to the interest on the loans described above. The current market value of the shares held by Treasury is approximately $40 million. In the event of appreciation in the company's equity value, this shareholding will create a significant profit for the federal government; in an adverse scenario, the collateralization described above will help protect Treasury against losses.

[4] CARES Act, sec. 4003(d).

Appendix B:
Letter from Congressional Oversight Commission
to Treasury Secretary Steven Mnuchin, dated August 7, 2020

Congressional Oversight Commission
SDG55 Dirksen Senate Office Building
Washington, DC 20510

August 7, 2020

The Honorable Steven T. Mnuchin
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Secretary Mnuchin:

The Congressional Oversight Commission (the "Commission") is in receipt of a letter from the Treasury Department (the "Treasury"), dated July 30, 2020 ("Letter")[1] providing additional information regarding the Treasury's recent $700 million national security loan to YRC Worldwide Inc. ("YRC") under Division A, Title IV, Subtitle A of the CARES Act ("Subtitle A"). We thank the Treasury for proactively providing this information in response to concerns we raised in the Commission's third report.[2] In accordance with our responsibility to oversee the implementation of Subtitle A, we respectfully request responses to the below follow-up questions regarding the YRC loan and the Treasury's implementation of the national security loan program.

As you are aware, Subtitle A provides the Treasury $500 billion to use "to provide liquidity to eligible businesses . . . related to losses incurred as a result of coronavirus,"[3] including up to $17 billion for lending to businesses "critical to maintaining national security."[4] The Treasury has defined a "business critical to maintaining national security" as a business that is, at the time of its application for a national security loan, performing under a defense contract of the highest national priority or operating under a top-secret facility security clearance.[5] A business that does not satisfy either of these two criteria may nonetheless be considered for a national security loan if the Secretary of Defense or the Director of National Intelligence recommends and certifies that the

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[1] Letter from Frederick W. Vaughan, Principal Deputy Assistant Secretary, Office of Legislative Affairs, Department of the Treasury to Congressional Oversight Commission, July 30, 2020.
[2] The Third Report of the Congressional Oversight Commission, July 20, 2020, https://www.toomey.senate.gov/files/documents/Oversight%20Commission%20-%203rd%20Report%20(FINAL)_7.20.20.pdf).
[3] CARES Act, Pub. L. No. 116-136, § 4003(a), 134 Stat. 281 (2020); *see also* Attachment to Letter at 1.
[4] *Id*. at § 4003(b)(3); *see also* Attachment to Letter at 1.
[5] U.S. Department of the Treasury, *Q&A: Loans to Air Carriers and Eligible Businesses and National Security Businesses*, Apr. 10, 2020, https://home.treasury.gov/system/files/136/CARES-Airline-Loan-Support-Q-and-A-national-security.pdf; Defense Contract Management Agency, *Defense Priorities & Allocations System (DPAS)*, May 7, 2019, https://www.dcma.mil/DPAS/ ("A DX rating is assigned to those programs of the highest national priority"); *see also* Attachment to Letter at 1.

business is critical to maintaining national security and the Secretary of the Treasury agrees with that determination.[6]

On July 8, 2020, the Treasury finalized an agreement to loan $700 million to YRC. YRC provides transportation and logistics services throughout North America. Based on 2019 revenue, YRC is the fifth-largest U.S. trucking company and the fourth-largest less-than-truckload U.S. shipping provider (*i.e.*, shipments where smaller cargos from multiple customers are combined on one trailer).[7] According to the Treasury, "YRC is a leading provider of critical military transportation and other hauling services to the U.S. government and provides 68% of less-than-truckload services to the Department of Defense"[8] and "is the leading transportation provider to the Department of Homeland Security and U.S. Customs and Border Protection."[9] The Treasury asserts that the loan "will enable YRC to maintain approximately 30,000 trucking jobs and continue to support essential military supply chain operations."[10] The Treasury's determination that YRC is critical to maintaining national security was "based on a certification by the Secretary of Defense," rather than on YRC satisfying either of the Treasury's two national security eligibility criteria.[11]

The YRC loan appears to expose taxpayers to significant risk. YRC's credit has been rated non-investment grade for over a decade.[12] On April 6, 2020, a research report by investment bank Stephens Inc. indicated that YRC might be at risk of a "potential bankruptcy."[13] One month later, on May 11, 2020, YRC stated that there was "substantial doubt" about its ability to continue to operate as a going concern without "governmental assistance or a meaningful stabilization of the economy in the near-term."[14] On May 28, 2020, Standard & Poor's ("S&P") downgraded YRC's credit rating from CCC+ to CCC.[15] It appears that the Treasury was aware of YRC's poor financial

[6] U.S. Department of the Treasury, *Q&A: Loans to Air Carriers and Eligible Businesses and National Security Businesses*, Apr. 10, 2020, https://home.treasury.gov/system/files/136/CARES-Airline-Loan-Support-Q-and-A-national-security.pdf; *see also* Attachment to Letter at 1.
[7] Jennifer Smith, *Trucker YRC Seeks to Defer Millions in Benefits Payments*, Wall Street Journal, June 18, 2020, https://www.wsj.com/articles/trucker-yrc-seeks-to-defer-millions-in-benefits-payments-11592508252 (citing analysis by transportation research provider SJ Consulting Group Inc. that ranks LTL shipping providers by revenue for LTL operations only).
[8] U.S. Department of the Treasury, *Treasury to Provide Loan to YRC Worldwide*, July 1, 2020, https://home.treasury.gov/news/press-releases/sm1049; *see also* Attachment to Letter at 1.
[9] Attachment to Letter at 1.
[10] U.S. Department of the Treasury, *Treasury to Provide Loan to YRC Worldwide*, July 1, 2020, https://home.treasury.gov/news/press-releases/sm1049; *see also* Attachment to Letter at 1.
[11] *Id*; *see also* Attachment to Letter at 1.
[12] Moody's Investors Services, YRC Worldwide Inc. Ratings, https://www.moodys.com/creditratings/YRC-Worldwide-Inc-credit-rating-834015 (last visited July 29, 2020).
[13] Jennifer Smith, *Truckers Cut Spending as Factory Slowdown Weighs on Operators*, Wall Street Journal, April 7, 2020, https://www.wsj.com/articles/truckers-cut-spending-as-factory-slowdown-weighs-on-some-operators-11586295247.
[14] YRC Worldwide Inc., *Quarterly Report (Form 10-Q)*, May 11, 2020, https://sec.report/Document/0001564590-20-024217/.
[15] Standard & Poor's, *U.S.-Based YRC Worldwide Inc. Downgraded To 'CCC' On Anticipated Covenant Violation, Outlook Negative*, May 28, 2020, https://www.standardandpoors.com/en_US/web/guest/article/-/view/type/HTML/id/2450913.

condition at the time it made the loan.[16] Nevertheless, the Treasury's loan to YRC has an interest rate of LIBOR plus 3.5%, which is 4% lower than the interest rate on a $600 million loan that YRC obtained from affiliates of Apollo Global Management, LLC in September 2019,[17] prior to the COVID-19 crisis and S&P's downgrade of YRC's credit rating. The Treasury will receive a 29.6% equity stake in YRC to reportedly provide "appropriate taxpayer compensation" for its loan to the company.[18]

To fulfill our obligations under the CARES Act, the Commission requests the following information, pursuant to Section 4020(e)(4) of that Act:

1. What was the Treasury's rationale for determining that YRC is critical to maintaining national security? Please provide all documentation and analysis supporting the Treasury's conclusion, including the Secretary of Defense's recommendation and certification that YRC is critical to maintaining national security.

2. Please summarize the decision-making process related to YRC's designation as a business critical to maintaining national security. The summary should (1) identify the parties that were involved in the designation, whether the parties are governmental or otherwise (although the list may elect to use parties' offices, titles, and affiliations while omitting their individual names), and (2) list any department, agency, office, or instrumentality of the United States or entity possessing public authority under the laws of the United States that was included in giving any input into that decision-making process (irrespective of whether it was an ultimate decision-maker).

3. Did the Treasury communicate with any creditors of YRC, including lenders or health, welfare, and pension funds, with respect to YRC's designation as a business critical to maintaining national security, the Treasury's loan transaction with YRC, or otherwise? If so, please provide a list of such creditors and a summary of such communications.

4. While YRC's business, like many other American businesses, may have been impacted by the COVID-19 crisis,[19] YRC's financial troubles also predate the COVID-19 crisis. YRC's credit has been rated non-investment grade for over a decade and the pandemic may only

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[16] Attachment to Letter at 1 ("YRC's fall in revenue created a liquidity crisis that forced the company to delay payments for employee health insurance and pension contributions. The company's major health insurance provider notified 12,000 of the company's employees of the termination of their coverage effective July 5, 2020. Our understanding is that the withdrawal of health insurance coverage would have led to a strike of the company's 25,000 unionized employees and a bankruptcy filing").

[17] YRC Worldwide Inc., *Current Report (Form 8-K)*, Sept. 11, 2019, https://sec.report/Document/0001193125-19-242625/.

[18] U.S. Department of the Treasury, *Treasury to Provide Loan to YRC Worldwide*, July 1, 2020, https://home.treasury.gov/news/press-releases/sm1049.

[19] Attachment to Letter at 1 ("As the COVID-19 pandemic hit the U.S. economy, YRC's shipments fell almost 30% from March 13, 2020 to April 10, 2020. YRC's revenue is projected to fall 16% in 2020 compared to 2019.").

have been the straw that broke the camel's back. Given those preexisting problems, how does the Treasury reconcile YRC's loan with the statutory language in Subtitle A stating that the Treasury is authorized to make loans "to provide liquidity to eligible businesses . . . related to losses incurred as a result of coronavirus"?[20]

5. Please provide all documentation, analysis, and recommendations concerning the Treasury's loan to YRC that Perella Weinberg Partners and any other external financial advisors produced for Treasury.

6. How did the Treasury determine that $700 million was an appropriate amount for YRC's loan? Please provide all documentation and analysis supporting the Treasury's conclusion, including any analysis produced by Perella Weinberg Partners and any other external financial advisors for the Treasury.

7. The Commission notes that a portion of the loan will be used by YRC to finance capital expenditures, such as the purchase of tractors and trailers.[21] How are these capital expenditures related to YRC's "losses incurred as a result of coronavirus"?[22]

8. The Commission notes that a portion of the loan will be used by YRC to pay deferred pension and healthcare liabilities.[23] How are these deferred liabilities related to YRC's "losses incurred as a result of coronavirus"?[24]

9. The Letter states that "the interest rate of LIBOR plus 3.5% on the YRC loans was set to be above the interest rate of LIBOR plus 3% applicable to loans made by banks participating in the Federal Reserve's Main Street Lending Program (MSLP)."[25] The Letter also notes that the Federal Reserve set the interest rate for the MSLP at a "penalty rate."[26] However, neither LIBOR plus 3% nor LIBOR plus 3.5% is a penalty rate for YRC. YRC received a $600 million loan just a few months prior to the coronavirus outbreak with an interest rate of LIBOR plus 7.5% (*i.e.*, 4% higher than the Treasury's loan to YRC). In light of that loan, why does the Treasury believe that an interest rate of LIBOR plus 3.5%, even including its assumptions about the valuation of its equity stake in YRC, was an appropriate interest rate for this loan? Please provide all documentation relating to the Treasury's interest rate and

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[20] CARES Act, Pub. L. No. 116-136, § 4003(a), 134 Stat. 281 (2020).
[21] U.S. Department of the Treasury, *Transaction Documentation*, July 8, 2020, https://home.treasury.gov/system/files/136/YRC-Documentation.pdf; *see also* Attachment to Letter at 2.
[22] CARES Act, Pub. L. No. 116-136, § 4003(a), 134 Stat. 281 (2020).
[23] U.S. Department of the Treasury, *Transaction Documentation*, July 8, 2020, https://home.treasury.gov/system/files/136/YRC-Documentation.pdf.
[24] CARES Act, Pub. L. No. 116-136, § 4003(a), 134 Stat. 281 (2020).
[25] Attachment to Letter at 3.
[26] *Id*.

risk analysis, including any analysis produced by Perella Weinberg Partners and any other external financial advisors for the Treasury.

10. The Letter analogizes the terms of the YRC loan with the terms of loans made by the Federal Reserve under the MSLP. The Treasury states "[t]he MSLP was established to provide bridge financing to companies of *speculative-grade credit risk* whose revenues were negatively affected by the economic impact of the COVID-19 crisis."[27] However, this appears to be at odds with the Treasury's prior statement that "[t]he Main Street program was established to provide a safety net for small and medium-sized businesses that were in *sound financial condition* before the pandemic."[28] Please clarify.

11. In determining that its loan to YRC was "sufficiently secured" as required by the CARES Act,[29] the Treasury assumes a 20% discount for the liquidation value of the equipment YRC will purchase with the proceeds of the loan. Please provide the basis for determining that 20% is an appropriate discount rate for such equipment, including all related documentation such as any analysis produced by Perella Weinberg Partners and any other external financial advisors for the Treasury.

12. The Treasury states that it determined that YRC has excess existing collateral of $545.7 million to secure the $700 million loan, along with an interest in certain equipment purchased with proceeds of the loan. The Commission notes that the Treasury's loan is secured by a combination of a first-priority security interest in certain escrow accounts, a third-priority security interest in YRC's personal property, a third-priority mortgage or deed on certain real property, a third-priority pledge of YRC's equity interests, and a first-priority security interest on certain equipment YRC purchases with proceeds of the loan.[30] Did the Treasury consider seeking additional first-priority interests on YRC assets? If not, why not? Please provide all documentation supporting the Treasury's conclusion that YRC's loan is "sufficiently secured," including any analysis produced by Perella Weinberg Partners and any other external financial advisors for the Treasury, diligence reports, and other professional opinions such as appraisals.

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[27] Attachment to Letter at 3 (emphasis added).

[28] U.S. Department of the Treasury, *Statement from Secretary Steven T. Mnuchin on the Main Street Lending Program*, July 6, 2020, https://home.treasury.gov/news/press-releases/sm1053 (emphasis added); *see also* Board of Governors of the Federal Reserve System, *Main Street Lending Program*, https://www.federalreserve.gov/monetarypolicy/mainstreetlending.htm ("The Federal Reserve established the Main Street Lending Program (Program) to support lending to small and medium-sized businesses and nonprofit organizations that were in *sound financial condition* before the onset of the COVID-19 pandemic.")(emphasis added)(last visited Aug. 1, 2020).

[29] CARES Act, Pub. L. No. 116-136, § 4003(c)(2)(C), 134 Stat. 281 (2020).

[30] U.S. Department of the Treasury, *Transaction Documentation*, July 8, 2020, https://home.treasury.gov/system/files/136/YRC-Documentation.pdf.

13. The Treasury's 29.6% equity stake in YRC is reportedly to provide "appropriate taxpayer compensation" for the loan.[31] How did the Treasury determine that a 29.6% equity stake was appropriate? How and when does the Treasury anticipate realizing returns on its equity in YRC? Please provide all documentation and analysis supporting the Treasury's conclusion, including any analysis produced by Perella Weinberg Partners and any other external financial advisors for the Treasury.

14. Please also provide the Commission with a copy of the loan application submitted by YRC, which, per the Treasury's form application, includes information regarding YRC's U.S. operations, covered losses, financial plan, etc.

15. How will the Treasury monitor whether YRC complies with Section 12.03 of the loan credit agreement's terms on maintenance of employment levels?[32]

16. The Treasury has previously told the Commission that "[t]ogether with the other data and information provided in [loan] applications, Treasury will develop standards for adequate and appropriate taxpayer protections. Treasury has not yet determined the final form of taxpayer protection that will be required, but anticipates applying a uniform standard that satisfies the requirements of [the CARES Act]."[33] Please provide the uniform standard that the Treasury is using to measure adequate and appropriate taxpayer protections, including the standards applied to the YRC loan.

17. The Letter states that the Treasury adopted a credit test for national security loans consisting of three criteria and that an applicant passes this test if it meets any two of those criteria.[34] Will the Treasury deny loans to companies that are designated as being critical to maintaining national security but do not pass this credit test?

18. The Treasury previously told the Commission that, as of June 17, 2020, the Treasury "received 70 applications for the national security loan program, 25 of which meet one of the two national security eligibility criteria established by Treasury, although one of those has been withdrawn."[35] Please provide an update regarding the total number of loan

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[31] U.S. Department of the Treasury, *Treasury to Provide Loan to YRC Worldwide*, July 1, 2020, https://home.treasury.gov/news/press-releases/sm1049.
[32] U.S. Department of the Treasury, *Transaction Documentation*, July 8, 2020, https://home.treasury.gov/system/files/136/YRC-Documentation.pdf.
[33] Letter from Treasury Secretary Steven Mnuchin and Federal Reserve Chair Jerome Powell to Congressional Oversight Commission, dated June 29, 2020 (attached as Appendix C to The Third Report of the Congressional Oversight Commission, July 20, 2020, https://www.toomey.senate.gov/files/documents/Oversight%20Commission%20-%203rd%20Report%20(FINAL)_7.20.20.pdf).
[34] Attachment to Letter at 2.
[35] Letter from Treasury Secretary Steven Mnuchin and Federal Reserve Chair Jerome Powell to Congressional Oversight Commission, dated June 29, 2020 (attached as Appendix C to The Third Report of the Congressional Oversight Commission, July 20, 2020,

applications for the national security loan program the Treasury has received to date and the status of those loan applications, including whether the Treasury currently anticipates issuing additional loans or loan guarantees under this program.

In light of the Commission's monthly reporting obligations, we ask that you provide the information requested in this letter by August 27, 2020 and look forward to receiving your responses.

Thank you for your attention to this matter.

Sincerely,

/s/ French Hill Member of Congress	/s/ Bharat Ramamurti Commissioner
/s/ Donna E. Shalala Member of Congress	/s/ Pat Toomey U.S. Senator

https://www.toomey.senate.gov/files/documents/Oversight%20Commission%20-%203rd%20Report%20(FINAL)_7.20.20.pdf).

Appendix C:
Letter from Congressional Oversight Commission to Defense Secretary Mark Esper, dated August 7, 2020

Congressional Oversight Commission

SDG55 Dirksen Senate Office Building
Washington, DC 20510

August 7, 2020

The Honorable Mark T. Esper
Secretary
U.S. Department of Defense
1000 Defense Pentagon
Washington, DC 20301

Dear Secretary Esper:

The Congressional Oversight Commission (the "Commission") was created by the CARES Act to oversee the implementation of Division A, Title IV, Subtitle A of the CARES Act ("Subtitle A").[1] Subtitle A provides the Treasury Department (the "Treasury") $500 billion to use "to provide liquidity to eligible businesses . . . related to losses incurred as a result of coronavirus,"[2] including up to $17 billion for the Treasury to lend to businesses "critical to maintaining national security."[3] The Treasury recently made such a loan to YRC Worldwide Inc. ("YRC"). We write as members of the Commission to request information related to the Defense Department's recommendation and certification that YRC is critical to maintaining national security.

The Treasury has defined a "business critical to maintaining national security" as a business that is, at the time of its application for a national security loan, performing under a defense contract of the highest national priority or operating under a top-secret facility security clearance.[4] A business that does not satisfy either of these two criteria may nonetheless be considered for a national security loan if the Secretary of Defense or the Director of National Intelligence recommends and certifies that the business is critical to maintaining national security and the Secretary of the Treasury agrees with that determination.[5]

On July 8, 2020, the Treasury finalized an agreement to loan $700 million to YRC. YRC provides transportation and logistics services throughout North America. Based on 2019 revenue,

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[1] CARES Act, Pub. L. No. 116-136, § 4020, 134 Stat. 281 (2020).
[2] *Id*. at § 4003(a).
[3] *Id*. at § 4003(b)(3).
[4] U.S. Department of the Treasury, *Q&A: Loans to Air Carriers and Eligible Businesses and National Security Businesses*, Apr. 10, 2020, https://home.treasury.gov/system/files/136/CARES-Airline-Loan-Support-Q-and-A-national-security.pdf; Defense Contract Management Agency, *Defense Priorities & Allocations System (DPAS)*, May 7, 2019, https://www.dcma.mil/DPAS/ ("A DX rating is assigned to those programs of the highest national priority").
[5] U.S. Department of the Treasury, *Q&A: Loans to Air Carriers and Eligible Businesses and National Security Businesses*, Apr. 10, 2020, https://home.treasury.gov/system/files/136/CARES-Airline-Loan-Support-Q-and-A-national-security.pdf.

YRC is the fifth-largest U.S. trucking company and the fourth-largest less-than-truckload ("LTL") U.S. shipping provider (*i.e.*, shipments where smaller cargos from multiple customers are combined on one trailer).[6] According to the Treasury, "YRC is a leading provider of critical military transportation and other hauling services to the U.S. government and provides 68% of less-than-truckload services to the Department of Defense ("Defense Department")."[7] The Treasury asserts that the loan "will enable YRC to maintain approximately 30,000 trucking jobs and continue to support essential military supply chain operations."[8] The Treasury's determination that YRC is critical to maintaining national security was "based on a certification by the Secretary of Defense," rather than on YRC satisfying either of the Treasury's two national security eligibility criteria.[9]

YRC has struggled financially for years and the COVID-19 crisis has exacerbated those struggles. YRC's credit has been rated non-investment grade for over a decade.[10] On April 6, 2020, a research report by investment bank Stephens Inc. indicated that YRC might be at risk of a "potential bankruptcy."[11] One month later, on May 11, 2020, YRC stated that there was "substantial doubt" about its ability to continue to operate as a going concern without "governmental assistance or a meaningful stabilization of the economy in the near-term."[12] On May 28, 2020, Standard & Poor's downgraded YRC's credit rating from CCC+ to CCC, stating that YRC's "capital structure [was] unsustainable over the long term."[13]

To fulfill our obligations under the CARES Act, the Commission requests the following information, pursuant to Section 4020(e)(4) of that Act:

1. In general, what criteria does the Defense Department use in evaluating whether a business is critical to maintaining national security? Specifically, what criteria did the Defense Department use to evaluate whether YRC is critical to maintaining national security?

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[6] Jennifer Smith, *Trucker YRC Seeks to Defer Millions in Benefits Payments*, Wall Street Journal, June 18, 2020, https://www.wsj.com/articles/trucker-yrc-seeks-to-defer-millions-in-benefits-payments-11592508252 (citing analysis by transportation research provider SJ Consulting Group Inc. that ranks LTL shipping providers by revenue for LTL operations only).
[7] U.S. Department of the Treasury, *Treasury to Provide Loan to YRC Worldwide*, July 1, 2020, https://home.treasury.gov/news/press-releases/sm1049.
[8] *Id.*
[9] *Id.*
[10] Moody's Investors Services, YRC Worldwide Inc. Ratings, https://www.moodys.com/creditratings/YRC-Worldwide-Inc-credit-rating-834015 (last visited July 29, 2020).
[11] Jennifer Smith, *Truckers Cut Spending as Factory Slowdown Weighs on Operators*, Wall Street Journal, April 7, 2020, https://www.wsj.com/articles/truckers-cut-spending-as-factory-slowdown-weighs-on-some-operators-11586295247.
[12] YRC Worldwide Inc., *Quarterly Report (Form 10-Q)*, May 11, 2020, https://sec.report/Document/0001564590-20-024217/.
[13] Standard & Poor's, *U.S.-Based YRC Worldwide Inc. Downgraded To 'CCC' On Anticipated Covenant Violation, Outlook Negative*, May 28, 2020, https://www.standardandpoors.com/en_US/web/guest/article/-/view/type/HTML/id/2450913.

2. What was the Defense Department's rationale for recommending and certifying that YRC is critical to maintaining national security? Please provide all documentation and analysis supporting the Defense Department's conclusion, including a copy of your recommendation and certification that YRC is critical to maintaining national security.

3. Please summarize the decision-making process related to YRC's designation as a business critical to maintaining national security. The summary should (1) identify the parties that were involved in the designation, whether the parties are governmental or otherwise (although the list may elect to use parties' offices, titles, and affiliations while omitting their individual names), and (2) list any department, agency, office, or instrumentality of the United States or entity possessing public authority under the laws of the United States that was included in giving any input into that decision-making process (irrespective of whether it was an ultimate decision-maker).

4. YRC "provides 68% of less-than-truckload services to the Department of Defense"[14] and reportedly delivers "food, electronics and other supplies to military locations around the country."[15] Why does the Defense Department believe these services from the fourth-largest less-than-truckload U.S. shipping provider are critical to maintaining national security?

5. What types of supplies does YRC transport for the Defense Department?

6. What services does YRC provide for the Defense Department other than less-than-truckload services?

7. Has the Defense Department decreased its usage of YRC's services at all during the COVID-19 crisis?

8. What other trucking companies provide less-than-truckload services for the Defense Department?

9. In evaluating whether YRC is critical to maintaining national security, did the Defense Department communicate with other trucking companies about whether they could meet the Defense Department's needs for transportation services if YRC reduced or ceased its operations? If so, please provide a summary of such communications.

10. In evaluating whether YRC is critical to maintaining national security, did the Defense Department consider replacement services or service providers for YRC? If not, why not?

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[14] U.S. Department of the Treasury, *Treasury to Provide Loan to YRC Worldwide*, July 1, 2020, https://home.treasury.gov/news/press-releases/sm1049.

[15] Kate Davidson & Jennifer Smith, *U.S. Treasury to Lend $700 Million to Trucking Firm YRC Worldwide*, Wall Street Journal, July 1, 2020, https://www.wsj.com/articles/u-s-treasury-to-loan-700-million-to-trucking-firm-yrc-worldwide-11593602409.

11. YRC has struggled financially for years prior to the COVID-19 crisis. What contingency plans did the Department of Defense have in place, before and after the onset of the COVID-19 crisis, should YRC reduce or cease its operations? Please provide all documentation concerning these plans.

12. Did the Department of Defense communicate with any creditors of YRC, including lenders or health, welfare, and pension funds, with respect to YRC's designation as a business critical to maintaining national security, the Treasury's loan transaction with YRC, or otherwise? If so, please provide a list of such creditors and a summary of such communications.

13. How many other businesses has the Defense Department recommended and certified as critical to maintaining national security as part of the Treasury's national security loan program?

In light of the Commission's monthly reporting obligations, we ask that you provide the information requested in this letter by August 27, 2020 and look forward to receiving your responses.

Thank you for your attention to this matter.

Sincerely,

/s/
French Hill
Member of Congress

/s/
Bharat Ramamurti
Commissioner

/s/
Donna E. Shalala
Member of Congress

/s/
Pat Toomey
U.S. Senator

cc: Secretary Steven T. Mnuchin, U.S. Department of the Treasury

Appendix D:
Letter from Treasury Department
to Congressional Oversight Commission, dated August 27, 2020

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

August 27, 2020

The Honorable French Hill
U.S. House of Representatives
Washington, DC 20515

The Honorable Donna E. Shalala
U.S. House of Representatives
Washington, DC 20515

Mr. Bharat Ramamurti
Commissioner
Washington, DC 20515

The Honorable Pat Toomey
United States Senate
Washington, DC 20510

Dear Members of the Congressional Oversight Commission:

I write regarding your August 7, 2020 letter, which requests additional information about the loans the Department of the Treasury agreed to make to YRC Worldwide Inc. (YRC) under section 4003(b)(3) of the Coronavirus Aid, Relief, and Economic Security Act. As your letter acknowledges, Treasury proactively provided the Commission with information on the YRC loans in a letter dated July 30, 2020, and we welcome the opportunity to further inform your work.

Treasury is actively working to respond to the specific questions set forth in your August 7 letter as quickly as possible. We expect to be able to provide the Commission with those responses by September 4.

If you have further questions, please direct your staff to contact the Office of Legislative Affairs

Sincerely,

Frederick W. Vaughan

Frederick W. Vaughan
Principal Deputy Assistant Secretary
for Legislative Affairs

Appendix E:
Letter from Department of Defense
to the Honorable Pat Toomey, dated September 2, 2020

OFFICE OF THE UNDER SECRETARY OF DEFENSE
3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

ACQUISITION
AND SUSTAINMENT

SEP 0 2 2020

The Honorable Pat Toomey
Congressional Oversight Commission
United States Senate
Washington, DC 20510

Dear Senator Toomey:

We appreciate the Congressional Oversight Commission's letter dated August 7, 2020, requesting information related to the Defense Department's recommendation and certification that YRC is critical to maintaining national security. We expect to respond to your letter by September 18, 2020. Thank you for your patience.

Sincerely,

Jeffrey Nadaner

Jeffrey (Jeb) Nadaner, Ph.D.
Deputy Assistant Secretary of Defense
for Industrial Policy

Appendix F:
Letter from Treasury Department
to Congressional Oversight Commission, dated September 4, 2020

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

September 4, 2020

The Honorable French Hill
U.S. House of Representatives
Washington, DC 20515

The Honorable Donna E. Shalala
U.S. House of Representatives
Washington, DC 20515

Mr. Bharat Ramamurti
Commissioner
Washington, DC 20515

The Honorable Pat Toomey
United States Senate
Washington, DC 20510

Dear Members of the Congressional Oversight Commission:

I write in response to your August 7, 2020 letter, which requests additional information about the loans the Department of the Treasury agreed to make to YRC Worldwide Inc. (YRC) under section 4003(b)(3) of the Coronavirus Aid, Relief, and Economic Security Act. In the spirit of transparency and cooperation, Treasury proactively provided the Commission with information on the YRC loans in a letter dated July 30, 2020, and we welcome the opportunity to further inform your work.

To these ends, we are enclosing responses to the follow-up questions in your August 7 letter, as well as documents we have identified as responsive to your inquiries. In addition, we are coordinating with Commission staff on the production of additional responsive documents that contain sensitive, nonpublic information and should be handled in a confidential manner.

If you have further questions, please direct your staff to contact the Office of Legislative Affairs

Sincerely,

Frederick W. Vaughan
Principal Deputy Assistant Secretary
Office of Legislative Affairs

Enclosures

Appendix: Responses to Questions Included in the Congressional Oversight Commission's August 7, 2020 Letter to the U.S. Department of the Treasury

1. **What was the Treasury's rationale for determining that YRC is critical to maintaining national security? Please provide all documentation and analysis supporting the Treasury's conclusion, including the Secretary of Defense's recommendation and certification that YRC is critical to maintaining national security.**

   Section 4003(b)(3) of the CARES Act authorizes Treasury to make loans and loan guarantees for "businesses critical to maintaining national security." The statute, however, does not define that term. Therefore, Treasury issued guidance on April 10, 2020, providing that a company can fall within this definition if it meets at least one of three criteria at the time of the business's application[1]:

   - the business performs under a "DX"-priority rated contract or order under the Defense Priorities and Allocations System regulations (15 CFR part 700);
   - the business operates under a valid top secret facility security clearance under the National Industrial Security Program regulations (32 CFR part 2004); or
   - based on a recommendation and certification by the Secretary of Defense or the Director of National Intelligence that the applicant business is critical to maintaining national security, the Secretary of the Treasury determines that the applicant business is critical to maintaining national security.

   In accordance with Treasury's guidance, the Secretary of Defense delivered to Treasury a recommendation and certification that YRC is critical to maintaining national security. YRC carries 68 percent of the Department of Defense's less-than-truckload shipments and is the leading transportation provider to the Department of Homeland Security and U.S. Customs and Border Protection. The Secretary of the Treasury determined that YRC is critical to maintaining national security based upon the Secretary of Defense's recommendation and certification.

   A copy of the recommendation and certification by the Secretary of Defense is attached.

2. **Please summarize the decision-making process related to YRC's designation as a business critical to maintaining national security. The summary should (1) identify the parties that were involved in the designation, whether the parties are governmental or otherwise (although the list may elect to use parties' offices, titles, and affiliations while omitting their individual names), and (2) list any department, agency, office, or instrumentality of the United States or entity possessing public authority under the laws of the United States that was included in giving any input into that decision-making process (irrespective of whether it was an ultimate decision-maker).**

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[1] Treasury, Q&A: Loans to Air Carriers and Eligible Businesses and National Security Businesses (Updated as of April 10, 2020), available at https://home.treasury.gov/system/files/136/CARES-Airline-Loan-Support-Q-and-A-national-security.pdf.

As described above, in accordance with Treasury's public guidance regarding loans to national security businesses, the Secretary of Defense delivered to Treasury a recommendation and certification that YRC is critical to maintaining national security, and the Secretary of the Treasury determined that YRC is critical to maintaining national security based upon the Secretary of Defense's recommendation and certification.

We understand that the Commission sent a separate letter on this topic to Secretary Esper on August 7, 2020, and respectfully defer to the Department of Defense to the extent the Commission is interested in further information on the Department of Defense's decision-making process.

3. **Did the Treasury communicate with any creditors of YRC, including lenders or health, welfare, and pension funds, with respect to YRC's designation as a business critical to maintaining national security, the Treasury's loan transaction with YRC, or otherwise? If so, please provide a list of such creditors and a summary of such communications.**

   We are not aware of any Treasury communications with YRC's creditors with respect to Treasury's determination that YRC is a business critical to maintaining national security. As described above, Treasury's determination was based upon the recommendation and certification by the Secretary of Defense that YRC is critical to maintaining national security.

   As Treasury evaluated whether to make a loan to YRC and potential terms for such a loan, Treasury held discussions with some of YRC's existing lenders. These discussions enabled Treasury to assess the appropriate size and structure of Treasury's loan and were necessary to secure the existing lenders' agreement to amend their outstanding loans to YRC to permit the Treasury loan. For these purposes, Treasury communicated with Apollo Global Management, Beal Bank, Citizens Bank, Bank of America Merrill Lynch, and Deutsche Bank.

   In addition to Treasury's communications with YRC's creditors, as part of Treasury's evaluation of YRC's finances and potential credit risks, Treasury held discussions with the company's employee labor union regarding YRC's obligations to its employees. Treasury also held discussions with the company's largest health insurance provider regarding the company's liabilities and the scheduled cancellation of the health insurance coverage of company employees.

4. **While YRC's business, like many other American businesses, may have been impacted by the COVID-19 crisis, YRC's financial troubles also predate the COVID-19 crisis. YRC's credit has been rated non-investment grade for over a decade and the pandemic may only have been the straw that broke the camel's back. Given those preexisting problems, how does the Treasury reconcile YRC's loan with the statutory language in Subtitle A stating that the Treasury is authorized to make loans "to provide liquidity to eligible businesses . . . related to losses incurred as a result of coronavirus"?**

YRC faced significant losses as a result of the spread of COVID-19. As the pandemic hit the U.S. economy, YRC's shipments fell almost 30% from March 13, 2020 to April 10, 2020. As a result, YRC's revenue was projected to fall 16% in 2020 compared to 2019. The fall in revenue created a liquidity crisis at the company.

5. **Please provide all documentation, analysis, and recommendations concerning the Treasury's loan to YRC that Perella Weinberg Partners and any other external financial advisors produced for Treasury.**

   Materials produced by Treasury's external financial advisors are attached.

   We are coordinating with Commission staff on the production of additional responsive documents that contain sensitive, nonpublic information and should be handled in a confidential manner.

6. **How did the Treasury determine that $700 million was an appropriate amount for YRC's loan? Please provide all documentation and analysis supporting the Treasury's conclusion, including any analysis produced by Perella Weinberg Partners and any other external financial advisors for the Treasury.**

   YRC's fall in revenue as a result of the spread of COVID-19 created a liquidity crisis that forced the company to delay payments for employee health insurance and pension contributions and depleted the company's working capital. Based on discussions with the company, Treasury determined that $300 million—the amount of Treasury's Tranche A Loan—was an appropriate amount to enable the company to meet near-term obligations and working capital needs. In addition, YRC's fall in revenue had disrupted a plan to upgrade YRC's fleet of tractors and trailers to improve efficiency. Projections supported a capital expenditure level of $400 million—the amount of Treasury's Tranche B Loan—over the next two years for this purpose.

   Drawings under Treasury's $400 million Tranche B Loan can only be used for the acquisition of tractors and trailers and are subject to a CapEx Plan that must be approved by the Treasury every quarter based on the company's most recent financial and operating results and updated projections of performance.

7. **The Commission notes that a portion of the loan will be used by YRC to finance capital expenditures, such as the purchase of tractors and trailers. How are these capital expenditures related to YRC's "losses incurred as a result of coronavirus"?**

   YRC's substantial fall in revenue as a result of the COVID-19 pandemic created a liquidity crisis that prevented the company from carrying out necessary capital expenditures, and the liquidity provided by Treasury to enable those expenditures is therefore "related to losses incurred as a result of coronavirus." Treasury's Tranche B Loan will finance capital expenditures to support the viability of the company. Treasury holds a first-priority lien over all assets purchased with the proceeds of the Tranche B Loan.

8. **The Commission notes that a portion of the loan will be used by YRC to pay deferred pension and healthcare liabilities. How are these deferred liabilities related to YRC's "losses incurred as a result of coronavirus"?**

   Similar to the issues described above relating to the use of Treasury's loan proceeds for capital expenditures, YRC's substantial fall in revenue as a result of the COVID-19 pandemic prevented the company from paying its healthcare and pension obligations. Thus, the liquidity provided by Treasury to cover those expenses is "related to losses incurred as a result of the coronavirus."

9. **The Letter states that "the interest rate of LIBOR plus 3.5% on the YRC loans was set to be above the interest rate of LIBOR plus 3% applicable to loans made by banks participating in the Federal Reserve's Main Street Lending Program (MSLP)." The Letter also notes that the Federal Reserve set the interest rate for the MSLP at a "penalty rate." However, neither LIBOR plus 3% nor LIBOR plus 3.5% is a penalty rate for YRC. YRC received a $600 million loan just a few months prior to the coronavirus outbreak with an interest rate of LIBOR plus 7.5% (*i.e.*, 4% higher than the Treasury's loan to YRC). In light of that loan, why does the Treasury believe that an interest rate of LIBOR plus 3.5%, even including its assumptions about the valuation of its equity stake in YRC, was an appropriate interest rate for this loan? Please provide all documentation relating to the Treasury's interest rate and risk analysis, including any analysis produced by Perella Weinberg Partners and any other external financial advisors for the Treasury.**

   Section 4003(c)(1)(A) of the CARES Act provides that loans to national security businesses will be at a rate determined by the Treasury Secretary based on the risk and current average yield on outstanding marketable obligations of the United States of comparable maturity. Treasury considered the interest rate applicable to bank loans under the Federal Reserve's Main Street Lending Program. The interest rate under the Main Street Lending Program was set at a "penalty rate" of Libor plus 3%, and Treasury set the interest rate on the YRC loan at 0.5% above that rate. The duration and credit risk of the Treasury loan to YRC are comparable to the duration and credit risk of the Main Street loans. Another benchmark was YRC's $450 million revolving credit facility maturing in January 2024 (the same year as the Treasury loan), which bears an interest rate of Libor + 2.25%.

   Importantly, Treasury's compensation for this loan is not based only on the interest rate: Treasury also received compensation in the form of a 29.6% equity holding in YRC, which has a current market value of $67 million. An analysis prepared by Treasury's financial advisor, using a range of estimates and projections, produced an estimated total return to taxpayers in excess of 12% per annum based on an assumption of a four-year holding period of the equity stake.

10. **The Letter analogizes the terms of the YRC loan with the terms of loans made by the Federal Reserve under the MSLP. The Treasury states "[t]he MSLP was established to provide bridge financing to companies of *speculative-grade credit risk* whose revenues were negatively affected by the economic impact of the COVID-19 crisis." However,**

this appears to be at odds with the Treasury's prior statement that "[t]he Main Street program was established to provide a safety net for small and medium-sized businesses that were in *sound financial condition* before the pandemic." Please clarify.

The majority of borrowers under the Main Street Lending Program were in sound financial condition but below investment-grade credit risk before the pandemic. The impact of COVID-19 on the operations and revenues of these companies has lowered their creditworthiness further. Like these companies, YRC's financial condition was harmed by the effects of COVID-19.

11. **In determining that its loan to YRC was "sufficiently secured" as required by the CARES Act, the Treasury assumes a 20% discount for the liquidation value of the equipment YRC will purchase with the proceeds of the loan. Please provide the basis for determining that 20% is an appropriate discount rate for such equipment, including all related documentation such as any analysis produced by Perella Weinberg Partners and any other external financial advisors for the Treasury.**

    Based on discussions with the borrower, Treasury's financial advisors, and Treasury's risk analysis experts, 20% was determined to be a reasonable discount for such collateral, based on market prices for used tractors and trailers.

12. **The Treasury states that it determined that YRC has excess existing collateral of $545.7 million to secure the $700 million loan, along with an interest in certain equipment purchased with proceeds of the loan. The Commission notes that the Treasury's loan is secured by a combination of a first-priority security interest in certain escrow accounts, a third-priority security interest in YRC's personal property, a third-priority mortgage or deed on certain real property, a third-priority pledge of YRC's equity interests, and a first-priority security interest on certain equipment YRC purchases with proceeds of the loan. Did the Treasury consider seeking additional first-priority interests on YRC assets? If not, why not? Please provide all documentation supporting the Treasury's conclusion that YRC's loan is "sufficiently secured," including any analysis produced by Perella Weinberg Partners and any other external financial advisors for the Treasury, diligence reports, and other professional opinions such as appraisals.**

    Treasury estimated that it would have collateral of $866 million securing its $700 million loan (a collateralization level of 124%) if YRC draws the full amount of both tranches of the loan.

    First, Treasury has a first-priority interest in all equipment purchased with the proceeds of its Tranche B Loan. If the full $400 million is disbursed under the Tranche B Loan, there will be newly purchased tractors and trailers with a purchase cost of $400 million securing the Tranche B Loan on a first-lien basis. Based on a 20% discount for the liquidation value of this collateral, the first-priority lien would provide Treasury with $320 million in security.

Second, the company's other lenders already hold a first-priority interest in the company's existing assets. But Treasury's loan is secured by the value of the company's existing assets in excess of those existing loans. The excess existing collateral totals $546 million.

13. **The Treasury's 29.6% equity stake in YRC is reportedly to provide "appropriate taxpayer compensation" for the loan. How did the Treasury determine that a 29.6% equity stake was appropriate? How and when does the Treasury anticipate realizing returns on its equity in YRC? Please provide all documentation and analysis supporting the Treasury's conclusion, including any analysis produced by Perella Weinberg Partners and any other external financial advisors for the Treasury.**

    Treasury received two layers of taxpayer compensation from the YRC loan. First, the company is paying an interest rate of Libor + 3.5%. Second, the 29.6% equity stake currently has a market value of $67 million. As required by section 4003(d) of the CARES Act, this enables taxpayers to participate in the appreciation in the company's equity value. Treasury will realize its return on the YRC equity stake based on market conditions, with the objective of obtaining a good return for the taxpayer.

    An analysis prepared by Treasury's financial advisor, using a range of estimates and projections, produced an estimated total return to taxpayers in excess of 12% per annum based on an assumption of a four-year holding period of the equity stake. Treasury, with the advice of its financial advisor, considered that these estimated returns provided appropriate compensation for the taxpayer.

14. **Please also provide the Commission with a copy of the loan application submitted by YRC, which, per the Treasury's form application, includes information regarding YRC's U.S. operations, covered losses, financial plan, etc.**

    A copy of YRC's loan application is attached.

    We are coordinating with Commission staff on the production of additional responsive documents that contain sensitive, nonpublic information and should be handled in a confidential manner.

15. **How will the Treasury monitor whether YRC complies with Section 12.03 of the loan credit agreement's terms on maintenance of employment levels?**

    The loan agreement between Treasury and YRC imposes extensive reporting and oversight requirements on the company to enable Treasury to monitor YRC's compliance with the agreement. Among other relevant provisions, section 6.02(a) of the agreement requires YRC to produce to Treasury a duly completed compliance certificate every quarter; section 6.02(e) of the agreement requires YRC to produce to Treasury such information regarding YRC's business, legal, financial, or corporate affairs as Treasury may from time to time reasonably request; section 6.10 provides Treasury with authority to examine YRC's corporate, financial and operating records and to discuss the company's affairs with its directors and officers;

section 6.19 requires the company to provide Treasury, the Treasury Inspector General, and other entities unrestricted access to all of YRC's records related to the Loans, including access to the company's personnel for interviews; section 12.01 requires the company to provide any information requested by Treasury to assess YRC's compliance with the applicable requirements under Title IV of the CARES Act.

16. **The Treasury has previously told the Commission that "[t]ogether with the other data and information provided in [loan] applications, Treasury will develop standards for adequate and appropriate taxpayer protections. Treasury has not yet determined the final form of taxpayer protection that will be required, but anticipates applying a uniform standard that satisfies the requirements of [the CARES Act]." Please provide the uniform standard that the Treasury is using to measure adequate and appropriate taxpayer protections, including the standards applied to the YRC loan.**

    Treasury continues to anticipate applying a uniform approach to taxpayer protection for most borrowers. For public companies, in accordance with section 4003(d) of the CARES Act, the required taxpayer protection will generally consist of warrants, the amount of which will be based on the principal amount of the loan. For nonpublic companies, the required taxpayer protection will generally consist of payment-in-kind interest on the loan.

17. **The Letter states that the Treasury adopted a credit test for national security loans consisting of three criteria and that an applicant passes this test if it meets any two of those criteria. Will the Treasury deny loans to companies that are designated as being critical to maintaining national security but do not pass this credit test?**

    Treasury does not expect to make a loan to any company that does not meet Treasury's applicable credit standards.

18. **The Treasury previously told the Commission that, as of June 17, 2020, the Treasury "received 70 applications for the national security loan program, 25 of which meet one of the two national security eligibility criteria established by Treasury, although one of those has been withdrawn." Please provide an update regarding the total number of loan applications for the national security loan program the Treasury has received to date and the status of those loan applications, including whether the Treasury currently anticipates issuing additional loans or loan guarantees under this program.**

    As of August 25, 2020, Treasury had received 74 applications for the national security loan program. Of these 74 applications, one loan has been made (YRC), 17 are currently being processed, and the remaining 56 have been or are expected to be withdrawn or rejected.

P / W / P
PERELLA WEINBERG PARTNERS

Davis Polk

Project Brick Road: SUMMARY OF TERMS
July 7, 2020

	TERMS
UST Investment	▪ **Tranche A: Near-Term Contractual Obligations** – **Amount:** $300 million ($200 million funded at close) – **Security:** 3rd lien on all assets of the Company – **Coupon:** L + 3.50% total: consisting of 1.50% cash and 2.00% PIK – **Maturity**: September 30, 2024 ▪ **Tranche B: Capital Expenditures / Fleet Investment** – **Amount:** $400 million (distributions subject to CapEx Plan) ▪ Investments to be made pursuant to capital expenditure plan to be approved by UST and subject to periodic review by UST – **Security:** 1st lien on newly purchased fleet collateral; 3rd lien on all other assets of the Company – **Coupon:** L + 3.50% cash – **Maturity**: September 30, 2024 ▪ **UST to receive 42% share issuance (equal to 29.6% pro forma fully diluted ownership)** – UST shares to be held in voting trust
Treatment of Existing Term Loan	▪ Reversion of Existing Term Loan coupon to contractual rate of L + 7.50% cash ▪ Capitalization of interest accrued since 12/31/19 through 6/30/20 ▪ Modification of EBITDA covenant and extension of covenant holiday through Q3'21 ▪ Minimum liquidity covenant of $125 million ▪ 1/3 participation in collateral pool consisting of rolling stock acquired off lease
Treatment of Existing ABL	▪ Extension of contractual maturity to January 2, 2024 ▪ Increase in coupon of 50 bps
Other	▪ Remedy of past-due health care obligations and any other existing obligations and defaults

SECRETARY OF DEFENSE
1000 DEFENSE PENTAGON
WASHINGTON, DC 20301-1000

JUN 2 6 2020

The Honorable Steven Mnuchin
Secretary of the Treasury
U.S. Department of the Treasury
Washington, DC 20220

Dear Mr. Secretary:

The Department of Defense has been collaborating with the Treasury Department in executing loans under section 4003(b) of the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Public Law 116-136 . Certain criteria were set forth in the Treasury's loan application that would allow companies to qualify for these loans. One of these requires the Department of Defense to provide recommendation and certification that the applicant business is critical to maintaining national security. We have determined that the following four companies meet this requirement, and accordingly I provide my certification that the following four companies are critical to maintaining national security. These companies are:

- [redacted]
- [redacted]
- [redacted]
- Yellow Roadway Corporation Worldwide

Please let me know if you require any additional information from the Department of Defense to process the applications from these companies. We look forward to continuing our partnership on these activities as we help our defense industrial base recover from impacts due to coronavirus disease 2019.

Sincerely,

Mark T. Esper

Appendix G:
Letter from Department of Defense
to Members of Congressional Oversight Commission,
dated Oct. 22, 2020

THE UNDER SECRETARY OF DEFENSE
3010 DEFENSE PENTAGON
WASHINGTON, DC 20301-3010

ACQUISITION
AND SUSTAINMENT

OCT 2 2 2020

The Honorable Pat Toomey
Congressional Oversight Commission
United States Senate
Washington, DC 20510

Dear Senator Toomey:

I received the Congressional Oversight Commission's letter dated August 7, 2020, to the Secretary of Defense requesting information related to the Department of Defense (DoD) recommendation and certification that YRC Worldwide, Inc. is critical to maintaining national security. I am responding on his behalf. This letter provides the Department's response to the thirteen questions posed in the Commission's letter.

1. *In general, what criteria does the Defense Department use in evaluating whether a business is critical to maintaining national security? Specifically, what criteria did the Defense Department use to evaluate whether YRC is critical to maintaining national security?*

   The following criteria are used when evaluating all candidates, including YRC, for Treasury loans under Section 4003(b)(3) of the Coronavirus Aid, Relief, and Economic Security Act (CARES) Act:
   1. Does the company currently supply to DoD via a direct contract or through a sub-contract?
   2. Are they owned in whole or in part by China or Russia?
   3. Are they participating in any other COVID-19 related loan or grant program?
   4. Are there alternate sources for the item?
   5. Is what they supply a commodity or commercially available item (i.e., duct tape)?

   The first one is a requirement. The second one would preclude them from certification. The last three do not preclude them from certification, but instead inform the Department's decision. In addition, all companies are screened via our Exiger tool to provide information to assist with the analysis, such as existing DoD contracts, foreign ownership, employee retention, and safety issues.

2. *What was the Defense Department's rationale for recommending and certifying that YRC is critical to maintaining national security? Please provide all documentation and analysis supporting the Defense Department's conclusion, including a copy of your recommendation and certification that YRC is critical to maintaining national security.*

   As a subcontractor to Crowley Logistics, Inc., a transportation and logistics firm that subcontracts to various transportation service providers and is used by the DoD, YRC is the largest single provider of less-than-truckload (LTL) services (68 percent of cargo moved LTL) to the Department of Defense and delivers items like food, electronics and other necessary supplies to military locations around the country.

3. *Please summarize the decision-making process related to YRC's designation as a business critical to maintaining national security. The summary should (1) identify the parties that were involved in the designation, whether the parties are governmental or otherwise (although the list may elect to use parties' offices, titles, and affiliations while omitting their individual names), and (2) list any department, agency, office, or instrumentality of the United States or entity possessing public authority under the laws of the United States that was included in giving any input into that decision-making process (irrespective of whether it was an ultimate decision-maker).*

   The office of the Deputy Assistant Secretary of Defense for Industrial Policy coordinates the analysis. The analysis is provided to the Under Secretary for Acquisition and Sustainment, who then sends it to the Secretary of Defense for final approval. Data for the YRC analysis was provided by U.S. Transportation Command (USTRANSCOM).

4. *YRC "provides 68 percent of less-than-truckload services to the Department of Defense" and reportedly delivers "food, electronics and other supplies to military locations around the country." Why does the Defense Department believe these services from the fourth-largest less-than-truckload U.S. shipping provider are critical to maintaining national security?*

   It is important that our troops have the supplies they need in order to be able to perform their duties and defend the country.

5. *What types of supplies does YRC transport for the Defense Department?*

   YRC transports a wide variety of supplies for the DoD. For example, as a sub-contractor to Crowley Logistics, Inc. on the Defense Freight Transportation Services (DFTS) contract, YRC moves freight of all kinds for the Defense Logistics Agency and the Defense Contract Management Agency. This includes both "general cargo" and hazardous materials (HAZMAT); examples from a random data pull include Class II items, Class IV items, batteries, and freight all kinds (FAK).

6. *What services does YRC provide for the Defense Department other than less-than-truckload services?*

   YRC provides truckload service as a subcontractor for the Surface Deployment and Distribution Command (SDDC).

7. *Has the Defense Department decreased its usage of YRC's services at all during the COVID-19 crisis?*

Ordinarily, the Government is not privy to the amount of cargo Crowley or other DoD prime contract shippers book with YRC or other sub-contractors, as we do not track this information on an ongoing basis. The 68 percent cited elsewhere represents a snapshot in time provided after inquiries were made of USTRANSCOM, who did a one-time request for that data when the YRC's loan request was received.

8. *What other trucking companies provide less-than-truckload services for the Defense Department?*

SDDC and its customers have access to LTL capacity through multiple providers, to include ABF Freight System Inc., Central Transport LLC, Estes Express Lines, FedEx and UPS.

9. *In evaluating whether YRC is critical to maintaining national security, did the Defense Department communicate with other trucking companies about whether they could meet the Defense Department's needs for transportation services if YRC reduced or ceased its operations? If so, please provide a summary of such communications.*

No.

10. *In evaluating whether YRC is critical to maintaining national security, did the Defense Department consider replacement services or service providers for YRC? If not, why not?*

No. DoD does not contract with YRC directly.

11. *YRC has struggled financially for years prior to the COVID-19 crisis. What contingency plans did the Department of Defense have in place, before and after the onset of the COVID-19 crisis, should YRC reduce or cease its operations? Please provide all documentation concerning these plans.*

DoD did not develop any contingency plans.

12. *Did the Department of Defense communicate with any creditors of YRC, including lenders or health, welfare, and pension funds, with respect to YRC's designation as a business critical to maintaining national security, the Treasury's loan transaction with YRC, or otherwise? If so, please provide a list of such creditors and a summary of such communications.*

No. Such inquiries would be beyond the scope of the single question put to the DoD: is the company critical to maintaining national security?

13. *How many other businesses has the Defense Department recommended and certified as critical to maintaining national security as part of the Treasury's national security loan program?*

There have been 19 other companies that DoD has recommended and certified in addition to YRC, for a total of 20.

I look forward to continuing to work with Congress to counter the impacts of COVID-19 on the defense industrial base. I am sending identical letters to the other signatories of your letter.

Sincerely,

Ellen M. Lord

Appendix H:
Letter from Congressional Oversight Commission
to Department of Defense Undersecretary Ellen Lord,
dated November 10, 2020

REP. FRENCH HILL
BHARAT RAMAMURTI
REP. DONNA E. SHALALA
SEN. PAT TOOMEY

SDG-55 DIRKSEN SENATE
OFFICE BUILDING

WASHINGTON, DC 20510
(202) 224-5050

Congressional Oversight Commission

November 10, 2020

The Honorable Ellen Lord
Undersecretary
U.S. Department of Defense
1000 Defense Pentagon
Washington, DC 20301

Dear Undersecretary Lord:

We write as members of the Congressional Oversight Commission (Commission) to request a call to discuss the answers you provided in your letter dated October 22, 2020 in more detail. Your letter was in response to our initial letter dated July 30, 2020.

As detailed in our most recent report dated October 30, 2020, "The Commission finds the Department of Defense's delay inexcusable and its answers incomplete. The Commission looks forward to further discussion of this matter in its November report."[1]

As outlined, we find it inexcusable that the Department of Defense took nearly three months to provide answers to our questions. In order for the Commission to conduct our statutory obligations, we feel strongly that we must have more complete answers to our questions and request this call happen by November 18, 2020. This will ensure we have enough time to conduct proper analysis in advance of the release of our next report.

Thank you for your attention to this matter.

Sincerely,

/s/ French Hill Member of Congress	/s/ Bharat Ramamurti Commissioner
/s/ Donna E. Shalala Member of Congress	/s/ Pat Toomey U.S. Senator

[1] Congressional Oversight Commission, The Sixth Report of the Congressional Oversight Commission, October 29, 2020, at 13, https://coc.senate.gov/sites/default/files/2020-10/The%20Sixth%20Report_Final%20%28002%29_0.pdf

Appendix I:
Letter from Congressional Oversight Commission
to Treasury Secretary Steven T. Mnuchin, dated November 17, 2020

REP. FRENCH HILL
BHARAT RAMAMURTI
REP. DONNA E. SHALALA
SEN. PAT TOOMEY

SDG–55 DIRKSEN SENATE
OFFICE BUILDING

WASHINGTON, DC 20510
(202) 224–5050

Congressional Oversight Commission

November 17, 2020

The Honorable Steven T. Mnuchin
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220

Dear Secretary Mnuchin,

In the Treasury Department's response to the Congressional Oversight Commission's ("Commission") inquiry regarding the national security loan to YRC Worldwide, Inc. (dated Sept. 4, 2020), the Treasury stated that it deferred to the Department of Defense's determination that YRC is critical to maintaining national security. However, as detailed in our most recent report dated October 30, 2020, the Commission finds the Department of Defense's delay in responding to our inquiries inexcusable and its answers incomplete. On November 10, 2020, we requested a call with the Department of Defense to address outstanding questions. We have received no response.

We request that on or before November 23, 2020, the Treasury produce to the Commission copies of all communications and records of communication between the Treasury Department and Department of Defense regarding the loan to YRC Worldwide, Inc.--whether electronic, telephonic, or otherwise, and including any notes or logs of communications. Although we have made the same production request to the Department of Defense, we do not believe it appropriate for the Treasury to defer to the Department of Defense in responding to this production request, given the Department of Defense's lack of responsiveness to date.

Thank you for your prompt attention to this matter.

Sincerely,

/s/
French Hill
Member of Congress

/s/
Donna E. Shalala
Member of Congress

/s/
Bharat Ramamurti
Commissioner

/s/
Pat Toomey
U.S. Senator

Appendix J:
Letter from Congressional Oversight Commission to Department of Defense Undersecretary Ellen Lord, dated November 17, 2020

REP. FRENCH HILL
BHARAT RAMAMURTI
REP. DONNA E. SHALALA
SEN. PAT TOOMEY

SDG–55 DIRKSEN SENATE
OFFICE BUILDING

WASHINGTON, DC 20510
(202) 224–5050

Congressional Oversight Commission

November 17, 2020

The Honorable Ellen Lord
Undersecretary
U.S. Department of Defense
1000 Defense Pentagon
Washington, DC 20301

Dear Undersecretary Lord:

As stated in our letter to you dated November 10, 2020, the Congressional Oversight Commission ("Commission") finds the Department of Defense's delay in responding to our inquiries regarding the national security loan to YRC Worldwide, Inc. inexcusable, and we find the Department of Defense's answers to date incomplete. Accordingly, in our November 10 letter, we requested a call with you on or before November 18, 2020 to address our outstanding questions. You have not responded. The ongoing failure to provide timely responses to oversight inquiries is inexcusable.

We reiterate our request for a call on or before November 18, 2020. Additionally, we request that on or before November 23, 2020, the Department of Defense produce to the Commission copies of all communications and records of communication between the Treasury Department and Department of Defense regarding the loan to YRC Worldwide, Inc.--whether electronic, telephonic, or otherwise, and including any notes or logs of communications.

Thank you for your prompt attention to this matter.

Sincerely,

/s/
French Hill
Member of Congress

/s/
Donna E. Shalala
Member of Congress

/s/
Bharat Ramamurti
Commissioner

/s/
Pat Toomey
U.S. Senator

Appendix K:
Letter from Congressional Oversight Commission to Department of Defense Undersecretary Ellen Lord, Director of Intelligence John Ratcliffe, and Treasury Secretary Steven T. Mnuchin, dated November 18, 2020

REP. FRENCH HILL
BHARAT RAMAMURTI
REP. DONNA E. SHALALA
SEN. PAT TOOMEY

SDG-55 DIRKSEN SENATE
OFFICE BUILDING

WASHINGTON, DC 20510
(202) 224-5050

Congressional Oversight Commission

November 18, 2020

The Honorable Ellen Lord
Undersecretary
U.S. Department of Defense
1000 Defense Pentagon
Washington, D.C. 20301

The Honorable Steven T. Mnuchin
Secretary
U.S. Department of Treasury
1500 Pennsylvania Avenue NW
Washington, D.C. 20220

The Honorable John Ratcliffe
Director of National Intelligence
The White House
1600 Pennsylvania Avenue NW
Washington, D.C. 20500

Dear Undersecretary Lord, Secretary Mnuchin, and Director Ratcliffe:

The Congressional Oversight Commission (created pursuant to Section 4020 of Title IV, Subtitle A the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), P.L. 116-136) invites you to testify at a public oversight hearing to examine the funds authorized by the CARES Act that provide up to $17 billion for loans and loan guarantees to businesses critical to maintaining national security.

The Commission offers the following times to hold the hearing: the morning of December 9, 10, 16, or 17. Please let us know your availability on each of those dates as soon as possible. After we receive your response, we will send final hearing invites with confirmed timing.

Thank you in advance for your participation in this hearing. Should you or your staff have any questions about the substantive or procedural aspects of this hearing, please do not hesitate to contact the Chief Clerk, Amber Venzon at (202) 224-5050 or amber_venzon@coc.senate.gov.

Sincerely,

/s/
French Hill
Member of Congress

/s/
Bharat Ramamurti
Commissioner

/s/
Donna E. Shalala
Member of Congress

/s/
Pat Toomey
U.S. Senator

Appendix L:
Letter from Treasury Department
to Congressional Oversight Commission, dated November 23, 2020

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

November 23, 2020

The Honorable French Hill
U.S. House of Representatives
Washington, DC 20515

The Honorable Donna E. Shalala
U.S. House of Representatives
Washington, DC 20515

Mr. Bharat Ramamurti
Commissioner
Washington, DC 20515

The Honorable Pat Toomey
United States Senate
Washington, DC 20510

Dear Members of the Congressional Oversight Commission:

I write regarding your November 17, 2020 letter, which requests additional information about the loans the Department of the Treasury agreed to make to YRC Worldwide, Inc. (YRC) under section 4003(b)(3) of the Coronavirus Aid, Relief, and Economic Security Act, as well as your November 18 letter inviting Secretary Mnuchin to testify before the Commission.

Treasury has appreciated working with the Commission to provide extensive information on a number of issues and is committed to continuing to work with the Commission to accommodate its legislative interests. Following receipt of your November 17 letter, Treasury reached out to the Department of Defense (DOD) regarding your request and is working with DOD to ensure the Commission receives additional information regarding the loans to YRC as soon as practicable. Coordination among Executive Branch agencies is necessary and customary when requests to one agency involve the equities of another agency.

Additionally, consistent with our commitment to accommodating the Commission's interest in these and other issues, Secretary Mnuchin would be pleased to appear before the Commission for a hearing. Of the dates the Commission offered in its November 18 letter, the Secretary can accept your invitation to appear on December 10.

If you have further questions, please direct your staff to contact the Office of Legislative Affairs.

Sincerely,

Frederick W. Vaughan

Frederick W. Vaughan
Principal Deputy Assistant Secretary
Office of Legislative Affairs

Appendix M:
Letter from Department of Defense
to Congressional Oversight Commission, dated November 23, 2020

THE UNDER SECRETARY OF DEFENSE
3010 DEFENSE PENTAGON
WASHINGTON, DC 20301-3010

ACQUISITION
AND SUSTAINMENT

NOV 23 2020

The Honorable French Hill
United States House of Representatives
Washington, DC 20515

Mr. Bharat Ramamurti
Commissioner
Washington, DC 20515

The Honorable Donna E. Shalala
United States House of Representatives
Washington, DC 20515

The Honorable Pat Toomey
United States Senate
Washington, DC 20510

Dear Members of the Congressional Oversight Commission:

I am writing in response to your November 10, 2020, and November 17, 2020, letters requesting additional information regarding the loans to YRC Worldwide Inc. under section 4003(b)(3) of the Coronavirus Aid, Relief, and Economic Security Act.

I am willing to discuss this matter further over the phone at a mutually convenient time in order to address any outstanding questions and supplement my previously provided written answers. I am available November 30, 2020 from 1300 to 1330 or 1500 to 1600 or alternatively, on December 1, 2020 from 1000 to 1300.

Thank you for your continued support of the men and women of the Department of Defense.

Sincerely,

Ellen M. Lord

Ellen M. Lord

Appendix N:
Letter from Congressional Oversight Commission to Department of Defense Undersecretary Ellen Lord, Director of Intelligence John Ratcliffe, and Treasury Secretary Steven T. Mnuchin, dated November 30, 2020

REP. FRENCH HILL
BHARAT RAMAMURTI
REP. DONNA E. SHALALA
SEN. PAT TOOMEY

SDG–55 DIRKSEN SENATE
OFFICE BUILDING

WASHINGTON, DC 20510
(202) 224–5050

Congressional Oversight Commission

November 30, 2020

The Honorable Ellen Lord
Undersecretary
U.S. Department of Defense
1000 Defense Pentagon
Washington, D.C. 20301

The Honorable Steven T. Mnuchin
Secretary
U.S. Department of Treasury
1500 Pennsylvania Avenue NW
Washington, D.C. 20220

The Honorable John Ratcliffe
Director of National Intelligence
The White House
1600 Pennsylvania Avenue NW
Washington, D.C. 20500

Dear Undersecretary Lord, Secretary Mnuchin, and Director Ratcliffe:

The Congressional Oversight Commission (created pursuant to Section 4020 of Title IV, Subtitle A the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), P.L. 116-136) invites you to testify at a public hearing on Thursday, December 10, 2020, at 10:00 AM EST in Room 215 of the Dirksen Senate Office Building. Should you prefer, we can also receive your testimony via an online video conference. The purpose of the hearing is to examine the funds authorized by the CARES Act that provide up to $17 billion for loans and loan guarantees to businesses critical to maintaining national security.

In order to maximize the time available for Members of the Commission to ask questions, please limit the oral summation of your written testimony to a maximum of five minutes. You are welcome to submit a more extensive written statement for inclusion in the official record.

To facilitate preparation by Members of the Commission for this hearing, an electronic copy of your written testimony must be emailed to the Chief Clerk, Amber Venzon at amber_venzon@coc.senate.gov by 6:00 PM EST on December 8, 2020. We request that you prepare your testimony in the following format: single-spaced with name, title, and agency/organization name printed in the top margin of the first full page of text in an MS Word document.

Thank you in advance for your participation in this hearing. Should you or your staff have any questions about the substantive or procedural aspects of this hearing, please do not hesitate to contact the Chief Clerk, Amber Venzon at (202) 224-5050 or amber_venzon@coc.senate.gov.

Sincerely,

/s/
French Hill
Member of Congress

/s/
Bharat Ramamurti
Commissioner

/s/
Donna E. Shalala
Member of Congress

/s/
Pat Toomey
U.S. Senator

Appendix O:
Letter from Congressional Oversight Commission to Treasury Secretary Steven T. Mnuchin, dated November 30, 2020

REP. FRENCH HILL
BHARAT RAMAMURTI
REP. DONNA E. SHALALA
SEN. PAT TOOMEY

SDG–55 DIRKSEN SENATE
OFFICE BUILDING

WASHINGTON, DC 20510
(202) 224–5050

Congressional Oversight Commission

November 30, 2020

The Honorable Steven T. Mnuchin
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

November 30, 2020

Dear Secretary Mnuchin:

Section 4020(b) of the CARES Act charges the Oversight Commission with the duty to conduct oversight of both the Treasury Department and the Federal Reserve with respect to Subtitle A, Division A programs. Pursuant to Section 4020(e)(1), (4) of the Act, the Oversight Commission requests your response to the attached questions regarding the CARES Act Division A loan program for air carriers and related airline-industry businesses. In light of the Oversight Commission's monthly reporting obligations, we ask that you provide the information requested in this letter by December 8, 2020.

Thank you for your attention to this matter.

Sincerely,

/s/ French Hill Member of Congress	/s/ Bharat Ramamurti Commissioner
/s/ Donna E. Shalala Member of Congress	/s/ Pat Toomey U.S. Senator

CONGRESSIONAL OVERSIGHT COMMISSION
Questions for the U.S. Treasury Regarding the Airline-industry Loan Program Established Pursuant to CARES Act § 4003(b)(1)-(2)

Questions for the Record Submitted to U.S. Treasury from the Congressional Oversight Commission

1. Who is the point person at the Treasury Department responsible for matters involving CARES Act § 4003(b)(1)-(2) loans to air carriers and related businesses?

2. What is the process for applying for a loan?

3. What is the Treasury's process for granting a loan?

    a. Who is involved?

    b. What are the criteria?

4. The Treasury's website includes a "Procedures and Minimum Requirements" document dated March 30, 2020, which states that it will be supplemented with additional information, including materials like additional rules and policies, an application form, and evaluation criteria, etc.[1] However, the only other such document published on the website is a brief FAQ document dated July 15, 2020, and one earlier iteration of the FAQ.[2] Please provide copies of any and all documents governing the airline-industry loan program, including the program's procedures, requirements, terms, evaluation criteria, the application, any guidance, etc. If these documents have changed over time, please provide all iterations of them.

5. In the FAQ, the Treasury states that "[s]ome businesses that applied for loans from Treasury will likely be better served by the Main Street Lending Program," and encourages applicants "to first apply for such a loan."[3]

    a. Why does the Treasury believe the Main Street Lending Program would likely be a better fit?

    b. Were any recipients of the Treasury loans rejected by the Main Street Lending Program?

    c. Were any Main Street Lending Program loans made to businesses that would otherwise qualify under the Treasury's § 4003(b)(1)-(2) direct loan program?

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[1] U.S. Department of the Treasury, *Procedures and Minimum Requirements for Loans to Air Carriers and Eligible Businesses and National Security Businesses under Division A, Title IV, Subtitle A of the Coronavirus Aid, Relief, and Economic Security Act*, at 1, 6, Mar. 30, 2020, https://home.treasury.gov/system/files/136/Procedures%20and%20Minimum%20Requirements%20for%20Loans.pdf (hereinafter "March Procedures").

[2] U.S. Department of the Treasury, *Q&A: Loans to Air Carriers and Eligible Businesses*, Jul. 15, 2020, https://home.treasury.gov/system/files/136/CARES-Airline-Loan-Support-Q-and-A-7-15-20.pdf (hereinafter "July FAQ"); U.S. Department of the Treasury, *Q&A: Loans to Air Carriers and Eligible Businesses and National Security Businesses*, Apr. 10, 2020, https://home.treasury.gov/system/files/136/CARES-Airline-Loan-Support-Q-and-A-national-security.pdf.

[3] July FAQ, at 1-2.

   d. Does the Federal Reserve announcement that lenders should submit eligible loans for the Main Street Lending Program on or before December 14, 2020 change the Treasury's view?

6. In the FAQ, the Treasury states that there is a minimum loan size of $250,000.[4] Have any air carriers or related businesses asked the Treasury to lower this minimum, or is the Treasury otherwise aware of interested businesses that are unable to participate due to it?

7. In the Procedures and Minimum Requirements document, the Treasury states that it will "determine[]" whether something constitutes a qualifying "loss[] incurred directly or indirectly as a result of coronavirus," and that it requires applicants to provide a description of the claimed covered losses by "line items detailing the cause of the loss."[5]

   a. What losses qualify?

   b. What losses has Treasury rejected as not qualifying?

8. Has the Treasury denied any loan applications? If so, what was the basis for the denial?

9. Do any loan applications remain pending? Does the Treasury anticipate extending additional loans or modifying existing loans? If yes, please provide details.

10. Does the Treasury anticipate sustaining any losses on the loans?

11. The Treasury required applicants to "provide … information" regarding "[t]he purposes for which the borrower will use the loan proceeds."[6] Please provide this information for each approved borrower.

12. In the FAQ, the Treasury provides that loan proceeds "may not be used for … capital expenses, delinquent taxes, and debt principal payments" unless the Treasury finds certain conditions are met.[7] Did the Treasury authorize any such uses?

13. In the Procedures and Minimum Requirements document, the Treasury directs applicants to provide evidence regarding their lack of credit elsewhere.[8] How does the Treasury evaluate whether the applicant lacked reasonable access to credit elsewhere at the time of the transaction?

14. How does the Treasury assess whether the obligations are prudently incurred and sufficiently secured? Please provide all supporting financial analysis, including any professional opinions or reports by external financial advisors to the Treasury.

15. Did the Treasury consider taking an equity stake in any of the borrowers? If so, why did it elect not to?

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[4] *Id.* at 2.
[5] March Procedures, at 2, 5.
[6] *Id.* at 5.
[7] July FAQ, at 2.
[8] March Procedures, at 4-5.

16. Some but not all of the loan agreements granted the Treasury warrants for common stock equal to 10% of the loan amount.

    a. How did the Treasury determine the appropriate amount of warrants? Please provide all supporting financial analysis, including any professional opinions or reports by external financial advisors to the Treasury.

    b. Why did the Treasury elect not to require the warrants from all borrowers?

17. For each borrower, how does the interest rate provided by the Treasury compare to rates the borrower could have obtained from private lenders?

18. For each borrower, how does the interest rate provided by the Treasury compare to rates the borrower received on comparable loans prior to the pandemic?

19. For each borrower, how did the Treasury determine the appropriate size of the loan?

20. The loans to Aero Hydraulics, Inc., Ovation Travel Group, and Legacy Airways, LLC are unsecured senior debt.

    a. What is the Treasury's assessment of the riskiness of these unsecured loans? Please provide all supporting financial analysis, including any professional opinions or reports by external financial advisors to the Treasury.

    b. Did the Treasury consider requiring collateral for these loans?

    c. Why did it not require collateral?

    d. Why does the Treasury believe that LIBOR + 5.5% and 3% payment-in-kind interest adequately compensates taxpayers for the risk of these loans? Please provide all supporting financial analysis, including any professional opinions or reports by external financial advisors to the Treasury.

21. In the Procedures and Minimum Requirements document, the Treasury states that "requirements contained herein may be waived by the Treasury Department in its sole discretion to the extent permitted by law."[9] Did the Treasury provide any waivers? If so, please describe with particularly the nature and basis for each waiver, including who received a waiver, who issued the waiver, and why.

22. Nearly all of the air carrier and related business loan recipients applied to Treasury for a loan in April, with the latest-filed application made in June. Yet all of the Treasury loan agreements are dated September 25, 2020 or later—an average application processing time of 182 days. What accounts for the

[9] *Id.* at 1.

length of time between application and approval? Please provide a detailed timeline of the review process and list any factors that may have contributed to 182 day average processing time.

23. In July, the Treasury Department announced that it had "signed letters of intent setting out the terms on which Treasury was prepared to extend loans" to American Airlines, Frontier Airlines, Hawaiian Airlines, Sky West Airlines, Alaska Airlines, JetBlue Airways, and United Airlines.[10] These airlines then all entered loan agreements with the Treasury Department that are dated September 25-September 29, 2020.

    a. Given that the terms of the loans had already been negotiated in July, what was the reason for the delay?

    b. Please provide a copy of each letter of intent signed by the Treasury regarding § 4003(b)(1)-(2) loans.

24. SEC filings indicate that the Treasury reached tentative agreements with at least some borrowers several months before Treasury's July press release announcing that it had signed letters of intent with airlines.[11] Those filings indicate that at that stage Treasury had already reached agreements with at least some borrowers regarding the approximate amount of the loans and the type of taxpayer protection (i.e. security, warrants, etc.) that would be provided.[12] The Treasury's July press release still did not disclose the terms or contours of the agreements that had been reached. Rather, the Treasury waited to disclose the substance of any agreements until late September. What accounts for the length of time before Treasury's disclosures to the public?

25. Beyond requiring a certification from the borrower, did the Treasury verify whether prospective borrowers have a majority of their employees in the United States?

26. What steps will the Treasury to take to verify borrowers' ongoing compliance with the restrictions on employee compensation in CARES Act § 4004(a) and corresponding loan agreement provisions?

27. Are any of the borrowers currently subject to a requirement that they continue air service, pursuant to CARES Act § 4005 and corresponding loan agreement provisions?

    a. If so, please describe the requirements imposed.

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[10] U.S. Department of the Treasury, *Statement from Secretary Steven T. Mnuchin on CARES Act Loans to Major Airlines*, July 7, 2020, https://home.treasury.gov/news/press-releases/sm1054. Three additional airlines that signed letters of intent later announced that they would not participate in the Treasury's loan program. *See* The Sixth Report of the Congressional Oversight Commission, at 14, https://coc.senate.gov/sites/default/files/2020-10/The%20Sixth%20Report_Final%20%28002%29_0.pdf.
[11] *E.g.*, American Airlines Group Inc., Form 8-9, filed with U.S. Securities and Exchange Commission on Apr. 14, 2020, https://www.sec.gov/ix?doc=/Archives/edgar/data/4515/000000620120000059/a8k041420caresactterms.htm.
[12] *Id.*

   b. If not, did the Treasury confer with the Secretary of Transportation regarding whether any such requirements should be imposed? Please describe the Treasury's understanding of why such requirements have not been imposed.

   c. Does the Treasury anticipate that such requirements may be imposed in the future?

28. Why did the Treasury and United Airlines amend and restate their loan agreement? Please describe the changes made, provide the original agreement, and provide a redline showing the differences between the original and amended/restated agreements.

29. The Treasury required cargo air carrier borrowers to "provide … information" regarding both 2019 revenue per ton mile "and a forecast of the same for 2020 that was prepared by or for the air carrier no earlier than October 1, 2019."[13] But the Treasury defines "cargo air carrier" to be backwards-looking—i.e., to consider only whether the air carrier derived more than 50% of its revenue from the transportation of property or mail from April 1, 2019 to September 30, 2019.[14]

   a. Why did the Treasury adopt a backwards-looking definition of cargo air carrier?

   b. Why did the Treasury determine April 1, 2019 to September 30, 2019 was the appropriate lookback window?

   c. Does the Treasury take into account the applicant's 2020 forecast?

   d. To date, the Treasury has classified only one loan—the loan to Legacy Airways, LLC—as a loan to a cargo air carrier made pursuant to § 4003(b)(2). Does Legacy Airways, LLC currently derive 50% or more of its revenue for the transportation of property or mail?

   e. What did Legacy Airways, LLC's 2020 forecast state?

30. The Treasury airline-industry loan program is currently set to expire on December 31, 2020. Does the Treasury believe that further relief to the airline industry is needed?

31. Does the Treasury Department believe the airline industry will continue to face decreased demand during 2021?

Questions for the Record Submitted to U.S. Treasury from Commissioner Bharat Ramamurti & Congresswoman Donna E. Shalala

1. The loan agreements with major airlines were entered two weeks or more before the agreements with smaller airlines and businesses, despite generally have similar application dates. The average loan processing time for United Airlines, Hawaiian Airlines, American Airlines, Frontier Airlines, Alaska

[13] March Procedures, at 5.
[14] *Id.* at 2.

Airlines, SkyWest Airlines, and JetBlue Airways was 161 days. The average for all other borrowers, excluding Legacy Airways LLC, was 196 days. Legacy Airways received the fastest loan processing time of all borrowers, at 119 days.

   a. Did the major airlines receive priority in loan processing? If so, why?

   b. Why was Legacy Airway, LLC's processing time faster (although still lengthy)?

2. What steps will the Treasury take to verify borrowers' ongoing compliance with the restrictions on stock buybacks and dividends in CARES Act § 4003(b)(2)(E)-(F) and corresponding loan agreement provisions?

3. Does the Treasury Department believe preventing job losses is a goal of the CARES Act § 4003(b)(1)-(2) loan programs?

4. The Treasury required applicants to "provide … information" regarding "any proposed changes to the borrower's employment levels, relative to March 24, 2020, during 2020."[15] What information regarding proposed changes to employment levels did each borrower provide?

5. CARES Act § 4003(c)(2)(G) provides that "until September 30, 2020," a loan recipient must "maintain its employment levels as of March 24, 2020 to the extent practicable, and in any case shall not reduce its employment levels by more than 10 percent from the [March 24] levels." A number of Treasury loan recipients reportedly made layoff announcements in early October. For example, United Airlines and American announced it planned to cut a combined 32,000 jobs, and Alaska Airlines began laying off 466 employees.[16] Are Treasury loan recipients under any obligation to maintain their employment levels after September 30, 2020?

6. All of the Treasury's loan agreements with air carriers and related business are dated September 25, 2020 or later. In Treasury's view, to be eligible for these loans, were the borrowers required to make practicable efforts to maintain their employment levels between March 24, 2020 and September 30, 2020, pursuant to CARES Act § 4003(c)(2)(G)?

7. What steps has Treasury taken to verify whether the borrowers made practicable efforts to maintain their employment levels between March 24, 2020 and September 30, 2020?

8. The Treasury currently reports the number of U.S. employees each borrower had in March 2020. To facilitate the Commission's ability to study the program's effect on jobs, will the Treasury report the number of U.S. employees each borrower had on September 30, 2020 and also at regular intervals throughout the life of each loan?

[15] March Procedures, at 4.
[16] Katherine Khasimova Long, *Alaska Airlines to Furlough or Lay Off More Employees as COVID-19 Grips Travel Industry*, Seattle Times, Oct. 1, 2020, https://www.seattletimes.com/business/boeing-aerospace/alaska-airlines-to-furlough-or-lay-off-more-employees-as-covid-19-grips-travel-industry/.

9. Although the Treasury generally reports the number of March 2020 U.S. employees for nearly every borrower, it has not done so with respect to Island Wings, Inc. How many U.S. employees did Island Wings, Inc. have in March 2020?

10. A number of the borrowers appear to provide private luxury charter jet services.

    a. Does the Treasury acknowledge that some borrowers provide private luxury charter jet services? Please identify all borrowers who do so.

    b. Do any of the Treasury's loan program requirements preclude private luxury charter jet companies from participating?

    c. Does the Treasury believe that supporting private charter jet companies and/or services is an appropriate use of coronavirus relief funds?

11. Did the Treasury consider requiring borrowers to implement COVID-related health protection measures, such as distancing and mask requirements? If so, why did the Treasury elect not to require such health protections for passengers and airline workers?

12. Does the Treasury anticipate further airline-industry job losses?

13. Does the Treasury have any "lessons learned" that policymakers should consider in crafting future relief programs (either with respect to the current pandemic or otherwise)?