

## Transparency and Accountability

Complete and reliable information is the lifeblood of congressional oversight. Since America was founded, Congress has relied on its legislative authority to ensure that it has the information it needs to hold the executive branch accountable to the American people. The executive branch and the courts have traditionally honored Congress's right to this information—until now.

President Trump has turned stonewalling Congress into an art form. Most recently, in signing the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) into law, the president asserted that inspectors general have no right to inform Congress when their investigations are stymied by the executive branch. At a time when Congress is authorizing the Trump Administration to spend trillions of taxpayer dollars, including hundreds of billions of dollars at the discretion of Administration officials, Congress must have the information it needs to fulfill its oversight responsibilities.

### *Officials Who Obstruct Congressional Oversight Should Not Receive Taxpayer Money*

Since 1998, Congress has included a provision in annual appropriations legislation denying salaries to government officials who wrongfully deny Congress information it requests. However, since the Treasury Department ultimately decides when an official has wrongfully denied information, no executive branch official has ever been denied their salary, even in cases of serious wrongdoing.

Congress can fix this. By providing clear and bright line rules for executive branch officials and denying salaries to those who violate them, Congress can ensure its access to information, facilitate effective oversight of CARES Act spending, and protect the American people.

- The Treasury Secretary should be required to confer with the Special Inspector General for Pandemic Recovery (SIGPR), as well as the Chairman and Executive Director of the Pandemic Relief Accountability Committee (PRAC), and file a weekly list of any **instances in which the SIGPR or the PRAC have been denied information from the executive branch in a manner that the relevant independent oversight officials consider unreasonable**. The filing should be signed by the SIGPR and the Chairman and Executive Director of the PRAC. If Secretary Mnuchin omits or misrepresents instances of wrongdoing, he will be liable for perjury.
- **If the Treasury Secretary fails to provide a required filing, neither he nor any other political appointee in the Treasury Department should be paid**. Consistent with current law, as enacted on a bipartisan basis for years, the officials who obstruct oversight should be held accountable for their actions.

### *No Oversight, No Slush Fund*

A pay-limitation provision drafted like the one described above will be difficult for the Trump Administration to evade. However, President Trump can be expected to rely on his usual tactic of claiming, disingenuously and with no support or analysis, that any action limiting his power is unconstitutional. Again, Congress can fix this.

If a statutory provision is invalidated on constitutional grounds, courts must determine

whether Congress intended the rest of the statute to remain in place. Congress should make clear that if President Trump and Secretary Mnuchin refuse to accept reasonable oversight, the Administration will not have discretion to distribute. As a result, the Administration will have to think twice before making frivolous claims about the constitutionality of congressional oversight.

To be clear, Congress should not in any way interfere with the many CARES Act programs that directly assist American workers, families, and small businesses. But if the Trump Administration refuses to cooperate with congressional oversight, it should lose that portion of the CARES Act that gives the Administration broad, largely unfettered discretion to spend hundreds of billions in taxpayer dollars as it sees fit.

- Congress should enact a **non-severability clause** clarifying that if coronavirus-related oversight provisions are held to be unconstitutional then **CARES Act provisions authorizing Secretary Mnuchin to distribute taxpayer dollars as he sees fit must also be invalidated.**

### *Strengthen the Congressional Oversight Commission*

The CARES Act also established the Congressional Oversight Commission (“the Commission”), a third oversight body to oversee the Treasury Department’s and Federal Reserve Board’s administration of the \$500 billion in bailout funds that Congress made available for loans, loan guarantees, and other investments to corporations, states, and municipalities. The purpose of the Commission is to provide additional public accountability over the Administration’s implementation of programs under the CARES Act by overseeing implementation of economic relief provisions, holding hearings, and submitting monthly reports to Congress. The Commission has a five member panel selected by Senate and House majority and minority leaders, and the Commission must report on the activities of the Treasury Secretary; the impact of the CARES Act on the economy, families, and financial markets; and the effectiveness of economic stabilization measures under the CARES Act.

The Commission is the only body established in the CARES Act outside of the Executive Branch, and the Commission has members who are not appointed—and cannot be removed—by the President. As the single oversight body that the President cannot directly undermine, the Commission plays a critical role in ensuring that the public has insight into how the government is doling out hundreds of billions in taxpayer dollars to corporations and other entities. Although the Commission’s structure gives it a measure of independence from President Trump, the Commission’s lack of subpoena authority handicaps its ability to perform robust oversight in instances where the federal government, perhaps under the direction of President Trump, does not willingly cooperate. Congress should correct this by granting the Commission the power to subpoena documents and witnesses and to enforce its subpoenas in federal court.

Although the Commission is authorized to hold hearings, take testimony, administer oaths, and obtain relevant information from federal agencies and departments, the CARES Act provides no mechanism for the Commission to compel federal agencies and officials to comply with its requests for testimony or documents, rendering the Commission toothless unless government officials agree to cooperate.

Subpoena authority is a key component of meaningful oversight. For example, under federal law, inspectors general are authorized to subpoena relevant documents, testimony, and other records necessary to their functions and can enforce those subpoenas in any U.S. district court. This authority helps ensure that federal agencies and government officials cannot subvert oversight by simply refusing to turn over essential information.

Without subpoena authority, the Commission will be least effective when oversight matters most—when federal agencies or officials have something to hide. Congress can and should guarantee that the Commission can be independent and effective by authorizing it to subpoena testimony and documents relevant to its work, and by empowering it to enforce subpoenas in any U.S. district court.