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Multiple Layers of Oversight in the CARES Act: The Appetite for Accountability Will Long Outlast the Current Crisis

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The estimated $2+ trillion stimulus bill – the Coronavirus Aid, Relief and Economic Security Act (the CARES Act) – is meant to address the economic crisis caused by the coronavirus pandemic. The act will pump hundreds of billions of dollars into private sector businesses. But the money will come with new government oversight and enforcement powers designed to police the use of these funds and to prevent and punish fraud by recipients. If history is any guide, the oversight provisions of the act could lead to hundreds or even thousands of enforcement actions against companies and individuals, and billions of dollars in fines and penalties.

The CARES Act creates three new oversight bodies:

1. **The Pandemic Response Accountability Committee:** The Pandemic Response Accountability Committee has an $80 million appropriation and the broadest oversight and enforcement powers of the three oversight bodies established by the CARES Act. The committee members will be selected from among existing inspectors general, and the committee is tasked with conducting, coordinating and supporting inspectors general in the oversight of covered funds in order to "detect and prevent fraud, waste, abuse, and mismanagement; and mitigate major risks that cut across programs and agency boundaries." The committee has auditing, reviewing and reporting responsibilities and the ability to refer matters to the Department of Justice for criminal or civil investigation. Most significantly, the committee has the authority to conduct independent investigations with the power to hold public hearings and issue subpoenas for both documents and testimony to private entities and individuals.
2. **Special Inspector General for Pandemic Recovery:** The Special Inspector General for Pandemic Recovery is established within the Treasury Department and is responsible for conducting, supervising and coordinating "audits and investigations of the making, purchase, management and sale of loans, loan guarantees, and other investments" by the secretary of the Treasury under any program established under the CARES Act. The special inspector general will have authority to conduct investigations and issue reports, and will also be able to refer matters to the DOJ for criminal or civil investigation. The special inspector general's office has a $25 million appropriation and will operate for the next five years.
3. **The Congressional Oversight Commission:** The Congressional Oversight Commission will consist of five members selected by majority and minority leadership from both the House and Senate and have authority to conduct oversight of the implementation of the stimulus package by the Treasury and the Federal Reserve. The oversight commission will have the authority to hold hearings, take testimony, receive evidence and issue reports. The oversight commission will operate until September 30, 2025.

In addition to these three oversight bodies, the CARES Act allocates substantial funds to the Government Accountability Office and provides a mandate for the GAO to issue reports on all expenditures of funds under the act. The act also directs millions of dollars to existing inspectors general and directs them to increase their investigative and enforcement activities of programs tied to CARES Act funds.

The additional oversight authorities built into the CARES Act are reminiscent of the creation of the Office of the Special Inspector General for the Troubled Asset Relief Program (SIGTARP) following the 2008 financial crisis. For perspective on the impact these new entities may have, consider that, more than a decade after the last financial crisis, SIGTARP remains quite active. To date, its investigations have resulted in the collection of more than $11 billion ($900M in 2019 alone), including multibillion-dollar penalties across the financial industry, as well as 381 criminal convictions.

And TARP pales in comparison to the CARES Act in terms of the amount of money to be distributed to the private sector. The CARES Act will be the largest expenditure of money in a single piece of legislation in US history. Companies should expect oversight and enforcement to be aggressive and last for years after the current pandemic crisis has ended. The multiple enforcement bodies established by the CARES Act, along with

a public eager to deter and prosecute the kinds of fraud and self-dealing that came out of the 2008 stimulus package, mean that any recipient of funds under the CARES Act should be prepared for scrutiny in the months and years to come.

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