

May 4, 2020

Mr. Brian Miller
Special Inspector General for Pandemic Recovery-Designate
The White House
1600 Pennsylvania Ave. NW
Washington, DC

Dear Mr. Miller:

Congratulations on your nomination to be the Special Inspector General for Pandemic Recovery (SIGPR or “Special Inspector General”). If confirmed as Special Inspector General, you would have extensive authority to “conduct, supervise, and coordinate audits and investigations of the making, purchase, management, and sale of loans, loan guarantees, and other investments made by the Secretary of the Treasury under any program established by the Secretary under [the *Coronavirus Aid, Relief, and Economic Security (CARES) Act*], and the management by the [Treasury] Secretary of any program established under” the CARES Act.¹

This is a critical role: if confirmed, you would be responsible for oversight of hundreds of billions of dollars of federal loans and grants which are already being distributed by Department of Treasury Secretary Steve Mnuchin and Federal Reserve Board Chairman Jerome Powell, and for ensuring that these funds are spent consistent with the law and the intent of the CARES Act to protect workers and the economy. You would have to conduct rigorous oversight to prevent corruption and eliminate waste, fraud, and abuse of taxpayer funds, and do so in a scrupulously non-partisan and independent fashion.

On Tuesday, May 5, 2020, you will appear before the Senate Committee on Banking, Housing, and Urban Affairs for a hearing on your nomination.² I have a number of questions about your experience and views of the role of Special Inspector General. I have summarized these questions below, and ask that you come to the hearing prepared to answer these questions.

The Importance of an Independent Inspector General

You have extensive experience as an Inspector General (IG), serving as the IG for the General Services Administration for nearly a decade, and helping to uncover several high-profile

¹ PL 116-136, § 4018(c).

² Senate Committee on Banking, Housing, and Urban Affairs, Nomination Hearing, The Honorable Brian D. Miller, of Virginia, to be Special Inspector General for Pandemic Recovery, U.S. Department of the Treasury; and Mrs. Dana T. Wade, of the District of Columbia, to be Assistant Secretary, U.S. Department of Housing and Urban Development, May 5, 2020, <https://www.banking.senate.gov/hearings/04/28/2020/nomination-hearing>

examples of waste, fraud and abuse,³ and in the U.S. Attorney's office for the Eastern District of Virginia, where you prosecuted Zacarias Moussaoui.⁴ From 2014 through January 2018, you served in private practice, and as "an independent corporate monitor and an expert witness,"⁵ and "represent[ed] ... clients who have been or who are being investigated by IGs."⁶

However, beginning in December 2018, you joined the Office of White House Counsel, working as a Senior Associate Counsel and Special Assistant to President Trump on his behalf on a variety of issues, including his impeachment.⁷ In this role, in at least one instance, you publicly rebuffed congressional requests for information and the White House Counsel's office refused to cooperate with numerous other congressional requests.⁸ This role in the White House marked a change from your previous experience: it involved working in a partisan environment, on behalf of the President's interests, often seeking to thwart congressional oversight. Your recent experience as a legal advocate for the President and the White House raises questions about your ability to immediately shift to a position where independence from the White House is a requirement.

I have the following questions about these matters:

1. What were your roles and responsibilities in the White House from 2018-2020?
2. Did you at any point, advise the President or any other White House official to refuse to turn over documents or materials in response to a congressional request or subpoena, or in response to a request from the Government Accountability Office? If so, what was the rationale for this advice?
3. Did you at any point, advise the President or any other White House official to refuse to turn over documents or materials or otherwise not fully cooperate with a request from an Inspector General?

³ Washington Post, "Trump's choice for coronavirus inspector general wins praise from some oversight experts as Democrats slam pick," April 4, 2020, <https://www.washingtonpost.com/us-policy/2020/04/04/brian-miller-trump-coronavirus-inspector-general/>.

⁴ New York Times, "Trump's Inspector General Has Expressed Dim Views of Congressional Oversight," April 7, 2020, <https://www.nytimes.com/2020/04/07/us/politics/trump-inspector-general-brian-miller-virus.html>.

⁵ Brian D. Miller, LinkedIn Profile, Reviewed on April 30, 2020, <https://www.linkedin.com/in/brian-d-miller-b830a476/>.

⁶ The Hill, Brian D. Miller, "Independence of Inspectors General should not be compromised by Congress," August 13, 2018, <https://thehill.com/opinion/white-house/401491-independence-of-inspectors-general-should-not-be-compromised-by-congress>.

⁷ Washington Post, "Trump announces intent to nominate White House lawyer as inspector general for \$2 trillion coronavirus law," April 3, 2020, <https://www.washingtonpost.com/business/2020/04/03/trump-coronavirus-inspector-general-brian-miller/>.

⁸ New York Times, "Trump's Inspector General Has Expressed Dim Views of Congressional Oversight," April 7, 2020, <https://www.nytimes.com/2020/04/07/us/politics/trump-inspector-general-brian-miller-virus.html>.

4. As the SIGPR, you would be responsible for a \$25 million budget to conduct investigations and audits.⁹ As you hire staff to manage and conduct these audits and investigations, will you do so on a strictly non-partisan basis?
5. Do you have any financial conflicts of interest related to your private sector experience that would raise questions about your involvement in any matters as SIGPR?
6. Will you recuse yourself from any investigation involving a former company or individual that you represented, consulted for, or with which you otherwise had a financial arrangement?

White House Efforts to Undermine Oversight

The concerns about your role in the White House are exacerbated by President Trump's immediate and ongoing efforts to undermine oversight of the CARES Act. One key provision of the CARES Act gives the SIGPR the authority to obtain "information or assistance" from any federal agency or department and requires that the SIGPR report to Congress immediately any instance where the request is rebuffed.¹⁰ But in a statement that he released when signing the legislation into law, President Trump argued that "my Administration will not treat, this provision as permitting the SIGPR to issue reports to the Congress without presidential supervision, required by the Take Care Clause, Article II, section 3"¹¹ – effectively arguing that he would not allow reports of administration non-cooperation with CARES Act oversight to be reported to Congress without his blessing.

Soon after that, the President raised additional concerns about his attempts to undermine oversight of the \$500 billion bailout funds when he removed Glenn A. Fine, the newly named head of the Pandemic Response Accountability Committee (PRAC or the Committee). On March 30, 2020, Mr. Fine, the Acting Inspector General of the Department of Defense (DOD), was named as Chair of the PRAC, a group of Inspectors General that has extensive authority and jurisdiction to conduct oversight over all aspects of the CARES Act and the response to the coronavirus pandemic.¹² But less than a week after Mr. Fine was named as head of the Committee, with no explanation, President Trump removed him from his role as Acting DOD IG, which effectively removed him as Chair of the PRAC.¹³

This was not President Trump's only action to undermine the accountability and oversight provided by independent Inspectors General. Several days before he removed Mr. Fine from his

⁹ PL 116-136, § 4018(g).

¹⁰ PL 116-136, § 4018(c).

¹¹ The White House, Statement by the President, March 27, 2020, <https://www.whitehouse.gov/briefings-statements/statement-by-the-president-38/>.

¹² Pandemic Response Accountability Committee, "Glenn A Fine Appointed Chair of CIGIES Pandemic Response Accountability Committee," March 30, 2020, <https://pandemic.oversight.gov/news/articles/glenn-a-fine-appointed-chair-cigies-pandemic-response-accountability-committee>.

¹³ New York Times, Trump Ousts Pandemic Spending Watchdog Known for Independence," April 7, 2020, <https://www.nytimes.com/2020/04/07/us/politics/trump-coronavirus-watchdog-glenn-fine.html>.

post, the President also fired, also with no explanation, Michael Atkinson, the Intelligence Community Inspector General who had informed Congress of the whistleblower complaint that led to President Trump's impeachment.¹⁴ And later that week, he engaged in a bitter, partisan attack against Christi Grimm, the Department of Health and Human Services (HHS) Principal Deputy Inspector General after an HHS IG report revealed the Administration's failures to provide adequate personal protective equipment at hospitals responding to the coronavirus.¹⁵ Late last week, President Trump abruptly replaced Ms. Grimm as head of the HHS IG Office.¹⁶

These actions demonstrate the President's ongoing efforts to undermine independent oversight of his actions and those of others in his administration. They also raise critical questions about how you would respond to these efforts if confirmed as SIGPR.

I have the following questions about these matters:

1. Were you involved in any way in the CARES Act signing statement by President Trump? If so, please describe the nature of your involvement.
2. Do you agree with the CARES Act signing statement's assertion that the SIGPR cannot freely report information to Congress absent Presidential approval?
3. Will you commit to reporting immediately to Congress any instance in which Administration officials or any other entity impede or do not comply with an information request from your office?
4. What action will you take if the President refuses to allow you to report relevant information to Congress?
5. Were you aware of the decision to remove Mr. Fine from his post before it was announced publicly? Did you provide any legal advice to the President regarding this decision? Do you agree with the President's decision to demote Mr. Fine?
6. Were you aware of the decision to fire Mr. Atkinson before it was announced publicly? Did you provide any legal advice to the President regarding this decision? Do you agree with the President's decision to fire Mr. Atkinson?
7. Were you aware of the decision to remove Ms. Grimm from her post before it was announced publicly? Did you provide any legal advice to the President regarding this decision? Do you agree with the President's decision to demote Ms. Grimm?

¹⁴ Politico, "Trump fires intelligence community watchdog who defied him on whistleblower complaint," April 3, 2020, <https://www.politico.com/news/2020/04/03/trump-fires-intelligence-community-inspector-general-164287>.

¹⁵ The Hill, "Trump decries IG report on hospital shortages as another fake dossier," April 7, 2020, <https://thehill.com/homenews/administration/491561-trump-decries-ig-report-on-hospital-shortages-as-another-fake-dossier>.

¹⁶ New York Times, "Trump Moves to Replace Watchdog Who Identified Critical Medical Shortages," May 1, 2020, <https://www.nytimes.com/2020/05/01/us/politics/trump-health-department-watchdog.html>.

8. Please describe your views on what protections IGs should afford whistleblowers?
9. If confirmed, will you commit to establishing a direct portal for whistleblowers to securely and safely communicate allegations of waste, fraud, or abuse with your office without fear of reprisal, retaliation, harassment, or persecution?
10. If confirmed, will you commit to withholding the identity of any anonymous whistleblowers who bring credible allegations of waste, fraud, abuse, or misconduct to your office? If not, under what circumstances would you disclose the identity of any whistleblowers to the public or to the White House?
11. Would you ever provide President Trump with the identity of any anonymous whistleblowers who are officers or employees of the Executive Branch upon request by the President or the White House? If so, please describe the circumstances under which you would provide this information.
12. The Congressional Oversight Commission was also created by the CARES Act to conduct oversight of the implementation of the CARES Act's economic provisions.¹⁷ Will you commit to appearing, upon request, at hearings of the Commission? Will you provide information upon request from Commissioners?
13. If confirmed, under what circumstances would you resign your post? If President Trump asked you to take action that conflicted with the clear intent or text of the CARES Act, would you take such action? Would you resign?

Your Own Views on the Role of Congress and the Inspector General

On August 13, 2018, several months before you joined the Trump Administration, you presented a highly disturbing opinion in *The Hill* in which you appeared to indicate that Members of Congress should not raise issues of concern to Inspectors General – and that when you were an IG, you were essentially unresponsive to Congressional requests.

You wrote that:

[C]alling in the IG comes with certain risks. Congress should remember that IGs are not tame watchdogs, and they may bite members of Congress as well as executive branch officials. They may also be a danger to themselves, to the normal functioning of government, and to Congress.

But the greatest danger may be to the IGs themselves, specifically to their independence. IGs must be independent—this includes being independent of Congress. Saying no to Congress is sometimes the hardest thing an IG has to do.

¹⁷ PL 116-136, § 4020.

When I was an IG, I said no to members of Congress. Even in the few times I said yes, I completely changed the parameters of review.¹⁸

You continued, citing the unitary executive theory to indicate that the entire notion of independent Inspector Generals was “suspect,” and raising concerns about Congress’s role in requesting and acting on Inspector General requests:

IGs are within the executive branch but function with some degree of independence. The notion of an independent inspector general within the executive branch remains suspect by those who insist on a unitary executive. The argument that this very independence is inconsistent with a unitary executive becomes more persuasive when IGs act on behalf of the legislative branch.

This also creates a problem under the separation of powers doctrine. The more IGs function under the direction of, and in response to, Congress, the more they appear to be functioning as part of the legislative branch. Simply put, the more members of Congress become involved in IG business, the more likely separation of powers is being violated, as well as independence being threatened. Egregious examples would include ... having a member of Congress hold a press conference to announce the IG investigation for which he asked and outlined the parameters of the investigation.¹⁹

I have the following questions about the views you have expressed on the role of Congress, Inspectors General, and unitary executive theory:

1. Please explain your views with regard to the unitary executive and the role of the SIGPR, and the implications of these views on the proper functions of the SIGPR. Can your views be reconciled with congressional intent to create an IG that is independent of the President and statutorily obligated to communicate with Congress under certain circumstances?
2. Please explain and elaborate on your statement that “IGs are not tame watchdogs, and they may bite members of Congress as well as executive branch officials. They may also be a danger to themselves, to the normal functioning of government, and to Congress.”
3. The SIGPR was created by an Act of Congress, signed by the President, and is provided funding on an ongoing basis by Congress. Will you give due consideration to requests for audits or investigations that come from members of Congress?

¹⁸ The Hill, Brian D. Miller, “Independence of Inspectors General should not be compromised by Congress,” August 13, 2018, <https://thehill.com/opinion/white-house/401491-independence-of-inspectors-general-should-not-be-compromised-by-congress>.

¹⁹ The Hill, Brian D. Miller, “Independence of Inspectors General should not be compromised by Congress,” August 13, 2018, <https://thehill.com/opinion/white-house/401491-independence-of-inspectors-general-should-not-be-compromised-by-congress>.

4. Do you continue to believe that a Member of Congress holding a press conference to announce the findings of an Inspector General report is an egregious example of violation of IG independence and separation of powers?
5. The article cited above indicates that you deliberately ignored or “changed the parameter” of Congressional requests when you were the GSA IG. Is this accurate? Please elaborate and provide an example from your time at GSA.
6. If confirmed, would you deliberately ignore or “change the parameter” of congressional requests if you are confirmed as SIGPR?
7. If requested, will you commit to voluntarily testifying before Congress on issues within the purview of the SIGPR? If not, under what circumstances would you reject a request by a committee to testifying before Congress on issues within the purview of the SIGPR?
8. If requested, will you commit to voluntarily testifying before the Congressional Oversight Commission established in the CARES Act?

The Need for Accountability among Treasury Bailout Recipients

I fought hard to ensure that there was adequate oversight of the massive \$500 billion bailout fund in the CARES Act, including a demand that the law included the Special Inspector General position for which you have been nominated, as well as the Congressional Oversight Commission, and the Pandemic Response Accountability Committee.

I also fought to ensure that the law required the Federal Reserve Board and the Treasury Secretary impose conditions on bailout recipients to ensure that workers were protected against layoffs, pay cuts, and other mistreatment, and that taxpayer funds were not wasted because of conflicts of interest and corruption.

Some of these protections are required in the legislation – for example, the CARES Act requires that airlines that receive bailouts retain their employees, and that companies that receive these funds not engage in stock buybacks until one year after they have repaid their loans.²⁰ But other provisions that I sought in the legislation to protect workers, consumers, and taxpayers and eliminate corruption were not included in the final law.

In a March 31, 2020 letter I wrote to Secretary Mnuchin and Federal Reserve Board Chair Powell,²¹ I argued that the law still grants them extensive authority to require these

²⁰ PL 116-136, § 4003(c)(2)(E)

²¹ Letter from Senator Elizabeth Warren to Federal Reserve Chairman Jeremy Powell and Treasury Secretary Steve Mnuchin, March 31, 2020, <https://www.warren.senate.gov/imo/media/doc/2020.03.31%20Letter%20to%20Mnuchin%20re%20CARES%20Act.pdf>.

conditions on their own. Specifically, the CARES Act gives the Treasury Secretary vast discretion to make loans “on such terms and conditions and contain such covenants, representations, warranties, and requirements...as the Secretary determines appropriate.”²²

In that letter, I described eight principles that should apply to bailout recipients to ensure that workers are protected and that taxpayer funds are not used to reward corporate misbehavior:

- Bailout recipients should use federal funds to keep workers on the job, including maintaining at least 95% of payrolls.
- Bailout recipients should provide a \$15 an hour minimum wage by year’s end.
- Bailout recipients should not use taxpayer funds to personally enrich CEOs or senior executives through any form of executive compensation.
- Bailout recipients should not shovel money out the door through stock buybacks, dividends, or any other direct or indirect form of shareholder distribution.
- Bailout recipients should provide at least one seat to workers on their board of directors.
- Bailout recipients should end union-busting efforts and maintain collective bargaining agreements.
- Bailout recipients should require that CEOs make personal, annual certifications to the Department of Treasury (Treasury Department) and the Federal Reserve System that their companies are complying with the rules, ensuring that these CEOs would face civil and criminal penalties for violating these terms.
- Bailout recipients should be liable to the federal government for all assistance received if the company violates any of the terms of their agreements with taxpayers.

I also outlined a set of requirements for strong ethics and transparency rules that should apply to bailout recipients to prevent corruption and waste. I asked that:

- The Treasury Department and the Federal Reserve Board create strong conflict-of-interest protections so that no federal official, financial agent, contractor, or adviser has any say or influence over decisions that may affect their own portfolio, or that may affect a current or former employer, and include strong post-employment restrictions to close the revolving door and prevent conflicts-of-interest.
- The Treasury Department and the Federal Reserve Board create clear, public rules and guidelines regarding how and why bailout recipients are chosen and how and why the terms and conditions of any bailouts are established.
- The Treasury Department and the Federal Reserve Board create immediate and complete transparency (beyond the requirements in the CARES Act)²³ regarding which companies successfully or unsuccessfully seek bailout funds, and what commitments they make in order to obtain these funds.

²² P.L.116-136, § 4003(c)(1)(A).

²³ P.L. 116-136 Act, § 4026.

- The Treasury Department and the Federal Reserve Board establish a ban on companies receiving funding from political spending or lobbying expenditures for the duration of the assistance.
- The Treasury Department and the Federal Reserve Board comply with any and all document and information requests and requests that officials appear as witnesses before the Special Inspector General, the Congressional Oversight Commission, or the Pandemic Response Accountability Committee.

I have the following questions about these matters.

1. If confirmed, you would have the clear authority to conduct audits and investigations of the making, purchase, management, and sale of loans, loan guarantees, and other investments made by the Secretary of the Treasury under any program established by the Secretary under the CARES Act, and the management by the Secretary of any program established under this Act. Please describe your understanding of the scope of programs within this authority.
 - a. Specifically, are loans provided to small businesses under Section 1102 of the CARES Act²⁴ within your audit and investigation jurisdiction?
 - b. Are the Federal Reserve’s Primary and Secondary Market Corporate Credit Facilities, , the Main Street Lending Program, and the Municipal Liquidity Facility, all created using funds appropriated to Treasury’s Exchange Stabilization Fund under the CARES Act, within the SIGPR’s jurisdiction?
 - c. Will any future Federal Reserve facility backstopped with CARES Act funds be under the SIGPR’s jurisdiction?
 - d. Will any existing Federal Reserve facility that was established before the CARES Act, but is later backstopped with CARES Act funds be under the SIGPR’s jurisdiction?
 - e. Which other programs currently established by the Treasury Secretary are under the SIGPR’s jurisdiction?
2. Under the CARES Act, the SIGPR is given “the duties and responsibilities of inspectors general under the Inspector General Act of 1978,”²⁵ which include “to conduct, supervise, or coordinate other activities carried out or financed by such establishment for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, its programs and operations.”²⁶

Broadly, this authority grants the SIGPR the ability to determine not only if program participants are committing fraud, but if they are abusing taxpayer funds, and if programs are being run with appropriate economy and efficiency for taxpayers and

²⁴ PL 116-136, § 1102.

²⁵ PL 116-136, § 4003(c)(3)

²⁶ P.L. 95-452.

the public. Using this or other authority given to the SIGPR under the CARES Act, if confirmed, will you commit to conducting investigations to determine if loan or grant recipients are using funds to benefit workers, consumers, and the economy?

Specifically, would you:

- a. Determine if Section 4003 loans are being used by recipients to keep workers on the job, including maintaining at least 95% of payrolls?
 - b. Determine if such loan recipients provide a \$15 an hour minimum wage?
 - c. Determine if such loan recipients use taxpayer funds to personally enrich CEOs or senior executives through any form of executive compensation?
 - d. Determine if such loan recipients engage in stock buybacks, dividends, or any other direct or indirect form of shareholder distribution?
 - e. Determine if such loan recipients provide at least one seat to workers on their board of directors?
 - f. Determine if such loan recipients engage in union-busting efforts or seek to weaken collective bargaining agreements?
 - g. Recommend that CEOs face civil and criminal penalties for violating loan terms of agreements with the Department of Treasury or the Federal Reserve Board?
 - h. Hold all companies that receive such loans liable for all assistance received if the company violates any of the terms of their agreements with taxpayers?
 - i. Determine if program participants are engaging in otherwise inappropriate uses of loan receipts?
3. Similarly, using the SIGPR's authority under the CARES Act, if confirmed, will you commit to conducting audits and investigations of program administration and Treasury Department and Federal Reserve Board decisions to ensure that they are free of conflicts of interest, including all decisions regarding recipients of assistance and contractors?

Specifically, will you determine if:

- a. Any federal official, financial agent, contractor, or adviser has any say or influence over decisions that may affect their own portfolio, or that may affect a current or former employer?
- b. All contractors and companies retained by the Treasury Department for the purposes of helping the government administer Section 4003 operate free of conflicts of interest and contribute to the funds being used to benefit workers, consumers, and the economy
- c. Treasury Department and the Federal Reserve Board are establishing clear, public rules and guidelines regarding how and why bailout recipients are chosen and how and why the terms and conditions of any bailouts are established?
- d. Companies receiving funding are engaging in political spending or lobbying while receiving assistance?

4. Will you conduct audits and investigations to determine if the President, his immediate family, or any personal friends, business associates, or individuals with personal or financial connections to the President are receiving CARES Act funds (including any violations of Section 4019 of the CARES Act), and if so, will you report to Congress on these matters?
5. If confirmed, will you commit to a thorough and robust evaluation of whether the \$500 billion bailout fund was an overall benefit to workers, consumers, families, and the economy? If so, how would you conduct this evaluation? What would be your specific metrics for success? Would you include rates of employment and wages compared to before the pandemic as metrics in your evaluation?
6. If confirmed, what other areas would you prioritize for audits and investigations as SIGPR?

Conclusion

If your nomination is confirmed by the Senate, you will have a critical job to do, and you will be responsible for ensuring that hundreds of billions of dollars in CARES Act funds are spent legally and appropriately, and are used to help workers and the economy. To provide assurances that you are up to the task, I ask that you come to the tomorrow's hearing prepared to answer the questions I outlined above, and I ask that you provide written answers to these questions prior to any vote on your nomination.

Sincerely,

A handwritten signature in black ink, appearing to read "Elizabeth Warren", written over a horizontal line.

Elizabeth Warren
United States Senator