

Committee on Banking, Housing, and Urban Affairs
Nomination Hearing
May 5, 2020

**Questions for The Brian D. Miller, of Virginia, to be Special Inspector General for
Pandemic Recovery, U.S. Department of the Treasury from Senator Elizabeth Warren:**

Inspector General Independence

1) What were your roles and responsibilities in the White House from 2018-2020?

My title at the White House Counsel's office is Senior Associate Counsel and Special Assistant to the President. In this role, I report to the Deputy Counsels to the President and the White House Counsel. I counsel federal agencies and other components within the Executive Office of the President on a wide range of issues and provide legal advice to my superiors within the White House Counsel's Office. My ability to respond to specific questions about my role in the White House is limited by the ethical obligations that bind all lawyers. Accordingly, it is appropriate to follow Justice Elena Kagan's example of limiting comments about her 4-year service in the Clinton White House to comply with all ethical obligations.

It is important for IGs and nominees to be Inspectors General to not be political. Under the IG Act and the CARES Act, IGs are nonpartisan and are not policy makers. To protect my independence, it would be inappropriate to comment about political disputes.

2) Did you at any point, advise the President or any other White House official to refuse to turn over documents or materials or delay doing so 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?

Please see my response to question 1.

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?

Please see my response to question 1.

4) As the SIGPR, you would be responsible for a \$25 million budget to conduct investigations and audits.¹ As you hire staff to manage and conduct these audits and investigations, will you do so on a strictly non-partisan basis?

Yes.

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?

No.

¹ PL 116-136, § 4018(g).

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6) Will you recuse yourself from any investigation involving or affecting a former company or individual that you represented, consulted for, or with which you otherwise had a financial arrangement?

I will apply the generally applicable standards for conflicts of interest, consult with any relevant ethics officials, and make a decision on a case-by-case basis to resolve any conflicts of interest.

White House Efforts to Undermine Oversight

7) Were you involved in any way in the CARES Act signing statement by President Trump? If so, please describe the nature of your involvement.

Please see my response to question 1.

8) Do you agree with the CARES Act signing statement's assertion that the SIGPR cannot freely report information to Congress absent Presidential approval?

Please see my response to question 1.

9) 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?

I will comply with the CARES Act and all applicable law that bind Inspectors General.

10) What action will you take if the President refuses to allow you to report relevant information to Congress?

Please see my response to question 9.

Were you aware of the decision, announced on April 7, 2020, to remove Glenn A. Fine from his post as Acting Director of the Department of Defense and Chair of the Pandemic Response Accountability Commission 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?

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11) Were you aware of the decision to fire Michael Atkinson as Inspector General for the Intelligence Community 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?

Please see my response to question 1.

12) Were you aware of the decision to remove Ms. Christie Grimm from her post as Acting Inspector General for the Department of Health and Human Services 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 from her role?

Please see my response to question 1.

13) Please describe your views on what protections IGs should afford whistleblowers.

Offices of Inspector General rely on whistleblowers to do their oversight work. I will take any and all actions necessary and appropriate under the law to protect whistleblowers from retaliation.

14) 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?

I hope to establish a hot line and web portal to encourage whistleblowers.

15) 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?

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16) 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

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President or the White House? If so, please describe the circumstances under which you would provide this information.

Please see my response to question 15.

17) The Congressional Oversight Commission was also created by the CARES Act to conduct oversight of the implementation of the CARES Act's economic provisions.² Will you commit to appearing, upon request, at hearings of the Commission? Will you provide information upon request from Commissioners?

Yes, as legally appropriate.

18) 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?

I would resign if it was impossible for me to do my job effectively.

Role of Congress and Inspector General

19) 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?

Yes. I will follow the Constitution, the IG Act, and the CARES Act.

20) Please explain and elaborate on your written view 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

IGs should be independent from politics, and the political branches of the Federal government often may not like what an IG reports.

21) 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?

Yes, as legally appropriate.

² PL 116-136, § 4020.

³ 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>.

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22) Do you continue to believe that, as you wrote in August 2018, 4 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?

Respectfully, I never wrote that. An issue arises when a member of Congress designs a review for an IG and then announces that review through a press conference. All audits and investigations should be the IG's independent work.

23) You also wrote in August 2018 that you deliberately ignored or “changed the parameter” of Congressional requests when you were the GSA IG. 5 Is this accurate? Please elaborate and provide an example from your time at GSA.

Respectfully, this is a misrepresentation of my writings. I was asked to evaluate the environmental and health risks in a federal building. Instead, I did a review of how GSA managed environmental issues at the facility.

24) If confirmed, would you deliberately ignore or “change the parameter” of congressional requests if you are confirmed as SIGPR?

I will always pay due respect to congressional requests as I did in my decade of experience as GSA IG. I will independently assess my office's abilities, resources, and priorities, and conduct those investigations supported by an independent factual predicate.

25) 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?

Yes, as legally appropriate.

26) If requested, will you commit to voluntarily testifying before the Congressional Oversight Commission established in the CARES Act?

Yes, as legally appropriate.

Transparency and Accountability among Bailout Recipients

27) 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

⁴ 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>.

⁵ 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>.

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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 Act⁶ within your audit and investigation jurisdiction?

I will consider the jurisdiction of SIGPR to be as broad as is textually permissible under the CARES Act, and Congress is always free to clarify or amend the jurisdiction of SIGPR.

- 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?

I will consider the jurisdiction of SIGPR to be as broad as is textually permissible under the CARES Act, and Congress is always free to clarify or amend the jurisdiction of SIGPR.

- C. Will any future Federal Reserve facility backstopped with CARES Act funds be under the SIGPR's jurisdiction?

I will consider the jurisdiction of SIGPR to be as broad as is textually permissible under the CARES Act, and Congress is always free to clarify or amend the jurisdiction of SIGPR.

- 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?

I will consider the jurisdiction of SIGPR to be as broad as is textually permissible under the CARES Act, and Congress is always free to clarify or amend the jurisdiction of SIGPR.

- E. Which other programs currently established by the Treasury Secretary are under the SIGPR's jurisdiction?

I will consider the jurisdiction of SIGPR to be as broad as is textually permissible under the CARES Act, and Congress is always free to clarify or amend the jurisdiction of SIGPR.

⁶ PL 116-136, § 1102.

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28) Under the CARES Act, the SIGPR is given “the duties and responsibilities of inspectors general under the Inspector General Act of 1978,”⁷ 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.”⁸

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 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?

As legally appropriate, I will consider all of the factors identified below.

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?

⁷ PL 116-136, § 4003(c)(3)

⁸ P.L. 95-452.

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- I. Determine if program participants are engaging in otherwise inappropriate uses of loan receipts?

29) 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?

As legally appropriate, I will consider all of the factors identified below.

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?

30) 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, but not limited to, any violations of Section 4019 of the CARES Act), and if so, will you report to Congress on these matters?

I will look into conflicts of interests as legally appropriate. It is important for IGs and nominees to be Inspectors General to not be political. Under the IG Act and the CARES Act, IGs are nonpartisan and are not policy makers. To protect my independence, it would inappropriate to be comment about political disputes.

31) 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?

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32) If confirmed, what other areas would you prioritize for audits and investigations as SIGPR?

At this point in time, it is too early to outline priorities for audits and investigations, but if confirmed I will report these to the committee very soon.