



## Office of the Special Inspector General for Pandemic Recovery

The Honorable Elizabeth Warren  
United States Senate  
131 Russell Senate Office Building  
Washington, DC 20510

September 22, 2020

Dear Senator Warren,

Thank you for your July 15, 2020 letter regarding alleged conflicts of interest and ethics violations connected to the funds appropriated by Congress to combat the economic fallout from the coronavirus pandemic.

Like you, I am acutely aware of the risk that conflicts of interest may arise in the context of CARES Act, Division A programs over which I have statutory jurisdiction. As an inspector general with law-enforcement authority, however, I must ensure that my team's investigations are properly predicated. As I committed to you during my confirmation process, "I will look into conflicts of interests as legally appropriate."<sup>1</sup>

While I also promised to give due respect to Congressional requests for investigations,<sup>2</sup> I have stated publicly that properly predicated investigations require an "independent basis for review" that is "clear and clearly stated."<sup>3</sup> An IG must determine proper predication without regard to impermissible considerations, such as political affiliation. To reiterate my response to you during my confirmation, "IGs should be independent from politics,"<sup>4</sup> and "[a]ll audits and investigations should be the IG's independent work."<sup>5</sup>

As an inspector general, I therefore eschew all politics. My independence is critical to my success, which is why I avoid taking actions that give the appearance of political preference or favoritism. I also guard my independence by never overstepping the authority given to me by the CARES Act. In other words, I take jurisdiction very seriously. That is why I recently declined an investigative

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<sup>1</sup> Brian D. Miller, Questions for the Record from Sen. Elizabeth Warren, Committee on Banking, Housing, and Urban Affairs, Nomination Hearing, Question 30 (May 5, 2020).

<sup>2</sup> *Id.* at Question 24.

<sup>3</sup> Brian D. Miller, *Independence of inspectors general should not be compromised by Congress*, The Hill (Aug. 13, 2018), <https://thehill.com/opinion/white-house/401491-independence-of-inspectors-general-should-not-be-compromised-by-congress>.

<sup>4</sup> Questions for the Record, *supra* note 1, at Question 20.

<sup>5</sup> *Id.* at Question 22.

request from a large group of Republican Senators involving issues important to their constituents but beyond my statutory reach.<sup>6</sup>

It is not that, as an IG, I will never work on an issue that may have political ramifications. In fact, a commitment to political independence means just the opposite. And as my record as an IG demonstrates,<sup>7</sup> I will charge ahead whenever the objective facts and evidence warrant, despite any potential political consequences.

Your letter, however, does not provide an independent basis for investigation. Although I share your concern generally that conflicts of interest be appropriately monitored, your letter, and the *Public Citizen* report on which it relies, presents a handpicked set of facts and allegations about lobbyists with a certain political affiliation while omitting that lobbyists of a different political affiliation are also engaged in CARES Act-related lobbying—often as part of a bipartisan team. This suggests the investigative requests presented in your letter are imbued with political bias, and where law-enforcement authorities are involved, “[a]ny hint of bias must never be allowed.”<sup>8</sup>

Because I know this matter is important to you, please allow me to explain some of what I see as shortcomings in the information you provided in your letter. I believe an objective review of publicly available facts and evidence demonstrates that the letter is insufficient to justify opening an investigation.<sup>9</sup>

Your discussion of Brownstein Hyatt Farber Schreck, LLP provides a good example of why IGs must evaluate all the available facts before opening an audit or investigation. The descriptions of the firm’s lobbying activities found in your letter and the *Public Citizen* article leave one believing that Brownstein Hyatt is effectively an arm of the current administration because some of its employees are former administration officials or fundraisers. Marc Lampkin, for example, is regularly identified as an active administration-connected lobbyist. True enough, he is listed by the Center for Responsive Politics as having filed the most lobbying-disclosure reports of any Brownstein Hyatt employee for the CARES Act.<sup>10</sup>

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<sup>6</sup> See Letter from Brian D. Miller, Special Inspector General for Pandemic Recovery, to Kelly Loeffler, United States Senator (Aug. 12, 2020).

<sup>7</sup> Citizens for Responsibility and Ethics in Washington (CREW) has documented my willingness to conduct properly predicated investigations without political fear or favor. See CREW, *Those Who Dared: 30 Officials Who Stood Up for Our Country*, at 34, available at <https://s3.amazonaws.com/storage.citizensforethics.org/wp-content/uploads/2016/07/20021536/30%20Officials%20Who%20Stood%20Up%20for%20Our%20Country%20REPORT.pdf>.

<sup>8</sup> Miller, *supra* note 3.

<sup>9</sup> Having been presented with a letter that offers the public only some of the facts, I also fear I may be seen as acting politically unless I explain my position. So, I am doing so in advance of my upcoming quarterly report.

<sup>10</sup> Center for Responsive Politics, Lobbyists lobbying on H.R.748: CARES Act (last accessed Sept. 13, 2020), [https://www.opensecrets.org/federal-lobbying/bills/lobbyists?start=50&page\\_length=25&cycle=2020&id=hr748-116&](https://www.opensecrets.org/federal-lobbying/bills/lobbyists?start=50&page_length=25&cycle=2020&id=hr748-116&).

But even a quick review of publicly available information shows Brownstein Hyatt's Nadeam Elshami is a close second.<sup>11</sup> Unlike Mr. Lampkin, Mr. Elshami is a recent employee of a prominent politician, having served as Democratic House Speaker Nancy Pelosi's chief of staff and senior communications advisor from 2007 through 2017.<sup>12</sup> Mr. Lampkin and Mr. Elshami appear together as co-lobbyists numerous times in Brownstein Hyatt's coronavirus<sup>13</sup> lobbying-disclosure reports, including those for Apollo Global Management.<sup>14</sup> You mentioned Apollo in your letter but did not mention that the Apollo lobbying team included Mr. Elshami.

Notably, Brownstein Hyatt lobbyists are not even close to being the most prolific on CARES Act matters. According to the Center for Responsive Politics, David Castagnetti and David R. Thomas each had nearly three times the lobbying reports as Mr. Lampkin.<sup>15</sup> Mr. Castagnetti describes himself as a "trusted Democratic advisor" whose career "has put him at the highest levels of politics, business and government."<sup>16</sup> Mr. Thomas describes himself as "a top Democratic strategist" who previously served as "Deputy Director of Legislative Affairs for Vice President Al Gore" and as Chief of Staff to House Impeachment Manager Zoe Lofgren (D-CA).<sup>17</sup>

While I agree lobbying can distort the policymaking process and may even be unlawful in some circumstances, these additional facts demonstrate that public records do not support opening an investigation or audit based on the misleading narrative that "lobbyists who worked for Trump's campaigns, committees and administration are feasting on the public health emergency."<sup>18</sup> Indeed, targeting individuals based on political affiliation under the guise of lobbying concerns is the exact sort of partisanship and favoritism IGs must avoid. And no one can reasonably conclude that whether a given lobbying activity is worthy of investigation depends on the political affiliations of those involved. At any rate, CARES Act-related lobbying—like all lobbying—is an entirely bipartisan activity.

Take, for example, the CARES Act Provider Relief Fund, which provided support for the health care industry. While I lack statutory jurisdiction over the Provider Relief Fund, the program is of

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<sup>11</sup> *Id.*

<sup>12</sup> See Nadeam A. Elshami, Policy Director, Brownstein Hyatt Farber Schreck (last accessed Sept. 13, 2020), <https://www.bhfs.com/people/policy/nelshami>; Nadeam Elshami, LinkedIn (last accessed Sept. 13, 2020), <https://www.linkedin.com/in/nadeam-elshami>.

<sup>13</sup> Some reports reference the CARES Act by name; some reference lobbying on "coronavirus" or "COVID-19 response" issues but do not specifically say "CARES Act."

<sup>14</sup> Brownstein Hyatt Farber Schreck, LLP, Lobbying Report (April 20, 2020), <https://soprweb.senate.gov/index.cfm?event=getFilingDetails&filingID=2ED5052A-FDEE-46D1-89C8-A703C6E17B0F&filingTypeID=51>.

<sup>15</sup> Center for Responsive Politics, Lobbyists lobbying on H.R.748: CARES Act (last accessed Sept. 13, 2020), <https://www.opensecrets.org/federal-lobbying/bills/lobbyists?cycle=2020&id=hr748-116>.

<sup>16</sup> Mehlman Castagnetti Rosen & Thomas, Bipartisan Team (last accessed Sept. 13, 2020), <https://mehlmancastagnetti.com/bipartisan-team/>.

<sup>17</sup> *Id.*

<sup>18</sup> COVID Lobbying Palooza, Public Citizen (July 2020) (alterations made to capitalization), <https://www.citizen.org/wp-content/uploads/Covid-Lobbying-Palooza.pdf>.

interest to me because health care providers can potentially receive hundreds of millions of dollars from the fund as well as hundreds of millions of dollars from the Federal Reserve’s liquidity programs under CARES Act § 4003—programs over which I have jurisdiction. I noted my concern about potential “double-dipping” into CARES Act funds in my initial report to Congress.

In the initial Provider Relief Fund distribution, HHS disbursed \$58 million to Massachusetts General Hospital—one of several hospitals in the Mass General Brigham system. On April 23, you and Senator Markey wrote to HHS Secretary Alexander Azar, claiming “the manner in which HHS has disbursed these funds to health care providers in hard-hit states such as Massachusetts has not adequately addressed their needs.”<sup>19</sup> You then “call[ed] on HHS to recognize this shortcoming and make needed adjustments to future Provider Relief Fund disbursements.”<sup>20</sup>

A week after your letter, Mass General Brigham hired BGR Government Affairs lobbyists to “[p]rovide strategic counsel and policy analysis related to federal payment and policy issues impacting hospitals.”<sup>21</sup> The registration and subsequent disclosures make no mention of the CARES Act, but it is hard to imagine what “payment and policy issues” unrelated to the CARES Act would require the services of a lobbying team consisting of Haley Barbour (former Republican governor of Mississippi),<sup>22</sup> Bob Wood (former Bush Administration official),<sup>23</sup> and Remy Brim (your legislative assistant and senior health policy advisor from 2013 and 2016).<sup>24</sup> Mass General Brigham hired this bipartisan lobbying team even though it already had a different lobbying firm and its own in-house lobbyist covering various CARES Act matters, including relief to health care providers.<sup>25</sup>

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<sup>19</sup> Letter from Elizabeth Warren, United States Senator, and Edward J. Markey, United States Senator, to Alex Azar, Secretary of the United States Department of Health and Human Services (April 23, 2020), <https://www.warren.senate.gov/imo/media/doc/MA%20Priorities%20in%20Provider%20Relief%20Fund.pdf>.

<sup>20</sup> *Id.*

<sup>21</sup> BGR Government Affairs, Lobbying Registration (May 1, 2020), <https://soprweb.senate.gov/index.cfm?event=getFilingDetails&filingID=1B93E9C8-CAD7-4128-9C50-C374D51FC8EB&filingTypeID=2>.

<sup>22</sup> Governor Haley Barbour, Founding Partner, BGR Group (last accessed Sept. 14, 2020), <https://bgrdc.com/team-member-post/governor-haley-barbour/>.

<sup>23</sup> Bob Wood, President and CEO, BGR Group (last accessed Sept. 14, 2020), <https://bgrdc.com/team-member-post/bob-wood/>. Notably, Bob Wood was chief of staff to HHS Secretary Tommy Thompson during the second Bush administration at the same time now-Secretary Azar was Thompson’s general counsel.

<sup>24</sup> Remy L. Brim, Ph.D., Health and Life Sciences Practice Co-Head, BGR Group (last accessed Sept. 13, 2020), <https://bgrdc.com/team-member-post/remy-brim-ph-d/>; Remy Brim, LinkedIn (last accessed Sept. 13, 2020), <https://www.linkedin.com/mwlite/in/remylbrim>.

<sup>25</sup> See, e.g., O’Neill, Athy & Casey, P.C., Lobbying Report (April 19, 2020), <https://soprweb.senate.gov/index.cfm?event=getFilingDetails&filingID=3D64628A-3120-4459-8372-320EAB58A033&filingTypeID=51>; Partners HealthCare, Lobbying Report (April 23, 2020), <https://soprweb.senate.gov/index.cfm?event=getFilingDetails&filingID=75652C0D-2172-44DB-A5A3-E51FBFFD89F0&filingTypeID=51>; Mass General Brigham (formerly Partners HealthCare), Lobbying Report (July 6, 2020), <https://soprweb.senate.gov/index.cfm?event=getFilingDetails&filingID=ADFA0837-E0DB-424B-B4B4-56933B6E3227&filingTypeID=60>.

HHS presently reports that Massachusetts General Hospital's General Distribution total is at least \$153.7 million, nearly \$100 million more than its first distribution. All the hospitals in the Mass General Brigham system have received a total of about \$343 million in General Distributions from the Provider Relief Fund. The bottom line is that the hospital system received a greater share of the provider relief fund after your letter and after hiring the BGR lobbying team that included your former staffer. As this example demonstrates, lobbying is a thoroughly bipartisan affair, making IG investigations predicated on party affiliation especially inappropriate.

As I stated at the outset, I am aware of the risk that conflicts of interest will arise in the context of CARES Act, Division A programs over which I have statutory jurisdiction. And I will continue monitoring and reporting on the issue as appropriate in my subsequent quarterly reports.<sup>26</sup>

During my confirmation process, I promised to "always pay due respect to congressional requests as I did in my decade of experience as General Services Administration IG."<sup>27</sup> But I also promised to "independently assess my office's abilities, resources, and priorities, and conduct those investigations supported by an independent factual predicate."<sup>28</sup> In short, publicly available records reveal that your letter and the *Public Citizen* article on which it relies present a select universe of facts drawn purely along political lines. Unless the position is that only lobbyists with a particular political affiliation should be investigated for CARES Act-related lobbying, your letter does not identify a "clear and clearly stated" independent basis to open an investigation.

Senator Warren, I stand ready to work with you to protect the taxpayers' hard-earned money in accordance with the principles I have outlined in this letter. But, respectfully, I cannot open targeted investigations and issue subpoenas based on *Public Citizen's* article and the distorted view of the facts it presents.

Sincerely,



Brian Miller, Inspector General  
Special Inspector General for Pandemic Recovery

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<sup>26</sup> To avoid ambiguity regarding the term "conflict of interest," I use the term to refer to potential violations of Federal law. See *e.g.*, 18 U.S.C. § 208.

<sup>27</sup> Questions for the Record, *supra* note 1, at Question 24.

<sup>28</sup> *Id.*