



441 G St. N.W.  
Washington, DC 20548

B-332417

August 10, 2020

The Honorable Brian D. Miller  
Special Inspector General  
for Pandemic Recovery

Dear Mr. Miller:

This letter responds to the discussion in the first report of the Special Inspector General for Pandemic Recovery (SIGPR) issued on August 3, 2020, of each of the CARES Act oversight entities, including GAO. The analysis of GAO's role is deeply flawed as it does not reflect the language or context of the Act. Equally disappointing, the analysis was prepared without any coordination with GAO, an approach plainly at odds with standards of professionalism expected of the audit oversight community.<sup>1</sup>

Section 19010 of the CARES Act provides an extensive oversight role for GAO.<sup>2</sup> Among other things, it directs us to monitor and oversee the exercise of authorities, and the receipt, disbursement, and use of funds made available, "under this Act or any other Act," as well as the effect of the pandemic on the health, economy, and public and private institutions of the United States. To facilitate GAO's exercise of these responsibilities, section 19010 includes a broad right of access to records, along with the right to make copies of such records, interview staff, and inspect facilities.<sup>3</sup> This

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<sup>1</sup>In the Inspector General Act of 1978, Congress directed each IG to "give particular regard to the activities of the Comptroller General of the United States with a view toward avoiding duplication and insuring effective coordination and cooperation." Pub. L. No. 95-452, § 4(c), 92 Stat. 1101, 1103 (1978), *codified as amended at* 5 U.S.C. app. Section 4(c) is applicable to SIGPR via the CARES Act. Pub. L. 116-136, § 4018(c)(3), 134 Stat. 281, 484 (2020).

<sup>2</sup>Section 19010(b) states that "The Comptroller General shall conduct monitoring and oversight of the exercise of authorities, or the receipt, disbursement, and use of funds made available, under this Act or any other Act to prepare for, respond to, and recover from the Coronavirus 2019 pandemic and the effect of the pandemic on the health, economy, and public and private institutions of the United States, including public health and homeland security efforts by the Federal Government and the use of selected funds under this or any other Act related to the Coronavirus 2019 pandemic and a comprehensive audit and review of charges made to Federal contracts pursuant to authorities provided in the Coronavirus Aid, Relief, and Economic Security Act." Pub. L. No. 116-136, 134 Stat. at 580.

<sup>3</sup>Pub. L. No. 116-136, § 19010(d), 134 Stat. at 580-81. The authorities provided under the CARES Act complement GAO's existing audit and access authorities under title 31 of the United States Code and other law. See, e.g., 31 U.S.C. §§ 712, 717, and 716 (providing GAO with

access authority extends not only to federal agencies, but also to state and local agencies; contractors; grantees; and recipients or subrecipients, including private entities, pertaining to any COVID-19-related assistance or effort “under this Act or any other Act”.<sup>4</sup> Indeed, these provisions call for GAO to review the national response to the COVID-19 pandemic under the CARES Act in its entirety, as well as other laws.

The SIGPR report acknowledges GAO’s oversight role, but asserts that it does not extend to the provisions in Division A of the CARES Act.<sup>5</sup> Citing the rule of construction in section 3 of the CARES Act under which references to “this Act” are treated as references only to the division in which they appear,<sup>6</sup> the report points out that references to “this Act” in section 19010 refer only to Division B. Of greater significance, the report asserts that the phrase “any other Act” in section 19010 does not reach Division A, but includes only non-CARES Act legislation enacted in response to the COVID-19 pandemic and any future legislation. In support of that view, the report theorizes that, if Congress had intended to grant GAO jurisdiction over Division A, Congress presumably would have used the phrase “the CARES Act” rather than using the phrases “this Act” and “any other Act.”<sup>7</sup>

The phrase “this Act or any other Act” appears repeatedly in section 19010. We agree with SIGPR’s understanding that the phrase “this Act” refers only to Division B under the rule of construction in section 3. However, SIGPR’s assertion regarding “any other Act” is not supported by the language of the statute or the context in which it appears.<sup>8</sup>

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authority to investigate the use of public money, audit federal programs and activities, and obtain the records of federal agencies for purposes of audits, investigations, and evaluations).

<sup>4</sup>Pub. L. No. 116-136, § 19010(d), 134 Stat. at 580-81.

<sup>5</sup>Special Inspector General for Pandemic Recovery, Initial Report to Congress 15-17 (2020). Broadly speaking, Division A of the CARES Act, entitled Keeping Workers Paid and Employed, Health Care System Enhancements, and Economic Stabilization, establishes new programs and authorities in response to the COVID-19 pandemic, and Division B, entitled Emergency Appropriations for Coronavirus Health Response and Agency Operations, provides supplemental appropriations for the response and agency operations.

<sup>6</sup>Section 3 states that “Except as expressly provided otherwise, any reference to ‘this Act’ contained in any division of this Act shall be treated as referring only to the provisions of that division.” Pub. L. No. 116-136, 134 Stat. at 285.

<sup>7</sup>Special Inspector General for Pandemic Recovery, Initial Report to Congress 17 (2020).

<sup>8</sup>The United States Supreme Court has regularly emphasized the importance of reading the words of a statute in the context of the overall statutory scheme. See, e.g., *Food & Drug Admin. v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 132-33 (2000) (“In determining whether Congress has specifically addressed the question at issue, a reviewing court should not confine itself to examining a particular statutory provision in isolation. The meaning—or ambiguity—of certain words or phrases may only become evident when placed in context. It is a ‘fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.’” (citation omitted)).

Because “this Act” refers to Division B, the phrase “any other Act” necessarily would, by its own terms and in the context of the clause “this Act or any other Act,” refer to any duly enacted statutory provisions other than those contained in Division B. As they were passed by both houses of Congress and signed into law by the President, the provisions of Division A when taken together constitute enacted law, or an Act.<sup>9</sup> Further, Congress did not include any limitation on the phrase “any other Act” that supports SIGPR’s view of section 19010; the mere fact that Congress could have achieved a similar result using another approach does not change the meaning of the words it chose to use.

The context in which the phrase “any other Act” appears also suggests that it includes the provisions of Division A of the CARES Act, as well as laws other than the CARES Act. Under section 19010(b), GAO’s reviews are to cover all aspects of the government’s response to the COVID-19 pandemic, including preparation, response, and recovery. GAO not only is charged with conducting monitoring and oversight of the receipt, disbursement, and use of funds, but also with examining the effect of the pandemic on the public health, economy, and public and private institutions of the United States, all of which are addressed to some extent in Division A. The broad right of access, including to records, staff, and facilities of private entities, provided to GAO in section 19010(d) lends further support to the view that GAO’s oversight extends to Division A, which provides relief to employers, health care providers, and severely distressed sectors of the economy. It is with regard to private entities, as well as state and local agencies, that the CARES Act most clearly complements GAO’s pre-existing audit and access authorities.

The crux of SIGPR’s argument for a restrictive reading of GAO’s responsibilities seems to be that it is “hard to imagine” or somehow illogical for Congress to have used such “awkward” wording to provide GAO with jurisdiction over both divisions of the CARES Act. We find it hard to imagine otherwise. In fact, it seems quite logical that Congress would authorize GAO—a legislative branch agency established to inform Congress on the government’s use of public money—to conduct oversight of the full range of provisions and programs established to respond to the COVID-19 pandemic at a cost of trillions of dollars of public money. Ultimately, GAO believes the text of the law clearly supports GAO’s oversight over all activities and funds provided for under Divisions A and B of the CARES Act.

We look forward to working with you and other oversight entities as we carry out our respective responsibilities under the CARES Act. In fact, we believe that effective coordination is critical as we contribute to the economy and efficiency of activities carried out in response to the COVID-19 pandemic. We respectfully suggest that an

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<sup>9</sup>An “act of Congress” is generally defined as “A statute that is formally enacted in accordance with the legislative power granted to the Congress by the U.S. Constitution.” Black’s Law Dictionary (11<sup>th</sup> ed. 2019). Section 3 of the CARES Act establishes that an “Act” can also be a subset of a larger piece of legislation.

emphasis on this common goal rather than a misguided emphasis on the legal jurisdiction of GAO would better serve the interests of the Congress, the Administration, and the American people.

Sincerely,

A handwritten signature in black ink that reads "Thomas H. Armstrong". The signature is written in a cursive style with a long horizontal line above the name.

Thomas H. Armstrong  
General Counsel

cc: The Honorable Richard C. Shelby  
Chairman  
The Honorable Patrick J. Leahy  
Vice Chairman  
Committee on Appropriations  
United States Senate

The Honorable Lamar Alexander  
Chairman  
The Honorable Patty Murray  
Ranking Member  
Committee on Health, Education, Labor, and Pensions  
United States Senate

The Honorable Ron Johnson  
Chairman  
The Honorable Gary C. Peters  
Ranking Member  
Committee on Homeland Security and Governmental Affairs  
United States Senate

The Honorable Nita M. Lowey  
Chairwoman  
The Honorable Kay Granger  
Ranking Member  
Committee on Appropriations  
House of Representatives

The Honorable Frank Pallone, Jr.  
Chairman  
The Honorable Greg Walden  
Republican Leader

Committee on Energy and Commerce  
House of Representatives

The Honorable Bennie Thompson  
Chairman

The Honorable Mike D. Rogers  
Ranking Member  
Committee on Homeland Security  
House of Representatives

The Honorable Carolyn B. Maloney  
Chairwoman

The Honorable James R. Comer  
Ranking Member  
Committee on Oversight and Reform  
House of Representatives