



Professional Perspective

CARES Congressional Oversight: Scope and Structure

Preston Burton, Buckley LLP

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Contributed by [Preston Burton](#), Buckley LLP

The Coronavirus Aid, Relief, and Economic Security Act, signed in March 2020, enacted an unprecedented level of emergency government spending to provide public health relief and stabilize an economy damaged by the pandemic, and included oversight provisions to monitor how the \$2 trillion is spent.

The provisions are broadly similar—with at least one important exception—to those in the Emergency Economic Stabilization Act passed in response to the 2008 financial crisis, which distributed \$700 billion through its Troubled Asset Relief Program. EESA's oversight mechanisms lingered for years through investigations, hearings, reports to Congress, and in some instances, criminal prosecutions. With the CARES Act weighing in at more than three times the level of EESA's federal spending (and more likely on the way), its oversight features seem certain to cast a similarly long shadow.

Headlines focused public attention on two oversight bodies that the CARES Act [created](#): the Office of the Special Inspector General for Pandemic Recovery (SIGPR), modeled on the TARP counterpart SIG-TARP, and the Pandemic Response Accountability Committee. The Department of Justice, in a [memorandum](#) from Attorney General William Barr, also announced special scrutiny of activity during the pandemic.

But with increasing evidence of the executive branch's disdain for inspectors general, the looming significance of a third oversight body—the Congressional Oversight Commission—is coming into view. It is responsible for supervising the implementation by the Treasury Department and the Federal Reserve of the \$500 billion fund for distressed industries, and is virtually identical to the structure of the TARP Congressional Oversight Panel, right down to its lack of subpoena power.

Oversight Commission Structure

The Oversight Commission, set to expire in Sept. 2025, will have five members, with appointments from each of the majority and minority leaders from both houses of Congress, and a chairperson appointed jointly by the Speaker of the House and the Senate Majority Leader. Consistent with its TARP Oversight predecessor, the CARES Act lays out provisions for hiring staff, experts, and consultants, and permits heads of federal agencies and departments to loan their staffs to the Oversight Commission. Meetings will be held at the call of the chairperson or a majority of the members of the Oversight Commission, and while a quorum for meetings requires four members, it can hold hearings with fewer.

Scope of Review

The Oversight Commission's statutory mandate is to examine the federal government's implementation of the measures enacted to provide economic stabilization for “severely distressed sectors of the United States Economy,” including, for example, the airline industry, companies critical to maintaining national security, and other eligible businesses, states, or municipalities. Every 30 days following the first act of the Treasury and the Federal Reserve under this program, the Oversight Commission must report to Congress on a list of required topics.

Because the Oversight Commission's duties are statutorily limited to the Treasury's and the Federal Reserve's economic stabilization efforts, its scope does not directly cover other portions of the act, including for example, Small Business Administration loans, public health spending, and the unemployment insurance provisions—unless the Treasury and the Federal Reserve take actions to stabilize the economy that somehow affect those provisions.

But one other provision of the CARES Act potentially gives it greater range to supervise matters related to the federal government's economic stabilization efforts in response to the pandemic. Although the language in the CARES Act closely tracks that establishing the TARP Oversight Panel's duties, the CARES Act includes the expectation that the Oversight Commission will examine and report on the “financial well-being of the people of the United States;” the corresponding provision in the EESA contemplated that the TARP Oversight Panel would report only on the impact of TARP purchases “on the financial market and financial institutions,” and contains no such mention of the “financial well-being of the people of the United States.”

One could well imagine the Oversight Commission interpreting its mandate beyond simply oversight of the Treasury and Federal Reserve to include reviewing and reporting on how the implementation of economic stabilization funding has impacted not only the economy and financial markets generally, but also its impact on everyday Americans including unemployment rates, wage stability, and the like. The ability to exercise its power of review, however broadly or narrowly the Commission endeavors to probe, is far from clear.

Oversight Commission Powers

The Oversight Commission is authorized to obtain evidence to fulfill its duties, but given the current political environment, its efforts to obtain that evidence from the executive branch may be frustrated. The commission can enter into contracts with third parties to fulfill its duties, such as engaging analysts and experts; it may request official data and information (which the government must furnish at the request of the chairperson); and it shall receive reports required to be submitted under the economic stabilization subtitle.

The commission is specifically empowered to hold hearings, seek to take testimony, and gather evidence within the scope of its mandate, but it lacks formal subpoena power to compel such testimony or the production of documents. The TARP Oversight Panel held largely the same powers, aside from the power to contract, and it held many hearings with testimony from Treasury officials, but the TARP Oversight Panel operated in a different time when administration officials and agencies were much more likely to appear in the absence of a subpoena. Given the recent and ongoing battles over more conventional congressional subpoenas, the lack of subpoena power may significantly hobble the Oversight Commission's work.

But, in addition to the Oversight Commission, the Speaker of the House of Representatives announced that she intends to form a House Select Committee on the Coronavirus, to be chaired by Rep. James E. Clyburn (D-S.C.), to also oversee these issues.

Presumably, that committee would enjoy subpoena power itself and, of course, the existing House Committee on Oversight and Reform would almost certainly enjoy the ability to make appropriate legislative inquiries and issue its own subpoenas to the agencies and government officials charged with responsibility for carrying out the expectations and requirements of the CARES Act.

Thus, the Oversight Commission's lack of subpoena power is hardly an impediment to legislative review of the program—it may just result in a less coordinated and specialized inquiry. And, of course, intergovernmental squabbles over the implementation of this stimulus and relief package and compliance with a proper inquiry from the Oversight Commission will present substantial political landmines for all involved.