

April 21, 2020

The Honorable Mitch McConnell
Majority Leader
United States Senate

The Honorable Nancy Pelosi
Speaker
United States House of Representatives

The Honorable Charles Schumer
Minority Leader
United States Senate

The Honorable Kevin McCarthy
Minority Leader
United States House of Representatives

Dear Leader McConnell, Leader Schumer, Speaker Pelosi, and Leader McCarthy:

The undersigned organizations dedicated to transparency, accountability, and good government write to ask that you include strong transparency and accountability provisions in the next legislative response to the COVID-19 pandemic. While the CARES Act included several important transparency and oversight requirements, it is clear that much more is needed to protect the public's access to information and strengthen meaningful oversight.

We recommend that the following measures be included in the legislation:

- 1. Strengthen protections for inspectors general.** Congress should protect inspectors general against removal without cause, to safeguard the executive branch-based oversight mechanisms in the CARES Act (the Special Inspector General for Pandemic Relief and the Pandemic Response Accountability Committee) against political interference.¹
- 2. Facilitate and expand the Freedom of Information Act.** The pandemic has exacerbated existing FOIA processing delay issues, due both to the volume of requests and new challenges such as remote processing. Congress should ease the burden on FOIA offices by increasing their funding and giving FOIA officers access to their agency's electronic records. Congress should also enable public oversight of the government's pandemic response by subjecting government contracts made using stimulus funds subject to FOIA.²
- 3. Broaden whistleblower protections.** Congress should expand whistleblower protections to cover any individual who presents evidence of misuse of COVID-19 recovery funds, whether they are recipients of covered funds or not. These should explicitly cover all "essential workers," as well as non-employees who present evidence of wrongdoing, and should protect against all types of retaliation.³

1 For more information, see this April 10, 2020 coalition letter, available at the Project On Government Oversight: <https://www.pogo.org/letter/2020/04/organizations-call-on-congress-to-urgently-pass-inspector-general-removal-protections/>

2 For more information, see this resource from Open the Government: <https://www.openthegovernment.org/wp-content/uploads/2020/04/ProtectFOIAonepager.pdf>

3 For more information, see this April 16, 2020 coalition letter, available at the Government Accountability Project: <https://whistleblower.org/letter/sign-on-stimulus-whistleblowing-protections/>

- 4. Narrow CARES Act secrecy exemption.** The CARES Act exempted the Federal Reserve from provisions of the Government in the Sunshine Act, to facilitate its COVID-19 response. However, this exemption is overbroad and should be narrowed by re-imposing the requirement to keep and publish records such as meeting minutes and transcripts. This would ensure the necessary flexibility while making sure the public isn't completely in the dark about actions considered and taken by the Federal Reserve during this time.
- 5. Promote court access.** The COVID-19 pandemic has severely impacted public access to court proceedings and records. Congress should allocate funding for federal courts so that they can provide live or same-day remote access to court proceedings, and give prompt notice of postponements. Since the access terminals the public can typically use to view court records for free are not available, Congress should suspend PACER fees.⁴
- 6. Fortify CARES Act oversight mechanisms.** The Pandemic Response Accountability Committee (PRAC) will conduct vital oversight of the distribution of COVID-19 response funds, but its authority should not be limited in such a way that it allows loopholes for funds to be misused. In order for it to be as effective as possible, the PRAC's jurisdiction should be expanded to include loan guarantees and tax provisions.⁵ Additionally, Congress should give the Special Inspector General for Pandemic Recovery emergency hiring authorities so that the office charged with overseeing \$500 billion in spending directed by the Treasury Secretary can be operational as soon as possible.
- 7. Disclose secret law related to the pandemic.** The public and Congress must have full knowledge of the laws governing the federal response to the pandemic, so that they can fully understand how the executive branch perceives its own authority. Congress should require the Department of Justice's Office of Legal Counsel to disclose all formal written legal opinions that are issued throughout the duration of the national emergency declared by President Trump on March 13, 2020 and any subsequently declared related emergencies.
- 8. Fund congressional oversight.** The pandemic has exacerbated the already serious shortage of funding for congressional oversight, especially committees that have been cut by hundreds of millions of dollars over the last decade, and GAO, which is down by 2,000 staff over the last quarter century. Congress should significantly increase funding for congressional committees to restore the capacity they've lost since the financial crisis in 2008.⁶

During this time of national crisis, it is vital that the public has timely access to information and that oversight mechanisms are as robust as possible, so that errors and abuses that threaten

4 For more information, see this letter from the Reporters Committee for Freedom of the Press: <https://www.rcfp.org/wp-content/uploads/2020/04/RCFP-Court-Access-Recommendations-Letter-House-of-Representatives.pdf>

5 For more information, see this resource from Taxpayers for Common Sense: <https://www.taxpayer.net/budget-appropriations-tax/the-covid-19-stimulus-package-long-on-money-short-on-details/>

6 For more information, see this resource from Demand Progress: https://s3.amazonaws.com/demandprogress/reports/2020-02_The_Undermining_of_Congress.pdf

public health can be swiftly rectified. We are happy to provide more information on any of these recommendations. Thank you for your consideration.

Sincerely,

American Arab Anti-Discrimination Committee

Campaign for Accountability

Center for Media and Democracy

Citizens for Responsibility and Ethics in Washington

Common Cause

Defending Rights & Dissent

Demand Progress

Electronic Privacy and Information Center (EPIC)

Fix the Court

Global Witness

Good Jobs First

Government Accountability Project

Government Information Watch

Jobs to Move America

National Security Archive

Open The Government

Project On Government Oversight (POGO)

Protect Democracy

Public Citizen

Public Employees for Environmental Responsibility

R Street Institute

Society of Professional Journalists

Taxpayers for Common Sense

The National Freedom of Information Coalition

Transparency International, U.S. Office

UC Hastings