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Watchdog Alleges ‘Turf Battles’ Over Pandemic Oversight

The pandemic inspector general asked the Justice Department for a legal opinion after getting “resistance” from other agencies.

COURTNEY BUBLÉ | MAY 3, 2021

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A recent Justice Department legal opinion narrowed the scope of the pandemic inspector general’s jurisdiction, which he said will impede oversight of trillions of dollars in coronavirus relief programs.

The Office of the Special Inspector General for Pandemic Recovery, established in the CARES Act passed in March 2020, published its [quarterly report](#) on Friday evening, which includes a “special update” from IG Brian Miller. The office is [one of several IG offices](#) for the Treasury Department.

On [April 29](#) “the Department of Justice’s Office of Legal Counsel issued an opinion that SIGPR’s jurisdiction is narrowly limited to programs established under title IV, subtitle A of the CARES Act. According to the OLC opinion, Treasury’s direct loans and the Federal Reserve’s lending programs fall within SIGPR’s compass, but the coronavirus relief fund, payroll support program, and paycheck protection program do not,” he wrote. “The consequence is permanently reduced oversight of these programs.”

After working together well early on, Miller said his office has been met with “resistance” from the Treasury Department and Treasury IG over the last few months in trying to obtain critical data and information and work together on oversight initiatives.

“Matters came to a head in late December and early January, when SIGPR asked Treasury [Office of Inspector General] to join an evaluation of the coronavirus relief fund,” he wrote. “Treasury OIG declined and instead formally requested Treasury [Office Of General Counsel] issue a legal opinion that Treasury OIG, not SIGPR, had jurisdiction over that program as well as the payroll support program.”

Miller then asked the Office of Legal Counsel for review to “preserve SIGPR’s independence and avoid the appearance of impropriety.” He noted that the Government Accountability Office and Council of the Inspectors General on Integrity and Efficiency would not have been proper venues for this request.

The Office of Management and Budget formally weighed in on the opinion, ruling against the pandemic IG’s jurisdiction. The Office of Legal Counsel “ultimately decided what it described as a ‘close’ question against SIGPR, based in large part on the submissions it received...including from OMB,” according to Miller.

He said that Congress could overturn the Office of Legal Counsel’s decision by passing legislation to ensure better oversight over the pandemic programs.

“All special inspectors general share concurrent jurisdiction with their counterparts and must partner with agency inspectors general to achieve their respective statutory oversight missions,” Miller said. “There is nothing more frustrating to achieving these missions than turf battles. Hardworking taxpayers are far better served when government resources are devoted to the public.”

Miller thanked his employees for their hard work despite the challenging circumstances. He noted much of their work would have to be “closed or transferred” now.

After questioning the need for such a position in a [signing statement accompanying the CARES Act](#), former President Trump nominated Miller for the position in April 2020 and the Senate [confirmed](#) him in June 2020. Miller was met with [some skepticism](#) because his most recent job was special assistant and senior associate counsel in the Office of White House Counsel. He has held a number of other high-level positions in government since 1992, such as inspector general at the General Services Administration, and senior positions at the Justice Department, including assistant U.S. attorney general, senior counsel to deputy attorney general, and special counsel on health care fraud.

The Pandemic Response Accountability Committee (of which Miller is a member) issued a [statement](#) on Saturday evening reiterating the Office of Legal Counsel’s opinion and noted that to-date member IGs of the committee have published almost 200 oversight reports on the pandemic and their investigations have led to criminal charges being filed in over 300 pandemic-related cases and over 84 convictions.

“The public can rest assured that the Pandemic Response Accountability Committee and the Treasury inspector general will continue to conduct robust, aggressive, and independent oversight over all pandemic-related spending, including the two programs covered by the DOJ Office of Legal Counsel opinion,” said Michael Horowitz, Justice IG and chair of the committee.

In a follow-up question, *Government Executive* asked the committee how it views Miller’s roles and responsibilities now and how it plans to work with his office. A committee spokesperson responded that the Pandemic Response Accountability Committee is a “central” coordinator for IGs, GAO and state and local partners and “we regularly coordinate with PRAC member inspectors general, including SIGPR, and PRAC members and staff meet weekly to discuss progress on ongoing initiatives and share best practices. It is up to IG Miller, not the PRAC, to assess his oversight role and responsibilities in light of the OLC opinion.”

“Treasury is dedicated to the prevention of waste, fraud and abuse and we are committed to being responsive and helpful to SIGPR,” Laurie Schaffer, principal deputy general counsel at the Treasury Department, wrote in a letter to Miller on April 27 (included in the quarterly report). “While SIGPR’s letter suggests that Treasury is electing whether to opt for more or less oversight, in fact every

program Treasury is implementing is subject to oversight by at least one of Treasury’s four inspector generals.”

A Treasury spokesperson said in a statement to *Government Executive*, “Treasury supports strong oversight, and we will continue to make sure all of our inspectors general, congressional committees of jurisdiction, and other oversight bodies have the information they need.”

Richard Delmar, acting Treasury IG, said, “Treasury OIG continues its oversight and enforcement of the payroll support program and coronavirus relief fund program, as it has done since these programs’ inception in 2020, without interruption or reduction of the scope of our work.”

In May 2020, Sen. Chuck Grassley, R-Iowa, [introduced bipartisan legislation](#) that would have given the pandemic IG expedited hiring authority. “Congress passed similar legislation to expedite hiring for previous special inspectors general,” said a [press release](#) from his office.

There are currently other special IGs for Afghanistan Reconstruction and the Troubled Asset Relief Program. There was previously one for Iraq Reconstruction.

In its [initial report to Congress](#) in August 2020, the SIGPR said its hiring process was “extremely cumbersome” and the office only had one employee, Miller, until July 6, 2020, which was a little over a month after his confirmation. The office recommended Congress take up the bipartisan legislation Grassley sponsored.

The office has 40 full-time employees as of this quarter and expects to have 66 by September 30.

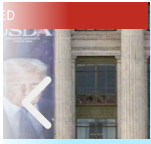
This story has been updated with additional comment from the acting Treasury IG. [G](#)

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