SELECT SUBCOMMITTEE
on the
CORONAVIRUS CRISIS



"WE HAD OUR HAND IN THE COOKIE JAR"

THE TRUMP ADMINISTRATION'S $700 MILLION "NATIONAL SECURITY" LOAN TO YELLOW CORPORATION

STAFF REPORT
APRIL 27, 2022

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

TABLE OF CONTENTS

TIMELINE OF YELLOW CORP CERTIFICATION i

I EXECUTIVE SUMMARY 1

II BACKGROUND 3

A. THE CARES ACT NATIONAL SECURITY PROGRAM 3

B. THE TRUMP ADMINISTRATION'S NATIONAL SECURITY LOAN TO YELLOW 4

C. THE SELECT SUBCOMMITTEE'S INVESTIGATION 5

III FINDINGS 6

A. WHITE HOUSE OFFICIALS—LIKELY WITH PRESIDENT TRUMP'S INVOLVEMENT—INTERVENED AS YELLOW'S APPLICATION FOR A NATIONAL SECURITY LOAN WAS BEING EVALUATED 6

B. TRUMP ADMINISTRATION POLITICAL APPOINTEES OVERRODE THE RECOMMENDATION OF CAREER OFFICIALS IN DECIDING TO CERTIFY THAT YELLOW WAS "CRITICAL" TO NATIONAL SECURITY 7

C. THE TRUMP ADMINISTRATION APPROVED THE LOAN TO YELLOW ON TERMS THAT VIOLATED CARES ACT RISK AND USE OF FUNDS REQUIREMENTS 12

IV RECOMMENDATIONS 18

MARCH 27

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) is enacted to address economic impacts of the coronavirus crisis and includes a provision authorizing the Treasury Secretary to make loans to companies "critical to maintaining national security" to aid in offsetting "losses incurred as a result of the coronavirus."

APRIL 8

Lobbyists for Yellow Corporation (Yellow) report that the White House Political Director was "almost giddy" at the prospect of working on Yellow's national security loan application "considering the Teamsters angle."

APRIL 10

The Department of the Treasury (Treasury) issues guidance stating that companies certified by the Defense Secretary as "critical to maintaining national security" may be considered for National Security CARES Act loans.

MAY 25

White House Chief of Staff Mark Meadows tells Yellow's lobbyists he will call Treasury Secretary Steven Mnuchin regarding Yellow's loan application. The Treasury official leading negotiations with Yellow said work on the loan application became "intensive" around this time.

JUNE

Department of Defense (DOD) analysis finds that Yellow provides 34% of DOD's LTL shipments and that Yellow's services could be replaced "by other carriers without any major impact."

JUNE 18

Under Secretary of Defense for Acquisition and Sustainment Ellen Lord approves criteria for evaluating whether companies are "critical to maintaining national security."

JUNE 19

President Trump speaks to a union leader—who was coordinating with Yellow in its efforts to obtain a loan—regarding Yellow's loan application. This call is communicated to Treasury Secretary Mnuchin and Defense Secretary Mark Esper.

JUNE 24

A career DOD official informs Treasury official that DOD will not certify Yellow as critical to national security. The Treasury official responds that she has briefed this decision not to certify Yellow "up [the] chain" at Treasury.

JUNE 25

Career DOD officials recommend to political appointees that Yellow not be certified as critical to national security because "plenty of other trucking companies" can provide the services Yellow provides to DOD and because the company is being sued by the Department of Justice (DOJ) for fraudulently overcharging the federal government.

Secretary Mnuchin requests a call with Secretary Esper and the DOD and Treasury General Counsels regarding "YRC and DOD certification."

JUNE 26

A call takes place between Secretary Mnuchin and Secretary Esper. Following the call between Secretary Mnuchin and Secretary Esper, Secretary Esper signs a letter to Treasury stating that he has certified Yellow is "critical to maintaining national security" for the purposes of the CARES Act national security loan program.

JULY 1

Treasury announces that it has approved a $700 million loan to Yellow saying it relied on Secretary Esper's certification that the company was critical to national security and that Yellow provided 68% of DOD's LTL shipments—twice the percentage DOD staff assessed that Yellow provided.

I. Executive Summary

This staff report presents findings from an investigation conducted by the Select Subcommittee on the Coronavirus Crisis into the Trump Administration's $700 million loan to trucking company YRC Worldwide Inc. (now named Yellow Corporation) under a Coronavirus Aid, Relief and Economic Security (CARES) Act program designed to ensure continued operation of companies "critical to maintaining national security." The loan to Yellow Corporation (Yellow) made up 95% of the total funds disbursed under the national security loan program. The Select Subcommittee launched this investigation in June 2021 following reports that Yellow may not have been eligible for the loan and may have misused the funds it received.

The Select Subcommittee's investigation has uncovered troubling evidence that Trump Administration political appointees flagrantly disregarded an assessment by career Department of Defense (DOD) industrial base experts that the company should not be certified under the CARES Act as "critical to maintaining national security" and provided generous loan terms that violated CARES Act risk and interest rate requirements. Evidence obtained by the Select Subcommittee suggests that these decisions were driven by the White House and President Trump himself.

Specifically, the Select Subcommittee investigation found:

White House Officials—Likely with President Trump's Involvement—Intervened as Yellow's Application for a National Security Loan Was Being Evaluated.

- **Yellow lobbyists reported that White House Chief of Staff Mark Meadows planned to call Treasury Secretary Mnuchin regarding Yellow's application in late May 2020.** The work of the Department of the Treasury (Treasury) on Yellow's application became "intensive" shortly after this planned call. Yellow's lobbyists identified Meadows as "the key actor" in the administration and said in internal emails that they talked to Meadows at least "three different times about YRC." Records obtained by the Select Subcommittee show that other White House officials regularly communicated with Yellow and its representatives concerning Yellow's loan application and sought to reach out to Treasury on Yellow's behalf in May 2020.

- **Briefing materials provided to Defense Secretary Mark Esper shortly before he certified Yellow as critical to national security noted that President Trump had received a call lobbying for a loan on Yellow's behalf.** An earlier report from Yellow's lobbyists noted that the White House Political Director was "almost giddy" to work on Yellow's application. Immediately after Treasury decided to award Yellow the loan, Treasury Secretary Steven Mnuchin emailed the announcement to Chief of Staff Meadows and other close aides to Trump and highlighted praise for President Trump in news reports about the loan.

Trump Administration Political Appointees Overrode the Recommendation of DOD Career Officials to Certify That Yellow Was Critical to National Security and Thus Eligible for the Loan.

- **Trump appointees awarded Yellow $700 million even though career officials recommended that Yellow not be certified as "critical to maintaining national security," according to documents uncovered by the Select Subcommittee.** DOD's analysis found that other companies could replace the trucking services Yellow provided to DOD, which were less than half of what the company claimed. The same documents show that career officials were also concerned about an ongoing Department of Justice (DOJ) lawsuit against Yellow for fraudulently overcharging DOD, which Yellow misleadingly described to Treasury merely a "contractual dispute." Citing these facts, career DOD officials recommended against certifying the company as "critical to maintaining national security" and thus making it eligible for a CARES Act national security loan.

- **Documents obtained by the Select Subcommittee show that Secretary Mnuchin requested a phone call with Defense Secretary Esper shortly after DOD career staff informed Treasury that DOD would likely not certify Yellow as "critical."** On June 24, 2020, DOD staff informed a Treasury official by email that DOD would not be certifying Yellow to be eligible for a national security loan. The Treasury official replied that she had briefed this information "up my chain." The next day, Secretary Mnuchin's office requested an urgent call "re: YRC and DOD certification" between the two Secretaries and their General Counsels who, records show, had previously discussed the "political aspect" of Yellow's certification process. The call was held the next morning.

- **After the call with Treasury Secretary Mnuchin regarding the Yellow certification process, Defense Secretary Esper certified that Yellow was "critical" to national security, making it eligible for the $700 million national security loan.** New evidence of this phone call obtained by the Select Subcommittee calls into question the veracity of Secretary Mnuchin's testimony to the Congressional Oversight Commission on December 10, 2020, during which he said that Treasury merely "relied" on the DOD certification and even suggested that DOD's purportedly independent certification of Yellow prompted Treasury to prioritize Yellow's loan application over the applications of other companies.

The Trump Administration Approved the Loan to Yellow on Terms That Violated CARES Act Risk and Use of Funds Requirements.

- **The Trump Administration agreed to allow Yellow to use more than half of its $700 million loan for long-term capital investments, despite the CARES Act requirement that loans be made to offset "losses incurred as a result of the coronavirus."** The $400 million portion of the loan that the Trump Administration allowed Yellow to use for long-term investment in replacing its truck and trailer fleet far exceeded what Yellow had been spending annually on capital investments before the pandemic and was much larger than Treasury's initial loan offer to the company. Public records and documents obtained by

the Select Subcommittee make clear that this substantial funding for long term investment was not related to losses incurred as a result of the pandemic.

- Documents obtained by the Select Subcommittee show that Yellow's CFO wrote to a creditor to say, **"while we had our hand in the cookie jar we thought we would try to get a little 'catch up' capex [capital expenditures] while we were at it,"** making clear that Yellow's executives intended that the capital expenditure request go beyond covering losses caused by the pandemic.

- **The Trump Administration's loan to Yellow provided an interest rate substantially lower than the rate Yellow paid to private creditors, even though the government took on more risk than those creditors.** These terms violated the CARES Act requirement that loans be made at a "rate that reflects the risk" and which is not less than the rate the company would have received "prior to the outbreak of the coronavirus." The loan terms agreed to by the Trump Administration were impermissibly generous even under Yellow's own legal counsel's interpretation of the applicable CARES Act requirements. The terms are a boon to Yellow as the company will pay tens of millions of dollars less in interest payments back to taxpayers than it would have if it was required to pay the same rate it had received on the market prior to the pandemic. In 2021, Yellow has increased the total compensation flowing to its top executives to over $12 million.

In summary, Trump Administration political appointees fast-tracked approval of a substantial national security loan to Yellow despite the assessments of career officials that the company was not "critical" to national security and provided Yellow with terms that violated CARES Act risk and interest rate requirements, a conclusion that Yellow itself had reached before receiving the loan. The loan to Yellow—which totaled 95% of the funds disbursed under the national security loan program—was approved months faster than smaller, less risky national security loans made to other applicants. There are clear indications that President Trump and White House officials allowed political considerations—including the belief that delivering relief funds to Yellow could be electorally advantageous—to override adherence to CARES Act requirements and agency policies in the process of evaluating Yellow's loan application.

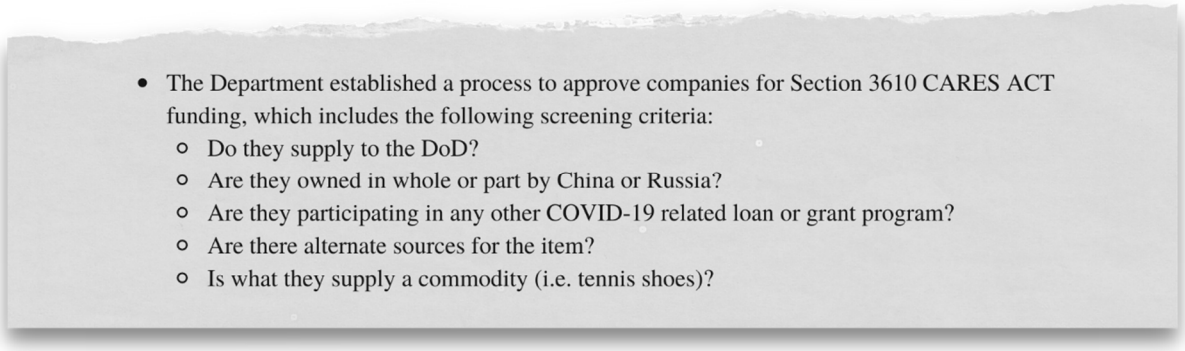
II. Background

A. The CARES Act National Security Loan Program

Congress created the national security loan program as part of the CARES Act to ensure that companies critical to America's national security had access to funds necessary to offset losses caused by pandemic disruptions. Specifically, the CARES Act directed Treasury to make national security loans and loan guarantees available to "provide liquidity" to "businesses critical to maintaining national security" that were experiencing "losses incurred as a result of coronavirus."[1] In April 2020, Treasury released guidance stating that a business would qualify for a loan if it met conditions defined in existing national security regulatory frameworks either by "performing under a 'DX'-priority rated contract"—meaning a contract of the highest national defense urgency— or "operating under a valid top secret facility security clearance."[2] Treasury stated that companies that did not meet those conditions could be determined by the

Treasury Secretary to be eligible for national security loans if they secured a "recommendation and certification by the Secretary of Defense or the Director of National Intelligence that the applicant business is critical to maintaining national security."[3]

More than two months after Treasury's initial guidance, on June 18, 2020, DOD's Under Secretary of Defense for Sustainment and Acquisition approved a memorandum adopting basic guidance for determining whether companies would be certified as "critical" to maintaining national security. The memorandum incorporated five criteria, which included basic threshold considerations like whether the company supplied DOD at all, whether there were "alternate sources" for the company's goods, and whether the company supplied a "commodity."[4] DOD staff recommendations show that the commodity-like nature of a company's goods and services and DOD's ability to replace a company's services from alternate sources generally weighed against certification.[5]



- The Department established a process to approve companies for Section 3610 CARES ACT funding, which includes the following screening criteria:
  - Do they supply to the DoD?
  - Are they owned in whole or part by China or Russia?
  - Are they participating in any other COVID-19 related loan or grant program?
  - Are there alternate sources for the item?
  - Is what they supply a commodity (i.e. tennis shoes)?

The CARES Act directed Treasury to make national security loans for limited purposes related to the pandemic's impact under terms that protected taxpayer funds from undue risk. It specified that the loans were "to provide liquidity to eligible businesses . . . related to losses incurred as a result of coronavirus."[6] Treasury guidance stated that national security loans were available to "offset covered losses" incurred "as a result of the coronavirus pandemic."[7] The CARES Act also required that loans only be made if they were "prudently incurred."[8] If the loan was not "sufficiently secured," Treasury was required to make the loan at an interest rate that "reflect[ed] the risk of the loan" and which was not less than the rate charged for comparable loans "based on market conditions" that existed prior to the pandemic.[9]

B. The Trump Administration's National Security Loan to Yellow

On July 1, 2020, the Trump Administration announced that Yellow would receive a $700 million CARES Act loan intended for businesses "critical to maintaining national security."[10] No other company received a national security loan until late October 2020, when 10 other companies—all of whom applied for relief around the same time as Yellow—received loans totaling $35.9 million. The loan to Yellow constituted 95% of the $735.9 million total loaned under the program.[11] In support of its decision to approve this substantial loan to Yellow, Treasury asserted that its "determination was based on a certification by the Secretary of Defense that YRC is critical to maintaining national security" and that Yellow "provides 68% of less-than-truckload services to the Department of Defense."[12]



Treasury's loan to Yellow was made at an interest rate of 3.5% plus LIBOR, with $300 million to be used for "near-term contractual obligations and non-vehicle capital expenditures" and $400 million to be used for long term capital investments in its truck and trailer fleet.[13] Treasury took a third-priority security interest in Yellow's existing collateral assets, putting taxpayers behind Yellow's bank creditors in an Asset-Backed Lending (ABL) facility and a group of private creditors led by Apollo Global Management (Apollo).[14]

C. The Select Subcommittee's Investigation

Following reports about Yellow's questionable eligibility for the significant CARES Act national security loan it received and the troubling terms on which the Trump Administration agreed to make the loan, the Select Subcommittee initiated an investigation on June 3, 2021.[15] As a part of this investigation, the Select Subcommittee has sought and received documents from Yellow, DOD, Treasury, and Crowley Logistics, a prime DOD transportation contractor. After initial evidence obtained by the Select Subcommittee revealed that Trump White House officials were involved in efforts to procure the loan, the Select Subcommittee sought and received Trump White House documents from the National Archives and Records Administration (NARA).[16] In total, the Select Subcommittee received and reviewed approximately 12,000 pages of documents responsive to these requests. The Select Subcommittee also interviewed the Trump Administration Treasury official who led negotiations with Yellow and the career DOD official who chaired the group that evaluated whether Yellow should be certified as "critical" to national security.[17]

III. Findings

A. White House Officials—Likely with President Trump's Involvement—Intervened as Yellow's Application for a National Security Loan Was Being Evaluated.

The Select Subcommittee has obtained evidence suggesting that political pressure from the Trump White House may have contributed to Treasury and DOD's decisions to support and approve the loan to Yellow despite career DOD officials' recommendation that Yellow not be certified as eligible to receive a loan, and the failure of the loan terms to Yellow to comply with CARES Act risk requirements. Documents obtained by the Select Subcommittee show that senior White House officials, including White House Chief of Staff Mark Meadows, repeatedly communicated with Treasury on Yellow's behalf as Treasury evaluated Yellow's application for a national security loan. Emails obtained by the Select Subcommittee also indicate that President Trump personally discussed Yellow's loan application with a union leader coordinating with the company in its efforts to obtain relief, and that the fact of President Trump's call concerning Yellow's loan application was relayed to Secretary Mnuchin and Secretary Esper. Secretary Mnuchin's subsequent emails to President Trump's closest aides, highlighting praise for the issuance of the loan, appear to confirm the President's involvement.

1. White House Chief of Staff Meadows Contacted Treasury on Yellow's Behalf.

Documents obtained by the Select Subcommittee show that White House officials repeatedly communicated with Treasury on Yellow's behalf as Treasury evaluated Yellow's application for a national security loan. As early as April 3, 2020, White House officials sent Yellow's application materials to President Trump's Deputy Assistant Secretary of the Treasury Brian Morgenstern and requested that he call Yellow's CEO.[18] A few days later, Yellow's lobbyists wrote that the White House Political Director was "almost giddy" on a phone call with them about the prospect of working on Yellow's application for a loan "considering the Teamsters angle," referring to the fact that Yellow employed Teamsters members as its drivers.[19]

Emails obtained by the Select Subcommittee show that, in early May 2020, White House Deputy Assistant to the President Tim Pataki "committed to huddle" with White House Political Director Brian Jack, who planned to then "call Treasury on [Yellow's] behalf."[20] Special Assistant to the President Joseph Russo later emailed Yellow asking the company to specifically identify the company's contacts at Treasury.[21] Other documents show that Yellow had continued contact with other White House offices and officials throughout May 2020—including the Chief of Staff to National Economic Council (NEC) Director Larry Kudlow—as it sought a loan from Treasury, and noted that the "White House remains engaged and has been calling for updates frequently."[22]

Yellow's lobbyists reported their repeated phone contacts with White House Chief of Staff Meadows regarding Yellow's application for a loan. Emails obtained by the Select Subcommittee from Yellow's lobbyists show that Meadows offered on May 25, 2020 to call Treasury Secretary Mnuchin regarding Yellow's loan application.[23] The former Treasury official who led the team analyzing Yellow's loan application told the Select Subcommittee during an interview that Treasury's work in evaluating Yellow's loan application became "intensive"

around the "end of May, beginning of June," which coincides with the time that Chief of Staff Meadows committed to call Secretary Mnuchin regarding the matter.[24] Yellow's lobbyists reported that they had already "talked to Meadows three different times about YRC" by mid-June and identified him as "the key actor" for influencing approval of Yellow's loan application within the Trump administration.[25] Indeed, on the day the loan to Yellow was announced, Secretary Mnuchin personally sent Chief of Staff Meadows emails highlighting the decision to approve the loan and press coverage of the approval.[26]

2. President Trump Personally Discussed Yellow's Loan Application in a Conversation Relayed to Secretary Esper and Secretary Mnuchin.

Documents obtained by the Select Subcommittee show that President Trump spoke directly with a union leader about Yellow's loan application. That leader had been coordinating with Yellow and its lobbyists in the company's efforts to obtain a national security loan. The President's call was communicated to Secretary Mnuchin and Secretary Esper shortly before they took action to approve the national security loan to Yellow. On June 19, 2020, Yellow's lobbyists communicated to Secretary Esper's Deputy Chief of Staff that Teamsters President James Hoffa "spoke to Trump about YRC this week," and that that call also "prompted a call from Mnuchin to Hoffa."[27] President Trump's reported call concerning Yellow's loan application, and the resulting call from Secretary Mnuchin to Mr. Hoffa, were highlighted for Secretary Esper in background materials he received the same day he certified Yellow as "critical" to national security.[28]

Secretary Mnuchin's communications appear to confirm President Trump's interest in the matter.[29] On the morning that Treasury announced the loan to Yellow, Secretary Mnuchin sent the company's press release to President Trump's executive assistant, Molly A. Michael. A few hours later, he sent Ms. Michael and Chief of Staff Meadows a CNN article reporting on the loan and highlighted that Mr. Hoffa had thanked President Trump, writing "SEE COMMENT FROM JAMES HOFFA."[30] These records suggest that President Trump may have intervened to press for Yellow's receipt of the $700 million national security loan based on the calculation that it could result in praise from a union leader months before the presidential election.

B. Trump Administration Political Appointees Overrode the Recommendation of Career Officials in Deciding to Certify That Yellow Was "Critical" to National Security.

Senior career DOD officials concluded, after collecting and analyzing information about the services that Yellow provided to DOD, that Yellow should not be certified as "critical to maintaining national security" for the purposes of obtaining a CARES Act loan. Yet within a day of receiving the recommendation of career officials, senior political appointees—including Treasury Secretary Mnuchin, Defense Secretary Esper, and Defense Under Secretary Ellen Lord—conferred about Yellow and quickly decided to certify that the company was "critical" to national security and eligible for a national security loan. This certification overrode the recommendations of career officials who found that Yellow should not be certified because the trucking services the company provided to DOD could be carried out by "plenty of other trucking companies" and because the company was being sued for fraudulently overcharging

DOD for the very services that Yellow argued made it critical to national security.[31] Secretary Esper's certification that Yellow was "critical" to national security contained no data or analysis, and Treasury's announcement that Yellow would receive a national security loan asserted, in a repetition of the company's own talking points, that Yellow provided 68 percent of DOD's less-than-truckload [LTL][32] shipments—twice the share found by DOD career officials. Without the intervention of political appointees, Yellow would not have been deemed eligible to receive a national security loan.

1. DOD Analysis Found That the Trucking Services Yellow Provided to DOD Could Be Replaced by Other Providers.

A career DOD official told the Select Subcommittee that senior career officials with industrial base expertise—forming DOD's Joint Industrial Base Working Group (JIBWG)—analyzed companies seeking CARES Act national security loans to determine whether to recommend that they be certified as "critical to maintaining national security" to determine eligibility for those loans.[33] The JIBWG collected information and data from relevant DOD components to inform its recommendations.[34] The JIBWG staff weighed the factors in the June 18, 2020 memorandum concerning whether a company should be certified as "critical" to national security, including whether there were "alternate sources" for the company's services and whether the company provided a good or service akin to a "commodity."[35] The JIBWG made recommendations to the Industrial Base Council, and ultimately to the Under Secretary of Defense for Acquisition and Sustainment, who was further responsible for making a recommendation to the Secretary of Defense.[36]

Documents obtained by the Select Subcommittee show that, through this process, DOD career officials collected information concerning Yellow and the impact of a possible loss of Yellow's services on DOD from the Department's Transportation Command (TRANSCOM), TRANSCOM's Surface Deployment and Distribution Command (SDDC), and a major TRANSCOM surface transportation contractor (Crowley Logistics) that subcontracted services to Yellow.[37]

TRANSCOM staff had already "shot down" Yellow's request that TRANSCOM support Yellow's certification as critical to national security.[38] TRANSCOM and SDDC provided information and data concluding that Yellow's trucking services could be replaced by other companies with minimal impacts to DOD due to the substantial capacity of other trucking companies. SDDC assessed that any disruption caused by the cessation of services provided by Yellow could be managed by using other transportation service providers (TSPs) and noted that "the current LTL [less-than-truckload] industry utilization rate of the 300 other TSPs is low."[39] TRANSCOM's primary surface transportation contractor Crowley Logistics—which subcontracts with LTL providers including Yellow—also assessed that Yellow's services could be replaced "by other carriers without any major impact."[40]

In accordance with these assessments that Yellow's services could be replaced by other companies, DOD's analysis also found that Yellow provided a much smaller share of LTL trucking services to DOD than the 68% repeatedly claimed by the company, a figure that was ultimately included in Treasury's announcement of the loan to Yellow.[41] But in compiling data

on Yellow's share of DOD's LTL shipments from TRANSCOM and its components, DOD found that Yellow had only provided 34% of DOD's LTL shipments in 2019 and 2020, amounting to half of what Yellow had claimed in its application.[42] Furthermore, DOD experts assessed that even that 34% could easily be absorbed by other companies.[43] The company has continued to maintain that the 68% figure it provided is accurate.[44]

Current Levels of YRCW Utilization. The below metrics show YRCW LTL utilization (including subsidiaries) by USTRANSCOM and SDDC compared to total DFTS and ToS LTL metrics, respectively. The DFTS metrics were compiled by Crowley, and USTRANSCOM has no way of verifying their accuracy or completeness.

Program	Year	YRCW Shipments	Total LTL Shipments	Percentage of LTL Shipments	YRCW Charges	Total LTL Charges	Percentage of LTL Charges
DFTS	2019	61,230	235,723	26%	$21.9M	$68.0M	32%
DFTS	2020	17,585	94,982	19%	$6.0M	$26.3M	23%
ToS	2019	74,436	167,371	44%	$21.4M	$164.8M	13%
ToS	2020	58,893	117,610	50%	$15.9M	$107.4M	15%
Grand Total		212,144	615,686	34%	$65.3M	$365.5M	18%

2. Yellow Was Entangled in a False Claims Act Suit Alleging That the Company Fraudulently Overcharged DOD.

Emails obtained by the Select Subcommittee also show that, in the process of evaluating Yellow, career DOD officials discovered that DOJ was pursuing litigation against Yellow for fraudulently overcharging DOD for trucking services.[45] DOJ had alleged in a lawsuit based on the findings of DOD's Defense Criminal Investigative Service that Yellow had fraudulently overcharged DOD for thousands of shipments worth millions of dollars over a period of more than seven years by submitting shipment weights that Yellow knew to be inflated. The suit also alleged that Yellow knowingly made false statements to DOD to conceal this misconduct.[46]

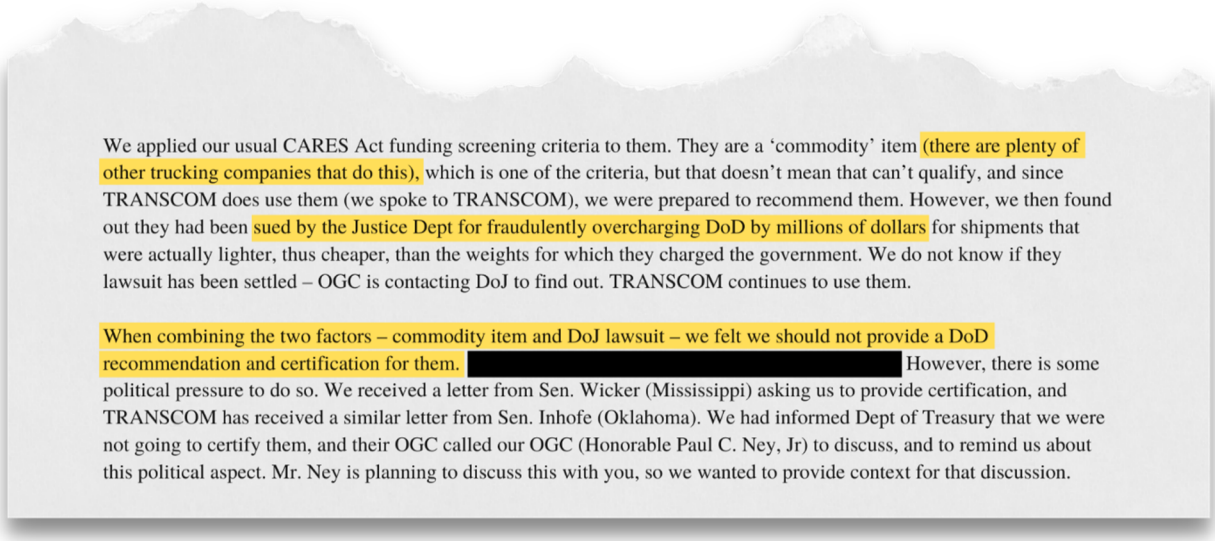
Treasury officials evaluating Yellow's application had become aware that the company was being sued by the Department of Justice before career DOD officials, and the counselor to the Secretary leading the team analyzing the loan application asked Yellow's counsel about the status of that litigation. Yellow's counsel responded that the lawsuit was a mere "contractual dispute" with a pending motion to dismiss.[47]

That statement was, at best, misleading. The lawsuit was a False Claims Act action alleging that Yellow engaged in "a fraudulent scheme … to deliberately overcharge" DOD by submitting inflated shipment weights and also "knowingly made false statements" to facilitate this scheme.[48] The Department of Justice had characterized Yellow as having "systematically overcharged the government for freight carrier services and made false statements to the government that hid their misconduct . . . for more than seven years."[49] Yellow ultimately agreed to pay the government nearly $7 million to settle this case following a court's ruling against the company's motion to dismiss.[50] Yellow also agreed to settle a securities fraud lawsuit brought by investors related to the company's alleged overcharging practices and DOJ's

investigation.[51] That investor lawsuit alleged that Yellow employees consistently raised concerns about the "integrity" of Yellow's shipment weighing practices.[52]

3. Career DOD Officials Recommended that Yellow Not Be Certified as "Critical" to National Security and Eligible for a National Security Loan.

The Select Subcommittee's investigation identified evidence showing that DOD industrial base experts recommended against certifying Yellow as critical to national security. Following the analysis of information and data concerning Yellow's criticality to national security, the career official serving as chair of the JIBWG sent a recommendation to Acting Deputy Assistant Secretary of Defense for Industrial Policy Scott Baum recommending that Yellow should not be certified as critical to maintaining national security. That recommendation, which has not previously been made public, explained that Yellow should not be certified because it provided a service akin to a "commodity" and there were "plenty of other trucking companies that do this," and because DOJ was suing the company for "fraudulently overcharging DoD by millions of dollars."[53]



We applied our usual CARES Act funding screening criteria to them. They are a 'commodity' item (there are plenty of other trucking companies that do this), which is one of the criteria, but that doesn't mean that can't qualify, and since TRANSCOM does use them (we spoke to TRANSCOM), we were prepared to recommend them. However, we then found out they had been sued by the Justice Dept for fraudulently overcharging DoD by millions of dollars for shipments that were actually lighter, thus cheaper, than the weights for which they charged the government. We do not know if they lawsuit has been settled – OGC is contacting DoJ to find out. TRANSCOM continues to use them.

When combining the two factors – commodity item and DoJ lawsuit – we felt we should not provide a DoD recommendation and certification for them. [redacted] However, there is some political pressure to do so. We received a letter from Sen. Wicker (Mississippi) asking us to provide certification, and TRANSCOM has received a similar letter from Sen. Inhofe (Oklahoma). We had informed Dept of Treasury that we were not going to certify them, and their OGC called our OGC (Honorable Paul C. Ney, Jr) to discuss, and to remind us about this political aspect. Mr. Ney is planning to discuss this with you, so we wanted to provide context for that discussion.

The chair of the JIBWG told the Select Subcommittee that Acting Deputy Assistant Secretary Baum concurred in the recommendation that Yellow should not be certified.[54] On June 25, 2020, Mr. Baum sent an email to Under Secretary for Acquisition and Sustainment Ellen Lord, a Trump appointee, recommending against certifying Yellow due to the "commodity" nature of the services provided by Yellow, the fact that "plenty of other trucking companies" could provide Yellow's services, and the lawsuit against the company for fraudulently overcharging DOD.[55] Mr. Baum noted, however, that Treasury's General Counsel had reached out to DOD's General Counsel to remind DOD of "the political aspect of the request" for certification.[56]

4. Following a Call with Treasury Secretary Mnuchin and Other Political Appointees, Secretary Esper Certified Yellow Was "Critical" to National Security—Contrary to the Recommendations of Experienced Career Officials.

Documents obtained by the Select Subcommittee from DOD and Treasury show that shortly after career officials communicated that Yellow would not be recommended for certification, Trump Administration political appointees at the highest levels of the departments moved to discuss the matter and quickly overrode career officials' assessments. On June 24, 2020, the chair of the JIBWG, a DOD career official, emailed a Treasury official to inform her that DOD would not certify that Yellow was critical to national security. The Treasury official responded later that day that she had briefed the message "up my chain."[57] According to documents obtained for the first time by the Select Subcommittee, Treasury Secretary Mnuchin requested a call with Secretary Esper the next day regarding "YRC and DOD Certification."[58] The request also sought to include DOD's General Counsel and Treasury's General Counsel.[59]

The call between Secretary Mnuchin and Secretary Esper took place on the morning of June 26, 2020.[60] Secretary Esper's senior staff emailed among themselves in the hours before the call requesting information on the issue of Yellow's certification, with which Secretary Esper was unfamiliar.[61] Documents obtained by the Select Subcommittee show that DOD's Acquisition and Sustainment first provided brief bullet points for the Secretary's use that included components of the analysis and recommendation of career DOD officials, which led to the recommendation that Yellow should not be certified.[62] Those briefing points noted that Yellow was "not the only carrier that has the ability to" provide freight carrier services to DOD and flagged that "the Justice Department sued YRCW for fraudulent charges to DoD."[63]

Emails obtained by the Select Subcommittee show that, 15 minutes later, Secretary Esper's Chief of Staff wrote to the staffer accompanying Secretary Esper that "Ellen [Under Secretary for Acquisition and Sustainment Ellen Lord[64]] is now in my office and requested" that a new set of bullet points be provided to the Secretary "in lieu of the previous talking points."[65] The new talking points deleted the note that other carriers could provide the services provided by Yellow and added a recommendation that Yellow should be certified that contradicted the recommendations of career officials:

> A&S believes that it is in DOD's best interest to support YRC Worldwide with a loan at this time in order to both support force readiness and national economic security.[66]

Shortly following his call with Secretary Mnuchin, Secretary Esper signed a brief letter to Treasury indicating that he certified that Yellow was "critical to maintaining national security," without providing any rationale or supporting data.[67] On July 1, 2020, Treasury announced its loan to Yellow.[68]

Secretary Mnuchin testified at a hearing of the Congressional Oversight Commission on December 10, 2020. In response to a question concerning whether he had independently assessed that Yellow was critical to national security, Secretary Mnuchin said that Treasury "relied" on the DOD certification.[69] Secretary Mnuchin also responded to a question asking why

Treasury prioritized Yellow's application over other companies by testifying that "we also had a certification from the Department of Defense that the loan qualified, so of course we were going to prioritize this." He also later testified, "[I]t's not my position to comment on the DOD certification."[70] In none of these responses did Secretary Mnuchin mention his call with Secretary Esper regarding Yellow's certification or any other role he may have played in the certification process. Secretary Mnuchin's request for an urgent call with Secretary Esper concerning Yellow's certification shortly after DOD career staff informed Treasury that Yellow would not be certified, and Secretary Esper's rapid certification of the company following that call, raise serious questions about the candor of Secretary Mnuchin's testimony on this matter. Secretary Mnuchin's testimony implied that Treasury merely relied on DOD's independent judgment and suggested that DOD's certification was what prompted Treasury to prioritize Yellow's application. The documents obtained by the Select Subcommittee, however, show that—contrary to his testimony—Secretary Mnuchin was actively involved in and may have even influenced DOD's certification decision.[71]

Treasury's rapid approval of the loan to Yellow stands in stark contrast to the long process faced by other applicants for national security loans. None of the other companies that applied for national security loans during the same period as Yellow, in late April and early May 2020, had their loan applications approved until late October 2020, even as they sought loan amounts that were much smaller than Yellow's (between $500,000 and $10 million).[72]

C. The Trump Administration Approved the Loan to Yellow on Terms That Violated CARES Act Risk and Use of Funds Requirements.

The Trump Administration's loan to Yellow violated CARES Act requirements intended to protect taxpayers and ensure that loan funds only went to aid companies in coping with the impacts of the coronavirus crisis. The Trump Administration agreed to loan terms that allowed Yellow to use more than half its pandemic loan funds for long-term capital investments in replacing an aging truck and trailer fleet, despite the CARES Act specification that loans were to offset "losses incurred as a result of the coronavirus." Further, despite CARES Act requirements that national security loans either be "sufficiently secured" or made at an interest rate reflective of the risk and comparable to pre-pandemic market rates, the loan to Yellow was made at an interest rate well below that charged to Yellow by private creditors led by Apollo only six months before the onset of the pandemic, even though Apollo received higher-ranking collateral interests than Treasury. Before Treasury agreed to such generous terms, Yellow's own counsel had concluded that Yellow would likely be required to pay a higher interest rate and give a higher-priority collateral interest to Treasury because of the CARES Act risk and interest rate requirements.

1. <u>The Trump Administration Allowed Yellow to Use Most of Its Loan Funds for Long-Term Capital Investment, Violating the CARES Act Requirement That Loans Be Made to Offset "Losses Incurred as a Result of the Coronavirus."</u>

The CARES Act authorized Treasury to make national security loans to provide "liquidity" to businesses "related to losses incurred as a result of the coronavirus."[73] Treasury guidance implemented this requirement by specifying that companies seeking relief could apply

for loans for "covered losses" caused directly or indirectly by the pandemic.[74] The loan Treasury approved to Yellow, however, went far beyond offsetting the losses Yellow incurred as a result of the pandemic both in its size and in the manner in which Treasury allowed Yellow to use the loan funds.

Treasury agreed to allow Yellow to use $400 million of its $700 million loan for substantial long-term capital investments in replacing the company's aging truck and trailer fleet, with only $300 million of the loan approved to meet near-term obligations.[75] Yellow's application materials, the company's recent rate of capital investment, Treasury's initial proposed terms to the company, and the statements of Yellow's Chief Financial Officer (CFO) all make clear that the loan's substantial allotment of funds for long-term capital investment violated CARES Act requirements.

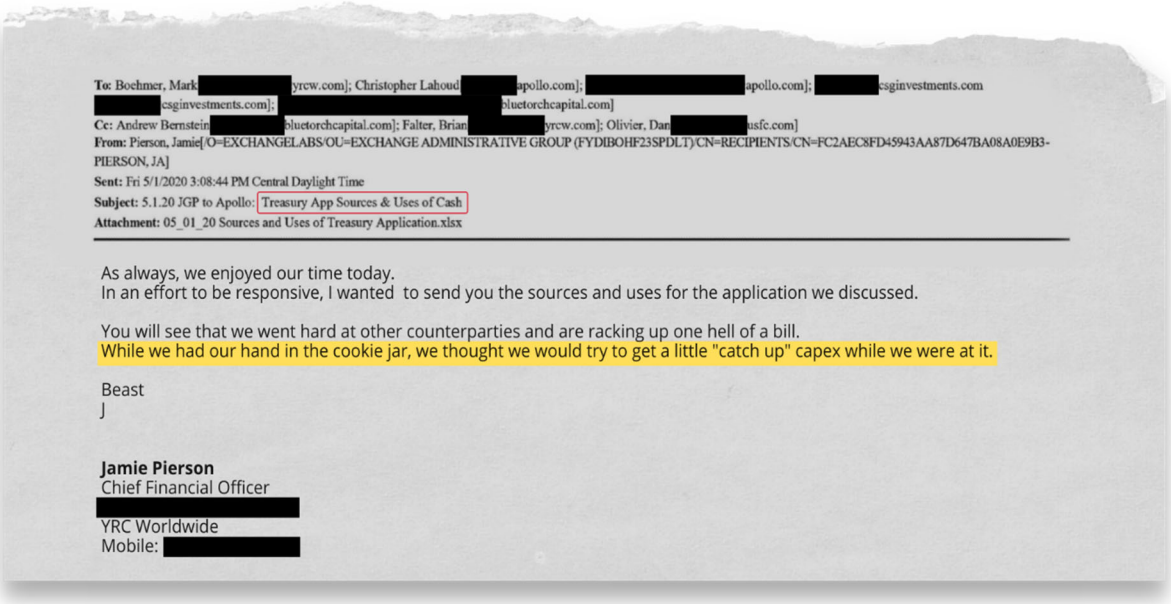
i. *Yellow's Loan Application Claimed, but Did Not Substantiate, That Its Request Was to Offset "Covered Losses" Incurred as a Result of the Coronavirus*.

Yellow sought a loan from Treasury totaling $710 million—only slightly more than the $700 million Treasury ultimately approved—and characterized the full $710 million request as compensating for "covered losses" incurred as a result of the pandemic.[76] The company requested $345 million "to fund newly created debt related to deferring contractual obligations in 2020," itemized those losses into six categories, and asserted that all those obligations had been incurred since the onset of the COVID-19.[77] But Yellow also requested a further $365 million—more than half its purported "covered losses"—explicitly for "capital investment required to replenish the fleet and modernize the technology infrastructure."[78]

Unlike Yellow's request for funds to offset debts and deferred obligations incurred after the onset of the pandemic—which included an itemized breakdown of debts incurred as a result of the pandemic's impact—Yellow's request for $365 million for capital investment only vaguely justified the request's connection to pandemic losses with the indefinite statement that Yellow had cut an unspecified "significant portion of its capital plan for 2020."[79] Moreover, Yellow's application made clear these funds were largely being sought to remedy an existing problem—an aging truck and trailer fleet—that plainly pre-dated the pandemic, stating that Yellow's "average age for tractors is ~11 years; industry average is 5 years."[80] The application further emphasized the financial benefits to Yellow of increased capital expenditures, but did not substantiate the claim that the funds would be used for losses caused by the pandemic.[81]

Yellow executives knew they were seeking to take advantage of American taxpayers. Yellow's CFO made clear to creditors, including Apollo, that the company's request for a $710 million national security loan went beyond the funds needed to offset pandemic losses and included a request for additional capital funds. In a May 1, 2020 email titled "Treasury App Sources & Uses of Cash," Yellow CFO Jamie Pierson sent the company's existing creditors a summary of its $710 million loan request, with $365 million of the request designated for capital investments in new tractors, trailers, and technology.[82] Pierson explained: "While we had our

hand in the cookie jar, we thought we would try to get a little 'catch up' capex [capital expenditures] while we were at it."[83]



To: Boehmer, Mark [redacted]yrcw.com]; Christopher Lahoud [redacted]apollo.com]; [redacted]apollo.com]; [redacted]csginvestments.com [redacted]csginvestments.com]; [redacted]bluetorchcapital.com]
Cc: Andrew Bernstein [redacted]bluetorchcapital.com]; Falter, Brian [redacted]yrcw.com]; Olivier, Dan [redacted]usfc.com]
From: Pierson, Jamie[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=FC2AEC8FD45943AA87D647BA08A0E9B3-PIERSON, JA]
Sent: Fri 5/1/2020 3:08:44 PM Central Daylight Time
Subject: 5.1.20 JGP to Apollo: Treasury App Sources & Uses of Cash
Attachment: 05_01_20 Sources and Uses of Treasury Application.xlsx

As always, we enjoyed our time today.
In an effort to be responsive, I wanted to send you the sources and uses for the application we discussed.

You will see that we went hard at other counterparties and are racking up one hell of a bill.
While we had our hand in the cookie jar, we thought we would try to get a little "catch up" capex while we were at it.

Beast
J

Jamie Pierson
Chief Financial Officer
[redacted]
YRC Worldwide
Mobile: [redacted]

ii. *The $400 Million Authorized for Capital Investment Was Far in Excess of Yellow's Pre-Pandemic Rate of Capital Expenditures.*

Although Yellow represented that its capital investment funds request would merely allow it to fulfill its pre-pandemic investment plan,[84] the company's *actual* capital expenditures preceding the pandemic were far lower than the amount the company sought and received for capital investment through the Treasury loan. In the first quarter of 2020, most of which preceded the pandemic's impact in the United States, Yellow spent only $13 million on capital expenditures.[85] In the two years immediately preceding the pandemic, Yellow's total capital expenditures were less than half of its loan request for funds for capital investment—$145.4 million in 2018 and $143.2 million in 2019.[86] After receiving the Treasury funds earmarked for capital investments, Yellow's capital expenditures increased dramatically. In the first quarter of 2021, just as Yellow began to receive significant disbursement of the Treasury funds designated for capital investment, the company increased its capital expenditures 15-fold from the first quarter of 2020 to $202 million, substantially more than it had spent on capital investment on an annual basis in the years before the pandemic.[87] In 2021, Yellow's total capital expenditures surged to $497.6 million, more than three times its total capital expenditures in the years immediately preceding the pandemic.[88]

Although Treasury ultimately approved Yellow's use of a full $400 million for capital expenditures, Department officials initially evinced skepticism about Yellow's request. Counselor to the Secretary Adam Lerrick, the Treasury official who led the financial analysis of Yellow's loan application, asked how Yellow could reconcile its substantial request for funds for capital investment with its much lower rate of recent capital expenditures.[89] Yellow's response highlighted the benefits to the company of more intensive capital investment and a transition to a purchasing rather than leasing model, but did not explain how this transition was connected to

losses incurred due to the pandemic.[90] Further evidencing Treasury's skepticism about Yellow's request that most of its loan funds be used for long-term capital investment, Treasury proposed a smaller total loan of only $500 million on the night of June 24, 2020, with only $150-200 million for capital expenditures.[91] By the next morning, however, Treasury sent a new proposal that increased the total loan to $700 million, with up to $400 million for long-term capital investment in trucks and trailers.[92] Mr. Lerrick told the Select Subcommittee during an interview that Treasury's rapid overnight reversal was based on "discussions" with Yellow.[93] Treasury's rapid reversal raises questions about whether there was political pressure to ensure that Yellow received a loan on generous terms regardless of an objective assessment of whether the funds would only offset losses incurred due to the pandemic. These more generous terms were proposed the same day that Secretary Mnuchin requested a call with Secretary Esper regarding Yellow's certification.[94] It is possible that these changes are also a result of President Trump's perception that a generous loan to Yellow would be politically advantageous.

Mr. Lerrick told the Select Subcommittee that Treasury asked for projections to confirm that the company had pre-pandemic plans to make such substantial capital investments.[95] The company's public filings and level of capital investment before the pandemic, however, strongly suggest it would not actually have been able to scale up its capital investment so dramatically even in the absence of the pandemic. Yellow told Treasury that it had planned to fund its capital investments from "cash flow."[96] But Yellow—which had an operating income of just $16 million in 2019—had warned investors in early 2020 that it might be unable to generate sufficient cash flow to make sufficient capital investments, just as it had warned the year prior, when it ended up spending only $143 million on capital expenditures.[97] Yellow's performance and level of investment before the pandemic makes clear that the company was not plausibly on track to fund $400 million in capital investment out of its cash flow before the onset of the pandemic. Treasury's loan was used make large capital investments unrelated to "losses incurred as a result of the coronavirus."

iii. *Yellow's Request and Treasury's Approval of a Large Tranche of Loan Funds for Capital Investment Was Motivated by a Desire to Fix a Long-Standing Capital Deficit, Not to Offset Losses Incurred as a Result of the Pandemic.*

Mr. Lerrick told the Select Subcommittee in an interview that it became clear that the increased loan amount for substantial capital expenditures was necessary to increase the "viability" and "profitability of the company."[98] However, the CARES Act directed Treasury to make loans to offset "losses incurred as a result of the coronavirus" not to increase the profitability of a loan applicant's business model.[99] Yellow's pre-pandemic capital investment rates, credit "weaknesses," and "thin margins" meant that the $400 million Treasury approved for the company's use for capital investment went far beyond filling losses caused by the pandemic.[100] Yellow's application itself made plain that the need for these investment funds was created by a longstanding investment deficit unrelated to the pandemic: the average age of the company's trucks was 11 years, compared to an industry average of five years.[101] The pre-existing "weaknesses in [Yellow]'s credit profile" and "thin margins" identified by Moody's Investor Service, along with the much higher interest rate Yellow received from Apollo to restructure existing debts, strongly suggested that, even without the impact of the pandemic, Yellow would not have been able to obtain private financing on such favorable terms to make

such a substantial long-term investment in replacing its fleet.[102] As discussed above, Yellow's CFO also made clear to Yellow's private creditors that the company's capital expenditure request went beyond seeking to fill a gap created by the pandemic.

2. The Trump Administration Approved the Loan to Yellow on Terms That Violated the CARES Act's Risk and Interest Rate Requirements.

The CARES Act provided that Treasury could only make national security loans with a reasonable level of risk and required that loans that were not sufficiently secured with collateral must be made at an interest rate reflecting the risk that was no lower than a market interest rate would have been for a similar loan before the pandemic. Specifically, the CARES Act directed that the Treasury Secretary could only make national security loans that were "prudently incurred," and that the loans must be "sufficiently secured" or "made at a rate that … reflects the risk of the loan" and "not less than an interest rate based on market conditions for comparable obligations prevalent prior to the outbreak of the coronavirus disease 2019 (COVID-19)."[103] As illustrated by the legal analysis of Yellow's own counsel, Treasury's acceptance of a third-ranking claim to Yellow's existing collateral and the agency's agreement to make the loan at an interest rate significantly lower than a large private loan Yellow received in late 2019 violated these CARES Act requirements.

i. The Trump Administration Agreed to Accept a Higher Level of Risk Than Yellow's Existing Private Creditors.

In making a $700 million loan to Yellow, Treasury agreed to take a collateral interest behind Yellow's other creditors on Yellow's major existing assets. Specifically, Treasury took only a third-ranking interest on Yellow's accounts receivable and capital assets behind the ABL facility lender banks and the creditor group led by Apollo. Apollo retained a first priority collateral interest on Yellow's equipment, real estate, and other equity interests and a second priority interest on Yellow's accounts and cash. The ABL facility retained a first priority collateral interest on the latter and a second priority interest on the former.[104] Treasury took a third-ranking interest behind these creditors on all existing assets, with the result that the American taxpayers assumed significantly more risk than those creditors.[105]

ii. The Loan to Yellow Was Not "Sufficiently Secured" and the Interest Rate Charged Reflected Neither the Risk of the Loan nor Market Conditions Prior to the Pandemic.

Treasury's approval of a loan to Yellow with the first tranche of the loan—totaling $300 million—secured only with a third-ranking priority on Yellow's existing assets was not "sufficiently secured" as required by the CARES Act. Although Treasury maintained that Yellow was overcapitalized, Treasury agreed to assume risk where, in the event that the company's assets were liquidated, creditors with claims of over $1 billion on the company's assets would have higher priority than Treasury to the proceeds of all Yellow's existing assets.[106] Given the company's projections that there would be excess trucking capacity in the near future and the advanced age of Yellow's trucking fleet, there were clear risks that taxpayers would not be made whole in the event the company's assets were liquidated in an unfavorable economic

environment because taxpayers' interests ranked last in priority among Yellow's major creditors.[107]

Even as Treasury assumed risk greater than Yellow's private creditors, Treasury agreed to charge an interest rate significantly lower than Yellow had received from Apollo under market conditions shortly before the onset of the pandemic. The interest rate that Treasury granted Yellow—LIBOR plus 3.5%—was only slightly higher than the LIBOR plus 3% interest rate charged to smaller companies in the CARES Act-authorized Main Street Lending Program for significantly smaller, lower risk loans.[108] The Treasury official who negotiated with Yellow over the loan's terms made clear that the loan involved "significantly higher risk" than Main Street program loans that were made at a similar interest rate.[109] The rate was much lower than the LIBOR plus 7.5% interest rate that Apollo charged for its September 2019 $600 million loan, even as Apollo received first-ranking priority to much of Yellow's existing collateral.[110]

Treasury's decision to charge an interest rate so much lower than the recent market rate Yellow had received will ultimately cost taxpayers more than $60 million in interest payments (and potentially more than $100 million given the repayment structure of the loan), despite the higher risk assumed, and will provide Yellow with an equivalent windfall.[111] This boon to Yellow allowed the company's executives' to continue receiving millions of dollars of compensation in the midst of an economic crisis. Public filings show that Yellow actually steadily increased the total compensation flowing to top executives in its CEO, Chief Operating Officer, and Chief Financial Officer positions from $4.3 million in 2019, to $8 million in 2020, and then to $12.3 million in 2021, including by paying out millions of dollars in severance packages to departing executives and hiring new executives at even higher compensation levels.[112] While not technically prohibited by the CARES Act, these large increases in executive compensation further suggest that Yellow did not need to rely on such a substantial amount of taxpayer funds to provide relief from losses caused by the pandemic.

The interest rate Treasury agreed to charge Yellow both failed to reflect the risk of the loan to Yellow and was lower than the rate Yellow paid to Apollo under "market conditions for comparable obligations prevalent prior to the outbreak of the coronavirus."[113] Indeed, Secretary Mnuchin later conceded that this low interest rate loan to Yellow was "risky" and testified that "we do not want to be in the long-term business of lending to this type of company."[114] These generous terms violated the CARES Act interest rate and risk requirements that were intended to protect taxpayers.[115]

iii. Yellow's Own Counsel Concluded That the CARES Act Would Require Yellow to Give the Government a Higher-Priority Collateral Interest and to Pay a Higher Interest Rate than Treasury Ultimately Required.

The Select Subcommittee obtained a legal analysis conducted by Yellow's own counsel that demonstrates the Trump Administration agreed to terms even more generous than Yellow's own lawyers contemplated. The legal memorandum drafted by Yellow's counsel concluded that Yellow would be required to give a higher-ranking collateral interest to Treasury and pay a higher interest rate than Treasury ultimately agreed to. Yellow submitted this legal memorandum—which was prepared for its board and executives regarding CARES Act

requirements for national security loans—to Treasury along with its application materials. Yellow's counsel concluded that Treasury would need to receive "middle priority" liens on Yellow's collateral between "the current first-ranking creditors but ahead of the current second-ranking creditors," and that Treasury "would be compensated for this second ranking position through an interest rate higher than the interest rate on the existing private loans in the first ranking position."[116] Treasury ultimately agreed, however, to take third-ranking priority in Yellow's existing collateral, behind both major existing creditors. Even though it took a lower priority security interest than Apollo, Treasury charged a significantly lower interest rate than Apollo.[117] That Treasury agreed to such generous loan terms raises further questions about the role of political pressure in the process of approving the loan to Yellow given the "relatively little" leverage Yellow, which was Mr. Lerrick told the Select Subcommittee was potentially facing bankruptcy, purportedly had in its negotiations with Treasury.[118]

IV. Recommendations

1. Agency Leaders Should Rely on the Assessments of Career Officials with Expertise when Assessing Whether a Company Is Eligible for Emergency Aid Directed at Companies Critical to National Security.

The Trump Administration disbursed 95% of the funds it loaned for companies "critical to maintaining national security" to a company that career DOD industrial base experts had assessed was not critical to national security, and whose services could be replaced by many other companies. The decision to certify that Yellow was eligible for such a loan quickly followed a call between high-ranking political appointees who overrode the recommendation of career experts without even requesting additional collection of information or analysis from experts. To prevent misallocation of funds designated for maintaining national security in future emergencies, agency leaders must rely on relevant experts and their objective analysis—not political considerations.

2. Future Emergency Legislation Allocating Funds to Companies Critical to National Security Should Require That Agency Leaders Include the Reasoning and Data Supporting Eligibility Certifications.

To help ensure that agency leaders appropriately disburse funds designated for maintaining companies vital to national security in future emergencies, emergency relief legislation should require that certifications of a company's criticality to national security be accompanied by the reasoning and data supporting such certifications. Secretary Esper signed a letter certifying that Yellow was critical to national security shortly after a call with Secretary Mnuchin and did not include any explanation, rationale, or supporting data for that decision. The certification, instead, contradicted the reasoned recommendations, analysis, and information compiled by DOD's career officials. Similar future emergency legislation should require that determinations that companies are entitled to relief intended to support industry critical to national security include an explanation of the rationale and information supporting such determinations. In this case, it may have been more difficult for senior political appointees to

override the recommendation of industrial base experts if doing so required more than a phone call and a capricious decision.

3. Future Emergency Legislation Should Prohibit the Distribution of Federal Aid to Companies Facing Credible Allegations of Fraud Against a Federal Government Agency.

The Trump Administration made this substantial loan to Yellow at a time DOJ was actively litigating a False Claims Act case that alleged the company had engaged in systematic, fraudulent overcharging of DOD for more than seven years and had made false statements to facilitate its fraudulent charging practices. Though this lawsuit troubled career DOD officials, it did not prevent Trump Administration political appointees from overruling the career officials and approving such a substantial loan to Yellow. To better protect taxpayer dollars and ensure accountability for misconduct, future emergency legislation should include safeguards to prevent federal relief funds and loans from flowing to companies facing active or recent legal actions brought by federal agencies that allege fraud against the federal government.

4. The Treasury Department Office of Inspector General Should Investigate to Determine if Yellow's Misleading Representations to the Government in Its Efforts to Obtain a National Security Loan Rise to the Level of Knowing Material Misstatements in Violation of the False Claims Act.

The Select Subcommittee also recommends that the Department of the Treasury Office of Inspector General conduct a further investigation to determine whether Yellow's application for a national security loan, and statements it made in order to obtain the loan—including statements pertaining to the existing False Claims Act suit, the planned uses of the loan funds, and the company's share of DOD trucking services—constitute knowing false claims and false statements under the False Claims Act.

---

[1] Coronavirus Aid, Relief, and Economic Security ("CARES") Act, Pub. L. No. 116-136 (2020) § 4003.

[2] Department of the Treasury, *Q&A: Loans to Air Carriers and Eligible Businesses and National Security Businesses* (Apr. 10, 2020) (online at https://home.treasury.gov/system/files/136/CARES-Airline-Loan-Support-Q-and-A-national-security.pdf).

[3] *Id.*

[4] Memorandum from Scott Baum, Acting Deputy Assistant Secretary of Defense for Industrial Policy, to Ellen M. Lord, Under Secretary of Defense for Acquisition and Sustainment, Department of Defense (June 18, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/DOD%20Natsec%20Action%20Memo%20with%20Criteria.pdf).

[5] The DOD career official interviewed by the Select Subcommittee stressed that the answer to the questions in DOD's criteria would "not necessarily" weigh in favor or against certification, but the actual recommendations provided to the Select Subcommittee make clear that the "commodity" type nature of a service and the availability of alternate providers were used as factors in analyses recommending against certification. Select Subcommittee on the Coronavirus Crisis, Transcribed Interview of Christine Michienzi (Jan. 20, 2022), at 15 (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/2022-01-20%20SSCC%20Interview%20of%20Dr.%20Christine%20Michienzi.pdf); Email from Christine Michienzi, Deputy Assistant Secretary of Defense and Chief Technology Officer, to Scott Baum, Acting Deputy Assistant

Secretary of Defense for Industrial Policy, Department of Defense (June 25, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/Michienzi%20to%20Baum%206.25.20%20rec%20against%20certification.pdf); Email from Scott Baum, Acting Deputy Assistant Secretary of Defense for Industrial Policy, to Ellen M. Lord, Under Secretary of Defense for Acquisition and Sustainment, Department of Defense (June 25, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/Baum%20to%20Lord%206.25.20%20rec%20against%20and%20political%20angle.pdf).

[6] Coronavirus Aid, Relief, and Economic Security ("CARES") Act, Pub. L. No. 116-136 (2020) § 4003.

[7] Department of the Treasury, *Q&A: Loans to Air Carriers and Eligible Businesses and National Security Businesses* (Apr. 10, 2020) (online at https://home.treasury.gov/system/files/136/CARES-Airline-Loan-Support-Q-and-A-national-security.pdf).

[8] Coronavirus Aid, Relief, and Economic Security ("CARES") Act, Pub. L. No. 116-136 (2020) § 4003.

[9] *Id*.

[10] Department of the Treasury, *Press Release: Treasury to Provide Loan to YRC Worldwide* (July 1, 2020) (online at https://home.treasury.gov/news/press-releases/sm1049).

[11] Department of the Treasury, *Loans to Air Carriers, Eligible Businesses, and National Security Businesses* (online at https://home.treasury.gov/policy-issues/coronavirus/assistance-for-industry/loans-to-air-carriers-eligible-businesses-and-national-security-businesses) (accessed Mar. 10, 2022).

[12] Department of the Treasury, *Press Release: Treasury to Provide Loan to YRC Worldwide* (July 1, 2020) (online at https://home.treasury.gov/news/press-releases/sm1049).

[13] Department of the Treasury, *Transaction Summary* (online at https://home.treasury.gov/system/files/136/YRC-Transaction-Summary.pdf) (accessed Mar. 10, 2022); Select Subcommittee on the Coronavirus Crisis, Interview of Adam Lerrick (Feb. 16, 2022) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/2022-02-16%20SSCC%20Interview%20of%20Adam%20Lerrick.pdf).

[14] Select Subcommittee on the Coronavirus Crisis, Transcribed Interview of Adam Lerrick (Feb. 16, 2022), at 63 (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/2022-02-16%20SSCC%20Interview%20of%20Adam%20Lerrick.pdf); Congressional Oversight Commission, *The Seventh Report of the Congressional Oversight Commission* (Nov. 30, 2020) (online at https://coc.senate.gov/sites/default/files/2020-12/COC%20November%20Report%20with%20Appendix.pdf) (Appendix F).

[15] Select Subcommittee on the Coronavirus Crisis, *Press Release: Select Subcommittee Launches Investigation into $700 Million Loan Issued by Trump Administration to Troubled Trucking Company* (June 3, 2021) (online at https://coronavirus.house.gov/news/press-releases/select-subcommittee-launches-investigation-700-million-loan-issued-trump).

[16] Letter from Chairman James E. Clyburn, Select Subcommittee on the Coronavirus Crisis, to Archivist of the United States David S. Ferriero, National Archives and Records Administration (Oct. 5, 2021) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/2021-10-05.Clyburn%20to%20Ferriero%20re%20Treasury%20Nat%20Sec%20Loans.pdf).

[17] Select Subcommittee on the Coronavirus Crisis, Transcribed Interview of Christine Michienzi (Jan. 20, 2022) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/2022-01-20%20SSCC%20Interview%20of%20Dr.%20Christine%20Michienzi.pdf); Select Subcommittee on the Coronavirus Crisis, Transcribed Interview of Adam Lerrick (Feb. 16, 2022) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/2022-02-16%20SSCC%20Interview%20of%20Adam%20Lerrick.pdf).

[18] Email from Jack Rauch, Special Assistant to the President, White House, to Brian Morgenstern, Deputy Assistant Secretary, Department of the Treasury (Apr. 3, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/Rauch%20to%20Morgenstern%20.3.20%20WH%20comms_Redacted.pdf).

[19] Email from Erskine Wells, Principal, BGR Group, to Darren Hawkins, Chief Executive Officer, Yellow Corporation (Apr. 8, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/Wells%20to%20Hawkins%204.8.20_Redacted.pdf).

[20] Email from Erskine Wells, Principal, BGR Group, to Rohit Kumar, Principal, PwC, and Mike Kelley, Chief Sustainability Officer and VP External Affairs, YRC Worldwide (May 6, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/Email%20from%20Erskine%20Wells%2C%20BGRC%2C%20to%20Todd%20Metcalf%20and%20Rohit%20Kumar%2C%20PwC%2C%20and%20Mike%20Kelley%2C%20YRC%20Worldwide%20%28May%206%2C%202020%29.pdf).

[21] Email from Joseph Russo, Special Assistant to the President, White House, to Mike Kelley, Chief Sustainability Officer and VP External Affairs, YRC Worldwide (May 27, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/Email%20from%20Special%20Assistant%20to%20the%20President%20Joseph%20Russo%2C%20to%20Mike%20Kelley%2C%20YRC.pdf).

[22] Email from Erskine Wells, Principal, BGR Group, to Mike Kelley, Chief Sustainability Officer and VP External Affairs, YRC Worldwide, and Rohit Kumar, Principal PwC (May 4, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/Erskine%20Wells%2C%20BGRC%2C%20to%20Mike%20Kelley%2C%20YRC%20Worldwide%20and%20Todd%20Metcalf%20and%20Rohit%20Kumar%2C%20PwC%20%28May%204%2C%202020%29.pdf); Email from Mike Kelley, Chief Sustainability Officer and VP External Affairs, YRC Worldwide, to Christy Bailey, International Brotherhood of the Teamsters (May 4, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/Email%20from%20Mike%20Kelley%2C%20YRC%20Worldwide%2C%20to%20Christy%20Bailey.pdf).

[23] Email from Erskine Wells, Principal, BGR Group, to Darren Hawkins, Chief Executive Officer, Yellow Corporation (May 25, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/Wells%20to%20Hawkins%205.25.20_Redacted.pdf).

[24]Select Subcommittee on the Coronavirus Crisis, Transcribed Interview of Adam Lerrick (Feb. 16, 2022), at 18 (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/2022-02-16%20SSCC%20Interview%20of%20Adam%20Lerrick.pdf) (Mr. Lerrick, former counselor to Secretary Mnuchin, attributed the increase in the intensity of Treasury's work on Yellow's application to the company's worsened financial situation).

[25] Email from Erskine Wells, Principal, BGR Group, to Rohit Kumar, Principal, PwC and Darren Hawkins, CEO, Yellow Corporation (June 16, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/Wells%20to%20Kumar%20and%20Hawkins%206.16.20.pdf).

[26] Email from Secretary Steven Mnuchin, Department of the Treasury, to Chief of Staff Mark Meadows, Executive Assistant to the President Molly A. Michael, and Assistant to the President Larry Kudlow, White House (July 1, 2020) (online at www.documentcloud.org/documents/20989594-treas-20-0568-bcd#document/p1); Email from Secretary Steven Mnuchin, Department of the Treasury, to Chief of Staff Mark Meadows and Executive Assistant to the President Molly Michael, White House (July 1, 2020) (online at www.documentcloud.org/documents/20989594-treas-20-0568-bcd#document/p1).

[27] Email from Erskine Wells, Principal, BGR Group, to Alexis Ross, Deputy Chief of Staff to the Secretary of Defense, Department of Defense (June 19, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/Wells%20to%20Ross%206.19.20%20potus%20call.pdf).

[28] Email from Career Staff, Department of Defense, to Bryan Fenton, Lieutenant General, and Jennifer Stewart, Chief of Staff to the Secretary of Defense, Department of Defense (June 26, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/staffer%2C%20Department%20of%20Defense%2C%20to%20Fenton%206.26.20%209.35AM.pdf).

[29] Email from Secretary Steven Mnuchin, Department of the Treasury, to Chief of Staff Mark Meadows, Executive Assistant to the President Molly A. Michael, and Assistant to the President Larry Kudlow, White House

(July 1, 2020) (online at www.documentcloud.org/documents/20989594-treas-20-0568-bcd#document/p1); Email from Secretary Steven Mnuchin, Department of the Treasury, to Chief of Staff Mark Meadows and Executive Assistant to the President Molly Michael, White House (July 1, 2020) (online at www.documentcloud.org/documents/20989594-treas-20-0568-bcd#document/p1).

[30] *Id.*

[31] Email from Christine Michienzi, Deputy Assistant Secretary of Defense and Chief Technology Officer, to Scott Baum, Acting Deputy Assistant Secretary of Defense for Industrial Policy, Department of Defense (June 25, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/Michienzi%20to%20Baum%206.25.20%20rec%20against%20certification.pdf); Select Subcommittee on the Coronavirus Crisis, Interview of Christine Michienzi (Jan. 20, 2022) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/2022-01-20%20SSCC%20Interview%20of%20Dr.%20Christine%20Michienzi.pdf).

[32] Less-than-Truckload (LTL) trucking services involve the delivery of small-to-moderately sized shipments of goods that do not require a full truck and trailer. *See generally* RAND Corp., *Army Stock Positioning* (2017) (online at www.rand.org/pubs/research_reports/RR1375.html).

[33] Select Subcommittee on the Coronavirus Crisis, Transcribed Interview of Christine Michienzi (Jan. 20, 2022, at 18 (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/2022-01-20%20SSCC%20Interview%20of%20Dr.%20Christine%20Michienzi.pdf).

[34] *Id*. at 27.

[35] Select Subcommittee on the Coronavirus Crisis, Transcribed Interview of Christine Michienzi (Jan. 20, 2022), at 13−17 (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/2022-01-20%20SSCC%20Interview%20of%20Dr.%20Christine%20Michienzi.pdf); Memorandum from Scott Baum, Acting Deputy Assistant Secretary of Defense for Industrial Policy, to Ellen M. Lord, Under Secretary of Defense for Acquisition and Sustainment, Department of Defense (June 18, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/DOD%20Natsec%20Action%20Memo%20with%20Criteria.pdf).

[36] Select Subcommittee on the Coronavirus Crisis, Transcribed Interview of Christine Michienzi (Jan. 20, 2022), at 19 (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/2022-01-20%20SSCC%20Interview%20of%20Dr.%20Christine%20Michienzi.pdf).

[37] Department of Defense, *Analysis of Yellow Corporation Worldwide Utilization and Potential Impact* (June 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/DOD%20analysis%20of%20Yellow%20Utilization%20and%20Impact.pdf).

[38] Email from Lieutenant Colonel, U.S. Army Surface Deployment and Distribution Command, to Stephen Farmen, Major General, U.S. Army Surface Deployment and Distribution Command (June 11, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/LTC%20to%20Farmen%206.11.20%20shot%20down_0.pdf).

[39] Department of Defense, *Analysis of Yellow Corporation Worldwide Utilization and Potential Impact* (June 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/DOD%20analysis%20of%20Yellow%20Utilization%20and%20Impact.pdf).

[40] *Id.*

[41] Department of the Treasury, *Press Release: Treasury to Provide Loan to YRC Worldwide* (July 1, 2020) (online at https://home.treasury.gov/news/press-releases/sm1049); Excerpt, Yellow Corporation Application for CARES Act Loan (Apr. 24, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/Excerpt%20Yellow%20App%2068%20percent.pdf).

[42] Department of Defense, *Analysis of Yellow Corporation Worldwide Utilization and Potential Impact* (June 2020) (online at

https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/DOD%20analysis%20of%20Yellow%20Utilization%20and%20Impact.pdf).

[43] *Id*.

[44] Letter from Chief Executive Officer Darren Hawkins Yellow Corporation, to Chairman James E. Clyburn, Select Subcommittee on the Coronavirus Crisis (June 10, 2021) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/Yellow%20Corporation.20210610.Response%20to%20Clyburn%20re%20Initial%20Response%20to%20June%203%20Letter.pdf).

[45] Email from Christine Michienzi, Deputy Assistant Secretary of Defense and Chief Technology Officer, to Staffers, Department of Defense (June 23, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/Michienzi%20to%20folks%206.23.20%20flagging%20DOJ%20suit.pdf).

[46] Complaint in Intervention, *U.S. ex. Rel. Hannum v. YRC Freight*, Case No. 08-cv-811 (W.D.N.Y. filed Dec. 12, 2018), ECF No. 72.

[47] Email from Counsel, Yellow Corporation, to Adam Lerrick, Counselor to the Secretary, Department of the Treasury (June 18, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/Email%20from%20Counsel%20to%20Yellow%20to%20Lerrick%206.18.20%20DOj%20suit%20-6678_Redacted.pdf).

[48] Complaint in Intervention, *U.S. ex. Rel. Hannum v. YRC Freight*, Case No. 08-cv-811 (W.D.N.Y. filed Dec. 12, 2018), ECF No. 72.

[49] Department of Justice, *Press Release: United States Sues Freight Companies for Systematic Overcharging of Shipments* (Dec. 14, 2018) (online at www.justice.gov/opa/pr/united-states-sues-freight-companies-systematic-overcharging-shipments).

[50] Decision & Order, *U.S. ex rel. Hannum v. YRC Freight et al.*, 08-CV-811-A (May 10, 2021, W.D.N.Y.), ECF No. 111 (denying Yellow subsidiaries' motion to dismiss with respect to five of six counts); *Yellow Settles Federal Claim It Overcharged Pentagon,* Wall Street Journal (Mar. 10, 2022) (online at https://wsj.com/articles/yellow-settles-federal-claim-it-overcharged-pentagon-11646913601).

[51] *See* Mem. In Supp. Of Mot. For Order Preliminarily Approving Settlement, *Lewis v. YRC Worldwide Inc*., Case No. 1:19-cv-00001-GTS-ATB (Apr. 15, 2021, N.D.N.Y), ECF No. 95-1; Amended Complaint, *Lewis v. YRC Worldwide Inc*., Case No. 1:19-cv-00001-GTS-ATB (June 19, 2019, N.D.N.Y), ECF No. 75.

[52] *Id*.

[53] Email from Christine Michienzi, Deputy Assistant Secretary of Defense and Chief Technology Officer, to Scott Baum, Acting Deputy Assistant Secretary of Defense for Industrial Policy, Department of Defense (June 25, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/Michienzi%20to%20Baum%206.25.20%20rec%20against%20certification.pdf); Select Subcommittee on the Coronavirus Crisis, Interview of Christine Michienzi (Jan. 20, 2022) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/2022-01-20%20SSCC%20Interview%20of%20Dr.%20Christine%20Michienzi.pdf).

[54] Select Subcommittee on the Coronavirus Crisis, Transcribed Interview of Christine Michienzi (Jan. 20, 2022), at 59 (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/2022-01-20%20SSCC%20Interview%20of%20Dr.%20Christine%20Michienzi.pdf).

[55] Select Subcommittee on the Coronavirus Crisis, Transcribed Interview of Christine Michienzi (Jan. 20, 2022), at 59 (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/2022-01-20%20SSCC%20Interview%20of%20Dr.%20Christine%20Michienzi.pdf); Email from Scott Baum, Acting Deputy Assistant Secretary of Defense for Industrial Policy, to Ellen M. Lord, Under Secretary of Defense for Acquisition and Sustainment, Department of Defense (June 25, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/Baum%20to%20Lord%206.25.20%20rec%20against%20and%20political%20angle.pdf).

[56] Secretary Mnuchin had previously testified that Treasury received letters supporting a loan to Yellow from a number of members of Congress. Both DOD career officials' recommendations noted that Senators Wicker

and Inhofe sent letters to DOD in support of Yellow's certification, and the Select Subcommittee has been unable to confirm whether those letters were the "political aspect" of the certification decision discussed by the Treasury and DOD General Counsels. Select Subcommittee on the Coronavirus Crisis, Transcribed Interview of Christine Michienzi (Jan. 20, 2022), at 58 (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/2022-01-20%20SSCC%20Interview%20of%20Dr.%20Christine%20Michienzi.pdf); Email from Scott Baum, Acting Deputy Assistant Secretary of Defense for Industrial Policy, to Ellen M. Lord, Under Secretary of Defense for Acquisition and Sustainment, Department of Defense (June 25, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/Baum%20to%20Lord%206.25.20%20rec%20against%20and%20political%20angle.pdf).

[57] Email from Laura Black, Director, Office of Investment Security, Policy and International Relations, U.S. Department of the Treasury, to Christine Michienzi, Deputy Assistant Secretary of Defense and Chief Technology Officer, Department of Defense (June 24, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/Black%20to%20Michienzi%206.24.20%20changing%20decision%20briefed%20up%20chain_Redacted.pdf); Select Subcommittee on the Coronavirus Crisis, Transcribed Interview of Christine Michienzi (Jan. 20, 2022), at 54 (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/2022-01-20%20SSCC%20Interview%20of%20Dr.%20Christine%20Michienzi.pdf) (Dr. Michienzi clarified that she meant to convey that DOD *likely* would not certify Yellow).

[58] Email from Executive Assistant to the Secretary, Department of the Treasury, to Director of Scheduling, Office of the Secretary of Defense, Department of Defense (June 25, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/Executive-Ass-Sec-Treas-Dir-Scheduling-DOD-62520.pdf).

[59] *Id*.

[60] Email from Executive Assistant to the Secretary, Department of the Treasury, to Director of Scheduling, Office of the Secretary of Defense, Department of Defense (June 26, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/Executive-Sec-Treas-Sec-Dir-Scheduling-dod-confirming-930.pdf); Email from Ellen M. Lord, Under Secretary of Defense for Acquisition and Sustainment, to Jennifer Stewart, Chief of Staff to the Secretary of Defense, Department of Defense (June 26, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/Lord%20to%20Stewart%206.25.20%20confirming%20call%20took%20place.pdf).

[61] Email from Jennifer Stewart, Chief of Staff to the Secretary of Defense, to Bryan Fenton, Lieutenant General, Department of Defense (June 26, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/Stewart%20to%20Fenton%206.26.20%20sec%20prepping%20original%20tps.pdf).

[62] *Id.*

[63] *Id*.

[64] Select Subcommittee on the Coronavirus Crisis, Transcribed Interview of Christine Michienzi (Jan. 20, 2022), at 62 (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/2022-01-20%20SSCC%20Interview%20of%20Dr.%20Christine%20Michienzi.pdf) (agreeing that the "Ellen" referenced likely referred to Under Secretary Ellen M. Lord).

[65] Email from Jennifer Stewart, Chief of Staff to the Secretary of Defense, to Bryan Fenton, Lieutenant General, Department of Defense (June 26, 2020, 9:17 am) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/Stewart%20to%20Fenton%206.26.20%20sec%20prepping%20original%20tps.pdf).

[66] *Id*.

[67] Letter from Secretary Mark Esper, Department of Defense, to Secretary Steven Mnuchin, Department of the Treasury (June 26, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/Letter%20from%20Mark%20Esper%2C

%20Secretary%20of%20Defense%2C%20to%20Steven%20Mnuchin%2C%20Department%20of%20the%20Treasury.pdf).

[68] Department of the Treasury, *Press Release: Treasury to Provide Loan to YRC Worldwide* (July 1, 2020) (online at https://home.treasury.gov/news/press-releases/sm1049).

[69] Congressional Oversight Commission, *Examination of Loans to Businesses Critical to Maintaining National Security* (Dec. 10, 2020) (online at https://coc.senate.gov/examination-loans-businesses-critical-maintaining-national-security).

[70] *Id.*

[71] Secretary Mnuchin also testified that there was a "tremendous risk to the Department of Defense" from Yellow's potential failure, though this flatly contradicted the analysis conducted by DOD staff that found Yellow's services could be replaced by "plenty of other trucking companies" and that the company was being sued for fraudulently overcharging DOD. Congressional Oversight Commission, *Examination of Loans to Businesses Critical to Maintaining National Security* (Dec. 10, 2020) (online at https://coc.senate.gov/examination-loans-businesses-critical-maintaining-national-security).

[72] *How a $17 Billion Bailout Fund Intended for Boeing Ended up in Very Different Hands*, Washington Post (Nov. 25, 2020) (online at www.washingtonpost.com/business/2020/11/25/boeing-national-security-bailout-loans/).

[73] Coronavirus Aid, Relief, and Economic Security ("CARES") Act, Pub. L. No. 116-136 (2020) § 4003(a).

[74] Coronavirus Aid, Relief, and Economic Security ("CARES") Act, Pub. L. No. 116-136 (2020) § 4003(a); Department of the Treasury, *Q&A: Loans to Air Carriers and Eligible Businesses and National Security Businesses* (Apr. 10, 2020) (online at https://home.treasury.gov/system/files/136/CARES-Airline-Loan-Support-Q-and-A-national-security.pdf).

[75] Department of the Treasury, *Transaction Summary* (online at https://home.treasury.gov/system/files/136/YRC-Transaction-Summary.pdf) (accessed Mar. 10, 2022).

[76] Excerpt, Yellow Corporation Application for CARES Act Loan (Apr. 24, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/Excerpt%2C%20Yellow%20Corporation%20Application%20for%20a%20CARES%20Act%20Nat%20Sec%20Loan%20%20-51.pdf). Yellow's application form referred Treasury to this presentation to substantiate its "covered losses."

[77] Excerpt, Yellow Corporation Application for CARES Act Loan (Apr. 24, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/Excerpt%2C%20Yellow%20Corp%20Application%2000043-44.pdf).

[78] *Id.*

[79] *Id.*

[80] *Id.*

[81] *Id.*

[82] Email from Jamie Pierson, Chief Financial Officer, Yellow Corporation, to Apollo Global Management (May 1, 2020) (YRCW-0000983−84) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/Pierson%20to%20Boehmer%20Apollo%205.1.20%20cookie%20jar_Redacted.pdf).

[83] *Id.*

[84] Select Subcommittee on the Coronavirus Crisis, Transcribed Interview of Adam Lerrick (Feb. 16, 2022), at 54 (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/2022-02-16%20SSCC%20Interview%20of%20Adam%20Lerrick.pdf).

[85] *YRC Worldwide (YRCW) Q1 2021 Earnings Call Transcript,* The Motley Fool (May 6, 2021) (online at https://fool.com/earnings/call-transcripts/2021/05/06/yrc-worldwide-yrcw-q1-2021-earnings-call-transcrip/).

[86] Securities and Exchange Commission, Form10-K, *YRC Worldwide Inc.* (Mar. 11, 2020) (online at https://investors.myyellow.com/node/27841/html).

[87] *YRC Worldwide (YRCW) Q1 2021 Earnings Call Transcript,* The Motley Fool (May 6, 2021) (online at https://fool.com/earnings/call-transcripts/2021/05/06/yrc-worldwide-yrcw-q1-2021-earnings-call-transcrip/); Presentation, *Yellow Corporation Second Quarter 2021 Earnings Conference Call,* Yellow Corporation (online at https://investors.myyellow.com/static-files/a5cdb961-e5e9-4d4b-ae55-695452436d49) (accessed Apr. 8, 2022); Presentation*, Yellow Corporation First Quarter 2021 Earnings Conference Call,* Yellow Corporation (online at https://investors.myyellow.com/static-files/9b3eaab0-cc56-45b5-9c7b-e2e84143de9d) (accessed Apr. 8, 2022).

[88] Securities and Exchange Commission, Form10-K, *Yellow Corporation* (Feb. 4, 2022) (online at https://investors.myyellow.com/static-files/044bfcb8-cd61-42eb-9f6d-060e9f44d61c).

[89] Email from Counsel, Yellow Corporation, to Adam Lerrick, Counselor to the Secretary, Department of the Treasury (June 18, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/Cohen%20to%20Lerrick%206.18.20%20capex%20request%20exchange_Redacted.pdf).

[90] *Id.*

[91] Email from Adam Lerrick, Counselor to the Secretary, Department of the Treasury, to Counsel, Yellow Corporation (June 24, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/Lerrick%20to%20Cohen%20Counsel%20for%20Yellow%206.24.20%20term%20sheet.pdf).

[92] Email from Adam Lerrick, Counselor to the Secretary, Department of the Treasury, to Counsel, Yellow Corporation (June 25, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/Lerrick%20to%20Cohen%20Counsel%20to%20Yellow%206.25.20%20term%20sheet.pdf).

[93] Select Subcommittee on the Coronavirus Crisis, Transcribed Interview of Adam Lerrick (Feb. 16, 2022), at 57 (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/2022-02-16%20SSCC%20Interview%20of%20Adam%20Lerrick.pdf).

[94] *See* Email from Executive Assistant to the Secretary, Department of the Treasury, to Director of Scheduling, Office of the Secretary of Defense, Department of Defense (June 26, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/Executive-Sec-Treas-Sec-Dir-Scheduling-dod-confirming-930.pdf); Email from Ellen M. Lord, Under Secretary of Defense for Acquisition and Sustainment, to Jennifer Stewart, Chief of Staff to the Secretary of Defense, Department of Defense (June 26, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/Lord%20to%20Stewart%206.25.20%20confirming%20call%20took%20place.pdf).

[95] Select Subcommittee on the Coronavirus Crisis, Transcribed Interview of Adam Lerrick (Feb. 16, 2022), at 60 (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/2022-02-16%20SSCC%20Interview%20of%20Adam%20Lerrick.pdf).

[96] *Id*.

[97] Securities and Exchange Commission, Form 10-K, *YRC Worldwide Inc.* (Feb. 19, 2019) (online at https://investors.myyellow.com/static-files/08c6f767-b0eb-49b4-b5ee-6b0a07b414d1); Securities and Exchange Commission, Form 10-K, *YRC Worldwide Inc.* (Mar. 11, 2020) (online at https://investors.myyellow.com/node/27841/html).

[98] Select Subcommittee on the Coronavirus Crisis, Transcribed Interview of Adam Lerrick (Feb. 16, 2022), at 57−58 (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/2022-02-16%20SSCC%20Interview%20of%20Adam%20Lerrick.pdf).

[99] Coronavirus Aid, Relief, and Economic Security ("CARES") Act, Pub. L. No. 116-136 (2020) § 4003.

[100] *Truckers Cut Spending as Factory Slowdown Weighs on Operators*, Wall Street Journal (Apr. 7, 2020) (online at www.wsj.com/articles/truckers-cut-spending-as-factory-slowdown-weighs-on-some-operators-11586295247).

[101] Excerpt, Yellow Corporation Application for CARES Act Loan (Apr. 24, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/Excerpt%2C%20Yellow%20Corp%20Application%2000043-44.pdf).

[102] *Rating Action: Moody's Downgrades YRC Ratings, Corporate Family Rating to Caa1; All Ratings on Review for Further Downgrade*, Moody's Investor Service (Mar. 31, 2020) (online at https://moodys.com/research/Moodys-downgrades-YRC-ratings-Corporate-Family-Rating-to-Caa1-all--PR_421071).

[103] Coronavirus Aid, Relief, and Economic Security ("CARES") Act, Pub. L. No. 116-136 (2020) § 4003(c).

[104] Excerpt, Yellow Corporation Application for CARES Act Loan (Apr. 24, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/Excerpt%20Yellow%20Corp%20Application%20debt%20structure%20-6492.pdf); Congressional Oversight Commission, *The Seventh Report of the Congressional Oversight Commission* (Nov. 30, 2020) (online at https://coc.senate.gov/sites/default/files/2020-12/COC%20November%20Report%20with%20Appendix.pdf) (Appendix F).

[105] Treasury did take a first-priority interest on newly purchased assets bought with Treasury's loan funds, but this interest only secured the portion of the loan that was to be used for long-term capital investment in tractors and trailers—which itself violated the CARES Act requirement that loans be made to offset losses incurred as a result of the coronavirus. Congressional Oversight Commission, *The Seventh Report of the Congressional Oversight Commission* (Nov. 30, 2020) (online at https://coc.senate.gov/sites/default/files/2020-12/COC%20November%20Report%20with%20Appendix.pdf) (Appendix F).

[106] Excerpt, Yellow Corporation Application for CARES Act Loan (Apr. 24, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/Excerpt%20Yellow%20Corp%20Application%20debt%20structure%20-6492.pdf); Congressional Oversight Commission, *The Seventh Report of the Congressional Oversight Commission* (Nov. 30, 2020) (online at https://coc.senate.gov/sites/default/files/2020-12/COC%20November%20Report%20with%20Appendix.pdf) (Appendix F).

[107] Excerpt, Yellow Corporation Application for CARES Act Loan (Apr. 24, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/Excerpt%2C%20Yellow%20Corp%20Application%2000043-44.pdf); Excerpt, Yellow Corporation Application for CARES Act Loan (Apr. 24, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/Excerpt%20Yellow%20appl%20excess%20trucking%20capacity%206740.pdf).

[108] Federal Reserve, *Uptake of the Main Street Lending Program* (Apr. 16, 2021) (online at https://federalreserve.gov/econres/notes/feds-notes/uptake-of-the-main-street-lending-program-20210416.htm); Department of the Treasury, *Transaction Summary* (online at https://home.treasury.gov/system/files/136/YRC-Transaction-Summary.pdf) (accessed Mar. 10, 2022).

[109] Email from Adam Lerrick, Counselor to the Secretary, Department of the Treasury, to Counsel for Yellow Corporation (June 25, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/Lerrick%20to%20Cohen%20Counsel%20to%20Yellow%206.25.20%20main%20street%20lower%20risk%20UST-HSSCC-00007214.pdf).

[110] YRC Worldwide Inc., *Press Release: YRC Worldwide Announces New Term Loan Agreement* (Sep. 11, 2019) (online at https://investors.myyellow.com/news-releases/news-release-details/yrc-worldwide-announces-new-term-loan-agreement).

[111] The Treasury official who negotiated the loan with Yellow argued that the equity stake in the company Treasury received compensated for Yellow's lower interest rate, but the CARES Act contains no exception to its interest rate requirements due to the size of equity interest received by Treasury. Instead, the CARES Act provision directed Treasury to take an "equity interest" *or* an "interest rate *premium*," which is reasonably read in the statute's context as an interest rate even higher than one that would have been received under market conditions before the pandemic. Select Subcommittee on the Coronavirus Crisis, Transcribed Interview of Adam Lerrick (Feb. 16, 2022), at 66 (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/2022-02-16%20SSCC%20Interview%20of%20Adam%20Lerrick.pdf); Coronavirus Aid, Relief, and Economic Security ("CARES") Act, Pub. L. No. 116-136 (2020) § 4003(d) (emphasis added).

[112] Securities and Exchange Commission, Schedule 14A, *Yellow Corporation* (Apr. 14, 2022) (online at https://investors.myyellow.com/static-files/3e794291-4fa9-43b5-beec-d7344fd8a75e); Securities and Exchange Commission, Schedule 14A, *Yellow Corporation* (Apr. 13, 2021) (online at https://investors.myyellow.com/static-files/479a5cb9-f3bc-4fd0-be5b-daaefc65f63f).

[113] Coronavirus Aid, Relief, and Economic Security ("CARES") Act, Pub. L. No. 116-136 (2020) § 4003(b).

[114] Congressional Oversight Commission, *Hearing on Examination of Loans to Businesses Critical to Maintaining National Security* (Dec. 10, 2020) (online at https://coc.senate.gov/examination-loans-businesses-critical-maintaining-national-security).

[115] The former Treasury official stated that Treasury's receipt of a significant equity stake in Yellow adequately compensated taxpayers, but the CARES Act did not create an exception to national security loan interest rate requirements for companies that agreed to give Treasury an equity stake. Select Subcommittee on the Coronavirus Crisis, Transcribed Interview of Adam Lerrick (Feb. 16, 2022), at 65 (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/2022-02-16%20SSCC%20Interview%20of%20Adam%20Lerrick.pdf).

[116] Memorandum from Counsel, to the Yellow Corporation, to Matthew Doheny, Chairman of the Board, and Darren Hawkins, Chief Executive Officer, Yellow Corporation (Apr. 1, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/Mem%20from%20Counsel%20Cohen%20to%20Doheny%20and%20Hawkins%20Apr%201.pdf).

[117] The Treasury official who negotiated the loan with Yellow asserted that the equity stake in the company Treasury received compensated for Yellow's low interest rate. Select Subcommittee on the Coronavirus Crisis, Transcribed Interview of Adam Lerrick (Feb. 16, 2022), at 65 (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/2022-02-16%20SSCC%20Interview%20of%20Adam%20Lerrick.pdf). Yellow's counsel, however, also envisioned that Treasury would take an "equity interest" in the company, showing that Yellow's own counsel did not believe that an equity interest in the company could be used to give a loan at a lower interest rate than was prescribed by the statute. Memorandum from Counsel to the Yellow Corporation, to Matthew Doheny, Chairman of the Board, and Darren Hawkins, Chief Executive Officer, Yellow Corporation (Apr. 1, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/Mem%20from%20Counsel%20Cohen%20to%20Doheny%20and%20Hawkins%20Apr%201.pdf).

[118] Select Subcommittee on the Coronavirus Crisis, Transcribed Interview of Adam Lerrick (Feb. 16, 2022), at 75 (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/2022-02-16%20SSCC%20Interview%20of%20Adam%20Lerrick.pdf).