

Congress of the United States
Washington, DC 20515

October 2, 2020

The Honorable Mark T. Esper
Secretary
Department of Defense
1000 Defense Pentagon
Washington, D.C. 20301

Dear Secretary Esper:

We are investigating whether the Department of Defense (DOD) inappropriately used hundreds of millions of taxpayer dollars appropriated by Congress in the Coronavirus Aid, Relief, and Economic Security (CARES) Act. These funds were intended to prioritize the domestic production and distribution of urgently needed medical supplies and personal protective equipment (PPE)—many of which are still in short supply—but DOD has reportedly diverted a significant portion of these funds to provide lucrative contracts to defense contractors for non-medical projects. As Congress considers additional coronavirus relief legislation, Americans deserve to know that the Trump Administration is following the law and using relief funds for their intended purpose—to aid the nationwide pandemic response.

More than six months after the Administration declared the coronavirus pandemic a national emergency, medical supplies and PPE shortages persist. For example, on August 14, 2020, the Food and Drug Administration (FDA) published a list of devices, including “PPE, testing supplies and equipment, and ventilation-related products,” that are still in short supply. The Federal Emergency Management Agency has confirmed that “the supply of N95 respirators for medical use is not expected to catch up to demand until January 2021.”¹ According to recent reports, internal documents from the Department of Health and Human Services show that the federal government has fewer than 90 million N95 masks available, well short of the Administration’s goal of 300 million.² Some nurses have had to re-wear N95 masks “more than the five times recommended by the CDC.”³ In September, Centers for Disease Control and Prevention (CDC) Director Robert Redfield testified that CDC does not currently have the necessary resources, including adequate medical supplies, to effectively distribute a coronavirus vaccine.⁴

¹ Government Accountability Office, *COVID-19: Federal Efforts Could Be Strengthened by Timely and Concerted Actions* (Sept. 21, 2020) (online at www.gao.gov/reports/GAO-20-701/).

² *Trump Promised 300 million N95 Masks by September. He Isn't Even Close.*, Yahoo News (Sept. 29, 2020) (online at news.yahoo.com/trump-promised-300-million-n-95-masks-by-september-he-isnt-even-close-183019656.html?guccounter=1).

³ *The N95 Shortage America Can't Seem to Fix*, The Washington Post (Sept. 21, 2020) (online at www.washingtonpost.com/graphics/2020/local/news/n-95-shortage-covid/).

⁴ Senate Committee on Appropriations, Subcommittee on Labor, Health and Human Services, Education, and Related Agencies, *Hearing: Review of Coronavirus Response Efforts* (Sept. 16, 2020) (online at www.appropriations.senate.gov/hearings/review-of-coronavirus-response-efforts).

On September 22, 2020, the Washington Post reported that hundreds of millions of dollars of Defense Production Act (DPA) funding, which Congress appropriated to DOD under the CARES Act to “prevent, prepare for, and respond to the coronavirus,” instead has been “funneled to defense contractors and used for making things such as jet engine parts, body armor, and dress uniforms.” The contracts reportedly include:

\$183 million to firms including Rolls-Royce and ArcelorMittal to maintain the shipbuilding industry; tens of millions of dollars for satellite, drone and space surveillance technology; \$80 million to a Kansas aircraft parts business suffering from the Boeing 737 Max grounding and the global slowdown in air travel; and \$2 million for a domestic manufacturer of Army dress uniform fabric.⁵

DOD has argued that the goal of this spending is “offsetting financial distress” caused by the coronavirus crisis throughout the defense industrial base.⁶ There may be legitimate reasons to provide financial support to the U.S. defense industry during the pandemic, but the use of CARES Act-authorized DPA funds in this manner runs counter to Congress’ intent that these appropriations be prioritized to address shortages in medical supplies and equipment.⁷ This is especially true given the wide range of programs already in the CARES Act that support the private sector, including \$17 billion for federal loans to businesses critical to our national security.

During consideration of the CARES Act, Chairwoman of the House Committee on Financial Services, Rep. Maxine Waters, explained on the floor of the House of Representatives:

Congress is providing the increase of funding to carry out the Defense Production Act with the understanding that these funds are to be used to help expand our domestic productive capacity for critically needed medical supplies or equipment, to purchase such supplies or equipment where necessary and to address other needs that directly relate to meeting the emergency medical needs arising directly from the COVID-19 pandemic.⁸

In its report accompanying the fiscal year 2021 defense appropriations bill, the Committee on Appropriations explained that using CARES Act funds to support the defense industrial base is “not the original intent of the funds.” The report explains, “The Committee’s expectation was that the Department would address the need for PPE industrial capacity rather than execute the funding for the [defense industrial base].”⁹ Many defense contractors that

⁵ *Pentagon Used Taxpayer Money Meant for Masks and Swabs to Make Jet Engine Parts and Body Armor*, Washington Post (Sept. 22, 2020) (online at www.washingtonpost.com/business/2020/09/22/covid-funds-pentagon/).

⁶ Department of Defense, *Press Release: Statement on the Department’s Use of Defense Production Act Title III* (Sept. 23, 2020) (online at www.defense.gov/Newsroom/Releases/Release/Article/2358713/statement-on-the-departments-use-of-defense-production-act-title-iii/).

⁷ Public Law 116-136, Title III, Division B; Public Law 116-136, Section 4017.

⁸ Statement of Rep. Maxine Waters, Congressional Record, H1850 (Daily Ed. March 27, 2020).

⁹ Committee on Appropriations, Subcommittee on Defense, *Department of Defense Appropriations Bill, 2021* (online at appropriations.house.gov/sites/democrats.appropriations.house.gov/files/FY21%20Defense%20Full%20committee).

received these funds reportedly also received stimulus funding through other coronavirus relief programs.¹⁰

On July 2, 2020, the Select Subcommittee on the Coronavirus Crisis held a hearing to address nationwide PPE and medical supplies shortages. At that hearing, Chairman Clyburn stated:

[T]o ensure this problem gets fixed, we need you to keep Congress apprised of your progress. I am therefore calling on FEMA, HHS, and DOD to provide this Committee with biweekly updates on the projected supply and demand for PPE and testing supplies.¹¹

Two weeks later, on July 14, 2020, the Select Subcommittee wrote to you to reiterate this request and seek documents related to DOD's efforts to procure PPE, testing supplies, and other medical equipment during the coronavirus outbreak.¹² To date, DOD has not produced the requested projections on supply and demand for PPE and testing supplies.

As communities across the United States continue to face critical PPE, medical supplies, and testing shortages due to President Trump's failed response to the coronavirus pandemic, Congress and the American people deserve greater transparency from DOD about its use of supplemental relief funding and how those spending decisions are being made.

For these reasons, please provide the following documents and information by October 16, 2020:

1. For each DPA Title III contract awarded under the funds provided by the CARES Act to date, documents sufficient to show:
 - a. Recipient;
 - b. Contract amount;
 - c. Date of award;
 - d. Goods or services provided;
 - e. Senior contracting officer;
 - f. All relevant assessments or justifications for the contract;

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¹⁰ *Pentagon Used Taxpayer Money Meant for Masks and Swabs to Make Jet Engine Parts and Body Armor*, Washington Post (Sept. 22, 2020) (online at www.washingtonpost.com/business/2020/09/22/covid-funds-pentagon/).

¹¹ Select Subcommittee on the Coronavirus Crisis, *Hearing on The Administration's Efforts to Procure, Stockpile, and Distribute Critical Supplies* (June 2, 2020) (online at <https://coronavirus.house.gov/subcommittee-activity/hearings/administration-s-efforts-procure-stockpile-and-distribute-critical>).

¹² Letter from Chairman James E. Clyburn, Select Subcommittee on the Coronavirus Crisis, et al., to Secretary of Health and Human Services Alex M. Azar II, Acting Secretary of Homeland Security Chad F. Wolf, Secretary of Defense Mark T. Esper, and Secretary of Veterans Affairs Robert Wilkie (July 14, 2020) (online at <https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/2020-07-14.Select%20Cmte.%20to%20Azar-HHS%20Esper-DOD%20Wolf-DHS%20Wilkie-%20VA%20re%20Administration%20PPE%20Contractor%20%281%29.pdf>).

- g. Whether the contract recipient received other CARES Act funding; and
 - h. Whether the contract recipient has relevant past performance with the DOD;
2. All documents related to the decision to use CARES Act funding to stimulate the defense industrial base rather than to support production and distribution of PPE; and
3. All documents related to the award of DPA Title III contracts under the CARES Act.

Furthermore, please provide complete responses to the Select Subcommittee's July 2, 2020, and July 14, 2020, requests by October 9, 2020, including but not limited to projections of supply and demand for PPE and testing supplies.

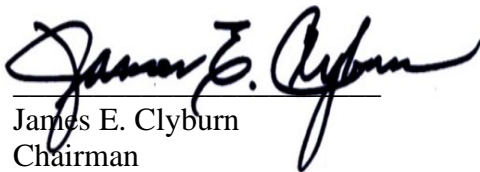
In addition, the Committees respectfully request a staff briefing by October 16, 2020, to address these issues.

The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate "any matter" at "any time" under House Rule X. House Resolution 935 established the Select Subcommittee on the Coronavirus Crisis "to conduct a full and complete investigation" of "issues related to the coronavirus crisis," including "executive branch policies, deliberations, decisions, activities, and internal and external communications related to the coronavirus crisis."

An attachment to this letter provides additional instructions for responding to the Committees' request. Consistent with these instructions, these requests are to be construed as continuing in nature.

If you have any questions regarding this request, please contact Committee staff at (202) 225-4400. Thank you for your attention to this matter.

Sincerely,



James E. Clyburn
Chairman
Select Subcommittee on the Coronavirus
Crisis



Maxine Waters
Chairwoman
Committee on Financial Services



Carolyn B. Maloney
Chairwoman
Committee on Oversight and Reform



Stephen F. Lynch
Chairman
Subcommittee on National Security

The Honorable Mark T. Esper

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Enclosure

cc: The Honorable Steve Scalise, Ranking Member
Select Subcommittee on the Coronavirus Crisis

The Honorable Patrick McHenry, Ranking Member
Committee on Financial Services

The Honorable James R. Comer, Ranking Member
Committee on Oversight and Reform

The Honorable Glenn Grothman, Ranking Member
Subcommittee on National Security

Responding to Oversight Committee Document Requests

1. In complying with this request, produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. Produce all documents that you have a legal right to obtain, that you have a right to copy, or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party.
2. Requested documents, and all documents reasonably related to the requested documents, should not be destroyed, altered, removed, transferred, or otherwise made inaccessible to the Committee.
3. In the event that any entity, organization, or individual denoted in this request is or has been known by any name other than that herein denoted, the request shall be read also to include that alternative identification.
4. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, thumb drive, or secure file transfer) in lieu of paper productions.
5. Documents produced in electronic format should be organized, identified, and indexed electronically.
6. Electronic document productions should be prepared according to the following standards:
 - a. The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - b. Document numbers in the load file should match document Bates numbers and TIF file names.
 - c. If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
 - d. All electronic documents produced to the Committee should include the following fields of metadata specific to each document, and no modifications should be made to the original metadata:

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH, PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE, SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM, CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD,

INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION,
BEGATTACH.

7. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, zip file, box, or folder is produced, each should contain an index describing its contents.
8. Documents produced in response to this request shall be produced together with copies of file labels, dividers, or identifying markers with which they were associated when the request was served.
9. When you produce documents, you should identify the paragraph(s) or request(s) in the Committee's letter to which the documents respond.
10. The fact that any other person or entity also possesses non-identical or identical copies of the same documents shall not be a basis to withhold any information.
11. The pendency of or potential for litigation shall not be a basis to withhold any information.
12. In accordance with 5 U.S.C. § 552(d), the Freedom of Information Act (FOIA) and any statutory exemptions to FOIA shall not be a basis for withholding any information.
13. Pursuant to 5 U.S.C. § 552a(b)(9), the Privacy Act shall not be a basis for withholding information.
14. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
15. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) every privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author, addressee, and any other recipient(s); (e) the relationship of the author and addressee to each other; and (f) the basis for the privilege(s) asserted.
16. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (by date, author, subject, and recipients), and explain the circumstances under which the document ceased to be in your possession, custody, or control.
17. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, produce all documents that would be responsive as if the date or other descriptive detail were correct.

18. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data, or information not produced because it has not been located or discovered by the return date shall be produced immediately upon subsequent location or discovery.
19. All documents shall be Bates-stamped sequentially and produced sequentially.
20. Two sets of each production shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2105 of the Rayburn House Office Building.
21. Upon completion of the production, submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control that reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, data, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, communications, electronic mail (email), contracts, cables, notations of any type of conversation, telephone call, meeting or other inter-office or intra-office communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape, or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, mail, releases, electronic

message including email (desktop or mobile device), text message, instant message, MMS or SMS message, message application, or otherwise.

3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information that might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neutral genders.
4. The term “including” shall be construed broadly to mean “including, but not limited to.”
5. The term “Company” means the named legal entity as well as any units, firms, partnerships, associations, corporations, limited liability companies, trusts, subsidiaries, affiliates, divisions, departments, branches, joint ventures, proprietorships, syndicates, or other legal, business or government entities over which the named legal entity exercises control or in which the named entity has any ownership whatsoever.
6. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual’s complete name and title; (b) the individual’s business or personal address and phone number; and (c) any and all known aliases.
7. The term “related to” or “referring or relating to,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is pertinent to that subject in any manner whatsoever.
8. The term “employee” means any past or present agent, borrowed employee, casual employee, consultant, contractor, de facto employee, detailee, fellow, independent contractor, intern, joint adventurer, loaned employee, officer, part-time employee, permanent employee, provisional employee, special government employee, subcontractor, or any other type of service provider.
9. The term “individual” means all natural persons and all persons or entities acting on their behalf.