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MEMORANDUM

September 1, 2020

To: **Members of the Select Subcommittee on the Coronavirus Crisis**

Fr: **Majority Staff**

Re: **Preliminary Analysis of Paycheck Protection Program Data**

This memorandum provides a preliminary analysis of Paycheck Protection Program (PPP) loan-level data by Select Subcommittee staff as part of the Subcommittee's ongoing investigation of the program. The analysis shows PPP helped millions of small businesses and non-profit organizations stay afloat during the coronavirus crisis, but a lack of oversight and accountability from the Treasury Department and Small Business Administration (SBA) may have led to billions of dollars being diverted to fraud, waste, and abuse, rather than reaching small businesses truly in need.

Congress established PPP in the Coronavirus Aid, Relief, and Economic Security (CARES) Act in March 2020 to provide $349 billion in forgivable loans to eligible small businesses and non-profit organizations to cover payroll, rent, and utility payments to help them survive the coronavirus crisis. In April 2020, Congress expanded the program by an additional $321 billion.

On June 15, 2020, the Select Subcommittee launched an investigation into the Trump Administration's implementation of the PPP, following reports that the program has favored large, well-funded companies over struggling small businesses in underserved communities. In response, Treasury and SBA have produced to the Subcommittee detailed data on all 5.2 million loans approved by SBA as of August 8, 2020, the last day of the program.

Preliminary analysis of this data by Select Subcommittee staff reveals that tens of thousands of loans issued by the Administration could be subject to fraud, waste, or abuse. Yet the Administration appears to lack the appropriate oversight mechanisms to identify and root out these problems. Treasury and SBA have only committed to auditing PPP loans that exceed $2 million—leaving the other 99.4% of loans with little or no oversight.

Specifically, the staff's preliminary analysis identified the following issues that suggest a high risk for fraud, waste, and abuse:

1. **Over $1 Billion in Loans Went to Companies That Received Multiple Loans**. Staff analysis identified 10,856 loans in which the borrower received multiple

PPP loans, for a total of over $1 billion in outstanding loans. Of the 10,856 loans identified, only 65 would be subject to additional scrutiny based on the Administration's stated plans to audit loans over $2 million. PPP rules prohibit companies from receiving multiple loans.

2. **More Than 600 Loans Totaling Over $96 Million Went to Companies Excluded From Doing Business With the Government**. Staff identified 613 PPP loans, amounting to $96.3 million, provided to borrowers that are ineligible to receive PPP funds because they have been debarred or suspended from doing business with the federal government.

3. **More Than 350 Loans Worth $195 Million Went to Government Contractors With Significant Performance and Integrity Issues**. Staff found that SBA approved 353 PPP loans, amounting to approximately $195 million, to government contractors previously flagged by the federal government for performance or integrity issues.

4. **Federal Database Raises Red Flags for $2.98 Billion in Loans to More Than 11,000 PPP Borrowers**. Select Subcommittee staff compared the federal government's System for Award Management (SAM) database against the information companies used to obtain PPP loans to identify red flags, such as mismatched addresses. These flags implicated more than 11,000 borrowers and $2.98 billion in PPP loans.

5. **SBA and Treasury Approved Hundreds of Loan Applications Missing Key Identifying Information About the Borrower.** These PPP loan applications were approved despite incomplete or missing identifying information on the loan applications, including missing names and addresses.

I. CONGRESS CREATED PPP TO HELP THE NEEDIEST SMALL BUSINESSES SURVIVE THE ECONOMIC DOWNTURN CAUSED BY THE PANDEMIC

As part of the CARES Act, Congress established the Paycheck Protection Program to provide forgivable loans to eligible small businesses and non-profit organizations to cover payroll, rent, and utility payments to help them survive the coronavirus crisis. Modeled after SBA's 7(a) lending program, PPP loans are guaranteed by SBA and eligible for forgiveness if used in accordance with SBA guidance.

PPP has helped millions of small businesses, non-profit organizations, and individuals stay afloat during the coronavirus crisis. Without the benefit of these forgivable loans, many small businesses would likely have been unable to cover their operating expenses and been forced to close their doors or lay off their employees. As of August 8, 2020, SBA had approved more 5.2 million PPP loans totaling over $525 billion. Of that amount, community development financial institutions and minority deposit institutions, which are focused on serving small businesses lacking longstanding relationships with large financial institutions, have processed over $16.4 billion in loans.[1]

Although PPP has enabled many small businesses to weather the pandemic, the program would be more effective if Treasury and SBA implemented it consistent with congressional intent. In the CARES Act, Congress specifically encouraged the Administration to issue guidance "to ensure that the processing and disbursement of covered loans prioritizes small business concerns and entities in underserved and rural markets," including businesses owned by veterans, members of the military, socially and economically disadvantaged individuals, and women.[2] On May 8, 2020, SBA's Inspector General reported, "We did not find any evidence that SBA issued guidance to lenders to prioritize the markets indicated in the Act."[3] The Inspector General also found that SBA failed to provide a demographic questionnaire with the PPP loan application, undermining SBA's ability to determine whether lenders appropriately prioritized loans to underserved communities.

Despite the substantial volume of PPP loans approved to date, many small businesses are still hurting, particularly businesses owned by minorities which have been especially hard hit by the pandemic. According to a recent study, more than 40 percent of Black business owners reported they were not working in April, compared to only 17 percent of White small business owners.[4] Almost half of Black and Hispanic-owned small businesses still operating expect to close within six months if conditions do not improve, according to a recent survey released by the Global Strategy Group for Color of Change and UnidosUS.[5] Black and Hispanic-owned businesses also appear to be benefiting less from federal stimulus programs. In the same survey, only 12 percent of Black and Hispanic business owners said they received the full funding they had requested, while 26 percent said they received a fraction of the funding they had requested.[6]

To ensure federal funds remain available for the small businesses that need them most, Treasury and SBA must implement robust oversight mechanisms. The Administration has only

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[1] Small Business Administration, *Paycheck Protection Program (PPP) Report* (Aug. 8, 2020) (online at https://home.treasury.gov/system/files/136/SBA-Paycheck-Protection-Program-Loan-Report-Round2.pdf).

[2] Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, §§ 1102, 1106 (2020).

[3] Small Business Administration, Office of Inspector General, *Flash Report: Small Business Administration's Implementation of the Paycheck Protection Program Requirements* (May 8, 2020) (online at www.sba.gov/document/report-20-14-flash-report-small-business-administrations-implementation-paycheck-protection-program-requirements).

[4] *Coronavirus Is Hitting Black Business Owners Hardest*, New York Times (June 18, 2020) (online at www.nytimes.com/interactive/2020/06/18/us/coronavirus-black-owned-small-business.html).

[5] Global Strategy Group for Color of Change and UnidosUS, *Federal Stimulus Survey Findings* (May 13, 2020) (online at https://theblackresponse.org/wp-content/uploads/2020/05/COC-UnidosUS-Abbreviated-Deck-F05.13.20.pdf).

[6] *Id.*

committed to auditing PPP loans over $2 million —a figure that accounts for only 0.6% of disbursed loans.[7]

II. STAFF ANALYSIS REVEALED SIGNIFICANT POTENTIAL FRAUD, WASTE, AND ABUSE IN THE PROGRAM

A. Over $1 Billion in Loans Went to Companies That Received Multiple Loans

Under SBA's program guidance, "individual business entities cannot apply for more than one loan" under PPP.[8] However, the Select Subcommittee has raised concerns about a vulnerability in SBA's loan processing system that caused many businesses to receive duplicate PPP loans.[9] Staff analysis of loan-level data has heightened these concerns. This analysis identified 10,856 loans in which the same borrower received multiple loans, for a total of over $1 billion in outstanding loans. Of the 10,856 loans identified, only 65 would be subject to additional scrutiny based on the Administration's stated plan to audit only loans over $2 million.

To conduct this analysis, Select Subcommittee staff searched for duplicate entries matches in the "Loan Applicant Name/ Borrower Name" and address fields of SBA's loan-level data. Staff excluded borrowers that applied as franchises to eliminate potential false matches. Staff also limited searches to loans with the status, "Disbursed Current," to exclude from the list loans that had been cancelled or returned. Staff calculated the total value of the loans based on the outstanding balance, rather than the loan approval amount, to accurately reflected the ongoing exposure of taxpayer funds to waste and fraud.

B. More Than 600 Loans Totaling Over $96 Million Went to Companies Excluded From Doing Business With the Government

Staff identified 613 PPP loans, amounting to $96.3 million, provided to borrowers that are ineligible to receive PPP funds because they have been debarred or suspended from contracting with the federal government.

Pursuant to the SBA's eligibility criteria, applicants that are "presently suspended, debarred, proposed for debarment, declared ineligible, [or] voluntarily excluded from participation in this transaction by any Federal department or agency" are disqualified from

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[7] *See Small Business Loans Above $2 Million Will Get Full Audit to Make Sure They're Valid, Mnuchin Says*, CNBC (Apr. 28, 2020) (online at www.cnbc.com/2020/04/28/small-business-loans-above-2-million-will-get-full-audit-to-make-sure-theyre-valid-mnuchin-says.html).

[8] Small Business Administration, *Paycheck Protection Program Loans, Frequently Asked Questions* (May 27, 2020) (online at www.sba.gov/sites/default/files/2020-06/Paycheck-Protection-Program-Frequently-AskedQuestions_05%2027%2020-508.pdf).

[9] Letter from Chairman James E. Clyburn, Select Subcommittee on the Coronavirus Crisis, to Inspector General Hannibal "Mike" Ware, Small Business Administration (June 23, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/2020-06-23-Clyburn%20to-Ware-SBA-OIG-re-Loan-Processing.pdf).

PPP.[10] A federal agency may suspend or debar a contractor for many reasons, including because the contractor has been convicted of or found civilly liable for fraud or fraud-related offenses, violated material terms of a contract, or presented "any other cause of so serious or compelling a nature that it affects the present responsibility of the contractor."[11] Suspension and debarment help protect the federal government's interests and save taxpayer dollars.

Of the 613 suspended or debarred companies that received a PPP loan, at least 12 had been excluded by more than one federal agency. Subcommittee staff discovered that one company received a PPP loan despite having been found in "[v]iolation of the terms of public agreement or transaction so serious as to affect the integrity of an agency program including: a willful failure to perform in accordance with the terms of one or more public agreements or transactions; and, failure to pay a single substantial debt, or a number of outstanding debts, owed to any federal agency or instrumentality." Another company was excluded twice by the same federal agency following convictions for Clean Air Act and/or Clean Water Act violations.[12]

The substantial number of PPP loans provided by SBA to suspended and debarred companies raises doubts about whether the SBA or Treasury consulted the government's list of debarred and suspended contractors before approving loans.

To conduct this analysis, Subcommittee staff compared the publicly available list of debarred and suspended contractors on the federal government's System for Award Management (SAM) database against the disbursed loan-level PPP data produced by Treasury and SBA on August 21, 2020. In addition to the borrower name and address, the staff's analysis leveraged a field in the PPP data that contains the borrower's DUNS number. The DUNS number, created by Dun & Bradstreet, is a unique nine-digit identifier that "identifies a company as being unique from any other . . ." A DUNS number is a widely used method to identify companies and is required to register in SAM. According to Dun & Bradstreet, DUNS numbers "are often referenced by lenders and potential business partners to help predict the reliability and/or financial stability of the company in question."[13]

C. <u>More Than 350 Loans Worth $195 Million Went to Government Contractors With Significant Performance and Integrity Issues</u>

Select Subcommittee staff also compared a federal database of contractor misconduct and prior performance with the disbursed loan-level PPP data. Staff found that SBA approved 353 PPP loans, amounting to approximately $195 million, to borrowers who have been flagged by the federal government for performance or integrity issues.

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[10] Small Business Administration, Paycheck Protection Program Borrower Application Form Revised June 24, 2020 (online at www.sba.gov/sites/default/files/2020-07/PPP-Borrower-Application-Form-508.pdf).

[11] Federal Acquisition Regulation 9.406-2.

[12] System for Award Management, *Data Access: Exclusion Interfaces* (online at https://sam.gov/SAM/pages/public/extracts/dataAccessExclusions.jsf).

[13] Dun & Bradstreet, *D-U-N-S Number* (online at www.dnb.com/duns-number.html) (accessed on Aug. 27, 2020).

The Federal Awardee Performance and Integrity Information System (FAPIIS) database tracks contractor misconduct and prior performance so that federal agencies can evaluate businesses competing for federal contracts and ensure taxpayer funds are used responsibly. Before awarding a contract, federal contracting regulations require the contracting officer to consider "all the information available through FAPIIS," "[w]hen making a responsibility determination."[14]

Of the 353 PPP loans extended to entities listed in the FAPIIS database, the SBA has approved 181 loans amounting to over $90 million to contractors who were terminated for cause.[15] Loans amounting to more than $38 million were made to contractors who have been terminated for default due to the contractor's actual or anticipated failure to perform its contractual obligations. SBA approved loans totaling approximately $6.7 million to contractors who were found "non-responsible" because they lacked a satisfactory performance record or a satisfactory record of integrity and business ethics.[16]

Treasury and SBA guidance does not prohibit companies with poor contract performance from receiving PPP funds, but the significant volume of loans extended to companies with documented performance and integrity issues raises a question of whether nearly $200 million in taxpayer funds have been allocated responsibly.

Subcommittee staff conducted this analysis by matching DUNS numbers or borrower names and addresses from the PPP loan-level data to FAPIIS data.

D. Federal Database Raises Red Flags for $2.98 Billion in Loans to More Than 11,000 PPP Borrowers

Select Subcommittee staff compared public registration data in SAM to the PPP loan-level data, which raised concerns about more than 11,000 PPP loans worth $2.98 billion. These concerns include: (1) key information in PPP loan applications that does not match the information registered in SAM; (2) PPP borrowers' use of a post office box as an address, despite having a physical street address registered in SAM; and (3) PPP loan recipients that, according to their SAM registrations, were created after February 15, 2020, and are therefore not eligible for PPP.

SAM contains data about more than half a million entities that have sought contracts or grants from the federal government. Entities must have an active registration in SAM to do business with the federal government.[17]

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[14] Federal Acquisition Regulation 9.104-6.

[15] Federal Awardee Performance and Integrity Information System, General Definitions (online at www.fapiis.gov/fapiis/definitions.action#D).

[16] Federal Acquisition Regulation 9.104-3; 9.104-6.

[17] System for Aware Management, *Learning Center: Entity Information* (online at https://beta.sam.gov/help/entity-information).

Select Subcommittee staff compared the information companies registered with SAM against the information companies used to obtain PPP loans to identify red flags.

Inconsistent Identifying Information. Providing false information on government forms or on a loan application is illegal.[18] Inconsistent information across government forms raises potential fraud concerns. Staff identified 11,365 instances in which companies provided a different address on their PPP loan application than the one registered in SAM, implicating $2.98 billion in loans. For these loans, the name and DUNS number were the same in both the SAM database and in the PPP loan-level data, but the address information was inconsistent.[19] Although legitimate explanations may exist for differing addresses, the inconsistency raises numerous concerns, including potential corporate identity theft, companies trying to obtain multiple loans, or companies attempting to skirt PPP eligibility requirements.

In one concerning example, seven businesses in widely varied industries all provided the same seemingly nonexistent address in Ohio on their PPP loan applications. A Google Maps search approximates this address as the back of a fast-casual restaurant. According to SAM, each of these varied businesses has an address registered in a different distant location—most of them out of state. This could indicate corporate identity theft. These loans totaled more than $10 million.

Select Subcommittee staff also found examples of PPP borrowers who used residential addresses on their loan applications and had separate business addresses in SAM; PPP borrowers who provided nonexistent addresses on their loan applications despite valid business addresses in SAM; and PPP loan applications that use addresses that appear to house completely separate businesses.

Use of P.O. Box Addresses. In at least 273 instances, companies used a post office box address to apply for a PPP loan even though the same company had registered a physical street address in the SAM database.

These instances include 34 companies that received loans of more than $500,000, some of which purport to employ hundreds of employees. Particularly for larger, more sophisticated entities, it makes little sense to use a post office box on a loan application when they have a physical street address registered with the federal government. This raises the concern that fraudsters could be using falsified business information to obtain a PPP loan.

Potentially Ineligible PPP Entities. To be eligible for a PPP loan, entities had to be in operation on February 15, 2020.[20] Select Subcommittee staff identified 121 PPP borrowers that received PPP loans even though the company started business *after* February 15, 2020, according to their SAM registration.

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[18] 18 USC § 1001 (2006); 18 U.S. Code § 1014 (2010).

[19] Subcommittee staff's analysis captured mismatches in street addresses and zip codes. The analysis excluded other address mismatches, such as mismatches caused by spelling errors in street or city names. The analysis also excluded franchisees from the PPP data and government entities from the SAM data.

[20] Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, § 1102 (2020) (PPP loans only available to applicants that were "in operation on February 15, 2020").

These findings suggest SBA and Treasury may not have used publicly available SAM data to validate information on PPP loan applications.

E. SBA and Treasury Approved Hundreds of Loan Applications Missing Key Information Identifying the Borrower.

As has been widely reported in the media, there are significant concerns about the accuracy of the PPP data released by the SBA and Treasury.[21] PPP, like other federal small business lending programs, relies on lenders to accept applications and issue loans. This means that the lenders are the first line of defense against waste and fraud. Lenders were given a standard PPP application form that they could then adapt to their own processes and systems. The standard form elicits the information one would expect from a loan applicant, including basic identifying information such as the "Business Legal Name" and the "Business Address."[22]

Unfortunately, it appears that more than 800 PPP loan applications were approved despite incomplete or missing identifying information on loan applications. Specifically, the staff's analysis found:

- 287 loans with "Self Employed" or "Independent Contractor" in the Borrower Name field, which amounts to over $4 million dollars in PPP loans;
- 192 loans with "New Application" in the Borrower Name field, which amounts to over $36 million dollars in PPP loans;
- 144 loans with the Borrower Name field left blank, which amounts to over $10 million dollars in PPP loans; and
- 203 loans where either the street address, city, state, or zip code is missing, which amounts to over $10 million dollars in PPP loans.

Typically, the name of the borrower and the borrower's address would be important information on a loan application to confirm a borrower's identity and creditworthiness. These missing data fields raise concerns whether the SBA, and the lenders who approved these loans, have sufficient identifying information on these PPP borrowers.

III. SBA AND TREASURY SHOULD IMPROVE OVERSIGHT AND ACCOUNTABILITY TO ADDRESS POTENTIAL FRAUD, WASTE, AND ABUSE

Congress appropriated hundreds of billions of dollars to support small businesses struggling to survive the economic crisis. The Subcommittee staff's analysis suggests a high risk that PPP loans may have been diverted from small businesses truly in need to ineligible businesses or even to criminals. Treasury Secretary Steven Mnuchin testified that, given the

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[21] *PPP Loan Data Errors Raise Questions About Relief Effectiveness*, Los Angeles Times (July 13, 2020) (online at www.latimes.com/business/story/2020-07-13/ppp-data-errors-coronavirus).

[22] Small Business Administration, Paycheck Protection Program Borrower Application Form (online at www.sba.gov/sites/default/files/2020-04/PPP-Borrower-Application-Form-Fillable.pdf).

commitment to get the stimulus money out "quickly," it was inevitable that they "ran into a lot of issues."[23] This is a false dichotomy: taxpayers should not have to choose between speed and fraud controls.

Despite the evidence of potential fraud in PPP, the Administration has refused to implement strong oversight mechanisms and instead has committed to audit only a tiny percentage of loans.[24] SBA and Treasury should take the following actions to improve oversight of PPP:

A. <u>SBA and Treasury Should Improve Internal Controls for Loan Forgiveness</u>

The Administration stopped issuing PPP loans on August 8, but in coming months will face millions of applications to forgive these loans. SBA and Treasury should work to develop stronger internal controls when reviewing loan forgiveness applications. Specifically, SBA should implement fraud detection protocols to review loan forgiveness applications, including the use of existing federal and commercial databases.

Select Subcommittee staff identified significant indicia of fraud, waste, and abuse simply by comparing PPP data with publicly available databases. The SBA should develop effective controls to identify and escalate potentially suspicious activity such as duplicate borrower addresses or DUNS numbers. SBA should also have in place controls to prevent debarred or suspended government contractors from receiving PPP loans.

B. <u>The Administration Should Improve the Audit Plan for PPP Borrowers</u>

The Administration should exercise additional oversight to ensure PPP funds have only gone to eligible businesses. SBA's and Treasury's current audit plan—which includes audits of loans over $2 million and "other loans as appropriate," to be conducted only after the lender has submitted a loan forgiveness application—is plainly insufficient.[25]

Fraudsters are well-aware of this limited audit plan and the limited program oversight.[26] According to fraud experts, criminals view the PPP as "fertile ground" for scams.[27]

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[23] Committee on Small Business, Hearing on Oversight of the Small Business Administration and Department of Treasury Pandemic Programs (July 17, 2020) (online at https://smallbusiness.house.gov/calendar/eventsingle.aspx?EventID=3347).

[24] *Small Business Loans Above $2 Million Will Get Full Audit to Make Sure They're Valid, Mnuchin Says*, CNBC (Apr. 28, 2020) (announcing that the Administration will audit PPP loans above $2 million, which amount to just 0.6% of all PPP loans) (online at www.cnbc.com/2020/04/28/small-business-loans-above-2-million-will-get-full-audit-to-make-sure-theyre-valid-mnuchin-says.html).

[25] Department of the Treasury, *Press Release: Joint Statement by Secretary Steven T. Mnuchin and Administrator Jovita Carranza on the Review Procedure for Paycheck Protection Program Loans* (Apr. 28, 2020) (online at https://home.treasury.gov/news/press-releases/sm991).

[26] *Spotting $62 Million in Alleged P.P.P. Fraud Was the Easy Part*, New York Times (Aug. 28, 2020) (online at www.nytimes.com/2020/08/28/business/ppp-small-business-fraud-coronavirus.html).

[27] *Paycheck Protection Program Fraud Cases Are on the Rise*, CBS News (Aug. 25, 2020) (online at www.cbsnews.com/news/ppp-paycheck-protetion-program-fraud-cases-rising/).

SBA and Treasury should develop a more robust, risk-based audit plan that identifies and escalates areas of concern, such as the issues identified in this preliminary report. The audit plan should also consider other techniques, such as statistically random sampling. These audits should be accompanied by public outreach to remind borrowers about the criminal penalties for PPP fraud and to encourage whistleblowers to come forward to SBA's Office of Inspector General.

C. Treasury and SBA Must Cooperate With Oversight From Congress, Inspectors General, and Other Watchdogs

The Administration must improve cooperation with oversight bodies to address waste, fraud, and abuse, and meet its requirements under the law. For example, the Pandemic Response Accountability Committee (PRAC) brings together multiple inspectors general to conduct oversight of critical pandemic-related programs. In light of the Treasury Department's acknowledgement that "the PRAC's jurisdiction extends to the entirety of the CARES Act," Treasury should work with the PRAC to address program oversight challenges with PPP and other economic relief efforts.[28] Treasury should also fully cooperate with the Government Accountability Office in order to identify areas for improvement.

Treasury must also cooperate with congressional inquiries, including the Select Subcommittee's ongoing investigation into whether implementation of the PPP has favored large, well-funded companies over struggling small businesses in underserved communities. Treasury should produce outstanding documents requested by the Subcommittee in this inquiry, including communications related to PPP implementation. Treasury's cooperation with the Select Subcommittee's inquiry is vital to ensuring that the Subcommittee can fulfill its oversight responsibilities.

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[28] Rep. Carolyn B. Maloney, *Press Release: Treasury Department Says CARES Act "Clear" – Will Comply with Independent Inspectors General Oversight* (July 6, 2020) (https://oversight.house.gov/news/press-releases/treasury-department-says-cares-act-clear-will-comply-with-independent-inspectors).