



SELECT SUBCOMMITTEE ON THE CORONAVIRUS CRISIS

“**UNNECESSARY COSTS:**  
**HOW THE TRUMP ADMINISTRATION  
ALLOWED THOUSANDS OF  
AVIATION WORKERS TO  
LOSE THEIR JOBS**”

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STAFF ANALYSIS  
OCTOBER 9, 2020



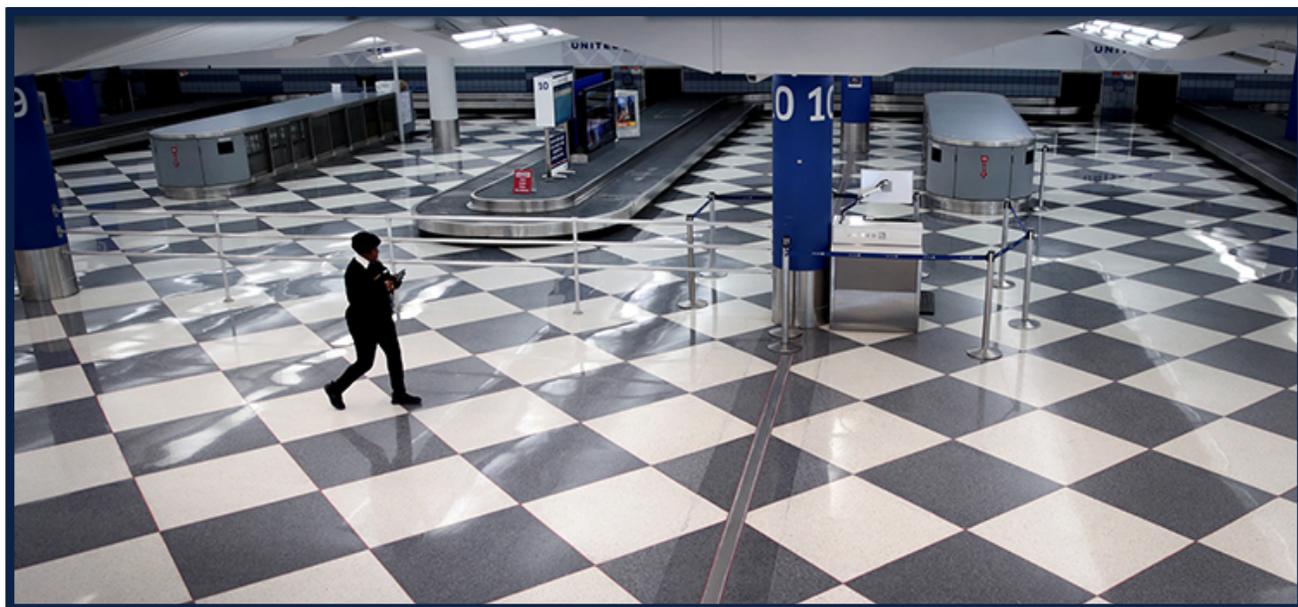
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*This staff report documents how the Department of the Treasury’s implementation of the Payroll Support Program (PSP) caused thousands of workers at aviation contractors to lose their jobs. Documents uncovered during the Select Subcommittee’s investigation show that aviation contractors sought to avoid “unnecessary costs” by terminating employees before executing PSP agreements. This report illustrates how Treasury incentivized aviation contractors to treat their workers as “unnecessary costs” instead of protecting their jobs as Congress intended, and makes recommendations for addressing these problems in the future.*

## I. EXECUTIVE SUMMARY

This staff report provides preliminary findings from the Select Subcommittee on the Coronavirus Crisis’ investigation of the administration of the Payroll Support Program (PSP) by the Department of the Treasury (Treasury). Congress created this relief program in the Coronavirus Aid, Relief, and Emergency Security (CARES) Act to “preserve aviation jobs” by providing payroll assistance to companies in exchange for keeping their workers on the payroll.<sup>1</sup>

On July 29, 2020, the Select Subcommittee, the Committee on Transportation and Infrastructure, and the Committee on Financial Services launched an investigation into the disbursement of PSP funds to aviation contractors. The Committees sent letters to Treasury and four aviation contractors that were receiving hundreds of millions of dollars in payroll assistance despite reports that they had laid off thousands of employees: Gate Gourmet Inc., Swissport USA Inc., Flying Food Fare Inc., and G2 Secure Staff LLC.<sup>2</sup>

Congress intended the PSP to provide eligible aviation companies with six months of financial assistance to cover the paychecks of their pre-pandemic workforce in exchange for maintaining that workforce for six months, ending on September 30, 2020. After reviewing tens of thousands of pages of documents and conducting briefings with Treasury and each of the four contractors, Select Subcommittee staff finds that the Trump Administration’s implementation of the PSP significantly weakened the Program’s impact on job preservation. Contrary to congressional intent, Treasury permitted aviation contractors to lay off thousands of workers and receive full payroll support calculated based on the companies’ pre-pandemic workforce.

The investigation identified four key decisions by Treasury that undermined the job retention purpose of the Program:

1. **Treasury’s delays in disbursing PSP funds resulted in more than 16,500 layoffs and furloughs at 15 companies—more than 15 percent of the aviation contractor workforce.** Treasury disregarded the CARES Act mandate to begin distributing payroll assistance within ten days of the law’s enactment, and instead took months to execute the necessary agreements. These delays led at least 15 different aviation contractors to lay off or furlough at least 16,655 employees before the agreements took effect, more than 15% of the existing aviation contractor workforce.
2. **Treasury permitted layoffs up to the execution date of a PSP agreement, leading companies to “urgently” fire employees before signing agreements.** Treasury knew companies were conducting layoffs while their PSP applications were pending but failed to object or require that employees be rehired. For example, internal emails show Swissport “urgently” sought to “furlough or terminate” staff before signing the PSP agreement to avoid “unnecessary costs

<sup>1</sup> Coronavirus Aid, Relief, and Emergency Security (CARES) Act, Pub. L. No. 116-136, § 4112(a) (2020).

<sup>2</sup> Each of these contractors produced documents in response to the Select Subcommittee’s requests. Gate Gourmet failed to complete its document production by the date of this report, despite having more than two months to do so.

once the ink is on the paper.” Treasury’s decision to allow layoffs while applications were pending, in conjunction with the delay in executing agreements, meant that many companies paused layoffs for far shorter than the six months Congress intended. In fact, five contractors received PSP funds in September, meaning that they agreed to pause layoffs for less than one month.

3. **Treasury permitted companies to spend PSP funds without a deadline—leading many companies to stockpile the money rather than rehire laid-off workers.** Treasury allowed companies to spend PSP funds without a time limit, thereby removing any incentive to use these funds to rehire workers. For example, Flying Food Fare and Swissport conducted significant layoffs before receiving hundreds of millions of dollars in payroll assistance, but neither company rehired a single worker based on receipt of those taxpayer dollars. Instead, they are slowly spending those funds to pay a reduced workforce.
4. **Treasury failed to reduce the amount of financial assistance awarded despite mass layoffs, awarding companies payroll support for jobs that no longer existed.** Treasury calculated the amount of assistance awarded to each company based on 2019 payroll figures. Although companies alerted Treasury to significant layoffs prior to finalizing PSP agreements, Treasury failed to lower the amount awarded based on the reduced headcount. As a result, companies received payroll assistance for jobs they already eliminated.

To address these problems and prevent the further loss of aviation jobs, this report also makes several recommendations, including (1) passing a new round of payroll support to preserve aviation jobs as part of a broader, comprehensive response to the coronavirus pandemic; (2) amending the CARES Act to prohibit layoffs by aviation contractors until all PSP funds are expended; and (3) ensuring that Treasury expedites the distribution of any additional payroll support funding.

## II. BACKGROUND

The coronavirus pandemic devastated the national economy and hit the aviation industry particularly hard. In March 2020, air passenger volume plummeted nearly 53% below 2019 rates.<sup>3</sup> Reeling from the rapid drop in demand, companies across the industry “scrambled to cancel flights” and “lay off workers.”<sup>4</sup>

To provide urgent relief to workers in the aviation industry, Congress established the Payroll Support Program as part of the CARES Act, which was enacted on March 27, 2020. Congress structured the Program as support for workers to keep their jobs, not as a corporate bailout. The CARES Act authorizes Treasury to provide up to \$32 billion to “preserve aviation jobs and compensate air carrier industry workers,” including \$3 billion reserved for aviation

<sup>3</sup> *Air Passenger Market Analysis*, IATA (Mar. 2020) (online at [www.iata.org/en/iata-repository/publications/economic-reports/air-passenger-monthly-analysis---mar-2020/](http://www.iata.org/en/iata-repository/publications/economic-reports/air-passenger-monthly-analysis---mar-2020/)).

<sup>4</sup> *Id.*; *Airlines Cancel Flights and Lay Off Workers as Stocks Plummet*, New York Times (Mar. 12, 2020) (online at [www.nytimes.com/2020/03/12/business/economy/coronavirus-airlines-trump-europe.html](http://www.nytimes.com/2020/03/12/business/economy/coronavirus-airlines-trump-europe.html)).

contractors.<sup>5</sup> The Act mandates that PSP funds must be used exclusively to pay employee wages, salaries, and benefits.<sup>6</sup> Recognizing the dire circumstances of aviation workers, the Act requires the Treasury Secretary to make initial payments “[n]ot later than 10 days after the date of enactment of this Act.”<sup>7</sup>

Congress intended to keep aviation workers connected to their jobs for at least the six months from April 2020 through September 2020.<sup>8</sup> The maximum amount of assistance available under the Payroll Support Program is calculated based on payroll costs during the six-month period from April 2019 through September 2019.<sup>9</sup> To receive this payroll assistance, companies must agree to “refrain from conducting involuntary furloughs or reducing pay rates and benefits until September 30, 2020.”<sup>10</sup> In other words, companies could receive six months of payroll assistance in exchange for a commitment to maintain their workforce for six months.

To implement the law effectively, Congress gave Treasury broad authority to specify the “form” of financial relief and to impose “such terms and conditions ... as the Secretary determines appropriate.”<sup>11</sup>

### **III. TREASURY’S PSP IMPLEMENTATION LED TO THOUSANDS OF AVIATION WORKERS UNNECESSARILY LOSING THEIR JOBS**

Treasury’s implementation of the Payroll Support Program undermined the program’s job preservation purpose. Treasury permitted aviation contractors to lay off tens of thousands of workers through the worst months of the pandemic and still receive full payroll support calculated based on pre-pandemic workforce numbers—the same amount they would have received if they had not laid off a single worker. Treasury also removed any incentive for companies to use PSP funds to rehire or recall any impacted workers. Because of these decisions, tens of thousands of aviation workers remain out of work, despite billions of dollars in taxpayer assistance intended to support their jobs.

The Select Subcommittee’s investigation identified four key decisions by Treasury that undermined the job retention purpose of the Program:

#### **A. Treasury’s Delays in Disbursing PSP Funds Resulted in More than 16,500 Layoffs and Furloughs at 15 Companies—More Than 15 Percent of the Aviation Contractor Workforce**

Although the CARES Act required Treasury to disburse initial PSP funds by April 6, 2020, Treasury did not start making payments until May 15, 2020, with some contractors not

<sup>5</sup> CARES Act, Pub. L. No. 116-136, § 4112(a) (2020).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* § 4113(b)(2).

<sup>8</sup> *Id.* § 4114(a)(1).

<sup>9</sup> *Id.* § 4113(a)(3).

<sup>10</sup> *Id.* § 4114(a)(1).

<sup>11</sup> *Id.* § 4114(b)(1)(A).

securing final PSP agreements until September 2020. These delays are particularly concerning because Treasury’s own data showed that aviation contractors were hemorrhaging workers and in need of immediate assistance. Aviation contractors reported conducting 57,833 layoffs and furloughs prior to applying for PSP assistance—more than 17 times the number reported by passenger air carriers.<sup>12</sup> Aviation contractors also conducted at least 16,655 layoffs between the date PSP applications opened and when the companies finalized their agreements with Treasury, as shown in Appendix 1.

Category	Sum of Average 2019 Employees	Sum of Involuntary Reductions (between 3/1/20 and the date of application submission) <sup>†</sup>
PASSENGER	469,297	3,322
CARGO	9,178	60
CONTRACTOR	166,886	57,833
HYBRID	1,804	289

Source: Department of the Treasury, Chart Showing Involuntary Reductions (Produced to Select Subcommittee Sept. 21, 2020).

The CARES Act directed Treasury to “make initial payments to air carriers and contractors” “not later than 10 days after the date of enactment of this Act,” or April 6, 2020.<sup>13</sup> Contractors told the Select Subcommittee that they relied on this statutory language and expected to receive at least some initial funds within 10 days.<sup>14</sup> Unfortunately, no contractor received PSP funds by that date. Many contractors applied on April 2, 2020, the day Treasury opened the application process, but the earliest contractor PSP agreement was executed on May 15, 2020.<sup>15</sup>

Treasury’s process was slow and protracted. Treasury received 1,060 applications, including 476 from aviation contractors.<sup>16</sup> Select Subcommittee staff found that contractor applicants typically received an initial contact from Treasury in mid-April, a preliminary term sheet in mid-May, and a draft promissory note days or weeks later. These documents frequently required revisions, and sometimes multiple rounds. Ultimately, Swissport waited 99 days before its PSP agreement was finalized, Gate Gourmet waited 78 days, Flying Food Fare waited 74 days, and G2 waited 68 days. See Appendix 2.

Applicants expressed frustration about the delays. After expecting funding on May 29 and learning of another delay, a Flying Foods executive wrote to another company executive:

<sup>12</sup> Department of the Treasury, Chart Showing Involuntary Reductions (Produced to Select Subcommittee Sept. 21, 2020) (online at [https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/Treasury%20Chart\\_one%20page.pdf](https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/Treasury%20Chart_one%20page.pdf)).

<sup>13</sup> CARES Act, Pub. L. No. 116-136, § 4113(b)(2) (2020).

<sup>14</sup> See, e.g., Briefing by Mark Noffke, Chief Financial Officer & Executive Vice President, Flying Food Fare, to Staff, Select Subcommittee on the Coronavirus Crisis (Aug. 18, 2020).

<sup>15</sup> Department of the Treasury, *Payroll Support Program Payments* (online at <https://home.treasury.gov/policy-issues/cares/preserving-jobs-for-american-industry/payroll-support-program-payments>) (last accessed Oct. 3, 2020).

<sup>16</sup> Briefing by Gary Grippo, Deputy Assistant Secretary for Public Finance, Department of the Treasury, to Staff, Select Subcommittee on the Coronavirus Crisis (Aug. 26, 2020).

“Unbelievable. When am I allowed to work like this?”<sup>17</sup> The final agreement with Flying Foods would not be finalized for another 17 days.

Many delays were due to Treasury’s decision to withhold payroll support payments until a company executed all loan documents, including the promissory note. The CARES Act states that “in the sole determination of the Secretary,” Treasury may receive collateral as “appropriate compensation to the Federal Government for the provision of the financial assistance.”<sup>18</sup> To secure this collateral, Treasury required each contractor that received more than \$37.5 million in PSP funds to sign a promissory note.<sup>19</sup> Nothing in the CARES Act required Treasury to wait until the promissory note was finalized before issuing an initial payment. Treasury could have issued initial payments under the \$37.5 million threshold and conditioned any amount above \$37.5 million on the execution of the promissory note, but Treasury chose not to do so.<sup>20</sup>

The first contractor agreement that included a note was executed on June 9, 2020—almost a month after Treasury began finalizing other contractor agreements that did not require promissory notes.<sup>21</sup> For some contractors, finalizing the terms of the promissory note took months. For example, Swissport received its draft promissory note on May 28.<sup>22</sup> The company exchanged questions and redlines with Treasury’s representatives for more than a month and finally executed an agreement on July 5.<sup>23</sup> Swissport also informed the Select Subcommittee that the promissory note was holding up the agreement between its subsidiary, Hallmark Aviation Services L.P, and Treasury;<sup>24</sup> that agreement was not finalized until September 17, 2020.<sup>25</sup>

<sup>17</sup> Email from Wolfgang Hoenle, Chief Financial Officer, Flying Food Group to Mark Noffke, Chief Financial Officer & Executive Vice President, Flying Food Group (May 29, 2020) (online at [https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/FFF-0004430\\_Wolfgang%20Hoenle%20email\\_Redacted.pdf](https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/FFF-0004430_Wolfgang%20Hoenle%20email_Redacted.pdf)).

<sup>18</sup> CARES Act, Pub. L. No. 116-136, § 4117 (2020).

<sup>19</sup> Department of the Treasury, *Payroll Support Program Payments* (online at <https://home.treasury.gov/policy-issues/cares/preserving-jobs-for-american-industry/payroll-support-program-payments>) (last accessed Oct. 3, 2020).

<sup>20</sup> This approach was possible under Treasury’s existing procedures. Treasury confirmed that it gave applicants eligible for awards above the threshold of \$37.5 million the choice to accept an award of \$37.5 million and not execute a promissory note. At least one contractor, AGI-CFI Holdings, took advantage of that option. See Department of the Treasury, *Payroll Support Program Payments* (online at <https://home.treasury.gov/policy-issues/cares/preserving-jobs-for-american-industry/payroll-support-program-payments>) (last accessed Oct. 3, 2020) (identifying that AGI-CFI Holdings received an award for \$37.5 million).

<sup>21</sup> *Id.*

<sup>22</sup> Swissport USA, Inc.’s Written Responses to the Questions Received from the Select Subcommittee on the Coronavirus Crisis, the Committee on Financial Services, and the Committee on Transportation & Infrastructure (Aug. 19, 2020).

<sup>23</sup> *Id.*

<sup>24</sup> Briefing by Michael Hargett, Chief Financial Officer, Swissport, to Staff, Select Subcommittee on the Coronavirus Crisis (Aug. 19, 2020).

<sup>25</sup> Department of the Treasury, *Payroll Support Program Payments* (online at <https://home.treasury.gov/policy-issues/cares/preserving-jobs-for-american-industry/payroll-support-program-payments>) (last accessed Oct. 3, 2020).

The consequences of these delays were profound. PSP applications languished at Treasury during the peak of the crisis for the aviation industry: in April, May, and June air passenger volume was down 95%, 90%, and 81%, respectively, compared to 2019.<sup>26</sup> Without payroll assistance, many contractors furloughed and laid off workers, even though their PSP applications were pending.

Flying Food Fare laid off 1,516 employees and furloughed 1,521 employees between the time it submitted its application and when it executed its agreement with Treasury.<sup>27</sup> Swissport laid off and involuntarily furloughed 3,873 workers between April 3 and July 10, when it executed its agreement.<sup>28</sup> Gate Gourmet laid off 5,040 employees between April and the execution of its agreement in June.<sup>29</sup> G2 was the only company examined by the Select Subcommittee that conducted no layoffs or involuntary furloughs while its application was pending. As shown in Appendix 2, the Select Subcommittee’s investigation revealed at least 15 aviation contractors that laid off workers between April 2, when Treasury opened the application process, and the execution of their payroll assistance agreements. Had Treasury met the deadline set by Congress, many of these jobs would have been preserved.

**B. Treasury Permitted Layoffs Up to the Execution Date of a PSP Agreement—Leading Companies to “Urgently” Fire Employees Before Signing Agreements**

The CARES Act specifies that recipients of PSP funds cannot conduct involuntary terminations “until September 30, 2020.”<sup>30</sup> The Act is silent, however, on when the prohibition commences, leaving the decision to Treasury’s discretion. Treasury decided that applicants could conduct layoffs and furloughs up until the date their PSP agreement was executed, with no rehiring required. This decision had the perverse effect of incentivizing companies to lay off or furlough workers before executing the agreement. It also shortened the length of time that companies were prohibited from conducting layoffs, with at least five contractors agreeing to pause layoffs for less than one month.<sup>31</sup>

Treasury communicated this decision through a form PSP agreement on its website, which stated that PSP recipients could not conduct involuntary terminations “between the date of

<sup>26</sup> Airlines for America, *Tracking the Impacts of COVID-19* (updated Sept. 27, 2020) (online at [www.airlines.org/wp-content/uploads/2020/03/A4A-COVID-Impact-Updates-104.pdf](http://www.airlines.org/wp-content/uploads/2020/03/A4A-COVID-Impact-Updates-104.pdf)).

<sup>27</sup> Letter from Michel R. Sklaire, Greenberg Traurig LLP, Counsel to Flying Food Fare, to Chairman James E. Clyburn, Select Subcommittee on the Coronavirus Crisis (Aug. 31, 2020).

<sup>28</sup> Swissport USA, Inc., Chart Summarizing Furloughs and Layoffs (Produced to Select Subcommittee Aug. 19, 2020).

<sup>29</sup> Gate Gourmet’s Written Responses for the Select Subcommittee on the Coronavirus Crisis, Appendix 1 (Aug. 12, 2020).

<sup>30</sup> CARES Act, Pub. L. No. 116-136, § 4114(a)(1) (2020).

<sup>31</sup> Department of the Treasury, *Payroll Support Program Payments* (online at <https://home.treasury.gov/policy-issues/cares/preserving-jobs-for-american-industry/payroll-support-program-payments>) (last accessed Oct. 3, 2020) (showing that five contractors executed their agreements in September 2020).

this Agreement and September 30, 2020.”<sup>32</sup> When Gate Gourmet sought clarification on the layoff prohibition and whether the company was required to rehire terminated workers, Treasury responded that the PSP agreement “will be the lens behind which we view the world.”<sup>33</sup>

Treasury was aware that applicants were conducting layoffs while their applications were pending. For example, Swissport’s PSP applications informed Treasury that the company had conducted significant layoffs and furloughs after March 1, 2020, and that “[s]ignificantly more involuntary furloughs are pending.”<sup>34</sup>

EMPLOYMENT LEVELS		
Identify the annual average number of U.S. employees for the applicant in 2019, and the number of U.S. employees the applicant has involuntarily furloughed, laid off, or subjected to other involuntary employee reductions after March 1, 2020.		
Average Number of Employees 2019 (Apr-Sep)	16,600	13,935 ex Hallmark
Involuntary Reductions After March 1, 2020*	5,238	3,199 ex Hallmark
*Through March 30; additional involuntary furloughs on hold pending Title B review; does not include layoffs or positions eliminated due to lost business and similar drivers.		
NB: Significantly more involuntary furloughs are pending at Swissport that would reduce active staffing from pre-pandemic levels by ~75% in ground handling and ~60% in into-plane fueling.		

Source: Swissport North America Holding, Inc., Payroll Support Application Form for Air Carriers and Contractors (Apr. 3, 2020).

Flying Food Fare similarly informed Treasury that it anticipated conducting additional layoffs and furloughs. During the company’s first meeting with Treasury, Flying Food Fare explained that it had already terminated 3,000 employees and furloughed 1,700 more and would “terminate the furlough employees and 65% of the salary employees” if it did not receive PSP funding or other financing.<sup>35</sup> In the weeks prior to executing its agreement, Flying Food Fare informed Treasury that “[b]ecause funds were not received when anticipated, additional cuts have been made to staff since the application o[f] April 2.”<sup>36</sup>

Some contractors presumed—incorrectly—that Treasury would require them to rehire workers under the PSP. In its April 3, 2020 submission, Gate Gourmet told Treasury that the

<sup>32</sup> Department of the Treasury, *Payroll Support Program Agreement* (online at <https://home.treasury.gov/system/files/136/Form-of-PSP-Agreement.pdf>) (last accessed Oct. 3, 2020).

<sup>33</sup> Gate Gourmet’s Written Responses for the Select Subcommittee on the Coronavirus Crisis (Aug. 12, 2020).

<sup>34</sup> Swissport North America Holding, Inc., *Payroll Support Application Form for Air Carriers and Contractors* (signed on Apr. 3, 2020) (online at [https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/SP-CONG0003907\\_Redacted.pdf](https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/SP-CONG0003907_Redacted.pdf)).

<sup>35</sup> Flying Food Fare, CARES Act: Initial Discussion Topics / Requests (Apr. 21, 2020) (online at [https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/FFF-0000173-175\\_Redacted.pdf](https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/FFF-0000173-175_Redacted.pdf)). In this document, Flying Food Fare provides bullet-point responses to agenda topics provided by Treasury for an upcoming call. The company emailed the document to Treasury in advance of the call.

<sup>36</sup> Email from Lee Ann Anderson, Greenberg Traurig LLP, Counsel for Flying Food Fare, to Benjamin H. Weiner, Sullivan & Cromwell LLP, Counsel for Treasury (May 20, 2020) (online at [https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/FFF-0002893\\_Redacted\\_0.pdf](https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/FFF-0002893_Redacted_0.pdf)).

company was “committed to restoring our workforce to the extent of the Awardable Amount,” and noted that the company would “need the full amount of financial assistance requested in this Application in order to restore our workforce to pre-COVID-19 levels.”<sup>37</sup> It requested that, if the company received an adjusted amount, Treasury “correspondingly adjust the employment level gategroup is required to maintain.”<sup>38</sup> However, Treasury never required the reinstatement of any workers. Gate Gourmet was ultimately the only one of the four contractors examined by the Select Subcommittee that recalled any workers upon receiving PSP funds, although it did not come anywhere close to “restoring” the company’s “workforce to pre-COVID levels.” Gate Gourmet recalled 900 workers,<sup>39</sup> but the company’s headcount in July 2020 (the month after completing its agreement) was 3,954, well less than half of the 9,541 workers the company employed in February 2020.<sup>40</sup>

Treasury’s decision to permit layoffs until the PSP agreement’s execution date and not to require the rehiring of laid-off workers incentivized companies to lay off or furlough workers before executing the agreement. Internal Swissport communications show that in the weeks prior to executing the company’s PSP agreement in June 2020, the company “urgently” sought to “furlough or terminate” staff before signing the PSP agreement to avoid “unnecessary costs once the ink is on the paper.”<sup>41</sup>

**From:** Kohl, Peter  
**Sent:** Donnerstag, 18. Juni 2020 12:14  
**To:** Morch, Andrew; Schneider, Michael  
**Subject:** FW: Employment Status  
**Attachments:** AllcompaniesAFAPASAJ061720.xlsx

Hi Andrew, Mike,

We still have 78 staff in Cargo on active status which have not received a paycheck since early June... see attached list (Mike: Company 7). **We need to urgently verify the status of these staff and either furlough or terminate them** as required, unless they are active, meant to be active, and there are good reasons for them not having received a paycheck (i.e., new hires, etc.).

Kindly reach out to all stations concerned and report back on the status of all highlighted employees. **CARES is now imminent, and we need to ensure we don't incur unnecessary costs once the ink is on the paper.**

Please revert asap.

Thanks & Brgds,  
 Peter

<sup>37</sup> Letter from President Joshua Janow, gategroup US, and Chief Financial Officer Jens Kuhlen, gategroup North America, to Payroll Support Applications, Department of the Treasury (Apr. 3, 2020) (online at [https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/GG463\\_Redacted.pdf](https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/GG463_Redacted.pdf)).

<sup>38</sup> *Id.*

<sup>39</sup> Briefing by President Joshua Janow, Gate Gourmet Inc., to Staff, Select Subcommittee on the Coronavirus Crisis (Aug. 12, 2020).

<sup>40</sup> Gate Gourmet’s Written Responses for the Select Subcommittee on the Coronavirus Crisis (Aug. 12, 2020).

<sup>41</sup> Email from Peter Kohl, COO Cargo, Swissport USA, Inc., to Andrew Morch, Vice President Cargo Services West Region, Swissport USA, and Michael Schneider, Vice President, Cargo, USA East, Swissport USA (June 18, 2020) (online at [https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/SP-CONG0003864\\_Redacted.pdf](https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/SP-CONG0003864_Redacted.pdf)).

*Source: Email from Peter Kohl, COO Cargo, Swissport USA, Inc., to Andrew Morch, Vice President Cargo Services West Region, Swissport USA, and Michael Schneider, Vice President, Cargo, USA East, Swissport USA (June 18, 2020).*

Treasury’s decision had another consequence: shortening the length of time during which companies were prohibited from laying off their employees. Congress intended to give companies six months of payroll support in exchange for a commitment to forgo layoffs and furloughs for six months. The CARES Act specified that PSP recipients could not conduct involuntary layoffs or furloughs or reduce pay rates or benefits “until September 30, 2020”—approximately six months after companies should have received initial PSP payments.<sup>42</sup> Due to Treasury’s decision to delay PSP agreements but permit layoffs until the agreements’ execution, some contractors were only restricted from laying off workers for a matter of weeks, rather than the six months contemplated in the statute.

**C. Treasury Permitted Companies to Spend PSP Funds Without A Deadline – Leading Many Companies to Stockpile the Money Rather Than Rehire Laid-Off Workers**

The CARES Act specifies that recipients cannot conduct furloughs or layoffs until September 30, 2020, but the law does not address whether recipients must also expend the PSP money by that date, leaving that decision to Treasury’s discretion. Unfortunately, Treasury chose to place no restrictions on when the money must be spent. Without a deadline to spend the funds, companies had little or no incentive to rehire previously laid off or furloughed workers. Many chose not to rehire workers and instead to use the funds to cover payroll for the remaining workers over a period of many months.

In frequently-asked questions posted online on April 3, 2020, Treasury stated it was considering the deadline for spending PSP funds and wrote, “Additional guidance will be provided soon.”<sup>43</sup> On April 20, Treasury wrote, “There is no deadline for a Recipient to use Payroll Support.”<sup>44</sup> Treasury told Select Subcommittee staff that this interpretation was its effort to implement the CARES Act as written, despite the Act’s silence on the question.<sup>45</sup>

During a staff briefing, Treasury confirmed the Department’s understanding that the Program was intended to encourage companies to keep more workers employed than business would otherwise demand.<sup>46</sup> Yet by permitting the expenditure of PSP funds without a deadline, Treasury allowed companies to reduce their workforce to the minimum necessary to meet diminished business demands and use the payroll assistance well into the future. Unsurprisingly, some contractors, including Flying Food Fare and Swissport, plan to do exactly that.

<sup>42</sup> CARES Act, Pub. L. No. 116-136, § 4114(a)(1) (2020).

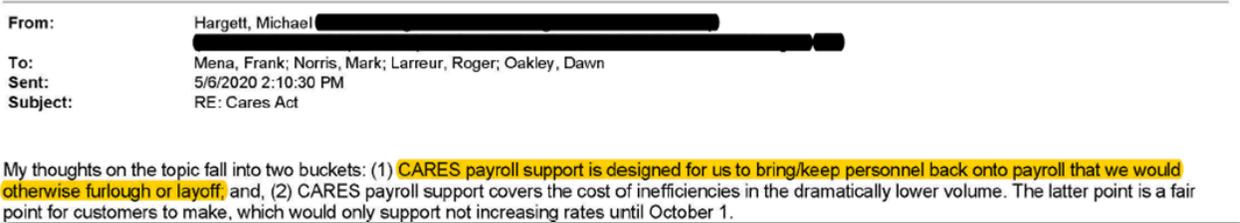
<sup>43</sup> Department of the Treasury, *Q&A: Payroll Support to Air Carriers and Contractors* (Apr. 3, 2020) (online at <https://home.treasury.gov/system/files/136/Airline-Payroll-Support-QA-4-3-20.pdf>).

<sup>44</sup> Department of the Treasury, *Q&A: Payroll Support to Air Carriers and Contractors* (Apr. 20, 2020) (online at <https://home.treasury.gov/system/files/136/PSP-FAQs-4-20-20.pdf>).

<sup>45</sup> Briefing by Gary Grippo, Deputy Assistant Secretary for Public Finance, Department of the Treasury, to Staff, Select Subcommittee on the Coronavirus Crisis (Aug. 26, 2020).

<sup>46</sup> *Id.*

During briefings with the Select Subcommittee, Flying Food Fare confirmed that the company “did not recall any workers based on the fact that PSP hit its bank accounts.”<sup>47</sup> The Chief Financial Officer of Swissport stated that the company was only willing to recall or rehire employees “based on the operational needs of the company,”<sup>48</sup> despite his own recognition in internal communications that “CARES payroll support is designed for us to bring/keep personnel back onto payroll that we would otherwise furlough or layoff.”<sup>49</sup>



Source: Email from Michael Hargett, Chief Financial Officer, Swissport USA, to Swissport Personnel (May 6, 2020).

**D. Treasury Refused to Reduce the Amount of Financial Assistance Awarded Despite Mass Layoffs, Awarding Companies Payroll Support for Jobs that No Longer Existed.**

The goal of the PSP was to provide payroll support to help companies maintain pre-pandemic employment levels through September 30, 2020. However, faced with companies that laid off thousands of workers before applying for payroll support and thousands more while their applications were pending, Treasury chose not to reduce the amount awarded to companies—even though many of the company’s workers were no longer employed and would not benefit. As a result, companies received an identical amount of payroll assistance regardless of the number of employees they had laid off since the beginning of the pandemic. Such an outcome is contrary to congressional intent and wastes taxpayer dollars by giving companies funds to support employees they already laid off.

Treasury has argued that it did not have the discretion to vary the payroll support awards in this way, but that position is not consistent with the CARES Act. The Act requires that Treasury base the amount of payroll assistance on a company’s payroll costs between April and September 2019, as a proxy for expected payroll costs between April and September 2020.<sup>50</sup> It also granted Treasury the discretion to determine the “appropriate” “terms and conditions” for

<sup>47</sup> Briefing by Mark Noffke, Chief Financial Officer, Flying Food Fare, Inc., to Staff, Select Subcommittee on the Coronavirus Crisis (Aug. 18, 2020).

<sup>48</sup> Briefing by Michael Hargett, Chief Financial Officer, Swissport USA, to Staff, Select Subcommittee on the Coronavirus Crisis (Aug. 19, 2020).

<sup>49</sup> Email from Michael Hargett, Chief Financial Officer, Swissport USA, to Swissport Staff (May 6, 2020) (online at [https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/SP-CONG0004203\\_final\\_Redacted.pdf](https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/SP-CONG0004203_final_Redacted.pdf)).

<sup>50</sup> CARES Act, Pub. L. No. 116-136, § 4113(a)(3) (2020).

the financial assistance.<sup>51</sup> Treasury has taken the position that it lacked the discretion to “change the formula” provided in the CARES Act,<sup>52</sup> but this ignores the Department’s authority to set appropriate terms and conditions. Moreover, statutes must be interpreted holistically.<sup>53</sup> Looking at the Payroll Support Program as a whole, it would make little sense to conclude that Congress sought to give companies the same amount of payroll assistance regardless of how many layoffs they conducted and the size of the current workforce.

#### IV. RECOMMENDATIONS

Congress appropriated billions of dollars to keep aviation workers employed at least through September 30, 2020. Unfortunately, Treasury’s poor implementation of the Payroll Support Program meant that thousands of workers lost their jobs well before that date—even though their former employers received taxpayer assistance to cover the cost of their paychecks. Congress and Treasury should consider several actions to ensure that aviation industry payroll support funds are deployed responsibly. The following recommendations are specifically focused on payroll support to aviation contractors.

##### A. **Congress Should Pass A Second Round of Payroll Support with Additional Protections to Preserve Aviation Jobs as Part of a Broader Response to the Coronavirus Crisis**

The aviation industry is among the hardest hit by the pandemic-induced economic crisis and has recovered only marginally since March. Tens of thousands of aviation workers have already lost their jobs through no fault of their own, and, without a national plan to contain the virus, many more workers stand to lose their jobs. These workers deserve support so they and their families can survive until people are willing to travel again and the industry is able to get back on its feet. Congress should pass additional payroll support for contractors and the rest of the aviation industry as part of a broader, comprehensive response to the coronavirus pandemic, such as the updated Heroes Act, which House Democrats passed on October 1, 2020.<sup>54</sup>

In addition to other critical measures to protect American workers, families, and communities, the updated Heroes Act provides supplemental payroll support to the aviation industry, and includes additional protections for aviation contractor workers by: (1) prohibiting involuntary reductions until the contractor exhausts the payroll assistance; (2) prohibiting involuntary reductions after the passage of the legislation (regardless of how long it takes to execute a final agreement); and (3) clarifying that Treasury may claw back PSP funds, including

<sup>51</sup> *Id.*; see also *id.* § 4113(b)(1)(A).

<sup>52</sup> Letter from Frederick W. Vaughn, Principal Deputy Assistant Secretary for Legislative Affairs, Department of the Treasury, to Chairman James E. Clyburn, Select Subcommittee on the Coronavirus Crisis (Aug. 12, 2020).

<sup>53</sup> See, e.g., *United Savings Ass’n v. Timbers of Inwood Forest Associates*, 484 U.S. 365, 371 (1988) (“Statutory construction, however, is a holistic endeavor. A provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme—because the same terminology is used elsewhere in a context that makes its meaning clear ... or because only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law.”).

<sup>54</sup> H.R. 8406.

those funds that were based on jobs that had already been terminated and those funds that remain substantially unused because of significant payroll reductions.

**B. Congress Should Amend the CARES Act to Prohibit Involuntary Layoffs and Furloughs as Long as Contractors Have PSP Funds.**

Congress should amend the CARES Act to make the statutory prohibition on involuntary furloughs and layoffs persist until a contractor expends all of its payroll support funds awarded under the Act. This would prevent contractors like Gate Gourmet, Flying Food Fare, and Swissport from conducting layoffs while they had taxpayer dollars left to cover the paychecks of their employees.

The updated Heroes Act would amend the CARES Act to extend the prohibition on layoffs or furloughs until “all funds are expended.” With respect to new funding, the updated Heroes Act would require contractors to refrain from conducting involuntary furloughs until “March 31, 2021, or the date on which the contractor exhausts such financial assistance, whichever is later.”<sup>55</sup>

**C. In Any Further Payroll Support, Treasury Should Expedite Funding**

In any additional round of payroll support, Treasury must learn from its mistakes and ensure that job retention is the top priority. To save as many jobs as possible, Treasury should expedite payroll support funding to contractors, including providing eligible companies with immediate initial payments if necessary—even if those initial payments are limited and precede the execution of any requisite promissory notes.

<sup>55</sup> *Id.*

## APPENDIX 1

### AVIATION CONTRACTORS KNOWN TO HAVE LAID OFF AND FURLOUGHED WORKERS AFTER APPLYING FOR THE PAYROLL SUPPORT PROGRAM

*Note: Layoff and furlough numbers for Gate Gourmet, Swissport, and Flying Food Fare are based on information received by the Select Subcommittee in the course of its investigation. Furlough and layoff numbers for other companies are based on state agency filings and public reporting and may substantially undercount actual layoffs and furloughs.*

Contractor	Payroll Assistance Agreement Date <sup>i</sup>	Total Anticipated Payroll Support <sup>ii</sup>	Known Layoffs/ Furloughs Following PSP Application Opening
Sky Chefs Inc.	7/30/2020	\$214,175,084	349 <sup>iii</sup>
Gate Gourmet	6/19/2020	\$171,424,598	7,160 <sup>iv</sup>
Swissport	7/10/2020	\$170,359,789	3,873 <sup>v</sup>
Flying Food Fare	6/15/2020	\$85,020,818	2,037 <sup>vi</sup>
Prospect Airport Services Inc.	7/10/2020	\$73,263,755	1,364 <sup>vii</sup>
Primeflight Aviation Services Inc.	6/15/2020	\$65,708,621	198 <sup>viii</sup>
The Nordam Group LLC	6/19/2020	\$54,044,828	210 <sup>ix</sup>
Thales USA Inc.	7/10/2020	\$47,616,120	809 <sup>x</sup>
Aviation Technical Services	6/15/2020	\$39,949,510	142 <sup>xi</sup>
American Sales and Management Org. LLC (a/k/a Eulen America)	5/29/2020	\$25,812,052	100 <sup>xii</sup>
Constant Aviation LLC	5/22/2020	\$23,271,516	52 <sup>xiii</sup>
Prosegur Services Group Inc.	6/2/2020	\$22,620,474	27 <sup>xiv</sup>

Total Airport Services	5/22/2020	\$20,828,745	68 <sup>xv</sup>
JetStream Ground Services	5/19/2020	\$13,117,705	176 <sup>xvi</sup>
ACTS-Aviation Security	6/24/2020	\$10,829,005	90 <sup>xvii</sup>
<b>Total</b>			<b>16,655</b>

<sup>i</sup> Department of Treasury, *Payroll Support Program Payments* (online at <https://home.treasury.gov/policy-issues/cares/preserving-jobs-for-american-industry/payroll-support-program-payments>).

<sup>ii</sup> *Id.*

<sup>iii</sup> State of California, Employment Development Department, *WARN Report (07/01/2019 – 06/30/2020)* (online at [https://edd.ca.gov/Jobs\\_and\\_Training/warn/WARN-Report-for-7-1-2019-to-6-30-2020.pdf](https://edd.ca.gov/Jobs_and_Training/warn/WARN-Report-for-7-1-2019-to-6-30-2020.pdf)) (139 workers laid-off effective May 29, 2020); State of California, Employment Development Department, *California COVID WARNs (March 1, 2020 – September 10, 2020)* (on file) (210 workers laid-off effective on May 29, 2020).

<sup>iv</sup> Gate Gourmet’s Written Responses for the Select Subcommittee on the Coronavirus Crisis (Aug. 12, 2020). This number is the sum of Gate Gourmet’s layoffs and furloughs in April, May, and June. Because some workers may have been furloughed and then terminated, this sum may include certain workers in both categories.

<sup>v</sup> Swissport USA, Inc., Chart Summarizing Furloughs and Layoffs (Produced to Select Subcommittee Aug. 19, 2020). This number is the sum of Swissport’s layoffs and involuntary furloughs between April 3 and July 10 when it executed its PSP agreement. Because some workers may have been furloughed and then terminated, this sum may include certain workers in both categories.

<sup>vi</sup> Letter from Michel R. Sklaire, Greenberg Traurig LLP, Counsel to Flying Food Fare, to Chairman James E. Clyburn, Select Subcommittee on the Coronavirus Crisis (Aug. 31, 2020). This number includes both voluntary and involuntary furloughs and layoffs during the time that Flying Food Fare’s PSP application was pending.

<sup>vii</sup> *Here Are the Philadelphia-Area Companies That Laid Off, Furloughed Worker in April*, Philadelphia Business Journal (May 4, 2020) (online at [www.bizjournals.com/philadelphia/news/2020/05/04/here-are-the-philadelphia-area-companies-that-laid.html](http://www.bizjournals.com/philadelphia/news/2020/05/04/here-are-the-philadelphia-area-companies-that-laid.html)) (329 layoffs); State of Illinois, Archived WARN Reports, *April 2020 Monthly WARN Report* (online at [www.illinoisworknet.com/DownloadPrint/April%202020%20Monthly%20WARN%20Report.xlsx](http://www.illinoisworknet.com/DownloadPrint/April%202020%20Monthly%20WARN%20Report.xlsx)) (829 layoffs between Mar. 22, 2020 to April 25, 2020); State of Wisconsin, *2020 WARN Notices and Updates* (online at <https://dwd.wisconsin.gov/dislocatedworker/warn/>) (accessed on Oct. 8, 2020) (48 layoffs beginning on Apr. 22, 2020); State of California, Employment Development Department, *WARN Report (07/01/2019 – 06/30/2020)* (online at [https://edd.ca.gov/Jobs\\_and\\_Training/warn/WARN-Report-for-7-1-2019-to-6-30-2020.pdf](https://edd.ca.gov/Jobs_and_Training/warn/WARN-Report-for-7-1-2019-to-6-30-2020.pdf)) (13 temporary layoffs effective April 20, 2020); State of Colorado, *2020 WARN Notices Received: Public List* (online at <https://docs.google.com/spreadsheets/d/1Km1mSUnCGE3EtZQTnZEUwxbdDTOcDZmNx6bviTw12jI/edit#gid=0>) (accessed on Oct. 8, 2020) (145 workers laid-off effective April 8, 2020). The number cited here includes layoffs that occurred starting in March, but the specific dates of the layoffs are unclear given the date ranges in the WARN Notices.

<sup>viii</sup> State of California, Employment Development Department, *WARN Report (07/01/2019 – 06/30/2020)* (online at [https://edd.ca.gov/Jobs\\_and\\_Training/warn/WARN-Report-for-7-1-2019-to-6-30-2020.pdf](https://edd.ca.gov/Jobs_and_Training/warn/WARN-Report-for-7-1-2019-to-6-30-2020.pdf)) (198 layoffs effective April 9, 2020).

<sup>ix</sup> State of Oklahoma, *WARN Information* (online at [https://okjobmatch.com/ada/mn\\_warn\\_dsp.cfm?id=737&callingfile=mn\\_warn\\_dsp.cfm&hash=038E149B592D1E03326C870EDF681A15](https://okjobmatch.com/ada/mn_warn_dsp.cfm?id=737&callingfile=mn_warn_dsp.cfm&hash=038E149B592D1E03326C870EDF681A15)) (noting 210 employees affected) (accessed on Sept. 25, 2020).

<sup>x</sup> State of California, Employment Development Department, *WARN Report (07/01/2019 – 06/30/2020)* (online at [https://edd.ca.gov/Jobs\\_and\\_Training/warn/WARN-Report-for-7-1-2019-to-6-30-2020.pdf](https://edd.ca.gov/Jobs_and_Training/warn/WARN-Report-for-7-1-2019-to-6-30-2020.pdf)) (128 layoffs effective May 8, 2020 and 681 layoffs effective on May 18).

<sup>xi</sup> State of Washington, *Worker Adjustment and Retraining Notification (WARN)* (<https://esd.wa.gov/about-employees/warn>) (142 permanent layoffs effective June 4, 2020) (accessed on Sept. 25, 2020).

<sup>xii</sup> *Delta Airlines Contractor Got \$25 Million Bailout. It Still Laid Off Workers.*, Aviation Pros (Aug. 14, 2020) (online at [www.aviationpros.com/airlines/news/21150234/delta-airlines-contractor-got-a-25-million-bailout-it-still-laid-off-workers](http://www.aviationpros.com/airlines/news/21150234/delta-airlines-contractor-got-a-25-million-bailout-it-still-laid-off-workers)) (noting about 100 of the company’s 160-170 employees were laid off).

<sup>xiii</sup> State of Ohio, Department of Job and Family Services, *WARN: Current Public Notices of Layoffs and Closures* (online at <https://jfs.ohio.gov/warn/current.stm>) (52 workers laid-off between May 10-15, 2020).

<sup>xiv</sup> State of Maryland, Department of Labor, *Work Adjustment and Retraining Notification (WARN) Log Year 2020 – Division of Workforce Development & Adult Learning* (online at [www.dllr.state.md.us/employment/warn.shtml](http://www.dllr.state.md.us/employment/warn.shtml)) (27 layoffs effective May 18, 2020) (accessed on Sept. 25, 2020).

<sup>xv</sup> State of Texas, Texas Workforce Commission, *Worker Adjustment and Retraining Notification (WARN) Notices* (online at [www.twc.texas.gov/businesses/worker-adjustment-and-retraining-notification-warn-notices#warnNotices](http://www.twc.texas.gov/businesses/worker-adjustment-and-retraining-notification-warn-notices#warnNotices)) (68 workers laid-off on April 24, 2020).

<sup>xvi</sup> State of California, Employment Development Department, *WARN Report (07/01/2019 – 06/30/2020)* (online at [https://edd.ca.gov/Jobs\\_and\\_Training/warn/WARN-Report-for-7-1-2019-to-6-30-2020.pdf](https://edd.ca.gov/Jobs_and_Training/warn/WARN-Report-for-7-1-2019-to-6-30-2020.pdf)) (176 workers laid-off on April 22, 2020).

<sup>xvii</sup> State of Georgia, Department of Labor, *Business Layoff/Closure Listing (Statewide, 01/01/2020 – 07/20/2020)* (online at [www.dol.state.ga.us/public/es/warn/searchwarns](http://www.dol.state.ga.us/public/es/warn/searchwarns)) (90 workers laid-off on April 30, 2020).

## APPENDIX 2

### CONTRACTOR CASE STUDIES

The following case studies illustrate how Treasury’s administration of the Payroll Support Program resulted in aviation contractors laying off thousands of employees and still receiving tens of millions of dollars in federal funds. Each contractor was subject to delays and was prohibited from conducting layoffs for less than the six months that Congress intended.

These case studies also show that each contractor approached the PSP differently. G2 implemented a no-furlough policy during the pendency of its PSP application to abide by the “spirit of” the CARES Act, while the other contractors aggressively laid off workers while their PSP agreements were pending. Gate Gourmet rehired some workers after receiving the PSP funds, but Flying Food Fare and Swissport did not hire back a single worker.

	Swissport	Flying Food Fare	Gate Gourmet	G2
<b>Total PSP Funding</b>	\$170,359,789	\$85,020,818	\$171,424,598	\$81,380,837
<b>Average Number of Employees in 2019</b>	7,125	5,737	10,260	7,764
<b>Days Between PSP Application and Agreement</b>	99 days	74 days	78 days	68 days
<b>Layoffs / Furloughs While Application Was Pending<sup>1</sup></b>	2,491 / 1,382	1,516 / 1,521	5,040 / 2,120	0 / 0
<b>Executive Compensation Cuts</b>	None	Yes, until May 1	Yes, until June 15	Yes, ongoing
<b>Workers Recalled due to PSP Funds</b>	0	0	900	0
<b>Length of Prohibition on Layoffs</b>	82 days	107 days	103 days	113 days
<b>Anticipated Exhaustion of PSP Funds</b>	March 2021	Second Quarter 2021	March or April 2021	October 2020

<sup>1</sup> The figures for Swissport are the sum of the company’s layoffs and involuntary furloughs between April 3 and July 10 when it executed its PSP agreement. The figures for Gate Gourmet are the sum of the company’s layoffs and furloughs, respectively, in April, May, and June.

## A. Swissport

Swissport and its affiliates provide ground handling, cargo handling, and fueling services to airports around the country.<sup>2</sup> Swissport received over \$170 million of taxpayer dollars from Treasury through the PSP—the third highest award to any aviation contractor. Swissport began furloughing workers on February 5, 2020, as the spread of the coronavirus in Asia led to the cancellation of flights to and from U.S. cities.<sup>3</sup> By the end of March, Swissport had furloughed 4,328 employees.<sup>4</sup>

On April 3, 2020, Swissport filed a PSP application on behalf of six legal entities within its U.S. group of companies.<sup>5</sup> For each of these entities, Swissport indicated that it intended to conduct additional layoffs and involuntary furloughs. Treasury never requested any information about those reductions.

After submitting its applications, Swissport expected the approval process to move quickly in light of the ten-day disbursement deadline in the CARES Act.<sup>6</sup> Treasury, however, did not initiate contact with the company until April 16.<sup>7</sup> On May 15, Treasury finally presented a preliminary term sheet to Swissport, which included a proposed promissory note.<sup>8</sup> On May 28, Treasury sent Swissport a draft PSP agreement, promissory note, and supporting documentation.<sup>9</sup> For the next month, Swissport and Treasury exchanged communications and

<sup>2</sup> Letter from CEO Frank Mena, Swissport North America, Inc., to Chairman James E. Clyburn, Select Subcommittee on the Coronavirus Crisis, Chairwoman Maxine Waters, Committee on Financial Services, and Chairman Peter A. DeFazio, Committee on Transportation and Infrastructure (Aug. 12, 2020).

<sup>3</sup> Email from Christopher Armstrong, Holland & Knight LLP, Counsel for Swissport, to Staff, Select Subcommittee on the Coronavirus Crisis (Sept. 3, 2020); Swissport USA, Inc.'s Written Responses to the Questions Received from the Select Subcommittee on the Coronavirus Crisis, the Committee on Financial Services, and the Committee on Transportation & Infrastructure (Aug. 19, 2020).

<sup>4</sup> Email from Christopher Armstrong, Holland & Knight LLP, Counsel for Swissport, to Staff, Select Subcommittee on the Coronavirus Crisis (Sept. 3, 2020).

<sup>5</sup> Swissport submitted six separate applications on April 6, following guidance that consolidated applications would not be accepted. Swissport also filed an application on behalf of Hallmark Aviation Services, L.P. (Hallmark). According to Treasury's website, Treasury and Hallmark finally finalized an agreement on September 17, 2020. Department of the Treasury, *Payroll Support Program Payments* (online at <https://home.treasury.gov/policy-issues/cares/preserving-jobs-for-american-industry/payroll-support-program-payments>) (last accessed Oct. 3, 2020).

<sup>6</sup> Briefing by Michael Hargett, Chief Financial Officer, Swissport, to Staff, Select Subcommittee on the Coronavirus Crisis (Aug. 19, 2020).

<sup>7</sup> Swissport USA, Inc.'s Written Responses to the Questions Received from the Select Subcommittee on the Coronavirus Crisis, the Committee on Financial Services, and the Committee on Transportation & Infrastructure (Aug. 19, 2020).

<sup>8</sup> This term sheet was subsequently amended on both June 16 and June 26. *Id.*

<sup>9</sup> *Id.*

redlined legal documents. On June 18, Swissport’s Chief Financial Officer informed staff that the PSP agreement was “not yet signed, but imminent.”<sup>10</sup>

Despite the “imminent” prospect of payroll support funds, Swissport continued to lay off and furlough employees through June, terminating 894 employees that month.<sup>11</sup> Swissport informed the Subcommittee that the company did not consider the imminent PSP funding in its decision-making around layoffs and furloughs because it could not “reasonably rely on the fact that it would receive CARES Act funds” until the PSP agreement was fully executed.<sup>12</sup> Notably, despite its significant layoffs, Swissport never implemented any cuts to executive compensation.

On July 10, 2020, Swissport executed its PSP agreement with Treasury.<sup>13</sup> Despite receiving more than \$170 million, it did not recall a single worker based on its receipt of PSP funds. Instead, Swissport plans to only recall employees “based on the operational needs of the company.”<sup>14</sup> Accordingly, the company anticipates that it will continue to use PSP funds into the first quarter of 2021 to cover payroll expenses for its various components, including its cargo company which has remained profitable during the pandemic.<sup>15</sup>

## **B. Flying Food Fare**

Flying Food Fare, Inc. is the privately held parent company of Flying Food Group, LLC, and International In-Flight Catering Company, Ltd. (collectively “FFF”) and provides catering services to airlines and food retailers. FFF received more than \$85 million in payroll support—placing it among the top aviation contractor recipients.<sup>16</sup>

<sup>10</sup> Email from Peter Kohl, Chief Operating Officer Cargo, Swissport USA to Andrew Morch and Michael Schneider, Swissport USA (June 18, 2020) (online at [https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/SP-CONG0003864\\_Redacted.pdf](https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/SP-CONG0003864_Redacted.pdf)).

<sup>11</sup> Swissport USA, Inc.’s Written Responses to the Questions Received from the Select Subcommittee on the Coronavirus Crisis, the Committee on Financial Services, and the Committee on Transportation & Infrastructure (Aug. 19, 2020); Briefing by Michael Hargett, Chief Financial Officer, Swissport, to Staff, Select Subcommittee on the Coronavirus Crisis (Aug. 19, 2020) (confirming that 894 employees were terminated in June).

<sup>12</sup> Swissport USA, Inc.’s Written Responses to the Questions Received from the Select Subcommittee on the Coronavirus Crisis, the Committee on Financial Services, and the Committee on Transportation & Infrastructure (Aug. 19, 2020); Briefing by Michael Hargett, Chief Financial Officer, Swissport, to Staff, Select Subcommittee on the Coronavirus Crisis (Aug. 19, 2020).

<sup>13</sup> Department of the Treasury, *Payroll Support Program Payments* (online at <https://home.treasury.gov/policy-issues/cares/preserving-jobs-for-american-industry/payroll-support-program-payments>).

<sup>14</sup> Briefing by Michael Hargett, Chief Financial Officer, Swissport, to Staff, Select Subcommittee on the Coronavirus Crisis (Aug. 19, 2020).

<sup>15</sup> *Id.* (estimating that PSP funds would be spent in 5 months for Swissport’s cargo company, 6-7 months for Swissport’s fueling company, and “a little longer” for the ground handling company).

<sup>16</sup> Department of the Treasury, *Payroll Support Program Payments* (online at <https://home.treasury.gov/policy-issues/cares/preserving-jobs-for-american-industry/payroll-support-program-payments>) (last accessed Oct. 3, 2020).

In late January 2020, FFF began conducting layoffs and furloughs.<sup>17</sup> By the end of March, FFF had furloughed, laid off, or reduced hours for over 5,200 employees—more than ninety percent of its workforce—and reduced the pay rates for the company’s senior executives and management.<sup>18</sup>

On April 2, 2020, FFF submitted its application to Treasury for payroll support. Given the language of the CARES Act, the company “believed that it would receive a disbursement, even just a small amount, within ten (10) days of enactment of the CARES Act.”<sup>19</sup> FFF did not receive a substantive response from Treasury until April 20, 2020, nearly three weeks later.<sup>20</sup> FFF repeatedly expressed frustration with Treasury’s delays, explaining that they were “anxious to close this out” so the business would remain viable.<sup>21</sup>

During its early discussions with Treasury, FFF informed Treasury of additional expected layoffs and furloughs.<sup>22</sup> The company could not identify any instances in which Treasury expressed any concerns about FFF’s layoffs or furloughs.<sup>23</sup> FFF conducted layoffs and furloughs throughout the time its application was pending.

During FFF’s call with Treasury on May 11, Treasury presented FFF with a term sheet and draft promissory note, which gave FFF “some comfort” that PSP funds would be

<sup>17</sup> Briefing by Mark Noffke, Chief Financial Officer & Executive Vice President, Flying Food Group, to Staff, Select Subcommittee on the Coronavirus Crisis (Aug. 18, 2020).

<sup>18</sup> *Id.*; Letter from Michael R. Sklaire, Greenberg Traurig LLP, Counsel to Flying Food Fare, to Chairman James E. Clyburn, Select Subcommittee on the Coronavirus Crisis, Chairman Peter A. DeFazio, Committee on Transportation and Infrastructure, and Chairwoman Maxine Waters, Committee on Financial Services (Aug. 14, 2020).

<sup>19</sup> Letter from Michael R. Sklaire, Greenberg Traurig LLP, Counsel to Flying Food Fare, to Chairman James E. Clyburn, Select Subcommittee on the Coronavirus Crisis, Chairman Peter A. DeFazio, Committee on Transportation and Infrastructure, and Chairwoman Maxine Waters, Committee on Financial Services (Aug. 14, 2020).

<sup>20</sup> *Id.*

<sup>21</sup> Email from Lee Ann Anderson, Greenberg Traurig LLP, to Ben Weiner, Sullivan & Cromwell LLP, (May 21, 2020); Briefing by Mark Noffke, Chief Financial Officer & Executive Vice President, Flying Food Group, to Staff, Select Subcommittee on the Coronavirus Crisis (Aug. 18, 2020) (online at [https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/FFF-0002892\\_final\\_Redacted.pdf](https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/FFF-0002892_final_Redacted.pdf)).

<sup>22</sup> Flying Food Fare, CARES Act: Initial Discussion Topics / Requests (Apr. 21, 2020) (online at [https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/FFF-0000173-175\\_Redacted.pdf](https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/FFF-0000173-175_Redacted.pdf)). FFF also later informed Treasury that “[b]ecause funds were not received when anticipated, additional cuts have been made to staff since the application o[f] April 2,” and asked whether the company needed to revise its certification that its PSP application was accurate. Email from Lee Ann Anderson, Greenberg Traurig LLP, to Ben Weiner, Sullivan & Cromwell LLP (May 20, 2020) (online at [https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/FFF-0002893\\_Redacted\\_0.pdf](https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/FFF-0002893_Redacted_0.pdf)).

<sup>23</sup> Briefing by Mark Noffke, Chief Financial Officer & Executive Vice President, Flying Food Group, to Staff, Select Subcommittee on the Coronavirus Crisis (Aug. 18, 2020).

forthcoming.<sup>24</sup> With the term sheet, FFF “thought we were almost there.”<sup>25</sup> Despite the “comfort” that funds would be forthcoming, FFF continued to slash its employment levels, laying off or furloughing 477 employees in May alone.<sup>26</sup>

Although the forthcoming funds were not sufficiently certain to cease layoffs and furloughs, on May 1, 2020, FFF restored senior executives and management to full pay because the company anticipated that PSP funds would soon be made available.<sup>27</sup>

On May 22, 2020, FFF signed its PSP agreement and promissory note and delivered them to Treasury, “believ[ing] that the Secretary of Treasury would sign the PSP Agreement that day.” On May 26, 2020, FFF signed a revised promissory note. Treasury informed FFF that “the company should expect the Secretary to sign the documents and to receive the first disbursement on May 27.”<sup>28</sup> But Treasury continued to delay the disbursement, much to FFF’s frustration. In one email exchange on May 29, 2020, upon learning that he would have to wait at least three more days for a signed agreement, the company’s Chief Financial Officer wrote: “Unbelievable. When am I allowed to work like this?”<sup>29</sup>

More revisions became necessary, however, and Treasury and FFF exchanged new versions of the term sheet, PSP agreement, and promissory note in early June.<sup>30</sup> Rather than

<sup>24</sup> Letter from Michael R. Sklaire, Greenberg Traurig LLP, Counsel to Flying Food Fare, to Chairman James E. Clyburn, Select Subcommittee on the Coronavirus Crisis, Chairman Peter A. DeFazio, Committee on Transportation and Infrastructure, and Chairwoman Maxine Waters, Committee on Financial Services (Aug. 14, 2020); Briefing by Mark Noffke, Chief Financial Officer & Executive Vice President, Flying Food Group, to Staff, Select Subcommittee on the Coronavirus Crisis (Aug. 18, 2020).

<sup>25</sup> Briefing by Mark Noffke, Chief Financial Officer & Executive Vice President, Flying Food Group, to Staff, Select Subcommittee on the Coronavirus Crisis (Aug. 18, 2020).

<sup>26</sup> Letter from Michael R. Sklaire, Greenberg Traurig LLP, Counsel to Flying Food Fare, to Chairman James E. Clyburn, Select Subcommittee on the Coronavirus Crisis, Chairman Peter A. DeFazio, Committee on Transportation and Infrastructure, and Chairwoman Maxine Waters, Committee on Financial Services (Aug. 14, 2020) (Exhibit 3.1).

<sup>27</sup> Letter from Michael R. Sklaire, Greenberg Traurig LLP, Counsel to Flying Food Fare, to Chairman James E. Clyburn, Select Subcommittee on the Coronavirus Crisis, Chairman Peter A. DeFazio, Committee on Transportation and Infrastructure, and Chairwoman Maxine Waters, Committee on Financial Services (Aug. 14, 2020); Briefing by Mark Noffke, Chief Financial Officer, Flying Food Group, to Staff, Select Subcommittee on the Coronavirus Crisis (Aug. 18, 2020).

<sup>28</sup> Letter from Michael R. Sklaire, Greenberg Traurig LLP, Counsel to Flying Food Fare, to Chairman James E. Clyburn, Select Subcommittee on the Coronavirus Crisis, Chairman Peter A. DeFazio, Committee on Transportation and Infrastructure, and Chairwoman Maxine Waters, Committee on Financial Services (Aug. 14, 2020).

<sup>29</sup> Email from Wolfgang Hoenle, Chief Financial Officer, Flying Food Group to Mark Noffke, Chief Financial Officer & Executive Vice President, Flying Food Group (May 29, 2020) (online at [https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/FFF-0004430\\_Wolfgang%20Hoenle%20email\\_Redacted.pdf](https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/FFF-0004430_Wolfgang%20Hoenle%20email_Redacted.pdf)).

<sup>30</sup> Letter from Michael R. Sklaire, Greenberg Traurig LLP, Counsel to Flying Food Fare, to Chairman James E. Clyburn, Select Subcommittee on the Coronavirus Crisis, Chairman Peter A. DeFazio, Committee on Transportation and Infrastructure, and Chairwoman Maxine Waters, Committee on Financial Services (Aug. 14, 2020).

retain its workforce during the final days before execution, FFF continued to conduct layoffs until June 8, three days before it executed its PSP agreement.<sup>31</sup>

Despite receiving \$85 million in payroll support, FFF did not rehire a single one of its laid off or furloughed employees based on the receipt of PSP funds. FFF informed Select Subcommittee staff that it would only rehire employees commensurate with business demands and use any increased business revenue to cover “overhead” expenses, including “rent, supplies, and other fixed costs.” FFF expects that its PSP funds will not be exhausted until the second quarter of 2021.<sup>32</sup>

### C. Gate Gourmet

Gate Gourmet, an airline catering company, received \$171 million in payroll support—the second highest award to any aviation contractor.<sup>33</sup> Gate Gourmet and its affiliates were affected by the coronavirus in early 2020, as flights began to be cancelled on Asian routes.<sup>34</sup> By the time of its application on April 3, 2020, Gate Gourmet had impacted approximately 8,600 employees—roughly 86% of its workforce—through involuntary furloughs, layoffs, or schedule or salary reductions.<sup>35</sup>

At the time of its application, Gate Gourmet was aware of the 10-day deadline in the CARES Act and expected money to arrive approximately within that timeframe. Ultimately, however, the process took 75 days.<sup>36</sup>

As the delays mounted, Gate Gourmet sought to expedite the process and even withdrew PSP applications on behalf of certain Gate Gourmet affiliates in the hope that would accelerate the process.<sup>37</sup> The company expressed frustration at Treasury’s slow speed and the uncertainty the delays caused: “More than a month after submission of our PSP application, Gate Gourmet had not received PSP funding, had not been informed when funding would be forthcoming, and did not know what amount, if any, Treasury would ultimately approve.”<sup>38</sup>

On May 15, 2020, Gate Gourmet received a term sheet from Treasury indicating that a portion of its requested funding would be in the form of a repayable loan and the amount of the

<sup>31</sup> *Id.* Exhibit 3.1.

<sup>32</sup> Briefing by Mark Noffke, Chief Financial Officer & Executive Vice President, Flying Food Group, to Staff, Select Subcommittee on the Coronavirus Crisis (Aug. 18, 2020).

<sup>33</sup> The final PSP award was to both Gate Gourmet and its affiliate, Gate Serve.

<sup>34</sup> Letter from President Joshua Janow, Gate Gourmet Inc., to Chairman James E. Clyburn, Select Subcommittee on the Coronavirus Crisis, Chairman Peter A. DeFazio, Committee on Transportation and Infrastructure, and Chairwoman Maxine Waters, Committee on Financial Services (Aug. 11, 2020).

<sup>35</sup> *Id.*

<sup>36</sup> Briefing by President Joshua Janow, Gate Gourmet Inc., to Staff, Select Subcommittee on the Coronavirus Crisis (Aug. 12, 2020).

<sup>37</sup> *Id.*

<sup>38</sup> Letter from President Joshua Janow, Gate Gourmet Inc., to Chairman James E. Clyburn, Select Subcommittee on the Coronavirus Crisis, Chairman Peter A. DeFazio, Committee on Transportation and Infrastructure, and Chairwoman Maxine Waters, Committee on Financial Services (Aug. 11, 2020).

note.<sup>39</sup> Gate Gourmet ultimately received its executed PSP agreement and its initial payroll support payment from Treasury on June 19, 2020—more than two-and-a-half months after submitting its application.<sup>40</sup>

During the months its application was pending, Gate Gourmet laid off and furloughed thousands of workers. In May, Gate Gourmet laid off 4,958 employees and furloughed 104 workers. In June, Gate Gourmet laid off or furloughed 90 more employees before receiving the PSP funds.<sup>41</sup>

After receiving the PSP funds, unlike other contractors, Gate Gourmet brought back some of its workers. It recalled approximately 900 workers and gave additional hours to approximately 1,200 part-time workers.<sup>42</sup> Thousands of employees remained out of work, but on July 15, 2020, Gate Gourmet decided to return management to full salaries—retroactively effective to June 15, 2020, after they had been cut by 20 percent on April 1.<sup>43</sup>

Gate Gourmet expects its PSP funding to be exhausted by March or April 2021. As of mid-August, the company anticipated additional layoffs after the prohibition on layoffs lifted on September 30.<sup>44</sup>

#### **D. G2**

G2 Secure Staff’s actions and response to the PSP stand in contrast to the other contractors discussed in this report. Despite permission from Treasury to do otherwise, G2 tried to act in accordance with “the spirit of” the CARES Act.<sup>45</sup>

As the pandemic battered the aviation industry and before G2 had insight that it would be eligible for the PSP, in early to mid-March, G2 “made the painful decision to furlough employees.”<sup>46</sup> G2 furloughed a total of 2,187 employees at 41 airport locations, which was

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> Gate Gourmet’s Written Responses for the Select Subcommittee on the Coronavirus Crisis (Aug. 12, 2020) (Appendix 1).

<sup>42</sup> Briefing by President Joshua Janow, Gate Gourmet Inc., to Staff, Select Subcommittee on the Coronavirus Crisis (Aug. 12, 2020).

<sup>43</sup> Gate Gourmet’s Written Responses for the Select Subcommittee on the Coronavirus Crisis (Aug. 12, 2020).

<sup>44</sup> Briefing by President Joshua Janow, Gate Gourmet Inc., to Staff, Select Subcommittee on the Coronavirus Crisis (Aug. 12, 2020); Letter from President Joshua Janow, Gate Gourmet Inc., to Chairman James E. Clyburn, Select Subcommittee on the Coronavirus Crisis, Chairman Peter A. DeFazio, Committee on Transportation and Infrastructure, and Chairwoman Maxine Waters, Committee on Financial Services (Aug. 11, 2020).

<sup>45</sup> Briefing by Senior Vice President for Human Resources and Administration Julie Gostic and Chief Financial Officer Roger Zebroski, G2 Secure Staff, to Staff, Select Subcommittee on the Coronavirus Crisis (Aug. 19, 2020).

<sup>46</sup> Letter from President and CEO Daniel Norman, G2 Secure Staff, to Chairman James E. Clyburn, Select Subcommittee on the Coronavirus Crisis, Chairman Peter A. DeFazio, Committee on Transportation and Infrastructure, and Chairwoman Maxine Waters, Committee on Financial Services (Aug. 5, 2020).

announced the week of March 16 and became effective as of March 27, 2020.<sup>47</sup> At the same time, it implemented salary reductions for all 219 corporate staff, managers, and directors. G2 reduced salaries for its four senior executives to zero.<sup>48</sup>

After the passage of the CARES Act, G2 instituted a no-furlough policy effective April 1, 2020, which the company estimates saved 3,000 jobs. Although the company was under financial pressure during the months of delay while its application was pending with Treasury, G2 stated that it wanted “to abide by the spirit of the CARES Act” and “knew the [PSP] funding was likely coming soon.”<sup>49</sup>

Upon receipt of its PSP funding on June 12, G2 provided lump sum payments to all of its frontline staff to restore missed compensation based on involuntary hour or schedule reductions over the prior two months.<sup>50</sup> The company also partially restored salaries for corporate staff, managers, directors, and executives, although executives continue to work at reduced rates. As of August 2020, the CEO remained at zero compensation.<sup>51</sup>

G2 expects to exhaust the PSP funding in approximately October 2020.

<sup>47</sup> Letter from Daniel F. Donovan, Partner, King & Spalding, to Chairman James E. Clyburn, Select Subcommittee on the Coronavirus Crisis, Chairman Peter A. DeFazio, Committee on Transportation and Infrastructure, Chairwoman Maxine Waters, Committee on Financial Services (Aug. 18, 2020) (Appendix B).

<sup>48</sup> *Id.*

<sup>49</sup> Briefing by Senior Vice President for Human Resources and Administration Julie Gostic and Chief Financial Officer Roger Zebroski, G2 Secure Staff, to Staff, Select Subcommittee on the Coronavirus Crisis (Aug. 19, 2020).

<sup>50</sup> *Id.*

<sup>51</sup> Letter from President and CEO Daniel Norman, G2 Secure Staff, to Chairman James E. Clyburn, Select Subcommittee on the Coronavirus Crisis, Chairman Peter A. DeFazio, Committee on Transportation and Infrastructure, and Chairwoman Maxine Waters, Committee on Financial Services (Aug. 5, 2020).