



10990 Roe Ave
Overland Park, KS 66211
Phone: (913) 696-6100
MyYellow.com

June 10, 2021

BY EMAIL

The Honorable James E. Clyburn
Chairman
Select Subcommittee on the Coronavirus Crisis
United States House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515

Re: Yellow Corporation CARES Act Loan

Dear Chairman Clyburn:

I write on behalf of Yellow Corporation in response to your June 3, 2021 letter concerning an inquiry by the Select Subcommittee on the Coronavirus Crisis concerning Yellow Corporation's \$700 million Coronavirus Aid, Relief and Economic Security (CARES) Act loan, in which you request that we voluntarily produce certain documents by June 17, 2021.

Please be assured that Yellow Corporation intends to cooperate fully with the Subcommittee's inquiry and will produce documents in accordance with a mutually agreeable schedule and scope of production.

Please be assured with respect to your question regarding our "eligibility for and use of the funds" that the Subcommittee's inquiry and Yellow Corporation's documents will conclusively confirm that the information the Company provided in applying for the loan was completely accurate, and the use of the loan funds were and are completely appropriate, transparent, and in full compliance with the loan agreements.

In this connection, please allow me to bring to your attention the following facts which you do not mention in your letter.

First, the loan was instrumental in ensuring that, during one of the worst health crises in history, we had the necessary liquidity:

- to remain a critical link in numerous supply chains throughout the United States and complete millions of freight shipments, including hundreds of thousands for the Department of Defense



("DoD").

- to enable our approximately 30,000 employees, including 24,000 union employees (mostly Teamsters), to remain working day and night on loading docks, in freight depots and on America's highways to provide the uninterrupted delivery of desperately needed military supplies, personal protective equipment, household goods, medicines, food and other necessities;
- to enable us to continue to meet our obligations to fund the cost of medical coverage for our pensioners and employees, many of whom were frontline workers risking exposure to Covid-19 on a daily basis; and
- to enable us to combat global warming by modernizing our fleet with safer, more fuel-efficient trucks and trailers, reform our business and return to profitable operations.

Second, your letter correctly notes that the loan to Yellow "constituted 95% of the \$753.9 million disbursed as part of the program," but we note that the program did not come close to expending the \$17 billion that the CARES Act earmarked for national security loans.¹ Indeed, in November 2020, the United States Treasury Department ("Treasury") directed the Federal Reserve to return approximately \$455 billion in CARES Act funding, consisting of \$429 billion in excess Treasury funds for the Federal Reserve facilities and \$26 billion in unused Treasury direct loan funds.² Thus, the funds we received had no bearing on the ability of other potentially qualified borrowers to access funds under any CARES Act program.

Third, Treasury's underwriting process, which extended for weeks between April and July 2020, conclusively established Yellow's eligibility for the Loan. There is no question but that, because of the massive dislocations in the United States economy and credit markets caused by the pandemic, we were experiencing losses incurred as a result of the pandemic when we made our loan application and were in acute need of liquidity.

Fourth, you refer to concerns about Secretary of Defense Esper's certification that Yellow was "critical to maintaining national security" and his statement that Yellow "provides 68% of less-than-truckload [LTL] services to the Department of Defense." That certification and statement are accurate. The Subcommittee's information about our LTL services for the DoD derives from a single logistics provider, Crowley Logistics ("Crowley"), which apparently estimated that we provide "between 20 and 40 percent of DoD's LTL

¹ CARES Act, § 4003(b) (3)

² <https://home.treasury.gov/news/press-releases/sm1190>



services" and speculated that our capacity "could be readily replaced by other companies in the trucking industry."

Crowley's guesstimate is incorrect, as it has an incomplete picture of the total freight shipping services that Yellow provides to the DoD (and other Government agencies). For example, from March 2020 through February 2021, only 25.2% (48,653 out of 193,322) of our DoD shipments were sourced through Crowley. The remaining 74.8% (144,669 out of 193,322) of our DoD shipments were sourced directly from the DoD based on voluntary tenders we submitted to the DoD Transportation Management System. Put another way, our contract with Crowley accounts for only one out of every four shipments that we carried for the DoD.³ Yellow is justifiably proud that, with the crucial assistance of the loan, we were able to make almost 200,000 deliveries during the pandemic for our men and women in uniform.⁴

Confirming Yellow's criticality to the DoD as an LTL freight shipper, before the loan was issued, all necessary and appropriate steps to justify the national security designation were followed by Yellow, Treasury and the Secretary of Defense.

Fifth, regarding the concerns you raise about Yellow's use of the loan proceeds, including "to replace the tractors and trailers in its fleet as part of a long-term capital investment plan," the fact is that we were completely transparent with Treasury regarding our intended use of the proceeds and, in fact, on July 1, 2020, we publicly announced that \$350 million "will be used for essential capital investment in trailers and tractors."⁵

In addition, Yellow and Treasury negotiated the use of the loan proceeds and specified those uses in the loan agreements. When utilizing every dollar received, we fully complied with our obligations under the loan.

Sixth, regarding the question whether the 29.6% of Yellow's stock, totaling 15.9 million shares, that Treasury received for the

³ In addition to completing more than 193,000 shipments for the DoD during the height of the pandemic, Yellow also completed an additional 14,514 shipments for other U.S. Government agencies, including UNICOR, GSA, Department of State, Department of Energy, Navy Exchange and others.

⁴ The Department of Justice lawsuit against Yellow has nothing to do with the services we provide the DoD. It involves a disagreement about certain billing arising from ambiguous contract language and regulations dating back seven to sixteen years and in no way evidences any alleged scheme to overcharge the DoD. Moreover, the federal government was aware of Yellow's allegedly fraudulent billing practices for more than a decade prior to bringing suit. Despite being so aware, it never contested them, never refused to pay any invoice and never took any action in response.

⁵ <https://investors.myyellow.com/news-releases/news-release-details/ycr-worldwide-expects-receive-700-million-cares-act-loan-us>



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loan was sufficient to secure the loan, in fact, the collateral was a first-priority lien on all equipment purchased with the proceeds, as well as a junior lien on nearly all other assets. The stock was required by Treasury not as security but, to provide additional compensation to the taxpayers over and above interest. Since immediately before the loan commitment and equity grant announcement on July 1, 2020, Treasury's negotiated equity stake has increased more than 240% and is now worth \$100.3 million (calculated as of the closing price on the date of your letter).⁶

Seventh, regarding the claim that the Government Accountability Office (GAO) has allegedly identified "abnormalities" in Treasury's consideration and approval of the loan, the GAO also noted that, at the time the loan was being considered, Treasury had not yet even finalized its procedures for the first stage, much less for the second stage, of evaluating applications. Those procedures were not final until mid-July and mid-October 2020, months *after* the loan issued.⁷ Treasury officials also advised the GAO "that to implement the program quickly, it was necessary to develop guidance incrementally as it was not possible to anticipate all the circumstances that could arise when reviewing applications."⁸ That observation was certainly true here when Treasury was considering our loan request, given that it also found itself implementing numerous CARES Act loan programs in the face of an unprecedented medical and economic crisis, with events often changing by the day. For this reason, the CARES Act necessarily vested the Treasury Secretary with discretion to make loan determinations.⁹

Finally, it is important to emphasize that while Yellow was and remains proud of the crucial role we played and continue to play in our country's national security, we are deeply grateful for the support the CARES Act loan provided to enable us to do so and for the broad bipartisan support Yellow received from Democrats and Republicans, as well as union leadership and members, when we were seeking relief under the CARES Act. We are particularly grateful to

⁶ Regarding the media speculation about Apollo Global Management LLC ("Apollo") and Jared Kushner, Yellow is not aware of any efforts on the part of Apollo or Mr. Kushner to advocate on Yellow's behalf. We further note that Apollo has publicly stated that it was not involved in Yellow's decision to seek the loan and did not advocate on our behalf.

<https://www.wsj.com/articles/u-s-lawmakers-probe-coronavirus-aid-to-yellow-corp-11622760981>. Moreover, Secretary Mnuchin testified under oath before the Oversight Commission that, when considering Yellow's loan application, he was not aware of any purported relationship between Apollo and Mr. Kushner and that neither Mr. Kushner nor anyone on his staff ever contacted him about the loan. <https://www.c-span.org/video/?507186-1/treasury-secretary-mnuchin-testifies-cares-act-funds>

⁷ <https://www.gao.gov/assets/gao-21-198.pdf>

⁸ *Id.*

⁹ CARES Act, § 4003(c) (2)



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Senators Wyden and Roberts and Representatives DeFazio and Graves, as well as all others, who wrote letters to Treasury supporting our request.

Yellow welcomes the opportunity to provide relevant information in response to the Subcommittee's requests. Counsel for the Company will contact the Subcommittee to meet-and-confer on the scope of its document requests and to reach a mutually acceptable schedule for our document production.

Respectfully,



Darren D. Hawkins
Chief Executive Officer

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

