

Congress of the United States

House of Representatives

SELECT SUBCOMMITTEE ON THE CORONAVIRUS CRISIS

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<https://coronavirus.house.gov>

June 3, 2021

Mr. Thomas Crowley
Chief Executive Officer, President, &
Chairman
Crowley Maritime Corp.
9487 Regency Square Blvd
Jacksonville, FL, 32225-7800

Mr. Brett H. Bennett
General Manager
Crowley Logistics Inc.
9487 Regency Square Blvd
Jacksonville, FL, 32225-7800

Dear Mr. Crowley & Mr. Bennett:

As the Select Subcommittee on the Coronavirus Crisis continues investigating allegations of waste, fraud, and abuse in the pandemic relief programs, I am concerned by the potential improper distribution of loan funds made available by the Coronavirus Aid, Relief and Economic Security (CARES) Act for businesses critical to maintaining U.S. national security to offset losses caused by the pandemic. A \$700 million loan to Yellow Corporation (Yellow) constituted 95% of the \$735.9 million disbursed as part of this program.¹ Crowley Logistics (Crowley), in its role as the prime contractor for a Department of Defense (DOD) Defense Freight Transportation Services (DFTS) contract, subcontracted to Yellow to provide DOD with the trucking services that the Department of the Treasury (Treasury) apparently relied on when approving Yellow's national security loan.² In light of troubling reports regarding Yellow's questionable eligibility for and use of the funds, I write to seek documents and information to determine whether Yellow provided inaccurate or misleading information in seeking to obtain a national security loan, and Crowley's role in DOD's certification of Yellow's eligibility.

The CARES Act specified that these loans and loan guarantees were made available to "provide liquidity" to "businesses critical to maintaining national security" that were "experiencing losses incurred as a result of coronavirus."³ In April 2020, Treasury released guidance stating that a business could qualify for national security loans if it was "performing under a defense contract of the highest national priority or operating under a top-secret facility security clearance," or by obtaining a "recommendation and certification by the Secretary of Defense or the Director of National Intelligence that the applicant business is critical to

¹ Department of the Treasury, *Loans to Air Carriers, Eligible Businesses, and National Security Businesses* (online at <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-industry/loans-to-air-carriers-eligible-businesses-and-national-security-businesses>) (accessed on June 2, 2021).

² Congressional Oversight Commission, *The Twelfth Report of the Congressional Oversight Commission* (Apr. 30, 2021) (online at <https://coc.senate.gov/sites/default/files/2021-04/COC%20April%20Report.pdf>).

³ CARES Act, § 4003.

maintaining national security.” This guidance reiterated that the loan funds can only be used to “offset covered losses incurred directly or indirectly as a result of the coronavirus pandemic.”⁴

On July 1, 2020, Treasury announced the first loan under the program, a \$700 million loan to U.S. trucking company YRC Worldwide (now Yellow). Treasury said that it had relied on a certification by the Secretary of Defense that Yellow was “critical to maintaining national security,” and stated that Yellow “provides 68% of less-than-truckload [LTL⁵] services to the Department of Defense.”⁶ It is unclear from where Treasury or DOD derived this figure.

Shortly after Treasury’s announcement of the Yellow loan, the bipartisan Congressional Oversight Commission (the Commission) began an inquiry into Yellow’s receipt of such a large national security loan and how DOD determined that Yellow was “critical to maintaining national security.”⁷ Subsequent disclosures to the Commission from DOD, however, have not substantiated the claim that Yellow regularly provides such a large share of DOD’s LTL trucking services.⁸ Although DOD has represented that it could not provide detailed information about its utilization of trucking company subcontractors, the Commission noted that the information DOD provided regarding DOD’s LTL expenditures suggested Yellow only provided between 20 and 40 percent of DOD’s LTL services. The Commission’s April 2021 report further indicates that DOD received information from Crowley suggesting that Yellow was in fact not critical to national security, because the company provides only limited LTL services to DOD and the loss of Yellow’s services could be readily replaced by other companies in the trucking industry.⁹ This raises serious questions about the source of potentially inaccurate information supporting the decision to grant Yellow a significant national security loan.

⁴ Department of the Treasury, *Q&A: Loans to Air Carriers and Eligible Businesses and National Security Businesses* (Updated Apr. 10, 2020) (online at <https://home.treasury.gov/system/files/136/CARES-Airline-Loan-Support-Q-and-A-national-security.pdf>).

⁵ LTL services involve the delivery of small-to-moderately sized shipments of goods that do not require a full truck and trailer. See generally RAND Corp., *Army Stock Positioning* (2017) (online at www.rand.org/pubs/research_reports/RR1375.html).

⁶ Department of the Treasury, *Press Release: Treasury to Provide Loan to YRC Worldwide* (July 1, 2020) (online at <https://home.treasury.gov/news/press-releases/sm1049>); Congressional Oversight Commission, *The Third Report of the Congressional Oversight Commission* (July 20, 2020) (online at https://coc.senate.gov/sites/default/files/2020-08/20200720_Congressional_Oversight_Commission_3rd_Report.pdf).

⁷ *Id.*

⁸ Congressional Oversight Commission, *The Eighth Report of the Congressional Oversight Commission* (Dec. 31, 2020) (online at <https://coc.senate.gov/sites/default/files/2021-01/COMMISSION%20December%20Report%2012-31%20FINAL%2C%20appendix.pdf>); Congressional Oversight Commission, *The Twelfth Report of the Congressional Oversight Commission* (Apr. 30, 2021) (online at <https://coc.senate.gov/sites/default/files/2021-04/COC%20April%20Report.pdf>).

⁹ Congressional Oversight Commission, *The Twelfth Report of the Congressional Oversight Commission* (Apr. 30, 2021) (online at <https://coc.senate.gov/sites/default/files/2021-04/COC%20April%20Report.pdf>).

DOD represented that it could not provide data on LTL services broken down by trucking subcontractor because it does not have privity of contract with Crowley's subcontractors.¹⁰ Consequently, Crowley has information important to determining whether misrepresentations or inaccurate data were used to support Yellow's application for and receipt of a national security loan.

For these reasons, please produce by June 17, 2021, the following documents and information from March 1, 2020, to the present:

1. All impact assessments of the consequences of ceasing Yellow's provision of LTL services to DOD, or other analyses of the consequences of Yellow ceasing operations, that were provided to DOD.
2. Documents sufficient to show the percentage of LTL services provided by Yellow to DOD in 2018, 2019, and 2020; and
3. All communications with Yellow, DOD, Treasury, or the White House concerning Yellow's application for a loan under the CARES Act for businesses "critical to maintaining national security," including communications related to the assessment of whether Yellow was critical to maintaining national security.

Please also provide the Select Subcommittee with written responses to the following questions:

1. What percentage of LTL services did Yellow provide to DOD in the years 2018, 2019, and 2020?
2. When did DOD first request information from Crowley regarding the impact of ceasing Yellow's LTL services, or otherwise regarding the importance of Yellow's services to maintaining national security?

These requests are consistent with the House of Representatives' authorization of the Select Subcommittee on the Coronavirus Crisis "to conduct a full and complete investigation" of "issues related to the coronavirus crisis," including "reports of waste, fraud, abuse, price gouging, profiteering, or other abusive practices related to the coronavirus crisis," and the "efficiency, effectiveness, equity, and transparency of the use of taxpayer funds and relief programs to address the coronavirus crisis."¹¹

Please respond to this letter by no later than June 10, 2021, to confirm your company's cooperation. An attachment to this letter provides additional instructions for responding to the

¹⁰ *Id.*

¹¹ H.Res. 8, sec. 4(f), 117th Cong. (2021); H.Res. 935, 116th Cong. (2020).

Mr. Thomas Crowley
Mr. Brett H. Bennett
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Select Subcommittee's request. If you have any questions regarding this request, please contact
Select Subcommittee staff at (202) 255-4400.

Sincerely,


James E. Clyburn
Chairman

Enclosure

cc: The Honorable Steve Scalise, Ranking Member

Responding to Oversight Committee Document Requests

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

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

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

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

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

Definitions

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

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

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