A Special Report of the Congressional Oversight Commission

June 27, 2023

Commission Member
U.S. Representative French Hill

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INTRODUCTION

This is a special report of the Congressional Oversight Commission ("Commission") created by the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act").[1] The Commission's role is to conduct oversight of the implementation of Division A, Title IV, Subtitle A of the CARES Act ("Subtitle A") by the U.S. Department of the Treasury ("Treasury") and the Board of Governors of the Federal Reserve System ("Federal Reserve"). Subtitle A provided $500 billion to the Treasury for lending and other investments "to provide liquidity to eligible businesses, States, and municipalities related to losses incurred as a result of coronavirus."[2]

Of this amount, $46 billion was set aside for the Treasury to provide loans or loan guarantees to certain types of companies. Up to $25 billion was available for passenger air carriers, eligible businesses certified to inspect, repair, replace, or overhaul services, and ticket agents. Up to $4 billion was available for cargo air carriers, and $17 billion was available for businesses "critical to maintaining national security."[3] The Treasury provided national security loans to eleven businesses, totaling $735.9 million.[4] One business, Yellow Corporation ("Yellow"), which was formerly known as YRC Worldwide, Inc. ("YRC"), accounted for 95% of the total loans.[5] In this special report, the Commission provides its final examination of the Treasury's national security loan to Yellow.[6]

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[1] CARES Act, Pub. L. No. 116-136, § 4020, 134 Stat. 281 (2020).

[2] *Id*. § 4003(a).

[3] *Id*. § 4003(b). In addition, Division A, Title IV, Subtitle B of the CARES Act ("Subtitle B") authorized the Treasury to provide up to $32 billion in financial assistance to passenger air carriers, cargo air carriers, and certain airline industry contractors that must be exclusively used for the continuation of payment of employee wages, salaries, and benefits. Subtitle B is not within the jurisdiction of the Commission.

[4] U.S. Department of the Treasury, *Loans to Air Carriers, Eligible Businesses, and National Security Businesses*, https://home.treasury.gov/policy-issues/coronavirus/assistance-for-industry/loans-to-air-carriers-eligible-businesses-and-national-security-businesses.

[5] Yellow Corporation, *YRC Worldwide Inc. is Renamed Yellow Corporation*, Feb. 4, 2021, https://investors.myyellow.com/news-releases/news-release-details/yrc-worldwide-inc-renamed-yellow-corporation.

[6] This report was drafted, in part, while U.S. Senator Pat Toomey was still a member of the Commission. However, this report was finalized after Senator Toomey resigned as a member of the Commission on January 3, 2023 in conjunction with his retirement from the U.S. Senate.

DISCUSSION OF THE TREASURY'S NATIONAL SECURITY LOAN TO YELLOW

This special report of the Commission is a continuation of previous reports that specifically examined the Treasury's $700 million national security loan to Yellow.[7] In these previous reports, the Commission has consistently expressed concerns about this loan, including questioning the initial decision to designate Yellow as a "business critical to maintaining national security", the lack of any substantive review by Treasury in regard to both the designation and the terms of the proposed loan, and observing that Yellow's precarious financial position at the time of the loan exposed taxpayers to a significant risk of loss.

As a refresher, Yellow is a publicly traded company ("YELL" on the Nasdaq) and provides transportation and logistics services, including to the U.S. Department of Defense (the "Defense Department").[8] The company specializes in less-than-truckload (LTL) shipping where smaller cargos from multiple customers are combined on one trailer.[9] When Yellow received its national security loan in July 2020, the Treasury stated that Yellow "provides 68% of less-than-truckload services to the Defense Department."[10] At that time, Yellow was the fifth-largest U.S. trucking company and the fourth-largest less-than-truckload U.S. shipping provider (i.e., where smaller cargos from multiple customers are combined on one trailer).[11] It was headquartered in Overland Park, Kansas and had about 30,000 employees, the vast majority of whom were union workers. Yellow had been rated non-investment grade for over a decade before the COVID-19 pandemic, struggled financially for years before the pandemic, and was at risk of bankruptcy before it obtained a loan from the Treasury.[12]

On April 29, 2020, Yellow applied for a loan from the Treasury's national security loan program.[13] Executed July 7, 2020, the Treasury loan to Yellow is for $700 million, broken up into two tranches: (1) $300 million in Tranche A, which was intended to cover, among other things, healthcare and pension liabilities, real estate and equipment leases, and interest payments

[7] The Commission specifically examined Yellow's national security loan in its third, seventh, eighth, and twelfth reports, which are available on the Commission's website at https://coc.senate.gov/reports/.

[8] YRC Worldwide Inc., *YRC Worldwide Expects to Receive $700 Million CARES Act Loan from U.S. Treasury*, July 1, 2020, http://investors.YRC.com/news-releases/news-release-details/yrc-worldwide-expects-receive-700-million-cares-act-loan-us.

[9] YRC Worldwide Inc., *Annual Report (Form 10-K)*, March 11, 2020, http://investors.YRC.com/static-files/8092f183-eb4b-4ba7-bae2-fb4afc4f3e25.

[10] U.S. Department of the Treasury, *Treasury to Provide Loan to YRC Worldwide*, July 1, 2020, https://home.treasury.gov/news/press-releases/sm1049.

[11] Jennifer Smith, *Trucker YRC Seeks to Defer Millions in Benefits Payments*, Wall Street Journal, June 18, 2020, https://www.wsj.com/articles/trucker-yrc-seeks-to-defer-millions-in-benefits-payments-11592508252.

[12] Moody's Investors Services, *YRC Worldwide Inc. Ratings*, https://www.moodys.com/credit-ratings/YRC-Worldwide-Inc-credit-rating-834015; Jennifer Smith, *Truckers Cut Spending as Factory Slowdown Weighs on Operators*, Wall Street Journal, April 7, 2020, https://www.wsj.com/articles/truckers-cut-spending-as-factory-slowdown-weighs-on-some-operators-11586295247; Standard & Poor's, *U.S.-Based YRC Worldwide Inc. Downgraded To 'CCC' On Anticipated Covenant Violation, Outlook Negative*, May 28, 2020, https://www.standardandpoors.com/en_US/web/guest/article/-/view/type/HTML/id/2450913.

[13] U.S. Department of the Treasury, *Loans to Air Carriers, Eligible Businesses, and National Security Businesses*, https://home.treasury.gov/policy-issues/cares/preserving-jobs-for-american-industry/loans-to-air-carriers-eligible-businesses-and-national-security-businesses.

on debt, and (2) $400 million in Tranche B, which was intended to finance the purchase of tractors and trailers in accordance with the company's capital expenditures plan, both due September 30, 2024. Interest for Tranche A is LIBOR plus 3.5% (split between 1.5% cash interest and 2.0% payment-in-kind ("PIK") interest) and interest for Tranche B is LIBOR plus 3.5% (all cash). Additionally, the Treasury received a 29.6% equity stake in the Yellow.[14]

Since the CARES Act did not define the term "business critical to maintaining national security", the Treasury had virtually unfettered discretion to define this term. The Treasury defined this type of business as a business that was at the time of its application for a national security loan performing under a defense contract of the highest national priority or operating under a top secret facility security clearance.[15] Yellow did not meet either of these two national security eligibility criteria. However, Yellow qualified for the program under a "catch-all provision" created by the Treasury allowing it to determine if a business is critical to maintaining national security based solely on a recommendation and certification from the Secretary of Defense or the Director of National Intelligence. In the view of the Commission, their "catch-all provision" is not an effective policy and should not be considered in future periods where Treasury loan programs are considered by Congress.

The Commission first examined the Treasury's loan to Yellow in its third report.[16] That report raised concerns with the Treasury's decision to deem Yellow a business critical to maintaining national security and the process for reaching that conclusion. The Commission noted that it is far from clear that the fourth-largest LTL shipping company in the United States is critical to maintaining national defense because it reportedly delivers "food, electronics and other supplies to military locations around the country."[17] The third report also raised concerns about the riskiness of the Treasury's loan to Yellow given the company's poor financial condition before the COVID-19 pandemic.

The Commission's seventh report raised concerns that the Defense Department did not provide the Commission a satisfactory explanation for how Yellow was critical to national security. The report also raised serious concerns about the terms and conditions of the Treasury's loan to Yellow. Yellow was operating at a loss and had poor credit ratings—both before and during the pandemic. The Commission noted the significant risk that Yellow could default on the loan and the fact that the Treasury's lien position was less favorable than that of Yellow's other

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[14] YRC Worldwide Inc., *UST Tranche A Term Loan Credit Agreement*, July 7, 2020, at 55, https://home.treasury.gov/system/files/136/YRC-Documentation.pdf.

[15] U.S. Department of the Treasury, *Q&A: Loans to Air Carriers and Eligible Businesses and National Security Businesses*, Apr. 10, 2020, https://home.treasury.gov/system/files/136/CARES-Airline-Loan-Support-Q-and-A-national-security.pdf; Defense Contract Management Agency, *Defense Priorities & Allocations System (DPAS)*, May 7, 2019, https://www.dcma.mil/DPAS/ ("A DX rating is assigned to those programs of the highest national priority").

[16] Congressional Oversight Commission, *the Third Report of the Congressional Oversight Commission*, Jul. 20, 2020, https://coc.senate.gov/report/the-third-report-of-the-congressional-oversight-commission-2/.

[17] Kate Davidson & Jennifer Smith, *U.S. Treasury to Lend $700 Million to Trucking Firm YRC Worldwide*, Wall Street Journal, July 1, 2020, https://www.wsj.com/articles/u-s-treasury-to-loan-700-million-to-trucking-firm-yrc-worldwide-11593602409.

creditors.

The Commission's eighth report focused on the national security loan program as a whole, including the Treasury's loan to Yellow. The reported concluded the Defense Department should have used a more robust criteria and process for recommending and certifying that a business is critical to maintaining national security. The report also concluded that the Treasury should better understand the underlying collateral when underwriting a loan and better measure the incurred losses caused by COVID-19.

The Commission's twelfth report again examined the Treasury's loan to Yellow. The report noted that the Commission was unable to substantiate the assertion the Treasury and the Defense Department made indicating that Yellow provided 68% of less-than-truckload ("LTL") services to the Defense Department. The report also called attention to Yellow's increased lobbying efforts in 2020 at the time it was seeking financial assistance from the federal government. Further, in addition to failing to fully establish that Yellow was "essential," the structure of the Tranche B loan is purely financing the existing business capital expenditure plan of the company and no way is justified "to provide liquidity to eligible business-related losses incurred as a result of the coronavirus."

Overall, the Commission continues to believe that the Treasury and the Defense Department made missteps in deeming Yellow as critical to maintaining national security and in executing the loan to Yellow. This report further analyzes:

1. Yellow's lobbying efforts to secure a national security loan;

2. How key Yellow stakeholders benefited from the Treasury loan; and

3. How Yellow's low credit quality and the terms and conditions of its national security loan continue to put taxpayers in a precarious position.

Finally, the report concludes with a series of recommendations based on the Commission's multi-year examination of Yellow's national security loan.

YELLOW'S LOBBYING FOR NATIONAL SECURITY LOAN

The Commission's twelfth report called attention to Yellow's increased lobbying efforts in 2020 when it was seeking a national security loan. Yellow spent $570,000 on lobbying efforts in 2020 compared to zero in 2019, $80,000 in 2018 and $75,000 in 2017.[18] The Commission noted the correlation between lobbying the government and Yellow's ability to secure a $700 million loan. The Treasury confirmed that several Senators and members of Congress sent letters[19] to Treasury urging them to provide Yellow a loan.

Yellow has previously engaged in these types of activities. In 2009 during the financial crisis, Yellow also was on the verge of bankruptcy, and Yellow had planned on applying for a $1 billion federal government bailout[20] before entering into a debt swap arrangement with a group of banks.[21] Yellow's lobbying efforts, in conjunction with intensive political contacts by organized labor, totaled $800,000 for that year. The following year in 2010, Yellow spent approximately $150,000 less on lobbying and the spending decline trended until 2020, as outlined in the table below.

[18] United States Senate Lobbying Disclosure, *Registrations & Quarterly Activity*, https://lda.senate.gov/system/public/.

[19] Letter from Representative Sharice Davids (D-KS), U.S. House of Representatives, to Secretary Mnuchin, Apr. 2, 2020; Letter from the Chairman Peter A. DeFazio (D-OR) and Ranking Member Sam Graves (R-MO), Committee on Transportation and Infrastructure, U.S. House of Representatives, to Secretary Mnuchin, Apr. 17, 2020; Letter from Senators Ron Wyden (D-OR) and Pat Roberts (R-KS), United States Senate, to Secretary Mnuchin, Apr. 22, 2020; Letter from Representative Albio Sires (D-NJ), U.S. House of Representatives, to Secretary Mnuchin, Apr. 22, 2020; Letter from Rep. Bill Pascrell, Jr. (D-NJ), U.S. House of Representatives, to Secretary Mnuchin, May 5, 2020; *see also* Letter from Rep. Donald M. Payne, Jr. (D-NJ), U.S. House of Representatives, to Secretary Mnuchin, Apr. 20, 2020.

[20] Reuters, *YRC decides not to apply for federal bailout funds*, Jun. 12, 2009, https://www.reuters.com/article/yrc/yrc-decides-not-to-apply-for-federal-bailout-funds-idUSN126982620090613.

[21] Pierre Paulden & John Detrixhe, *Goldman Sachs Helps YRC Avert Bankruptcy Following Hoffa's Plea*, Jan. 1, 2010, https://www.bloomberg.com/news/articles/2010-01-01/goldman-sachs-helps-yrc-avert-bankruptcy-following-hoffa-s-plea.

Yellow Lobbying Spending 2009-2020[22]	
Year	**Amount**
2020	$570,000
2019	$0
2018	$80,000
2017	$75,000
2016	$210,000
2015	$130,000
2014	$320,000
2013	$620,000
2012	$500,000
2011	$637,500
2009	$800,000

The Commission obtained documents from the Defense Department and the Treasury that provide a window into Yellow's efforts to lobby for a national security loan. These documents show that Yellow or its lobbyists made contact with multiple Defense Department officials involved in Defense Department's process for certifying Yellow as a "businesses critical to maintaining national security." In their communications with the executive branch, lobbyists for Yellow suggested they had been in close touch with White House officials throughout the national security loan process and had discussed how the company employs 24,000 drivers who are part of the International Brotherhood of Teamsters ("Teamsters") union.[23] In their communications, lobbyists for Yellow also suggested that Teamsters President Jimmy Hoffa had reached out to the Trump administration and that Mr. Hoffa was seeking a meeting with the Secretary of Defense to advocate for Yellow's national security loan application.[24] A detailed review of Yellow's lobbying communications is available in the House Select Subcommittee on

[22] United States Senate Lobbying Disclosure, *Registrations & Quarterly Activity*, https://lda.senate.gov/system/public/.

[23] Email from Erskine Wells, Principal, BGR Group, to Jennifer Stewart, Chief of Staff to the Secretary of Defense, June 16, 2020; Email from Alexis Ross, Deputy Chief of Staff to the Secretary of Defense, to Jennifer Stewart, Chief of Staff to the Secretary of Defense, June 26, 2020.

[24] Email from Erskine Wells, Principal, BGR Group, to Alexis Ross, Deputy Chief of Staff to the Secretary of Defense, June 16, 2020; Email from Erskine Wells, Principal, BGR Group, to Alexis Ross, Deputy Chief of Staff to the Secretary of Defense, June 19, 2020.

the Coronavirus Crisis's April 27, 2022 report on Yellow's national security loan.[25]

The documents obtained by the Commission also show that the Treasury had more involvement in the process for designating companies as critical for national security than previously indicated. Defense Department officials were initially prepared to recommend "yes" to certifying Yellow as critical to maintaining national security, despite a Defense Department analysis that indicated that other trucking companies could replace Yellow's work with the federal government. Defense Department officials notified the Treasury of its likely "yes" recommendation. However, Defense Department officials then changed their recommendation to "no" (and notified the Treasury of this change) due to concerns about a Justice Department lawsuit alleging Yellow had overbilled its services to the Defense Department for years.[26] One day after Defense Department officials notified the Treasury that the Defense Department would likely not certify Yellow as critical to maintaining national security, the Treasury requested an urgent call with Secretary Esper, which took place on June 26, 2020. Secretary Esper certified Yellow as critical to maintaining national security the same day as the call, June 26, 2020, and the Treasury finalized the loan to Yellow on July 7, 2020. See Appendix A for more details on this timeline of events.

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[25] House Select Subcommittee on the Coronavirus Crisis, *Staff Report: 'We Had Our Hand in the Cookie Jar': The Trump Administration's $700 Million 'National Security' Loan to Yellow Corporation*, Apr. 27, 2022, https://coronavirus.house.gov/news/reports/clyburn-trump-admin-yellow-national-security-report-covid-oversight.

[26] Note: This lawsuit was settled in March 2022 with Yellow agreeing to pay the Defense Department $6.8 million. Yellow did not admit liability and Yellow denied the lawsuit's core allegations. Yellow Corporation, *SEC Form 8-K re Yellow Corporation Settles Decade-Old Dispute with United States Government*, Mar. 10, 2022, https://investors.myyellow.com/static-files/b3981d26-2ea9-41b7-8c9a-b39987adeef7.

BENEFITS OF TREASURY LOAN TO YELLOW'S KEY STAKEHOLDERS

The analysis presented below shows how Yellow's SEC-reporting executive officers (i.e., officers whose stock holdings are listed in Yellow's U.S. Securities and Exchange Commission (SEC) proxy statements and directors and the Teamsters benefited from Yellow's status as a going concern due to Treasury's national security loan.

YELLOW'S REPORTING OFFICERS AND DIRECTORS

Through an analysis of Yellow's relevant SEC filings,[27] quantified in Appendix B, C, and D, the Commission sought to understand how Yellow's reporting officers and directors have benefitted with both unrealized and realized stock gains after Treasury's loan to Yellow. The time period analyzed covers the months leading up to the loan in July 2020 into 2022.

Stock Holdings and Unrealized Value

Appendix B shows the Yellow common stock holdings of Yellow's reporting officers and directors on April 11, 2019, March 23, 2020, March 30, 2021, and April 4, 2022.[28] The chart also shows the unrealized value of these stock holdings based on the stock price on these dates. Yellow's reporting officers and directors had Yellow stock holdings—in some cases substantial holdings—which they stood to lose in the event of a Yellow bankruptcy. They benefitted from Yellow avoiding bankruptcy and also from the rise in Yellow's stock price that occurred in the months after Treasury's loan to Yellow.

On March 23, 2020, Yellow's reporting officers and directors collectively owned approximately 2.4 million shares of Yellow common stock that was worth $4.2 million when Yellow's stock price was $1.72. These shares represented about 6.4% of the approximately 37.58 million shares of Yellow common stock outstanding on March 23, 2020. On March 30, 2021, Yellow's reporting officers and directors collectively owned approximately 1.9 million shares of Yellow common stock that was worth $16.1 million when Yellow's stock price was at $8.54.[29]

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[27] The Commission examined Yellow's proxy statements issued in 2019, 2020, 2021, and 2022, and the SEC Form 4s (Statement of Changes in Beneficial Ownership) for Yellow SEC reporting officers and directors from February 1, 2020 through July 22, 2022. The Commission believes that these dates provide a good picture of the holdings of these officers and directors before and after Treasury's loan to Yellow in July 2020. The SEC requires directors, officers, and owners of ten percent of a company's stock file SEC Form 4 before the end of the second business day following the day on which a transaction resulting in a change in beneficial ownership has been executed.

[28] The information in this chart is taken from Yellow's SEC Schedule 14A proxy statements issued in June 2019, April 2020, April 2021, and April 2022, which are available at https://investors.myyellow.com/node/27111/html, https://investors.myyellow.com/node/27861/html, https://investors.myyellow.com/node/28681/html. These dates provide a good picture of the holdings of these officers and directors before and after Treasury's loan to Yellow in July 2020.

[29] *Id*. Officers and directors who leave the company are not required to report their holdings after their departures. It is possible that officers and directors continued to own Yellow shares after they left the company, but Yellow is not required to disclose that information. Appendix B lists the Yellow reporting officers whose stock holdings are listed in Yellow's proxy statements. This list is smaller than the entire universe of Yellow reporting officers, which are

These shares represented about 3.7% of the approximately 51.27 million shares of Yellow common stock outstanding on March 30, 2021. On April 4, 2022, Yellow's reporting officers and directors collectively owned approximately 1.6 million shares of common stock that was worth $9.6 million when Yellow's stock price was $6.09. These shares represented about 3.1% of the approximately 51.49 million shares of Yellow common stock outstanding on April 4, 2022.

Yellow shares sold by Yellow's reporting officers in the period between March 23, 2020 and April 4, 2022 were either scheduled sales made pursuant to Rule 10b5-1 trading plans or sales triggered by tax withholding requirements. No Yellow directors made Yellow stock sales during this period.

In 2021, Yellow's reporting officers and directors collectively purchased 260,000 shares of Yellow common stock valued at $1.75 million, based on the dates of those purchases. As of July 22, 2022, these holdings were worth only $1 million.

Stock Sales and Realized Value

Appendix C shows Yellow common stock sales made by Yellow's reporting officers and directors from February 1, 2020 through July 22, 2022.[30] During this period, these officers sold 658,243 shares of Yellow stock on various dates and at various prices. Collectively, the realized value of these sales was $3.80 million. The stock sales made by Yellow's CEO, Darren Hawkins, accounted for almost two-fifths of the realized value of these sales. These reporting officer sales were either scheduled sales made pursuant to Rule 10b5-1 trading plans or sales triggered by tax withholding requirements. No Yellow directors made Yellow stock sales during this period.

Stock Grants Awarded and Unrealized Value

Appendix D shows Yellow common stock grants awarded to Yellow's reporting officers and directors from February 1, 2020 through July 22, 2022.[31] During this period, 20 officers and directors were awarded 3.06 million shares of common stock with an unrealized value of $12.34 million. The Commission calculated this unrealized value by assuming that all shares vested on the dates on which they were awarded and by using the closing stock price of the shares on the dates on which they were awarded.[32] The ultimate realized value of these shares, if any, depends

those officers whose Yellow stock transactions must be disclosed in a SEC Form 4. The reason for this is the proxy rules only require that certain officers have their stock holdings listed in a proxy statement. Appendix B and C list all Yellow SEC reporting officers, as the Yellow SEC filings from which the Commission drew information for those charts include information for all Yellow reporting officers.

[30] The information in this chart is taken from Yellow's SEC Form 4s (Statement of Changes in Beneficial Ownership) from February 1, 2020 through July 22, 2022, which are available at https://investors.myyellow.com/financial-information/sec-filings.

[31] The information in this chart is taken from Yellow's SEC Form 4s (Statement of Changes in Beneficial Ownership) from February 1, 2020 through July 22, 2022.

[32] Yellow's stock price for all dates was sourced from Bloomberg. The Commission calculated this amount for

upon the prices at which they are sold. That said, these stock grants are another way in which Yellow's reporting officers and directors stand to benefit from Yellow's avoidance of bankruptcy.

The data in Appendix D is organized by the cumulative number of stock grants awarded over the time period. The unrealized value column in Appendix D calculates each transaction using the stock price on the date the stock grant was awarded and adds up each transaction, resulting in a total monthly figure. The Commission calculated the unrealized value of these shares by assuming that all shares vested on the dates on which they were awarded and by using the closing stock price of the shares on the dates on which they were awarded.

TEAMSTERS

The Teamsters also benefitted from the Treasury's national security loan to Yellow. The loan enabled Yellow to pay off certain pension and healthcare obligations to the Teamsters and likely prevented Yellow from going bankrupt.

As described below, the Treasury's loan to Yellow contains two parts (i.e., tranches). The first tranche of $300 million (Tranche A) was used by Yellow to cover, among other things, healthcare and pension liabilities, real estate and equipment leases, and interest payments on debt.[33] Before Yellow obtained this loan, it deferred millions of dollars of pension and healthcare payments for its largely unionized workforce for March, April, and May 2020.[34] In April 2020, Yellow "told a large multiemployer health-care fund that the missed contributions would be paid once Yellow received" a loan from the Treasury.[35] On July 1, 2020, Yellow's CEO, Darren Hawkins, stated that the funds from the Treasury would allow the company to pay off three months of missed pension and healthcare payments, which were "roughly $40 million a month."[36] On or around July 2, 2020, after Treasury announced its intent to provide a loan to Yellow, the company began to repay some of these missed payments.[37]

In addition, the Teamsters hold a direct interest in Yellow as a result of the Teamsters' ownership of Series A Preferred Stock. Yellow issued one share of Yellow's Series A Preferred

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illustrative purposes. Yellow's compensation plans for officers and directors impose restrictions on when the shares of officers and directors vest.

[33] U.S. Department of the Treasury, *Transaction Documentation*, Jul. 8, 2020, https://home.treasury.gov/system/files/136/YRC-Documentation.pdf.

[34] Jennifer Smith, *Trucker YRC Seeks to Defer Millions in Benefits Payments*, Wall Street Journal, Jun. 18, 2020, https://www.wsj.com/articles/trucker-yrc-seeks-to-defer-millions-in-benefits-payments-11592508252.

[35] *Id*.

[36] Kate Davidson & Jennifer Smith, *U.S. Treasury to Lend $700 Million to Trucking Firm YRC Worldwide*, Wall Street Journal, Jul. 1, 2020, https://www.wsj.com/articles/u-s-treasury-to-loan-700-million-to-trucking-firm-yrc-worldwide-11593602409.

[37] Brian Kaberline, *YRC makes partial payment to employee health funds*, Kansas City Business Journal, Jul. 6, 2020, https://www.bizjournals.com/kansascity/news/2020/07/06/yrc-makes-partial-payment-to-employee-health-funds.html.

stock on July 22, 2011 to the Teamsters "to confer certain board representation rights."[38] This share is valuable to the Teamsters because as the holder of this share the Teamsters are permitted to appoint two directors to Yellow's board of directors.

[38] Yellow Corporation, *SEC Schedule 14A - Proxy Statements*, Jun. 2019, Apr. 2020, Apr. 2021, Apr. 2022, https://investors.myyellow.com/financial-information/sec-filings; Yellow Corporation, *SEC Form 10-K - 2020 Annual Report*, Dec. 31, 2020, https://investors.myyellow.com/node/28441/html; Yellow Corporation, *SEC Form 8-K*, Jul. 22, 2011, https://investors.myyellow.com/node/22921/html.

RISKS OF YELLOW'S NATIONAL SECURITY LOAN TO TAXPAYERS

The Commission questions whether Yellow's precarious financial position at the time of the loan, and continued struggles, expose taxpayers to a significant risk of loss. Yellow experienced both revenue declines and negative free cash flow in 2019 and 2020.[39] The company ended 2019 with only $109 million in cash and cash equivalents. This amount was insufficient to absorb any adverse events. On May 12, 2020, a representative of Yellow wrote an email to the Treasury indicating "bottom line, [Yellow] is in need of a loan from Treasury or they won't make it through the summer."[40] On June 2, 2020, a Moody's analysis noted Yellow's liquidity was "weak" prior to the Treasury loan and Yellow's credit rating was Caa1, which Moody's noted is reserved for debt "judged to be of poor standing and subject to very high credit risk."[41] Yellow's very high credit risk was not a new development but instead a product of decades of mismanagement by Yellow, evidenced by Yellow's financial restructurings in both 2009 and 2011.[42] In 2019, prior to the COVID pandemic, Yellow was engaged in yet another corporate restructuring in an attempt to turn around its struggling fortunes. After Yellow obtained its loan from the Treasury, the company's CEO stated that the loan gave "the unique ability to focus on and accelerate the enterprise transformation strategy that we began implementing in 2019."[43]

Subsequent to the Treasury loan and improvements in Yellow's operations, Moody's upgraded Yellow's liquidity rating to "adequate" and credit rating to B3 (up from Caa1) in December 2021, which Moody's noted is reserved for debt "considered speculative and subject to high credit risk."[44] Despite positive trucking industry and operating tailwinds, Yellow still had negative free cash flow in 2021, 2022, and free cash flow is expected to remain negative in 2023,

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[39] Yellow Corporation, *SEC Form 10-K for the period ended December 31, 2019 , Mar. 11, 2020*, https://investors.myyellow.com/node/27841/html; Yellow Corporation, *SEC Form 10-K for the period ended December 31, 2020 , Feb. 11, 2021*, https://investors.myyellow.com/node/28441/html.

[40] Email from Erskine Wells, Principal, BGR Group, to Daniel Kowalski, Counselor to the Secretary of the Treasury, May 12, 2020.

[41] Moody's Investors Service, *Ratings Symbols and Definitions*, Jun. 2, 2022, https://www.moodys.com/researchdocumentcontentpage.aspx?docid=pbc_79004#:~:text=Obligations%20rated%20Ba%20are%20judged,subject%20to%20substantial%20credit%20risk.&text=Obligations%20rated%20B%20are%20considered,subject%20to%20high%20credit%20risk.&text=Obligations%20rated%20Caa%20are%20judged,to%20very%20high%20credit%20risk; Moody's Investors Service, *Yellow Corporation: Update to credit analysis following upgrade of CFR to B3*, Jan. 19, 2022, https://www.moodys.com/credit-ratings/Yellow-Corporation-credit-rating-834015/reports#.

[42] Yellow Corporation, *SEC Form 8-K*, Jul. 22, 2011, https://investors.myyellow.com/node/22921/html; *See, e.g.*, David Twiddy, *YRC Worldwide bondholders approve debt-for-equity swap*, Kansas City Business Journal, Dec. 31, 2009, https://www.bizjournals.com/kansascity/stories/2009/12/28/daily22.html.

[43] Yellow Corporation, *Press release: YRC Worldwide Reports Second Quarter 2020 Results*, Aug. 3, 2020, https://investors.myyellow.com/news-releases/news-release-details/yrc-worldwide-reports-second-quarter-2020-results.

[44] Moody's Investors Service, *Rating Action: Moody's upgrades Yellow Corporation's CFR to B3 from Caa1; outlook stable*, Dec. 23, 2021, https://www.moodys.com/research/Moodys-upgrades-Yellow-Corporations-CFR-to-B3-from-Caa1-outlook--PR_460563.

given high levels of capital investments and a thin operating margin.[45] In addition, both S&P and Moody's downgraded Yellow's credit rating to CCC+/Caa1 due to "significant risk Yellow cannot refinance its upcoming debt maturities."[46] According to Bloomberg, Yellow's risk of default was rated on June 22, 2023 at the riskiest category for companies (i.e., not investment grade or even speculative grade) at "Distressed 2," with a one-year default probability of 18.9%.[47] Yellow's one-year default risk cratered to a level of "Distressed 2," with a default probability of 20.5% on June 16, 2022.[48] For context, FedEx Corporation's ("FedEx") Bloomberg one-year default risk rating is "Investment Grade 9," and FedEx's one-year default probability was 0.12% on June 22, 2023 and hit a high of 0.5329% on September 26, 2022.[49] Yellow had very high credit risk before receiving a loan from the Treasury and its remains a company with high credit risk nearly three years since receiving that loan.

The structure of the Treasury's loan to Yellow exposes taxpayers to heightened risk. The Treasury's loan to Yellow contains two parts (i.e., tranches) that mature on September 30, 2024. Both tranches have an interest rate of London Inter-bank Offered Rate ("LIBOR") +3.50%. The first tranche of $300 million ("Tranche A") was used to cover, among other things, healthcare and pension liabilities, real estate and equipment leases, and interest payments on debt. The second tranche of $400 million ("Tranche B") was used to finance the purchase of tractors and trailers in accordance with the company's capital expenditures plan that must be submitted to, and approved by, the Treasury. Again, Tranche B is simply a taxpayer subsidized support of Yellow's capital expenditure plan with no direct connection to losses in and from the coronavirus.

Tranche A is secured by a third lien, behind the claims of Yellow's senior secured asset-based revolving credit agreement ("ABL revolver") and the company's senior secured term loan ("term loan"), which are both cross-collateralized.[50] This means that in a negative credit event, the ABL revolver and the term loan creditors will have claims on Yellow's assets of up to $1.05

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[45] Moody's Investors Service, *Yellow Corporation: Update to credit analysis following upgrade of CFR to B3*, Jan. 19, 2022, https://www.moodys.com/credit-ratings/Yellow-Corporation-credit-rating-834015/reports#.
[46] Moody's Investors Service, *Moody's downgrades Yellow Corporation's CFR to Caa1 on refinancing risk*, May 15, 2023, https://www.moodys.com/research/Moodys-downgrades-Yellow-Corporations-CFR-to-Caa1-on-refinancing-risk-Rating-Action--PR_476677; *S&P Global, Yellow Corp. downgraded to 'CCC+' on uncertainty around the refinancing of its upcoming maturities*, Feb. 27, 2023, https://disclosure.spglobal.com/ratings/en/regulatory/article/-/view/type/HTML/id/2953902.
[47] Bloomberg, *Yellow Corporation 1-year default risk and 1-year default probability for the period of Jan. 1, 2020 through Jun. 22, 2023*, data retrieved from Bloomberg Terminal Jun. 22, 2023. Bloomberg's Distressed 1-year default risk scale ranges from 1 to 5 (with 5 being the highest risk).
[48] Bloomberg, *Yellow Corporation 1-year default risk and 1-year default probability for the period of Jan. 1, 2020 through Jun. 22, 2023*, data retrieved from Bloomberg Terminal Jun. 22, 2023.
[49] Bloomberg, *FedEx Corporation 1-year default risk and 1-year default probability for the period of Jan. 1, 2020 through Jun. 22, 2023*, data retrieved from Bloomberg Terminal Jun. 22, 2023. Bloomberg's Investment Grade 1-year default risk scale ranges from 1 to 10 (with 10 being the highest risk).
[50] U.S. Treasury, *UST Term Loan Credit Agreement*, Jul. 7, 2020, https://home.treasury.gov/system/files/136/YRC-Documentation.pdf. Note: Cross collateralization is the act of using an asset that's collateral for an initial loan as collateral for a second loan. If the debtor is unable to make either loan's scheduled repayments on time, the affected lenders can eventually force the liquidation of the asset and use the proceeds for repayment.

billion.[51] The Treasury has a first lien on all equipment purchased under Tranche B.

The Treasury loan is scheduled to be repaid only after Yellow's other obligations are repaid. As seen in the chart below, the ABL revolver matures on January 9, 2024. After that, the term loan matures on June 30, 2024. The Treasury's loan matures on September 30, 2024. This leaves the taxpayer the last creditor to get repaid.

While not a creditor, the Teamsters have a master collective bargaining agreement with Yellow that expires on March 31, 2024. The Teamsters are entitled to two selections on Yellow's board of directors and the Teamsters, who represent 79% of Yellow's workforce, benefited from Yellow's corporate restructurings in both 2009 and 2011.[52] In regards to upcoming labor negotiations, the Teamsters general president Sean O'Brien has said, "it is not left for the Teamsters to save this company; we have given enough. What happens next is out of our control."[53] Moody's has noted that the concentration of Yellow's workforce represented by the Teamsters presents a social risk due to the possibility that Yellow's relationship with its union deteriorates and that this results in work stoppages.[54]

Date of Maturity/ Expiration	**Financial Instrument/ Contract**	**Counterparty**	**Amount**
January 9, 2024	ABL revolver	Bank syndicate	$450 million
March 31, 2024	Master collective bargaining agreement	Labor union	79% of workforce
June 30, 2024	Senior secured term loan	Private equity	$600 million
September 30, 2024	Two-tranche term loan	Treasury	$700 million

As additional security for the Treasury's loan to Yellow, the Treasury received 15.9

[51] Yellow Corporation, *SEC Form 10-K for the period ended December 31, 2021*, Feb. 4, 2022,
[52] Yellow Corporation, *SEC Form 10-K for the period ended December 31, 2009*, Mar. 22, 2010, https://investors.myyellow.com/node/22466/html; Yellow Corporation, *SEC Form 10-K for the period ended December 31, 2011*, Feb. 28, 2012, https://investors.myyellow.com/node/23571/html.
[53] Freightwaves, *Teamsters not 'bailing out' Yellow again, unmoved by carrier's finances*, Jun. 13, 2023, https://www.freightwaves.com/news/teamsters-not-bailing-out-yellow-again-unmoved-by-carriers-finances.
[54] Moody's Investors Service, *Yellow Corporation: Update to credit analysis following upgrade of CFR to B3*, Jan. 19, 2022, https://www.moodys.com/credit-ratings/Yellow-Corporation-credit-rating-834015/reports#.

million shares of Yellow's common stock.[55] Based on Yellow's stock price on June 22, 2023, the value of the Treasury's common stock position is approximately $21 million.[56] The value of Treasury's equity position in Yellow has fluctuated from as low as $20 million on May 31, 2023 to as high as $233 million on December 8, 2021. In addition to stock price fluctuations, Yellow's stock has a relatively low daily trading volume, meaning the Treasury stake will not be able to be easily sold or exchanged for cash without a significant change in price. From January 1, 2020 to June 22, 2023, an average of 1.3 million shares of Yellow stock were traded per day, including a low of 202 thousand shares on one day in that period[57] For context, during the same period, the S&P 500 index traded 675 million shares per day, including a low of 207 million shares.[58] Also during the same time period, another trucking company, FedEx, traded an average of 2.7 million shares per day, including a low of 445 thousand shares.[59] It will be difficult for Treasury to dispose of its 15.9 million shares of Yellow without the risk of severely lowering the stock price and this will adversely impact both taxpayers and Yellow's other shareholders.

While the Commission understands that the Treasury obtained Yellow stock as part of the loan agreement to provide a monetary upside for the taxpayer (an equity stake currently worth $21 million), the Commission believes that this equity holding does little to mitigate the downside risks of the Yellow loan. In a downside scenario, the equity stake will be worth little (or nothing) and taxpayers will be left with limited claims on Yellow's assets.

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[55] Yellow Corporation, *2020 Annual Report*, Feb. 11, 2021, https://investors.myyellow.com/static-files/c7b4a86d-ddd4-444b-80e6-0603b6b5876b (*see* "U.S. Treasury Loan").
[56] Bloomberg, *Yellow corporation equity price for Jun. 22, 2023*, retrieved from Bloomberg Terminal Jun. 22, 2023.
[57] Bloomberg, *Yellow Corporation equity trading volume for the period of Jan 1, 2020 through Jun. 22, 2023*, data retrieved from Bloomberg Terminal Jun. 22, 2023.
[58] Bloomberg, *S&P 500 Index equity trading volume for the period of Jan 1, 2020 through Jun. 22, 2023*, data retrieved from Bloomberg Terminal Jun. 22, 2023.
[59] Bloomberg, *FedEx Corporation equity trading volume for the period of Jan 1, 2020 through Jun. 22, 2023*, data retrieved from Bloomberg Terminal Jun. 22, 2023.

RECOMMENDATIONS

The following recommendations are based on the Commission's multi-year examination of the Treasury's national security loan program.

1. **Congress should <u>not</u> create an open-ended sector specific (such as national security) loan program in the future.**

    - While the national security loan program may have been a well-intentioned response to extraordinary events, it ultimately proved to be unnecessary and morphed into something that Congress never intended—a risky taxpayer bailout for businesses, like Yellow, that struggled financially before the COVID-19 pandemic and were not critical to maintaining national security.

    - Former Treasury Secretary Steven Mnuchin has publicly stated that the national security loan program was developed with the thought that Boeing and General Electric might need loans from the government.[60] However, as Secretary Mnuchin later acknowledged, these companies did not need such loans because the markets recovered and they were ultimately able to borrow in the markets.[61] That arguably should have been the end of the story for the national security loan program.

    - But whenever Congress gives the Executive Branch billions of taxpayer dollars and enormous discretion to hand them out, it is understandably difficult for the Executive Branch to resist the urge to do so. The only airtight way to prevent a sector-specific loan program from straying from its original intent is to not create such a program in the first place or have substantial "off-ramps" if not needed or very tight "guardrails" as to liquidity, assessment, and approval.

    - The Treasury's National Security Loan Program ended up being redundant as the Federal Reserve's emergency programs served the same set of companies. For example, many of the National Security Loan Program recipients could have qualified for the Main Street Lending Program, which was intended for small and medium-sized businesses. Larger businesses with access to the capital markets were eligible to receive support under the Federal Reserve's Primary Market Corporate Credit Facility

[60] Saleha Mohsin, *Mnuchin May Ease Rules for $17 Billion Security Funds*, Bloomberg, June 11, 2020, https://www.bloomberg.com/news/articles/2020-06-11/mnuchin-says-he-may-ease-rules-for-17-billion-security-stimulus.

[61] Congressional Oversight Commission, *the Eighth Report of the Congressional Oversight Commission*, Dec. 31, 2020, https://coc.senate.gov/sites/default/files/2021-01/COMMISSION%20December%20Report%2012-31%20FINAL%2C%20appendix.pdf, see 59, 73. Secretary Mnuchin told the Commission at a hearing on December 10, 2020 that "the good news is that the markets recovered, and so many of the companies that we thought we would have to make loans to were able to borrow in the markets, companies like Boeing and GE that we thought were going to be major military contractors." He also stated at that hearing that "I can tell you the original concept of the national security loans was for critical suppliers, and we thought—we were worried about Boeing."

and Secondary Market Corporate Credit Facility.

2. **If Congress were to create another sector-specific (e.g., national security) loan program in response to future emergency events, the statute establishing the program should, at a minimum, contain the following features to limit the risk of the program straying from its original intent.**

   - **Congress should clearly define the term "business critical to maintaining national security" and prohibit the Executive Branch from having unfettered authority to designate a business as critical to maintaining national security.**

     - The CARES Act did not define the term "business critical to maintaining national security." As a result, the Treasury had virtually unfettered authority to define this term as it wanted. The Treasury defined a "business critical to maintaining national security" as a business that at the time of its application was performing under a defense contract of the highest national priority or operating under a top secret facility security clearance.[62]

     - Unfortunately, the Treasury's definition was not limited to these two national security eligibility criteria. The Treasury also created a catch-all provision that allowed it to determine that a business was critical to maintaining national security based solely on a recommendation and certification from the Secretary of Defense or the Director of National Intelligence. The Treasury did not establish criteria for how the Treasury, the Secretary of Defense, and the Director of National Intelligence would implement this catch-all provision.

     - The discretion afforded to the Treasury, Secretary of Defense, and the Director of National Intelligence opened the door for outside parties, including lobbyists and members of Congress, to influence the process. The Commission's twelfth report called attention to Yellow's increased lobbying efforts in 2020 when it was seeking a national security loan. Yellow spent $570,000 on lobbying efforts in 2020 compared to zero in 2019, $80,000 in 2018 and $75,000 in 2017. The Commission noted the correlation between lobbying the government and Yellow's ability to secure a $700 million loan. The Treasury confirmed that several Senators and members of Congress sent letters to Treasury urging them to provide Yellow a loan.

     - In practice, this catch-call provision proved to be the exception that swallowed the rule. Most of the Treasury's national security loans, including its loan to Yellow, were made under this catch-all provision. The result was that the Treasury made a

[62] U.S. Department of the Treasury, *Q&A: Loans to Air Carriers and Eligible Businesses and National Security Businesses*, Apr. 10, 2020, https://home.treasury.gov/system/files/136/CARES-Airline-Loan-Support-Q-and-A-national-security.pdf; Defense Contract Management Agency, *Defense Priorities & Allocations System (DPAS)*, May 7, 2019, https://www.dcma.mil/DPAS/ ("A DX rating is assigned to those programs of the highest national priority").

risky national security loan to Yellow—a business with long-standing financial troubles that, based on any common-sense measure, was not critical to maintaining national security given that the shipping services it provides to the military could be provided by other trucking companies.

- o The catch-all provision created by the Treasury allowed the national security program to stray from Congress's original intent. In any future national security loan program, Congress should not create (or permit the Executive Branch to create) any type of catch-all provision and should clearly define the term "business critical to maintaining national security."

- **Congress should prohibit businesses that receive national security loans from using the loans on expenditures unrelated to the purpose of the loan program.**

  - o The CARES Act authorized the Treasury to make loans "to provide liquidity to eligible businesses . . . related to losses incurred as a result of the coronavirus."[63] Despite this statutory language, Tranche B of the Treasury's national security loan to Yellow provided the company $400 million to finance the purchase of tractors and trailers in accordance with its capital expenditures plan. This type of spending is beyond the intent of the CARES Act as it is not covering COVID-19 losses. The Treasury had no business lending a trucking company money to buy tractors and trailers, just as it would have had no business lending airlines money to buy airplanes. In any future national security loan program, Congress should clearly limit the use of loans to expenditures that are directly related to the purpose of the program.

- **Congress should limit any national security loan program to businesses that are in good financial condition prior to the emergency events that lead to the program's creation.[64]**

  - o A national security loan program should not be used as a mechanism to bailout businesses with deep-seated financial problems that pre-date the emergency events that trigger the creation of a program. Before the COVID-19 pandemic, Yellow was a financially struggling company that had a long-term non-investment grade (i.e., junk) rating and previous close calls with bankruptcy over the years. The pandemic did not cause Yellow's longstanding problems, nor is the Treasury's loan to the company likely to solve those problems. As a result, taxpayers face a heightened risk of loss from Yellow's loan.

  - o In any future national security loan program, Congress should limit the program to

[63] CARES Act, Pub. L. No. 116-136, § 4003(a), 134 Stat. 281 (2020).
[64] See for example the additional safeguards imposed on the Federal Reserve by the Dodd Frank Act regarding their design and implementation of Sec. 13(3) facilities. Congressional Research Service, *Federal Reserve: Emergency Lending*, March 27, 2020, https://crsreports.congress.gov/product/pdf/R/R44185

businesses that were in good financial condition prior to the emergency events that lead to the program's creation. For example, Congress could limit the program to businesses that had an investment-grade credit rating from a nationally recognized statistical ratings organization (NRSRO)[65] prior to the emergency events. Businesses with an investment-grant credit rating have at worst "moderate credit risk and may contain certain speculative characteristics."[66]

- **Congress should require national security loans to be underwritten and structured in ways that more effectively mitigate the risk of loss to taxpayers.**
    - Yellow has other obligations that come due before the Treasury's national security loan matures on September 30, 2024. When coupled with Yellow's high credit risk and the Treasury's third-lien position on Tranche A of its loan, the Treasury may have put taxpayers in a precarious position. In any future national security loan program, Congress should consider requiring national security loans to be paid back before a company's other creditors and mandating that the federal government's claims on a company's assets be at least as good as the claims of other creditors (i.e., *pari-passu*). Such creditor protections should be required regardless of whether Congress allows the federal government to obtain an equity stake in a company as part of a national security loan. In other words, an equity stake should supplement, not replace, congressionally mandated creditor protections.

- **The Defense Department (1) should not rely on its contractors for critical information relevant to making decisions about certifying a business as critical to maintaining national security and (2) the Defense Department must improve its oversight over its subcontractors not just its prime contractors.**
    - Both Treasury and the Defense Department cited figures claiming that Yellow "provides 68% of less-than-truckload services to the Defense Department" as justification for the designation, but the August 13, 2021 correspondence from the Defense Department showed that it was provided by Crowley Logistics and that USTRANSCOM has "no way of verifying their accuracy or completeness."
    - The Commission found that this often cited "68% of less-than-truckload services" figure originated from communications from Yellow and its representatives and was not independently verified by the Defense Department.

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[65] U.S. Securities and Exchange Commission, *Current NRSROs*, last visited Jun. 22, 2023, https://www.sec.gov/ocr/ocr-current-nrsros.html.

[66] Moody's Investors Service, *Ratings Symbols and Definitions*, Jun. 2, 2022, https://www.moodys.com/researchdocumentcontentpage.aspx?docid=pbc_79004#:~:text=Obligations%20rated%20Ba%20are%20judged,subject%20to%20substantial%20credit%20risk.&text=Obligations%20rated%20B%20are%20considered,subject%20to%20high%20credit%20risk.&text=Obligations%20rated%20Caa%20are%20judged,to%20very%20high%20credit%20risk. An investment-grade credit rating from a NRSO, such as Moody's or S&P, equates to Baa3/BBB- or higher.

- The Commission's own review, as detailed in its Twelfth report from April 2021, estimated that Yellow constituted a range of 20% to 40% of the Defense Department's LTL shipments from 2018 to 2020, based on a total amount of LTL Defense Freight Transportation Services ("DFTS") of $59.98 million. Yet the Defense Department and Treasury have continued to cite the 68% figure even though the Defense Department acknowledges that it is just "a snapshot in time" and that it was plausible that Yellow could have just been on the high end of their shipment services. Furthermore, Defense Department's own internal evaluation of Yellow questions "how the company could have 70% of the less-than-truckload awards with the government and not show up on [Federal Procurement Data System]."

- All oversight of subcontractors is left to the prime contractors, yet Yellow, which is a subcontractor of Defense Department prime contractor Crowley, was deemed as critical to national security based on figures that Crowley provided about the nature of Yellow's financial health, business, and operations. The Defense Department did not even question or attempt to verify those figures, such as the 68% LTL. The Defense Department cannot justify a subcontractor as being critical to national security if they have no understanding of, oversight over, or accountability mechanism with respect to the company.

- **Congress should limit any national security loan program to non-pre-revenue companies. These loan recipients must have a direct and immediate impact on national security, not based on speculation over potential future impact.**

3. The Treasury should seek to disposes of its Yellow stock and loan holdings to minimize the risk of loss to taxpayers.

- There is a significant risk, as described above, that the Treasury's equity and debt stakes in Yellow will be worth little if the Treasury continues to hold them. To minimize the risk of loss to taxpayers, the Treasury should immediately explore options to sell (a) its 15.9 million shares of Yellow stock no later than January 1, 2024, and (b) its $700 million loan to Yellow before the loan's September 30, 2024 maturity date.

Appendix A:

Timeline of Events Relating to Yellow's National Security Loan and Communications Between Yellow, Defense Department, Treasury, and the U.S. Congress

Date	Yellow	Defense Department	Treasury	Congress
April 2020				
4/2 4/17 4/20 4/22			Congressional letters of support sent to Treasury.[1]	
4/24	Yellow submits application for national security loan program to Treasury.[2]			
May 2020				
5/5			Congressional letter of support sent to Treasury.[1]	
5/11- 5/12	Yellow contacts Treasury to indicate the poor financial shape Yellow was in and indicating Yellow would fail without a Treasury loan.[3]			
June 2020				
6/10	Yellow CEO letter to Secretary of Defense requesting a waiver to certify Yellow as "critical to maintaining national security"[4]			
6/10 6/11	Yellow establishes contact with TRANSCOM, Office of Under Secretary of Defense for Acquisitions and Sustainment, and Office of Secretary of Defense.[5]			
6/15	Yellow CEO call with Deputy Commander of TRANSCOM.[6]			
6/16	Yellow requests phone call between Teamsters President and Secretary of Defense. Request was later withdrawn.[7]			
6/17	Yellow communications with Office of Secretary of Defense.[8]			
6/19			Congressional letter of support sent to Treasury.[9]	
6/19		Internal discussions about certification.[10]		
6/22		Defense Department Industrial Policy team notifies Treasury it will be recommending "yes" for designating Yellow as a business critical to maintaining national security.[11]		
6/24		Defense Department Industrial Policy notifies Treasury recommendation has changed to "no" for Yellow's national security designation based on additional information received about the Justice Department lawsuit against Yellow.[12]		
6/25		Treasury reaches out to Office of Secretary of Defense to schedule a 6/26/20 call between Secretary of Treasury and Secretary of Defense.[13]		
6/26		Secretary of Defense certifies Yellow as critical to maintaining national security.[14]		
July 2020				
7/1	Yellow notifies Defense Department that Treasury loan has been approved.[15]			
7/7			Treasury finalizes loan agreement.[16]	

Notes

- **Yellow**: Communications Yellow initiated
- **Purple**: Communications Congress initiated
- **Green**: Communications Treasury initiated

[1] Letter from Representative Sharice Davids (D-KS), U.S. House of Representatives, to Secretary Steven Mnuchin, Apr. 2, 2020; Letter from the Chairman Peter A. DeFazio (D-OR) and Ranking Member Sam Graves (R-MO), Committee on Transportation and Infrastructure, U.S. House of Representatives, to Secretary Steven Mnuchin, Apr. 17, 2020; Letter from Senators Ron Wyden (D-OR) and Pat Roberts (R-KS), United States Senate, to Secretary Steven Mnuchin, Apr. 22, 2020; Letter from Representative Albio Sires (D-NJ), U.S. House of Representatives, to Secretary Steven Mnuchin, Apr. 22, 2020; Letter from Rep. Bill Pascrell, Jr. (D-NJ), U.S. House of Representatives, to Secretary Steven Mnuchin, May 5, 2020; *see also* Letter from Rep. Donald M. Payne, Jr. (D-NJ), U.S. House of Representatives, to Secretary Steven Mnuchin, Apr. 20, 2020.

[2] Yellow Corporation, *Application to National Security Loan Program*, Apr. 24, 2020.

[3] Email from Erskine Wells, Principal, BGR Group, to Brian Morgenstern, Deputy Assistant Secretary for External Affairs at Treasury, May 11, 2020; Email from Erskine Wells, Principal, BGR Group, to Daniel Kowalski, Counselor to the Secretary of the Treasury, May 12, 2020.

[4] Yellow Corporation, *Letter from CEO Darren Hawkins to Secretary of Defense requesting favorable "critical to maintaining national security" recommendation and certification from the Secretary of Defense*, Jun. 10, 2020.

[5] Email from Erskine Wells, Principal, BGR Group, to Alexis Ross, Deputy Chief of Staff to the Secretary of Defense, Jun 10, 2020; Email from Darren Hawkins, CEO, Yellow Corporation, to Vice Admiral Dee Mewbourne, Deputy Commander TRANSCOM, Department of Defense, Jun. 10, 2020; Email from Alexis Ross, Deputy Chief of Staff to the Secretary of Defense, to Karen Saunders, Chief of Staff to Under Secretary of Defense for Acquisition and Sustainment Ellen Lord, June 10, 2020; Email from Bill Wanamaker, Executive Director, American Trucking Associations, Jun. 10, 2020.

[6] Email from Darren Hawkins, CEO, Yellow Corporation, to Vice Admiral Dee Mewbourne, Deputy Commander TRANSCOM, Department of Defense, Jun. 16, 2020.

[7] Email from Erskine Wells, Principal, BGR Group, to Alexis Ross, Deputy Chief of Staff to the Secretary of Defense, Jun. 16, 2020; Email from Erskine Wells, Principal, BGR Group, to Jennifer Stewart, Chief of Staff to the Secretary of Defense, June 16, 2020.

[8] Email from Erskine Wells, Principal, BGR Group, to Alexis Ross, Deputy Chief of Staff to the Secretary of Defense, Jun. 17, 2020; Email from Erskine Wells, Principal, BGR Group, to Jennifer Stewart, Chief of Staff to the Secretary of Defense, Jun. 17, 2020.

[9] Letter from Senator Jerry Moran (R-KS), U.S. Senate, to Secretary Steven Mnuchin, Treasury, Jun. 19, 2020; Letter from Senator Roger Wicker (R-MS), U.S. Senate, to Secretary Mark Esper, Defense Department, Jun. 19, 2020; Letter from Ranking Member Senator James Inhofe (R-OK), U.S. Senate, to Secretary Mark Esper, Defense Department, Jun. 19, 2020.

[10] Emails between Alexis Ross, Deputy Chief of Staff to the Secretary of Defense, Jennifer Stewart, Chief of Staff to the Secretary of Defense, Karen Saunders, Chief of Staff Under Secretary of Defense for Acquisition and Sustainment Ellen Lord, Kerry Smith, Chief of Correspondence Management Division, Defense Department, and Captain David Soldow, Executive Secretary, Office of Secretary of Defense, Jun. 19, 2020.

[11] Email from Dr. Christine Michienzi, Chief Technology Officer, Office of Under Secretary of Defense for Acquisition and Sustainment Ellen Lord, to Laura Black, Director of Policy and International Relations at the Office of Investment Security (CFIUS), Treasury, Jun. 22, 2020.

[12] Email from Dr. Christine Michienzi, Chief Technology Officer, Office of Under Secretary of Defense for Acquisition and Sustainment Ellen Lord, to Laura Black, Director of Policy and International Relations at the Office of Investment Security (CFIUS), Treasury, Jun. 24, 2020.

[13] Email from Executive Assistant to the Secretary of the Treasury, to Anne Powers, Scheduler, Office of the Secretary of Defense, Jun. 25, 2020.

[14] Defense Department, *National Security Designation Certification for Yellow Corporation*, Jun. 26, 2020.

[15] Email from Erskine Wells, Principal, BGR Group, to Jennifer Stewart, Chief of Staff to the Secretary of Defense, Jul. 1, 2020.

[16] Treasury, *U.S. Treasury Term Loan A and B Credit Agreement for YRC Worldwide*, Jul. 7, 2020, https://home.treasury.gov/system/files/136/YRC-Documentation.pdf.

Appendix B:

Stock Holdings of Yellow SEC Reporting Officers and Directors

Chart of Stock Holdings - Yellow SEC Directors and Certain Reporting Officers
Covers April 2019 through April 2022

		2019		2020		2021		2022	
		Shares of common stock owned on April 11, 2019	Unrealized value based on April 11, 2019 price ($8.04)	Shares of common stock owned on March 23, 2020	Unrealized value based on March 23, 2020 price ($1.72)	Shares of common stock owned on March 30, 2021	Unrealized value based on March 30, 2021 price ($8.54)	Shares of common stock owned on April 4, 2022	Unrealized value based on April 4, 2022 price ($6.09)
Officers									
Hawkins, Darren	Chief Executive Officer (Apr. 2018 - present)	378,290	$ 3,041,452	620,124	$ 1,066,613	401,601	$ 3,429,673	401,601	$ 2,445,750
Harris, Darrel	President and Chief Operating Officer (Apr. 2021 - present)							103,067	$ 627,678
O'Connor, Thomas	Former Chief Operating Officer (Jun. 2019 - present)	88,507	$ 711,596	238,352	$ 409,965	173,366	$ 1,480,546	-	$ -
Olivier, Daniel	Chief Financial Officer (Oct. 2020 - present)					68,143	$ 581,941	40,210	$ 244,879
Fisher, Stephanie	Former Chief Financial Officer (May 2017 - Dec. 2019)	94,913	$ 763,101	61,910	$ 106,485				
Pierson, James	Former Chief Financial Officer (Dec. 2019 - Oct. 2020)			496,339	$ 853,703	270,315	$ 2,308,490		
Hall, Justin	Former Chief Customer Officer (Jun. 2016 - Jun. 2019)	83,005	$ 667,360						
Ringgenberg, Jason	Chief Information Officer (Mar. 2017 - present)	Not broken out	Not broken out	170,724	$ 293,645	139,032	$ 1,187,333	Not broken out	Not broken out
Ware, Scott	Chief Network Officer (Oct. 2018 - present)	74,573	$ 599,567	208,494	$ 358,610	141,460	$ 1,208,068	Not broken out	Not broken out
Bergman, Jason	Chief Commercial Officer (Jul. 2019 - present)			Not broken out	Not broken out	Not broken out	Not broken out	Not broken out	Not broken out
Dawson, Leah	Executive VP and General Counsel (Oct. 2020 - present)					Not broken out	Not broken out	38,456	$ 234,197
Faught, James	Chief Accounting Officer (Oct. 2020 - present)					Not broken out	Not broken out	41,629	$ 253,521
Directors									
Carty, Douglas	Director (Jul. 2011 - present)	106,889	$ 859,388	132,650	$ 228,158	142,819	$ 1,219,674	161,395	$ 982,896
Davidson, William	Former Director (Jul. 2014 - Apr. 2021)	65,435	$ 526,097	91,186	$ 156,840	101,355	$ 865,572		
Doheny, Matthew	Director (Jul. 2011 - present)	106,889	$ 859,388	132,650	$ 228,158	142,819	$ 1,219,674	207,395	$ 1,263,036
Evans, Javier	Director (Nov. 2021 - present)							8,576	$ 52,228
Hoffman, James	Director (Jul. 2011 - present)	106,889	$ 859,388	132,650	$ 228,158	142,819	$ 1,219,674	151,395	$ 921,996
Jones, Shaunna	Director (Oct. 2020 - present)					10,169	$ 86,843	18,745	$ 114,157
Martinez, Susana	Director (Oct. 2020 - present)					10,169	$ 86,843	18,745	$ 114,157
McClimon, David	Director (Jan. 2021 - present)					10,169	$ 86,843	38,745	$ 235,957
Nazemetz, Patricia	Director (Mar. 2015 - present)	68,351	$ 549,542	94,102	$ 161,855	104,271	$ 890,474	112,847	$ 687,238
Suitemeirer, Chris	Director (Jan. 2021 - present)					16,269	$ 138,937	24,845	$ 151,306
Total		**2,359,921**	**$ 18,973,765**	**2,447,271**	**$ 4,209,306**	**1,888,798**	**$ 16,130,335**	**1,572,668**	**$ 9,577,548**

Source: Yellow Corporation, SEC Schedule 14A - Proxy Statement, Jun. 2019, Apr. 2020, Apr. 2021, Apr. 2022.
Note 1: The list of Directors above does not include Michael Kneeland, who resigned as Director in Jun. 2019, or Raymond Bromark, Robert Friedman, and James Winestock, who resigned as Directors in 2019.
Note 2: Yellow Directors receive certain Yellow restricted stock units (RSUs) as part of their compensation. The shares of common stock listed for Yellow Directors in this chart reflect shares they are entitled to receive as a result of these RSUs. However, due to restrictions in Yellow's Director compensation plans, a Director does not actually receive shares of common stock until the Director ceases to be a Director or three years after the RSUs were granted.
Note 3: This chart does not show stock ownership information for Officers and Directors after they have left Yellow because that information is not disclosed in Yellow's SEC filings. It is possible that former Officers and Directors continued to own Yellow stock after they left the company.

Appendix C:

Stock Sales of Yellow SEC Reporting Officers and Directors

Chart of Stock Sales - Yellow SEC Reporting Officers and Directors

Covers Reports from Feb. 1, 2020 through Jul. 22, 2022

		Realized value from scheduled stock sales ($)	Realized value from stock sales triggered by tax withholding ($)	Total realized value from stock sales ($)
Officers				
Hawkins, Darren	Chief Executive Officer (Apr. 2018 - present)	$ 1,000,000	$ 481,158	$ 1,481,158
Harris, Darrel	President (Apr. 2021 - present)	$ -	$ 417,201	$ 417,201
O'Connor, Thomas	Chief Operating Officer (Jun. 2019 - present)	$ 201,290	$ 203,504	$ 404,794
Olivier, Daniel	Chief Financial Officer (Oct. 2020 - present)	$ -	$ 202,068	$ 202,068
Pierson, James	Former Chief Financial Officer (Dec. 2019 - Oct. 2020)	$ -	$ 61,946	$ 61,946
Ringgenberg, Jason	Chief Information Officer (Mar. 2017 - present)	$ -	$ 146,861	$ 146,861
Ware, Scott	Chief Network Officer (Oct. 2018 - present)	$ 151,250	$ 197,215	$ 348,465
Bergman, Jason	Chief Commercial Officer (Jul. 2019 - present)	$ 148,925	$ 256,732	$ 405,657
Dawson, Leah	Executive VP and General Counsel (Oct. 2020 - present)	$ -	$ 242,100	$ 242,100
Faught, James	Chief Accounting Officer (Oct. 2020 - present)	$ -	$ 92,081	$ 92,081
Directors				
Carty, Douglas	Director (Jul. 2011 - present)	$ -	$ -	$ -
Davidson, William	Former Director (Jul. 2014 - Apr. 2021)	$ -	$ -	$ -
Doheny, Matthew	Director (Jul. 2011 - present)	$ -	$ -	$ -
Evans, Javier	Director (Nov. 2021 - present)	$ -	$ -	$ -
Hoffman, James	Director (Jul. 2011 - present)	$ -	$ -	$ -
Jones, Shaunna	Director (Oct. 2020 - present)	$ -	$ -	$ -
Martinez, Susana	Director (Oct. 2020 - present)	$ -	$ -	$ -
McClimon, David	Director (Jan. 2021 - present)	$ -	$ -	$ -
Nazemetz, Patricia	Director (Mar. 2015 - present)	$ -	$ -	$ -
Sultemeirer, Chris	Director (Jan. 2021 - present)	$ -	$ -	$ -
Total		**$ 1,501,465**	**$ 2,300,867**	**$ 3,802,332**

Source: Yellow Corporation, SEC Form 4 - Statement of Changes in Beneficial Ownership, Feb. 1, 2020 through Jul. 22, 2022.

Appendix D:

Stock Grants Awarded and Stock Purchases of Yellow SEC Reporting Officers and Director

Chart of Stock Grants Awarded and Stock Purchases - Yellow SEC Reporting Officers and Directors

Covers Reports from Feb. 1, 2020 through Jul. 22, 2022

		Total stock grants awarded (#)	Unrealized value of stock grants assuming 100% vesting on award dates ($)	Unrealized value of stock grants assuming 7/22/2022 stock price ($)	Total stock purchases (#)	Value of stock purchases on purchase date ($)	Value of stock purchases assuming 7/22/2022 stock price ($)	Unrealized gain/loss on stock purchases ($)
Officers								
Hawkins, Darren	Chief Executive Officer (Apr. 2018 - present)	475,000	$ 1,007,000	$ 1,914,250	26,000	$ 101,920	$ 104,780	$ 2,860
Harris, Darrel	President (Apr. 2021 - present)	383,479	$ 3,335,459	$ 1,545,420	18,844	$ 74,434	$ 75,941	$ 1,508
O'Connor, Thomas	Chief Operating Officer (Jun. 2019 - present)	200,000	$ 424,000	$ 806,000	-	$ -	$ -	$ -
Olivier, Daniel	Chief Financial Officer (Oct. 2020 - present)	358,156	$ 2,153,363	$ 1,443,369	10,000	$ 37,500	$ 40,300	$ 2,800
Pierson, James	Former Chief Financial Officer (Dec. 2019 - Oct. 2020)	370,000	$ 784,400	$ 1,491,100	-	$ -	$ -	$ -
Ringgenberg, Jason	Chief Information Officer (Mar. 2017 - present)	140,000	$ 296,800	$ 564,200	-	$ -	$ -	$ -
Ware, Scott	Chief Network Officer (Oct. 2018 - present)	185,000	$ 392,200	$ 745,550	-	$ -	$ -	$ -
Bergman, Jason	Chief Commercial Officer (Jul. 2019 - present)	130,000	$ 275,600	$ 523,900	-	$ -	$ -	$ -
Dawson, Leah	Executive VP and General Counsel (Oct. 2020 - present)	200,230	$ 1,787,398	$ 806,927	10,000	$ 40,637	$ 40,300	$ (337)
Faught, James	Chief Accounting Officer (Oct. 2020 - present)	132,424	$ 1,212,010	$ 533,669	-	$ -	$ -	$ -
Directors								
Carty, Douglas	Director (Jul. 2011 - present)	44,496	$ 206,635	$ 179,319	30,000	205,990	$ 120,900	$ (85,090)
Davidson, William	Former Director (Jul. 2014 - Apr. 2021)	35,920	$ 115,301	$ 144,758	-	-	$ -	$ -
Doheny, Matthew	Director (Jul. 2011 - present)	244,496	$ 2,438,635	$ 985,319	109,150	888,715	$ 439,875	$ (448,840)
Evans, Javier	Director (Nov. 2021 - present)	-	$ -	$ -	-	-	$ -	$ -
Hoffman, James	Director (Jul. 2011 - present)	44,496	$ 206,635	$ 179,319	10,000	41,900	$ 40,300	$ (1,600)
Jones, Shaunna	Director (Oct. 2020 - present)	18,745	$ 152,043	$ 75,542	-	-	$ -	$ -
Martinez, Susana	Director (Oct. 2020 - present)	18,745	$ 152,043	$ 75,542	-	-	$ -	$ -
McClimon, David	Director (Jan. 2021 - present)	18,745	$ 152,043	$ 75,542	46,000	359,687	$ 185,380	$ (174,307)
Nazemetz, Patricia	Director (Mar. 2015 - present)	44,496	$ 206,635	$ 179,319	-	-	$ -	$ -
Sultemeier, Chris	Director (Jan. 2021 - present)	18,745	$ 152,043	$ 75,542	-	-	$ -	$ -
Total		**3,063,173**	**$ 15,450,246**	**$ 12,344,587**	**259,994**	**1,750,783**	**$ 1,047,776**	**$ (703,007)**

Source: *Yellow Corporation, SEC Form 4 - Statement of Changes in Beneficial Ownership, Feb. 1, 2020 through Jul. 22, 2022.*

Note 1: 100% vesting is showed for illustrative purposes. In some instances, such as for Officer stock awards, stock grants may vest to common stock over multiple years.

Note 2: In some cases, individuals received multiple stock awards on different days within the month. The unrealized value column calculates each transaction using the day of award stock price and adds them for a total figure.