

Congress of the United States
U.S. House of Representatives
Committee on Small Business
2361 Rayburn House Office Building
Washington, DC 20515-6515

MEMORANDUM

To: Members, Committee on Small Business
From: Nydia M. Velázquez, Chairwoman
Date: July 1, 2020
Re: Full Committee Hybrid Hearing: “The Economic Injury Disaster Loan Program: Status Update from the Administration”

The Committee on Small Business will meet for a hearing titled, “The Economic Injury Disaster Loan Program: Status Update from the Administration.” The hearing is scheduled to begin at **10:00 A.M. on Wednesday, July 1, 2020, in-person in Rayburn room 2118 and virtually via the WebEx platform (information to be provided)**. The hearing will allow Members an opportunity to hear from Mr. James Rivera, the Small Business Administration’s (SBA) Associate Administrator for the Office of Disaster Assistance (ODA). Mr. Rivera is responsible for the implementation of the Economic Injury Disaster Loan (EIDL) program, and the hearing will explore the challenges SBA has faced in ramping up the EIDL program to deal with the coronavirus pandemic (COVID-19), what steps SBA must take to better meet the needs of small businesses adversely impacted by COVID-19, and what policy changes Congress could make to improve delivery of the program.

Panel:

- Mr. James Rivera, Associate Administrator, Office of Disaster Assistance, U.S. Small Business Administration, Washington, DC

Background

SBA disaster assistance for businesses is mostly in the form of loans to help businesses repair and replace damaged property and provide financial assistance to businesses that suffered economic loss as a result of a disaster.

Economic Injury Disaster Loan Program

EIDLs provide up to \$2 million for working capital (including fixed debts, payroll, accounts payable, and other bills that cannot be paid because of the disaster’s impact) to help small businesses, small agricultural cooperatives, small businesses engaged in aquaculture, and most private, nonprofit organizations meet their financial obligations and operating expenses that cannot be met as a direct result of the disaster (regardless if there has been physical damage to the business). Substantial economic injury “is such that the business concern is unable to meet its

obligations as they mature or to pay its ordinary and necessary operating expenses.”¹ The loan can have a maturity of up to 30 years² and an interest rate of 4 percent of less.³

First Coronavirus Supplemental

While the outbreak of COVID-19 was impacting small businesses in some parts of the country as early as January, SBA was slow in issuing the county-by-county disaster declarations that allow small businesses to apply for EIDLs, forcing Congress to act. On March 6, 2020, Congress passed the Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020,⁴ which deemed the COVID-19 outbreak a declarable disaster under the Small Business Act and provided SBA with an additional \$20 million for disaster assistance administrative expenses. The measure also permitted SBA to issue disaster declarations that make EIDLs available to eligible small businesses. On March 16, 2020, the Administrator began issuing such declarations in response to states seeking SBA disaster assistance. New criteria issued by SBA relaxed eligibility requirements for states/territories, requiring a certification that at least five small businesses within the state/territory suffered substantial economic injury, regardless of where the businesses are located.⁵ By March 21, 2020, the SBA had issued disaster declarations for all 50 states and 3 territories.

CARES Act

On March 27, 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act,⁶ which provided \$10 billion for Emergency EIDL grants, a new SBA program that would provide advance payments of up to \$10,000 that would not need to be repaid, even if borrowers are later denied disaster loans. According to the law, borrowers must request the advances in the applications, and SBA must disburse the advances within three days. In order to get the money into the hands of borrowers swiftly, the law streamlines the process for loan approvals and disbursements by:

- waiving the credit elsewhere requirement;
- approving an applicant based solely on credit score, instead of running a full credit check, or use alternative appropriate methods to determine an applicant’s ability to repay;
- not requiring applicants to submit a tax return or tax return transcript for approval;
- waiving the personal guarantee on advances/loans up to \$200,000; and
- waiving the requirement that an applicant be in business for the one-year period before the disaster declaration.

Paycheck Protection Program and Health Care Enhancement Act

On April 24, 2020, Congress passed the Paycheck Protection Program and Health Care Enhancement Act (PPHCEA),⁷ which appropriated an additional \$50 billion for EIDL loan

¹ 13 CFR § 123.300.

² SBA SOP 50 30 9 Ch. 2.4.A.6.

³ 13 CFR § 123.302.

⁴ P.L. 116-123.

⁵ U.S. Small Bus. Admin., *SBA Updates Criteria on States for Requesting Disaster Assistance Loans for Small Businesses Impacted by Coronavirus (COVID-19)*, (Mar. 17, 2020) <https://www.sba.gov/about-sba/sba-newsroom/press-releases-media-advisories/sba-updates-criteria-states-requesting-disaster-assistance-loans-small-businesses-impacted>.

⁶ P.L. 116-136.

⁷ P.L. 116-139.

subsidy⁸ and an additional \$10 billion for Emergency EIDL grants. The PPPHCEA also provided an additional \$2.1 billion for SBA's salaries and expenses account so that SBA could increase staffing to meet demand for the program. Finally, the PPPHCEA expanded eligibility for EIDL loans and Emergency EIDL grants to agricultural businesses during the covered period.

Current Issues

The Committee has heard from small businesses from across the country who have expressed their deep concerns and frustrations with the implementation of the EIDL and emergency grant programs. The main issues of concern are:

Lack of Information on Status of Application.

SBA has not instituted a workable process to allow borrowers who have applied but not received funds to monitor the progress of their applications. In the EIDL portal, individuals can check their status, however, few details are provided. The status is marked as "processing" up until it is "accepted" or "denied." While SBA has stated applicants can monitor their progress by phone or email for additional details, Congress has heard reports that SBA customer service hotlines have not been particularly helpful or responsive, and in some instances, provided inconsistent information. In sum, small businesses across the country are reporting significant problems determining where they stand in the queue and attempts to communicate with SBA through the recommended channels have had mixed success.

Administrative Policy Changes Drastically Lowered Maximum Loan Size.

Congress learned that SBA reduced the maximum amount of the EIDL loan from \$2 million to \$150,000 per small business.⁹ This change was first reported on May 7, and similar concerns were echoed by witnesses in remote hearings that were held by the Committee.¹⁰ These arbitrary policy changes are inconsistent with the law and Congressional intent to provide quick relief to small businesses. Moreover, the \$150,000 loan amount is only 7.5 percent of the maximum loan size under the EIDL program and far short of the liquidity most small businesses need to survive. In sum, the one size fits all approach has shortchanged millions of small businesses who are in dire need of economic relief and threatens their survival.

Administrative Policy Changes to EIDL Advance.

The Committee has heard concerns with aspects of the EIDL advance program, as created in the CARES Act. First, we have heard concerns that some EIDL applicants did not receive the advance, despite believing they applied for it. Congress intended these advances to be disbursed within three days of the submission of applications in order to tide small businesses over until their loans were processed. If applicants were subsequently denied the loan, they would not have to repay the advances. The Committee is interested in learning more about the process for requesting advances.

Second, applicants who *did* receive the EIDL advance were disappointed to learn the amount of the advance were being limited to \$1,000 per employee, in contradiction to the CARES Act which permitted borrowers to receive up to \$10,000 in an advance, without regard to the number of

⁸ At the current subsidy rate, this can support approximately \$360 billion in loans.

⁹ The Washington Post, *SBA Slashes Disaster-loan Limit from \$2 million to \$150,000, Shuts Out Nearly All New Applicants*, (May 7, 2020) <https://www.washingtonpost.com/business/2020/05/07/sba-disaster-loans/>.

¹⁰ *The Economic Injury Disaster Loan Program: A View from Main Street Before the Comm. on Small Business*, 116th Cong. (2020).

employees at such business. The program was designed to quickly distribute working capital funds to small businesses and to supplement the Paycheck Protection Program (PPP), which was conceived of as a payroll support program. By tying the EIDL advances to a firm's number of employees, SBA limited the impact of the program by turning it into an additional payroll support program, instead of preserving its integrity as a flexible, working capital, disaster relief program.

Lack of Effective Communication to Stakeholders.

Additionally, the administrative changes to the maximum loan size and the advances were not communicated effectively and in a timely way to borrowers, SBA field offices, and Resource Partners. Clear communication of policies and administrative changes is essential so field offices can get word out to small firms and the Resource Partners can provide vital counseling and training small businesses need at this time.

Denials for “Unsatisfactory Credit History”

Furthermore, the Committee has received testimony and heard from other EIDL applicants whose applications were denied. One witness testified that he was denied for “unsatisfactory credit history,”¹¹ which did not accurately reflect the cash flow position and repayment ability of his business. Concerns have been raised that SBA may be denying worthy EIDL applicants without availing itself of the flexibilities Congress provided SBA in the CARES Act to approve applicants based solely on credit score or use alternative appropriate methods to determine an applicant's ability to repay.¹²

Slow Processing and Disbursement of Loans Despite Additional Resources.

Moreover, the additional infusion of funds was meant to be used to provide a quick turnaround of the loans to struggling small businesses. As of June 21, 2020, 1,775,539 loans, amounting to nearly \$113.3 billion, have been approved.¹³ SBA has stated that they have received an unprecedented number of applications, which has delayed the process. To meet the additional demand for EIDLs, Congress provided SBA with over \$2.7 billion in both the CARES Act and PPPHCEA for SBA's Salaries and Expenses account to hire additional staff to carry out this and other programs. The Committee remains concerned SBA is not utilizing all its available resources, including the additional funding for salaries and expenses, to reduce the current backlog of EIDL loans.

EIDL Access Limited to Agriculture Entities.

On or around May 4, the EIDL program stopped accepting general applications for new loans, even though Congress appropriated an additional \$50 billion to support \$366 billion in new lending to all eligible small businesses, not just agriculture entities. On June 15, SBA announced it would begin accepting EIDL applications from all qualified small businesses, in addition to agricultural businesses. While it is a good sign that the EIDL portal is now open to all qualified small businesses, the Committee remains concerned with the unexplained and unjustified nature of these decisions, as well as SBA's lack of communication to Congress and to the public about the closure.

¹¹ *The Economic Injury Disaster Loan Program: A View from Main Street Before the Comm. on Small Business*, 116th Cong. (2020) (statement of Mr. Jerome Whack, owner Christian Street Pharmacy).

¹² The Coronavirus Aid, Relief, and Economic Security (CARES) Act, Pub. L. No. 116-136, § 1110(d) (2020).

¹³ U.S. Small Bus. Admin., *Disaster Assistance Update: Nationwide EIDL Loans-June 21, 2020*, (Jun. 21, 2020) <https://www.sba.gov/sites/default/files/2020-06/EIDL%20COVID-19%20Loan%206.21.20.pdf>.

Greater public awareness regarding the closure would have better apprised America's small businesses about their capital access options in this dire time.

Lack of Transparency

Concerns also exist about the lack of transparency in the program, especially regarding program performance data. To date, the Committee does not know how many applications are pending in SBA's queue, nor how quickly SBA is processing these applications. It is still unknown what the approval and denial rates are for EIDL loans. In order to evaluate the success and challenges with the program and determine whether additional funding is needed to meet the immediate needs of small businesses, Congress needs regular, timely, and complete data from SBA about pending and approved applications. Such detailed information, such as zip code and state and average processing time, is necessary to gain a better understanding of how SBA is meeting the demand for the program.

Furthermore, SBA should be collecting anonymized, voluntarily provided applicant demographic data to understand how effectively this program is reaching traditionally underserved communities at a time when they need it most. Without this information, Congress cannot evaluate the program nor determine how much additional funding or programmatic changes are needed. Members of Congress have submitted numerous letters to SBA calling on greater transparency with regard to SBA performance data, loan demographic data, and other important information that Congress needs in order to legislate.

Conclusion

Small businesses across the country who are struggling to keep their doors open turned to SBA for economic relief during these uncertain times. They were met with additional uncertainty stemming from lack of communication, limited funding, delayed approvals, and lack of transparency with the implementation of the EIDL program. It is vital that SBA improve its management of the program and provide regular and timely updates to Congress in order to ensure the program is being operated effectively for the 30 million small businesses across the country who count on it being open and available. Therefore, this hearing will offer Members the opportunity to hear directly from Associate Administrator Rivera regarding the challenges ODA faced with the program and hear recommendations on how to improve the program. The hearing will also allow Committee Members to conduct proper oversight of the program, identify potential issues, and evaluate legislative improvements.