

Congress of the United States
U.S. House of Representatives
Committee on Small Business
2561 Rayburn House Office Building
Washington, DC 20515-0515

MEMORANDUM

To: Members, Committee on Small Business
From: Nydia M. Velázquez, Chairwoman
Date: July 17, 2020
Re: Full Committee Hybrid Hearing: “Oversight of the Small Business Administration and Department of Treasury Pandemic Programs”

The Committee on Small Business will meet for a hearing titled, “Oversight of the Small Business Administration and Department of Treasury Pandemic Programs” The hearing is scheduled to begin at **10:30 A.M. on Friday, July 17, 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. Steven Mnuchin, Secretary of the U.S. Treasury, and Ms. Jovita Carranza, the Administrator of the Small Business Administration (SBA), about small business assistance provisions created under the CARES Act, including the implementation of the Paycheck Protection Program (PPP) and the Economic Injury Disaster Loan (EIDL) program, and additional policies necessary to provide ongoing aid to struggling firms.

Panel:

- Hon. Steven Mnuchin, Secretary, U.S. Department of Treasury, Washington, DC
- Hon. Jovita Carranza, Administrator, U.S. Small Business Administration, Washington, DC

Background

In response to the COVID-19 pandemic, Congress created the Paycheck Protection Program (PPP) at SBA, which has been implemented with the assistance of the Department of Treasury. Congress also enacted changes to the existing SBA Economic Injury Disaster Loan (EIDL) program. Both programs are designed to help small employers swiftly access critical financial assistance.

EIDL – First Coronavirus Supplemental

As COVID-19 spread through parts of the country in early January, small businesses began to feel the impact, suffering from fewer customers, declines in revenues, and gaps in supply chains. In response, Congress passed the Coronavirus Preparedness and Response Supplemental Appropriations Act on March 6, 2020,¹ which declared the COVID-19 outbreak a disaster and also permitted SBA to make EIDLs available to eligible small businesses. The bill provided an additional \$20 million for disaster assistance administrative expenses. 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,

¹ P.L. 116-123.

requiring a certification that at least five small businesses within the state/territory suffered substantial economic injury, regardless of where the businesses are located.² By March 21, 2020, the SBA had issued disaster declarations for all 50 states and 3 territories.

EIDL – CARES Act

On March 27, 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act,³ 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 – CARES Act

The PPP was established in the CARES Act⁴ as a subprogram of SBA's 7(a) loan guarantee program. It delegated authority to banks and other lenders to make up to \$349 billion in fully guaranteed loans to small businesses negatively impacted by the COVID-19 outbreak and subsequent economic collapse. The program is tailored to assist small businesses with meeting payroll costs and other expenses, and it offers full forgiveness on loan proceeds spent for such purposes. Due to high demand, the initial round of funding was exhausted in 14 days, requiring Congress to act again.

Paycheck Protection Program and EIDL – The Enhancement Act

On April 24, the Paycheck Protection Program and Health Care Enhancement Act⁵ (Enhancement Act) became law. The Enhancement Act appropriates an additional \$310 billion for the PPP and includes a series of set-asides of those funds so that community lending institutions, including Community Development Financial Institutions (CDFIs), Certified Development Companies (CDCs) and SBA Microloan Intermediaries, could participate in the program on equal footing with large banks. These set-asides are intended to maximize PPP lending in traditionally underserved business communities.

² 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>.

³ P.L. 116-136.

⁴ *Id.*

⁵ P.L. 116-139.

Regarding EIDL, the Enhancement Act appropriated an additional \$50 billion for EIDL loan subsidy⁶ and an additional \$10 billion for Emergency EIDL grants. The Enhancement Act 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 Enhancement Act expanded eligibility for EIDL loans and Emergency EIDL grants to agricultural businesses during the covered period.

Paycheck Protection Program – Flexibility Act

On June 5, the Paycheck Protection Program Flexibility Act (Flexibility Act) became law.⁷ The Flexibility Act establishes a minimum maturity of five years on PPP loans, and extends the covered period during which a borrower may use such funds for certain expenses while remaining eligible for forgiveness from eight to 24 weeks. The new law also raises the non-payroll portion of a forgivable covered loan amount from the current 25 percent up to 40 percent.

S. 4116, Extension of Paycheck Protection Program

On July 8, S. 4116 became law.⁸ S. 4116 extends the PPP application deadline to August 8, allowing more time for small businesses considering applying for a PPP to weigh their options.

As of June 27, the PPP program has supported over 4.7 million loans for a total net PPP dollars lent at over \$518.8 billion, with the average loan size of approximately \$108,135.⁹ As of that date, over \$134 billion in PPP funding remains available.¹⁰

Current Issues

Paycheck Protection Program – Data Transparency

In early July, Treasury and SBA publicly disclosed PPP loan data. Though the disclosure of this loan data is incomplete, it is a welcome first step towards enhancing much-needed transparency in this program. The Committee continues to analyze the data for trends, both positive and negative, that could lead to enhancements to the program in the future.

Lack of Sufficient, Clear, and Complete Guidance for Borrowers and Lenders

While recognizing the implementation of these large lending programs is a steep challenge for a small, independent agency like the SBA, the publication of program guidance was fragmented and confusing for lenders and borrowers.¹¹ As of July 13, Treasury/SBA have published 22 interim final rules (IFRs) and 49 answers to Frequently Asked Questions since the start of the program, which has forced borrowers and lenders to rely on disjointed and incomplete guidance that has been subject to change. Furthermore, some lenders have asserted that the piecemeal nature of the guidance may be contributing to the stagnation in PPP lending that has been observed over the

⁶ At the current subsidy rate, this can support approximately \$360 billion in loans.

⁷ P.L. 116-142.

⁸ P.L. 116-147.

⁹ U.S. Small Bus. Admin., *Paycheck Protection Program (PPP) Report: Approvals through 06/27/2020*, (Jun. 27, 2020), https://www.sba.gov/sites/default/files/2020-06/PPP_Report_Public_200627%20Final-508.pdf.

¹⁰ *Id.*

¹¹ Notably, this guidance was prepared and released by Treasury in conjunction with SBA, as opposed to independently by SBA.

past several weeks. This is largely why borrowers, lenders, and policymakers would greatly benefit from having comprehensive program guidance.

Paycheck Protection Program – Microbusinesses and Sole Proprietors

From the outset of the program, it was plagued by reports that sole proprietors and microbusinesses were being excluded from applying for loans, especially by large banks. This led to concerns that lenders were prioritizing larger businesses in making PPP loans. This is borne out by the fact that as the program progressed, the average loan size decreased from \$206,021.90 (as reported on April 16 – the only report published for the first tranche of funding) to \$108,135.71 (as reported on June 26). This is in direct contravention of the CARES Act, which emphasized a priority for underserved small businesses, those located in rural areas, and those owned by women and minorities.¹² Sole proprietors and microbusinesses continue to face challenges in accessing relief under the CARES Act, specifically the PPP. According to SBA public data, 770,756 sole proprietorships received PPP loans. The IRS reports¹³ that there are over 26 million sole proprietorships in the United States. This means that less than 3 percent of America’s sole proprietors got a PPP loan, revealing a significant gap in the program’s coverage.

Paycheck Protection Program – Underserved Business Owners

SBA’s recent partial PPP loan data disclosure did not include any data regarding borrower demographics, which leaves out an important data set that pertains to the program’s reach to minority communities. Minority small business owners have been the most severely impacted by the COVID-19 pandemic. The National Bureau of Economic Research found that the rate of business ownership by Blacks declined by 41 percent, and that by Latinx owners declined by 32 percent.¹⁴ Data from the agencies on how well the PPP has performed among minority-owned will be critical in assessing the extent to which further legislation is required to ensure these communities are being properly served by the program.

Paycheck Protection Program – Loan Forgiveness

The PPP has consistently been plagued by an unclear and cumbersome loan forgiveness application process. This was exposed in detail during the Committee’s June 17 hearing regarding lender and stakeholder experiences with the program. Furthermore, lenders have consistently reported concerns with the forgiveness application process. During the June 17 hearing, a PPP lender testified that the guidance provided by SBA to lenders remained incomplete.¹⁵ They went on to testify that given the significant liability concerns lenders face, the lack of clarity creates unnecessary challenges for lenders in providing assistance to borrowers in completing forms.¹⁶ Given that loan forgiveness is one of the main appeals to borrowers of the PPP, Treasury and SBA should be making that process as simple and clear as possible. Furthermore, as of Friday, July 10, lenders have reported SBA has not provided a process or portal for accepting loan forgiveness applications.

¹² 15 U.S.C. § 636(a)(36)(P)(iv).

¹³ Most recently data available is 2017: <https://www.irs.gov/pub/irs-soi/17sp02is.xls>.

¹⁴ See Robert W. Fairlie, *The Impact of COVID-19 on Small Business Owners: Evidence of Early-Stage Losses from the April 2020 Current Population Survey*, NBER, (June 2020), <https://www.nber.org/papers/w27309>.

¹⁵ *Paycheck Protection Program: Loan Forgiveness and Other Challenges, Hearing Before the H. Comm. on Small Business*, 116th Cong. (2020) (statement of Eduardo Sosa, SBA Lending Senior Vice President, Amarillo National Bank).

¹⁶ *Id.*

EIDL – 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. Furthermore, the Committee did not receive an assessment or an estimate of the funding needed to fully meet demand for EIDLs, further exacerbating the issue with SBA's lack of communication with Congressional and other stakeholders. 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. Better communication with Congress is also essential towards ensuring the SBA's programs are properly funded so they can meet demand as the programs were designed by Congress, without needing the agency to administratively cap maximum loan sizes.

EIDL – 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.¹⁷ This change was first reported on May 7, and similar concerns were echoed by witnesses in remote hearings that were held by the Committee.¹⁸ These arbitrary policy changes are inconsistent with the law and Congressional intent to provide quick relief to small businesses, despite SBA's stated intent in the Committee's July 1 hearing to ensure as many EIDL applicants got *some* money, no matter whether the amount met their needs. The one size fits all approach SBA took in this regard shortchanged millions of small businesses who are in dire need of economic relief and threatens their survival. As of July 3, SBA has approved 2,235,192 EIDLs for a total of over \$134.6 billion and an average loan size of \$60,232.53.¹⁹

EIDL – Administrative Policy Changes to EIDL Advance

The Committee heard concerns with aspects of the EIDL Advance program, as created in the CARES Act. EIDL applicants who received the EIDL advances are being limited in the amount of the advance 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 employees at such business. The program was designed to quickly distribute working capital funds to small businesses and to supplement the 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. As of July 3, SBA has disbursed 4,946,997 EIDL Advances for a total of over \$16.2 billion and an average advance size of \$3,293.13.²⁰ On July 11, 2020, SBA announced that it discontinued the EIDL advance program due to the obligation of all the funds.

¹⁷ Aaron Gregg and Erica Werner, *SBA Slashes Disaster-loan Limit from \$2 million to \$150,000, Shuts Out Nearly All New Applicants*, WASH. POST, (May 7, 2020) <https://www.washingtonpost.com/business/2020/05/07/sba-disaster-loans/>.

¹⁸ *The Economic Injury Disaster Loan Program: A View from Main Street Before the Comm. on Small Business*, 116th Cong. (2020).

¹⁹ U.S. Small Bus. Admin., *Disaster Assistance Update: Nationwide EIDL Loans-July 3, 2020*, (Jul. 3, 2020) <https://www.sba.gov/sites/default/files/2020-07/EIDL%20COVID-19%20Loan%207.3.20.pdf>.

²⁰ U.S. Small Bus. Admin., *Disaster Assistance Update: EIDL Advance-Jul 3, 2020*, (Jul. 3, 2020) <https://www.sba.gov/sites/default/files/2020-07/EIDL%20COVID-19%20Advance%207.3.20.pdf>.

Conclusion

Over the past four months, the nation's small businesses have endured a degree of uncertainty that has been unprecedented. In response, Congress enacted numerous programs at SBA designed to offer small businesses affordable capital so they could keep their workers employed and help them withstand the COVID-19 pandemic. This hearing will offer an opportunity for Members to conduct oversight over the Treasury and SBA's implementation and operations of the COVID-19 pandemic relief programs enacted by Congress.