NYDIA M. VELAZQUEZ, NEW YORK
CHAIRWOMAN

STEVE CHABOT, OHIO
RANKING MEMBER

Congress of the United States
U.S. House of Representatives
Committee on Small Business

2361 Rayburn House Office Building
Washington, DC 20515-6315

MEMORANDUM

TO:	Members, Investigations, Oversight, and Regulations Subcommittee
FROM:	Chairwoman Judy Chu
RE:	Subcommittee Hybrid Hearing: Preventing Fraud and Abuse of PPP and EIDL: An Update with the SBA Office of Inspector General and the Government Accountability Office.
DATE:	October 1, 2020

On **Thursday, October 1, 2020 at 10:00 a.m.,** the Investigations, Oversight, and Regulations Subcommittee will hold a hybrid hearing on the prevention of fraud in the Small Business Administration's (SBA) Paycheck Protection Program (PPP) and Economic Injury Disaster Loan (EIDL) program. The hearing will take place in room 2360 of the Rayburn House Office Building. Members who wish to participate remotely may do so via Cisco WebEx, information to be provided separately**.**

At the hearing, Members will have the opportunity to discuss the July 28, 2020 Management Report from the SBA Office of Inspector General (OIG) and the 2020 COVID-19 reports from the Government Accountability Office (GAO). The reports detail a lack of internal controls and potential for fraud within PPP and EIDL. The hearing will give Members the opportunity to discuss the OIG and GAO's findings and determine if SBA's response to these reports is consistent with their recommendations or if more work needs to be done to prevent fraud.

Witnesses

- Mr. Hannibal "Mike" Ware, Inspector General, Office of the Inspector General, U.S. Small Business Administration, Washington, DC
- Mr. William Shear, Director, Financial Markets and Community Investment, United States Government Accountability Office, Washington, DC

Background

On March 6, 2020, the Coronavirus Preparedness and Response Supplemental Appropriations Act became law and authorized SBA's Disaster Assistance program to use available funds to issue EIDLs to small businesses. On March 27, 2020 the CARES Act was enacted and created the PPP and EIDL Advance program to assist small businesses through the COVID-19 pandemic. The PPP was established as a subprogram of the 7(a) loan guarantee program and delegates authority to banks and other lenders to make fully guaranteed loans to small businesses negatively impacted by the COVID-19 outbreak. The CARES Act set aside $349 billion for the relief of small businesses, and the funds were exhausted on April 16, 2020. Congress later provided an additional $310 billion for the PPP in the Paycheck Protection Program and Health Care Enhancement Act, totaling $649 billion. The program was tailored to assist small businesses with meeting payroll costs and other expenses, and it offers full forgiveness on loan proceeds spent for such purposes.

The CARES Act 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 were later denied disaster loans. Borrowers had to request the advances in the applications, and SBA were required to disburse the advances within three days. EIDLs (loans) 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 years[2] and an interest rate of 4 percent of less.[3] In order to get the money into the hands of borrowers swiftly, the CARES Act streamlined the process for loan approvals and disbursals by waiving credit elsewhere requirements, approving applicants based solely on their credit score, not requiring applicants to submit tax returns for approval, waiving the personal guarantees on advances/loans up to $200,000, and waiving the requirement that applicants be in business for 1-year before the disaster declaration.

Oversight Reports

The SBA OIG's mission is to provide independent, objective oversight to improve the integrity, accountability, and performance of the SBA.[4] As part of their supplemental oversight plan to increase oversight of the CARES Act and the impact of COVID-19, the OIG prepared a number of audits and white papers detailing their findings in real time.[5] The CARES Act mandates that the GAO conduct monitoring and oversight of the federal governments' response to the COVID-19 pandemic and the funding made available to support federal response programs.[6] The GAO submits bimonthly reports on its ongoing COVID-19 oversight efforts to Congress.

SBA OIG Management Alert: On July 28, 2020, the SBA OIG released a report entitled, "Serious Concerns of Potential Fraud in Economic Injury Disaster Loan Program Pertaining to the Response to COVID-19".[7] The report details strong indicators of potential widespread fraud within the EIDL program and deficiencies in SBA's internal controls. The report states that as of June 19, 2020, the SBA approved more than $250 million in economic injury disaster loans and advance grants to potentially ineligible businesses.[8] In addition, as of June 6, 2020, the SBA made duplicative loans to nearly 300 businesses.[9] The OIGs initial findings detail the following concerns:

- Communication Between Lending Institutions and SBA: Under the EIDL program, SBA provides direct loans to small businesses, however, they rely on lenders to monitor deposits for fraud. At the time of the OIG review, SBA did not have partnerships in place with financial institutions to review

[1] 13 CFR § 123.300.
[2] SBA SOP 50 30 9 Ch. 2.4.A.6.
[3] 13 CFR § 123.302.
[4] SBA OFFICE OF INSPECTOR GENERAL, https://www.sba.gov/about-sba/oversight-advocacy/office-inspector-general
[5] U.S. Small Business Administration Office of Inspector General Audits Division Supplemental Oversight Plan 2020
[6] Pub. L. No. 116-136, § 19010, 134 Stat. at 579-81.
[7] SBA OFFICE OF INSPECTOR GENERAL, 20-16, SERIOUS CONCERNS OF POTENTIAL FRAUD IN ECONOMIC INJURY DISASTER LOAN PROGRAM PERTAINING TO THE RESPONSE TO COVID-19 (2020).
[8] Id. At 5.
[9] Id. At 5.

instances of suspected fraud in EIDL applications. Financial institutions can help SBA confirm the validity of borrowers claims by monitoring suspicious claim activity. Almost 440 financial institutions contacted the OIG regarding concerns of potential fraud including, but not limited to, accounts established using stolen identities, account holders claiming to use loan funds to open a business, and EIDL loans being deposited into personal accounts with no evidence of business activity.[10] The lack of partnerships between SBA and financial institutions is a missed opportunity for SBA to prevent fraud before loan disbursement.

- Loans to Ineligible Businesses: The CARES Act specifies that to be eligible for an economic injury disaster loan or advance grant, applicants must have been in business on January 31, 2020. The OIG examined EIDL applications from companies whose Employer Identification Numbers (EIN) were registered between January 1st and June 15th, 2020and found 68,257 EIDL applicants whose businesses were registered after the required date.[11] Of these 68,257 ineligible applications, SBA approved 6,132 loans, totaling $208.1 million.[12] The OIG also found that an additional 20,692 ineligible applicants received $47.8 million in advance grants.[13] Stronger internal controls could have prevented these loans from being disbursed and saved taxpayer dollars.
- Duplicate Loans: The OIG reports that SBA has approved, or approved and paid, at least 275 loans more than once with $35 million of the $45.6 million in approved duplicate loans disbursed.[14] The OIG believes that most of the duplicate loans were made to applicants that applied more than once for assistance and states that a lack of internal controls from SBA opened the program to duplication.
- Social Media Fraud Schemes: The OIG's Investigative Division uncovered several organized fraud rings that used social media to recruit potential applicants who then split EIDL advance money with ringleaders.[15] These scams include romance schemes, business startups, and other solicitations to convince people to provide personally identifiable information which was then used to apply for EIDLs.

GAO August Report: On August 31, 2020, the GAO released a report entitled, "Brief Update on Initial Federal Response to the Pandemic".[16] The report series fulfills the CARES Act requirement that the GAO continuously monitor and oversee the federal response to the COVID-19 pandemic. The GAO report details the following:

- Potential for Fraud in PPP: The GAO recommends that the SBA develop and implement plans to identify and respond to risks in PPP to protect against potential fraud. This reinforces a prior recommendation from the June 25, 2020, report that internal controls be implemented in the program.[17] The SBA responded to this recommendation stating that they are still in the process of developing plans to review PPP loans but have not provided documentation for GAO to review.

---

[10] Id. At 5.
[11] Id. At 5.
[12] Id. At 5.
[13] Id. At 5.
[14] Id. At 5.
[15] SBA OFFICE OF INSPECTOR GENERAL, 20-16, SERIOUS CONCERNS OF POTENTIAL FRAUD IN ECONOMIC INJURY DISASTER LOAN PROGRAM PERTAINING TO THE RESPONSE TO COVID-19 (2020).
[16] U.S. GOV'T ACCOUNTABILITY OFF., GAO-20-708, COVID-19 BRIEF UPDATE ON INITIAL FEDERAL RESPONSE TO THE PANDEMIC (2020).
[17] U.S. GOV'T ACCOUNTABILITY OFF., GAO-20-625, COVID-19 OPPORTUNITIES TO IMPROVE FEDERAL RESPONSE AND RECOVERY EFFORTS (2020).

GAO September Report: On September 21, 2020, the GAO released a report entitled, “Federal Efforts Could be Strengthened by Timely and Concerted Actions”.[18] The report details the following:

- Demographic Information Gaps: During the PPP loan application process, the SBA did not require applicants to submit demographic information and consequently, 90 percent of approved loans did not contain the business owners race, 79 percent did not contain their gender, and 85 percent did not contain their veteran status.[19] SBA has included an optional form as part of the loan forgiveness document, but the results of that form are not yet available. This missing demographic information is vital to determine whether PPP loans were equitably distributed to minority, women, and veteran-owned businesses and raises questions about data completeness and reliability.

- Data Reliability Issues: The data system lenders used to submit information on approved PPP loans to SBA required lenders to submit the number of “jobs retained” as a result of the loan. However, loan applicants were not required to submit this data in their loan applications. In 18 percent of loans, this data was either not reported or indicated zero jobs retained, raising data reliability concerns.[20] In addition, SBA has not provided guidance on their website for how lenders should calculate jobs retained.

  In August 2020, SBA changed the data field previously labeled as “jobs retained” to “jobs reported”. SBA states that this new designation more accurately reflects the data lenders and borrowers were required to report. However, the system took information on “number of current employees” from borrowers’ applications, as well as, “jobs retained” from lenders’ reports. In the data received by GAO, there were sometimes inconsistences between the two numbers, leading GAO to question the reliability of the data.

- OIG and Department of Justice (DOJ) Referrals: SBA continues to work with the Department of Treasury to finalize and implement internal controls for the PPP. GAO reports that, as of August 14, 2020, SBA has still not implemented internal controls and this delay opens the program up to continued potential fraud.[21] SBA stated that they have referred questionable loans to the OIG or DOJ with the DOJ publicly announcing charges in over 40 fraud-related cases associated with the PPP.[22] When SBA implements their oversight plans for PPP, GAO states that their efforts may be hindered by the unreliable data they have collected from lenders and borrowers.

- Loan Forgiveness: SBA updated their guidance on the loan forgiveness process three times in July and August of 2020.[23] GAO’s review of the forgiveness process finds that there are still uncertainties in the role of lenders and SBA’s oversight of the process. SBA’s interim final rules (IFR) and a July 23, 2020, procedural notices places the burden of loan forgiveness review on the lender.[24] However, what that review should entail is unclear. Lenders are directed to perform a “good-faith review” of the borrowers’ calculations and supporting documents to confirm whether they are eligible for forgiveness. However, SBA states in the IFR and procedural notice that the

---

[18] U.S. GOV’T ACCOUNTABILITY OFF., GAO-21-701, COVID-19 FEDERAL EFFORTS COULD BE STRENGTHENED BY TIMELY AND CONCERTED ACTIONS (2020).
[19] Id. At 62.
[20] U.S. GOV’T ACCOUNTABILITY OFF., GAO-21-701, COVID-19 FEDERAL EFFORTS COULD BE STRENGTHENED BY TIMELY AND CONCERTED ACTIONS (2020) AT 62.
[21] ID. AT 63.
[22] ID. AT 64.
[23] ID. AT 65.
[24] ID. AT 65.

burden of correct calculations is on the borrower. This fragmented submission and review process raises concerns that SBA may be relying on unreliable data when forgiving PPP loans and opens the program to fraudulent forgiveness applications.

SBA's Response

The SBA has responded to the OIG and GAO reports in comments stating that they have internal controls in place to prevent against fraud, and potential for fraud, as cited in the reports. SBA states that the EIDL program specifically checks for duplicate applications, performs identity verification, performs bank account verification, and has Loan Officer's review applications. However, the OIG stands by their findings that the instances of fraud identified in their report occurred with these initial controls in place.

In response to the August 31st GAO report, SBA again stated that the report did not include information on controls in place during the PPP application process and the rules and guidance issued by the agency. In conversations with GAO, Committee Staff were informed that they have not received the necessary information on SBA's internal controls to determine whether they exist or if they are effective. Without this data, the GAO cannot close the recommendation that SBA develop internal controls for the PPP program.

In response to the September 21st GAO report, SBA reiterated their belief that SBA is responding to GAO's June 2020 recommendation that they develop and implement internal controls in the PPP.[25] However, GAO will not consider their recommendation implemented until SBA provides them the necessary documents to ensure internal controls have been properly implemented. SBA also disagreed that the data they collected for PPP loans was not sufficiently reliable. GAO stands by their assessment in the report regarding PPP data.

Conclusion

Since their inception, the PPP and EIDL programs have been mired with confusion and uncertainty. Through their oversight, the OIG and GAO seek to strengthen SBA's programs and ensure that taxpayer funds are spent in a responsible manner. Continued oversight of these programs is necessary to ensure their integrity but, cooperation from SBA is paramount. Overcoming data issues will be paramount to GAO's continued work on the PPP and EIDL programs. In addition, internal control implementation by SBA is overdue. As the country enters its sixth month of the COVID-19 pandemic, it is past time the SBA finalize and implement internal controls to ensure PPP and EIDL program integrity.

---

[25] U.S. GOV'T ACCOUNTABILITY OFF., GAO-21-701, COVID-19 FEDERAL EFFORTS COULD BE STRENGTHENED BY TIMELY AND CONCERTED ACTIONS (2020) AT 115.