Committee on Small Business

U.S. House of Representatives

Hearing on Private Sector Solutions to Recouping Stolen Pandemic Loan Funds.

Testimony of the Hon. Richard C. Breeden

September 27, 2023

I am honored to appear before you today as you consider the appropriate response to widespread instances of fraud in connection with Covid-19 EIDL and PPP Loans of the U.S. Small Business Administration ("SBA"). We have more contentious differences in our national politics today than when I was privileged to serve under Presidents Ronald Reagan, George H.W. Bush and William Clinton. However, hopefully most of us can agree that it is wrong for anyone to commit deliberate fraud against our neighbors and fellow citizens.

Fraud and dishonesty are perils in any economic system. Large pools of money attract people determined to take as much as possible, even if they are not eligible. Left uncontrolled, fraud and looting of lending programs can grow to dimensions that damage the broader economy and discredit whole sections of markets. The savings and loan crisis of the 1970s-1980s, the subprime mortgage and banking crisis in the early 2000s and the fraud on COVID lending programs of the past few years all grew to the point of doing devastating harm. Large frauds involving private companies such as Enron, WorldCom, Madoff and others can also destroy companies, the jobs and security of their workforce and their families and the savings of those who invested in them.

By whatever measure one uses, an enormous sum - as much as $200 billion or more – was stolen through fraudulent loan applications to the SBA that were not detected by SBA or its contractors. In preparing this testimony I reviewed the *White Paper Report* dated June 27, 2023 of the Office of Inspector General of SBA (the "OIG Report"), and also the Report of the Government Accountability Office ("GAO") to Congressional Committees entitled *Covid Relief: Fraud Schemes and Indicators in SBA Pandemic Programs* (the "GAO Report"). Both reports establish without doubt that the pandemic-era loan programs of SBA experienced an epic level of fraud.

Those who deliberately stole public funds should face a day of reckoning. Strong efforts to recover stolen funds are warranted for many reasons. I hope that I can contribute to your

efforts in considering how private sector solutions can assist in recouping stolen loan funds and in doing a far better job of preventing recurrence of these problems. At the outset, I would like to summarize briefly my experiences in the public and private sectors that form the backdrop for my testimony.

I. Background in Antifraud Efforts.

White House Service.

In January of 1989, savings and loan and other "thrift" institutions[1] held roughly $1.2 ***trillion*** in federally insured deposits from the public. After years of heavy losses, the Federal Savings and Loan Insurance Corporation (FSLIC), the analog of the FDIC for banks, was down to roughly $3 ***billion*** in remaining cash to back its insurance. It had the ability to borrow less than $1 billion from the Treasury. There were dozens of very large thrifts that were hopelessly insolvent, and which could have taken down the deposit insurance fund in a morning. President Bush did not particularly relish dealing with savings and loans in his initial days in office. However, he was adamant that he would not allow the country to default on promises to insure the savings deposits of tens of millions of citizens.

Approximately three weeks into his tenure in office, President Bush proposed legislation to Congress to finance closing insolvent institutions and protecting every insured depositor. The legislation, which became known as FIRREA, authorized the issuance of special purpose bonds to finance paying cash to the insured depositors. The legislation also created a new agency called the Resolution Trust Corporation ("RTC") to acquire, manage and sell **hundreds of billions in assets** that had belonged to the failed firms. RTC was a gigantic SWAT team for troubled assets that had previously backed defaulted loans made by the thrifts.

With an historic flood of troubled real estate that needed to be sold to recover taxpayer money, we believed this task could best be handled by people with the skill and experience in selling real estate in large blocks. We didn't want to sell one building at a time. Rather, we wanted to sell balanced portfolios containing numerous buildings at a time. Bank regulators don't have those skills, and liquidators at the FDIC didn't either. So, President Bush decided to create a new temporary entity[2] to launch a *blitzkrieg* against the toxic assets and turn them into cash.

[1] This was a term that generically referred to savings & loan firms. It included mutual savings banks and other institutions originally developed in the mid to late 1800s to promote savings and thrift by citizens of ordinary means.
[2] FIRREA was passed by large bipartisan majorities. It mandated that RTC would go out of business once it completed the recycling of thrift assets. This avoided creation of a new permanent agency.

After some initial growing pains, the RTC collected hundreds of billions from the assets of the failed thrifts in a very short time. This was accomplished mostly by drawing on private sector firms to help package and sell troubled real estate and other assets, rather than trying to create a permanent bureaucracy to do so.[3] Wherever possible, RTC retained a participation in the value of the portfolios as they were liquidated.

In addition to creating RTC, President Bush believed that it was important to take strong action against individuals who had engaged in wrongdoing associated with failures of some institutions. We believed that unknown billions in loans had been made based on loan applications that were partially or entirely false. Also, some real estate developers had acquired control of thrifts and then made loans to themselves with blatant conflicts of interest.

To address this issue the legislation included funding to create new task forces of investigators and federal prosecutors. It also toughened the legal standards of what constituted fraud on federally-insured institutions, and increased sanctions. Even though we knew there were long odds against these actions, the President believed that the public should know that we exerted maximum efforts to hold fraudsters and looters accountable.

Thus, our overall effort was a two-pronged attack on the legacy of fraud. RTC pursued every commercial avenue for selling the assets of failed firms in a commercially sensible manner, and without warehousing billions in properties in government hands. At the same time, the Department of Justice pursued criminal sanctions against those who had committed fraud.[4] While I am admittedly biased, I believe that the bipartisan efforts of the President and Congress that resulted in the savings and loan recovery bill averted a financial apocalypse and immensely benefitted the public.[5]

Service at the U.S. Securities and Exchange Commission (1989-1993).

In October of 1989, President Bush nominated me to serve as Chairman of the U.S. Securities and Exchange Commission ("SEC"), where I served for just under four years. Combatting fraud against investors is one of the SEC's preeminent responsibilities, and during my tenure we brought over 1,200 enforcement actions. A great many of those actions were targeted against

[3] Private sector resources were important in the RTC's efforts. However, not all private sector entities proved successful. Not entrepreneurially focused, law and accounting firms lacked expertise in selling real estate or other recovered assets, and their astronomical fees ate up recoveries quickly. There is a similar problem in many bankruptcy proceedings involving fraud, where legal fees can eat up most of the potential recoveries for fraud victims.

[4] In hindsight, we missed an opportunity to do even more by not making forfeiture actions a more important part of our arsenal. In my experience, forfeiture actions are by far the most effective tool in recovering funds related to fraud, and redirecting those funds back to the victims of crime or to the taxpayers.

[5] In contrast, the TARP program in the subprime crisis was far less well thought-out in my view, and relied more heavily on discretionary assistance actions that were not always consistent with accountability.

persons who had committed fraud in various forms, including falsification of financial statements.[6]

My SEC experience taught me many lessons about the tools required to successfully combat fraud in the market. Fraud -- an intentional use of dishonesty to acquire funds – comes in an almost infinite variety of forms. It can involve false statements, false documents and almost any other type of falsehood. Something that is one thing is made to look like something better. Sometimes a fraud uses information that is partially correct. Other times, such as in a Ponzi scheme like Madoff, ALL information is false. Sometimes a fraud can be small in scale, and in other cases like WorldCom, Madoff, or false PPP and EIDL loans, the scale is enormous. As a result, combatting fraud effectively requires people with years of experience, backed by good surveillance and prosecutorial tools.

One element in blocking marketplace fraud is effective surveillance to detect situations that may indicate that fraud or market manipulation is ongoing. Sometimes indications of a fraud are readily apparent, such as when market prices suddenly spike or plunge without apparent economic cause. Other times, signs of an ongoing fraud may be subtle and very hard to detect. Effective surveillance requires good monitoring systems that are sophisticated enough to identify anomalies, and that do so in real or near-real time.[7]

My SEC experience also showed me how critical it is to have a well-trained and alert staff. In the 1990s, the SEC discovered what was then the largest Ponzi scheme in history because a staff attorney thought something in a newspaper article sounded strange. The article in question described a privately-held equipment leasing company that claimed it had won a contract to lease $100 million in copy machines to the New York City Transit Authority. The company was selling those leases to investors. The staff member calculated that at an average price for a machine, the transit agency would be acquiring more than 12,000 copy machines in this one transaction, which would have required several on every bus. An inquiry was started, and the SEC eventually discovered that the company had sold or financed $2.5 billion in nonexistent leases. In another case a staff member read an article about a rapidly growing local

[6] The use of inaccurate financial statements in the sale of securities is a "fraud", if it was done deliberately. If an intent to defraud was not present, inaccurate financial statements may still be false and misleading to others. Though there are cases where financial statements used to raise money from investors (or lenders) are inaccurate due to errors in preparation, in most situations where money is obtained through false and inaccurate financial statements, the inaccuracies are deliberate. For law enforcement, proving fraud is much more difficult, since it involves a state of mind, than proving that financial information was inaccurate or misleading.

[7] While the quality of surveillance systems is very important, it is easy to overstate their role. All too often, people assume that "Big Data", "AI", advanced algorithms or some other technological marvel will find fraud all by itself. In my experience, technology is a vital tool for regulators and investigators. However, sitting around waiting for Big Data to find a fraud is likely to be disappointing. Frauds are usually found by people who have the experience, diligence and insight to challenge something that looks unusual, or to follow up on complaints from individuals reporting a problem.

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Maryland company holding investment meetings in local churches. The staff person inquired about investing and received in the mail a "pitch" for a rapidly growing affinity fraud promising minority investors returns of 25,000% in six months. Because of that alert individual's rapid action, we were able to shut down a rapidly growing scam.

Fraud is often first uncovered by victims, or by people inside a company who may witness something they know is unusual or suspect. Early complaints sometimes get brushed aside as not credible. However, tips or complaints are often the first and best indication that fraud is taking place, and it is vital that they be reviewed carefully. The audit committees of large public companies usually have an Ethics Hotline or other system for enabling employees to report information about wrongdoing in the company directly to the board. ***Qui Tam*** suits and formal whistleblower programs such as the IRS and SEC use are other techniques for giving individuals a monetary incentive to come forward to the government with information they possess about improper conduct.[8] Once a company or a government agency is alerted, it will hopefully follow up to determine if something that appears normal is really a sign that fraud is occurring. In part that depends on the organization having a culture of truthfulness and accountability so that tips are not just ignored.

In cases of fraud, the SEC almost always goes after the money stolen from investors or others. One traditional type of litigation was to seek "disgorgement", which is to recover the profits made by someone who engaged in unlawful or improper conduct. Disgorgement is similar to forfeiture actions Congress has authorized in connection with many other types of criminal actions with the intent of taking away the profits from crime.[9] In the early 1990s, Congress gave the SEC authority to fine individuals or companies for violating the securities laws where disgorgement wasn't an adequate remedy. Fines are useful where the harm from an unlawful practice far exceeds the profits made by the person or firm engaging in unlawful conduct.

Once the SEC learns of a fraud or other improper or unlawful conduct, its Enforcement Division brings civil litigation against the persons or companies that were involved. Similarly, U.S. Attorneys and DOJ often swiftly bring forfeiture actions to recover against large criminal wrongdoing. In the Madoff case, the DOJ recovered over $9 billion through forfeiture suits, enabling victims to recover a very large portion of their fraud losses. Historically the SEC has used its own internal resources to seek to recover stolen funds, rather than partnering with the private sector which would be fraught with conflicts of interest and other issues. However, to

[8] The SEC did not have a "whistleblower" reward program when I served as Chairman. One must be careful that incentives for reporting misconduct do not become so large as to incentivize misreporting.

[9] In my opinion, forfeiture actions are the most powerful and efficient tool for attacking fraud and recovering funds for victims of unlawful activity.

some degree the SEC partners with the private sector by encouraging companies to "self-report" violations in return for lighter sanctions.

Strong internal controls against fraud are vital for public agencies like the SEC and SBA, as they are for large publicly traded companies. Under Section 404 of the Sarbanes-Oxley Act, publicly traded companies are required to have effective controls against fraud. The CEO and CFO must personally certify that the information contained in an SEC filing is accurate, and the company's internal controls must be audited by its public accounting firm. The private sector has expended enormous effort and expense in developing frameworks for acceptable internal controls against fraud over more than 30 years backed by capable internal audit teams. These efforts include the development of the "COSO" antifraud principles and numerous auditing standards promulgated by the SEC and the accounting profession.

As frauds at Enron, WorldCom, Madoff and many other companies show, even good controls can be overridden by persons orchestrating a fraud. In WorldCom, executives in the accounting and treasury functions might come to work and find a sticky note on their computer screen from the CFO telling them to add $300 million or some other large figure to revenues in a particular area. In those situations people did what they were told. Some later explained that they assumed that the CFO was aware of consolidation or other issues with other parts of the company that they weren't familiar with. Unfortunately, WorldCom's internal auditors, its independent external accountants and its board of directors did not detect that management was inflating reported revenues and profits every quarter for several years. When it restated its financial statements, roughly 75% of WorldCom's pre-fraud reported assets were eliminated, and over $15 billion in reported earnings proved non-existent.

Administering Trusts and Other Funds for the Benefit of Victims of Unlawful Conduct.

In the private sector, I have administered a series of trusts, bankruptcy estates, Fair Funds or remission funds on behalf of Federal courts, the Department of Justice or the SEC. Set forth below is a partial list of these engagements:

- The Bennett Funding Group (Bankruptcy court)
- WorldCom/MCI (Federal Court)
- Enron (SEC Fair Fund)
- Shell Oil (SEC Fair Fund)
- British Petroleum (SEC Fair Fund)
- JP Morgan Chase (SEC Fair Fund)
- Adelphia Communications (DOJ forfeiture fund)
- Madoff Securities (DOJ forfeiture fund)
- General Electric (SEC Fair Fund)
- Facebook (SEC Fair Fund)

- Kraft Heinz (SEC Fair Fund)

These entities exist to administer payments to the victims of unlawful conduct that depressed or destroyed the value of a company's shares, or that led to a company's collapse. Many of the companies that violated the law remained in business, while others collapsed. In each case there is a written plan of distribution that sets forth the eligibility standards for a recovery (like the eligibility standards for an SBA loan). Applicants for funds have to submit a claim or petition that demonstrates they meet all eligibility standards. They must also document the amount of their fraud loss through financial records and other documents. My team and I then review all claims so we can recommend which should be approved, and in what amount.

In many respects, administering such a fund is a smaller version of administering PPP or EIDL loans. In each case there is a limited pool of funds available for helping a defined group of eligible recipients. The plan of distribution approved by a Federal court or the Justice Department, spells out the criteria for eligibility, as well as how each person's losses will be calculated. We publish notices of the existence of a fund and set up electronic and physical filing mechanisms that applicants use. Documentation from claimants covering millions or tens of millions of transactions involves voluminous data that must be analyzed both for eligibility and for loss calculation. I believe this work is similar to reviewing data regarding employees, payroll, benefits and other issues in connection with PPP/EIDL eligibility and loan amount.

The fraud cases that I have administered were all very different. There were large and small cases in terms of the dollar size of the fund. Some cases were widely known and attracted huge numbers of claims, such as WorldCom, Enron, Shell Oil and GE with over 2 million claims collectively. Other cases involved less well-known companies and/or much smaller numbers of claims. Each case had its own unique facts that affected the claims. WorldCom, Enron and Madoff all involved cases where equity investors lost every penny when the companies collapsed. Shell Oil, British Petroleum, JP Morgan and others were cases where false disclosures caused losses to shareholders, but the companies and their share prices eventually recovered.

Administering these victim trusts is not so dissimilar in important respects from reviews that had to be made for PPP/EIDL loans. Both our cases and SBA's involved two essential decisions that had to be made through an application process. These were (i) whether the applicant met eligibility standards for a loan, grant or payment, and (ii) how much was the individual entitled to receive. Each program requires documentation to demonstrate eligibility for a loan or for a payment, and to verify the amount. There are enough similarities in the two types of programs that there are several observations from our 20 years of work with these trusts in the private sector experience that the Committee might find useful.

First. The dollar amount of false, ineligible, duplicate and overstated claims (collectively, "false claims") has been very substantial in every large case.[10] The SBA's experience of large volumes of false claims is not an aberration because it was a new program. Rather, large numbers of false claims must be expected and controlled in any government grant or loan program if taxpayers are to be protected. The ocean is always wet, and government grant and loan programs always attract individuals willing to make false and overstated claims.

My team and I have reviewed approximately ***4 million claims*** of loss involving roughly ***140 million*** securities transactions. We reviewed claims with total claimed losses of over ***$170 billion*** dollars. **After thorough scrutiny, we have found that eligible and properly documented claims generally constitute from 30-70% of the dollar amount of claims received.** Thus, after carefully reviewing claims involving $170 billion in claimed losses, we have only recommended approximately $45.5 billion of those claims.[11] Even assuming future approvals, we will not reach $50 billion in approved claims, or an approval rate of less than $1 out of $3 in claims. Thus, in our experience, which spans 20 years of work, waste, fraud and abuse would have misdirected as much as 2/3rds of available dollars into the wrong hands if we hadn't stopped that from happening. In doing our reviews of claims, we regard ourselves as being the people who make sure that the money originally won by the government actually reaches the victims of unlawful conduct that it was intended to help.

Second. There has not been a single case without significant numbers or dollar value of false claims. The highest percentage of dollar amount of claims we have ever been able to approve in a major case is 73%, with 27% denied. However, even in the case with the highest dollar approval percentage, there were still false claims of more than $1.5 billion.

Third. Without a rigorous review, false claims in large numbers will be approved, resulting in horrific losses to taxpayers and the public. Analyzing large volumes of claims with detailed eligibility standards as with the PPP and EIDL loans is difficult and time consuming. Identifying ineligible or overstated claims for payment can utilize computer systems to some degree. However, technology also provides the tools for fraudsters to create perfect-looking fake documents. Therefore, finding false claims requires a multi-layer process using both experienced analysts and good systems. Sometimes finding the false and fraudulent claims is like looking for a needle in a haystack. In WorldCom, a single claim filed by an investment

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[10] For discussion purposes, we do not distinguish in these statistics between claims that upon review did not satisfy eligibility criteria, or that contained false loss information, and those ineligible or overstated claims that were filed with an intent to defraud the government. Our role as administrators is to protect eligible victims from having their recoveries diluted by false/overstated claims, not to go beyond and assess any criminal liability. We have seen billions in what we believe were "fraudulent" claims mixed among over $125 billion in claims that were not eligible or that were overstated, whether due to confusion, mistake or deliberate action.

[11] Several large ongoing cases have not reached the stage of recommendations for approval or denial, and the $45.5 billion number will rise when that happens. However, the overall proportions will remain within the historic norms described.

advisory firm included seriously inflated prices on 17 transactions (out of 10 million transactions we reviewed). However, including those 17 transactions at the value the firm put on them would have overstated the firm's legitimate claim by over $2 billion if not detected. Whether deliberate or by mistake, inflated or ineligible claims need to be challenged. In another case, one of the largest financial firms submitted a $1.5 billion claim that was entirely ineligible, but that contained full documentation. The information submitted was accurate, but it only showed some of the firm's trades. By omitting complete information, the firm made a profit into a large loss and sought payments from the fraud fund.

Given the magnitude of false claims, investing in effective review systems pays an enormous return. For every dollar our firm spends on claim analytics, we typically expect to prevent several hundred dollars in false claims from being approved. Losses to taxpayers (or to legitimate victims in our case) are measured in the billions, while strong fraud detection efforts that could prevent much of the loss are measured in millions. As a matter of economics, well-executed government efforts to establish strong and effective antifraud practices will pay for themselves many times over. They should also reassure the public that tax dollars are not being squandered without reason.

Despite the benefits of strong antifraud efforts, we do not believe that there is any government-wide mandate for agencies to make fraud detection an essential part of internal review of loans or grants, or in selecting private sector contractors. Indeed, there often is a "lowest cost bid" mentality in selecting contractors through competitive bidding. Unfortunately, lowest cost bidding for administrative services (what might be called "see no evil, hear no evil" review) will almost inevitably produce the highest levels of undetected false claims.

Fourth. Where fraud is detected, it needs to be prosecuted criminally, in addition to vigorous action to recover stolen funds. If there is no price to pay for submitting a false claim, then the behavior will only multiply. Criminal actors may systematically file false claims, knowing that many will sneak through review. Even a low percentage of success can be highly profitable for false claims. Therefore, there needs to be stronger deterrence than simply denying false claims. Criminal sanctions are the most effective, but unstinting pursuit of stolen funds is also important financially and psychologically. Mansions, airplanes and exotic cars purchased with proceeds of fraud need to be taken away, ideally in a very public manner.

Fifth. The dollar amount and number of instances of serious fraud is most prevalent among "institutions" or larger firms, as opposed to individuals. This is particularly true with firms making claims relating to proprietary trading. Limiting the size of companies that could apply for PPP loans, for example, was one effective method of limiting the overstated claims that otherwise would have occurred. In our experience, the largest amount of "errors" or false claims occurs with large firms claiming funds for their own account, and with firms paid to file

claims on behalf of others. Our firm separately reviews every large proposed payout to double check validity.

Sixth. It takes time to find fraud, so necessary systems need to be created and tested in advance. One of the obvious differences between our experience with identifying false claims and PPP/EIDL was the intense time pressure SBA was under. If the necessary systems, including outside contractors, can be established and tested on ongoing activity, it will be easier to surge personnel and scale systems in the event of a larger crisis. Both the SEC and the DOJ maintain pools of firms that can handle these types of review assignments.

Seventh. Using commercial banks to process loans guaranteed by the government without accountability for loss will not work. The subprime mortgage crisis demonstrated that banks that process loans or securities and then securitize them for a fee, without retaining risk, will do so without meaningful limits. Anyone who has applied for a new bank account also understands that the depth of regulatory minutiae involved in modern banking makes nimble response to a crisis difficult to envision. Certainly the SBA needed outside assistance to handle the volume of loan processing. Turning to commercial banks as intermediaries did not seem to produce good results in blocking fraud. In many cases, banks produced computerized templates that were confusing to themselves as well as to SBA loan applicants. Review personnel may themselves have been confused, and the results do not suggest either proficiency or accountability for accuracy.

The SBA needed to keep control of drafting loan applications matched to eligibility standards. It also needed to interpret ambiguities rapidly and communicate answers to common questions effectively. Eligibility standards need to be expressed very clearly, in plain language and with examples claimants can understand. This will not prevent deliberate false claims, but it can sharply reduce the number of inappropriate claims made in good faith. In the Madoff case, for example, the Madoff Victim Fund published our eligibility and loss calculation criteria in the form of FAQs written in plain English. As we received questions from lawyers or claimants during the claim period, MVF published the incoming questions and our responses on our website to provide maximum assistance on interpretive questions.

Eighth. I am not aware of any government-wide legislation requiring every government grant or loan program to make identifying and expunging fraud and/or overstated and inappropriate claims a priority. We require agencies to conduct a cost-benefit analysis of many proposed actions, and to review paperwork burdens. We require competitive bidding for many government procurements. Inspectors General and the GAO are important voices for antifraud systems. However, I believe Congress should consider much stronger requirements for agencies to include identification and prevention of fraudulent claims at the beginning of their processes, not simply to have after-the-fact reviews as occurred with TARP and CARES. Federal law requires every U.S. publicly traded company to establish effective internal controls,

and to have its internal financial controls audited periodically. Certainly there could be stronger requirements for agencies to make fraud prevention capabilities a significant factor in hiring of outside contractors to be involved with administration of loans, grants or similar financial programs.

II. Suggestions for Action

The GAO's Report on Fraud Schemes and Indicators in SBA Pandemic Programs notes accurately that it is much more difficult to recover funds from fraudulent loans after the fact than it is to detect and prevent fraudulent loans at the application stage. However, at this time, recovery efforts are the only answer for improper loans that have already been made. Both the SBA OIG and GAO have already made excellent suggestions. Given my limited knowledge of the internal details of SBA's lending review and interactions with contractors, it is difficult to make informed suggestions for the Committee. However, I would suggest

1. Litigation against enablers of fraud.

My time at the SEC involved many efforts by the Commission to seek disgorgement of profits resulting from unlawful behavior. Disgorgement is a civil lawsuit to recover what are, in essence, proceeds of unlawful or unethical activity. If SBA does not have statutory authority to sue any person who submitted, prepared or reviewed a seriously inaccurate loan application that resulted in ineligible or significantly overstated proceeds, the Committee might consider giving it such authority.

Unlike the power to seek disgorgement of wrongful profits, civil fines were not originally part of the SEC's arsenal. However, in 1990, Congress authorized the SEC to assess fines for unlawful conduct. Imposing larger penalties is valuable when dealing with larger firms that have committed violations of the law or contributed to losses due to its own negligence or reckless behavior.

The OIG Report mentions that one of the lenders SBA used to process PPP loans went from a volume of 200 loans per year to almost 500,000 loans per year during the pandemic without any substantial increase in staff. If true, that would suggest reckless behavior at a minimum while the institution tried to increase fee income. Banks seem to have been the intermediaries for a very large portion of the COVID loans. At least in the future, there should be accountability for any firm that collected significant fees without meaningful efforts to identify fraudulent loans. Depending on the provisions of applicable contracts with SBA, the conduct of intermediary banks with the top 10, top 20 or top 30 dollar volume of originations might be useful to review independently. If there are firms that profited significantly from negligent or reckless behavior, recovery actions should be brought.

Individuals and entities that procured loans using fraudulent documents and other faked information should be pursued vigorously. Efforts to date in obtaining arrests and indictments are very positive. Congress contributed significantly by extending the statute of limitations to provide ample time for pursuit of wrongdoers. To the extent possible, the efforts to seek out and prosecute deliberate fraudsters should continue with utmost vigor. A vital question is the ability to develop leads for follow-up investigation and enforcement.

Many programs have had effective whistleblower programs to incentivize citizens to report wrongdoing. The guidance for applicants regarding eligibility for PPP and EIDL programs seems to have been quite confusing. Millions of applicants were firms with only a handful of employees, who may have lacked the records management capabilities of larger firms. Thus, I would personally hesitate to create significant financial incentives for "whistleblower" actions against firms employing a handful of people. However, it might be sensible to create a whistleblower type program limited to firms of more than some minimum size, such as 200 employees, for example. Since the taxpayers have been the loser with these loans, sharply limiting awards to whistleblowers might also be appropriate.

2. Forensic analysis of targeted loans.

Both the OIG Report and the GAO Report describe efforts to deploy IT solutions in identifying indices of fraud. The OIG has indicated that it has 100 years' worth of investigative work based on credible complaints and leads already in hand. This cries out for immediate and accelerated action.

I would suggest the creation of small "fraud detection teams" ("FDTs") to work with OIG or some appropriate group in SBA. In my view, FDTs should be mini-SWAT teams with no more than 50 or 100 people to avoid bureaucracy and paper-shuffling. OIG could carve up its 100 years of investigative work and assign blocks of identified loans/complaints to each FDT.

To make sense, FDTs should have demonstrated experience identifying false and fraudulent loans or grants. They should also have a short leash for proving cost effective. Retention contracts could be limited to 3-5 years with interim reviews of performance metrics. Focus should be on the largest loans, because that is where the largest improper loan amounts will be found. However, deploying a few hundred experienced analysts in an intense process should make it possible to enhance the fraud target list significantly in a relatively short time frame. Firms could be deployed by region, by industry sector, by size of firm or other criteria. Because of the waste and abuse the public has already endured, I would establish a strict budgeting regime for FDTs, including a limit on hourly fees that can be billed (such as $600) and some requirement to demonstrate identified fraud or overstated loans in excess of fees.

As noted earlier, I am deeply skeptical of the suitability of the large professional firms – law or accounting – to do timely and efficient work to identify wrongdoers. In WorldCom,

aggregate professional fees exceeded $600 million. In the bankruptcies of Lehman Brothers and Madoff, aggregate professional fees exceeded $1 billion. The bankruptcy of FTX could easily set a new record. The large New York law firm representing FTX in bankruptcy billed $400,000 per day in fees for the initial three weeks of the case, using partners charging over $2,100 per hour. Given that the COVID loans show severe waste and abuse of taxpayer funds, any outside effort to enhance the pace and scale of recovery litigation should be designed specifically to avoid the appearance of highly compensated professionals adding to the taxpayer's burdens. Since we are talking about the "small business" administration, I would suggest that smaller investigative firms should be used as FDTs.

In the Madoff case, roughly 50 individuals identified just under $70 billion in excessive or ineligible claims. Those 50 analysts identified more than 23,000 individual claims that were denied for lack of eligibility. In WorldCom, roughly 125 people were able to identify 195,000 ineligible claimants. Those 125 people blocked more than $28 billion in improper or overstated claims. In Shell Oil, roughly 125 people were able to identify 140,000 claims that did not meet eligibility standards. Over $1.5 billion in improper claims were identified and blocked. Each of these review processes occurred over a longer period of time. To some extent, the time required can be shortened by adding more individuals to the effort. However, with the fraudulent COVID loans, the goal is to sharply increase the pace and volume of recoveries, knowing that much of the damage has been done and will prove unrecoverable. During my time at the SEC, fewer than a dozen people were often used in cases seeking to recover tens of millions of dollars that resulted from unlawful acts. Therefore, I believe strongly that small FDT teams will be most effective and easiest to hold accountable for success. What is needed is an intense effort using individuals with the skill and attitudes to find wrongdoing.

I hope that these comments prove helpful to the Committee, and I will be happy to answer any questions.