

Congress of the United States
Washington, DC 20510

April 23, 2020

Mr. Hannibal “Mike” Ware
Inspector General
Office of the Inspector General
U.S. Small Business Administration
409 3rd Street, S.W., Suite 7150
Washington, DC 20416

Richard K. Delmar
Acting Inspector General
Office of the Inspector General
U.S. Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, DC 20220

Dear Mr. Ware and Mr. Delmar:

We write to request your offices open an investigation into the implementation of the Paycheck Protection Program (PPP) created by the Coronavirus Aid, Relief, and Economic Security Act (CARES) Act. This program was created to support millions of small businesses that have been devastated by the economic collapse caused by the novel coronavirus 2019 (COVID-19) pandemic, and the need for this program has become so important that Congress has already allocated an additional \$310 billion in support of its goals.

We supported the program and the extension of funds because small businesses are facing dire needs. But now that the program has been replenished, Congress and the Administration have a responsibility to ensure that these funds are helping the businesses they are designed to help, and that they are being distributed consistent with the law and without waste, fraud, and abuse.

The CARES Act tasked the Small Business Administration (SBA) and the Department of Treasury (Treasury) with the implementation of the \$349 billion PPP¹ to quickly disburse loans to keep small businesses afloat amid the economic downturn resulting from the shutdown caused by the spread of COVID-19.² Under the program, small businesses, private non-profit organizations, or 501(c)(19) veterans organizations with less than 500 employees affected by COVID-19 can apply for loans,³ which are forgivable “if all employees are kept on the payroll

¹ CARES Act, § 1102 (b)(1)

² CARES Act, § 1102

³ U.S. Small Business Administration, “Paycheck Protection Program (PPP),” <https://www.sba.gov/funding-programs/loans/paycheck-protection-program-ppp>

for eight weeks and the money is used for payroll, rent, mortgage interest, or utilities.”⁴ These loans are processed and disbursed by banks, credit unions, and other SBA-certified lenders.⁵ Congress created this structure to prevent bottlenecks and allow banks and credit unions in every community to quickly and easily administer this small business assistance.

But even before the program officially began – and as banks opened their door to the first small businesses seeking loans on April 6, 2020, there were reports of numerous problems with the SBA and Treasury Department rules and implementation of the law, and it became apparent that agency leadership did not take adequate steps to prevent a number of foreseeable errors.

SBA rules imposed a complicated restriction on how the funds could be used – requiring that at least 75% of all loans be used for payroll– that was not part of the law.⁶ Lenders reported difficulties with accessing SBA’s loan-processing system and the first days of the program were riddled with confusion over the types of documentation they were required to collect and transmit on behalf of applicants.⁷ Community banks and credit unions raised concerns that the SBA’s initial guidance would not let them register and qualify as lenders for the program.⁸ And many small businesses reported that they were not hearing back via email or phone from the SBA or banks about their loan applications when they sought assistance or updates.

Once the banks began processing loans, small businesses immediately began to raise concerns that they were playing favorites, processing the largest loans first out of a desire to reap higher fees, and shoring up their business lines by prioritizing existing larger customers over small mom and pop businesses.⁹ For example, JP Morgan “provided loans to virtually all of its commercial banking customers that sought financing through the small business relief program, while the lender’s smallest customers were almost entirely shut out.”¹⁰ Ultimately, based on the last update provided by the SBA, the largest 4% of loans approved under the program cost over \$150 billion

⁴ *Id.*

⁵ U.S. Department of the Treasury, “Paycheck Protection Program (PPP) Information Sheet,” <https://home.treasury.gov/system/files/136/PPP%20Lender%20Information%20Fact%20Sheet.pdf>

⁶ Small Business, Administration, “Paycheck Protection Program,” <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program>

⁷ Politico, “Small business loan program stumbles as SBA system crashes,” Zachary Warmbrodt, April 6, 2020, <https://www.politico.com/news/2020/04/06/small-business-loan-program-system-crashes-169614>

⁸ Letter from State Community Banking Associations to Secretary Mnuchin and Administrator Carranza, April 2, 2020. https://www.icba.org/docs/default-source/icba/advocacy-documents/letters-to-regulators/paycheck-protectionprogram-state-banking-association-letter.pdf?sfvrsn=4a52b17_0.

⁹ Wall Street Journal, “In Race for Small-Business Loans, Winning Hinged on Where Firms Bank,” Ruth Simon and Peter Rudegair, April 20, 2020, <https://www.wsj.com/articles/in-race-for-small-business-loans-winning-hinged-on-where-firms-bank-11587410421>

¹⁰ Bloomberg, “JP Morgan Commercial Clients Beat Out Smaller Ones for SBA Loans,” David McLaughlin and Michelle F Davis, April 22, 2020, <https://www.bloomberg.com/news/articles/2020-04-22/jpmorgan-commercial-clients-beat-out-smaller-ones-for-sba-loans>

– and accounted for 45% of all program funding,¹¹ a clear sign that mom and pop businesses did not proportionally benefit from the program.¹²

A detailed report by the New York Times explained that the program was “anything but” first come first serve,

[S]ome of the nation’s biggest banks, including JPMorgan Chase, Citibank and U.S. Bank, prioritized the applications of their wealthiest clients before turning to other loan seekers ... Customers of Citi’s private bank, where the minimum account size is \$25 million, didn’t have to use an online portal to apply for a loan; they could simply submit paperwork to their banker, who would put in an application on their behalf. At Chase, the nation’s largest bank, nearly all private and commercial banking clients who applied for a small-business loan got one, whereas only one out of every 15 retail banking customers who sought loans was successful. Some banks provided highly personalized, so-called concierge service to their richest clients by enlisting representatives to walk them through every step and submit their paperwork. The two-tiered system paid off for well-to-do customers.¹³

In addition to favoring large, well-off customer, the program was undermined by large restaurant chains, hotels, and other huge publicly traded companies that received PPP loans that were intended to benefit small businesses. The Wall Street Journal reported that “dozens of publicly traded companies” – including large restaurant chains like Potbelly and Ruth’s Chris Steak House- “received forgivable loans totaling more than \$500 million.”¹⁴ In another case, Dallas hotel magnate Monty Bennett received \$2 million in preferred dividends, laid off most of his staff, and then, using “[h]otels and luxury resorts that funnel money back to a single company... secured about \$53 million in federal virus aid,” including through the Ritz Carlton Hotel in Atlanta.¹⁵ And in a third case, Continental Materials, a “company owned by a prominent Chicago family [the family of U.S. Ambassador to Belgium Ronald Gidwitz] with close ties to the Trump administration was able to get a \$5.5 million loan under the program.”¹⁶ These reports are

¹¹ Small Business Administration, Paycheck Protection Program, Approvals Through 12 PM EST, April 16, 2020, <https://www.sba.gov/sites/default/files/2020-04/PPP%20Deck%20copy.pdf>.

¹² Id.

¹³ New York Times, “Banks Gave Richest Clients ‘Concierge Treatment’ for Pandemic Aid,” Emily Flitter and Stacy Cowley, <https://www.nytimes.com/2020/04/22/business/sba-loans-ppp-coronavirus.html>

¹⁴ Wall Street Journal, “Public Companies Got \$500 Million in Small Business Loans,” Inti Pacheco and Theo Francis, April 22, 2020, <https://www.wsj.com/articles/these-are-the-public-companies-that-got-small-business-loans-11587493742>

¹⁵ Wall Street Journal, “Dallas Hotel Owner is Biggest Beneficiary of Coronavirus Loan Program,” Konrad Putzier, April 22, 2020, <https://www.wsj.com/articles/dallas-hotel-owner-is-biggest-beneficiary-of-coronavirus-loan-program-11587568827>; New York Times, “Luxury Hotel Company is Biggest Beneficiary of Small-Business Funds,” Jeanna Smialek, Jim Tankersley, and Alan Rappeport April 22, 2020 <https://www.nytimes.com/2020/04/22/business/economy/coronavirus-small-business-loans-real-estate-trusts.html>

¹⁶ NPR, “Company with Ties to Trump Receives Millions from Small Business Loan Program,” Robert Benincasa, April 20, 2020, <https://www.npr.org/2020/04/20/839455480/company-with-ties-to-trump-receives-millions-from-small-business-loan-program>

disturbing, raising significant questions about whether SBA and Treasury Department officials that wrote the rules took appropriate steps to prevent abuse. Although the Treasury Department announced updated guidance on April 23, 2020, designed to make it “unlikely” for publicly traded companies to qualify for loans moving forward, and suggested that these companies should repay any PPP loans already taken out, it is unclear if these rules will be sufficient to prevent abuse.¹⁷

The PPP was intended to help the small businesses that form the backbone of our economy, and has now been provided over \$650 billion by Congress to do so. To make sure that these funds are spent consistent with congressional intent and appropriately to address the economic impacts of the COVID-19 pandemic, I request that you open a broad investigation into the program’s implementation. This investigation should include:

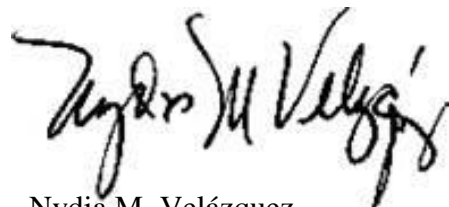
- A review of the SBA and Treasury Department rulemaking and guidance process, and an assessment of whether this process was effective in ensuring that lenders and small businesses could access the program quickly and equitably, and whether SBA and Treasury included appropriate protections against program waste, fraud, and abuse.
- An analysis of the lending process and the role of banks in providing funds, including an assessment of whether banks favored larger, wealthier customers and existing customers to the detriment of the small mom and pop businesses that the program was designed to benefit.
- A review of program participants, to determine if (1) larger businesses and public companies were able to obtain loans, and if so, the cost of these loans to taxpayers; (2) businesses that received loans were in need of these funds due to the COVID-19 pandemic; (3) companies with close ties to Administration officials or other political connections were able to receive PPP funds.

We appreciate your attention to this matter, and am happy to discuss this request with you in more detail.

Sincerely,



Elizabeth Warren
United States Senator



Nydia M. Velázquez
Chairwoman
Committee on Small Business

cc: Michael Horowitz, Chair, Council of the Inspectors General on Integrity and Efficiency

¹⁷ Wall Street Journal, Public Companies Have to Repay Small-Business Rescue Loans, April 23, 2020, <https://www.wsj.com/articles/public-companies-have-to-repay-small-business-rescue-loans-11587670442>