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Lowering the Guardrails: How the Trump Administration Failed to Prevent Billions in Pandemic Small Business Fraud

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Congress of the United States
Washington, DC 20515

MEMORANDUM

March 25, 2021

To: Members, Select Subcommittee on the Coronavirus Crisis

Fr: Majority Staff

Re: Lowering the Guardrails: How the Trump Administration Failed to Prevent Billions in Pandemic Small Business Fraud

This memorandum describes new evidence obtained by the Select Subcommittee regarding the scope of fraud in the Small Business Administration's (SBA's) Paycheck Protection Program (PPP) and Economic Injury Disaster Loan (EIDL) program. These programs have played a crucial role in helping small businesses keep their lights on and keep workers on the payroll during the pandemic, preventing the nation's economic crisis from becoming even worse. However, the Trump Administration refused to implement basic controls in PPP and EIDL despite warnings from the Select Subcommittee and others, leading to billions of dollars in potential fraud. The American Rescue Plan provided more resources to federal watchdogs to combat this problem, and the Biden-Harris Administration is enhancing program integrity to prevent fraud, waste, and abuse in these critical programs going forward.

Key Findings

- **\$626 million:** Funds seized or forfeited as a result of civil and criminal investigations involving the EIDL and PPP programs by the Department of Justice (DOJ), less than 1% of the nearly \$84 billion in potential fraud identified in these programs.
- **1.34 million:** Referrals for suspected fraud in EIDL loans and advances from SBA to the agency's Inspector General.
- **148,525:** Hotline complaints received by the SBA Office of Inspector General (OIG) relating to PPP or EIDL, a 19,500% increase over prior years.
- **212:** Open SBA OIG investigations regarding EIDL or PPP as of March 18, 2021.
- **32:** Law enforcement and other federal and state agencies investigating small business fraud in pandemic relief programs.

I. Trump Administration Actions Led to Substantial Fraud in Small Business Relief Programs

In response to the coronavirus pandemic, Congress has taken swift action to aid America's small businesses. With the passage of the American Rescue Plan, more than \$1 trillion has been appropriated for PPP and EIDL.ⁱ So far, SBA has issued more than 8.2 million PPP loans totaling over \$718 billionⁱⁱ and more than 3.7 million EIDL loans totaling over \$200 billion.ⁱⁱⁱ SBA has also issued more than 5.7 million EIDL Advance grants, worth \$20 billion.^{iv} These programs have played an essential role in preventing further economic destruction during the pandemic. However, the programs' effectiveness was hampered due to poor implementation by the previous Administration that led to the diversion of funds due to fraud, waste, and abuse.

The Select Subcommittee, as well as the Government Accountability Office (GAO) and SBA OIG, have worked to determine the scope of potential fraud in EIDL and PPP under the previous Administration. Last October, SBA OIG found that under the Trump Administration, SBA "lowered the guardrails" by "removing or weakening of controls" in the EIDL program, which "significantly increased the risk of program fraud."^v Regarding PPP, the Inspector General concluded that the Trump Administration's efforts "to hurry capital to businesses were at the expense of controls that could have reduced the likelihood of ineligible or fraudulent businesses obtaining a PPP loan."^{vi}

EIDL Fraud

The Trump Administration's actions resulted in significant potential fraud, waste, and abuse in the EIDL program. According to the most recent analysis by SBA OIG, there have been **\$79 billion** in potentially fraudulent EIDL loans and advances, including:

- **\$67.5 billion** in loans and advances to applicants with duplicate IP addresses, email addresses, physical addresses, and bank accounts;
- **\$7.9 billion** in loans and advances to applicants using bank accounts that differed from the accounts listed on their original loan application;
- **\$3.2 billion** in loans and advances linked to alleged identity theft; and
- **\$557 million** in loans and advances to potentially ineligible recipients with Employer Identification Numbers registered after the program cutoff date.^{vii}

The scale of potential fraud is also evident in the **1.34 million** referrals for suspected fraud in EIDL loans and advances that SBA sent to the agency's Inspector General. These include nearly 750,000 referrals for suspected identify theft and more than 585,000 referrals for other potentially fraudulent activity.^{viii}

PPP Fraud

Significant potential fraud has also been identified in PPP following the Trump Administration's refusal to implement basic fraud controls. On September 1, 2020, the Select Subcommittee released an analysis identifying more than **\$4 billion** in potentially fraudulent PPP loans.^{ix} The SBA OIG conducted its own analysis, identifying **\$4.6 billion** in potentially

fraudulent PPP loans,^x including **\$3.6 billion** that went to borrowers on the Treasury Department’s Do Not Pay list,^{xi} **\$692 million** in duplicate PPP loans,^{xii} and **\$402 million** to borrowers with Taxpayer Identification Numbers (TINs) created after the program cutoff date.^{xiii}

In a separate analysis, SBA OIG also identified nearly 55,000 PPP loans totaling **\$7 billion** made to potentially ineligible businesses, including companies that exceeded maximum loan amounts based on the number of employees, exceeded maximum business size standards, or received TINs after the program cutoff date.^{xiv}

In December 2020, SBA’s independent financial auditor identified a broader set of more than two million PPP loans worth **\$189 billion**—more than one third of all PPP loans issued in that period—that “are potentially not in conformance with the CARES Act and related legislation.” The auditor found the Trump Administration “did not adequately design and implement controls to ensure PPP loan guarantees were accurate” for the purpose of reporting SBA’s liabilities for loan guarantees and that the SBA “approved loans disbursed by its third-party lenders that, in numerous cases, were not accurate.”^{xv}

Fraud Complaints and Reports

Federal watchdogs received an unprecedented number of tips and complaints about potential fraud in these programs. SBA OIG has received a total of **148,525 hotline complaints** relating to PPP and EIDL, a **19,500% increase** over the approximately 700 to 800 hotline complaints the Inspector General receives in a typical year. Of the complaints received, 428 have led to OIG investigations, while 73,758 were still unprocessed as of March 18, 2021.^{xvi}

Financial institutions also identified significant potential fraud in PPP and EIDL during the previous Administration. These entities filed **41,000 Suspicious Activity Reports** with the Department of the Treasury’s Financial Crimes Enforcement Network relating to PPP and EIDL from May to October 2020.^{xvii}

II. The Biden Administration and Democrats in Congress Are Taking Action to Stop Fraud

Supporting Oversight by Federal Watchdogs

Congressional Democrats and the Biden-Harris Administration have ramped up oversight efforts to address small business lending fraud risks. President Biden has called for “fastidious oversight” of pandemic relief funds and directed his Administration to “make sure the relief arrives quickly, equitably and efficiently with no waste or fraud.”^{xviii}

The American Rescue Plan provides an additional \$142 million in oversight funds to combat fraud, including \$77 million to GAO, \$40 million to the Pandemic Response Accountability Committee (PRAC), and \$25 million to the SBA OIG.^{xix} SBA OIG may use these funds, in part, to increase hiring of law enforcement agents. The PRAC plans to use the funds, in part, for the Pandemic Analytics Center of Excellence, which the PRAC recently established to conduct data analysis on pandemic-related funds and assist fraud investigations.^{xx}

The Center’s four goals are: (1) conduct data analysis and visualization of all pandemic response funds; (2) provide fraud-fighting tools and central shared services to the Inspectors General community; (3) enable the broad sharing of data, analytics and leading practices across the oversight and law enforcement community; and (4) assist investigations and audits of pandemic relief programs with expanded data for open source investigative intelligence.^{xxi}

Enhancing Program Integrity and Interagency Coordination

Given the high number of potentially fraudulent loans disbursed by the previous Administration under the PPP and EIDL programs, the federal government faces a steep challenge in mounting an effective response and pursuing fraudsters. The Biden-Harris Administration has made improvements to program integrity and interagency coordination to help address this challenge.

In February 2021, the White House announced key program changes to reduce fraud in PPP while ensuring a streamlined loan review process. Under these procedures, “loan guaranty approval is now contingent on passing SBA fraud checks, Treasury’s Do Not Pay database, and public records.” In addition, the largest PPP loans and a sampling of smaller loans are now subject to more detailed manual reviews.^{xxii}

Government coordination has also improved. At least 32 federal, state, and local law enforcement and other agencies are currently investigating PPP and EIDL fraud.^{xxiii} The PRAC is working with DOJ and other law enforcement agencies to combat fraud, including by establishing a Fraud Task Force on February 11, 2021, to help develop an organized approach to handle cases with potentially overlapping jurisdiction.^{xxiv}

As of March 23, 2021, DOJ has charged 173 criminal cases involving 242 defendants for violations related to the PPP or EIDL programs. In those cases, DOJ has charged \$446.8 million in losses related to PPP and obtained 48 convictions. For the EIDL program, DOJ has charged \$27.1 million in losses and obtained 9 convictions. Of the nearly \$84 billion in potential fraud in the PPP and EIDL programs, \$626 million has been seized or forfeited as a result of DOJ’s criminal and civil investigations.^{xxv} DOJ may need additional personnel to continue effectively investigating and prosecuting cases involving EIDL and PPP fraud. This could include additional attorneys, as well as more data analysts and forensic contractors, to pursue all coronavirus-related fraud.

To further promote accountability and coordination, President Biden appointed former National Economic Council Director Gene Sperling to oversee pandemic relief implementation under the American Rescue Plan, with a focus on ensuring the funds go where they are needed and are not diverted to fraud, waste, or abuse.^{xxvi}

ⁱ Pandemic Response Accountability Committee, *Funding Overview* (online at www.pandemicoversight.gov/track-the-money/funding-overview) (accessed on Mar. 22, 2021); American Rescue Plan Act, Pub. L. 117-7 (2021).

ⁱⁱ Small Business Administration, *PPP Data* (as of Mar. 21, 2021) (online at www.sba.gov/funding-programs/loans/covid-19-relief-options/paycheck-protection-program/ppp-data).

ⁱⁱⁱ Small Business Administration, *Disaster Assistance Update: Nationwide EIDL Loans* (Feb. 16, 2021) (www.sba.gov/sites/default/files/2021-02/2.16.2021_COVID%20EIDL%20200B-508.pdf).

^{iv} Small Business Administration, *Disaster Assistance Update: EIDL Advance* (July 15, 2020) (www.sba.gov/sites/default/files/2021-02/EIDL%20COVID-19%20Advance%207.15.20-508.pdf).

^v Small Business Administration, Office of Inspector General, *Inspection of Small Business Administration's Initial Disaster Assistance Response to the Coronavirus Pandemic* (Report No. 21-02) (Oct. 28, 2020) (online at www.sba.gov/sites/default/files/2020-10/SBA%20OIG%20Report%2021-02.pdf).

^{vi} Small Business Administration, Office of Inspector General, *Inspection of SBA's Implementation of the Paycheck Protection Program* (Report No. 21-07) (Jan. 14, 2021) (online at www.sba.gov/document/report-21-07-inspection-sbas-implementation-paycheck-protection-program).

^{vii} Email from Staff, Small Business Administration, Office of Inspector General, to Staff, Select Subcommittee on the Coronavirus Crisis (Mar. 18, 2021).

^{viii} Email from Staff, Government Accountability Office, to Staff, Select Subcommittee on the Coronavirus Crisis (Mar. 17, 2021).

^{ix} Select Subcommittee on the Coronavirus Crisis, *Press Release: Select Subcommittee Releases Preliminary Analysis of Paycheck Protection Program Data* (Sept. 1, 2020) (online at <https://coronavirus.house.gov/news/press-releases/chairman-clyburn-addresses-administration-s-unprecedented-refusal-release-ppp>).

^x Email from Staff, Small Business Administration, Office of Inspector General, to Staff, Select Subcommittee on the Coronavirus Crisis (Mar. 18, 2021).

^{xi} Small Business Administration, Office of Inspector General, *Management Alert: Paycheck Protection Program Loan Recipients on the Department of Treasury's Do Not Pay List* (Report No. 21-05) (Jan. 11, 2021) (online at www.sba.gov/sites/default/files/2021-01/SBA%20OIG%20Report%2021-06.pdf) (data as of Aug. 8, 2020).

^{xii} Small Business Administration, Office of Inspector General, *Flash Report: Duplicate Loans Made Under the Paycheck Protection Program* (Report No. 21-09) (Mar. 15, 2021) (online at www.sba.gov/sites/default/files/2021-03/SBA%20OIG%20%20Report%2021-09.pdf) (data as of Aug. 9, 2020).

^{xiii} Small Business Administration, Office of Inspector General, *Inspection of SBA's Implementation of the Paycheck Protection Program* (Report No. 21-07) (Jan. 14, 2021) (online at www.sba.gov/document/report-21-07-inspection-sbas-implementation-paycheck-protection-program).

^{xiv} Small Business Administration, Office of Inspector General, *Inspection of SBA's Implementation of the Paycheck Protection Program* (Report No. 21-07) (Jan. 14, 2021) (online at www.sba.gov/document/report-21-07-inspection-sbas-implementation-paycheck-protection-program); According to SBA OIG, \$402 million of this \$7 billion in loans to potentially ineligible borrowers overlaps with the \$4.6 billion in potentially fraudulent loans that SBA OIG identified.

^{xv} Small Business Administration, *Agency Financial Report, Fiscal Year 2020* (Dec. 2020) (online at www.sba.gov/sites/default/files/2020-12/2020%20SBA%20AFR_121820A.pdf); *see also* Small Business Administration, *Paycheck Protection Program (PPP) Report* (identifying a total of 5.2 million loan approvals

through Aug. 8, 2020) (online at www.sba.gov/sites/default/files/2020-08/PPP_Report%20-%202020-08-10-508.pdf).

^{xvi} Email from Staff, Small Business Administration, Office of Inspector General, to Staff, Select Subcommittee on the Coronavirus Crisis (Mar. 18, 2021).

^{xvii} Government Accountability Office, *COVID-19: Critical Vaccine Distribution, Supply Chain, Program Integrity, and Other Challenges Require Focused Federal Attention* (GAO-21-265) (Jan. 2021) (online at www.gao.gov/assets/gao-21-265.pdf).

^{xviii} *President Biden: COVID Relief Needs 'Fastidious Oversight'*, Government Executive (Mar. 15, 2021) (online at www.govexec.com/oversight/2021/03/president-biden-covid-relief-needs-fastidious-oversight/172681/).

^{xix} American Rescue Plan Act, Pub. L. 117-7 (2021).

^{xx} Briefing by Michael E. Horowitz, Chair, Pandemic Response Accountability Committee, to Staff, Select Subcommittee on the Coronavirus Crisis (Jan. 26, 2021); Email from Staff, Pandemic Response Accountability Committee, to Staff, Select Subcommittee on the Coronavirus Crisis (Mar. 19, 2021).

^{xxi} Email from Staff, Pandemic Response Accountability Committee, to Staff, Select Subcommittee on the Coronavirus Crisis (Mar. 19, 2021).

^{xxii} The White House, *Fact Sheet: Biden-Harris Administration Increases Lending to Small Businesses in Need, Announces Changes to PPP to Further Promote Equitable Access to Relief* (Feb. 22, 2021) (online at www.whitehouse.gov/briefing-room/statements-releases/2021/02/22/fact-sheet-biden-harris-administration-increases-lending-to-small-businesses-in-need-announces-changes-to-ppp-to-further-promote-equitable-access-to-relief/).

^{xxiii} Email from Staff, Small Business Administration, Office of Inspector General, to Staff, Select Subcommittee on the Coronavirus Crisis (Mar. 18, 2021); Email from Staff, Government Accountability Office, to Staff, Select Subcommittee on the Coronavirus Crisis (Mar. 17, 2021); Email from Staff, Pandemic Response Accountability Committee, to Staff, Select Subcommittee on the Coronavirus Crisis (Mar. 19, 2021).

^{xxiv} Briefing by Robert Westbrook, Executive Director, Pandemic Response Accountability Committee, to Staff, Select Subcommittee on the Coronavirus Crisis (Jan. 26, 2021).

^{xxv} Email from Staff, Department of Justice, to Staff, Select Subcommittee on the Coronavirus Crisis (Mar. 23, 2021).

^{xxvi} *President Biden: COVID Relief Needs 'Fastidious Oversight'*, Government Executive (Mar. 15, 2021) (online at www.govexec.com/oversight/2021/03/president-biden-covid-relief-needs-fastidious-oversight/172681/).