

Congress of the United States
U.S. House of Representatives
Committee on Small Business
2361 Rayburn House Office Building
Washington, DC 20515-6515

February 12, 2021

The Honorable John Yarmuth
Chairman
Committee on the Budget
United States House of Representatives
204 E Cannon House Office Building
Washington, DC 20515

The Honorable Jason Smith
Ranking Member
Committee on the Budget
507 Cannon House Office Building
United States House of Representatives
Washington, DC 20515

Dear Chairman Yarmuth and Ranking Member Smith:

I am writing to advise you of the Additional Views of Minority Members of the House Committee on Small Business on the Committee Print providing for reconciliation pursuant to S.Con.Res. 5, the Concurrent Resolution on the Budget for Fiscal Year 2021. These are in addition to the Budget Reconciliation Committee Print, Majority Views, and Legislative Text adopted by the Committee on Small Business at a Full Committee meeting on February 10, 2021.

Should you have questions about this document, please contact Jan Oliver, Chief Counsel, House Committee on Small Business Minority staff, at jan.oliver@mail.house.gov.

Sincerely,



Blaine Luetkemeyer
Ranking Member

Minority Views
Additional and Supplemental Views of the Republican Members of the
House Committee on Small Business
on Matters Set Forth in
The Small Business Committee Print/Amendment in the Nature of a Substitute Providing
for the Reconciliation Pursuant to S.Con.Res. 5,
the Concurrent Resolution on
the Budget of the United States for Fiscal Year 2021
February 12, 2021

Pursuant to § 310 of the of the Congressional Budget Act of 1974 as amended,¹ we are writing to advise you of the Additional and Supplemental Views of the Minority Members of the Committee on Small Business on the Committee Print providing for reconciliation pursuant to S.Con. Res. 5, the Concurrent Resolution on the Budget for Fiscal Year 2021. These views are in addition to those submitted by the Committee's Majority Members. Unfortunately, neither the House Majority nor the Committee's Majority engaged in a bipartisan reconciliation process. Consequently, the Minority has substantial disagreement with the Majority's Budget Reconciliation Committee Print. These objections are discussed in greater detail below.

Under clause 1(q) of Rule 10 of the Rules of the United States House of Representatives, the Committee on Small Business has legislative jurisdiction over the United States Small Business Administration (SBA), including financial aid, regulatory flexibility, paperwork reduction, and the participation of small businesses in federal government procurement and federal government contracts. Similarly, under clause 3(l) of House Rule 10, the Committee also has continuing jurisdiction to study and investigate the problems of all types of small businesses. This letter, accordingly, focuses on the small business provisions of S.Con.Res. 5, the Concurrent Resolution on the Budget of the United States for Fiscal Year 2021, which covers the Small Business Act² and the Small Business Investment Act.³

The SBA has responsibility for programs that help to create millions of jobs and to grow the economy of the United States. Our nation's entrepreneurs depend on these programs not only to provide capital, but also for advising, mentoring, training, and other services. As a result, it is essential that SBA programs are efficient, effective, and achieve real results for America's small businesses and taxpayers.

¹ 2 U.S.C. § 641 et seq.

² 15 U.S.C. § 631 et seq.

³ 15 U.S.C. § 661 et seq.

I. Introduction: The Impact of the COVID-19 Pandemic on Small Businesses

The unique and unprecedented environment surrounding the COVID-19 (coronavirus or pandemic) of 2020-2021 has deeply affected small businesses. As a result, much of the SBA's focus over the past months has been on assisting small businesses that were adversely affected by the pandemic and its emergency declarations.

Congress passed, and on March 27, 2020 President Trump signed, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act).⁴ Section 1102 of the Act added a new product, called the Paycheck Protection Program (PPP), which was modeled after the SBA's 7(a) Loan Program.

The PPP and its corresponding loan forgiveness were intended to provide emergency economic relief to small businesses nationwide that were adversely affected by the Coronavirus Disease 2019 (COVID-19) Emergency Declaration issued by President Trump on March 13, 2020.⁵ Section 1106 of the Act provides for forgiveness of up to the full principal amount of qualifying loans guaranteed under the Paycheck Protection Program. The Program's loans were to be available until June 30, 2020 or until the funds were exhausted.⁶ Within one week of the CARES Act being signed into law, the SBA and the Department of the Treasury announced the initial rules of the program. On April 15, 2020, these initial rules were published as an interim final rule in the Federal Register.⁷ SBA and Treasury subsequently issued additional interim final rules implementing the PPP. Congress continued to pass legislation designed to provide small businesses with additional relief. Congress initially authorized \$349 billion for SBA 7(a) loans, including PPP loans. Lending began on April 3, 2020 and the initial amount was exhausted by April 16, 2020.

On April 24, 2020, Congress authorized an additional \$310 billion for the PPP program in the Paycheck Protection Act and Health Care Enhancement Act.⁸ PPP loans used for payroll expenses and other authorized non-payroll purposes paid or incurred during an eight week period may be forgiven if the borrower meets certain employee retention criteria. Previous regulations stipulated that not more than 25% of the loan forgiveness amount may be attributed to non-payroll costs. On May 18, 2020, the SBA released its initial loan forgiveness application, and on May 29, 2020, the SBA issued an interim final rule on PPP loan forgiveness.⁹

⁴ Pub. L. No. 116-137 (March 27, 2020).

⁵ Two declarations were issued on March 13, 2020: one under Sections 201 and 301 of the National Emergencies Act and one under Section 501(b) of the Stafford Act.

⁶ Pub. L. No. 116-137, sections 1102 and 1106.

⁷ UNITED STATES SMALL BUSINESS ADMINISTRATION AND UNITED STATES DEPARTMENT OF THE TREASURY, Interim Final Rule, Business Loan Program Temporary Changes; Paycheck Protection Program, 85 Fed. Reg. 20811 (April 15, 2020) (to be codified at 13 C.F.R. pt. 120).

⁸ Pub. L. No. 116-139.

⁹ UNITED STATES SMALL BUSINESS ADMINISTRATION AND UNITED STATES DEPARTMENT OF THE TREASURY, Interim Final Rule, Business Loan Program Temporary Changes, 85 Fed. Reg. 33004 (June 1, 2020).

In order to provide greater flexibility top small businesses, on June 5, 2020, the Paycheck Protection Program Flexibility Act of 2020¹⁰ was signed into law, amending the CARES Act. On June 26, 2020, the SBA and Treasury issued an interim final rule revising interim final rules that were published by the SBA and Treasury in the Federal Register on May 22, 2020,¹¹ but most provisions were effective retroactively to March 27, 2020.

On July 1, 2020, Congress passed legislation to extend the authority for commitments for the Paycheck Protection Program, which extended the PPP through August 8, 2020. This legislation also separated the 7(a) Loan Program authorization levels from the PPP authorization levels.¹² As required by the CARES Act, the SBA stopped accepting PPP loan applications from lenders on August 8, 2020.¹³

As of August 2020, PPP loans saved or supported over 50 million jobs nationwide. Despite this success, small businesses still need help. According to the January 2021 NFIB Business Optimism Index, in January optimism declined January to 95.0, down 0.9 from December and three points below the 47-year average of 98. Owners expecting better business conditions over the next six months declined seven points to a net negative 23%, the lowest level since November 2013. The net percent of owners expecting better business conditions has fallen 55 points over the past four months.¹⁴ In December, 2020, the House and Senate passed, and President Trump signed, a consolidated spending bill¹⁵ that contained \$325 billion in coronavirus relief for small businesses. Republicans worked to provide additional funding for the PPP program, including \$284 billion for eligible small firms that had not received a first round PPP loan and eligible small businesses and other entities interested in receiving a second PPP loan. It also set aside funding for the smallest of small businesses.

II. The Current State of Small Businesses Amid COVID-19

Prior to COVID-19, small businesses were projecting confidence, optimism, and job creation. Pro-growth policies resulted in historic unemployment levels. A smart regulatory environment and low taxes meant small businesses had the economic freedom and economic opportunity to innovate and expand.

America's small businesses are now facing challenges they have never encountered before. They are working every day to cope with the pandemic. Some businesses have adapted well, and some have not, but it has not been easy for any of them. Congress has responded with some tools to help many of them through this crisis, generally on a bipartisan basis, and supported by

¹⁰ Pub. L. No. 116-142 (June 5, 2020).

¹¹ Business Loan Program Temporary Changes; Paycheck Protection Act—Revisions to Loan Forgiveness and Loan Review Procedures Interim Final Rules, 13 C.F.R. §120 (June 26, 2020).

¹² This legislation became Pub. L. No. 116-147 on July 4, 2020.

¹³ Pub. L. No. 116-136 (March 27, 2020).

¹⁴ NFIB BUSINESS OPTIMISM INDEX, JANUARY 2021, *available at* <https://www.nfib.com/surveys/small-business-economic-trends/>.

¹⁵ Pub. L. No. 116-260 (December 28, 2020).

both Democrats and Republicans in this Committee and on the House Floor. Unfortunately, the new package of small business proposals offered by House Democrats at a markup on February 10, 2021, is one where House Republicans were blocked from engaging, providing thoughts or ideas, or interacting in any way. This is not only disappointing, it means our entrepreneurs are missing opportunities they might otherwise have had. And instead, the Democrats' latest COVID package, combined with discussions about more than doubling the minimum wage and recent administrative actions taken by the President, mean small businesses will be facing even greater challenges beyond COVID: an inhospitable economic environment.

House Republicans offered a number of amendments to the package that would have improved it, only to find them summarily dismissed by Democrats. This disappointing turn of events does not bode well for the future of small businesses or our American economy.

III. SBA's Capital Access Programs

Even before the pandemic, small business owners consistently cited the lack of capital as a significant problem for growing their businesses and creating jobs. The pandemic has made this need for capital even more urgent. Overall, despite some initial glitches, the SBA did an impressive job of getting these programs up and running in one week, processing fourteen years of loans in the first 14 days. Over the life of the pandemic, the Paycheck Protection Program (PPP) has supported over 51 million jobs across the country and served as a lifeline for small businesses. The funding enabled many to weather the pandemic and safely reopen to serve their communities. Once the PPP lapsed on August 8, 2020, it still had more than \$135 billion available. Legislation was introduced in September 2020 to extend the PPP through the end of 2020 and establish a program for second draw PPP loans. Unfortunately, the bill failed on numerous procedural votes in the House.¹⁶

In response to the COVID-19 pandemic, small business owners, including agricultural businesses and non-profit organizations, could apply for an Economic Injury Disaster Loan (EIDL). The EIDL program is designed to provide economic relief to businesses that experience a temporary loss of revenue due to the coronavirus. The funds may be used for obligations and operating expenses, such as working capital, continuation of health care benefits, rent, utilities, and fixed debt payments, that could have been met had the disaster not occurred. Initially, some small firms may have been eligible for an EIDL Advance grant, which did not require repayment. Others may have been eligible for an EIDL loan, which does require repayment.

On October 29, 2020, SBA's Inspector General released a disturbing report outlining serious concerns of potential fraud in the EIDL and EIDL Advance grant programs. The IG's office found over \$75 billion in fraudulent activity. The IG said he was troubled by the SBA's inadequate internal controls. The SBA responded that the report overlooked the controls that it has put in place and that SBA had itself referred many potentially fraudulent cases to the IG's office.

¹⁶ H.R. 8265, 116th Cong. (2020).

In recent years, the SBA IG has consistently identified the SBA's failure to provide effective oversight of its lending program participants as one of the most serious issues facing the agency. The SBA must improve its oversight to ensure that it can provide proper accounting of its ongoing capital access programs. The more recent PPP and the EIDL programs, for which Congress has authorized billions of dollars in loans, much of it eligible for borrower forgiveness, has increased the need for oversight. We are concerned about the reports of fraudulent loans, as we are with any reports of waste, fraud, or abuse, and have been working with the SBA Inspector General, which is reviewing the loan programs.

On October 1, 2020, the Subcommittee on Investigations, Oversight, and Regulations held a hearing with the SBA Inspector General, Hannibal "Mike" Ware, and William Shear, Director of Financial Markets and Community Investment, Government Accountability Office (GAO).¹⁷ Mr. Ware and Mr. Shear discussed the need for the SBA to adopt stronger internal controls to identify fraud and wrongdoing to ensure that Paycheck Protection Program and the Economic Injury Disaster Loan Program loans were properly allocated and disbursed. In addition, Minority Committee Members will continue to partner in the oversight and transparency that is essential to ensure the effective use of taxpayer dollars. We are mindful of the need to balance effective oversight of these programs without subjecting small businesses to overly burdensome requirements or disclosure of their proprietary information. At the February 10, 2021 markup of the Majority's Budget Reconciliation legislation, the Minority offered amendments that focused on waste, fraud, and abuse, and an amendment that would have increased the allocation of dollars to the SBA's Office of the Inspector General.

Many small businesses are still interested in the SBA's traditional loan products to meet their capital requirements during the pandemic. At the markup of the Budget Reconciliation proposal, the Minority offered an amendment to increase the maximum loan amount in the SBA's flagship 7(a) Loan Program from \$5 million to \$6 million.

IV. Concerns About Specific Small Business Budget Reconciliation Provisions

A. Economic Injury Disaster Loan Program Grant Funding

We are wary of the Majority's addition of \$15 billion to further bolster the EIDL Advance grant program. Created in the CARES Act, and reformed in subsequent legislation, this program allows small businesses and other entities that demonstrate a 30 percent economic loss, employ fewer than 300 workers, and are located in a low to moderate income area to apply for a \$10,000 grant. In its Budget Reconciliation legislation, the Majority allows small entities with a 50 percent economic loss and fewer than 10 employees to receive an additional \$5,000 grant. Unlike the EIDL Loan Program, the EIDL Advance grants do not require repayment.

¹⁷ *Preventing Fraud and Abuse in the PPP and EIDL: An Update with the SBA Office of Inspector General and the Government Accountability Office: Hearing Before the Subcommittee on Investigations, Oversight, and Regulations*, 116th Cong. (2020) (statement of Hannibal "Mike" Ware) ("strong indicators of widespread potential fraud") (statement of William B. Shear) ("COVID-19 loans lack internal controls and are susceptible to fraud").

We are concerned about the reliance on, and risks inherent in, federal grant funding, which can be difficult to trace. In the past, federal grants have been susceptible to financial theft and fraud, such as falsifying applications, using grant funds for non-grant purposes; failing to comply with record-keeping requirements; and inflating costs. The SBA's IG found that the EIDL program has been vulnerable to fraud and identified tens of billions in applications that warranted further review. A July 2020 SBA Office of Inspector General report said it had "deficiencies in internal controls related to disaster assistance... identified \$250 million in Economic Injury Disaster Loans and Advance grants given to potentially ineligible recipients... \$45.6 million in potentially duplicate payments."¹⁸ In the report, the Inspector General was alarmed about "potentially rampant fraud" and account activity with stolen identities, transfers to foreign accounts, transfers into investment accounts, deposits into third party accounts, and transfers to accounts with no other activity.¹⁹

We reiterate our concern about grant funding and must ensure that SBA programs serve both small businesses and taxpayers honestly, fairly, and transparently. At a time when small businesses need these funds to keep their employees paid and their doors open, we cannot afford for funding to be misspent or wasted.

B. Expanding PPP Program Eligibility

We are concerned about expanding eligibility for the PPP program. Although the Majority included \$7.25 billion in additional funding for the PPP program, it has also expanded eligibility, spreading the funding thinner. This is a popular program with very high demand, and an additional \$7.25 billion is likely to be drawn down quickly. The nonprofit entities currently eligible for the PPP Program include 501(c)(3)s, 501(c)(6)s, 501(c)(19)s, and through administrative action, 501(c)(12)s. In addition to providing eligibility to all 501(c) entities except 501(c)(4)s, under the Majority's proposal, non-profits would be exempt from the SBA's affiliation rules, which help the SBA to determine if a business is indeed small. For many years, there have been numerous incidents of larger businesses posing as small businesses to receive favorable consideration as SBA government contractors or eligibility for federal programs designed for small firms. We believe that waivers of the SBA affiliation rules should be limited, and offered an amendment at markup to strike the expansion of PPP to additional non-profit groups made eligible in the Budget Reconciliation legislation, and strike the waiver of SBA's affiliation rules.

The Majority's proposal would allow Internet publishing organizations that are engaged in the collection and distribution of local, regional, or national news to be eligible for the PPP Program. We do not believe the federal government should be in the business of determining what is news and what is not news.

¹⁸ OFFICE OF INSPECTOR GENERAL, UNITED STATES SMALL BUSINESS ADMINISTRATION, MANAGEMENT ALERT, SERIOUS CONCERNS OF POTENTIAL FRAUD IN ECONOMIC INJURY DISASTER LOAN PROGRAM PERTAINING TO RESPONSE TO COVID-19, *available at* https://www.sba.gov/sites/default/files/2020-07/SBA_OIG_Report_20-16_508.1.pdf.

¹⁹ *Id.* at 3-4.

C. Restaurant Revitalization Fund Program

The Majority's proposal would provide \$25 billion in direct grant assistance to the restaurant industry, which has been particularly hit hard by the pandemic. Grants must not exceed \$10 million to a restaurant group or \$5 million to an individual restaurant location. We understand and appreciate that the restaurant industry has suffered greatly in the pandemic, and believe it is deserving of financial assistance. We remain concerned about the effectiveness of federal assistance in the form of grant funding, but strongly support the restaurant industry and its efforts to stay open and serve its customers in this difficult time. As a result, the minority offered an amendment at markup to increase the allocation for the Restaurant Revitalization Fund from \$25 billion to \$45 billion.

D. Community Navigators Pilot Program

The Majority proposes \$175 million for a Community Navigators Pilot Program, which would provide grants to community financial institutions and SBA's resource partners, such as Small Business Development Centers, SCORE, and Women's Business Centers, for outreach and resources to small businesses during the pandemic. Again, we restate our concerns about grant funding, which can be susceptible to fraud. This "pilot" program would not sunset until 2025, meaning it will operate for at least four years. Typically, a government pilot project is a short term, small scale feasibility study, and not an expansive project lasting multiple years. We also have concerns with the duplication that this new pilot program could add.

E. Shuttered Venues Grants Program

The Shuttered Venue Operator Grants Program was created in the Consolidated Appropriations Act in December 2020,²⁰ for which Congress provided \$15 billion in funding. The Majority's current proposal provides an additional \$1.25 billion, an immense increase for a program that has not yet launched, awarded any grants, or disbursed any funds. Although the program is a worthy one that will assist venues that have been hard hit by the pandemic, the Minority believes the program should launch and begin awarding grants before determining if additional funding is needed.

F. SBA Administrative Funding

The Majority proposes \$840 million for SBA's administrative expenses, \$460 million for SBA's Office of Disaster Assistance, and \$25 million for SBA's Office of the Inspector General. The SBA's Office of the Inspector General has done commendable work throughout the pandemic, auditing, identifying, and investigating allegations of waste, fraud, and abuse in SBA's programs. The Minority believes that the \$25 million increase woefully underfunds the Office of the Inspector General, and would allocate more funding to assist the work it is doing in these unprecedented times.

²⁰ Pub. L. No. 116-260 (December 27, 2020).

G. Increasing SBA Oversight and Accountability

Because of the findings of fraud in SBA's existing pandemic programs,²¹ the possible expansion of its existing programs, and the possible addition of new programs, Minority Members support increasing oversight of the SBA's programs. The Minority offered amendments to increase oversight of SBA's pandemic programs, including allocating an additional \$25 million to the SBA's Office of the Inspector General, and require the SBA to issue a report to Congress on the waste, fraud, and abuse in the Economic Injury Disaster Program.

H. Overall Economy and Increasing the Minimum Wage

According to a February 2020 report on the economic outlook for 2021-2031 by the Congressional Budget Office,²² the CBO expects the U.S. economy will continue to improve, gross domestic product (GDP) will return to its pre-pandemic level by mid-2021, and anticipates a real GDP growth rate of 3.7 percent, the highest in over 15 years. In fact, CBO said the overall U.S. economy is expected to improve, fairly impressively, *even assuming no further stimulus legislation is enacted*.²³ In addition, CBO projected that the labor market will continue to improve, with unemployment gradually declining through 2026.²⁴

The Administration and the House Majority have proposed more than doubling the minimum wage from its current level of \$7.25 to \$15 per hour by 2025. Although this provision is not within the Committee's legislative jurisdiction, it is clearly within its oversight jurisdiction, because it would affect the operation of small businesses that employ workers. The February 2020 CBO report projects that raising the minimum wage would cost 1.4 million jobs and increase the deficit by \$54 billion over ten years.²⁵ At the markup of the Majority's Budget Reconciliation legislation, the Minority offered an amendment to direct the Administrator of the Small Business Administration to submit a report to Congress on the impact of raising the minimum wage to \$15 per hour on small businesses.

V. A Cautious Look at the Small Business Horizon

The events of the past year have had a deep and lasting effect on small firms, with many barely surviving and some ceasing business altogether. We are hopeful that this year will see small firms recover from the pandemic with the help of the SBA and its programs. However, with a new Congress and a new Administration, we must be cautious, particularly now, about the

²¹ *Preventing Fraud and Abuse in the PPP and EIDL: An Update with the SBA Office of Inspector General and the Government Accountability Office: Hearing Before the Subcommittee on Investigations, Oversight, and Regulations, 116th Cong. (2020)* (statements of Hannibal "Mike" Ware and William B. Shear).

²² UNITED STATES CONGRESSIONAL BUDGET OFFICE, AN OVERVIEW OF THE ECONOMIC OUTLOOK: 2021 TO 2031, *available at* <https://www.cbo.gov/system/files/2021-02/56965-Economic-Outlook.pdf>.

²³ *Id.* at 1.

²⁴ *Id.*

²⁵ *Id.*

potential of hampering small businesses with the burdens of additional regulations and higher taxes. Entrepreneurs, above all, face an uncertain future, and we must not threaten them with additional harm. We must provide an economy that allows all small businesses to prosper.

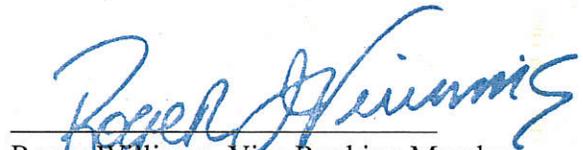
VI. Conclusion

During this time of economic recovery, Members of the Committee's Minority will continue to work with the SBA to ensure that small business owners receive the services that they need to start businesses, grow them, and keep their doors open. The United States was founded on principles that encourage entrepreneurship and economic growth. We will continue to do all that we can to help small businesses create jobs, retain their workers, and compete in the global economy.

Respectfully,



Blaine Lueckemeyer, Ranking Member



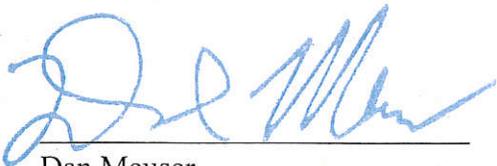
Roger Williams, Vice Ranking Member



Jim Hagedorn
Member of Congress



Pete Stauber
Member of Congress



Dan Meuser
Member of Congress



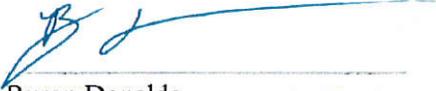
Andrew Garbarino
Member of Congress



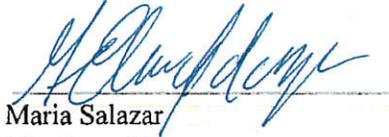
Young Kim
Member of Congress



Beth Van Duyne
Member of Congress



Byron Donalds
Member of Congress



Maria Salazar
Member of Congress



Scott Fitzgerald
Member of Congress