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OVERSIGHT OF SBA'S COVID ECONOMIC INJURY DISASTER LOAN PROGRAM

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HEARING

before the

COMMITTEE ON SMALL BUSINESS
AND ENTREPRENEURSHIP

OF THE

UNITED STATES SENATE

ONE HUNDRED SEVENTEENTH CONGRESS

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ONE HUNDRED SEVENTEENTH CONGRESS

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TUESDAY, AUGUST 2, 2022

United States Senate,
Committee on Small Business
and Entrepreneurship,
Washington, DC.

The Committee met, pursuant to notice, at 10:00 a.m., in Room 428A, Russell Senate Office Building, Hon. Ben Cardin, Chairman of the Committee, presiding.

Present: Senators Cardin, Shaheen, Hirono, Rosen, Hickenlooper, Scott, Ernst, Young, and Marshall.

OPENING STATEMENT OF CHAIRMAN CARDIN

Chairman Cardin. The Small Business Committee will come to order.

Before I give my opening statement in regard to today's subject I do want to express all of our concerns about the devastation that is taking place in Kentucky. The flooding has been just horrible to see. We know these natural disasters are very, very hard on a community, and our prayers are with those that have been victimized by the flooding. And we recognize there are many needs to how we respond as a nation to deal with this natural disaster, and I know our country will do everything we can. We see the resiliency of the people of Kentucky.

I say that particularly knowing that our Ranking Member, Senator Paul, represents the great state of Kentucky, and our thoughts are with them.

I also recognize that small business relief is only one part of that recovery, but I commend the SBA's announcement yesterday to provide relief to small businesses, nonprofits, homeowners, and renters in the region. The Small Business Committee will work with the SBA to get this information out to the affected areas to help the people of southeastern Kentucky get back on their feet.

I want to thank Senator Paul for his cooperation in arranging for today's hearing. It has been a challenge on scheduling. Thank you, Senator Ernst, for stepping up and being

willing to take on the responsibilities. I know Senator Paul had a conflict, and we certainly understand that, but he cooperated with us and Senator Ernst is available, and I thank her for being able to take on this position today.

And let me thank Patrick Kelley, the Associate Administrator, Office of Capital Access, at the Small Business Administration, for being here today and being willing to help us understand where we are in regard to the EIDL program.

One of the most important functions of this Committee is oversight. Yes, we want to pass the right policies and make sure that they are adequately drafted and funded, that you have the resources and the direction you need. But then it is our responsibility to make sure these programs are being carried out as effectively as possible. So we look at today's hearing, which is to oversight the Economic Injury Disaster Loan Program during COVID, and recognize that this was an incredible undertaking.

On April 24, 2020, \$50 billion of subsidy was provided for the Economic Injury Disaster Loan Program under COVID. On May 7th, 2020, the Small Business Administration announced the program and imposed \$150,000 cap. Even though this program, under law, allows for loans up to \$2 million, the Trump administration decided to limit that to \$150,000 cap.

We were not happy about that, and members of this Committee, as well as many members of the Senate, expressed our concern that that \$150,000 cap was arbitrary, and we wanted to see that implemented at the full amount that Congress authorized, at \$2 million.

But by July 20th, the SBA had entered into 3.1 million loans, for \$169 billion. Now I will repeat that again--3.1 million loans by July 20th. On April 21st of this year, the Biden administration increased the cap from \$150,000 to \$500,000, and then, in September, increased it to the full \$2 million. We were all very pleased about that announcement, and we were very pleased that we were able to increase the total amounts available to the \$2 million limit.

The Biden administration deserves high marks for implementing the congressional intent at \$2 million. The SBA administered the program and now there are almost 4 million loans that have been issued under the COVID EIDL program. That is quite a record.

Over the past two years, the SBA has transformed a relatively small and unknown program, intended to support communities following natural disasters, into one of the Federal Government's primary tools to combat the economic impact of COVID-19 pandemic. The 3.9 million COVID EIDL loans the SBA has issued since April of 2020, are more than all the loans that have been issued during the entire history of the disaster loan program. That just tells you how much additional responsibilities the SBA took over and how they delivered on those programs.

The EIDL loan program is a source of hope for small businesses. It is the critical capital they need during a pandemic. It provides a fixed-rate, low-interest, long-term capital that is absolutely essential for small businesses. They do not have the resiliency. This gives them the hope of being able to stay in business.

In December of last year, December 31st, no new applications were allowed, under law, and the SBA basically closed the process for new applications.

Here is where the confusion and frustration comes down, on the winding down of the program, and here is where we are really baffled as to the way, and information that we have received from the SBA.

First, on May 6th of this year, the SBA said that funding

was exhausted. On April 28th, they had set the deadline for loan modifications, appeals, and denials for reconsideration. Yet on May 11th, we were informed by the SBA that it had \$1.3 billion, a transfer of funds from the American Rescue Plan, and \$1.2 billion available in regard to cancelled loans. So we did not understand that they gave the explanation on May 6th, the SBA, that funding had been exhausted. They sent another notice on May 16th that all workable files had been processed.

So what I am confused about, we have a large number of small business owners that are in the process, with their SBA EIDL loan, receiving information from the SBA that they have exhausted funding and that all workable files had been made, and yet they have not been notified in regard to their individual cases.

On June 22nd, applications could still not be processed because of lack of funds, another statement made by the SBA, yet in June, on a staff call with Administrator Kelley, we were informed that \$800 million remained in the EIDL program.

There is frustration and anger out there. We have 41,000 applicants who have never received determinations. We have 125,000 applicants that have been approved that have not received their funds.

Now I can tell you, I talk to my state workers all the time that handle the calls from the small business community. They are my frontline workers. And there are small business owners that are really frustrated. They have gotten inconsistent information from the SBA. They believe their applications have never been litigated, never been completed, and they want to know why. They want a straight answer. As I said earlier, the small business community is the growth engine of our country. It is where innovation takes place. But small business owners do not have the same deep pockets and resiliency. They need to know what is going on with their applications, and if they are ineligible then declare them ineligible. Let them handle it or take an appeal, but do not leave them in the lurch.

So I hope that this hearing will have an opportunity to get answers to those questions and that we can have the completion of the EIDL loan program done in a way that represents the values of our Committee and a policy that we developed and the values of the program that is so important to small businesses.

And with that let me turn it over to Senator Ernst.

OPENING STATEMENT OF SENATOR ERNST

Senator Ernst. Thank you, Senator Cardin, and I also want to express my sympathies to those families and those communities that were impacted in Kentucky. I think all of us are watching and praying for the best but understanding that this is a very difficult time for them, so thank you for mentioning that.

And thank you, as well, Chairman Cardin, for holding this important hearing to discuss the SBA's lending and disaster assistance programs. And before we move forward any further on this I cannot overstate how harmful inflation has been for small businesses in Iowa and throughout the nation. As part of my 99-county tour across Iowa I speak with those small business owners who are continuing to tell me how record-setting levels of inflation have created a significant financial burden across their value chains.

The most recent Consumer Price Index report shows that prices increased by 9.1 percent over the last 12 months, the largest year-over-year increase in over 40 years. Over the same period, the Producer Price Index increased by 11.3 percent, indicating that most small businesses are experiencing increasingly diminished margins, impacting their ability to

provide paychecks to working families, especially those that reside in my rural communities.

Small businesses are the backbone of the American economy, and despite being told otherwise, small business owners know the impact of inflation on their businesses is not transitory and it is proving not to be short term. This inflation crisis has created a hidden value-added tax that has deeply impacted their economic security, which is why it is deeply troubling to me that the Democrats in Congress plan to move forward with a reckless, partisan tax and spending spree focused on raising taxes to pay for electric vehicles for the rich, hamstringing our manufacturers, and all sorts of other pet projects of far-left interest groups.

The COVID Economic Injury Disaster Loan Program, or EIDL, provided support for small businesses facing financial hardship as a result of the COVID-19 pandemic. As the rush of pandemic aid went out the door, bad actors took advantage of the American taxpayer's generosity. We now know fraudsters bilked millions and millions from SBA in fraudulent loans from this program.

But as it transitions from supporting small businesses to servicing loans, I am concerned about the SBA's lack of attentiveness to ensuring law enforcement has everything it needs to pursue those who have defrauded the taxpayers. Wrongfully awarded dollars must be returned to the program and returned to the American taxpayer. Timely action is needed in order to do so.

In a similar vein, the SBA has unlawfully approved nearly \$100 million in forgivable PPP loans to Planned Parenthood affiliates. To make matters worse, the SBA forgave 34 of these loans, despite it being a clear violation of the affiliation rule. Yet to date the SBA has not launched an investigation into this issue or made any effort to recoup the ineligible funds.

It is critically important to protect the integrity of the capital access programs that are intended to provide support to small businesses from fraud and ineligible distributions.

Mr. Kelley, thank you for appearing before us today. I look forward to working together in the future to ensure that taxpayer money is protected from fraud and that bad actors are held accountable. Thank you.

Thank you, Senator Cardin.

Chairman Cardin. Thank you very much for, again, taking on the responsibility today.

I want to ask consent to put into the record letters that were written to Administrator Guzman on May 6, 2022, from Senator Van Hollen and myself, and July 15, 2022, from a group of Senators, headed by Senator Cornyn and myself, in regard to our concerns as to why certain information as given to our constituents when we were told that there was money available.

Chairman Cardin. Administrator Kelley, thank you again for being here. As I had pointed out earlier we appreciate your leadership on this program. The Office of Capital Access is critically important to small businesses. The role of that committee has quadrupled, maybe more than that, since COVID-19, so we know that you have stood up an agency that was meant for a certain purpose that was really tested to its limit. And we thank you very much for your service and thank you for being here, and you may proceed.

STATEMENT OF PATRICK KELLEY, ASSOCIATE ADMINISTRATOR, OFFICE OF CAPITAL ACCESS, U.S. SMALL BUSINESS ADMINISTRATION, WASHINGTON, DC.

Mr. Kelley. Great. Thank you, Chairman Cardin, thank you

Senator Ernst. I too want to extend my sympathies to the Commonwealth of Kentucky. Obviously, 35 families to date no longer have a loved one, and there are hundreds of others that have not been found.

As Chairman Cardin mentioned in his opening statement, President Biden declared a disaster area for the five counties, and obviously we will work to expand that, if necessary, and obviously work to help all of the survivors.

On behalf of Administrator Guzman, I am happy to be here with the Committee today to answer any and all questions. My name is Patrick Kelley. I am the Associate Administrator of the Office of Capital Access at the SBA, and I have been since March 1st of 2021.

First I would like to echo the Chairman's comments regarding the work of the civil servants at the SBA. It truly is a privilege for me to have a second opportunity to work with people during a time when so much was asked of them for the last 24 months. On balance, these are some of the best people I have ever worked with, across the private sector and the public sector, and I will continue to enjoy the opportunity to serve the American people with them.

We oversee a bunch of different CARES Act and Economic Aid Act programs, and COVID EIDL is certainly a focus today. That particular program, as was mentioned by Chairman Cardin, serviced about 4 million small businesses and roughly \$400 billion in financing. Seventy-two percent of those loans went to small businesses with 10 or fewer employees. Fifty percent of the recipients were not able to access the PPP program. So I think one of the great success stories about this, what I have characterized as an uber-credit-not-available-elsewhere program, is its success getting to all corner of our society.

In addition to the COVID EIDL program, just to provide an update for you and the members, we are obviously working on forgiveness in the PPP program. We are currently approaching 10.4 million loans out of the 11.4 million forgiven, and we expect that the remaining 1 million will seek forgiveness this fall as the April/May/June 2021 PPP loans hit their 10-month mark and begin to make payments.

We have provided direct forgiveness to assist 1,500 lenders, which has amounted to 2 million loans being serviced by the SBA on behalf of lenders and borrowers to assist with that forgiveness. That particular program also coincided with obviously the Restaurant Revitalization Program.

I do want to thank the Chairman's leadership on the restaurant program. We worked diligently to roll that out, with members of this Committee's staff as well as the House, and 101,000 businesses were supported, for \$28.6 billion.

The last thing that I will add before we get to the questions, which I am looking forward to hopefully helping folks understand what we are trying to accomplish, is just to provide some context to the breadth of what the SBA was asked to do. The Office of Advocacy at the SBA estimated that in 2021, a total, for small business and medium-sized enterprises receiving capital from any source, any private sector lender, was \$651 billion. In the COVID EIDL program, in 2021, we put out \$200 billion on top of the \$167 billion that the Chairman referenced in 2020.

So it is absolutely the case that the SBA has played an outsized role, as Administrator Guzman has worked with this Committee and the nation to provide. Thank you.

[The prepared statement of Mr. Kelley follows:]

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Chairman Cardin. Well again, thank you, and I agree with

your last statement. The SBA had played an outsized role, and there is no question about it. It stepped up during the pandemic, and I agree with you on the civil servants, and I give our real thanks to the incredible amount of work that they put out to help out quickly, both with the PPP program and the EIDL loan program, the EIDL Advance program, and then later with the Shuttered Venue and the restaurant program. So it was an incredible effort, and it saved small businesses, that exist today that would not have but for the ability to get those programs out.

And as we point out, this has all been bipartisan. The bills were developed bipartisan, and this hearing, in regard to how the EIDL program is being wound down, there is bipartisan interest to see it done right.

So I want to get the numbers right because we had like 3.9 million loans that were given out. We have, we think, 41,000 people who are looking for determinations that have not yet been done. We have seen, at times, the SBA say that these are unworkable, but to our knowledge those 41,000 small businesses have not been informed as to their status. So they are sitting out there hoping that they are going to get a positive response, but they want a response. They want to move on with their life. They want to know whether they can or cannot access the funds, because they have to plan their businesses, and we believe there are 41,000 that are in that status.

And then we had 125,000 small businesses that thought they were going to get their funds, thought they had been approved for the funds, and have not gotten their funds. And then they get notices that there are not funds available, but yet we have been told that there is money there. So the funds are there. So it seems like they are not getting accurate information, which is extremely frustrating. And they call our office, and they call your office, and they call every Senator in this country with legitimate concerns.

So can you clarify the numbers for us? How many applications are still pending? Are they workable or not workable? Why have the small businesses not been notified? And are there applications that have been approved but have not been acted upon, and for what reason would that be?

Mr. Kelley. Yes, I will get to all of that. So first I just want to start off the top with the 125,000 first, so we can address that. The 125,000 folks have obligated funds to them. They could close those today with the assistance of an SBA district office, directly themselves with the call center for the specific COVID EIDL program. But that money is theirs. We will not cancel those funds. Obviously, at some point, you know, later this year we will send out notice and start to see if folks want to seek this. Obviously, it is a loan product that has to be paid back, obviously, very favorable terms. But still, nevertheless, a loan product.

So at their discretion, each of those 125,000 can close that loan. I welcome the opportunity to make sure that anybody, in any of the offices, is clear that those folks have money and can be funded.

Chairman Cardin. And those funds are there.

Mr. Kelley. Yes.

Chairman Cardin. There is no problem of collecting the funds.

Mr. Kelley. Correct. And I start there to then move to the 41,000, because prior to—I believe my testimony in the House was the week of May 16th, and during my testimony it was timely because we were in the period of time where applications received on or before May 6th, I indicated in the House that there were roughly 61,000 of those, two-thirds of which were roughly loan increase requests, and a third of those were

reconsiderations. And I said during that testimony that we would get to all of those files prior to May 16th, and we would decision those files.

So 38 percent of the two-thirds--so if we are keeping track, 38 percent of 40,000 files were decisioned and were approved and obligated funds and either sit in that 125,000 bucket or have already closed their loan and been disbursed.

With respect to the final third, the reconsiderations, I indicated at that time, and it held true, that reconsiderations are decisioned successfully, meaning you ask for a reconsideration, the SBA reconsiders it and says, ``You know what? On hindsight you are correct.'' Two out of 10 times the SBA reverses a prior decision.

It is important to understand that 92 percent of the 41,000 did receive a loan and a prior decision in 2021, regarding their increase request, or in 2022, had been indicated what documents they were missing, which is one-third, or two-thirds of that number--I realize I am throwing a lot of data here, but as the Chairman asked to get into the numbers--two-thirds of that number has either not filed taxes from 2019. So it is important to understand that you could file an extension and that the extension period tolled within the fall of 2020. So these are 2019 tax returns with no filing.

There was a filing once in 2021, when the program resumed, a historic practice at an SBA program. So to Senator Ernst's comments about fraud, waste, and abuse, historically the SBA has always validated tax verification through the 4506-T process. The CARES Act required the SBA to forego that provision, and the Economic Aid Act replaced that.

So in addition to not filing or filing late there is a third category of filers who, upon learning that their increase request was not validated by the filing that they put forward for 2019, proffered an amended filing return that, coincidentally, coincided with the request that they were seeking. So it is really important to understand that yes, there were communication challenges with trying to indicate, first, we are seeking all comers in the five months following the program's formal conclusion.

12/31/2021 was the last day that in the program, by law, anyone could submit a new application. As Chairman Cardin mentioned, since 92 percent of the loans, or 3.6 million from 2020, had from April of 2021 until May 6, 2022, to seek a loan increase. And the reason I use the April time frame instead of the September 2 million threshold is because the average loan increase was \$200,000.

So it is absolutely the case that these folks are frustrated. It should be mentioned that 75 percent of the 41,000 files are from NAICS codes that Congress indicated were not impaired by the pandemic. As you know, in the Economic Aid Act, Congress designated specifically industry segments, which was appropriate--hospitality, restaurants, et cetera. Seventy-five percent of the remaining requests are from industries that were not designated as significantly impaired by the pandemic.

I lent money for six years to small businesses for a community bank based in Wilmington, North Carolina, and the CEO of that company's line to us is the only two questions that a borrower cares about is am I approved and when do I get my money.

And so I understand that from a borrower's perspective ``no'' is a suboptimal outcome. But given the fraud, waste, and abuse that this Committee has highlighted for the last year and the reforms that the Economic Aid Act began, and the Biden-Harris administration extended to address fraud, waste, and abuse, we cannot extend loans to folks who have not paid their taxes.

Chairman Cardin. I understand exactly, and we want you to verify. But recognize that during COVID-19 we gave relaxations on filing returns. So not all the documentation is there, and it is not always the small business owner's fault. They may very well be entitled. They just have not been able to because of the pandemic, to dot every I and cross every T.

So I am interested in how many files today are there still open, where the small business owner has not been informed. If you reject, they can file an appeal, so they have that right. But if you do not reject and they are in sort of an open status, they do not know what the future has. How many EIDL applications are still pending, where there has not been a finite answer given by the Small Business Administration?

Mr. Kelley. So Chairman Cardin, every single person--and I know this because we have worked with your staff, Committee member's staffs on a daily basis, and my colleagues here from Legislative Affairs work on a daily basis. We receive email accounts, both your office and our office, and in those email accounts--and I read them daily, so I read each one each day, because it is an easy way for me, in public service, to have an impact that day. It is directly tangible. I can either help somebody unblock something or I can get to a solution.

In each of those email correspondences there is an indication, by the borrower, of multiple instances, and several different times over the balance of however long they have been seeking a loan increase, of interaction and communication with SBA employees, either at the district office or directly with the loan officers themselves. To say that they have not been notified of the challenges facing their files I believe understates the totality of the circumstances.

Where, in the most recent cases--so since the program stopped considering reconsiderations and loan increase requests in May--the emails that come in are either, as I said, in the obligated funded category, in which we work then to assist them with how they can close that loan if they want to close that loan, or they are almost entirely in the category related to a tax issue.

So 41,000 is obviously a deafening amount of voices, because if you took 50 states and divided it by that, that is roughly 800 calls. So your colleague, Senator Van Hollen, on that staff call that you mentioned, referenced 1,200 calls, which, at the time, if you did 50 by 1,200, that is roughly 61,000 when we had the call.

And so it is totally understandable that your offices are frustrated, that the borrower who, in 2020, the Federal Government allowed them to seek a loan product without any verification of whether they had filed taxes or could demonstrate the gross sales receipts number and the cost of goods sold number, integral to the economic injury calculation, and they say to us, collectively, ``But you gave me money. Therefore, I am eligible.''

And in the sense that their business is small--as I mentioned, the overwhelming majority of these are 10 or fewer employees, so they are, by anybody's definition, small--totally true. But in the sense that we can make a reasonable reassurance of repayment from the cash flow of the business, and verify that they filed their taxes, we cannot do that.

Chairman Cardin. I understand what you are saying, and I think we are like two ships passing in the night. We are hearing from the borrowers that they requested additional information, they supplied that additional information, they did not hear back from the SBA, their application is still pending. They get a notification that there is no money available and now they hear that money is available. Then they get notification that all files are unworkable, but they think

their case is still pending. That is where the frustration is occurring, and we need to know the numbers.

I will come back on a second round. Senator Ernst.

Senator Ernst. Yes. Thank you, Mr. Chair. And just a quick, easy—I hope it is easy—question for you. Do taxpayers deserve an SBA that is transparent and accountable to Americans in how it spends their money?

Mr. Kelley. Yes.

Senator Ernst. That is great. Thank you. I do agree with that as well. And your office has received recommendations from both the inspector general and the GAO on both PPP and COVID EIDL, many of which are pretty common sense, including continually assessing the COVID EIDL program and developing portfolio-level data analytics to help identify fraudulent loans and fraud risk factors. Yet these recommendations and others have remained open for more than a year while watchdogs have identified billions in fraud, and law enforcement prosecutes fraud case after fraud case.

And I have heard from a lot of Iowans who said that PPP and COVID EIDL loans were helpful for them in the early days of the pandemic, but when we listen to Inspector General Ware, he is right when he says that PPP and COVID EIDL have unprecedented levels of fraud. So it has been helpful, but there is a lot of fraud ongoing in these programs. And we have all seen this story about the BMW with the license plate PPPLoan. You know, this is Manhattan, in New York. And we have seen so many of these cases. I do not think the program was there for folks to buy brand new Beamers.

But as the programs are winding down and they are shifting to the fraud identification phase, I am concerned that it seems everybody cares about fraud mitigation and prosecution except maybe the folks in your office, and we really need the SBA to step up on this.

So will you commit to implementing each of the recommendations the OIG and GAO have made to your office so that we can actually limit the waste, the fraud, and the abuse of our taxpayer funds?

Mr. Kelley. Yes, and we have. What Inspector Ware also mentioned in his testimony, specifically, is that under the Biden-Harris administration we have made great progress on the items you have identified. Specific to the COVID EIDL program—and what I am going to do is list the choices made in the previous administration during 2020, that were not in place, and these changes were made in 2021, by the Biden-Harris administration.

First, verifying business address. There is an easy, fast, speedy way to verify a U.S. postal address through API. They did not do that.

IP static address. Again, another automated—and the theme that I will continue to come back to is this false distinction that you could not have speed without certainty. We restored speed and certainty. We made 6.1 million PPP loans in the same amount of time, same amount of months, but we did that with a fraud framework ahead of the E-Tran authorization.

In addition, we have talked about the 4506-T, which, again, Congress corrected in the Economic Aid Act, and we instituted.

As was mentioned in the IG findings in 2020, in the RER RAPID portal, borrowers were allowed to switch their bank accounts. That is a red flag for any financial service company, it is not something that is necessary for speed, and we restored preventing that from happening. And you see that, actually, in the comments regarding the ACH disbursements going over to Treasury and some of the challenges with banks flagging suspicious activity.

In addition, we restored the Rule of 2 and manual reviews

for all fraud flag related to individual loan files. This is particularly important because the IG referenced, in the COVID EIDL program, that there were bulk filings, where despite having fraud flags fire on those particular loan applications, they were waved through in 2020.

Specific to the PPP program and the challenges that were highlighted in 2020 there, specifically the Secretary of the Treasury at the time required SBA to process E-Tran authorizations in real time. For any bank of financial service company or payments company, that is near impossible. There are three core accounting systems on Planet Earth that banks use-- Jack Henry, Fiserv, the FIS, and I am sure there are other brands but those are the three that lead--they cannot process in real time reconciliation. So by allowing E-Tran authorizations to be granted in real time, which they never had been before and will not again, it led to 50,000 duplicate loans.

In addition, there were bulk processing choices that were made in Phase 2 that were provided to banks to move through, which the IG has correctly pointed out led to a host of issues with respect to duplicate loans as well as challenges with respect to the loan calculations.

I can keep going, but what I want to assure you, Senator Ernst, is that under Administrator Guzman and under the Biden-Harris administration we have worked with the IG every day. The reason that this Committee does have the data that Chairman Cardin has talked about, on both programs, on all programs, is because unlike our predecessors who went to court to block the access for the American people to the data of the programs, we have made all data available.

So it is absolutely the case that we will continue to prioritize fraud, waste, and abuse. It is something that we do not have to sacrifice speed. So I want to assure the borrowers out there, back to my points about am I approved and when do I get my money, you can go fast in the 21st century but you can go fast with sensible controls all through automated.

And the last thing I will say on this particular point, with respect to PPP, is that we put in, beginning in January of 2021, for 6.1 million PPP loans, a fraud control framework which enabled us to validate all manners of eligibility and compliance as well as know-your-customer principles of individual identity and business identity.

So before you could get a PPP-3 second-draw or first-draw loan, whether or not the nonbank lender ran a fraud protocol, the agency ran that fraud protocol. And but for the holds that we place on loans, that lenders needed to work with us and borrowers needed to work with us to overcome, where we did manual reviews depending on the issue, those things went through fast. And again, there were 5.1 million loans in 2020, no controls in six months, 6.1 million loans in 2021 with controls.

So the thing that I have been looking for, to talk to, and I appreciate this opportunity today, is that speed and certainty can coexist. You can do emergency relief.

And the last thing I will say on behalf of the civil servants at the SBA, which is really important for them, is that you would be hard-pressed to find an IG or GAO report ahead of 2020, that has fraud, waste, and abuse featured prominently in it. There are improper payments, for sure, meaning the lender made a mistake on the eligibility or some type of rule, but you would be hard-pressed to find that fraud, waste, and abuse.

So 2020, there were choices made to prioritize speed at all costs, that in my opinion did not need to be made, and are the outlier event that has caused the challenges that we all

regret. And I say that completely admiring the prior administration, both Congresses, and everybody that has been involved, because PPP and COVID EIDL were unbelievable programs to help Main Street small businesses. But it is absolutely the case that fraud, waste, and abuse is a huge priority and we will continue to do that.

Thank you for indulging me.

Senator Ernst. Yes. No, and I appreciate that, and I do hope once the fraud, waste, or abuse has been identified then we go that next step of either prosecution or recoupment. So again, I will go back to my opening statements as well. We do know that there was an error made with Planned Parenthood and the affiliation rules. But we have not seen any attempt to recoup those dollars.

So it is one thing that we can identify it, but then to actually go back and correct problem, I think that is really important. Because whether it is PPP or the EIDL program, the loan program, obviously there are still those that have applied that would like to see those dollars in their businesses.

And we can come back to that, certainly. I will have some follow-on questions, because I do know that you have a Fraud Risk Management Board, which is good. So I will want to know a little bit more about that as well.

Thank you very much, Mr. Chair.

Chairman Cardin. Thank you. Senator Hirono.

Senator Hirono. Thank you, Mr. Chairman.

Whenever there is a natural disaster, SBA is among the first agencies to step forward, and certainly Hawaii has had its share of nationally declared disasters. And I want to thank you and Administrator Guzman and all of the men and women who work at SBA for being there as they have been.

It is clear that the prior administration did not set up adequate protections against fraud, waste, and abuse, so I get that you are doing everything you can to ameliorate those deficiencies. The PPP and EIDL were massive, massive programs, and, in fact, you have about 4 million loans that are coming due. Did you not request additional resources for SBA so that you can process these loans that are coming due?

Mr. Kelley. Yes. I believe the 2023 budget makes a request for the servicing, and what you are referencing is beginning in October, so less than 60 days from now, we will begin to service payments. As the Committee knows and as you know, Senator, there were 30 months of deferment. I am pleased to report that a third of COVID EIDL recipients have already made payments, even during the deferment, so that is encouraging.

But yes, we will begin servicing. That number, obviously, as Chairman Cardin referenced in his opening remarks, is a massive number, so we will need resources.

Senator Hirono. Mr. Chairman, I hope that we are going to be supporting the Administration's request for additional resource. Otherwise, you are going to have, I would say, the word ``chaos'' comes to mind, as SBA does its best with its resources to administer all these loans.

You have heard a lot about people in our own state, we have all been getting phone calls, and the issue for me is that there are people who applied for these loans who were told that things were going well. They were following up on all of the requested information, et cetera, and then finally to be told by the SBA that the program ran out of funds.

And then the next thing they heard was that, no, the issue for this particular applicant--I am talking about an applicant called Maikai Health Corporation, which is a nonprofit organization that takes care of the health care needs--but the thing they hear is that they were actually in the situation where they had made exaggerated projections of 2021 expenses

and did not file their 990 tax return. I do not know what that is.

So they are getting two different pieces of information. So what are they supposed to do? Because the second one sounds serious. When you are exaggerating your costs, that sounds like fraud. So what are they supposed to do, because originally they were not told that they were in a situation where they had to deal with what sounds like fraud.

Mr. Kelley. First off, yes, not filing your taxes is fraud, yes. So it is a criminal offense. And for this particular program, the 2019 return is the return that we are leveraging. Those returns needed to be file, even with extensions, by the fall of 2020.

And the reason there is a disconnect, I believe--and I work on this every day, and I just want to say for the Committee, and it is important just to say personally, I come from a town, Manchester, Connecticut, where the median income is \$61,000. It is under the national average. In my community, behind us was a dentist, across from us was a steak owner, and around the corner was a franchise owner for Dairy Queen, obviously our favorite.

So I want people to get capital, and as does the Administrator. But the reason that they cannot get capital, and believe that they are eligible in the first place, is because they did get capital in 2020, even with those issues. And so it is important to understand that that original choice, with respect to the tax filings, has a ripple through the process.

Senator Hirono. Is there any way for this nonprofit agency to remedy its situation? I mean, exaggerated projection for 2021. That is probably in dispute. But whether or not they filed a 990, that is an objective criterion. Is that something they can remedy, so that assuming they still need these funds and you have funds, that they can pursue funds?

Mr. Kelley. Yeah. So first off, obviously, as I have indicated, this is a credit-not-available-elsewhere program, so we take extraordinary lengths together, and I think it is appropriate for the public sector to, for example, originate loans with a 570 credit score, which, of course, in the private sector would be difficult to get.

On this particular issue, though, on whether or not you filed, and the fact that the increase request that you were seeking is not supported by the tax information or the financial information that you provided, I believe that we need to draw the line there, and I have recommended to the Administrator that that is what we do.

And I guess the last thing I would say is there is no comparable process in the private sector for appeal or reconsideration, and I will say every time that I said yes when I was lending--and I lent half a billion dollars to Federal Government contractors across the country, minority, women, veteran-owned--every time I said yes, I was the greatest banker in the history of the world. And the next day when I said no, I was the worst banker in the history of the world.

Senator Hirono. So with regard to this particular nonprofit then, the answer is no because they did not file--they either filed a 990 or they did not, and if they did not file it, this disallows their increased request. That is my conclusion. They just need to know one way or the other, I would say.

Mr. Kelley. Yeah.

Senator Hirono. Okay. So that is their situation. Thank you.

I know, Mr. Chairman, that with the millions of loans and everything that happened in the PPP and the EIDL program, there were people that came out of the woodwork to take advantage of this program. And my one last question is who is prosecuting

all the people who were engaged in fraud in these two programs?

Mr. Kelley. As you know, and Senator Ernst also referenced this, the Biden-Harris administration designated a team at DOJ to focus on fraud, waste, and abuse associated with the CARES Act programs. And as I understand it, both the House and the Senate are moving bills along to extend statutory limitations, which obviously will support their efforts. Because as the license plate shows, folks do need to be held accountable for where it is appropriate.

Senator Hirono. Do you have any idea how many people have already been indicted for these two programs?

Mr. Kelley. I do not. And I do want to clarify something. I know this Committee knows, so many reaching across the Committee out to the C-SPAN public. SBA is not an enforcement agency. So unlike the SEC, unlike the bank regulatory bodies, we administer program certifications for government, and I know everybody knows this.

So we rely on the Office of the Inspector General primarily, and then, of course, they work with Secret Service, at Treasury, as well as DOJ, Department of Justice. So we can assist the IG, and one of the primary ways to do that is allowing inspector general personnel, on a daily basis, to have access to any and all data related to anything across all these programs.

And Administrator Guzman, upon being sworn in, actually preceding her, when I took my position in March, we restored that. And so the IG has daily access to anything and everything they want. And obviously as Senator Ernst referenced, the Administrator has designated a front-office person to coordinate with those other bodies on this. She meets every two weeks with the inspector general, and her directive to us has been, and will continue to be, to be completely open, completely cooperative.

I want fraudsters put in jail, because the 32 million small businesses are the people that employ two-thirds of this nation, and they were my neighbors and my friends and my relatives growing up.

Senator Hirono. Thank you. Thank you, Mr. Chairman.

Chairman Cardin. I will point out that Senator Paul and I have worked together. The legislation you refer to passed the Senate this week and is on the way to the President for signature, extending the statute of limitations. Senator Rosen.

Senator Rosen. Thank you, Chair Cardin and Ranking Member Ernst today. And Mr. Kelley, thank you for being here and testifying and the work you are doing.

You know, we are here today because a little over 2 2 years ago Congress had to respond to a pandemic with the promise--a promise to our small business owners that we would not let them lose everything as a result of the global health crisis, completely outside their control--completely outside their control. We made this promise through programs like PPP, the Restaurant Revitalization Fund, and, of course, EIDL.

EIDL has provided relief to over 40,000 Nevada small businesses. Thank you. We are grateful for that. It was particularly important for the smallest of business because it allowed them to get support directly from the SBA without going through a bank. And this program's ability to help struggling small businesses is why I introduced the bipartisan EIDL For Small Business Act. It is aimed to eliminate the borrowing caps on EIDL loans, to fulfill our promise on EIDL advance grants, and replenish the funding for this program, which I know the Chairman supports. I am proud that my efforts lobbying these two administrations resulted in raising EIDL loan cap up to \$2 million.

But through all this, small business owners, of course,

they face numerous challenges. Over 90 percent of businesses in Nevada are small businesses, and so working with SBA on EIDL programs in the last two administrations, really important.

And after the current administration has corrected many errors of the previous administration--I applaud you for that--SBA seemingly reneging on its promise by ignoring many of the qualified applicants who began their EIDL application process prior to the May 6th deadline.

So I think that we have to restore trust. You aim to serve small business. This is your mission. You come from a small town. You know all of the business owners there, ice cream, your favorite. I think that is a favorite for everyone in the heat of the summer, for sure.

But how do we restore trust between the SBA and small business owners who feel they have been unfairly boxed out of this process? And I think that has to do with the communication. Can you speak to the communication that you need to have between SBA and the small business owners who applied before May 6th?

Mr. Kelley. Yes, I can. First, they tell me that it is your birthday.

Senator Rosen. It is.

Mr. Kelley. So happy birthday.

Senator Rosen. Thank you.

Mr. Kelley. I will communicate that first.

Senator Rosen. Thank you. Ice cream, maybe.

Mr. Kelley. Yeah. I mean, cherry-dipped at Dairy Queen, pretty good.

Senator Rosen. Pretty good.

Mr. Kelley. What I will say about communication. So there is no question that for 24 months there were peaks and valleys, or plusses and minuses with the way that the programs were communicated. We have talked about structural expectation setting earlier in the hearing, and you referenced this, which is to say you tell someone, in 2020, you can show up for something. You do not need documentation to validate that you filed taxes. We give you \$150,000. We do 3.6 million in four months. And so the expectation is set, okay, that this must be something that I am able to access because I went to the Federal Government and they gave it to me.

And then in 2021, when I come back and I am asked to proffer evidence now of tax verification that goes to the economic injury, by definition we have now changed the expectations, right? So

So at the basis of communication, in anything, is what expectations do you set, and if you change those expectations--

Senator Rosen. Do applicants receive an email, any kind of opportunity, communication from you about this?

Mr. Kelley. Yes. So one of the silver linings to communications--I will call this one of the plusses--has been the open rate of email correspondence with borrowers. In the private sector, if an email marketing campaign that I was involved with got, you know, high single digits, we were very excited, and during PPP it would climb into the double digits.

At SBA, for COVID EIDL programs, we were getting, in some cases, each week, 60 percent open rates. So that is really important, and we see this evidenced in the correspondence to your offices and our offices, that they are understanding and processing the requests and the communication.

But I think the other expectation about communication is that in a loan product situation there is, yes, are you a small business? That is a foundational principle. But then there is, do you have reasonable reassurance of repayment? And it is there, in the credit decision, that differentiates it, for example, from PPP, where we did not have a credit decision. We

had a formula that the lenders executed, but we did not make a credit score, which was one of the reasons that you will recall that lenders were concerned, in Phase 1, about lending to business borrowers who were not existing customers.

So I think one of the things that we improved, but was too late, in terms of communication, certainly for a program that had been open well over a year at that point, in August of 2021, we made reforms to the RAR RAPID portal to enable the district offices to have direct access and transparency to see whatever the loan officer or any other processing employee in the DPC in Dallas-Fort Worth could see. That was really critical because it helped expedite casework for your offices, but it empowered them. And one of the mistakes prior to that was the fact that a person could pinball from the call center to the district office and back, in an infinite loop, and that is deeply frustrating, and regrettable.

In September, we switched call center vendors. So the vendor that had been selected, the contract staff augmentation and call center system that had been selected in 2020, had no service-level agreements or KPIs. So what that translates to is, well, what was the call response time? How quickly did you pick up the phone? We do not know. How quickly did you disposition it in a favorable outcome? We do not know. And so, again, choices made at the outset proved to be really devastating across the span of time.

In addition, the portal itself had a two-step process, which from a technology standpoint was inept, quite frankly. It required you to come in, fill out the application form in an intake, and then wait for a response. And in an emergency situation, as you guys have told me and I totally agree with, silence is deafening. And so if I am waiting to be invited back into the portal and I do not know, I logically start a new application. Well, the system then detected that you were applying for two instances at the same time, so then, of course, you are now on the call center line.

So again, there were choices made, in 2020, from a speed standpoint and a design standpoint, that created systemic issues that rippled forward, and it leads to this day, because the constituency interactions that we receive are still trying to make heads or tails out of all these, you know, disparate signals that we sent them. And that is horrible, and from Administrator Guzman's standpoint, it is never again. So the Office of Capital Access is now charged with reforming all of this in the core natural disaster programs.

Senator Rosen. Thank you very much, and I look forward to seeing more streamlined communication and process.

Thank you, Mr. Chairman.

Chairman Cardin. Senator Hickenlooper.

Senator Hickenlooper. I was so glad to yield to the Senator from Nevada on her birthday, to make sure she did not have to wait.

Senator Rosen. Thank you.

Chairman Cardin. And we all wish you a very happy birthday.

Senator Hickenlooper. We try to do our best.

Mr. Kelley, Administration Guzman, I have tremendous respect for, and I think you are acquitting yourself well today. But whatever I am saying, whatever agitation I bring to my questions is not a reflection on you. Recognize I view you as a solution, not the problem. But it is hard to look at a system like this where the communication and the system has been so dysfunctional, and not feel tremendous aggravation.

Senator Risch and I introduced a bill to require the EIDL program to meet exact timelines--I am sure you have probably seen it--to make sure that it is communicating in a timely, effective manner.

In March, the SBA started work on GAO's July 2021, recommendation to develop a comprehensive strategy for communicating with disaster loan program participants. And obviously, the resilience in this country is insufficient. These wildfires, these floods are going to continue.

Is the SBA's comprehensive communication strategy, does it include the timelines that Senator Risch and I had in our bill?

Mr. Kelley. I apologize. I am not able to recall exactly the timelines, but I will endeavor to state some timelines, and you can tell me to speed up or, as Senator Cantwell did last spring on RRF.

But with respect to what we are doing in the disaster loans, 83 percent of disaster loans are under \$50,000, and they are consumer and EIDL loans for business but there is property damage on the consumer side. Those are unsecured loans, and we ought to be, in the 21st century, able to approve, decision, and disburse within 72 hours or less. And I am sure right now there is somebody online saying, ``Well, you know, Kelley, I can do it in 24 hours.'' But 72 hours sending the disbursement ACH list over to Treasury, we can get to that.

There is, historically, in natural disaster, challenges between the way the FEMA systems and the SBA systems--they are not as integrated as they could be. So we are working with FEMA on a roadmap of application program interface to allow for those systems to integrate with one another. That is important because we often talk about a single point of entry so that I do not have to go to multiple different places. But in the modern technology architecture with API you can have no wrong entry point but maximum reuse or optimal reuse of data that you have put in.

So from our standpoint I would look to the Restaurant Revitalization program as an indicator of how Administrator Guzman intends to reform disaster lending in terms of timeliness. In that particular program, we had APIs published for private sector tools, point-of-sale vendors, Square, and Toast. We enlisted other point-of-sale vendors for source-of-truth data that went to the economic injury calculation. And we were able to process 60 percent of those applications mobile, at the discretion and election of the applicant, and we were able to process those in less than 20 minutes.

And if you think back to RF, in particular, in terms of the totality of Administrator Guzman's vision and execution, in comparison to the shortcomings we are discussing today over the two years, with respect to COVID EIDL or some of the legacy issues with PPP, it is quite remarkable and promising, because we did not have the tax issues that we see.

Senator Hickenlooper. No, I agree, and I think that is exactly correct and one of the reasons I admire her and her work.

Let me ask you another question, just a little bit connected to that. You mentioned Square and Toast, is there--and this is just kind of pie in the sky, future--a way that you guys could work with the fintech. They claim that they now have so much information about their customers that they can give a more accurate loan. They can tell who is credit-worthy, and that they are giving many, many loans that are turned down by the SBA. Is there some way to partner with them to kind of use that capacity and the increased accuracy and get a better performance?

Mr. Kelley. Yeah. So yes, and that is underway. For example, under the hood, so to speak, in the back end, for the Restaurant Revitalization portal, we integrated a fintech provider called Plaid. Plaid enabled us, at the election and discretion of the borrower, to integrate, through API, with Plaid, to validate their bank account. If you wanted to forego

that we did a manual review to validate bank account, again going back to what was not done in COVID EIDL, where you could switch your bank account, in 2020. So we were able to offer speed with certainty.

In addition, we integrated the 4506-T process inline, in the application workflow, leveraging DocuSign, electronic signature. And so what people will tell you when they design user experience for product in financial technology is that you do not want to break the workflow. You do not want somebody to go out of that experience. You want them to complete the task on hand.

So those are two examples. But from the standpoint of fraud, waste, and abuse, we were able to integrate Treasury Do Not Pay, 4506-T, yes. Those are very important public sector criteria. But we were able to access third-party databases, like LexisNexis public records, research Plaid, et cetera.

So there is enormous opportunity in natural disaster, which we are focused on right now, and into our core programs to do that, yes.

Senator Hickenlooper. Great. Perfect. You made my day.

Thank you. I yield back to the Chair.

Chairman Cardin. Senator Shaheen.

Senator Shaheen. Thank you, Mr. Chairman, and thank you, Mr. Kelley, for being here and for all of the work that SBA does.

It is my understanding that SBA has argued that no funding remains to continue to approve EIDL loan modifications or previously denied applications. But in drafting the Bipartisan Infrastructure Bill Congress very clearly intended that SBA use transfer authority granted by that law to reallocate funds from targeted EIDL grant program to the EIDL loan program so that businesses that were eligible for that assistance would be able to receive it.

Now in the past, SBA has used that authority. Why was the decision made, in this case, not to use that authority again?

Mr. Kelley. As we have indicated to the Committee we did use that authority, for example, to process applications that were received on or before May 6th cutoff deadline. So we used both cancellations, which I think Chairman Cardin referenced, as well as funds that we moved in coordination with ONB into that fund.

There is no question that communication from center-level personnel on an individual basis about funding being exhausted was confusing. However, when we speak to the inventory that we are talking about today, the 41,000, it there are not any instances that would be approved in obligated funds. Those files have been looked at. There has been communication to those borrowers about what was missing, what was insufficient. And in two-thirds of the cases it is a tax-related issue.

At this point, we would not move fund because we do not see the inventory of demand. And again, the reason that is the case is 92 percent of that population has had a loan since 2020, and as of April of 2021, with the average increase being \$200,000, they could seek a loan increase, and many did. But only 20 percent of those eligible for an increase ever responded over the course of 15, 16 months, roughly.

So I understand--again, and I want to keep reiterating this--I understand why they are frustrated with the outcome, but in terms of the SBA's responsiveness to their petition for an increase, we have given them multiple, in some cases, reconsiderations or appeals, and we are not going to be able to get to yes on their individual file.

Senator Shaheen. I appreciate the effort. I beg to differ on a list of applications that we have worked with, our district office, on. And while there are some--I do not want to

use the word ``questions,'' but there are some disparities, but they are in, you know, in at least one case, as simple as an email address that was different.

So I guess you have not convinced me. And while I recognize that there are some cases that, you know, for various reasons, human error, do not get reviewed in the same way that we would all like, I am still concerned that we have businesses out there that qualify, that are not being acknowledged by SBA.

So I do not know how to resolve some of those cases, but I do think it is a concern, and it is an ongoing concern. And as Senator Rosen talked about trust, I think that is a real issue that many of our small businesses still have at this point.

I want to ask you about an issue that is not directly related to EIDL but it is one that concerns me a great deal because I think the district offices that SBA has around the country are really important. I have lived through recession in New Hampshire where the only thing that kept our small businesses afloat was the SBA and the work of the district offices, and particularly during the pandemic they were really important.

And I am very concerned because I am hearing that there are some at SBA who would prefer to see a smaller footprint in the district offices, who would like to see more power consolidated in Washington, and that data that we have seen shows that there is a marked drop in operating budgets for some district offices, including in New Hampshire, even as some of the other programs that help our small businesses are being phased out. To have a further reduction in the ability of our district offices to help small businesses I think does not accomplish the goal that we all share.

So can I ask you if you support the work that is being done by SBA's district offices, and will you commit to resist efforts to decrease staffing and operating budgets as long as Congress appropriates sufficient funding for salaries and expenses overall?

Mr. Kelley. Well first, yes, I enjoy working with the district offices. I had five years during the Obama administration where I traveled quite a bit more to those district offices. I understand their value at the point of sale. And one of the things that we have done, for example, in Restaurant Revitalization program was we integrated 100 district office employees directly into the decisioning process as a response to some of the shortcomings that were identified, for example, in COVID EIDL previously, at that moment.

In addition, as I mentioned for COVID EIDL, one of the things that we worked with the field on was getting them access to the data regarding COVID EIDL files, so that they could assist borrowers directly. So there is absolutely a place for district office folks to help us success on the mission.

As to the second part of your statement, I think it is yes, and I think what you are saying is a budget is about prioritizing choices, and you are suggesting that the SBA would have its funding to do its full suite of things. And quite obviously, then, the district office should be, you know, funded as it needs to be.

Those decisions, obviously, are above my pay grade, but I think everyone, and certainly Administrator Guzman, to your question, in her hearing this spring, I think indicated support for the field offices.

Senator Shaheen. Well, she did, and I have had a chance to raise that with her, yet we do not see a change in terms of the information that we have been getting with respect to how the money is being distributed. And the fact is that those district offices are still being told they have to reduce their operating budgets significantly, and I think that is a concern.

Mr. Kelley. My understanding on this particular issue is that--so these guys are about to jump out of their seats--I do not understand appropriations. I know there are appropriations, but there is an Appropriations Committee, and what has been related to the agency is that these things are going to be sorted out as the process moves forward. That is not a very informed answer, but what I took that to mean, in relation to prioritization, is that there is an understanding that there is a lot of opportunity, there is a lot of need across the SBA footprint, given the balance of what we have to attack.

Senator Shaheen. Well, thank you. As an appropriator I am going to be watching this very carefully, and I do not appreciate having a budget submitted that is being done with the idea that we are going to cut this area because we know Congress is going to put that back so that we can fund something else. I would hope that in the budget process we would all be as honest as we can about what the priorities are and what we should be funding.

Thank you. I appreciate your answers.

Chairman Cardin. I am going to follow up on some of Senator Shaheen's points. I just want to acknowledge that we spent a lot of time together in developing these programs, with Senator Rubio and Senator Collins. And we really did want to get money out quickly, and we recognized that the verification systems would be lax, because if we had to go through all the verification systems the businesses would be shuttered and closed for good. So we knew that there was going to be some challenges in doing this when we created the program.

I am also going to follow up on some of Senator Shaheen's points about individuals that are not--they have followed the rules and they have not gotten the clarity that you have given us today.

But first let me just point out, on waste, fraud, and abuse, because I agree. Look, we wanted to get money out quickly. We did not want to see any waste, fraud, or abuse, but we wanted to get money out quickly. And when you look at the size of the PPP program and the EIDL programs and the restaurant program and the Shuttered Venue program, the amount of fraud is very, very small. So let us be clear about that. We want to see it at zero percent, but the percentages are very, very small.

And under waste, fraud, and abuse, or mistake, a lot of this is not fraud, as you pointed out, and we should recognize that small businesses do not have the same degree of capacity that large companies have, and at times mistakes are made. They are not intended, and we have to correct that. But let us not call it fraud when it is not fraud.

So I just really wanted to clarify those points and also compliment this Administration for having much more transparency. We have gotten much more information. I note Senator Ernst might get a little upset about this. It was not a high bar to meet under the Trump administration because they just did not make anything available to us. But we do appreciate the fact that it has been a much more open process under this Administration.

And in regard to Planned Parenthood, I did not know we have to talk about that again. This is the affiliation rules. Affiliation rules apply not just to Planned Parenthood but other nonprofits. We clearly wanted nonprofits to be eligible. We made nonprofits eligible. And the affiliation rule is the same for Planned Parenthood as it is for the Y's, as it is for Boys and Girls Clubs, et cetera. There was never a determination made that money should have been returned.

So let us be clear about that. I know we will hear about it again, but I just really wanted to clarify that for the record.

Now let me get to the main thrust of today's hearing. It is clear that the SBA did send out communications saying that applications were being denied because of lack of resources, but as you have clarified today, that is not the case. Correct?

Mr. Kelley. Yes. In all of those instances, both of those messages I believe were communicated to the borrower.

Chairman Cardin. So now we have 125,000 eligible small businesses that have been informed that they are entitled to receive additional loan money, and your testimony today is it is up to those applicants to get the documentation in, in order to complete the settlement of those loans.

Mr. Kelley. It is up to any borrowers to close a loan. So they have to sign the note. They have to sign the ancillary documents to the note. So they are not providing any additional documentation for any approval or anything. So if you bought a house and you remember the big closing table and the big stack, that is what they have got to execute. They just have not done that yet.

Chairman Cardin. I just really want to emphasize what Senator Shaheen has said. We will give you chapter and verse--I think we have already given you these cases. We have several that have come to my attention where that is not the case. The burden is on the SBA to complete the closing, not on the person. They have done that and they are still waiting for their checks.

Mr. Kelley. There is yet another issue with what you just opened up. I agree that but for the borrower agreeing to take the note--so they have to sign to be the borrower--we are responsible for closing the loans in association with that. So for the 125,000, including with the district offices, we are executing the closing, and it is at the discretion of the borrower to execute that.

And yes, we have seen, from your office and others, that there was confusion for those folks who do have funding--and I want to reiterate again, their money is there, they can execute the closing, and we will assist them with that closing.

Once they have executed the documents the money goes on a schedule over to Treasury for the ACH into the designated bank account. There are issues with those bank accounts, where the account is located are bouncing back our disbursements, and I do not know the exact reasons from each institution. One of the reasons that is cited most often is the opinion of the bank that commercial activity for this account is not recognized, and therefore they are flagging it as suspicious activity.

Chairman Cardin. I understand exactly what you are saying and I recognize that, and that is one of the points that I think some of our colleagues have mentioned. There are better systems out there that would have dealt with this. And we are dealing with two agencies, Treasury and SBA, and that is a challenge also.

My plea to you is, provide the leadership and resources to get these resolved. These are people that are frustrated. They need their money. In one case it was the bank account only accepted checks up to a certain amount, and they had a higher check coming in so they set up a separate account, and it took them forever, and they still have not completed getting that routing into the system so the money actually could get there.

Mr. Kelley. Yes.

Chairman Cardin. You know, these are small businesses. They need help. So please resolve these issues. Get the resources and get it done. And they have been given inconsistent information over time. At one point they thought the money was not there, and many of them were giving up.

So please provide the services they need so we can get that 125,000, those that want to take out the loan, that they can

complete the loan process and stop calling our offices. That would be very helpful. So I appreciate if you would follow up on that.

Mr. Kelley. I understand. Yes, and I hear you. One hundred percent we will redouble our efforts. And for all of those bank account bounce, just like the closing, we will work those to completion. So we will work with that particular borrower to get that money. And that money remains theirs, even if it bounced back.

Chairman Cardin. Now to the 41,000 potentials. We are informed, either directly or through communications generally, that these loans are unworkable, not that they were denied but that they were unworkable, as I understand it. And I understand that a lot of these they could not get the verifications that are required, they had not filed their tax returns, all those issues that have to be done for them to be able to get their loans completed. I recognize that.

But unworkable is not denied. Many of these, according to the case work notes that we have, they think that they have given adequate information, or that they can supply the adequate information, but they have not gotten that ability to do that because of the way the system is set up.

So I would just urge you, to those that do have claims that can be adjudicated in a positive way, either reconsideration or increased loan amount or whatever they have filed, let us try to get those resolved. The numbers are getting small enough that it seems to me that we should be able to handle those with the type of service that we would expect from the SBA. So I just urge you to try to resolve that.

For those that are truly not eligible, you are going to have to bite the bullet and give them a determination so that they can move on or file an appeal.

So it would seem to me you have to complete these. I do not want you to deny an application that has merit because you want to get it off the books. I am happy to keep it open if there is a possibility for successful conclusion for the small business owner. But they need to know. There has to be a time.

Mr. Kelley. So understood. I understand the urgency. I understand what the objective of the mission is. The one thing that I do want to make the Chairman aware of, and members, is that from the point of first disbursement a borrower has 24 months to seek a loan increase. So as of July, 80 percent of that universe told. It is August 2nd today, so 80 percent of that universe can no longer seek a loan increase. By October, that number will be in excess of 90 percent, and by the end of the year it will be zero.

So what is important to understand, too, is that, again, the program did formally close, as you guys know, on December 31st, from taking new applications. So the combination of those things makes it such that from our perspective we are moving on to servicing, for which that begins in October. There will be 27,000 folks that are required to make their first payment, and then it spikes up a half a million for multiple months thereafter.

That is a huge lift. We are going to have to onboard the staffing that we briefly scaled back when originations concluded, to come back on board. Despite the fact that this Committee and the Appropriations Committee made billions of dollars available for COVID EIDL admin, the COVID EIDL RER RAPID portal does not handle servicing. And so we have to stand up a servicing solution at scale, which is a technology lift as well as a people process lift.

So we are facing that in the next 60 days. I understand the frustration that folks feel out there, as a part of that 41,000, but from the perspective of what I can assure you is

that we did work with these borrowers to find a yes. And it should be mentioned that with your leadership, in 2021, we did \$200 billion of support, and we did those 400,000 loans checking IP static address, checking business address, validating tax information.

So we demonstrated that you can do 20 percent of the total addressable marketplace of all lending in 2021, with 7,000 employees. We did that together, and yes, there are definitely things that we would do differently and have learned from, for sure.

Chairman Cardin. I would just point out that I have been told the 24-month period is not statutory. You can waive that 24 months if you wanted to.

Mr. Kelley. Sure. I understand.

Chairman Cardin. Senator Ernst.

Senator Ernst. Yes, thank you, Chairman, and I appreciate the discussion today. And I want to make it clear. I do not care what administration it is, we should always be transparent. I think that is just the best policy across the board.

And with that transparency, again, I am going to go back to the Fraud Risk Management Board. I am really excited. I know that the SBA had announced in April that they were creating this Fraud Risk Management Board. But again, when it comes to transparency SBA has not really shared any details with Congress or the public about its impact since it was created.

Can you maybe just visit with us a little bit, give us an overview of what type of programs the board is looking at. Have there been results from that? Maybe just share information with us on how that board is going.

Mr. Kelley. The primary responsibility of the board today obviously is to handle what amounts to I think somewhere north of 60 total audit reports across GAO and OIG, in addition to our annual audit with our auditor, KPMG, that is ordered by the IG.

Within that, obviously, is demonstrating to those auditors, and first and foremost to ourselves, that we have addressed the shortcomings that were highlighted. You know, I mentioned in PPP not making a core accounting system reconcile in real time loan requests, which is not done on Planet Earth, so we can avoid 50,000 duplicates.

There are issues with improper payments that had been conflated to fraud, which, as you guys have addressed, small businesses are not necessarily committing fraud. For example, in the COVID EIDL program, the \$80 billion number that is often referenced is in large part due to sole proprietors who, in 2020, were required to demonstrate, for each \$1,000 they were seeking, up to \$10,000 for the targeted EIDL advance that was originally made available, they needed to demonstrate they had an employee. In order to have employees as a sole proprietor you have to have a registered EIN.

There are a great many sole proprietors that I have no doubt believing have employees, were certified correctly that they deserved \$5,000 or \$6,000, or whatever, but they did not have a registered EIN on or before, I believe, the date is February 15, 2020, when the pandemic was officially start date.

So the Fraud Review Board is focused on addressing the most immediate issues. From a standpoint of how we do that, we have to recognize--and Administrator Guzman has I think shared with you and others--we have to recognize that we have to be timely. We have to be fast. We have to be relevant. And so that means making technology choices that contemplate both that speed and certainty. So putting tools in the front end before you disburse the money, to know your customer, those types of things.

So across the board it has begun and is a daily event. There is not a day since I became the Associate Administrator on March 1, 2021, literally, that I have not spent at least, minimally, a third, and there were some long days, focused on fraud, waste, and abuse. So it is top of mind.

Senator Ernst. That is good. Now with all of the lessons that we have taken away, that came out of COVID-19, and some that have been identified by the Chairman and others through their lines of questioning today, I am so hopeful that we never, ever experience another COVID-19 type event in our history, but it could happen.

So taking all of these lessons learned, are we able to act on those in the future, have those suggestions, those solutions been identified, and how can we put those into practice as we move forward?

Mr. Kelley. Yeah. I too share the sentiment that I am good for pandemics. I hope I do not have to have another one.

I want to take a second to commend the Office of Capital Access, SES civil servants, because they were prescient. They took the resources, the admin dollars that this Committee and the appropriators made available for CARES Act programs across PPP, et cetera, and that technology, specifically for fraud, waste, and abuse, as well as call center support--we have talked about communication--we were able to build, successively, off of the initial portal that was launched August 10, 2020, to support, ostensibly in the beginning, PPP forgiveness.

From the private sector, watching that launch August 10, 2020, I was struck, as many were in the private sector, this works. This is good. And Steve Kucharski and his team in the Office of Capital Access deserve a heck of a lot of credit, because it was that investment, again with the PPP dollars, that led to a better experience for all applicants in the Restaurant Revitalization, put the agency in a position to facilitate 1,500 really small banks with forgiveness in processing 2 million loans, and it is that foundation that is going right into the natural disaster platform to address the fraud issues that the IG highlighted, the call center issues, and some of the challenges that we see in the individual case files today.

Senator Ernst. Good. No, I do hope that we continue to build upon that. And just in closing too, I do want to say a well-deserved thank you to all of the folks at SBA, who really had a huge, pressing job ahead of them when COVID-19 hit, and they performed admirably, as did, I know, a number of our own local banks and credit unions that really helped push those dollars out to those small businesses that really did need that assistance.

So thank you, Mr. Kelley, for coming in front of the Committee today, and thank you, Mr. Chairman.

Chairman Cardin. Thank you, Senator Ernst. One more clarification I need to get on the record so I understand. May 6th was the cutoff date for modifications, et cetera. It could have gone up to July, if I understand correctly, and you could have waived that date and made it later than that. And you put on your website May 6th as the date, quote, ``due to lack of available funding.'' We will not argue that when the judgment was made you were projecting how much money would be available, et cetera. You made that judgment.

But on the website today it still says as of May 6, 2022, SBA is no longer processing COVID-19 EIDL loan increase requests or requests for reconsideration of previously declined loan applications, due to the lack of available funding.

I would suggest that you may want to modify that, just take off that clause. You are not accepting them, fine. We recognize

you have used that date. We may disagree with that. We can have that debate. But clearly funding is available now, and it is misleading to keep that on your website.

The second point I would raise, you indicated during your questioning here that most of the 41,000 will not be able to get to yes, and that there is a concern that the funding could be repurposed. We want to make sure that funding is not a reason for determination as pending as of May 6th.

Mr. Kelley. Yeah, I apologize if I left that impression. I either misspoke or was not aware. I am keenly aware that that is an appropriations decision. It is a decision for OMB. My position, and I want to make this clear, is that these files were looked at, and I have seen them personally, I have been involved in the day-to-day correspondence, and that we have been responsive. And so I apologize for the confusion I may have left you.

Chairman Cardin. So no one will be denied who had their applications in prior to May 6th because of lack of funding.

Mr. Kelley. Correct. The denials, the decisions, beginning with their initial denial, for most of these instances, beginning way back in 2021, and at the heart of the denials is a disagreement between that particular person about whether or not filing taxes is appropriate or not. And I understand the frustration here and I understand why that person--because again, they got the loan originally with no taxes; they did not file and they got a loan from the Federal Government in 2020.

I understand why when they speak to people, including me, I receive emails where, when I read the initial email they acknowledge the back-and-forth with their particular loan officer, they acknowledge that there were some shortcomings at first. Then they say a wrong has been done to them. And I came back to serve to say yes, so that appeals to me, as I am sure it does you and all the members. We are here to serve. And so we then take action and we work with the civil servants in the process centers to determine whether or not we can make an action.

Chairman Cardin. I just want to make it clear that any of the pending applications, if they are meritorious, they will be funded. The money is there, that the funds are there.

We will save for another debate, at another time, whether you had to use that May 6th date because of lack of funding. I, quite frankly, do not agree with that. I think you could have gone beyond May 6th if the funding was available, and that you have the discretion to even go beyond July of this year if you wanted to, under the authority, to waive the 24 months.

We will leave that for another debate for another time, but it is clear that Congress intended EIDL to have adequate funds to deal with the COVID pandemic, and we were prepared to make funds available. It seems like a lot of the funds that we specifically made available for specific purposes have been taken for other purposes, not necessarily on the EIDL program but on other programs, and we could have repurposed money to be able to take care of all the needs that are out there.

I want to make sure we take care of the 41,000 and the 125,000, but it seems to me we could have had a longer offramp on this on the applications for increased funds.

Senator Ernst, anything further?

Senator Ernst. I am good. Thank you.

Chairman Cardin. We very much appreciate your time and your explanations and your service to our country. You have a very challenging job, so thank you very much, and thank you for appearing before the Committee.

The Committee record will remain open, I believe, for two weeks, which is our normal process, for friendly questions that may be asked to you for the record. We appreciate if you would

answer those questions as quickly as possible.

And with that the Committee will stand adjourned. Thank you.

[Whereupon, at 11:43 a.m., the Committee was adjourned.]

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