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United States Senate

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July 26, 2023

The Honorable Isabella Casillas Guzman
Administrator
U.S. Small Business Administration
409 3rd Street, SW
Washington, D.C. 20416

Dear Administrator Guzman:

I am writing to you today with urgency about improper payments within the U.S. Small Business Administration (SBA) pandemic relief programs. Additionally, I am extremely troubled by SBA's response to fraud and improper payments within its programs.

A recent oversight report by OpenTheBooks on improper payments listed SBA as the "Worst Loss" federal agency for its increase in improper payments from FY2021 to FY2022. This is especially concerning, given SBA reported over 37 billion dollars of improper and unknown payments in 2022.¹ The actual improper payments amount may be significantly higher. In a May 2023 Independent Auditors' Report on SBA's Fiscal Year 2022 Compliance with the Payment Integrity Information Act of 2019, KPMG auditors found SBA was not compliant with nearly all of the reporting requirements under the Act and Office of Management and Budget (OMB) guidance.² SBA did not publish improper and unknown payment estimates, corrective action plans, and reduction targets for Paycheck Protection Program (PPP) loan guaranty purchases and forgiveness activities. The report also identified that SBA's improper payment and unknown payment rate estimates were not accurate or reliable for the Disaster Assistance Loans, COVID-19 Economic Injury Disaster Loan (COVID-EIDL), EIDL Advance, and PPP.

I am most concerned with the SBA's response to Government Accountability Office (GAO) and SBA Office of Inspector General (OIG) findings within its programs. A May 2023 GAO report on SBA pandemic programs identified over 3.7 million unique PPP and COVID-19 EIDL recipients with signs of potential fraud. In a 9-page letter, SBA expressed concerns with GAO's presentation

¹ Open the Books, *Improper payments: OpenTheBooks Oversight Report*, 12 June 2023, <https://www.openthebooks.com/improper-payments--openthebooks-oversight-report/>.

² Office of Inspector General, U.S. Small Business Administration, *Independent Auditors' Report on SBA's Fiscal Year 2022 Compliance with the Payment Integrity Information Act of 2019*, Report 23-07, 15 May 2023, <https://www.sba.gov/document/report-23-07-independent-auditors-report-sbas-fiscal-year-2022-compliance-payment>.

of these findings and methodologies.³ In a June 2023 report, GAO stated SBA could take additional steps to identify and respond to fraudulent or ineligible Restaurant Revitalization Fund recipients. The OIG also issued a recommendation to SBA regarding fraud within the Restaurant Revitalization Fund program.⁴ However, SBA remains obstinate, reiterating its disagreement with the GAO recommendations, as outlined in a 12-page letter.⁵ SBA reasons that Restaurant Revitalization Fund controls do not need to be assessed and additional steps do not need to be taken to identify potential fraud, because SBA believes strong controls are in place that align with industry practices. In June 2023, the OIG reported that SBA likely disbursed more than \$200 billion in potentially fraudulent COVID-19 EIDL and PPP funds.⁶ In response, SBA expressed its disagreement with this finding in a 5-page letter and 31-page report, making unsupported and unrealistic claims that fraud within SBA programs was around 600% lower than OIG estimates. **SBA leadership needs to set a tone at the top that demonstrates that it takes matters regarding improper payments seriously. Furthermore, it is apparent that SBA devoted significant time and attention to its lengthy and unprecedented letters. I encourage the SBA to instead concentrate its resources on resolving outstanding issues with improper payments.**

Recent SBA statements on its efforts to prevent and detect improper payments are misleading and unsubstantiated. Under oath during an April 26, 2023 “Oversight of SBA’s Implementation of Final Rules to Expand Access to Capital” hearing, Mr. Patrick Kelley testified that over a two-year period, SBA referred 3.5 million applications to the OIG.⁷ The OIG was unable to validate this SBA assertion. In fact, Sheldon Shoemaker, Deputy Inspector General, stated that the spreadsheets that SBA provides on its internal fraud reviews include information obtained from OIG and other law enforcement agencies. These should not be considered as referrals by SBA as they are already ongoing investigations. Also, contrary to Mr. Patrick Kelley’s testimony indicating a significant volume of referrals, SBA referred few suspicious Restaurant Revitalization Fund awards to its OIG.⁸

³ U.S. Government Accountability Office, *COVID Relief: Fraud Schemes and Indicators in SBA Pandemic Programs*, GAO-23-105331, 18 May 2023, <https://www.gao.gov/products/gao-23-105331>.

⁴ Office of Inspector General, U.S. Small Business Administration, *SBA’s Administrative Process to Address Potentially Fraudulent Restaurant Revitalization Fund Awards*, Report 23-10, 5 July 2023, <https://www.sba.gov/document/report-23-10-sbas-administrative-process-address-potentially-fraudulent-restaurant-revitalization-fund-awards>.

⁵ U.S. Government Accountability Office, *2023 Annual Report: Additional Opportunities to Reduce Fragmentation, Overlap, and Duplication and Achieve Billions of Dollars in Financial Benefits*, GAO-23-106089, 14 June 2023, <https://www.gao.gov/products/gao-23-106089>; and

U.S. Government Accountability Office, *Restaurant Revitalization Fund: Opportunities Exist to Improve Oversight*, GAO-22-105442, 14 July 2022, <https://www.gao.gov/products/gao-22-105442>.

⁶ Office of Inspector General, U.S. Small Business Administration, *COVID-19 Pandemic EIDL and PPP Loan Fraud Landscape*, Report 23-09, 27 June 2023, <https://www.sba.gov/document/report-23-09-covid-19-pandemic-eidl-ppp-loan-fraud-landscape>.

⁷ U.S. Senate Committee on Small Business & Entrepreneurship, *Oversight of SBA’s Implementation of Final Rules to Expand Access to Capital*, 26 April 2023, <https://www.sbc.senate.gov/public/index.cfm/2023/4/oversight-of-sba-s-implementation-of-final-rules-to-expand-access-to-capital>.

⁸ U.S. Government Accountability Office, *2023 Annual Report: Additional Opportunities to Reduce Fragmentation, Overlap, and Duplication and Achieve Billions of Dollars in Financial Benefits*, GAO-23-106089, 14 June 2023, <https://www.gao.gov/products/gao-23-106089>.

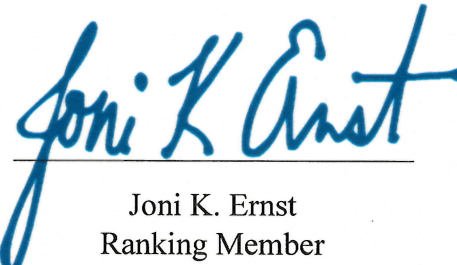
Please respond to the following no later than August 9, 2023:

1. Please either substantiate Mr. Kelley's claim of 3.5 million referrals to SBA OIG as part of his April 26, 2023 testimony or correct this misrepresentation for the record.
2. What steps is SBA taking to remedy its non-compliance with the Payment Integrity Information Act of 2019?
3. When does SBA expect to publish improper and unknown payment estimates for PPP loan guaranty purchases and forgiveness activities?
4. What is SBA's methodology for calculating improper payments for PPP/COVID EIDL loans? Please provide documentation including any estimations or assumptions used as part of SBA's methodology for these calculations.
5. What number of delinquent borrowers has SBA reported to U.S. Department of Housing and Urban Development Credit Alert System (CAIVRS) or to credit reporting bureaus?
6. Is SBA flagging borrowers in any other way such as for enhanced background or credit checks for future lending?
7. Please provide data on PPP/COVID EIDL loans with known or suspected improper payment.
8. Please provide a comparison of the number of loans with lender billed guaranty fee and number of loans with SBA guarantee fee paid. Provide the population of loans where the SBA guarantee was not honored.

I urge you to prioritize rectifying SBA's noncompliance with improper payment reporting requirements as soon as possible. Improper payments hurt taxpayers and the small businesses these programs serve. Taxpayers deserve to be apprised of the full scale of SBA improper payments, for recovery efforts to minimize these losses, and to feel confident that their hard-earned money is not being wasted.

Thank you for your consideration on this important matter.

Sincerely,



Joni K. Ernst
Ranking Member