

SBA'S EMERGENCY EIDL GRANTS TO SOLE PROPRIETORS AND INDEPENDENT CONTRACTORS

REPORT NUMBER 22-01/OCTOBER 7, 2021





EXECUTIVE SUMMARY

SBA'S EMERGENCY EIDL GRANTS TO SOLE PROPRIETORS AND INDEPENDENT CONTRACTORS

Report
Number
22-01

October 7,
2021

What OIG Reviewed

This report presents the results of our inspection to assess whether the Small Business Administration (SBA) approved and disbursed Emergency Economic Injury Disaster Loan (EIDL) grants in accordance with the Coronavirus Aid, Relief, and Economic Security (CARES) Act and the Paycheck Protection Program and Healthcare Enhancement Act.

Our review focused on Emergency EIDL grants to sole proprietors and independent contractors from March 29, 2020, until the funds were exhausted just 14 weeks later on July 10. We set out to determine whether the agency complied with its internal policy that set Emergency EIDL grants at \$1,000 per employee up to the CARES Act mandated maximum amount of \$10,000 per Coronavirus 2019 (COVID-19) EIDL application.

To meet our objective, we reviewed Emergency EIDL grant data, Internal Revenue Service requirements for registering Employer Identification Numbers (EIN), the CARES Act, and SBA policy established for this new grant program.

After a little over 3 months, SBA reported it had exhausted the \$20 billion in appropriated funds on July 11, 2020. The agency had approved 5.8 million Emergency EIDL grants.

What OIG Found

Using SBA's data, we found SBA provided \$4.5 billion more in Emergency EIDL grants to sole proprietors and independent contractors than they were entitled to receive based on established policy.

We determined that 542,897 sole proprietors, who received a grant of more than a \$1,000, applied for the Emergency EIDL grants without an EIN and claimed more than 1 employee on their COVID-19 EIDL applications.

The absence of an EIN indicates the sole proprietor applicants should have claimed no employees and were entitled to a maximum of \$543 million (\$1,000 per applicant). However, SBA approved and disbursed a total of \$4 billion in Emergency EIDL grant funds to these sole proprietors, an over disbursement of \$3.5 billion.

We also found 161,197 independent contractors, who received a grant of more than \$1,000, also applied but did not provide an EIN and claimed more than one employee on their COVID-19 EIDL application.

Like other employers, independent contractors need an EIN registered with the IRS if they have employees. The absence of an EIN indicates the applicants should have claimed no employees.

Consequently, the independent contractors were entitled to a maximum of \$161 million (\$1,000 per applicant). However, SBA disbursed \$1.1 billion to the independent contractors, resulting in grant over disbursement of about \$1 billion.

OIG Recommendations

We recommended that SBA remedy \$4.5 billion in funds disbursed in excess of its policy allowance to sole proprietors and independent contractors.

Agency Response

SBA disagreed with the prior Administration's policy determination, the criteria used to premise our findings, and with key assertions in the findings. Despite management's disagreement, they are taking corrective actions to implement our recommendation.

We have included management's comments on this report in Appendix IV.



Office of Inspector General

U.S. Small Business Administration

DATE: October 7, 2021

TO: Isabella Casillas Guzman
Administrator

FROM: Hannibal "Mike" Ware
Inspector General 

SUBJECT: SBA's Emergency Economic Injury Disaster Loan Grants to Sole Proprietors and Independent Contractors

This report presents the results of our inspection of *SBA's Emergency EIDL Grants to Sole Proprietors and Independent Contractors*. We considered management's comments on the draft of this report when preparing the final report. Management partially agreed with OIG's recommendation.

We appreciate the cooperation and courtesies provided by your staff. If you have any questions or need additional information, contact John Provan, Director of Disaster Programs, or Andrea Deadwyler, Assistant Inspector General for Audits, at (202) 205-6586.

cc: James Rivera, Associate Administrator, Office of Disaster Assistance
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Table of Contents

Introduction.....	1
Background	1
Emergency Advance Grant Program.....	1
Objective.....	2
Results.....	2
SBA Disbursed \$4.5 Billion More in Emergency EIDL Grants to Sole Proprietors and Independent Contractors than Agency Policy Allowed.....	3
Sole Proprietors with No Employer Identification Numbers	3
Table 1. Emergency EIDL Grants Disbursed to Sole Proprietors Without EINs for More than \$1,000	4
Table 2. Sole Proprietor Emergency EIDL Grant Applications Claiming Employees Without EINs	5
Unclear Guidance	5
Independent Contractors with No Employer Identification Numbers	5
Table 3. Independent Contractor Emergency EIDL Grant Applications Claiming Employees Without EINs	5
Table 4. Emergency EIDL Grants Disbursed for More Than \$1,000 to Independent Contractors Without EINs.....	6
Conclusion	6
Recommendation.....	7
Analysis of Agency Response and Summary of Actions to Close the Report	8
Previous Policy	8
Certification Follow-up	8
Appendix I: Objective, Scope, and Methodology.....	10
Appendix II: Questioned Costs.....	11
Appendix III: Prior Work.....	12
Appendix IV: Management Comments	13

Introduction

When the Coronavirus 2019 (COVID-19) pandemic caused most businesses small and large to shut down in hopes of slowing the spread of the virus, our nation's leaders appropriated significant funding to the Small Business Administration (SBA) to provide financial relief for those businesses affected.

For more than 60 years, SBA has helped small businesses after declared disasters. SBA's Disaster Assistance Program helps small agricultural cooperatives and most private, nonprofit organizations whose operations are affected when a disaster strikes. The program provides up to \$2 million in Economic Injury Disaster Loans (EIDLs) to help eligible entities meet financial obligations and operating expenses they are unable to meet after a disaster.

Since SBA became the primary source of business relief from the economic effects of the pandemic disaster, OIG has produced a series of reports on our work to determine how the agency met the requirements of the related laws while also managing the realities of staffing, systems, and controls (see Appendix III). In this report, we focus on SBA's management of Emergency EIDL grants to businesses classified as sole proprietors and independent contractors to determine whether the agency complied with its internal policy and the relevant legislative mandates.

Background

The Coronavirus Preparedness and Response Supplemental Appropriations Act, signed by the President on March 6, 2020, deemed COVID-19 a disaster and required SBA to begin a number of relief efforts as quickly as possible.¹ The Act authorized SBA to provide EIDLs to business entities affected by COVID-19 and eligible under the Small Business Act.

The President signed the Coronavirus Aid, Relief, and Economic Security (CARES) Act on March 27, 2020, which included a new vehicle—Emergency EIDL grants.² A third law, the Paycheck Protection Program and Health Care Enhancement Act, was signed by the President on April 24, 2020.³ The laws authorized SBA's Disaster Assistance Program to use available funds to issue economic injury loans and begin the new program, Emergency EIDL Grants.

Emergency Advance Grant Program

Collectively, the CARES Act and the Paycheck Protection Program and Health Care Enhancement Act made \$20 billion available for Emergency EIDL grants. Section 1110 of the CARES Act authorized SBA to issue a \$10,000 advance within 3 days to applicants for loans being requested under the Small Business Act (15 U.S.C. 636(b)(2)).

The Emergency EIDL grant was intended to serve as an interim source of funds while the COVID-19 EIDL applicants waited for loan decisions. The program advanced eligible businesses up to a maximum of \$10,000, as an interim source of funds while applicants waited for loan decisions.

¹ Public Law 116-123 - Coronavirus Preparedness and Response Supplemental Appropriations Act.

² Public Law 116-136 - Coronavirus Aid, Relief, and Economic Security Act.

³ Public Law 116-139 - Paycheck Protection Program and Health Care Enhancement Act.

Applicants did not have to be approved for a loan to receive the grant; they could receive the grant even if their loan application was denied.

An agency official told us that about 72 percent of the initial COVID-19 EIDL applications SBA received included a grant request. SBA officials also told us many applicants applied for the loan solely to obtain a grant.

The CARES Act did not specify methods for awarding the Emergency EIDL grants. To ensure as many applicants as possible received a portion of the available \$20 billion, SBA management decided to limit the grant to \$1,000 for eligible entities with no employees, or \$1,000 per employee up to the maximum of \$10,000. Under that policy, an applicant with no employees would receive \$1,000 and an applicant with one employee would also receive \$1,000.

The CARES Act specifically allowed those applying for loan and grant relief to self-certify their application information including the stated number of employees. Under SBA's policy, businesses merely had to accurately state the number of employees on their applications to ensure that every business that applied would receive the correct amount.

Even with SBA's policy of \$1,000 per employee, the agency ran out of the emergency grant funds on July 10, 2020. The next day, July 11, SBA announced the \$20 billion Emergency EIDL grant program had ended because the \$20 billion was exhausted. The agency had provided Emergency EIDL grants to a total of about 5.8 million COVID-19 EIDL applicants.

Objective

Our objective was to assess whether SBA approved and disbursed Emergency EIDL grants in accordance with the CARES Act and the Paycheck Protection Program and Healthcare Enhancement Act.

Results

We found SBA did not establish a proper internal control environment at the onset of the program to prevent sole proprietors and independent contractors without employees from receiving Emergency EIDL grants for more than \$1,000. SBA provided billions of dollars more in Emergency EIDL grants to sole proprietors and independent contractors than they were entitled to receive under SBA's own policy.

The funding could have been used to provide grants to more eligible small businesses, which was the intent of SBA's policy of limiting grants to \$1,000 per employee. However, SBA approved thousands of grant amounts for applications that were not sufficiently vetted because no system of controls was in place to flag applications with flawed or illogical information. For example, sole proprietors or independent contractors without EINs claiming they have as many as 1 million employees.

SBA Disbursed \$4.5 Billion More in Emergency EIDL Grants to Sole Proprietors and Independent Contractors than Agency Policy Allowed

We found SBA disbursed \$3.5 billion more in Emergency EIDL grants to sole proprietors and \$1 billion more to independent contractors than those applicants were entitled to receive based on SBA's policy.

The CARES Act prohibited SBA from requiring applicants to provide tax records to apply for COVID-19 EIDLs or Emergency EIDL grants. Instead, the Act allowed the loan applicant to verify eligibility by signing a self-certification statement, which included notice of penalty of perjury for untrue information. SBA implemented this requirement of the COVID EIDL program in accordance with the rules established by the CARES Act.

However, SBA has a responsibility to prevent improper payments through internal controls, particularly through validation of illogical information on applications. SBA relied on applicants' self-certifications of application information and disbursed the grants based solely on the number of employees stated on their applications, with no checks or reviews of applications that would have been "flagged" if controls had been in place.

Sole Proprietors with No Employer Identification Numbers

SBA defines sole proprietorships as unincorporated businesses owned and run by one individual with no distinction between the business and the owner.⁴ The IRS defines independent contractors as self-employed.⁵ Both sole proprietorships and independent contractors are organizations owned and operated by one person and they can hire employees. If employees are hired, however, they must file for and obtain an Employer Identification Number (EIN) from the Internal Revenue Service (IRS). Every employer who has one or more individuals employed for wages subject to Federal Insurance Contributions Act taxes or to withholding of federal income taxes from wages must obtain an EIN under the Code of Federal Regulations.⁶

In addition, IRS Publication 15 provides guidance that *all* employers with employees are required to have an EIN. This includes sole proprietors and independent contractors. We found SBA provided 542,898 Emergency EIDL grants of more than \$1,000 to sole proprietors although they applied for the grants with a Social Security Number only, which would indicate they did not have employees (See Table 1).

⁴ SBA definition of sole proprietorship at www.sba.gov/content/sole-proprietorship accessed on June 22, 2021.

⁵ IRS definition of an independent contractor at www.irs.gov/businesses/small-businesses-self-employed/independent-contractor-defined accessed on June 22, 2021.

⁶ 26 CFR 31.6011(b)1(ii)

Table 1. Emergency EIDL Grants Disbursed to Sole Proprietors Without EINs for More than \$1,000

Emergency EIDL Grant Amount Disbursed (Dollars)	Number of Applicants	Value of Disbursed Grants (Dollars)
2,000	84,924	\$169,848,000
3,000	41,734	125,202,000
4,000	25,921	103,684,000
5,000	25,266	126,330,000
6,000	14,345	86,070,000
7,000	11,619	81,333,000
8,000	17,988	143,904,000
9,000	20,350	183,150,000
10,000	300,751	3,007,510,000
Total	542,898	\$4,027,031,00

Source: OIG analysis of SBA's Emergency EIDL grant data, as of September 7, 2020

Sole proprietors and independent contractors with employees should have had EINs and submitted the numbers on their COVID-19 EIDL applications. The Emergency EIDL grant data we reviewed included sole proprietors who claimed numerous employees but did not provide an EIN.

These sole proprietors were entitled to a maximum of about \$543 million at the rate of \$1,000 per applicant. Of the \$4 billion SBA disbursed to sole proprietors, about \$3.5 billion exceeded applicant eligibility according to the agency policy that limited funds to \$1,000 per employee (see Table 1).

We reviewed all the agency's emergency grant data from the beginning of the program at the end of March 2020 until the funds ran out July 10. The data showed that the agency approved and disbursed grant funds to 15 sole proprietorships that claimed to have a million employees but did not provide an EIN on the application. More than 40 claimed to have more than 100,000 employees but had no EIN, and nearly 350 claimed to have more than 500 employees without an EIN (see Table 2).

The numbers of employees claimed should have alerted the agency that a deeper review was needed to confirm the correct amount for grants to those sole proprietorships, but SBA did not have controls in place to flag such applications.

Table 2. Sole Proprietor Emergency EIDL Grant Applications Claiming Employees Without EINs

Claimed Number of Employees	Number of Applications Approved & Disbursed
1,000,000	15
100,000 to 999,999	41
501 to 99,999	348
2 to 500	542,493
Total	542,897

Source: OIG analysis of SBA’s Emergency EIDL grant data, as of September 7, 2020

Note: One additional applicant claimed 0 employees but was awarded a \$2,000 Emergency EIDL grant.

Unclear Guidance

SBA is required under 31 U.S.C. 7701 to ask for a Tax Identification Number on the COVID-19 EIDL applications and did so. SBA Form 3501, COVID-19 EIDL Application in PDF format, approved by the Office of Management and Budget, required applicants to submit their “EIN, if applicable, or Social Security Number.” However, the webpage version of the application stated “EIN/SSN for sole proprietorship,” which may have been confusing to applicants.

The absence of an EIN and the number of employees cited on these applications should have alerted SBA loan specialists that the applicant’s self-certified information was flawed and likely erroneous. However, SBA never requested additional information from these sole proprietors to verify the number of employees cited on their grant applications before approving and disbursing the grants in amounts in excess of \$1,000.

Independent Contractors with No Employer Identification Numbers

The Emergency EIDL grant data we reviewed also included independent contractors who did not provide an EIN but claimed numerous employees (see Table 3). We found SBA provided \$1 billion more in Emergency EIDL grants to independent contractors than they were entitled to receive.

Our review of SBA’s data showed that 161,197 independent contractors applied for the Emergency EIDL grants with a Social Security Number but did not provide an EIN (see Table 4).

Table 3. Independent Contractor Emergency EIDL Grant Applications Claiming Employees Without EINs

Number of Employees Claimed	Number of Applications Approved & Disbursed
1,000,000	29
100,000 to 999,999	114
501 to 99,999	432
2 to 500	160,622
Total	161,197

Source: OIG Analysis of SBA’s Emergency EIDL grant data as of September 7, 2020

If an independent contractor had employees, the business was required by the IRS to obtain an EIN, and as in the case of sole proprietors, no EIN on the application but claims of hundreds, thousands, or a million employees should have at least been subject to further review.

Our review found that the independent contractors were entitled to a maximum of \$161 million in Emergency EIDL grants, at a rate of \$1,000 each. The \$1.1 billion SBA disbursed exceeded applicants' grant eligibility by about \$1 billion. The absence of an EIN in combination with the number of employees cited on these independent contractors' applications should have alerted SBA that the applicant's self-certified information was flawed and likely erroneous.

SBA had no internal controls in place to prevent sole proprietors and independent contractors without employees from obtaining Emergency EIDL grants for more than \$1,000. SBA should have requested additional information from these independent contractors to verify the number of employees cited on their applications before approving and disbursing the grants. If the sole proprietors and independent contractors did not have an EIN, SBA should have provided only a \$1,000 grant.

Table 4. Emergency EIDL Grants Disbursed for More Than \$1,000 to Independent Contractors Without EINs

Emergency EIDL Grant Amount Disbursed (Dollars)	Number of Applicants	Total Grants Disbursed (Dollars)
2,000	29,962	\$59,924,000
3,000	14,203	42,609,000
4,000	7,763	31,052,000
5,000	8,146	40,730,000
6,000	4,356	26,136,000
7,000	3,349	23,443,000
8,000	5,125	41,000,000
9,000	8,279	74,511,000
10,000	80,014	800,140,000
Total	161,197	\$1,139,545,000

Source: OIG analysis of SBA's Emergency EIDL grant data, as of September 7, 2020

Conclusion

SBA followed the CARES Act, allowing applicants to sign their applications certifying that they were claiming a correct number of employees. However, thousands of sole proprietor and independent contractor applications for COVID-19 EIDLs and Emergency EIDL grants either had information that was not sensible, such as sole proprietors claiming a million employees, or that lacked crucial information, most notably, an EIN.

Instead of verifying the applicant information, SBA relied on the sole proprietor's and independent contractors' assertions on the COVID-19 EIDL applications. Although agency officials told us they were not required by law to do such follow up, SBA has a responsibility to safeguard taxpayer funds and ensure loan applications have accurate and complete applicant information and that all required information is included.

Obtaining additional information to verify the number of employees cited for entities that claimed to have employees on their Emergency EIDL grant applications would have reduced the likelihood of fraud and applicant errors and helped to meet the stated purpose of equitably distributing limited grant funds.

The \$4.5 billion overage in Emergency EIDL grants to sole proprietors and independent contractors could have been used to provide funding to thousands or millions more eligible small businesses. When the funds ran out in early July 2020, there were over 6 million applicants in process who were eligible for a grant but had not received one. More than 7.3 million applicants later applied for an EIDL loan but could not request a grant because the funds were exhausted.

Even though the initial program has concluded, the agency still has options that could potentially result in the recovery of Emergency EIDL grant funds that should not have been disbursed. For example, SBA can follow up and request EINs from applicants that claimed more than one employee or request proof of the number of employees from applicants who did not provide their EIN.

The agency could also request the return of funds disbursed to applicants who have neither an EIN nor proof of the number of employees claimed. In cases of applicants who do not have either an EIN or proof of the number of employees claimed, the agency could refer suspected fraudulent applications to OIG for investigation and potential prosecution, as is normally done if wrongdoing is suspected.

Recommendation

1. We recommend the Administrator direct the Associate Administrator for Disaster Assistance to
 - review the applications of sole proprietors and independent contractors that included numbers of employees but no Employer Identification Number; and
 - remedy the \$3.5 billion disbursed to sole proprietors and \$1 billion disbursed to independent contractors that exceeded the amount allowed by SBA's policy.

Analysis of Agency Response and Summary of Actions to Close the Report

We considered management's comments on our draft when preparing this final report. Management disagreed with our finding but partially agreed with the recommendation. We have included those comments in Appendix IV.

OIG Analysis of Agency Response

SBA disagreed with the prior Administration's policy determination to limit Emergency EIDL grants to \$1,000 per employee, up to the maximum of \$10,000. SBA also points out that:

1. SBA was required by the CARES Act to accept applicant self-certification to determine eligibility and was prohibited from obtaining tax records to validate the self-certified information, including the applicant's number of employees.
2. Some of the sole proprietors and independent contractors who received Emergency EIDL grants greater than \$1,000 without providing an EIN will be eligible to receive the full \$10,000 advance under the Targeted EIDL advance program.
3. Some of the applicants who did not supply an EIN on their application may have omitted it from the application because the instructions did not clearly indicate that an EIN was required to receive the advance.

SBA management also notes that the COVID EIDL application did not clearly define "employee" for applicants. Consequently, sole proprietors and independent contractors may have included independent contractors, seasonal workers, or other individuals who do not meet the IRS definition of "employee" in their COVID EIDL application.

Previous Policy

We understand that current SBA administration officials do not support the previous administration's policy to limit the Emergency EIDL grant to \$1,000 per employee. However, that assertion does not nullify the fact that the policy was valid during the time the agency was disbursing emergency grant funds.

We reviewed all the agency's emergency grant data from the beginning of the program on March 29, 2020, until the funds ran out July 10, and the agency policy was in effect during that entire period. The agency should have followed the policy in place at the time SBA for COVID-19 EIDL advances.

Certification Follow-up

As we noted in the report, the CARES Act prohibited SBA from obtaining tax records to validate loan application information. The CARES Act mandate for SBA to accept applicant self-certification does not relieve the agency of its fiduciary responsibility to the taxpayers to detect and prevent fraud.

SBA is responsible for safeguarding taxpayer dollars and preventing improper payments through internal controls. SBA should have had controls in place to detect applications on which the applicant claimed employees but did not supply an EIN.

SBA also should have had controls to detect applications with unreasonably large numbers of employees, such as sole proprietorships that claimed to have a million employees, more than 100,000 employees, or more than 500 employees without an EIN. SBA should not have disbursed

Emergency EIDL grants to entities that reported unreasonably large numbers of employees because of the well-documented and pervasive fraud present in the COVID-19 EIDL program.

We note that some applicants who claimed employees but did not provide an EIN may now be eligible to obtain a Targeted EIDL Advance and a Supplemental Targeted EIDL Advance. However, not all will meet the stricter eligibility requirements for advances even now.

SBA should review the applications of sole proprietors and independent contractors that included numbers of employees but no EIN and pursue returns of funds disbursed to sole proprietors and independent contractors that exceeded the amount allowed by SBA's policy. Such action would exclude applicants now eligible for the full \$10,000 under the Targeted EIDL Advance program.

We agree that some applicants who did not supply an EIN on their application may have omitted it because SBA'S instructions did not clearly indicate that an EIN was required to receive the advance. SBA should request EIN documentation from any applicants who did not provide one on the application.

Summary of Actions to Close the Report

Although SBA did not agree with the finding, management partially agreed with the recommendation. We believe that management's proposed actions satisfy the intent of the recommendation and when completed, we will close the recommendation.

1. **Resolved.** Management has stated SBA will develop a plan to assess the Emergency EIDL Grants awarded by reviewing a sampling of recipient sole proprietors and independent contractors who certified they had employees but did not provide an EIN on the COVID EIDL application.

SBA plans to use a third-party contractor to assess Emergency EIDL grants greater than \$1,000 that were disbursed to sole proprietors and independent contractors who did not provide an EIN on the application. SBA will also develop an appropriate plan to remedy cases identified where the applicant provided false information on the COVID EIDL application. SBA will explore available options to remedy cases, including recovery of funds by offset, referral to OIG's Division of Investigations, or providing supporting documentation where appropriate.

Appendix I: Objective, Scope, and Methodology

This report presents the results of our inspection of Emergency EIDL grants approved and disbursed in accordance with SBA's internal policy to provide \$1,000 in grant funds per employee and the CARES Act maximum of up to \$10,000 per applicant. This inspection focused on Emergency EIDL grants to sole proprietors and independent contractors.

To meet our objective, we reviewed SBA Emergency EIDL grant data for sole proprietors and independent contractors, IRS requirements for registering EINs, and SBA policy and procedures for Emergency EIDL grants. We also interviewed the Director of the Office of Disaster Assistance Program Policy & Evaluation about controls in place and guidance provided to staff and applicants.

We relied on computer-generated data stored in the SBA COVID-19 EIDL data warehouse to perform our analysis. SBA uses this data to manage the program and derive program statistics. We identified minor issues with the data, but we believe the data we reviewed was sufficiently reliable to support our report conclusions.

We performed this review in accordance with the Council on Inspectors General on Integrity and Efficiency's *Quality Standards for Inspections and Evaluations*. Those standards require that we plan and perform the review to obtain sufficient, appropriate evidence to provide a reasonable basis for our conclusions and observations based on our objective. We believe the evidence obtained provides a reasonable basis for our conclusions and observations based on our objectives.

Appendix II: Questioned Costs

Under the Inspector General Act, questioned costs are expenditures that do not comply with legal, regulatory, or contractual requirements; are not supported by adequate documentation at the time of the audit; or are unnecessary or unreasonable.⁷ Questioned costs may be remedied by offset, waiver, recovery of funds, the provision of supporting documentation, or contract ratification, where appropriate.

OIG Schedule of Monetary Impact

Description	Amount	Explanation
Questioned Costs – Sole Proprietors	\$3,484,133,000	Amount in excess of \$1,000 awarded to sole proprietors without EINs.
Questioned Costs – Independent Contractors	\$978,348,000	Amount in excess of \$1,000 awarded to independent contractors without EINs.
Total Questioned Costs	\$4,462,481,000	

Source: OIG analysis of Emergency EIDL grant data

⁷ Inspector General Act of 1978, as amended, section 5(f)(1).

Appendix III: Prior Work

SBA OIG 21-15, *SBA’s Handling of Identity Theft in the COVID-19 EIDL Program (May 6, 2021)*.

SBA referred nearly 850,000 COVID-19 applications related to identity theft complaints and applications with similar information to OIG. We found SBA does not have processes to update victims’ status; protect or resolve victims’ credit-related issues; cease billing fraudulent loans to victims; prevent collection actions; release victims from loan liability; charge-off or remove the fraudulent loans if funds are not recovered by SBA; or cancel filing fees and release any Uniform Commercial Code liens associated with loan collateral.

SBA OIG 21-13, *Serious Concerns About SBA’s Control Environment and the Tracking of Performance Results in the Shuttered Venues Operators Grants Program (April 7, 2021)*.

SBA should take immediate action to reduce or eliminate risks by strengthening existing controls and implementing internal controls to address potential misuse of federal funds. Strong controls will ensure the program can effectively help eligible small business owners and entities that have suffered economic injury because of the COVID-19 pandemic.

SBA OIG 21-02, *Inspection of Small Business Administration’s Initial Disaster Assistance Response to the Coronavirus Pandemic (October 28, 2020)*.

We found SBA disbursed \$13.4 billion in COVID-19 EIDLs to accounts that differed from the original bank accounts listed on the loan applications; \$58 billion in multiple COVID-19 EIDLs to applicants using the same Internet provider addresses, email addresses, bank accounts, or businesses listed at the same addresses; and approximately \$1.1 billion in COVID-19 EIDLs and grants to potentially ineligible businesses.

SBA OIG 20-16, *Serious Concerns of Potential Fraud in EIDL Program Pertaining to the Response to COVID-19 (July 28, 2020)*.

This Management Alert informed SBA that OIG investigative offices and the OIG Hotline had received complaints of more than 5,000 instances of suspected fraud from financial institutions receiving EIDL deposits.

SBA OIG 20-12, *Risk Awareness and Lessons Learned from Audits and Inspections of EIDLs and Other Disaster Lending (April 3, 2020)*.

In this White Paper, we found that the SBA issued disaster loans without vetting borrowers’ credit or repayment ability. We also found that SBA approved businesses that had no disaster-related economic loss. The agency also had staffing challenges that limited its ability to serve borrowers.

Appendix IV: Management Comments

SBA Response to Inspection Report



U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

Date: September 8, 2021

To: Hannibal "Mike" Ware
Inspector General

From: James E. Rivera
Associate Administrator
Office of Disaster Assistance

Subject: SBA's Emergency EIDL Grants to Sole Proprietors and Independent Contractors

We have reviewed the OIG Draft Report "SBA's Emergency Economic Injury Disaster Loan Grants to Sole Proprietors and Independent Contractors" (Project 21802) dated August 5, 2021. Our response to the draft report findings and corresponding recommendation is included in the letter. Thank you for the opportunity to respond.

The scope of this audit covers only the Economic Injury Disaster Loan (EIDL) Advance program that was administered by the SBA last year from March 29 through July 10, 2020. The findings and corresponding recommendation in the OIG draft report do not apply to the current Targeted EIDL Advance and Supplemental Targeted Advance programs currently being administered by the SBA.

SBA does not support the prior Administration's policy to limit EIDL Advances to \$1,000 per employee up to the maximum of \$10,000.

At the core of this audit is the SBA's 2020 policy decision to limit EIDL Advances to \$1,000 per employee, up to a maximum of \$10,000. The per-employee cap on the original EIDL Advance program was a self-imposed policy instituted by the prior Administration which has generated countless hours of work for SBA teams responding to inquiries from small businesses negatively impacted by the policy. In April 2020, SBA received letters signed by more than 30 US Senators and the chairs and ranking members of the House and Senate Small Business Committees, urging the SBA Administrator to remove the cap on EIDL Advances. However, the policy remained in place until the EIDL Advance program ran out of funds and was eventually closed on July 10, 2020.

SBA accepted self-certifications from applicants to determine eligibility for the EIDL Advance program in accordance with the CARES Act.

Section 1110 (e)(2) of the Coronavirus Aid, Relief, and Economic Security (CARES) Act required SBA to verify that the applicant is an eligible entity before disbursing EIDL Advance funds by accepting a self-certification from the applicant under penalty of perjury pursuant to section 1746 of title 28 United States Code. The CARES Act also linked requests for EIDL Advances to the COVID EIDL program loan application, under which Section 1110 (d)(1) prohibited SBA from requiring tax records to validate the self-certified information provided by applicants. Furthermore, Section 1110 (e)(1) of the Act

established a goal for SBA to provide EIDL Advance funds to applicants within 3 days from receipt of the COVID EIDL application. The 3-day goal was ambitious and clearly demonstrated the Act's intent to prioritize expediency to disburse EIDL Advance funds over the standard practice to first collect and examine information to validate eligibility. The SBA delivered on the intent of the CARES Act by processing over 14 million COVID EIDL applications and approving 5.8 million EIDL Advances for a total of \$20 billion in just 14 weeks.

The audit fails to mention that sole proprietors and independent contractors that received EIDL Advances greater than \$1,000 without providing an EIN may still be eligible for the full \$10,000 Advance under the Targeted EIDL Advance program.

In December 2020, the Economic Aid Act appropriated \$20 billion for the Targeted EIDL Advance program to provide businesses that received less than \$10,000 with the full Advance. In accordance with the Economic Aid Act, small businesses with 300 or less employees that are in a low-income community as defined in section 45D(e) of the Internal Revenue Code and suffered greater than 30 percent economic loss are eligible to receive the full \$10,000 EIDL Advance. The intent of the Targeted EIDL Advance program was to provide all eligible businesses, including the sole proprietors and independent contractors examined in this audit, with the full \$10,000 EIDL Advance.

Sole proprietors and independent contractors with employees may have omitted the EINs on their COVID-19 EIDL applications due to unclear instructions.

The draft report asserts that all sole proprietors and independent contractors that reported having employees on their COVID EIDL application applied using only their SSN because they did not have an EIN and are therefore in violation of an IRS regulation to obtain an EIN. This assertion, however, fails to acknowledge that the COVID EIDL application instructions may have been unclear to applicants. For example, applicants were asked to provide either an EIN or SSN for the applicant business entity. The field collecting this information included only the label "EIN/SSN for Sole Proprietorship" and did not instruct applicants that they must provide their EIN if they have one and have employees. It is possible that sole proprietors were confused by the label on the application and provided their SSN instead of their EIN. However, the draft report assumes that because the sole proprietor did not provide the EIN it must mean that they did not have an EIN and were in violation of IRS regulations.

Furthermore, the COVID EIDL application did not clearly define "employee" for applicants. The application simply asked applicants to confirm if they had "not more than 500 employees" and to self-certify the number of employees as of January 31, 2020. The COVID EIDL application did not define employees as full time, part time, seasonal, etc. The application also did not clearly explain for applicants that contractors are not considered employees and should not be reported as such on the COVID EIDL application. It is important to remember that the COVID EIDL program, which to date has received over 20 million application, is popular with many small businesses, sole proprietors, independent contractors, freelancers, and other types of gig workers that are less experienced in commercial lending practices and business tax laws. To mitigate confusion, the COVID EIDL application should have provided clearer instructions for applicants on how to define an employee and whether providing the EIN should have been a requirement.

OIG Audit Recommendation

1. OIG recommends SBA to:
 - review the applications of sole proprietors and independent contractors that included numbers of employees but no Employer Identification Number; and
 - remedy the \$3.5 billion disbursed to sole proprietors and \$1 billion disbursed to independent contractors that exceeded the amount allowed by SBA's policy.

Agency Response to Recommendation

While the SBA does not agree with key assertions in the draft report findings, the Agency partially agrees with the audit recommendation. SBA will develop a plan to assess the EIDL Advances awarded by reviewing a sampling of recipient sole proprietors and independent contractors that self-certified having employees but did not provide an EIN on their COVID EIDL application. SBA will utilize a third-party contractor to conduct this assessment of the EIDL Advances greater than \$1,000 disbursed to sole proprietors and independent contractors that did not apply using an EIN. SBA will also develop an appropriate plan to remedy cases identified where the applicant provided false information on their COVID EIDL application with regard to having employees. SBA will explore available options to remedy cases, including but not limited to recovery of funds by offset, referral to OIG criminal investigative division, or the provision of supporting documentation, where appropriate.

Sincerely,

James E. Rivera
Associate Administrator
Office of Disaster Assistance