

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

June 5, 2024

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

Dear Administrator Guzman:

The House Committee on Small Business (Committee) is investigating the Small Business Administration's (SBA) decision to end active collection efforts on the Paycheck Protection Program (PPP) and COVID Economic Injury Disaster Loans (COVID EIDL) valued at \$100,000 or less and the subsequent decision not to sell all or part of the COVID EIDL portfolio. The purpose of this investigation is to evaluate legislative solutions to issues within small business lending programs and loan collection processes. Rather than comply with the Committee's attempt to inform itself about the SBA's decisions regarding the largest lending program in the agency's history, the SBA has provided the Committee with only minimal information and has ignored numerous requests for information. The SBA's continual obstruction has hindered the Committee's ability to quickly consider legislative reforms regarding issues directly related to the investigation.

The Committee launched its investigation at the start of this Congress. Over the course of the Committee's 14-month investigation, the SBA has slow-rolled document productions and ignored legitimate oversight document requests, while the Committee has repeatedly offered to accommodate the SBA. On March 15, 2023, the Committee requested that the SBA provide the following information within a two-week period: (1) the total number of purchased PPP loans valued at \$100,000 or less that are affected by the SBA's April 27, 2022 policy; (2) all communications between and among SBA staff relating to the April 27, 2022 decision to end collection on purchased PPP loans; (3) all communications between SBA and any external entities, including but not limited to the White House, relating to the April 27, 2022 decision to end collection on purchased PPP loans; (4) all documents and evidence relied upon in making the determination that the cost to collect the purchased PPP loans would likely be more than the recovery amount; and (5) a copy of the comprehensive analysis, if conducted, recommended by the September 30, 2022 report.¹ The SBA provided a narrative response on March 27, 2023, that was barely more than a page long, mostly regurgitated publicly available information, and ultimately failed to address the Committee's concerns. Indeed, the response did not include any

¹ Letter from Roger Williams, Chairman, H. Comm. on Small Bus., to Isabella Guzman, Adm'r., U.S. Small Bus. Admin. (Mar. 15, 2023).

of the documents requested by the Committee.² A few weeks later, the SBA provided the Committee with a staff-level briefing, but again, none of the requested documents.

On June 5, 2023, the Committee sent a follow-up letter reiterating its need for the documents it had previously requested and adding new requests based on the Committee's oversight of the SBA's COVID EIDL activities, with a two-week production deadline, after it came to light that the decision to end collections applied to both PPP and COVID EIDL.³ The expanded requests included: (1) updated figures of the value of the PPP and COVID EIDL portfolios valued at \$100,000 or less; (2) clarification on the SBA's policy for defaulted loans worth more than \$100,000; (3) the justification for using the SBA Express loan program as the basis for analysis in deciding to abandon collection on pandemic lending under \$100,000; (4) copies of the cost-benefit analyses performed to reach the decision not to collect on both PPP and defaulted COVID EIDL loans under \$100,000; (5) clarification on the cost to collect on both PPP and COVID EIDL, and a copy of the calculation used to reach these figures; (6) whether the SBA explored alternate means of collection; (7) an explanation of Patrick Kelley's claim that it cost the agency \$700,000 in fees to have an administrative hearing "before the wage offset kicks in" after being referred to the Treasury Offset Program upon failure to repay a PPP loan; and (8) clarification on the subsidy rate. The SBA failed to provide any documents by the two-week deadline.

After negotiations between the Committee and the SBA, on September 28, 2023, the Committee accepted the SBA's offer to view one of the relevant documents *in camera*. Further negotiations led to a second *in camera* review of another document on October 11, 2023. These two documents together totaled just 15 pages. From these *in camera* reviews, it was clear that these documents, as well as another report that the Committee became aware of during the *in camera* review, struck at the heart of the Committee's investigation.

Despite repeated attempts to obtain those three documents, the SBA continued to withhold them. For instance, on October 18, 2023, the Committee sent a follow-up letter to the SBA reiterating the outstanding requests and, as a further accommodation, extending the deadline to produce those three documents by October 25, 2023.⁴ The SBA failed to provide the documents by that date. Finally, under threat of subpoena, the SBA produced those three documents to the Committee on November 3, 2023.⁵ The remaining requests in the October letter expanded the initial requests from March to include all internal and external communications related to the decision on the sub-\$100,000 COVID EIDLs as well as the related documents. Eventually, nearly five months after the June 5 request, the SBA agreed to provide a narrative response to the Committee, but still refused to produce the documents.

² Letter from Jihoon Kim, Dir., U.S. Small Bus. Admin., to Roger Williams, Chairman, H. Comm. on Small Bus. (Mar. 27, 2023).

³ Letter from Roger Williams, Chairman, H. Comm. on Small Bus., to Isabella Guzman, Adm'r., U.S. Small Bus. Admin. (Jun. 5, 2023).

⁴ Letter from Roger Williams, Chairman, H. Comm. on Small Bus., to Isabella Guzman, Adm'r., U.S. Small Bus. Admin. (Oct. 18, 2023).

⁵ Letter from George Holman, Assoc. Adm'r., to Roger Williams, Chairman, H. Comm. on Small Bus. (Nov. 3, 2023); on file with Committee.

On December 22, 2023, the SBA finally produced its first responsive email chain: a single thread, totaling 11 pages. That same 11-page thread was repeated over subsequent pages making the total production 140 pages long.⁶ This minimal production after nine months of negotiations did little to satisfy the Committee's multiple legitimate oversight requests. That same day, the SBA notified the Committee that it ran a search for the requested Office of Management and Budget (OMB) communications but had inadvertently included a typo in the search and needed to re-run it. The SBA has yet to produce a single document from that search.

Next, the SBA contacted Committee staff on December 28, 2023, seeking a meeting that same day, which the Committee accommodated. In this virtual meeting, the SBA announced it had "new information" that led it to reverse its prior policy of not referring PPP and COVID EIDLs valued at \$100,000 or less to Treasury. During the meeting, Committee staff asked for the new information that led to this policy change.

The Committee sent a follow-up letter to the SBA on January 4, 2024, narrowing its outstanding requests and requesting a Transcribed Interview (TI) with the SBA employee who authored the initial decision memoranda that ended collections on PPP and COVID EIDLs valued at \$100,000 or less, Jihoon Kim.⁷ The SBA responded in narrative form on January 12, 2024, and produced 276 pages of information—252 pages of which were simply a re-transmission of letters and narrative information the SBA had already provided to the Committee.⁸ Although the Committee maintained the need to interview Mr. Kim, as an accommodation to the SBA, the Committee accepted the SBA's offer for a briefing with the current SBA Office of Capital Access Associate Administrator, Katie Frost, which took place on January 31, 2024. Unfortunately, Ms. Frost was unable to answer several key questions about the decision, claiming multiple times that because she was not in her role at the time of the underlying events, she did not know the answers to the Committee's questions. If this briefing had any value, it was to underscore the Committee's need to talk to Mr. Kim.

On January 7, 2024, Committee staff met with SBA staff to discuss the outstanding document requests. At that meeting, the Committee again agreed to narrow its requests. Unfortunately, even after yet another attempt to accommodate the SBA, the SBA's next production was not sent to the Committee until March 19, 2024, nearly two months after the January 12, 2024, deadline and the day before the Administrator was scheduled to testify before the Committee.⁹ Of the 4,000 pages produced, 3,980 were a fragmented spreadsheet. The entire production was from a search of a single email inbox of a former employee that the SBA was already reviewing for a different investigation.

⁶ On file with Committee.

⁷ Letter from Roger Williams, Chairman, H. Comm. on Small Bus., to Isabella Guzman, Adm'r., U.S. Small Bus. Admin. (Jan. 4, 2024).

⁸ Letter from George Holman, Assoc. Adm'r, to Roger Williams, Chairman, H. Comm. on Small Bus. (Jan. 12, 2024); on file with Committee.

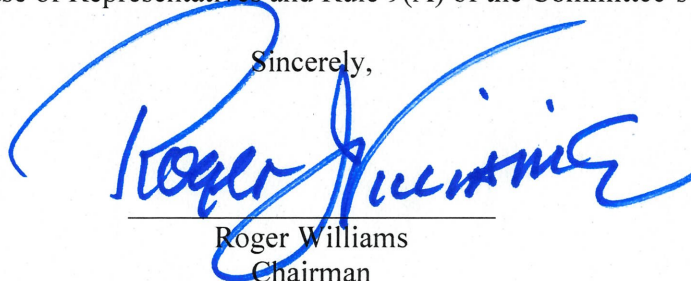
⁹ On file with Committee.

Under threat of subpoena, the SBA then produced a letter and 90 pages of documents on May 22, 2024. This production contained none of the requested communications, neither of the two requested internal analyses, and only two of the requested reports related to the third-party recommendations that the SBA sell the portfolio, including an eight-page report that had already been provided to the Committee in November 2023. Further, nearly one-third of the documents the SBA produced appear to be in response to a different request by a Member in a Committee hearing on March 23, 2023.¹⁰

The Committee still has not seen the communications surrounding the SBA's decision to end collections on PPP and COVID EIDLs valued at \$100,000 or less that were first requested on March 15, 2023. These communications are critical to assessing how and why this decision was made in the first place, the justification behind the reversal in December 2023, whether the SBA acted in accordance with the Debt Collection Improvement Act, and whether legislative reforms are needed to protect taxpayer dollars in future small business lending programs and loan collection processes. The SBA continues to obstruct these efforts. Though the Committee appreciates that after four months of negotiations the SBA finally made Mr. Kim available for the requested TI on June 7, 2024, that does not satisfy the Committee's informational need for the requested communications surrounding the decision.

The Committee has broad authority to investigate "problems of all types of small business" under House Rule X. The Committee continues to have serious concerns regarding the SBA's efforts to comply with legitimate oversight requests and will not tolerate any further delay. Accordingly, attached to this letter is a subpoena, issued pursuant to Rule XI.2(m)(1)(B) of the Rules of the House of Representatives and Rule 9(A) of the Committee's rules.

Sincerely,



Roger Williams
Chairman

House Committee on Small Business

¹⁰ *Oversight of the Small Business Administration, Hearing before the H. Comm. on Small Bus., 118th Cong. (Mar. 23, 2023).*

SUBPOENA

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE CONGRESS OF THE UNITED STATES OF AMERICA

The Honorable Isabella Casillas Guzman, Administrator of the U.S. Small Business Administration

To _____

You are hereby commanded to be and appear before the
House Committee on Small Business

_____ of the House of Representatives of the United States at the place, date, and time specified below.

- to produce the things identified on the attached schedule** touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of production: 2361 Rayburn House Office Building, Washington, D.C. 20515

Date: June 19, 2024

Time: 12:00p.m.

- to testify at a deposition** touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of testimony: _____

Date: _____

Time: _____

- to testify at a hearing** touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of testimony: _____

Date: _____

Time: _____

To _____ any authorized staff member or the U.S. Marshals Service

_____ to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States, at

the city of Washington, D.C. this 5 day of June, 2024.

Attest:

Kevin F. McInerney

Clerk

Roger Williams
Chairman or Authorized Member

Schedule to Subpoena

In accordance with the attached Schedule instructions, you, Isabella Casillas Guzman, Administrator of the U.S. Small Business Administration (SBA), are required to produce the following items in your possession, custody, or control in unredacted form:

1. All documents and communications between and among SBA staff relating to the April 2022 decision, including but not limited to emails, messages, and calendar invitations.
2. All documents and communications between the SBA and the Executive Office of the President, including but not limited to the Office of Management and Budget (OMB), relating to the April 2022 decision.
3. All documents and communications between the SBA and the U.S. Department of the Treasury (Treasury) relating to the April 2022 decision.
4. All documents and communications between and among the SBA and the Executive Office of the President, including but not limited to OMB, regarding the decision not to sell all or portions of the COVID Economic Injury Disaster Loans (COVID EIDL) portfolio.
5. All documents and communications between and among the SBA and Treasury regarding the decision not to sell all or portions of the COVID EIDL portfolio.
6. All documents relating to internal analyses conducted by the SBA on selling the COVID EIDL portfolio, including (a) any documents that support the conclusion that doing so was not in the best interests of the government and (b) the initial and updated analyses referenced in the SBA's December 22, 2023, correspondence to the Committee on Small Business.
7. All documents and communications between and among SBA staff relied upon and/or related to the September 2022 analysis.
8. All documents and communications between and among SBA staff relied upon and/or related to the February 23, 2023, memorandum, including all reports relied upon in drafting the memorandum.
9. All third-party analyses, including those from subcontractors, conducted for the SBA related to COVID EIDL from January 1, 2021, until present.
10. All documents and communications relied upon and/or related to the December 2023 decision, including all reports relied upon in drafting the December 23, 2023, decision.

RESPONDING TO THE COMMITTEE'S SUBPOENA

In responding to this Subpoena, please apply the instructions and definitions set forth below:

INSTRUCTIONS

1. In complying with this Subpoena, you are required to produce all responsive documents in unredacted form that are in your possession, custody, or control or otherwise available to you, regardless of whether the documents are possessed directly by you. You are also required to produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. You must also produce any responsive documents or communications from any Slack or Teams channel that you own, is in your primary control, or have access to. Subpoenaed records, documents, data, or information should not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization, or individual named in the Subpoena has been, or is currently, known by any other name, the Subpoena should be read also to include such other names under that alternative identification.
3. The Committee's preference is to receive documents in electronic form in lieu of paper productions.
4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
5. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.
6. When you produce documents, you should identify the paragraph(s) and/or clause(s) in the Committee's schedule to which the documents respond.
7. Documents produced pursuant to this Subpoena should be produced in the order in which they appear in your files and should not be rearranged. Any documents that are stapled, clipped, or otherwise fastened together should not be separated.
8. Documents produced in response to this Subpoena should be produced together with copies of file labels, dividers, or identifying markers with which they were associated when this Subpoena was issued. Indicate the office or division and person from whose files each document was produced.
9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.

10. If any of the subpoenaed information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the Subpoena cannot be made in full by June 19, 2024, at 12:00 noon, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided no later than June 12, 2024, at 12:00 noon.
12. In the event that a document is withheld on any basis, provide a log containing the following information: (a) the basis for withholding the document; (b) the type of document; (c) the general subject matter; (d) the date, author, and addressee; and (e) the relationship of the author and addressee to each other.
13. If any document responsive to this Subpoena was, but no longer is, in your possession, custody, or control, or has been placed into the possession, custody, or control of any third party and cannot be provided in response to this Subpoena, you should identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control, or was placed in the possession, custody, or control of a third party.
14. In complying with the Subpoena, be apprised that the U.S. House of Representatives and the Committee do not recognize: any purported non-disclosure privileges associated with the common law including, but not limited to, the deliberative process privilege, the attorney-client privilege, and attorney work product protections; any purported privileges or protection from disclosure under the Freedom of Information Act; or any purported contractual privileges, such as non-disclosures agreements.
15. If any document responsive to this Subpoena cannot be located, describe with particularity the efforts made to locate the document and the specific reason for its disappearance, destruction or unavailability.
16. If a date or other descriptive detail set forth in this Subpoena referring to a document, communication, meeting, or other event is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the Subpoena, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.
17. The Subpoena is continuing in nature and applies to any newly discovered document, regardless of the date of its creation. Any document not produced because it has not been located or discovered by the return date should be produced immediately upon location or discovery subsequent thereto.
18. All documents should be Bates-stamped sequentially and produced sequentially.

19. Two sets of the documents should be delivered to the Committee, one set to the majority staff in Room 2361 of the Rayburn House Office Building and one set to the minority staff in Room 2069 of the Rayburn House Office Building. You should consult with Committee majority staff regarding the method of delivery prior to sending any materials.
20. Upon completion of the document production, you must submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; (2) all documents located during the search that are responsive have been produced to the Committee.

DEFINITIONS

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra-office communications, electronic mail (“e-mail”), instant messages, calendars, contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, power point presentations, spreadsheets, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments to any of the foregoing as well as any attachments thereto) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise and whether in a meeting, by telephone, facsimile, email (desktop or mobile device), text message, instant message, MMS or SMS message, regular mail, telexes, releases, or otherwise.
3. The phrase “possession, custody or control” means (a) documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, or representatives acting on your behalf; (b) documents that you have a legal right to obtain, that you have a right to copy, or to which you have access; and (c) documents that have been placed in the possession, custody, or control of any third party.
4. The terms “and” and “or” should be construed broadly and either conjunctively or disjunctively as necessary to bring within the scope of this Subpoena any information which might otherwise be construed to be outside its scope. The singular includes the plural number, and vice versa. The masculine includes the feminine and neuter genders.
5. The terms “person” or “persons” mean natural persons, firms, partnerships, associations, limited liability corporations and companies, limited liability partnerships, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, other legal, business or government entities, or any other organization or group of persons, and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof.

6. The terms “referring” or “relating,” with respect to any given subject, mean anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any manner whatsoever pertinent to that subject.
7. The term “employee” means agent, borrowed employee, casual employee, consultant, de facto employee, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, contract employee, contractor, or any other type of service provider.
8. The term “April 2022 decision” refers to the SBA decision ending collections and abandoning collateral on delinquent loans of \$100,000 or less.
9. The term “September 2022 analysis” refers to the supplemental memorandum which supplied additional analysis for the decision to end collections on delinquent PPP loans of \$100,000 or less.
10. The term “February 23, 2023, memorandum” refers to the supplemental memorandum that analyzed the PPP portfolio for potential sale.
11. The term “December 2023 decision” refers to the SBA’s decision to begin referring loans to Treasury for Offset and Cross Servicing.