

Lessons Learned from the Paycheck Protection Program: A Way Forward for an Equitable COVID Recovery

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The COVID Oversight Coalition was established in April 2020 in response to the COVID-19 pandemic. It has assessed programs established in the CARES Act and other legislation that aimed to provide relief to American families and businesses through the pandemic. The Coalition is composed of diverse partners including labor unions, government accountability and policy advocacy groups, research experts, and financial reform advocates.



Introduction

The Paycheck Protection Program (PPP) was established in the CARES Act of 2020 to provide emergency relief to small businesses struggling to retain employees at the start of the COVID-19 pandemic. The program provided forgivable loans backed by the Small Business Administration (SBA) using third-party lenders including major banks and Community Development Financial Institutions (CDFIs). Small businesses needing support to maintain their payroll, rent, mortgage, and utility expenses could use PPP loans for those purposes. The program has been considered historic in providing a low-interest, government-backed, forgivable loan option that directed substantial aid to businesses.¹ The SBA reports that the program originated more than 11.7 million loans to over 8.5 million businesses and provided a total of almost \$800 billion in federal COVID relief.²

The PPP was popular in Congress, and after its first round of funding ran out within weeks of being established in March 2020, a second round was authorized in April 2020, with a subsequent third round of funding offered from January-May 2021. Providing an easy cash line to businesses affected by pandemic-related shutdowns was one of the most useful aspects of the PPP to model for future relief programs. However, despite its innovative features and focus on providing essential support to small businesses, the SBA fell short on tracking how recipients, particularly large recipients eligible for the program, utilized their loans. In the absence of rigorous tracking of the program, significant unanswered questions remain. Despite the fact that criteria for receiving loan forgiveness are relatively clear,³ reports on the percentage of PPP loans that have been forgiven range from 80-90%⁴ with rates in specific industries like hospitality even higher at 99%.⁵ According to the most recent data from the SBA, 88% of all PPP loans have been either fully or partially forgiven as of May 15, 2022 and over \$727 billion has been paid out.⁶ With such high overall forgiveness rates, an important concern is that large PPP recipients whose loans should have been scrutinized more closely were not, and they too have received forgiveness. Greater attention to whether such recipients, particularly those

¹ Rep. Judy Chu. Letter to Small Business Administrator Isabel Guzman. February 3, 2022. On file.

² Small Business Administration. [Press Release]. "SBA Announces Opening of Paycheck Protection Program Direct Forgiveness Portal." June 28, 2021. <https://www.sba.gov/article/2021/jul/28/sba-announces-opening-paycheck-protection-program-direct-forgiveness-portal#:~:text=Established%20by%20the%20CARES%20Act,come%20back%20stronger%20than%20ever.>

³ To be eligible for PPP loan forgiveness, recipients had to demonstrate they maintained employee and compensation levels; spent loan proceeds on payroll costs and other eligible expenses; and spent at least 60% of the proceeds on payroll costs. SBA. [Website]. "PPP loan forgiveness: Borrowers may be eligible for Paycheck Protection Program (PPP) loan forgiveness." <https://www.sba.gov/funding-programs/loans/covid-19-relief-options/paycheck-protection-program/ppp-loan-forgiveness>

⁴ Longo, Tracy. "SBA Has Forgiven 80% Of PPP Loans." *Financial Advisor*. January 10, 2022. <https://www.famag.com/news/sba-has-forgiven-80--of-ppp-loans-65818.html>; Tascarella, Patty. "Here's Where PPP Forgiveness Stands, Two Years After Launch of Initiative to Help Small Business Hard-hit by Pandemic." *Pittsburgh Business Times*. April 7, 2022. <https://www.bizjournals.com/pittsburgh/news/2022/04/07/where-ppp-forgiveness-stands.html>

⁵ Hotel PPP loan data downloaded and analyzed as of January 3, 2022, when the SBA made data available at <https://data.sba.gov/dataset/ppp-foia>. SBA has since uploaded new data as of April 5, 2022, at the same link, which reflects additional loans forgiven between January 3 and April 5. As of January 3, SBA had forgiven 98% of loan volume for hotel loans (NAICS Code 721110) with any amount listed under the "forgiveness amount" field.

⁶ SBA. "Forgiveness Platform Lender Submission Metrics." May 15, 2022. https://www.sba.gov/sites/default/files/202205/2022.05.15_Weekly%20Forgiveness%20Report_Public%5B10%5D.pdf

receiving PPP loans of \$150,000 and higher, met program rules to be eligible for forgiveness, should have been a critical feature of the loan forgiveness process.

Since the program was sunset in April 2021, limited policy actions remain to increase the extent to which the program contributes to an equitable long-term recovery from the COVID-19 pandemic. At the very least, the SBA must share its available data publicly, conduct audits of the firms that used their funds in questionable ways, and claw back funds that were misspent. The Biden administration and the SBA must also set adequate guardrails to ensure that the misdirection of PPP funds to large wealthy corporations is not replicated in future programs.

The COVID Oversight Coalition, a set of civil society groups that joined forces to monitor the response to the COVID crisis through emergency relief programs like the PPP, monitored PPP from its inception. We supported efforts to impose and utilize oversight mechanisms to direct public dollars effectively to their intended purposes and recipients. We welcomed attempts from Congress, the inspector general (IG) community, and others to protect against waste, fraud, theft, and abuse of this, and other CARES Act programs. In particular, we have called for greater attention to the role of corporations and large recipients as potential misusers of the PPP funds, rather than focusing on independent and small businesses as a focus of analysis. Coalition partners developed systems to track the performance of COVID relief programs, including PPP performance,⁷ and communicated with federal government personnel about multiple PPP shortcomings and problems. This paper explores several of the largest problems with the PPP, the consequences of failing to incorporate stronger requirements and oversight mechanisms to control the disbursement of funds, and four case studies illustrating the problems. It also offers six recommendations intended to secure a more equitable pandemic recovery, and present lessons learned that could be used to safeguard future emergency assistance programs.

The PPP was one of many CARES Act relief programs and this assessment does not cover the breadth of these programs. The COVID Oversight Coalition believes it is important to assess the results of the PPP because its supporters hoped that the program would promote an equitable recovery. But from the program's inception, we saw many examples that undermined this purpose. Corporations and large businesses eligible for the program qualified for loans greater than \$150,000 and treated the program as an easy cash line. Other recipients did not use funds to retain workers and had these loans forgiven. These companies must be held accountable by the Small Business Administration and its Inspector General, the Select Subcommittee on the Coronavirus Crisis, the White House Office of Management and Budget (OMB), the White House American Rescue Plan Implementation Team, the Pandemic Response Accountability Committee (PRAC), or Congress. Because of these abusers, several of which we highlight in the case studies, truly small businesses in need were left out of the first, and part of the second round of PPP and workers who should have been supported by the program were not.

Section 1: Systemic Problems with the PPP

The COVID Oversight Coalition acknowledged the formidable task facing the Biden administration to ensure the prompt disbursement of billions of dollars in COVID-19 relief funds,

⁷ Project on Government Oversight. "Covid Tracker." <https://covidtracker.pogo.org/>; Good Jobs First. "Covid Stimulus Watch." <https://covidstimuluswatch.org/>

and implementing programs whose statutes, rules, and practices had been established under the prior Trump administration without their input. But the Coalition continuously emphasized the importance of prioritizing program oversight, data collection, and guardrails to maximize the extent to which public funds were going to the businesses and recipients that needed it most, especially given the powerful evidence that the COVID-19 pandemic was exacerbating long-standing inequities in the country. We also argued that prompt disbursement and adequate oversight were not necessarily at odds with each other, a point that has recently been made by Michael Horowitz, the Justice Department Inspector General, who pointed to steps the SBA could have taken to limit the fraud in the program without causing undue delay in loan disbursement. This included checking loan recipients against the Treasury's do-not-pay list, a step that the SBA did not take and through which 57,000 loans worth \$3.6 billion went to questionable entities.⁸

Six months into the pandemic, the disproportionate impact of job losses on minority and low-wage workers was well-documented with Black and Latinx communities facing the brunt of unemployment and slow job recovery.⁹ Over one year into the pandemic, the vast racial disparities among Paycheck Protection Program loan recipients were similarly well-known. For example, in the Los Angeles and New York metro areas, data shows businesses in majority white neighborhoods received loans at twice the rate of Latinx neighborhoods. In Los Angeles, businesses in white neighborhoods received PPP loans at 1.5 times the rate as businesses in Black neighborhoods, and 1.2 times the rate of businesses in Asian neighborhoods.¹⁰ In 2021, a third round of PPP funds disbursed \$278 billion of the program's total \$800 billion, and this final round did appear to have been disbursed more to small businesses owned by people of color.¹¹

While the public health emergency necessitated the government's swift disbursement of relief funds, the approach also undermined attempts to ensure that the hardest hit communities were being reached by relief efforts. The swift disbursement of PPP funds without adequate safeguards also led to an explosion of fraud and theft. As of August 2021, one study estimated that as much as \$76 billion of the PPP's \$800 billion in loans may have been disbursed to fraudulent entities, often by financial technology lenders.¹²

Businesses in Need Lost Out

⁸ Rascoe, Ayesha. "Money from the COVID Paycheck Protection Program was allegedly largely misspent." *NPR*. April 10, 2022. https://www.npr.org/2022/04/10/1091927667/money-from-the-covid-paycheck-protection-program-was-allegedly-largely-misspent?utm_medium=email&utm_source=govdelivery

⁹ Long, Heather, Andrew Van Dam, Alyssa Fowers, and Leslie Shapiro. "The covid-19 recession is the most unequal in modern U.S. history." *Washington Post*. September 30, 2020. <https://www.washingtonpost.com/graphics/2020/business/coronavirus-recession-equality/>

¹⁰ Morel, Laura C., Mohamed Al Elew, and Emily Harris. "Rampant Racial Disparities Plagued How Billions of Dollars in PPP Loans Were Distributed in the U.S." *Reveal News*. May 1, 2021. <https://revealnews.org/article/rampant-racial-disparities-plagued-how-billions-of-dollars-in-ppp-loans-were-distributed-in-the-u-s>

¹¹ Fairlie, Robert W. and Frank Fossen. "The 2021 Paycheck Protection Program Reboot: Loan Disbursement to Employer and Nonemployer Businesses in Minority Communities." National Bureau of Economic Research (NBER). NBER Working Paper No. 29732. February 2022. <https://www.nber.org/papers/w29732>

¹² Cowley, Stacy. "15% of Paycheck Protection Program Loans Could Be Fraudulent, Study Shows." *The New York Times*. August 17, 2021. <https://www.nytimes.com/2021/08/17/business/ppp-fraud-covid.html>

From the PPP's inception, the program's reliance on big banks as preferred lenders was reported to be disadvantageous to small businesses that did not hold those banking relationships. Banks including JPMorgan Chase, Citibank, and U.S. Bank prioritized the PPP loan applications of their wealthy clients, according to bank employees and financial industry analysts who spoke to the *New York Times*.¹³ Another *New York Times* analysis of available SBA data found that Black and women-owned businesses were disproportionately shut out of the PPP because they lacked the relationships needed to access loans or were rejected due to program rules.¹⁴ Advocates for small businesses like the Center for Responsible Lending pointed out problems like the fee structure of the PPP that would deprioritize small businesses to lenders because their smaller loans would generate lower fees for lenders.¹⁵ After the first round of PPP funds ran out, over 1,500 small business owners and the Main Street Alliance called on the Biden Administration for access to more direct grant programs for businesses that were left behind by the PPP, particularly businesses owned by women and communities of color.¹⁶ In short, barriers to entry for the intended recipients of the program were known from the program's inception.

Later rounds of PPP loans did direct more funds to Community Development Financial Institutions (CDFIs) serving lower income communities, but the data shows this did not make up for lending disparities in the initial round which lent a total of \$349 billion, and of course could not reach businesses that had already shuttered due to prior lending inequities.¹⁷ As a result, the PPP exacerbated pre-existing inequities between Black and white-owned small businesses instead of contributing to a racially just and equitable pandemic response.

Because the PPP had finite funds, every dollar lent to a fraudster reduced the funds available to legitimate businesses in need, making the high fraud rate in the program another problem. One year into the program, the *New York Times* reported that an estimated 15% of PPP loans had gone to fraudulent borrowers, which were overwhelmingly serviced by online financial technology, or fintech, firms. According to one study, although fintech firms issued only around 29% of the program's loans, they accounted for more than 50% of its suspicious loans.¹⁸ In May 2021, Congress opened investigations into two fintech lenders, BlueVine and Kabbage,¹⁹ based

¹³ Flitter, Emily and Stacy Cowley. "Banks Gave Richest Clients 'Concierge Treatment' for Pandemic Aid." *The New York Times*. April 22, 2020. <https://www.nytimes.com/2020/04/22/business/sba-loans-ppp-coronavirus.html>

¹⁴ Cowley, Stacy. "Minority Entrepreneurs Struggled to Get Small-Business Relief Loans." *The New York Times*. April 4, 2021. <https://www.nytimes.com/2021/04/04/business/ppp-loans-minority-businesses.html>.

¹⁵ Center for Responsible Lending. "The Paycheck Protection Program Continues to be Disadvantageous to Smaller Businesses, Especially Businesses Owned by People of Color and the Self-Employed." April 6, 2020. <https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-cares-act2-smallbusiness-2020.pdf>.

¹⁶ Main Street Alliance. [Press Release]. "As the Restaurant Revitalization Fund and Paycheck Protection Program Come to an End, Congress Must Make More Small Business Grants Available." May 25, 2021. <https://mainstreetalliance.org/press-releases/as-the-restaurant-revitalization-fund-and-paycheck-protection-program-come-to-an-end-congress-must-make-more-small-business-grants-available>

¹⁷ Mercado, Darla. "The Paycheck Protection Program has run out of money – meet the entrepreneurs left in the cold." CNBC. April 17, 2020. <https://www.cnbc.com/2020/04/17/this-government-loan-program-has-run-dry-these-people-lost-out.html>

¹⁸ Cowley, Stacy. "15% of Paycheck Protection Program Loans Could Be Fraudulent, Study Shows." *The New York Times*. August 17, 2021. <https://www.nytimes.com/2021/08/17/business/ppp-fraud-covid.html>

¹⁹ Press Release. "Select Subcommittee Launches Investigation Into Role Of FinTech Industry In PPP Fraud." *Select Subcommittee on the Coronavirus Crisis*. May 28, 2021. <https://coronavirus.house.gov/news/press-releases/select-subcommittee-launches-investigation-role-fintech-industry-ppp-fraud>.

on reporting from *ProPublica* that the latter disbursed “378 small loans totaling \$7 million to fake business entities.”²⁰

Workers in Need Lost Out

Although helping workers was a key purpose of the PPP, a study by the National Bureau of Economic Research (NBER) estimated that of the \$800 billion in disbursed PPP funds, at most, only 23% to 34% went directly to workers who would have otherwise lost jobs.²¹ “[T]he balance flowed to business owners and shareholders, including creditors and suppliers of PPP-receiving firms,” the study said. The study concluded that, overall, the PPP was “highly regressive, with about three-quarters of PPP funds accruing to the top quintile of households.”²² This data indicates that the program allowed well-resourced industries to use PPP funds as a low-cost or even free loan to benefit business owners and pay non-payroll business expenses at the expense of helping average workers make it through the pandemic. Meanwhile, a Center on Budget and Policy Priorities report analyzing data collected by the Census Bureau which was tracking households on a near real-time basis during the pandemic found:

In the early months of the crisis, tens of millions of people lost their jobs. While employment began to rebound within a few months, unemployment remained high throughout 2020. Improving employment and substantial relief measures helped reduce the very high levels of hardship seen in the summer of 2020. Nonetheless, considerable unmet need remained near the end of 2021, with 20 million households reporting having too little to eat in the past seven days and 10 million households behind on rent.²³

Businesses Not in Need Cashed In

PPP funds not only failed to sustain small businesses and workers in need, but they also provided cash windfalls to larger businesses and industries that could have survived the pandemic without taxpayer funds. The program did so in part by allowing businesses normally ineligible to receive SBA loans to obtain substantial PPP funds, including elite law firms,²⁴ lobbying shops,²⁵ hospitality and fast-food industries,²⁶ and casinos.²⁷ In addition, SBA minimally enforced its own

²⁰ Willis, Derek and Lydia DePillis. “Hundreds of PPP Loans Went to Fake Farms in Absurd Places.” *ProPublica*. May 18, 2021. <https://www.propublica.org/article/ppp-farms>

²¹ Autor, David et al. “The \$800 Billion Paycheck Protection Program: Where Did the Money Go and Why Did it Go There?” National Bureau of Economic Research (NBER). NBER Working Paper No. 29669. January 2022. Page 1. <https://www.nber.org/papers/w29669>. (“We estimate that the program cumulatively preserved between 2 and 3 million job-years of employment over 14 months at a cost of \$170K to \$257K per job-year retained.”)

²² Ibid.

²³ Center on Budget and Policy Priorities. “Tracking the COVID-19 Economy’s Effects on Food, Housing, and Employment Hardships.” i 2022. Page 1. <https://www.cbpp.org/sites/default/files/8-13-20pov.pdf>

²⁴ Roy Strom. Bloomberg Law. “Boies Schiller, Big Law Firms Obtained Millions in PPP Loans.” July 6, 2020. <https://news.bloomberglaw.com/business-and-practice/boies-schiller-law-firm-got-millions-in-coronavirus-ppp-loans>

²⁵ Alex Gangitano. The Hill. “Lobbying groups received millions in PPP loans.” July 6, 2020.

<https://thehill.com/business-a-lobbying/business-a-lobbying/506086-lobbying-groups-received-millions-in-ppp-loans/>

²⁶ Anti-Corruption Data Collective et al. “Public Money for Private Equity: Pandemic Relief Went to Companies Backed by Private Equity Titans.” September 2021. Page 17. <https://ourfinancialsecurity.org/wp-content/uploads/2021/09/public-money-for-private-equity-9-13-21.pdf>

rules on company affiliations to larger entities, such as companies backed by deep pocketed private equity funds, enabling the PPP to become a cash grab opportunity for well-resourced industries and companies.²⁸ For those recipients, the program functioned as an easy, low-interest loan or grant that was used to pay down debt, execute stock buybacks, or otherwise enrich investors and executives.²⁹ The lack of accountability measures to ensure the retention of employees, the primary objective of the PPP, enabled large businesses to obtain taxpayer-financed loans and win forgiveness of the debt, while still laying off workers during the pandemic.

The hospitality industry was exempted from the rules governing the size of businesses eligible for the PPP. UNITE HERE Local 11 found that large hospitality chains with over 500 employees collected \$1.3 billion in PPP loans through this carveout.³⁰ In addition, multinational conglomerates normally would not be eligible for SBA loan programs. However, in the case of Giti Tire Manufacturing (USA), a South Carolina tire manufacturer, and its California-based sister company, Giti Tire (USA), these subsidiaries were quick to apply for and receive PPP loans and then laid off workers. The companies were able to receive these loans because the SBA created a retroactive loophole for subsidiaries of large foreign firms with U.S. employee counts under 500 for its affiliates. This insulated subsidiaries of large foreign firms like Giti Tire USA from enforcement efforts that might have overturned their eligibility for the program.³¹ The company was approved for a \$7.9 million PPP loan in April 2020, weeks after the program was established. Giti received a second loan for \$1.8 million for its imported tire distributor, putting them ahead of many small business applicants to the program.³²

Using the findings from a worker complaint system developed by the Fight for \$15 and a Union, the campaign found that 99% of McDonald's franchises in California received PPP loans and of the California fast-food franchises where workers filed health and safety complaints, 95% of

See also case studies below.

²⁷ O'Connell, Jonathan and Aaron Gregg. Washington Post. "After lobbying push, casinos are eligible for small-business funds under new stimulus rules." April 28, 2020.

<https://www.washingtonpost.com/business/2020/04/28/casinos-sba-loans/>

²⁸ Ibid.

²⁹ Gregg, Aaron. "Publicly traded firms paid dividends, bought their own stock after receiving PPP loans to pay employees." September 24, 2020. <https://www.washingtonpost.com/business/2020/09/24/dividends-buybacks-ppp-loans/>; David Autor et al., "The \$800 Billion Paycheck Protection Program: Where Did the Money Go and Why Did It Go There?" *National Bureau of Economic Research* (2022).

https://www.nber.org/system/files/working_papers/w29669/w29669.pdf

³⁰ UNITE HERE Local 11. [Research Brief]. "The 'Paycheck Protection Program' In Name Only." May 24, 2021.

<https://www.unitehere11.org/wp-content/uploads/PPP-In-Name-Only-Research-Brief.pdf>

³¹ SBA. Business Loan Program Temporary Changes; Paycheck Protection Program— Treatment of Entities with Foreign Affiliates Interim Final Rule. 85 Fed. Reg. 99. May 21, 2020, at 30837.

<https://home.treasury.gov/system/files/136/Interim-Final-Rule-on-Treatment-of-Entities-with-Foreign-Affiliates.pdf>

³² Americans for Financial Reform Education Fund, the Main Street Alliance, South Carolina Appleseed Legal Justice Center, and Public Citizen. "Where the Rubber Meets the Road: How a Global Tire Titan Got Millions in Pandemic Small Business Loans." March 2021. <https://ourfinancialsecurity.org/wp-content/uploads/2021/03/Giti-Tire-PPP-Report-3-21.pdf>

these franchises received PPP loans.³³ Additionally, restaurant chains with private equity backing received more than \$224 million in loans from the Small Business Administration.³⁴

More than 14,000 private equity-backed companies received over \$1.2 billion from the PPP and Economic Injury Disaster Loans, two programs administered by SBA as lifelines for small businesses.³⁵ Wall Street private equity-backed firms were supposed to be excluded from the program according to the PPP's rules that specify that recipients should not be owned or controlled by large companies or private equity investors. However, if Wall Street firms did not have a controlling stake in the companies they backed, they were technically not violating this affiliation rule. Still, there were cases in which the SBA and major banks did not enforce the rules on size and affiliation and approved PPP loans for firms with a majority private equity ownership.³⁶

Section 2: PPP Case Studies

COVID Oversight Coalition partners UNITE HERE Local 11, Fight for \$15 and a Union, and United Steelworkers have been working closely with workers on the frontlines of the pandemic in three key sectors – hospitality, food service, and manufacturing. The experience of workers whose companies received substantial PPP loans provide crucial case studies illustrating key program failures and the impact on low-wage workers. Many of these accounts come from workers employed at large corporations that received PPP loans, an aspect of the program that has faced less scrutiny. These corporations gained access to PPP funds either in accordance with the program's rules, or through insufficient oversight of the program, but in all cases, used funds in ways that did not benefit their most vulnerable workers.

All four case studies are examples of companies that participated in a federal loan program with weak guardrails for screening borrowers and even weaker rules for confirming eligibility for loan forgiveness. The first case study presented below involves the hospitality industry, the second involves a manufacturer affiliated with a wealthy foreign parent corporation, and the third involves fast-food franchises affiliated with wealthy parent corporations. The final case study involves companies supported by U.S. private equity firms flush with cash. In each of these case studies the PPP served large corporations and entities with access to substantial reserves without government support, and it is not clear that the firms used the additional PPP resources to support payroll related expenses.

Case Study 1: PPP helped the hotel industry recover, but hotels left workers behind³⁷

³³ The Fight for \$15 and a Union, CA. [Memo]. "Fast-food Industry Participation in the Paycheck Protection Program." July 23, 2021. https://docs.google.com/document/d/12zwGTXy7_Gd5uI1zYulGeoUv28TfvvK6/edit and PPP loan data downloaded and analyzed as of March 2, 2021.

³⁴ Anti-Corruption Data Collective et al. Public Money for Private Equity: Pandemic Relief Went to Companies Backed by Private Equity Titans. September 2021. 19. <https://ourfinancialsecurity.org/2021/09/report-public-money-for-private-equity-cares-act/>

³⁵ Ibid 16.

³⁶ Ibid.

³⁷ UNITE HERE Local 11 is solely responsible for the content of this section and is not responsible for other sections of this report.

On May 24, 2021, UNITE HERE Local 11 published a report titled, “The Paycheck Protection Program in Name Only,” writing that “the PPP has key flaws that allow businesses to spend billions on mortgages, rent, utilities and other non-payroll costs and, particularly in the hotel industry, enable large, wealthy corporations to monopolize a program meant for small businesses.”³⁸ As of April 3, 2022, \$10.3 billion of the \$10.4 billion in PPP loans to hotels classified by the SBA as "Paid in Full" had been forgiven, a forgiveness rate of 99%.³⁹

Initially, borrowers were required to spend 75% of their loans on payroll to qualify for full loan forgiveness, but the “Paycheck Protection Program Flexibility Act” passed on June 5, 2020, lowered this threshold to 60% to qualify for full loan forgiveness.⁴⁰ While these changes undoubtedly provided more flexibility for small businesses, they also likely allowed larger borrowers in the hospitality industry and others to spend larger sums on paying down corporate and property-level debt to big banks, and other non-payroll costs.

After the PPP infused \$13.9 billion into hotels, the industry has not only weathered the pandemic but has increased the number of locations, while using fewer workers to do more work than before this unprecedented crisis. While the number of U.S. private industry accommodations establishments increased by more than 2,000 from the first quarter of 2020 to the third quarter of 2021,⁴¹ the industry employed more than 420,000 fewer workers in March 2022 than in February 2020 before the pandemic.⁴²

Even though the threshold for full loan forgiveness was lowered to 60%, there are still questions about whether hotels that were given forgiveness met that threshold.

An analysis by UNITE HERE Local 11 of employment data at unionized hotels in Southern California whose owners or operators received PPP in 2020 demonstrates that 10 properties do not appear to have spent 60% of their loan on payroll, meaning they do not appear to have qualified for full loan forgiveness.⁴³ This seriously calls into question whether the PPP program accomplished the core goal of providing protection for workers' paychecks. Further, despite the

³⁸ UNITE HERE Local 11. [Research Brief]. “The “Paycheck Protection Program” In Name Only.” May 24, 2021. <https://www.unitehere11.org/wp-content/uploads/PPP-In-Name-Only-Research-Brief.pdf>

³⁹ Hotel PPP loan data downloaded and analyzed as of April 3, 2022, when the SBA made data available at <https://data.sba.gov/dataset/ppp-foia>. As of April 3, SBA had forgiven 99% of loan volume for hotel loans (NAICS Code 721110) listed as “Paid in Full.”

⁴⁰ H.R.7010 - Paycheck Protection Program Flexibility Act of 2020, June 5, 2020, <https://www.congress.gov/bill/116th-congress/house-bill/7010#:~:text=The%20bill%20raises%20the%20non,of%20a%20paycheck%20protection%20loan.>

⁴¹ Preliminary data from the Quarterly Census of Employment and Wages, https://data.bls.gov/timeseries/ENUUS000205721?amp%253bdata_tool=XGtable&output_view=data&include_graphs=true

⁴² Current Employment Statistics Survey, https://data.bls.gov/timeseries/CES7072100001?amp%253bdata_tool=XGtable&output_view=data&include_graphs=true

⁴³ Hotel Worker Employment Data Reveals Paycheck Protection Program’s Failure to Keep Workers on Payroll, July 9, 2021, UNITE HERE Local 11, <https://www.unitehere11.org/wp-content/uploads/UNITE-HERE-Local-11-Hotel-Loan-Forgiveness-Analysis.pdf>

SBA’s limit of \$20 million per “corporate group,”⁴⁴ nine hotel chains appear to have received more than \$20 million through loans to their separate affiliates.⁴⁵

Westmont Hospitality Group, an international hotel chain, collected \$48 million through the PPP—including \$30 million through JPMorgan Chase

Hotels collected \$4.8 billion in the first two weeks of the PPP,⁴⁶ before guardrails had been put in place to improve small businesses’ access to loans.⁴⁷ As was the case with the program overall, larger borrowers dominated this frenetic period of lending through their existing relationships with financial giants like JPMorgan Chase and Bank of America, the top two PPP lenders in 2020⁴⁸ and 2021.⁴⁹ Overall, the top ten lenders distributed 22% of total hotel loan volume during the first two weeks of the program versus 17% of total loan volume in subsequent funding rounds.⁵⁰ Further, borrowers with fewer than 20 employees received 17% of hotel loans during the first two weeks as opposed to 25% in subsequent rounds.⁵¹

Westmont Hospitality Group, an international hotel company that owns and operates over 400 hotels around the world, illustrates the problems with lending during this period. According to public data, Westmont-related corporate entities received \$48 million in First and Second Draw PPP loans. These loans included over \$35.2 million approved for Westmont affiliates during the first two weeks of the program; JPMorgan Chase was the vehicle for \$20.4 million during this period, and an additional \$9.2 million to Westmont affiliates in subsequent PPP rounds.⁵²

Local 11 sent a letter to the SBA Office of Inspector General in July 2021 discussing one hotel connected to Westmont that received a PPP loan but issued WARN notices that it had permanently separated at least 121 workers and raising the question of whether the PPP funds were being used for the purpose of protecting jobs.⁵³ Moreover, of the 15 entities that received loans listing Westmont’s Texas headquarters address, seven listed “Red Roof Inn” under the franchise name field and eight left this field blank, making it impossible to tell which specific hotel properties received the loans.⁵⁴ Despite these outstanding questions, as of January 3, 2022,

⁴⁴ Small Business Administration and U.S. Department of the Treasury. “Business Loan Program Temporary Changes; Paycheck Protection Program as Amended by Economic Aid Act.” 86 Fed Reg. 9 Issue Number. January 14, 2021. Pg. 74. <https://www.sba.gov/sites/default/files/2021-01/PPP%20--%20IFR%20--%20Paycheck%20Protection%20Program%20as%20Amended%20by%20Economic%20Aid%20Act%20%281.6.2021%29.pdf>

⁴⁵ Hotel PPP loan data downloaded and analyzed as of January 3, 2022, when the SBA made data available at <https://data.sba.gov/dataset/ppp-foia>.

⁴⁶ Hotel PPP loan data downloaded and analyzed as of January 3, 2022.

⁴⁷ Rep. Nydia Velázquez. [Press Release]. “Velázquez on New Small Business Relief Bill.” April 23, 2022. <https://velazquez.house.gov/media-center/press-releases/velazquez-new-small-business-relief-bill>

⁴⁸ Small Business Administration. “Paycheck Protection Program (PPP) Report: Approvals through August 8, 2020.” https://www.sba.gov/sites/default/files/2020-08/PPP_Report%20-%202020-08-10-508.pdf

⁴⁹ Small Business Administration. “Paycheck Protection Program (PPP) Report: Approvals through May 31, 2021.” https://www.sba.gov/sites/default/files/2021-06/PPP_Report_Public_210531-508.pdf

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² Hotel PPP loan data downloaded and analyzed as of January 3, 2022, when the SBA made data available at <https://data.sba.gov/dataset/ppp-foia>.

⁵³ Complaint filed by UNITE HERE Local 11 with the U.S. Small Business Administration, July 14, 2022.

⁵⁴ Hotel PPP loan data downloaded and analyzed as of January 3, 2022.

SBA had forgiven \$26.6 million of the \$35.3 million lent to Westmont during the first two weeks of the program.⁵⁵ In response, on March 15, 2022, Rep. Ruben Gallego (D-AZ) led a letter joined by 16 additional members of Congress to the Small Business Administration highlighting the PPP loans connected to Westmont Hospitality Group and called for “vigilant oversight” and improved transparency regarding how the loan proceeds were spent.⁵⁶

Hotel workers laid off by hotel chains that collected millions in PPP loans ask what happened to funds meant for payroll costs

Hotels terminated or furloughed more than one million workers in 2020 and 2021 combined and have since enjoyed billions in PPP relief without publicly disclosing whether funds were spent on payroll costs.⁵⁷ In the course of 2021, the American Hotel & Lodging Association (AHLA) and its hotel members faced a labor shortage, which they blamed on enhanced government benefits. But hiring remained slow a month after enhanced benefits ended.⁵⁸ Hotels also opposed a bill that would require employers to offer jobs to their employees who have been laid-off due to the pandemic.⁵⁹ Below, we highlight the stories of laid off hotel workers employed at two large hotel chains that received millions from the PPP: the Chateau Marmont in Hollywood, CA, and the Merriweather Lakehouse Hotel in Columbia, MD.

In March 2020, the Chateau Marmont fired more than 200 workers, leaving employees, some of whom had dedicated decades of their lives to the hotel, without job security or company-provided healthcare during the pandemic. Chateau was approved for a \$1.95 million PPP loan on February 5, 2021, but as of March 2022, only a fraction of the laid-off Chateau workers had returned to their jobs.

Several workers have filed complaints with the California Division of Labor Standards Enforcement alleging that the Chateau Marmont failed to recall them to work as required by a California law enacted in 2021. SB-93 requires hospitality employers to offer to rehire workers to positions for which they are qualified in order of seniority. Workers who filed complaints include Martha Moran, who worked as a housekeeper at the Chateau for more than 33 years, and Jesus Moreno, who worked at the hotel as a gardener for nearly 20 years. They allege that Chateau Marmont took on brand-new employees, in some cases through staffing agencies, to perform the work they had previously performed without first offering them these open

⁵⁵ Ibid.

⁵⁶ Ruben Gallego letter to Small Business Administration, March 15, 2022, <https://www.unitehere11.org/sba-oversight-march-2022/>

⁵⁷ American Hotel and Lodging Association. [Fact Sheet]. “State-by-State Job Loss: COVID-19 Continues to Devastate Hotel Industry.” February 2021. https://www.ahla.com/sites/default/files/Fact%20Sheet_2021%20State%20COVID19%20Impact.pdf

⁵⁸ Sperance, Cameron. “Hotel Jobs Report Shows Many Workers Still Aren’t Coming Back.” *Skift*. October 8th, 2021. <https://skift.com/2021/10/08/hotel-jobs-report-shows-many-workers-still-arent-coming-back/>

⁵⁹ Luca, Giacomo. “California to require some employers to rehire workers laid off due to the pandemic.” *ABC10*. April 19, 2021. <https://www.abc10.com/article/news/local/california/california-require-some-employers-rehire-workers-pandemic/103-be5fe8c5-ac82-4a06-85ae-fc90e562b0df>

positions. Each of the complaints remains pending. Of the 50 workers with the longest tenures at Chateau Marmont prior to the layoffs, approximately 46 were Latinx.⁶⁰

“I feel like management at Chateau Marmont aren’t respecting my seniority or my humanity, and I say it’s unfair,” said Moran, who had worked as a housekeeper at Chateau Marmont since 1986 before she was laid off.⁶¹

Since being laid off at the start of the pandemic, many of the hotel’s workers have also spoken out about abuses they experienced working at the hotel, including disrespect, mistreatment, and a racially stratified workplace. Two African American women who formerly worked at the hotel have filed discrimination lawsuits against the Chateau Marmont. Thomasina Gross, a former banquet server at the Chateau, alleges that she was subjected to unwanted touching by guests and that she was passed over for promotions in favor of white employees. And April Blackwell, a former night auditor, alleges in her suit that she experienced a racially hostile work environment and unsafe working conditions. As the only overnight front desk agent working in the Chateau’s “anything goes” environment, she alleges she was subjected to racist and sexist harassment by guests while performing her job.⁶² The Chateau Marmont has since forced both workers to refile their claims in private arbitration.⁶³

On April 10, 2020, Merriweather Lakehouse Hotel owner, IMH Columbia LLC,⁶⁴ whose principal owner and investor is local developer David Costello, received a nearly \$1.1 million PPP loan.⁶⁵ By April 15, 2020, the hotel, which was operated by Aimbridge Hospitality, had completely closed, laying off more than 100 hotel workers, the majority of whom were Black and Brown women, and many of whom had worked at the hotel for decades.⁶⁶ Although the hotel remained closed until November 2021, IMH Columbia LLC received a second PPP loan on

⁶⁰ UNITE HERE Local 11 [Press Release]. “Veteran Latinx Workers at Chateau Marmont & Hilton Santa Monica Allege Discrimination & State Recall Law Violations.” November 24, 2021, <https://www.unitehere11.org/veteran-latinx-workers-at-chateau-marmont-hilton-santa-monica-allege-discrimination-state-recall-law-violations/>

⁶¹ Id.

⁶² Martin, Hugo. “Chateau Marmont gave coveted jobs mostly to white people, lawsuit alleges.” *LA Times*. January 28, 2021. <https://www.latimes.com/business/story/2021-01-28/chateau-marmont-employee-lawsuit-alleges-racism-sexual-harassment>; Baum, Gary. “Chateau Marmont Hit With New Lawsuit Over Alleged Racist Incidents Involving Guests.” *Hollywood Reporter*. April 28, 2021. <https://www.hollywoodreporter.com/business/business-news/chateau-marmont-union-boycott-effort-lawsuit-4174361/>; Baum, Gary. “Chateau Marmont Hit by Multiple Lawsuits in Wake of Racial Discrimination, Sexual Misconduct Claims.” *Hollywood Reporter*. January 28, 2021. <https://www.hollywoodreporter.com/lifestyle/lifestyle-news/chateau-marmont-hit-by-multiple-lawsuits-in-wake-of-racial-discrimination-sexual-misconduct-claims-4122968/>

⁶³ Gary Baum, “Black Clergy Leaders Urge Jay-Z to Move Chateau Oscar Party Amid Hotel Boycott.” *Hollywood Reporter*. March 25, 2022. <https://www.hollywoodreporter.com/business/business-news/jay-z-chateau-oscar-party-hotel-boycott-criticism-1235118874/>.

⁶⁴ Wiggins, Ovetta. “Laid-off hotel employees fight for ‘right to return’ to work.” *The Washington Post*. Sept. 26, 2021. https://www.washingtonpost.com/local/md-politics/unemployed-workers-maryland-hotel-ppp-loan/2021/09/26/75774492-1bec-11ec-a99a-5fea2b2da34b_story.html.

⁶⁵ See PPP Loan Data. IMH Columbia LLC. FederalPay.org. April 10, 2020. <https://www.federalpay.org/paycheck-protection-program/imh-columbia-llc-columbia-md>

⁶⁶ Testimony from Merriweather Lakehouse workers. On File.

February 5, 2021, for almost \$1.5 million.⁶⁷ From publicly available data, we know that the April 10, 2020, loan was forgiven in full by the SBA.⁶⁸

Since the hotel's reopening in November 2021, formerly laid off workers have been told that they would have to reapply for their jobs. Ty Hughes, a Columbia resident who worked setting up banquet functions at the Merriweather Lakehouse hotel for sixteen years prior to being laid off, reflected, "We were all laid off through no fault of our own. I worked hard and loved the people I worked for and with. There are banquets happening in our hotel now. Were it not for the pandemic I would be setting them up."

Looking broadly at the sector, the SBA should investigate whether hotel firms that received PPP loans violated the SBA limit of \$20 million per corporate group; whether individual loan recipients met the statutory requirement that they spend 60% of their loan proceeds on payroll expenses to qualify for full loan forgiveness; why SBA moved so quickly to forgive loans; and whether SBA plans to conduct any review of these loans to see if a claw-back effort would be appropriate.

Case Study 2: Redefining the Small Business: How a Global Tire Manufacturer Received Millions in PPP

Giti Tire Manufacturing (USA), a South Carolina tire manufacturer, and its California-based sister company, Giti Tire (USA), together received more than \$9.8 million in PPP funds in April 2020. In their loan applications, the companies stated that the loans would be used to retain 500 employees in South Carolina and 89 in California.⁶⁹ They received these loans even though both companies are subsidiaries of Giti Tire Pte Ltd, which is by no means a small business.⁷⁰ In fact, Giti Tire Pte Ltd, is a global tire manufacturing empire based in Singapore with more than 30,000 workers at 6 factories and offices in 11 countries. Additionally, it generates \$2.5 billion in annual revenues and has subsidiaries in several countries.⁷¹

Because of their affiliation with Giti Tire Pte Ltd, Giti Tire Manufacturing (USA) was not technically eligible for a PPP loan when it applied in April 2020 because such loans were only supposed to go to companies with no more than 500 employees, the SBA's litmus test for what defines a small business.⁷² But fortunately for Giti Tire Manufacturing (USA), Giti Tire (USA), and other subsidiaries of large foreign firms, the SBA waived its affiliation rules one month later.

⁶⁷ See PPP Loan Data. IMH Columbia LLC. FederalPay.org. April 10, 2020. <https://www.federalpay.org/paycheck-protection-program/imh-columbia-llc-columbia-md>

⁶⁸ Hotel PPP loan data downloaded and analyzed as of January 3, 2022

⁶⁹ See PPP Loan Data. Giti Tire Manufacturing (USA) and Giti Tire (USA) LTD. FederalPay.org. <https://www.federalpay.org/paycheck-protection-program/giti-tire-manufacturing-usa-ltd-richburg-sc> and <https://www.federalpay.org/paycheck-protection-program/giti-tire-usa-ltd-rancho-cucamonga-ca>.

⁷⁰ Giti Tire Group. [Key Figures & Strong Global Structure](#). Accessed April 12, 2022.

⁷¹ Giti Tire Group. [Key Figures & Strong Global Structure](#). Accessed April 12, 2022. Publicly traded subsidiaries include: Giti Tire Corporation traded on the Shanghai Stock Exchange, China ([600182.SS](#)) and Gajah Tunggal Tbk which is traded on the Jakarta Stock Exchange, Indonesia ([GJTL.JK](#)).

⁷² Affiliation Rules Applicable to U.S. Small Business Administration Paycheck Protection Program, <https://www.sba.gov/sites/default/files/2020-06/Affiliation%20rules%20overview%20%28for%20public%29%20v2-508.pdf>. One example of affiliation based on management is that Enki Tan is Executive Chairman of Giti Tire Pte. Ltd., President and CEO of Giti Tire (USA), Ltd., and Director of PT Gajah Tunggal, <https://www.ustires.org/giti-tire-usa-ltd-0>, retrieved May 8, 2022.

The SBA created a loophole stating that it would “not find any borrower that applied for a PPP loan prior to May 5, 2020 to be ineligible based on the borrower’s exclusion of non-U.S. employees from the borrower’s calculation of its employee headcount if the borrower (together with its affiliates) had no more than 500 employees whose principal place of residence is in the United States.”⁷³ (Note: The exception went further than that. Giti did have more than 500 employees in the United States. But the SBA’s rules defining small businesses allow for greater numbers of employees in some industries. In the case of tire manufacturers, the threshold is 1,500.⁷⁴)

Not only was Giti Tire Manufacturing (USA) technically ineligible when it applied for its loan, ten days before it was approved for its PPP loan, it idled its factory and furloughed 636 workers,⁷⁵ claiming that it planned to bring production workers back one month later. In its letters to some employees, Giti wrote that although it hoped “the furlough is temporary, at this time we do not anticipate that you will be recalled.”⁷⁶

Giti’s failure to use its loans to bring back many of its workers created significant hardships for those left behind. For example, Ray Durmon started working for Giti Tire in 2017 and was one of the first maintenance workers hired for the new factory. Within the first couple years, he was promoted to a lead position. As a highly trusted employee, the company sent him to Slovakia on its behalf to purchase equipment. Unfortunately, Ray, like hundreds of other employees, was laid off in April 2020, when Giti closed its plant. In May 2020, when the factory reopened, Ray was not called back. He tried calling the company to find out his status, but they would not return his calls. Ray says, “When COVID hit they sent me home with the rest of them with the understanding that I would be coming back. Then I found out I was fired.” After being laid off for nearly six months and struggling to make ends meet, Ray and his family moved to Nebraska for a new job. “I had to sell off almost everything I had just so I could afford to move. I sold my tools. I sold my storage building. I sold my tractor and all of our furniture.”⁷⁷

SBA forgave Giti Tire Manufacturing’s \$8 million PPP loan on August 5, 2021,⁷⁸ even though there were 190 fewer workers working at its plant in South Carolina than there were immediately prior to its April 5 layoff.⁷⁹ Based on data submitted to the South Carolina Coordinating Council for Economic Development by Giti Tire Manufacturing, it had 774 full-time employees on

⁷³ Business Loan Program Temporary Changes; Paycheck Protection Program— Treatment of Entities with Foreign Affiliates Interim Final Rule. 85 Fed. Reg. 99. May 21, 2020 at 30837.

⁷⁴ Table of Small Business Size Standards Matched to North American Industry Classification System Codes, Small Business Administration. Viewed on May 17, 2022, https://www.sba.gov/sites/default/files/2019-08/SBA%20Table%20of%20Size%20Standards_Effective%20Aug%2019%2C%202019.pdf.

⁷⁵ WARN Notification Report 2020. South Carolina Department of Employment and Workforce, https://scworks.org/docs/librariesprovider6/default-document-library/2020-warn-report-updated-06-18-2021.pdf?sfvrsn=980fb63d_0

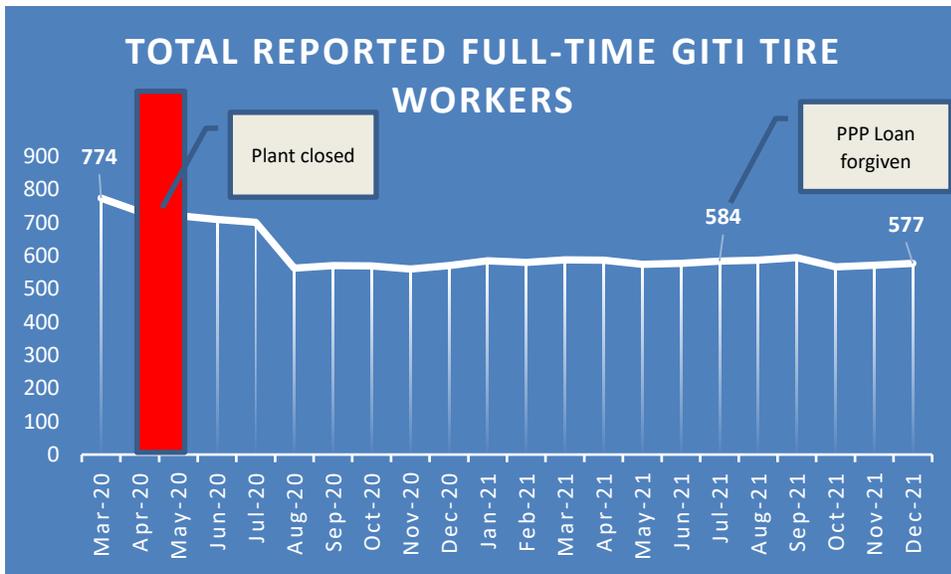
⁷⁶ Giti Tire Manufacturing (USA). Letter to worker. April 2, 2020. On file.

⁷⁷ Interview with Ray Durmon, February 25, 2022. On File.

⁷⁸ Office of Capital Access. PPP FOIA Data, public_150k_plus_220403.csv. U.S. Small Business Administration. April 20, 2022. <https://data.sba.gov/dataset/ppp-foia>.

⁷⁹ Exhibit C Quarterly Report 2020 for quarter ending 3/31/2020 filed by Giti Tire Manufacturing (USA) pursuant to Revitalization Agreement Between South Carolina Coordinating Council for Economic Development, filed 7/30/2020. On File.

March 31, 2020, and 584 on July 31, 2021, just days before its loan was forgiven.⁸⁰ One question raised by these facts is whether Giti Tire Manufacturing met the statutory requirement that it spend 60% of its loan proceeds on payroll expenses to qualify for full loan forgiveness.



Source: Quarterly Reports filed by Giti Tire Manufacturing (USA) pursuant to Revitalization Agreement Between South Carolina Coordinating Council for Economic Development

Those who were called back to work faced unsafe working conditions and short staffing. For example, LaVera Shealy started working for Giti Tire as a Visual Tire Inspector in 2017, when the factory opened in Richburg, South Carolina. In March of 2020, she was laid off because of the pandemic and was called back four months later in July 2020. She stated that she was able to make ends meet during the four months only because of the \$300 per week in Pandemic Emergency Unemployment Compensation payments. When she returned to work, she found that many of her co-workers were not called back. “We usually have 10 inspectors on my shift. When I got back there were only 2 or 3, yet we were expected to make production,” she said in an interview. To make up for the staffing shortage, Ms. Shealy said that management canceled their days off. “At one time we worked so much overtime. It felt like I was working two shifts. When we complained it fell on deaf ears.”⁸¹

To make matters worse, Ms. Shealy said that management failed to provide proper protective equipment when they came back. “When COVID hit the plant, we were not given PPE, such as gloves or masks...None given to us. Employees were allowed to work even though they tested positive. Upper management told them not to worry about it because we have a job to do. We were bringing in our own toilet paper. I had to bring my own Lysol and hand sanitizer. When I asked for safety gloves, they would give us one pair and we were told ‘you are not getting any more so don’t lose them’.”⁸²

⁸⁰ Exhibit C Quarterly Report for quarter ending 9/30/2021 filed by Giti Tire Manufacturing (USA) pursuant to Revitalization Agreement Between South Carolina Coordinating Council for Economic Development, filed 10/23/2021. On File.

⁸¹ Interview with LaVera Shealy. February 24, 2022. On File

⁸² Ibid.

The questions raised by this case study include how a U.S. company affiliated with a large, wealthy foreign parent corporation qualified for PPP funds and whether Giti devoted 60% of the loan proceeds to payroll costs as required by the SBA to qualify for loan forgiveness. A related question is whether SBA plans to audit the nearly \$10 million in PPP loan proceeds to Giti Tire to determine whether any claw-back effort might be appropriate.

Case Study 3: Fast-Food Companies Take Millions in PPP As Workers Report Rampant Workplace Violations

Fast-food and food service workers became an unexpected face of the pandemic, expanding the category of “essential worker” to include not just healthcare and emergency service workers, but workers in industries that remained open throughout the height of COVID-19 outbreaks and lockdowns.⁸³ Fast-food workers, whose work has been denigrated and undervalued for years, were seen as providing essential services for the overworked healthcare workers that needed quick meal options coming from long hospital shifts. But from the start, many of these workers raised that providing these essential services put them at risk in an industry known for low wages and poor working standards. They also questioned whether their workplaces would take adequate safety precautions to keep them safe through an unprecedented public health crisis.⁸⁴ According to analysis from *The Intercept*, 2,389 McDonald’s franchises collected about \$1.3 billion in PPP loans of which \$31 million was spent on paying rent to McDonald’s headquarters, which refused to grant rent forgiveness to franchisees.⁸⁵ This refusal may have directed funds away from keeping workers on payroll to paying the McDonald’s corporation rent.

During the COVID-19 pandemic, the Fight for \$15 and a Union developed a worker complaint system to help fast-food workers monitor health and safety conditions in their workplaces and submit worker complaints to county health departments, as well as Cal/OSHA and other agencies. Using available SBA data, the Fight for \$15 and a Union found that in California, 99% of franchised McDonald’s locations (approximately 1,195 out of 1,202 locations) are operated by franchisees that received PPP funds.⁸⁶ In the first 15 months of the pandemic, McDonald’s franchisees in California received at least \$246.4 million in PPP loans, and 95% of all fast-food franchises in California where workers filed health and safety complaints received PPP loans.⁸⁷ Since March 2020, the Fight for \$15 and a Union found that California fast-food workers filed over 300 complaints regarding alleged health and safety, wage theft, management retaliation and a WARN Act violation with relevant authorities, alleging failures to take appropriate steps to

⁸³ Ruggless, Ron. “CDC vaccine plan prioritizes foodservice workers as ‘essential.’” *National Restaurant News*. December 22, 2020. <https://www.nrn.com/operations/cdc-vaccine-plan-prioritizes-foodservice-workers-essential>

⁸⁴ Taylor, Kate. “Why fast-food workers are considered essential, even as employees worry they could risk catching or spreading coronavirus at work.” *Business Insider*. March 26, 2020. <https://www.businessinsider.com/coronavirus-why-fast-food-workers-essential-2020-3>

⁸⁵ Brown, Claire, H and Jessica Fu. “McDonald’s Franchises Planned to Pay Tens of Millions in PPP Loan Dollars to Corporate HQ.” *The Intercept*. April 21, 2022. <https://theintercept.com/2022/04/21/covid-mcdonalds-rent-ppp-loans/>

⁸⁶ The Fight for \$15 and a Union, CA. [Memo]. “Fast-food Industry Participation in the Paycheck Protection Program.” July 23, 2021. https://docs.google.com/document/d/12zwGTXy7_Gd5uI1zYulGeoUv28TfvvK6/edit . Analysis of PPP loan data released by the U.S. Department of the Treasury as of March 2, 2021.

⁸⁷ PPP loan data downloaded and analyzed as of March 2, 2021.

protect them at work, including requiring workers to work sick, denying workers sick pay, failing to exclude sick and exposed workers from the workplace, and retaliating against workers for seeking improvements in working conditions.⁸⁸

Many worker complaints were specifically linked to the safety protocols to combat COVID-19. In addition, however, many workers allegedly continued to face illegal and unsafe working conditions including wage theft, being targets of violent crime, and being physically and verbally threatened and abused by managers and people associated with management.⁸⁹ The range of worker complaints underscores that these concerns in the fast-food industry continued even as fast-food workers were being heralded as providing critical services during the COVID-19 pandemic.

For example, Delia Vargas, a McDonald's worker in Oakland, California, works at a franchise on Telegraph Avenue owned by the Edward J and Valerie Smith Family LLP,⁹⁰ which owns several franchises and received over \$1 million in PPP loans.⁹¹ On May 28, 2020, 23 McDonald's workers from that location submitted a detailed complaint to the Alameda County Public Health Department.⁹² The complaint alleged that, in May 2020, a few workers that reported or demonstrated clear symptoms of COVID-19 were told to come to work or continue working their shifts. The complaint alleges a failure to properly quarantine exposed workers, contact trace, or sanitize in the store. The workers said that, when workers at this location fell ill, they were expected to come to work sick unless someone could cover their shift. Workers also reported that this location did not enforce mask wearing or social distancing. In fact, the workers alleged that they were at one point told to use dog diapers as masks.⁹³ Their May 28 complaint further alleged that 26 employees were on strike at their location "because McDonald's has put us, our families and our community at risk. We are ready to help but feel we should not have to go on strike to protect our families and to keep the public safe."⁹⁴ Some workers later filed a

⁸⁸ Details of workplace conditions are derived from health and safety complaints filed by fast-food workers assisted by the Fight for \$15 and a Union, specific complaints cited below. Most of the 275 health and safety complaints have received no meaningful response from Cal/OSHA or county health departments, but 13 complaints have received a letter inspection and three have received citations following in-person inspections. More than half of the 60 wage theft complaints are waiting for an initial hearing date from the California Office of the Labor Commissioner and the remainder are in the process of settling, have been settled, or are not being pursued by complainants.

⁸⁹ *Id.*

⁹⁰ McDonald's USA, LLC. Franchise Disclosure Document. Issued May 1, 2021. On file

⁹¹ See PPP Loan Data. Edward J And Valerie Smith Family LLP. FederalPay.org.

<https://www.federalpay.org/paycheck-protection-program/edward-j-and-valerie-smith-family-llp-vallejo-ca> .

⁹² Rodriguez, Angeli et al. "Emergency Public Health Complaint re: McDonald's, 4514 Telegraph Avenue, Oakland, California." Submitted to Alameda Public Health Department. May 28, 2020. On file.

⁹³ Phillips, Justin. "McDonald's workers in Oakland take further legal action against restaurant amid wave of COVID-19 cases." *San Francisco Chronicle*. June 16, 2020. <https://www.sfchronicle.com/food/article/McDonald-s-workers-in-Oakland-take-further-15344387.php>

⁹⁴ *Ibid.*

lawsuit against their employer.⁹⁵ Under a settlement, the restaurant agreed to implement a variety of safety measures, including social distancing, contact tracing, and paid sick leave.⁹⁶

Maria Sabina, an employee at an Oakland McDonald's who filed a health complaint with Alameda Public Health Department on November 5, 2020, alleged similar issues in her workplace during the pandemic.⁹⁷ The owners of her franchise,⁹⁸ Haynes Family Limited Partnership, received \$1.1 million in PPP loans.⁹⁹ Maria's complaint to the county health authority alleged that she observed no enforcement of mask wearing, social distancing, or sanitizing. After some employees received positive COVID-19 tests, Maria alleged there was no quarantining protocol. She also worried that she would be punished for taking sick days, which she thought her employer had done before the pandemic. According to Maria, "I do not feel that McDonald's is keeping me safe, and I would like you to enforce public health orders, so I don't have to fear for my health and the health of my family when I go to work."¹⁰⁰ At another Haynes Family Limited-owned McDonald's, also in Oakland, workers complained that they were not informed when employees tested positive for COVID-19. They alleged that no proper contact tracing or quarantining was put in place, that employees were not offered paid leave to quarantine, not provided masks and that social distancing guidelines were not enforced.¹⁰¹

Maria Yolanda, who is employed at a Subway in San Jose, CA, works for the franchise owner, Rajiv Kohli, who received nearly \$906,000 in PPP loans and nearly \$286,000 in Restaurant Revitalization Fund loans under a variety of different corporate entities.¹⁰² The latter program was established in the March 2021 American Rescue Plan Act and was also administered by the Small Business Administration. Maria alleged that wage theft occurred in her workplace

⁹⁵ Phillips, Justin. "McDonald's workers in Oakland take further legal action against restaurant amid wave of COVID-19 cases." San Francisco Chronicle. June 16, 2020. <https://www.sfchronicle.com/food/article/McDonalds-workers-in-Oakland-take-further-15344387.php>

⁹⁶ Scheiber, Noam. "McDonald's Franchise Settles Suit Involving 'Dog Diaper' Masks." NY Times. April 12, 2021. <https://www.nytimes.com/2021/08/12/business/mcdonalds-dog-diapers.html>.

⁹⁷ Sabina, Maria. "Environmental Health Complaint for the McDonald's at 2520 E 12th St Oakland, CA." Submitted to Alameda Public Health Department and filed with Cal/OSHA. November 5, 2020. On file.

⁹⁸ State of California, Department of Industrial Relations Division of Occupational Safety and Health, Citation and Notification of Penalty, Haynes Family Limited Partnership, Inspection # 1503099. Issued on 4/5/2021.

https://www.dir.ca.gov/dosh/Coronavirus/Citations/04.05.2021-Haynes-Family-Limited-Partnership-DBA-McDonalds-Of-Oakland.No.1666_1503099.pdf, McDonald's USA, LLC. Franchise Disclosure Document. Issued May 1, 2021. On file.

OSHA Notice of no violation after inspection (12/23/21). Inspection Completed 12/17/2021. Other agencies, no response.

⁹⁹ See PPP Loan Data. Haynes Family Limited Partnership. FederalPay.org. <https://www.federalpay.org/paycheck-protection-program/haynes-family-limited-partnership-san-leandro-ca>.

¹⁰⁰ Sabina, Maria. "Environmental Health Complaint for the McDonald's at 2520 E 12th St Oakland, CA." Submitted to Alameda Public Health Department and filed with Cal/OSHA. November 5, 2020. On file.

¹⁰¹ Arroyo, Imelda. "COVID-19 Compliance-Related Health and Safety Complaint, McDonald's, 6300 East 14th St, Oakland CA. On file.

¹⁰² Sainato, Michael. "We'll be heard: California could grant fast food workers unprecedented power." The Guardian. March 1, 2022. <https://www.theguardian.com/us-news/2022/mar/01/california-fast-food-workers-bill-fast-recovery-act-and-Tracking-PPP>, ProPublica, <https://projects.propublica.org/coronavirus/bailouts/>.

Perez, Berta, et al. "Subway, 330 E Hamilton Ave C, Campbell CA 95008; Subway, 980 S Winchester Blvd, San Jose CA 95128 - Please see Wage Claims, attached: Berta Perez, Margarita Garcia, Maria Y. Torres, Petra Pedroza - Please see related Health Complaint filed with Cal/OSHA November 4, 2021, attached." Submitted to: Labor Commissioner's Office, Division of Labor Standards Enforcement - San Jose. February 4, 2022. Pg. 2. On File.

throughout the pandemic, claiming that management changed time clock records, workers were required to work off the clock, and there was no sick pay or COVID-19 sick pay.¹⁰³ Four other employees alleging that their tips were stolen, they missed meal and rest breaks, and accrued sick hours disappeared from their paychecks, filed wage claims of \$41,192.13 with the San Jose Labor Commissioner's Office on February 4, 2022.¹⁰⁴ Additionally, the employees alleged that they had to contend with an unsafe workplace where they were left to work alone on some shifts, which made it impossible to take breaks. The complaint also alleged that Berta Perez, who was one of the four employees, was working alone in January 2021 when she was assaulted at gunpoint.¹⁰⁵

This case study highlights the contradictions of granting PPP funds to help businesses and workers survive the pandemic without requiring any standards of conduct for the businesses. Recipients receiving COVID relief funds should have had to adhere to COVID health and safety protocols including limiting workers' exposure to COVID-related illness, providing personal protective equipment, and providing paid and protected sick days. Additional questions for the SBA include whether it analyzed whether those franchises were subject to, or may have violated, the SBA limit of \$20 million per corporate group; what the status of forgiveness on these loans is; and what information the SBA has sought about fast-food franchises operations in making loan forgiveness decisions.

Case Study 4: Private Equity Companies used Lobbying and Political Contributions to Win PPP Access for their Portfolio Companies

The fourth case study focuses on private equity firms that successfully lobbied to enable the companies they backed with substantial reserves – their portfolio companies – to obtain PPP loans and benefit from an emergency lending program ostensibly created for struggling small businesses. This case study was developed as part of a larger joint research project conducted by the conveners of the COVID Oversight Coalition, Americans for Financial Reform, and Public Citizen.

In 2020, in the halls of Congress and at government agencies, private equity firms lobbied to allow their portfolio companies to gain access to public funds through the various relief programs that Congress created in response to the pandemic, including the PPP.¹⁰⁶ A review of federal lobbying data shows that at least 28 private equity (PE) firms whose holdings received PPP money either directly lobbied the federal government on COVID issues or did so through

¹⁰³ Perez, Berta, et al. "Subway, 330 E Hamilton Ave C, Campbell CA 95008; Subway, 980 S Winchester Blvd, San Jose CA 95128 - Please see Wage Claims, attached: Berta Perez, Margarita Garcia, Maria Y. Torres, Petra Pedroza - Please see related Health Complaint filed with Cal/OSHA November 4, 2021, attached." Submitted to: Labor Commissioner's Office, Division of Labor Standards Enforcement - San Jose. February 4, 2022. Pg. 2. On File.

¹⁰⁴ Ibid. This complaint has received no meaningful response. All workers who filed wage claims are waiting for a hearing date.

¹⁰⁵ Ibid.

¹⁰⁶ Warmbrodt, Zachary. "Wall Street Titans Lobby for a Cut of Small Business Bailout." *Politico*. April 1, 2020. <https://www.politico.com/news/2020/04/01/wall-street-titans-lobby-for-a-cut-of-small-business-bailout-160298> The Lobbying Disclosure Act requires active lobbying firms to file publicly available, quarterly activity reports with the Clerk of the U.S. House of Representatives and the Secretary of the U.S. Senate. Some of the information in this case study is taken from those reports.

their portfolio companies. These PE firms’ portfolio companies received at least \$344 million in PPP funds despite collectively having access to \$554 billion in reserves – sometimes referred to as “dry powder” – during the course of 2020.¹⁰⁷ The fact that the portfolio companies were backed by private equity firms controlling vast amounts of capital raises the question of whether the portfolio companies should have been given access to emergency relief programs, especially those like the PPP that were intended for struggling small businesses.

The employees and political action committees of these private equity firms and their subsidiaries made at least \$79 million combined in political contributions during the 2019-2020 election cycle.¹⁰⁸ In addition, these private equity firms and their portfolio companies spent \$35 million on lobbying in 2020.¹⁰⁹ Lobbying disclosure forms identify issue areas, but do not break out amounts spent by issue area, which means the \$35 million spent on lobbying expenses addressed multiple issues, not just federal COVID relief payments, but the total sum certainly contributed to their impact and influence overall.

Private Equity Firms That Lobbied on COVID Issues and Whose Portfolio Companies Received PPP Money
(sorted by those that spend the most on lobbying in 2020)

PE Firm	PPP Money Received by Portfolio Companies	2020 Cycle Campaign Contributions	Year 2020 Lobbying (on all Issues) *
KKR	\$27,090,418	\$3,556,274	\$6,740,000
The Blackstone Group	\$21,874,074	\$43,626,109	\$5,649,000
Apollo	\$16,330,063	\$3,772,284	\$4,730,000
The Carlyle Group	\$10,890,132	\$4,251,452	\$3,740,000
American Investment Council**	n/a	\$393,317	\$2,180,000
Morgan Stanley Capital Partners	\$90,190	\$4,333,059	\$2,070,000
BlackRock Private Equity Partners	\$151,065	\$1,789,117	\$1,830,000
Brookfield Asset Management	\$4,968,312	\$623,848	\$1,655,000
TPG Capital	\$18,199,115	\$1,711,588	\$1,560,000
Ares Capital	\$23,060,693	\$460,909	\$1,420,000

Sources: Database compiled by the Anti-corruption Data Collective, Americans for Financial Reform and Public Citizen; Open Secrets; and the Project on Government Oversight.

* Includes lobbying by PE firms and their subsidiaries.

** Trade association of private-equity industry

¹⁰⁷ Based on analysis of databases compiled by the Anti-Corruption Data Collective, Americans for Financial Reform, and Public Citizen and data furnished by the Project on Government Oversight.

¹⁰⁸ Analysis of data provided by the Center for Responsive Politics (www.opensecrets.org).

¹⁰⁹ Analysis of data provided by the Center for Responsive Politics (www.opensecrets.org).

The relevant lobbying disclosure forms list 223 separate lobbyists for the private equity firms and their portfolio companies who are identified as lobbying specifically on COVID issues in 2020.

Most Lobbyists Working on COVID Issues in 2020 By PE Firms Plus Their
Portfolio Holdings

PE Firm	Lobbyists Hired on Covid Issues in 2020
Apollo	58
KKR	40
American Investment Council (trade association for the private equity industry)	29
Carlyle Group	22
Leonard Green & Partners	22
Ares Capital	20
Blackstone	14
ABRY Partners	14
Morgan Stanley	11
American Securities	10

Sources: Database compiled by the Anti-Corruption Data Collective, Americans for Financial Reform and Public Citizen; Open Secrets; and the Project on Government Oversight.

To understand the significance for PPP purposes, consider the holdings of three related private equity firms: American Securities, Ares Capital, and Leonard Green & Partners. The three firms’ portfolio companies collectively obtained \$77 million through multiple PPP loans. Those PPP loans included \$18.2 million paid to Aspen Dental Services, which is owned by all three of the PE firms.¹¹⁰ In April 2020, shortly after the PPP loan distributions commenced, Aspen Dental’s CEO reportedly sent a message to staff stating, “Two weeks ago, we worked with practice owners to submit PPP loan applications... We’re thrilled to report that every loan request we submitted has been accepted.”¹¹¹

In February 2020, just as the first cases of COVID-19 were being diagnosed in the United States, Aspen Dental paid a \$50 million dividend to its private equity owners.¹¹² In December 2020, after collecting more than \$21 million in PPP money and other taxpayer-financed COVID relief funds, Aspen Dental paid another dividend to its private equity owners. The size of that dividend has not been disclosed.¹¹³ Aspen Dental’s three private equity holders had a combined \$72 billion in reserves in 2020.¹¹⁴

A second example involves nine portfolio companies backed by the Blackstone Group, one of the largest PE firms in America. Together, those portfolio companies obtained a total of \$21.9

¹¹⁰ Data provided by the Project on Government Oversight.

¹¹¹ Scheer, David. “Rescue Cash Too Hot for KKR Proves Irresistible to Many PE Peers.” *Bloomberg Law*. July 2, 2020.

<https://news.bloomberglaw.com/private-equity/private-equity-on-edge-with-u-s-plan-to-name-relief-recipients>

¹¹² Pitchbook. Aspen Dental Management company profile. Accessed May 2021.

¹¹³ Pitchbook. Aspen Dental Management company profile. Accessed May 2021.

¹¹⁴ Database compiled by the Anti-Corruption Data Collective, Americans for Financial Reform and Public Citizen.

million in PPP money.¹¹⁵ During the same period, among those whom Blackstone (through its subsidiary Blackstone Administrative Services Partnerships) hired to lobby on COVID issues on its behalf was Jeffrey Miller, a top fundraiser for Donald Trump’s 2020 presidential campaign. Miller lobbied Congress, the Small Business Administration and other federal agencies on the CARES Act and other COVID “financial relief legislation.”¹¹⁶ The Blackstone Group also made \$43.7 million in political contributions during the 2020 election cycle which included more than \$30 million in contributions from Blackstone CEO Stephen Schwarzman to super PACs supporting Senate and presidential candidates.¹¹⁷

Next, consider the portfolio companies backed by Kohlberg Kravis Roberts (KKR), another large private equity firm with enormous access to capital. The KKR portfolio companies received \$47.8 million in PPP money, while KKR and its executives made \$3.5 million in political contributions during the 2020 election cycle and spent \$6.7 million on lobbying (on all issues) in 2020.¹¹⁸ Most of KKR’s COVID-oriented lobbying was done through its subsidiaries. For instance, KKR holding Envision Healthcare, a medical staffing firm, was accused of billing patients exorbitant fees for out-of-network physicians at in-network facilities.¹¹⁹ Envision Healthcare engaged lobbying powerhouse Brownstein Hyatt Farber Schreck at the outset of the pandemic strictly to lobby on “issues related to COVID-19 relief” and the CARES Act, which established the PPP. KKR and its subsidiaries deployed a total of 40 lobbyists to work on COVID issues in 2020.¹²⁰

Still another example involves entities owned by affiliated units of private equity firm Apollo. Together, those entities obtained \$16.3 million in PPP money.¹²¹ That sum, however, paled in comparison to money distributed to Apollo’s holdings through other federal COVID relief programs. For instance, LifePoint Health, a network of hospitals owned by Apollo, received \$1.4 billion in payments and loans through other COVID relief programs.¹²² Apollo employees made \$3.8 million in political contributions in the 2020 election cycle, and the firm’s units spent \$4.7 million on lobbying in 2020.¹²³ Lobbying efforts included \$1.9 million paid by various Apollo units to Brownstein Hyatt Farber Schreck to lobby on “issues related to COVID-19 relief” and

¹¹⁵ Data provided by the Project on Government Oversight.

¹¹⁶ Evers-Hillstrom, Karl. “Trump-tied Lobbyists’ Revenues Peaked in President’s Final Year.” *Open Secrets*. January 28, 2021 and Analysis of records filed with the Secretary of the Senate pursuant to the Lobbying Disclosure Act, <https://lda.senate.gov/filings/public/filing/e05982ac-21d1-4ff8-98e0-a83965c17df0/print/> <https://www.opensecrets.org/news/2021/01/trump-tied-lobbyists-peaked-in-final-year/> and <https://www.forbes.com/sites/michelatindera/2021/02/25/these-billionaire-donors-spent-the-most-money-on-the-2020-election/?sh=12a9a31914ce>.

¹¹⁷ Data from the Center for Responsive Politics (www.opensecrets.org), <https://www.opensecrets.org/orgs/blackstone-group/summary?id=D000021873>.

¹¹⁸ Data from the Project on Government Oversight and the Center for Responsive Politics (www.opensecrets.org).

¹¹⁹ Cooper, Zach, Fiona Scott Morton, and Nathan Shekita. “Surprise! Out-of-Network Billing for Emergency Care in the United States.” *Journal of Political Economy*. Vol. 128, no. 9 (2020).

¹²⁰ Analysis of records filed with the Secretary of the Senate pursuant to the Lobbying Disclosure Act.

¹²¹ Data provided by the Project on Government Oversight.

¹²² Morgenson, Gretchen. “Companies backed by private-equity firms got \$5 billion out of \$2 trillion in federal Covid relief.” *NBC News*. Sept. 15, 2021. <https://www.nbcnews.com/business/corporations/companies-backed-private-equity-firms-got-5-billion-out-2-n1279058>

¹²³ Data provided by the Project on Government Oversight and the Center for Responsive Politics www.opensecrets.org; <https://www.opensecrets.org/orgs/apollo-global-management/summary?id=D000021845>.

other matters. All told, Apollo fielded 58 lobbyists to work specifically on COVID issues in 2020.¹²⁴

Consider next Kindred Healthcare, owned by two private equity firms in 2020. The firm hired lobbyists to advocate specifically on the PPP loan program as well as other COVID relief programs.¹²⁵ The company's facilities obtained \$2.2 million in PPP money along with \$238.7 million in grants and loans through other pandemic relief programs.¹²⁶ The private equity owners, Welsh, Carson, Anderson & Stowe and TPG Capital, spent \$1.8 million combined on lobbying (on all issues) and \$3.3 million in political contributions.¹²⁷

Fast-food restaurants Burger King, Popeyes, and Tim Hortons obtained \$7.7 million in PPP funds.¹²⁸ These brands are all owned by Restaurant Brands International, which is in turn owned by private equity firm, 3G Capital. Restaurant Brands International paid Washington, D.C. law firm Akin Gump \$240,000 to lobby for "strategic and policy advice on COVID-19 stimulus legislation and franchise-related issues" and for "policy advice related to small business and the Paycheck Protection Program," among other issues in 2020.¹²⁹

Aimbridge Hospitality provides an example of a large hospitality chain that has access to substantial capital yet applied for and obtained millions in PPP funds and lobbied Congress on issues related to the Paycheck Protection Program. The firm holds a portfolio of over 1,500 properties in 50 states and 23 countries.¹³⁰ On January 7, 2019, private equity firm Advent International, which has \$86 billion in assets under management, acquired a majority stake in Aimbridge.¹³¹ Aimbridge operates the Merriweather Lakehouse Hotel in Columbia, Maryland,¹³² and the Windsor Court New Orleans hotel,¹³³ which received \$2.5 million¹³⁴ and \$4.6 million¹³⁵ in PPP funds, respectively.

¹²⁴ Analysis of records filed with the Secretary of the Senate pursuant to the Lobbying Disclosure Act.

¹²⁵ Ibid.

¹²⁶ Data provided by the Project on Government Oversight.

¹²⁷ Data provided by the Center for Responsive Politics www.opensecrets.org, <https://www.opensecrets.org/orgs/welsh-carson-et-al/summary?id=D000000402>, and <https://www.opensecrets.org/orgs/tpg-capital/summary?id=D000022278>.

¹²⁸ Data provided by the Project on Government Oversight.

¹²⁹ Analysis of records filed with the Secretary of the Senate pursuant to the Lobbying Disclosure Act, <https://lda.senate.gov/filings/public/filing/b17ab57e-a6b4-432d-bd3d-f9eab17d3a76/print/> and <https://lda.senate.gov/filings/public/filing/4f46c4ed-0a9f-4c08-86b8-d0b80845db76/print/>.

¹³⁰ Aimbridge Hospitality. [Website]. "History and Milestones." <https://aimbridgehospitality.com/history-and-milestones/>

¹³¹ Advent International. [Press Release]. "Advent International to acquire majority stake in leading third-party hotel operator Aimbridge Hospitality." January 7, 2019. <https://www.adventinternational.com/advent-international-to-acquire-majority-stake-in-leading-third-party-hotel-operator-aimbridge-hospitality/>

¹³² Aimbridge Hospitality. [Press Release]. "Aimbridge Hospitality, Announces Multiple Managed Properties Are Rebound Ready, Emerging From The Pandemic." April 22, 2021. <https://www.hospitalitynet.org/news/4104051.html>

¹³³ The "apply online" section of the Windsor Court Hotel's website links to Aimbridge Hospitality's hiring website. See <https://windsorcourthotel.com/careers/>.

¹³⁴ <https://www.federalpay.org/paycheck-protection-program/imh-columbia-llc-columbia-md>

¹³⁵ See <https://www.federalpay.org/paycheck-protection-program/windsor-court-hotel-partners-llc-plano-tx> and <https://www.federalpay.org/paycheck-protection-program/windsor-court-hotel-partners-llc-new-orleans-la>. "Windsor Court Hotel Partners" is the entity that owns the Windsor Court New Orleans hotel (Page 30, https://www.sec.gov/Archives/edgar/data/1004158/000153949713001038/n258_fwp1.htm).

Aimbridge appeared in federal lobbying records in the second quarter of 2020, just after the pandemic began ravaging the United States. Its lobbying report that quarter focused on “implementation of and potential changes to the Paycheck Protection Program.”¹³⁶ According to lobbying reports filed in subsequent quarters, the company lobbied on “potential assistance to the hospitality industry,” “issues related to Main Street lending facilities for real estate businesses,” and “issues related to the second round of Paycheck Protection Program to be made available for hospitality businesses.”¹³⁷ Aimbridge and a lobbying firm it had retained both submitted filings after the first quarter of 2021 saying Aimbridge’s lobbying activities had been terminated.¹³⁸

Lastly, The American Investment Council, a key trade association for the private equity industry, filed lobbying reports indicating that it spent \$2.2 million on lobbying in 2020. A total of 29 of the lobbyists it financed advocated specifically on COVID issues.¹³⁹

This final case study illustrates how wealthy private equity firms spent freely on lobbying and campaign contributions and secured millions in PPP loans for their portfolio companies. These companies could have utilized the substantial reserves held by their private equity backers, but instead, they obtained PPP funds that might otherwise have gone to struggling small businesses. Given that 99% of PPP loans have now been forgiven, it may be that none of the PPP loans just described was repaid. It is also impossible to know how many of those PPP loans have been audited by SBA to ensure compliance with PPP loan requirements.

Section 3: PPP Loan Forgiveness

The PPP could have used its loan forgiveness process to ensure transparency and oversight of the program. It would have allowed SBA to provide ongoing oversight of the program even after funds were distributed to determine if public funds were spent on the right borrowers who used the program for its intended purposes. If a determination was made that the borrower was ineligible or misused loan proceeds, SBA could then decide to direct the borrower to repay the loan amount. The borrower would still have benefited from securing a timely, low-cost loan during the emergency, but would then be required to repay the loan without relying on public dollars. The loan repayment would not only reduce public expenditures, but it would also free up public funds for other COVID relief purposes and perhaps also increase the fairness of the distribution of PPP loan proceeds.

To qualify for full forgiveness of a PPP loan, the law required that at least 60% of the loan proceeds be spent by the loan recipient on maintaining employee and compensation levels, payroll, and other eligible expenses. But to date, SBA has forgiven between 80-90% of outstanding loans without verifying that this standard has been met. Our case studies underscore

¹³⁶ Records filed with the Secretary of the Senate pursuant to the Lobbying Disclosure Act, <https://lda.senate.gov/filings/public/filing/08a87efe-b111-4811-8b4d-f130c9e9c3ab/print/>

¹³⁷ Records filed with the Secretary of the Senate pursuant to the Lobbying Disclosure Act, <https://lda.senate.gov/filings/public/filing/e7508a98-25e5-4aff-bbd8-962f2be143a3/print/>

¹³⁸ Records filed with the Secretary of the Senate pursuant to the Lobbying Disclosure Act,, <https://lda.senate.gov/filings/public/filing/f0f5f176-2924-43de-a55f-11da7f0a17f8/print/> and <https://lda.senate.gov/filings/public/filing/f0f5f176-2924-43de-a55f-11da7f0a17f8/print/>

¹³⁹ Analysis of records filed with the Secretary of the Senate pursuant to the Lobbying Disclosure Act.

that in SBA's rush to forgive loans, some of the largest PPP loan recipients that received loans of \$150,000 and above may have had their loans forgiven even if they did not meet this statutory requirement. SBA does not appear to have requested evidence that the standard was met, much less required such evidence before forgiving loans. SBA has also indicated that it plans to conduct very few loan audits and has released very limited loan forgiveness data to the public. Of course, had the right data been collected at the outset, the SBA would not have to conduct backward looking audits of forgiven loans.

Presently, given the failures to track how recipients used their loans, SBA must thoroughly audit loans where there is evidence of potential fraud or misuse. Our case studies provide worker testimony, data demonstrating that certain borrowers would not have met the 60% threshold due to closures or layoffs, and evidence that workers did not see the benefits of the loans that their employers received. Making loan forgiveness decisions based on this information would have created a powerful incentive for PPP loan recipients to provide data on how loan proceeds were spent, and the number of jobs or wages saved. At this point, this information must be used to determine if claw backs are appropriate for these recipients. If a recipient did not maintain jobs or terminated employees while at the same time boosting executive pay, issuing stockholder dividends, buying back stock, or engaging in other conduct suggesting misuse of PPP funds, SBA should require the problematic PPP loan to be repaid. SBA could also determine whether any entity that misused its PPP funds should be barred from receiving future loan relief.

Additional recipient data would have helped Congress, auditors, and the public better evaluate the overall effectiveness of the program. More PPP loan data could have also enabled them to gain a clearer and more complete understanding of who applied for PPP loans, which industries obtained them, total loan amounts extended by industry sector, which loans were forgiven for how much, the number and types of jobs or wages saved, and other loan recipient and employee demographics. This data would have helped Congress, the administration, and the public understand the impact of the program, decide on whether the PPP loans were worth the cost and whether a future emergency lending program should be structured in a similar way despite the risks of misallocation of funds, abuse, and fraud.

Section 4: Recommendations

The objective of this paper is twofold: to urge SBA and other actors to take steps to achieve a more equitable finish to the PPP program, and to convey lessons learned from the PPP to improve similar programs in the future. The PPP has no plans to issue new loans, but the American Rescue Plan will continue to disburse funds for years to come. The Biden administration is also advocating, and Congress is considering, additional appropriations for COVID relief. Concerns about PPP fraud have increased, and President Biden recently appointed a chief prosecutor to investigate and potentially prosecute billions of dollars in pandemic-related fraud.¹⁴⁰

¹⁴⁰ The White House. [Statement]. "Statement of President Joe Biden on the Justice Department Naming a Chief Pandemic Prosecutor." March 10, 2022. <https://www.whitehouse.gov/briefing-room/statements-releases/2022/03/10/statement-of-president-joe-biden-on-the-justice-department-naming-a-chief-pandemic-prosecutor/>.

Considering the still active COVID relief programs, the COVID Oversight Coalition recommends the following six reforms to achieve a more equitable recovery in the future.

- (1) **Stronger guardrails upfront:** The PPP would have been more successful in distributing funds fairly had better criteria, transparency, and other program safeguards been established upfront in the law and in the rules implementing the program. For example, in developing the statute, Congress should have required loan applicants to project the number of jobs to be saved if a loan were received and provide evidence of the number of jobs saved after funds were disbursed. The law or implementing rules should have also barred borrowers from using loan proceeds for stock buybacks, dividends, bonuses, campaign contributions and lobbying or compensation of higher-paid professionals. In addition, the law or implementing rules should have ensured that companies associated with large parent companies did not qualify for the program. Previous SBA rules excluding casinos, lobbying firms, and elite law firms from receiving small business loans, or companies backed by parent corporations or private equity firms with substantial reserves, should also have extended to the PPP. Still another issue involves SBA's initial refusal to follow its normal procedure of providing detailed public data on all loans, indicating the exact loan amount and the recipient. Instead, the lack of PPP transparency led to confusion, public distrust, and poor oversight. A useful exercise would be to have SBA, in consultation with the OMB and PRAC, draw up model rules now for implementing the next emergency lending program, including provisions related to loan eligibility safeguards, data reporting requirements, permissible uses of loan proceeds, and public disclosure of loan details.

- (2) **Improved practices and standards for lenders:** At the start of the pandemic, larger banks had greater access to PPP funds than smaller lenders, which led to an unequal distribution of loans, disfavoring smaller businesses.¹⁴¹ Better planning from the outset could have led to loans going to a greater variety of lenders serving a variety of demographic communities to minimize inequities. There was also confusion among large and small banks about which companies were eligible for funds, a problem which could have been addressed with more information from SBA. The law or implementing rules could have also required lenders to conduct extensive outreach to unbanked businesses and more aggressively screen for, prevent, and report signs of loan fraud, possibly by imposing a reduced percentage of loan repayment at financial institutions where loan fraud exceeded a threshold amount such as \$1 million. Another possible measure would be to bar banks from hiring fee-based fintech firms to act as loan brokers or hold banks responsible for any frauds arising from loans issued by such fintech firms. Again, a useful exercise would be to have SBA, in consultation with OMB and PRAC, draw up model rules for selecting lenders to implement the next emergency lending program. This would establish standards for lenders, including requirements for lenders to verify and prevent fraud, resolve their use of fintech firms, and create a streamlined process to efficiently

¹⁴¹ David Autor et al., "The \$800 Billion Paycheck Protection Program: Where Did the Money Go and Why Did It Go There?" *National Bureau of Economic Research* (2022), 6.
https://www.nber.org/system/files/working_papers/w29669/w29669.pdf

disburse funds while ensuring adequate guardrails preventing misuse and fraud are in place.

- (3) **More loan audits:** SBA once announced that it would audit every PPP loan over \$2 million but has since backtracked, promising to audit only a selection of those loans.¹⁴² Loans of less than \$2 million – which make up the vast majority of PPP loans – appear unlikely to undergo any review at all. Loan recipients who were ineligible, misused loan proceeds, or committed outright fraud are the clear beneficiaries of this weak system for loan audits. The public will lose billions of dollars because of it. SBA, in consultation with OMB and PRAC, should establish model rules for audits of emergency loans, including dedicating resources and building in deadlines for audit work and reports upfront when the emergency loan program is first established, ensuring ongoing audits during program operations. A system to prioritize firms that received large loans and or exhibit suspect patterns suggesting fraud should also be developed, as well as systems for making greater use of random audits to uncover problems including with smaller loans. In addition, model rules should be developed for enlisting auditors at other agencies if necessary and possible, and routinely pausing loan forgiveness until planned audits are complete.
- (4) **Stricter loan forgiveness standards:** Where emergency loan funds are disbursed quickly, loan forgiveness reviews should be used as an opportunity to ensure loan standards were met. Currently, weak PPP loan forgiveness criteria, reporting guidelines, and tracking of funds mean that Congress, auditors, and the public have insufficient information on the total amount of taxpayer-financed loans that have been forgiven, with reports varying from 80-90% of the outstanding PPP loans.¹⁴³ Evidence suggests that no more than 34% of the \$800 billion in loan funds were spent on workers' wages,¹⁴⁴ and that fraud rates are high. In addition, as shown by the case studies above, many businesses obtained loans under questionable circumstances and without supplying information demonstrating they met the law's requirements. On top of that, SBA has provided very little public information about which PPP loans have been forgiven, when, and how many public dollars were at stake. The SBA rush to forgive PPP loans while releasing limited and delayed public data undermines the ability of Congress, auditors, and the public to track the program's effectiveness. To ensure recovery funds are used for their intended purposes, government agencies should implement more rigorous forgiveness criteria, make forgiveness decisions only after needed information is provided, and publish timely public loan forgiveness data with particular attention to recipients of loans above \$150,000. Loan forgiveness should be contingent upon, for example, the borrower first providing data on how the loan funds were used and the extent to which the money went to payroll and job retention.

¹⁴² Dykema. [Legal Alert]. "PPP Loan Insights: Forgiveness Does Not Mean Forgotten – Part III." August 10, 2021. <https://www.dykema.com/news-insights/ppp-loan-insights-forgiveness-does-not-mean-forgotten-part-iii.html>

¹⁴³ Longo, Tracy. "SBA Has Forgiven 80% Of PPP Loans." *Financial Advisor*. January 10, 2022. <https://www.famag.com/news/sba-has-forgiven-80-of-ppp-loans-65818.html>; Tascarella, Patty. "Here's Where PPP Forgiveness Stands, Two Years After Launch of Initiative to Help Small Business Hard-hit by Pandemic." *Pittsburgh Business Times*. April 7, 2022. <https://www.bizjournals.com/pittsburgh/news/2022/04/07/where-ppp-forgiveness-stands.html>

¹⁴⁴ Ibid, page 1.

Loan forgiveness could also be used as a tool to incentivize anti-fraud efforts by establishing a strict liability standard. If a bank issued PPP loans to fraudulent borrowers and the total amount lost to fraud exceeded a specified amount such as \$1 million, SBA could reduce the loan repayment amounts to that bank by a fixed percentage or amount, for example, between 1%-5% or \$10,000-\$50,000 per million lost. SBA would need to determine the contours of a reasonable incentive to convince program lenders to take the steps needed to avoid issuing fraudulent loans. A useful exercise here, too, would be to have SBA, in consultation with OMB and PRAC, draw up model loan forgiveness rules for the next emergency lending program.

- (5) **Increased transparency:** While the PPP currently requires loan recipients to report some data on the use and impacts of the loan proceeds, most of that data is not available to the public. In addition, SBA has made only limited use of its ability to require useful disclosures from loan recipients. To enable efficient congressional, auditor, and public oversight of the effectiveness of pandemic response programs, recipients of federal funding should be required to publicly disclose key information such as the borrower’s workforce demographics and NAICS codes, the amount of loans, grants, or other benefits provided, breakdowns of how funds were used, any jobs or wages that were saved, and any loan forgiveness by amount and date. Routine, timely disclosures could make fraud easier to spot and prevent, enable better program evaluation, ensure appropriate forgiveness, help lawmakers make program adjustments, and help the public understand where tax dollars are going. To prepare for the next emergency lending program, SBA, in consultation with OMB and PRAC, should draw up model disclosure rules.
- (6) **Additional oversight funding:** Despite \$6 trillion in COVID emergency spending, since March 2020, only \$478 million of pandemic stimulus funds have reportedly been allocated to oversight functions.¹⁴⁵ Inadequate resources mean that federal watchdogs have the capacity to audit and investigate only larger programs, grants, and loans, while billions of dollars disbursed through smaller loans and grants potentially rife with fraud go unexamined. Limited funds also hinder agency efforts to track and publish accurate and timely program data essential for effective oversight. Future emergency recovery packages should incorporate funding to enable agencies to conduct proper oversight of taxpayer-financed loans, lender performance, and job and worker impacts, including identifying loan recipients that fired or didn’t rehire their workforce. In addition, existing watchdogs like the Congressional Oversight Commission, PRAC and Special IG should be resourced and fully staffed.

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¹⁴⁵ Romm, Tony. “‘Immense fraud’ creates immense task for Washington as it tries to tighten scrutiny of \$6 trillion in emergency coronavirus spending.” *Washington Post*. February 17, 2022. <https://www.washingtonpost.com/us-policy/2022/02/17/stimulus-aid-oversight-fraud/>