

TO PROHIBIT INDIVIDUALS CONVICTED OF DEFRAUDING THE GOVERNMENT FROM RECEIVING ANY ASSISTANCE FROM THE SMALL BUSINESS ADMINISTRATION, AND FOR OTHER PURPOSES

SEPTEMBER 26, 2023.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. WILLIAMS of Texas, from the Committee on Small Business, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 5427]

The Committee on Small Business, to whom was referred the bill (H.R. 5427) to prohibit individuals convicted of defrauding the Government from receiving any assistance from the Small Business Administration, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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I. PURPOSE AND BILL SUMMARY

On September 13, 2023, Rep. Williams and Rep. Mfume introduced H.R. 5427. The purpose of H.R. 5427 is to prohibit anyone convicted of defrauding the government during the COVID-19 pandemic from ever receiving a loan through the Small Business Administration.

II. NEED FOR LEGISLATION

A report released by the U.S. Small Business Administration's (SBA) Office of Inspector General (OIG) in June 2023 concluded that the SBA disbursed more than \$200 billion in potentially fraudulent loans in the pandemic relief programs. In order to provide accountability, this legislation will prohibit anyone convicted of defrauding the government during the COVID-19 pandemic from ever getting another SBA loan.

III. HEARINGS

In the 118th Congress, the Committee held one hearing examining the issues covered in H.R. 5427. On July 13, 2023, the Committee held a hearing titled "Reviewing the SBA and OIG Reports of Fraud in Pandemic Lending Programs." Inspector General Hannibal "Mike" Ware testified on the Office of Inspector General findings. Administrator Isabella Guzman was invited to testify but did not attend.

IV. COMMITTEE CONSIDERATION

The Committee on Small Business met in open session, with a quorum being present, on September 14, 2023 and ordered H.R. 5427 reported favorably to the House of Representatives. During the markup no amendments were offered.

V. COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the recorded votes on the motion to report legislation and amendments thereto. The Committee voted to favorably report H.R. 5427 to the House of Representatives at 11:49 AM.

118th Congress House Committee on Small Business Vote Record

Date: 9.14.23 Bill: H.R. 5427

Vote Time: 11:49

Republicans	Aye	Nay	Present
Mr. Luetkemeyer (MO-03)	✓		
Mr. Stauber (MN-08)	✓		
Mr. Meuser (PA-09)	✓		
Ms. Van Duyne (TX-24)	✓		
Ms. Salazar (FL-27)	✓		
Mr. Mann (KS-01)	✓		
Mr. Ellzey (TX-06)			
Mr. Molinaro (NY-19)	✓		
Mr. Alford (MO-04)	✓		
Mr. Crane (AZ-02)	✓		
Mr. Bean (FL-04)	✓		
Mr. Hunt (TX-38)			
Mr. (La-Low-ta) Lalota (NY-01)			
Chairman Williams (TX-25)	✓		
TOTALS:	11		

Mr. Chairman _____ Votes _____

Mr. Chairman _____ Off _____, Votes _____

Mr. Chairman on that vote 22 Ayes 0 Nays and 0 Present

118th Congress House Committee on Small Business Vote Record

Date: 9.14.23 Bill: H.R. 5427

Vote Time:

Democrats	Aye	Nay	Present
Mr. Golden (ME-02)	✓		
Mr. M-fume (MD-07)			
Mr. Phillips (MN-03)	✓		
Mr. Landsman (OH-01)	✓		
Mr. Mc-Gar-vey (KY-03)	✓		
Ms. Glue-sen-kamp Perez (WA-03)	✓		
Ms. (Skull- ton) Scholten (MI-03)	✓		
Mr. (Tan-a-dar) Thanedar (MI-13)	✓		
Ms. (Chew) Chu (CA-28)	✓		
Ms. Davids (KS-03)	✓		
Mr. Pappas (NH-01)	✓		
Ranking Member Nydia Velazquez (NY-07)	✓		
TOTALS:	22		

VI. SECTION-BY-SECTION OF H.R. 5427

Section 1. Assistance prohibited after fraud conviction

This section debars anyone finally convicted of a crime related to financial misconduct or making a false statement with regards to COVID-19 assistance from the federal government from receiving a business loan from the SBA for the remainder of their lifetime.

Debarment is an action that excludes an individual from future eligibility for certain government benefits or opportunities.

Finally convicted means that an individual has exhausted all opportunities to appeal a conviction or that a conviction can otherwise no longer be appealed because the time for appealing a conviction has expired.

VII. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

Pursuant to clause 3(d)(1) of House rule XIII, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974. The Committee has requested but not received from the Director of the Congressional Budget Office a cost estimate for the Committee's provisions. Once available, the cost estimate will be published in the Congressional Record.

VIII. NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

Pursuant to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a)(I) of the Congressional Budget Act of 1974, the Committee provides the following opinion and estimate with respect to new budget authority, entitlement authority, and tax expenditures. While the Committee has not received an estimate of new budget authority contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to Sec. 402 of the Congressional Budget Act of 1974, the Committee does not believe that there will be any additional costs attributable to this legislation. H.R. 5427 does not direct new spending, but instead reallocates funding independently authorized and appropriated.

IX. OVERSIGHT FINDINGS & RECOMMENDATIONS

In accordance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the oversight findings and recommendations of the Committee on Small Business with respect to the subject matter contained in H.R. 5427 are incorporated into the descriptive portions of this report.

X. PERFORMANCE GOALS AND OBJECTIVES

With respect to the requirements of clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the performance goals and objectives of H.R. 5427 are to prohibit individuals convicted of defrauding the federal government from receiving financial assistance from the SBA.

XI. STATEMENT OF DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, no provision of H.R. 5427 is known to be duplicative of another Federal program, including any program that was included in a report to Congress pursuant to section 21 of Public Law 111–139 or the most recent Catalog of Federal Domestic Assistance.

XII. CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee finds that the bill does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of rule XXI of the Rules of the House of Representatives.

XIII. FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

XIV. FEDERAL ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

XV. APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

XVI. STATEMENT OF CONSTITUTIONAL AUTHORITY

Pursuant to clause 7 of rule XII of the Rules of the House, the Committee finds that the authority for this legislation in Art. I, § 8, cl.1 of the Constitution of the United States.

XVII. CHANGES IN EXISTING LAW, MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics and existing law in which no change is proposed is shown in roman):

SMALL BUSINESS ACT

* * * * *

SEC. 16. (a) Whoever makes any statement knowing it to be false, or whoever willfully overvalues any security, for the purpose of obtaining for himself or for any applicant any loan, or extension thereof by renewal, deferment of action, or otherwise, or the acceptance, release, or substitution of security therefor, or for the purpose of influencing in any way the action of the Administration, or for the purpose of obtaining money, property, or anything of value, under this Act, shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than two years, or both.

(b) Whoever, being connected in any capacity with the Administration, (1) embezzles, abstracts, purloins, or willfully misapplies any moneys, funds, securities, or other things of value, whether belonging to it or pledged or otherwise entrusted to it, or (2) with intent to defraud the Administration or any other body politic or corporate, or any individual, or to deceive any officer, auditor, or examiner of the Administration, makes any false entry in any book, report, or statement of or to the Administration, or, without being duly authorized, draws any order or issues, puts forth, or assigns any note, debenture, bond, or other obligation, or draft, bill of exchange, mortgage, judgment, or decree thereof, or (3) with intent to defraud participates or shares in or receives directly or indirectly any money, profit, property, or benefit through any transaction, loan, commission, contract, or any other part of the Administration, or (4) gives any unauthorized information concerning any future action or plan of the Administration which might affect the value of securities, or, having such knowledge, invests or speculates, directly or indirectly, in the securities or property of any company or corporation receiving loans or other assistance from the Administration, shall be punished by a fine of not more than \$10,000 or by imprisonment for not more than five years, or both.

(c) Whoever, with intent to defraud, knowingly conceals, removes, disposes of, or converts to his own use or that of another, any property mortgaged or pledged to, or held by, the Administration, shall be fined not more than \$5,000 or imprisoned not more than five years, or both; but if the value of such property does not exceed \$100, he shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

(d)(1) Whoever misrepresents the status of any concern or person as a "small business concern", a "qualified HUBZone small business concern", a "small business concern owned and controlled by service-disabled veterans", a "small business concern owned and controlled by veterans", a "small business concern owned and controlled by socially and economically disadvantaged individuals", or a "small business concern owned and controlled by women", in order to obtain for oneself or another any—

(A) prime contract to be awarded pursuant to section 8, 9, 15, 31, 36, or 36A;

(B) subcontract to be awarded pursuant to section 8(a);

(C) subcontract that is to be included as part or all of a goal contained in a subcontracting plan required pursuant to section 8(d); or

(D) prime or subcontract to be awarded as a result, or in furtherance, of any other provision of Federal law that specifically references section 8(d) for a definition of program eligibility, shall be subject to the penalties and remedies described in paragraph (2).

(2) Any person who violates paragraph (1) shall—

(A) be punished by a fine of not more than \$500,000 or by imprisonment for not more than 10 years, or both;

(B) be subject to the administrative remedies prescribed by the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801–3812);

(C) be subject to suspension and debarment as specified in subpart 9.4 of title 48, Code of Federal Regulations (or any successor regulation); and

(D) be ineligible for participation in any program or activity conducted under the authority of this Act or the Small Business Investment Act of 1958 (15 U.S.C. 661 et seq.) for a period not to exceed 3 years.

(3) LIMITATION ON LIABILITY.—This subsection shall not apply to any conduct in violation of subsection (a) if the defendant acted in good faith reliance on a written advisory opinion from a Small Business Development Center (as defined in this Act), or an entity participating in the Procurement Technical Assistance Cooperative Agreement Program defined in chapter 388 of title 10, United States Code; however nothing in this Act shall obligate either entity to provide such a letter nor shall the provision of such a letter in any way render the providing entity liable to the business concern should the Administrator later determine that the concern is not a small business concern. Upon issuance of an advisory opinion under this paragraph, the entity issuing the advisory opinion shall remit a copy of the opinion to the General Counsel of the Administration, who may reject the advisory opinion. If the General Counsel of the Administration rejects the advisory opinion, the Administration shall notify the entity issuing the advisory opinion and the recipient of the opinion, after which time the business concern may not rely upon the opinion.

(e) Any representation of the status of any concern or person as a “small business concern”, a “HUBZone small business concern”, a “small business concern owned and controlled by service-disabled veterans”, a “small business concern owned and controlled by veterans”, a “small business concern owned and controlled by socially and economically disadvantaged individuals”, or a “small business concern owned and controlled by women” in order to obtain any prime contract or subcontract enumerated in subsection (d) of this section shall be in writing.

(f) Whoever falsely certifies past compliance with the requirements of section 7(j)(10)(I) of this Act shall be subject to the penalties prescribed in subsection (d).

(g) SUBCONTRACTING LIMITATIONS.—

(1) IN GENERAL.—Whoever violates a requirement established under section 46 shall be subject to the penalties prescribed in subsection (d), except that, for an entity that exceeded a limitation on subcontracting under such section, the fine

described in subsection (d)(2)(A) shall be treated as the greater of—

(A) \$500,000; or

(B) the dollar amount expended, in excess of permitted levels, by the entity on subcontractors.

(2) MONITORING.—Not later than 1 year after the date of enactment of this subsection, the Administrator shall take such actions as are necessary to ensure that an existing Federal subcontracting reporting system is modified to notify the Administrator, the appropriate Director of the Office of Small and Disadvantaged Business Utilization, and the appropriate contracting officer if a requirement established under section 46 is violated.

(h) *FINANCIAL ASSISTANCE PROHIBITION.*—

(1) *IN GENERAL.*—*An associate of a small business concern who is finally convicted of any crime involving or relating to financial misconduct or a false statement with respect to a covered loan or grant shall be ineligible to receive any financial assistance from the Administrator, other than financial assistance under section 7(b).*

(2) *BUSINESS CONCERNS.*—*A small business concern that has as an associate an individual subject to paragraph (1) shall be ineligible to receive any financial assistance from the Administrator, other than financial assistance under section 7(b).*

(3) *DEFINITIONS.*—*In this subsection:*

(A) *ASSOCIATE.*—*The term “associate” means, with respect to a small business concern—*

(i) an officer, director, or owner of more than 20 percent of the equity of, or a key employee of, such small business concern;

(ii) any entity not less than 20 percent owned or controlled by one or more individuals referred to in clause (i); and

(iii) any other individual or entity in control of or controlled by such small business concern, except for a licensed small business investment company (as defined in section 103(3) of the Small Business Investment Act of 1958 (15 U.S.C. 662(3)).

(B) *COVERED LOAN OR GRANT.*—*The term “covered loan or grant” means—*

(i) a loan made under—

(I) paragraph (36) or (37) of subsection (a) of section 7 of the Small Business Act (15 U.S.C. 636); or

(II) subsection (b) of such section in response to the COVID-19 pandemic; or

(ii) a grant made under—

(I) section 5003 of the American Rescue Plan Act of 2021 (15 U.S.C. 9009c); or

(II) section 324 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (15 U.S.C. 9009a).

(C) *FINALLY CONVICTED.*—*The term “finally convicted” means, with respect to an individual or entity, that such in-*

dividual or entity has been convicted of an offense and such conviction—

(i) has not been appealed and is no longer appealable because the time for taking an appeal has expired; or

(ii) has been appealed and the appeals process for such conviction is completed.

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XVIII. MINORITY VIEWS

Over the course of the COVID-19 pandemic, the Small Business Administration (SBA) disbursed approximately \$1.2 trillion of economic aid through the Paycheck Protection Program (PPP) (\$792 billion), Economic Injury Disaster Loan Program (EIDL) (\$405.2 billion), Restaurant Revitalization Fund (RRF) (\$28.6 billion), and the Shuttered Venue Operators Grant Program (SVOG) (\$14.6 billion) to help small businesses adversely impacted by the crisis.

In an effort to disburse PPP and COVID-19 funds swiftly, the SBA weakened and removed internal controls. The Office of the Inspector General (OIG) issued a number of reports early on warning of the importance of strong internal controls to mitigate risk, and a total of 22 reports to identify weaknesses in SBA's control environment throughout the pandemic. Beginning in early 2021, long-standing anti-fraud controls were reinstituted, and new safeguards were put into place by the Biden-Harris Administration to reduce the potential for fraud.

On June 27, 2023, the OIG issued a white paper to provide a comprehensive review reporting that SBA disbursed more than \$200 billion in *potentially* fraudulent COVID-19 EIDLs, EIDL Targeted Advances, Supplemental Targeted Advances, and PPP loans. SBA also issued a report, entitled "Protecting the Integrity of the Pandemic Relief Programs," which estimates that \$36 billion of the \$1.2 trillion in pandemic relief emergency funds was obtained fraudulently. Moreover, the agency asserts that 86% of the *likely* fraud originated in the first nine months of the pandemic, under the Trump Administration. As of August 15, 2023, there have been 1,081 indictments, 884 arrests, 574 convictions related to PPP or EIDL, and 579 ongoing investigations.

The bill is aligned with recent actions taken by the Biden Administration to ensure that SBA loans are not approved for those who defrauded the government during the pandemic or any other time. Beginning on August 1, 2023, SBA began proactively screening for prior government loss and connection to fraud for all business loans. This screening includes utilizing the Treasury Do Not Pay system (DNP). The DNP includes a dataset called CAIVRS, which indicates whether an individual or entity has a delinquent federal debt. The screening also includes a check across SBA's internal databases for any business connected to pandemic program fraud (e.g., PPP). If a borrower is flagged through these checks, they have an opportunity to clear the hold by resolving the issue, demonstrating that it does not apply, or proving it incorrect. SBA does not move forward with an applicant's loan unless the hold is cleared.

Given that the SBA already has protocols in place to prevent fraud, Committee Democrats believe the single most important action Congress can take to support the OIG in their efforts to com-

bat fraud is to advocate for their Fiscal Year 2024 (FY 2024) budget request. The Administration's FY 2024 budget plan proposed \$47.704 million of discretionary funding, plus a \$1.6 million transfer from SBA's Disaster Loans Program, and an additional \$14 million transfer to OIG from a mandatory funding source. The proposed mandatory funding source for the \$14 million transfer is no longer available following enactment of the Fiscal Responsibility Act of 2023 (P.L. 118–5), which rescinded the unobligated balances in the SBA Disaster Loan Program account.

The OIG budget request would enable OIG to build on its existing oversight capacity as COVID EIDL loans enter into repayment with additional criminal investigators, data scientists, auditors, and professional staff. These investments in data analytics capabilities, auditors, and investigative coverage will enable OIG to analyze more data, conduct more audits and reviews, and investigate more cases, promoting public trust and integrity within SBA's programs and operations.

Unfortunately, the House FSGG appropriations bill provides \$32.02 million, which would cripple the OIG, providing budget authority for approximately 130 positions, and bringing operations back to pre-pandemic levels. The Administration's FY 2024 budget provides the necessary funding to enable the OIG to sustain existing oversight capacity and invest in additional necessary staffing. Absent the total budgetary resources requested in the FY 2024 budget, the OIG will not have sufficient funding to combat fraud within SBA programs or to provide effective oversight over the agency's programs. Critically, OIG will not have a sufficient operating budget to capitalize on the new laws (P.L. 117–165 and P.L. 117–166), which extended the statute of limitations for fraud in the PPP and EIDL programs to 10 years.

Sincerely,

NYDIA M. VELÁZQUEZ,
Ranking Member.

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