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HOUSE OF REPRESENTATIVES
REPORT
117–515

RESOLUTION OF INQUIRY DIRECTING THE SECRETARY OF THE TREASURY TO TRANSMIT CERTAIN DOCUMENTS TO THE HOUSE OF REPRESENTATIVES RELATING TO THE ROLE OF THE DEPARTMENT OF THE TREASURY IN THE PAYCHECK PROTECTION PROGRAM OF THE SMALL BUSINESS ADMINISTRATION

SEPTEMBER 28, 2022.—Referred to the House Calendar and ordered to be printed

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Ms. VELÁZQUEZ, from the Committee on Small Business, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H. Res. 1298]

The Committee on Small Business, to whom was referred the resolution (H. Res. 1298) of inquiry directing the Secretary of the Treasury to transmit certain documents to the House of Representatives relating to the role of the Department of the Treasury in the Paycheck Protection Program of the Small Business Administration, having considered the same, reports thereon with amendments and without recommendation.

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The amendments are as follows:

In the matter preceding paragraph (1), strike "with respect to" and all that follows through "including".

In paragraph (1), insert "with respect to the loan programs established under paragraphs (36) and (37) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)(36)) (commonly known as the 'Paycheck Protection Program')," before "all such".

In paragraph (2)—

(1) insert "with respect to the loan programs established under paragraphs (36) and (37) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)(36)) (commonly known as the 'Paycheck Protection Program')," before "all such"; and

(2) strike "and" at the end.

In paragraph (3)—

(1) insert "with respect to the loan programs established under paragraphs (36) and (37) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)(36)) (commonly known as the 'Paycheck Protection Program')," before "all such"; and

(2) strike the period at the end and inserting ";".

Add at the end the following new paragraphs:

(4) with respect to loans made under section 7(b) of the Small Business Act (15 U.S.C. 636(b)) in response to COVID–19, from grants under section 1110(e) of the CARES Act (15 U.S.C. 9009(e)), from grants under section 331 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (15 U.S.C. 9009b), and from grants under section 5003 of the American Rescue Plan Act of 2021, all documents and communications relating to the amount of funds from such loans or grants that have been recovered from any individual or entity that fraudulently obtained such a loan or grant; and

(5) with respect to actions taken by the Department of the Treasury on and after January 21, 2021, to assist small business concerns (as defined under section 3 of the Small Business Act (15 U.S.C. 632)) with addressing government regulations, and all such communications between the Secretary of the Treasury and the Administrator of the Small Business Administration relating to any guidance the Administration offered Treasury in targeting regulatory assistance to small business concerns.

Amend the title so as to read: Resolution of inquiry directing the Secretary of the Treasury to transmit certain documents to the House of Representatives relating to the role of the Department of the Treasury in the Paycheck Protection Program of the Small Business Administration and with respect to regulatory assistance for small business concerns.

I. PURPOSE AND SUMMARY

House Resolution 1298, as amended, is a resolution of inquiry directing the Secretary of Treasury to transmit to the House of Representatives, not later than 14 legislative days after the date of the

adoption of the resolution, records relating to the role of the Department of Treasury in the Paycheck Protection Program, other loan and grant programs of the Small Business Administration, and regulatory assistance for small business concerns.

II. BACKGROUND AND NEED FOR LEGISLATION

H. Res. 1298 was introduced by Ranking Member Blaine Luetkemeyer (R–MO) on July 28, 2022.

Resolution of inquiry

A resolution of inquiry is a nonbinding resolution that either requests or directs the President or the head of an executive department [1] to furnish the House with factual information in the Administration's possession.[2] There are no House rules for enforcing resolutions of inquiry, and they have ordinarily been complied with pursuant to principles of comity between the Legislative and Executive branches.[3]

If a resolution of inquiry qualifies as privileged under clause 7 of rule XIII of the Rules of the House, a Committee has 14 legislative days to markup and file a report on the privileged resolution. As to the reporting of the resolution, a Committee can make a favorable, adverse, or no recommendation determination in the report. To be considered privileged, a resolution of inquiry must not only be directed to the President or the head of an executive department, but it also must not have a preamble, must request only factual information, and may not require the official to express an opinion or undertake an investigation.[4]

Once the resolution of inquiry has been reported, an authorized Member of the Committee may call up the resolution for consideration.[5] A Member, not authorized by the Committee, may call up the resolution for consideration if the Committee fails to report the resolution within the 14-day timeframe.[6] The last resolution of inquiry to reach the House floor was in 1995.[7] Prior to this Congress, the last resolution of inquiry to be referred to this Committee was in the 103rd Congress in 1994.[8]

Paycheck Protection Program

The Small Business Administration's (SBA) Paycheck Protection Program (PPP) was established in the CARES Act [9] as a subprogram of SBA's 7(a) loan guarantee program. Under PPP, banks and other private lenders made fully guaranteed SBA loans to small businesses negatively impacted by the COVID–19 pandemic. The

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[1] The House Parliamentarian does not consider the Small Business Administration to be an executive department within the meaning of clause 7 of rule XIII of the Rules of the House, however, the Department of Treasury is considered to be an executive department.

[2] Christopher Davis, *CRS Insight: Resolutions of Inquiry in the House, Cong.* Research Serv., July 21, 2022, https://crsreports.congress.gov/product/pdf/IN/IN10661. Due to the pandemic, the deadlines for Committee action on resolutions of inquiry were paused, but the pause was lifted after the adoption of H. Res. 1232 on July 19, 2022. *Id.*

[3] Charles W. Johnson, John V. Sullivan, and Thomas J. Wicker, Jr., *House Practice: A Guide to the Rules, Precedents, and Procedures of the House*, Gov't. Printing Office (2017), *available at* https://www.govinfo.gov/content/pkg/GPO–HPRACTICE–115/pdf/GPO–HPRACTICE–115.pdf.

[4] *Supra* note 2.

[5] *Supra* note 3.

[6] *Id.*

[7] *See* H. Res. 80, 104th Cong. (1995).

[8] *See* H. Res. 360, 103rd Cong. (1994).

[9] Pub. L. No. 116–136.

loans were intended to assist small businesses with meeting payroll costs and other expenses, and full loan forgiveness is offered if loan proceeds are spent on such purposes. In total, over $800 billion was appropriated for PPP in several pieces of legislation.

However, the initial tranche of PPP funding favored larger, better-capitalized businesses, and left out microbusinesses and many firms owned by women and minorities. To address this disparity, the PPP and Health Care Enhancement Act[10] included set-asides of newly appropriated PPP funds so that community lending institutions, including Community Development Financial Institutions (CDFIs), SBA Certified Development Companies (CDCs), and SBA Microloan Intermediaries could participate in the program alongside large banks. These set-asides, as well as other policy changes made by SBA and Treasury, were intended to maximize PPP lending in traditionally underserved business communities.[11]

In the beginning of the program, fraud prevention safeguards were lowered in order to distribute loan funds more quickly. So far, SBA's Office of Inspector General (OIG) has identified 70,835 loans totaling over $4.6 billion in potentially fraudulent PPP loans.[12] The Department of Treasury, under the leadership of former Secretary Steven Mnuchin, was instrumental in implementing PPP, which included ensuring small businesses were getting the assistance they needed while making sure that taxpayer dollars were protected. In particular, section 1109 of the CARES Act authorized the Department of Treasury to include additional lending institutions as part of PPP, and to issue regulations and guidance as necessary to implement PPP.[13]

Moreover, PPP was designed not only to keep businesses from closing but also to keep workers employed. There are still outstanding academic debates as to the extent of PPP's positive impact on employment. According to the Brookings Institution, a considerable portion of PPP funding was used for businesses to pay down debt instead of sustain payroll.[14] Also, the academic literature has shown no credible evidence that the largest PPP loans had a substantial positive employment effect in the short or medium run.[15] Furthermore, researchers with the Federal Reserve Bank of Boston found that PPP would have been "significantly more effective" if the government allocated loans to the smallest firms earlier in the program.[16]

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[10] Pub. L. No. 116–139.

[11] *See, e.g.*, U.S. Small Bus. Admin., *CARES Act Section 1102 Lender Agreement—Non-Bank and Non-Insured Depository Institution Lenders*, SBA Form 3507 (04/21), https://home.treasury.gov/system/files/136/SBA-Form-3507-PPP--Agreement-for-New-Lenders-Non-Bank-Non-Insured-Depository-Institution-Lenders.pdf; *see also*, U.S. Small Bus. Admin., *Interim Final Rule on Corporate Groups and Non-Bank and Non-Insured Depository Institution Lenders (originally posted 4/30/2020)*, (Apr. 30, 2020), https://home.treasury.gov/system/files/136/IFR--Corporate-Groups-and-Non-Bank-and-Non-Insured-Depository-Institution-Lenders.pdf.

[12] U.S. Small Bus. Admin. Off. of Inspector Gen., *Top Management and Performance Challenges Facing the Small Business Administration in Fiscal Year 2022*, (Oct. 15, 2021), https://www.sba.gov/sites/default/files/2021-10/SBA%20OIG%20Report%2022-02.pdf.

[13] *Supra* note 9 at § 1109.

[14] WENDY EDELBERG ET AL., BROOKINGS INSTITUTION, RECESSION REMEDIES: LESSONS LEARNED FROM THE U.S. ECONOMIC POLICY RESPONSE TO COVID–19 140 (2022), https://www.brookings.edu/wp-content/uploads/2022/04/RR-Chapter-4-Support-for-Business.pdf.

[15] *Id.* at 124.

[16] Gustavo Joaquim and Felipe Netto, *Optimal Allocation of Relief Funds: The Case of the Paycheck Protection Program*, Federal Reserve Bank of Boston (Oct. 2021), https://www.bostonfed.org/publications/research-department-working-paper/2021/optimal-allocation-of-relief-funds-the-case-of-the-paycheck-protection-program.aspx.

Currently, PPP is in the forgiveness phase of the program. The Committee is actively monitoring the status of loan forgiveness. As of September 5, 2022, SBA made over 10.4 million full or partial forgiveness payments, representing 91 percent of all PPP loans.[17] These payments total over $751 billion in PPP lending, representing 95 percent of total PPP volume. However, PPP forgiveness data reveals a burgeoning small-dollar forgiveness gap. As of September 5, 2022, 892,463 PPP borrowers have not submitted forgiveness applications.[18] Of these non-submissions, 848,738 are loans $50,000 or less, representing over 95 percent of all non-submissions.

Secretary of Treasury

To increase the Committee's oversight of PPP, section 321(b) of the Economic Aid to Hard-Hit Small Business, Nonprofits, and Venues Act, 15 U.S.C. § 639b(b),[19] required the Secretary of the Treasury and the SBA Administrator to testify before the House Small Business Committee within 120 days of enactment of the Act, and not less than twice per year for the next two years. Since the enactment of the Act in December 2020, SBA Administrator Isabella Guzman has appeared before the House Small Business Committee three times,[20] but attempts to have Treasury Secretary Janet Yellen testify before the Committee during the 117th Congress have been unsuccessful.

It is necessary for the Committee's oversight of this multibillion-dollar program for the Secretary of Treasury to testify before the Committee on the merits and operation of the program, as required by law. The Committee is disappointed that the Secretary of Treasury failed to adhere to her obligations under the Economic Aid Act. The Committee continues to be in touch with the Department of Treasury regarding the Secretary's obligation to testify before the Committee.

It is important to note that the SBA Administrator and her team have also made themselves available for personal calls with the Chair, the Ranking Member, and other Members on the Committee. Her Associate Administrator of Capital Access, Patrick Kelly has also testified before Congress on SBA's covid relief programs, including on the Restaurant Revitalization Fund, COVID EIDL, and the Shuttered Venue Operators Grant program, and provided answers in testimony and off the record meetings.

Amendments

H. Res. 1298 was reported to the House with two amendments. The first adopted amendment was offered by Representative Van Duyne (R–TX). The amendment requests all documents and com-

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[17] U.S. Small Bus. Admin., *Forgiveness Platform Lender Submission Metrics—September 05*, (Sep. 5, 2022), https://www.sba.gov/sites/default/files/2022-09/2022.09.05__Weekly%20Forgiveness%20Report__Public-508.pdf.

[18] *Id.*

[19] Pub. L. No. 116–260 [hereinafter, Economic Aid Act]. On July 17, 2020, Treasury Secretary Steven Mnuchin and SBA Administrator Jovita Carranza testified before the House Small Business Committee. *See the H. Comm. on Small Business*, 116th Cong. (Jul. 17, 2020).

[20] *An Examination of the SBA's Covid–19 Programs: Hearing Before the H. Comm. on Small Business*, 117th Cong. (May 26, 2021); *A Discussion with SBA Administrator Isabella Casillas Guzman: Hearing Before the H. Comm. on Small Business*, 117th Cong. (Nov. 16, 2021); *Small Business Administration's FY 2023 Budget: Hearing Before the H. Comm. on Small Business*, 117th Cong. (Apr. 27, 2022).

munications relating to the total amount of funding recovered from fraudulently obtained COVID–19 relief, specifically COVID EIDLs, EIDL Advances, Targeted Advances, and the Restaurant Revitalization Fund. The second adopted amendment was offered by Representative Meuser (R–PA). The amendment requests all documents and communications relating to Treasury's actions to assist small businesses with addressing the impact of federal regulations.

Without recommendation

The Committee is generally not opposed to the H. Res. 1298, especially due to the failure of the Secretary to testify before the Committee, as required by law, and the opportunity to get a clearer picture of the policies Treasury, specifically under former Secretary Mnuchin, could have instituted to ensure that these PPP loans were distributed equitability in the beginning of the program. However, the Committee continues to conduct rigorous oversight of the program, which is why the Committee believes this resolution is not needed. In fact, this Committee came together to pass two commonsense bills to help investigators hold bad actors accountable by extending the statute of limitations related to the PPP and COVID EIDL programs at SBA to 10 years.[21] Those bills were a direct result of the Committee's oversight work and dedication to evaluating the effectiveness of covid programs. Due to these facts, the Committee recommended that H. Res. 1298 be reported to the House without recommendation.

III. HEARINGS

The Committee held no hearings on H. Res. 1298.

IV. COMMITTEE CONSIDERATION

The Committee on Small Business met in open session, with a quorum being present, on September 21, 2022, and ordered H. Res. 1298, as amended, reported to the House of Representatives without recommendation by a record vote of 25 yeas and 0 nays.

V. COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives, the following are summaries of the recorded votes of the Committee on Small Business in its consideration of H. Res. 1298 on September 21, 2022.

MOTION TO REPORT H. RES. 1298

H. Res. 1298, as amended, was ordered transmitted without recommendation to the House of Representatives by a roll call vote of 25 yeas to 0 nays (with a quorum being present). The vote was as follows:

Majority Members	Aye	No	Not Voting
Ms. Velázquez, Chairwoman	X		
Mr. Jared Golden	X		
Mr. Jason Crow	X		
Ms. Sharice Davids	X		

[21] *See* PPP and Bank Fraud Enforcement Harmonization Act of 2022, Pub. L. No. 117–166, and COVID–19 EIDL Fraud Statute of Limitations Act of 2022, Pub. L. No. 117–165.

Majority Members	Aye	No	Not Voting
Mr. Kweisi Mfume	X		
Mr. Dean Phillips	X		
Ms. Marie Newman			X
Ms. Carolyn Bourdeaux	X		
Mr. Troy Carter	X		
Ms. Judy Chu	X		
Mr. Dwight Evans	X		
Ms. Chrissy Houlahan	X		
Mr. Andy Kim	X		
Ms. Angie Craig	X		
Mr. Scott Peters	X		

Minority Members	Aye	No	Not Voting
Mr. Blaine Luetkemeyer, Ranking Member	X		
Mr. Roger Williams	X		
Mr. Pete Stauber	X		
Mr. Dan Meuser	X		
Ms. Claudia Tenney	X		
Mr. Andrew Garbarino	X		
Ms. Young Kim	X		
Ms. Beth Van Duyne	X		
Mr. Byron Donalds	X		
Ms. Maria Salazar			X
Mr. Scott Fitzgerald	X		
Mr. Mike Flood			

VOTES ON AMENDMENTS

Van Duyne 1v2 was agreed to by a roll call vote of 17 yeas to 4 nays.

Majority Members	Aye	No	Not Voting
Ms. Velázquez, Chairwoman		X	
Mr. Jared Golden		X	
Mr. Jason Crow	X		
Ms. Sharice Davids	X		
Mr. Kweisi Mfume			X
Mr. Dean Phillips	X		
Ms. Marie Newman			X
Ms. Carolyn Bourdeaux	X		
Mr. Troy Carter			X
Ms. Judy Chu		X	
Mr. Dwight Evans		X	
Ms. Chrissy Houlahan	X		
Mr. Andy Kim	X		
Ms. Angie Craig	X		
Mr. Scott Peters	X		

Minority Members	Aye	No	Not Voting
Mr. Blaine Luetkemeyer, Ranking Member	X		
Mr. Roger Williams	X		
Mr. Pete Stauber	X		
Mr. Dan Meuser	X		
Ms. Claudia Tenney	X		
Mr. Andrew Garbarino			X
Ms. Young Kim	X		
Ms. Beth Van Duyne	X		
Mr. Byron Donalds			X
Ms. Maria Salazar			X
Mr. Scott Fitzgerald	X		
Mr. Mike Flood			

Meuser 1v2 was agreed to by a roll call vote of 12 yeas to 8 nays.

Majority Members	Aye	No	Not Voting
Ms. Velázquez, Chairwoman		X	
Mr. Jared Golden	X		
Mr. Jason Crow		X	
Ms. Sharice Davids		X	
Mr. Kweisi Mfume			X
Mr. Dean Phillips	X		
Ms. Marie Newman			X
Ms. Carolyn Bourdeaux		X	
Mr. Troy Carter			X
Ms. Judy Chu		X	
Mr. Dwight Evans		X	
Ms. Chrissy Houlahan	X		
Mr. Andy Kim		X	
Ms. Angie Craig	X		
Mr. Scott Peters		X	

Minority Members	Aye	No	Not Voting
Mr. Blaine Luetkemeyer, Ranking Member	X		
Mr. Roger Williams	X		
Mr. Pete Stauber	X		
Mr. Dan Meuser	X		
Ms. Claudia Tenney	X		
Mr. Andrew Garbarino			X
Ms. Young Kim			X
Ms. Beth Van Duyne	X		
Mr. Byron Donalds			X
Ms. Maria Salazar			X
Mr. Scott Fitzgerald	X		
Mr. Mike Flood	X		

Williams 1v2 was not agreed to by a roll call vote of 11 yeas to 11 nays.

Majority Members	Aye	No	Not Voting
Ms. Velázquez, Chairwoman		X	
Mr. Jared Golden		X	
Mr. Jason Crow		X	
Ms. Sharice Davids		X	
Mr. Kweisi Mfume			X
Mr. Dean Phillips		X	
Ms. Marie Newman			X
Ms. Carolyn Bourdeaux		X	
Mr. Troy Carter			X
Ms. Judy Chu		X	
Mr. Dwight Evans		X	
Ms. Chrissy Houlahan		X	
Mr. Andy Kim		X	
Ms. Angie Craig	X		
Mr. Scott Peters		X	

Minority Members	Aye	No	Not Voting
Mr. Blaine Luetkemeyer, Ranking Member	X		
Mr. Roger Williams	X		
Mr. Pete Stauber	X		
Mr. Dan Meuser	X		
Ms. Claudia Tenney	X		
Mr. Andrew Garbarino	X		
Ms. Young Kim	X		
Ms. Beth Van Duyne	X		
Mr. Byron Donalds			X
Ms. Maria Salazar			X
Mr. Scott Fitzgerald	X		
Mr. Mike Flood	X		

Luetkemeyer 1v1 was not agreed to by a roll call vote of 11 yeas to 13 nays.

Majority Members	Aye	No	Not Voting
Ms. Velázquez, Chairwoman		X	
Mr. Jared Golden		X	
Mr. Jason Crow		X	
Ms. Sharice Davids		X	
Mr. Kweisi Mfume		X	
Mr. Dean Phillips		X	
Ms. Marie Newman			X
Ms. Carolyn Bourdeaux		X	
Mr. Troy Carter		X	
Ms. Judy Chu		X	
Mr. Dwight Evans		X	
Ms. Chrissy Houlahan	X		
Mr. Andy Kim		X	
Ms. Angie Craig		X	
Mr. Scott Peters		X	

Minority Members	Aye	No	Not Voting
Mr. Blaine Luetkemeyer, Ranking Member	X		
Mr. Roger Williams	X		
Mr. Pete Stauber	X		
Mr. Dan Meuser	X		
Ms. Claudia Tenney	X		
Mr. Andrew Garbarino	X		
Ms. Young Kim	X		
Ms. Beth Van Duyne	X		
Mr. Byron Donalds			X
Ms. Maria Salazar			X
Mr. Scott Fitzgerald	X		
Mr. Mike Flood	X		

VI. SECTION-BY-SECTION FOR H. RES. 1298

Section 1

Directs the Secretary of Treasury, to transmit to the House of Representatives, not later than 14 days after the date of the adoption of the resolution, any such documents and other materials that refer or relate to:

(1) Communications between the Department of Treasury and the Small Business Administration relating to the Paycheck Protection Program.

(2) The obligation of the Secretary of the Treasury to testify before the Committee.

(3) The role of the Secretary of Treasury in administering the Paycheck Protection Program.

(4) Communications and documents relating to total amount of funding recovered from fraudulently obtained COVID–19 relief, specifically COVID EIDLs, EIDL Advances, Targeted Advances, and the Restaurant Revitalization Fund.

(5) The actions of the Department of Treasury to assist small business concerns with addressing government regulations.

VII. CONGRESSIONAL BUDGET COST ESTIMATE

The Committee has requested but not received a cost estimate from the Director of the Congressional Budget Office.

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) 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 section 402 of the Congressional Budget Act of 1974, the Committee does not believe that there will be any additional costs attributable to this legislation.

The resolution does not provide new budget authority, new spending authority, new credit authority, or an increase or decrease in revenues or tax expenditures and a statement under clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a)(1) of the Congressional Budget Act of 1974 is not required.

IX. COMMITTEE OVERSIGHT FINDINGS AND 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 the H. Res. 1298 are incorporated into the descriptive portions of this report.

X. STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

With respect to the requirements of clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the performance goals and objectives of H. Res. 1298 is to direct the Secretary of Treasury to submit records related to the Department of Treasury's role in the management and oversight of the Small Business Administration Paycheck Protection Program to the House of Representatives.

XI. 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. Res. 1298 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 this measure 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

An estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act was not made available to the Committee in time for the filing of this report. The Chairwoman of the Committee shall cause such estimate to be printed in the Congressional Record upon its receipt by the Committee.

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. 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, this resolution makes no changes to existing law.

XVII. SUPPLEMENTAL, ADDITIONAL, DISSENTING, OR MINORITY VIEWS

Clause 2(c) of rule XIII of the Rules of the House of Representatives requires each report by a committee on a public matter to include any supplemental, additional, dissenting, or minority views submitted pursuant to clause 2(l) of rule XI of the Rules of the House of Representatives by one or more Members of the Committee. The minority views of members of the Committee are as follows:

MINORITY VIEWS

Pursuant to clause 2(l) of rule XI of the Rules of the House of Representatives, I am writing to advise of the additional views of the Committee on Small Business on House Resolution 1298. These views are in addition to any views submitted by the Committee's majority members. Disappointingly, the Committee majority members opted to report this resolution to the House without recommendation. Consequently, the minority disagrees with the majority's neutral position on this resolution. This objection is discussed in greater detail below.

Under clause 1(q) of rule 10 of the Rules of the United States House of Representatives, the Committee on Small Business has legislative jurisdiction over the United States Small Business Administration (SBA), including financial assistance, regulatory matters, paperwork reduction, and the participation of small businesses in federal government procurement contracts.[22] Additionally, the Committee has continuing jurisdiction to examine any issues that impact America's small businesses. This document, accordingly, focuses on House Resolution 1298, a resolution of inquiry directing the Secretary of the Treasury to transmit certain documents to the House of Representatives relating to the role of the Department of Treasury in the Paycheck Protection Program of the Small Business Administration.

I. INTRODUCTION

Crafted by Congress, in consultation with the Department of the Treasury and the Small Business Administration (SBA), the Paycheck Protection Program (PPP) served as an immediate source of relief for small businesses in the early days of the pandemic.[23] As outlined in the CARES Act, the PPP was administered and implemented by the SBA and through the critical assistance of the Department of the Treasury.[24] Specifically, the Department of the Treasury, under Section 1109 of the CARES Act, was required to onboard new private sector lenders to deliver PPP loans to small businesses and other eligible entities.[25] The two agencies worked steadfastly together during the early days of the pandemic, and throughout 2020, to ensure dollars reached small businesses and their employees swiftly. Likewise, both agency heads testified before Congress in 2020 to provide important information on this program.[26]

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[22] Cheryl L. Johnson, Rules of the House of Representatives, 117th Cong. at Rule 10 clause 1(q) (February 2, 2021).
[23] Pub. L. No. 116–136 (2020).
[24] *Id.*
[25] *Id* at § 1109.
[26] *Oversight of the Small Business Administration and Department of Treasury Pandemic Programs Before the House Committee on Small Business,* 116th Cong. (2020).

In December 2020, Congress passed the Consolidated Appropriations Act of 2021.[27] The Act, which provided additional funding to the PPP program, included a testimony requirement for both the SBA Administrator and the Secretary of the Treasury.[28] Recognizing the role both agencies would play in the implementation of PPP, the Act required each official to testify before the House Committee on Small Business not less than 120 days after enactment and not less than twice each year thereafter. As of September 23, 2022, 515 days since the first testimony deadline, Treasury Secretary Yellen has yet to testify before the Committee.

Committee minority members have requested Secretary Yellen's testimony on numerous occasions over the past 515 days. These requests include a May 26, 2021 letter signed by all Committee minority members reminding the Secretary of her legal requirement to testify and requesting her availability. A July 6, 2021 letter signed by all Committee minority members at the conclusion of the PPP processing window reminding the Secretary of the Treasury's role in the program and once again requesting her testimony. A July 28, 2021 letter signed by the Ranking Members of multiple House Committees expressing concern at the Secretary's failure to appear before multiple committees and once again requesting her testimony. A March 1, 2022 letter signed by the Ranking Member of the House Committee on Small Business expressing concern as the one-year anniversary of the Secretary's failure to testify approached and once again requesting her testimony. Finally, a June 13, 2022 letter from the Ranking Member of the House Committee on Small Business noting the Secretary's ability to appear before multiple media outlets while continuing to avoid her legal requirement to testify before this Committee. Treasury Secretary Yellen never responded to Committee minority members on any of these occasions. To date, Treasury Secretary Yellen has never provided any type of written response to Committee minority members, except for directed responses from the Assistant Secretary for Legislative Affairs at the Treasury Department.

Despite Treasury's role in PPP, this Committee has received almost no information from Treasury. With direct jurisdiction over such a critical pandemic relief program, Secretary Yellen's obstruction has placed this Committee at a legislative disadvantage and threatens Congress' legitimate oversight responsibilities. Ranking Member Luetkemeyer's Resolution of Inquiry, reported unanimously by Republicans and Democrats on the Committee on Small Business, intends to correct just that.

II. THE RESOLUTION OF INQUIRY

The resolution directs Treasury Secretary Yellen to provide: (1) all communications between the Department of the Treasury and the SBA relating to the PPP; (2) all documents and communications relating to the obligation of the Treasury Secretary to testify before the Small Business Committee of the House of Representatives as required by section 321(b) of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (15 U.S.C. 639b(b));

[27] Pub. L. No. 116–260, 134 Stat. 1182 (2020).
[28] *Id.*

and (3) all documents and communications relating to the role of the Treasury Secretary on administering the PPP.

The exchange of documents and communications between Treasury and the SBA is of critical value to this Committee. As the two agencies work in tandem through the loan forgiveness period of PPP, this Committee must understand the role each agency played, and continues to play, in the program. With rampant pandemic fraud seemingly around every corner, a legislative solution may be in order. Unfortunately, without Treasury's cooperation, the Committee stands at a legislative disadvantage.

Furthermore, as the Secretary continues to thumb her nose at her legal requirement to testify before this Committee, we remain concerned about the precedent this sets regarding Congress' constitutional authority to conduct oversight over the executive. With the legality of the Secretary's actions in question, we believe the Secretary must have sought counsel or guidance from within the Department. As such, this Committee requires the documentation and rationale any and all government employees have provided Secretary Yellen that would justify her refusal to abide by her legal requirement to testify.

House Resolution 1298, as amended, was reported to the House without recommendation with 25 votes in favor and 0 votes against. Ms. Salazar was not recorded. Had she been present, Ms. Salazar would have voted in favor of the resolution.

III. AMENDMENTS TO THE RESOLUTION OF INQUIRY

Van Duyne Amendment 1v2, offered by Representative Beth Van Duyne of Texas, adds additional language under the resolution of inquiry requesting the Treasury Secretary to provide all documents and communications relating to the total amount of funding recovered from fraudulently obtained COVID–19 relief. This amendment was agreed to with 17 ayes and 4 nos.

On the Van Duyne Amendment 1v2 vote, Mr. Garbarino, Mr. Donalds, and Ms. Salazar were not recorded. Had these members been present, they would have voted aye.

Meuser Amendment 1v2, offered by Representative Dan Meuser of Pennsylvania, adds additional language under the ROI requesting the Treasury Secretary to provide all documents and communications relating to any of Treasury's actions to assist small businesses with addressing the impact of federal regulations. Additionally, the amendment requests all information relating to any guidance the SBA offered to the Treasury Department in targeting regulatory assistance to small businesses. This amendment was agreed to with 12 ayes and 8 nos.

On the Meuser Amendment 1v2 vote, Ms. Kim, Mr. Garbarino, Mr. Donalds, and Ms. Salazar were not recorded. Had these members been present, they would have voted aye.

Williams Amendment 1v2, offered by Representative Roger Williams of Texas, adds additional language under the ROI requesting the Treasury Secretary to provide all documents and communications relating to any of Treasury's actions to assist small businesses with rising inflation, ongoing labor shortages, and persistent supply chain issues. Additionally, the amendment requests all information relating to any guidance the SBA offered to the Treasury

Department in targeting economic assistance to small businesses. This amendment was not agreed to with 11 ayes and 11 nos.

On the Williams Amendment 1v2 vote, Mr. Donalds and Ms. Salazar were not recorded. Had these members been present, they would have voted aye.

Luetkemeyer Amendment 1v1, offered by Ranking Member Luetkemeyer of Missouri, adds additional language under the ROI requesting the Treasury Secretary to provide all documents and communications relating to any of Treasury's actions to assist veteran owned small businesses. Additionally, the amendment requests all information relating to any guidance the SBA offered to the Treasury Department in targeting economic assistance to veteran owned small businesses. This amendment was not agreed to with 11 ayes and 13 nos.

On the Luetkemeyer Amendment 1v1 vote, Mr. Donalds and Ms. Salazar were not recorded. Had these members been present, they would have voted aye.

IV. CONTINUING OVERSIGHT CHALLENGES

Despite the Committee taking up, and reporting to the House, this critical resolution directed at Treasury Secretary Yellen, current House rules and precedent have hamstrung this Committee from exercising its oversight authority to the full extent of its jurisdiction. A Resolution of Inquiry is a method used by the House of Representatives to obtain information from the executive branch. If properly drafted, in accordance with House rules, such resolutions are given special parliamentary status. This status allows the introducing member the ability to require action on this oversight request. House rules describe a properly directed Resolution of Inquiry as one being directed to the President or cabinet level secretary. Clause 7 of rule XIII refers to "the head of an executive department." That term does not extend beyond Cabinet officers to subordinate officials. Thus, a Resolution of Inquiry directed to the Administrator of the SBA would not be privileged for consideration.

The Committee on Small Business has direct legislative jurisdiction over the United States Small Business Administration. Legislative solutions can be, and often are, driven by oversight investigations. As the SBA has taken on such an outsized role in the nation's economic recovery, its critical this Committee examine the agency's ability to manage its growing workload. Unfortunately, current House rules prevent this Committee from exercising the same oversight tools afforded to other House committees tasked with direct oversight over an agency because the Administrator is not recognized as a cabinet level official. President Biden's current cabinet includes the SBA Administrator as a cabinet level official. Based on the role of the SBA in our nation's economic recovery, along with the cabinet level rank currently afforded to the Administrator, House rules should be amended to officially recognize the SBA Administrator as a cabinet level officer.

BLAINE LUETKEMEYER,
Ranking Member, House Committee on Small Business.

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