



NEW YORK CITY COMPTROLLER
BRAD LANDER

Maura Hayes-Chaffe
Deputy Comptroller for Audit

**Audit Report on the
Department of Small Business
Services' Administration of the
New York City Employee
Retention Grant Program**

FK21-083A | December 8, 2022



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
BRAD LANDER

December 8, 2022

To the Residents of the City of New York,

My office has audited the Department of Small Business Services' (SBS) administration of the NYC Employee Retention Grant Program (Grant Program) to determine whether SBS had adequate controls over the award process and complied with relevant rules and regulations. The Office of the New York City Comptroller conducts audits of City agencies such as this as a means of increasing accountability and ensuring that City resources are used effectively and equitably.

While we acknowledge the urgent context in which the Grant Program was established at the very onset of the COVID-19 crisis, and we recognize SBS' achievements in standing up a complex program with a very short turnaround time, significant shortcomings were found in the implementation of the program, and areas for improvement have been identified.

The audit determined that SBS' review processes did not sufficiently ensure the accuracy of the eligibility determinations. Additionally, SBS did not always correctly calculate grant amounts and use \$6.7 million allocated for the Grant Program. The audit also found that Grant Program funding was not equitably distributed across the five boroughs. The Bronx was particularly underserved, with the lowest absolute and relative awarded funds.

The audit recommends that for future financial assistance programs, SBS ensure that secondary reviewers follow procedures and independently review applications and award recommendations; require applicants to submit federal, State, and City tax returns and accounting records; independently obtain federal and State tax records; search public records or use third-party research tools to determine whether businesses have outstanding judgments or liens; communicate changes to documentation requirements to applicants; increase outreach to underserved areas; and distribute funds equitably.

The results of the audit have been discussed with SBS officials and their comments have been considered in preparing this report. SBS' complete written response is attached to this report.

If you have any questions concerning this report, please email my Audit Bureau at audit@comptroller.nyc.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Lander".

Brad Lander
New York City Comptroller

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AUDIT IMPACT

Summary of Findings

When administering the Grant Program, the Department of Small Business Services (SBS) did not perform sufficient due diligence and did not consistently make correct eligibility determinations or correctly calculate grant amounts. Additionally, SBS did not use \$6.7 million allocated for the Grant Program. SBS also did not take meaningful steps to ensure that Grant Program funds were equitably distributed across the five boroughs or across industries.

Intended Benefits

The audit identified opportunities to improve the administration of future financial assistance programs and distribution of funding.

INTRODUCTION

Background

SBS' mission is to unlock economic potential and create economic security for all New Yorkers by connecting them to good jobs, creating stronger businesses, and building thriving neighborhoods across the five boroughs. SBS accomplishes this in part by providing financial assistance and services to small businesses to help them start, operate, and grow.

On March 8, 2020, just as the COVID-19 crisis was escalating in New York City, more than a week before mandatory business closures began to be put into effect, and nearly a month before the Coronavirus Aid, Relief, and Economy Security Act (CARES) created the federal Paycheck Protection Program (PPP), Mayor Bill de Blasio announced that the City would provide relief to small businesses adversely affected by the COVID-19 pandemic through the NYC Employee Retention Grant Program (Grant Program), and the NYC Small Business Continuity Loan Fund (Loan Program).¹ The purpose of the Grant Program was to help small businesses retain employees for two months until federal funding became available.

Each business was eligible for a grant of up to \$27,000 to cover up to 40% of their payroll for two months. To qualify for the Grant Program, businesses were required to meet the following eligibility requirements: (1) experience at least a 25% decrease in revenue or sales due to the COVID-19 outbreak; (2) be located within the five boroughs of New York City; (3) be in operation for at least six months; (4) employ one to four employees across all locations; and (5) have no outstanding tax liens or legal judgments.

The New York City Economic Development Corporation (NYCEDC) entered into an agreement (the Grant Agreement) with Workforce Development Corporation (WDC) to provide services in connection with the Grant Program.^{2 3} Specifically, WDC Analysts were responsible for reviewing applications and recommending whether to approve grant applications. In turn, SBS Managers were responsible for independently reviewing applications and Analyst recommendations and determining whether to approve or deny grants.

SBS accepted Grant Program applications between March 17, 2020, and April 3, 2020. The agency received 8,816 completed applications and awarded 3,411 applicants grants totaling \$24,919,920. SBS reported that 6,290 applications were started and subsequently withdrawn.⁴

¹ This audit covers only the Grant Program. The auditors separately reviewed the Small Business Continuity Loan Fund Program: *Audit Report on the Department of Small Business Services' Administration of the New York City Small Business Continuity Loan Fund Program* (Audit Report # FK21-084A).

² The City contracts with NYCEDC to provide City-wide economic development services which include, among other things, programs which provide financial incentives to locate, remain, or expand their operations in the City. Those incentives include grants, loans, tax incentives, and relocation assistance.

³ Under the terms of the Agreement, NYCEDC had the right to delegate responsibilities, in whole or in part, to SBS or such other agency of the City as may be appropriate.

⁴ SBS classified applications as "Withdrawn" from consideration because either the Applicant requested to withdraw their application for the grant or a case was started but not submitted by April 3, 2020.

In March 2020, the federal government passed the CARES Act, which established the PPP, to provide relief to a vastly greater number of businesses, ultimately providing loans to 388,230 City businesses, for approximately \$30.6 billion.⁵

Objectives

The objectives of the audit were to determine whether SBS had adequate controls over the award process and complied with relevant rules and regulations.

Discussion of Audit Results with SBS

The matters covered in this report were discussed with SBS officials during and at the conclusion of this audit. An Exit Conference Summary was sent to SBS on October 24, 2022, and discussed with SBS officials at an exit conference held on October 27, 2022. On November 7, 2022, we submitted a Draft Report to SBS with a request for written comments. We received a written response from SBS on November 23, 2022.

In its response, SBS stated that it launched the Grant Program within days of the Mayor's Emergency Executive Order No. 98, which it believes was the first emergency relief program of its kind in the country. Further, SBS stated that the program was expected to provide stop-gap relief until a federal relief program was launched.

We acknowledge the difficult and pressing circumstances in which the Grant Program was established and recognize the challenges faced by SBS at the time, as well as its achievements administering the program at the very outset of the COVID-19 emergency. The auditors considered SBS' response but did not find any basis to modify the report's findings. The full text of the SBS response is included as an addendum to this report.

⁵ CARES PPP data was obtained from Democrat & Chronicle which provides summary data on New York State counties which received loans.

DETAILED FINDINGS

Based on the auditors' review, Analyst and Managers did not consistently follow procedures and did not make correct eligibility determinations in all cases. Additionally, SBS did not always correctly calculate grant amounts, nor did it use \$6.7 million allocated for the Grant Program or for other COVID-19 financial assistance programs.

The auditors also found that Grant Program funds were not equitably distributed across the five boroughs. Funds were disproportionately awarded to businesses located in Manhattan, leaving the outer boroughs underserved.

SBS Did Not Make Correct Eligibility Determinations

The document *NYC Employee Retention Grant – Analyst & Manager Training* (the SBS Training Manual) stated that the job of the Analyst was to review SBS Grant Applications. When reviewing applications, Analysts were directed to verify that an applicant uploaded all required documents, that these documents matched application answers, and that these documents proved the applicant's eligibility for the grant.

After the Analyst made a recommendation, a Manager was responsible for independently reviewing the application and the Analyst's recommendation. The Manager made a final decision on whether to approve an application, deny an application because the business did not meet eligibility requirements, or reject an application because the business did not submit the required information or documents.

The SBS Training Manual instructed Analysts and Managers to verify that applicants had uploaded a signed Grant Program Participation Affidavit (which certified that they met certain eligibility requirements), revenue documentation for 2019 and 2020 (showing a 25% decrease in revenue), documentation proving a New York City address, and eight weeks of payroll records that show one to four employees across all locations.

However, based on the review of SBS records for 74 awarded Grant Program applications, the auditors found that SBS awarded grants to 16 applicants (21.6% of the sample) who did not meet one or more SBS Grant Program eligibility requirements. Specifically, SBS referred:

- 10 applicants who did not demonstrate a decrease in revenue of at least 25%;
- Eight applicants who did not submit adequate payroll documents for employees listed on the Affidavit; and
- Three applicants who did not provide a completed Affidavit.

This likely happened because Analysts incorrectly recommended that grants be awarded to applicants and Managers did not assess each application and come to their own decisions.

Consequently, limited Grant Program funds were not properly distributed, and SBS distributed 16 grants, totaling \$96,453, that did not meet one or more eligibility requirements.

In its response to the Draft Report, SBS disagreed that eight of the 16 cited cases were improperly awarded. SBS stated that there were two different ways to calculate revenue loss, and that it

disagreed with some report findings regarding eligibility determinations. However, the auditors calculated revenue loss using both methods, and none of the cited applicants met the revenue loss requirements under either method.

SBS also indicated that the Grant Program was implemented quickly. SBS stated, “The goal was to provide relief as soon as possible to small businesses and support their ability to retain staff until Federal relief was available.” Regarding newer grant programs, SBS stated that most programs are completely outsourced. On June 17, 2022, the auditors requested that SBS provide details on how and why SBS changed the process for reviewing eligibility determinations. However, to date, SBS has not provided the auditors with the requested information.

SBS Did Not Correctly Calculate Grant Amounts

According to the SBS Training Manual, Analysts and Managers were responsible for verifying that applicants provided the most recent eight weeks of payroll records showing tax withholdings for one to four employees across all locations. SBS informed the auditors that “[g]ross payroll expenses were used to calculate the grant amount. This included withholdings (taxes, social security), benefits, tips, overtime, and commissions. Bonuses were removed from the grant calculation.” Additionally, SBS informed the auditors that when calculating grant awards, salaries were capped at \$100,000 per employee.⁶

Based on the review of 155 sampled grants, SBS incorrectly calculated grant amounts for 103 applicants (66.5%). As a result, SBS overpaid 96 applicants by \$762,890, and underpaid seven applicants by \$17,286. SBS generally overpaid applicants because Analysts and Managers did not apply the salary cap when calculating grant amounts. This likely happened because the SBS Training Manual did not include any instructions regarding allowable payroll costs and salary caps. On June 17, 2022, and November 1, 2022, the auditors provided SBS with a list of cited grants so that SBS could review them and provide additional documentation and information. Although SBS generally agreed with the report’s findings related to grant calculation amounts, it disagreed with a small number of calculations. However, SBS did not consistently calculate payroll costs or apply the payroll cap.

SBS Did Not Use \$6.7 Million Allocated for the Grant Program

As stated above, NYCEDC contracted with WDC to administer the Grant Program. The contract provided \$39 million in funding for the Grant Program. However, SBS did not use \$6,675,721 allocated for the Grant Program or other COVID relief programming as detailed in Table I below.

⁶ At the beginning of the grant, SBS used the following calculation to determine the cap: Annual salary of \$100,000/12 months * two months, or \$16,666. However, SBS determined that there was an unfair variation in reimbursement for employees that were paid daily or bi-weekly. To eliminate this unfair variation in reimbursement, on April 24, 2020, SBS standardized the cap calculation to eight weeks. The new calculation used was: Annual salary \$100,000/52 (weeks) * eight (weeks), or \$15,385.

Table I
Breakdown of Grant Funds Provided to NYCEDC

Funds Used for Employee Retention Grant Awards	24,919,920
Funds Used for Employee Retention Grant Administrative Fees	147,181
Total Funds Used for the Employee Retention Grant Program	25,067,101
Funds Reallocated to Other COVID-19 Grant and Loan Programs	7,257,178
Total Funds Used for COVID-19 Grant and Loan Programs	32,324,279
Contract Amount	39,000,000
Total Unexpended Funds	6,675,721

SBS informed the auditors that it “deployed these funds consistent with the funding requirements and provided relief to small business affected by COVID-19 [...] OMB [Office of Management and Budget] requested the transfer of funds to be repurposed for other programming.” The auditors requested that SBS provide documentation to show that OMB requested that funds be transferred to OMB to be repurposed for other programming. However, SBS has not provided the auditors with this documentation.

Since SBS did not use all funds allocated for the Grant Program, there may have been applicants that met eligibility requirements but were not awarded grants and, therefore, may not have been able to retain employees.

After the auditors discussed this finding with SBS, officials stated that at the onset of the program they had projected the total grant amount based on the anticipated number of applications, average grant size, and denial rate. However, by the time SBS had reviewed all applications, they had issued grants totaling only approximately \$25 million, and other programs, such as the Federal Payroll Protection Program, were available.

On November 1, 2022, the auditors requested that SBS provide documentation to show the rationale for not reallocating all unused funds to other SBS financial assistance programs and instead reallocating a portion of unused funds to other COVID-19 grant and loan programs (\$7,257,178) and returning the balance to OMB (\$6,675,721).

On November 23, 2022, SBS stated that “SBS reallocated and spent \$7.2 million on other programs consistent with the funding requirements as shared previously. These requirements stipulated that all funds needed to be spent by the end of 2021. Since that was not possible for the balance of funding available (\$6.7 million), that amount was returned to OMB per their request.”

However, SBS did not explain why SBS was not able to use \$6.7 million to provide direct financial assistance to small businesses by the end of 2021.

SBS Generally Did Not Perform Due Diligence to Determine Whether Applicants Met Eligibility Requirements

The SBS Training Manual states that, among other requirements, businesses must:

- Be located within the five boroughs of New York City,
- Demonstrate that the COVID-19 outbreak caused at least a 25% decrease in revenue,
- Employ one to four employees in total across all locations,
- Have been in operation for at least six months, and
- Have no outstanding tax liens or legal judgments.

SBS required applicants to submit documentation to demonstrate that they met minimum revenue loss requirements and have an address in New York City, as well as payroll records for each employee. However, SBS did not require applicants to certify on the Affidavit that they did not have outstanding liens or judgments, nor did SBS independently verify this through public records searches or third-party research tools. Consequently, it appears that SBS awarded grants to applicants who did not meet Grant Program eligibility requirements.

For 74 sampled awarded grants totaling \$602,436, auditors used third-party research tools to determine whether businesses had outstanding legal judgments or tax liens.⁷ Based on the auditors' review, SBS awarded grants to 10 applicants who had outstanding City, State, or federal judgments or liens totaling \$55,276. Those 10 applicants were awarded grants totaling \$67,319.

After the auditors discussed these findings with SBS, officials stated that there have been changes to due diligence procedures and eligibility requirements. On June 17, 2022, the auditors requested that SBS detail how and why SBS changed due diligence and eligibility procedures for subsequent grant programs. To date, SBS has not provided the requested information.

On June 17, 2022, and on November 1, 2022, the auditors provided SBS with a list of cited grants so that SBS could review them and provide additional documentation and information.

SBS stated that some applicants were not subject to tax liens and judgments at the time they submitted their applications. However, based on the auditors' review, using third-party research tools, the applicants had outstanding tax liens and judgments during the application period. SBS did not provide documentation to show these tax liens or judgments were resolved.

⁷ The New York State Department of State website states that the "Corporation and Business Entity Database includes business and not for profit corporations, limited partnerships, limited liability companies, limited liability partnerships, and other miscellaneous businesses. The database also includes assumed name filings for corporations, limited liability companies and limited partnerships." The auditors used CLEAR, which is a third-party locate-and-research tool available to government, law enforcement, and commercial customers.

SBS Did Not Equitably Distribute Grant Program Funds Across the Five Boroughs

According to the SBS 2020 Mayor's Management Report, "Equity and opportunity are at the core of the work we do [...] SBS is committed to ensuring economic security for all New Yorkers by providing a wide range of services that help businesses, jobseekers and communities throughout the five boroughs."

Based on U.S. Census Bureau data and the auditors' review of agency records, businesses located in Manhattan disproportionately benefited from the Grant Program, while businesses located in the outer boroughs were underserved as detailed in Table 2 and Chart I below. Although businesses located in Manhattan accounted for 37.7% of businesses in the City, they received 63.1% of Grant Program funds.

Further, the highest Grant Program awards were for businesses located in the neighborhoods of Clinton, Midtown, Chelsea, Downtown Manhattan, and Tribeca. Please refer to Figure 1 below for a map detailing Grant Program award distribution by zip code and Appendix I for a list of Grant Program awards for the 50 zip codes that received the most funding. This suggests SBS did not adequately market the Grant Program across all five boroughs.

Additionally, the review noted that Grant Program funds were not distributed proportionally to certain industries, as detailed in Chart II below. For example, businesses in the professional, scientific, and technical services industry, which includes lawyers, architects, advertising agencies, and certified public accountants, disproportionately benefited from the Grant Program. Although the professional, scientific, and technical services industry accounts for 14.1% of small businesses, they received 23.2% of the grant funds.

SBS informed the auditors that it publicized the Grant Program via a Mayoral announcement, town hall meetings, social media posts, notifications to community partners, and email lists. The auditors requested that SBS provide supporting documentation including promotional materials and correspondence. However, in response SBS provided only two documents: a March 9, 2020, email announcing that assistance will be provided to small businesses and that additional information will be sent out "as more details become available," and a link to a NY1 interview with the SBS Commissioner on March 11, 2020, in which he promoted the Grant Program.

Additionally, SBS awarded grants on a first-come, first-served basis. SBS did not consider COVID-19 impact on neighborhoods, such as those with heavy concentrations of businesses or industries which were most adversely impacted. Consequently, Grant Program funds were not equitably distributed.

SBS argued that it had little control over how the grant funds were distributed and stated that when the Grant Program was launched in March 2020, there was "no known geographic or industrial impact due to the pandemic [and that] there was no rational basis to establish targets by geography or sector to distribute funds."

It also argues that "new data shows that many of the areas in Manhattan that the Comptroller stated were 'over-served' by this program experienced some of the highest net-loss of businesses since March 2020." This new data was not made available to the auditors to review.

These arguments notwithstanding, SBS did acknowledge the issue with the distribution of funding, and SBS has stated that for subsequent grant programs they considered information such as the

Low-to-Moderate Income geographies or areas that were disproportionately impacted by the pandemic.

Table 2

Comparison of the Number and Percentage of Small Businesses per Borough to the Number and Percentage of Grant Program Applicants, Recipients, and Funds⁸

Borough	Businesses with Less Than 5 Employees Per Census Bureau		Grant Program Applicants ⁹		Grant Program Recipients		Grant Program Funds	
	#	%	#	%	#	%	\$	%
Bronx	11,783	7.9%	366	4.3%	104	3.0%	\$491,709.28	2.0%
Brooklyn	40,919	27.5%	2,108	24.6%	802	23.5%	\$5,063,562.98	20.3%
Manhattan	56,093	37.7%	4,196	48.9%	1,831	53.7%	\$15,720,584.20	63.1%
Queens	33,948	22.8%	1,616	18.8%	578	16.9%	\$3,122,043.75	12.5%
Staten Island	5,932	4.0%	291	3.4%	96	2.8%	\$522,019.60	2.1%
Total	148,675		8,577		3,411		\$24,919,919.81	

⁸ Percentages may not total due to rounding.

⁹ 239 Grant Program applicants did not indicate a borough in their application or were listed as outside of NYC; therefore, the total does not equal the total of 8,816 listed in the Background section of this report.

Figure 1

Map of Grant Program Award Distribution by Zip Code

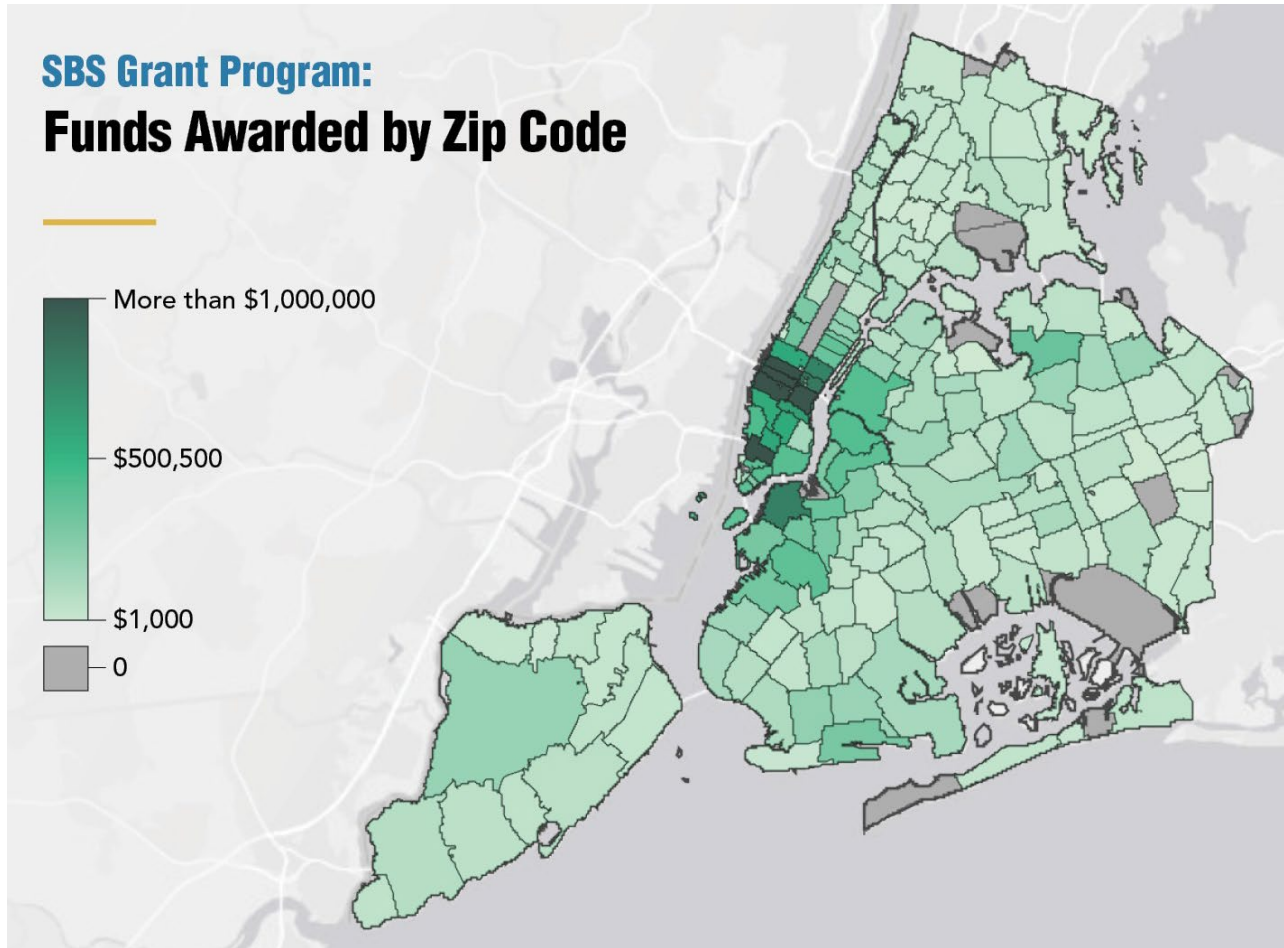


Chart I

Percentage of Small Businesses Compared to Percentage of Funding Received by Borough

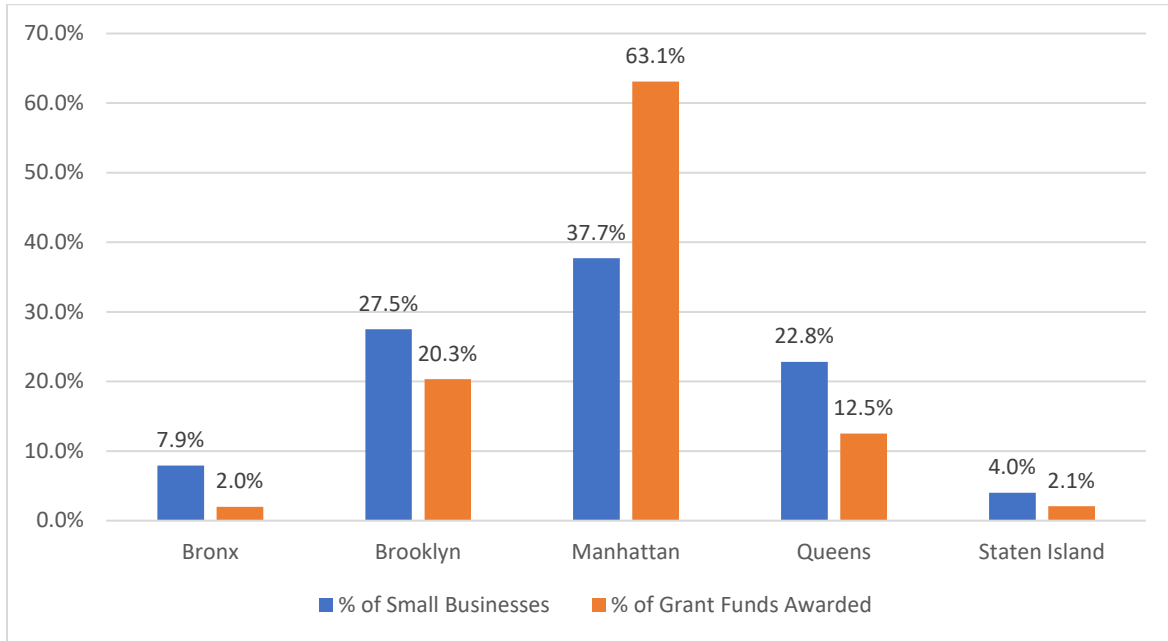
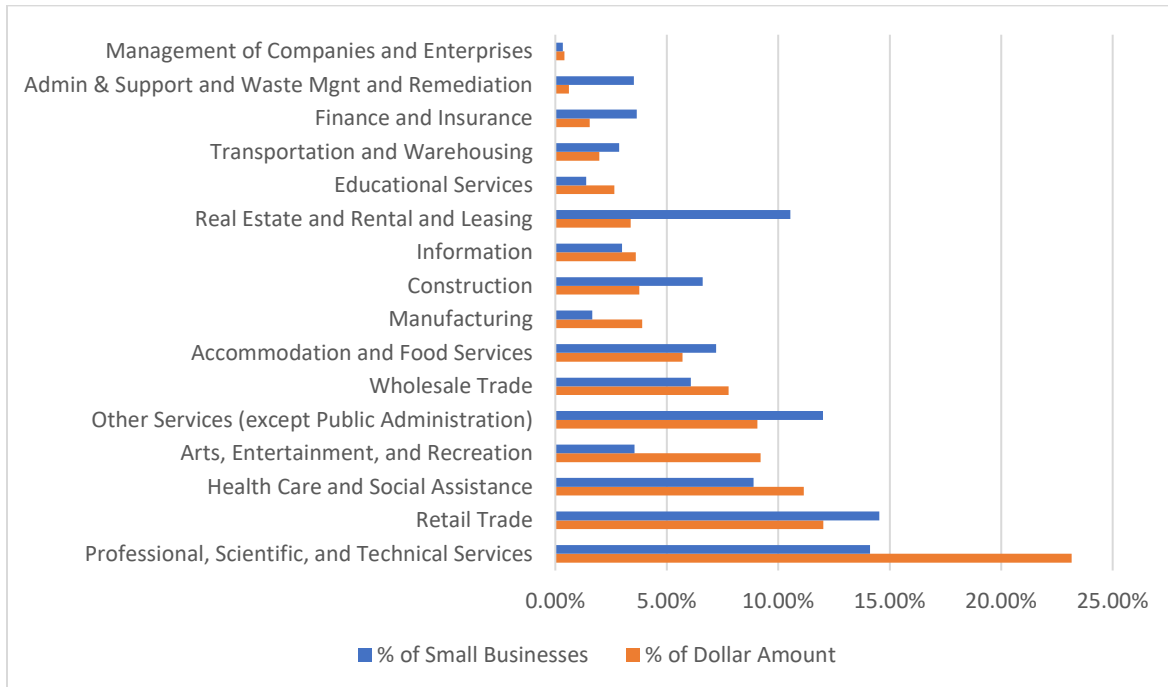


Chart II

Percentage of Small Businesses Compared to Percentage of Funding Received by Industry



RECOMMENDATIONS

To address the abovementioned findings, the auditors propose that for future financial assistance programs, SBS:

1. Ensure that secondary reviewers follow procedures and independently review applications and staff recommendations to make correct eligibility determinations.

SBS Response: SBS agreed with this recommendation and has implemented it. The agency informed the auditors that it “launched a grant program in late 2021 that adhered to this requirement.”

2. Require applicants to submit federal tax returns, New York State Quarterly Combined Withholding forms (including NYS-45 and NYS-45-ATT forms), NYC General Corporation or Unincorporated Business Tax Returns, and accounting records for programs with eligibility requirements which are based on business revenue, number of employees, or location.

SBS Response: SBS agreed with this recommendation and has implemented it. The agency informed the auditors that it “launched a grant program in late 2021 that adhered to these requirements.”

3. Independently obtain tax records from the Internal Revenue Service and New York State to verify financial information.

SBS Response: SBS did not directly respond to the recommendation. The agency stated, “This has not yet been implemented. In our experience this is likely not feasible given our goal of disburse funds quickly and efficiently to recipients, but SBS is willing to reach out to federal and state partners to establish a way for the timely delivery of records. SBS is also open to other approaches from the Comptroller that would result in a timely delivery of records.”

4. Independently conduct public record searches or use third-party research tools to determine whether businesses have outstanding judgments or liens.

SBS Response: SBS agreed with this recommendation and has implemented it. The agency informed the auditors that it “launched a grant program in late 2021 that adhered to this requirement.”

5. Communicate changes to documentation requirements to prospective applicants.

SBS Response: SBS agreed with this recommendation and has implemented it. The agency informed the auditors that it “has launched a variety of other loan and grant programs that have all adhered to this requirement.”

6. Increase outreach to underserved areas.

SBS Response: SBS agreed with this recommendation and has implemented it. The agency informed the auditors that it “has launched a variety of other loan and grant programs that targeted business in low-to-moderate income geographies or areas that were disproportionately impacted by the COVID-19 pandemic.”

7. Distribute funds to the public equitably within the context of the statutory parameters.

SBS Response: SBS agreed with this recommendation and has implemented it. The agency informed the auditors that it “has launched a variety of other loan and

grant programs that were only available to businesses in low-to-moderate income geographies or areas that were disproportionately impacted by the COVID-19 pandemic.”

Recommendations Follow-up

Follow-up will be conducted periodically to determine the implementation status of each recommendation contained in this report. Status updates are reported in the Audit Recommendations Tracker available here: <https://comptroller.nyc.gov/services/for-the-public/audit/audit-recommendations-tracker/>

SCOPE AND METHODOLOGY

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The scope of this audit was March 8, 2020, to April 3, 2020.

To gain an understanding of the Grant Program requirements, the auditors obtained and reviewed instructions available to applicants, including a document checklist and Grant Program Participation Affidavit form. To obtain an understanding of SBS policies and procedures related to preliminary eligibility checks, the auditors reviewed the *SBS NYC Employee Retention Grant – Analyst & Manager Training Manual* (updated March 18, 2020). To gain an understanding of the services in connection with the Grant Program, the auditors obtained a copy of the *Consultant Contract for the Provision of Services in Connection with the NYC Employee Retention Grant Program* between NYCEDC and WDC.

To obtain an understanding of the Grant Program creation, eligibility requirements, application intake, review, and award processes, the auditors conducted a walkthrough with SBS officials responsible for overseeing the Grant Program. Auditors also conducted a walkthrough of SBS' Microsoft Dynamics system to learn how Grant Program applications were submitted, reviewed, and processed, what key fields were maintained in the system, and how supporting documentation was stored.

To determine a population of Grant Program applications and awards, the auditors requested and obtained a listing of all 3,411 awarded Grant Program applications. The auditors also obtained read-only access to SBS' Microsoft Dynamics system, and independently obtained a listing of Grant Program application data by setting the data field as "Application Type" to "COVID-19 ERG Application" and again by setting the data field identified as "Case Type" to "Employee Retention Grant." To further confirm their population, the auditors asked SBS officials whether the methodology was correct, and they confirmed the auditors' methodology.

To test for completeness of key fields related to business operation date, location, and revenue, and application status, the auditors reviewed all approved Grant Program applications to determine whether they contained proper field content (alpha/numeric) and whether there were blank fields. Additionally, the auditors recalculated revenue loss using the figures recorded in Microsoft Dynamics to determine whether Microsoft Dynamics correctly calculated revenue loss percentages.

The auditors ran a "Transactions Listing" report within Microsoft Dynamics to determine whether any grant recipients received more than one payment or duplicate payment by sorting and running a report of all "ERG Case ID" that included data fields "Pay Agent Status;" "Disposition Status;" "Legal Business Name;" "EIN (Case ID);" and the last four digits of the small business or owners "EIN or SSN," along with the grant approval date and approved amount. For Grant Program

recipients who received more than one grant payment, the auditors reviewed grant case documents to determine whether grant recipients with multiple payments were adjustments or duplicate payments made to the grant recipient.

To determine whether information extracted from Microsoft Dynamics was accurate compared to (revenue, percentage loss, and payroll) information recorded on individual grant cases, the auditors used Microsoft Excel ACL Add-in sampling function and randomly selected 50 grant cases and compared the information from these fields extracted from their report to the financing tab for the 50 random cases.

To determine whether Analysts and Account Managers made correct eligibility determinations for awarded grant applicants, the auditors selected a sample of 74 of 3,411 awarded Grant Program applications, as of August 4, 2021, and obtained and reviewed supporting documentation for each application. To select the 74 awarded Grant Program applications, the auditors:

- Reviewed the percentage loss calculation in SBS' Microsoft Dynamics system, and judgmentally selected all 17 applicants that did not meet the 25% decrease in revenue loss requirement;
- Reviewed all awarded applicants' federal Payroll Protection Program (PPP) loan data and:
 - Judgmentally selected all seven applicants that indicated they had more than four employees, and received more than \$200,000 in PPP loans;
 - Randomly selected eight applicants that indicated they had more than four employees, and received between \$100,000 and \$200,000 in PPP loans; and
 - Randomly selected five applicants that indicated they had more than four employees, and received less than \$100,000 in PPP loans;
- Reviewed 200 Grant Program applicants' dates of incorporation and incorporation statuses within the New York State Division of Corporations, Corporation and Business Entity Database. For recipients that were not found in the New York State Department of Corporations' database, the auditors performed additional online searches to determine if more information on where the business was located or operating was available. Based on the search results, the auditors identified and judgmentally selected one awarded applicant incorporated for less than six months at the time of their transaction date, and identified 11 recipients for whom the auditors were unable to find active incorporation status in any of the databases; and
- Randomly selected 25 awarded applicants from the remaining population of recipients.

For each of the 74 awarded applications, the auditors obtained supporting documentation and correspondence from Microsoft Dynamics. Auditors then reviewed supporting documentation to determine whether Grant Program applicants were eligible by independently recalculating revenue loss; verified whether grant applicants were located in NYC, in existence for at least six months, had fewer than five employees on payroll; and ensured that applicants had provided signed Affidavits and adequate payroll records.

To determine whether SBS correctly calculated grant reimbursement amounts, the auditors judgmentally selected a sample of 159 awarded grants. For each of the 159 awarded applications, the auditors obtained supporting documentation and correspondence from Microsoft Dynamics. The auditors then reviewed supporting documentation and recalculated grant amounts based on salary caps established by SBS.

To determine whether Analysts and Managers made correct eligibility determinations for non-awarded grant applicants, the auditors selected a sample of 50 of 5,404 disqualified Grant Program applicants, as of August 4, 2021. To select a sample of 50 disqualified applications, auditors used the Microsoft Excel ACL Add-in sampling function and randomly selected 20 applications that had an application status of “Reject,” 20 applications that had an application status of “Deny,” and 10 applications that had an application status “Appeal Denied.”

For each of the 50 non-awarded Grant Program applicants, the auditors obtained supporting documentation and correspondence from Microsoft Dynamics and looked to see if the Analyst and Manager made the correct eligibility determination by independently recalculating revenue loss, verifying that those applicants were located in NYC, ensuring that applicants had provided all required documents and signed Affidavits, and whether the business applicant was sent a notification for the denied, rejected, or “appeal denied” application.

To determine whether businesses were located within the City's five boroughs, in operation for at least six months, and had no outstanding legal judgments or tax liens, the auditors searched CLEAR for their sample of 74 awarded Grant Program applicants.

To determine whether SBS equitably distributed grants across the City, the auditors reviewed fields in Microsoft Dynamics (including zip code and borough) and summarized and mapped out where Grant Program funds were distributed. Additionally, the auditors obtained and reviewed 2019 and 2020 United States Census Bureau reports (“All Sectors: County Business Patterns, including ZIP Code Business Patterns, by Legal Form of Organization and Employment Size Class for the U.S., States, and Selected Geographies”), and summarized the number of small businesses that could have qualified for the Grant Program based on business size. The auditors then compared the distribution of Grant Program funds to the distribution of small businesses across the City.

The results of the above tests, while not projectable to their respective populations whenever a sample was used, provided a reasonable basis for the auditors to evaluate whether SBS obtained and reviewed required documentation to ensure that grants were awarded to eligible businesses and whether SBS had adequate controls over the award process and complied with relevant rules and regulations.

APPENDIX I

Listing of Grant Program Award Distribution by the Top 50 Zip Codes

Zip Code	Neighborhood	Number of Grants	Amount Awarded
10018	Chelsea, Clinton & Midtown	147	\$ 1,530,863.35
10001	Chelsea	171	\$ 1,436,851.28
10013	Tribeca & Downtown	122	\$ 1,052,408.04
10036	Clinton & Midtown Business District	133	\$ 1,014,296.87
10016	Murray Hill, East Side & Midtown	111	\$ 996,766.80
10017	Murray Hill, East Side & Midtown	74	\$ 791,579.39
11201	Downtown Brooklyn	87	\$ 753,607.30
10022	Turtle Bay, East Side & Midtown	74	\$ 733,902.06
10010	Gramercy Park & Stuyvesant Town	65	\$ 607,226.28
10012	NoHo, Soho & Downtown	60	\$ 563,001.14
10019	Upper West Side, West Side & Uptown	68	\$ 556,663.87
10011	Chelsea, Midtown West & West Side	78	\$ 545,726.38
10003	East Village & Downtown	61	\$ 541,973.09
10014	Greenwich Village & SoHo	43	\$ 388,018.82
11222	Greenpoint	52	\$ 367,360.03
11101	Long Island City	54	\$ 360,700.29
10038	City Hall & Downtown	38	\$ 358,346.95
10002	Chinatown & Lower East Side	55	\$ 353,762.16
10007	Tribeca & Downtown	33	\$ 338,923.92
11211	Williamsburg	53	\$ 329,262.55
11215	South Slope	54	\$ 325,862.79
10004	Battery Park City	32	\$ 317,953.69
10021	Upper East Side	30	\$ 306,638.91
11205	Navy Hill	35	\$ 280,653.90
10065	Upper East Side	30	\$ 274,240.79
11354	Flushing & Murray Hill	56	\$ 273,182.81
10023	Upper West Side, West Side & Uptown	33	\$ 261,675.88
11217	Boerum Hill	29	\$ 236,559.60
11232	Sunset Park	26	\$ 233,618.07
11231	Red Hook	36	\$ 229,908.80
11235	Sheepshead Bay	39	\$ 222,672.07
11238	Prospect Heights	30	\$ 219,064.96
11249	Williamsburg	34	\$ 216,733.67
10024	Upper West Side	22	\$ 213,640.99
10075	Upper East Side	19	\$ 212,193.58
11206	Williamsburg	33	\$ 188,174.06

Zip Code	Neighborhood	Number of Grants	Amount Awarded
10005	Wall Street & Downtown	19	\$ 179,140.47
10128	Upper East Side	23	\$ 159,841.67
11223	Bensonhurst	22	\$ 158,978.88
10028	Yorkville & Upper East Side	21	\$ 152,501.36
10314	New Springville	18	\$ 139,858.99
11361	Bayside	19	\$ 137,667.37
11229	Sheepshead Bay	22	\$ 135,655.99
11106	Astoria & Long Island City	18	\$ 135,120.00
11355	Queensboro Hill	27	\$ 129,714.66
11378	Maspeth	20	\$ 126,104.31
11220	Sunset Park	28	\$ 117,857.42
11375	Forest Hills	24	\$ 117,277.98
11358	Murry Hill	24	\$ 105,973.45
10009	East Village & Downtown	17	\$ 105,405.36



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To: Kolbein Netland, Office of the New York City Comptroller
From: Ismail Mohammed, Assistant Commissioner, Department of Small Business Services
CC: Kevin Kim, Commissioner; Jackie Mallon, First Deputy Commissioner; Michael Silver, Senior Policy Advisor
Re: Response to Employee Retention Grant Individual Case Findings
Date: December 6, 2022

Dear Kolbein,

The following is the Department of Small Business Services' (SBS) response to the New York City Comptroller's findings for the Employee Retention Grant program (ERG).

Within days of the emergency declaration by the Mayor (EO 98 - March 12, 2020) SBS responded by launching two emergency relief programs, we believe the first of their kind in the country. The Employee Retention Grant and Small Business Continuity Loan programs were launched on March 17, 2020 and March 26, 2020 respectively. The extent and impact of the pandemic would not be known for months and as such, SBS expected that these programs would provide stop-gap relief to businesses in NYC before a more comprehensive federal program would become available. The Paycheck Protection Program would launch April 3, 2020.

The Comptroller identified 16 ERG cases it concluded were improperly awarded. SBS disagrees with eight of these findings and agrees with the Comptroller's conclusion on the remaining cases. It should be noted that there were two methods to calculate the revenue loss. SBS compared both the revenue in the corresponding two months in 2020 and 2019 and the average monthly revenue from 2019 to the average revenue for two months in 2020. See Appendix A for details.

For the cases where there is a finding regarding the grant calculation amount, SBS disagrees with eight of these calculations. For the remaining cases, although it was SBS's intention to cap each individual employee's payroll costs, the Dynamics system did not include this functionality, therefore we agree with the Comptroller's finding. See Appendix B for details.

In response to the cases with outstanding judgments, SBS required that applicants for ERG affirm that they had "no outstanding tax liens or warrants and is not in arrears with respect to any outstanding debt or payments owed to the City or State of New York or the federal government or is in violation of any



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applicable government regulations.” In light of the COVID-19 crisis and in order to distribute funds to thousands of the smallest businesses in need of relief quickly, SBS did not independently validate this attestation by the applicant. That said, SBS has checked the status of the businesses cited by the Comptroller and disagrees with four of these determinations. See Appendix C for details.

Finally, as related to the distribution of funds by borough and industry, both the ERG and SBCL programs launched in March 2020 and at that time there was no known geographic or industrial impact due to the pandemic. As such, there was no rational basis to establish targets by geography or sector to distribute funds. Consequently, funds were disbursed on a first-come first-served basis. In addition, new data shows that many of the areas in Manhattan that the Comptroller stated were “over-served” by this program experienced some of the highest net-loss of businesses since March 2020.

Regarding the recommendations proposed for future financial assistance programs, SBS has already implemented most of the Comptroller’s proposed solutions. See below for details.

1. Ensure that secondary reviewers follow procedures and independently review applications and staff recommendations to make correct eligibility determinations.
 - a. SBS agrees with this recommendation and has implemented it. SBS launched a grant program in late 2021 that adhered to this requirement.
2. Require applicants to submit federal tax returns, NYS Quarterly Combined Withholding forms (NYS-45 or NYS-45-ATT), NYC General Corporation or Unincorporated business tax returns, and accounting records for programs with eligibility requirements which are based on business revenue, number of employees, or location.
 - a. SBS agrees with this recommendation and has implemented it. SBS launched a grant program in late 2021 that adhered to these requirements.
 - b. Note that for loan programs the lender will stipulate the required documentation for underwriting.
3. Independently obtain tax records from the IRS and NY State
 - a. This has not yet been implemented. In our experience this is likely not feasible given our goal of disburse funds quickly and efficiently to recipients, but SBS is willing to reach out to federal and state partners to establish a way for the timely delivery of records. SBS is also open to other approaches from the Comptroller that would result in a timely delivery of records.
4. Independently conduct public record searches or use third-party research tools to determine whether businesses have outstanding judgements and liens.



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- a. SBS agrees with this recommendation and has implemented it. SBS launched a grant program in late 2021 that adhered to this requirement.
5. Communicate changes to documentation requirements to prospective applicants.
 - a. SBS agrees with this recommendation and has implemented it. SBS has launched a variety of other loan and grant programs that have all adhered to this requirement.
6. Increase outreach to underserved areas.
 - a. SBS agrees with this recommendation and has implemented it. SBS has launched a variety of other loan and grant programs that targeted business in low-to-moderate income geographies or areas that were disproportionately impacted by the COVID-19 pandemic.
7. Distribute funds to the public equitably within the context of the statutory parameters.
 - a. SBS agrees with this recommendation and has implemented it. SBS has launched a variety of other loan and grant programs that were only available to businesses in low-to-moderate income geographies or areas that were disproportionately impacted by the COVID-19 pandemic.



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APPENDIX A

1. ERG2020-0092; 141 Dental Studio, P.C.
 - SBS disagrees with the revenue loss challenge. The business submitted the affidavit addendum demonstrating \$0 revenue for April, thus demonstrating 58% loss.
2. ERG2020-0569; Good Vibes Music Therapy LTD
 - SBS disagrees that payroll records were inadequate. Using the document called "2020 Payment History Summ by employee", payroll for February and March months were provided. Note, this document was uploaded to the 2020 revenue documents section rather than the Payroll document section.
3. ERG2020-2421; Tracy and Malik's Bus Company, Inc.
 - SBS agrees with the payroll conclusion by the Comptroller.
 - SBS disagrees with the revenue loss challenge. The monthly average revenue from calendar year 2019 compared to 2020's average revenue demonstrates a 55% loss.
4. ERG2020-2521; KMW Textiles Inc.
 - SBS disagrees with the revenue loss challenge. The monthly average revenue from calendar year 2019 compared to 2020's average revenue demonstrates a 42% loss.
5. ERG2020-4215; RHG USA, LLC
 - SBS agrees with payroll conclusion by the Comptroller.
 - SBS disagrees with the revenue loss challenge. The monthly average revenue from calendar year 2019 compared to 2020's average revenue demonstrates a 42% loss.
6. ERG2020-8620; GameOn App Inc.
 - SBS agrees with payroll conclusion by the Comptroller.
7. ERG2020-3820; FLOSAM INC
 - SBS disagrees with the revenue loss challenge. The monthly average revenue from calendar year 2019 compared to 2020's average revenue demonstrates a 34% loss.
8. ERG2020-5698; RC Wellness Medical PC
 - SBS disagrees with the revenue loss challenge. The monthly average revenue from calendar year 2019 compared to 2020's average revenue demonstrates a 66% loss.
9. ERG2020-10114; IT Public Relations Inc
 - SBS disagrees with the revenue loss challenge. The corresponding two months in 2019 vs 2020 revenue calculation demonstrates a 55% loss.
 - SBS disagrees that the affidavit is missing, it is available in Dynamics.
10. ERG2020-2630; Bread & Joe LLC
 - SBS disagrees with the revenue loss challenge. The monthly average revenue from calendar year 2019 compared to 2020's average revenue demonstrates a 62% loss.



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- SBS disagrees that the affidavit is missing, it is available in Dynamics.
11. ERG2020-5190; New Tech Contracting Corp.
 - SBS agrees with payroll conclusion by the Comptroller.
 12. ERG2020-4652; RFC PRODUCTIONS BK, LLC
 - SBS agrees that the revenue loss did not meet the threshold.
 13. ERG2020-4312; Que Bonita, Inc.
 - SBS agrees that the business did not submit the affidavit.
 14. ERG2020-10194; Nexus Building Development Group, Inc.
 - SBS disagrees with the revenue loss challenge the monthly average revenue from 2019 compared to 2020's average revenue demonstrates a 40% loss.
 15. ERG2020-8718; Fine Art Shippers
 - SBS agrees with payroll conclusion by the Comptroller.
 16. ERG2020-0513; SpringPeak Capital, LLC
 - SBS agrees with payroll conclusion by the Comptroller.



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APPENDIX B

1. ERG2020-1660; Galerie Gmurzynska US Inc: calculated payroll to be \$60,403, 40% is \$24,161 which is the amount awarded.
2. ERG2020-6929; Mission united taekwondo inc: calculated payroll to be \$14,000, 40% is \$5,600 which is the amount awarded.
3. ERG2020-8920; Rha & Kim, LLP: recalculated payroll to be \$55,538, 40% is \$22,215 which is the amount awarded.
4. ERG2020-12344; AAA AMERICAN FLAG DECORATING COMPANY INC: calculated payroll to be \$26,732.08, 40% is \$10,692 which is the amount awarded.
5. ERG2020-7527; ACE NY SALES: calculated payroll to be \$24,660, 40% is \$9,864 which is the amount awarded.
6. ERG2020-12595; 386 United Inc.: calculated payroll to be \$15,897, 40% is \$6,359 which is the amount awarded. The Comptroller's analysis is using the net payroll and not the gross payroll.
7. ERG2020-6874; Gauge Inc: calculated payroll to be \$6,334, 40% is \$2,533 which is the amount awarded. The Comptroller's analysis is using the net payroll and not the gross payroll.
8. ERG2020-12976; The Questor Group, Inc: calculated payroll to be \$66,664, 40% is \$26,666 which is the amount awarded. In this case the analyst capped each employee at the maximum amount (4 x \$16,666).



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APPENDIX C

1. ERG2020-12344; AAA AMERICAN FLAG DECORATING COMPANY INC: \$1,272 city tax lien issued 9/23/03, released 3/3/04. This was resolved before our program launched.
2. ERG2020-10565; Allure Jewelry and Accessories: NYS tax warrant issued 9/6/17, released 11/15/17. This was resolved before our program launched.
3. ERG2020-1537; AA PLUS MANAGEMENT INC: \$663 City tax lien issued 12/7/21, released 8/9/22. This was in place after our program was complete.
4. ERG2020-10460; Rockfoot Inc.: \$41 city tax lien issued 2/1/22, remains outstanding. This was issued after our program was complete.



NEW YORK CITY COMPTROLLER
BRAD LANDER

1 Centre Street, New York, NY 10007

www.comptroller.nyc.gov

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(212) 669-3916