



NEW YORK CITY COMPTROLLER
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**Audit Report on the
Department of Small Business
Services' Administration of the
New York City Small Business
Continuity Loan Fund Program**

FK21-084A | 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 Small Business Continuity Loan Fund Program (Loan 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 Loan 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, that notification of applicants was not sufficient to ensure applicants became aware of changes in eligibility requirements and in application deficiencies and denials. The audit also found that Loan Program funding was not equitably distributed across the five boroughs. The Bronx was particularly underserved, with the lowest absolute and relative number of loan recipients and awarded funds.

The audit recommends that for future financial assistance programs, SBS implement multi-level reviews to ensure that staff follow procedures and determine eligibility correctly; 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 judgements 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 Loan Program, the Department of Small Business Services (SBS) did not perform sufficient due diligence and did not consistently make correct eligibility determinations. Additionally, SBS did not consistently notify applicants of changes in eligibility requirements and application deficiencies and denials. SBS also did not take meaningful steps to ensure that Loan Program funds were equitably distributed across the five boroughs.

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 Small Business Continuity Loan Fund (Loan Program) and the NYC Employee Retention Grant Program (Grant Program).¹ The purpose of the Loan Program was to help small businesses retain employees and ensure business continuity over the course of the pandemic.

Each business was eligible for a maximum loan amount of up to \$75,000 at 0% interest. To qualify for the Loan Program, businesses were required to demonstrate and/or certify that they: (1) experienced at least a 25% decrease in revenue or sales due to the COVID-19 outbreak; (2) had the ability to repay the loan; (3) were located within the five boroughs of New York City; (4) were in operation for at least two years; (5) employed fewer than 100 employees across all locations; and (6) had no outstanding tax liens or legal judgments.

The City entered into an agreement with its lending partners (the Loan Agreement) to commit funding for the Loan Program.² The Loan Agreement states that:

[SBS] is expected to perform the following due diligence with respect to each such loan applicant to determine its eligibility as a Qualifying Program Borrower:

- (A) Verify such loan applicant's legal authority to do business in the City;
- (B) Perform a general evaluation of such loan applicant's eligibility; and
- (C) Verify the business address of such loan applicant through public records.

SBS contracted with five vendors to review Loan Program applications. SBS informed us that it assigned Loan Program applications to contracted Account Managers based on the borough of the applicant's business location. Account Managers were responsible for determining whether applicants were eligible to apply for loans and referred eligible applicants to SBS' Loan Administrator. The Loan Administrator was responsible for determining whether applicants had the ability to repay loans.³

¹ This audit covers only the Loan Program. The auditors separately reviewed the Employee Retention Grant Program in the following report: *Audit Report on the Department of Small Business Services' Administration of the New York City Employee Retention Grant Program* (Audit Report # FK21-083A).

² Under the terms of the Loan Agreement, Goldman Sachs Bank USA and the Coach Foundation committed to fund \$15 million and \$2 million, respectively, as Senior Lenders. The New York City Economic Development Corporation (NYCEDC) committed to fund \$5.7 million as a Junior Lender.

³ The City contracted with Pursuit Lending (formerly known as New York Business Development Corporation) to process loan applications and service project loans, which were partially funded by the City. The auditors did not review the lender's determination or award process.

SBS accepted applications between March 26, 2020 and April 8, 2020. The agency received 12,044 completed loan applications and referred 1,032 applicants to the Loan Administrator. As a result of the Loan Program, 404 businesses received loans totaling approximately \$22,872,149.

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.⁴

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 19, 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 Loan 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. Additionally, SBS stated that “[i]n general, SBS does not believe that the findings represent the quality of this program given the context in which it was launched. As the first public emergency loan fund to launch in the nation, it was critical for SBS to launch as quickly as possible. [...] In general, SBS worked as quickly as possible to manage unprecedented demand for this program, that was designed and implemented in record time.”

We acknowledge the difficult and pressing circumstances in which the Loan 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' written response to the findings, and where relevant, changes to the report were made. The full text of the SBS response is included as an addendum to this report.

⁴ 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, Account Managers did not consistently follow procedures and did not make correct eligibility determinations in all cases. SBS did not require all applicants to submit supporting documentation to demonstrate that they met eligibility, and they did not independently verify businesses' qualifications through public records searches or third-party research tools.

Additionally, SBS did not always inform applicants of changes in eligibility requirements and application deficiencies. Consequently, applicants were not always given the opportunity to submit additional documentation which may have enabled them to qualify for loans.

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

Account Managers Did Not Make Correct Eligibility Determinations

The document *NYC Small Business Continuity Fund – Account Manager & SBS Training* (the SBS Training Manual) stated the job of the Account Manager was to review SBS Loan Applications. When reviewing applications, Account Managers 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 to apply for the loan.

Specifically, the SBS Training Manual instructed Account Managers to verify that applicants uploaded a signed Loan Program Participation Affidavit (which certified that they meet eligibility requirements), revenue documentation for 2019 and 2020 (showing a 25% decrease in revenue), and documentation proving a New York City address.

However, based on the review of SBS records for 76 awarded Loan Program applications, the auditors found that SBS referred 39 applicants (51.3% of the sample) to the Loan Administrator who did not meet one or more eligibility requirements. Specifically, SBS referred:

- 31 applicants who did not provide a completed Loan Program affidavit;
- Eight applicants who did not demonstrate a decrease in revenue of at least 25%; and
- Four applicants who did not prove their businesses were located in the City.

The 31 applicants who did not provide a completed Loan Program affidavit also applied to the Grant Program. SBS relied on affidavits submitted in connection with the Grant Program. However, the Grant Program affidavit did not require applicants to certify that their business was located in the City and was in operation for at least two years. It also did not require applicants to certify that they have no outstanding tax liens or outstanding obligations to the City, State, or federal government.

Additionally, based on the review of SBS records for 45 disqualified Loan Program applications, SBS did not approve 15 applicants (33.3%) who met SBS Loan Program eligibility requirements. These applicants uploaded signed Loan Program Participation Affidavits, provided documentation to demonstrate a decrease in revenue of at least 25%, and provided documentation to show that their business was located within the City.

This likely happened because SBS did not have supervisory personnel review Account Managers' determinations to ensure that they were correct. Consequently, limited Loan Program funds were not properly distributed.

In its written response to the draft report, SBS generally disagreed that eligibility determinations were incorrect or that applicants were improperly denied. SBS argued that it relied on the Loan Administrator to perform "a detailed review of each applicant that applies for a loan with their organization, much of which overlaps with the eligibility criteria for this program"; that applicants submitted Grant Program affidavits that were the same as Loan Program affidavits; that applicants demonstrated that they met revenue loss requirements and submitted proof of a NYC address. SBS also argued that there were two different ways to calculate revenue loss.

Based on new documentation provided, the auditors modified the finding in relation to two applicants, but the auditors did not find any other basis to modify the findings, generally or for the remaining applicants.

According to Section 6.1(q)(iii) of the Loan Agreement, the due diligence responsibilities of the Loan Administrator were as follows:

Upon receipt of any loan applications submitted under the Program, the Administrator shall [...] perform the following due diligence with respect to each such loan applicant to determine its eligibility as a Qualifying Program Borrower:

- (A) Evaluate the working capital needs of such loan applicant to restart or continue business operations; and
- (B) Perform minimal financial analysis of such loan applicant's ability to repay a loan under the Program, including based on a review of the credit score and a calculation of a rough estimate of the Debt Service Coverage Ratio, in each case, of such loan applicant.

SBS has not provided documentation to show that the Loan Administrator was responsible for performing a second-level review of eligibility. The Grant Program affidavit is not the same as the Loan Program Affidavit in that it does not include certifications related to business location, operation, and outstanding tax liens or outstanding obligations.

Regarding the calculation of revenue loss, the auditors used both methods, but none of the cited applicants met the revenue loss requirements, under either calculation method. Lastly, SBS did not always provide proof of NYC address.

SBS officials also argued that the Loan Program was implemented quickly. This is true, and we acknowledge the difficult circumstances in which SBS was operating and the speed with which the operation was established. As SBS put it, "The goal was to provide relief to small businesses as soon as possible and support their ability to retain staff until Federal relief was available." For newer loan programs, SBS has completely outsourced program administration, and applications now require multiple levels of approval.

SBS Did Not Consistently Allow Applicants to Demonstrate Revenue Loss Based on Anticipated Revenue for April 2020

The SBS Training Manual instructed Account Managers to verify, among other things, that applicants submitted documentation which demonstrated “at least a 25% decrease in revenue for two (2) consecutive months after January 1st, 2020, compared to the average revenue for the same two-month period in calendar year 2019 (or average monthly revenue based on total 2019 sales).” Further, the SBS Training Manual stated that acceptable documentation included:

One or more of the following for the entire impacted period: point-of-sales reports or screenshots, sales reports (demonstrating fees collected or earned income), bank statements, transaction level data from banks, quarterly sales tax filings, profit & loss statements for two consecutive months in 2020.

As previously mentioned, SBS started accepting applications on March 26, 2020. On April 1, 2020, SBS implemented a “Participation Affidavit Addendum” which allowed applicants to certify that, “Due to the Governor’s Executive Order 202.6, ‘New York State on PAUSE’, my business operations were closed” and to certify anticipated revenue for April 2020.

SBS implemented this policy prospectively. SBS did not allow applicants who were previously disqualified because they did not meet the revenue loss requirement based on documentation submitted for January, February, or March 2020, to reopen their loan applications and submit a Participation Affidavit Addendum which self-reported revenue for April 2020.

The audit found that SBS did not post the Participation Affidavit Addendum on its website or otherwise communicate to businesses that they could demonstrate the revenue loss requirement based on anticipated revenue for April 2020. SBS instructed Account Managers to provide applicants who did not meet the revenue loss requirements with the Participation Affidavit Addendum. After SBS implemented the Participation Affidavit Addendum, Account Managers disqualified 27 applicants because they did not meet the revenue loss requirement. However, in 26 of those 27 instances, Account Managers did not provide applicants with the Participation Affidavit Addendum, which would have allowed them to demonstrate revenue loss based on anticipated revenue for April 2020, and instead denied their applications.

In its written response to the draft report, SBS argued that the Participation Affidavit Addendum was posted on its website and available to all applicants and that SBS was not able to re-evaluate previously disqualified applications, due to the large number of applicants. However, this was not verified with supporting documentation from SBS, and searches of internet archives did not find evidence that SBS posted the Participation Affidavit Addendum on its website.

With respect to volume, SBS only disqualified 38 applications before changing revenue loss requirements and arguably could have re-evaluated them based on the new criteria.

Account Managers Did Not Issue Notices of Deficiency and Denial Letters to Applicants

The SBS Account Manager Training Manual stated that Account Managers should issue notices of deficiency to applicants if there are discrepancies in their submitted documentation, or if

applicants did not submit required documentation. The Account Manager Training Manual outlined a procedure for applicants who are missing documentation. It stated:

At any point if any documentation is missing, you should reach out to the applicant through [Microsoft] Dynamics using a “Notice of Deficiency” email. Once the applicant receives a first notice of deficiency, they have two weeks to provide their missing documentation.⁵ After **two (2) weeks**, you should send a final notice of deficiency, reminding the applicant of the information they are missing [...] You should make an eligibility determination or reach out for more information within **three (3) business days** of receiving an application. [Emphasis in original.]

The Account Manager Training Manual also stated that Account Managers should issue denial letters to applicants that did not meet eligibility criteria.

However, based on the auditors’ review, Account Managers did not send a Notice of Deficiency to 18 of 24 sampled applicants who did not submit required documentation or submitted documentation with discrepancies. As a result, applicants were not informed of deficiencies, nor were they given the opportunity to correct them.

Likewise, Account Managers did not send Denial Letters to 44 of the 45 sampled applicants who were disqualified by SBS, and applicants were unaware that their applications had been denied.

This likely happened because SBS did not employ multi-level reviews to ensure that Account Managers followed procedures regarding communication with applicants.

After the auditors discussed the findings with SBS, officials stated that the SBS Loan Program was overwhelmed with applications.

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

The Loan Agreement Section 6.1(q)(iv) stated that SBS is expected to perform the following due diligence when determining whether applicants meet eligibility requirements:

- (A) Verify such loan applicant’s legal authority to do business in the City;
- (B) Perform a general evaluation of such loan applicant’s eligibility; and
- (C) Verify the business address of such loan applicant through public records.

The Loan Agreement stipulated that an eligible borrower must:

- be located and conducting business in the City;
- be either a for-profit business independently owned and operated and paying taxes in the City or a non-profit organization;
- not have more than 99 employees;

⁵ Microsoft Dynamics is an information system which SBS uses to administer multiple programs and functions. For the Loan Program, SBS used Dynamics to assign applications to Account Managers for review, maintain application responses and supporting documentation, communicate with applicants, and record Account Manager determinations.

- have demonstrated that the Virus outbreak caused a decrease of at least 25% in 2020 average monthly revenue;
- not be subject to any adverse legal judgments that have not been vacated or stayed and shall not have its property subject to a tax lien; and
- have filed 2018 tax returns and have them available for a full year of operation of such applicant's business.

SBS required applicants to submit documentation to demonstrate that they met minimum revenue loss requirements and showed an address in New York City. However, SBS did not require applicants to submit supporting documentation to demonstrate that they met other eligibility requirements regarding business type, size, tax returns and payments, and judgments or liens.

The review indicates that SBS did not independently verify that businesses met them through public records searches or third-party research tools. Instead, SBS relied on the Loan Program Participation Affidavit which allowed applicants to self-certify that their businesses met eligibility requirements. It appears that SBS referred applicants who did not meet Loan Program eligibility requirements to the Loan Administrator.

For 76 sampled awarded loans totaling \$4,276,500, auditors searched the New York State Department of State Corporation and Business Entity Database and third-party research tools⁶ to determine whether businesses were in operation for at least two years and had no outstanding legal judgments or tax liens at the time the applications were submitted.⁷ Based on the auditors' review, SBS referred 20 applicants who may not have met one or both of the aforementioned Loan Program eligibility requirements to the Loan Administrator. Those 20 applicants were awarded loans totaling \$974,500.

When the auditors brought these findings to the attention of SBS officials, they 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 they changed these procedures for subsequent loan programs. To date, SBS has not provided the requested information.

Additionally, SBS stated that the Loan Administrator was responsible for performing a second-level review of eligibility. However, as previously stated, the Loan Agreement stated that the Loan Administrator was responsible only for evaluating applicants' working capital needs to restart or continue business operations and determining applicants' ability to repay loans by performing minimal financial analysis including reviewing credit scores and calculating debt service coverage ratios.

In its written response to the draft report, SBS raised a new argument regarding tax liens and judgments. Specifically, SBS stated that the requirement pertained to the owner of the business and not the business entity. However, the Loan Agreement states that "each such Person shall not be subject to any adverse legal judgments [...] and shall not have its property subject to a tax lien." The Loan Agreement further defines a "Person" as "any individual, sole proprietorship, partnership, limited liability company, joint venture, trust, unincorporated organization, joint stock

⁶ The auditors used Accurant, LexisNexis, and CLEAR, which are third-party locate-and-research tools available to government, law enforcement, and commercial customers.

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."

company, association, corporation, institution, entity, party or government (including any division, agency or department thereof) or any other legal entity.”

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

The Loan Agreement required the Loan Administrator to assist SBS and other parties in any publicity and marketing efforts “in the Targeted Areas”—meaning, throughout “the five boroughs of the City.” Additionally, the Loan Agreement stated that the Loan Administrator “shall make reasonable efforts to comply with requests [...] for updates about the deployment, results and performance of the Program in the Targeted Areas.”

Based on U.S. Census Bureau data and the auditors’ review of SBS records, businesses located in Manhattan disproportionately benefited from the Loan Program, while businesses located in the outer boroughs were underserved, as detailed in Table I and Chart I below. Although businesses located in Manhattan accounted for 41.3% of businesses in the City, they received 59.6% of Loan Program funds.

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

SBS informed the auditors that it publicized the Loan Program via a Mayoral announcement, town hall meetings, social media posts, notifications to community partners, and email lists. Auditors requested that SBS provide supporting documentation including promotional materials and correspondence. However, in response SBS provided only: (1) a March 9, 2020, email announcing that assistance would be provided to small businesses, including loans, and that “SBS will continue to send out information, including on financial assistance, as more details become available;” (2) a link to a NY1 interview with the SBS Commissioner on March 11, 2020, in which he promoted the Loan Program; and (3) an SBS press release issued on March 27, 2020, announcing that loans were available for small businesses affected by COVID-19.

Additionally, SBS awarded loans 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, and performance of the Program across the five boroughs when qualifying applicants for loans. Consequently, Loan Program funds were not equitably distributed.

SBS argued that it had little control over how the loan funds were distributed and stated that when the Loan 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 loan programs they considered information such as the Low-to-Moderate Income (LMI) census tract and areas with heavy concentrations of the most-impacted industries.

Table I

Comparison of the Number and Percentage of Small Businesses per Borough to the Number and Percentage of Loan Program Applicants, Recipients, and Funds

Borough	Businesses With Less Than 100 Employees Per Census Bureau		Loan Program Applicants		Loan Program Recipients		Loan Program Funds	
	#	%	#	%	#	%	\$	%
Bronx	17,807	7.7%	519	4.3%	9	2.2%	518,100.00	2.3%
Brooklyn	59,142	25.6%	2,769	23.2%	87	21.5%	5,003,000.00	21.9%
Manhattan	95,439	41.3%	6,021	50.4%	230	56.9%	13,622,799.34	59.6%
Queens	49,240	21.3%	2,218	18.6%	64	15.8%	2,990,250.00	13.1%
Staten Island	9,220	4.0%	425	3.6%	14	3.5%	738,000.00	3.2%
Total	230,848		11,952		404		22,872,149.34	

Figure 1

Map of Loan Program Award Distribution by Zip Code

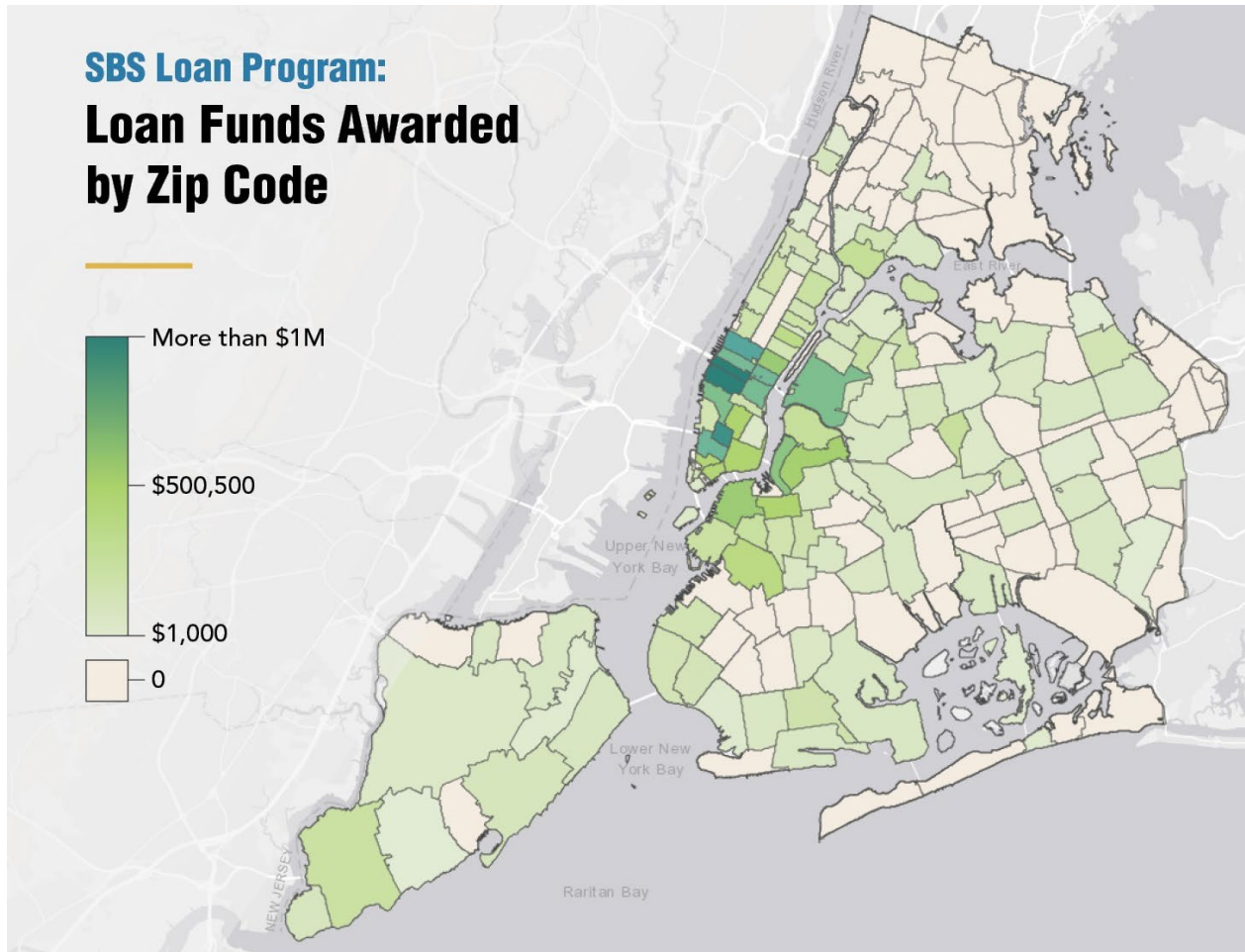
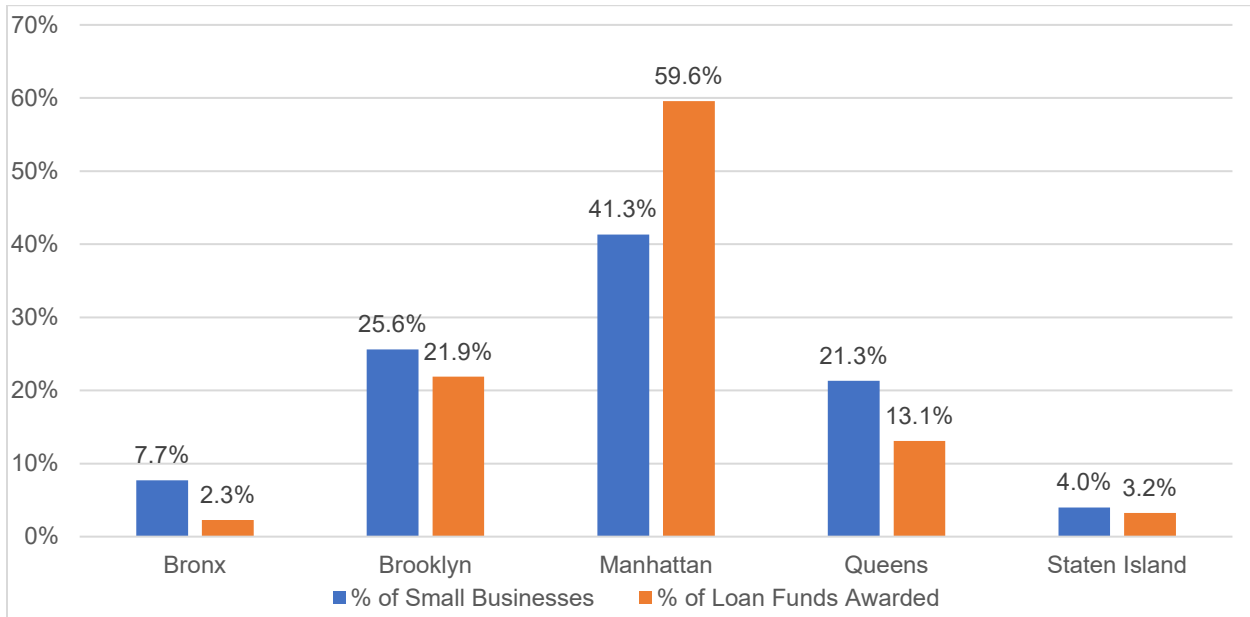


Chart I

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



RECOMMENDATIONS

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

1. Implement multi-level reviews to ensure that staff reviewing applications follow procedures and 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 stated that it “launched a grant program in late 2021 that adhered to these requirements. Note that for loan programs the lender will stipulate the required documentation for underwriting.”

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. As cited above, the agency stated, “SBS 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 “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. SBS stated 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 "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 8, 2020.

To gain an understanding of the Loan Program requirements, the auditors obtained and reviewed instructions available to applicants, including a document checklist and participation affidavit form. To obtain an understanding of SBS policies and procedures related to preliminary eligibility checks, the auditors reviewed the SBS Account Manager Training Manual. To gain an understanding of the lending partners' responsibilities and obligations, the auditors obtained a copy of the Loan Agreement between SBS, NYCEDC, the Loan Administrator, Lenders, and the Administrative Agent.

To obtain an understanding of the Loan Program creation, eligibility requirements, application intake, review, lender involvement, and award processes, the auditors conducted a walkthrough with SBS officials responsible for overseeing the Loan Program. The auditors also conducted a walkthrough of SBS Microsoft Dynamics system to learn how Loan 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 Loan Program applications and awards, the auditors requested and obtained a listing of all 404 awarded Loan Program applications as of March 8, 2021. The auditors also obtained read-only access to SBS Microsoft Dynamics system, and independently obtained a listing of Loan Program application data as of May 26, 2021. To determine whether the data auditors obtained from Dynamics was complete, the auditors reviewed key fields related to business operation date, location, and revenue, and application status 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 Dynamics to determine whether Dynamics correctly calculated revenue loss percentages.

To determine whether Account Managers made correct eligibility determinations for awarded loan applicants, auditors selected a sample of 76 awarded Loan Program applications and obtained and reviewed supporting documentation for each application. To select the 76 awarded loan applications, the auditors:

- Reviewed the percentage loss calculation in SBS' Microsoft Dynamics system, and judgmentally selected all 18 applicants that did not meet the 25% decrease in revenue loss requirement;
- Reviewed all awarded applicants' federal Payroll Protection Program loan data and judgmentally selected all eight applicants indicated as having more than 100 employees;
- Searched for each recipient's date of incorporation and incorporation status, primarily within the New York State Department of Corporations' database. For recipients that were not found in the New York State Department of Corporations' database, auditors

performed additional searches. Based on the results of our searches the auditors identified and judgmentally selected all 19 awarded applicants that were incorporated for less than two years at the time of their application, and judgmentally selected all six recipients for whom the auditors were unable to find an active incorporation status; and

- Randomly selected 25 awarded applicants from the remaining population of recipients.

For each of the 76 awarded applications, the auditors obtained supporting documentation and correspondence from Microsoft Dynamics. Auditors then reviewed supporting documentation to determine whether applicants were eligible for the Loan Program by independently recalculating revenue loss, verifying applicants were located in NYC, and ensuring that applicants had provided signed participation affidavits.

To determine whether Account Managers made correct eligibility determinations for denied loan applicants, the auditors selected a sample of 45 of the 307 disqualified Loan Program applicants as of May 26, 2021. To select the sample of 45 disqualified applicants, the auditors randomly selected 20 applicants assigned a status reason of “Not Qualified,” 20 applicants assigned a status reason of “No Longer Interested” and all five applicants assigned a status of “Cannot Contact.”

For each of the 45 disqualified Loan Program applicants, the auditors obtained supporting documentation and correspondence from Microsoft Dynamics and looked to see if the Account Manager made the correct eligibility determination by independently recalculating revenue loss, verifying that applicants were located in NYC, and ensuring that applicants had provided signed participation affidavits.

We used an internet archive search tool to determine whether SBS posted the Participation Affidavit Addendum to its website between March 29, 2020 and April 11, 2020.

To determine whether businesses were located in the City, in operation for at least two years, and had no outstanding legal judgments or tax liens, the auditors searched the New York State Department of State Corporation and Business Entity Database and Accurint, Lexis Nexis, and CLEAR for our sample of 76 awarded Loan Program applicants.

To determine whether SBS equitably distributed across the City, the auditors reviewed fields in Dynamics (including zip code and borough) and summarized and mapped out where Loan 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 Loan Program based on business size. The auditors then compared the distribution of Loan 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 loans 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 Loan Program Award Distribution by the Top 50 Zip Codes

Zip Code	Neighborhood	# of Loans	Amount Awarded
10018	Chelsea, Clinton & Midtown	21	\$ 1,443,250.00
10001	Chelsea	21	\$ 1,330,750.00
10012	NoHo, Soho & Downtown	13	\$ 911,000.00
10019	Upper West Side, West Side & Uptown	12	\$ 791,000.00
10013	Tribeca & Downtown	12	\$ 702,466.00
10017	Murray Hill, East Side & Midtown	10	\$ 694,000.00
10036	Clinton, Midtown West & West Side	11	\$ 677,000.00
10016	Murray Hill, East Side & Midtown	13	\$ 669,500.00
11101	Long Island City	13	\$ 654,000.00
10011	Chelsea, Midtown West & West Side	10	\$ 646,000.00
11249	Williamsburg	10	\$ 603,000.00
10022	Turtle Bay, East Side & Midtown	11	\$ 556,000.00
11201	Downtown Brooklyn	8	\$ 553,000.00
11211	Williamsburg	9	\$ 520,000.00
10003	East Village & Downtown	8	\$ 475,000.00
10002	Chinatown & Lower East Side	8	\$ 470,000.00
11205	Navy Hill	8	\$ 470,000.00
10038	City Hall & Downtown	8	\$ 440,000.00
10007	Tribeca & Downtown	7	\$ 438,000.00
11215	South Slope	6	\$ 382,000.00
10021	Upper East Side	5	\$ 365,000.00
10454	Mott Haven	5	\$ 278,100.00
11222	Greenpoint	7	\$ 274,000.00
11374	Rego Park	4	\$ 262,000.00
11217	Boerum Hill	5	\$ 248,000.00
10029	East Harlem	4	\$ 239,000.00
10309	Rossville	3	\$ 225,000.00
11231	Red Hook	3	\$ 225,000.00
11103	Astoria	4	\$ 216,000.00

Zip Code	Neighborhood	# of Loans	Amount Awarded
10020	Theatre District& Midtown	3	\$ 214,500.00
10028	Yorkville & Upper East Side	3	\$ 214,000.00
10025	Upper West Side & West Side	4	\$ 201,000.00
11370	Jackson Heights	4	\$ 192,000.00
10023	Upper West Side, West Side & Uptown	5	\$ 190,000.00
11216	Bedford Stuyvesant	4	\$ 185,000.00
10010	Gramercy Park & Stuyvesant Town	4	\$ 183,000.00
11229	Sheepshead Bay	4	\$ 182,000.00
11238	Prospect Heights	3	\$ 169,000.00
10014	Greenwich Village & SoHo	3	\$ 154,333.34
10006	Wall Street & Downtown	2	\$ 150,000.00
10128	Upper East Side	2	\$ 150,000.00
10455	Hunts Point & Mott Haven	2	\$ 150,000.00
11220	Sunset Park	2	\$ 150,000.00
11361	Bayside	3	\$ 148,250.00
10065	Upper East Side & Uptown	3	\$ 145,000.00
11209	Bay Ridge	3	\$ 134,000.00
11228	Dyker Heights	2	\$ 132,000.00
10027	Morningside Heights	3	\$ 129,000.00
10024	Upper West Side	2	\$ 125,000.00
10306	Great Kills	2	\$ 118,000.00



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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; Kitty Chan, Deputy Commissioner, Sherri Lane, Assistant Commissioner
Re: Response to Small Business Continuity Loan 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 draft findings for the Small Business Continuity Loan (SBCL).

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.

In general, SBS does not believe that the findings represent the quality of this program given the context in which it was launched. As the first public emergency loan fund to launch in the nation, it was critical for SBS to launch as quickly as possible. To do this, SBS found efficiencies such as:

- We used the same Program Affidavit for the Employee Retention Grant (ERG) and the Small Business Continuity Loan. The Comptroller's report mentioned that the ERG Program Affidavit did not require applicants to certify that their business was located in the City and was in operation for at least two years, and that it did not require applicants to certify that they have no outstanding tax liens or other outstanding obligations. However, each of these characteristics was verified by our partner community lender, which conducted a thorough underwriting of each applicant. The lender checks business location, years in business, and past due payments as a part of all loan underwriting, not only specifically to this program, which is why this was not included in the contractual agreement.



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- Instead of providing multi-level reviews at SBS, we relied on our contracted community development lender to provide a thorough assessment of the application. The Comptroller's report mentions that SBS stated that the Loan Administrator was responsible for performing a second-level review of eligibility. However, that is a misinterpretation of what SBS said, which was that the Loan Administrator performs a detailed review of each applicant that applies for a loan with their organization, much of which overlaps with the eligibility criteria for this program. As such, SBS determined it would have been a waste of public funds for SBS to conduct an additional review, particularly given the emergency nature of this program.

Due to extremely high interest and an evolving pandemic, we adapted the program quickly in the following ways:

- We closed the application after only 14 days, due to unprecedented interest, which limited our ability to conduct further outreach. Since we launched the application days after the City shut down, and the over 12,000 applications were reviewed in the order they were received, we had little control over how the approved loans were distributed across the five boroughs.
- After the Governor required non-essential businesses to close, we adapted the documentation requirements to demonstrate revenue loss for those industries. However, because the number of applicants was so much higher than the amount of funding available, we were not able to re-evaluate applications that had already been disqualified prior to this change.
- We have applied lessons learned from this program in the following ways:
 - The LMI Storefront Loan was only available to businesses located in low-to-moderate income areas.
 - We increased operational checks within the SBS CRM System by giving the lender direct access to Dynamics.
 - For the NYC Small Business Resilience Grant, we outsourced all fund administration to an experienced fund administrator and made the grant amount a fixed, flat amount to increase operational efficiencies and minimize errors.

In general, SBS worked as quickly as possible to manage unprecedented demand for this program, that was designed and implemented in record time. Given the evolving nature of the pandemic and State regulations, it was impossible to plan ahead for changes in eligibility requirements. Similarly, it would have been impossible to estimate where the pandemic would be most detrimental to small businesses and commercial corridors. 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



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Manhattan that the Comptroller stated were “over-served” by this program experienced some of the highest net-loss of businesses since March 2020.

As a result of the Small Business Continuity Loan, SBS was able to provide 404 NYC businesses with loans through a program that launched before federal funding became available, meeting a critical need at the beginning of the Covid-19 pandemic.

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. Implement multi-level reviews to ensure that staff reviewing applications follow procedures and 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.
 - 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



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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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Detailed feedback:

The Comptroller identified 40 loans it concluded were improperly awarded. SBS disagrees with 35 of these findings. Thirty of the applicants provided a completed Program Affidavit for ERG (mentioned above) and 1 of the applicants completed a Program Affidavit for SBCL, attached on the lead. Four of the applicants did demonstrate a decrease in revenue of at least 25%, as demonstrated in various ways (see appendix), and 2 of the applicants provided proof they were located in NYC based on their provided lease document or taxes. 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. This was done to accommodate situations where revenue fluctuations at a point in time either in 2019 or 2020 would not reflect the true loss a business was suffering. This is why we required 2019 calendar year revenue to be submitted as part of the application. See Appendix for details.

The Comptroller identified 15 applicants it concluded were improperly denied. SBS disagrees with 14 of these findings. Thirteen of the applicants were unresponsive and marked as “No longer interested,” not “disqualified.” One of the applicants did not provide adequate representation of a decrease in revenue.

Regarding the Participation Affidavit Addendum, the Addendum was posted on SBS’s website for all applicants to see.

The Comptroller identified 18 applicants did not receive a “Notice of Deficiency” email and 44 applicants did not receive a “Denial Letter.” SBS agrees that these communications were not properly documented in the Dynamics CRM system, likely due to the Account Managers’ email accounts not being linked to the system, so email communication that was not initiated through Dynamics would not have been accounted for. SBS has corrected for this in future programs by outsourcing eligibility checks to paid fund administrators.

The Comptroller identified 20 cases that were potentially ineligible to receive a loan due to tax liens, legal judgements, or not being in business for at least 2 years. SBS disagrees with all of these cases. Regarding tax liens and judgements, the requirement in the Loan Agreement was specific to the owner of the business, not the business entity. In the 7 cases that the Comptroller reported a tax lien or legal judgment, none had personal tax liens or judgments at the time of application. Regarding the years in business, the requirement in the Loan Agreement was that the lender collect 2018 taxes or similar documents to represent operations in 2018. In one case, the business had rebranded within the last 2 years.



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APPENDIX

Item	Lead or Opportunity ID Numbers
Provided Program Affidavit for ERG	OP-2020-048158 OP-2020-047034 OP-2020-047458 OP-2020-047429 OP-2020-047445 OP-2020-047437 OP-2020-047438 OP-2020-046763 OP-2020-047456 OP-2020-046874 OP-2020-046784 OP-2020-046875 OP-2020-047435 OP-2020-046804 OP-2020-046782 OP-2020-050346 OP-2020-046834 OP-2020-048167 OP-2020-047430 OP-2020-046775 OP-2020-046901 OP-2020-046743 OP-2020-047452 OP-2020-046770 OP-2020-046749 OP-2020-047881 OP-2020-046838 OP-2020-046777 OP-2020-046819 OP-2020-047115
Provided Program Affidavit for SBCL	OP-2020-045507
Demonstrated decrease in revenue on ERG Case	OP-2020-046685, ERG2020-3393
Demonstrated decrease in revenue - Participation Affidavit Addendum uploaded to "signed	OP-2020-045972



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participation affidavit" section on Dynamics Lead	
Demonstrated decrease in revenue - Participation Affidavit Addendum uploaded to "Revenue statements for 2020" section on Dynamics Lead	OP-2020-046116
Demonstrated decrease in revenue - Taxes indicate NYC and revenue from monthly statements show 25% decrease	OP-2020-045503
Demonstrated proof of NYC location with business lease	OP-2020-046055
Demonstrated proof of NYC location with taxes	OP-2020-045503
Applicants marked as no longer interested	LD-2020-267383
	LD-2020-262738
	LD-2020-278521
	LD-2020-258852
	LD-2020-277019
	LD-2020-283289
	LD-2020-266682
	LD-2020-266689
	LD-2020-281287
	LD-2020-278549
	LD-2020-268531
	LD-2020-268627
	LD-2020-266236
Applicant denied for not meeting revenue requirements	LD-2020-261547



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