

**Congress of the United States**  
**House of Representatives**

SELECT SUBCOMMITTEE ON THE CORONAVIRUS CRISIS

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December 1, 2022

The Honorable Isabella Guzman  
Administrator  
Small Business Association  
409 3rd Street, S.W.  
Washington, D.C. 20416

Dear Administrator Guzman:

The Select Subcommittee on the Coronavirus Crisis has been investigating waste, fraud, and abuse in the Paycheck Protection Program (PPP) administered by the Small Business Administration (SBA).<sup>1</sup> The Select Subcommittee’s investigation—documented in the enclosed staff report being released today—uncovered evidence that that certain financial technology (fintech) companies involved in processing PPP loans contributed to fraud in the \$800 billion program. Specifically, some fintech companies facilitated millions of loans while taking shortcuts on fraud controls, and certain lenders put taxpayer funds at risk by delegating their compliance responsibilities to fintechs without conducting adequate oversight. The Select Subcommittee identified evidence showing that some fintech owners may have used the program to enrich themselves and their families—potentially engaging in fraud in some cases. These findings illustrate patterns of conduct among fintechs and their lenders that may warrant additional steps by SBA to protect the integrity of current and future SBA lending programs.

**I. Recommendations for Improving SBA Programs**

The enclosed report includes multiple instances in which lenders delegated their fraud prevention and eligibility verification controls to third parties not overseen by the SBA, but apparently failed to “exercise[] day-to-day responsibility” for those third parties, as contemplated by the SBA’s Standard Operating Procedures.<sup>2</sup> The Select Subcommittee’s findings suggest that SBA’s mechanisms for oversight of lender service providers (LSPs) may be insufficient to protect taxpayers, particularly as applied to LSPs facilitating significant numbers of loans and

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<sup>1</sup> Select Subcommittee on the Coronavirus Crisis, *Press Release: Select Subcommittee Launches Investigation into Role of FinTech Industry in PPP Fraud* (May 28, 2021) (online at <https://coronavirus.house.gov/news/press-releases/select-subcommittee-launches-investigation-role-fintech-industry-ppp-fraud>).

<sup>2</sup> Small Business Administration, Office of Capital Access, *Lender and Development Company Loan Programs* (Oct. 1, 2020) (SOP 50 10 6) (online at <https://sba.gov/document/sop-50-10-lender-development-company-loan-programs-0>).

those responsible for fraud-related controls. Accordingly, the Select Subcommittee recommends that the SBA take action to protect the integrity of future programs.

Specifically, SBA should promptly issue and enforce guidelines that clarify the responsibilities of lenders and their service providers in SBA programs, particularly in regard to underwriting, fraud screening, and suspicious activity reporting. Additionally, if the SBA opens participation in 7(a) programs to fintechs and other non-depository institutions, a well-defined, more rigorous, and better-resourced initial review process should be put in place, with entities subject to continuous monitoring to confirm their adherence to SBA rules and industry best practices. At the same time, any participant found to have engaged in unlawful or unethical conduct while participating in the PPP should be barred from future SBA programs. Finally, due to the number of fraudulent loans that were fully forgiven, the Select Subcommittee recommends that, in any future emergency financial assistance programs that prioritize speed of loan issuance, the SBA should conduct aggressive and large-scale reviews of loans prior to their forgiveness to detect fraudulent and ineligible loans.

## **II. Potential Violations of SBA 7(a) Lender and Lender Service Provider Rules**

The Select Subcommittee recommends that the SBA investigate the following potential violations of SBA rules by certain PPP lenders and lender service providers (LSPs). The Select Subcommittee found that some fintechs and their lending partners—specifically, fintechs Womply and Blueacorn and lenders Harvest and Capital Plus—may have violated SBA rules governing lenders in 7(a) programs. The Coronavirus Aid, Relief and Economic Security (CARES) Act created the PPP under SBA’s 7(a) program, which guarantees loans for small businesses that are unable to obtain credit on reasonable terms in the private credit markets.<sup>3</sup> Under the program, existing SBA-certified 7(a) lenders and newly approved lenders were given authority to originate, underwrite, and service PPP loans. To fulfill these obligations, lenders often turned to agents and LSPs. As participants in the 7(a) program, PPP lenders, referral agents, and LSPs were all subject to SBA 7(a) participant rules. The Select Subcommittee found evidence that Womply and Blueacorn performed tasks that suggest they should be properly considered to be LSPs under the SBA’s guidelines, and therefore subject to SBA rules. Yet evidence obtained by the Select Subcommittee indicates that they, as well as lenders Harvest Small Business Finance (Harvest) and Capital Plus Financial (Capital Plus), may have engaged in conduct that runs contrary to these rules:

### **A. Womply:**

SBA regulations provide that “implying or stating that the work to be performed for an Applicant will include use of political or other special influence with SBA” may constitute good cause for suspension or revocation of the privilege to conduct business before the SBA.<sup>4</sup> As detailed in the Select Subcommittee’s report, the Select Subcommittee learned that Womply

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<sup>3</sup> Small Business Administration, *Business Loan Program Temporary Changes; Paycheck Protection Program*, 85 Fed. Reg. 20811 (Apr. 15, 2020) (interim final rule).

<sup>4</sup> 13 C.F.R. § 103.4(d) (2022).

implied to lenders that it had a close association with the SBA, in possible violation of this standard.<sup>5</sup> In addition, Womply's conduct may have violated SBA 7(a) rules that permit the SBA to revoke or suspend the privilege to conduct business with the SBA to any participant found to be "[e]ngaging in any conduct indicating a lack of business integrity or business honesty," including criminal conviction or civil judgment for fraud within the last seven years.<sup>6</sup> Womply's CEO Toby Scammell has a 2014 criminal conviction for securities fraud.<sup>7</sup> These factors suggest that the SBA may have good cause to revoke Womply's privilege to participate in the 7(a) program.

*B. Blueacorn:*

Blueacorn's executives awarded multiple, questionable PPP loans to themselves and their family members and business partners.<sup>8</sup> In addition to presenting conflicts of interest, some of these loans may have in fact been fraudulent, and may therefore run afoul of SBA standards for 7(a) programs which permit the SBA to revoke permission for an entity to conduct business with the SBA if it has participated in "conduct indicating a lack of business integrity or business honesty."<sup>9</sup> Additionally, by asking multiple borrowers to pay substantial fees out of the proceeds of their PPP loans, Blueacorn and its owners may have run afoul of both SBA and PPP rules that expressly state: "Agents may not collect fees from the borrower or be paid out of the PPP loan proceed."<sup>10</sup> The Select Subcommittee found evidence indicating that a Blueacorn co-owner asked borrowers to pay substantial fees out of the proceeds of their PPP loans on multiple occasions, in apparent violation of this rule.<sup>11</sup>

*C. Harvest:*

The SBA requires lenders to "exercise due diligence and prudent oversight" on any agents or LSPs they partner with on SBA programs, which includes "monitoring performance of loans referred by an Agent or where an Agent provided assistance."<sup>12</sup> Although Harvest

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<sup>5</sup> Select Subcommittee on the Coronavirus Crisis, "*We Are Not the Fraud Police*": *How Fintechs Facilitated Fraud in the Paycheck Protection Program* (Dec. 1, 2022) (Section III (C)(5)).

<sup>6</sup> 13 C.F.R. § 103.4(f) (2022).

<sup>7</sup> Select Subcommittee on the Coronavirus Crisis, "*We Are Not the Fraud Police*": *How Fintechs Facilitated Fraud in the Paycheck Protection Program* (Dec. 1, 2022) (Section III (C)(3)).

<sup>8</sup> Select Subcommittee on the Coronavirus Crisis, "*We Are Not the Fraud Police*": *How Fintechs Facilitated Fraud in the Paycheck Protection Program* (Dec. 1, 2022) (Section III (B)(9), (10) and (11)).

<sup>9</sup> 13 C.F.R. § 103.4(f) (2022).

<sup>10</sup> 13 C.F.R. § 120 (2022); Small Business Administration, *First Draw PPP Loan* (online at [www.sba.gov/funding-programs/loans/covid-19-relief-options/paycheck-protection-program/first-draw-ppp-loan](https://www.sba.gov/funding-programs/loans/covid-19-relief-options/paycheck-protection-program/first-draw-ppp-loan)) (accessed Nov. 17, 2022) ("Neither the government nor lenders will charge small businesses any fees.").

<sup>11</sup> Select Subcommittee on the Coronavirus Crisis, "*We Are Not the Fraud Police*": *How Fintechs Facilitated Fraud in the Paycheck Protection Program* (Dec. 1, 2022) (Section III (B)(8)).

<sup>12</sup> Small Business Administration, Office of Capital Access, *Lender and Development Company Loan Programs* (Oct. 1, 2020) (SOP 50 10 6) (online at <https://sba.gov/document/sop-50-10-lender-development-company-loan-programs-0>).

received more than 800,000 PPP loan application referrals from Womply, Harvest appears to have performed little oversight of Womply, even when alerted to suspicions of fraud by another lender.<sup>13</sup> The Select Subcommittee found that Harvest did not perform any formal audits, assessments, or evaluations of Womply, and ceased its manual spot-checks early in the program. This lack of prudent oversight suggests that Harvest may not have exercised the appropriate diligence required of a 7(a) lender to continue participating in the program.

*D. Capital Plus:*

Capital Plus may have similarly violated the SBA's requirement that lenders exercise due diligence and prudent oversight of Lender Service Providers.<sup>14</sup> As the Select Subcommittee's investigation found, Capital Plus delegated its PPP fraud prevention and eligibility verification responsibilities to Blueacorn, without diligently overseeing the company to confirm that they were successfully implementing anti-fraud controls.<sup>15</sup> Capital Plus was unable to provide documentation of manual reviews or details from any Capital Plus meetings or communications discussing PPP fraud and oversight of Blueacorn. In addition, Capital Plus approved multiple PPP loans for Blueacorn's owners and the owners of Blueacorn's antifraud consultant—at least some of which may themselves have been fraudulent—and failed to detect the potentially ineligible loans until Capital Plus was notified of them by an unnamed third party.<sup>16</sup> Though Capital Plus later required the repayment of some of the ineligible loans, their demonstrated lack of oversight of Blueacorn suggests Capital Plus may also not have exercised the appropriate diligence required of a 7(a) lender.

**III. Use of PPP Applicant Personal and Business Data**

Following Womply's work in the PPP, several former Womply executives founded a new company in February 2022, Solo Global, Inc., which provides financial and marketing services to small businesses.<sup>17</sup> On May 20, 2022, Womply updated its privacy policy to notify its customers—which may have included the millions of small businesses, contractors, and sole proprietors who applied for a PPP loan through Womply—that Womply's retroactively-updated terms gave Solo Global the right to use their personal and business data for future commercial use.<sup>18</sup> Information submitted to government agencies, including the SBA, is typically protected by the Privacy Act of 1974, which places limitations on federal agencies' use and disclosure of

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<sup>13</sup> Select Subcommittee on the Coronavirus Crisis, *"We Are Not the Fraud Police": How Fintechs Facilitated Fraud in the Paycheck Protection Program* (Dec. 1, 2022) (Section III (C)(2)(a) and (9)).

<sup>14</sup> Small Business Administration, Office of Capital Access, *Lender and Development Company Loan Programs* (Oct. 1, 2020) (SOP 50 10 6) (online at <https://sba.gov/document/sop-50-10-lender-development-company-loan-programs-0>).

<sup>15</sup> Select Subcommittee on the Coronavirus Crisis, *"We Are Not the Fraud Police": How Fintechs Facilitated Fraud in the Paycheck Protection Program* (Dec. 1, 2022) (Section III (B)(12)).

<sup>16</sup> *Id.*

<sup>17</sup> Solo Global, Inc., *About* (online at <https://solo.co/about/>) (accessed Nov. 29, 2022) (stating "the Womply team has created a new company called Solo").

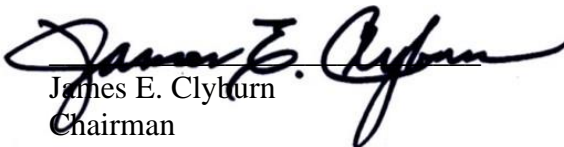
<sup>18</sup> Womply, Inc., *Privacy Policy* (May 20, 2022) (online at <https://womply.com/legal/privacy/>).

data on individuals that is controlled by federal agencies.<sup>19</sup> While contractors receiving records from the SBA must themselves comply with the Privacy Act, the regulations are unclear as to the status of data provided to the SBA from agents acting on behalf of lenders to provide Americans access to SBA programs. The SBA should make a determination as to whether Womply's use of personal and business data submitted by American borrowers as part of the PPP violates SBA rules and the Privacy Act of 1974 (5 U.S.C. 552a). If the SBA determines such use is not permitted, SBA should take action to protect that data. If such use is permitted under current rules, SBA should consider updating its rules to protect the personal information of Americans who apply to SBA programs.

The PPP and other pandemic relief programs provided a vital lifeline to Americans struggling during the coronavirus crisis. Our work today is important to ensure accountability for those responsible for waste, fraud, and abuse and to inform improvements to similar programs that may be necessary to address future crises. Accordingly, I recommend that the SBA investigate Womply, Blueacorn, Harvest, and Capital Plus to determine whether they should be eligible to participate in any future SBA 7(a) programs.

If you have any questions regarding this matter, please contact Select Subcommittee staff at (202) 225-4400. Thank you for your assistance.

Sincerely,

  
James E. Clyburn  
Chairman

Enclosure

cc: The Honorable Steve Scalise, Ranking Member

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<sup>19</sup> 5 U.S.C. § 552a; Department of Justice, Office of Privacy and Civil Liberties, *Overview of the Privacy Act of 1974* (2020) (online at [www.justice.gov/opcl/overview-privacy-act-1974-2020-edition/](http://www.justice.gov/opcl/overview-privacy-act-1974-2020-edition/)) (summarizing protections); Small Business Administration, *Privacy Act* (online at [www.sba.gov/about-sba/open-government/privacy-act](http://www.sba.gov/about-sba/open-government/privacy-act)) (accessed Nov. 29, 2022).