Locke Lord LLP

111 Huntington Avenue
9th Floor
Boston, MA 02199-7613
Telephone: 617-239-0100
Fax: 617-227-4420
www.lockelord.com

Allison M. O'Neil
Direct Telephone: [redacted]
Direct Fax: [redacted]
allison.oneil@lockelord.com

August 31, 2022

<u>VIA EMAIL ONLY TO CCs</u>

Hon. James E. Clyburn, Chairman
Select Subcommittee on the Coronavirus Crisis
United States House of Representatives
2157 Rayburn House Office Building
Washington, D.C. 20515

Re: Response to July 1, 2022 Letter

Dear Chairman Clyburn:

As you know, Locke Lord LLP represents Harvest Small Business Finance, LLC ("Harvest") in connection with its response to the Subcommittee's letter of July 1, 2022. We are writing to respond to Information Request Nos. 2 and 4-6. Furthermore, we write to inform you that we plan to produce additional responsive documents tomorrow, September 1, and will continue rolling productions thereafter, pursuant to our discussions with Laura O'Neill.

2. *In what way and to what extend did Harvest rely on the automatic checks, Know Your Customer (KYC) management, bank and tax document analysis, and anti-fraud measures undertaken by Womply when determining whether Harvest would submit a PPP loan application to the Small Business Administration (SBA) for approval and funding?*

As Harvest explained in its August 2, 2022 letter providing its response to Information Request No. 1, in order to meet the increased demand for PPP loans created by the expansion of the changes made to the PPP Program in 2021, as well as meet Congress' and the SBA's goal of "provid[ing] relief to small businesses and their employees and expand[ing] access to the PPP" (86 Fed. Reg. 13,154 (Mar. 8, 2021), Harvest entered into a contractual relationship with Oto Analytics, Inc. d/b/a Womply ("Womply") whereby Womply acted as a "Referral Agent" and simultaneously provided the use of its technology platform, known as "Fastlane," to expedite the processing of loan applications and refer complete applications from eligible borrowers to Harvest.

Womply demonstrated that its process met the Program's requirements. Womply indicated that it was working directly with Bill Briggs, head of the Paycheck Protection Program at the SBA, to ensure the Fastlane program was meeting all of the SBA's requirements. In addition, Womply assured Harvest that it would only refer to Harvest complete applications that Womply's platform had confirmed were for eligible borrowers. Womply, both to Harvest and publicly, represented it was capable of performing this service because of its close association with the SBA.[1]

Notwithstanding Womply's assurances and the SBA's apparent endorsement of Womply's platform, Harvest still performed its own reviews of many applications it received from Womply to ensure borrower eligibility and to identify potentially fraudulent applications. At the inception of Harvest's relationship with Womply, Harvest's processors and management reviewed a sample set of each batch of loans Harvest submitted to the SBA for review and approval to ensure that the documents required by the SBA were included in the applications it was receiving.

Harvest also identified "patterns" of ineligible or potentially fraudulent applicants and applications. For instance, during its manual review of loan files, Harvest became aware that applications were being submitted with Employer Identification Numbers ("EIN") that did not match the stated year of formation of the applicant business. Harvest then identified applications containing this discrepancy, stopped those applications from being processed if they had not already been submitted or funded, and alerted the SBA Office of Inspector General ("OIG") (the law enforcement arm of the SBA, Harvest's regulator) to the potential ineligibility and/or fraud. Harvest estimates that it identified thousands of potentially fraudulent applications based on its searches for these kinds of patterns and either canceled or declined them before funding, or immediately alerted the SBA if the application had already been submitted for approval.

In fact, Harvest believes that it identified and reported more ineligible and/or fraudulent applications than if it had simply been performing a manual review of loan applications without identifying and investigating these patterns and connections. Because of the emergency nature of the Program, the minimal documentation required by the SBA for Schedule C borrowers, and the fact that many of the leading indicators of ineligibility and fraud, such as multiple applications fraudulently submitted by the same applicant, were only evident when reviewed in hindsight and/or through the high-level business analytics, even a careful, real-time review of each document submitted with a single application would not always indicate that a borrower may be ineligible or an application may be fraudulent. Thus, Harvest (while processing the high volume of Fastlane applications and adhering to evolving guidance revisions from the SBA) searched for and investigated indicia of fraud by reviewing certain groups of loans in the aggregate.

[1] *See* PPP Launch- FAQ's with the SBA for Contract workers, https://www.youtube.com/watch?v=mt8VQXSNCIE (Jan. 19, 2021); PPP Launch – FAQ's with the SBA for Small Businesses, https://www.youtube.com/watch?v=DtLAiNbpEes (Jan. 19, 2021).

4. *For the below questions, unless otherwise instructed, please provide answers corresponding to the 2021 fiscal year. If necessary to fully answer the below questions, please include information related to parent, holding, and other related entities.*

    a. *What was the processing fee income generated from Harvest's participation in the PPP?*

Lenders' fees for processing PPP loans were prescribed by the SBA. Pursuant to SBA Procedural Notices 5000-20036 and 2000-20091, for first draw PPP loans processed before December 27, 2020, the SBA paid lenders fees in the following amounts:

- "Five (5) percent for loans of not more than $350,000;
- Three (3) percent for loans of more than $350,000 and less than $2,000,000; and
- One (1) percent for loans of at least $2,000,000."

After December 27, 2020, the SBA paid lenders the following amounts for processing first draw PPP loans:

- "Fifty (50) percent or $2,500, whichever is less, for loans of not more than $50,000;
- Five (5) percent for loans of more than $50,000 and not more than $350,000;
- Three (3) percent for loans of more than $350,000 and less than $2,000,000; and
- One (1) percent for loans of at least $2,000,000."

Finally, the SBA paid lenders fees for processing all second draw PPP loans in the following amounts:

- "Fifty (50) percent or $2,500, whichever is less, for loans of not more than $50,000;
- Five (5) percent for loans of more than $50,000 and not more than $350,000; and
- Three (3) percent for loans above $350,000."

SBA Procedural Notice No. 5000-20091. "Under 15 U.S.C. § 636(a)(36)(P) and 15 U.S.C. § 636(a)(37)(L), all processing fees [were] based on the balance of the PPP loan outstanding at the time of full disbursement of the loan."

Based on the above statutory rate structure, Harvest ultimately retained $319,282,668.92 in fees from the SBA in Fiscal Year ("FY") 2021. SBA paid Harvest $1,074,907,943.72 in fees from the SBA for PPP loans for which it was the lender, and, based on its contractual agreement with Womply, a majority of those fees were paid to Womply for the services it provided to Harvest.

    b. *What was Harvest's total revenue from operations? How did this compare to the 2020 fiscal year?*

Based on the U.S. Partnership Income Tax Return (Form 1065) for the tax year 2021, Harvest's gross receipts were $1,165,328,948. Based on the U.S. Partnership Income Tax Return (Form 1065) for the tax year 2020, Harvest's gross receipts were $65,898,816.

The increase between FY 2020 and FY 2021 is due primarily to the fact that, beginning in January 2021, the Economic Aid Act ("EAA") expanded PPP with the aim of providing more relief to borrowers that may have been unable to take advantage of the Program in 2020, including businesses with fewer than 20 employees, independent contractors, self-employed borrowers, and sole proprietors, commonly referred to as "Schedule C" borrowers.[2] In keeping with the goals of the EAA these Schedule C borrowers were often otherwise ignored by the larger financial institutions during the early rounds of funding. Thus, smaller institutions like Harvest played a key role in providing access to PPP funds once Schedule C borrowers became eligible for the Program.

In addition to the expansion of the Program to Schedule C borrowers, the SBA issued an IFR on March 8, 2021, further clarifying that "a Schedule C filer may elect to calculate the owner compensation of its payroll costs … based on either (i) net profit or (ii) gross income …." 86 Fed. Reg. 13,150. As a result of these changes at the beginning of 2021, more borrowers became eligible for loans, and in some cases, loans in larger amounts[3]. Therefore, demand for loans from all lenders, including Harvest, instantly and significantly increased, and Harvest was expected to process substantially more PPP loans in order to meet the objectives of the EAA.

> c. *What amount of Harvest's total revenue from operations was a result of Harvest's participation in the PPP?*

In response to this Information Request, Harvest refers to the information provided in its response to subpart (b), above.

> d. *What was Harvest's net operating income before taxes? How did this compare to the 2020 fiscal year?*

Based on the U.S. Partnership Income Tax Return (Form 1065) for the tax year 2021, Harvest's ordinary business income was $356,593,726. Based on the U.S. Partnership Income Tax Return (Form 1065) for the tax year 2020, Harvest's ordinary business income was $29,525,892.

As discussed in response to subpart (b), above, the increase between 2020 and 2021 is due primarily to the fact that, beginning in January 2021, the EAA expanded PPP with the aim of providing more relief to borrowers that may have been unable to take advantage of the Program in 2020, including businesses with fewer than 20 employees, independent contractors, self-employed borrowers, and sole proprietors, commonly referred to as "Schedule C" borrowers.[4]

---

[2] Harvest's August 2, 2022 letter further describes many of the additional changes lenders had to address with the shift in eligibility for Schedule C borrowers in early 2021.

[3] In the March 8, 2021 IFR, the SBA noted that "the use of gross income by Schedule C filers may, in some cases, increase the risk of waste, fraud, or abuse, because it will substantially increase the maximum loan amount for relevant applicants, and in some cases an applicant's gross income may not accurately reflect the extent to which a PPP loan is necessary to support the ongoing operations of the applicant's business."

[4] Harvest's August 2, 2022 letter further describes many of the additional changes lenders had to address with the shift in eligibility for Schedule C borrowers in early 2021.

In addition to the expansion of the Program to Schedule C borrowers, the SBA issued an IFR on March 8, 2021, further clarifying that "a Schedule C filer may elect to calculate the owner compensation of its payroll costs … based on either (i) net profit or (ii) gross income …." 86 Fed. Reg. 13,150. As a result of these changes at the beginning of 2021, more borrowers became eligible for loans, and in some cases, loans in larger amounts. Therefore, demand for loans from all lenders, including Harvest instantly and significantly increased, and Harvest was expected to process substantially more PPP loans in order to keep up with the intended aims of the EAA.

> e. *What were Harvest's total operating expenses, including general administrative expenses and salaries/wages? How did this compare to the 2020 fiscal year?*

Based on the U.S. Partnership Income Tax Return (Form 1065) for the tax year 2021, Harvest's total deductions were $48,090,841. Based on the U.S. Partnership Income Tax Return (Form 1065) for the tax year 2020, Harvest's total deductions were $34,041,683.

> f. *What were Harvest's operating expenses as a percentage of total revenues? How did this compare to the 2020 fiscal year?*

In response to this Information Request, Harvest refers to the information provided in its responses to subparts (b) and (e), above.

> g. *What was the dollar value of employee and management bonus expense incurred by Harvest? How did this compare to the 2020 fiscal year?*

For FY 2021, Harvest incurred $1,150,000 in expenses for bonuses paid to employees. For FY 2020, Harvest incurred $59,500 in expenses for bonuses paid to employees.

5. *If necessary to fully answer the below questions, please include information related to relevant parent, holding, and other related entities.*

> a. *How many total employees did Harvest have in 2020 and in 2021?*

Harvest employed 98 people in 2020, and 119 people in 2021.

> b. *How many Harvest employees were dedicated full time and exclusively to AML, BSA, eligibility verification, or fraud compliance, including those employed full time to prevent, detect, or investigate potential fraud, broken up month by month, from January 2019 to October 2021?*

All relevant Harvest employees are trained and required to follow Harvest's policies relating to Anti-Money Laundering ("AML"), the Bank Secrecy Act ("BSA") and detecting and preventing fraud. At the inception of Harvest's participation in the Program, due to the volume of applications Harvest received, virtually every one of Harvest's employees was dedicated to processing PPP loan applications and detecting and preventing suspected fraud and ineligibility. Throughout this time, Harvest's employees were working around the clock to process as many eligible applications as possible.

As Harvest's participation in the Program continued, Harvest's loan processors became the employees primarily responsible for processing loan applications and detecting and preventing suspected fraud and ineligibility. During the course of the Program, Harvest employed as many as 20-25 loan processors who were trained for and charged with identifying and preventing suspected fraud and ineligibility. All of the loan processors worked with and reported to Harvest's Fraud Protection Manager, Harvest's Senior Vice President, and ultimately Harvest's Chief Operating Officer, [redacted].

In addition to Harvest's own employees, as explained in Harvest's August 2, 2022 letter and above, Harvest relied on Womply and the SBA to detect fraud and ineligibility. Womply demonstrated that the technology it was using could meet the Program's requirements. Womply indicated that it was working directly with Bill Briggs, head of the Paycheck Protection Program at the SBA, to ensure the Fastlane program was meeting all of the SBA's requirements. In addition, Womply assured Harvest that it would only refer to Harvest complete applications that Womply's platform had confirmed were for eligible borrowers. Womply, both to Harvest and publicly, represented it was capable of performing this service because of its close association with the SBA.[5]

Moreover, when applications were submitted to the SBA for final review and approval, the SBA performed its own "Compliance Checks," and, if potential ineligibility, fraud, or abuse was discovered by the SBA, the SBA would issue a "Hold Code," placing the application on hold and alerting Harvest to the potential ineligibility, fraud, or abuse. *See* SBA Procedural Notice No. 5000-20092, Feb. 10, 2021 ("After issuance of the SBA Loan Number, all First Draw PPP Loans made in 2020 were individually screened by an automated tool … that may indicate non-compliance with eligibility requirements, fraud, or abuse …. In 2021, before issuance of an SBA loan number, SBA is conducting front-end Compliance Checks on Lender loan guaranty applications for new First Draw PPP Loans and Second Draw PPP Loans using a modified version of the automated screening tool and information from the Department of Treasury Do Not Pay lists.").

c. *What were the total budgets for, and amounts allocated to, AML, BSA, eligibility verification, and fraud compliance at Harvest in 2019, 2020, and 2021, excluding amounts budgeted or allocated to third party contractors? Please include a breakdown of these expenses.*

Due to the speed at which Harvest was required to implement new procedures for detecting and preventing fraud in light of the constantly-evolving rules and guidance surrounding the Program, and the fact that for a significant period during the Program, Harvest dedicated virtually all of its resources to processing PPP loan applications—which included detecting potential fraud and ineligibility—Harvest did not create separate budget line items for the amounts allocated to the activities listed in this subpart.

[5] *See* PPP Launch- FAQ's with the SBA for Contract workers, https://www.youtube.com/watch?v=mt8VQXSNCIE (Jan. 19, 2021); PPP Launch – FAQ's with the SBA for Small Businesses, https://www.youtube.com/watch?v=DtLAiNbpEes (Jan. 19, 2021).

6. *What was the total dollar amount of the disbursements, payouts, or other payments that were made to Harvest and its parent/holding company shareholders, executives, or owners in 2020, 2021, and 2022?*

Harvest made a total of $23,571,000 in distributions in FY2020. Of those distributions, $16,971,000 was allocated to Medalist Partners Opportunity Master Fund B, L.P., Harvest's majority member, and $2,200,000 each was allocated to Harvest's other three members.

Harvest made a total of $350,449,737 in distributions in FY2021. Of those distributions, $225,367,832 was allocated to Medalist Partners Opportunity Master Fund B, L.P., Harvest's majority member, and $41,693,968 each was allocated to Harvest's other three members.

***

All of Harvest's responses herein contain Confidential Commercial and/or Financial Information as defined in Section II of the House Committee on Oversight and Reform's Protocol for the Handling of Sensitive Personal and Commercial Information ("COR Protocol"). As a result, should the Subcommittee plan to publicly disclose any of the Confidential Commercial and/or Financial Information contained herein, Harvest requests that the Subcommittee provides (1) reasonable notice of any planned disclosure; and (2) an opportunity to identify specific concerns or requests for redactions, pursuant to Section II(B) of the COR Protocol, by contacting the undersigned via email. Please do not hesitate to reach out with any questions.

Very truly yours,

Allison M. O'Neil

Allison M. O'Neil

Encl.

cc: [redacted]

Message

From: Toby Scammell [redacted]@womply.com]
on behalf of Toby Scammell [redacted]@womply.com> [redacted]@womply.com]
Sent: 6/8/2021 10:01:46 AM
To: [redacted]@sba.gov]; [redacted]@sba.gov]
Subject: Fwd: Fwd: steps to reduce fraud
Attachments: Steps to reduce fraud (1).docx

Re our discussion: See attached suggestions on fraud prevention. I can update this based on more recent data and we have more we can share to help improve the results for EIDL

Toby Scammell
Founder & CEO at Womply
[redacted]
LinkedIn

---------- Forwarded message ----------
From: Toby Scammell [redacted]@womply.com>
Date: Wednesday, May 12 2021 at 2:00 PM PDT
Subject: Fwd: steps to reduce fraud
To: [redacted]@sba.gov>, [redacted]@sba.gov>, [redacted]@sba.gov>
Cc: [redacted]@milesstockbridge.com>, [redacted]@womply.com>

Hi [redacted], Please see email and attachment for some of our technical suggestions. Separately, a couple of small tweaks (that would have little to no impact on legitimate borrowers) would have a huge impact on fraud reduction in the PPP program and perhaps other SBA programs. The PPP forgiveness process affords you a unique opportunity to catch fraud even after loans have been funded, which is an opportunity we shouldn't pass up.
Thanks again for your time.
Best,
Toby

Toby Scammell
Founder & CEO at Womply
[redacted]
LinkedIn

---------- Forwarded message ----------
From: Toby Scammell [redacted]@womply.com>
Date: Monday, May 3 2021 at 10:21 AM PDT
Subject: steps to reduce fraud
To: [redacted]@sba.gov>, [redacted]@sba.gov>, [redacted]@sba.gov>

Hi [redacted]
I hope you're all well. I've attached specific recommendations that could be useful across COVID relief programs to reduce and detect fraud. Many of these can be implemented very easily. We're seeing an increase in the sophistication of attacks and our team is also picking up significant dark web activity surrounding SBA, EIDL, PPP (including Womply and other technology companies).

Related to PPP:
1 We have a list of compromised SSNs and bank accounts that are definitively associated with fraud. We believe these should be blocked or at least flagged as high risk across all SBA programs. I offered to share with the OIGs office but they suggested this was more of a policy issue. We can provide to Summit Group or any other company if helpful. The vast majority of these are upstream of SBA (millions of applications).

2 Our lender partners need to withdraw ~tens of thousands of applications from SBA Approved in ETRAN due to fraud. We believe that the manual withdrawal process will take too long for lenders, which could cause a program accounting issue--namely that the program will "run out" of funding before those loans can be statused correctly in ETRAN. Our team can help consolidate this info into a flat file or figure out how to enable lenders to do this by API.

Please let me know if you want to discuss.

Best,
Toby

Toby Scammell
Founder & CEO at Womply
[redacted]
LinkedIn

In recent days we've seen a significant increase in fraudulent applications that contain stolen identities. Thousands of these applications have been approved by SBA, indicating that the processes used by SBA to detect and prevent identity fraud are having minimal impact. We did a cursory analysis of SVOG, EIDL, and RRF programs and observed that they are likely to have the same vulnerabilities today as the PPP program.

Here are some recommendations that may be applied to detect, prevent, and investigate fraud across government programs and by private participants.

Block all international IP addresses and all anonymous IPs
We've seen spikes in fraud from Ghana, Nigeria, and Pakistan in the last two weeks. The geographies of attacks changes and therefore all international traffic should be blocked at the firewall. Most attackers mask their traffic with VPNs, proxies, or Tor. This is unlikely to have any impact on legitimate applicants. IP traffic must be blocked at all levels including by any third party solution (Docusign, LexisNexis, ID.me, payment processor, etc)

Block all VOIP numbers
Using Twilio or similar, block VOIP numbers from being used for signup, verification, or notifications. Associated accounts/applications should be viewed as very high risk.

Database / KBA checks are widely exploited
Most digital KYC solutions are being systematically exploited including the Lexis Nexis-powered Docusign ID Check, ID.me and Persona. Database checks for Name, Address, SSN are routinely passing because identities have been stolen.

Block temporary, paper, or foreign IDs
US Fake IDs are passing digital analysis, manual inspection, and barcode scanning. Other IDs should not be accepted. Expired IDs don't appear to be a strong indicator of fraud at the moment.

Use video selfies with strict liveness checks
Dolls, mannequins, masks, animations, and deep fakes are exploiting technical holes in video selfie technology including liveness checks that require head movement, blinking, and mouth movement. Videos and images should be manually reviewed.

Block online banks at their routing number
Walmart Money, Greendot, Varo, Lili and others like them are all strongly correlated to fraud and fund transfers should be blocked to these banks. The fact that someone has

an account open with one of these companies should not be reassuring--their KYC processes are so weak that they are irrelevant--and instead should be viewed as a reason to classify their application as high risk.

Require funding into a named bank account via ACH
While many banks have substantial issues with KYC and stolen accounts, it's still very important to have funds electronically deposited into a named account. Deposits onto prepaid cards should be strictly prohibited because this eliminates a critical layer of fraud prevention.

Require business bank accounts
For programs or applications that require a registered business entity, require business bank accounts for all deposits. These should be independently verified with the RDFI. Where possible, ACH descriptors & routing numbers should be clearly separated & identifiable to aid RDFIs in their own fraud checks.

Apply strict rules after a funding failure
Conduct manual reviews on all data and limit the number of retries or changes. Where possible under the rules of the program, add increasing delays for subsequent deposit attempts (first try adds a 5 day delay, second try adds 10 day delay, etc). This will add time for the RDFI to close accounts in the case they detect fraud.

Require minimum bank activity
If possible use Plaid/Yodlee/etc transaction data to verify bank activity existed at least 30 days ago. Bank statements aren't useful for this purpose (too easy to fake).

Require a minimum bank balance of over $20
$20 is often the minimum required to open an account and in general fraud rings are reluctant to deposit money that could be frozen. Often it's not possible to collect this data due to institution or API failures.

Restrict bank account usage
Limit the count of deposits and count of tax IDs on applications associated with each bank account.

Anonymous IDs & browser fingerprints
Identify clusters of browser fingerprints and cookie-based anonymous IDs to find fraud. Fraud rings rarely change their ID or fingerprints across applications, so these links help connect fraudulent apps together.

Device count limits
Applications that are associated with more than 2 devices are high risk, particularly if those devices are located more than 50 miles apart (based on their IP address). This often indicates a vertically integrated fraud ring with specialists/segmentation in each step (KYC, documents, bank accounts, etc).

Limit IP address distance from database address
Database checks of SSN will often return a recent address that is more than 250 miles from both the address shown on the ID and/or the IP address location. This appears to be frequently associated with fraud.

Restrict tax IDs per bank login/password
Where possible if using Plaid or Yodlee, restrict the number of tax IDs from an application that can use the same login/password for a bank institution.

Use loan amount to identify risk
With PPP Schedule C & F filers, ~95% of confirmed fraudulent applications have been within $500 of the maximum allowable loan amount ($20,833 for draw 1).