117TH CONGRESS
2D SESSION

S. 4471

To provide relief for small businesses suffering extraordinary losses due to the COVID–19 pandemic.

IN THE SENATE OF THE UNITED STATES

JUNE 23, 2022

Mr. CARDIN introduced the following bill; which was read twice and referred to the Committee on Small Business and Entrepreneurship

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A BILL

To provide relief for small businesses suffering extraordinary losses due to the COVID–19 pandemic.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Hardest-Hit Small Business COVID Relief Act of 2022".

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

SEC. 3. DEFINITIONS.

In this Act:

(1) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the Small Business Administration.

(2) COVERED MORTGAGE OBLIGATION; COVERED RENT OBLIGATION; COVERED SUPPLIER COST; COVERED UTILITY PAYMENT; COVERED WORKER PROTECTION EXPENDITURE.—The terms ''covered mortgage obligation'', ''covered rent obligation'', ''covered supplier cost'', ''covered utility payment'', and ''covered worker protection expenditure'' have the meanings given the terms in section 7A(a) of the Small Business Act (15 U.S.C. 636m(a)).

(3) COVERED PERIOD.—The term ''covered period'' means the period—

(A) beginning on March 1, 2020; and

(B) ending on March 31, 2023, or a date to be determined by the Administrator that is not later than 2 years after the date of enactment of this Act.

(4) ELIGIBLE ENTITY.—The term ''eligible entity''—

(A) means a small business concern (as defined in section 3 of the Small Business Act (15 U.S.C. 632)) that has experienced substantial losses resulting from the COVID–19 pandemic, as determined by the Administrator;

(B) may include—

(i) a Tribally-owned concern;

(ii) a sole proprietorship;

(iii) an independent contractor; and

(iv) an eligible self-employed individual; and

(C) does not include—

(i) an entity described in subparagraph (A) that—

(I) is a State or local government-owned or operated business; and

(II) has a pending application for or has received a grant under—

(aa) section 324 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (15 U.S.C. 9009a); or (bb) section 5003 of the American Rescue Plan Act of 2021 (15 U.S.C. 9009c);

(ii) a publicly-traded company;

(iii) an entity that is owned or operated by a private equity fund;

(iv) an entity that was not in operation before March 1, 2020; or

(v) an entity that is not in operation on, and does not intend to reopen on or before the date that is 180 days after, the date on which the entity applies for a grant.

(5) ELIGIBLE SELF-EMPLOYED INDIVIDUAL.—The term ‘‘eligible self-employed individual'' has the meaning given the term in section 7002(b) of the Families First Coronavirus Response Act (26 U.S.C. 1401 note).

(6) EXCHANGE; ISSUER; SECURITY.—The terms ‘‘exchange'', ‘‘issuer'', and ‘‘security'' have the meanings given those terms in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

(7) FUND.—The term ‘‘Fund'' means the Hardest-Hit Small Business Relief Fund established under section 4(a).

(8) NATIONAL SECURITIES EXCHANGE.—The term ''national securities exchange'' means an exchange that is registered in accordance with section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f).

(9) PAYROLL COSTS.—The term ''payroll costs'' has the meaning given the term in section 7(a)(36)(A) of the Small Business Act (15 U.S.C. 636(a)(36)(A)), except that such term shall not include—

(A) qualified wages (as defined in subsection (c)(3) of section 2301 of the CARES Act (26 U.S.C. 3111 note)) taken into account in determining the credit allowed under such section 2301; or

(B) premiums taken into account in determining the credit allowed under section 6432 of the Internal Revenue Code of 1986.

(10) PRIVATE EQUITY FUND.—The term ''private equity fund'' has the meaning given the term in section 225.173(a) of title 12, Code of Federal Regulations, or any successor regulation.

(11) PUBLICLY-TRADED COMPANY.—The term ''publicly-traded company'' means an entity that is majority owned or controlled by an entity that is an

issuer, the securities of which are listed on a national securities exchange.

(12) TRIBALLY-OWNED CONCERN.—The term ''Tribally-owned concern'' has the meaning given the term in section 124.3 of title 13, Code of Federal Regulations, or any successor regulation.

SEC. 4. HARDEST-HIT SMALL BUSINESS RELIEF FUND.

(a) ESTABLISHMENT.—There is established in the Treasury of the United States a fund to be known as the Hardest-Hit Small Business Relief Fund.

(b) FUNDING.—

(1) IN GENERAL.—The Fund shall consist of—

(A) amounts transferred under section 11; and

(B) other amount appropriated to the Fund.

(2) ADMINISTRATIVE EXPENSES.—Of the amounts transferred under section 11, $80,000,000 shall be for administrative expenses to carry out the program under this Act, of which $20,000,000 shall be for the Inspector General of the Small Business Administration for necessary expenses of the Office of Inspector General.

SEC. 5. GRANTS FROM FUND.

(a) IN GENERAL.—Except as provided in subsection (c)(4), the Administrator shall make grants under this section to eligible entities in the order in which applications are received by the Administrator.

(b) APPLICATIONS.—

(1) CERTIFICATION.—An eligible entity applying for a grant under this section shall make a good faith certification that—

(A) the uncertainty of current economic conditions makes necessary the request for the grant to support the ongoing operations of the eligible entity;

(B) the eligible entity does not have a pending application for, and has not received, a grant under—

(i) section 324 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (15 U.S.C. 9009a); or

(ii) section 5003 of the American Rescue Plan Act of 2021 (15 U.S.C. 9009c); and

(C) contains any other information that the Administrator may require.

(2) VERIFICATION MATERIALS.—The Administrator shall use tax records and may, in addition,

use other reliable sources such as certified accounting statements with respect to an applicant for a grant to determine—

(A) the eligibility of the applicant for that grant; and

(B) the amount of that grant to the applicant.

(3) ACCEPTANCE OF APPLICATIONS.—Not later than 90 days after the date of enactment of this Act, the Administrator shall begin accepting applications for grants under this section.

(c) AMOUNT OF GRANT.—

(1) IN GENERAL.—Subject to paragraph (4), the amount of a grant under this section made to an eligible entity shall be determined based on a formula to be established by the Administrator.

(2) REDUCTION.—Any formula established by the Administrator to determine grant amounts under paragraph (1) shall reduce awards by amounts a recipient has received under—

(A) section 1110 of the Coronavirus Aid, Relief, and Economic Security Act (15 U.S.C. 9009);

(B) section 331 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (15 U.S.C. 9009b); or

(C) section 5002 of the American Rescue Plan Act of 2021 (15 U.S.C. 9009 note).

(3) DETERMINATION OF REVENUE.—

(A) IN GENERAL.—When calculating the revenue of an entity for purposes of determining the eligibility of the entity for a grant under this section or the amount of such a grant, the Administrator shall treat as revenue—

(i) any amounts received from a covered loan made under paragraph (36) or (37) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)), in 2020 or 2021; and

(ii) the amount by which the total of all remunerative payments made to an individual, including any annual salary paid to an employee, in 2020, or 2021, exceeds $250,000.

(B) ADMINISTRATOR AUTHORITY.—The Administrator may determine the types of payments and individuals to which subparagraph (A)(ii) applies.

(4) INSUFFICIENT FUNDING.—

(A) IN GENERAL.—If the Administrator determines that the amounts made available to carry out this section are insufficient to make grants to each eligible entity in the amount provided under paragraph (1), the Administrator shall distribute grants to all eligible applicants that submit an application during the 21-day period beginning on the date on which the Administrator begins accepting those applications on either—

(i) a pro rata basis; or

(ii) based on a formula to be determined by the Administrator.

(B) RESERVING FUNDS.—Nothing in subparagraph (A) shall prevent the Administrator from—

(i) reserving funding for applicants that may be determined to be eligible for a grant upon reconsideration; or

(ii) making partial awards to eligible entities on a preliminary basis until the amount of funding required to fund grants to all eligible entities that submit applications is established upon the completion of the reconsideration process.

(d) USE OF FUNDS.—During the covered period, an eligible entity that receives a grant under this section may use amounts received for the following expenses incurred as a direct result of, or during, the COVID–19 pandemic:

(1) Payroll costs.

(2) Payments to independent contractors, as reported on Form 1099–MISC, except that each payment under this paragraph shall be in an amount that is not more than $100,000.

(3) Scheduled payments of interest or principal on any covered mortgage obligation (which may not include any prepayment of principal on a covered mortgage obligation).

(4) Payments on any covered rent obligation and common area maintenance charges under a lease agreement.

(5) Covered utility payments.

(6) Maintenance expenses.

(7) Covered worker protection expenditures.

(8) Supplies, including protective equipment and cleaning materials.

(9) Expenses that were within the scope of the normal business practice of the eligible entity before the covered period.

(10) Covered supplier costs.

(11) Operational expenses.

(12) Paid sick leave.

(13) Any other expenses that the Administrator determines to be essential to maintaining the eligible entity.

(e) RETURNING FUNDS.—If an eligible entity that receives a grant under this section fails to use all of the amounts received under the grant on or before the last day of the covered period or permanently ceases operations on or before the last day of the covered period, the eligible entity shall return to the Treasury any funds that the eligible entity did not use for the allowable expenses under subsection (d).

SEC. 6. DATA TRANSPARENCY AND CUSTOMER SERVICE.

The Administrator shall—

(1) on a biweekly basis until the amounts made available under this Act are fully expended, publish data that shows, for the period beginning on the date of enactment of this Act and ending on the date on which the information is published—

(A) with respect to applications for grants under this Act, the number of those applications—

(i) that the Administrator has received;

(ii) that the Administrator has reviewed or is in the process of reviewing; and

(iii) with respect to which the Administrator has made a decision; and

(B) the number and dollar amount of grants—

(i) that are awarded; and

(ii) that are disbursed;

(2) on a weekly basis until the amounts made available under this Act are fully expended, publish, with respect to the period beginning on the date of enactment of this Act, and ending on the date on which the information is published—

(A) with respect to each entity to which a grant under this Act has been made—

(i) the name of the entity, including the name under which the entity does business if that name is different from the name of the entity;

(ii) the address of the entity; and

(iii) if the physical location for the eligible business listed on the application is different from the address of the entity, the address of such physical location; and

(B) the amount of each grant described in paragraph (1); and

(3) with respect to an applicant that applies for a grant under this Act and is denied by the Administrator—

(A) make available to the applicant a brief explanation identifying the reason why the Administrator denied the application of the applicant, which shall include, where applicable, a citation to the statutory, regulatory, or guidance provision with which the applicant failed to comply and that was the basis for the denial; and

(B) establish a reconsideration process through which the applicant may—

(i) submit to the Administrator additional clarifying information the applicant determines to be relevant to whether the applicant is eligible for the grant; and

(ii) receive a second review of the application submitted by the applicant.

SEC. 7. BUSINESS IDENTIFIERS.

In accepting applications for grants under this Act, the Administrator shall prioritize the ability of each applicant to use the existing business identifier of the applicant over requiring other forms of registration or identification that may not be common to the industry of the applicant, which may impose additional burdens on the applicant.

SEC. 8. OVERSIGHT AND AUDITS.

(a) IN GENERAL.—The Administrator shall institute an oversight and audit plan with respect to entities receiving grants under this Act, which shall include—

(1) documentation requirements that are consistent with the eligibility and other requirements, including by requiring an entity that receives a grant under this Act to retain records that demonstrate compliance with those requirements; and

(2) reviews of the use by entities of grants under this Act to ensure compliance with the requirements under this Act, which shall include—

(A) the review and audit, by the Administrator, of grants made under this Act; and

(B) in the case of fraud or other material noncompliance with respect to a grant made under this Act—

(i) a requirement that the applicable entity repay to the Administrator the amount of the misspent funds; or

(ii) the pursuit, by the Administrator, of legal action to collect the misspent funds.

(b) SUBMISSION OF PLAN.—Not later than 90 days after the date of enactment of this Act, the Administrator shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives the plan required under subsection (a), which shall describe—

(1) the policies and procedures of the Administrator for conducting oversight and audits of grants under this Act; and

(2) the metrics that the Administrator will use to determine which grants will be audited under that plan.

(c) REPORTS.—Not later than 90 days after the date of enactment of this Act, once every 30 days thereafter until the date that is 180 days after the date on which all amounts made available to carry out this Act have been fully expended, and upon request thereafter, the Administrator shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report on the oversight and audit activities of the Administrator under this section, which shall include—

(1) the total number of grants under this Act approved and disbursed;

(2) the total amount of each grant under this Act received by each entity that received such a payment;

(3) the number of active investigations and audits of grants made under this Act;

(4) the number of completed reviews and audits of grants under this Act, including a description of—

(A) any findings of fraud or other material noncompliance;

(B) questionable costs identified by the Administrator; and

(C) the total amount recouped from ineligible recipients; and

(5) a description of any substantial changes made to the plan required under subsection (a).

SEC. 9. GROSS RECEIPTS.

The Administrator may authorize applicants for grants under this Act to measure annual gross receipts using either the calendar year or fiscal year.

SEC. 10. RULES.

Not later than 60 days after the date of enactment of this Act, the Administrator shall issue rules to carry out this Act, without regard to the notice requirements under section 553(b) of title 5, United States Code.

SEC. 11. TRANSFER OF FUNDS.

(a) IN GENERAL.—The unobligated balances of amounts made available under the heading ''Small Business Administration—Business Loans Program Account, CARES Act'' in section 323(d)(1)(A) of division N of the Consolidated Appropriations Act, 2021 (Public Law 116–260; 134 Stat. 2019) for the cost of guaranteed loans as authorized under paragraphs (36) and (37) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)) shall be transferred to the Fund.

(b) CARES ACT.—The unexpended balances of amounts made available under the heading ''Small Business Administration—Business Loans Program Account, CARES Act'' in section 1107(a)(1) of the Coronavirus Aid, Relief, and Economic Security Act (15 U.S.C. 9006(a)(1)) shall be transferred to the Fund.

(c) SHUTTERED VENUES.—The unobligated balances in the account appropriated under the heading "Small Business Administration—Shuttered Venue Operators" shall be transferred to the Fund.

(d) AMERICAN RESCUE PLAN ACT.—

(1) IN GENERAL.—If the Administrator submits to Congress a certification described in paragraph (2), effective on the date of the certification, the unobligated balances of amounts made available under section 5002(b) of the American Rescue Plan Act of 2021 (15 U.S.C. 9009 note), including any of such balances that were transferred under section 90007(b)(2) of the Infrastructure Investment and Jobs Act (Public Law 117–58; 135 Stat. 1347), shall be transferred to the Fund.

(2) CERTIFICATION OF SUFFICIENCY OF FUNDS FOR EIDL PROGRAM.—A certification described in this paragraph is a certification that, if the balances described in paragraph (1) are transferred, the Administrator will still have sufficient funds to make loans described in section 7(b)(2) of the Small Business Act (15 U.S.C. 636(b)(2)) to each entity described in section 1110(b) of the CARES Act (15 U.S.C. 9009(b)) that submitted—

(A) an application for such a loan on or before December 31, 2021; or

(B) a request for a modification, rehearing, or appeal in connection with an application for such a loan on or before May 6, 2022.

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