

Democratic Senators Ask SBA To Investigate PPP Loans

By [Philip Rosenstein](#)

Law360 (April 24, 2020, 10:10 PM EDT) -- Top Democrats in Congress have asked the [Small Business Administration](#) inspector general to investigate the implementation of the Paycheck Protection Program following reports that larger companies received preferential treatment from lenders at the expense of smaller businesses.

In a letter to SBA inspector general Hannibal “Mike” Ware, dated Thursday and announced Friday, Minority Leader Sen. Chuck Schumer, D-N.Y., Sen. Sherrod Brown, D-Ohio, and Sen. Benjamin Cardin, D-Md., requested that Ware investigate PPP lenders and provide a recommendation by May 8 assessing the implementation of the program to ensure that small businesses are being fairly treated.

Sen. Elizabeth Warren, D-Mass., and Rep. Nydia M. Velazquez, D-N.Y., who chairs the House Committee on Small Business, also sent a letter Thursday to Ware and acting inspector general of the U.S. Treasury Richard K. Delmar. They likewise asked for an investigation into the implementation of PPP loans to ensure the distribution of lending is “consistent with the law and without waste, fraud, and abuse.”

“Some private and commercial banking customers received special treatment from their banks when applying for assistance through the Paycheck Protection Program, while smaller businesses, including those at greater risk because of the pandemic, have struggled to receive timely assistance from their banks, contrary to the SBA’s ‘first-come, first-served’ claims,” Sens. Schumer, Brown and Cardin said in their letter.

The letters came the same day the U.S. Treasury issued guidance [cautioning deep-pocketed companies about borrowing money](#) through PPP. That guidance came as a string of restaurant chains and other companies announced the return of millions of dollars in PPP loans following widespread criticism that high-powered brands and well-connected firms managed to access funds before it exhausted its initial \$349 billion in funding.

A spokesman for the SBA’s Office of Inspector General confirmed receipt of the letters and

said the requests were within the scope of work planned under the office's supplemental oversight plan. Under the supplemental oversight plan, the SBA's Inspector General is planning to conduct a review of priorities and audit the SBA's response to COVID-19. According to the plan, the SBA Inspector General will assess the implementation of PPP, the SBA's response to COVID-19 loans and loan eligibility under PPP.

Authorized by the \$2 trillion federal [coronavirus relief legislation](#) enacted in late March and launched on April 3 through the SBA, PPP guarantees private two-year loans of up to \$10 million at 1% interest to cover payroll costs, health care benefits, mortgage interest payments, rent and more. The loans will be forgiven if businesses hold up their end of the deal by keeping employees on the payroll through the crisis.

Congressional leaders [reached an agreement on Tuesday](#) to replenish PPP with another \$310 billion after the SBA announced last week that the [\\$349 billion initially authorized for the program](#) had been drained. Previous efforts to restock PPP were held up by Democrats who demanded changes that would [ensure access for small businesses](#) that don't have established banking relationships.

President Trump signed the bill providing more funds for PPP loans on Friday.

The first batch of PPP loans flew out the door at breakneck speeds. The SBA said on April 16 that more than 1.6 million loans had been approved through nearly 5,000 lenders since April 3. According to the U.S. Treasury, the SBA "processed more than 14 years' worth of loans in less than 14 days" through PPP.

According to numbers from the SBA highlighted by Sen. Warren and Rep. Velazquez, "the largest 4% of loans approved under the program cost over \$150 billion — and accounted for 45% of all program funding, a clear sign that mom and pop businesses did not proportionally benefit from the program."

"Once the banks began processing loans, small businesses immediately began to raise concerns that they were playing favorites, processing the largest loans first out of a desire to reap higher fees, and shoring up their business lines by prioritizing existing larger customers over small mom and pop businesses," the letter penned by Sen. Warren and Rep. Velazquez said.

Sen. Schumer's letter also emphasized that smaller, rural and minority-owned small businesses "must receive assistance as quickly as possible from any eligible lender, and that the lack of a prior relationship with a bank should not stand in the way of lending to these eligible small businesses."

According to a [report published April 14](#) by the Brookings Institution's Metropolitan Policy Program, the impact of COVID-19 is likely to be felt particularly hard by minority- and women-owned business enterprises, or MWBEs.

House Speaker Nancy Pelosi, D-Calif., agreed with her Democratic colleagues on Friday. At a news conference she said given that PPP loans are guaranteed by the SBA, banks should focus on the applications for funds themselves for determining eligibility.

"They are just a facilitator," Speaker Pelosi said of the PPP lenders. "But all of a sudden in some cases, it looks like they made themselves decision-makers about relationships that they have ... I think that requires some close scrutiny."

"This shouldn't depend on what your bank relationship is," she added. "The bank is covered, they are protected. It should depend on your application that you make in terms of how you're going to pay your employees, your rent, your utilities."

Larger banks are already facing legal action for their PPP lending practices.

[Bank of America](#) was sued over its "gating" policy that only allowed PPP loan applications from its small-business checking customers that either are already borrowers at the bank or aren't borrowers at another bank; the bank notched a [district court win](#) and is [allowed](#) to keep the policy pending appeal.

Small businesses have [filed class actions](#) alleging [Wells Fargo Bank NA](#) and [JPMorgan Chase](#) gave preference to larger small businesses.

--Additional reporting by Jon Hill and Andrew Kragie. Editing by Amy Rowe.