

# EXHIBIT E



April 8, 2021

Chief, Freedom of Information/Privacy Acts Office  
U.S. Small Business Administration  
409 3rd Street SW, 8th Floor  
Washington, DC 20416

Submitted via online FOIA Requester Service Center: foia@sba.gov

Re: Freedom of Information Act Request

Dear Sir or Madam:

On behalf of the Project On Government Oversight (POGO) I am making this request of the Small Business Administration (SBA) under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and agency regulations.

Specifically, POGO requests the following records in electronic format:

1. The dataset containing Paycheck Protection Program (PPP) loans flagged by the SBA Office of Capital Access as potentially not in conformance with the CARES Act and related legislation and the reasons these loans were flagged, in Excel or CSV format.
2. Methodologies, code sheets, glossaries, and/or data dictionaries accompanying or explaining the above data.
3. Summaries, reports, or analyses of the above data.

By way of background, a December 18, 2020 memorandum from SBA Inspector General Hannibal “Mike” Ware to SBA Administrator Jovita Carranza regarding independent auditor KPMG’s report on SBA’s FY 2020 financial statements states that “over 2 million approved PPP loan guarantees ... flagged by management within the loan repository system . . . are potentially not in conformance with the CARES Act and related legislation. The loans were flagged for one or more of 35 reasons (e.g., Business in Operation After February 15, 2020; Mismatch of Taxpayer Identification Number/Employer Identification Number/Social Security Number; Criminal Record; Mismatch of Individual or Company Entity Name; Aggregate Data Mismatch; Potential Multiple Data Universal Numbering System Issue; or Inactive Business).”<sup>1</sup>

On March 26, 2021, POGO contacted the SBA Inspector General’s office to clarify the source of this analysis and the resulting dataset. Assistant Inspector General for Management and Operations Sheldon Shoemaker responded that “KPMG’s report to OIG reflects the results of data and analysis completed and

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<sup>1</sup> Memorandum from SBA Inspector General from Hannibal “Mike” Ware to SBA Administrator Jovita Carranza about the independent auditors’ report on SBA’s FY 2020 financial statements, December 18, 2020, 7. <https://www.sba.gov/sites/default/files/2020-12/OIG%20Final%20Report%2021-04%20Consolidated%20Financial%20Statement%20Audit.pdf>

provided to KPMG by SBA's Office of Capital Access (OCA), as of November 3. The stratification of flags and assigned error codes was that of OCA. OCA would be best positioned to speak to their data in this regard." (See Attachment A)

On March 24, 2021, Patrick Kelley, Associate Administrator of OCA, provided additional details about the dataset in his testimony to the Senate Committee on Small Business and Entrepreneurship:

[I]n late 2020 the SBA reviewed the entire portfolio of PPP loans through the use of an automated screening process comparing loan data with publicly available information and applying eligibility and fraud detection rules. Based on the results of this automated screening process, SBA placed hold codes on loans. Because these hold codes indicated that a borrower may have been ineligible for the First Draw PPP loan it received or for the loan amount received by the borrower, the borrower is prevented from receiving a guaranty of a second draw PPP loan or loan forgiveness until the hold code is resolved. There are currently approximately 190,000 loans with outstanding hold codes.<sup>2</sup>

### **Waiver of Costs**

POGO requests a waiver of all costs associated with fulfilling this request pursuant to 5 U.S.C. §552(a)(4)(A)(iii). Disclosure of the requested information will further the "public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest" of the requester, POGO. Specifically, POGO will use the requested records to inform the public, free of charge, about programs implemented under the Coronavirus Aid, Relief, and Economic Security Act of 2020 (CARES Act)—in particular, the Paycheck Protection Program (PPP).

What follows is a detailed account of POGO's planned use of the requested information and responds to fee waiver criteria that (1) disclosure of the requested information is in the public interest because it is likely to contribute significantly to a broad public understanding of the operations and activities of the government, (2) the requested material is not primarily in POGO's commercial interest, and (3) the requested information will be provided and distributed for free to the public.

The records POGO requests here will add to the public's understanding of how funds were disbursed under the PPP, and the extent to which those funds may have been disbursed erroneously or improperly, matters of great public interest. In December 2020, the SBA inspector general reported that the agency "did not adequately design and implement controls to ensure PPP loan guarantees were accurate" and in conformance with the CARES Act and related legislation.<sup>3</sup> As a result, over 2 million PPP loans worth approximately \$189 billion were "flagged" as possibly not conforming with the law in one or more of 35 ways, ranging from mismatched loan recipient identification information to indicators of potential fraud.<sup>4</sup>

Founded in 1981, POGO is a nonpartisan independent watchdog that investigates and exposes waste, corruption, abuse of power, and when the government fails to serve the public or silences those who report wrongdoing. We champion reforms to achieve a more effective, ethical, and accountable federal government that safeguards constitutional principles. POGO closely observes the activities of federal

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<sup>2</sup> *Hearing before the Senate Committee on Small Business and Entrepreneurship on Oversight of SBA's COVID-19 Relief Programs*, March 24, 2021 (Statement of Patrick Kelley, Associate Administrator, Office of Capital Access, U.S. Small Business Administration), 3. [https://www.sbc.senate.gov/public/\\_cache/files/5/1/511a71b1-7bcb-469f-adaf-07f343db8277/D98AD0D83EF145D552CDAB3A4343F624.kelley-testimony.pdf](https://www.sbc.senate.gov/public/_cache/files/5/1/511a71b1-7bcb-469f-adaf-07f343db8277/D98AD0D83EF145D552CDAB3A4343F624.kelley-testimony.pdf)

<sup>3</sup> Memorandum from Ware to Carranza, 7.

<sup>4</sup> Memorandum from Ware to Carranza, 7-8.

agencies, Congress, the federal courts, and government contractors. Over the years, POGO has built up considerable expertise and international prominence in government transparency and accountability as it applies to various issue areas, including federal assistance programs responding to disasters and other emergency situations. We will use our 40 years of expertise to analyze the information and explain to the general public its relevance.

All of POGO's investigations are made available to the public for free on our website (<https://www.pogo.org/>), which receives 87,000 unique visitors monthly. Our online content has gained a devoted readership, averaging roughly 14,000 visitors monthly. POGO also disseminates information directly to supporters, the media, nonprofit organizations, Congress, executive branch officials, and other policymakers via direct email, reports, and newsletters. Our collaborations with other organizations and the media amplify our reach and increase public understanding of government activities. POGO, as a public interest entity organized under IRC §501(c)(3), holds no commercial interest in the requested information. We will use the information strictly for the public interest. We do not charge for access to our web content, or for our reports, newsletters, and other printed materials.

POGO further requests that it not be charged search or review fees for this request pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) because POGO qualifies as a member of the news media. *See Nat'l Sec. Archive v. U.S. Dep't of Defense*, 880 F.2d 1381, 1386 (D.C. Cir. 1989) (holding non-profit a "representative of the news media" and broadly interpreting the term to include "any person or organizations which regularly publishes or disseminates information to the public").

Under these circumstances, POGO satisfies fully the criteria for a fee waiver.

If this request is denied, in full or in part, please cite the exemptions pursuant to 5 U.S.C. § 552(b) that justify the denial. If an exemption applies, however, please consider exercising the agency's discretionary release powers to disclose the information. Additionally, please release all reasonably segregable portions of that record that do not meet an exemption.

I look forward to your response within 20 days of the receipt of this request, unless, in the case of "unusual circumstances," the time limitation is "extended by written notice." I am aware that I have a right to appeal this request if it is wholly or partially denied or if the agency fails to respond within 20 days. I am aware that, if successful, a federal district court may assess "reasonable attorney fees and other litigation costs" pursuant to 5 U.S.C. § 552(a)(4)(E).

Please contact me if this request requires further clarification or if you have any questions. I can be reached via e-mail at [ngordon@pogo.org](mailto:ngordon@pogo.org). Thank you for your prompt attention to this matter.

Sincerely,

Neil Gordon  
Senior Researcher  
Project On Government Oversight

**Attachment A**

4/8/2021

Project On Government Oversight Mail - Query: 2 million PPP loans "potentially not in conformance with the CARES Act"



Nick Schwellenbach <nick@pogo.org>

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**Query: 2 million PPP loans "potentially not in conformance with the CARES Act"**

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Shoemaker, Sheldon R. (Off. of Inspector Gen) <Sheldon.shoemaker@sba.gov>

Fri, Mar 26, 2021 at 4:25 PM

To: Nick Schwellenbach <nick@pogo.org>

Cc: "Saint-Surin, Farrah M." <Farrah.Saint-Surin@sba.gov>

Nick,

Hello. I was able to reach out to our Audits Division, and I have to clarify based on their response. OIG contracted with an independent public auditor, KPMG, to perform our financial statement audit. KPMG's report to OIG reflects the results of data and analysis completed and provided to KPMG by SBA's Office of Capital Access (OCA), as of November 3. The stratification of flags and assigned error codes was that of OCA. OCA would be best positioned to speak to their data in this regard. I apologize for my initial misunderstanding.

I'm sorry for the need to put you back in touch with SBA's Office of Communication and Public Liaison.

[Quoted text hidden]