

**Empire Justice Center**

**NYS Assembly hearing on the federal response to the economic impact of  
the COVID-19 pandemic on small businesses in New York State**

**Testimony of**

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## **INTRODUCTION**

Empire Justice Center is a statewide legal services and advocacy organization for low-income and marginalized people with offices in Albany, Rochester, White Plains, Yonkers and Central Islip (Long Island). Empire Justice focuses on changing the “systems” within which poor and marginalized families live. With a focus on poverty law, Empire Justice undertakes research and training, acts as an informational clearinghouse, and provides litigation backup to local legal services programs and community based organizations. As an advocacy organization, we engage in legislative and administrative advocacy on behalf of those impacted by poverty and discrimination. As a non-profit law firm, we provide legal assistance and undertake impact litigation in order to protect and defend the rights of disenfranchised New Yorkers.

We also co-convene the Greater Rochester Community Reinvestment Coalition (GRCRC). In that capacity, we have been analyzing mortgage lending data for 3 decades and small business data for 2 decades. We focus on lack of lending to communities and neighborhoods of color. We share our analyses with federal and NYS bank regulators. In order to improve lending, GRCRC members meet with the banks to share our data and information about the on-the-ground reality experienced by people of color.

This testimony focuses on the impact of COVID-19 on lending to mom or pop micro businesses, to minority businesses, and to businesses in communities of color and how state and federal programs can be improved to better support them

## **COVID-19’S IMPACT ON BUSINESSES OF COLOR**

According to a May 2020 article by Robert Fairlie,<sup>1</sup> an economics professor at the University of California at Santa Cruz, “minority-owned businesses have suffered disproportionately [from the pandemic] that’s also killing nonwhite Americans at higher rates and eliminating more of their jobs.” While the total number of active business owners dropped by 22 percent from February to April:

- The number of active Black business owners plummeted by 40%;
- The number of active Latinx business owners declined by 32%;
- The number of active Asian business owners decreased by 35%; and
- The number of immigrant business owners declined by 36%.

Self-employed businesses with no margin for building capital, even in the best of times, can’t afford to borrow money. It is possible that for the next 12 months they will have half their normal income. It will be impossible to pay a loan back. Those located in black and brown neighborhoods will have customers with reduced or no income. Even if the health crisis is over, the economic crisis will not be over.

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<sup>1</sup> <https://siepr.stanford.edu/research/publications/impact-covid-19-small-business-owners-evidence-early-stage-losses-april-2020>.

On June 17<sup>th</sup>, testifying before Congress, Fed Chairman Powell said: “This is the largest economic shock to hit our economy in living memory. It looks like it will be the deepest recession. It may not turn out to be a very long run. But it will take some time” to get all the millions who have been laid off back to work.<sup>2</sup>

High unemployment will continue to impact black and brown communities who take the longest to recover from recessions.

There is a very limited amount of public data about small business lending. Congress mandated that the Consumer Financial Protection Bureau (CFPB) issue regulations to expand the small business lending data collected and made public. The CFPB did not and was sued, and has now begun the process again. It will still be a few years before we have pre- and post- COVID-19 small business lending data.

Despite deficiencies in the data currently, we were able to analyze small business lending in communities of color and compare that to lending in predominantly white communities. We looked at 2018 small business lending in the Rochester MSA, which includes Monroe and five surrounding counties, examining the number of loans per the number of occupied businesses in each census tract.<sup>3</sup>

We found that in 2018:

- Businesses in neighborhoods (i.e. census tracts) with 50% or more people of color received 3.5 loans for every 10 businesses.
- Businesses in neighborhoods that were 90% or more white received 9 loans for every 10 businesses.

So, assuming one loan per business, almost every business in predominantly white communities was able to access credit to keep in business, compared to only 35% of businesses in communities of color. These loans include business credit cards. Many smaller businesses borrow via business credit cards which can be issued by financial institutions that do not have a branch presence where the business is located. That is why many businesses did not have a relationship with the banks who were issuing the PPP loans.

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<sup>2</sup> <https://www.nytimes.com/aponline/2020/06/17/business/bc-us-federal-reserve-congress-powell.html>.

<sup>3</sup> HUD aggregates by census tract US Postal Service (USPS) data on residential and business vacancies. Using several fields from this data, Empire Justice created an estimate of the number of occupied businesses in each census tract as of March 31, 2017. The HUD data can be found at: <https://www.huduser.gov/portal/usps/index.html>.

## RESPONDING TO COVID-19

### Paycheck Protection Program

The Paycheck Protection Program (PPP) was designed to be implemented through banks, many of which have redlined communities of color for decades. Given that there is no CRA small business loan application or denial data, including by race, we can't document how these banks have previously served, or did not serve, Black and brown business owners. The first \$350 billion of PPP was lent in two weeks. PPP rules kept changing. Even businesses with tax accountants and lawyers could barely keep up. In Rochester over 90% of black and brown businesses are self-employed.

As of May 16, 2020, \$518 billion in PPP lending had been disbursed since inception, while \$130 billion still remains. Of this, \$38 billion (7% of the total approved dollars) went to NYS; \$98 billion (19% of the total approved dollars) were loans under \$100k; and \$15 billion (3% of the total approved dollars) were loans by community development financial institutions (CDFIs) and minority depository institutions (MDIs).<sup>4</sup>

However, it looks like Black-owned businesses have benefitted less from federal programs, including the PPP.<sup>5</sup> According to the New York Times, “[o]nly 12 percent of black and Hispanic business owners polled between April 30 and May 12 received the funding they had requested. About one quarter received some funding. By contrast, half of all small businesses reported receiving from a single part of the stimulus packages — the Paycheck Protection Program — according to a census survey.”<sup>6</sup>

The small percentage of lending done by CDFIs and MDIs is due, in part, because most CDFIs were too small to be able to lend in Round 1 of the PPP. As of June 14<sup>th</sup>, a local CDFI in Rochester has yet to be approved and does not know if it will be approved by June 30<sup>th</sup>, the last day to make PPP loans. In fact, many CDFIs did not get approved for Round 2 of the PPP for over 4 weeks.<sup>7</sup>

On June 19<sup>th</sup>, after pressure from advocates and lawmakers, the US Treasury and Small Business Administration (SBA) agreed to release data on the businesses and organizations that have or will receive Paycheck Protection Program (PPP) loans of over \$150,000.<sup>8</sup> However, granular data about who got loans, including by race and ethnicity, won't be released for loans under \$150,000. As of June 20<sup>th</sup>, 86% of the loans approved are of amounts \$150,000 or less,<sup>9</sup> which means the public will be missing information on most of the PPP loans made. It is imperative that the complete data for the Program, including a full analysis of PPP lending (or lack thereof) to Black and brown owned business

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<sup>4</sup> [https://www.sba.gov/sites/default/files/2020-05/PPP\\_Report\\_Net\\_200518.pdf](https://www.sba.gov/sites/default/files/2020-05/PPP_Report_Net_200518.pdf). More up-to-date numbers were released on June 21, 2020. To see the update, go to: [https://www.sba.gov/sites/default/files/2020-06/PPP\\_Report\\_200620.pdf](https://www.sba.gov/sites/default/files/2020-06/PPP_Report_200620.pdf).

<sup>5</sup> <https://www.pbs.org/newshour/show/why-minority-owned-businesses-are-struggling-to-get-ppp-loans>.

<sup>6</sup> <https://www.nytimes.com/interactive/2020/06/18/us/coronavirus-black-owned-small-business.html>.

<sup>7</sup> Personal discussion and correspondence with Hubert VanTol of PathStone Enterprise Center.

<sup>8</sup> <https://www.sba.gov/about-sba/sba-newsroom/press-releases-media-advisories/sba-and-treasury-announce-enhanced-transparency-regarding-paycheck-protection-program>.

<sup>9</sup> [https://www.sba.gov/sites/default/files/2020-06/PPP\\_Report\\_200620.pdf](https://www.sba.gov/sites/default/files/2020-06/PPP_Report_200620.pdf).

be made public. Only then can we design NY programs, targeted to fill the gaps created by decades of structural racism and redlining.

### Language Access on SBA Website

Many American citizens as well as new Americans are limited English proficient (LEP). However, LEP business owners were unable to navigate the English-only Small Business Administration (SBA) website as they tried to apply for PPP. During the week of June 15th, a Spanish-speaking attorney from Empire Justice Center (and a member of the Rochester Hispanic Business Association) attempted to access the Spanish-language links on the SBA website. There were some parts of the website that he was able to access in Spanish. However, when he tried clicking on certain links from the Spanish-language pages of the website, he was sometimes directed to English-language pages. For example, if he clicked on a Spanish-language page of the SBA website regarding disaster relief loans, he was brought to an English-language page.<sup>10</sup> Although as of June 25th we were unable to confirm if the SBA website is in fact completely accessible by Spanish speaking LEP business owners, the attorney reported that accessibility appeared to improve between his initial observations on the week of June 15<sup>th</sup> and later visits to the SBA website.

Similarly, attempts to reach the SBA by telephone required callers to understand enough English to make certain initial selections. A call to 1.800.659.2955 (shown on the website at <https://www.sba.gov/about-sba/organization/contact-sba>) resulted in a menu of options provided in English only. After making an initial selection in English, the caller was eventually provided with additional options, including an option to speak with someone in Spanish. Following further instructions in Spanish, the caller was placed in a queue (estimated over 40 minutes long) to wait before receiving assistance (it is noted that the caller was provided an option, in Spanish, to wait for a representative or to be called back at a later time).

Empire Justice also asked an Arabic-speaking colleague to navigate the SBA website. The colleague clicked on several tabs/categories and then used the translate feature (Arabic). She found the translation to be accurate, except for a few words that were literal translations; however, that didn't alter the sentence. The colleague also found the PPP application and instructions to be translated into Arabic. However, the actual application has to be completed and submitted in English, which, according to the colleague, "defeated the purpose."

### NY Forward Loan Fund

Black and brown businesses are routinely subject to predatory lending. They are offered loans that strip wealth and equity. The NY Forward Loan Fund could be one way to provide support to businesses owned by people of color that have been impacted by COVID-19. However, it is not

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<sup>10</sup> For example, clicking the Spanish-language page link from <https://www.sba.gov/page/coronavirus-covid-19-orientacion-y-recursos-de-prestamos-para-las-pequenas-empresas>, directs to an English-language page at <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options>. (It was not immediately evident from that link whether the banks have application materials available in Spanish.)

possible to access the NY Forward application online. One has to enter information to go to the next screen. Upstate Black and brown business are being asked to trust an application process despite a history of predatory lending, and to apply to a downstate or national CDFI that they may never have heard of. None of the CDFIs that provide technical assistance are located in Rochester, NY.

## **RECOMMENDATIONS**

For all of New York's businesses to succeed, no matter their size, sector or geographic area, they need access to affordable, responsible credit and lenders who understand Rochester's changing market and/or markets in other areas of our state. Empire Justice Center recommends that New York take, or advocate for, the following actions.

### Increase the Reach and Accessibility of the NY Forward Loan Fund

We need a safe and affordable NY program that is designed so that black and brown business can access the money in reality. Any program must include set asides for MWBEs and for CDFIs.

One way to do this is through the NY Forward Loan Fund. We need to expand it and make the application process more accessible. Any changes must ensure that Black and brown-owned businesses in Upstate NY can actually access the money. In light of the history of predatory lending in communities of color and the current opaqueness of the NY Forward online application process, we recommend that the application form, in its entirety, be made accessible on the main webpage to all potential applicants.

Moreover, the use and impact of the program must be transparent. Data must be broken out by the race and ethnicity of the business owner as well as the racial demographics of the location of the business. The program must include set asides for self-employed businesses, as well as set asides for MWBEs and for CDFIs.

NY Forward must be expanded to CDFIs with a track record of serving New York outside of New York City. With major foundations located in NYC it is hard for small community based not for profits outside of NYC to access grant funding. Banks like to give their community development grants to national organizations; and smaller Upstate NY cities often don't fully benefit from funding for technical assistance to micro business.

If NY Forward is to succeed, CDFIs in Upstate NY need to get operational funding as well as money to provide technical assistance

The program announced by Gov. Tom Wolf of PA on June 8<sup>th</sup> to provide \$225 million to support small businesses impacted by COVID-19 could be a good model for expanding the NY Forward Loan Fund. PA's program will be run by CDFIs. Eligible businesses will be able to use the grants to cover operating expenses during the shutdown and transition to re-opening, and for technical assistance including training and guidance for business owners as they stabilize and relaunch their businesses. The

program includes \$100 million for businesses owned by “socially and economically disadvantaged individuals.”<sup>11</sup>

At a minimum, New York should reduce the interest rates on NY Forward loans from 2% and 3% to 1% so loans are more affordable and more small businesses can access them.<sup>12</sup> A dollar amount or a percentage of the loan should be grant. When these programs were 1<sup>st</sup> conceived no one assumed that we could be in pause for as long as we have been and will continue to be. PPP only gives two months of costs and only a fixed percentage can be spent on costs that are not payroll.

#### Increase the Use of and Support for CDFIs

Increase affordable loan options for young or start-up small businesses. Banks can work with local community advocates, economic development officials, community development financial institutions (CDFIs) and the business community to craft a product that is affordable and makes business sense. Some banks only offer credit card loans for businesses younger than 2 years. These banks should be encouraged to refer these businesses to CDFIs, so they don't have to resort to a higher cost credit card loan or a predatory loan from an online or merchant cash advance lender.

CDFIs need adequate funding to make smaller loans and provide technical assistance to new or young businesses. Ensure adequate financing of the New York State Fund that supports CDFIs. Include a set aside for MWBEs. Provide incentives for banks to also fund CDFIs.

However, funding of CDFIs cannot replace doing the work of underwriting and originating small business loans; banks need to do this as well. When businesses are not ready for a loan, banks can refer them to CDFIs for credit repair and technical assistance. CDFIs can return the favor by referring businesses to banks for a more traditional loan product when ready. Provide incentives for banks to develop these relationships with CDFIs.

#### Increase Access for LEP and Immigrant Business Owners

Federal and state agencies must ensure that limited English proficient individuals and small business owners can access programs in their native language, including webpages and telephone. Inadequate language access puts limited proficient business owners at a distinct disadvantage when trying to access programs like the PPP and NY Forward. New York must ensure that all programs are available in the top (6) languages of New York State.

In addition, there are large numbers of immigrant communities that make up sizeable proportions of cities in New York. Our state must continually identify those communities and ensure that they are not excluded from local, state and federal programs developed to help communities impacted by COVID-19.

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<sup>11</sup> <https://www.governor.pa.gov/newsroom/gov-wolf-announces-225-million-grant-program-for-small-businesses-impacted-by-covid-19/>.

<sup>12</sup> Information on the loans and requirements was found at: <https://esd.ny.gov/nyforwardloans-info>.

### Other Recommendations to Address Disparate Impacts on Black and Brown Owned Businesses

Support at the federal level the expansion and enhancement of CRA small business lending data that is reported and released to the public to allow for more detailed analysis and increased accountability. The Consumer Financial Protection Bureau (CFPB) can do this by promulgating a strong rule to implement Section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank). The inclusion of data by race and ethnicity is critical. For state-regulated banks and lenders, collect and report this data to the public.

Demand the complete release of data on the Paycheck Protection Program, including a full analysis of PPP lending (or lack thereof) to Black and brown owned business be made public. Only then can we design NY programs targeted to fill the gaps created by decades of structural racism and redlining.

Pass legislation modeled on the Small Business Borrowers' Bill of Rights (BBoR). The BBoR identifies six fundamental rights that all small business owners seeking financing should have, along with specific practices by lenders and brokers that are necessary to uphold and protect these rights. They are rights to transparent pricing and terms, non-abusive products, responsible underwriting, fair treatment from brokers, inclusive credit access and fair collections practices.<sup>13</sup>

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<sup>13</sup> <http://www.borrowersbillofrights.org/>