

# Empire State Development

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## COVID-19 Pandemic Small Business Recovery Grant Program

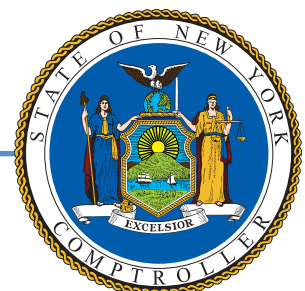
Report 2023-S-10 | May 2025

OFFICE OF THE NEW YORK STATE COMPTROLLER

Thomas P. DiNapoli, State Comptroller

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Division of State Government Accountability



# Audit Highlights

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## Objectives

To determine whether Empire State Development (ESD) awarded funds according to COVID-19 Pandemic Small Business Recovery Grant Program (Program) eligibility requirements, and whether ESD established performance measures to assess the impact of the awards. The audit covered the period from April 2021 through January 2023.

## About the Program

On March 20, 2020, New York's former Executive signed the "New York State on PAUSE" executive order in response to the COVID-19 pandemic. The order included a directive that all non-essential businesses across the State would need to close, effective March 22, 2020. While the order affected businesses of all sizes, most of the businesses in New York are small businesses employing fewer than 100 people. Specifically, 98% of businesses have fewer than 100 employees, and 93% have fewer than 25 employees. Based on U.S. Census Bureau data, 77% of small businesses in the State reported a decrease in revenues and sales at the end of April 2020. The impact remained a year after the pandemic's onset, with 78% reporting an overall negative impact on their business as of the first week of March 2021. To assist the over 400,000 small businesses in the State impacted by the pandemic, the 2021-22 State budget established the Program, with \$800 million in funding. ESD was charged with administering the Program through enactment of Section 16-FF of the Urban Development Corporation Act.

The mission of the Program was to support small businesses or for-profit independent arts and cultural organizations impacted by the COVID-19 pandemic that either did not qualify for federal assistance programs or received inadequate federal COVID-19 support. Priority was to be given to socially and economically disadvantaged business owners, including, but not limited to, minority- and women-owned business enterprises, service-disabled veteran-owned businesses, veteran-owned businesses, and businesses located in communities that were economically distressed prior to March 1, 2020 based on U.S. Census data. Program awards allowed New York State small businesses to cover costs such as payroll, rent or mortgage payments, personal protective equipment expenses, utility bills, costs associated with compliance with COVID-19 health and safety protocols, and other documented COVID-19 costs as approved by ESD.

ESD reported receiving over 168,000 applications, with just over 75,200 being fully completed and submitted. ESD awarded the entirety of the \$760 million allocated for small businesses (\$40 million was allocated for administrative expenses) to 40,842 applicants, with an average grant amount of \$18,608.

## Key Findings

ESD needs to improve controls for monitoring eligibility of grant recipients and enhance practices for award distribution. Specifically:

- ESD awarded almost \$4.1 million to 101 businesses that were ineligible because they had already received assistance from federal business assistance programs.
- ESD did not consider business type, need, or factors established in the original goals of the Program when awarding grants, instead favoring a first-come, first-served methodology to awarding grants, which resulted in tens of thousands of businesses that went unfunded and resulted in certain types of businesses—most notably Sole Proprietor Transportation businesses

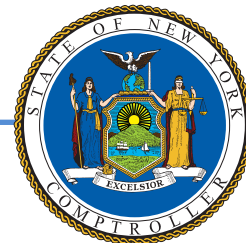
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without employees (i.e., rideshare drivers)—receiving a significant percentage of the total dollars spent. Rideshare drivers received \$184,493,238 or about 24% of the total dollars spent. Within the first 12 months from when the Program’s application portal was launched (June 2021 to May 2022), these businesses accounted for over half of the funded businesses (54%). Additionally, due to this methodology, several women-owned businesses and low-to-middle-income businesses did not receive funding, as Program funding was completely disbursed before their applications could be reviewed. These businesses were more represented in businesses that did not receive funding compared to those that did.

- ESD did not establish a process to measure, in a meaningful way, whether the Program achieved its intended goals or its impact on businesses. Therefore, there is limited assurance that the Program met its goals outside of distributing funds to businesses. Furthermore, without any form of performance review, any potential improvement areas that could be implemented for any future emergency relief programs were not identified.

## Key Recommendations

- Develop and implement enhanced application review and award practices for grants administered by ESD. This may include, but not be limited to:
  - Utilizing relevant publicly available data sources.
  - Working with federal or other applicable government partners to obtain relevant information on eligibility criteria.
  - Incorporating relevant elements into award selection methodology, including, but not limited to, areas outlined in the Program’s goals.
- Establish a process or practice to measure performance of grants administered by ESD.
- Recover Program funds that were awarded to ineligible businesses as appropriate.



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## Office of the New York State Comptroller Division of State Government Accountability

May 7, 2025

Hope Knight  
Commissioner, President, and CEO  
Empire State Development  
633 3rd Avenue  
37th Floor  
New York, NY 10017

Dear Commissioner Knight:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage their resources efficiently and effectively. By so doing, it provides accountability for the tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities, and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit entitled *COVID-19 Pandemic Small Business Recovery Grant Program*. This audit was performed pursuant to the State Comptroller's authority under Article V, Section 1 and Article X, Section 5 of the State Constitution; Article II, Section 8 of the State Finance Law; and Section 2803 of the Public Authorities Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

*Division of State Government Accountability*

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# Glossary of Terms

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Term	Description	Identifier
ESD	Empire State Development	<i>Auditee</i>
Act	Urban Development Corporation Act	<i>Law</i>
Administrator	Third-party administrator for the Program	<i>Key Term</i>
EIDL	COVID-19 Economic Injury Disaster Loan	<i>Key Term</i>
PPP	COVID-19 federal relief Paycheck Protection Program	<i>Key Term</i>
Program	COVID-19 Pandemic Small Business Recovery Grant Program	<i>Program</i>
RRF	COVID-19 federal relief Restaurant Revitalization Fund	<i>Key Term</i>
SBA	U.S. Small Business Administration	<i>Federal Agency</i>
Small Businesses	Micro-businesses, small businesses, and for-profit independent arts and cultural organizations	<i>Key Term</i>
SPT	Sole Proprietor Transportation	<i>Key Term</i>
UDC	Urban Development Corporation	<i>Agency</i>

# Background

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On March 20, 2020, New York's former Executive signed the "New York State on PAUSE" executive order in response to the COVID-19 pandemic. The order included a directive that all non-essential businesses across the State would need to close effective March 22, 2020. While the orders affected businesses of all sizes, most of the businesses in New York are small businesses employing fewer than 100 people. Specifically, 98% of businesses have fewer than 100 employees, and 93% have fewer than 25 employees. Based on U.S. Census Bureau data, 77% of small businesses in the State reported a decrease in revenues and sales at the end of April 2020. The impact remained a year after the pandemic's onset, with 78% of small businesses reporting an overall negative impact of the first week of March 2021.

The Urban Development Corporation (UDC)—a public authority—was created in 1968 by the UDC Act (Act) to support the State's economy and prevent economic stagnation. In 1995, the operational efforts of the Department of Economic Development, UDC, and other economic development agencies were consolidated and have since operated as Empire State Development (ESD). To assist the over 400,000<sup>1</sup> small businesses in the State impacted by the pandemic, the 2021-22 State budget established the COVID-19 Pandemic Small Business Recovery Grant Program (Program), with \$800 million in funding. As the chief agency responsible for the coordination of the State's economic development programs, ESD was charged with administering the Program through enactment of Section 16-FF of the Act.

The Program aimed to support micro-businesses ( $\leq 10$  employees), small businesses ( $\leq 100$  employees), and for-profit independent arts and cultural organizations (collectively referred to as small businesses)—entities that typically have the least access to resources—with priority given to socially and economically disadvantaged business owners, including, but not limited to, minority- and women-owned business enterprises, service-disabled veteran-owned businesses, veteran-owned businesses, and businesses located in communities that were economically distressed prior to March 1, 2020 based on U.S. Census data.

The Program awarded grants on a sliding scale up to \$50,000 based on annual gross receipts. Awards were to be used for COVID-19-related losses or expenses incurred between March 1, 2020 and April 1, 2021, such as payroll, rent or mortgage payments, and costs associated with compliance with COVID-19 health and safety protocols.

To be eligible for a grant under the Program, small businesses must have:

- Been incorporated in New York State or licensed or registered to do business in the State;
- Been viable and operating at the time of application and begun operation on or prior to March 1, 2019;

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<sup>1</sup> According to ESD's 2022 Annual Report on the [State of Small Businesses](#).

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- Demonstrated lost revenue or other economic hardship due to the COVID-19 pandemic or compliance with COVID-19 health and safety protocols that resulted in business modifications, interruptions, or closures;
  - Been in substantial compliance with applicable federal, State, and local laws, regulations, codes, and requirements; and
  - Not owed any federal, State, or local taxes prior to July 15, 2020, or have had an approved repayment, deferral plan, or agreement with federal, State, and local taxing authorities.

In addition, small businesses must not have not qualified for, or must have been unable to obtain sufficient assistance from, grant assistance programs under the federal American Rescue Plan Act of 2021 (such as the U.S. Small Business Administration [SBA] Restaurant Revitalization Grant Program, hereafter referred to as the Restaurant Revitalization Fund [RRF]) or any other available federal COVID-19 economic recovery or business assistance grant programs, including loans under the federal Paycheck Protection Program (PPP). Eligible applicants may have received or been awarded the following federal assistance:

- PPP loans not exceeding \$250,000
- COVID-19 Economic Injury Disaster Loan (EIDL) Advance Grant up to \$10,000
- COVID-19 EIDL Supplemental Targeted Advance Grant up to \$5,000
- SBA Shuttered Venue Operators Grant

Applicants also had to attest twice—once as part of the application process and again when they received Program funds—that they have not received disqualifying assistance through business grant programs available under the American Rescue Plan Act of 2021 or any other available federal COVID-19 economic recovery or business assistance grant program.

ESD deployed a variety of services to inform small businesses about the Program and assist and guide applicants through the application process. These services included establishing technical assistance partners to provide one-on-one assistance to applicants, delivering informational webinars to small businesses, developing Program materials and applications in 15 different languages, and establishing a call center to provide applicants with the ability to discuss questions live with an expert.

To create a streamlined application, and process a high volume of Program awards quickly, ESD competitively procured a third-party grant administrator (Administrator) that had provided similar COVID-recovery grant services for other states. Under the contract with ESD, the Administrator was responsible for developing and providing technical assistance for the Program’s application portal and for Program outreach. The Administrator also received application materials from applicants, reviewed and vetted Program application information to determine eligibility, allocated awards among qualified recipients in accordance with Program requirements, provided and received grant agreements, disbursed Program funds, and assisted ESD in developing a Program Guide and establishing a call center to field questions and troubleshoot any issues applicants encountered. The Program Guide for applicants

listed all required application information, including eligibility requirements and funding information. For ESD's staff to be able to view application data in real time, the Administrator also created an online dashboard showing the number of applications received, including leading industry sectors represented and the geographic regions receiving funding.

The Act required ESD to submit reports to the Executive and Legislature each quarter beginning on September 30, 2021 until all Program funds were disbursed.<sup>2</sup> These reports included the number of applicants and their county locations, number of applicants approved, total amount of grants awarded, and any other information ESD determined to be necessary and appropriate. According to the reports, of the \$800 million available for the Program, \$5.3 million was used to operate the technical assistance partners, \$34.7 million was paid to the Administrator, and the remaining \$760 million was awarded to businesses.

The Program's application portal was launched on June 10, 2021; by January 5, 2023, ESD had awarded the entire \$760 million allocated for small businesses. ESD reported receiving over 168,000 applications; of these, 75,253 (45%) were complete and submitted. According to the reports:

- 40,842 of the 75,253 applications (54%) received funding; the average grant amount was \$18,608.
- Of the target business sectors, micro-businesses received the majority of funding (96% or about \$730 million).
- Every region of the State was represented in the award distribution. As shown in Table 1, businesses in New York City and Long Island received a majority of the funding.
- Out-of-state businesses received grants totaling \$141,435.

**Table 1 – Breakdown of Funded vs. Unfunded Applications by Region**

ESD Region	Applications Received	Applications Funded	Applications Not Funded	Percent Funded	Total Funding Awarded
New York City	50,436	31,190	19,246	62%	\$520,390,691
Long Island	8,748	4,535	4,213	52%	110,596,439
Mid-Hudson	4,827	2,063	2,764	43%	54,768,662
Western New York	2,556	864	1,692	34%	16,882,706
Capital District	1,960	688	1,272	35%	18,633,777
Finger Lakes	1,750	481	1,269	27%	12,551,561
Central NY	1,244	329	915	26%	8,861,607
Southern Tier	1,158	313	845	27%	7,346,981
Mohawk Valley	881	202	679	23%	5,444,737
North Country	611	162	449	27%	4,381,404
Out of state	1,082	15	1,067	1%	141,435
<b>Totals</b>	<b>75,253</b>	<b>40,842</b>	<b>34,411</b>	<b>54%</b>	<b>\$760,000,000</b>

<sup>2</sup> These reports can be accessed on ESD's website (<https://esd.ny.gov/esd-media-center/reports>).

# Audit Findings and Recommendations

We found ESD needs to improve controls for monitoring eligibility of grant recipients and enhance its practices for award distribution. Specifically, awards were given to recipients that were ineligible because they had received other business assistance from grants awarded under federal programs. As specified in the Act, the Program was intended to support small businesses as well as for-profit independent arts and cultural organizations that experienced economic hardship due to the pandemic and that typically have the least access to resources. However, we determined ESD lacked controls to ensure that only eligible small businesses benefited from the Program. In administering the awarding of grants, ESD also did not consider business type, need, or factors established in the original goals of the Program, instead favoring a first-come, first-served methodology, which resulted in certain types of businesses—most notably Sole Proprietor Transportation (SPT) businesses without employees (i.e., rideshare drivers)—receiving a significant percentage of the total dollars spent (\$184,493,238 [24%]). ESD also did not establish a process to measure, in a meaningful way, whether the Program achieved its intended goals or its impact on businesses. Therefore, there is limited assurance that the Program met its goals outside of distributing funds to businesses.

## Program Eligibility and Award Methodology

### Program Eligibility

To determine if Program funds were awarded to eligible applicants, we compared Program grant recipients with SBA's data set of all recipients of federal COVID-19 assistance programs<sup>3</sup> and identified 101 businesses that received a total of almost \$4.1 million that were ineligible for the Program because they received federal assistance from PPP in excess of \$250,000 or RRF prior to applying for, and receiving, Program funds (see Table 2).

**Table 2 – Breakdown of Ineligible Businesses by Federal Assistance Program**

Federal Program	Number of Ineligible Businesses	Program Funds Received	Federal Assistance Received
PPP	34	\$1,699,700	\$14,410,706
RRF	67	2,356,201	759,970
<b>Totals</b>	<b>101</b>	<b>\$4,055,901</b>	<b>\$15,170,676</b>

The improper awards occurred because ESD and the Administrator relied largely on attestations made by grant applicants that they had not received federal assistance—and did not develop procedures to verify whether this information was accurate.

In response to our findings, ESD officials stated that they and the Administrator were committed to expeditiously providing relief to small businesses impacted by the pandemic, and that attestations are commonly used in both State and federal programs to allow for the efficient processing of applications. They asserted

3 PPP: <https://www.sba.gov/funding-programs/loans/covid-19-relief-options/paycheck-protection-program/ppp-data>; RRF: <https://data.sba.gov/dataset/rrf-foia>.

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that, given the lack of readily available and reliable data sources and methods for verifying applicants' receipt of federal assistance, the use of attestations in this case was timely, appropriate, and necessary to administer the Program. While we acknowledge the pressing need to distribute funds efficiently during an unprecedented time of economic hardship, we recommend that ESD establish a practice of using publicly available data and working with federal partners to obtain information that will enable ESD to make more reliable eligibility determinations with future grant programs, especially when federal grant receipts are a factor.

We also reviewed a sample of 115 individual applicants, consisting of 174 individually funded businesses, totaling \$4,299,059. While we determined all the businesses were eligible to receive funding, 15 businesses that received a total of \$141,435 were incorporated and/or resided outside of New York State. Although the Program's selection criteria didn't specifically exclude out-of-state businesses, we question whether such businesses should have been selected to receive Program funds when ESD was simultaneously receiving thousands of applications from in-state businesses. Going forward, ESD should consider whether its inclusion of out-of-state applicants in New York State assistance programs aligns with the intention of the program and is in the best interest of New Yorkers.

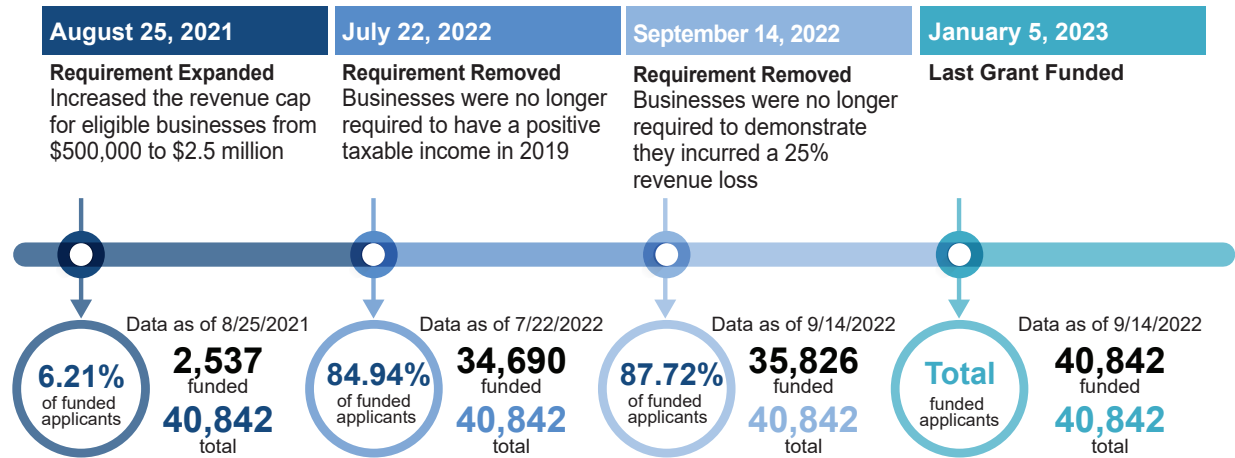
## Issues With Administration of Awards/Funding

The Program was intended to support entities that typically have the least access to resources, prioritizing socially and economically disadvantaged business owners, including, but not limited to, minority- and women-owned business enterprises, service-disabled veteran-owned businesses, veteran-owned businesses, and businesses located in communities that were economically distressed prior to March 1, 2020 based on U.S. Census data. However, ESD did not use a thoughtful approach to awarding funding—one that considered factors relevant to the Program's stated intent such as the applicant's business need, access to resources, viability, and location in communities that were economically distressed. Rather, it favored a first-come, first-served method, which resulted in tens of thousands of potentially more distressed businesses that went unfunded.

While 75,253 small businesses applied for funding under the Program, ultimately there was only enough funding to provide grants to 40,842 (54%); funding ran out before the remaining 34,411 applications could be reviewed. Neither ESD nor the Administrator, as a practice, reviewed the unfunded applications and we could not conclude whether any of the remaining 34,411 businesses would have been eligible. However, we compared the demographics for the unfunded and the funded businesses to determine if there were patterns or trends that could be useful in understanding how the Program funds were or were not distributed. Notably, we found that applications from women-owned businesses accounted for only 19% of the funded businesses but 39% of the unfunded businesses. Also, low-to-middle-income applicants accounted for 30% of the funded businesses but 70% of the unfunded businesses.

At the time it was launched on June 10, 2021, the Program had established a revenue cap of \$500,000 for eligible businesses. However, as shown in Figure 1, ESD made multiple changes to eligibility requirements over a relatively short period of time. First, in August 2021—just 2 months after the online application portal went live—ESD raised the revenue cap to \$2.5 million—a jump that not only increased the pool of businesses competing for funding but altered the original intent of the Program. Then, about a year into the Program, ESD removed two eligibility requirements: eligible businesses no longer had to show a 25% decrease in gross revenue between 2019 and 2020 (September 2022) and were no longer required to have a positive taxable income in 2019 (July 2022). These actions further eroded the original intent of the Program and may have even funded businesses that were not viable prior to the pandemic.

**Figure 1 – Timeline of Changes to Eligibility Requirements**



According to ESD, the elimination of certain requirements was aimed at increasing participation in the Program. The elimination of these eligibility requirements allowed businesses that had less than 25% in revenue losses, or even increased revenues, to be eligible to receive Program funds. However, it’s unclear whether this was necessary, as the Program closed with over 34,400 applicants having applied and not receiving funding. Of the 40,842 businesses that received Program funding, 2,206 businesses that had less than a 25% decrease in revenue received grants totaling \$59.3 million, and 874 businesses that were not profitable in 2019 were awarded a total of \$23.8 million.

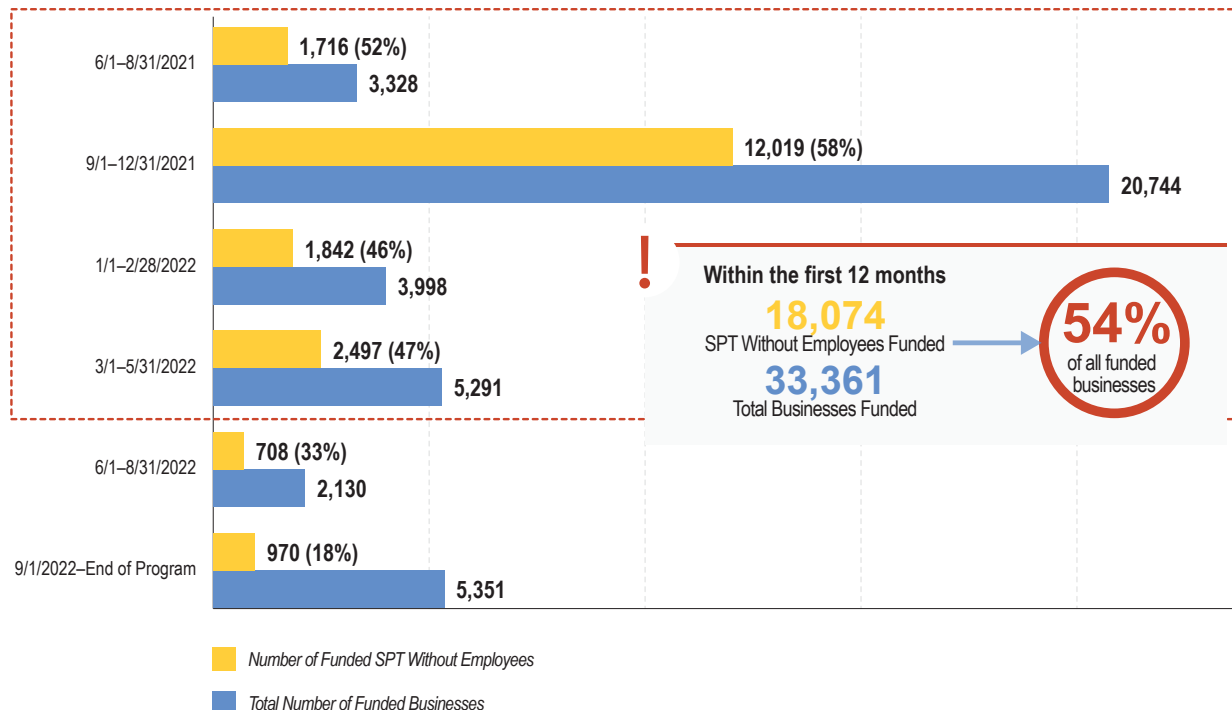
Furthermore, we found that the methodology heavily favored certain types of businesses—most notably SPT businesses without employees (i.e., rideshare drivers). ESD categorized the businesses that applied into 26 categories including entertainment, transportation, retail, health services, etc., with various types of businesses falling within those categories. For example, rideshare drivers was a type of transportation business. Of the 40,842 funded businesses, 19,752 (48%) were rideshare drivers. These 19,752 businesses received a total of \$184,493,238 in Program funds, as shown in Table 3.

**Table 3 – Program Award Breakdown of Awards to SPT Businesses With No Employees**

Grant Amounts	Number of Funded SPTs	Total Funding
\$5,000 or less	2,974	\$11,728,965
\$5,001–\$10,000	12,112	116,834,922
\$10,001–\$15,000	4,366	50,487,286
\$15,001–\$25,000	281	4,710,404
More than \$25,000	19	731,661
<b>Totals</b>	<b>19,752</b>	<b>\$184,493,238</b>

Almost all the rideshare drivers (19,151 [97%]) were located in New York City or Long Island—those businesses received \$179,085,447 (97%). Rideshare drivers not only accounted for almost half of the total businesses funded by the Program, but they represented a majority of the businesses that were served from the start of the Program. Within the first 12 months from when the application portal was launched (June 2021 to May 2022), SPT businesses without employees accounted for over half of the total funded businesses (54%), as shown in Figure 2.

**Figure 2 – Number of Funded SPT Without Employees (Rideshare Drivers)**



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We also note that 12 of the 15 out-of-state businesses we reviewed in our sample were rideshare drivers. While rideshare drivers met Program eligibility requirements, we question whether the Program intention was best served by allocating 48% of the awards made (totaling about 24% of the total dollars spent) to one type of business.

ESD officials reiterated that rideshare drivers were eligible for the Program, and the Act did not require any review to determine business type when providing funding. Officials also again stressed that their primary concern was to get funding to businesses and the first-come, first-served model best facilitated this goal. We acknowledge that the first-come, first-served model may have been the fastest way to serve businesses; however, the method takes no other programmatic factors, including the overall intention of the Program, into account.

We recommend that, in the future, ESD take a more thoughtful approach that would best serve the intention of the Program and facilitate distribution of awards that better consider stated Program priorities, balanced with the need to distribute funding quickly.

## Performance Measures

ESD did not establish a process to measure, in a meaningful way, whether the Program achieved its intended goals or its impact on businesses. Therefore, there is limited assurance that the Program met its goals outside of distributing funds to businesses. Furthermore, without any form of performance review, any potential improvements that could be implemented for future emergency relief programs were not identified.

As noted above, ESD's primary concern was distributing the entirety of the \$760 million as quickly as possible. Neither ESD nor the Administrator, as a practice, followed up with businesses to determine how funds were spent or if there was a significant impact on the business from the awards. When completing the required quarterly reports for the Executive and Legislature, ESD did request the Administrator obtain testimonials from businesses awarded funds in each of the 10 economic development regions of the State, with a preference for minority- and women-owned business enterprises. The Administrator reached out to businesses that fit those criteria and, once consent was received from the selected businesses, the testimonials were provided to ESD.

ESD issued six reports between September 2021 and January 2023 (when the last Program award was disbursed). Of the 40,842 awarded businesses, ESD collected responses from only 20 businesses, and only 12 of the 20 testimonials mentioned—in broad terms—how recipients used their Program funds. Their references included payroll costs including the hiring of new employees, rent payments, utility payments, and the purchase of new equipment.

ESD officials stated an effort to assess the impact of the Program on the funded businesses was not the intent of the Act and that the State achieved the goal of the Program by distributing funds to small businesses. We maintain that there were

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intentions outlined in the statute for these funds, and that they were not merely aimed at distributing funding without any other expected outcome.

## Recommendations

1. Develop and implement enhanced application review and award practices for grants administered by ESD. This may include, but not be limited to:
  - Utilizing relevant publicly available data sources.
  - Working with federal or other applicable government partners to obtain relevant information on eligibility criteria.
  - Incorporating relevant elements into award selection methodology, including, but not limited to, areas outlined in the Program's goals.
2. Establish a process or practice to measure performance of grants administered by ESD.
3. Recover Program funds that were awarded to ineligible businesses as appropriate.

# Audit Scope, Objectives, and Methodology

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The objectives of our audit were to determine whether ESD awarded funds according to Program eligibility requirements, and whether ESD established performance measures to assess the impact of the awards. The audit covered the period from April 2021 through January 2023.

To accomplish our objectives and assess related internal controls, we reviewed the applicable Act and ESD procedures, interviewed ESD and Administrator officials and employees, and examined ESD records. We also reviewed and analyzed SBA published data.

We used a non-statistical sampling approach to provide conclusions on our audit objectives and to test internal controls and compliance. We selected random samples. However, because we used a non-statistical sampling approach for our tests, we cannot project the results to the respective populations, even for the random samples. Our samples, which are discussed in detail in the body of our report, include:

- A random sample of 50 funded businesses to test whether applicants met Program guidelines and were awarded accurate grant amounts.
- A random sample of 50 business owners with multiple businesses (totaling 109 funded businesses) out of a population of 972.

We also reviewed all 15 out-of-state funded businesses to determine if they met Program eligibility.

We obtained Program recipient data from ESD's application portal system and assessed the reliability of that data by reviewing existing information, tracing to and from source data, and interviewing officials knowledgeable about the system. For our review of rideshare drivers, we focused our analysis on Business Type and Business Category. Of the 19,752 rideshare drivers identified in this report, there were 51 businesses that we were unable to verify due to conflicting information within the program recipient data. However, we determined that the data was sufficiently reliable for the purposes of this report.

We relied on federal PPP and RRF data obtained from the SBA website, which is recognized as an appropriate source, and used this data for widely accepted purposes. Therefore, this data is sufficiently reliable for the purposes of this report without requiring additional testing.

# Statutory Requirements

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## Authority

The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 and Article X, Section 5 of the State Constitution; Article II, Section 8 of the State Finance Law; and Section 2803 of the Public Authorities Law.

We conducted our performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State, including some duties on behalf of public authorities. For ESD, these include operating the State's accounting system, reporting ESD as a discrete component unit in the State's financial statements, and approving selected contracts. These duties could be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our professional judgment, these duties do not affect our ability to conduct this independent audit of ESD's oversight and administration of the COVID-19 Pandemic Small Business Recovery Grant Program.

## Reporting Requirements

We provided a draft copy of this report to ESD officials for their review and formal written comments. We considered their response in preparing this final report and have included it in its entirety at the end of the report. Generally, agency officials took exception to certain statements in the report. Our responses to certain remarks are embedded within ESD's response as State Comptroller's Comments. Certain information was shared with ESD officials but not included in this report due to the confidential nature of that information.

Within 180 days after final release of this report, as required by Section 170 of the Executive Law, the Commissioner of Empire State Development shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons why.

# Agency Comments and State Comptroller's Comments

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KATHY HOCHUL  
Governor  
  
HOPE KNIGHT  
President, CEO & Commissioner

March 10, 2025

Melissa Davie  
Audit Supervisor  
Office of the State Comptroller  
110 State Street  
Albany, New York 12236

**RE: Response to OSC's Audit Report: COVID-19 Pandemic Small Business Recovery Grant Program (2023-S-010)**

Dear Ms. Davie:

Thank you for the opportunity to comment on the Office of the State Comptroller's ("OSC") Draft Audit Report 2023-S-010 ("Draft Audit Report") regarding Empire State Development's ("ESD"): COVID-19 Pandemic Small Business Recovery Grant Program (the "Program").

In order to evaluate the Program, it is important to revisit, recall and recognize the state of the world, and specifically New York State (the "State"), at the beginning of the global COVID-19 pandemic.

**Background**

As noted in the Background Section of the Draft Audit Report, as early as March 20, 2020, an Executive Order was issued mandating, among other numerous health-related restrictions, telecommuting where possible. It also mandated a complete reduction of in-person workforce of all non-essential businesses.<sup>1</sup>

Not surprisingly, these restrictions had significant negative impacts on the over 400,000 small business across the State. As OSC reported on March 18, 2021, "[f]or many small businesses, the pandemic quickly resulted in revenue decline. According to the Census Bureau, 77 percent of New York's small businesses reported a decrease in revenues, sales or receipts, not including financial assistance or loans, at the end of April 2020."<sup>2</sup>

In response to this emergent situation, the 2021-2022 New York State Budget funded a new one-time \$800 million COVID-19 pandemic small business recovery grant program to be administered by ESD "to provide assistance to small businesses and for-profit independent arts and cultural organizations who have experienced economic hardship during the COVID-19 pandemic." While ESD routinely administers grants for the purposes of economic development, these grants were unique as they represented

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<sup>1</sup> Executive Order 202.8.

<sup>2</sup> <https://www.osc.ny.gov/reports/impact-covid-19-march-18-2021#:~:text=For%20many%20small%20businesses%2C%20the,the%20end%20of%20April%202020>

emergency relief grants to tens of thousands of applicants in a short timeframe. ESD contracted with a third-party administrator (the “Administrator”) to oversee the Program.

The Program legislation was enacted in April 2021, and ESD opened the application portal on June 10, 2021. During this short period, ESD engaged in an expedited Request for Proposals; scored the received proposals and chose the Administrator; drafted guidelines; hired Technical Assistance Providers; and worked with the Administrator to create the application.

The Program successfully disbursed the entirety of the \$760 million in available funding to 40,842 small businesses impacted by the COVID-19 pandemic. The Program provided flexible grants of \$5,000 to \$50,000, with an average award of \$18,608. As per the Program’s mission, 98% of awards went to micro-businesses, 48% of awards went to socially and economically disadvantaged small businesses, and 90% went to minority and/or women owned small businesses.

#### **OSC’s Recommendations**

Following this audit process, OSC made three recommendations.

- A. Develop and implement enhanced application review and award practices for grants administered by ESD. This may include but not be limited to: (i) Utilizing relevant publicly available data sources; (ii) Working with federal or other applicable government partners to obtain relevant information on eligibility criteria.**

OSC determined that 101 businesses that had been awarded grant funds under the Program had also received either Restaurant Revitalization Fund (“RRF”) grants or Paycheck Protection Program (“PPP”) loans, in contravention of Program guidelines.

OSC faults ESD for using attestations regarding whether the applicant had received funds from these federal assistance programs. However, in May and June of 2021, when ESD and the Administrator were developing the application for the Program, the complete and accurate federal data for the RRF and PPP programs were not available. Specifically, according to the Small Business Association (“SBA”) website, the RRF dataset was initially created on July 21, 2021, and then updated thereafter. The PPP dataset was initially created on March 2, 2021, and then updated thereafter. Importantly, the SBA data was updated through and including October 2024, which calls into question the accuracy, value and reliability of the initial published data. The Program closed on January 6, 2023; therefore, ESD properly utilized attestations instead of consulting incomplete datasets and potentially delaying the distribution of much needed grant funds.

**State Comptroller’s Comment 1** – On page 10 of our report, we acknowledge the pressing need to distribute funds efficiently during an unprecedented time of economic hardship. We reiterate our recommendation for ESD to establish a practice of using publicly available data and

working with federal partners to obtain information, along with attestations, that will enable ESD to make more reliable eligibility determinations with future grant programs, especially when federal grant receipts are a factor.

OSC acknowledges the “pressing need to distribute funds efficiently during an unprecedented time of economic hardship” but then recommends “that ESD establish a practice of using publicly available data and working with federal partners to obtain information that will enable ESD to make more reliable eligibility determinations with future grant programs, especially when federal grant recipients are a factor.” As noted, the data for the PPP and RRF programs were neither available nor reliable. Furthermore, the Administrator reached out to the SBA during the development phase of the application to inquire about obtaining the relevant federal data via FOIA or other means and was told that the requested data would not be available in time for the Program’s launch.

**State Comptroller’s Comment 2** – In response to our preliminary findings and during further discussions, ESD did not inform the auditors that the Administrator purportedly reached out to the Small Business Association to obtain relevant federal data or of the response. However, ESD noted in its response that data was available in March 2021 (3 months prior to the first Program award) for the Paycheck Protection Program and July 2021 (within 1 month of the first Program award) for the Restaurant Revitalization Fund. Also, without further testing, ESD cannot determine whether the federal data is reliable.

As noted earlier, over the course of the Program, SBA released updated and new data, so the program would have run the risk of utilizing incorrect data to make decisions. In conversations with ESD during the course of the audit, the OCS auditors suggested that ESD could have used other forms of verification; specifically, that ESD could have requested bank statements to check for the absence of federal awards. However, this method would have burdened both the applicants and the Administrator and would not have provided assurances because businesses could have used separate bank accounts to receive any federal funds, and it is not guaranteed that requested statements would overlap with any federal funds. Accordingly, ESD’s use of attestations was, in fact, programmatically appropriate as it was the best method available at the time to assess whether an applicant had received PPP or RRF funds.

**(iii) Incorporating relevant elements into award selection methodology, including, but not limited to, areas outlined in the Program goals.**

OSC also faults ESD for providing grant funds to 15 businesses that were incorporated and/or reside outside of New York State. OSC acknowledges that the businesses *were eligible* to receive funding but states, “we question whether such businesses should have been selected to receive Program funds when ESD was simultaneously receiving thousands of applications from in-state businesses.” The enabling legislation for the Program, UDC Act §16-ff(4)(i), specifically includes as eligible businesses that are “incorporated in New York state or licensed or registered to do business in New York state” (Emphasis supplied). OSC’s

recommendation would have ESD ignore the law as enacted by the legislature and the Executive – an action that would violate the law and the rights of those businesses deemed eligible. Indeed, providing funds for these businesses, by definition, “aligns with the intention of the Program” because it is part of the enacted legislation.

**State Comptroller’s Comment 3** – As stated on page 10 of our report, OSC acknowledged the Program’s selection criteria didn’t specifically exclude out-of-state businesses; however, we do question whether the out-of-state businesses should have received awards while other in-state businesses did not. Outside the enacted legislation, the Program’s mission was to provide “flexible grant assistance to currently viable small businesses, micro-businesses and for-profit independent arts and cultural organizations in New York State who have experienced economic hardship due to the COVID-19 pandemic.”

Furthermore, OSC’s suggestion that the first-come, first-served method did not provide grants to businesses or industries most impacted by the pandemic is incorrect. The Program was established specifically to provide grants to the neediest businesses and was only broadened to include more businesses after the neediest businesses were provided access to the grant funds.

**State Comptroller’s Comment 4** – As stated on page 11 of our report, certain Program eligibility requirements were modified throughout the administration of the Program—some only after a few months within the first Program awards. These modifications were made theoretically after the neediest businesses received funding, which resulted in thousands of businesses—that would have otherwise been initially ineligible—receiving funding. As such, a review of the 34,411 businesses that have approved applications, but did not have eligibility determined, identified over 29,000 that had less than \$500,000 in revenue. Therefore, we question how ESD determined that all the neediest businesses were funded prior to changing Program eligibility.

The Program also included significant assistance – website guidance, call centers and technical assistance providers – to help less sophisticated businesses through the application process.

Moreover, employing the methodology that OSC suggests would have required ESD to gather all applications, then determine which businesses were most impacted and only then process the grant payments.

**State Comptroller’s Comment 5** – As mentioned on page 13 of our report, while ESD’s method for awarding funds may have been the quickest way to serve businesses, it lacked consideration of other programmatic factors, including the overall intent of the Program. We recommend ESD take a more thoughtful approach that would best serve the intention of the Program and facilitate distribution of awards that better consider stated Program priorities, balanced with the need to distribute funding quickly.

Firstly, the legislation imposed no such requirement on the Program and such a discretionary policy would have represented a significant deviation from the Program legislation. Furthermore, such a process would have caused significant delay to businesses already suffering great hardships due to the pandemic. Time was very much of the essence

and the first-come, first-served method provided the most expedient way to disburse the grant funds to small businesses.

OSC then uses data from the 34,411 applications that were deemed complete but went unfunded to extrapolate, without basis, on types of applicants (such as women-owned businesses and low-to-middle-income businesses) that could have been funded. On May 10, 2024, when OSC requested this list of completed but unfunded applications, OSC acknowledged that the Administrator “closed out all unfunded applications so there is no way to know if the application had been reviewed or not, but we would still like to see the listing.” OSC concedes that it could not conclude that the 34,411 applications would have been deemed eligible; yet it extrapolates based on the admittedly flawed data, nonetheless. In fact, the 34,411 applications had completed the initial automated stage of submission of the applications; but the majority had not been reviewed for eligibility, and, as a result, the data lacked integrity for statistical analysis purposes. An initial review of the 34,411 “completed applications” that were not funded demonstrates that many, if not most, of those applications were not fundable for many reasons beyond availability of funds. The review shows that many fell well outside the Program’s parameters, including 461 with greater than 100 employees reported, 550 with \$2.5 million or more in 2020 sales, and 1,120 with business ZIP codes that are *outside* of New York State.

**State Comptroller’s Comment 6** – ESD indicates that many of the 34,411 completed applications without eligibility determinations fell outside the Program’s parameters and then indicates that only 1,581 applications (4.6%) failed to meet requirements. However, ESD highlights that 1,120 businesses would be ineligible because these were businesses “with business ZIP codes that are *outside* of New York State.” Based on the enacted legislation and ESD’s response (see State Comptroller’s Comment 3), these businesses would be eligible for Program awards if meeting all other requirements.

Finally, OSC incorrectly concludes that ESD’s “first-come first-served method . . . resulted in tens of thousands of businesses that went unfunded.”

**State Comptroller’s Comment 7** – We revised our final report to clarify this statement.

In fact, as noted above, New York State has over 400,000 small businesses; therefore, no matter how the Program was administered, tens of thousands of businesses would go unfunded. The Program was intended to help as many businesses as possible in a short timeframe with the available funds only – and it did just that.

It should be noted that at the closure of this Program, the pandemic state of emergency remained, and additional relief programs for small businesses were still being enacted and administered by ESD. Thus, the need to distribute these funds as quickly as possible was present throughout the entire time the Program was in operation.

OSC also faults the changes that ESD made to the Program over time. The Program was established to help the neediest businesses first – defined in the guidelines as those with a revenue cap of \$500,000 or less. In addition, the Program prioritized businesses

located in socially and economically disadvantaged areas, minority and/or women-owned businesses, micro-businesses, and small businesses that did not receive adequate federal COVID-19 support. It was only after these needier businesses were assisted that the State raised the revenue cap to \$2.5 million to allow more businesses to access the necessary support.

OSC's assertion that "[t]hese actions further eroded the original intent of the Program and may have even funded businesses that were not viable prior to the pandemic" is simply incorrect and contradicts OSC's own assertion that the Program should target the neediest businesses. As the Program proceeded, ESD evaluated who was being served by the Program and who needed to be served. Importantly, it became clear that the profit requirement did not accurately reflect the statuses of businesses, because profitability is not a requirement for business viability.

**State Comptroller's Comment 8** – ESD did not provide the auditors with any analysis or evaluation of businesses being served as compared to businesses in need or that profitability hindered businesses that otherwise would be eligible. In fact, as stated on page 11 of our report, only 874 businesses received funding based on removing profitability as a Program factor, while 34,411 businesses had applications submitted and not reviewed because Program funds were fully disbursed.

Many businesses that are deemed viable do not report a profit. Many businesses, including very small businesses, offset income with legitimate deductions. It became apparent that the profitability requirement was impeding the State's ability to assist many viable businesses negatively impacted by the pandemic, and the State remediated the issue.

OSC also takes issue with the number of taxi and limousine drivers that were assisted by the Program, though it concedes that they were eligible under the law and guidelines. While OSC refers to them as Sole Proprietor Transportation and "Ride Share" businesses without employees, in fact the category included yellow cab drivers and others. Initially, this Program involved reimbursement for expenses borne due to the pandemic; neither the Program nor the grants were tied to employee retention (as distinguished from the Paycheck Protection Program, which was geared towards employee retention primarily).

**State Comptroller's Comment 9** – As stated on pages 11-12 of our report, rideshare drivers accounted for almost half (19,752) of the total businesses funded by the Program, and more than half (54%) of the businesses funded within the first 12 months. The next largest funded business category was Retail Trade with 3,376 businesses, or 8.3% of all businesses funded. Ultimately, how the Program was administered resulted in a single business category funded six times as much as any other. We reiterate our recommendation for ESD to implement an approach to administer programs that both facilitate awards and consider Program goals.

A report prepared by the New York City Taxi and Limousine Commission reveals the stark impact the pandemic had on the Taxi and Limousine industry:

During the week of March 15, demand for transportation in the city began to decline, with trips dropping by 84% of their pre-COVID levels by the beginning of April. By then, only 26% of all drivers were still on the road and, for those that were still working, weekly earnings had dropped by 49%.<sup>3</sup>

*Time* magazine provided equally grim data:

A new survey by the New York Taxi Workers Alliance (NYTWA), which represents about 23,000 taxi and rideshare-app drivers, found more than 82% of drivers have run out of money to buy food or say they will soon reach that point. Out of 919 drivers surveyed, more than 700 said they were unable to pay their rent or mortgage in March and April. The Independent Drivers Guild, which represents more than 80,000 for-hire drivers in the city, said 45% of its members in late April had asked for help securing food. Nearly 70% of the guild's drivers said they were unable to make rent or mortgage in April, with more saying they won't be able to pay in May.<sup>4</sup>

OSC would have had ESD limit the assistance to this devastated group that met the criteria for assistance under the law. OSC repeatedly focuses on the "intention of the Program"; In fact, the mission of the Program was "to support the small businesses that typically have the least access to resources. To that end, the Program strategically encourage[d] participation from microbusinesses, socially and economically disadvantaged business owners, minority and/or women owned businesses, and small businesses that did not receive adequate federal COVID-19 support."<sup>5</sup> Taxi and limousine drivers are a large component of the State's microbusinesses, socially and economically disadvantaged business owners, and minority and/or women owned businesses; they were particularly hard hit by the pandemic-imposed shut down; and they were not otherwise being assisted by other existing programs, such as PPP or EIDL, because they were such small businesses.

**State Comptroller's Comment 10** – According to ESD, the Program was established specifically to provide grants to the neediest businesses. Whereas rideshare drivers certainly experienced economic hardship at the onset of the COVID-19 pandemic, ESD is incorrect in its assertion that this industry was not eligible for the Paycheck Protection Program and Economic Injury Disaster Loans—these businesses were eligible for both as well as granted extended unemployment benefits under the CARES Act.

Thus, on all grounds, these are firmly within the category of businesses the Program was created to help weather the ongoing emergency situation.

<sup>3</sup> [covid-impact-report.pdf](#)

<sup>4</sup> [Coronavirus Could Be a Breaking Point for NYC Taxi Drivers | TIME](#)

<sup>5</sup> <https://esd.ny.gov/sites/default/files/NY-Pandemic-Recovery-Grant-Program-December-22-Final-Legislative-Report.pdf>

**B. Establish a process or practice to measure performance of grants administered by ESD.**

The enacted legislation focused on getting funds to ailing small businesses and the State achieved that stated goal. The herculean effort to assess the effect of relatively small grant amounts on 40,842 businesses – to the extent the data would have even been available – was not envisioned by the legislation. These grants were intended to be for the *reimbursement for prior expenses*; therefore, any future growth effects would be hard to quantify and were not an expected Program outcome.

**State Comptroller's Comment 11** – Without reviewing the overall effectiveness of the Program, ESD has no assurance that the Program met its intended goals other than distributing funds to businesses that successfully applied first, while other and possibly more needy businesses did not receive Program funds. Furthermore, without any form of performance review, any potential improvement areas that could be implemented for similar programs were not identified.

**C. Recover Program funds that were awarded to ineligible businesses as appropriate.**

ESD has developed a plan to seek recoupment of Program funds to business that are deemed ineligible.

**Conclusion**

ESD remains proud of the work it did to assist businesses during the unprecedented pandemic that so gravely affected small businesses in New York State.

Thank you for the opportunity to comment on the Draft Audit Report.

Sincerely,

*Felisa Hochheiser*

Felisa Hochheiser  
Director of Compliance

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