



PRESS RELEASE

Kabbage Agrees to Pay up to \$120 Million to Resolve Allegations that it Defrauded the Paycheck Protection Program

Monday, May 13, 2024

For Immediate Release

U.S. Attorney's Office, District of
Massachusetts

BOSTON – Bankrupt lender Kabbage, Inc. d/b/a KServicing, has agreed to resolve allegations that it knowingly submitted thousands of false claims for loan forgiveness, loan guarantees, and processing fees to the U.S. Small Business Administration (SBA) as part of the Paycheck Protection Program (PPP), in violation of the False Claims Act (FCA).

Kabbage is now winding down its operations as KServicing Wind Down Corp. after filing for Chapter 11 bankruptcy in the District of Delaware in October 2022. The resolution consists of two separate settlements with KServicing Wind Down Corp., that together provide the United States with an allowed, unsubordinated, general unsecured bankruptcy claim for recovery of up to \$120 million. The amount the government will recover on this claim will depend on the ultimate amount of assets available to the bankruptcy estate for distribution to unsecured creditors.

“When the nation was facing a pandemic-induced crisis, Kabbage received tens of millions of dollars through the PPP to help lend

taxpayer funds to businesses in need. Instead of safeguarding those funds, Kabbage doled out inflated and fraudulent loans, in an effort to maximize its profits,” said Acting United States Attorney Joshua S. Levy for the District of Massachusetts. “Then, Kabbage sold its assets and left the remaining company so low on cash that it ultimately went bankrupt, leaving taxpayers exposed to the risk of loss caused by Kabbage’s conduct. This office will continue pursuing any company or individual, like Kabbage, that took advantage of the PPP.”

“The PPP was intended to provide critical assistance to businesses to alleviate the economic challenges imposed by the pandemic,” said Principal Deputy Assistant Attorney General Brian M. Boynton, head of the Justice Department’s Civil Division. “The department is committed to holding accountable lenders that knowingly contributed to the misuse of such funds by approving PPP loans for ineligible borrowers or otherwise failing to comply with applicable program requirements.”

“Lenders who participated in PPP were trusted on their word that they would comply with PPP requirements and do their part in safeguarding taxpayer funds from fraudsters,” said United States Attorney Damien M. Diggs for the Eastern District of Texas. “PPP lenders who broke that trust should be held accountable, as they ignored signs of fraud, and chose profit at the expense of taxpayers and struggling small businesses badly hit by the COVID-19 pandemic. This settlement with Kabbage demonstrates our office’s firm commitment to pursuing all parties who played a part in committing PPP fraud.”

“The PPP Program provided those small businesses affected by the COVID-19 pandemic with forgivable loans for eligible payroll and non-payroll costs,” said SBA General Counsel Therese R. Meers. “SBA has made it a top priority to pursue participants in the PPP Program who committed fraud or otherwise abused the program.”

“Today we are sending a clear message that compliance with program rules is non-negotiable, especially when supporting the nation’s small businesses during the pandemic,” said SBA OIG’s Assistant Inspector General for Investigations Shafee Carnegie. “This settlement highlights our dedication to preserving the integrity of the Paycheck Protection Program and holding entities accountable for misusing taxpayer-funded programs. I want to thank the U.S. Attorney’s Office and our law enforcement partners for their support and commitment to pursuing justice in this case.”

“Today’s settlement resolves allegations that this financial services company sought to cash in on a public health crisis by inflating the loan applications of small business owners as well as intentionally profiting off of fraudulent loan applications,” said Jodi Cohen, Special Agent in Charge of the FBI Boston Division. “Anyone who tries to defraud the government and taxpayers like this will be held accountable by the FBI and our partners because every dollar diverted for fraudulent reasons is a dollar not available for legitimate applicants in need.”

The first settlement, which provides the United States with a claim for recovery of up to \$63.2 million, resolves allegations that Kabbage systemically inflated tens of thousands of PPP loans, causing the SBA to guarantee and forgive loans in amounts that exceeded what borrowers were eligible to receive under program rules. As part of the settlement, KServicing Wind Down Corp. admitted and acknowledged that Kabbage double-counted state and local taxes paid by employees in the calculation of gross wages; failed to exclude annual compensation in excess of \$100,000 per employee; and improperly calculated payments made by employers for leave and severance. The United States alleged that Kabbage was aware of its errors as early as April 2020, yet Kabbage failed to remedy all incorrect loans that had already been disbursed and continued to approve additional loans with miscalculations. The resolution also provides for Kabbage to receive a \$12.5 million credit for payments it previously returned to the SBA during the Department’s investigation of this alleged misconduct.

The second settlement, which provides the United States with a claim for recovery of up to \$56.7 million, resolves allegations that Kabbage knowingly failed to implement appropriate fraud controls to comply with its PPP and BSA/AML obligations. In particular, the United States allege that Kabbage removed underwriting steps from its pre-PPP procedures in order to process a greater number of PPP loan applications and maximize processing fees. The government further alleged that Kabbage knowingly set substandard fraud check thresholds despite knowledge of SBA’s concerns that fraudulent borrowers might seek to benefit from the PPP; relied on automated tools that were inadequate in identifying fraud; devoted insufficient personnel to conduct fraud reviews; discouraged its fraud reviewers from requesting information from borrowers to substantiate their loan requests; and submitted to the SBA thousands of PPP loan applications that were fraudulent or highly suspicious for fraud.

The civil settlement includes the resolution of claims brought under the qui tam or whistleblower provisions of the False Claims Act in two actions, one by an accountant who submitted PPP loan applications to Kabbage and other lenders; and the other by a former legal analyst in Kabbage’s collections department. Under those provisions, a private party can file an action on behalf of the United States and receive a portion of any recovery. The qui tam cases are captioned *United States ex rel. Berteletti v. Kabbage, Inc., et al.*, No. 1:20-cv-12114-GAO (D. Mass.) and *United States ex rel. Pietschner v. Kabbage, Inc., et al.*, No. 4:21-cv-110-SDJ (E.D. Tex.).

Congress created the PPP in March 2020, as part of the Coronavirus Aid, Relief and Economic Security (CARES) Act, to provide federally guaranteed loans to small businesses suffering economic hardship due to the COVID-19 pandemic. The SBA administers the PPP. The CARES Act authorized private lenders to approve PPP loans for eligible borrowers who could later seek forgiveness of the loans, so long as they used loan funds on employee payroll and other eligible expenses. Among other things, the Cares Act/SBA required participating PPP lenders to confirm borrowers' average monthly payroll costs by reviewing the payroll documentation submitted with the borrower's application. The Cares Act/SBA also required lenders to follow applicable Bank Secrecy Act/Anti-Money Laundering (BSA/AML) requirements. So long as the lender adhered to PPP requirements, the SBA guaranteed any unforgiven or defaulted PPP loans. The SBA paid a fixed fee calculated as a percentage of the loan to lenders who originated PPP loans.

On May 17, 2021, the Attorney General established the COVID-19 Fraud Enforcement Task Force to marshal the resources of the Department of Justice in partnership with agencies across government to enhance efforts to combat and prevent pandemic-related fraud. The task force bolsters efforts to investigate and prosecute the most culpable domestic and international criminal actors and assists agencies tasked with administering relief programs to prevent fraud by, among other methods, augmenting and incorporating existing coordination mechanisms, identifying resources and techniques to uncover fraudulent actors and their schemes and sharing and harnessing information and insights gained from prior enforcement efforts. For more information on the Department's response to the pandemic, please visit <https://www.justice.gov/coronavirus>.

Tips and complaints from all sources about potential fraud affecting COVID-19 government relief programs can be reported by visiting the webpage of the Civil Division's Fraud Section, which can be found [here](#). Anyone with information about allegations of attempted fraud involving COVID-19 can also report it by calling the Department of Justice's National Center for Disaster Fraud (NCDF) Hotline at 866-720-5721 or via the NCDF Web Complaint Form at: <https://www.justice.gov/disaster-fraud/ncdf-disaster-complaint-form>.

Acting U.S. Attorney Levy; Principal Deputy AAG Boynton; U.S. Attorney Featherston; GC Meers; Assistant IG Carnegie and FBI SAC Cohen made the announcement today. Valuable assistance was provided by the Federal Reserve Board, Office of Inspector General; the Federal Deposit Insurance Corporation, Office of Inspector General; and SBA's Office of General Counsel and Office of the Inspector General. This matter was handled by Assistant U.S. Attorney Brian M. LaMacchia, Chief of the Affirmative Civil Enforcement Unit and Assistant U.S. Attorney Diane Seol for the U.S. Attorney's Office for the District of Massachusetts; Fraud Section Trial Attorney Sarah E. Loucks; and Assistant U.S. Attorney Betty Young for the U.S. Attorney's Office for the Eastern District of Texas. Corporate/ Financial Litigation Section Trial Attorneys Alastair

Gesmundo, Stanton McManus and Shane Huang represented the United States in the bankruptcy proceeding.

Updated May 13, 2024

Attachments

[USA v. Kabbage - EDTX Settlement Agreement](#)

[USA v. Kabbage - MA Settlement Agreement](#)

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