



PRESS RELEASE

United States Joins Lawsuit Against Former Executives of Kabbage Inc. Alleging False Claims Act Violations in Connection with Paycheck Protection Program Lending



Friday, December 20, 2024

For Immediate Release

Office of Public Affairs

The United States has intervened and filed a [complaint](#) against Robert Frohwein, Kathryn Petralia and Spencer Robinson, three former executives of Kabbage Inc., a now-bankrupt financial technology company. The United States alleges that they violated the False Claims Act by submitting and causing the submission of false claims for loan forgiveness, loan guarantees and processing fees to the Small Business Administration (SBA) in connection with Kabbage's participation in the Paycheck Protection Program (PPP).

"The PPP was intended to provide critical assistance to eligible businesses during the economic uncertainty caused 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 ensuring that PPP lenders — including their executives — are held accountable for contributing to the misuse of PPP funds by knowingly failing to comply with applicable program requirements, including approving PPP loans in inflated amounts and to ineligible borrowers."

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 administered 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, participating PPP lenders were required to confirm borrowers' average monthly payroll costs by reviewing the payroll documentation submitted with the borrower's application. Lenders were also required to follow applicable Bank Secrecy Act/Anti-Money Laundering requirements to help combat fraud. Any unforgiven or defaulted PPP loans made by lenders were guaranteed by the SBA, so long as the lenders adhered to PPP requirements. Lenders who originated PPP loans were paid a fixed fee calculated as a percentage of the loan amount by the SBA.

According to the government's complaint, Frohwein and Petralia co-founded Kabbage in 2008 and served as the company's chief executive officer and president, respectively, while Robinson formerly served as the company's head of strategy. Kabbage was approved as a PPP lender in 2020 and approved more than \$7 billion in PPP loans that year for which the company was paid more than \$217 million in processing fees after certifying that it had complied with all applicable lending requirements.

The complaint alleges that, between April and October 2020, the defendants knowingly submitted or caused the submission of false claims for loan guarantees, loan forgiveness and processing fees relating to tens of thousands of PPP loans that were systemically inflated due to calculation errors by Kabbage. These errors allegedly included Kabbage's double-counting of state and local taxes paid by employees and the failure to exclude annual compensation in excess of \$100,000 per employee from its calculation of payroll costs. Additionally, the lawsuit alleges that the defendants knowingly submitted or caused the submission of false claims for processing fees related to tens of thousands of PPP loans where Kabbage failed to implement appropriate fraud controls. The government's complaint alleges that the defendants ignored these violations to maximize PPP processing fees before selling off the majority of Kabbage's assets in October 2020.

Kabbage Inc., which is now winding down its operations as KServicing Wind Down Corp. after filing for bankruptcy in the wake of the 2020 asset sale, previously agreed to resolve allegations relating to its role in the submission of false claims to the SBA. As part of that settlement, the United States received a general unsecured claim in the bankruptcy proceeding of up to \$120 million, and the company received a credit for \$12.5 million that Kabbage returned to SBA during the department's investigation.

"The PPP was a light providing hope to businesses in the midst of the shadow of a global pandemic," said U.S. Attorney Damien M. Diggs for the Eastern District of Texas. "Unfortunately, some unscrupulous lenders and executives took advantage of that situation by lining their

pockets with ill-gotten incentive payments from processing PPP loans despite not performing even the most cursory fraud checks or reviews of borrower documentation. Individuals who shirked their responsibilities at the expense of the public fisc must be held accountable. This lawsuit against Kabbage's former executives demonstrates our firm commitment to holding all parties responsible for their part in causing the submission of false claims to the PPP."

"SBA's lending partners have a responsibility to ensure only eligible borrowers gain access to SBA's programs," said Special Agent in Charge Brady Ipock of the SBA Office of Inspector General (SBA OIG)'s Central Region. "SBA OIG stands ready to support the Justice Department in rooting out greed and wrongful actions. I want to thank the U.S. Attorney's Office and our law enforcement partners for their support and dedication to pursuing justice in this case."

The lawsuit was originally filed under the *qui tam* or whistleblower provisions of the False Claims Act by Paul Pietschner, a former analyst in Kabbage's collections department. The FCA permits private parties to file suit on behalf of the United States for false claims and to share in any recovery. The FCA also permits the United States to intervene in such an action, as it has done in this case. A defendant who violates the act is subject to liability for three times the government's losses, plus applicable penalties.

On May 17, 2021, Attorney General Merrick B. Garland established the COVID-19 Fraud Enforcement Task Force to marshal the resources of the Justice Department in partnership with agencies across the federal 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 actors committing civil and criminal fraud 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 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 Justice Department's National Center for Disaster Fraud (NCDF) Hotline at 866-720-5721 or via the NCDF Web Complaint Form at www.justice.gov/disaster-fraud/ncdf-disaster-complaint-form.

Trial Attorney Sarah E. Loucks of the Civil Division's Commercial Litigation Branch, Fraud Section and Assistant U.S. Attorney Betty Young for the Eastern District of Texas are handling the matter, with assistance provided by the SBA's Office of General Counsel and Office of the Inspector General.

The case is captioned *United States ex rel. Pietschner v. Kabbage, Inc., et al.*, No. 4:21-cv-110-SDJ (EDTX).

The claims asserted by the United States are allegations only. There has been no determination of liability.

Updated February 6, 2025

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Press Release Number: 24-1625



Office of Public Affairs

U.S. Department of Justice

