XI. Paycheck Protection Program and Loan Fraud: Indicators, Trends, and the DOJ's Response

A. Introduction

Early 2020 marked an unpredictable transition period for many businesses in the United States due to the COVID-19 pandemic. Government imposed lockdown restrictions required many businesses to close their doors for the first time, while others had to implement creative operational alternatives in order to stay afloat.[1] Many business sectors unaffected by the mandated lockdowns and other COVID-related restrictions also suffered diminished revenues due to many individuals wishing to quarantine themselves at home in order to stop the spread of the virus.[2] As a result of these diminished returns, many businesses were forced to furlough or lay-off employees, rendering many out of work for months.[3] Ultimately, outside of the evidently contagious effect the virus has had through close person-to-person contact, it has also infected nearly every aspect of the United States economy.[4]

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[1] Kathy Gurchiek, *Small Businesses Get Creative to Survive During the Pandemic*, SOC'Y FOR HUM. RES. MGMT. (Sept. 19, 2020), https://www.shrm.org/hr-today/news/all-things-work/pages/small-businesses-get-creative-to-survive-during-the-pandemic.aspx [https://perma.cc/4YGJ-565H].

[2] *See generally* Diana Farrell et. al, *Small Business Financial Outcomes During the Onset of COVID-19*, JPMORGAN CHASE & CO. (June 2020), https://www.jpmorganchase.com/institute/research/small-business/small-business-financial-outcomes-during-the-onset-of-covid-19#finding-4 [https://perma.cc/SZ7X-GQV2] (highlighting that cash balances and revenues have declined across many different business industries, particularly small businesses).

[3] *See* Alexander Bartik et. al, *The Impact of COVID-19 on Small Business Outcomes and Expectations*, 117 PNAS, 17656-57, 17656-57 (2020); Rita Zeidner, *Cutting Staff in Times of Crisis*, SOC'Y FOR HUM. RES. MGMT. (May 2, 2020), https://www.shrm.org/hr-today/news/all-things-work/pages/cutting-staff-due-to-coronavirus-fallout.aspx [https://perma.cc/RBH9-JX66].

[4] Sharon Stang, *Impact of the Coronavirus Pandemic on Businesses and Employees by Industry*, U.S. BUREAU LAB. STAT. (July 2020), https://www.bls.gov/spotlight/2021/impact-of-the-coronavirus-pandemic-on-businesses-and-employees-by-industry/pdf/impact-of-the-coronavirus-pandemic-on-businesses-and-employees-by-industry.pdf [https://perma.cc/Q8T9-BFMT].

In an effort to provide emergency relief to businesses affected by the COVID crisis, Congress enacted The Coronavirus Aid, Relief, and Economic Security ("CARES") Act on March 27, 2020.[5] While this act includes several components related to the improvement of health care facilities and shielding health care workers of legal liability, the central component of the legislation was Section 1102(a)(2), which established the Paycheck Protection Program ("PPP").[6] The centerpiece of PPP was a $958-billion dollar loan with funds to be allocated to businesses struggling to keep operations running during the pandemic.[7]

While PPP has been successful in "substantially increas[ing] the employment, financial health, and survival of small businesses,"[8] some of the major drawbacks of the program have been instances where individuals have attempted to game the system and engage in fraudulent activity.[9] This article will address the steps taken by the Department of Justice ("DOJ") and other bodies of the federal government to combat these fraudulent schemes and mitigate the financial losses coming from the program.

Section II of this article will explain PPP loan logistics including eligibility requirements, roadblocks, documentation requirements, and more. This section will also highlight the Small Business Administration's ("SBA") role in the process and some of the relevant legal applications since this program was instituted. Section III will provide a brief history and overview of the DOJ's past dealings with fraud. The DOJ has used what's been coined as the "one-two punch" playbook in past loan fraud cases dealing with dealing with schemes involving Wells Fargo, Allied Home Mortgage and SunTrust Bank.[10] Section IV will

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[5] *See generally* Coronavirus Aid, Relief, and Economic Security (CARES) Act, Pub. L. 116-36. 134 Stat. 286 (codified as 15 U.S.C. § 116). [hereinafter "CARES Act"].
[6] CARES Act, § 1102(a)(2)
[7] *See generally Id.*
[8] Glenn Hubbard & Michael R. Strain, *Has the Paycheck Protection Program Succeeded?*, BROOKINGS PAPERS ON ECON. ACTIVITY 335, 336 (2020).
[9] *See* João Granja et al., *Did the Paycheck Protection Program Hit the Target?* 2 (Becker Friedman Inst. For Econ. At U. Chi., Working Paper No. 52, 2020).
[10] Derek Adams, *United States: Trio of DOJ Civil Resolutions Under the Paycheck Protection Program are the Tip of the Iceberg*, POTOMAC L. GRP. (June 25, 2021), https://www.mondaq.com/unitedstates/white-collar-crime-anti-corruption-fraud/1083648/trio-of-doj-civil-resolutions-under-the-paycheck-protection-program-are-tip-of-the-iceberg [https://perma.cc/54AX-PU6N].

provide an overview of PPP fraud including pertinent metrics, the genesis of fraudulent schemes, and some examples of fraud since the enactment of the CARES Act. Finally, Section V will provide current regulations and what the DOJ and federal government are doing to fight fraud.

B. Eligibility Requirements and Documentation

In order to determine a business's eligibility for a PPP loan, the SBA conducts a comprehensive review into many aspects of the business.[11] In their review, the SBA considers five main requirements and a few entity-level requirements depending on the business structure of the applicant. The five main requirements are the business must (1) be in operation before February 15, 2020, (2) be currently open and operational, (3) have no more than 500 employees, (4) have no more than 500 employees per office location if the business has multiple offices, and (5) show a 25% or greater reduction in revenue.[12] Supplemental to the main requirements, the SBA also has entity-level requirements depending on the applicant's business structure. These entity-level requirements are mainly tax-related and revolve around what type of tax documentation and forms the business needs to submit.[13] For example, sole proprietorships and single-member LLCs are required to provide a 2019 or 2020 Schedule C from their own personal tax return, as well as payroll tax forms 940 and 941/444 if the business has employees on their payroll.[14]

Separate from the main and entity-level requirements, the SBA also lists a few other disqualifying characteristics. Some of these characteristics include bankruptcy,[15] business owner's fraud or criminal

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[11] *See generally Grounds for SBA Review, the SBA Loan Review Process, and Borrower Items*, SCHWABE, WILLIAMSON & WYATT (Jan. 26, 2021), https://www.schwabe.com/newsroom-publications-grounds-for-sba-review-the-sba-loan-review-process-and-borrower-items [https://perma.cc/UN8U-ARGS].

[12] Owen Yin & Brian Miura-Wong, *Do I Qualify for the PPP Loan?*, BENCH (May 5, 2020), https://bench.co/blog/operations/qualify-ppp-loan/ [https://perma.cc/MW63-MR4U] [hereinafter Yin].

[13] *Id.*

[14] *Id.*

[15] Rachel Stoian & Steven Waterman, *SBA Clarifies PPP Loans and Bankruptcy,* DORSEY & WHITNEY LLP (Apr. 8, 2021), https://www.dorsey.com/newsresources/publications/client-

record,[16] and if the nature of the business services provided will exempt them from a loan.[17] Should a business not qualify for a PPP loan, the SBA encourages applicants to seek other methods of funding through private lenders, bridge loans, or federal stimulus checks.[18]

In order to apply for a PPP loan, all applicants should complete the borrower form on the SBA's website.[19] The first component of this form is a general information section including identifying the applicant's business structure, legal name, average monthly payroll, and more.[20] The general information section is followed by nine questions which relate to the aforementioned disqualifiers.[21] Finally, each applicant is asked to certify this form for accuracy and truthfulness by answering a few other questions and signing the form.[22] If a business qualifies for a PPP loan, the business will be notified by the SBA and will then be eligible for the Second Draw PPP Loan.[23] While these requirements and questionnaire intake questions do a decent job of screening businesses that are in need of PPP assistance, the procedure falls short of safeguarding the program to fraud as we have seen in past couple years.[24]

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alerts/2021/04/sba-clarifies-ppp-loans-and-bankruptcy [https://perma.cc/9QFJ-4L4X] ("SBA states that three conditions terminate involvement in a bankruptcy case. First, if an individual was involved in a chapter 7 bankruptcy ... Second, if the applicant (or 20% owner) has been a debtor in a case under chapter 11, 12, or 13 ... Third, under any bankruptcy chapter, once an order dismissing the case is entered, then the bankruptcy involvement ends."); *In re Penobscot Valley Hospital*, 626 B.R. 350 (Bankr. D. Me. 2021) (holding that the bankruptcy exclusion recommended by the SBA was not "arbitrary and capricious" per the Administrative Procedure Act).

16 *Defy Ventures, Inc. v. U.S. Small Business Administration*, 469 F.Supp.3d 459 (D. Md. 2020) (holding that the criminal history exclusion recommended by the SBA was based on "reasonable construction" of the CARES Act).

17 *See, e.g.*, *DV Diamond Club of Flint, LLC v. U.S. Small Business Administration*, 459 F.Supp.3d 943 (E.D. Mich 2020) (holding that the SBA's rule against loans for sexually orientated businesses is invalid).

18 Yin, *supra* note 11.

19 Small Business Administration, *Borrower Application Form* (Mar. 18, 2021), https://www.sba.gov/sites/default/files/2021-03/BorrowerApplication 2483ARPrevisions%20%28final%203-18-21%29-508.pdf.

20 *Id.*

21 *Id.*

22 *Id.*

23 *See id.*

24 *See* Tribune Content Agency, *Small Businesses Often Hit by PPP Loan Scams; Program has Few Built-In Safeguards*, CHIC. TRIB. (Dec. 2, 2020),

C. History of DOJ and Past Dealings with Fraud

Over the last decade, the DOJ has pursued several cases of loan fraud, most notably in cases of mortgage fraud.[25] In these cases, the primary statutory vehicle used by the DOJ are the False Claims Act ("FCA") and the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA").[26] While these statutes are often used concurrently and broadly achieve the same goals, each statute has its own criteria.[27] Under the FCA, the claimant must prove by a preponderance of the evidence that there is a "(1) false statement or fraudulent course of conduct (2) made with scienter (3) that was material causing, (4) the government to pay out money or forfeit moneys due."[28] Conversely, FIRREA functions without any elemental test. The statute requires the government to prove by a preponderance of the evidence, any of the enumerated criminal violations that fall under the umbrella of the statute including bank fraud, corruption, wire fraud, etc.[29]

While both statutes are often used concurrently in a specific case, each has its own benefits and drawbacks. The FCA is generally considered to be the superior statute when it comes to pursuing the recovery of damages, because it allows for treble damages, meaning the court has the discretion to award triple the amount of actual or compensatory damages to a party.[30] The FCA is also considered to be the superior for whistleblowers as it allows them to collect up to 30% of the damages from a civil resolution, while FIRREA has a compensation cap set at $1.6 million for whistleblowers.[31] Finally, one of the advantages for claimants under the FCA is that they able to pursue

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https://www.chicagotribune.com/business/ct-biz-paycheck-protection-loan-scams-20201202-3t2umydombb5zijb42xibmv3xy-story.html.

[25] Press Release, Department of Justice, *Combating Mortgage Fraud* (Nov. 9, 2009), https://www.justice.gov/archives/opa/blog/combating-mortgage-fraud [https://perma.cc/SP5J-JRPW].

[26] Suzanne E. Durrell, *Two Potent Weapons in the Government's War on Residential Mortgage Fraud: The FCA and FIRREA*, WHISTLEBLOWER L. COLLABORATIVE (May 31, 2013), https://www.whistleblowerllc.com/two-potent-weapons-in-the-governments-war-on-residential-mortgage-fraud-the-fca-firrea/ [https://perma.cc/9TL5-4NX7].

[27] *See* Adams, *supra* note 9.

[28] *U.S. ex rel. Manion v. St. Luke's Reg'l Med. Ctr., Ltd.*, No. CV 06-498-S-EJL, 2008 WL 906022, at *4 (D. Idaho Mar. 31, 2008)

[29] Durrell, *supra* note 24.

[30] Adams, *supra* note 9.

[31] *Id.*

litigation without the intervention of the DOJ, as opposed to FIRREA which requires the DOJ to intervene for the claimant to have standing in a dispute.[32]

Most of the weaknesses that derive from the FCA are addressed in FIRREA. One of the primary benefits of FIRREA is that it is much broader in scope compared to the FCA.[33] Under the FCA, claimants can only bring claims where the United States suffered a monetary loss from fraudulent behavior, while FIRREA allows individuals to pursue claims against fraud losses of a number of financial institutions including banks, insurance companies, and credit unions.[34] Another benefit of FIRREA is that it has a statute of limitations of ten years as compared to the FCA which is only six years.[35] This extra time allows the DOJ to conduct their investigation and monitor whether or not the fraud is on-going.[36] Finally, the FIRREA appears to be much more fluid with the inclusion of these enumerated predicate criminal offenses that the DOJ can prosecute a fraudster under. For example, by including violations of wire and mail fraud in the statute, it allows the government to have a very broad reach into fraudulent activity as this type of fraud can take many different forms.[37]

Specifically in mortgage fraud cases, both of these statutes have been used by the government to pursue civil resolutions and damages against individuals who have misrepresented the Federal Housing Authority ("FHA") when applying for a loan, as well as lenders who have engaged in criminal behavior in regard to their lending practices.[38] For example, in 2016, the DOJ prosecuted and settled with Wells Fargo for its mortgage lending practices in conjunction with the FHA's Direct Endorsement Lending Program.[39] In this settlement, Wells Fargo agreed

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[32] *Id.*
[33] Antonio F. Dias & Courtney Lyons Snyder, *FIRREA Civil Money Penalties: The Government's Newfound Weapon Against Financial Fraud*, JONES DAY (May 2013), https://www.jonesday.com/en/insights/2013/05/firrea-civil-money-penalties-the-governments-newfound-weapon-against-financial-fraud [https://perma.cc/8TGG-WVYP].
[34] 12 U.S.C. § 1833a(c).
[35] Dias, *supra* note 31.
[36] *See id.*
[37] *See id.*
[38] Adams, *supra* note 9.
[39] Press Release, *Wells Fargo Bank Agrees to Pay $1.2 Billion for Improper Mortgage Lending Practices*, DEP'T OF JUST., (Apr. 8, 2016), https://www.justice.gov/opa/pr/wells-fargo-bank-agrees-pay-12-billion-improper-mortgage-lending-practices [https://perma.cc/L22M-QWH3].

to resolve any current potential violation of the FCA and FIRREA, as well as paying monetary damages in order to escape criminal sanctions.[40] The use of these statutes and types of settlements have become commonplace for these types of scenarios as we have seen in other high profile civil settlements such as SunTrust Bank in 2014 and Allied Home Mortgage in 2019.[41]

D. Overview of PPP Loan Fraud

Since the SBA began approving PPP loans for businesses, the DOJ has prosecuted over 500 individuals for COVID-19 related fraud, with over $569 million being implicated in these alleged illegal activities.[42] Additionally, in a memo from the House of Representatives Select Subcommittee on the Coronavirus Crisis, the committee hypothesized that approximately $84 billion dollars could be implicated from suspected loan fraud due to the PPP and Economic Injury Disaster Loan (EIDL) Program.[43] Ever since the DOJ and other agencies began looking into fraud related to the pandemic and PPP, law firm Arnold & Porter has compiled a spreadsheet of cases that helps to identify relevant trends and metrics in what is perpetuating this type of fraud.[44] The most common perpetrators are individuals making duplicate requests using different personal information such as e-mail addresses, IP information, and bank account information.[45] Other suspected types of PPP fraud include individuals using banking information that was different from

[40] Settlement Agreement at 9, United States v. Wells Fargo Bank, No. 12-CV-7527 (S.D.N.Y. 2016).
[41] Settlement Agreement at J-2, United States v. SunTrust Mortgage, No. 14-CV-1028 (D.D.C. 2014); Settlement Agreement at 1, United States v. Hodge, No. 17-20720 (5th Cir. 2019).
[42] Ryan Lucas, *DOJ Has Charged Nearly 500 With COVID-Related Fraud in the Past Year*, NPR (Mar. 26, 2021), https://www.npr.org/2021/03/26/981598848/doj-has-charged-nearly-500-with-covid-related-fraud-in-the-past-year [https://perma.cc/5FJW-SSHA].
[43] Press Release, Select Subcomm. on the Coronavirus Crisis, *Select Subcommittee Releases New Findings on Trump Administration's Failure to Prevent Billions in Small Business Fraud* (Mar. 25, 2021) [hereinafter Select Subcommittee].
[44] *Cares Act Fraud Tracker*, ARNOLD & PORTER, (last updated Oct. 29, 2021), https://www.arnoldporter.com/en/general/cares-act-fraud-tracker [https://perma.cc/QU8Q-5MS3].
[45] *Id.*

what was inputted on their applications, identify theft, and false claims made on the First Draw PPP Loan Application.[46]

Another interesting trend is the high percentage of fraudulent loans that were given by online lenders, also known as FinTechs. In a study conducted by the University of Texas at Austin McCombs School of Business, researchers found that FinTechs were much more likely to be involved in fraudulent lending than other traditional lending institutions such as banks.[47] In the study, the researchers performed a look-through of over 11 million PPP loans to find suspicious activity and other trends related to how that particular business received the loan.[48] The study found that out of the top ten lenders whose loans turned out to be fraudulent, nine of these lenders were FinTechs.[49] Additionally, they found that FinTechs were more than five times likely to give out loans that ended up being fraudulent compared to other traditional lending institutions.[50] The study indicates that riskiness of FinTech lending is attributed to them being less careful about who they are lending to and not doing the proper due diligence when reviewing loan applications for potential red flags.[51] The operational failures of FinTechs have become so tremendous that the Select Subcommittee of the Coronavirus Crisis announced that they will be launching an investigation into various FinTechs to understand the controls they had in place and why fraudulent lending is so prevalent in these institutions.[52]

The McCombs study also identified four primary and five secondary indicators of loan fraud outside of FinTech lending.[53] First, the "Business Registry Flag" shows that many businesses falsified whether their business was incorporated post-February 15, 2020, whether the business was inactive or closed when requesting the PPP loan, and whether the business put the wrong address of incorporation in their application.[54] In a similar study analyzing the first 100 PPP loan

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[46] *Id.*
[47] JOHN M. GRIFFIN ET AL., *Did FinTech Lenders Facilitate PPP Fraud?*, MCCOMBS SCH. OF BUS., Aug. 17, 2021, at 25.
[48] *Id.* at 5.
[49] *Id.* at 10.
[50] *Id.* at 35.
[51] *See generally Id.* at 36.
[52] Press Release, Select Subcomm. on the Coronavirus Crisis, Select Subcommittee Launches Investigation into Role of FinTech Industry in PPP Fraud (May. 28, 2021).
[53] Griffin, *supra* note 42 at 2, 7.
[54] *Id.* at 8.

fraud cases, the Project on Government Oversight ("POGO") found that many of these fraud cases met this Business Registry Flag.[55] Another common indicator identified by the McCombs study is the "Multiple Loan Flag" where many businesses have set up different companies at the same address to obtain multiple loans.[56] The study found that when businesses have more than one address registered, there is more likely a chance of a fraudulent scheme occurring.[57] It would seem that this type of fraud is utilized by individuals who have created many shell businesses that exist on paper and then are able to manipulate the system in order to receive multiple PPP loans.[58] Another indicator from the McCombs study is the "High Implied Compensation Flag."[59] This red flag is present when the loan amount received by a business is higher than the average compensation in that particular industry.[60] It would seem this type of fraud is typically perpetuated through falsifying payroll documents and expense reports to exaggerate the need of a loan.[61] The primary final indicator referenced in the McCombs study is the "EIDL Advance Jobs > PPP Jobs Flag."[62] EIDL was another program created by the government to help small businesses stay on their feet.[63] Many businesses who applied for PPP also applied for EIDL and as a result of this there runs the possibility of their being discrepancies between the applications and questionnaires of both programs.[64]

In further assessing how PPP loan fraud has spiraled, many have pointed to the Trump administrations dealing with the issue.[65] In May 2021, the Select Subcommittee on the Coronavirus Crisis found that the Trump administration mismanaged the program and took part in some unfair practices.[66] The subcommittee found that the Trump

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[55] *Red Flags: The First Year of COVID-19 Loan Fraud Cases*, PROJECT ON GOV'T OVERSIGHT (Apr. 15, 2021), https://www.pogo.org/investigation/2021/04/red-flags-the-first-year-of-covid-19-loan-fraud-cases/ [https://perma.cc/U9WD-C9R9].
[56] Griffin, *supra* note 42 at 9.
[57] *Id.*
[58] *See id.*
[59] *Id.* at 10.
[60] *Id.*
[61] *See id.*
[62] *Id.* at 12.
[63] *See id.*
[64] *Id.*
[65] Select Subcommittee, *supra* note 38.
[66] *Id.*

administration often favored larger businesses that were less needy than some of the small businesses applying for PPP loans.[67] Additionally, the Trump administration reportedly expedited some of the loan requests for businesses that have been supportive or have been closely tied to the Trump presidency.[68] Additionally, it was found that many businesses where Trump's children had a stake also received expedited PPP loans including a lettuce farm partially owned by Donald Trump Jr. and several companies connected to son-in-law and special advisor Jared Kushner.[69] The Trump Administration has also been criticized for not enforcing enough safeguards to ensure against fraud.[70] In the implementation of PPP, Trump insisted on allowing lenders like banks and FinTechs to regulate themselves and that safeguards and controls against potential fraud were not necessary.[71] This prediction turned out to be a failure as the lack of safeguards have allowed individuals to abuse and defraud the lending system through various schemes.[72]

E. Current Regulation and The DOJ's Response to PPP Fraud

In a response to the rampant fraud that has plagued the PPP loan process, the DOJ and federal government have instituted different measures to help resolve existing fraud cases and safeguard against new ones. On March 26, 2021, Attorney General Merrick Garland announced that the DOJ would be taking a "historic enforcement initiative to detect and disrupt COVID-19 related fraud schemes."[73]

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[67] *Id.*

[68] Jack Gillum et al., *Trump Friends and Family Cleared for Millions in Small Business Bailout* PROPUBLICA, (July 6, 2021), https://www.propublica.org/article/trump-friends-and-family-cleared-for-millions-in-small-business-bailout [https://perma.cc/WQ7M-3E8D].

[69] *Id.*

[70] Al Leiva et. all, *The Trump Administration Allowed an Estimated $84B in EIDL and PPP Fraud. Now Congress is Revamping Oversight*, CORP. COMPLIANCE INSIGHTS (May 26, 2021), https://www.corporatecomplianceinsights.com/84b-ppp-eidl-loan-fraud/ [https://perma.cc/8RCH-S4JA].

[71] *Id.*

[72] *See id.*

[73] Press Release, Department of Justice, *Justice Department Takes Action Against COVID-19 Fraud* (Mar. 26, 2021), https://www.justice.gov/opa/pr/justice-department-takes-action-against-covid-19-fraud [https://perma.cc/A7XL-WTE5].

These efforts have included the DOJ's Criminal Division Fraud Section prosecuting defendants at a historic rate and the DOJ's International Computer Hacking and Intellectual Program ("ICHIP") detecting cyber-related fraud related to the pandemic.[74]

Since the DOJ began to ramp up its efforts to fight PPP-related fraud, the department has taken an analytical approach in pursuing cases.[75] On September 23, 2020, Acting Assistant Attorney General Brian C. Rabbitt informed the public that data analytics has played a critical role in efforts concerning the detection and fighting of PPP fraud.[76] While Rabbitt did not expound on the DOJ's actual efforts related to data analytics, some have theorized that the department is using these analytical methods to recognize redundancies across PPP applications.[77] In using these analytical tools, the DOJ uses "unique identifiers" typically related to an applicant's personal information they input on their application.[78] Using these identifiers, the DOJ is able to find irregularities in applications and find submissions of the same personal information across other applications.[79] For example, the DOJ recently prosecuted an individual in the Southern District of Texas who used the same names and phone numbers on several PPP applications.[80] Another example is an individual who was prosecuted in the Western District of New York after the DOJ used their analytical tools to identify multiple fraudulent applications were sent from the same IP address.[81] The DOJ has also leveraged their analytical tools with other state and federal agencies to further detect cases for fraud.[82] For example, in the prosecution of the same individual in the Southern District of Texas, the

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[74] *Id.*

[75] Press Release, Department of Justice, *Acting Assistant Attorney General Brian C. Rabbitt Delivers Remarks at the Practicing Law Institute's White Collar Conference*, (Sept. 23, 2020), https://www.justice.gov/opa/speech/acting-assistant-attorney-general-brian-c-rabbitt-delivers-remarks-practicing-law [https://perma.cc/ZBV2-DKAB].

[76] *Id.*

[77] John Cella & Murad Hussain, *DOJ's Evolving Use of Data Analytics in Pursuing PPP Fraud*, ARNOLD AND PORTER (Oct. 1, 2020), https://www.arnoldporter.com/en/perspectives/blogs/enforcement-edge/2020/10/dojs-use-of-analytics-in-pursuing-ppp-fraud [https://perma.cc/7NT8-2BBK].

[78] *Id.*

[79] *See id.*

[80] *Id.*

[81] *Id.*

[82] *Id.*

DOJ reconciled what they mined from SBA loan data with records from the Texas Workforce Commission.[83] Aforementioned, there is not much clarity related to the DOJ's approach to data analytics, but it's suspected that they engage in an array of reconciliation efforts between what the SBA has on record from the original application and any other public information they can gain access to.[84]

Similar to the mortgage fraud cases pursued in the past by the DOJ, the DOJ has used a similar approach in combating fraud through the use of the FCA and FIRREA statutes. In recent months, the DOJ has used these statutes to go after fraudsters which have subsequently led to several civil resolutions between the government and the defendant.[85] On January 12, 2021, the DOJ obtained its first civil settlement out of the Eastern District of California.[86] In this case, SlideBelts Inc, an internet retailer and its CEO agreed to pay $100,000 in damages after fabricating information on their application in order to receive a larger loan.[87] In prosecuting SlideBelts, the DOJ ultimately determined that it had enough evidence to meet the elemental test for the FCA and that they were able to charge FIRREA with either bank fraud or wire fraud.[88] Over the past few months we have seen more of these civil settlements with the DOJ as it seems they prefer to settle rather than continue bringing these criminal sanctions. Dr. Nick Oberheiden of Oberheiden P.C. believes this soft stance from the DOJ is "inedeed a real issue, [and] many cases of PPP fraud do warrant criminal prosecution ... [however these businesses] deserve to be spared from extreme costs and risks of going to trial on federal criminal charges.[89] It is anticipated that we will continue to see several of these settlements over the next few years with PPP fraudsters.[90] The main driving factors of the settlement will be the

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83 *Id.*
84 *See id.*
85 Adams, *supra* note 9.
86 Press Release, Department of Justice, *Eastern District of California Obtains Nation's First Civil Settlement for Fraud on Cares Act Paycheck Protection Program* (Jan. 12, 2021), https://www.justice.gov/usao-edca/pr/eastern-district-california-obtains-nation-s-first-civil-settlement-fraud-cares-act.
87 *Id.*
88 *Id.*
89 The National Law Review, *DOJ Announces First Paycheck Protection Program Fraud Investigation Resulting in Civil Settlement* (Apr. 8, 2021), https://www.natlawreview.com/article/doj-announces-first-paycheck-protection-program-fraud-investigation-resulting-civil [https://perma.cc/33S9-6E37].
90 Adams, *supra* note 9.

seriousness of the conduct, the dollar amount of the loan, and whether loan forgiveness was approved.[91]

F. Conclusion

A lot of uncertainty still exists regarding how much PPP loan fraud exists. During the pandemic, lenders gave out loans to more than ten million borrowers. Even well-managed and strict controls, the possibility of a fraudulent loan slipping through the cracks is likely. As previously mentioned there isn't much clarity into how effective the Biden administrations newly revamped PPP controls have been. Until there is more information at how effective the new administration has been, there is unlikely to be much more transparency into what the DOJ and federal government is doing to remedy these fraudulent loan cases.

Zachary Trombly[92]

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[91] *Id.*
[92] Student, Boston University School of Law (J.D. 2023).