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applications, but few lenders have been held accountable for their role in approving these fraudulent loans.

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**PAYCHECK
PROTECTION
PROGRAM**



The Ben Wieder, McClatchy Washington Bureau (via TNS).

The Paycheck Protection Program was awash in fraud. Now, one lender may finally face a legal reckoning.

The PPP was one of the signature federal economic relief measures in the early days of the COVID-19 pandemic, providing small businesses loans of up to \$10 million that were forgivable if used for payroll and other approved expenses.

But the program, which tasked banks and other private lenders with processing applications, was beset by fraud from its earliest days in the spring of 2020, with

some recent estimates suggesting that more than \$117 billion of the \$780 billion in

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The online lender Kabbage disclosed in the Florida case that it is under investigation by U.S. attorneys in Massachusetts and the Eastern District of Texas for its PPP lending practices. Those investigations are being coordinated by the U.S. Department of Justice's Civil Division, the filing said. Neither district nor the DOJ responded to requests for comment.

"Any time you have two U.S. Attorneys offices that have separately drawn the same inferences based on evidence that reached them from independent sources it's not a really good sign," said Ben Curtis, the former the former assistant chief of the Criminal Division Fraud Section at the DOJ and a partner in the Miami office of McDermott Will & Emery.

The disclosure itself was unusual, Curtis said, since civil investigations aren't typically public.

"If I'm a client, I don't want that ever to be out there in the public domain," he said.

The filing came amid an effort by Kabbage to fend off a subpoena from federal prosecutors in the Southern District of Florida to testify in a PPP fraud case that is scheduled to be heard next month in a Fort Lauderdale courthouse. Kabbage is not a target of the case, but it argued that its testimony in the case could be used against it in the other federal probes, which it described as, "financially ... an existential threat to Kabbage." But that argument didn't sway U.S. District Judge William P. Dimitrouleas, who denied Kabbage's request, and the online lender could be called upon to testify in the criminal trial against Luke Joselin, which is currently scheduled to start August. 15.

Kabbage is also [one of several financial technology, or FinTech, companies](#) that are under investigation by the House Oversight Committee's Select Subcommittee on the Coronavirus Crisis for their role in PPP fraud.

The PPP program bailed out the Georgia-based online lender, which went from

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But the company's trademark speed — it relied on algorithms more than people to approve loans — has raised questions about how it vetted applicants.

When American Express acquired Kabbage, it didn't take on its loan portfolio, which included the PPP loans, leaving them behind in a holding company branded KServicing. The credit card giant has tried to distance itself from Kabbage's performance in the PPP program, but these multiple investigations might make it impossible to continue to avoid difficult questions.

"What did AMEX know, if anything, and when?" said Jim Richards, a former top financial risk officer at Wells Fargo and Bank of America and former prosecutor.

KServicing CEO Laquisha Milner didn't respond to multiple requests for comment and messages to the company's media line bounced back.

American Express didn't respond to multiple requests for comment, either. It has previously made a point of stressing that American Express and KServicing are separate entities.

'Obviously fraudulent'

The small business COVID-19 relief program, approved as part of the CARES Act in March 2020, tasked lenders with vetting and approving applicants to the program, with the cash ultimately reimbursed by the federal government.

The program, which was approved as part of the CARES Act in March 2020, administered by the U.S. Small Business Administration, undoubtedly saved many businesses struggling with mandatory closures and uncertainty in the early months of the COVID-19 pandemic but was also plagued by fraud. The SBA's Office of the Inspector General estimated that as much as \$4.6 billion worth of fraudulent loans were approved in the first year of the program alone. A [paper by researchers at the](#)

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required that businesses be in existence since at least Feb. 15, 2020, and prohibited business owners facing felony criminal charges or who had recently been convicted of financial fraud. Kabbage approved a [disproportionate share](#) of the questionable PPP loans flagged by the Herald.

While it has [previously been reported](#) that Kabbage and other FinTechs were under DOJ investigation, the Florida filing provides far more detail about the investigations the online lender faces. Kabbage disclosed that it has been under investigation for more than a year by the U.S. Attorney's Office in Massachusetts under the false claims act, which prevents against government fraud, "on the theory that Kabbage improperly approved PPP loans that were either obviously fraudulent or not within Small Business Administration ("SBA") parameters." The company also disclosed that the U.S. Attorney's Office in East Texas is investigating, "the adequacy of Kabbage's fraud and anti-money laundering controls in the same time frame." Kabbage indicated that DOJ's civil division is coordinating both investigations. The U.S. attorneys offices in Massachusetts and the Eastern District of Texas didn't respond to requests for comment.

The Texas investigation is significant, Richards said, because the PPP program required lenders, even those that like Kabbage were not banks, to establish robust anti-money laundering and customer due diligence programs.

"That's where I think Kabbage probably has its greatest exposure," he said.

Richards, who now runs the financial risk consultancy [Regtech Consulting](#), has been tracking PPP fraud cases and found that Kabbage has been linked to nearly one in five federal PPP fraud prosecutions to date.

Banks were paid fees on a sliding scale based on the size of the loan, which earned Kabbage hundreds of millions of dollars in fees on the loans it approved directly and

those it approved through its partner banks Cross River Bank and Customers Bank.

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The Herald previously reported on the struggles to obtain forgiveness faced by many small business owners who obtained their PPP loans through Kabbage. Under the rules of the program, the loans would be forgiven if used for payroll and other approved expenses. While the vast majority of loans approved in the first year of the program have now been forgiven, Kabbage, known as KServicing since the American Express merger, had the lowest forgiveness rate of any major lender in the program's first year.

It currently faces a class-action suit brought by several borrowers who allege that KServicing's loan forgiveness process has been an "abject and ongoing failure" and described the company as "one of the most opportunistic profiteers to emerge from the COVID-19 global pandemic." KServicing argued that the lawsuit should be dismissed because the loans were approved through the CARES Act, which it argues "does not provide for a private right of action," that would allow individuals to sue.

Kabbage initially touted its success approving PPP loans for smaller businesses and women and minority-owned businesses that historically struggled to obtain credit from traditional banks. That's meant that those same businesses have now had more difficulty getting their PPP loans forgiven.

"It's been ridiculous," Vicki LeMaster, a Miami hairdresser who struggled for months to have her loan of just over \$3,000 forgiven, told the Herald in March. "Because we don't have a banker on our side, we're the ones who have to deal with all the garbage."

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