IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: KSERVICING WIND DOWN CORP., *et al.*,[1] Post-Confirmation Debtors.	Chapter 11 Case No. 22-10951 (CTG) (Jointly Administered)
KSERVICING WIND DOWN CORP. (f/k/a Kabbage, Inc.), Plaintiff, v. ROBERT FROHWEIN, *et al*., Defendants.	Adversary Proceeding No. 25-52372 (CTG)

APPENDIX IN SUPPORT OF PLAINTIFF'S OMNIBUS MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS' MOTIONS TO DISMISS THE COMPLAINT

Dated: June 9, 2026

REID COLLINS & TSAI LLP
Jessica Zeldin (DE Bar No. 3558)
300 Delaware Ave., Suite 770
Wilmington, DE 19801
T: (302) 467-1765
jzeldin@reidcollins.com

Eric D. Madden (*PHV* granted)
Brian J. Bah (*PHV* granted)
1445 Ross Avenue, Suite 2900
Dallas, Texas 75202

[1] The post-confirmation Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, as applicable are: KServicing Wind Down Corp. (f/k/a Kabbage, Inc. d/b/a KServicing) (3937); KServicing Wind Down Canada Holdings LLC (f/k/a Kabbage Canada Holdings, LLC) (N/A); KServicing Wind Down Asset Securitization LLC (f/k/a Kabbage Asset Securitization LLC) (N/A); KServicing Wind Down Asset Funding 2017-A LLC (f/k/a Kabbage Asset Funding 2017-A LLC) (4803); KServicing Wind Down Asset Funding 2019-A LLC (f/k/a Kabbage Asset Funding 2019-A LLC) (8973); and KServicing Wind Down Diameter LLC (f/k/a Kabbage Diameter, LLC) (N/A). The Debtors' mailing and service address is KServicing Wind Down Corp. c/o Resolute Commercial Services, 6750 E. Camelback Road, Suite 103, Scottsdale, AZ 85251.

T: (214) 420-8900
emadden@reidcollins.com
bbah@reidcollins.com

Joshua J. Bruckerhoff (*PHV* granted)
Jeremy H. Wells (*PHV* granted)
Emma Culotta (*PHV* granted)
1301 S. Capital of Texas Highway, C-300
Austin, Texas 78746
T: (512) 647-6100
jbruckerhoff@reidcollins.com
jwells@reidcollins.com
eculotta@reidcollins.com

-and-

MORRIS JAMES LLP
Eric J. Monzo (DE Bar No. 5214)
Tara C. Pakrouh (DE Bar No. 6192)
3205 Avenue North Blvd., Suite 100
Wilmington, DE 19803
T: (302) 888-6800
emonzo@morrisjames.com
tpakrouh@morrisjames.com

Attorneys for Plaintiff

Exhibit	Description	App. No.
1	Declaration of Emma Culotta in Support of Plaintiff's Omnibus Memorandum of Law in Opposition to Defendants' Motions to Dismiss	B000001
A	Email from A. Zimmerman to Scott Askins, cc Kathryn Petralia, re: Fwd: Confidential Employee Complaint, dated April 17, 2020, with attachment	B000004
B	Draft of Kabbage's Enterprise Bank Secrecy Act / Anti-Money Laundering and Office of Foreign Assets Control Policy, dated April 27, 2020	B000007
C	Emails between E. Maiellaro and Scott Askins, re: compliance coverage, dated June 4, 2020	B000026
D	Letter from the Chief Financial Officer of Kabbage to Duff & Phelps, dated August 11, 2020	B000028
E	Presentation by Duff & Phelps titled "Solvency Analysis Related to a Proposed Distribution," dated October 15, 2020	B000034
F	Staff Report of the Select Subcommittee on the Coronavirus Crisis, United States House of Representatives, titled, "'*We Are Not the Fraud Police': How Fintechs Facilitated Fraud in the Paycheck Protection Program*," dated December 2022	B000057
G	Proof of Claim No. 247 (Official Form 410), filed by the United States Department of Justice, Civil Division, dated April 3, 2023	B000187

Dated: June 9, 2026

REID COLLINS & TSAI LLP

/s/ *Jessica Zeldin*
Jessica Zeldin (DE Bar No. 3558)
300 Delaware Ave., Suite 770
Wilmington, DE 19801
T: (302) 467-1765
jzeldin@reidcollins.com

Eric D. Madden (*PHV* granted)
Brian J. Bah (*PHV* granted)
1445 Ross Avenue, Suite 2900
Dallas, Texas 75202
T: (214) 420-8900
emadden@reidcollins.com
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1301 S. Capital of Texas Highway, C-300
Austin, Texas 78746
T: (512) 647-6100
jbruckerhoff@reidcollins.com
jwells@reidcollins.com
eculotta@reidcollins.com

-and-

MORRIS JAMES LLP

/s/ *Eric J. Monzo*
Eric J. Monzo (DE Bar No. 5214)
Tara C. Pakrouh (DE Bar No. 6192)
3205 Avenue North Blvd., Suite 100
Wilmington, DE 19803
T: (302) 888-6800
emonzo@morrisjames.com
tpakrouh@morrisjames.com

Attorneys for Plaintiff

EXHIBIT 1

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: KSERVICING WIND DOWN CORP., *et al.*,[1] Post-Confirmation Debtors.	Chapter 11 Case No. 22-10951 (CTG) (Jointly Administered)
KSERVICING WIND DOWN CORP. (f/k/a Kabbage, Inc.), Plaintiff, v. ROBERT FROHWEIN, KATHRYN PETRALIA, LESLIE SCOTT ASKINS, SPENCER ROBINSON, SAM TAUSSIG, DON BUTLER, JONATHAN EBINGER, ALEX CHULACK, LAURIE HODRICK, BRYAN STOLLE, IOANNIS PIPILIS, THOMVEST VENTURES LTD., BLUERUN VENTURES IV, LP, BRV OPPORTUNITIES FUND, L.P., REVERENCE CAPITAL PARTNERS OPPORTUNITIES FUND I, L.P., REVERENCE CAPITAL PARTNERS OPPORTUNITIES FUND I (CAYMAN), L.P., RCP KICKER CO-INVEST, L.P., REVERENCE CAPITAL PARTNERS OPPORTUNITIES FUND I (AI), L.P., MDV IX, L.P., SOFTBANK VISION FUND (AIV M2) L.P., SOFTBANK PRINCEVILLE INVESTMENTS, L.P., CURIEUX LIMITED CO., BENNU HOLDINGS LIMITED CO., RAYMOND JAMES & ASSOCIATES, INC. CSDN FBO ROBERT FROHWEIN RIRA U/A/D 5/27/16 A/C 2867A298, and THE FROHWEIN FAMILY 2015 TRUST, Defendants.	Adversary Proceeding No. 25-52372 (CTG)

[1] The post-confirmation Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, as applicable are: KServicing Wind Down Corp. (f/k/a Kabbage, Inc. d/b/a KServicing) (3937); KServicing Wind Down Canada Holdings LLC (f/k/a Kabbage Canada Holdings, LLC) (N/A); KServicing Wind Down Asset Securitization LLC (f/k/a Kabbage Asset Securitization LLC) (N/A); KServicing Wind Down Asset Funding 2017-A LLC (f/k/a Kabbage Asset Funding 2017-A LLC) (4803); KServicing Wind Down Asset Funding 2019-A LLC (f/k/a Kabbage Asset Funding 2019-A LLC) (8973); and KServicing Wind Down Diameter LLC (f/k/a Kabbage Diameter, LLC) (N/A). The Debtors' mailing and service address is KServicing Wind Down Corp. c/o Resolute Commercial Services, 6750 E. Camelback Road, Suite 103, Scottsdale, AZ 85251.

DECLARATION OF EMMA CULOTTA IN SUPPORT OF PLAINTIFF'S OMNIBUS MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS' MOTIONS TO DISMISS THE COMPLAINT

Emma Culotta, an attorney duly admitted to practice law *pro hac vice* before this Court, declares the following under penalty of perjury:

1. I am a senior associate of the law firm of Reid Collins & Tsai LLP, and counsel for Plaintiff KServicing Wind Down Corp. (f/k/a Kabbage, Inc. d/b/a KServicing). I make this Declaration based on my personal knowledge, information and belief, and aver that the exhibits which are cited in *Plaintiff's Omnibus Opposition to Defendants' Motions to Dismiss the Complaint* are true and correct.

2. Attached in Plaintiff's Appendix as **Exhibit A** is a copy of an email from A. Zimmerman to Scott Askins, cc Kathryn Petralia, re: Fwd: Confidential Employee Complaint, dated April 17, 2020, with attachment, which is incorporated by reference by paragraph 95 of the Complaint.

3. Attached in Plaintiff's Appendix as **Exhibit B** is a copy of the April 27, 2020 draft of Kabbage's Enterprise Bank Secrecy Act / Anti-Money Laundering and Office of Foreign Assets Control Policy, which is incorporated by reference by paragraphs 11, 20, 82, and 194 of the Complaint.

4. Attached in Plaintiff's Appendix as **Exhibit C** is a copy of emails between E. Maiellaro and Scott Askins, re: compliance coverage, dated June 4, 2020, which is incorporated by reference by paragraph 20 of the Complaint.

5. Attached in Plaintiff's Appendix as **Exhibit D** is a copy of a letter from the Chief Financial Officer of Kabbage to Duff & Phelps dated August 11, 2020, which is incorporated by reference by paragraphs 240 and 246–48 of the Complaint.

6. Attached in Plaintiff's Appendix as **Exhibit E** is a copy of a presentation by Duff & Phelps titled "Solvency Analysis Related to a Proposed Distribution," dated October 15, 2020, which is incorporated by reference by paragraph 271 of the Complaint.

7. Attached in Plaintiff's Appendix as **Exhibit F** is a copy of the Staff Report of the Select Subcommittee on the Coronavirus Crisis, United States House of Representatives, titled, "'*We Are Not the Fraud Police': How Fintechs Facilitated Fraud in the Paycheck Protection Program*," dated December 2022, which is incorporated by reference by paragraph 280 of the Complaint and available to the public at https://coronavirus-democrats-oversight.house.gov/sites/evo-subsites/coronavirus-democrats-oversight.house.gov/files/2022.12.01%20How%20Fintechs%20Facilitated%20Fraud%20in%20the%20Paycheck%20Protection%20Program.pdf and subject to judicial notice.

8. Attached in Plaintiff's Appendix as **Exhibit G** is a copy of Proof of Claim No. 247 (Official Form 410), filed by the United States of America on behalf of the United States Department of Justice, Civil Division, and the United States Attorney's Office for the Eastern District of Texas, on April 3, 2023, in the matter of *In re Kabbage, Inc. d/b/a KServicing, et al.*, Case No. 22-10951 (CTG), in the United States Bankruptcy Court for the District of Delaware, in the amount of $346,157,724.00, with attachment, which is incorporated by reference by paragraph 282 of the Complaint and subject to judicial notice.

Executed this 9th day of June, 2026.

/s/ *Emma Culotta*
Emma Culotta (*PHV Admitted*)
REID COLLINS & TSAI LLP
1301 S. Capital of Texas Highway, C-300
Austin, Texas 78746
T: (512) 647-6100
eculotta@reidcollins.com

Attorney for Plaintiff

EXHIBIT A

From: Amy Zimmerman <azimmerman@kabbage.com> on behalf of Amy Zimmerman <azimmerman@kabbage.com>
Sent: Friday, April 17, 2020 3:02 PM
To: Scott Askins <saskins@kabbage.com>
Cc: Kathryn Petralia <kpetralia@kabbage.com>
Subject: Fwd: Confidential Employee Complaint
Attach: Dear Kabbage Human Resources and Legal 2020.pdf; ATT00002.bin

---

Hey Scott,
This email was intended for you and me. Unfortunately, she sent it to you and Scott Asher instead. I'll leave it to you to take from here.

All the best,

Amy M. Zimmerman
M: 404.502.1744

...via mobile

Begin forwarded message:

> **From:** "nhill181@outlook.com" <nhill181@outlook.com>
> **Date:** April 17, 2020 at 2:09:57 PM EDT
> **To:** "azimmerman@kabbage.com" <azimmerman@Kabbage.com>, "sasher@kabbage.com" <sasher@kabbage.com>
> **Subject: Confidential Employee Complaint**
>
> Good afternoon, Amy and Scott:
>
> I am writing you to advise you of a number of issues I seek to bring to your attention. I would appreciate your urgent review of the attached document.
>
> I look forward to your response.
>
> Regards,
>
> Nicole

Dear Kabbage Human Resources and Legal:

This letter is to inform you of several concerns I have related to the working environment and treatment I have been subject to during my 90+ day tenure at Kabbage. From the first day I joined the organization, I have worked diligently to develop and execute a fraud strategy that mitigates economic loss to the organization, reduces its risk profile, and provides greater security within our lending environment. This is what I was hired to do.

During my first 30 days, I identified 5 separate fraud rings with losses totaling more than $10M. Concurrently, I worked to develop a strategy, outline resource needs, including a training and action plan to stop the fraud rings, and prevent recurrence. This proposal met great pushback. Controls it called for were referred to as "stupid," and would be cut off. Subsequently, I learned that the pushback was a result of the desire to make money and not minimize losses.

After alerting leadership of more than $8M of previously unreported fraud losses, I was advised by two senior leaders that "we do not have fraud," and not to impair investors by classifying fraud. I raised another concern related to hidden fraud losses, controls that were inappropriately integrated, and the fact that my team was advised not to confirm fraud.

I have justifiably stated the need for additional fraud resources in the US and have been told no. I was eventually provided one FTE and told to be grateful. At the same time, my non-minority counterparts have received multiple resources to support originating Kabbage PPP Loans.

I have been disrespectfully cursed at by white males, in a very demeaning and belittling manner. I have been told and pushed to "shut up" and "be quiet" about fraud needs, and repeatedly my thoughts were called stupid by white males in the organization.

I was advised by several individuals to be very cautious around Spencer and David, due to their close relationship with the owners.

On April 16th, in a conversation with Spencer Robinson, I was advised that I was no longer the Head of Fraud. In that conversation, Spencer stated that I was "lucky I was not being fired, and that I was better suited to in compliance to work under Azba with no clear direction of what that role will be"

A day prior to this conversation with Spencer (which was my first as a direct report of his), an urgent meeting was scheduled with KK and Amit to share my fraud strategy with them. Little did I know that the next day, I would be replaced by these two individuals, neither of which has any fraud experience.

Prior to reporting to Spencer, I received high praise from my previous leader (Vicky B), from Human Resources, and several other functional leaders for the work my team and I have done. What's more, I have not been coached or received any constructive feedback regarding my performance or leadership.

Based upon this and other documented treatment I have been exposed to, the hostility of the working environment, and other discriminatory actions I've had to endure due to my race and gender, I am rendering this complaint. I have been discriminated upon, retaliated against, and experienced a hostile

work environment for my role in speaking up about employee related matters, fraud losses, and reputational risk at Kabbage.

If you require any additional information or further details I am happy to discuss with you at your earliest convenience.

Regards,

Nicole Hill

(NH)

EXHIBIT B



UNITED STATES OF AMERICA
ENTERPRISE BANK SECRECY ACT/ ANTI-MONEY LAUNDERING AND OFFICE OF FOREIGN ASSETS CONTROL POLICY

Approval Date: [_____], 2020

Effective Date: [_____], 2020

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1. INTRODUCTION

A. PURPOSE

Title III of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 ("USA PATRIOT Act"), the Bank Secrecy Act ("BSA"), and Office of Foreign Assets Control ("OFAC") regulations each require compliance with applicable anti-money laundering ("AML") and sanctions regulations.

This document contains the Enterprise BSA/AML and OFAC Policy (the "Policy") for complying with the BSA and all other relevant statutes relating to money laundering, counter-terrorist financing, and sanctions,[1] as implemented by Kabbage, Inc. and Kabbage Payments, LLC (collectively, "Kabbage" or the "Company") in connection with Kabbage's role as:

> (1) A program manager for Celtic Bank Corporation ("Celtic Bank"), the issuer of loans to small and medium-sized businesses ("SMBs") under the Kabbage Funding™ loan program;
>
> (2) A payment facilitator enabling merchant processing services for SMBs through its relationship with Worldpay, LLC ("Processor") and Fifth Third Bank ("Sponsoring Bank") for the Kabbage Payments™ product;
>
> (3) A technology service provider to Green Dot Bank ("Green Dot"), the issuer of demand deposit accounts to SMBs for the Kabbage Checking™ product; and
>
> (3) A service provider to certain bank partners and independently as a non-bank lender authorized by the U.S. Small Business Administration ("SBA"), in each case, for Paycheck Protection Program loans offered pursuant to Section 1102 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act)(collectively with (1), (2), and (3), the "Offerings").[2]

The Policy sets out how the Offerings meet guidelines developed by regulators and other government agencies to control, monitor, detect, prevent, and report possible money laundering, terrorist financing, and other financial crimes and to screen, prohibit, reject, or block transactions for sanctions violations. Accordingly, Kabbage's BSA/AML program ("BSA/AML Program") encompasses a Customer Identification Program ("CIP"), including Know Your Customer/Know Your Business (collectively, "KYC") checks, transaction monitoring, suspicious activity reporting, and a comprehensive sanctions screening process. To operationalize these elements of the BSA/AML Program, Kabbage has developed a separate BSA/AML Program Manual ("BSA/AML Program Manual"). The BSA/AML Program Manual is a living operational document and is periodically revised to reflect the Company's operational procedures.

Kabbage, its management, and its Board of Directors (the "Board") are committed to deterring use of Offerings as a conduit for illegal activity. This Policy has been designed to provide the framework and high level controls for effective compliance with BSA/AML and sanctions laws and regulations, as well as to communicate a clear commitment to creating a strong compliance culture for the Company's

[1] Hereafter collectively referred to as "BSA/AML," for simplicity.

[2] The Paycheck Protection Program is a temporary Offering, made available by the SBA due to the unprecedented economic circumstances resulting from COVID-19. Unless otherwise required by law and then only to such extent, the Company's BSA/AML obligations related to loans under the Paycheck Protection Program are likewise temporary and conclude upon the maturity of such loans.

employees. The separate BSA/AML Program Manual includes the detailed information related to the specific requirements and procedures outlined in this Policy.

B. Responsibility and Training

This Policy is established to govern the BSA/AML Program upon review and in certain cases, approval by the Company's bank partners and the Board and is reviewed annually by one or more qualified Kabbage compliance professionals ("Compliance") and the Chief Compliance Officer ("CCO") to determine any necessary updates resulting from changes in applicable laws, regulations or rules, industry landscape, product offerings, and/or Kabbage or bank partner processes. In the event there are no material changes to this Policy, Compliance will notify the Board, or a committee to which Board has delegated authority for the Policy ("Board Committee"), that there are no material changes for consideration, in lieu of providing the full Policy document to the Board. However, if there are material changes, Compliance will provide the full policy document reflecting the recommended changes to the Board, or appropriate Board Committee, for approval.

The BSA/AML Officer oversees and administers this Policy and may make recommendations of material changes to the Policy. This responsibility may be transferred to a designated representative to the extent deemed appropriate by the BSA/AML Officer.

Kabbage personnel will be trained on this Policy in accordance with the Compliance Training Policy.

No part of this Policy or its supporting procedures should be interpreted as contravening or superseding other applicable legal and regulatory requirements imposed upon Kabbage or the Offerings. Any conflicts between this Policy and Kabbage's other applicable legal and regulatory requirements must be submitted immediately to the BSA/AML Officer for further evaluation. If necessary, the BSA/AML Officer will consult outside legal counsel.

Any exceptions to this Policy must be approved by the BSA/AML Officer. Questions or suggestions about this Policy should be sent to the BSA/AML Officer, or designee.

C. Scope

This Policy applies to the Offerings and to all Kabbage personnel (i.e., management, Board members, and employees) performing services related to the Offerings.

D. Consequences of Non-Compliance

All Kabbage personnel assigned to carry out any specific BSA/AML tasks are responsible for understanding this Policy. Non-compliance with, or violation of, the Policy's requirements may result in:

- Disciplinary action, up to and including termination in appropriate cases; and/or
- Individual and/or company civil and/or criminal penalties.

Willful blindness, or "turning a blind eye," to a potential BSA/AML violation can expose Kabbage and its bank partners to potential liability.

E. KEY TERMS

Money laundering is generally defined as the process by which persons attempt to conceal and disguise the true origin and ownership of illegal funds. Money laundering is generally viewed as a three-stage process: placement, layering, and integration:

- **Placement** is the introduction of unlawful proceeds into the financial system without attracting the attention of financial institutions or law enforcement;
- **Layering** is the movement of funds around the financial system to disguise their origin and complicate the paper trail; and
- **Integration** is the incorporation of unlawful proceeds into the financial system to convert illicit funds into apparently legitimate business earnings and acquire wealth.

Terrorist financing is generally defined as the process by which terrorists and/or terrorist organizations raise funds through the abuse of financial products. While money laundering is the process by which funds raised from criminal activities are made to look legitimate for re-integration into the financial system, terrorist financing differs in that it typically concerns what the funds are to be used for, rather than from where they come.

Sanctions are restrictions against doing business with individuals, entities, or countries. OFAC, as part of the U.S. Department of the Treasury, is responsible for administering and enforcing economic and trade sanctions based on U.S. Government requirements to support foreign policy and national security goals. U.S. persons (a term that includes individuals and entities) are prohibited from engaging in most transactions with these countries and certain individuals and entities ("Specifically Designated Nationals" or "SDNs"). OFAC maintains an up-to-date list of SDNs ("SDN List").

If a U.S. entity receives a payment from, or is asked to make a payment to, any SDN or restricted country, for whatever purpose, the entity is required to stop the payment, block or reject the proceeds, and report the transaction to OFAC within 10 business days.

2. POLICY OBJECTIVES

This Policy seeks to protect the Offerings from being used by individuals and entities engaging in money laundering, terrorist financing, or sanctions avoidance. Specifically, the Policy:

- Defines specific roles and responsibilities for BSA/AML compliance;
- Creates an AML risk assessment process;
- Outlines the BSA/AML internal control process;
- Creates a KYC framework that provides for risk-based customer identification, verification, and due diligence;
- Creates a risk-based transaction monitoring and suspicious activity referral and reporting process;
- Establishes a policy of compliance with all USA PATRIOT Act Section 314(a) information sharing requests by bank partners or by the Financial Crimes Enforcement Network ("FinCEN");
- Establishes controls to ensure compliance with OFAC requirements;

- Establishes a process to ensure adherence to all applicable compliance requirements, including filing of reports, responding to information requests, and maintaining records;
- Ensures Kabbage documents efforts to meet its legal and contractual obligations;
- Provides a training program for all personnel;
- Requires periodic compliance quality assurance and independent testing; and
- Requires regular reporting to management and the Board on Kabbage's BSA/AML efforts.

3. GOVERNANCE, ORGANIZATIONAL STRUCTURE, AND AUTHORITY

Kabbage's Board appoints the BSA/AML Officer, who is responsible for the execution of this Policy. The BSA/AML Officer reports directly to the CCO, who is also appointed by the Board. Both the BSA/AML Officer and the CCO have accountability and access to the Board, as needed.

The BSA/AML Officer is responsible for maintaining sufficient staffing, both in numbers and qualifications, to implement this Policy effectively and for requesting additional resources from the Board as needed. Notwithstanding the delegation of the day-to-day activities of BSA/AML compliance to the BSA/AML Officer, the CCO, and the Board remain responsible for ensuring that adequate resources are available for the BSA/AML Officer and for the BSA/AML Program.

Every employee of Kabbage has responsibility for ensuring that he or she implements the BSA/AML Program within his or her sphere of responsibility. The BSA/AML Officer will receive advance notice of all new products or services, as well as changes to existing products or services that might affect BSA/AML risk of the Offerings.

All Kabbage personnel are directly accountable to the Company's BSA/AML Officer for implementation of this Policy and its associated procedures. The BSA/AML Officer and his/her team will have unrestricted access to any business records, IT systems, or any other business locations to which they require access in order to fulfil their responsibilities.

A. BSA/AML PROGRAMS FOR NON-REGULATED INSTITUTIONS

While Kabbage is not a "financial institution" (as defined in the BSA at 31 U.S. Code § 5312) required by law to implement a BSA/AML program, Kabbage has made a commitment to implement an effective BSA/AML program to comply with its statutory obligations under the Paycheck Protection Program as well as its contractual obligations to its bank partners. This commitment is demonstrated through:

- Setting a clear "tone from the top" about the importance of BSA/AML compliance;
- Board and management's ongoing involvement in oversight of the BSA/AML Program, including:
    - Review and, where appropriate, approval of key documents such as the Policy and the BSA/AML risk assessment;
    - Receipt of regular management updates on the performance of the BSA/AML Program;
    - Receipt of the results of the independent review of the BSA/AML Program;
    - Resolution of escalated issues; and

- Prompt corrective action to remediate systematic errors or control deficiencies.

Kabbage has also developed and implemented internal controls to ensure that it identifies inherent risks within the organization, including those presented by customers, products and services, and geographies.

As a U.S. company, Kabbage understands that it must comply with OFAC requirements. OFAC requirements hold that all U.S. persons[3], including U.S. banks, bank holding companies, and non-bank financial institutions, must comply with OFAC's regulations. The laws and OFAC-issued regulations apply not only to U.S. entities but also to their foreign branches and in certain circumstances, foreign subsidiaries.

B. Roles and Responsibilities

This BSA/AML Policy establishes the following roles and responsibilities:

Responsible Party	Roles and Responsibilities
BSA/AML Officer (Policy Owner)	The BSA/AML Officer owns this Policy and is responsible for: ● Developing, implementing and maintaining this Policy's related procedures; ● Reviewing and refreshing the Policy at least annually, or when circumstances warrant; ● Ensuring Kabbage personnel receive BSA/AML training, and that Kabbage documents training materials and attendance records; ● Ensuring adequate BSA/AML staffing to implement the Policy; ● Providing guidance and direction to Kabbage personnel about the steps they need to take to institute the Policy in their areas of responsibility; ● Conducting an annual risk assessment; ● Ensuring the completion of an annual independent test of Kabbage's BSA/AML Program; ● Monitoring the effectiveness of BSA/AML compliance and taking corrective action to remedy any deficiencies found; ● Reviewing any changes to BSA/AML-related laws, regulations, guidance, or regulatory expectations and ensuring that Kabbage implements processes to remain fully in compliance with its BSA/AML obligations; ● Reviewing the BSA/AML implications of any new or changed products, services, initiatives, or distribution channels, and advising management and employees on necessary steps to mitigate BSA/AML risk;

[3] All U.S. persons must comply with OFAC regulations, including: all U.S. citizens and permanent resident aliens, regardless of where they are located; all persons and entities within the United States; and all U.S. incorporated entities and their foreign branches. In the case of certain programs, such as those regarding Cuba and North Korea, foreign subsidiaries owned or controlled by U.S. companies also must comply. Certain programs also require foreign persons in possession of U.S.-origin goods to comply.

	• Promptly alerting the Board to any material issues of BSA/AML non-compliance, and instituting and monitoring corrective action; • Providing annual reporting to the Board on the state of BSA/AML compliance and any significant emerging issues; • As needed, liaising with bank partners on BSA/AML issues; and • Seeking outside legal advice on BSA/AML issues as required.
Board of Directors	The Board, or a delegated committee thereof, is responsible for: • Designating a BSA/AML Officer responsible for day-to-day oversight of BSA/AML compliance at Kabbage; • Reviewing and approving this Policy and any subsequent material changes to this Policy; • Reviewing Kabbage's BSA/AML reporting, as appropriate; • Reviewing the annual independent testing of the BSA/AML Program and any plans for corrective action as necessary; • Addressing any BSA/AML issues escalated to the Board; and • As applicable, reviewing feedback from bank partners on the BSA/AML Program and receiving reports on any remedial action necessary.
Chief Compliance Officer	The CCO is responsible for: • Promoting and implementing a strong culture of BSA/AML compliance; • Reviewing the BSA/AML risk assessment for the Offerings; • Reviewing and approving this Policy and any subsequent material changes to the Policy, prior to submitting to the Board for approval; • Reviewing the BSA/AML Officer's periodic reports; • Holding personnel accountable for resolution of BSA/AML corrective actions; • Ensuring that Kabbage has adequate BSA/AML resources; • Overseeing annual, or more frequent as necessary, compliance quality assurance, independent control testing, and review of this Policy and reporting results to the Board; and • As applicable, reviewing feedback from bank partners relating to the BSA/AML Program and receiving reports on any remedial action necessary.
Kabbage Employees	All employees of Kabbage with responsibilities impacting the BSA/AML Program, are responsible for: • Promoting a strong culture of BSA/AML compliance; • Knowing their responsibilities under this Policy including the prohibition on "tipping-off" (i.e., informing the subject of an investigation or a suspicious activity filing of their status as a subject), and ensuring they remain in compliance;

	● Implementing this Policy and its associated procedures within their areas of responsibility, including designing, implementing and maintaining necessary controls; ● Identifying BSA/AML compliance weaknesses and promptly alerting and working with Kabbage's BSA/AML Officer, or designee, to take corrective action; ● Maintaining systems, controls, and reports used to support compliance efforts; ● Notifying and seeking the approval of the BSA/AML Officer for any new or modified products, services, initiatives, or distribution channels; ● Reporting unusual activity to the CCO, BSA/AML Officer, or designee; ● Ensuring they complete required BSA/AML training; and ● Providing BSA/AML compliance personnel unrestricted access to any business records, systems or locations necessary to fulfil the duties described in this Policy and other applicable compliance policies and procedures.

4. BSA/AML POLICY REQUIREMENTS

This Policy provides a summary of the various procedures and processes Kabbage employs to comply with both legal requirements and its contractual responsibilities, to establish and maintain an effective and compliant BSA/AML Program.

It describes the manner in which Kabbage implements the "five pillars" of AML compliance, namely:

A. Designation of a BSA/AML Officer and BSA governance structure;

B. Policies, procedures, and internal controls, which include:

I. A BSA/AML risk assessment process;

II. A risk-based KYC Program, which includes a CIP and customer due diligence ("CDD");

III. OFAC screening, review, and reporting;

IV. Transaction monitoring;

V. Referring or reporting potentially suspicious activity to bank partners or FinCEN, respectively;

VI. Mechanisms designed to monitor on-going compliance; and

VII. BSA/AML Program controls related to account opening.

C. On-going personnel training and development;

D. Independent testing of the BSA/AML Program; and

E. Risk-based procedures for conducting ongoing customer due diligence.

A. Designation of BSA/AML Officer and Governance Structure

Kabbage's Board designates the BSA/AML Officer, who has responsibility for day-to-day oversight of BSA/AML compliance for the Offerings. Section 3 describes the responsibilities of the BSA/AML Officer and Kabbage's BSA/AML governance structure.

B. Internal Controls

Kabbage has in place internal BSA/AML controls designed to mitigate risks presented by the Offerings. Kabbage's internal controls include those related to customer onboarding, transaction monitoring, and sanctions screening functions.

I. BSA/AML Risk Assessment

The BSA/AML Officer conducts an annual risk assessment to identify the inherent BSA/AML and OFAC risk of the Offerings and the effectiveness of the existing controls.

Consistent with the regulatory obligations of covered financial institutions, the risk assessment process assigns an inherent risk rating based on an assessment of customers, product and services, and geographic risks. The BSA/AML Officer then assesses the adequacy of the design and implementation of mitigating controls to determine the residual risk.[4]

The BSA/AML risk assessment process forms the foundation of the BSA/AML Program. Using the results of the BSA/AML risk assessment, the BSA/AML Officer:

- Identifies the BSA/AML risk profile of the Offerings;
- Determines the adequacy and effectiveness of BSA/AML controls;
- Evaluates the adequacy and application of BSA/AML resources;
- Identifies the existence of any unmitigated and/or unacceptable BSA/AML risk; and
- If necessary, recommends and implements modifications to Kabbage's activities and/or Policy (or the underlying procedures and processes) to bring the BSA/AML residual risk of the Offerings to an acceptable level.

The BSA/AML Officer reports the results of the BSA/AML risk assessment to the Board, including proposed enhancements to the BSA/AML Program to mitigate any levels of excessive risk or control weaknesses identified in the risk assessment, for review and approval. The BSA/AML Officer makes the assessment available to other functions within the organization, including the business (also referred to as the first line) and any product development functions.

II. Know Your Customer Program

The KYC program (the "KYC Program") is a fundamental control in preventing the Offerings from becoming involved in money laundering, terrorist financing, or sanctions violations. The KYC Program covers all customers.

[4] Refer to the BSA/AML Risk Assessment Methodology for additional details on this process.

Customers include any business that (1) qualifies for a loan or a line of credit, (2) opens a merchant account for processing card payments, or (3) opens a demand deposit account (collectively, "Account"). Accounts are currently only available to domestic (U.S.) businesses.

The risk-based KYC processes for the Offerings encompass:

- A CIP that allows Kabbage to identify and verify the identity of customers with reasonable assurance;
- A risk-based segmentation of customers; and
- A due diligence process that provides a greater depth of insight into certain customers.

Kabbage's policy is to ensure that it has a reasonable belief that it knows the true identity of all customers by collecting customer information at Account opening and collecting additional information, if warranted, depending on customer behavior.

As part of its on-boarding processes, Kabbage is required to collect and verify the identity of its customers and does so through non-documentary verification. Kabbage has engaged LexisNexis to facilitate this function. Kabbage further uses online triangulation of disparate data sources connected through its unique onboarding process to verify the identity of all customers. The vetting process for new accounts also includes automated data validation, the use of third-party data services and, when necessary, manual investigation.

In the event Kabbage is unable to form a reasonable belief that it knows the true identity of the customer, Kabbage may take the following actions:

- Decline to open the Account;
- Impose terms under which a customer may use their Account while Kabbage attempts to verify the customer's identity; or
- Close or suspend an Account after attempts to verify a customer's identity fail.

a. Customer Identification Program

For purposes of CIP regulation, all Accounts are considered to be accounts subject to CIP requirements. Therefore, Kabbage performs CIP on all applicants for an Account. Kabbage collects CIP information (a) at the time of onboarding, (b) at the time a customer initiates a change in his/her information on file, and (c) on an ongoing basis thereafter using a risk-based approach. This process is designed to ensure Kabbage is able to form a reasonable belief that it knows the true identity of each customer and is able to mitigate the risk of identity theft, money laundering, terrorist financing, and sanctions violations.

b. Beneficial Ownership Requirements for Legal Entity Customers

In accordance with FinCEN's CDD requirements, Kabbage collects and verifies ultimate beneficial ownership information of legal entity customers at the time a new Account is opened. Legal entity customers include a corporation, limited liability company (LLC), or other entities that are created by a filing of a public document with a Secretary of State or similar office, a general partnership, and any similar business entity formed in the United States or a foreign country. Legal entity customers do not include sole proprietorships or unincorporated associations. Customers that were Account holders prior to the effective date of FinCEN's CDD rule (May 11, 2018) are not subject to the beneficial ownership verification requirements under the rule.

Kabbage collects, at a minimum, the name, address, date of birth, and social security number (or passport number or other similar information, in the case of foreign persons) for the following individuals, each an ultimate beneficial owner ("UBO"), from the individual opening the Account on behalf of a legal entity customer:

- each individual who, directly or indirectly, owns 25 percent[5] or more of the equity interests of the legal entity customer ("Owner"); and
- an individual who has significant management responsibility for the legal entity customer ("Control Person")

Kabbage collects information for up to four Owners[6] and one Control Person. Kabbage further requires the individual opening the Account on behalf of a legal entity customer to certify as to the accuracy of the UBO information in a manner substantially similar to the Certification Form provided by FinCEN.[7] Kabbage uses a third-party to verify the UBO information and conducts enhanced due diligence as necessary. All records related to the identification and verification of the UBOs are retained consistent with this Policy.

c. Customer Due Diligence

The BSA/AML Program requires that CDD be performed on all customers. CDD may include: information on business and industry type; information regarding payroll filings; corporate documents; understanding of the purpose of the loan or transaction; and a Politically Exposed Person ("PEP") check.

The BSA/AML Officer, or designee, will report or refer (as applicable) potentially suspicious activity if Kabbage identifies such activity in the due diligence processes.[8]

d. High-Risk and Prohibited Customers

Kabbage has identified certain types of businesses that pose a higher risk and as a result, require enhanced due diligence ("EDD"). These include:

- Confirmed PEPs or PEP-controlled entities; and
- Businesses that are risk rated as "High" through the Customer Risk Rating ("CRR") methodology process.

Kabbage has also identified certain types of businesses that pose significant risk and as a result, has determined that they will not be accepted as customers:

- Businesses that are unable to link at least one account from a FinCEN registered money service business ("MSB") or financial institution; and
- Any business for which Kabbage has reported or referred for suspicious activity three times;

[5] For Paycheck Protection Program loans, this threshold has been reduced to 20%.

[6] For Paycheck Protection Program loans, information is collected for up to five Owners.

[7] See Appendix A to 31 § CFR 1010.230 – Certification Regarding Beneficial Owners of Legal Entity Customers.

[8] As a non-bank financing provider for Paycheck Protection Program loans, Kabbage will directly file suspicious activity reports with FinCEN.

- Businesses in the following industries: marijuana, CBD, gambling, financial services, lending, non-profits; and businesses that sell or manufacture any form of assault-style weapons and/or sell firearms or ammunition to individuals under 21;
- Businesses deemed as prohibited or requiring pre-approval for payment processing services by the Processor;
- Businesses deemed as prohibited for demand deposit account services by Green Dot.
- With respect to Paycheck Protection Program loans, businesses that are deemed ineligible for 7(a) loans guaranteed by the U.S. Small Business Administration.

Kabbage does not offer access to consumer loans, demand deposit accounts, or payment processing services for personal accounts and therefore, does not have any individual persons as customers.

e. Enhanced Due Diligence for High-Risk Customers

Kabbage utilizes a risk-based methodology to conduct EDD.

Kabbage's EDD process includes non-documentary means, documentary means, direct contact, and/or a combination of the foregoing.

A customer risk rating is assigned at the time of onboarding for the purposes of determining the need for EDD. Once EDD is successfully completed, the relevant documentation is added to the customer's profile but the risk level remains the same.

If after an assessment, it is determined that the Account or relationship may pose additional risks, the Account or relationship will be escalated to the Risk team, and the BSA/AML Officer may be consulted, to determine whether to open or maintain the Account or relationship.

III. OFAC Compliance and Name Screening

As a policy requirement, the BSA/AML Officer ensures that Kabbage complies with the OFAC requirements to enforce economic and trade sanctions based on U.S. foreign policy and national security goals. Kabbage's policy towards OFAC compliance applies to all parties with which Kabbage does business including, but not limited to customers, third-party vendors, and Kabbage personnel. The systems and controls ensure that Kabbage:

- Fully incorporates OFAC risk within the BSA/AML risk assessment;
- Screens all customers, vendors, and personnel against the SDN List;
- Updates OFAC and other applicable lists in a timely fashion when sanctions programs and/or the SDN List changes and screens existing customers, vendors, and personnel against changes to the list on a recurring basis;
- Blocks internet protocol addresses of countries subject to comprehensive OFAC sanctions, and any countries subject to narrower OFAC sanctions where the BSA/AML Officer or designee deems that internet protocol blocking is necessary to mitigate the risk of a sanctions violation;
- Works with its bank partners to resolve any sanctions concerns;
- Prevents all customers under review for a potential OFAC hit from conducting transactions;[9] and

[9] With regard to Kabbage Funding and Kabbage Checking, because the Account relationship is between the bank and the business (i.e., Kabbage does not own the Account and therefore cannot block or maintain property),

- Documents rationales for clearing all false-positive OFAC hits.

a. OFAC List Name Screening

In order to conduct a timely and orderly screening of customers, Kabbage utilizes a third-party service provider, which screens against OFAC and other sanctions lists to ensure adequate coverage and risk mitigation for the OFAC screening process. Kabbage currently screens the following data elements:

- Name of business customer;
- Name of the business representative; and
- Name of the UBO(s).

For Offerings, names are screened:

- Prior to Account creation; and
- On a recurring monthly basis.

The Compliance Manager will immediately be advised of any OFAC screening matches and will work with the BSA/AML Officer to document and communicate the match to bank partners. Where appropriate, Kabbage will also report any confirmed true matches directly to OFAC and take the legally mandated actions to manage the Account in accordance with OFAC requirements. Any true OFAC match will also be reported to the Board and maintained as a record on a regular basis.

b. USA Patriot Act Section 314A- Customer List Screening

Section 314(a) grants FinCEN the authority to require that each financial institution expeditiously search its records to determine whether it maintains or has maintained any accounts for, or engaged in specified transactions with, each individual entity or organization named in FinCEN's request.

The BSA/AML Officer, or designee, is responsible for ensuring compliance with 314(a) information sharing requests from bank partners and ensuring that such requests and responses stay confidential. Upon receipt of a FinCEN 314(a) request from a bank partner, Kabbage, in compliance with the requirement, will conduct a one-time search of the records related to the relevant Offering to identify any current Account, or any Account maintained in the last twelve (12) months, for a named suspect. Positive matches will be provided to the relevant bank partner prior to the designated response date and Kabbage will retain all records in association with the review.

If, as a part of Kabbage's status as an approved non-bank lender for Paycheck Protection Program loans, Kabbage receives 314(a) requests directly from FinCEN, Kabbage will search Paycheck Protection Program Account records in response directly to such request.

IV. Transaction Monitoring

The BSA/AML Program has in place policies, procedures, and processes to identify and monitor unusual activity, as well as a formal process for reviewing that activity, filing suspicious activity reports or

Kabbage does not have reporting requirements to OFAC related to blocked or rejected property. Kabbage would, however, cease from enabling any further transactions on the Account.

referrals suspicious activity to bank partners, and managing its systems used to assist in this process. In addition, Kabbage requires all of its employees to report unusual or potentially suspicious activity to the BSA/AML Officer or designee.

Since all transactions are conducted online and no currency (i.e., cash) is deposited, withdrawn, exchanged, or transferred in connection with the Offerings, Kabbage does not have an obligation to file currency transaction reports ("CTRs").

V. REFERRALS FOR POTENTIALLY SUSPICIOUS ACTIVITY

Under federal law, a covered financial institution must file a Suspicious Activity Report ("SAR") when it identifies suspicious activities as part of the customer onboarding and monitoring processes. While Kabbage is not a financial institution, in connection with its status as a non-bank lender for Paycheck Protection Program loans, Kabbage will file SARs directly with FinCEN. Additionally, and consistent with its contractual obligations, Kabbage will refer potentially suspicious activity to its bank partners.

Kabbage has implemented procedures for referring potentially suspicious activity to its bank partners[10] and maintains records for customer Account information (including the information obtained during the customer vetting process) for the time period required by federal obligations.

The Risk team works closely with the Compliance and Financial Operations teams to identify and report on any suspicious activities. Referrals and reports are submitted for any activity involving $5,000[11] or more of funds or assets (individually or in the aggregate) once Kabbage knows, suspects, or has reason to suspect the transaction:

- Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity as part of a plan to violate or evade federal law or regulation or to avoid any transaction reporting requirement under federal law or regulation;
- Is designed, whether through structuring or otherwise, to evade any requirements of the BSA regulations;
- Has no apparent lawful purpose or is not the business activity in which the customer would normally be expected to engage, and Kabbage knows, after examining the background, possible purpose of the transaction and other facts, of no reasonable explanation for the transaction; and/or
- Involves the use of the Offerings to facilitate criminal activity.

Information collected by Kabbage regarding suspicious activity may not be discussed with anyone outside the Kabbage organization (except for relevant bank partners). Discussion of such matters within Kabbage should be limited to those who have a need to know. If an inquiry is received from the

[10] Depending on the partner, such referrals may be labeled Questionable Activity Reports ("QARs") or Unusual Activity Reports ("UARs").

[11] Kabbage does not solely base its decision on whether to file or refer on whether the transaction is above a predefined threshold. Transactions below $5,000 may also result in a report or referral if determined to be warranted by the BSA/AML Officer.

customer or an outside third party, the inquiry must be promptly referred to the BSA/AML Officer who will consult with Kabbage's CCO to determine the appropriate course of action.

The BSA/AML Officer, or designee, evaluates whether to close accounts subject to reports or referrals. If an account is closed as a result, the BSA/AML Officer is responsible for documenting the basis for the decision. Unless specifically instructed by law enforcement not to close the account, Kabbage will consider the closure of any account on which it files three reports or referrals.

VI. Mechanisms to Monitor On-going Compliance

Kabbage has implemented additional mechanisms to monitor on-going compliance.

a. New Products Approval

All new or modified Offerings require approval by the BSA/AML Officer. Any launch decisions for new products or services will appropriately consider AML risks and include plans for additional controls, as needed.

Kabbage currently only provides the Offerings to domestic (U.S.) businesses. Any expansion of the permitted customer base constitutes a new or modified business practice for these purposes.

b. Internal Control Monitoring

The BSA/AML Officer is responsible for developing monitoring processes to identify BSA/AML Program systemic errors and control deficiencies promptly. These processes should facilitate remediation of identified BSA/AML control deficiencies as well as escalation procedures. The BSA/AML Officer or designee will then track the remediation of identified control deficiencies through corrective action plans (e.g., based on recommendations identified by the risk assessment or independent testing). The purpose of ongoing monitoring is to implement a quality control function to ensure day-to-day compliance between full, and comprehensive, testing of the BSA/AML Program.

c. Board Reporting

The BSA/AML Officer provides an annual report on the state of BSA/AML compliance and any significant emerging issues that assists the Board and CCO in evaluating any Policy changes that may be appropriate.

d. Confidential Reporting of Violations

The BSA/AML Officer ensures Kabbage employees can report violations of this Policy anonymously by telephone. The BSA/AML Officer further ensures that this mechanism is well publicized to all employees and takes all possible steps to ensure reports of potential violations remain anonymous and confidential. Kabbage never tolerates retaliation of any type against an employee who reports a potential violation of the Policy. Any employee who commits such retaliation will be subject to disciplinary action up to and including termination.

Internal referrals may not be discussed with anyone outside the organization. Discussion of such matters within Kabbage should be limited to those who have a need to know. If an inquiry is received from the customer or an outside third party, the inquiry must be promptly referred to the BSA/AML Officer, who will consult with Kabbage's CCO to determine the appropriate course of action.

VII. ADDITIONAL BSA/AML PROGRAM CONSIDERATIONS

The process by which Kabbage assesses the BSA/AML risk of a prospective customer is in part incorporated into the existing credit underwriting process for certain Offerings. Kabbage assesses the credit risk of a customer using multiple sources, many of which may also serve as indicators of BSA/AML Risk.

Customers are required to link an account from a U.S. financial institution (e.g., a regulated bank or a money service business, such as PayPal), a process that assists underwriting, customer verification, and loan disbursement.

C. TRAINING

Kabbage requires that all Kabbage personnel receive BSA/AML training appropriate to their roles and responsibilities at least annually.

New Kabbage employees are required, within 30 days of hire, to participate in an orientation that contains an overview of BSA/AML requirements.

The BSA/AML Officer is responsible for ensuring training is completed in a timely fashion. Kabbage provides training on relevant laws and regulations, including BSA/AML requirements, through an online course provided by a third-party. If deemed necessary by the BSA/AML Officer, additional in-depth training may be provided either directly by the BSA/AML Officer or a third party.

D. INDEPENDENT TESTING

Kabbage's BSA/AML Officer oversees the completion, at least annually, of an independent test of Kabbage's BSA/AML Program to assess the implementation and effectiveness of the BSA/AML Program and the adequacy of its controls over BSA/AML compliance risk.[12]

The BSA/AML Officer, or designee, is responsible for updating the risk assessment for the Offerings in light of any issues raised during the independent testing and taking necessary corrective action to remediate findings.

E. RISK-BASED CONTROLS

Kabbage has in place appropriate risk-based procedures for conducting ongoing customer due diligence which include, but are not limited to:

- understanding the nature and purpose of the customer relationship for the purposes of developing a customer risk profile; and
- conducting ongoing monitoring to identify and report suspicious activity and on a risk-basis, to maintain and update customer information.

[12] Celtic Bank is required to conduct an independent review of its BSA/AML program to assess the overall effectiveness and institute practices for monitoring the strength of internal controls. As result, Celtic Bank expects that Kabbage, as service provider to Celtic Bank, will also conduct an independent testing of the BSA/AML Program on an annual basis.

Kabbage has implemented a CRR methodology for Offerings other than Paycheck Protection Program loans[13] which assigns a risk-based rating to customers at the time of on-boarding using the following factors:

- entity type;
- industry type;
- geographic location (e.g., in HIDTA or HIFCA); and
- marketing channel.

Customers with a high CRR rating are subject to EDD. Suspicious activity monitoring and reporting are also critical internal controls and are addressed under Section 4(B)(IV). Kabbage periodically refreshes both business and individual verification information to ensure it continues to maintain updated customer information.

5. BSA/AML Policy Administration

A. Record Retention and Record Keeping

Kabbage maintains all information related to BSA/AML requirements for a period of at least five (5) years from the date of last activity on the Account. This includes but is not limited to: records of all customer information including, CIP information, purpose of loan information, credit bureau file information, documentary identification information, loan agreements, statements, transaction information, customer correspondence, and customer contact information.

B. Version Control Management

Ver.	Last Revised Date	Edited By	Comments	Bank Partner Approval Date	Board Approval Date	Last Reviewed Date
1	3/28/18	A. Habib	Revised Policy per feedback from Promontory	Celtic (3/28/18)	4/6/18	3/23/18
2	7/11/19	A. Habib	● Expanded existing Policy to contemplate payment processing services ● Addressed findings from 2018 BSA/AML audit ● Made clarifications and clean-ups	Celtic (7/11/19)	7/24/19	7/11/19
3	4/24/19	A. Habib	Expanded existing Policy to incorporate the Kabbage Checking and Kabbage Paycheck Protection Program offerings			

[13] As of April, 2020, Kabbage is still refining its customer risk segmentation process for Paycheck Protection Program loans and expects this process will likely be different from the standard CRR.

EXHIBIT C

From: Elizabeth Maiellaro <emaiellaro@kabbage.com> on behalf of Elizabeth Maiellaro <emaiellaro@kabbage.com>
Sent: Thursday, June 4, 2020 8:37 PM
To:
Subject: Re: compliance coverage

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consultant

Elizabeth Maiellaro
Counsel
www.kabbage.com

On Thu, Jun 4, 2020 at 4:17 PM Scott Askins <saskins@kabbage.com> wrote:
> is that a law firm or consultant?

Kabbage

L. Scott Askins
General Counsel
404-345-2705
www.kabbage.com

Kabbage, Inc.
730 Peachtree Street NE
Suite 1100
Atlanta, GA 30308

> On Thu, Jun 4, 2020 at 3:15 PM Elizabeth Maiellaro <emaiellaro@kabbage.com> wrote:
> > Alvarez and Marcel - doing PPP risk assessment right now - thanks!
> >
> > On Thu, Jun 4, 2020 at 3:10 PM Scott Askins <saskins@kabbage.com> wrote:
> > > Who is A&M? Happy to get upfront discount from Venable
> > >
> > > L. Scott Askins
> > >
> > > Sent from my iPhone
> > >
> > > > On Jun 4, 2020, at 10:28 AM, Elizabeth Maiellaro <emaiellaro@kabbage.com> wrote:
> > > >
> > > > Hi, Scott -
> > > >
> > > > I talked through these compliance matters with Azba and have a few suggestions for how we can get some outside support as follows:
> > > >
> > > > 1. Implementing Corrective Action Plans

FOIA Confidential Treatment Requested

Azba told me yesterday that the corrective action plans (remediations) from the 2019 Promontory risk assessment and the related Treliant audit are not complete - it will require significant effort to operationalize and validate these before any additional audit is done in the future.

We'll also have remediations arising out of the ongoing PPP risk assessment being conducted now - I'll take a shot at a corrective action plan for this one.

Since A&M is now familiar with Kabbage, we thought maybe we could negotiate a good deal to have one of the consultants at A&M get onboard and help get the three sets of remediations/corrective action plans in order - I can work with them to get a deal and be an internal point person to facilitate the work - Treliant also may be able to help except where they may be conflicted out - so I could ask them for a quote, too.

2. Reviewing A&M PPP Risk Assessment report/findings
Compliance support on PPP forgiveness process

We talked to Evan yesterday and he hinted that the firm's work volume is lower than normal and he thought Venable could give a solid discount to support the above - like a package deal/number of hours to support certain things -

I can get a deal with him I think as to rate and number of hours and efforts - we'll also use him judiciously and not have him be primary or on calls, etc.

He also said Venable will do some PPP forgiveness training at no charge - we can use this for training compliance purposes.

That's all I have for the moment but am otherwise going to make a list of areas where we'll need some coverage for Azba's workload and where we'll need some support from our internal team - will send to you!

Thank you, Liz

Elizabeth Maiellaro
Counsel
www.kabbage.com

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Elizabeth Maiellaro
Counsel
www.kabbage.com

EXHIBIT D

Kabbage

August 11, 2020

Duff & Phelps, LLC
311 S. Wacker, Suite 4200
Chicago, IL 60606

Attention: Christopher L. Janssen

Dear Mr. Janssen:

In connection with your analysis and rendering of an Opinion (as defined in the engagement letter dated August 5, 2020, the "Engagement Letter") as to the solvency and capitalization of Kabbage, LLC (as hereinafter defined) following the Proposed Transaction (as hereinafter defined), we hereby make to you the representations presented in paragraphs numbered 1 to 8 as of the date hereof and as of the date of the consummation of the Distribution. Kabbage, Inc., a Delaware corporation (together with its successors, including Kabbage, LLC (as hereinafter defined), "Kabbage"), has engaged Duff & Phelps, LLC ("Duff & Phelps") to serve as an independent financial advisor to the board of directors (the "Board of Directors") of Alpha Kabbage, Inc., a Delaware corporation ("Alpha Kabbage" and, together with Kabbage, the "Company") (solely in their capacity as members of the Board of Directors) and to provide certain determinations in connection with the Proposed Transaction, as defined below.

It is Duff & Phelps' understanding that the Proposed Transaction involves a series of steps intended to separate Kabbage's lending and servicing platform (the "Alpha Assets") from the Company's existing loan book to allow for the eventual sale to a third-party buyer (the "Buyer") of the Alpha Assets (the "Alpha Acquisition"). The first steps create Alpha Kabbage and effect a merger between Green Target Merger Sub, LLC, a Delaware limited liability company ("Reorg Merger Sub"), and Kabbage (the "Reorg Merger"), with the result of Alpha Kabbage becoming the sole stockholder of Kabbage.

Following the conversion of Kabbage to a Delaware limited liability company ("Kabbage, LLC"), Kabbage, LLC will distribute the Alpha Assets to Alpha Kabbage (the "Distribution"). Kabbage, LLC will retain the existing loan book and will service obligations under the existing loan book and any other assets, liabilities and operations not acquired by the Buyer. After servicing those obligations, Kabbage, LLC will be eventually wound down.

1. We have made available to you all significant information that we believe is relevant to your analysis, including financial projections and budgets. The information we have provided includes accurate historical financial and operating data and other information regarding Kabbage, LLC as of the date of your analysis.

2. The assumptions provided and utilized in the projected cash flow calculations for Kabbage, LLC represent management's best estimates as to the future operating performance and financial results of

Kabbage, LLC. The assumptions supporting such projections are both reasonable and achievable as of the date hereof and have been subject to management and board review and approval.

3. We understand that there will usually be differences between prospective financial information and actual results, and these differences may be material. Accordingly, to the extent that any of the information used in the analysis requires adjustment, the resulting conclusion or your Opinion could be different.

4. We understand that distribution of your conclusions or your Opinion, which is to be distributed only in its entirety, is intended for and restricted to the Company and the Board of Directors. Your conclusions or your Opinion will not be discussed or disclosed by Company personnel with any other party for any purpose without your prior express written approval. Neither your Opinion nor any reference to your firm will be included or quoted in any offering or registration statement, proxy statement, prospectus, sales brochure, appraisal, loan or other agreement or document without your prior express written approval regarding both the form and substance of such disclosure. The Company agrees to obtain Duff & Phelps' written consent (not to be unreasonably withheld) before disclosing any of Duff & Phelps' advice or analysis to anyone other than the Company's legal counsel, or otherwise making reference to its role, whether orally or in writing; provided, however, that Duff & Phelps hereby consents to the Company (i) informing the stockholders of Alpha Kabbage and credit rating agencies of the existence of the Opinion and that the Opinion was prepared by Duff & Phelps and (ii) delivering a non-reliance copy of the Opinion to the Buyer upon the execution of a release agreement, executed by the Buyer, in a form reasonably acceptable to Duff & Phelps. Other than as described in the preceding sentence, if Duff & Phelps gives such written consent, the language of such disclosure it is subject to the prior written approval of Duff & Phelps.

5. We understand that if there are any changes made to the facts, circumstances or underlying assumptions, both as expressed in this management representation letter and in any other discussion with us, your Opinion could change and this change may be material.

6. Based upon our review to date of your analysis and materials that you have provided, nothing has come to our attention that would cause us to believe that the assumptions underlying your analyses are unreasonable or unachievable given the prevailing facts and circumstances surrounding Kabbage, LLC and the Proposed Transaction.

7. Exhibit A lists, to the best knowledge of the management of the Company, all contingent and unliquidated liabilities and obligations that may require a cash payment by Kabbage, LLC. We acknowledge and agree that any liabilities or obligations not listed on Exhibit A may change your analysis and opinion. Further, we hereby represent that except as set forth on Exhibit A, (i) Kabbage, LLC has no other known liabilities or obligations of any kind or nature whatsoever, contingent or otherwise, including, without limitation, any liabilities or obligations with respect to (A) any credit, debit or charge card or similar product or facility provided or offered by Kabbage, LLC or any of its affiliates and any agreement or arrangement related thereto, or (B) any actions, causes of actions, litigation, claims, audits, examinations or similar proceedings, and (ii) Kabbage, LLC has sufficient unencumbered and immediately available cash to satisfy all of its operational and financial needs and requirements and to conduct the business and

operations of Kabbage, LLC in a manner consistent with the financial projections outlined in Exhibit B following the consummation of the Distribution.

8. Exhibit B presents the financial projections of Kabbage, LLC for the six-year period following the consummation of the Distribution.

Sincerely,



August 14, 2020

Oneal Bhambani
Chief Financial Officer, Kabbage, Inc.

Date

Exhibit A: Listing of Reserves

Description	Reserve (3)
Mastercard Small Business Credit Co-Brand Agreement (1)	$300,000
Potential Legal Liabilities	$1,000,000
PPP Put Back	$950,000
General Liquidity	$100,000
Estimated Contractual Loan Servicing Obligations (2)	$12,996,500

(1) Amount represents estimated launch support fees that would need to be reimbursed to MasterCard in the event MasterCard terminates agreement.

(2) Amount projected by using revenue and cost assumptions for the SMB and PPP portfolios.

(3) For avoidance of doubt, amount represents reserved cash to fund liabilities, not an estimation of liabilities.

Exhibit B: Financial Projections

Cash Burn Projections - Base Case

($ in thousands)

	Current	Year 1 Projected	Year 2 Projected	Year 3 Projected	Year 4 Projected	Year 5 Projected	Year 6 Projected
Portfolio Outstanding (balances as of period end):							
Number of KBG Active Accounts	28,112	4,180	1,483	559	177	15	-
Number of KBG Delinquent and Charged Off Accounts	11,294	1,831	495	209	70	8	0
Principal balance outstanding	$471,657	$58,721	$23,259	$6,452	$1,268	$43	$0
PPP Accounts and Principle Balance Outstanding							
Number of Accounts	219,074	14,449	11,147	11,147	11,147	11,147	11,147
Principal balance outstanding	$5,557,726	$944,904	$529,471	$529,471	$529,471	$529,471	$529,471
Headcount (as of period end):							
KBG	89	15	6	3	2	2	1
PPP	113	25	15	11	11	11	11
Corporate staff	3	3	3	3	3	2	2
Total	205	44	24	17	16	15	14
	Cumulative Total Year 1 - Year 6						
KBG							
Servicing Income (Warehouse / Forward Flow)	$288	$237	$35	$13	$3	$0	$0
Resale of repurchased charge-offs (at $0.045)	717	657	40	15	4	1	0
Repurchase obligation - Forward Flow (Purchase of Charge-offs at $0.03)	478	438	26	10	3	1	0
Credit Operations Costs	3,316	2,234	468	241	155	141	78
KBG Net Contribution	($2,789)	($1,778)	($420)	($223)	($150)	($140)	($78)
PPP							
Interest Income, net of financing charges	$7,952	$5,294	$585	$539	$525	$511	$497
Customer Service Costs	9,489	4,816	1,290	1,117	756	756	756
PPP Net Contribution	($1,538)	$478	($705)	($577)	($230)	($244)	($258)
OPEX							
Software & Services	$4,076	$2,289	$520	$400	$327	$286	$254
Office, utilities and facilities	1,094	461	241	133	86	86	86
Other G&A	1,019	200	189	180	150	150	150
Corporate Operations (incl labor)	1,944	348	348	348	348	276	276
Total	$8,133	$3,298	$1,298	$1,061	$912	$798	$766
Cash from unpledged loans	$778	$681	$44	$37	$12	$3	$0
PPP Put Back	$0	$0	$0	$0	$0	$0	$0
Cash Burn	**($11,682)**	**($3,918)**	**($2,378)**	**($1,824)**	**($1,280)**	**($1,180)**	**($1,102)**
Beginning Cash Balance	**$15,500**	**$15,500**	**$11,582**	**$9,204**	**$7,380**	**$6,100**	**$4,920**
Ending Cash Balance	**$3,818**	**$11,582**	**$9,204**	**$7,380**	**$6,100**	**$4,920**	**$3,818**

Cash Burn Projections - Sensitivity Case

($ in thousands)

	Current	Year 1 Projected	Year 2 Projected	Year 3 Projected	Year 4 Projected	Year 5 Projected	Year 6 Projected
Portfolio Outstanding (balances as of period end):							
Number of KBG Active Accounts	28,112	4,684	1,470	588	204	23	-
Number of KBG Delinquent and Charged Off Accounts	11,294	3,427	866	387	141	20	1
Principal balance outstanding	$471,657	$71,791	$29,328	$8,692	$1,850	$79	$0
PPP Accounts and Principle Balance Outstanding							
Number of Accounts	219,074	16,488	12,761	12,761	12,761	12,761	12,761
Principal balance outstanding	$5,557,726	$1,231,675	$913,487	$913,487	$913,487	$913,487	$913,487
Headcount (as of period end):							
KBG	89	23	7	4	3	2	1
PPP	113	28	22	16	16	16	16
Corporate staff	3	3	3	3	3	2	2
Total	205	54	32	23	22	20	19

	Cumulative Total Year 1 - Year 6						
KBG							
Servicing Income (Warehouse / Forward Flow)	$274	$272	$3	$0	$0	$0	$0
Resale of repurchased charge-offs (at $0.045)	782	768	14	-	-	-	-
Repurchase obligation - Forward Flow (Purchase of Charge-offs at $0.03)	521	512	9	-	-	-	-
Credit Operations Costs	4,309	2,983	621	305	175	146	79
KBG Net Contribution	($3,774)	($2,456)	($614)	($305)	($175)	($146)	($79)
PPP							
Interest Income, net of financing charges	$9,807	$5,350	$960	$910	$886	$863	$839
Customer Service Costs	11,843	5,046	1,757	1,586	1,151	1,151	1,151
PPP Net Contribution	($2,036)	$304	($797)	($677)	($265)	($289)	($312)
OPEX							
Software & Services	$4,472	$2,428	$589	$458	$373	$329	$295
Office, utilities and facilities	1,076	441	242	133	87	87	87
Other G&A	1,605	283	272	263	263	263	263
Corporate Operations (incl labor)	1,865	335	335	335	335	263	263
Total	$9,018	$3,487	$1,437	$1,189	$1,057	$941	$907
Cash from unpledged loans	$730	$857	($11)	($29)	($29)	($29)	($29)
PPP Put Back	($949)	($949)	$0	$0	$0	$0	$0
Cash Burn	**($15,046)**	**($5,731)**	**($2,859)**	**($2,200)**	**($1,526)**	**($1,404)**	**($1,327)**
Beginning Cash Balance	**$15,500**	**$15,500**	**$9,769**	**$6,910**	**$4,711**	**$3,185**	**$1,780**
Ending Cash Balance	**$454**	**$9,769**	**$6,910**	**$4,711**	**$3,185**	**$1,780**	**$454**

EXHIBIT E

DUFF & PHELPS



Confidential

Kabbage

October 15, 2020

Solvency Analysis Related to a Proposed Distribution

The information contained herein is of a confidential nature and is intended for the exclusive use of the persons or firm to whom it is furnished by us. Reproduction, publication, or dissemination of portions hereof may not be made without prior written approval of Duff & Phelps, LLC.

Duff & Phelps Disclaimer

- The following pages contain material that is being provided by Duff & Phelps, LLC ("Duff & Phelps" or "we") to the Board of Directors (as defined herein) (solely in their capacity as such) of the Company (as defined herein) as supporting analysis for an opinion that Duff & Phelps has been engaged to provide to the Company and the Board of Directors in connection with a Proposed Transaction (as defined herein).

- The accompanying material was compiled and prepared on a confidential basis for the sole use of the Company and the Board of Directors in connection with their consideration of the Proposed Transaction and not with a view toward public disclosure and may not be disclosed, summarized, reproduced, disseminated or quoted from or otherwise referred to, in whole or in part, without the prior written consent of Duff & Phelps.

- Without limiting the prior bullet, because this material was prepared for use in the context of a presentation to the Company and the Board of Directors, which are familiar with the business, assets, liabilities, prospects and affairs of the Company, neither the Company nor Duff & Phelps, nor any of their respective legal or financial advisors or accountants, takes any responsibility for the accuracy or completeness of any of the material if used by persons other than the Company and the Board of Directors.

- These materials are not intended to represent an opinion but rather to serve as discussion materials for the Company and the Board of Directors to review and include information that may form a portion of a basis upon which Duff & Phelps may render an opinion. Any reference herein to an opinion or discussions related thereto are qualified in their entirety by reference to any opinion actually rendered by Duff & Phelps in connection with the Proposed Transaction.

- The information utilized in preparing this presentation was obtained from the Company and public sources. Duff & Phelps relied without independent verification upon the accuracy, completeness, and fair presentation in all material respects of data, including all information contained in the Company's pro forma financial statements, and relied without independent verification on the accuracy of representations that Duff & Phelps obtained from public sources, private sources and management of the Company. Any estimates and projections contained herein have been prepared by or based on discussions with the senior management of the Company and involve numerous and significant subjective assumptions and determinations, which may or may not prove to be correct. Projections necessarily involve risks and uncertainties. No representation or warranty, expressed or implied, is made as to the accuracy or completeness of such information and nothing contained herein is, or shall be relied upon as, a representation, whether as to the past or the future. Duff & Phelps did not independently verify such information.

- Nothing contained herein should be construed as tax, legal, regulatory or accounting advice.

- As you are aware, the credit, financial and stock markets have been experiencing unusual volatility and economies and businesses have been impacted and disrupted due to the COVID-19 pandemic and may be potentially impacted and disrupted in the future due to a resurgence of the COVID-19 pandemic or "second wave" thereof. As such, and notwithstanding anything to the contrary herein or otherwise, we express no opinion or view, and have performed no analysis, review or assessment, as to any potential effects of such volatility, impact or disruption on Kabbage, Inc. or the Proposed Transaction.

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Section

1. Introduction and Background
2. Balance Sheet Analysis
3. Capital Adequacy / Cash Flow Analysis

Appendix

I. Original Base Case and Original Sensitivity Case

1. Introduction and Background

Introduction and Background

Engagement and Transaction Overview

The Engagement

- Kabbage, Inc., a Delaware corporation (together with its successors, including Kabbage, LLC (as defined below), "Kabbage" or "Kabbage, Inc."), has engaged Duff & Phelps, LLC ("Duff & Phelps") to serve as an independent financial advisor to the board of directors (the "Board of Directors") of Alpha Kabbage, Inc., a Delaware corporation ("Alpha Kabbage" and, together with Kabbage, the "Company") (solely in their capacity as members of the Board of Directors) and to provide certain determinations (collectively, the "Opinion") in connection with the Proposed Transaction, as defined below.

The Proposed Transaction

- It is Duff & Phelps' understanding that the transaction involves a series of steps intended to separate Kabbage's lending and servicing platform (the "Alpha Assets") from the Company's existing loan book to allow for the eventual sale to a third-party buyer (the "Buyer") of the Alpha Assets (the "Alpha Acquisition"). The first steps created Alpha Kabbage and effected a merger between Green Target Merger Sub, LLC, a Delaware limited liability company ("Reorg Merger Sub"), and Kabbage (the "Reorg Merger"), with the result of Alpha Kabbage becoming the sole stockholder of Kabbage.
- Following the conversion of Kabbage to a Delaware limited liability company ("Kabbage, LLC"), Kabbage, LLC distributed the Alpha Assets to Alpha Kabbage (the "Distribution"). Kabbage, LLC then converted back to Kabbage, Inc. Kabbage, Inc. will retain the existing loan book and will service obligations under the existing loan book and any other assets, liabilities and operations not acquired by the Buyer. After servicing those obligations, Kabbage, Inc. will be eventually wound down.

Introduction and Background

Determinations

The Company has requested that Duff & Phelps determine whether, as of the date hereof and after giving effect to the consummation of the transactions contemplated by Exhibit K to the Merger Agreement (as defined herein), including the Distribution:

1. Kabbage, Inc. should be able to pay its Debts (including Contingent Liabilities) as they become due;

2. Kabbage, Inc. will not have an unreasonably small amount of assets (or capital) for the businesses in which it is engaged or in which management has indicated it intends to engage;

3. The Fair Value of the assets of Kabbage, Inc. exceeds the sum of (a) its Liabilities (including Contingent Liabilities) and (b) its capital (as such capital is calculated pursuant to Section 154 of the Delaware General Corporation Law) (including the exclusion from such calculation of (a) Non-Recourse Liabilities and (b) assets subject to Non-Recourse Liabilities, except to the extent that the Fair Value of such assets exceeds such Non-Recourse Liabilities); and

4. Kabbage, Inc. will have sufficient cash on hand and working capital to service the Retained Loan Assets and to satisfy its obligations under any of its retained Contracts or Liabilities to third-parties that are known by the Company or are reasonably likely to exist as of the closing date of the Proposed Transaction, and the amount representing such sufficient cash on hand and working capital is equal to or greater than the Retained Cash (Retained Loan Assets, Contracts, Liabilities, and Retained Cash are each as defined in the Merger Agreement, which is hereinafter defined).

This presentation contains a summary of our analysis and related observations with respect to the determinations described above, but does not constitute an opinion with respect to these determinations. Any opinion as to these determinations would be subject to assumptions, qualifications, other limitations, and other disclosures which are described in the Opinion letter and would be provided by Duff & Phelps in the form of a signed opinion letter separately provided to the Board of Directors. Any capitalized terms used but not defined herein have the respective meanings ascribed to them in the Opinion.

Introduction and Background

Scope of Analysis

In connection with the Opinion, Duff & Phelps has made such reviews, analyses and inquiries as it has deemed necessary and appropriate to render the Opinion. Duff & Phelps also took into account its assessment of general economic, market and financial conditions, as well as its experience in securities and business valuation, and with respect to similar transactions. Duff & Phelps' procedures, investigations, and financial analysis with respect to the preparation of the Opinion included, but were not limited to, the items summarized below:

- Reviewed the following documents:
  - The audited financial statements for Kabbage for the year ended December 31, 2019 provided to us by management of the Company;
  - Financial projections provided to us by management of the Company (the "Management Projections");
  - A letter dated October [ ], 2020 from the management of the Company which made certain representations as to historical financial statements, the Management Projections and the underlying assumptions, and Contingent Liabilities for Kabbage on a post-transaction basis (the "Management Letter");
  - The Transfer, Assignment and Assumption Agreement dated as of October 13, 2020 by Kabbage, LLC and Alpha Kabbage (the "Transfer Agreement");
  - The Agreement and Plan of Merger among American Express Travel Related Services Company, Inc., Green Acquisition Merger Sub, Inc., Kabbage, Inc., Alpha Kabbage, Inc., and Fortis Advisors, LLC, dated as of August 16, 2020 (as amended and in effect, the "Merger Agreement"); and
  - Other files provided by the management of the Company including, but not limited to:
    - i. KBRA Comments on Kabbage Asset Securitization LLC, Series 2019-1 Rapid Amortization Event (1).pdf
    - ii. Kabbage - Board Presentation (7.29.20) v1.pdf
    - iii. Kabbage Slide Deck (FTP).pptx
    - iv. Kabbage - Small Business Credit Co-brand Agreement - 2020 - signed.pdf
    - v. Marqeta Kabbage Program Addendum 10.6.15.pdf
    - vi. ns.Kabbage_Visa Direct Incentive Agreement_Final watermarked 8 9 18.pdf
    - vii. Project Green __ Servicing Transition Matters (3).DOCX
    - viii. Proposal to Kabbage - PPP & KBG Loan Servicing.pdf
    - ix. 6 - Loan Loss Reserve June 2020.xlsx
    - x. B1 Credit Decision Process Overview.pdf
    - xi. B2 B3 Historical Roll Rates by Delinquency Bucket.xlsb
    - xii. B5 Houlihan Lokey Kabbage Draft (7.27.20).pdf
    - xiii. D5 Forward Flow Charge Off Repurchase.xlsx
    - xiv. Kabbage Servicing Model (8-9-2020) Base Case.xlsx
    - xv. Kabbage Servicing Model (Stress Test - 8-9-2020).xlsx
    - xvi. C1 Kabbage PPP Servicing Loan Tape 2020-06-30 (Update).xlsb
    - xvii. C1 Kabbage SMB Servicing Loan Tape 2020-06-30 (Update).xlsb
    - xviii. C3 Servicing Overview Aug 4 2020.pptx
    - xix. K Servicing (10-10-2020).xlsx
    - xx. SC1-#5273823-v11-Green_-_Transition_Services_Agreement_(TSA).DOCX
    - xxi. SC1-#5300739-v3-Green_-_Transition_Services_Agreement_(TSA)_Schedules.DOCX
    - xxii. Danny Eidson Offer Letter 2020 (1).docx
    - xxiii. Please_DocuSign_Revised_-_Jon_Hoffman_Offer_.pdf
    - xxv. Kabbage PPP Servicing Loan Tape 2020-09-30.xlsb
    - xxvi. Kabbage SMB Servicing Loan Tape 2020-09-30.xlsb
    - xxvii. Legacy Co BS - D&P.pdf
    - xxviii. Correspondent Agreement 6.1 - 09.30.2020_KBG_clean (2) (1).docx

Introduction and Background

Scope of Analysis (continued)

- Discussed the information referred to above and the background and other elements of the Proposed Transaction with the management of the Company;
- Discussed with Company management its plans and intentions with respect to the management and operation of the business of Kabbage;
- Performed certain cash flow analyses using the Management Projections, which, based on management's representations and with its consent, represent a reasonable downside scenario; and
- Conducted such other analyses and considered such other factors as Duff & Phelps deemed appropriate.

2.

Balance Sheet Analysis

Balance Sheet Analysis

Conclusions

- Based on the Bringdown Sensitivity Case Management Projections:
  - The net asset value of Kabbage, Inc. is at least $3.054 million; and
  - The surplus of Kabbage, Inc. is at least $3.001 million.

Balance Sheet Test

($ in thousands)

Cash (1)	$108,792.0
Fees receivable (SBA, Customers Bank)	2,539.0
Asset Value	**111,331.0**
Contractual servicing obligation (2)	(16,485.0)
Payable to South State Bank per Correspondent Agreement	(2,280.0)
Amounts due to PPP funding partners for returned loans	(78,927.0)
Amounts reserved for return of SBA processing fees for returned loans	(2,500.0)
Accrued vacation, paid time off, and sabbatical leave	(2,409.0)
Accrued bonuses	(3,308.0)
Other accrued expenses	(1,131.0)
Payroll tax deferrals pursuant to the CARES Act	(1,237.0)
Additional Contingent and Other Liabilities (3)	0.0
Net Asset Value - Kabbage, Inc.	**$3,054.0**
Less: Stated Capital (4)	(53.0)
Surplus	**$3,001.0**

(1) As of October 13, 2020
(2) Based on the Bringdown Sensitivity Case, refer to page 16. Bringdown Sensitivity Case includes certain reserves for potential liabilities including legal ($1.0mn), PPP-related ($0.95mn), Mastercard reimbursement ($0.3mn)
(3) Per Management representation; amounts represent reserves in addition to those included in footnote 2.
(4) Stated capital of $0.053mn as per 2019 audited financial statements of Kabbage, Inc.

Balance Sheet Analysis

Determinations and Methodology

Determination

- The Company has requested that Duff & Phelps determine whether, as of the date hereof and after giving effect to the consummation of the Distribution:

1. The Fair Value of the assets of Kabbage, Inc. exceeds the sum of (a) its Liabilities (including Contingent Liabilities) and (b) its capital (as such capital is calculated pursuant to Section 154 of the Delaware General Corporation Law) (including the exclusion from such calculation of (a) Non-Recourse Liabilities and (b) assets subject to Non-Recourse Liabilities, except to the extent that the Fair Value of such assets exceeds such Non-Recourse Liabilities); and

2. Kabbage, Inc. will have sufficient cash on hand and working capital to service the Retained Loan Assets and to satisfy its obligations under any of its retained Contracts or Liabilities to third-parties that are known by the Company or are reasonably likely to exist as of the closing date of the Proposed Transaction, and the amount representing such sufficient cash on hand and working capital is equal to or greater than the Retained Cash (Retained Loan Assets, Contracts, Liabilities, and Retained Cash are each as defined in the Merger Agreement, which is hereinafter defined).

Methodology

- Duff & Phelps estimated the cumulative service obligations under the existing loan book utilizing the Bringdown Sensitivity Case of the Management Projections (refer to page 16), and deducted liabilities and the undiscounted cumulative service obligations from balance sheet cash to estimate the net asset value for Kabbage, Inc.

3. Capital Adequacy / Cash Flow Analysis

Capital Adequacy / Cash Flow Analysis

Determinations and Methodology

Determination

- The Company has requested that Duff & Phelps determine whether, as of the date hereof and after giving effect to the consummation of the Distribution:

1. Kabbage, Inc. should be able to pay its Debts (including Contingent Liabilities) as they become due; and

2. Kabbage, Inc. will not have an unreasonably small amount of assets (or capital) for the businesses in which it is engaged or in which management has indicated it intends to engage.

Methodology

- Performed a detailed analysis of cash flow projections based on the Bringdown Sensitivity Case Management Projections to assess the ability to service obligations under the existing loan book.

Cash Flow / Capital Adequacy Analysis

Portfolio Stratifications

Total Portfolio

($ in thousands)

Program	Count*	Outstanding Principal*	% of Total	Maturity Date**	Term (Months)**	Interest Rate (APR)**	30-59 Days Past Due**	60-89 Days Past Due**	90+ Days Past Due**
PPP	258,339	$6,107,884	93.89%	8/9/2023	38.16	1.00%	N/A	N/A	N/A
Pledged Non-EPP	52,818	$283,577	4.36%	1/12/2021	11.92	40.94%	3.75%	4.34%	30.62%
Pledged EPP	21,244	$112,307	1.73%	7/2/2020	9.99	42.93%	2.73%	2.45%	8.46%
Not Pledged Non-EPP	4,781	$941	0.01%	4/9/2021	14.31	41.02%	12.68%	4.09%	32.87%
Not Pledged EPP	1,785	$309	0.00%	3/17/2020	8.34	48.72%	0.71%	5.04%	6.33%
Total	**338,967**	**$6,505,017**	**100.00%**	**6/9/2023**	**36.52**	**3.47%**	**3.48%**	**3.81%**	**24.34%**

PPP

($ in thousands)

Loan Balance	Count*	Outstanding Principal*	% of Total	Maturity Date**	Term (Months)**	Interest Rate**
<=$150 K	253,420	$4,470,463	73.19%	10/9/2023	40.01	1.00%
>$150 K	4,919	$1,637,420	26.81%	2/22/2023	33.09	1.00%
Total	**258,339**	**$6,107,884**	**100.00%**	**8/9/2023**	**38.16**	**1.00%**

Direct vs. Non-Direct	Count*	Outstanding Principal*	% of Total	Maturity Date**	Term (Months)**	Interest Rate**
Direct	98,769	$1,475,747	54.30%	4/30/2024	46.26	1.00%
Non-Direct	159,570	$1,241,983	45.70%	12/5/2022	30.60	1.00%
Total	**258,339**	**$2,717,730**	**100.00%**	**8/9/2023**	**38.16**	**1.00%**

SMB

($ in thousands)

EPP Status	Count	Outstanding Principal*	% of Total	Maturity Date**	Term (Months)**	Interest Rate (APR)**	30-59 Days Past Due**	60-89 Days Past Due**	90+ Days Past Due**
Non-EPP	57,599	$284,518	71.64%	1/12/2021	11.93	40.94%	3.78%	4.34%	30.63%
EPP	23,029	$112,616	28.36%	7/2/2020	9.99	42.95%	2.73%	2.46%	8.46%
Total	**80,628**	**$397,134**	**100.00%**	**11/18/2020**	**11.38**	**41.51%**	**3.48%**	**3.81%**	**24.34%**

*Balances displayed in thousands based on the provided filename “Kabbage SMB Servicing Loan Tape 2020-09-30.xlsb”. PPP balances and counts based upon filename “K Servicing Model (10-10-2020).xlsx”.

**Indicates a metric displayed as a weighted average.

Cash Flow / Capital Adequacy Analysis

Bringdown Sensitivity Case - Key Assumptions Reviewed

Duff & Phelps reviewed the Bringdown Sensitivity Case Management Projections as the basis for the cash flow analysis. Key assumptions include:

PPP Bringdown Sensitivity Case – Key Assumptions

- Management has utilized the same forgiveness scheduled for loans above $150,000 and below $150,000 in the Original Sensitivity Case.
- Management has maintained the same percentage of loans projected to be “put-back” as a result of improper document review, or as a result of a change to the SBA’s view on “Safe Harbor” in the Original Sensitivity Case.
- Per the Shared Services Agreement, Management has elected to outsource certain Customer Servicing responsibilities to American Express employees for approximately six months.
- Management has projected a faster wind down of headcount in late 2021 as compared to mid 2023 in the Original Sensitivity Case.
- Management has updated accounts and balances with known information from July and August, with approximately 39,000 more accounts than in the Original Sensitivity Case.

SMB Bringdown Sensitivity Case – Key Assumptions

- Management utilized the same roll rates that were utilized in the Original Sensitivity Case and continued to use contractual paydown percentages to forecast balance, delinquency migration, and account number run-offs.
- Management’s assumptions for contractual repurchase charge-off obligation fee and resale of repurchased charge-offs remained the same as those utilized in the Original Sensitivity Case.
- Management decreased the contractual assumption for the warehouse servicing fees from 3% to 1%. This is a negotiating tactic that they have considered but not yet executed. It is a conservative estimate to assume that they will.
- Management updated accounts and balances with known information from July and August. Both accounts and balances have amortized faster than was previously projected in the Original Sensitivity Case.
- Management assumed an additional $999,788 in expenses related to potential additional hiring for selected servicing functions as needed.

Servicing Model

Bringdown Sensitivity Case Summary

Cash Burn Projections - Bringdown Sensitivity Case

	As of 9/30/2020	Year 1 Projected	Year 2 Projected	Year 3 Projected	Year 4 Projected	Year 5 Projected	Year 6 Projected
Portfolio Outstanding (balances as of period end):							
KBG Active Accounts	21,701	1,714	451	96	22	1	-
KBG Delinquent and Charged Off Accounts	10,869	1,624	326	77	17	2	-
Principal balance outstanding ($MMs)	394,539	41,281	10,024	1,568	209	4	-
PPP Accounts and Volumes							
Accounts	258,339	19,526	14,604	14,604	14,604	14,604	14,604
Volumes ($Ms)	6,108	1,283	943	943	943	943	943
Headcount (as of period end):							
KBG	75	10	2	1	1	1	1
PPP	116	17	11	11	11	11	11
Corporate staff (Inc. Amex employees)	23	24	15	13	12	12	11
Total	213	51	28	25	23	23	22
	Cumulative Total Year 1 - Year 6	**Year 1 Projected**	**Year 2 Projected**	**Year 3 Projected**	**Year 4 Projected**	**Year 5 Projected**	**Year 6 Projected**
KBG							
Servicing Income (Warehouse / Forward Flow)	158	130	23	5	1	0	0
Resale of repurchased charge-offs (at $0.045)	680	594	66	17	3	0	0
Repurchase obligation - Forward Flow	453	(396)	(44)	(11)	(2)	(0)	(0)
Credit Operations Costs (Inc. Third Party Expenses)	3,230	(2,221)	(392)	(180)	(151)	(144)	(143)
KBG Net Contribution	(2,846)	(1,894)	(347)	(170)	(149)	(144)	(143)
PPP							
Interest Income, net of financing charges	11,294	6,437	1,048	991	965	939	914
Customer Service Costs	4,057	1,795	512	437	437	437	437
PPP Net Contribution	7,237	4,641	536	553	528	502	476
Bringdown Related Expenses							
Shared Personnel	(5,168)	(1,329)	(1,015)	(870)	(749)	(603)	(603)
Training	(13)	(13)	-	-	-	-	-
Platform	(4,690)	(2,295)	(907)	(649)	(347)	(264)	(228)
OPEX							
Software & Services	4,222	2,405	487	353	335	325	317
Office, utilities and facilities	91	39	13	11	10	9	9
Other G&A	2,254	1,285	390	174	144	130	130
Corporate Operations (incl labor)	4,466	1,117	1,044	1,029	498	498	280
Total	11,033	4,846	1,934	1,567	987	963	737
Cash from unpledged loans (Inc. Miscellaneous Credits)	1,086	1,054	24	7	0	0	0
PPP Put Back	(1,058)	(1,058)	0	0	0	0	0
Cash Burn	**(16,485)**	**(5,739)**	**(3,643)**	**(2,694)**	**(1,705)**	**(1,472)**	**(1,233)**
Beginning Cash Balance	**17,000**	**17,000**	**11,261**	**7,618**	**4,924**	**3,220**	**1,748**
Ending Cash Balance	**515**	**11,261**	**7,618**	**4,924**	**3,220**	**1,748**	**515**

Note: Beginning cash balance excludes fees receivable from SBA and Customers Bank of $2.5mn

Servicing Model

Bringdown Sensitivity Case Summary (Compared against the Original Sensitivity Case)

Sensitivity Analysis - Bringdown Sensitivity Case vs. Original Sensitivity Case

($ in thousands)

	Year 1 Projected	Year 2 Projected	Year 3 Projected	Year 4 Projected	Year 5 Projected	Year 6 Projected	
Number KBG Active Accounts							**Year 1 - Year 6 Cumulative Variance**
Original Sensitivity Case	4,684	1,470	588	204	23	-	
Bringdown Sensitivity Case	1,714	451	96	22	1	-	**-67.2%**
Number KBG Delinquent and Charged Off Accounts							**Year 1 - Year 6 Cumulative Variance**
Original Sensitivity Case	3,427	866	387	141	20	1	
Bringdown Sensitivity Case	1,624	326	77	17	2	-	**-57.8%**
Number of PPP Accounts							**Year 1 - Year 6 Cumulative Variance**
Original Sensitivity Case	16,488	12,761	12,761	12,761	12,761	12,761	
Bringdown Sensitivity Case	19,526	14,604	14,604	14,604	14,604	14,604	**15.3%**
KBG Net Contribution							**Year 1 - Year 6 Cumulative Variance**
Original Sensitivity Case	(2,456)	(614)	(305)	(175)	(146)	(79)	
Bringdown Sensitivity Case	(1,894)	(347)	(170)	(149)	(144)	(143)	**$929**
PPP Net Contribution							**Year 1 - Year 6 Cumulative Variance**
Original Sensitivity Case	304	(797)	(677)	(265)	(289)	(312)	
Bringdown Sensitivity Case	4,641	536	553	528	502	476	**$9,273**
Total Opex							**Year 1 - Year 6 Cumulative Variance**
Original Sensitivity Case	3,487	1,437	1,189	1,057	941	907	
Bringdown Sensitivity Case	4,846	1,934	1,567	987	963	737	**$2,015**
Bringdown Related Expenses							**Year 1 - Year 6 Cumulative Variance**
Original Sensitivity Case	-	-	-	-	-	-	
Bringdown Sensitivity Case	(3,637)	(1,923)	(1,518)	(1,096)	(867)	(830)	**($9,871)**
Cash Burn							**Year 1 - Year 6 Cumulative Variance**
Original Sensitivity Case	(5,731)	(2,859)	(2,200)	(1,526)	(1,404)	(1,327)	
Bringdown Sensitivity Case	(5,739)	(3,643)	(2,694)	(1,705)	(1,472)	(1,233)	**($1,439)**

Appendix I

Original Base Case and Original Sensitivity Case

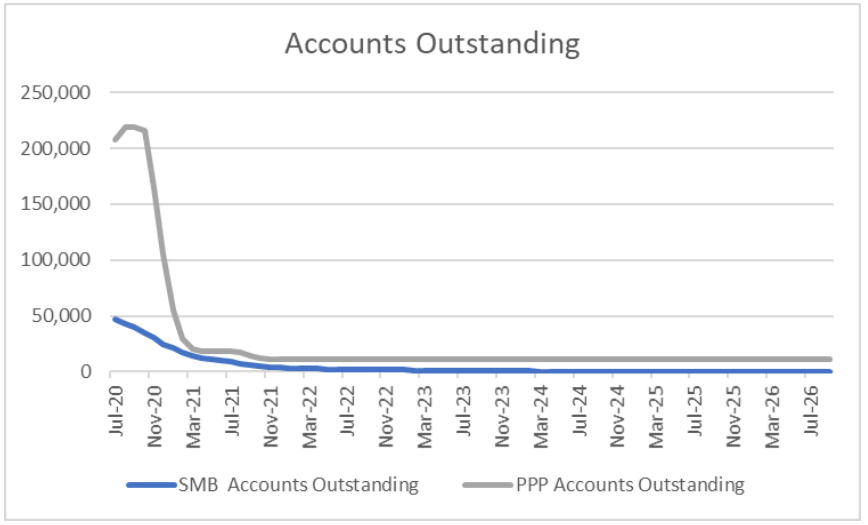
Cash Flow / Capital Adequacy Analysis

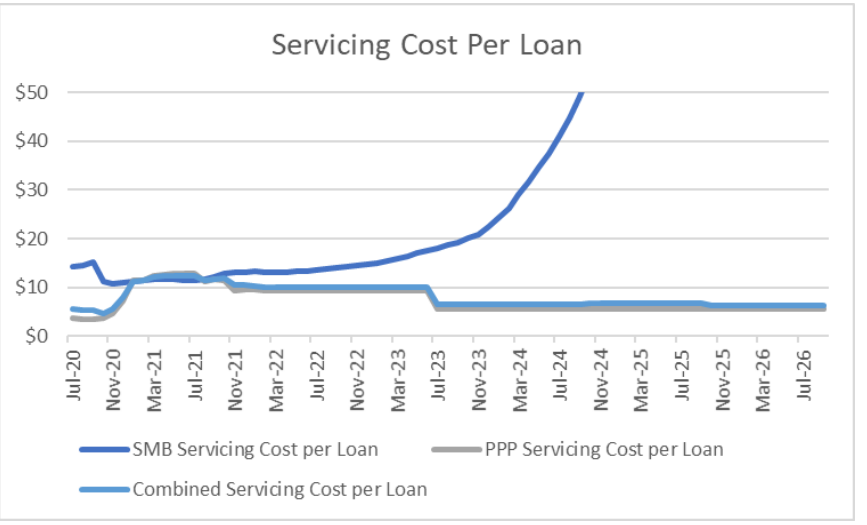
Original Base Case - Key Assumptions Reviewed

Duff & Phelps reviewed the Management Projections as the basis for the original base case cash flow analysis (the "Original Base Case"). Key assumptions include:

General

- A run-off of the current business under which Kabbage, Inc. stops issuing new loans, generating origination fees, and generating servicing fees.
- Management assumed the same amortization speeds for both outstanding balances and accounts.
- Management assumed no collection of late fees.
- Management assumptions for operating costs, including, among other things, Customer Service, Risk, Technology Support, Collections, and Compliance Costs implied the average servicing cost per loan as follows:[1]





[1] Management is in the process of negotiating a shared services agreement with Alpha Kabbage. Based on the current form of the agreement, Management has represented that the costs are expected to be lower than in the Original Base Case assumptions.

Cash Flow / Capital Adequacy Analysis

Original Base Case - Key Assumptions Reviewed (continued)

PPP Key Assumptions

- A wind-down of operating costs based primarily upon the expected run-off of loans outstanding (due primarily from SBA forgiveness & guarantees):
  - "Blanket Forgiveness" available for loans under $150,000, which Management based upon review of current versions of the proposed HEALS Act.
  - 97% - 98% (depending on cohort) of the loans below $150,000 are gradually forgiven over an 11-month period after the 6-month deferral period;
  - 75% of the loans above $150,000 are forgiven by the 7th month after the 6-month deferral period.
- Management has assumed that lenders will be able to shield themselves from any liability relying on the SBA's 'good faith' clauses with respect to actions it took reviewing borrower documents when originating and servicing loans.
- Management assumed net interest will be accrued monthly on the outstanding balance at an annualized rate of 0.65% (1% interest income less 0.35% PPPLF interest expense) until the balance is forgiven. Unforgiven amounts are assumed to continue to accrue interest until the loans mature.
- Responses to SBA Loan Reviews requesting documents on loans can be executed on an automated basis with very low cost.
- Management assumed financing of unpaid PPP interest ahead of repayment from the SBA at a financing rate of 5-year Treasuries plus 75 basis points.

SMB Key Assumptions

- Management utilized roll rates and contractual paydown percentages to forecast balance, delinquency migration, and account number run-offs.
- Management applied contractual assumptions for servicing fees (3% for the warehouse and 1% for the forward flow).
- Management applied a contractual repurchase charge-off obligation fee of 3% of par for forward flow.
- Management assumed a resale of repurchased charge-offs of 4.5%.[1]

[1] Management has estimated that recent collections on charge-offs are approximately 5% to 6%.

Cash Flow / Capital Adequacy Analysis

Original Base Case Summary

Cash Burn Projections - Original Base Case

	As of 9/30/2020	Year 1 Projected	Year 2 Projected	Year 3 Projected	Year 4 Projected	Year 5 Projected	Year 6 Projected
Portfolio Outstanding (balances as of period end):							
KBG Active Accounts	28,112	4,180	1,483	559	177	15	-
KBG Delinquent and Charged Off Accounts	11,294	1,831	495	209	70	8	0
Principal balance outstanding ($MMs)	471,657	58,721	23,259	6,452	1,268	43	-
PPP Accounts and Volumes							
Accounts	219,074	14,449	11,147	11,147	11,147	11,147	11,147
Volumes ($Ms)	5,558	945	529	529	529	529	529
Headcount (as of period end):							
KBG	89	15	6	3	2	2	1
PPP	113	25	15	11	11	11	11
Corporate staff	3	3	3	3	3	2	2
Total	205	44	24	17	16	15	14

	Cumulative Total Year 1 - Year 6	Year 1 Projected	Year 2 Projected	Year 3 Projected	Year 4 Projected	Year 5 Projected	Year 6 Projected
KBG							
Servicing Income (Warehouse / Forward Flow)	288	237	35	13	3	0	0
Resale of repurchased charge-offs (at $0.045)	717	657	40	15	4	1	0
Repurchase obligation - Forward Flow	478	438	26	10	3	1	0
Credit Operations Costs	3,316	2,234	468	241	155	141	78
KBG Net Contribution	(2,789)	(1,778)	(420)	(223)	(150)	(140)	(78)
PPP							
Interest Income, net of financing charges	7,952	5,294	585	539	525	511	497
Customer Service Costs	9,489	4,816	1,290	1,117	756	756	756
PPP Net Contribution	(1,538)	478	(705)	(577)	(230)	(244)	(258)
OPEX							
Software & Services	4,076	2,289	520	400	327	286	254
Office, utilities and facilities	1,094	461	241	133	86	86	86
Other G&A	1,019	200	189	180	150	150	150
Corporate Operations (incl labor)	1,944	348	348	348	348	276	276
Total	8,133	3,298	1,298	1,061	912	798	766
Cash from unpledged loans	778	681	44	37	12	3	0
PPP Put Back	0	0	0	0	0	0	0
Cash Burn	**(11,682)**	**(3,918)**	**(2,378)**	**(1,824)**	**(1,280)**	**(1,180)**	**(1,102)**
Beginning Cash Balance	**17,000**	**17,000**	**13,082**	**10,704**	**8,880**	**7,600**	**6,420**
Ending Cash Balance	**5,318**	**13,082**	**10,704**	**8,880**	**7,600**	**6,420**	**5,318**

Cash Flow / Capital Adequacy Analysis

Original Sensitivity Case - Key Assumptions Reviewed

The sensitivity analysis supplements our analysis of the Original Base Case projections in determining whether Kabbage, LLC passes the capital adequacy and cash flow solvency tests. The sensitivity analysis (the "Original Sensitivity Case") is designed to illustrate Management's reasonable downside scenario projections. Key assumptions include:

PPP Original Sensitivity Case – Key Assumptions

- A faster amortization speed was applied to the outstanding balance than the amortization speed applied to the number of accounts, whereas the Original Base Case assumed the same amortization speed for both the outstanding balance and the number of accounts.
- A certain percentage of loans are projected to be "put-back" as a result of improper document review, or as a result of a change to the SBA's view on "Safe Harbor", compared to 0% in the Original Base Case.
- Higher Compliance/Legal costs were applied in preparation for future responses to document requests from the SBA pertaining to loan reviews.
- A more conservative forgiveness assumption of approximately 95.9% was applied for loans below $150,000, compared to a forgiveness assumption of 97.5% in the Original Base Case, as the threshold might change in the future.
- A stress was performed on the total costs for unforgiven loans in the tail after all forgiveness benefits are applied.
- Management assumed financing of unpaid PPP interest ahead of repayment from the SBA at a financing rate of 5-year Treasuries plus 75 basis points.

SMB Original Sensitivity Case – Key Assumptions

- In consideration of the potential for a COVID-19 second wave and/or a prolonged period where businesses are unable to operate at full capacity, Management stressed roll rates to reflect the increased default experience observed in Q2 2020.

Cash Flow / Capital Adequacy Analysis

Original Sensitivity Case Summary

Cash Burn Projections - Original Sensitivity Case

	As of 9/30/2020	Year 1 Projected	Year 2 Projected	Year 3 Projected	Year 4 Projected	Year 5 Projected	Year 6 Projected
Portfolio Outstanding (balances as of period end):							
KBG Active Accounts	29,644	4,684	1,470	588	204	23	-
KBG Delinquent and Charged Off Accounts	12,750	3,427	866	387	141	20	1
Principal balance outstanding ($MMs)	463,207	71,791	29,328	8,692	1,850	79	-
PPP Accounts and Volumes							
Accounts	219,030	16,488	12,761	12,761	12,761	12,761	12,761
Volumes ($Ms)	5,558	1,232	913	913	913	913	913
Headcount (as of period end):							
KBG	94	23	7	4	3	2	1
PPP	113	28	22	16	16	16	16
Corporate staff	3	3	3	3	3	2	2
Total	210	54	32	23	22	20	19

	Cumulative Total Year 1 - Year 6	Year 1 Projected	Year 2 Projected	Year 3 Projected	Year 4 Projected	Year 5 Projected	Year 6 Projected
KBG							
Servicing Income (Warehouse / Forward Flow)	274	272	3	-	-	-	-
Resale of repurchased charge-offs (at $0.045)	782	768	14	-	-	-	-
Repurchase obligation - Forward Flow	521	512	9	-	-	-	-
Credit Operations Costs	4,309	2,983	621	305	175	146	79
KBG Net Contribution	(3,774)	(2,456)	(614)	(305)	(175)	(146)	(79)
PPP							
Interest Income, net of financing charges	9,807	5,350	960	910	886	863	839
Customer Service Costs	11,843	5,046	1,757	1,586	1,151	1,151	1,151
PPP Net Contribution	(2,036)	304	(797)	(677)	(265)	(289)	(312)
OPEX							
Software & Services	4,472	2,428	589	458	373	329	295
Office, utilities and facilities	1,076	441	242	133	87	87	87
Other G&A	1,605	283	272	263	263	263	263
Corporate Operations (incl labor)	1,865	335	335	335	335	263	263
Total	9,018	3,487	1,437	1,189	1,057	941	907
Cash from unpledged loans	730	857	(11)	(29)	(29)	(29)	(29)
PPP Put Back	(949)	(949)	0	0	0	0	0
Cash Burn	**(15,046)**	**(5,731)**	**(2,859)**	**(2,200)**	**(1,526)**	**(1,404)**	**(1,327)**
Beginning Cash Balance	**17,000**	**17,000**	**11,269**	**8,410**	**6,211**	**4,685**	**3,280**
Ending Cash Balance	**1,954**	**11,269**	**8,410**	**6,211**	**4,685**	**3,280**	**1,954**

EXHIBIT G

Debtor: Kabbage, Inc. d/b/a KServicing

UNITED STATES BANKRUPTCY COURT DISTRICT OF DELAWARE

Case Number: 22-10951

FILED

Claim No. 247

April 03, 2023

By Omni Claims Agent
For U.S. Bankruptcy Court
District of Delaware

Official Form 410

Proof of Claim

04/22

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Carefully read instructions included with this Proof of Claim before completing.

Part 1: Identify the Claim

1. Who is the current creditor?

United States of America

Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor _____

2. Has this claim been acquired from someone else?

☒ No
☐ Yes From whom? _____

3. Where should notices and payments to the creditor be sent?

Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?

United States Attorney's Office, EDTX

110 N. College Avenue, Suite 700

Tyler, TX 75702

Contact Phone 903-510-9370

Contact email Betty.Young@usdoj.gov

Where should payments to the creditor be sent? (if different)

Contact Phone _____

Contact email _____

Uniform claim identifier for electronic payments in chapter 13 (if you use one)

_____

4. Does this claim amend one already filed?

☒ No
☐ Yes Claim Number on court claims registry (if known) _____ Filed On _____ MM / DD / YYYY

5. Do you know if anyone else has filed a proof of claim for this claim?

☒ No
☐ Yes Who made the earlier filing? _____

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor?
☒ No
☐ Yes Last 4 digits of the debtor's account or any number you use to identify the debtor: _____

7. How much is the claim? $ $346,157,724.00

Does this amount include interest or other charges?
☒ No
☐ Yes Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim?
Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
Limit disclosing information that is entitled to privacy, such as health care information
Violation of 31 U.S.C. 3729 (see Attachment).

9. Is all or part of the claim secured?
☒ No
☐ Yes The claim is secured by a lien on property

Nature of property:
☐ Real Estate If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*
☐ Motor Vehicle
☐ Other Describe: _____

Basis for perfection: _____
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.

Value of Property: $ _____
Amount of the claim that is secured: $ _____
Amount of the claim that is unsecured: $ _____ (The sum of the secured and unsecured amounts should match the amount in line 7).

Amount necessary to cure any default as of the date of the petition: $ _____

Annual Interest Rate: (when case was filed) _____%
☒ Fixed
☐ Variable

10. Is this claim based on a lease?
☒ No
☐ Yes **Amount necessary to cure any default as of the date of the petition.** $ _____

11. Is this claim subject to a right of setoff?
☐ No
☒ Yes Identify the property: Funds, if any, held by any federal agency.

12. Is this claim for the value of goods received by the debtor within 20 days before the commencement date of this case (11 U.S.C. § 503(b)(9)).?
☒ No
☐ Yes Amount of 503(b)(9) Claim: $ _____

13. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☒ No
☐ Yes *Check one:*

	Amount entitled to priority
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$
☐ Up to $3,350* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$
☐ Wages, salaries, or commissions (up to $15,150*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$
☐ Contributions to an employee benefit plan 11 U.S.C. § 507(a)(5).	$
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(___) that applies.	$

* Amounts are subject to adjustment on 4/01/25 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it.

FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both.
18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.
☒ I am the creditor's attorney or authorized agent.
☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
☐ I am the guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowlegment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 4/3/2023
MM / DD / YYYY

Betty Young
Signature

Print the name of the person who is completing and signing this claim:

Name: Betty Young
First Name Middle Name Last Name

Title: Assistant U.S. Attorney

Company: United States Attorney's Office, Eastern District of Texas
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address: 110 N. College Avenue, Suite 700
Tyler, TX 75702

Contact Phone: 903-510-9370 Email: Betty.Young@usdoj.gov

Fill in this information to identify the case:

Debtor 1 Kabbage, Inc. d/b/a KServicing et al.

Debtor 2 (Spouse, if filing) _____

United States Bankruptcy Court for the: District of Delaware

Case number 22-10951 (CTG)

Official Form 410

Proof of Claim

04/22

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**

United States of America
Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor _____

2. **Has this claim been acquired from someone else?**

☑ No
☐ Yes. From whom? _____

3. **Where should notices and payments to the creditor be sent?**
Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent?** (if different)
United States Attorney's Office, EDTX Name	_____ Name
110 N. College Avenue, Suite 700 Number Street	_____ Number Street
Tyler TX 75702 City State ZIP Code	_____ City State ZIP Code
Contact phone 903-510-9370	Contact phone _____
Contact email Betty.Young@usdoj.gov	Contact email _____

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

_ _

4. **Does this claim amend one already filed?**

☑ No
☐ Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**

☑ No
☐ Yes. Who made the earlier filing? _____

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
☑ No
☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ____ ____ ____ ____

7. **How much is the claim?** $ 346,157,724.00 . **Does this amount include interest or other charges?**
☑ No
☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**
Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
Limit disclosing information that is entitled to privacy, such as health care information.

Violations of 31 U.S.C. 3729 (see Attachment).

9. **Is all or part of the claim secured?**
☑ No
☐ Yes. The claim is secured by a lien on property.

Nature of property:
☐ Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim.*
☐ Motor vehicle
☐ Other. Describe: _____

Basis for perfection: _____
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

Value of property: $_____
Amount of the claim that is secured: $_____
Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amounts should match the amount in line 7.)

Amount necessary to cure any default as of the date of the petition: $_____

Annual Interest Rate (when case was filed)_____%
☐ Fixed
☐ Variable

10. **Is this claim based on a lease?**
☑ No
☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**
☐ No
☑ Yes. Identify the property: Funds, if any, held by any federal agency.

B000191

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☑ No

☐ Yes. *Check one:*

	Amount entitled to priority
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
☐ Up to $3,350* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
☐ Wages, salaries, or commissions (up to $15,150*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/25 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.
☑ I am the creditor's attorney or authorized agent.
☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 04/03/2023
MM / DD / YYYY

Signature

Print the name of the person who is completing and signing this claim:

Name: Betty S. Young
First name Middle name Last name

Title: Assistant U.S. Attorney

Company: United States Attorney's Office, Eastern District of Texas
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address: 110 N. College Avenue, Suite 700
Number Street

Tyler TX 75702
City State ZIP Code

Contact phone 903-510-9370 Email Betty.Young@usdoj.gov

Attachment to Proof of Claim Form of the United States of America in *In re Kabbage, Inc. d/b/a KServicing, et al.* (Bankr. Case No. 22-10951 (CTG))

1. The United States of America on behalf of the United States Department of Justice, Civil Division, and the United States Attorney's Office for the Eastern District of Texas (collectively, "United States"), submits this proof of claim ("Proof of Claim") as to Kabbage, Inc. d/b/a KServicing ("Kabbage" or "Debtor").

I. SUMMARY OF CLAIM

2. The United States is investigating credible allegations that Kabbage violated the False Claims Act ("FCA"), 31 U.S.C. §§ 3279–3733, when it submitted or caused to be submitted to the U.S. Small Business Administration ("SBA") false certifications regarding its compliance with the SBA's rules and regulations implementing the Paycheck Protection Program ("PPP"). Among other requirements, the PPP required lenders, to which the SBA delegated authority to approve PPP loans, to comply with the Bank Secrecy Act ("BSA") and the anti-money laundering ("AML") fraud controls. The United States is investigating allegations that because of Kabbage's failure to implement adequate fraud controls sufficient to comply with the PPP requirements, including BSA/AML requirements, Kabbage knowingly submitted or caused the submission to the SBA of false claims for processing fees, forgiveness payments, and guarantee payments related to the fraudulent loans that it approved.

3. To date, the Government's investigation shows that both as a direct PPP lender and lender service provider for its partner banks, Kabbage knew it did not implement adequate fraud controls sufficient to comply with the PPP requirements, including BSA/AML requirements, during its participation in the PPP, and knew and/or had reason to know that it was submitting fraudulent and ineligible PPP loan applications to the SBA. Yet Kabbage repeatedly certified to the SBA its compliance with the applicable PPP regulations and submitted or caused the submission of false claims for processing fees and forgiveness and guarantee payments from the SBA despite its noncompliance.

4. Specifically, the Government's investigation to date indicates Kabbage falsely certified that it had (1) confirmed receipt of information demonstrating that borrowers had employees for whom the borrower paid salaries and payroll taxes, (2) confirmed the receipt of legitimate payroll documentation supplied by the borrower to conduct its review to confirm the dollar amount of average monthly payroll costs for the preceding calendar year, (3) complied with BSA/AML regulations by verifying PPP borrower identities, and (4) implemented a due diligence program with sufficient fraud checks. In fact, Kabbage knowingly set substandard fraud check thresholds, reduced its fraud staff, told its staff to submit to the SBA highly suspicious PPP loans even when its staff had identified those loans as fraudulent or highly suspicious, placed a ten-percent limit on document review for each batch of loans released to the SBA, and encouraged employees to increase PPP loan application pass rates to increase revenue.

5. As a result of Kabbage's false certifications, the Government disbursed millions of dollars in PPP loan processing fees and forgiveness and guarantee payments to Kabbage and to fraudsters who received PPP loans and loan forgiveness.

The Qui Tam Lawsuit

6. On February 5, 2021, a *qui tam* lawsuit was filed under seal pursuant to the FCA, 31 U.S.C. §§ 3729–3733, in the United States District Court for the Eastern District of Texas. The district court recently granted the United States a partial lift of this seal to the extent necessary for the United States to file this Proof of Claim. Accordingly, the *qui tam* complaint itself is not being disclosed at this time. In sum, the *qui tam* Complaint alleges that Kabbage knowingly submitted or caused the submission to the SBA of false claims for processing fees, forgiveness payments, and guarantee payments related to the fraudulent PPP loans that it approved.

A. Nature and Basis of the Claim.

The False Claims Act

7. The FCA is the United States' primary tool for fighting fraud. The FCA provides, in pertinent part, that any person who: "(A) knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval; [or] (B) knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim . . . is liable to the United States Government for a civil penalty of not less than $5,000 and not more than $10,000, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990 . . . plus 3 times the amount of damages which the Government sustains because of the act of that person." 31 U.S.C. § 3729(a)(1).

8. For purposes of the FCA, the term "knowingly" means that a person, with respect to information: (i) has actual knowledge of the information; (ii) acts in deliberate ignorance of the truth or falsity of the information; or (iii) acts in reckless disregard of the truth or falsity of the information. No proof of specific intent to defraud is required. 31 U.S.C. § 3729(b)(1).

9. For purposes of the FCA, the term "claim," as relevant here, means a request or demand for payment from the United States. 31 U.S.C. § 3729(b)(2).

10. For purposes of the FCA, the term "material" means "having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property." 31 U.S.C. § 3729(b)(4). Loan certifications to government entities are material. *E.g.*, *United States v. Eghbal*, 548 F.3d 1281, 1284–85 (9th Cir. 2008); *United States v. Wells Fargo Bank, N.A.*, 972 F. Supp. 2d 593, 625 (S.D.N.Y. 2013); *United States v. Americus Mortg. Corp.,* No. 4:12-CV-02676, 2014 WL 4274279, at *11 (S.D. Tex. Aug. 29, 2014).

The CARES Act and the PPP

11. Congress created the PPP under section 7(a) of the Small Business Act as part of the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), Pub. L. No. 116-136 (Mar. 27, 2020). The PPP, which is administered through the SBA, provided emergency relief to

small and medium-sized businesses affected by the COVID-19 pandemic. *See* 15 U.S.C. § 636(a)(36).

12. Under the PPP, the SBA did not make PPP loans directly. Rather, the CARES Act delegated authority to private lenders, such as Kabbage, to make the PPP loans pursuant to PPP requirements. The program permitted borrowers to apply for loan forgiveness if they complied with requirements for the use of funds they received. The SBA also guaranteed unforgiven or defaulted loan amounts for lenders as long as those lenders adhered to program requirements. To receive forgiveness or guarantee payments, lenders submitted claims and certifications to the SBA, and the SBA disbursed payments to lenders.

13. Congress authorized the SBA to pay a processing fee to the lender for each eligible loan. *See* 15 U.S.C. § 636(a)(36)(P). The processing fee was calculated as a percentage of the loan amount. *See id.* In December 2020, the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act, Pub. L. No. 116–260, 134 Stat. 1993 (Dec. 27, 2020), amended the PPP to provide that fees may be required to be repaid if "the lender is found guilty of an act of fraud in connection with the covered loan." 15 U.S.C. § 636(a)(36)(P)(iii).

Applicable PPP Lender Requirements

14. To participate in the PPP, a non-bank lender that is not already an approved 7(a) Lender with a valid SBA Form 750 or 750CA must submit to SBA Form 3507, wherein it attested that it would "assume all obligations, responsibilities, and requirements associated with delegated processing of covered loans made under the Paycheck Protection Program;" that it was "responsible, to the extent set forth in the PPP Loan Program Requirements, for all decisions concerning the eligibility (including size) of a borrower for a covered loan;" and that it would "certif[y] that it is in compliance and will maintain compliance with all applicable requirements of the Paycheck Protection Program and PPP Loan Program Requirements."

15. PPP lenders were required to: (a) confirm receipt of borrower certifications, (b) confirm receipt of borrower information demonstrating that a borrower had employees for whom the borrower paid salaries and payroll taxes, and (c) confirm, by performance of a good faith review, the dollar amount of average monthly payroll costs for the preceding calendar year by reviewing payroll documentation submitted with the borrower's application. *See* 85 Fed. Reg. 20811, 20815 (Apr. 15, 2020). "Lenders are expected to perform a good faith review, in a reasonable time, of the borrower's calculations and supporting documents concerning average monthly payroll cost." SBA PPP FAQ #1 (Apr. 3, 2020).

16. As the PPP was established under section 7(a) of the Small Business Act, PPP lenders were required to conform with the overall requirements of the Act to the extent they did not conflict with PPP program requirements. 85 Fed. Reg. 20811, 20815.

17. PPP lenders were also required to follow the applicable BSA/AML requirements. 85 Fed. Reg. 20811, 20815. Non-bank lenders were expected to establish an "AML compliance program equivalent to that of a comparable federally regulated institution" before making PPP loans. *Id.* Such regulations require institutions to have (and utilize) a written Customer

Identification Program ("CIP"), that was part of an anti-money laundering compliance program, which includes procedures for: (1) specifying what identifying information will be obtained from the customer and verifying the identity of the customer using that information; (2) making and maintaining a record of customer identification information; (3) determining whether the customer appears on government lists of known or suspected terrorists or terrorist organizations; and (4) providing customers with notice that information to verify customer identity is requested. *See* 31 C.F.R. § 1020.220(a)(1)–(5). AML regulations also require institutions to (1) have and apply a due diligence program "designed to enable" the detection and reporting of "known or suspected money laundering activity" connected to both correspondent accounts and private banking accounts; and (2) maintain procedures for risk assessment of accounts. *See* 31 C.F.R. §§ 1010.610(a), 1010.620(a); *see also* 31 C.F.R. § 1020.210(a)(1). Federally regulated institutions must also report suspicious activity for transactions involving or aggregating at least $5,000 in funds where the institution knows, suspects, or has reason to suspect that the transaction involves funds derived from illegal activities or is designed to evade BSA regulations or other federal law. *See* 31 C.F.R. § 1020.320.

18. After the lender processed and approved a borrower's PPP loan application, but prior to the closing of the PPP loan, the PPP required lenders to submit SBA Form 2484, applying for a guarantee on the loan. SBA Form 2484 required lenders to certify to the SBA that the lender had complied with paragraphs 3.b(i)-(iii) of the April 15 Interim Final Rule, which provide that:

> Each lender shall:
>
> i. Confirm receipt of borrower certifications contained in Paycheck Protection Program Application form issued by the Administration;
>
> ii. Confirm receipt of information demonstrating that a borrower had employees for whom the borrower paid salaries and payroll taxes on or around February 15, 2020; [and]
>
> iii. Confirm the dollar amount of average monthly payroll costs for the preceding calendar year by reviewing the payroll documentation submitted with the borrower's application[.]

85 Fed. Reg. 20811, 20815. In submitting SBA Form 2484, PPP lenders also certified to the SBA that "[t]he Lender has obtained and reviewed the required application (including documents demonstrating qualifying payroll amounts) of the Applicant and will retain copies of such documents in the Applicant's loan file."

19. To receive PPP processing fees, the PPP required lenders to submit SBA Form 1502. 85 Fed. Reg. 26321 (May 4, 2020). Form 1502 requires the lender to confirm that "all the information" in each Form 1502 was "true and correct." SBA Procedural Notice, No. 5000-20028 (May 21, 2020).

Kabbage

20. Kabbage was an Atlanta-based non-bank, financial technology ("fintech") company founded in 2009, which focused on financing loans to small businesses and consumers through its online lending platform. By March of 2020, Kabbage was struggling financially. It had laid off a significant number of employees and suspended its lending services in anticipation of widespread expected defaults by its small business customers. Because of its declining liquidity, it was required to renegotiate and pay down its corporate debt early.

21. In March of 2020, Kabbage saw the pandemic and the PPP as a risk-free financial lifeline. Kabbage's Strategy and Operations Manager estimated that Kabbage could make over $100 million in servicing fees in the first three months of the PPP, leading him to describe the PPP as a "money making machine! . . . [p]lus no risk of loss." Kabbage's Head of Strategy wrote to Kabbage employees on April 5, 2020: "[W]e're looking at a legitimate opportunity of hundreds of millions of dollars of revenue," later adding that "you've seen the liquidity . . . we could definitely use a few hundred million." Thus, Kabbage quickly applied to participate as a PPP lender and PPP loan service provider despite its reduced workforce.

22. On or about April 9, 2020, Kabbage submitted its application to participate in the PPP to the SBA. On April 14, 2020, the SBA approved Kabbage's application to participate in the PPP as a non-bank lender. Kabbage also processed loans as a loan servicing provider for two other PPP lenders, "Bank 1" and "Bank 2." Kabbage represented to Bank 1 and Bank 2 that it would originate loans on behalf of those banks that complied with program requirements. During Kabbage's participation in PPP, Kabbage originated or facilitated over 310,000 PPP loan applications, and it and its partner banks received processing fees on these loans. For each loan that Kabbage processed on behalf of Cross River and Customers, Kabbage received a fee from the bank pursuant to its agreements with each bank.

23. In order to maximize profit from the PPP, Kabbage believed that it had to make as many loans as quickly as possible, before PPP funding dried up. As Kabbage's Head of New Product Initiatives wrote: "Everyone will try to get in ASAP . . . Dear god we can make so much money . . . it's literally ours to lose." The pressure within Kabbage to submit as many applications as possible, as quickly as possible, is evident from Kabbage's internal communications in April 2020. For example, on April 11, 2020, Kabbage's Head of Lending Strategy and Operations wrote: "I want like at least 50mm [in loans] ready to be sent to sba by Sunday[.] Actually I want 500mm." The same day, Kabbage's Strategy and Operations Manager indicated that Kabbage's Head of New Product Initiatives wanted "~$1bn in loan calc ready to go."

Kabbage's Processes for Reviewing for Fraud Were Inadequate

24. As a PPP lender, Kabbage was required to, among other things, maintain a formalized compliance program and apply BSA/AML requirements to its PPP loan program. Those regulations required that Kabbage have and implement a due diligence program to detect fraud. Kabbage knew this. It had written BSA/AML procedures and created PPP-specific BSA/AML documents. Those procedures laid out the specific steps Kabbage would take and software Kabbage would use to verify borrowers' identities, confirm their business information,

and evaluate their documents for fraud, prior to moving the borrower through the PPP payroll verification process.

25. In addition to failing to comply with BSA/AML regulations, the PPP also required Kabbage to conduct "a good faith review, in a reasonable time" of the information submitted by the borrower. SBA PPP FAQ #1 (Apr. 3, 2020). Many of Kabbage's procedures did not withstand good faith review as required by the PPP, resulting in the approval of obviously fraudulent loans.

26. Though Kabbage had these written procedures on paper, the Government's investigation to date suggests that in practice, Kabbage systematically failed to identify fraudulent borrowers and prevent disbursement of fraudulent loans. Kabbage used a haphazard patchwork of several automated tools to review loans for appropriate documentation and for fraud. In many cases, the tools didn't work as designed and "passed" loans that should have been flagged for further review. Loans that failed the automated system were to be reviewed manually. But Kabbage assigned insufficient personnel to process those loans. In some instances, Kabbage modified its automated tools to catch fewer loans, to reduce the number that would have to be reviewed by hand. Kabbage management knew as much, but ignored concerns raised by its employees and other financial institutions as it raced to earn processing fees.

27. Contrary to its written BSA/AML procedures, Kabbage did not perform fraud checks until after submitting PPP loan guarantee applications to the SBA through E-Tran. Kabbage also delayed verifying borrower identities and documents until after it had already submitted PPP loan guarantee applications to the SBA. When told by its consultant that this practice exposed Kabbage to regulatory and reputational risk, Kabbage did not change its practices and instead represented to the consultant that this practice had been approved by the SBA.

28. Kabbage predominantly relied on automated document review tools to "confirm" information contained on the application against the supporting documentation. In effect, this meant that the vast majority of Kabbage's loans were approved with no human review at all: more than 90% of the more than 260,000 loans Kabbage originated or processed on behalf of its partner banks received no human review. Kabbage's automated fraud review check process failed to flag obvious indicia of fraud and approved many fraudulent borrowers. The issues abounded: Kabbage submitted to the SBA PPP loan guarantee applications that were based on incomplete documentation. It approved borrowers that were not in existence or active at the time of the application. It failed to detect falsified tax forms and mismatched TINs. It approved more than 4,100 loans where the borrower shared a social security number with another PPP borrower. It approved loans where the borrower did not pass the KYC/KYB thresholds set on Kabbage products. It did not check affiliate status or have borrowers attest to affiliate status until the end of April 2020. It disbursed PPP loans with that its systems had flagged for fraud . Nearly 135,000 Kabbage borrowers that received PPP loans shared an IP address or device ID with another PPP borrower.

29. A Kabbage consultant found in early June 2020 that Kabbage had not conducted background checks on two of ten loans in a sample and that the remaining eight loans had failed the automated background check per Kabbage's policies, but Kabbage had no procedure in place to address that situation.

30. Rather than utilizing an adequate automated system and fraud check process to address potential fraudulent PPP loan applications raised both internally and externally, Kabbage instead lowered its thresholds on fraud detection and made other changes to keep costs to Kabbage down. In May 2020, it changed the parameters of another fraud-detection software because costs were "skyrocketing." It chose not to use a third-party document-reading service because "it's expensive," relying instead on a home-grown system which Kabbage reviewers openly complained about as having allowed significant amounts of fraud through. Regarding its KYB/KYC checks, one reviewer commented that she "would not be surprised if the passing scores were now a piece of chewed up gum and an old bandaid." "And no one told us," another reviewer added.

31. In the rare circumstance where a loan did not pass the automated checks, loans were assigned to manual review. When it came to manual fraud reviews, Kabbage devoted insufficient personnel and provided insufficient training to its employees and contractors. Kabbage staffed six or seven fraud analysts during PPP. As early as May 2020, Kabbage managers noted that this team was "overwhelmed." Those reviewers complained that they were "drowning" under the volume of fraud suspicions raised by other employees and needed more people. The manual reviews sometimes identified that might have flagged the loan as fraudulent had they been incorporated into the automated review process. A Kabbage fraud analyst worried that beefing up the standards for their automated review tools would increase the queue of loans to review manually. Even so, it appears Kabbage did not increase the size of the team reviewing fraudulent accounts and instead offered incentives, in addition to overtime, for clearing accounts on weekends.

32. Other financial institutions also notified Kabbage about potential fraud in loans it had approved after Kabbage had disbursed the funds to the borrower. These files were also submitted to the fraud review team for review.

Kabbage Knew or Should Have Known It Approved Fraudulent PPP Loans.

33. Before the onset of the COVID-19 pandemic and before the CARES Act was enacted, Kabbage was warned that it needed to enhance its BSA/AML procedures. In a 2019 audit of Kabbage's BSA/AML procedures, a third-party auditor commented that the procedures had been subject to "limited enhancements" since the prior year and opined that the lack of remediation was an "important weakness that requires prioritization by the Company." Despite the warning and recommendations from the 2019 audit, Kabbage had not implemented any of the recommendations to its BSA/AML procedures when it began participating in the PPP.

34. Kabbage knew it did not comply with required BSA/AML procedures early on but did not significantly alter its overall process during the first round of PPP. When Kabbage employees identified fraudulent PPP loan applications during the manual review process, Kabbage leadership questioned their determinations and pushed back on their review and use of common sense in catching patterns of suspicious activity. For example, Kabbage relied on a tool to assess borrowers that had been flagged as suspicious to determine if documents were forged or altered. Kabbage employees raised concerns with management numerous times that the tool would not identify as forged the unfiled tax documents that Kabbage accepted in support of PPP applications.

Leadership did not change their practices and instead emphasized passing these types of suspicious PPP loan guarantee applications to the SBA unless there was "definitive proof of fraud." One Kabbage fraud analyst complained to her supervisors in July 2020 that she was "uncomfortable" with this procedure "because I'm not comfortable passing almost all the people I have to pass." "Please make sure my dog goes to a good home before I end up in prison," she said.

35. Manual fraud reviewers were instructed accept documents provided by borrowers\, even when Kabbage employees believed that the document was fraudulent or falsified. Kabbage's document review guide instructed reviewers that they did not need to look at organizational documents so long as there was a file uploaded. If fraud reviewers considered an account suspicious, they were instructed not to request any additional documents from borrowers on top of the tax returns provided by the borrower that would allow them to evaluate the account. Kabbage employees received "pushback" when they raised concerns of fraud but were essentially steered to abandon common sense when reviewing PPP loan applications:



36. In May 2020, Kabbage retained an outside consultant to conduct a risk assessment of Kabbage PPP lending and review its PPP-related policies and procedures. In June 2020, the consultant provided Kabbage with its initial draft report on its assessment, identifying several recommendations to improve Kabbage's PPP processes. One of the issues identified was the adequacy of Kabbage's BSA/AML program, specifically its Customer Identification Program ("CIP"), which was meant to ascertain the true identities of its PPP applicants to mitigate the risk of identity theft, money laundering, terrorist financing, and sanctions violations. Another issue identified was Kabbage's inadequate customer due diligence process on applicants and beneficial owners. Alvarez & Marsal specifically noted that as of April 2020, "Kabbage is still refining its customer risk segmentation process for PPP loans and expects this process will likely be different from the standard CRR [client risk rating]." A third issue identified was Kabbage's inadequate fraud checks because Kabbage's PPP BSA/AML procedures permitted submission of PPP loan applications flagged as suspicious for fraud to the SBA before Kabbage reviewed and/or cleared said fraud flags. Another issue, among others, identified was the absence of suspicious activity reporting procedures. At a minimum, Kabbage knew as early as June 2020, that it was not in full

compliance with the PPP requirements to serve as a PPP lender and knew that it was falsely certifying its compliance with PPP requirements each time it transmitted PPP loans applications containing fraudulent information.

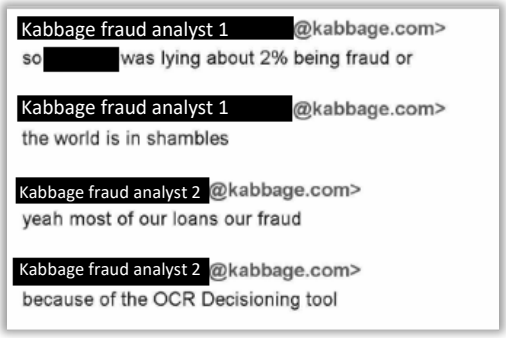
Kabbage Did Not Act in Good Faith.

37. Kabbage claimed that it relied on borrowers' representations, but it did so in full knowledge that borrowers were submitting fraudulent information and supporting documentation. Multiple Kabbage employees noted that the tax forms provided by the borrower were "Fraud AF [as fuck]." "[O]h god at this point i dont even know what's real and what's not," another employee commented. Another Kabbage employee noted that a borrower's tax document claimed its annual earnings were "100,000.00 [] on the fucking dot . . . but we have to put it down right." This cannot be considered reasonable, good-faith reliance on borrowers.

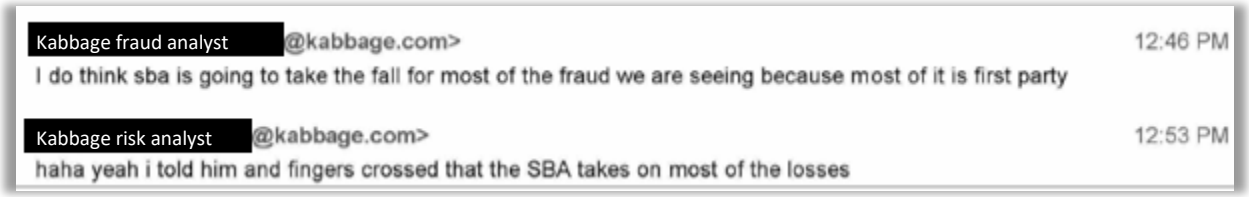
38. The SBA told Kabbage that when conducting fraud reviews, the PPP loans "shouldn't be treated any different" from loans Kabbage processed on its own behalf. Kabbage ignored this instruction and did treat PPP loans differently. Namely, because there was no risk to Kabbage in approving fraudulent loans, it ignored obvious indicators of fraud in its loans and earned processing fees for submitting those loans to the SBA.

39. Also in May 2020, Kabbage's correspondent bank flagged several loans as potentially fraudulent and queried whether Kabbage wanted to recall the funds. A second Kabbage risk analyst said that he didn't think Kabbage should pursue the funds because "the SBA takes the liability of first party fraud." In July 2020, when Kabbage's correspondent bank again raised concerns about the large volume of fraudulent loans processed by Kabbage, the Kabbage employee overseeing the KYC/KYB and fraud processes commented: "I think it's not a loss to Kabbage, these should be covered by SBA." Following a lengthy discussion of obviously suspicious PPP loan applications, it appears Kabbage employees did nothing with their observations of possible fraud and instead, believed that it was "this kind of stuff I think sba will have to take the liability for." Kabbage employees knew that it was "too much," they "should not have gone so fucking fast," and "maybe the banks know something we don't lol."

40. In an August 11, 2020 Slack communication between two Kabbage fraud analysts, both analysts openly admitted that most of Kabbage's loans were fraudulent:



But the attitude remained that all this fraud was the SBA's problem, and not Kabbage's.



Kabbage and Its Investors Enrich Themselves at the United States' Expense.

41. Kabbage executives knew that it would not get paid processing fees until the PPP loans were disbursed and thus, emphasized the focus on loan disbursement and submitting as many PPP loan applications as possible.

42. Despite having to renegotiate their debt at the outset of the pandemic, Kabbage was able to pay down all its debt by July 2020. In October 2020, newly solvent following its PPP windfall, Kabbage sold most of its assets (with the notable exception of Kabbage's PPP loan portfolio and associated liabilities) to American Express ("AMEX").

43. The very same day that it closed on the AMEX transaction, and with full knowledge of the issues described above, Kabbage paid executives and shareholders nearly $700 million through a dividend. As is clear from this current bankruptcy proceeding, that disbursement left Kabbage without sufficient funds to meet its liabilities to the United States and other creditors once the fallout of Kabbage's flawed PPP process came to light.

Potential Damages.

44. Under the SBA's regulations, as a PPP lender, Kabbage was required to perform a "good faith review, in a reasonable time" of the borrower's application. SBA PPP FAQ #1 (Apr. 3, 2020). BSA/AML requirements that were applicable to non-bank lenders such as Kabbage under PPP rules further required Kabbage to take reasonable steps to identify its customers and prevent fraud. It failed to do so, and falsely certified to the SBA its compliance with applicable rules and regulations on SBA Forms 2484 and 1502 in connection with each fraudulent loan.

45. Kabbage's submission of fraudulent PPP loan applications resulted in the submission of false claims for payment of processing fees on the fraudulent PPP loans submitted to the SBA for approval. Each Form 1502 submitted by Kabbage or its partner banks pertaining to fraudulent loans due to Kabbage's non-compliance with PPP rules and regulations, including BSA/AML requirements, constitutes a false claim for payment of processing fees by the SBA. Kabbage's failure to conduct sufficient fraud checks and comply with BSA/AML resulted in the improper payment of all processing fees associated with the fraudulent PPP loan amounts.[1]

[1] Contemporaneously with the filing of this Proof of Claim, the United States is filing a second proof of claim on behalf of the United States Department of Justice, Civil Division, and the United States Attorney's Office for the District of Massachusetts related to a separate

46. The United States' investigation of these allegations is ongoing, but the potential single damages for the Debtor's alleged conduct total at minimum $31,468,884, related to processing fees and forgiveness for loans flagged by Kabbage as fraud or suspected fraud. The FCA mandates treble damages, for a total of $94,406,652. Further, civil penalties under the FCA are mandatory. For penalties assessed after January 30, 2023, penalties range from $13,508 and $27,018 per false claim. 28 C.F.R. § 85.5. The Debtor is alleged to have made at least 17,224 false claims based on loans it knew or should have known were fraudulent, resulting in potential penalties between $232,661,792 and $465,358,032. Here, the United States seeks penalties of $251,751,072. *See United States ex rel. Bunk v. Gosselin World Wide Moving, N.V.*, 741 F.3d 390, 408 (4th Cir. 2013) (recognizing that the United States has discretion under the FCA "to accept reduced penalties"). In total, the United States is seeking approximately half of the maximum penalties available under the FCA. Adding penalties to the treble damages mandated by the FCA, the United States has a claim against Debtor in the approximate amount of at least $346,157,724.

47. The United States' calculation of potential damages does not include loan amounts and the corresponding processing fees Kabbage received on other fraudulent PPP loans submitted to the SBA for loan approval and forgiveness that have yet to be identified in this investigation. The United States reserves the right to amend this Proof of Claim, including, but not limited to, asserting additional liabilities or adjusting the claimed amount as warranted by any facts uncovered in any investigation.

48. The United States expressly reserves its rights pursuant to 11 U.S.C. § 553 to offset any prepetition obligation of any agency or component of the United States—whether fixed, contingent, or the subject of litigation as of Debtor's prepetition date—to Debtor, or any successor in interest of Debtor, to any such prepetition obligation, against any portion of this claim. The United States has a secured claim to the extent of funds available to set off against its claim.

B. <u>Amendments; Reservation of Rights.</u>

49. The United States reserves the right to amend or supplement this Proof of Claim in any respect, to fix or liquidate any claims stated herein, to specify and quantify expenses, damages, attorney's fees and costs, incurred by the United States, including seeking post-petition interest in the event the Debtor is determined to be solvent and such claim would become due.

50. The filing of this Proof of Claim is not (a) a waiver or release of the United States' rights, claims or defenses against any person, entity or property; (b) a waiver or release of United States' right to have any and all final orders in any and all non-core matters entered only after *de*

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investigation of Kabbage's practices as a PPP lender. The United States has made reasonable efforts to ensure that the two claims do not overlap. Each claim constitutes an independent claim against Kabbage.

Also contemporaneously with the filing of this Proof of Claim, the United States is filing a proof of claim on behalf of the United States Small Business Administration related to Kabbage's practices as a PPP lender. Some portion of the loans that form the basis for that claim may overlap with this claim. Each claim constitutes an independent claim against Kabbage.

novo review by a United States District Judge; (c) a waiver or release of any right or claim of the United States arising out of any other claim of any nature whatsoever, which the United States has against the Debtor; (d) a waiver or release of any rights of the United States under any provision of the Bankruptcy Code or other applicable non-bankruptcy law; (e) a consent by the United States to the jurisdiction of the Court for any purpose other than with respect to this Proof of Claim; (f) an election of remedy to the exclusion, express or implied, of any other remedy; (g) a waiver or release of any rights which the United States may have to a jury trial; (h) a waiver of the right to move to withdraw the reference with respect to the subject matter of this Proof of Claim, any objection thereto or any other proceedings which may be commenced in these cases against or otherwise involving the United States, including without limitation, any adversary proceeding that was or may be commenced by any party or committee in this case; (i) a consent that this claim is a debt which is subject to discharge in this or any other subsequent bankruptcy proceeding; (j) a ratification or consent to any obligation or liability based upon or arising out of any transaction between the United States and the Debtor; or (k) a waiver of the United States' rights to make a request for payment of an administrative expense claim under the Bankruptcy Code. All of such rights are hereby reserved by the United States, without exemption and with no purpose of confession or conceding any of the foregoing in any way by this filing or by any other participation in this case.