

# DOJ Announces First Civil Settlement for PPP Fraud

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After bringing dozens of criminal charges against Paycheck Protection Program loan recipients in recent months, on January 12, the US Department of Justice announced its first civil settlement resolving allegations of PPP loan fraud. Pursuant to the [settlement agreement](#), SlideBelts, an internet retail company and debtor in bankruptcy, and its president and CEO, Brigham Taylor, agreed to pay a combined \$100,000 to resolve claims that they violated the False Claims Act and the Financial Institutions Reform, Recovery and Enforcement Act of 1989. SlideBelts also repaid the \$350,000 PPP loan that it received.

This first civil settlement confirms that the government will actively and aggressively pursue borrowers and individuals involved in alleged PPP loan fraud.

## The government's allegations

The settlement agreement sets out a lengthy recitation of facts, for which SlideBelts and Taylor “admit, acknowledge, and accept responsibility.” Specifically, the settlement agreement states that, on April 3, 8 and 14, SlideBelts submitted three applications for PPP loans to three different federally insured banks, ranging from \$300,000 to \$350,000, and falsely stated, in response to Question 1 on each loan application, that SlideBelts was not “presently involved in any bankruptcy,” although at the time SlideBelts was in fact a debtor in bankruptcy proceedings.

The settlement agreement states that, on April 10, the first lender rejected SlideBelts’ application and advised Taylor that he had answered Question 1 incorrectly because the lender knew SlideBelts was presently in bankruptcy. According to the settlement agreement, “Taylor responded that his answer was an ‘oversight,’ but nonetheless argued that the question regarding bankruptcy in the application was ‘an overreach’” by the US Small Business Administration. On April 14, Taylor again reached out to the first lender and stated that the term bankruptcy should not be included in Question 1 of the PPP loan application and asked the lender to approve the loan. But the lender again rejected the request, repeating that SlideBelts was definitively not eligible for a PPP loan because it was in bankruptcy. Three hours later, SlideBelts submitted a third application to a different lender, making the same false statement.

The second lender ultimately approved SlideBelts’ application before the third lender and extended a \$350,000 PPP loan. According to the settlement agreement, “Taylor signed the loan note with and stated falsely that SlideBelts was not in bankruptcy to influence to execute the note and disburse the loan proceeds to SlideBelts.” The settlement agreement also states that “Taylor’s and SlideBelts’ false statements caused to submit a false claim to the SBA for \$17,500 in loan processing fees, which the SBA paid to” the second lender.

On April 22, the day after the second lender disbursed the loan to SlideBelts, Taylor emailed the second lender “explaining that SlideBelts had ‘just realized that we may not have answered correctly since we filled out the application quickly and wanted to bring it to your attention’” SlideBelts did not return the loan; instead, eight days later, SlideBelts filed a motion in bankruptcy court seeking retroactive approval of the PPP loan. According to the settlement agreement, SlideBelts’ motion “did not disclose to the court that it had obtained the loan by making a false statement to concerning its status in bankruptcy.”

On June 16, the SBA opposed SlideBelts’ motion and requested that the court order SlideBelts to return the loan. The second lender joined the SBA’s opposition. However, SlideBelts did not return the loan and instead asked the bankruptcy court to dismiss the case so that it could refile for bankruptcy later and “apply for funds while the case is dismissed.” The bankruptcy court granted SlideBelts’ motion to dismiss its bankruptcy case and, on July 8, SlideBelts returned the \$350,000 loan to the second lender.

Notably, the government does not appear to allege that SlideBelts would not have qualified for a PPP loan had it not been in bankruptcy proceedings or that SlideBelts had misspent the loan funds before it returned them.

The government contends that SlideBelts and Taylor (i) violated the FIRREA for having made false statements on its loan applications and having committed bank and wire fraud, and (ii) violated the FCA for having made false statements and

having caused the lender to submit a false claim for processing fees, and, as a result, that they “are liable to the United States for damages and penalties totaling \$4,196,992.”

## Lessons learned

The government’s civil settlement with SlideBelts and Taylor sends several notable messages to the PPP borrower community:

- **Individuals will be held responsible:** The settlement with Taylor is consistent with the DOJ’s continued pursuit of individuals in FCA cases. Indeed, the settlement agreement specifically calls out Taylor as having answered the questions on the PPP loan application and for having made allegedly false statements to lenders. The settlement, which was done on an “inability to pay” basis, also considered Taylor’s financial disclosures and provides that \$17,500 of the \$100,000 settlement amount (likely attributable to the \$17,500 in loan processing fees) “constitutes restitution from Taylor”
- **The DOJ and SBA will not shy away from smaller civil settlements:** SlideBelts received a \$350,000 PPP loan, which is far less than the loan amounts at issue even in some of the DOJ’s recent criminal prosecutions. That the DOJ would announce a comparatively small loan as its first civil settlement signals that the DOJ will not shy away from pursuing borrowers of smaller PPP loans that it suspects of wrongdoing
- **Expect to hear more about FIRREA:** FIRREA imposes large civil penalties for violations of 14 specified criminal statutes, such as bank and mail/wire fraud statutes “affecting a federally insured financial institution.” Little was said of FIRREA following its enactment in 1989, but it received new life following the 2008 financial crisis. FIRREA’s prominence in the settlement with SlideBelts and Taylor indicates that the government will not hesitate to use this potent tool in future civil settlements. Likewise, although the government opted to settle these claims under FIRREA, with its less demanding burden of proof, the settlement serves as a reminder that borrowers, and particularly individuals, may be subject to criminal liability for PPP loan fraud
- **Inability to pay settlements may get a shot in the arm:** The DOJ has long been willing to consider an entity’s assertion that it is unable to pay the amount the DOJ demands because it lacks sufficient assets to pay the government and meet its ordinary and necessary expenses. In [policy guidance](#) recently issued in September, the DOJ clarified this policy around a defendant’s “inability to pay,” perhaps in anticipation of PPP settlements. Considering the economic factors driving PPP loan applications, the DOJ’s settlement with SlideBelts and Taylor – which was done on an inability to pay basis with an upfront partial payment and payments over time, with interest – may signal that the DOJ will be willing to settle other civil PPP cases on similar terms
- **The DOJ and SBA are staying true to their word:** The SBA has consistently reminded borrowers that it retains the ability to review any PPP loan at any time for any reason and included clear language in the application documents regarding the applicability of civil and criminal statutes and penalties for intentional misstatements. This settlement confirms the SBA is serious

## Conclusion

With more than \$525 billion in PPP funds disbursed for more than five million loans through the end of the original program last August, and more on the way as first-draw PPP loans were reauthorized and second-draw PPP loan applications are now being accepted, this long-awaited first civil settlement under the PPP is likely the first of many more to come. Indeed, over the next few months, it is likely that civil *qui tam* cases are likely to come to light, making this case just the tip of the iceberg.

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