

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

JANET JENISON,

Defendant.

CASE NO. 2:21-CR-90

CHIEF JUDGE MARBLEY

**SENTENCING MEMORANDUM OF
THE UNITED STATES**

The United States hereby submits its Sentencing Memorandum for the Court's consideration in connection with the sentencing of Defendant Janet Jenison. Ms. Jenison pleaded guilty to three counts of wire fraud and one count of making a false statement in connection with her fraudulent applications for nearly \$300,000 in emergency COVID-19 relief loans. The funds were meant to keep workers on the job at businesses suffering from the effects of the pandemic. Ms. Jenison misdirected the funds to her own pocket. For the reasons that follow, a sentence of 21 months of imprisonment, a fine of \$95,000, a term of supervised release of 3 years, and a restitution order of \$160,247 would be sufficient but not greater than necessary to achieve the statutory goals of sentencing. Under the Plea Agreement, the preliminary forfeiture order, and Federal Rule of Criminal Procedure 32.2(b)(4), forfeiture is also required in this case.

BACKGROUND

Defendant Janet Jenison lied to steal from a program designed to help small businesses and the workers they employ. As the virus that causes COVID-19 spread, and as the American public came to realize the danger the virus causes, a public health crisis became an economic one. Businesses shuttered and workers lost their jobs. In response to this economic fallout,

Congress passed the Coronavirus Aid, Relief, and Economic Security Act, or CARES Act. *See* Pub. L. No. 116-136, 134 Stat. 281 (2020). One of the goals of the Act was to keep workers employed by helping businesses make payroll and pay operating expenses. To that important end, the CARES Act created the Paycheck Protection Program.

The Paycheck Protection Program authorized qualifying small businesses to receive forgivable loans to help pay payroll costs, rent, utilities, interest on mortgages, and other permissible expenses. PSR ¶ 12. The size of the PPP loan a particular business could receive was based in part on its average monthly payroll costs. *Id.* PPP loans were entirely forgivable if the funds were used for specified expenses—in effect, the loan became a grant. *Id.*; 15 U.S.C. § 9005(b). In order to obtain a PPP loan, a business was required to submit a loan application to a financial institution. PSR ¶ 12. PPP loan applications were required to contain certain information about the businesses, such as average monthly payroll expenses and number of employees. *Id.* Applicants were also obligated to provide supporting documentation, such as payroll reports and federal tax returns. *Id.* Any PPP loans that were funded by financial institutions were fully guaranteed by the U.S. Small Business Administration. *Id.*

In many respects, the Paycheck Protection Program was successful in its goal of helping to keep workers on the job and to keep businesses open. The Small Business Administration's rapid response quickly made billions of dollars of capital available to businesses harmed by the pandemic. But speed had a cost. Fraudulent borrowers were able to take advantage of the loan program and divert the money, to the detriment of struggling businesses.

Ms. Jenison was one of these fraudulent opportunists. On April 27, 2020—exactly one month after the CARES Act was enacted—she submitted a PPP loan application to Celtic Bank on behalf of Janet Minton Marketing LLC. PSR ¶ 14. This first application sought \$86,896.67.

Id. On the application, Ms. Jenison reported an average monthly payroll of \$34,758.67 for six employees. *Id.* In fact, these numbers were false. *See* PSR ¶¶ 18–19, 21. Celtic Bank did not fund the loan. PSR ¶ 14.

On May 29, 2020, Ms. Jenison filed a second fraudulent PPP application, this time to a financial institution called Funding Circle. PSR ¶ 15. In order to seek additional funding, she increased the number of employees she reported and the amount of her average monthly payroll. *Id.* Funding Circle approved and fully funded the PPP loan in the amount of \$98,120. *Id.*

Unsatisfied with one PPP loan, Ms. Jenison applied for another from Funding Circle. PSR ¶ 15. She submitted the application on February 18, 2021, and asked for \$113,703. *Id.* Once again, she increased the number of employees she reported and the amount of her business's average monthly payroll. *Id.* This loan application was approved, but Funding Circle funded the loan only for \$62,127.

All three loan applications were fraudulent. Ms. Jenison misrepresented both the number of employees of the company and its average payroll. PSR ¶¶ 18–21. Moreover, she created and provided false documents in support of the loan applications. *Id.* In support of the Celtic Bank application, she submitted a document purporting to be a Fifth Third Bank statement that listed debits for payroll, tax withholding, and business expenses. PSR ¶ 18. The bank statement purported to cover the period February 8, 2020, to March 6, 2020. *Id.* These dates are important. Ms. Jenison actually had a Fifth Third Bank business account, but it was not opened until April 27, 2020, and the bank statement was a fabrication. *Id.* She also submitted a fabricated Fifth Third Bank statement in support of the Funding Circle applications. *Id.* Although it differed in some ways from the one she submitted to Celtic Bank, both statements contained false business-

related expenses, and both purported to cover a time period that pre-dated the opening of the bank account. *Id.*

In support of her Celtic Bank application, Ms. Jenison also submitted an IRS form that businesses use to elect how they will be classified for federal tax purposes. PSR ¶ 19. This form, too, was fabricated. On the form submitted to the bank, Ms. Jenison listed the company's Employer Identification Number, which is a unique nine-digit number assigned by the IRS and used to identify business entities. *Id.* The form she submitted to Celtic Bank had a signature dated January 24, 2020, but the EIN listed on the form in fact was not created until three months later. *Id.*

Finally, Ms. Jenison also provided false tax documents in her PPP applications to Funding Circle. PSR ¶ 20. As supporting documents, she submitted IRS Forms 941, which are used to document federal employment tax deposits. *Id.* Employers use these forms to report certain taxes withheld from employees' paychecks. The Forms 941 that Ms. Jenison submitted were fabrications, too, and had never been filed with the IRS. *Id.*

Law enforcement approached Ms. Jenison, and in a voluntary, non-custodial interview, she admitted to fraudulently creating documents in support of her loan applications. PSR ¶ 21. Following plea negotiations, on May 20, 2021, the United States Attorney filed a Bill of Information charging Ms. Jenison with three counts of Wire Fraud, in violation of 18 U.S.C. § 1343, and one count of Making a False Statement Within the Jurisdiction of an Agency of the United States, in violation of 18 U.S.C. § 1001(a)(2). (Information, R.2 at 3–7.) On the same day, the Parties filed a Plea Agreement, wherein Ms. Jenison agreed to plead guilty to all counts of the Information, to forfeit the proceeds of her criminal activity, and to pay restitution to

Funding Circle. (Plea Agreement, R.24 at 9, 12–13.) On July 30, 2021, she pleaded guilty. The Court accepted her pleas and adjudged her guilty.

The final Presentence Investigation Report was issued on October 13, 2021. Sentencing in this matter is scheduled for December 1, 2021.

ARGUMENT

The Probation Officer calculated that Ms. Jenison’s Total Offense Level is 16 and that her Criminal History Category is I. The Probation Officer correctly noted that these calculations would result in advisory guidelines ranges of 21 to 27 months of imprisonment; a fine of \$10,000 to \$95,000; and a term of supervised release of 1 to 3 years. PSR ¶¶ 78, 83, 89.

Ms. Jenison has one unresolved objection; the United States has none. The United States will first respond to the objection, then will turn to the statutory sentencing factors under 18 U.S.C. § 3553(a).

I. Ms. Jenison’s objection should be overruled because the PSR properly calculated the enhancement for loss based on the intended loss, rather than the actual loss.

During the PSR process, Ms. Jenison registered one objection. (*See* PSR, R.14-1 at 88.) In calculating the sentencing guidelines in this case, the PSR increased the offense level by 12 levels because the loss was greater than \$250,000 but less than or equal to \$550,000. PSR ¶ 32; *see* U.S.S.G. § 2B1.1(b)(1)(G). Ms. Jenison objects to that calculation on the ground that “the actual loss is more than \$120,000, but less than \$200,000.” (*See* PSR, R.14-1 at 88.) This objection reflects a belief that the guidelines should be based on the actual loss in this case. But actual loss is not the correct measurement; intended loss is.

The Sentencing Guidelines establish that a defendant’s offense level in a fraud case is increased based on the “loss” in the case. U.S.S.G. § 2B1.1(b)(1). Subject to exclusions not relevant to this case, the general rule is that “loss is the greater of actual loss or intended loss.”

U.S.S.G. § 2B1.1 app. n. 3(A). That is, when intended loss exceeds actual loss, intended loss is the proper measurement for the loss enhancement.

Here, the Probation Officer correctly concluded that the intended loss is \$298,719.67. PSR ¶ 32. In the Statement of Facts, Ms. Jenison admitted to submitting three fraudulent applications for PPPP loans: (1) an April 27, 2020 application for \$86,896.67, which was not funded; (2) a May 29, 2020 application for \$98,120.00, which was fully funded; and (3) a February 18, 2021 application for \$113,703, which was funded for \$62,127. (Plea Agreement, R.3 at 16–17.) All three loan applications contained false statements and were fraudulent. (*Id.*) Accordingly, the intended loss totals \$298,719.67. PSR ¶ 32. And under the guidelines, intended loss is the proper measure in this case because it exceeds actual loss.

For her part, Ms. Jenison does not articulate in her objection letter why actual loss would be the appropriate measure of loss in this case. Accordingly, she lacks a persuasive theory for why the calculation of loss should depart from the general rule established by the guidelines. The objection should be overruled.

II. Based on the statutory sentencing factors, the United States recommends a sentence of 21 months of imprisonment, a fine of \$95,000, a term of supervised release of 3 years, and a restitution order of \$160,247.

Based on the factors in 18 U.S.C. § 3553(a), the United States recommends a sentence of 21 months of imprisonment, a fine of \$95,000, a term of supervised release of 3 years, and a restitution order of \$160,247.

Nature and circumstances of the offense. Ms. Jenison fraudulently sought to obtain nearly \$300,000 in emergency assistance out of personal greed. The Paycheck Protection Program was designed to help legitimate small business owners keep their doors open and Americans employed during the pandemic. But PPP funds are not unlimited, and misdirecting emergency assistance from small businesses who need it to stay afloat creates real harm.

Two features distinguish Ms. Jenison's crimes. First, she submitted three separate loan applications. This sets her apart from one-time fraud perpetrators. Second, she submitted her third fraudulent loan application more than eight months after she received \$98,120 from Funding Circle. PSR ¶¶ 15–16. This was not an impulsive spree. Ms. Jenison made the deliberate decision to go back for more. The nature and circumstances of the offense warrant a within-guidelines sentence.

The need to afford adequate deterrence. The need to afford general deterrence justifies the recommended term of imprisonment here. “Because economic and fraud-based crimes are more rational, cool, and calculated than sudden crimes of passion or opportunity, these crimes are prime candidates for general deterrence.” *United States v. Peppel*, 707 F.3d 707 F.3d 627, 637 (6th Cir. 2013) (internal quotation marks omitted).

The importance of affording general deterrence through meaningful sentences is particularly acute when it comes to PPP fraud. Prosecution of PPP fraud protects the public interest in preserving the integrity of federal COVID-19 relief programs. These programs will work best when the public knows that the loans go to deserving applicants and that those who cheat the system will be punished. Relatedly, PPP fraud prosecutions have proven to attract media attention. Potential fraudsters are more likely to hear about the sentence in this case; accordingly, the recommended sentence will contribute to the United States' efforts to promote deterrence of further emergency assistance fraud.

As for specific deterrence, Ms. Jenison's actions in this case suggest there may be a need to deter her from further criminal activity. She did not stop when the first bank refused to approve her PPP application. She did not stop when she obtained nearly \$100,000 from Funding

Circle. She repeatedly sought government funds she was not entitled to until law enforcement intervened.

Ms. Jenison's history of substance abuse also presents risks that she will reoffend. She started drinking at age 14 and in the past has used alcohol to self-medicate. PSR ¶ 60. Her alcohol abuse became severe and dangerous, including two incidents that led to car accidents and convictions for Operating a Vehicle While Intoxicated. PSR ¶¶ 42–43, 61. Substance abuse is highly correlated to an increased propensity to commit crime. U.S.S.G. § 5H1.4. Ms. Jenison's history of alcohol abuse increases the need for specific deterrence. Additionally, the Court should consider this history in recommending placement at a Bureau of Prisons facility and in crafting her conditions of supervised release, so that Ms. Jenison can receive the substance-abuse and related mental-health treatment she needs.

History and characteristics of the defendant. Unlikely many of the defendants who appear before this Court, Ms. Jenison enjoys a substantial net worth, and had lawful means to pay the bills that she could have pursued instead of turning to fraud. She has a master's degree in molecular genetics from Purdue. PSR ¶ 65. In January 2021, she had an investment account valued at \$1.16 million. PSR ¶ 74. She liquidated that account to invest in real estate, and now she owns four residential properties. PSR ¶¶ 70–74. Ms. Jenison has more than \$50,000 in cash in personal bank accounts, and owns \$40,000 in antiques and jewelry. PSR ¶ 69. In the face of this degree of advantage, her crimes can be explained only by avarice.

Three factors mitigate Ms. Jenison's culpability somewhat, and lead the United States to recommend a sentence at the bottom of the guidelines range. First, upon being approached by law enforcement, she admitted her wrongdoing and accepted responsibility. PSR ¶ 21. Second, she has offered to pay full restitution, and defense counsel and counsel for the United States have

been working together to determine the best way for her to do so. Third, she has no criminal history involving fraud or other financial crimes. PSR ¶¶ 42–44. These are proper considerations for the Court and warrant the United States’ recommended sentence.

Ms. Jenison’s current schooling, however, does not justify a noncustodial sentence. According to the PSR, she is currently seeking a doctoral degree and is worried that a term of imprisonment would negatively affect her education and future career. PSR ¶¶ 27, 65. But she was enrolled in her graduate program at the time of her fraud crimes, *see* PSR ¶ 65, and any negative effects on her schooling and career are the natural result of her decision to engage in fraud—not a mitigating factor beyond her control.

Moreover, the Sixth Circuit has made clear that the collateral consequences of conviction are “impermissible factors” in sentencing a defendant. *Peppel*, 707 F.3d at 637. That is because Section 3553(a) requires that “the *sentence* imposed . . . reflect the seriousness of the offense,” and “none of” these collateral consequences are Ms. Jenison’s “sentence.” *United States v. Bistline*, 665 F.3d 758, 765 (6th Cir. 2012) (emphasis in original) (quoting 18 U.S.C. § 3553(a)(2)(A)). Beyond that, consideration of these consequences would create unseemly results. Consideration of collateral consequences, such as disruption of a doctoral program, “would tend to support shorter sentences in cases with defendants from privileged backgrounds, who might have more to lose along these lines.” *Id.* at 765–66. If another defendant were to cause the same fraud loss as Ms. Jenison, he should not receive a stiffer sentence simply because he is not pursuing an advanced degree. The Court should reject Ms. Jenison’s request for leniency based on her schooling.

Seriousness of the offense and need to promote respect for the law. Finally, a noncustodial sentence would neither reflect the seriousness of the offenses nor promote respect

for the law. A probationary sentence and a restitution order would send the dangerous message that individuals convicted of PPP fraud need only pay back their ill-gotten gains and suffer a lesser loss of liberty. A probationary sentence or a sentence of home confinement would be particularly inappropriate here: Ms. Jenison lives in a six-bedroom home and has substantial means. PSR ¶¶ 70. Sentencing her to spend time in her home rather than to a term of incarceration would not satisfy Congress's purposes of sentencing.

CONCLUSION

For these reasons, a sentence of 21 months of imprisonment, a fine of \$95,000, a term of supervised release of 3 years, and a restitution order of \$160,247 would be sufficient but not greater than necessary to achieve the statutory goals of sentencing. Forfeiture is also required.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Sentencing Memorandum of the United States was served this 1st day of November, 2021, electronically upon all counsel of record.

s/ Peter K. Glenn-Applegate

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