

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
HARRISON DIVISION

UNITED STATES OF AMERICA )  
 ) No. 3:21CR30001-PKH-001  
v. )  
 )  
JAMES READ )

**UNITED STATES’ SENTENCING MEMORANDUM**

The United States of America, by and through David Clay Fowlkes, Acting United States Attorney for the Western District of Arkansas, and the undersigned Assistant United States Attorney, states its position on the forthcoming sentencing and outstanding objections to the Pre-Sentence Report, *Doc. No. 16* (“PSR”).

**BACKGROUND**

After pleading guilty to a three-count Information stemming from his filing fraudulent applications for SBA backed loans and unemployment benefits, Read is set for sentencing before this Court on July 7, 2021. The United States files this sentencing memorandum to address the pending objections and the 18 U.S.C. § 3553(a) factors for the Court’s consideration.

**ARGUMENT**

**1. Objections to Loss Amount**

The United States contends that the loss Read intended to cause should drive the Guidelines calculation. The general rule is to apply the greater of actual or intended loss. U.S.S.G. § 2B1.1(commentary note 3(A)). Intended loss is “the pecuniary harm that the defendant purposely sought to inflict” and even includes “pecuniary harm *that would have been impossible or unlikely to occur.*” *Id.* (emphasis added).

Read completed loan applications using false income data in hopes of obtaining large loans. Unequivocally, Read provided the data that drove the requested loan amounts. At times, the banks gave less than Read asked for, were limited by law in the amount they could give, or denied the loan altogether. Thus, as the addendum to the PSR rightfully notes, the full intended loss amount in this case carries some complications. Because some of the loan applications were summarily denied by the banks, the Government did not seek further details about those applications. But nonetheless, the ascertainable intended loss amount still eclipses the actual loss, and the United States submits it is therefore the more appropriate measure in this case.

Next, the law is clear that Read is accountable for the losses that occurred when he assisted his wife and mother-in-law in obtaining loans and unemployment benefits by fraud. U.S.S.G. § 1B1.3(A). There was joint criminal conduct between Read and his wife, and between Read and his mother-in-law. Read admits as much throughout the PSR. This joint conduct mirrors Read's own offense conduct, i.e., is within the same scope. *Id.* That an unearned payment would issue to his wife and mother-in-law, as it did to him, is reasonably foreseeable. *Id.* Accordingly, it is appropriately included as relevant conduct here, and Read bears responsibility for it.

## **2. Acceptance of Responsibility**

The PSR correctly captures that Read should not receive a reduction for acceptance of responsibility. The addendum to the PSR, *Doc. No. 16-1*, spells out why Read's March 21, 2021 PPP loan application contained false information. Primarily, the Schedule C Read provided with the application relates to tax year 2019, not 2020 as he points out in his defense. *Doc. No. 14 at 4*. However, upon information and belief, Read did not file tax returns in 2019, nor does that Schedule C appear in any returns filed by his wife (who included Read as her dependent). Moreover, Read is no stranger to providing a doctored Schedule C to obtain a loan. The PSR is

littered with instances of his providing fake tax documents, specifically 2019 IRS form Schedule Cs, to obtain PPP loans. *See PSR at 19, 25, 32, 38, 45, 51, 61, 67, 73, 79, 97, & 99.* All signs point to this being more of the same.

Next, to the extent Read treated the recent application as a “Second Draw” PPP loan<sup>1</sup>, he did so by representing that he’d received a First Draw application, omitting the minor detail that it was obtained by fraud. In this latest application, Read indicated that the First Draw Loan he received was SBA Loan Number \*\*\*\*\*7802, identified in the PSR at Par. 27 and 88. Read certified in this latest application that “The Applicant received a First Draw Paycheck Protection Program Loan and, before the Second Draw Paycheck Protection Program Loan is disbursed, will have used the full loan amount . . . of the First Draw Paycheck Protection Program Loan only for eligible expenses.” Even under the thin assumption that Read used the funds from the identified First Draw loan for eligible expenses<sup>2</sup>, he nonetheless gained the First Draw Loan by fraud and used that information in support of his application for a Second Draw Loan. Certainly, the representation that he’d previously received a loan was material to the lender in deciding to award Read this loan. More certain, the fact that Read had obtained a previous loan by fraud would have affected the lender’s decision to give Read money.

Setting the PPP loan aside, Read’s failure to own up to his crimes was broadcast to his many followers on social media. Shortly after his change of plea, Read addressed his fans, analogizing his behavior to a minor misrepresentation on a credit card application. *See PSR Par. 122.* In the post, he minimized his criminal conduct, falsely represented the nature of aspects of

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<sup>1</sup> It is unclear to the Government if Read, when he initially applied for the loan in January, treated the loan as First or Second Draw Loan. But the Government further contends that distinction is irrelevant for the reasons provided.

<sup>2</sup> Read indicated he used the money on gambling, baseball cards, hobby shops, the GMC truck, and a Ford Fusion. *PSR at 109.* Read’s wife indicated that approximately 70% went to gambling and sports cards. *PSR at 111.*

it, and in some cases denied the offense conduct altogether. *Id.* Accordingly, Read should not receive an adjustment for accepting responsibility.

### **3. Sentencing Factors.**

To arrive at a just sentence, the statute directs the Court to consider the familiar factors at 18 U.S.C. § 3553(a). When the facts of Read's offense conduct are applied to those criteria, a substantial sentence is merited.

*a. Nature and Circumstances of the Offense and the History and Characteristics of the Defendant. (18 U.S.C. § 3553(a)(1)).*

The Coronavirus pandemic has claimed more than half a million American lives, affected the mental and physical health of millions more, and led to widespread unemployment and financial hardship. For others, like Read, it presented a prime opportunity to steal money the U.S. Government earmarked for those most in need.

Read's conduct was especially egregious and involved. To obtain SBA loans aimed for struggling small businesses, he pulled no punches: he forged fake documents<sup>3</sup> (*PSR par. 107*), he used his dead father's information to file loan applications, (*PSR par. 48*), he involved his wife and mother-in-law in the scheme (*see, e.g., PSR pars. 16 & 98*), he faked the numbers (*see, e.g., PSR par. 67*), he applied for loan after loan after loan, even when those loans were being summarily denied. *PSR Par. 88*. After being investigated for loan fraud, after agreeing to plea terms with the United States and executing an agreement acknowledging his guilt, Read continued to provide false information and documents to banks to obtain more money. *PSR par. 114*. And while great financial need could, in the right case, be a somewhat mitigating factor, Read instead blew the money gambling and on baseball cards (*see, e.g., PSR pars. 82-84, 109, & 111*), ignoring other

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<sup>3</sup> Read suggests he used a similar approach to receive a home loan. *PSR par. 107*.

financial obligations. *See PSR par. 180.* Despite pocketing nearly \$300,000.00 in undeserved government money, Read still has outstanding debt and few assets to show for it. *Id.*

This was not the aberrant behavior of a desperate man. It was a months-long operation that took significant effort involving real deceit aimed at a program meant to help the most vulnerable during a once-in-a-lifetime crisis. These circumstances merit a substantial sentence.

- b. The Need for the Sentence Imposed to Reflect the Seriousness of the Offense, To Promote Respect for the Law, and to Provide Just Punishment for the Offense. (18 U.S.C. § 3553(a)(2)(A)); The Need for the Sentence Imposed to Afford Adequate Deterrence To Criminal Conduct and Protect the Public from Further Crimes. (18 U.S.C. § 3553(a)(2)(B-C)).*

Read's lack of criminal history cuts in his favor. But his abuse of the PPP and Unemployment Insurance systems demands just punishment and must promote respect for the law. Moreover, Read has proved that--through his most recent loan applications and public minimization of his conduct--that he requires some specific deterrence and a sentence that help him understand the seriousness of his actions. Moreover, as the second wave of PPP loan applications are on the horizon, Read's sentence should send a message to others, including his many social media followers, that preying on this program will not be treated with leniency. Accordingly, the United States seeks a substantial sentence.

### **CONCLUSION**

Considering the factors set forth at 18 U.S.C. § 3553(a), the United States respectfully requests the Court impose a substantial sentence on Read, one that reflects the concerns outlined above.

Respectfully submitted,

DAVID CLAY FOWLKES  
ACTING UNITED STATES ATTORNEY

/s/ Hunter Bridges  
HUNTER BRIDGES  
Assistant U.S. Attorney  
Arkansas Bar No. 2012282  
414 Parker Avenue  
Fort Smith, Arkansas 72901  
479-783-5125  
[Hunter.Bridges@usdoj.gov](mailto:Hunter.Bridges@usdoj.gov)

**CERTIFICATE OF SERVICE**

I, Hunter Bridges, hereby certify that on June 16, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notice to the following:

James B. Pierce  
Office of the Federal Public Defender  
Judge Isaac C. Parker Fed Bldg.  
30 S. 6th Street  
Room 205  
Fort Smith, AR 72901

/s/ Hunter Bridges  
Hunter Bridges  
Assistant U.S. Attorney