



**THE JUSTICE DEPARTMENT'S HOUSING SETTLEMENTS:  
MILLIONS OF CONSUMER RELIEF FUNDS DISBURSED  
WITH NO GUARANTEES OF HELPING HOMEOWNERS**

**A Majority Staff Report of the  
Committee on Homeland Security and Governmental Affairs  
United States Senate  
Senator Ron Johnson, Chairman**



**May 18, 2016**

## EXECUTIVE SUMMARY

---

Nearly a decade after the crash of U.S. housing markets, the Obama Administration continues to pursue claims against large financial institutions accused of contributing to the crash. The crash had profound effects on American homeowners, and disproportionately affected minority homeowners. In recent years, the Administration has settled claims with multiple financial institutions, resolving allegations relating to housing finance. The settlement negotiations between the DOJ and the banks, however, have been shrouded in secrecy and the terms of the eventual settlement create a number of constitutional and policy concerns. In particular, the settlements require the distribution of millions of dollars of consumer relief funds with no guarantee that the funds will assist individuals who lost their homes in the housing crash.

The DOJ settled with JPMorgan Chase & Co. (JPMorgan) in November 2013, Citigroup Inc. (Citigroup) in July 2014, and Bank of America Corporation (Bank of America) in August 2014. These settlements concerned allegations related to the issuance of residential mortgage-backed securities. Collectively, these three settlements totaled \$36.65 billion in payments from the banks to various federal, state, non-governmental organizations, and direct consumer relief.

In March 2015, Senator Ron Johnson, Chairman of the Senate Homeland Security and Governmental Affairs Committee, began oversight of the DOJ's settlements with large financial institutions. As chairman of the chief investigative committee of the Senate, Chairman Johnson requested information from the DOJ and the designated independent monitors of the three settlements. The purpose of this majority staff report is to promote broad transparency and accountability in the disbursement of billions of dollars of settlement funds flowing outside of the Congressional appropriations process.

The framework of the Constitution designates Congress as the sole entity empowered to allocate public funds, either directly or through delegation to the agencies. The judicial system, similarly, is the mechanism for adjudicating disputes and remedying wrongs. The DOJ's housing settlements, however, removed millions of dollars of third-party payments from the congressional appropriation process as well as from judicial review. Of the settlements funds set aside for consumer relief, at least \$640 million was set aside for third-party payments, to be disbursed by the banks according to the settlement terms. By routing funds away from the U.S. Treasury, the settlements circumvented Congress's spending authority and eliminated Congress's ability to decide how to distribute the funds. While reasonable people may disagree on the merits of these settlements, it is concerning nonetheless that the DOJ unilaterally controlled the allocation of billions of dollars absent Congressional and judicial involvement.

The majority staff report finds that as the banks disbursed settlement funds to third-party organizations, there were no guarantees that the funds would help homeowners who lost their homes. From the billions of dollars that each bank agreed to pay under the terms of the



settlement, specific sums were earmarked for third-party groups approved by the Department of Housing and Urban Development. The DOJ did not require the third-party disbursements to go to those homeowners actually aggrieved by the alleged wrongdoing. Instead, the DOJ required the banks to disburse the funds to these third-party groups without requiring any proof of how the funds would be spent. Moreover, the independent settlement monitors charged with overseeing the settlements have no way of knowing how the third-party groups spent the funds they received through the settlements.

In addition to funding broader housing policy outside of the Congressional and judicial processes, Chairman Johnson has found that the DOJ collected more than \$575 million for its own purposes through the three settlements. The DOJ has the ability under federal law to collect a three percent fee on settlement funds related to its civil enforcement efforts in order to pay for processing debt litigation. Since the creation of this authority in 1993, however, the DOJ's total collections—and, correspondingly, the three-percent payments to the DOJ—have grown over time. To date, the DOJ has retained a total of \$575.7 million from the housing settlements with JPMorgan, Bank of America, and Citigroup—a remarkable sum considering that the agency collected only \$158.3 million in three-percent payments as recently as fiscal year 2013.

The findings of this majority staff report are admittedly limited by the information available to the Committee. Because Chairman Johnson's inquiry was a broad examination of the settlements, the Committee has not tracked the use of the settlement funds beyond the DOJ and the independent settlement monitors. Nonetheless, concerns are apparent in the DOJ's housing settlements. Chairman Johnson's oversight has found:

- Of the \$36.65 billion in total settlements, the DOJ earmarked \$13.5 billion for “consumer relief,” of which hundreds of millions of dollars are to be disbursed to selected third-party groups approved by the Administration. (pages 20-25)
- Of the \$13.5 billion in consumer relief funds, there is no requirement for every dollar to be first distributed to any homeowners actually aggrieved before any money is spent on broader housing-related policy goals. (pages 20-25)
- The settlements did not require any proof of how the third-party groups spent consumer relief funds, and the independent settlement monitors have no visibility into the use of those funds. (pages 25-30)
- The DOJ has retained \$575.7 million from three housing settlements for its own use as part of the “three percent fund”—an amount that could easily fund oversight of multiple housing regulators. (pages 32-35)



- The DOJ's use of the housing settlements to indirectly effectuate housing policy ignores Congress's power of the purse to appropriate funds for policy purposes. (pages 16-20)
- The third-party consumer relief entities chosen by the DOJ include politically active and controversial groups. (pages 25-27)
- The sole entity designated by the DOJ to receive undesignated surplus consumer relief funds has been struggling with "management shortcomings," "contracting issues," and other issues. (pages 27-30)





## TABLE OF CONTENTS

---

EXECUTIVE SUMMARY .....	2
TABLE OF CONTENTS.....	5
I. INTRODUCTION .....	6
II. AN OVERVIEW OF THE ADMINISTRATION’S HOUSING SETTLEMENTS .....	7
A. <i>JPMorgan Chase Settlement</i> .....	10
B. <i>Citigroup Inc. Settlement</i> .....	12
C. <i>Bank of America Corporation Settlement</i> .....	13
D. <i>Other Housing-Related Settlements</i> .....	15
III. THE JUSTICE DEPARTMENT DISREGARDED THE ROLE OF CONGRESS AND THE JUDICIARY IN ITS METHOD AND MANNER OF COMPELLING THE PAYMENT OF FUNDS TO THIRD-PARTY GROUPS.....	16
A. <i>The DOJ avoided Congress and the courts to pursue policy outcomes through pre-indictment settlements</i> .....	17
B. <i>The DOJ compelled banks to fund a narrow group of government-approved third parties as part of the banks’ penalty obligations at the expense of aggrieved homeowners</i> .....	20
C. <i>There has been ineffective oversight of the consumer relief funds distributed to third parties because the method and manner of DOJ’s settlement process precludes traditional oversight tools.</i> .....	25
i. <i>Controversial housing counseling groups receive funds under the settlements that Congress cut from the federal budget</i> .....	26
ii. <i>NeighborWorks America was selected as the primary recipient of any balance from settlements and tax relief fund</i> .....	27
IV. THE JUSTICE DEPARTMENT’S SETTLEMENTS WITH THREE FINANCIAL INSTITUTIONS RESULTED IN \$575 MILLION GOING DIRECTLY TO THE JUSTICE DEPARTMENT.....	30
A. <i>The Three Percent Fund in practice</i> .....	31
B. <i>The multi-billion dollar settlements produced a windfall for the DOJ’s Three Percent Fund and deprive millions of dollars from the congressional appropriations process.</i> .....	32
V. CONCLUSION.....	36



## I. INTRODUCTION

---

In March 2015, Senator Ron Johnson, Chairman of the Senate Committee on Homeland Security and Governmental Affairs, initiated an inquiry into the Department of Justice's (DOJ) settlements with large financial institutions and credit rating agencies related to the 2008 financial crisis. Chairman Johnson sent a total of six letters requesting data and information about the settlements. On March 11, 2015, Chairman Johnson requested information from the DOJ about its settlements with Bank of America, Citigroup, JPMorgan, and Standard & Poor's (S&P).<sup>1</sup> After receiving an incomplete response from the DOJ,<sup>2</sup> Chairman Johnson sent a follow-up letter on May 4, 2015.<sup>3</sup> On May 29, 2015, the DOJ responded with more specific information about the amount of funds in each settlement and explained how each bank maintained responsibility for distributing consumer relief funds.<sup>4</sup> In response to this letter, Chairman Johnson sent a third letter to DOJ on July 28, 2015, requesting specific information about the DOJ's Three Percent Fund, how the DOJ tracked expenditures retained in the Three Percent Fund, and the DOJ's involvement in selecting housing counseling agencies.<sup>5</sup> The DOJ responded on August 24, 2015.<sup>6</sup>

Separately, on July 28, 2015, Chairman Johnson wrote individually to the independent monitors tasked with overseeing each settlement, seeking information about how the banks were distributing consumer relief funds and which entities had received funds to date.<sup>7</sup> On August 7, 2015, Joseph A. Smith, Jr., the monitor for JPMorgan, responded to the Chairman's letter.<sup>8</sup> On

---

<sup>1</sup> Appendix A, Ex. 1, Letter from Hon. Ron Johnson, Chairman, S. Comm. on Homeland Sec. & Governmental Affairs, to Hon. Stuart Delery, Acting Assoc. Att'y Gen., Dep't of Justice (March 11, 2015).

<sup>2</sup> Appendix A, Ex. 2, Letter, from Hon. Peter J. Kadzik, Assistant Att'y Gen., Dep't of Justice, to Hon. Ron Johnson, Chairman, S. Comm. on Homeland Sec. & Governmental Affairs (March 25, 2015).

<sup>3</sup> Appendix A, Ex. 3, Letter from Hon. Ron Johnson, Chairman, S. Comm. on Homeland Sec. & Governmental Affairs, to Hon. Stuart Delery, Acting Assoc. Att'y Gen., Dep't of Justice (May 4, 2015).

<sup>4</sup> Appendix A, Ex. 4, Letter, from Hon. Peter J. Kadzik, Assistant Att'y Gen., Dep't of Justice, to Hon. Ron Johnson, Chairman, S. Comm. on Homeland Sec. & Governmental Affairs (May 29, 2015).

<sup>5</sup> Appendix A, Ex. 5, Letter from Hon. Ron Johnson, Chairman, S. Comm. on Homeland Sec. & Governmental Affairs, to Hon. Stuart Delery, Acting Assoc. Att'y Gen., Dep't of Justice (July 28, 2015).

<sup>6</sup> Appendix A, Ex. 6, Letter from Hon. Peter J. Kadzik, Assistant Att'y Gen., U.S. Dep't of Justice, to Hon. Ron Johnson, Chairman, S. Comm. on Homeland Sec. & Governmental Affairs (Aug. 24, 2015).

<sup>7</sup> Appendix A, Ex. 7, Letter from Hon. Ron Johnson, Chairman, S. Comm. on Homeland Sec. & Governmental Affairs, to Eric Green, Monitor, 2014 Bank of America Mortgage Settlement (July 28, 2015); Letter from Hon. Ron Johnson, Chairman, S. Comm. on Homeland Sec. & Governmental Affairs, to Joseph Smith, Monitor, JPMorgan Chase RMBS Settlement (July 28, 2015) (on file with Comm.); Letter from Hon. Ron Johnson, Chairman, S. Comm. on Homeland Sec. & Governmental Affairs, to Hon. Tom Perrelli, Monitor, 2014 Citigroup Inc. Mortgage Settlement (July 28, 2015).

<sup>8</sup> Appendix A, Ex. 8, Letter from Joseph Smith, Monitor, JPMorgan Chase RMBS Settlement, to Hon. Ron Johnson, Chairman, S. Comm. on Homeland Sec. & Governmental Affairs (Aug. 7, 2015)



August 11, 2015, Eric D. Green, the monitor for Bank of America, and Thomas J. Perrelli, the monitor for Citigroup, each responded to the Chairman’s letter.<sup>9</sup>

The information obtained from the DOJ and independent settlement monitors informs the conclusions articulated in this majority staff report. From this information, it appears that billions of dollars have flowed through these opaque negotiations of each settlement without explicit accounting for actual damage done or a direct provision of assistance to those homeowners who already lost their homes. Providing help to those struggling to stay in their homes is a worthy policy goal. The DOJ’s settlements with these major financial institutions, however, show how the Obama Administration unilaterally made funding choices that effectuated broad housing policy with no oversight or little accountability for how the funds were ultimately spent.

## **II. AN OVERVIEW OF THE ADMINISTRATION’S HOUSING SETTLEMENTS**

---

The subprime mortgage and financial crises that occurred from 2006 to 2009 had profound effects on homeowners. According to a Pew Center study, the housing crash had a disproportionate effect on minority homeowners, with inflation-adjusted median net worth falling by 66 percent for Hispanic household and 53 percent for African-American households.<sup>10</sup> There has been ample literature and media coverage of the housing crash. Congressional committees—including a subcommittee of this Committee—investigated the root causes of these problems, attempting to determine why and how they happened.<sup>11</sup> In addition, the DOJ initiated law-enforcement investigations of the major mortgage servicers.<sup>12</sup> On February 9, 2012, the DOJ announced a \$25 billion agreement with the five largest mortgage servicers to settle claims related to mortgage loan servicing and foreclosures.<sup>13</sup> The agreement mandated that the

---

<sup>9</sup> Appendix A, Ex. 9, Letter from Eric Green, Monitor, 2014 Bank of America Mortgage Settlement, to Hon. Ron Johnson, Chairman, S. Comm. on Homeland Sec. & Governmental Affairs (Aug. 11, 2015); Letter from Hon. Tom Perrelli, Monitor, 2014 Citigroup Inc. Mortgage Settlement, to Hon. Ron Johnson, Chairman, S. Comm. on Homeland Sec. & Governmental Affairs (Aug. 11, 2015).

<sup>10</sup> Rakesh Kochhar, Richard Fry, and Paul Taylor, *Wealth Gaps Rise to Record Heights Between Whites, Blacks and Hispanics*, PEW RESEARCH CENTER at 1 (July 26, 2011).

<sup>11</sup> See e.g., Permanent Subcomm. on Investigations Report, *Wall Street and the Financial Crisis: Anatomy of a Financial Collapse*, Majority and Minority Staff Report (April 13, 2011). Specifically, the PSI Report determined that “the most immediate trigger to the financial crisis was the July 2007 decision by Moody’s and S&P to downgrade hundreds of [residential mortgage-backed securities] and [collateralized debt obligation] securities.” *Id.* at 45.

<sup>12</sup> Press Release, U.S. Dep’t of Justice, Federal Government and State Attorneys General Reach \$25 Billion Agreement with Five Largest Mortgage Servicers to Address Mortgage Loan Servicing and Foreclosure Abuses (Feb. 9, 2012) (agreement “is the result of extensive investigations by federal agencies, including the Department of Justice” and other federal agencies and state attorneys general).

<sup>13</sup> *Id.* In this particular agreement, the DOJ negotiated on behalf of the Department of Housing and Urban Development and 49 state attorneys general. Press Release, U.S. Dep’t of Justice, \$25 Billion Mortgage Servicing Agreement Filed in Federal Court (March 12, 2012).



financial institutions—Bank of America Corporation, JPMorgan Chase & Co., Wells Fargo & Co., Citigroup Inc., and Ally Financial, Inc.—collectively pay “\$20 billion toward various forms of financial relief to homeowners.”<sup>14</sup>

After the 2012 settlement, the DOJ shifted its focus to claims related to each bank’s role in the “issuance of residential mortgage-backed securities.”<sup>15</sup> This focus led to three additional major settlements: JPMorgan Chase & Co. (JPMorgan) in November 2013,<sup>16</sup> Citigroup Inc. (Citigroup) in July 2014,<sup>17</sup> and Bank of America Corporation (Bank of America) in August 2014.<sup>18</sup> Collectively, the three new settlements totaled \$36.65 billion in payments from the banks to various federal and state entities, non-governmental organizations, and in direct consumer relief. The three settlement agreements shared a number of identical provisions, though each agreement had distinct variations in certain provisions.

The principal similarity among all three settlements is the DOJ’s reliance on 12 U.S.C. § 1833a, the civil penalties provision of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA).<sup>19</sup> Prior to the 2009 financial crisis, the FIRREA civil remedy was a rarely-used enforcement tool to target fraud in the savings and loan industry.<sup>20</sup> Since 2009, however, this enforcement tool has emerged as the DOJ’s “remedy of choice to investigate and prosecute cases arising out of the recent financial crisis.”<sup>21</sup> Using this authority, the DOJ collected a total of \$11 billion in FIRREA civil penalties from the JPMorgan, Citigroup, and Bank of America settlements to be “deposited in the General Fund of the United States Treasury.”<sup>22</sup> Any funds deposited into the General Fund are subject to the congressional appropriations process governed by Article I of the U.S. Constitution.<sup>23</sup> The banks also resolved claims brought by federal regulators such as the National Credit Union Administration, Federal

---

<sup>14</sup> Press Release, U.S. Dep’t of Justice, \$25 Billion Mortgage Servicing Agreement Filed in Federal Court (March 12, 2012).

<sup>15</sup> See Settlement Agreement between JPMorgan Chase & Co. et al., and U.S. Dep’t of Justice et al., at 1 (Nov. 2013) [hereinafter JPMorgan Settlement Agreement]; Settlement Agreement between Citigroup Inc. et al. and U.S. Dep’t of Justice et al., at 1 (July 2014) [hereinafter Citigroup Settlement Agreement]; and Settlement Agreement between Bank of America Corporation et al. and U.S. Dep’t of Justice et al., at 1 (Aug. 2014) [hereinafter Bank of America Settlement Agreement].

<sup>16</sup> See JPMorgan Settlement Agreement. The settlement between the DOJ and JPMorgan includes JPMorgan Chase & Co., The Bear Stearns Companies, Inc., and Washington Mutual Bank. *Id.*

<sup>17</sup> See Citigroup Settlement Agreement.

<sup>18</sup> See Bank of America Settlement Agreement. The settlement between DOJ and Bank of America includes Bank of America Corporation, Bank of America, N.A., Banc of America Mortgage Securities, and “current and former subsidiaries and affiliates.” *Id.* at 1.

<sup>19</sup> 12 U.S.C. § 1833a.

<sup>20</sup> Michael Y. Scudder and Andrew M. Good, *The FIRREA Revival: Dredging Up Solutions to the Financial Crisis*, U.S. Chamber Inst. for Legal Reform (Oct. 2014) <http://www.instituteforlegalreform.com/uploads/sites/1/firrea.pdf>.

<sup>21</sup> *Id.*

<sup>22</sup> JPMorgan Settlement Agreement at 3; Citigroup Settlement Agreement at 2; and Bank of America Settlement Agreement at 6.

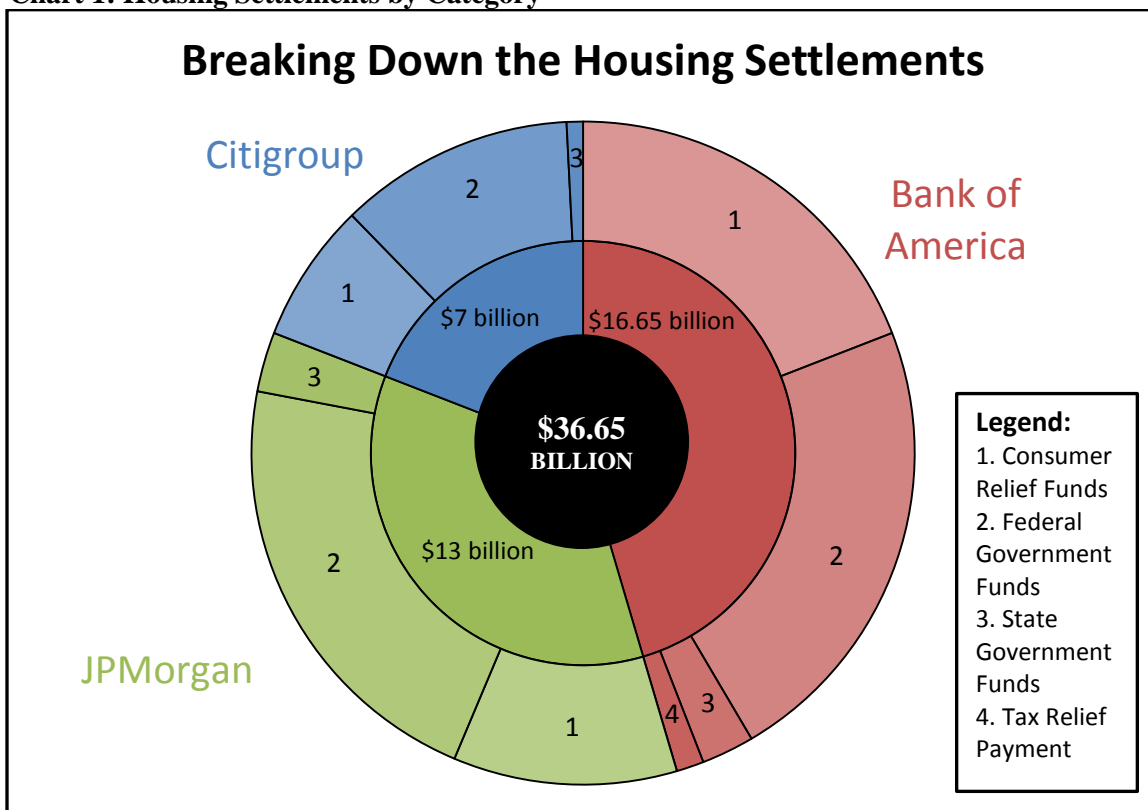
<sup>23</sup> See U.S. CONST. art. I, § 9, cl. 7.



Deposit Insurance Corporation, Federal Housing and Finance Agency, Federal Housing Administration, and the Securities and Exchange Commission.<sup>24</sup>

In addition to the FIRREA civil penalties, all three bank settlements include provisions related to claims bought by individual states, and each bank is required to disburse a specific amount of money for the purposes of consumer relief. The settlement agreements did not require these funds to be deposited in the Treasury’s General Fund—unlike the FIRREA civil penalties. Accordingly, these portions of the settlement funds were not subject to any congressional review or control.

**Chart 1: Housing Settlements by Category<sup>25</sup>**



<sup>24</sup> See JPMorgan Settlement Agreement, Citigroup Settlement Agreement, and Bank of America Settlement Agreement.

<sup>25</sup> For the purposes of this chart, consumer relief funds include any funds distributed by a bank for the purposes of consumer relief under the terms of the settlement agreement. Federal government funds include any funds paid in relation to the FIRREA civil penalty or to resolve claims by federal entities. State government funds include any funds paid by a bank to settle claims brought by an individual state. Tax Relief Payment is specific to the Bank of America Settlement. Bank of America is required by the settlement to provide \$490 million to the bank’s monitor for the purposes of providing tax relief payments to consumers that have increased tax liabilities based on receiving consumer relief funds from the bank.



### A. JPMorgan Chase Settlement

In November 2013, JPMorgan Chase & Co. settled with the DOJ for \$13 billion.<sup>26</sup> According to the JPMorgan settlement agreement, the DOJ “conducted investigations of the packaging, marketing, sale and issuance of residential mortgage-backed securities by JPMorgan, The Bear Stearns Companies, Inc. and Washington Mutual Bank between 2005 and 2008.”<sup>27</sup> Of the \$13 billion, JPMorgan agreed to pay \$9 billion to federal regulators and individual states, as well as another \$4 billion in consumer relief.<sup>28</sup> JPMorgan did not admit liability as a part of the settlement.

<b>JPMorgan Chase Settlement</b>	
November 2013	
Direct Consumer Relief	\$4,000,000,000.00
FIRREA Civil Penalty	\$2,000,000,000.00
Federal Government Entity Settlements <sup>29</sup>	\$5,932,989,690.73
Combined Individual State Settlements <sup>30</sup>	\$1,067,010,309.27
<b>TOTAL</b>	<b>\$13,000,000,000.00</b>

The settlement agreement also specified how JPMorgan would receive credit toward satisfying its \$4 billion direct consumer relief obligation. According to the Annex 2 of the agreement, JPMorgan could receive credit towards its consumer relief obligation in the following ways:

- modifying existing mortgages through forgiveness and forbearance;
- rate reduction and refinancing;
- lending to low to moderate income homebuyers and other areas; and
- funding anti-bligh measures.<sup>31</sup>

<sup>26</sup> Press Release, U.S. Dep’t of Justice, Federal and State Partners Secure Record \$13 Billion Global Settlement with JPMorgan for Misleading Investors About Securities Containing Toxic Mortgages (Nov. 19, 2013).

<sup>27</sup> JPMorgan Settlement Agreement at 1. JPMorgan Chase purchased Bear Stearns and Washington Mutual during the financial collapse with the help of federal regulators. See Neil Irwin, *Everything You Need to Know About JPMorgan’s \$13 Billion Settlement*, THE WASHINGTON POST (Nov. 19, 2013) <https://www.washingtonpost.com/news/wonk/wp/2013/10/21/everything-you-need-to-know-about-jpmorgans-13-billion-settlement/>.

<sup>28</sup> JPMorgan Settlement Agreement at 3, 5.

<sup>29</sup> The individual federal entities receiving specific allocations include: the National Credit Union Administration, the Federal Housing Finance Agency (Fannie Mae and Freddie Mac’s conservator), and the Federal Deposit Insurance Corporation. See JPMorgan Settlement at 2.

<sup>30</sup> The individual states receiving specific allocations include: California, Delaware, Illinois, Massachusetts, and New York. See JPMorgan Settlement at 4-5.



Each category includes subcategories related to specific methods of disbursing funds.<sup>32</sup> The agreement requires JPMorgan to disburse a minimum of \$2 billion for loan forgiveness and forbearance, defined as relief given directly to qualified homeowners with mortgages serviced by JPMorgan.<sup>33</sup> The remainder of the consumer relief funds may be directed to any category at the bank's choosing.<sup>34</sup>

Under the terms of the settlement agreement, if JPMorgan fails to pay out all \$4 billion in required consumer relief by 2018, the bank is required to pay one organization, NeighborWorks America, the remaining balance.<sup>35</sup> According to the DOJ, the inclusion of NeighborWorks as the recipient of settlement funds "was a negotiated term of the settlement agreement between the parties."<sup>36</sup> As of June 30, 2015, JPMorgan had satisfied \$3.56 billion out of \$4 billion in consumer relief.<sup>37</sup> According to the bank, it plans to complete all consumer relief distributions in 2016.<sup>38</sup>

The most notable difference in JPMorgan's settlement agreement as compared to the settlements with Bank of America and Citigroup is that JPMorgan's agreement did not require the bank to donate funds to any third-party groups. The settlement's anti-blight option includes a provision that allows JPMorgan to receive credit towards the settlement total by donating funds "to capitalize community equity restoration funds or substantially similar community redevelopment activities."<sup>39</sup> This provision allowed JPMorgan, if it desired, to donate money to a variety of organizations rather than directly to homeowners impacted by the housing crisis. As demonstrated in the monitor reports, however, JPMorgan has yet to disburse any funds using this provision of the settlement agreement to date.<sup>40</sup>

---

<sup>31</sup> JPMorgan Settlement Agreement, Annex 2 at 2-4.

<sup>32</sup> See JPMorgan Settlement Agreement, Annex 2.

<sup>33</sup> JPMorgan Settlement Agreement, Annex 2 at 2-3.

<sup>34</sup> The JPMorgan settlement agreement requires that \$1.2 billion be disbursed for principal forgiveness of the homeowner's first lien or principal forgiveness of forbearance (categories 1A and 1B). JP Morgan Settlement Agreement, Annex 2 at 2. However, there is a \$300 million cap on the credit JPMorgan can earn for principal forgiveness of forbearance (category 1B) as well as a \$300 million cap on payment forgiveness (category 1C). *Id.*

<sup>35</sup> JPMorgan Settlement Agreement, Annex 2 at 5.

<sup>36</sup> See Appendix A, Ex. 6, Letter from Assistant Att'y Gen. Kadzik, DOJ, to Chairman Johnson at 4 (Aug. 24, 2015).

<sup>37</sup> Joseph A. Smith, Jr., Monitor, JPMorgan Settlement Monitor, *Consumer Relief through June 30, 2015*, 7<sup>th</sup> Report at 2 (Jan. 12, 2016).

<sup>38</sup> Phone Call between Majority Staff, HSGAC, and JPMorgan (Jan. 11, 2016).

<sup>39</sup> JPMorgan Settlement Agreement, Annex 2 at 4.

<sup>40</sup> Joseph A. Smith, Jr., Monitor, JPMorgan Settlement Monitor, *Consumer Relief through June 30, 2015*, 7<sup>th</sup> Report at 2 (Jan. 12, 2016).



## B. Citigroup Inc. Settlement

In July 2014, Citigroup settled with the DOJ for \$7 billion.<sup>41</sup> According to the settlement agreement, the DOJ “conducted investigations of the packaging, marketing, sale, structuring, arrangement, and issuance of residential mortgage-backed securities and collateralized debt obligations by Citigroup between 2006 and 2007.”<sup>42</sup> Of the total settlement amount, Citigroup agreed to pay \$4 billion as a “civil monetary penalty,” \$2.5 billion in the form of consumer relief, and the remainder to settle FDIC and individual state claims.<sup>43</sup> Citigroup did not admit liability as a part of the settlement.

<b>Citigroup Settlement</b> July 2014	
Direct Consumer Relief	\$2,500,000,000.00
FIRREA Civil Penalty	4,000,000,000.00
Federal Government Entity Settlement (FDIC)	\$208,250,000.00
Combined Individual State Settlements <sup>44</sup>	\$291,750,000.00
<b>TOTAL</b>	<b>\$7,000,000,000.00</b>

Annex 2 of the Citigroup settlement agreement describes the five categories that will satisfy the bank’s obligation to pay \$2.5 billion in consumer relief funds.<sup>45</sup> Citigroup may:

- provide loan modifications in the form of forgiveness or forbearance;<sup>46</sup>
- provide rate reductions or refinancing to homeowners;<sup>47</sup>
- earn credit towards the consumer relief requirements by lending to low to moderate income home buyers;<sup>48</sup>
- disburse settlement funds towards community reinvestment and neighborhood stabilization projects;<sup>49</sup> and

<sup>41</sup> Citigroup Settlement Agreement, at 2, 4; *see also* Press Release, Dep’t of Justice, Justice Department, Federal and State Partners Secure Record \$7 Billion Global Settlement with Citigroup for Misleading Investors About Securities Containing Toxic Mortgages (July 14, 2014) <http://www.justice.gov/opa/pr/justice-department-federal-and-state-partners-secure-record-7-billion-global-settlement>.

<sup>42</sup> Citigroup Settlement Agreement at 1.

<sup>43</sup> Citigroup Settlement Agreement at 2-4.

<sup>44</sup> The individual states receiving specific allocations include: California, Delaware, Illinois, Massachusetts, and New York. *See* Citigroup Settlement Agreement at 2-4 (\$102.7 million to California, \$92 million to New York, \$44 million to Illinois, \$45.7 million to Massachusetts, and \$7.35 million to Delaware).

<sup>45</sup> *See* Citigroup Settlement Agreement, Annex 2.

<sup>46</sup> Citigroup Settlement Agreement, Annex 2 at 2-7.

<sup>47</sup> *Id.* at 8-9.

<sup>48</sup> *Id.* at 10.





- disburse funds towards affordable rental housing.<sup>50</sup>

The settlement and associated Annex 2 detail the minimum amounts that Citigroup must pay out to certain categories. For example, Citigroup is required to disburse a minimum of \$820 million of the \$2.5 billion in consumer relief funds to any of the loan modification options or for “forgiveness of principal associated with a property where foreclosure is not pursued and liens are released.”<sup>51</sup> Citigroup is similarly required to put a minimum of \$299 million towards rate reduction.<sup>52</sup> Citigroup must take a \$180 million loss—and thereby deduct \$180 million from its overall obligation—by providing funds to support affordable rental housing.<sup>53</sup> Finally, the settlement agreement requires Citigroup to pay a minimum of \$25 million in donations to Community Development Financial Institutions, \$15 million to state-based Interest on Lawyers’ Trust Account organizations, and \$10 million to HUD-approved housing counseling agencies.<sup>54</sup>

As of June 30, 2015, Citigroup distributed \$689 million worth of consumer relief out of the required \$2.5 billion.<sup>55</sup> According to the latest monitor report, filed in January 2016, Citigroup has yet to disburse funds to any third-party groups.<sup>56</sup> The bank has completed its disbursements primarily related to homeowner relief in the form of first lien principal forgiveness, rate reductions or refinancing, and principal forgiveness where foreclosure is not pursued.<sup>57</sup>

### ***C. Bank of America Corporation Settlement***

In August 2014, Bank of America settled with the DOJ for \$16.65 billion.<sup>58</sup> This settlement agreement was premised on the DOJ’s inquiry into “the packaging, origination, marketing, sale, structuring, arrangement, and issuance of residential mortgage-backed securities

---

<sup>49</sup> *Id.* at 11-12.

<sup>50</sup> *Id.* at 13.

<sup>51</sup> *Id.* at 7, 11.

<sup>52</sup> *Id.* at 8.

<sup>53</sup> *Id.* at 13. The settlement agreement defines loss “as the difference between the fair value and par value, as reflected on the books and records of Citi, on the origination date of the subordinated loan made to facilitate the construction, rehabilitation or preservation of affordable rental multi-family housing.” *Id.* at fn. 23.

<sup>54</sup> *Id.* at 12.

<sup>55</sup> Tom Perrelli, Citigroup Monitor, *Citi Monitorship Fourth Report*, at 18 (Jan. 2016).

<sup>56</sup> See Tom Perrelli, Citigroup Monitor, *Citi Monitorship Fourth Report*.

<sup>57</sup> *Id.* at 4. Principal forgiveness where foreclosure is not pursued, menu item 4A of the settlement agreement Annex 2, allows Citigroup to “seek credit when it (i) forgoes its right to foreclose on a property; (ii) forgives all principal associated with the property; and (iii) releases the Citi-held liens associated with the property. *Id.* at 17.

<sup>58</sup> Press Release, U.S. Dep’t of Justice, Bank of America to Pay \$16.65 Billion in Historic Justice Department Settlement for Financial Fraud Leading up to and During the Financial Crisis (Aug. 21, 2014) <http://www.justice.gov/opa/pr/bank-america-pay-1665-billion-historic-justice-department-settlement-financial-fraud-leading>.



(RMBS) and collateralized debt obligations (CDOs).”<sup>59</sup> The settlement agreement required Bank of America to pay more than \$8.2 billion in civil monetary penalties to federal entities and individual states.<sup>60</sup> Bank of America did not admit liability as a part of the settlement agreement.

<b>Bank of America Settlement</b> August 2014	
Direct Consumer Relief	\$7,000,000,000.00
FIRREA Civil Penalty	\$5,000,000,000.00
Federal Government Entity Settlements	\$3,216,840,000.00
Combined Individual State Settlements	\$943,000,000.00
Tax Relief Payment	\$490,160,000.00
<b>TOTAL</b>	<b>\$16,650,000,000.00</b>

Like the other settlement agreements, Annex 2 of the Bank of America settlement agreement describes categories through which Bank of America can fulfill its \$7 billion consumer relief obligation.<sup>61</sup> Specifically, the bank can satisfy its consumer relief obligations in the following ways:

- modification through loan forgiveness and loan forbearance;
- lending to low to moderate income homebuyers;
- community reinvestment and neighborhood stabilization; and
- affordable rental housing.<sup>62</sup>

Bank of America is required to provide a minimum of \$2.15 billion in first lien principal forgiveness, \$50 million in donations to community development financial institutions, \$30 million in state-based Interest on Lawyers’ Trust Account organizations, and \$20 million in donations to HUD-approved housing counseling agencies.<sup>63</sup> In addition, Bank of America is required to take a \$100 million loss in support of affordable rental housing.<sup>64</sup>

<sup>59</sup> Bank of America Settlement Agreement at 1. The DOJ’s agreement with Bank of America included companies acquired by Bank of America: Countrywide Financial Corp., Countrywide Home Loans, Inc., Countrywide Securities Corp., Merrill Lynch, Pierce, Fenner & Smith, Inc., Merrill Lynch Mortgage Lending, Inc., Merrill Lynch Mortgage Investors, Inc., and First Franklin Financial Corp. *Id.*

<sup>60</sup> Bank of America Settlement Agreement at 5-8.

<sup>61</sup> *Id.* at 8.

<sup>62</sup> Bank of America Settlement Agreement, Annex 2 at 2-8.

<sup>63</sup> *Id.* at 2, 7.

<sup>64</sup> *Id.* at 8.



Lastly, Bank of America is required to provide its settlement monitor with over \$490 million to establish a tax relief fund to pay for “a portion of [a homeowner’s] potential federal income tax liability associated with the income from discharge of indebtedness.”<sup>65</sup> In other words, a homeowner who is assessed a greater tax liability due to mortgage debt relief would have an avenue to pursue tax relief from the bank. According to the settlement agreement, if Congress were to extend the Mortgage Forgiveness Debt Relief Act of 2007 prior to the end of 2015, the agreement required any money remaining in the tax relief fund to go to state-based Interest on Lawyers’ Trust Account (IOLTA) organizations (75% of the balance) and NeighborWorks America (25% of the balance).<sup>66</sup> Congress passed the Protecting Americans from Tax Hikes Act of 2015, extending tax relief to homeowners who received principal forgiveness.<sup>67</sup> As a result, on February 10, 2016, Bank of America’s monitor disbursed \$122,540,000 to NeighborWorks America.<sup>68</sup>

#### ***D. Other Housing-Related Settlements***

Beyond the three aforementioned settlements, the DOJ has settled or is in the process of settling with other financial institutions. On February 3, 2015, Standard & Poor’s Financial Services LLP (S&P) agreed to settle for \$1.375 billion, including a \$687.5 million FIRREA civil penalty related to S&P’s ratings of RMBS and CDOs.<sup>69</sup> On February 5, 2016, the DOJ announced a \$470 million settlement with HSBC Bank USA NA (HSBC) “to address mortgage origination, servicing and foreclosure abuses.”<sup>70</sup> This settlement requires HSBC to pay \$100 million to settle claims by federal entities and individual states.<sup>71</sup> The remaining \$370 million will be disbursed by HSBC in the form of consumer relief.<sup>72</sup> Morgan Stanley also settled with

---

<sup>65</sup> *Id.* at 1.

<sup>66</sup> Bank of America Settlement Agreement, Annex 3 at 3.

<sup>67</sup> The Protecting Americans from Tax Hikes Act of 2015 was included in the Consolidated Appropriations Act, 2016. Pub. L. No. 114-113 (2015); *see also* Eric Green, Bank of America Monitor, *February 29, 2016 Report* at 40 (Feb. 29, 2016).

<sup>68</sup> *Id.* at 41.

<sup>69</sup> Appendix A, Ex. 6, Letter from Assistant Att’y Gen. Kadzik, DOJ, to Chairman Johnson at 3 (Aug. 24, 2015) (of this, the DOJ retained \$20.6 million under the Three Percent Fund statutory authority).

<sup>70</sup> Press Release, Dep’t of Justice, Justice Department Reaches \$470 Million Joint State-Federal Settlement with HSBC to Address Mortgage Loan Origination, Servicing and Foreclosure Abuses (Feb. 5, 2016) <http://www.justice.gov/opa/pr/justice-department-reaches-470-million-joint-state-federal-settlement-hsbc-address-mortgage>; *see also* Lydia Wheeler, *HSBC Will Pay \$470M to Settle Mortgage, Foreclosure Abuses*, THE HILL (Feb. 5, 2016) <http://thehill.com/regulation/finance/268391-hsbc-will-pay-470m-to-settle-mortgage-foreclosure-abuses>; Rupert Neate, *HSBC Fined \$470m for 'Abusive Mortgage Practices' During 2008 Crisis*, THE GUARDIAN (Feb. 5, 2016) <http://www.theguardian.com/business/2016/feb/05/hsbc-fined-mortgage-practices-financial-crisis>; Kedar Grandhi, *HSBC Fined \$470m in Relation to Its Mortgage Practices During the 2007-2009 American Housing Crisis*, INT’L BUS. TIMES (Feb. 6, 2016), <http://www.ibtimes.co.uk/hsbc-fined-470m-relation-its-mortgage-practices-during-2007-2009-american-housing-crisis-1542321>.

<sup>71</sup> Press Release, U.S. Dep’t of Justice, Justice Department Reaches \$470 Million Joint State-Federal Settlement with HSBC to Address Mortgage Loan Origination, Servicing and Foreclosure Abuses (Feb. 5, 2016).

<sup>72</sup> *Id.*



the DOJ and other entities related to the housing crisis, paying \$3.2 billion.<sup>73</sup> Specifically, the settlement requires Morgan Stanley to pay a \$2.6 billion civil monetary penalty to the federal government and nearly \$600 million to settle claims brought by the states of New York and Illinois.<sup>74</sup> On April 11, 2016, the DOJ announced a settlement with Goldman Sachs related to the “marketing, structuring, arrangement, underwriting, issuance and sale of residential mortgage-backed securities.”<sup>75</sup> The agreement is for a total payout of \$5.06 billion—\$2.385 billion in civil monetary penalties, \$875 million to resolve other federal and state claims, and \$1.8 billion in consumer relief.<sup>76</sup> These other housing-related settlements are not included in this analysis because they have not been formally completed, do not involve the distribution of funds for consumer relief, or the entity has yet to begin distributing consumer relief funds.

### **III. THE JUSTICE DEPARTMENT DISREGARDED THE ROLE OF CONGRESS AND THE JUDICIARY IN ITS METHOD AND MANNER OF COMPELLING THE PAYMENT OF FUNDS TO THIRD-PARTY GROUPS**

---

Leveraging the settlement process under threat of prosecution, the DOJ secured the banks’ agreement to provide consumer relief funds to third-party groups, rather than directly to individuals who were injured by the crash of the housing market. This course of action raises two primary concerns. First, the use of these settlements to create incentives for shaping broader housing policy shows a disregard for separation of powers considerations inherent in the U.S. Constitution. Second, the DOJ’s settlements divert funds away from harmed individuals or the U.S. Treasury’s General Fund, depriving Congress of any meaningful ability to conduct oversight of these funds after they have been disbursed to third-party groups. As demonstrated below, without the proper oversight, the opportunity for misuse of millions of dollars increases significantly and the ultimate question of whether funds were spent effectively by such third-party groups may never be answered.

---

<sup>73</sup> Christie Smythe, ‘We Are Running Under the Radar’: Morgan Stanley in \$3.2 Billion Mortgage-Bond Pact, BLOOMBERG (Feb. 11, 2016) <http://www.bloomberg.com/news/articles/2016-02-11/morgan-stanley-reaches-3-2-billion-pact-over-mortgage-bonds>.

<sup>74</sup> Renae Merle, *Morgan Stanley Agrees to \$3.2 Billion Settlement for Selling Risky Mortgages*, THE WASHINGTON POST (Feb. 11, 2016) (New York receives \$550 million and Illinois receives \$22.5 million) <https://www.washingtonpost.com/news/business/wp/2016/02/11/morgan-stanley-agrees-to-3-2-billion-settlement-for-selling-risky-mortgages/>.

<sup>75</sup> Settlement Agreement between The Goldman Sachs Group, Inc. et al., and U.S. Dep’t of Justice et al., at 1 (Apr. 2016); see also Press Release, Goldman Sachs, Goldman Sachs Announces a Settlement in Principle with the RMBS Working Group (Jan. 14, 2016) <http://www.goldmansachs.com/media-relations/press-releases/current/announcement-14-jan-2016.html>.

<sup>76</sup> Press Release, Dep’t of Justice, Goldman Sachs Agrees to Pay More than \$5 Billion in Connection with Its Sale of Residential Mortgage Backed Securities (Apr. 11, 2016) <https://www.justice.gov/opa/pr/goldman-sachs-agrees-pay-more-5-billion-connection-its-sale-residential-mortgage-backed>; see also Sudarshan Varadhan and Suzanne Barlyn, *Goldman Sachs Settlement on Mortgage-Backed Bonds to Hit Earnings*, REUTERS (Jan. 14, 2016) <http://www.reuters.com/article/us-goldman-sachs-settlement-idUSKCN0US2SI20160114>.



***A. The DOJ avoided Congress and the courts to pursue policy outcomes through pre-indictment settlements***

The DOJ, as the federal government’s representative in criminal and civil suits affecting the interests of the United States, has the ability to enter into settlements with other parties. This authority is not in question. A more troubling issue, however, is the wisdom of executing settlement agreements that effectuate preferred policy outcomes outside of Congress and the courts. In particular, the decisions to require the banks to disburse money to certain third-party groups, rather than collecting the fines that are appropriately subject to the congressional appropriations process, demonstrates a troubling disregard for separation of powers.

According to the DOJ, large financial institutions like JPMorgan, Citigroup, and Bank of America agreed to multi-billion dollar settlements that included consumer-relief provisions that “likely could not have been ordered by a court, even if the government had prevailed at trial.”<sup>77</sup> This acknowledgement is startling. It describes how the DOJ used the settlement process to achieve policy goals—including the distribution of hundreds of millions of dollars from private companies to third-party housing counseling groups—that would not have been possible in litigation. In other words, the DOJ used the threat of litigation—and the corresponding financial and reputational costs—to cause the banks to take actions that a court would not have ordered them to do.

The federal government’s use of lawsuits to pursue policy goals is not new. In 1999, Senator Orrin Hatch, then-Chairman of the Senate Judiciary Committee, convened a hearing to examine whether lawsuits against private companies—in that case, tobacco, gun, and lead paint manufacturers—were in the public interest.<sup>78</sup> At the time, the federal government was a participant in large-scale tort cases against the tobacco industry.<sup>79</sup> One witness, law professor Jonathan Turley, opined on an issue in the government’s litigation with tobacco companies then that is similar to the DOJ’s recent settlements with major financial institutions. Professor Turley noted that while the government sought to identify a primary bad actor in the tobacco cases, the litigation in reality “involve[d] complex questions of the actual costs of this product [tobacco] on the federal and state government.”<sup>80</sup> Here, in the context of the housing settlements, there are complex questions about the causes and costs of the financial crisis. Many historians and

---

<sup>77</sup> Appendix A, Ex. 2, Letter, from Assistant Att’y Gen. Kadzik, DOJ, to Chairman Johnson at 2 (March 25, 2015).

<sup>78</sup> *Big Government Lawsuits: Are Policy-Driven Lawsuits in the Public Interest?*, Hearing before the S. Comm. on the Judiciary, 106<sup>th</sup> Cong. (Nov. 2, 1999) [hereinafter Lawsuit Hearing].

<sup>79</sup> *See id.*

<sup>80</sup> *Id.* at 29 (opening statement of Prof. Jonathan Turley).



commentators have weighed in on these issues, but there is no consensus view on exact reasons that caused the crises.<sup>81</sup>

Professor Turley also explained that the tobacco litigation “raises questions of the government’s own culpability in the subsidization and taxation of an industry that is now targeted for damages.”<sup>82</sup> This same analysis rings true in the context of the housing crash. Indeed, there is evidence that the federal government’s own affordable housing policies combined with government-sponsored support of “Fannie Mae’s and Freddie Mac’s dominance in the secondary mortgage market” contributed to the housing market crash.<sup>83</sup> In this way, Professor Turley’s observations about the government seeking damages for conduct it previously incentivized are particularly apt.

A more fundamental concern with the DOJ’s housing settlements is that the executive branch is using the settlements beyond the mere enforcement of the law. The executive branch is using the settlements to push policy goals, including funding self-selected third-party groups. Professor Turley articulated this concern in 1999 as well, explaining that the American

*“The DOJ has picked winners—recipients of funds that otherwise could have been deposited in the General Fund of the Treasury—and losers—the entities that were not chosen.”*

constitutional framework is “designed to compel the two political branches, sometimes against the inclinations of their leaders, to deal with each other in an open and deliberative way.”<sup>84</sup> Congress passes appropriations permitting expenditures by the executive branch, while the executive branch enforces and implements the spending priorities of

Congress. As Professor Turley stated, “[o]nce either political branch circumvents the other branch in the process, the center of gravity for the Madisonian system is displaced with potentially dangerous consequences.”<sup>85</sup>

<sup>81</sup> Numerous articles, interviews, and reports have identified a variety of contributing factors, including: high risk lending, regulatory failures, inflated credit ratings, economic adversity, affordability and land-use regulations, predatory lenders, predatory borrowers, and overcommitted borrowers. See e.g., Permanent Subcomm. on Investigations Report, *Wall Street and the Financial Crisis: Anatomy of a Financial Collapse*, Majority and Minority Staff Report (April 13, 2011); Ronald D. Utt, *The Subprime Mortgage Market Collapse: A Primer on the Causes and Possible Solutions*, The Heritage Foundation (Apr. 22, 2008) <http://www.heritage.org/research/reports/2008/04/the-subprime-mortgage-market-collapse-a-primer-on-the-causes-and-possible-solutions>; Fernando Ferreira and Joseph Gyourko, *A New Look at the U.S. Foreclosure Crisis*, Nat’l Bureau of Econ. Research (June 2015).

<sup>82</sup> Lawsuit Hearing at 29 (opening statement of Prof. Jonathan Turley).

<sup>83</sup> H. Comm. on Oversight and Gov’t Reform Report, *The Role of Government Affordable Housing Policy in Creating the Global Financial Crisis of 2008*, at 3 (July 1, 2009, updated May 12, 2010) <https://oversight.house.gov/report/the-role-of-government-affordable-housing-policy-in-creating-the-global-financial-crisis-of-2008/>.

<sup>84</sup> Lawsuit Hearing at 32 (opening statement of Prof. Jonathan Turley).

<sup>85</sup> *Id.*



Here, the DOJ is inserting *its* spending priorities into the settlements with large financial institutions, requiring banks to disburse funds to third-party organizations. The DOJ has picked *winners*—recipients of funds that otherwise could have been deposited in the General Fund of the Treasury—and *losers*—the entities that were not chosen. Those entities that were unaware of the opportunity to receive settlement funds will not receive them; those organizations that were fortunate to be on the HUD-approved list prior to these settlements will enjoy an opportunity not widely available to other organizations. Although the DOJ creates the appearance of transparency by using a predetermined list of organizations, the use of such a list necessarily narrows the potential recipients of the funds from the entire universe of recipients.

A paucity of transparency in the settlement process is precisely the criticism levied by the *Economist*, which characterized the settlements as the “new” way “that regulators and prosecutors are in effect conducting closed door trials.”<sup>86</sup> The allegations levied against the financial institutions never make it to trial, settling before they ever reached the trier of fact. There is no determination of actual wrongdoing made in a public fact-finding. The reliance on settlement agreements to dole out policy-based goals, according to one legal commentator, is a

“As the *Economist* noted, “[p]erhaps the most destructive part of it all is the secrecy and opacity. The public never finds out the full facts of the case, nor discovers which specific people—with souls and bodies—were to blame.”

“systemic flaw[ ]” and “severely skew[s] the incentives that each party has to let a jury (or judge) decide the merits” of the case.<sup>87</sup> The layer of secrecy built into the settlement process adds to this concern. As the *Economist* noted, “[p]erhaps the most destructive part of it all is the secrecy and opacity. The public

never finds out the full facts of the case, nor discovers which specific people—with souls and bodies—were to blame.”<sup>88</sup>

The DOJ could have required the banks to pay more in penalties to federal agencies or directly to the Treasury’s General Fund. In such circumstances, Congress retains a measure of oversight and control—and ultimately, accountability—into how the funds are expended and

<sup>86</sup> *The Criminalization of American Business*, THE ECONOMIST (Aug. 30, 2014) <http://www.economist.com/news/leaders/21614138-companies-must-be-punished-when-they-do-wrong-legal-system-has-become-extortion>.

<sup>87</sup> Memorandum from the Heritage Found. on the Problematic Use of Nonprosecution and Deferred Prosecution Agreements to Benefit Third Parties, No. 141, at 3 (Oct. 23, 2014) [hereinafter Heritage Legal Memorandum No. 141] <http://www.heritage.org/research/reports/2014/10/the-problematic-use-of-nonprosecution-and-deferred-prosecution-agreements-to-benefit-third-parties>; see also Brandon L. Garrett, *Structural Reform Prosecution*, 93 Va. L. Rev. 853, 857 (2007) (noting how prior federal suits using settlement agreements show “some indications of overreaching . . . where prosecutors exacted seemingly unrelated terms”).

<sup>88</sup> *The Criminalization of American Business*, The Economist (Aug. 30, 2014).



what policy goals the funding furthers. Instead, the DOJ chose to avoid Congress and force the banks to disburse funds to third-party groups chosen in secret by unelected and unaccountable officials. In the words of one observer, “the public has the opportunity to hold Senators and Representatives accountable at the polls for their [policy] decisions, an opportunity that they lack whenever career lawyers or political appointees . . . decide which organizations will benefit” from a settlement agreement.<sup>89</sup>

The DOJ asserts in its defense that “[t]hese third-party donations comprise a much smaller part of the overall consumer relief package than direct relief.”<sup>90</sup> It even goes so far as to represent that Bank of America settlement “requires the Bank to accrue *only* \$100 million in consumer relief credit through donations.”<sup>91</sup> This is an unprincipled view. Congress is the sole entity that is empowered by the Constitution to allocate public funds, either directly or through delegation to the agencies. The courts are the mechanisms for adjudicating disputes and remedying wrongs. In its settlements with large financial institutions, the DOJ avoided both to coerce disbursements that further the policy goals of the Administration.

***B. The DOJ compelled banks to fund a narrow group of government-approved third parties at the expense of aggrieved homeowners***

The DOJ required the banks to distribute portions of their settlement payments to certain third-party groups.<sup>92</sup> Despite the DOJ’s assurances that it “plays no role” in selecting specific third party recipients,<sup>93</sup> it is evident that the DOJ influenced which groups received disbursements. Specifically, the DOJ narrowed the list of entities eligible to receive funds by selecting “HUD-approved housing counseling agencies” as the only entities to which the banks could make disbursements for credit.<sup>94</sup> In this respect, the DOJ directed the consumer relief funding to third-party groups and away from homeowners directly aggrieved by any wrongdoing.

Observers have criticized the DOJ’s settlements as “a textbook case of outrageous executive overreach” and as “a scheme to undermine Congress’s spending authority.”<sup>95</sup> The *Wall Street Journal* opined that the DOJ “is in the process of funneling more than half-a-billion dollars to liberal activist groups.”<sup>96</sup> The DOJ also incentivized banks to donate to these third-

---

<sup>89</sup> Heritage Legal Memorandum No. 141, at 6-7 (Oct. 23, 2014).

<sup>90</sup> Appendix A, Ex. 2, Letter, from Assistant Att’y Gen. Kadzik, DOJ, to Chairman Johnson at 2 (March 25, 2015).

<sup>91</sup> *Id.* at 2 (emphasis added).

<sup>92</sup> *Id.* at 3.

<sup>93</sup> *Id.* (indeed, the DOJ reiterated the fact it is not involved in selecting groups to receive consumer relief funds three more times in the paragraph explaining its role).

<sup>94</sup> *Id.*

<sup>95</sup> Kimberley A. Strassel, *Justice’s Liberal Slush Fund*, THE WALL STREET JOURNAL (Dec. 3, 2015)

<http://www.wsj.com/articles/justices-liberal-slush-fund-1449188273>.

<sup>96</sup> *Id.*





party organizations rather than to pay the entire settlement directly to aggrieved homeowners. The *Journal* explained:

To further induce companies to go the donation route, Justice considers these handouts to be worth “double credit” against penalty obligations. So while direct forms of victim relief are still counted dollar-for-dollar, a \$500,000 donation by [Bank of America] to La Raza takes at least \$1 million of the company’s bill.<sup>97</sup>

Specifically, both the Citigroup and Bank of America settlement agreements include provisions providing a two-for-one credit for donations to third-party groups.<sup>98</sup> For example, for every dollar the bank donates to a HUD-approved housing counseling agency, it receives two dollars in credit towards its total settlement obligation.<sup>99</sup> In addition, the DOJ extended an additional incentive to the banks to promptly donate money to third-party groups, providing a 115% early-incentive credit for every dollar the banks provide before a certain date.<sup>100</sup> These provisions have been questioned as “appear[ing] to grossly inflate[] the settlement amount,”<sup>101</sup> providing only “cold comfort”<sup>102</sup> to those who lost their homes, and “hav[ing] a combined on-paper value in the tens of billions of dollars, but a far lower bottom-line impact in reality.”<sup>103</sup>

---

<sup>97</sup> *Id.*

<sup>98</sup> Citigroup Settlement Agreement, Annex 2 at 11, 12; Bank of America Settlement Agreement, Annex 2 at 7.

<sup>99</sup> Citigroup Settlement Agreement, Annex 2 at 12; Bank of America Settlement Agreement, Annex 2 at 7.

<sup>100</sup> Citigroup Settlement Agreement, Annex 2 at 12; Bank of America Settlement Agreement, Annex 2 at 7.

Citigroup earns this additional incentive credit for donations made before October 1, 2015. Citigroup Settlement Agreement, Annex 2 at 2, FN. 7. Bank of America receives this additional incentive credit for donations made before August 31, 2015. Bank of America Settlement Agreement, Annex 2 at 3, FN. 10.

<sup>101</sup> Nathaniel Popper, *In Settlement’s Fine Print, Goldman May Save \$1 Billion*, THE NEW YORK TIMES (Apr. 11, 2016) (quoting Dennis Kelleher, founder of Better Markets)

<http://www.nytimes.com/2016/04/12/business/dealbook/goldman-sachs-to-pay-5-1-billion-in-mortgage-settlement.html>.

<sup>102</sup> Marilyn Geewax, *Citigroup Settlement Offers Former Homeowners ‘Cold Comfort’*, NPR (July 15, 2014) (quoting Robert Hockett, Cornell University law professor) <http://www.npr.org/2014/07/15/331444471/citigroup-settlement-offers-former-home-owners-cold-comfort>.

<sup>103</sup> Alan Pyke, *The Truth of the Goldman Sachs Settlement is in the Fine Print*, THINKPROGRESS (Apr. 11, 2016)

<http://thinkprogress.org/economy/2016/04/11/3768216/goldman-sachs-schneiderman-fine-print/>; see also Suzy Khimm, *The Truth Behind the \$17 Billion Bank of America Settlement*, MSNBC (Aug. 29, 2014)

<http://www.msnbc.com/msnbc/the-truth-behind-the-17-billion-bank-america-settlement>; Jeff Horwitz, *Bank of America’s \$17 Billion Settlement Won’t Cost it \$17 Billion*, THE ASSOCIATED PRESS (Aug. 20, 2014)

<http://www.dailyfinance.com/2014/08/20/bank-of-america-17-billion-settlement-real-cost/>.



Notwithstanding this criticism, the DOJ argued that the settlements' mandatory disbursements are appropriate because "these donations are calibrated to provide assistance to those consumers and communities most in need of help."<sup>104</sup> After Chairman Johnson inquired as

---

*"There is no mechanism available in law that could require a private entity to distribute funds to a universe of unidentified individuals not directly harmed by the entity's actions."*

---

to what the DOJ meant by "calibrated" donations,<sup>105</sup> the Department further explained that "in the view of the Department . . . such payments will help meet the goal of helping homeowners affected by the financial crisis to avoid foreclosure, and further helping individuals to successfully attain homeownership."<sup>106</sup> Notably, the DOJ did not assert that the forced

disbursements would help to make whole any aggrieved homeowners. The disbursements, in other words, are not intended to solely remedy any prior harm for homeowners directly hurt by wrongdoing during the housing crash.

The settlement negotiations allow the DOJ, by its own admission, to *force* banks to distribute money in a manner that the executive branch could not mandate outside of a settlement. There is no mechanism available in law that could require a private entity to distribute funds to a universe of unidentified individuals not directly harmed by the entity's actions. Yet, here, the DOJ selected a subset of third-party organizations—those on the HUD-approved list—to receive funding.<sup>107</sup>

Once a bank distributes funds to a third-party recipient, there is no effective mechanism in place to ensure the funds are ultimately disbursed to homeowners actually aggrieved by the banks' actions. The DOJ claims that it limits the use of the funds,<sup>108</sup> asserting that "the money must be used *only* for foreclosure prevention assistance, community redevelopment assistance, and other housing counseling activities" and that "[t]he banks can receive credit under the agreements only if the relevant donations are properly directed towards these specific ends."<sup>109</sup> However, the DOJ, the banks, and the monitors of the banks lack the authority to examine how the third-party organizations use the funds on the ground level. At most, any visibility into how

---

<sup>104</sup> Appendix A, Ex. 2, Letter from Assistant Att'y Gen. Kadzik, DOJ, to Chairman Johnson at 2 (March 25, 2015).

<sup>105</sup> Appendix A, Ex. 3, Letter from Chairman Johnson, to Acting Assoc. Att'y Gen. Delery, DOJ at 2 (May 4, 2015) (see question 5).

<sup>106</sup> Appendix A, Ex. 4, Letter from Assistant Att'y Gen. Kadzik, DOJ, to Chairman Johnson at 4 (May 29, 2015).

<sup>107</sup> See generally JPMorgan Settlement Agreement, Citigroup Settlement Agreement, and Bank of America Settlement Agreement. For more information about the HUD-approved housing counseling agencies:

<http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm>.

<sup>108</sup> Appendix A, Ex. 2, Letter from Assistant Att'y Gen. Kadzik, DOJ, to Chairman Johnson at 3 (March 25, 2015).

<sup>109</sup> *Id.*



the funds are spent is limited to the contractual commitments between the bank and the third-party organizations.

The sequencing of the settlement agreements shows that the DOJ has increased its efforts to direct money to these third-party organizations. In its first settlement, with JPMorgan, the DOJ did not require a donation to a third-party organization, but offered credit toward the bank’s consumer relief obligations for third-party donations. The DOJ’s subsequent settlement with Citigroup required the bank to make \$50 million in donations to third party organizations, \$10 million of which was required to go to HUD-approved housing counseling agencies.<sup>110</sup> In its most recent settlement with Bank of America, the DOJ required the bank to make a \$100 million in donations to third party organizations,<sup>111</sup> \$20 million of which was required to go to HUD-approved housing counseling agencies.<sup>112</sup>

<b>Settlement Breakdown and Consumer Relief Totals to Date</b>				
	<b>JPMorgan</b>	<b>Citigroup</b>	<b>Bank of America</b>	<b>Totals</b>
Settlement Date	November 2013	July 2014	August 2014	
Total Settlement	\$13 billion	\$7 billion	\$16.65 billion	\$36.65 billion
Consumer Relief	\$4 billion	\$2.5 billion	\$7 billion	\$13.5 billion
Minimum Required Donations to Third Party Groups	No minimum	\$50 million	\$100 million	\$150 million
Donations Disbursed to Third Party Groups	\$0	\$0	\$84 million <sup>113</sup>	\$84 million

Of the \$36.65 billion total settlement amount, \$13.5 billion—or 37 percent—is dedicated to various forms of consumer relief. The agreements require each of the banks to disburse the consumer relief funds and submit the numbers to a monitor for credit towards their settlement.<sup>114</sup> The JPMorgan Monitor released its seventh report on January 12, 2016 and credited JPMorgan with disbursing over \$3.6 billion in consumer relief as of June 30, 2015.<sup>115</sup> The Citigroup Monitor released its fourth report in January 2016 and credited Citigroup with disbursing over

<sup>110</sup> Citigroup Settlement Agreement, Annex 2 at 12 (under Annex 2, part 4(F), Citigroup is required to pay at least \$10 million to housing counseling agencies).

<sup>111</sup> Bank of America Settlement Agreement, Annex 2 at 7 (under Annex 2, part 3(G), Bank of America is required to pay at least \$20 million to HUD-approved housing counseling agencies).

<sup>112</sup> *Id.* at 2, 7.

<sup>113</sup> Eric Green, Bank of America Monitor, *February 29, 2016 Report* at 26 (Feb. 29, 2016).

<sup>114</sup> See JPMorgan Settlement Agreement at 5; Citigroup Settlement Agreement at 4; and Bank of America Settlement Agreement at 8.

<sup>115</sup> Joseph A. Smith, Jr., Monitor, JPMorgan Settlement Monitor, *Consumer Relief through June 30, 2015, 7<sup>th</sup> Report* at 1 (Jan. 12, 2016).



\$3.95 billion in consumer relief as of June 30, 2015.<sup>116</sup> As of those two reports, both JPMorgan and Citigroup have yet to receive credit for disbursing any funds to third-party organizations under the terms of the settlements.

Unlike the other two banks, Bank of America has disbursed funds to third-party organizations. The Bank of America Monitor released its fourth report on February 29, 2016.<sup>117</sup> The report explains that Bank of America has disbursed over \$4.1 billion—or over 59 percent—of the consumer relief required under the terms of its settlement, as of September 30, 2015.<sup>118</sup> Of the \$4.1 billion, Bank of America has disbursed over \$54 million to community development financial institutions or housing counseling agencies.<sup>119</sup> It has also disbursed an additional \$30 million to legal assistance organizations.<sup>120</sup>

---

*“Over \$84 million in donations to third-party organizations and \$193 million in credit for Bank of America towards its total consumer relief goal . . . It is unclear how many homeowners that lost their homes during housing crash actually received the funds.”*

---

This total donation amounts to over \$84 million in donations to third-party organizations and \$193 million in credit for Bank of America towards its total consumer relief goal after factoring in the various incentives.<sup>121</sup> Because these funds are disbursed to third party organizations, rather than directly to aggrieved homeowners, it is unclear how many homeowners who lost their homes during the housing crash actually received the funds.

In its response letters to Chairman Johnson, the DOJ made specific reference to the fact that “no third-party groups have received any money to date under any of these three settlements.”<sup>122</sup> However, the Citigroup and Bank of America settlements both

require the financial institutions to make millions in donations to third-party groups. Bank of America is required to give \$100 million to three types of third-party groups and Citigroup is required to give \$50 million to three types of groups.<sup>123</sup> In addition, the DOJ is not providing

---

<sup>116</sup> Tom Perrelli, Citigroup Monitor, *Citi Monitorship Fourth Report*, at 3 (Jan. 2016).

<sup>117</sup> Eric Green, Bank of America Monitor, *February 29, 2016 Report* (Feb. 29, 2016).

<sup>118</sup> *Id.* at 3.

<sup>119</sup> *Id.* at 27.

<sup>120</sup> *Id.* at 27 (Feb. 29, 2016).

<sup>121</sup> *Id.* at 26-27 (Feb. 29, 2016) (credit claimed by Bank of America includes \$78,840,654 for Menu Item 3E, \$69,000,000 for Menu Item 3F, and \$46,000,000 for Menu Item 3G). JPMorgan, while capable of receiving credit towards the overall settlement amount for donations to third party organizations, has not disbursed any funds to third party organizations. See Joseph A. Smith, Jr., Monitor, JPMorgan Settlement Monitor, *Consumer Relief through June 30, 2015*, 7<sup>th</sup> Report.

<sup>122</sup> Appendix A, Ex. 4, Letter from Assistant Att’y Gen. Kadzik, DOJ, to Chairman Johnson at 3 (May 29, 2015); see also Appendix A, Ex. 2, Letter from Assistant Att’y Gen. Kadzik, DOJ, to Chairman Johnson at 4, fn. 7 (March 25, 2015). At the time of the DOJ’s response to Chairman Johnson’s letters, the individual monitors had yet to credit a bank for distributing consumer relief funds to third-party organizations. However, as mentioned above, the settlement agreements require a minimum of \$150 million in third-party donations.

<sup>123</sup> Citigroup Settlement Agreement, Annex 2 at 12; Bank of America Settlement Agreement, Annex 2 at 7.



any oversight of the funds being disbursed to these groups, relying instead on monitors that are simply reviewing a bank's assertion of consumer relief funds distributed in accordance with the settlement agreement. Deputy Associate Attorney General Geoffrey Graber, who led the settlement negotiations with the three banks, specifically testified in 2015 the monitors are responsible for determining if "the third parties were to use the funds in a way that is inconsistent with the terms of the agreement."<sup>124</sup> In essence, these settlement provisions have become a blank check payable to third-party groups with little guarantee that the funds will be used to remediate homeowners who lost their homes during the housing crisis.

***C. There has been ineffective oversight of the consumer relief funds distributed to third parties because the method and manner of DOJ's settlement process precludes traditional oversight tools.***

Although it is worthwhile to support individual homeowners harmed by the housing crisis, the DOJ's choice to send money to third-party entities is problematic. This money falls outside the congressional appropriations process.<sup>125</sup> Congress and its members are held

---

<sup>124</sup> *Consumers Shortchanged? Oversight of the Justice Department's Mortgage Lending Settlements, Hearing Before the H. Subcomm. on Regulatory Reform, Commercial and Antitrust Law, Comm. on the Judiciary*, 114<sup>th</sup> Cong. 1, 46 (2015) [hereinafter H. Subcomm. Hearing on Mortgage Settlements]. The full exchange between Deputy Assistant Attorney General Graber and Congressman Doug Collins regarding the issue of how funds distributed to third-party groups is disbursed:

Mr. COLLINS. . . . The monitoring process you talked about, it only deals with the banks, okay? And we talk about the banks, making sure that they live up to their agreements and their end of this. DOJ does not have any monitors in place to ensure that if these monies go to intended groups that they are actually using it for the purposes stated. Is that not a concern of DOJ in making these agreements, that they would go to third party groups, but your monitors only monitor the bank that they gave them the money, no[t] that the intended result was going to happen.

Mr. GRABER. Actually it is my understanding that the monitor will actually oversee the use of these funds by third parties—

Mr. COLLINS. But that was not your earlier testimony. Your earlier testimony was that the monitors were to monitor the banks, that the money went to where it was supposed to go, and they would do the audit to make sure they got the money so they could get properly credited in that process. And also any research that we have done is that there is no DOJ monitoring to do that for the third party groups.

Mr. GRABER. Absolutely. The monitor will oversee the allocation of the funds from the banks, including allocation under these provisions to third parties. And it is my understanding that if the third parties were to use the funds in a way that is inconsistent with the terms of the agreement, the monitor would be responsible for catching that. And the monitor would not credit the bank for the funds that went out the door on that.

Mr. COLLINS. But, again, that is contradictory to some of your testimony.

*Id.*

<sup>125</sup> Nonprofit oversight organizations across the political spectrum have identified concerns that the executive branch has insufficient controls in place to limit the allocation of federal funds outside of the congressional appropriations process. *See, e.g.*, Petition for Rulemaking from Cause of Action Inst. and Demand Progress to the Office of Mgmt. & Budget, Exec. Office of the President (Oct. 7, 2015) <http://causeofaction.org/assets/uploads/2015/10/OMB-Petition-for-Rulemaking-2.pdf>.



accountable by the American public every two years, and the Constitution gives Congress the sole authority to direct the appropriations of funds from the Treasury. The DOJ's actions here may be fairly classified as a quasi-legislative disbursement of funds. Rather than *requesting* particular appropriations through the congressional appropriations process, the DOJ made—and will likely continue to make—determinations on the use of money from entities that settle with the federal government.

**i. Controversial housing counseling groups receive funds under the settlements that Congress cut from the federal budget**

While the DOJ does not have a direct role in distributing consumer relief funds to each specific third-party group, the settlements signed by the DOJ require the banks to distribute money to organizations that provide community development, housing counseling, and mortgage assistance. For example, Bank of America has distributed money to the following groups:

- The National Council of La Raza (\$1.5 million);
- The National Community Reinvestment Coalition (\$2.6 million); and
- The National Urban League (\$1.15 million).<sup>126</sup>

The settlement agreements, however, do not specify how these third-party groups must precisely use the funding.

The National Council of La Raza, in particular, has had a particularly checkered history. The group has garnered attention from some lawmakers as being particularly extreme in its views on immigration—with some suggesting that La Raza promotes illegal immigration and advocates for benefits and driver's licenses for undocumented immigrants.<sup>127</sup> La Raza receives millions in government grants each year and between 1989 and 2014, the organization's political action committee, its employees, and their family members made approximately \$100,000 in campaign contributions, predominantly to Democratic politicians.<sup>128</sup> Concurrently, La Raza spent more than \$6 million on lobbying efforts, predominantly in support of immigration and health care legislation.<sup>129</sup>

---

<sup>126</sup> Eric Green, Bank of America Monitor, *February 29, 2016 Report* at 79-80 (Feb. 29, 2016) (Appendix 3E, G).

<sup>127</sup> Andrea Zelinski, *Senate Holding Out on Renata Soto Resolution*, NASHVILLE POST (Feb. 4, 2016) <http://www.nashvillepost.com/politics/article/20489234/senate-holding-out-on-renata-soto-resolution>.

<sup>128</sup> H. Subcomm. Hearing on Mortgage Settlements at 91 (2015) (Statement of Cornelia Mrose, CEO of Compass Films).

<sup>129</sup> *Id.*



It is important that if the executive branch allocates public funds to third-party groups, outside of the grant-making process, it make every attempt to avoid the appearance of impropriety. When the federal government picks winners and losers through a pre-indictment

---

*“By virtue of the housing settlements requiring Bank of America and Citigroup to collectively provide \$30 million to housing counseling organizations, the DOJ is ‘essentially restoring all the funding’ Congress decided to remove from the budget.”*

---

settlement process, it erodes the public’s trust in the government and contributes to a culture of partisanship at the national stage. One commentator noted cynically that as Congress has cut funding for housing counseling programs,<sup>130</sup> the DOJ’s housing settlements have made up the difference.<sup>131</sup> By virtue of the housing settlements requiring Bank of America and

Citigroup to collectively provide \$30 million to housing counseling organizations, the DOJ is “essentially restoring all the funding” Congress decided to remove from the budget.<sup>132</sup>

The lack of oversight of consumer relief funds distributed to third-parties is problematic because many of the recipient groups actively participate in partisan politics. Many of these groups participate in administrative proceedings in the context of regulatory enactment, modification, and enforcement.<sup>133</sup> La Raza employees sat or are sitting on federal advisory committees, and the National Community Reinvestment Coalition is one of several influential affordable housing non-profits that are working with HUD on re-writing Affirmatively Furthering Fair Housing regulations.<sup>134</sup> These groups participate in partisan politics and there is little guarantee in the settlement agreements that the funds received by the third-party groups are used only for housing assistance programs.

**ii. NeighborWorks America was selected as the primary recipient of any balance from settlements and tax relief fund**

The DOJ settlements also require the banks to disburse funds to NeighborWorks America if funds are not spent on individual housing relief by a deadline established in each settlement

---

<sup>130</sup> In 2011, Congress eliminated funding for housing counseling programs from the federal budget for the next fiscal year. Pub. L. No. 112-10, 125 Stat. 196, § 2245.

<sup>131</sup> Kimberley A. Strassel, *Justice’s Liberal Slush Fund*, THE WALL STREET JOURNAL (Dec. 3, 2015).

<sup>132</sup> *Id.*

<sup>133</sup> H. Subcomm. Hearing on Mortgage Settlements at 85-91 (statement of Cornelia Mrose, CEO of Compass Films) (Mrose identifies involvement of third-party groups participating in federal advisory committees, administrative lawmaking and rule enforcement); Kimberley A. Strassel, *Justice’s Liberal Slush Fund*, THE WALL STREET JOURNAL (Dec. 3, 2015).

<sup>134</sup> *Id.*



agreement. According to their respective settlements, JPMorgan has until December 31, 2017,<sup>135</sup> Bank of America has until August 31, 2018,<sup>136</sup> and Citigroup has until December 31, 2018<sup>137</sup> to distribute the required consumer relief funds.

Rather than finding an alternative method to provide additional settlement funds directly to consumers, the DOJ opted for the “sole remedy”<sup>138</sup> of giving funds to a single organization not subject to executive or congressional oversight.<sup>139</sup> It also opted not to simply have the additional funds returned to the General Fund of the Treasury for future appropriation by Congress. The DOJ settlement with JPMorgan requires the bank to “make a compensatory payment in cash in the amount equal to the shortfall to NeighborWorks America” in the event JPMorgan fails to disburse all \$4 billion in consumer relief.<sup>140</sup> Pursuant to Citigroup’s settlement with the DOJ, if Citigroup does not distribute the full amount of consumer relief by the end of 2018, Citigroup must pay the remaining balance to NeighborWorks America.<sup>141</sup>

Similarly, Bank of America’s settlement requires the bank to split the remaining balance of its consumer relief obligations by distributing 25 percent of the balance to NeighborWorks America and 75 percent of the balance pro rata to the state-based IOLTA organizations.<sup>142</sup> The significant difference in the Bank of America settlement agreement, however, is an additional provision that requires Bank of America to deposit over \$490 million into a “Tax Relief Payment Account” for the purpose of assisting homeowners subject to additional federal income-tax liabilities due to principal forgiveness.<sup>143</sup> In the event Congress extended tax relief to homeowners, the agreement required the \$490 million to be disbursed instead to state-based IOLTA organizations and NeighborWorks America.<sup>144</sup> NeighborWorks America would receive 25 percent of the \$490 million, or over \$122 million.<sup>145</sup> Congress extended tax relief to homeowners who received principal forgiveness in passing the Protecting Americans from Tax

---

<sup>135</sup> JPMorgan Settlement Agreement, Annex 2 at 5.

<sup>136</sup> Bank of America Settlement Agreement, Annex 2 at 10.

<sup>137</sup> Citigroup Settlement Agreement, Annex 2 at 14.

<sup>138</sup> *Id.* at 15.

<sup>139</sup> H. Subcomm. Hearing on Mortgage Settlements at 1, 2 (2015) (statement of Rep. Bob Goodlatte, Chairman, Comm. on the Judiciary).

<sup>140</sup> JPMorgan Settlement Agreement, Annex 2 at 5.

<sup>141</sup> Citigroup Settlement Agreement, Annex 2 at 14-15.

<sup>142</sup> Bank of America Settlement Agreement, Annex 2, at 10.

<sup>143</sup> Bank of America Settlement Agreement at 9.

<sup>144</sup> Bank of America Settlement Agreement, Annex 3, at 1. If Congress decided not to act and the money was not used by August 31, 2018, the settlement states that 25% (up to \$122,500,000) of any money in this account would be distributed to NeighborWorks America for housing counseling, neighborhood stabilization, and foreclosure prevention. Bank of America Settlement Agreement, Annex 3 at 3.

<sup>145</sup> Bank of America Settlement Agreement, Annex 3 at 3.





Hikes Act of 2015.<sup>146</sup> As a result, on February 10, 2016, NeighborWorks America received \$122.5 million.<sup>147</sup>

The DOJ's anointed recipient, NeighborWorks America, has been the subject of controversy. According to a *Bloomberg* article, NeighborWorks America has been struggling with "management shortcomings," "contracting issues," and other issues.<sup>148</sup> Four top officials left NeighborWorks America over the course of a few months in 2015 under the watch of a board of directors that includes administrators from the Federal Reserve and the Department of Housing and Urban Development.<sup>149</sup> In another example of mismanagement, executives at NeighborWorks America allegedly awarded two large contracts to insiders without bidding and later tried to justify one of the contracts with a backdated memo.<sup>150</sup> In the other contract, managers signed off on a multi-million dollar technology deal with a new contractor, who overcharged by as much as twenty times, had board members in common with NeighborWorks America, and used the same law firm.<sup>151</sup> The DOJ has not explained why it chose NeighborWorks as the sole recipient of any surplus funds other than to state that the decision to specifically designate funds to NeighborWorks "was in the best interest of the United States."<sup>152</sup>

Without the traditional opportunities for oversight provided by the Congressional appropriations process, the DOJ foreclosed any realistic opportunity to ensure that funds disbursed pursuant to the housing settlements actually help aggrieved homeowners. Instead, the DOJ has blessed \$13.5 billion in consumer relief, of which a minimum of \$640 million flows directly to third-party entities rather than directly to homeowners.<sup>153</sup> The DOJ has chosen favored entities to receive these funds, including entities that engage in partisan politics and one that has been overcharged its contractor "by as much as 20 times."<sup>154</sup> Amid these circumstances,

---

<sup>146</sup> The Protecting Americans from Tax Hikes Act of 2015 was included in the Consolidated Appropriations Act, 2016. Pub. L. No. 114-113 (2015); *see also* Eric Green, Bank of America Monitor, *February 29, 2016 Report* at 40 (Feb. 29, 2016).

<sup>147</sup> *Id.* at 41.

<sup>148</sup> Tom Schoenberg and Clea Benson, *The Nonprofit Behind Billions in Mortgage Aid is a Mess*, BLOOMBERGBUSINESS (Mar. 18, 2015) <http://www.bloomberg.com/news/articles/2015-03-18/billions-in-mortgage-aid-flow-through-group-in-turmoil>. According to *Bloomberg*, the contractor, Hope LoanPort Inc., provides technology services for NeighborWorks America. Both organizations share two board members and are represented by the law firm Venable LLP. *Id.*

<sup>149</sup> *Id.*

<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

<sup>152</sup> *See* Appendix A, Ex. 6, Letter from Assistant Att'y Gen. Kadzik, DOJ, to Chairman Johnson at 4 (Aug. 24, 2015).

<sup>153</sup> The \$640 million minimum is calculated by combining the \$490 million taxpayer relief fund, the \$50 million minimum requirement in the Citigroup settlement agreement, and the \$100 million in the Bank of America settlement agreement.

<sup>154</sup> Tom Schoenberg and Clea Benson, *The Nonprofit Behind Billions in Mortgage Aid is a Mess*, BLOOMBERGBUSINESS (Mar. 18, 2015).



it is difficult to have confidence that the settlement funds intended to assist homeowners are having that effect.

#### **IV. THE JUSTICE DEPARTMENT'S SETTLEMENTS WITH THREE FINANCIAL INSTITUTIONS RESULTED IN \$575 MILLION GOING DIRECTLY TO THE JUSTICE DEPARTMENT**

---

Under federal law, the DOJ has the ability to collect a three percent fee on settlement funds related to its civil enforcement efforts.<sup>155</sup> Congress authorized the DOJ to assess this fee in 1993.<sup>156</sup> When the initial legislation was proposed, the DOJ justified the need for the fund to assist the Department's debt-collection activities, estimating that "hundreds of millions of dollars a year in additional debt could be recovered if it was provided more resources."<sup>157</sup> Congress created the Three Percent Fund in response.

At the time the legislation was drafted, Congress anticipated \$27 million would be retained and deposited into the fund from a projected \$900 million worth of total collections for fiscal year 1994.<sup>158</sup> Congress intended for retained funds, once processing and tracking costs were covered, to be invested in expanding debt processing and tracking activities.<sup>159</sup> Furthermore, the DOJ estimated that for every dollar reinvested into processing and tracking activities, the Department would accrue an additional \$15 to \$32 million in debt collections.<sup>160</sup> The DOJ also estimated debt collection resources would be expanded from \$33 to \$44.25 million in the following year.<sup>161</sup> As a result, total debt collection was estimated to increase by \$170 to \$360 million.<sup>162</sup>

While the Three Percent Fund was originally intended to be used solely for the costs of "processing and tracking debt litigation," Congress expanded its usage in 2002 to include criminal debt litigation, and, "thereafter, for financial systems and for debt-collection-related personnel, administrative, and litigation expenses."<sup>163</sup> This change provided additional categories for how the DOJ could provide funds to its divisions for litigation, but it does not permit funds to be disbursed for other DOJ programs that are governed by the appropriations process.

---

<sup>155</sup> P.L. 10-273, Section 11013(a)

<sup>156</sup> P.L. 103-121, Section 108 (1993).

<sup>157</sup> 139 Cong. Rec. H7968-01 (Oct. 14, 1993)

<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

<sup>160</sup> *Id.*

<sup>161</sup> *Id.*

<sup>162</sup> *Id.*

<sup>163</sup> PL 107-273, Section 11013(a)



### A. *The Three Percent Fund in practice*

According to the DOJ, “[t]he settlement funds subject to the Three Percent Fund are the federal payments in each settlement.”<sup>164</sup> The DOJ may therefore collect three percent of any federal civil monetary penalty or settlement payment to a federal agency to settle claims *before* the funds make their way into the Treasury’s General Fund. In the case of the housing settlements, payments to a federal regulatory agency, like the Federal Deposit Insurance Corporation or a FIRREA civil penalty are subject to the fee.<sup>165</sup> Consumer relief funds or state payments, however, are not subject to the three percent fee because they do not qualify as “federal payments.”<sup>166</sup>

When the DOJ receives Three Percent Funds, the funds are deposited into the agency’s Working Capital Fund.<sup>167</sup> After deposit, the DOJ’s Collection Resources Allocation Board (CRAB) allocates funds based upon request by DOJ “component offices.”<sup>168</sup> The funds can be allocated to pay for “civil debt collection and civil and criminal litigation activities conducted by the department.”<sup>169</sup> The agency’s Financial Management Information System (FMIS) tracks the funds.<sup>170</sup> The deposits into the fund are recorded in the annual financial statement audit.<sup>171</sup> In prioritizing the use of the funds, “the Department uses the funds first for paying the costs of processing and tracking civil and criminal debt collection litigation, and thereafter, for financial systems and for debt collection-related personnel, administrative, and litigation expenses.”<sup>172</sup>

According to statistics provided by the DOJ and GAO, the DOJ collected more than \$1.5 billion through the Three Percent Fund from 2009 to 2015.<sup>173</sup> In 2012, the DOJ collected money for the Three Percent Fund from “over 15,000 separate transactions” in which “fewer than 30 transactions provided collections of \$1 million or more” and “[t]he largest transaction resulted in a deposit of over \$22 million.”<sup>174</sup> The table below provides a breakdown of the total collections per year by the DOJ based on its Three Percent Fund authority and a breakdown of the total obligations—or dollars allocated from the Fund to various DOJ components—by fiscal year.

---

<sup>164</sup> See Appendix A, Ex. 6, Letter from Assistant Att’y Gen. Kadzik, DOJ, to Chairman Johnson at 2 (Aug. 24, 2015).

<sup>165</sup> See *id.*

<sup>166</sup> *Id.*

<sup>167</sup> *Id.* at 3.

<sup>168</sup> *Id.*

<sup>169</sup> U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-15-48, DEPARTMENT OF JUSTICE—ALTERNATIVE SOURCES OF FUNDING ARE A KEY SOURCE OF BUDGETARY RESOURCES AND COULD BE BETTER MANAGED, at 17 (Feb. 2015) [hereinafter GAO Report, GAO-15-48].

<sup>170</sup> Appendix A, Ex. 6, Letter from Assistant Att’y Gen. Kadzik, DOJ, to Chairman Johnson at 3 (Aug. 24, 2015).

<sup>171</sup> *Id.*

<sup>172</sup> *Id.* at 2

<sup>173</sup> GAO Report, GAO-15-48 at 68; Microsoft Excel Spreadsheet provided by DOJ to Majority Staff (March 24, 2016).

<sup>174</sup> GAO Report, GAO-15-48 at 68.



The table also provides the unobligated balance—the funds remaining in the account at the end of each fiscal year.

<b>Three Percent Fund Collections (by fiscal year)</b>			
<i>Information compiled from GAO and DOJ<sup>175</sup></i>			
Fiscal Year	Collection Total	Obligations	Unobligated Balance
2009	\$83,177,000	\$84,095,000	\$136,590,000
2010	\$101,776,000	\$95,446,000	\$135,672,000
2011	\$119,048,000	\$121,699,000	\$142,002,000
2012	\$161,094,000	\$139,340,000	\$139,351,000
2013	\$158,311,000	\$158,170,000	\$161,105,000
2014	\$525,965,108	\$306,364,832	\$359,001,371
2015	\$393,599,612	\$272,009,971	\$329,529,843
<b>TOTAL</b>	<b>\$1,542,970,720</b>	<b>\$1,117,124,803</b>	

While the total collections and corresponding obligations from the fund have grown over time, the recent settlements with large financial institutions raise questions about whether the broader authorities given to the DOJ for use of this money are appropriate.

***B. The multi-billion dollar settlements produced a windfall for the DOJ's Three Percent Fund and deprive millions of dollars from the congressional appropriations process.***

The Constitution vests the power of the purse with Congress.<sup>176</sup> Congress can authorize a federal agency to collect “an alternative source of funding, but Congress must specifically provide a federal agency “authority to collect amounts, conduct the activity in question, and obligate and expend the funds collected.”<sup>177</sup> Although Congress provided the DOJ with authority to collect three percent of federal payments for debt collection, as a general matter, agencies have a responsibility to deposit money received for the federal government from any source into the U.S. Treasury.<sup>178</sup> It is unlikely that Congress, when creating the Three Percent Fund, intended to cede to an executive agency the power to collect and distribute millions of

<sup>175</sup> Email from GAO to Majority Staff (March 1, 2016); Microsoft Excel Spreadsheet provided by DOJ to Majority Staff (March 24, 2016); *see also* GAO Report, GAO-15-48, at 68-71 (figure 13) and 21 (Table 2). The DOJ increased its reserve from \$33.5 million in FY2014 to \$191.9 million in FY2015 “based on a recommendation from GAO.” Microsoft Excel Spreadsheet provided by DOJ to Majority Staff (March 24, 2016).

<sup>176</sup> U.S. CONST. art. I, § 8-9.

<sup>177</sup> GAO Report, GAO-15-48 at 7 (Feb. 2015).

<sup>178</sup> 31 U.S.C. § 3302.



dollars outside of the Congressional appropriations process.<sup>179</sup> In fact, the DOJ's current intake of \$575.7 million from only three settlements exceeds expectations from the Fund's 1993 inception by a factor of fifty.<sup>180</sup> A windfall of this magnitude was not foreseen and likely never intended by Congress.

The DOJ already holds end-of-year balances in the Fund that are twice as large as required to remain in the Fund,<sup>181</sup> and the balance held for the present year, \$329.5 million, is vastly unprecedented.<sup>182</sup> For example, using the Fund's unobligated balance for FY 2015, or \$329.5 million, Congress could have fully funded the Offices of the Inspector General for the

---

*“The DOJ’s current intake of \$575.7 million from only three settlements exceeds expectations from the Fund’s 1993 inception by a factor of fifty.”*

---

Department of Justice, Federal Housing Finance Agency, Federal Deposit Insurance Corporation, Department of the Treasury, Securities and Exchange Commission, Department of Commerce, National Credit Union Administration, Commodities Futures Trading Commission, and Troubled Asset Relief

Program for an entire year.<sup>183</sup> As expressed in the legislative history of the Three Percent Fund, Congress's intent was to create an efficient process for the Department to cover its debt collection costs and expand its debt collection resources.<sup>184</sup> Holding excessive amounts of unobligated funds in its account contravenes this purpose and suggests the DOJ is gaining the ability to insulate itself from the congressional budgetary process.

---

<sup>179</sup> Congressional appropriations committees have a level of oversight of the Department of Justice's Working Capital Fund deposits and expenditures. For example, the Department must notify Senate and House appropriations committees when the Department wishes to transfer unobligated balances into its Working Capital Fund. DOJ, Working Capital Fund (updated Aug. 28, 2014) <https://www.justice.gov/jmd/working-capital-fund>.

<sup>180</sup> 139 Cong. Rec. H7968-01 (Oct. 14, 1993) (it was estimated the DOJ would collect between \$170 million and \$360 million in additional debt, thus retaining \$5.1 to \$10.8 million in Three Percent Fund fees).

<sup>181</sup> GAO Report, GAO-15-48, at 1 (Feb. 2015).

<sup>182</sup> Microsoft Excel Spreadsheet provided by DOJ to Majority Staff (March 24, 2016).

<sup>183</sup> The enacted or actual fiscal year 2015 budgets for these Offices of Inspector General were: \$88.6 million (DOJ Office of the Inspector General), \$48 million (FHFA Office of the Inspector General), \$34.6 million (FDIC Office of the Inspector General), \$48.3 million (Dept. of Treasury Office of the Inspector General), \$11 million (SEC Office of the Inspector General), \$34.2 million (Special Inspector General for TARP), \$30.6 million (Dept. of Commerce Office of the Inspector General), \$3.97 million (NCUA Office of the Inspector General), and \$2.6 million (CFTC Office of the Inspector General) for a total of over \$300 million. See Dep't of Justice, FY 2017 Performance Budget: Office of the Inspector General Congressional Justification Submission at 22; Federal Housing Finance Agency, Office of Inspector General, FY2017 Congressional Budget Justification at 40; S. Rep. 114-097, at 82 (2015) (FDIC OIG 2015 appropriation); Dept. of the Treasury, Office of the Inspector General, Program Summary by Budget Activity, at 1; SEC, FY 2017 Congressional Budget Justification at 16; Dept. of Commerce, Office of the Inspector General, FY2017 Congressional Budget Justification at 9; NCUA, NCUA Office Budget by Cost Element at 5 (Nov. 20, 2014); CFTC, President's Budget Fiscal Year 2017 at 10 (Feb. 2016); and S. Rep. 114-097, at 18 (2015) (SIGTARP 2015 appropriation).

<sup>184</sup> 139 Cong. Rec. H7968-01 (Oct. 14, 1993).



Another concern is whether the DOJ’s expansive use of settlement funds to cover the costs of “affirmative civil and criminal investigations and cases” is inconsistent with the principles of the Antideficiency Act.<sup>185</sup> The Antideficiency Act prohibits federal employees from “mak[ing] or authoriz[ing] any expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation.”<sup>186</sup> Essentially, the Act stops the executive branch from spending money that Congress has not authorized it to spend. Under authority granted by Congress, the DOJ is authorized to collect three percent of federal settlement funds for specific purposes; however, this authorization should be narrowly construed.<sup>187</sup> Specifically, the law requires the DOJ to disburse money from the fund “first, for paying the costs of processing and tracking civil and criminal debt-collection litigation, and, thereafter, for financial systems and for debt-collection-related personnel, administrative, and litigation expenses.”<sup>188</sup> This specific statutory construction creates, according to the plain meaning and to the DOJ itself, two tiers for funding: (1) processing and tracking debt-collection litigation, and (2) for debt-collection related activities.<sup>189</sup>

According to a report by the GAO, the DOJ is operating in a gray area when it disburses funds for litigation expenses that *may* result in debt-collection, rather than only cases specifically related to debt-collection.<sup>190</sup> The GAO additionally found that the “DOJ consistently collected at least \$83 million annually, indicating stability in collections.”<sup>191</sup> The intent of the legislation supported the DOJ’s need to better collect the civil and criminal debts owed to the federal government, but the magnitude of recent settlements—such as the housing settlements with major financial institutions—goes well beyond legislative intent. It essentially provides the DOJ with a multi-million dollar funding reserve.

---

<sup>185</sup> GAO Report, GAO-15-48 at 67, fn. 20.

<sup>186</sup> 31 U.S.C. 1341(a)(1)(A).

<sup>187</sup> Pub. L. No. 107-273, div. C, title I, §11013(a), 116 Stat. 1823.

<sup>188</sup> Pub. L. No. 107-273, div. C, title I, §11013(a), 116 Stat. 1823.

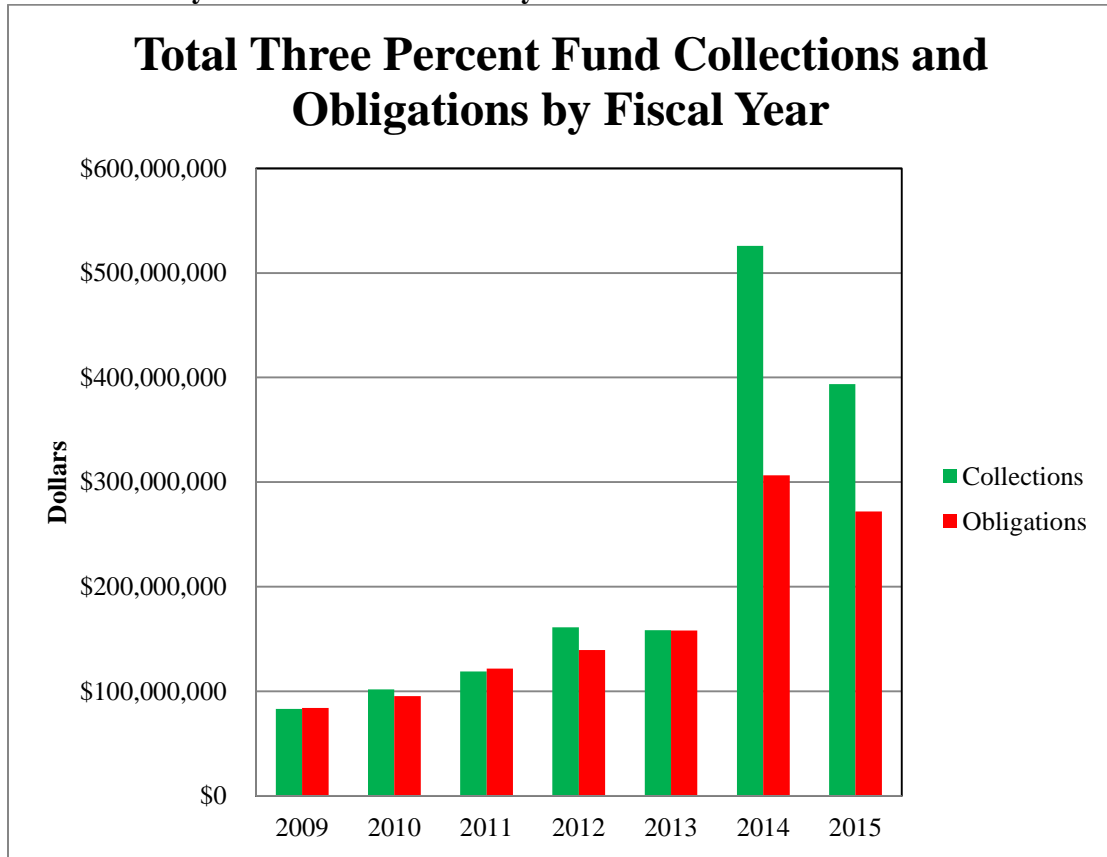
<sup>189</sup> DOJ, Working Capital Fund (updated Aug. 28, 2014) <https://www.justice.gov/jmd/working-capital-fund#law3>.

<sup>190</sup> GAO Report, GAO-15-48 at 67.

<sup>191</sup> *Id.* at 20.



Chart 2: Steady Increase in Collections by DOJ overtime.



Over \$20 billion in the DOJ’s housing settlement funds were subject to contributions to the Three Percent Fund.<sup>192</sup> To date, the DOJ has retained a total of \$575.7 million from its settlements with JPMorgan, Bank of America, and Citigroup.<sup>193</sup> The agency retained \$238 million from the settlement with JPMorgan, \$211.5 million from the settlement with Bank of America, and \$126.2 million from the settlement with Citigroup.<sup>194</sup> This is a remarkable sum when considering that the agency’s entire collections for the fiscal year 2013 totaled only \$158.3 million, and from 2009 to 2013, the Department added a total of \$623 million to the fund.<sup>195</sup> The \$575.7 million from the three settlements contributed to a three-fold increase from 2013.

<sup>192</sup> Appendix A, Ex. 6, Letter from Assistant Att’y Gen. Kadzik, DOJ, to Chairman Johnson at 3 (Aug. 24, 2015) (added the total federal payments in each settlement subject to the 3% fund together).

<sup>193</sup> *Id.*

<sup>194</sup> *Id.* The DOJ also acknowledged that it retained \$20.6 million from its settlement with Standard & Poor’s. *Id.*

<sup>195</sup> GAO Report, GAO-15-48, at 44 (Feb. 2015).



<b>DOJ's Three Percent Fund Collections by Financial Institution</b>	
<b>Entity</b>	<b>Total Retained</b>
JPMorgan	\$238,000,000
Citigroup	\$126,200,000
Bank of America	\$211,500,000
<b>TOTAL</b>	<b>\$575,700,000</b>

Beyond the extensive collections the DOJ has obtained from large financial institutions, the GAO report concluded that “DOJ can improve management of” its Three Percent Fund because “DOJ consistently had end-of-year unobligated balances that were at least twice as large as the amount DOJ reported was required to remain in the fund at the end of the year.”<sup>196</sup> Essentially, the DOJ was not considering the likely revenue flowing into the fund the following year, and as a result the DOJ continually carries over a large sum of money each year.<sup>197</sup> In working with the DOJ, the GAO concluded that the DOJ “could not demonstrate how, if at all, increasing obligation rates may have an impact on the availability of funding in future years.”<sup>198</sup> By failing to do this, the DOJ may not be able “to determine if committing larger portions of budgetary resources was sustainable.”<sup>199</sup> The GAO’s report concludes that the DOJ is depositing larger sums of money each year into its discretionary fund, distributing larger amounts each year to DOJ components, and continues to carry over a large balance not dedicated to any particular needs.<sup>200</sup> Thus, the DOJ should better manage those unobligated funds or deposit them into the General Fund to be disbursed to other programs in need of additional funding.

## V. CONCLUSION

---

The recent housing market crash and financial crisis caused significant heartache for the nation and, most importantly, for homeowners. The DOJ exerted its law-enforcement authority and reached settlements resulting in billions of dollars in fines and consumer relief. These settlements, however, raise numerous policy and legal questions. The DOJ bypassed Congress and the courts to use a portion of the settlements to finance the Administration’s housing policy goals. In the settlements, the DOJ inserted its own spending priorities to pick certain groups eligible to receive funds without any requirement that the funds be disbursed to aggrieved homeowners. The DOJ kept up to three percent of the settlement total, using a law intended to improve debt collection to amass a multi-million reserve fund.

---

<sup>196</sup> GAO Report, GAO-15-48, at 1 (Feb. 2015).

<sup>197</sup> Phone Call between GAO and Majority Staff (March 3, 2016).

<sup>198</sup> GAO Report, GAO-15-48 at 19 (Feb. 2015).

<sup>199</sup> *Id.*

<sup>200</sup> GAO Report, GAO-15-48.





The recent bank settlements show that the DOJ has used its settlement authority to affirmatively push housing policy. Using the weight of the federal government and the implicit—and perhaps even explicit—threat of litigation, the DOJ secured settlement terms that require banks to disburse funds that Congress and the courts could not have required them to make. Homeowner assistance is a noble policy objective. But process matters, and achieving that goal outside of the normal policy-making processes detracts from the effectiveness of the endeavor. The DOJ’s decision to pursue housing policy through settlement limits oversight and accountability, and prevents the public from ever fully knowing whether settlement funds went to homeowners hurt in the financial crisis.



---

# **Appendix A**

---

# **Exhibit 1**

# United States Senate

COMMITTEE ON  
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

KEITH B. ASHDOWN, STAFF DIRECTOR  
GABRIELLE A. BATKIN, MINORITY STAFF DIRECTOR

March 11, 2015

The Honorable Stuart Delery  
Acting Associate Attorney General  
United States Department of Justice  
Robert F. Kennedy Building  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-2001

Dear Mr. Delery:

I write to seek information about the recent federal settlements with financial institutions and credit rating agencies related to the 2008 financial crisis. Specifically, I am interested in the Department of Justice's (DOJ's) decision-making process for determining how to expend discretionary funds received pursuant to the settlements.

Over the past year and a half, DOJ has settled with JPMorgan Chase & Co.,<sup>1</sup> Citigroup Inc.,<sup>2</sup> and Bank of America Corp.<sup>3</sup> for alleged misconduct during the housing market crash for a total of \$36.65 billion.<sup>4</sup> Most recently, DOJ settled with Standard & Poor's Financial Services LLC (S&P) for alleged misconduct leading up to the 2008 financial crisis.<sup>5</sup> S&P agreed to pay the DOJ \$1.375 billion to settle federal and state claims.<sup>6</sup>

---

<sup>1</sup> Press Release, Department of Justice, Justice Department, Federal and State Partners Secure Record \$13 Billion Global Settlement with JPMorgan for Misleading Investors About Securities Containing Toxic Mortgages (Nov. 19, 2013) <http://www.justice.gov/opa/pr/justice-department-federal-and-state-partners-secure-record-13-billion-global-settlement>.

<sup>2</sup> Press Release, Department of Justice, Justice Department, Federal and State Partners Secure Record \$7 Billion Global Settlement with Citigroup for Misleading Investors About Securities Containing Toxic Mortgages (July 14, 2014) <http://www.justice.gov/opa/pr/justice-department-federal-and-state-partners-secure-record-7-billion-global-settlement>.

<sup>3</sup> Press Release, Department of Justice, Bank of America to Pay \$16.65 Billion in Historic Justice Department Settlement for Financial Fraud Leading up to and During the Financial Crisis (August 21, 2014) <http://www.justice.gov/opa/pr/bank-america-pay-1665-billion-historic-justice-department-settlement-financial-fraud-leading>.

<sup>4</sup> This is an aggregated total of DOJ's reported settlements with JPMorgan, Citigroup and Bank of America.

<sup>5</sup> Press Release, Department of Justice, Justice Department and State Partners Secure \$1.375 Billion Settlement with S&P for Defrauding Investors in the Lead Up to the Financial Crisis (Feb. 3, 2015) <http://www.justice.gov/opa/pr/justice-department-and-state-partners-secure-1375-billion-settlement-sp-defrauding-investors>.

<sup>6</sup> *Id.*

Even though DOJ provides a rough breakdown for how settlement payments will be distributed among federal and state authorities, many questions are left unanswered about how these funds are paid out. Because funds received from these settlements are outside of the congressional appropriations process, Congress lacks the ability to fully evaluate the use of these funds. Specifically, there is little insight into DOJ's procedures for selecting organizations to receive settlement payments, DOJ's analyses for determining how much money each organization receives, and DOJ's oversight of how funds are spent by the selected groups.

In addition to the four settlements, DOJ reportedly has ongoing negotiations with Morgan Stanley and Wells Fargo for their alleged involvement in the housing market collapse.<sup>7</sup> In addition, DOJ is reportedly initiating an investigation into Moody's Investor Service, Inc., another credit rating agency, for its ratings of certain mortgage bonds.<sup>8</sup> As DOJ is reportedly continuing settlement negotiations and investigations into financial entities related to the 2008 housing crisis, it is important that there is transparency and effective oversight of the distribution of settlement payments.

To help address these concerns, I ask that you please provide the following information and materials:

1. For each of the four settlements mentioned above (Bank of America, Citigroup, JPMorgan, and S&P), please provide a breakdown of the settlement funds paid out to date as well as any remaining funds yet to be disbursed to a given entity. Specifically, please provide a detailed list of individual entities receiving payments and the total dollar amount each entity received for the following categories:
  - a. States;
  - b. State-run entities;
  - c. Private organizations;
  - d. Non-profit organizations; and
  - e. Federal agencies.
2. What procedures does DOJ use to select a non-profit or private organization to receive settlement payments? Which DOJ officials are responsible for this decision?
3. After funds are disbursed to an organization by the financial institution or DOJ, what oversight does DOJ have in monitoring how those funds are used by the recipient organization? Does DOJ have a formal tracking system in place to monitor those funds? Please explain.

---

<sup>7</sup> See David McLaughlin, Bob Van Voris and Phil Milford, *Morgan Stanley Said to Near Mortgage-Bond Accord with U.S.*, BLOOMBERGBUSINESS (Dec. 30, 2014) <http://www.bloomberg.com/news/articles/2014-12-30/morgan-stanley-said-to-near-mortgage-bond-accord-with-u-s-1->; Ben Lane, *Wells Fargo, DOJ Losing "Optimism" for Lawsuit Settlement*, HOUSINGWIRE (Nov. 18, 2014) <http://www.housingwire.com/articles/32099-wells-fargo-doj-losing-optimism-for-lawsuit-settlement>.

<sup>8</sup> Timothy W. Martin, *Justice Department Investigating Moody's Investor Service*, WALL STREET JOURNAL (Feb. 1, 2015) <http://www.wsj.com/articles/justice-department-investigating-moodys-investors-service-1422822296>.

4. During settlement negotiations, does DOJ include certain terms or requirements that direct the financial institution to make payments to non-profit or other private organizations? Please explain.
5. What legal and constitutional authorities does DOJ rely on to direct the use of received funds through the settlement process rather than returning such funds to the general treasury for appropriation by Congress? Please explain.
6. How does DOJ determine what portion of the settlement goes back to the general treasury and what portion is distributed elsewhere? Which DOJ officials are responsible for making this determination? Please explain.

Please provide this information and material as soon as possible, but no later than 5:00 p.m. on March 25, 2015.

The Committee on Homeland Security and Governmental Affairs is authorized by Rule XXV of the Standing Rules of the Senate to investigate “the efficiency, economy, and effectiveness of all agencies and departments of the Government.”<sup>9</sup> Additionally, S. Res. 73 (114th Congress) authorizes the Committee to examine “the efficiency and economy of operations of all branches of the Government including the possible existence of fraud, misfeasance, malfeasance, collusion, mismanagement, incompetence, corruption or unethical practices. . . .”<sup>10</sup> For purposes of this request, please refer to the definitions and instructions in the enclosure.

If you have any questions about this request, please contact [REDACTED] or [REDACTED] [REDACTED] of the Committee staff (Majority) at (202) 224-4751. Thank you for your prompt attention to this matter.

Sincerely,



Ron Johnson  
Chairman

cc: Thomas R. Carper  
Ranking Member

Enclosure

---

<sup>9</sup> S. Rule XXV(k); *see also* S. Res. 445, 108th Cong. (2004).

<sup>10</sup> S. Res. 73 § 12, 114th Cong. (2015).

## **Exhibit 2**





U.S. Department of Justice

Office of Legislative Affairs

---

Office of the Assistant Attorney General

Washington, D.C. 20530

March 25, 2015

The Honorable Ron Johnson  
Chairman  
Committee on Homeland Security and Governmental Affairs  
United States Senate  
Washington, DC 20510

Dear Chairman Johnson:

This responds to your letter to Acting Associate Attorney General Stuart F. Delery dated March 11, 2015, requesting information about certain settlements entered into by the Department of Justice (the Department). We are pleased to provide additional information regarding our recent settlements with JPMorgan, Citigroup, Bank of America, and Standard & Poor's (S&P).

The Department, along with our federal and state partners, has engaged in a broad effort to hold financial institutions accountable for their misconduct related to the housing market. As noted in your letter, we have reached record global resolutions with JPMorgan, Citigroup, and Bank of America, which arose from investigations into the fraudulent conduct those banks committed in packaging and selling residential mortgage-backed securities (RMBS). These three resolutions resulted in total settlements of \$36.65 billion, and include the largest settlement against a single entity in American history—\$16.65 billion in the Bank of America settlement—as well as the largest penalty ever recovered under the FIRREA statute—\$5 billion in the Bank of America settlement. As you also noted, on February 3, 2015, the Department announced a \$1.375 billion settlement of its 2013 lawsuit against the rating agency S&P for misrepresenting the true credit risks associated with RMBS from 2004 to 2007. Pursuant to these agreements, many billions of dollars in FIRREA penalties will be deposited in the General Fund of the United States Treasury. In addition, these agreements separately provide for billions of dollars in payments to our federal and state partners, pursuant to the terms agreed to by these various states and agencies in the settlement agreements.<sup>1</sup> The publicly available settlement agreements provide the precise breakdown of the total settlement amounts.<sup>2</sup>

---

<sup>1</sup> The agreements provide for separate payments to these various entities; moneys from the federal FIRREA penalty are not routed to any of these state or federal partners.

<sup>2</sup> See <http://www.justice.gov/opa/pr/justice-department-federal-and-state-partners-secure-record-13-billion-global-settlement> (JPMorgan); <http://www.justice.gov/opa/pr/justice-department-federal-and-state-partners-secure-record-7-billion-global-settlement> (Citigroup); <http://www.justice.gov/opa/pr/bank-america-pay-1665-billion-historic-justice-department-settlement-financial-fraud-leading> (Bank of America); and <http://www.justice.gov/opa/pr/justice-department-and-state-partners-secure-1375-billion-settlement-sp-defrauding-investors> (S&P).



While these FIRREA penalties provide accountability for the banks' misconduct and serve as a powerful deterrent against misconduct by other financial institutions, another feature of certain settlements, the consumer relief provisions, is comparably important. A significant portion of the JPMorgan, Citigroup, and Bank of America settlements is devoted to various types of consumer relief to help remediate some of the harm suffered by consumers and communities from the financial crisis resulting from the banks' misconduct.<sup>3</sup> A total of \$13.5 billion consists of consumer relief obligations of the settling banks. The consumer relief in these three settlements follows the April 2012 National Mortgage Settlement (NMS)—involving the Department and a broad coalition of 49 state attorneys general, state banking regulators, and other federal agencies—in which \$20.7 billion was devoted to consumer relief from the nation's five largest mortgage servicers. While the consumer relief obligations in the NMS settlement have been met, consumer relief in the JPMorgan, Citigroup, and Bank of America settlements is ongoing.

Together, the consumer relief provisions in these agreements contain some or all of the following elements: (1) loan modifications, including forgiveness of principal on underwater mortgages; (2) refinancing assistance to certain homeowners currently paying high interest rates on their mortgages; (3) down payment assistance, and closing cost payments for (a) borrowers in areas with a high number of vacant or distressed properties and foreclosures, (b) borrowers who lost homes to foreclosure and short sales, and (c) first-time, low-to-moderate-income borrowers; (4) donations to certain categories of community development funds, legal aid organizations, and housing counseling agencies; and (5) financing for affordable rental housing. Importantly, this type of relief likely could not have been ordered by a court, even if the government had prevailed at trial.

The consumer relief provisions in these agreements explicitly require the settling financial institutions to provide specific amounts and types of consumer relief, targeted to help precisely those Americans in need of such relief—those who are still suffering the effects of the misconduct that was the basis for these investigations. For example, because loan modifications can powerfully assist struggling consumers, each agreement requires the settling bank to provide a significant amount of first lien principal forgiveness. The importance of this form of relief is evident in the Bank of America settlement, which requires \$2.15 billion in such first lien principal forgiveness—by far the largest minimum requirement under the agreement.

In addition to this type of relief, the settlement agreements require a certain level of payments to third-party groups that in turn provide housing counseling and other forms of relief to consumers hurt by the crisis, such as foreclosure prevention assistance. These third-party donations comprise a much smaller part of the overall consumer relief package than direct relief. The Bank of America settlement, for instance, requires the Bank to accrue only \$100 million in consumer relief credit through donations. Although such provisions represent a much smaller portion of the consumer relief package (approximately 1.4% of the overall consumer relief requirement, and just 0.4 % of the total settlement amounts), these donations are calibrated to provide assistance to those consumers and communities most in need of help.

---

<sup>3</sup> S&P's business does not as directly touch affected homeowners and therefore, the S&P settlement does not include consumer relief provisions.

Importantly, the *banks* are responsible for choosing specific recipients of consumer relief funds. For example, one of the consumer relief provisions requires “[d]onations to HUD-approved counseling agencies to provide foreclosure prevention assistance and other housing counseling activities.”<sup>4</sup> The list of HUD-approved housing counseling agencies is available on the HUD website.<sup>5</sup> The agreements reference a pre-existing list of organizations from which the banks can choose—a list that has been in existence for decades. As a result of this structure, the Department is not in the position of picking and choosing which organizations receive donations under the settlements. To be clear, the Department plays no role in that selection process, with the exception of the provision in the Bank of America settlement requiring donations to the state-based Interest on Lawyers’ Trust Account (IOLTA) organization in each state and territory, to then be distributed by IOLTAs to organizations of their choosing for use in foreclosure prevention legal assistance and community redevelopment legal assistance. Again, the Department plays no role in that ultimate selection process, nor do we encourage the settling banks to select any particular recipient for these funds.

It is also important to note that restrictions on the donations to third-party organizations limit how those donations may be used: the money must be used *only* for foreclosure prevention assistance, community redevelopment assistance, and other housing counseling activities. The banks can receive credit under the agreements only if the relevant donations are properly directed towards these specified ends.

Pursuant to its statutory authority to settle cases in the best interest of the United States, the Department agreed with the settling banks that it was appropriate to include these consumer relief provisions in the settlement agreements. But it should be noted that these consumer relief provisions will not be funded through public moneys. Instead, these are private funds—totally separate from the FIRREA penalties and payments to our federal and state partners—provided and disbursed by the settling banks as part of the settlement agreements. At no point will the Department receive these funds; rather, the funds go directly from the settling banks to the recipients, to assist consumers in the housing market, including struggling homeowners who have suffered as a result of the collapse of that market.

In addition to the consumer relief provisions explained above, the JPMorgan, Citigroup, and Bank of America settlements contain liquidated damages provisions requiring that, in the event the financial institution fails to meet its obligation under the agreement to provide all of the consumer relief within the designated timeframe, it must make payments to IOLTA organizations or NeighborWorks America, a congressionally chartered national nonprofit created to provide financial support, technical assistance, and training for community-based revitalization efforts.<sup>6</sup> The agreements call for the organizations to use the funds for foreclosure prevention and community redevelopment, foreclosure prevention legal assistance, community development legal assistance, housing counseling, and neighborhood stabilization. These

---

<sup>4</sup> Citibank Settlement Agreement, Annex 2, p. 12.

<sup>5</sup> *Id.*

<sup>6</sup> See 42 U.S.C. §§ 8101-8107, establishing the Neighborhood Reinvestment Corporation now known as NeighborWorks America.

liquidated damages funds are required only if the financial institution fails to meet its consumer relief obligations by the end of the compliance period for these consumer relief provisions, the first of which does not occur until December 31, 2017. In such a situation, the funds would be provided to support foreclosure prevention and community redevelopment, foreclosure prevention legal assistance, community development legal assistance, housing counseling, and neighborhood stabilization.

In all of these settlements, the banks are required to report their consumer relief efforts to independent monitors, who are paid by the banks. The independent monitors are charged with verifying that the banks meet their consumer relief obligations. The monitors also publicly report their findings. The NMS monitor, Joseph Smith, has released regular reports on the banks' compliance with the NMS settlement at [www.jasmithmonitoring.com](http://www.jasmithmonitoring.com). Mr. Smith is also the monitor for the JPMorgan settlement, and his reports on JPMorgan's compliance with its consumer relief obligations can be found on the same website. The Citigroup monitor and the Bank of America monitor also have websites where they are posting their reports. See <http://citigroupmonitorship.com/> and <http://bankofamerica.mortgagesettlementmonitor.com.><sup>7</sup>

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,



Peter J. Kadzik  
Assistant Attorney General

cc: The Honorable Thomas R. Carper  
Ranking Member

---

<sup>7</sup> It should be noted that the latest monitor reports do not reflect the donation of any money by the settling banks to third-party groups.

## **Exhibit 3**



# United States Senate

COMMITTEE ON  
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS  
WASHINGTON, DC 20510-6250

KEITH B. ASHDOWN, STAFF DIRECTOR  
GABRIELLE A. BATKIN, MINORITY STAFF DIRECTOR

May 4, 2015

The Honorable Stuart Delery  
Acting Associate Attorney General  
United States Department of Justice  
Robert F. Kennedy Building  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-2001

Dear Mr. Delery:

The Committee on Homeland Security and Governmental Affairs is examining recent federal settlements with financial institutions and credit rating agencies related to the 2008 financial crisis. In my March 11, 2015 letter, I asked for information about the distribution of settlement funds, the U.S. Department of Justice's (DOJ) tracking of the distribution of those funds, and the decision-making process for allocating funds to the general treasury or another source.<sup>1</sup> On March 25, 2015, you responded to my request with limited, publicly available information about the settlements with large financial institutions and failed to provide the Committee with adequate responses.<sup>2</sup>

Based on your limited response to my inquiry, I write to reiterate my initial questions that were not fully addressed and ask clarifying questions. In order to fully answer these questions, I ask that you please provide the following information:

1. I asked for DOJ to provide a breakdown of the funds associated with DOJ's settlements with Bank of America, Citigroup, JPMorgan, and Standard & Poor's Financial Services LLC. Specifically, I requested a breakdown of the settlement funds paid out to date as well as any remaining funds yet to be disbursed to a given entity.<sup>3</sup> In DOJ's response, it indicated that the "consumer relief in the JPMorgan, Citigroup, and Bank of America settlements is ongoing."<sup>4</sup> However, the response did not provide the requested breakdown of settlement funds. I also requested a detailed list of individual entities receiving payments and the total dollar amount each entity received for the following categories:

---

<sup>1</sup> Letter from Senator Ron Johnson, Chairman, Comm. on Homeland Security and Governmental Affairs, to Stuart Delery, Acting Associate Attorney General, U.S. Dept. of Justice (Mar. 11, 2015).

<sup>2</sup> Letter from Peter J. Kadzik, Assistant Attorney General, U.S. Dept. of Justice, to Senator Ron Johnson, Chairman, Comm. on Homeland Security and Governmental Affairs (Mar. 25, 2015).

<sup>3</sup> Letter from Senator Ron Johnson, at 2.

<sup>4</sup> Letter from Peter J. Kadzik, at 2.

- a. States;
- b. State-run entities;
- c. Private organizations;
- d. Non-profit organizations; and
- e. Federal agencies.<sup>5</sup>

While DOJ indicated the total settlement amount for the relevant banks and provided hyperlinks to the settlement agreements, DOJ's reply did not provide any specific information that showed the amount of settlement funds paid to date to those entities.<sup>6</sup> Therefore, I reiterate my request for this information.

2. I asked what oversight DOJ has in monitoring funds disbursed by DOJ to an entity or organization.<sup>7</sup> In DOJ's response, it stated that "independent monitors are charged with verifying that the banks meet their consumer relief obligations."<sup>8</sup> DOJ's answer did not fully address whether it has direct responsibilities to disburse settlement funds it receives, and if so, whether DOJ has a formal tracking system in place to monitor those funds. Therefore, I reiterate my request for this information.
3. DOJ stated in its response that "many billions of dollars in FIRREA penalties will be deposited in the General Fund of the United States Treasury."<sup>9</sup> However, DOJ's response did not provide a breakdown of how much money has been deposited in the General Fund to date as well as whether or not DOJ retains any of the settlement amount for its own purposes. Please provide this information. If DOJ retains any portion of the settlement amount, please provide a detailed breakdown of the amount from each settlement mentioned in my March 11, 2015 letter and how those funds are being allocated or spent.
4. While DOJ stated in its response that "the Department plays no role in [the] ultimate selection process" of non-profit or private groups to receive settlement funds,<sup>10</sup> does DOJ allow banks to receive credit for funds distributed to certain organizations? If so, please provide a detailed breakdown of the amount of funds paid out to date to non-profit or private organizations and the credit banks received towards their settlement balance.
5. In DOJ's response, it stated that donations to third-party groups from banks "are calibrated to provide assistance to those consumers and communities most in need of help."<sup>11</sup> Please explain how these donation amounts are "calibrated."

---

<sup>5</sup> Letter from Senator Ron Johnson, at 2.

<sup>6</sup> Letter from Peter J. Kadzik, at 2.

<sup>7</sup> Letter from Senator Ron Johnson, at 2.

<sup>8</sup> Letter from Peter J. Kadzik, at 4.

<sup>9</sup> Letter from Peter J. Kadzik, at 1.

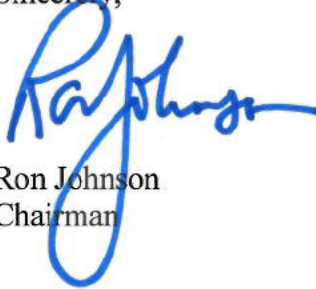
<sup>10</sup> Letter from Peter J. Kadzik, at 3.

<sup>11</sup> Letter from Peter J. Kadzik, at 2.

6. DOJ's response stated that "the settlement agreements require a certain level of payments to third-party groups that in turn provide housing counseling . . . ." <sup>12</sup> How did DOJ determine what level of payments would be made to these third-party groups? Please explain.
7. DOJ's response stated that "restrictions on the donations to third-party organizations limit how those donations may be used . . . ." <sup>13</sup> Which DOJ officials are responsible for ensuring that these donations are compliant with the restrictions set forth in the settlement agreement? Please explain.

Please provide this information and material as soon as possible, but no later than 5:00 p.m. on May 18, 2015. If you have any questions about this request, please contact [REDACTED] or [REDACTED] of the Committee staff (Majority) at (202) 224-4751. Thank you for your prompt attention to this matter.

Sincerely,



Ron Johnson  
Chairman

cc: The Honorable Thomas R. Carper  
Ranking Member

---

<sup>12</sup> Letter from Peter J. Kadzik, at 2.

<sup>13</sup> Letter from Peter J. Kadzik, at 3.

## **Exhibit 4**





**U.S. Department of Justice**

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

May 29, 2015

The Honorable Ron Johnson  
Chairman  
Committee on Homeland Security and Governmental Affairs  
United States Senate  
Washington, DC 20510

Dear Chairman Johnson:

This responds to your letter to Acting Associate Attorney General Stuart F. Delery, dated May 4, 2015, requesting additional information about certain settlements entered into by the Department of Justice (the Department). On March 25, 2015, the Department responded to your first letter, dated March 11, 2015, regarding our recent settlements with JPMorgan, Citigroup, Bank of America, and Standard & Poor's (S&P). We are pleased to provide additional information about those settlements.

The following is a breakdown of the amounts that each settlement requires the settling institution to pay to government entities:

**JPMorgan Settlement:**<sup>1</sup>

1. \$3,932,989,690.73, to certain federal government entities (with payment made to the Department), consisting of the following:
  - a. \$2,000,000,000, in a FIRREA civil penalty;
  - b. \$1,417,525,773.20, in settlement of claims of the National Credit Union Administration (NCUA); and
  - c. \$515,463,917.53, in settlement of claims of the Federal Deposit Insurance Corporation (FDIC).
2. \$4,000,000,000, to Fannie Mae and Freddie Mac.
3. \$298,973,005.98, to the State of California.
4. \$19,725,255.40, to the State of Delaware.
5. \$100,911,813.41, to the State of Illinois.
6. \$34,400,000, to the Commonwealth of Massachusetts.
7. \$613,000,234.48, to the State of New York.

<sup>1</sup> See <http://www.justice.gov/iso/opa/resources/69520131119191246941958.pdf>.

**Citigroup Settlement:**<sup>2</sup>

1. \$4,208,250,000, to certain federal government entities (with payment made to the Department), consisting of the following:
  - a. \$4,000,000,000, in a FIRREA civil penalty; and
  - b. \$208,250,000, in settlement of claims of the FDIC.
2. \$102,700,000, to the State of California.
3. \$7,350,000, to the State of Delaware.
4. \$44,000,000, to the State of Illinois.
5. \$45,700,000, to the Commonwealth of Massachusetts.
6. \$92,000,000, to the State of New York.

**Bank of America Settlement:**<sup>3</sup>

1. \$8,216,840,000, to certain federal government entities (with payment made to the Department), consisting of the following:
  - a. \$5,000,000,000, in a FIRREA civil penalty;
  - b. \$1,050,000,000, in settlement of claims of the United States in various *qui tam* litigations;
  - c. \$800,000,000, in settlement of claims of the Federal Housing Administration (FHA);
  - d. \$200,000,000, in settlement of claims of Fannie Mae;
  - e. \$1,031,000,000, in settlement of claims of the FDIC; and
  - f. \$135,840,000, in settlement of claims of the Securities and Exchange Commission.
2. \$300,000,000, to the State of California.
3. \$45,000,000, to the State of Delaware.
4. \$200,000,000, to the State of Illinois.
5. \$23,000,000, to the Commonwealth of Kentucky.
6. \$75,000,000, to the State of Maryland.
7. \$300,000,000, to the State of New York.

**S&P Settlement:**<sup>4</sup>

1. \$687,500,000 in a FIRREA civil penalty.
2. \$687,500,000, in payments of varying amounts to 19 states and the District of Columbia.<sup>5</sup>

<sup>2</sup> See <http://www.justice.gov/iso/opa/resources/471201471413656848428.pdf>.

<sup>3</sup> See <http://www.justice.gov/iso/opa/resources/3392014829141150385241.pdf>.

<sup>4</sup> See <http://www.justice.gov/file/338701/download>.

<sup>5</sup> Included in this amount is \$4,500,004 to the National Association of Attorneys General Financial Services and Consumer Protection Enforcement, Education and Training Fund.

To date, \$11.2 billion has been deposited by the Department in the FIRREA Fund of the United States Treasury and \$695.9 million has been deposited by the Department in the General Fund of the United States Treasury, as a result of these four settlements. Pursuant to the authority granted to the Department by Congress in P.L. 107-273, the 21<sup>st</sup> Century Department of Justice Appropriations Authorization Act, the Department may retain up to 3% of any civil debt collection litigation activity for use in funding affirmative civil and criminal debt collection efforts. Accordingly, the Department has retained up to 3% of the federal payment amounts detailed above to be used, going forward, for the purposes designated in P.L. 107-273, including in support of affirmative civil and criminal debt collection efforts.

For each of the bank settlements above (JPMorgan, Citigroup, and Bank of America), the Department may have responsibility to distribute funds to the appropriate federal agencies (*i.e.*, NCUA, FDIC, etc.), dependent upon the wiring instructions provided to the settling institutions. For all four settlements, the settling institutions have made the required payments, either to the Department or directly to the federal agency, and, where applicable, the Department has disbursed funds to the respective federal agencies. As to payments to the states, the agreements provide payment instructions to the settling institutions for each of the states and require that the banks pay the states directly. However, the Department has confirmed that all required payments to the states have been made.

As stated in our March 25, 2015, letter, the JPMorgan, Citigroup, and Bank of America settlements also require the banks to provide several billions of dollars in consumer relief, including relatively small donations to third-party groups (chosen by the banks) that in turn provide housing counseling and other forms of relief to consumers hurt by the financial crisis, such as foreclosure prevention assistance. As with any settlement terms, these were items that were agreed to by the settling banks after full negotiation of the relevant agreements. According to the latest publicly-disclosed monitor reports,<sup>6</sup> no third party group has received any money to date under any of these three settlements, and none of the banks has received any credit from the monitors for any such payments. As noted in our March 25 letter, this relief is provided directly by the bank to the intended recipients. The relevant consumer relief is not sent to the Department and therefore, is not distributed by the Department.

Your letter also inquires about whether the Department “has direct responsibilities to disburse settlement funds it receive[d], and if so, whether DOJ has a formal tracking system in place to monitor those funds.” As noted above, the Department does disburse the payments received by the Department pursuant to these agreements, and employs a tracking system to monitor both funds received and funds distributed outside the Department. We reiterate, however, that this process does not apply to consumer relief funds, which are *not* provided to or distributed by the Department.

The three independent monitors do play a role in ensuring that those funds are used for the purposes set forth in the agreement. The settlement agreements charge the independent monitors with “determin[ing] and certify[ing] [a settling bank]’s compliance with the terms of”

---

<sup>6</sup> For your convenience, we have enclosed copies of those reports.

the consumer relief provisions.<sup>7</sup> Thus, the banks can receive credit from the monitors *only if* donations meet the strictures of the agreements, including the requirements that the relevant donations be properly directed towards foreclosure prevention assistance, community redevelopment assistance, and other housing counseling activities. The monitors also are authorized and empowered to evaluate whether neighborhood revitalization activities are sufficiently structured to meet the ends described in the agreements.<sup>8</sup>

Moreover, the Department may play a role as well. If, at the conclusion of the designated period for provision of consumer relief (the earliest of which is the end of 2017), the banks have not complied with their consumer relief obligations (obligations that include targeting certain funds for specific purposes), the Department would have available to it all of the remedies it typically has when a settling party breaches an agreement with the Department, including bringing a lawsuit to enforce compliance with the settlement.<sup>9</sup>

Your letter also asks for further information about the statement in our March 25 letter that certain donations “are calibrated to provide assistance to those consumers and communities most in need of help.” This “calibration” means, in the view of the Department and its federal and state partners, that such payments will help meet the goal of helping homeowners affected by the financial crisis to avoid foreclosure, and further helping individuals to successfully attain homeownership (notwithstanding some of the challenges that resulted from the financial crisis). For example, empirical research has shown that housing counseling agencies—such as those on the HUD-approved list set forth in the settlement agreements—and legal representation are effective in preventing foreclosures.<sup>10</sup> In addition, commentators such as Justice Nathan Hecht of the Texas Supreme Court have recognized the key role that state-based IOLTAs and legal aid organizations play in helping low-income families secure legal services to prevent foreclosure and economic hardship.<sup>11</sup>

---

<sup>7</sup> See Citibank Settlement Agreement, Annex 2, p. 14; Bank of America Settlement Agreement, Annex 2, p. 10. JPMorgan Settlement Agreement, Annex 2, p.5.

<sup>8</sup> *Id.*

<sup>9</sup> In addition, as we explained on page 3 of our March 25, 2015, letter, the banks would be required to make liquidated damages payments if they fail to provide all the required consumer relief by the end of the period.

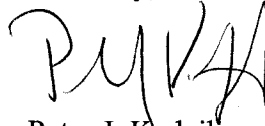
<sup>10</sup> See Testimony of Alan M. White, Professor, CUNY School of Law, Judiciary Subcommittee on Regulatory Reform, Commercial and Antitrust Law, Oversight Hearing, February 12, 2015.

<sup>11</sup> See “Legal Aid Groups Need Support,” Houston Chronicle, September 26, 2010, available at <http://www.chron.com/opinion/outlook/article/Legal-aid-groups-need-support-1717703.php>.

The Honorable Ron Johnson  
Page 5

We hope this additional information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'PJKA', written in a cursive style.

Peter J. Kadzik  
Assistant Attorney General

Enclosures

cc. The Honorable Thomas R. Carper  
Ranking Member

## **Exhibit 5**

JOHN McCAIN, ARIZONA  
ROB PORTMAN, OHIO  
RAND PAUL, KENTUCKY  
JAMES LANKFORD, OKLAHOMA  
MICHAEL B. ENZI, WYOMING  
KELLY AYOTTE, NEW HAMPSHIRE  
JONI ERNST, IOWA  
BEN SASSE, NEBRASKA

THOMAS R. CARPER, DELAWARE  
CLAIRE McCASKILL, MISSOURI  
JON TESTER, MONTANA  
TAMMY BALDWIN, WISCONSIN  
HEIDI HEITKAMP, NORTH DAKOTA  
CORY A. BOOKER, NEW JERSEY  
GARY C. PETERS, MICHIGAN

# United States Senate

COMMITTEE ON  
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

KEITH B. ASHDOWN, STAFF DIRECTOR  
GABRIELLE A. BATKIN, MINORITY STAFF DIRECTOR

July 28, 2015

The Honorable Stuart Delery  
Acting Associate Attorney General  
United States Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-2001

Dear Mr. Delery:

I write to request additional information following the Department of Justice's (DOJ) May 29, 2015 response to my letter regarding the recent settlements with financial institutions and credit rating agencies related to the 2008 financial crisis.<sup>1</sup> Specifically, I am seeking to clarify information about the funds retained by DOJ in accordance with its authority granted in the 21<sup>st</sup> Century Department of Justice Appropriations Act,<sup>2</sup> the DOJ's tracking system to monitor the funds,<sup>3</sup> and the DOJ's potential involvement with the selection of the housing counseling agencies from the Department of Housing and Urban Development (HUD)-approved list in the settlement.<sup>4</sup>

To better understand these issues, I respectfully request that you please provide the following information and materials:

1. In DOJ's May 29, 2015 reply letter, you stated that "the Department has retained up to 3% of the federal payment amounts" in support of federal civil and criminal debt collection efforts.<sup>5</sup> Because "up to 3%" is an amount that can vary considerably with respect to settlements as large as these, please address the following issues:
  - a. Which of the settlement funds specifically are subject to this "3%" rule?
  - b. To date, how much money has been retained by DOJ from these housing settlements? Please provide a breakdown of the source of each amount retained.
  - c. Please specify how the settlement funds retained by DOJ will be distributed or used by DOJ.
  - d. Which DOJ official(s) are responsible for determining how the settlement funds will be distributed or used by DOJ?

---

<sup>1</sup> Letter from Peter J. Kadzik, Assistant Attorney General, U.S. Dept. of Justice, to Senator Ron Johnson, Chairman, Comm. On Homeland Security and Governmental Affairs (May 29, 2015).

<sup>2</sup> 21<sup>st</sup> Century Department of Justice Appropriations Authorization Act, 107 P.L. 272, 116 Stat. 1758; *see also*, Letter from Kadzik at 3.

<sup>3</sup> Letter from Kadzik at 2.

<sup>4</sup> Letter from Kadzik at 3.

<sup>5</sup> Letter from Kadzik, citing P.L. 107-273.

2. Regarding the monitoring of funds, your response stated that DOJ “employs a tracking system to monitor both funds received and funds distributed outside the Department.”<sup>6</sup>
  - a. Does the existing tracking system monitor the settlement funds retained by DOJ pursuant to the 3% rule? Please explain.
  - b. If so, please provide any reports generated from the tracking system.
3. Your response included the housing counseling agencies from the HUD-approved list in the settlement.<sup>7</sup> The Bank of America monitor report included in your response mentioned one of these agencies, NeighborWorks America (NeighborWorks), by name: “One quarter of any shortfall payment will go to NeighborWorks, to provide housing counseling, neighborhood stabilization, foreclosure prevention, or similar programs.”<sup>8</sup>
  - a. Did DOJ suggest or comment on the decision to select certain recipients of settlement funds from the HUD-approved list of housing counseling agencies?
  - b. How was NeighborWorks, for instance, chosen to be the recipient of compensatory payment in case of Bank of America’s shortfall? Please explain.

Further, in order to assist the Committee’s oversight efforts, I ask that you make your staff available for a briefing with Committee staff. Please provide the information requested in this letter as soon as possible, but no later than 5:00 p.m. on August 11, 2015. The Committee requests that the staff briefing occur after the Department has provided the requested information.

The Committee on Homeland Security and Governmental Affairs is authorized by Rule XXV of the Standing Rules of the Senate to investigate “the efficiency, economy, and effectiveness of all agencies and departments of the Government.”<sup>9</sup> Additionally, S. Res. 73 (114th Congress) authorizes the Committee to examine “the efficiency and economy of operations of all branches of the Government including the possible existence of fraud, misfeasance, malfeasance, collusion, mismanagement, incompetence, corruption or unethical practices ....”<sup>10</sup> For purposes of this request, please refer to the definitions and instructions in the enclosure.

---

<sup>6</sup> *Id.*

<sup>7</sup> Letter from Kadzik at 4.

<sup>8</sup> Eric D. Green, Initial Progress Report, Monitor of the 2014 Bank of America Mortgage Settlement at 27 (Feb. 17, 2015) <http://bankofamerica.mortgagesettlementmonitor.com/Reports/Initial-Progress-Report-Monitor-2014-Bank-of-America-Mortgage-Settlement...pdf>.

<sup>9</sup> S. Rule XXV(k); *see also* S. Res. 445, 108th Cong. (2004).

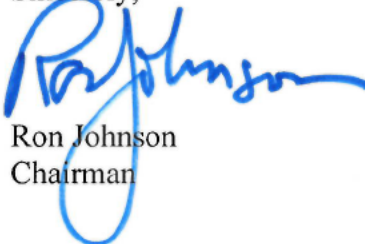
<sup>10</sup> S. Res. 73 § 12, 114th Cong. (2015).



The Honorable Stuart Delery  
July 28, 2015  
Page 3

If you have any questions about this request, please contact [REDACTED] or [REDACTED] [REDACTED] of the Committee staff at (202) 224-4751. Thank you for your prompt attention to this matter.

Sincerely,



Ron Johnson  
Chairman

cc: The Honorable Thomas R. Carper  
Ranking Member

Enclosure

# **Exhibit 6**



**U.S. Department of Justice**

Office of Legislative Affairs

---

*Office of the Assistant Attorney General*

*Washington, DC 20530*

August 24, 2015

The Honorable Ron Johnson  
Chairman  
Committee on Homeland Security and  
Governmental Affairs  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

This responds to your letter to the Acting Associate Attorney General dated July 28, 2015, requesting additional information about certain settlements entered into by the Department of Justice (the Department). On March 25, 2015, and May 29, 2015, the Department responded to your prior letters dated March 11, 2015 and May 4, 2015, regarding our settlements with JPMorgan, Citigroup, Bank of America, and Standard & Poor's (S&P) relating to the 2008 financial crisis. We are pleased to provide additional information about those settlements and the Three Percent Fund established by P.L. 103-121 (repealed and replaced by Section 11013(a) of P.L. 107-273).

With regard to the Three Percent Fund, it is important to understand as an initial matter the legal framework for this fund. The Three Percent Fund allows the Attorney General to credit, as an offsetting collection to the Department's Working Capital Fund, up to three percent of all amounts collected pursuant to the Department's civil debt collection litigation activities, which include judgments and settlements.

In 2002, Section 11013(a) of P.L. 107-273 repealed and replaced the original provision governing the management and use of the Three Percent Fund—previously set forth in 28 U.S.C. § 527 note, Section 108 of P.L. 103-121—with new authorizing language; however, the language was altered only to include expenditures on criminal, as well as civil litigation. The new provision provided additional guidance on the usage of the Three Percent Fund, stating that it should be used first for paying the costs of processing and tracking civil and criminal debt collection litigation, and, thereafter, for financial systems and for debt collection-related personnel, administrative, and litigation expenses. Monies from the Three Percent Fund are allocated only to the Department's components that support civil and criminal debt collection functions.

On May 10, 1994, Attorney General Reno created by order (Order No. 1877-94) the Department's Collection Resources Allocation Board (CRAB) to process requests by the

Department's components for allocations from the Three Percent Fund. The CRAB is comprised of two permanent members (Deputy Assistant Attorney General/Controller; Director, Debt Collection Management Staff) and one rotating member (currently, the Chief Financial Officer, United States Marshals Service). All CRAB decisions are briefed to and reviewed by the Deputy Attorney General prior to the allocation of funds.

With regard to the four settlements that are the subject of your letter, the settlement funds subject to the Three Percent Fund are the federal payments in each settlement. As provided in our May 29, 2015, letter, they are as follows:

**JPMorgan Settlement:**<sup>1</sup>

1. \$3,932,989,690.73, to certain federal government entities (with payment made to the Department), consisting of the following:
  - a. \$2,000,000,000, in a FIRREA civil penalty;
  - b. \$1,417,525,773.20, in settlement of claims of the National Credit Union Administration (NCUA);
  - c. \$515,463,917.53, in settlement of claims of the Federal Deposit Insurance Corporation (FDIC).
2. \$4,000,000,000, to Fannie Mae and Freddie Mac.

**Citigroup Settlement:**<sup>2</sup>

1. \$4,208,250,000, to certain federal government entities (with payment made to the Department), consisting of the following:
  - a. \$4,000,000,000, in a FIRREA civil penalty;
  - b. \$208,250,000, in settlement of claims of the FDIC.

**Bank of America Settlement:**<sup>3</sup>

1. \$8,216,840,000, to certain federal government entities (with payment made to the Department), consisting of the following:
  - a. \$5,000,000,000, in a FIRREA civil penalty;
  - b. \$1,050,000,000, in settlement of claims of the United States in various *qui tam* litigations;
  - c. \$800,000,000, in settlement of claims of the Federal Housing Administration (FHA);
  - d. \$200,000,000, in settlement of claims of Ginnie Mae;<sup>4</sup>
  - e. \$1,031,000,000, in settlement of claims of the FDIC;

---

<sup>1</sup> See <http://www.justice.gov/iso/opa/resources/69520131119191246941958.pdf>.

<sup>2</sup> See <http://www.justice.gov/iso/opa/resources/471201471413656848428.pdf>.

<sup>3</sup> See <http://www.justice.gov/iso/opa/resources/3392014829141150385241.pdf>.

<sup>4</sup> In the Department's prior letter to the Committee dated May 29, 2015, Fannie Mae was inadvertently listed as a recipient of Bank of America settlement funds. This organization should have been listed as "Ginnie Mae" as reflected in the above language.

- f. \$135,840,000, in settlement of claims of the Securities and Exchange Commission.

**S&P Settlement:**<sup>5</sup>

1. \$687,500,000 in FIRREA civil penalty.

The amounts retained by the Department from these four settlements, pursuant to Section 11013(a) of P.L. 107-273, are as follows:

<b><u>Institution</u></b>	<b><u>Amount Retained</u></b>
JPMorgan	\$238.0M
Bank of America	\$211.5M
Citigroup	\$126.2M
<u>Standard &amp; Poor's</u>	<u>\$ 20.6M</u>
Total	\$596.3M

The Department follows the statutory guidance in Section 11013(a) in determining how any such retained funds are distributed or used. Specifically, pursuant to that statute and as set forth above, the Department uses the funds first for paying the costs of processing and tracking civil and criminal debt collection litigation, and thereafter, for financial systems and for debt collection-related personnel, administrative, and litigation expenses. *See* Section 11013(a) of P.L. 107-273.

The Department's accounting system of record, the Financial Management Information System (FMIS) is used to track and monitor funds retained by the Department pursuant to the Three Percent Fund. Funds retained are deposited into the Department's Working Capital Fund. On a monthly basis, the Department's Debt Collection Management staff confirms that the deposits are recorded correctly. These deposits are included as part of the Department's annual financial statement audit.

Once the funds are deposited into the Department's FMIS system, they are available for allocation by the CRAB. Component offices within the Department submit requests for funding on an annual basis to the CRAB. The requests are reviewed and considered by the Department's Budget Staff and the CRAB. Once funding decisions have been made, component offices whose requests have been granted are subject to a reimbursable agreement providing for a specified period of obligation and performance. Component offices identify and manage the funding received in FMIS. The CRAB monitors these funds on a quarterly basis. Funds not obligated at the end of the specified period are recaptured by the CRAB.

Regarding the selection of recipients of funds from the HUD-approved list of housing counseling agencies, as we stated in prior letters noted above, it is the *banks*, not the Department, that are responsible for choosing specific recipients of consumer relief funds. With respect to

---

<sup>5</sup> *See* <http://www.justice.gov/file/338701/download>.

donations to HUD-approved counseling agencies, the agreements reference a pre-existing list of organizations from which the banks can choose—a list that has been in existence for decades. As a result of this structure, the Department is not in the position of picking and choosing—or indeed, of suggesting or commenting on—which organizations should receive donations under the settlements. To be clear, the Department plays no role in that selection process, with the exception of the provision in the Bank of America settlement requiring donations to the state-based Interest on Lawyers' Trust Account (IOLTA) organization in each state and territory, to then be distributed by IOLTAs to organizations of their choosing for use in foreclosure prevention legal assistance and community redevelopment legal assistance. Again, the Department plays no role in that ultimate selection process, nor do we encourage the settling banks to select any particular recipient for these funds.

The inclusion of Neighborworks America as a potential recipient of funds in the event that Bank of America does not provide the required relief during the compliance period was a negotiated term of the settlement agreement between the parties. As with all provisions in the settlement agreements, the Department determined that this particular provision of the settlement agreement with Bank of America was in the best interest of the United States. We also note that Neighborworks is not guaranteed to receive any funds under the settlement. The provision cited in your letter will result in Neighborworks receiving funds *only if* Bank of America fails to provide the required consumer relief by the end of the compliance period.

We hope this information is helpful. If you have additional information needs, we would be pleased to confer with your staff about any remaining questions. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,



Peter J. Kadzik  
Assistant Attorney General

cc: The Honorable Thomas R. Carper  
Ranking Member

# **Exhibit 7**



# United States Senate

COMMITTEE ON  
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS  
WASHINGTON, DC 20510-6250

KEITH B. ASHDOWN, STAFF DIRECTOR  
GABRIELLE A. BATKIN, MINORITY STAFF DIRECTOR

July 28, 2015

Mr. Eric Green  
Monitor  
2014 Bank of America Mortgage Settlement  
P.O. Box 10134  
Dublin, OH 43017-3134

Dear Mr. Green:

I write to request information about the Bank of America settlement with the federal government in connection to the 2008 financial crisis. As you are aware, the Department of Justice (DOJ) and Bank of America agreed to settle alleged legal claims related to the 2008 housing crisis for \$16.65 billion, including \$7 billion in direct consumer relief.<sup>1</sup> Because funds received from these settlements are outside of the congressional appropriations process, Congress lacks the ability to fully evaluate their use and distribution. Therefore, I request your assistance in your role as monitor in order to provide the Committee with greater insight into Bank of America's settlement agreement. Specifically, there is little public information available regarding how third-party organizations are selected to receive settlement funds rather than direct consumer relief. There is also a lack of insight into the process for determining how much money each organization receives and for monitoring how funds are spent by the selected groups.

To address these issues, I request that you provide the following information and materials:

1. Please provide a breakdown of the settlement funds you monitor, including:
  - a. How much of the overall settlement funds have been distributed by Bank of America to date and to whom were those funds distributed; and
  - b. How much of the overall settlement funds are yet to be distributed and to whom will these funds likely be distributed?
2. Have any third parties been the beneficiaries of the settlement funds to date?
  - a. If yes, please provide a breakdown of the third-party organizations that have received settlement payments to date.
  - b. If not, which third-party organizations are likely to receive settlement funds in the future?

---

<sup>1</sup> Press Release, Department of Justice, Justice Department, Federal and State Partners Secure Record \$7 Billion Global Settlement with Citigroup for Misleading Investors About Securities Containing Toxic Mortgages (July 14, 2014) <http://www.justice.gov/opa/pr/justice-department-federal-and-state-partners-secure-record-7-billion-globalsettlement>.



3. According to the settlement agreement, under “Consumer Relief,” Menu Item 3(G), Bank of America agreed to provide a minimum \$20 million payment in “[d]onations to HUD-approved housing counseling agencies to provide foreclosure prevention assistance and other housing counseling activities.”<sup>2</sup>
  - a. What is the current status of the disbursement of these consumer relief funds?
  - b. Have any HUD-approved housing agencies already been identified as recipients for these settlement funds? If so, please list the recipients of settlement funds and the amount of funding for each agency.
  - c. Was there any coordination between Bank of America and HUD, DOJ, or other federal entities in determining which housing counseling activities should receive these funds? Please explain.
  
4. In your initial progress report, you wrote that if it is determined that Bank of America has fallen short in its consumer relief obligations then “[o]ne quarter of any shortfall payment will go to NeighborWorks America,” for it to provide housing counseling and other services.<sup>3</sup>
  - a. Has NeighborWorks America received any consumer relief funds from the settlement to date?
  - b. If not, is it likely that NeighborWorks America will receive any settlement funds in the future? If so, how much?
  - c. To your knowledge, how, why, and by whom was NeighborWorks selected to receive settlement funds? Please explain.

Please provide this information as soon as possible, but no later than 5:00 p.m. on August 11, 2015.

The Committee on Homeland Security and Governmental Affairs is authorized by Rule XXV of the Standing Rules of the Senate to investigate “the efficiency, economy, and effectiveness of all agencies and departments of the Government.”<sup>4</sup> Additionally, S. Res. 73 (114th Congress) authorizes the Committee to examine “the efficiency and economy of operations of all branches of the Government including the possible existence of fraud, misfeasance, malfeasance, collusion, mismanagement, incompetence, corruption or unethical practices ....”<sup>5</sup> For purposes of this request, please refer to the definitions and instructions in the enclosure.

---

<sup>2</sup> Settlement Agreement between Bank of America and U.S. Department of Justice, et al., Annex 2: Consumer Relief at 7 (Aug. 20, 2014) <http://www.justice.gov/iso/opa/resources/8492014829141239967961.pdf>.

<sup>3</sup> Eric D. Green, Initial Progress Report, Monitor of the 2014 Bank of America Mortgage Settlement at 7 (Feb. 17, 2015) <http://bankofamerica.mortgagesettlementmonitor.com/Reports/Initial-Progress-Report-Monitor-2014-Bank-of-America-Mortgage-Settlement....pdf>.

<sup>4</sup> S. Rule XXV(k); *see also* S. Res. 445, 108th Cong. (2004).

<sup>5</sup> S. Res. 73 § 12, 114th Cong. (2015).

Mr. Eric Green  
July 28, 2015  
Page 3

If you have any questions about this request, please contact [REDACTED] or [REDACTED] of the Committee staff at (202) 224-4751. Thank you for your prompt attention to this matter.

Sincerely,



Ron Johnson  
Chairman

cc: The Honorable Thomas R. Carper  
Ranking Member

Enclosure

# United States Senate

COMMITTEE ON  
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

July 28, 2015

Mr. Joseph Smith  
Monitor  
JPMorgan Chase RMBS Settlement  
301 Fayetteville St., Suite 1801  
Raleigh, NC 27601

Dear Mr. Smith:

I write to request information about the JP Morgan Chase (JPMorgan) settlement with the federal government in connection to the 2008 financial crisis. As you are aware, the Department of Justice (DOJ) and JPMorgan agreed to settle alleged legal claims related to the 2008 housing crisis for \$13 billion,<sup>1</sup> including \$4 billion in direct consumer relief.<sup>2</sup> Because funds received from these settlements are outside of the congressional appropriations process, Congress lacks the ability to fully evaluate their use and distribution. Therefore, I request your assistance in your role as monitor in order to provide the Committee with greater insight into JPMorgan's settlement agreement. Specifically, there is little public information available regarding how third-party organizations are selected to receive settlement funds rather than direct consumer relief. There is also a lack of insight into the process for determining how much money each organization receives and for monitoring how funds are spent by the selected groups.

To address these issues, I request that you provide the following information and materials:

1. Please provide a breakdown of the settlement funds you monitor, including:
  - a. How much of the overall settlement funds have been distributed by JPMorgan to date and to whom were those funds distributed; and
  - b. How much of the overall settlement funds are yet to be distributed and to whom will these funds likely be distributed?
2. Have any third parties been the beneficiaries of the settlement funds to date?
  - a. If yes, please provide a breakdown of the third-party organizations that have received settlement payments to date.
  - b. If not, which third-party organizations are likely to receive settlement funds in the future?

---

<sup>1</sup> Press Release, Department of Justice, Justice Department, Federal and State Partners Secure Record \$13 Billion Global Settlement with JPMorgan for Misleading Investors About Securities Containing Toxic Mortgages (Nov. 19, 2013) <http://www.justice.gov/opa/pr/justice-department-federal-and-state-partners-secure-record-13-billion-global-settlement>.

<sup>2</sup> Joseph A. Smith, Updated Progress, Monitor of the JP Morgan Chase RMBS Settlement at 1 (Apr. 2, 2015).

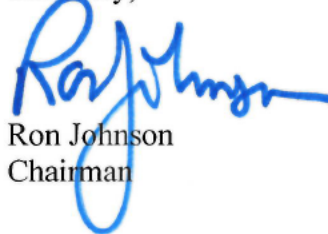
3. According to the settlement agreement, under "Consumer Relief," Menu Item 4(D) states that JPMorgan agreed to provide "[f]unds donated to capitalize community equity restoration funds or substantially similar community redevelopment activities."<sup>3</sup>
  - a. What is the current status of the disbursement of these consumer relief funds?
  - b. Have any Department of Housing and Urban Development (HUD)-approved community redevelopment agencies already been identified as recipients for these settlement funds? If so, please list them and provide the amount of funding for each agency.
  - c. Was there any coordination between HUD, DOJ, or other federal entities in determining which housing counseling activities should receive these funds?
  - d. For the "community redevelopment activities," what do you expect the payment amount will be? Please explain.

Please provide this information as soon as possible, but no later than 5:00 p.m. on August 11, 2015.

The Committee on Homeland Security and Governmental Affairs is authorized by Rule XXV of the Standing Rules of the Senate to investigate "the efficiency, economy, and effectiveness of all agencies and departments of the Government."<sup>4</sup> Additionally, S. Res. 73 (114th Congress) authorizes the Committee to examine "the efficiency and economy of operations of all branches of the Government including the possible existence of fraud, misfeasance, malfeasance, collusion, mismanagement, incompetence, corruption or unethical practices ...."<sup>5</sup> For purposes of this request, please refer to the definitions and instructions in the enclosure.

If you have any questions about this request, please contact [REDACTED] or [REDACTED] [REDACTED] of the Committee staff at (202) 224-4751. Thank you for your prompt attention to this matter.

Sincerely,



Ron Johnson  
Chairman

cc: The Honorable Thomas R. Carper  
Ranking Minority Member

Enclosure

<sup>3</sup> Settlement Agreement between JPMorgan and U.S. Department of Justice, et al., Annex 2: Consumer Relief (Nov. 19, 2013) <http://www.justice.gov/iso/opa/resources/64420131119164759163425.pdf>.

<sup>4</sup> S. Rule XXV(k); see also S. Res. 445, 108th Cong. (2004).

<sup>5</sup> S. Res. 73 § 12, 114th Cong. (2015).



# United States Senate

COMMITTEE ON  
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

KEITH B. ASHDOWN, STAFF DIRECTOR  
GABRIELLE A. BATKIN, MINORITY STAFF DIRECTOR

July 28, 2015

The Honorable Tom Perrelli  
Monitor  
2014 Citigroup, Inc. Mortgage Settlement  
Jenner & Block LLP  
1099 New York Avenue, NW Suite 900  
Washington, DC 20001-4412

Dear Mr. Perrelli:

I write to request information about the recent Citigroup, Inc. (Citi) settlement with the federal government in connection to the 2008 financial crisis. As you are aware, the Department of Justice (DOJ) and Citi agreed to settle alleged legal claims related to the 2008 housing crisis for the sum of \$7 billion.<sup>1</sup> Because funds received from these settlements are outside of the congressional appropriations process, Congress lacks the ability to fully evaluate their use and distribution. Therefore, I request your assistance in your role as monitor in order to provide the Committee with greater insight into Citi's settlement agreement. Specifically, there is little public information available regarding how third-party organizations are selected to receive settlement funds rather than direct consumer relief. There is also a lack of insight into the process for determining how much money each organization receives and for monitoring how funds are spent by the selected groups.

To address these issues, I request that you provide the following information and materials:

1. Please provide a breakdown of the settlement funds you monitor, including:
  - a. How much of the overall settlement funds have been distributed by Citi to date and to whom were those funds distributed; and
  - b. How much of the overall settlement funds are yet to be distributed and to whom will these funds likely be distributed?
2. According to the settlement agreement, under "Consumer Relief," Menu Item 4(F), Citi agreed to provide a minimum payment of \$10 million in "[d]onations to HUD-approved housing counseling agencies to provide foreclosure prevention assistance and other housing counseling activities."<sup>2</sup>

---

<sup>1</sup> Press Release, Department of Justice, Justice Department, Federal and State Partners Secure Record \$7 Billion Global Settlement with Citigroup for Misleading Investors About Securities Containing Toxic Mortgages (July 14, 2014) <http://www.justice.gov/opa/pr/justice-department-federal-and-state-partners-secure-record-7-billion-global-settlement>.

<sup>2</sup> Settlement Agreement between Citigroup and U.S. Department of Justice, et al., Annex 2: Consumer Relief at 11 (Jul. 11, 2014) <http://www.justice.gov/iso/opa/resources/649201471413721380969.pdf>.

The Honorable Tom Perrelli  
July 28, 2015  
Page 2

- a. What is the current status of the disbursement of these consumer relief funds? Please explain.
- b. Have any HUD-approved housing agencies already been identified as recipients for these settlement funds? If so, please list the recipients of settlement funds and the amount of funding for each agency.
- c. Was there any coordination between Citi and HUD, DOJ, or other federal entities in determining which housing counseling activities should receive these funds? Please explain.

Please provide this information as soon as possible, but no later than 5:00 p.m. on August 11, 2015.

The Committee on Homeland Security and Governmental Affairs is authorized by Rule XXV of the Standing Rules of the Senate to investigate "the efficiency, economy, and effectiveness of all agencies and departments of the Government."<sup>3</sup> Additionally, S. Res. 73 (114th Congress) authorizes the Committee to examine "the efficiency and economy of operations of all branches of the Government including the possible existence of fraud, misfeasance, malfeasance, collusion, mismanagement, incompetence, corruption or unethical practices ...."<sup>4</sup> For purposes of this request, please refer to the definitions and instructions in the enclosure.

If you have any questions about this request, please contact [REDACTED] or [REDACTED] [REDACTED] of the Committee staff at (202) 224-4751. Thank you for your prompt attention to this matter.

Sincerely,



Ron Johnson  
Chairman

cc: The Honorable Thomas R. Carper  
Ranking Minority Member

Enclosure

<sup>3</sup> S. Rule XXV(k); *see also* S. Res. 445, 108th Cong. (2004).

<sup>4</sup> S. Res. 73 § 12, 114th Cong. (2015).

# **Exhibit 8**

August 7, 2015

**Sent Via National Courier:  
Next Business Day Delivery**

The Honorable Ron Johnson  
Chairman, United States Senate Committee on Homeland  
Security and Governmental Affairs  
c/o US Senate Committee on Homeland Security and  
Governmental Affairs  
Majority Staff  
Room 340  
Dirksen Senate Office Building  
Washington, DC 20510-6250

The Honorable Thomas R. Carper  
Ranking Minority Member, United States Senate Committee on Homeland  
Security and Governmental Affairs  
c/o US Senate Committee on Homeland Security and Governmental Affairs  
Minority Staff  
Room 346  
Dirksen Senate Office Building  
Washington, DC 20510-6250

Re: JP Morgan Chase (JP Morgan) RMBS Settlement – Inquiry Dated July 28, 2015

Dear Senator Johnson and Senator Carper:

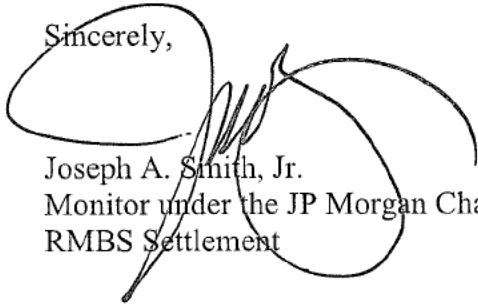
This letter is in response to a request for information dated July 28, 2015 (Request for Information), from the United States Senate Committee on Homeland Security and Governmental Affairs (Committee). The request for information pertains to the settlement agreement (Settlement) between JP Morgan Chase (JP Morgan), the United States, acting through the United States Department of Justice (Department of Justice), and other parties of legal claims related to the 2008 housing crisis and the packaging, marketing, sale and issuance of residential mortgage-backed securities (RMBS) by JP Morgan and others. The inquiry was addressed to me as monitor (Monitor) of the \$4 billion in consumer relief JP Morgan is required to provide under Annex 2 to the Settlement.



The Honorable Ron Johnson  
The Honorable Thomas R. Carper  
August 7, 2015  
Page 2

The Request for Information asked that I provide, as Monitor under the Settlement, information and materials in three areas. I have, in the attachment to this letter, responded to your requests in the order presented in the Request for Information. I believe the attachment includes all the information you have requested that is available to me as Monitor. Please contact me if you need other information about implementation of the Settlement or if you believe my response is in any manner incomplete. I can be reached at [REDACTED]

Sincerely,



Joseph A. Smith, Jr.  
Monitor under the JP Morgan Chase  
RMBS Settlement

cc:

[REDACTED]  
JP Morgan Chase

[REDACTED]  
United States Department of Justice

## ATTACHMENT

Letter to United States Senate Committee on  
Homeland Security and Governmental Affairs  
from Joseph A. Smith, Jr., Monitor under  
JP Morgan Chase RMBS Settlement

### Request No. 1

1. Please provide a breakdown of the settlement funds you monitor, including:
  - a. How much of the overall settlement funds have been distributed by JP Morgan to date and to whom were those funds distributed; and
  - b. How much of the overall settlement funds are yet to be distributed and to whom will these funds likely be distributed?

### Answer No. 1

JP Morgan is required under the Settlement to provide \$4 billion in consumer relief (Consumer Relief). As set out in Annex 2 to the Settlement, the Consumer Relief may be provided through:

- (1) modification – forgiveness/forbearance in the form of (i) first lien principal forgiveness, (ii) principal forgiveness of forbearance, (iii) first lien forbearance (payment forgiveness), and (iv) second lien principal forgiveness (including extinguishments) (Modification – Forgiveness/Forbearance Relief) (Menu Items 1A, 1B, 1C and 1D);
- (2) rate reductions and refinancings through cross-servicer Home Affordable Refinance Program Originations (Refinancing Relief) (Menu Items 2A and 2B);
- (3) low to moderate income and disaster lending for purchase money loans to creditworthy borrowers (i) in Hardest Hit Areas, (ii) in areas declared as Major Disasters by FEMA between 10/1/12 and 11/19/13, (iii) who lost homes to foreclosure or short sales, or (iv) to first time low to moderate income home buyers (LMI and Other Lending Relief) (Menu Item 3A); and
- (4) anti-blight relief in the form of (i) forgiveness of principal associated with a property where foreclosure is not pursued, (ii) cash costs paid for demolition of dilapidated properties, (iii) mortgages or REO properties donated to accepting municipalities, land banks or non-profits or to servicemembers with disabilities or relatives of deceased servicemembers, and (iv) financial contributions to capitalize community equity restoration funds or substantially similar community redevelopment activities (Anti-Blight Relief) (Menu Item 4A, 4B, 4C and 4D).

Under Annex 2 to the Settlement, JP Morgan is required to provide a minimum of \$2 billion in Consumer Relief through Principal Forgiveness Relief (Menu Items 1A, 1B, 1C and 1D). The Settlement, in Annex 2, does not require JP Morgan to provide minimum amounts of Consumer Relief for Refinancing Relief, LMI and Other Lending Relief or Anti-Blight Relief.

As Monitor, through BDO Consulting, a division of BDO USA, LLP (BDO), the professional firm I have engaged to assist me as Monitor, I have confirmed to the Department of Justice that, as of December 31, 2014, JP Morgan has provided \$3,324,010,726 in Consumer Relief. Below is a breakdown of the \$3,324,010,726 in Consumer Relief by type of relief:

- (1) Modification – Forgiveness/Forbearance Relief – \$1,278,583,917 as follows:
  - (i) first lien principal forgiveness (Menu Item 1A) – \$581,316,559
  - (ii) principal forgiveness of forbearance (Menu Item 1B) – \$300,000,000
  - (iii) first lien forbearance (payment forgiveness) (Menu Item 1C) – \$168,585,249
  - (iv) second lien principal forgiveness (including extinguishments) (Menu Item 1D) – \$228,682,109;
- (2) Refinancing Relief – \$874,470,934 as follows:
  - (i) rate reduction (Menu Item 2A) – \$ 874,470,934
  - (ii) refinancings (Menu Item 2B) – \$0;
- (3) LMI and Other Lending Relief – \$1,170,955,875 as follows (Menu Item 3A):
  - (i) in Hardest Hit Areas – \$694,499,375
  - (ii) in areas declared as Major Disasters by FEMA between 10/1/12 and 11/19/13 – \$0
  - (iii) who lost homes to foreclosure or short sales – \$0
  - (iv) to first time low to moderate income home buyers – \$476,456,500;
- (4) Anti-Blight Relief – \$0 as follows:
  - (i) forgiveness of principal associated with a property where foreclosure is not pursued (Menu Item 4A) – \$0
  - (ii) cash costs paid for demolition of dilapidated properties (Menu Item 4B) – \$0
  - (iii) mortgages or REO properties donated to accepting municipalities, land banks or non-profits or servicemembers with disabilities or relatives of deceased servicemembers (Menu Item 4C) – \$0
  - (iv) financial contributions to capitalize community equity restoration funds or substantially similar community redevelopment activities (Menu Item 4D) – \$0

With respect to the Consumer Relief JP Morgan has provided in the forms of Modification – Forgiveness/Forbearance Relief, Refinancing Relief and LMI and Other Lending Relief, as Monitor I do not know the identity of the persons to whom such relief has been provided, other than those borrowers on loans included in the sample of loans tested by BDO as part of my validation of the Consumer Relief credit claimed by JP Morgan. With respect to the identities of the foregoing borrowers, BDO and I are under a confidentiality agreement with JP Morgan under which we are prohibited from disclosing or otherwise making public any personally identifiable information regarding its borrowers and their respective mortgage loans, including names and account numbers. BDO and I are not privy to the names of persons to whom relief has been provided from the remaining population of loans.

With respect to Anti-Blight Relief, as noted above, JP Morgan has not provided any such Consumer Relief as of December 31, 2014, and accordingly, there are no persons to whom such relief has been distributed.

With respect to the amount of Consumer Relief remaining to be provided by JP Morgan, as of December 31, 2014, there remains \$675,989,274 that I will be required to confirm under the Settlement. Regarding to whom such Consumer Relief will be provided by JP Morgan, I am not privy to that information. JP Morgan is not required under the Settlement to provide me, as Monitor, advance notice of the types of Consumer Relief it intends to provide or may provide; JP Morgan is only required to notify me, as the Monitor, of the Consumer Relief it has provided and for which it seeks my confirmation that such Consumer Relief has been provided in accordance with the Settlement.

#### Request No. 2

2. Have any third parties been the beneficiaries of the settlement funds to date?
  - a. If yes, please provide a breakdown of the third party organizations that have received settlement payments to date.
  - b. If not, which third-party organizations are likely to receive settlement funds in the future?

#### Answer No. 2

The type of relief referenced above in 2.a and 2.b is referred to under the Settlement and in this letter as Anti-Blight Relief. As noted above in the answer to Request No. 1, as of December 31, 2014, as Monitor, I have not confirmed, through the work of BDO, any Anti-Blight Relief under the Settlement. As such, on the basis of my confirmatory work as Monitor, no third party organizations have received payments under the Settlement for Consumer Relief in the form of Anti-Blight Relief. Also, as noted above in the answer to Request No. 1, I am not privy to information regarding which third-party organizations are likely to receive Consumer Relief in the form of Anti-Blight Relief. JP Morgan is not required under the Settlement to give me advance notice of the third-party organizations, if any, to which it intends to give Consumer Relief in the form of Anti-Blight Relief.

With respect to the other forms of Consumer Relief, through BDO's work and my review of that work, I have confirmed, as Monitor, that JP Morgan, as of December 31, 2014, has provided Consumer Relief in respect of 151,436 mortgage loans, which have been identified only through account numbers or mortgage loan numbers, rather than names of individual borrowers (except as noted above in the answer to Request No. 1 with respect to a sample of loans reviewed by BDO during its confirmatory testing). Below is a breakdown of the 151,436 mortgage loans by type of relief:

- (1) Modification – Forgiveness/Forbearance Relief – 26,997 mortgage loans as follows:
  - (i) first lien principal forgiveness (Menu Item 1A) – 6,789
  - (ii) principal forgiveness of forbearance (Menu Item 1B) – 4,328
  - (iii) first lien forbearance (payment forgiveness) (Menu Item 1C) – 9,313
  - (iv) second lien principal forgiveness (including extinguishments) (Menu Item 1D) – 6,567;
- (2) Refinancing Relief – 34,695 mortgage loans as follows:
  - (i) rate reduction (Menu Item 2A) – 34,695
  - (ii) refinancings (Menu Item 2B) – 0;
- (3) LMI and Other Lending Relief – 89,744 mortgage loans as follows (Menu Item 3A):
  - (i) in Hardest Hit Areas – 48,313
  - (ii) in areas declared as Major Disasters by FEMA between 10/1/12 and 11/19/13 – 0
  - (iii) who lost homes to foreclosure or short sales – 0
  - (iv) to first time low to moderate income home buyers – 41,431

### Request No. 3

3. According to the settlement agreement, under “Consumer Relief,” Menu Item 4(D) states that JP Morgan agreed to provide “[f]unds donated to capitalize community equity restoration funds or substantially similar community redevelopment activities.”
  - a. What is the current status of the disbursement of these consumer relief funds?
  - b. Have any Department of Housing and Urban Development (HUD)-approved community redevelopment agencies already been identified as recipients for these settlement funds? If so, please list them and provide the amount of funding for each agency.

- c. Was there any coordination between HUD, DOJ, or other federal entities in determining which housing counseling activities should receive these funds?
- d. For the “community development activities,” what do you expect the payment amount will be? Please explain.

Answer No. 3

The type of relief in Menu Item 4(D) of Annex 2 to the Settlement is one of four types of relief referred to in Annex 2 and this letter as Anti-Blight or Anti-Blight Relief. Under the Settlement, JP Morgan is not required to give me, as Monitor, advance notice of the types of Consumer Relief it intends to provide or may provide under the Settlement; JP Morgan is only required to notify me, as Monitor, on the Consumer Relief it has provided and for which it seeks my confirmation that such Consumer Relief has been provided in accordance with the Settlement. As of the date of this letter, JP Morgan has not requested that I confirm that it has provided any Consumer Relief in the form of Anti-Blight Relief. As a consequence, I have no responses to question 3(b), (c) and (d).

# **Exhibit 9**

August 11, 2015

The Honorable Ron Johnson, Chairman  
Committee on Homeland Security and Governmental Affairs  
United States Senate  
340 Dirksen Senate Office Building  
Washington, DC 20510  
(Via Overnight Mail and Email to [REDACTED], [REDACTED]  
[REDACTED] for the Committee on Homeland Security and Governmental  
Affairs, at [REDACTED])

The Honorable Thomas R. Carper, Ranking Member  
Committee on Homeland Security and Governmental Affairs  
United States Senate  
346 Dirksen Senate Office Building  
Washington, DC 20510  
(Via Overnight Mail and Email to [REDACTED], [REDACTED]  
[REDACTED] for the Committee on Homeland Security and Governmental  
Affairs, at [REDACTED])

Dear Senators Johnson and Carper:

I write in response to the request for information contained in Senator Johnson's letter to me, dated July 28, 2015, in my capacity as the independent Monitor appointed under the August 20, 2014 Settlement Agreement between Bank of America (the "Bank") and the United States Department of Justice, the states of California, Delaware, Illinois, Maryland, and New York, and the Commonwealth of Kentucky (the "Settlement Agreement"). Each of the questions posed in Senator Johnson's letter is set forth below, followed by my answer.

- 1. Please provide a breakdown of the settlement funds you monitor, including:**
  - a. How much of the overall settlement funds have been distributed by Bank of America to date and to whom were those funds distributed; and**
  - b. How much of the overall settlement funds are yet to be distributed and to whom will these funds likely be distributed?**

As the Monitor, I am responsible for determining whether the Bank satisfies its obligation under the Settlement Agreement to provide "Consumer Relief," as defined in the Settlement



Agreement, valued at \$7 billion. The Bank can earn “Credit” toward meeting the \$7 billion target by modifying homeowners’ loans to make them more affordable, making new loans to low- and moderate-income borrowers, donating money and real-estate assets toward community reinvestment and neighborhood stabilization, and supporting affordable low-income rental housing. Specifics regarding the various forms of Consumer Relief for which the Bank can receive Credit are provided in a series of “Menu Items” in Annex 2 to the Settlement Agreement. Annex 2 also specifies how Credit is to be calculated for each form of Consumer Relief and how extra Credit can be earned if the Bank satisfies certain additional conditions.

The Bank seeks Credit for its Consumer Relief efforts by making periodic “Submissions” to me in which the Bank states the dollar amounts of Credit it is claiming for Consumer Relief provided during a specified period. With the assistance of professional advisers, I review each Submission to determine whether the claimed Credit is correct. The processes that I and my professional advisers follow to make that determination are described in detail in the two Reports I have issued to date: my Initial Report, dated February 17, 2015, and my July 31, 2015 Report (the “July Report”). Copies of both Reports are submitted with this letter.

As stated in the July Report, the Bank has to date provided Submissions claiming Credit in the total amount of \$1,190,339,386 for Consumer Relief completed by the end of the first quarter of 2015. This Credit, and the Consumer Relief for which it is claimed, breaks down as follows according to the Settlement Agreement’s Menu Items:

<u>Menu Item</u>	<u>Consumer Relief</u>	<u>Credit Claimed</u>
1.A	First Lien Principal Forgiveness (\$423,560,475 forgiven)	\$1,091,990,251
1.B	Forgiveness of Forbearance (\$0 forgiven)	\$0
1.C	Forbearance (\$0 deferred)	\$0
1.D	Second Lien Extinguishment (\$0 forgiven)	\$0
1.E	Junior Lien Forgiveness (\$0 forgiven)	\$0
2.A	Low- to Moderate-Income Lending and Other Lending (\$0 loaned)	\$0
3.A	Extinguishment of Principal (\$0 forgiven)	\$0
3.B	Costs of Demolition (\$0 donated)	\$0
3.C	Mortgages or Properties Donated (none donated)	\$0
3.D	Donations to Nonprofits for Demolition or Renovation of Donated Properties (\$0 donated)	\$0

3.E	Donations to Community Development Financial Institutions or Similar Qualified Nonprofits (\$1,175,000 donated)	\$2,702,500
3.F	Donations for Legal Assistance (\$7,729,244 donated)	\$17,777,260
3.G	Donations to HUD-approved Housing Counseling Agencies (\$800,000 donated)	\$1,840,000
4	Loans at a Loss for Affordable Low-Income Rental Housing (\$18,350,000 loss)	\$76,029,375

Because the Settlement Agreement specifies the Bank’s target as \$7 billion in Credit, the Settlement Agreement does not readily lend itself to a determination of the amount of additional cash outlays the Bank must make to discharge its settlement obligations. The Bank has a certain degree of discretion regarding the allocation of its Consumer Relief efforts among the Menu Items, and many of the Menu Items provide for forms of Consumer Relief, such as loan forgiveness under Menu Item 1.A, that involve the absorption of losses by the Bank rather than the distribution of funds.

With respect to three Menu Items, the Settlement Agreement does set forth minimum amounts that the Bank must make in donations. The Bank must donate a minimum of \$50 million under Menu Item 3.E, a minimum of \$30 million under Menu Item 3.F, and a minimum of \$20 million under Menu Item 3.G. Thus, based on the Bank’s Submissions to date, and subject to my final determination that the Bank’s Consumer Relief efforts comply with the requirements of the Settlement Agreement, the Bank must donate an additional \$48,825,000 to reach the minimum under Menu Item 3.E, an additional \$22,270,756 to reach the minimum under Menu Item 3.F, and an additional \$19,200,000 to reach the minimum under Menu Item 3.G. Other Menu Items either have no required minimum (i.e., the Bank may opt to provide no Consumer Relief under such Menu Items) or specify minimums in terms of Credit for loan modifications or losses on loans.

The organizations that received donations for which the Bank has claimed Credit to date under Menu Items 3.E, 3.F, and 3.G are the following:

<u>Menu Item</u>	<u>Organization</u>	<u>Donation</u>
3.E	Opportunity Finance Network, PA Local Initiatives Support Corporation, NY	\$175,000 \$1,000,000
3.F	Tennessee Bar Foundation IOLTA Program Alabama Civil Justice Foundation	\$641,877 \$273,094

	Arizona Foundation for Legal Services & Education	\$644,786
	Delaware Bar Foundation	\$241,208
	Georgia Bar Foundation	\$878,787
	Idaho Law Foundation IOLTA Program, Inc.	\$294,964
	Indiana Bar Foundation	\$584,646
	Iowa Lawyer Trust Account Commission	\$346,653
	Kansas Bar Foundation	\$351,253
	Michigan State Bar Foundation	\$849,545
	Nevada Bar Foundation	\$355,047
	Oklahoma Bar Foundation	\$446,510
	Oregon Law Foundation	\$439,469
	Pennsylvania Lawyer Trust Account Board	\$852,693
	South Carolina Bar Foundation IOLTA Program	\$528,712
3.G	National Foundation for Credit Counseling, Inc., D.C.	\$700,000
	National Faith Homebuyers, MI	\$100,000

As part of the process by which the Bank provides me with periodic updates of activity for which it expects to seek Credit in the future, the Bank has also supplied lists of donations it has made under Menu Items 3.E, 3.F, and 3.G, but for which it has not yet made a Submission claiming Credit. Those lists, which name the recipients of the donations, are attached hereto as Exhibit A (for Menu Item 3.E), Exhibit B (for Menu Item 3.F), and Exhibit C (for Menu Item 3.G). Further, the Bank has provided lists of donations that are “in progress” under Menu Items 3.E, 3.F, and 3.G. Those lists, which also name the recipients, are attached hereto as Exhibit D.

I have no knowledge regarding organizations that have not yet received but are likely to receive donations from the Bank under the Settlement Agreement.

In addition, as required by the Settlement Agreement, the Bank has deposited \$490,160,000 into the “Tax Relief Payment Account” (the “Account”), which is subject to my control as the Monitor. The purpose of the Account is to assist homeowners who may be subject to additional federal income-tax liability as a result of principal forgiveness by the Bank. Payments from the Account will be made directly to the IRS and will be applied only to reduce a homeowner’s federal income-tax liability. If, however, the Mortgage Forgiveness Debt Relief Act of 2007, as extended in December 2014, is further extended through 2015, I will not make any tax payments out of the Account, because homeowners whose mortgages are modified in 2015 will already receive federal tax relief under the legislation. Should that occur, the Settlement Agreement requires that 25% of the funds in the Account be distributed to NeighborWorks America, to provide housing counseling, neighborhood stabilization, foreclosure prevention, or similar programs, and 75% of the funds in the Account be distributed to state-based IOLTA organizations (or other statewide bar association affiliated intermediaries) that

provide funds to legal-aid organizations to be used for foreclosure-prevention legal assistance and community-redevelopment assistance. To date, I have not made any payments from the Account.

2. **Have any third parties been the beneficiaries of the settlement funds to date?**
  - a. **If yes, please provide a breakdown of the third-party organizations that have received settlement payments to date.**
  - b. **If not, which third-party organizations are likely to receive settlement funds in the future?**

According to the Bank's Submissions to me to date, it has made donations under the Settlement Agreement to 19 organizations. Those organizations, and the amounts of those donations, are listed above in my answer to question 1. Donations that the Bank has made to date under the Settlement Agreement but for which it has not yet claimed Credit are listed in Exhibits A through D attached hereto. I have no knowledge regarding organizations that have not yet received but are likely to receive donations from the Bank under the Settlement Agreement.

3. **According to the settlement agreement, under "Consumer Relief," Menu Item 3(G), Bank of America agreed to provide a minimum of \$20 million payment in "[d]onations to HUD-approved housing counseling agencies to provide foreclosure prevention assistance and other housing counseling activities."**
  - a. **What is the current status of the disbursement of these consumer relief funds?**
  - b. **Have any HUD-approved housing agencies already been identified as recipients for these settlement funds? If so, please list the recipients of settlement funds and the amount of funding for each agency.**
  - c. **Was there any coordination between Bank of America and HUD, DOJ, or other federal entities in determining which housing counseling activities should receive these funds? Please explain.**

Donations for which the Bank has claimed Credit to date under Menu Item 3.G, the agencies that received those donations, and the amount each agency received are listed above in my answer to question 1. In addition, the Bank has provided me with a list of donations under Menu Item 3.G that the Bank has made but for which it has not yet claimed Credit, and a further list of donations under Menu Item 3.G that are "in progress." Those lists, which include the recipients of the donations and the amount donated to each recipient, are provided in Exhibits C and D attached hereto. If one assumes that all of the Menu Item 3.G donations listed on Exhibits C and D are submitted to me for Credit, and that I find all of them to qualify for Credit under the Settlement Agreement, then the total donations to date under Menu Item 3.G would be

\$19,065,000, and the Bank would need to donate an additional \$935,000 to reach the \$20 million minimum under Menu Item 3.G.

I have no knowledge regarding the answer to question 3.c in so far as the question is asking about the housing counseling activities sanctioned in Menu Item 3.G. In this regard, I wish to note that the Consumer Relief that the Bank has agreed to provide under the Settlement Agreement is the result of negotiations between the Bank and the U.S. DOJ and Attorneys General for the six “Participating States” (i.e., California, Delaware, Illinois, Maryland, New York, and Kentucky) to settle potential legal claims that the Bank or its affiliates violated the law in connection with the origination, packaging, marketing, and issuance of mortgage-backed securities. I did not participate in those settlement negotiations. At the conclusion of their negotiations, the settling parties agreed that they would appoint me as an independent Monitor to determine whether the Bank satisfies its Consumer Relief obligations under the Settlement Agreement. The Settlement Agreement provides that I am to remain fully independent of the settling parties. In my capacity as Monitor, I do not represent any of the settling parties and, likewise, cannot represent or provide legal or tax advice to individual homeowners.

Bank of America has informed the Monitor that it has not coordinated with HUD, DOJ or any other federal entity when selecting the recipients of donations under Menu Item 3.G.

- 4. In your initial progress report, you wrote that if it is determined that Bank of America has fallen short in its consumer relief obligations then “[o]ne quarter of any shortfall payment will go to NeighborWorks America,” for it to provide housing counseling and other services.**
- a. Has NeighborWorks America received any consumer relief funds from the settlement to date?**
  - b. If not, is it likely that NeighborWorks America will receive any settlement funds in the future? If so, how much?**
  - c. To your knowledge, how, why, and by whom was NeighborWorks selected to receive settlement funds? Please explain.**

NeighborWorks America is not identified as a recipient of Consumer Relief in the Bank’s Submissions to me to date or in the lists of donation recipients provided by the Bank and attached hereto as Exhibits A through D.

The answer to question 4.b depends, at least in part, on the likelihood (i) that the Bank will fall short in satisfying its Consumer Relief obligations under the Settlement Agreement, or (ii) that as discussed above in my answer to question 1, the Mortgage Forgiveness Debt Relief Act of 2007 is extended through 2015. I have no knowledge regarding the likelihood that either or both of those developments will occur, or whether the Bank otherwise is likely to provide Consumer Relief to NeighborWorks America.

I have no knowledge regarding the answer to question 4.c, for the reasons provided above regarding the answer to question 3.c.

\* \* \*

I hope that you find the information provided in this letter, in the attached exhibits, and in my two Reports to be complete and responsive to your questions. If you or your staffs have any additional questions, I will be happy to try to answer them.

Very truly yours,



CC:



**EXHIBIT A**

## Completed Donations

3E

Donation Recipient	Section	Total Donation Amount	Date Check Cashed
CDCLI Funding Corporation	3E	\$ 750,000.00	7/7/2015
Chicago Community Loan Fund	3E	\$ 1,000,000.00	7/24/2015
Community Loan Fund of the Capital Region, Inc.	3E	\$ 500,000.00	7/1/2015
Community Partnership Development Corporation	3E	\$ 200,000.00	7/1/2015
Corporation For Supportive Housing	3E	\$ 75,000.00	6/1/2015
Enterprise Community Loan Fund, Inc.	3E	\$ 1,750,000.00	5/29/2015
First Nations Development Institute	3E	\$ 75,000.00	5/6/2015
First Nations Oweesta Corporation	3E	\$ 75,000.00	6/10/2015
Greater Rochester Housing Partnership	3E	\$ 850,000.00	7/7/2015
Habitat for Humanity	3E	\$ 1,500,000.00	6/1/2015
Housing Assistance Council	3E	\$ 100,000.00	5/15/2015
Housing Partneship Fund	3E	\$ 1,075,294.00	1/22/2015
Housing Partnership Fund	3E	\$ 9,928,251.00	6/24/2015
Leviticus 25:23 Alternative Fund, Inc.	3E	\$ 100,000.00	7/8/2015
Living Cities	3E	\$ 150,000.00	6/10/2015
Local Initiatives Support Corporation *	3E	\$ 1,000,000.00	4/15/2015
Local Initiatives Support Corporation *	3E	\$ 1,250,000.00	5/29/2015
Low Income Investment Fund	3E	\$ 125,000.00	5/14/2015
Mercy Housing	3E	\$ 300,000.00	5/20/2015
National American Indian Housing Council	3E	\$ 50,000.00	6/11/2015
National Community Reinvestment Coalition Community Development Fund	3E	\$ 1,500,000.00	6/10/2015
National Council of La Raza*	3E	\$ 1,000,000.00	5/15/2015
National Federation of Community Development Credit Unions	3E	\$ 500,000.00	6/15/2015
National Urban League*	3E	\$ 650,000.00	5/15/2015
Opportunity Finance Network	3E	\$ 175,000.00	4/16/2015
Opportunity Resource Fund	3E	\$ 835,000.00	7/3/2015
Rural Community Assistance Corporation	3E	\$ 65,000.00	5/12/2015
The Disability Fund, Inc.	3E	\$ 250,000.00	7/1/2015
The Housing Partnership Network, Inc.	3E	\$ 100,000.00	5/13/2015
The Reinvestment Fund	3E	\$ 1,600,000.00	6/30/2015
Utica Neighborhood Housing Services, Inc.	3E	\$ 150,000.00	6/25/2015



**EXHIBIT B**

Donation Recipient	Section	Total Donation Amount	Date Check Cashed
Alabama Civil Justice Foundation	3F	\$ 273,094.24	4/29/2015
Alabama Law Foundation Inc.	3F	\$ 273,094.24	7/15/2015
Alaska Bar Association	3F	\$ 238,039.08	7/10/2015
Arizona Foundation for Legal Services & Education	3F	\$ 644,785.74	4/28/2015
Arkansas IOLTA Foundation, Inc.	3F	\$ 416,607.59	5/7/2015
Colorado Lawyer Trust Account Foundation	3F	\$ 462,346.29	5/15/2015
Connecticut Bar Foundation IOLTA Program	3F	\$ 341,085.00	5/29/2015
Delaware Bar Foundation	3F	\$ 241,207.50	4/28/2015
Fondo Acceso a la Justicia, Inc.	3F	\$ 870,962.99	6/4/2015
Georgia Bar Foundation	3F	\$ 878,787.40	4/29/2015
Hawaii Justice Foundation	3F	\$ 269,967.20	6/18/2015
Idaho Law Foundation IOLTA Program, Inc.	3F	\$ 294,963.85	4/30/2015
Indiana Bar Foundation	3F	\$ 584,646.26	4/29/2015
IOLA Fund of the State of New York	3F	\$ 1,345,387.69	5/5/2015
IOLTA Fund of the Bar of New Jersey	3F	\$ 545,822.12	6/4/2015
Iowa Lawyer Trust Account Commission	3F	\$ 346,652.88	4/28/2015
Kansas Bar Foundation	3F	\$ 351,252.51	4/30/2015
Kentucky IOLTA Fund	3F	\$ 518,260.54	5/18/2015
Lawyers Trust Fund of Illinois	3F	\$ 904,263.54	5/5/2015
Legal Foundation of Washington	3F	\$ 553,012.44	5/5/2015
Legal Services Corporation of Virginia	3F	\$ 547,015.81	5/5/2015
Legal Services Trust Fund Program (CA IOLTA)	3F	\$ 2,485,197.43	6/11/2015
Louisiana Bar Foundation/IOLTA Program	3F	\$ 532,101.72	5/15/2015
Maine Bar Foundation	3F	\$ 267,784.73	5/1/2015
Maryland Legal Services Corporation	3F	\$ 420,011.53	5/20/2015
Massachusetts IOLTA Committee	3F	\$ 485,561.86	5/14/2015
Michigan State Bar Foundation	3F	\$ 849,544.99	4/29/2015
Minnesota IOLTA Program	3F	\$ 442,039.45	6/17/2015
Mississippi Bar Foundation IOLTA Program	3F	\$ 457,003.87	6/12/2015
Missouri Lawyer Trust Account Foundation	3F	\$ 554,878.47	5/7/2015
Montana Justice Foundation	3F	\$ 258,102.35	5/13/2015
Nebraska Lawyers Trust Account Foundation	3F	\$ 290,348.11	5/29/2015
Nevada Bar Foundation	3F	\$ 355,046.96	4/29/2015
New Hampshire Bar Foundation IOLTA Program	3F	\$ 243,399.62	5/12/2015
North Carolina State Bar Plan for IOLTA	3F	\$ 842,896.15	5/5/2015
North Dakota Bar Foundation	3F	\$ 232,485.30	5/15/2015
Ohio Legal Assistance Foundation	3F	\$ 915,576.43	5/5/2015
Oklahoma Bar Foundation	3F	\$ 446,510.26	4/29/2015
Oregon Law Foundation	3F	\$ 439,468.89	4/30/2015
Pennsylvania Lawyer Trust Account Board	3F	\$ 852,693.28	4/28/2015
Rhode Island Bar Foundation IOLTA Program	3F	\$ 254,901.73	6/2/2015
South Carolina Bar Foundation IOLTA Program	3F	\$ 528,711.88	4/29/2015
South Dakota Bar Foundation IOLTA Program	3F	\$ 244,462.47	5/5/2015
State Bar of New Mexico	3F	\$ 364,018.77	5/7/2015
Tennessee Bar Foundation IOLTA Program	3F	\$ 641,877.00	4/30/2015
Texas Equal Access To Justice Foundation	3F	\$ 1,963,027.11	5/1/2015
The District of Columbia Bar Foundation	3F	\$ 243,494.23	5/1/2015
The Florida Bar Foundation	3F	\$ 1,395,699.84	5/4/2015
Utah Bar Foundation	3F	\$ 339,188.79	5/1/2015
Vermont Bar Foundation IOLTA	3F	\$ 228,531.83	5/4/2015
Virgin Islands Legal Assistance Foundation, Inc.	3F	\$ 209,510.48	6/1/2015
West Virginia State Bar	3F	\$ 329,906.99	5/1/2015
Wisconsin Trust Account Foundation, Inc.	3F	\$ 488,355.86	5/15/2015
Wyoming IOLTA Program/Wyoming State Bar Foundation	3F	\$ 224,028.82	5/18/2015

**EXHIBIT C**

3G

Donation Recipient	Section	Total Donation Amount	Date Check Cashed
ACCORD Corporation	3G	\$ 70,200.00	7/13/2015
Albany County Rural Housing	3G	\$ 373,961.00	7/15/2015
American Debt Resources	3G	\$ 242,250.00	7/22/2015
Austin Habitat for Humanity	3G	\$ 50,000.00	5/15/2015
Belmont Housing Resources	3G	\$ 257,000.00	7/20/2015
Bridge Street Development Corporation	3G	\$ 157,000.00	7/13/2015
Brooklyn Housing & Family Services	3G	\$ 245,000.00	7/24/2015
Catholic Charities of Chemung and Schuyler	3G	\$ 110,000.00	7/28/2015
CCCS of Rochester	3G	\$ 85,000.00	7/22/2015
Central Detroit Christian	3G	\$ 100,000.00	5/1/2015
Chautauqua Opportunities, Inc.	3G	\$ 70,000.00	7/22/2015
Community Action in Self Help	3G	\$ 135,966.00	7/22/2015
Community Development Corporation of Long Island	3G	\$ 656,319.00	7/13/2015
Community Housing Innovations	3G	\$ 79,300.00	7/22/2015
Cypress Hills Local Development Corporation	3G	\$ 165,000.00	7/22/2015
Debt Counseling Corporation	3G	\$ 19,000.00	7/23/2015
Economic Opportunity Council of Suffolk	3G	\$ 266,401.00	7/28/2015
Franklin County Community Housing Council	3G	\$ 30,000.00	7/22/2015
Friends of the North Country	3G	\$ 99,000.00	7/23/2015
GreenPath	3G	\$ 70,000.00	7/23/2015
Grow Brooklyn	3G	\$ 81,000.00	7/22/2015
Habitat for Humanity for Rhode Island, South County, Inc.	3G	\$ 50,000.00	5/15/2015
Habitat for Humanity of Jacksonville, Inc.	3G	\$ 50,000.00	5/15/2015
Habitat for Humanity, Stanislaus County	3G	\$ 50,000.00	5/14/2015
HFH East Bay/Silicon Valley	3G	\$ 50,000.00	5/26/2015
Home HeadQuarters	3G	\$ 175,981.00	7/24/2015
Homefree - USA	3G	\$ 530,000.00	5/1/2015
Homeownership Preservation Foundation	3G	\$ 725,000.00	5/21/2015
Housing Assistance Program of Essex	3G	\$ 131,548.00	7/22/2015
Housing Partnership Network	3G	\$ 500,000.00	5/13/2015
Hudson River Housing	3G	\$ 285,611.00	7/29/2015
Indian River Habitat for Humanity	3G	\$ 50,000.00	5/14/2015
Long Island Housing Partnership	3G	\$ 174,813.00	7/20/2015
Long Island Housing Services	3G	\$ 290,000.00	7/23/2015
Marketview Heights	3G	\$ 96,500.00	7/22/2015
Metro Interfaith	3G	\$ 47,000.00	7/27/2015
MHANY Management, Inc.	3G	\$ 50,000.00	7/27/2015
NACA (Neighborhood Assistance Corporation of America)	3G	\$ 750,000.00	6/5/2015
National Asian American Coalition	3G	\$ 275,000.00	5/5/2015
National Coalition for Asian Pacific American Community Development	3G	\$ 785,000.00	5/26/2015
National Community Reinvestment Coalition	3G	\$ 1,100,000.00	5/14/2015
National Council of La Raza*	3G	\$ 500,000.00	5/15/2015
National Faith Homebuyers	3G	\$ 100,000.00	4/29/2015
National Foundation for Credit Counseling, Inc.	3G	\$ 700,000.00	4/28/2015
National Urban League*	3G	\$ 500,000.00	5/15/2015
New Jersey Citizen Action	3G	\$ 100,000.00	5/12/2015
NHS of Jamaica	3G	\$ 136,000.00	7/24/2015
NID Housing Counseling Agency	3G	\$ 500,000.00	5/22/2015
Operation Hope, Inc.	3G	\$ 350,000.00	5/1/2015
Orange County Rural Development Advisory Corp	3G	\$ 235,000.00	7/29/2015
Pratt Area Community Council	3G	\$ 113,000.00	7/24/2015
Rural Community Assistance Corporation	3G	\$ 500,000.00	5/29/2015
Rural Ulster Preservation Co	3G	\$ 170,000.00	7/24/2015
Southwest Housing Solutions	3G	\$ 100,000.00	5/15/2015
Steuben Church People Against Poverty Inc. dba Arbor Housing and Development	3G	\$ 119,250.00	7/23/2015
The Housing Council at Pathstone	3G	\$ 300,000.00	7/22/2015
Twin Cities Habitat for Humanity	3G	\$ 50,000.00	5/21/2015
UNHS Homeownership Center	3G	\$ 113,675.00	7/16/2015
Valdosta-Lowndes County Habitat for Humanity	3G	\$ 50,000.00	5/29/2015
West Side Neighborhood Housing Services	3G	\$ 150,312.00	7/17/2015
Western Catskills Community Revitalization Council	3G	\$ 27,300.00	7/27/2015

\*Organization has more than 1 donation

**EXHIBIT D**

### 3EFG Donations in progress

#### 3E

Donation Recipient	Section	Total Donation Amount	Date Check Cashed
Community Preservation Corporation	3E	\$ 2,000,000.00	
Enterprise Community Loan Fund, Inc.	3E	\$ 2,000,000.00	
Home Headquarters, Inc.	3E	\$ 450,000.00	
Local Initiatives Support Corporation *	3E	\$ 2,000,000.00	
Neighborhood Lending Partners of West Florida, Inc.	3E	\$ 150,000.00	
*Organization has more than 1 donation			

#### 3F

Donation Recipient	Section	Total Donation Amount	Date Check Cashed
Micronesia Legal Services Corporation	3F	\$ 272,377.93	

#### 3G

Donation Recipient	Section	Total Donation Amount	Date Check Cashed
Buffalo Urban League	3G	\$ 100,000.00	
CCCS of Buffalo	3G	\$ 40,000.00	
Chhaya Community Development Corporation	3G	\$ 135,000.00	
Fulton Community Development Agency	3G	\$ 50,000.00	
Housing Action Council	3G	\$ 68,560.00	
Human Development Services of Westchester	3G	\$ 147,000.00	
La Fuerza	3G	\$ 211,993.00	
Neighborhood Reinvestment Corp. dba Neighborworks America	3G	\$ 1,650,000.00	
Neighbors Helping Neighbors/ Fifth Ave Committee	3G	\$ 170,000.00	
NHS North Bronx	3G	\$ 75,000.00	
NHS of Bedford- Stuyvesant	3G	\$ 100,000.00	
NHS of East Flatbush	3G	\$ 111,000.00	
NHS of Northern Queens	3G	\$ 170,000.00	
NHS of Staten Island	3G	\$ 80,000.00	
NHS South Bronx	3G	\$ 143,000.00	
Northfield Community LDC of Staten Island Inc.	3G	\$ 119,000.00	
Putnam County Housing	3G	\$ 203,610.00	
Rockland Housing Action Coalition	3G	\$ 222,190.00	
Westchester Residential Opportunities	3G	\$ 125,260.00	

August 11, 2015

Thomas J. Perrelli  
Tel +1 202 639 6004  
Fax +1 202 661 4900  
tperrelli@jenner.com

VIA HAND DELIVERY

The Honorable Ron Johnson, Chairman  
Committee on Homeland Security and  
Governmental Affairs  
United States Senate  
340 Dirksen Senate Office Building  
Washington, DC 20002

**Re: Citigroup Inc. Residential Mortgage-Backed Securities Settlement Agreement**

Dear Chairman Johnson:

Thank you for your July 28, 2015 letter regarding the Citigroup Inc. ("Citi") Residential Mortgage-Backed Securities Settlement Agreement with the Department of Justice and five participating states ("Settlement Agreement"). In your letter, you asked several questions regarding the Settlement Agreement. Each question and a response is included below.

1) *Please provide a breakdown of the settlement funds you monitor, including:*

a) *How much of the overall settlement funds have been distributed by Citi to date and to whom those funds [were] distributed?*

As of today, I have determined that Citi has earned \$13,971,004 of consumer relief credit. This consumer relief was based upon an initial testing population of 100 loans, under Menu Item 4A of Annex 2 of the Settlement Agreement, which addresses forgiveness of principal associated with a property where foreclosure is not pursued and liens are released.<sup>1</sup> This relief has been distributed to individual borrowers.

In addition, Citi has submitted approximately 3,300 loans pending review, which are focused on Menu Items 1A, 2A and 4A of Annex 2, respectively providing consumer relief for forgiveness of mortgages; rate reductions and refinancing; and, as noted above, forgiveness of principal associated with a property where foreclosure is not pursued and liens are released. I expect to issue a report on the results on my review shortly, which will be publicly available on my web site, and will be happy to provide you with a

---

<sup>1</sup> See Citi Monitorship First Report, January 2015, available at [http://citigroupmonitorship.com/uploads/3/5/1/9/3519321/citi\\_monitorship\\_initial\\_report\\_2015-01-21.pdf](http://citigroupmonitorship.com/uploads/3/5/1/9/3519321/citi_monitorship_initial_report_2015-01-21.pdf).

copy. As with the consumer relief credit associated with the initial population of 100 loans, the pending consumer relief has been provided directly to individual borrowers.

b) *How much of the overall settlement funds are yet to be distributed and to whom will these funds likely be distributed?*

The Settlement Agreement requires Citi to provide \$2.5 billion in consumer relief credit under the five Menu Items described in Annex 2. Accordingly, Citi must complete approximately an additional \$2.48 billion in consumer relief credit by the end of 2018.

With respect to your question regarding to whom the funds will likely be distributed, the Settlement Agreement does not entitle any specific consumer to relief, but Citi must meet certain requirements regarding minimum contributions and eligibility requirements. These include:

- Citi must provide at least \$820 million in credit under Menu Items 1 and 4A of Annex 2.<sup>2</sup> With respect to Menu Items 1A and 1E, eligibility is limited to non-performing loans, loans in imminent default, high LTV loans, loans with rates substantially above Freddie Mac's Primary Mortgage Market Survey, and loans with troubled loan history.<sup>3</sup> In addition, to the extent that Citi seeks credit from mortgages owned and operated by its CitiMortgage, Inc. ("CMI") portfolio, 50% of the credit derived from CMI borrowers must accrue from HUD's Hardest Hit Areas.<sup>4</sup>
- Citi must provide a minimum of \$299 million in relief in rate reductions, "regardless of loan performance status," provided that such relief is offered at no cost to the borrower other than any tax consequences incurred.<sup>5</sup>
- Citi must provide at least \$50 million in mandatory donations to certain types of organizations as specified under Menu Items 4D, 4E, and 4F, and gets a "credit" of \$2 against its overall obligation under the Settlement Agreement for each \$1 spent on these donations.<sup>6</sup>
- Under Menu Item 5, Citi is required to provide gap financing for affordable rental housing projects that will result in Citi incurring at least \$180 million in losses.<sup>7</sup> There are a number of restrictions on the development projects that qualify. For example, half of the units receiving credit under this Menu Item must be in Critical Need Family Housing developments, which are projects that are located within HUD's Small Area Difficult Development Areas or State-Defined High Opportunity/Low Poverty Areas where none of the units have age restrictions for any of the

---

<sup>2</sup> See Settlement Agreement, Annex 2 ("Annex 2") at 7.

<sup>3</sup> See Annex 2 at 2 n.4.

<sup>4</sup> See *id.* at 7 n.11.

<sup>5</sup> See *id.* at 8 n.12, n.13.

<sup>6</sup> See *id.* at 11-12.

<sup>7</sup> See *id.* at 13.



occupants.<sup>8</sup> Each year, at least 40% of the units in these projects must have two or more bedrooms, and at least 10% must have three bedrooms or more.<sup>9</sup>

- Citi must provide a minimum level of consumer relief in each of the states that participated in the investigation and negotiation of the Settlement Agreement. This comprises \$90 million in credit each for California and New York; \$40 million for Illinois; and \$10 million each for Delaware and Massachusetts.<sup>10</sup>

In my capacity as Monitor, I will verify that each of these requirements is met.

2) *According to the settlement agreement, under "Consumer Relief," Menu Item 4(F), Citi agreed to provide a minimum payment of \$10 million in "[d]onations to HUD-approved housing counseling agencies to provide foreclosure prevention assistance and other housing counseling activities."*

a) *What is the current status of the disbursement of these consumer relief funds. Please explain.*

Citi has not yet submitted any credit for its consumer relief efforts under Menu Item 4F. The Settlement Agreement provides for an "Early Incentive Credit" of 115% for 4F funding distributed by October 1, 2015.<sup>11</sup> Accordingly, I anticipate that Citi will endeavor to provide most, if not all, of its 4F funding by October 1, 2015.

b) *Have any HUD-approved housing agencies already been identified as recipients for these settlement funds? If so, please list the recipients of settlement funds and the amount of funding for each agency.*

Although Citi is in the process of identifying recipients for relief under Menu Item 4F, I am not aware of any specific recipients who have been selected or the amount of any such funding. Citi will be required to submit this information to me when it seeks credit for its relief efforts.

c) *Was there any coordination between Citi and HUD, DOJ, or other federal entities in determining which housing counseling activities should receive these fund? Please explain.*

I am not aware of any discussions or interactions between Citi and HUD, DOJ, or other federal entities in determining which housing counseling activities should receive funds under Menu Item 4F.

\* \* \* \* \*

---

<sup>8</sup> See *id.* at 13 n.22.

<sup>9</sup> *Id.* at 13.

<sup>10</sup> *Id.* at 14.

<sup>11</sup> *Id.* at 2 n.7, 12.

Chairman Johnson  
August 11, 2015  
Page 4

I appreciate your interest in the Settlement Agreement and welcome any further questions you may have regarding my Monitorship of the same.

Sincerely,



Thomas J. Perrelli

cc: Senator Thomas R. Carper, Ranking Minority Member (via email to [REDACTED])