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October 27, 2016

VIA ELECTRONIC TRANSMISSION

The Honorable Loretta E. Lynch
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Attorney General Lynch:

I write regarding the Department of Justice's settlements in its mortgage-lending lawsuits, in which the Department required mortgage servicers to pay a portion of their penalties to third-party organizations with no connection to the litigation. I wrote to the Department in 2010 with concerns about the Department's renewal of this practice in two cases alleging violations of the Fair Housing Act and Equal Credit Opportunity Act.¹ The Department's continued use of settlement agreements to fund third-party organizations constitutes a circumvention of Congress and threatens to deprive victims of compensation.

The Department settled in 2013 and 2014 with Bank of America Corporation, Citigroup Inc., and JPMorgan Chase & Co., for a total of \$36.65 billion.² Pursuant to the settlement agreements, at least \$640 million of the penalties will be paid to third-party organizations instead of being deposited into the U.S. Treasury or paid to individuals who suffered harm.³ By diverting money from the U.S. Treasury, the Department directed government funds absent an appropriation from Congress, thus usurping Congress's spending authority.

Specifically, the settlement agreements required Bank of America and Citigroup to pay a total of \$150 million in the form of "donations" to government-approved nonprofit

¹ Letter from Hon. Charles E. Grassley, U.S. Senator, to Hon. Eric H. Holder, Jr., Attorney General, U.S. Department of Justice (July 8, 2010).

² Settlement Agreement between Bank of America Corporation and U.S. Department of Justice (Aug. 21, 2014), available at <https://www.justice.gov/opa/pr/bank-america-pay-1665-billion-historic-justice-department-settlement-financial-fraud-leading> [hereinafter "Bank of America Settlement"]; Settlement Agreement between Citigroup Inc. and U.S. Department of Justice (July 14, 2014), available at <https://www.justice.gov/opa/pr/justice-department-federal-and-state-partners-secure-record-7-billion-global-settlement> [hereinafter "Citigroup Settlement"]; Settlement Agreement between JPMorgan Chase & Co. and U.S. Department of Justice (Nov. 19, 2013), available at <https://www.justice.gov/opa/pr/justice-department-federal-and-state-partners-secure-record-13-billion-global-settlement> [hereinafter "JPMorgan Settlement"].

³ Bank of America Settlement; Citigroup Settlement.

organizations.⁴ Additionally, Bank of America was required to deposit \$490 million into a tax relief fund, which is now instead being distributed to third-party organizations.⁵

The Department handpicked the third-party organizations—none of which have suffered harm—that could receive payments. The Department made its selections through a non-public and unaccountable process that is void of any opportunity for oversight from Congress or transparency to the public. Moreover, the list of government-approved recipients includes organizations from which Congress cut funding in 2011, such as the National Council of La Raza, the National Urban League, the National Community Reinvestment Coalition, and NeighborWorks America.⁶ The Department has apparently used its settlement agreements to funnel money to left-leaning, politically active organizations, and to effectively restore funding to organizations that Congress deliberately defunded.

In addition to circumventing Congress and handpicking recipient organizations to receive a portion of the settlement payments, the Department has created opportunities for misuse of government funds. The settlement agreements do not provide for any oversight of the third-party recipients' use of the settlement payments.⁷ I have long been concerned about the potential for abuse within tax-exempt organizations and spent years investigating the Association of Community Organizations for Reform Now's (ACORN) illicit practice of funding lobbying and political activity with funds raised for charitable purposes.⁸ Given the political activities of many of the third-party recipients and the absence of proper oversight, it is impossible to ensure that the recipients will use the payments solely for housing assistance programs.

The Committee seeks a better understanding of the Department's settlement agreements with Bank of America, Citigroup, and JPMorgan. Accordingly, I request that the Department provide the following answers and information by no later than November 10, 2016:

1. Please provide all communications relating to the "Community Reinvestment and Neighborhood Stabilization" provisions in the Bank of America and Citigroup settlements. Please also provide any communications discussing similar terms as part of the JPMorgan settlement discussions.

⁴ Bank of America Settlement; Citigroup Settlement; Kimberley A. Strassel, *Justice's Liberal Slush Fund*, Wall. St. J. (Dec. 3, 2016, 7:17 PM), <http://www.wsj.com/articles/justices-liberal-slush-fund-1449188273>.

⁵ Bank of America was required to pay \$490 into a taxpayer relief fund that was intended to cover homeowner tax liability associated with income from the discharge of indebtedness. However, the entirety of the fund will now be paid to third-party organizations because the Protecting Americans from Tax Hikes Act of 2015 extended tax relief for homeowners who received principal forgiveness. Bank of America Settlement; Protecting Americans from Tax Hikes Act of 2015, Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, 129 Stat. 2242.

⁶ In 2011, Congress eliminated funding for the Department of Housing and Urban Development's (HUD) housing counseling programs. Congress has since restored a portion, but not all, of the funding. Pub. L. No. 112-10, 125 Stat. 196, § 2245; Strassel, *Justice's Liberal Slush Fund*; HUD Housing Counseling Grantees, Fiscal Year 2010, available at http://portal.hud.gov/hudportal/documents/huddoc?id=recommended_awards.pdf.

⁷ Bank of America Settlement; Citigroup Settlement; JPMorgan Settlement.

⁸ See Memorandum from Finance Committee Tax Staff to Sen. Charles E. Grassley, Ranking Member, Senate Committee on Finance (Sept. 22, 2009), available at <http://www.finance.senate.gov/ranking-members-news/finance-committee-tax-staff-review-of-acorn-tax-exempt-status>.

2. Is it the Department's view that the Department is authorized to require Bank of America, Citigroup, and JPMorgan to make payments to non-victim third parties in the absence of a congressional appropriation?
 - a. If yes, please provide legal analysis supporting this position.
 - b. Did anyone within the Department raise concerns surrounding the legality of this requirement? Please explain.
3. How is the Department ensuring that third-party recipients use settlement funds solely for housing assistance programs and not for political activity or otherwise prohibited purposes? Please provide all documents and communications between and among the Department, the independent monitors, and third-party recipients related to their use of settlement payments.

Thank you in advance for your cooperation with this request. Please number your responses according to their corresponding questions. If you have questions, please contact Samantha Brennan of my Committee staff at (202) 224-5225.

Sincerely,



Charles E. Grassley
Chairman
Senate Judiciary Committee

cc: The Honorable Patrick Leahy
Ranking Member
Senate Judiciary Committee