



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

JUL 03 2017

The Honorable Charles E. Grassley
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

This responds to your letter to the Attorney General dated June 14, 2017, regarding the Department's (Department) past practice of entering into settlement agreements that direct payment to non-governmental persons or entities not party to the dispute. To the extent this practice diverted funds that could otherwise have gone to victims or to the U.S. Treasury, this past practice was inconsistent with Congress's exclusive appropriations power and raised the prospect of the Department impermissibly funding third parties, including certain special interest groups.

We share your concerns, and, as your letter notes, the Attorney General's June 5 memorandum ("Sessions Memo") puts an end to these practices. With certain limited exceptions, the Sessions Memo prohibits all Department components and each of the 94 U.S. Attorney's Offices from entering into any agreement on behalf of the United States in settlement of federal claims or charges that directs or provides for a settlement payment to non-governmental, third parties that were not directly harmed by the conduct.

In connection with the preparation of the Sessions Memo, the Department undertook a review of certain past instances when the Department included third-party payment provisions in settlement agreements. Because the Department had not maintained a central list of such settlement agreements when they were entered into, collecting information about all of the settlements under the prior administration has proven challenging and resource intensive. That information collection process is ongoing.

With respect to the settlements related to residential mortgage-backed securities identified in your letter—Bank of America, Citigroup, and JP Morgan Chase—Defendants committed to provide amounts in agreements executed before an admission or finding of liability, and the United States did not retain post-settlement control over the disposition or management of the associated funds or projects, except for providing means to ensure the defendants complied with the settlement requirements. Here is some information that we compiled regarding these settlements:

- Bank of America concerned an August 21, 2014, agreement among the United States, various states, and Bank of America.¹ Under that agreement, Bank of America agreed to provide approximately \$7 billion of consumer relief directly to recipients; approximately \$490 million constituting a “Total Tax Relief Payment Amount;” approximately \$170 million to various whistleblowers pursuant to the False Claims Act and the Financial Institutions Anti-Fraud Enforcement Act of 1990; and approximately \$1 billion to the Federal Deposit Insurance Corporation as a receiver, which in turn may have distributed some of these funds to non-governmental third parties. In October of 2016, Eric D. Green, the Independent Monitor for the Bank of America settlement agreement publicly reported that through October of 2016, Bank of America earned \$7,005,373,353 in consumer relief credit.² The appendices to that final report identify specific organizations in various categories that were provided consumer relief under the agreement, and the value of the relief provided. The “Tax Relief” section of the final report describes how, as required by the agreement, and because of the December 2014 extension of the Mortgage Forgiveness Debt Relief Act and the December 2015 passage of the Protecting American from Tax Hikes Act of 2015, the funds from the Tax Relief Payment Account could not be distributed to homeowners, those funds were distributed to Neighborworks America and to state-based Interest on Lawyers’ Trust Account (IOLTA) organizations (or other statewide bar association-affiliated intermediaries).
- Citigroup concerned a July 14, 2014, agreement among the United States, various states, and Citibank.³ Under that agreement, Citibank agreed to provide approximately \$2.5 billion in consumer relief directly to recipients; and approximately \$208 million to the Federal Deposit Insurance Corporation as receiver, which in turn may have distributed some of these funds to non-governmental third parties. In a series of seven public reports, Thomas J. Perelli, the Independent Monitor for the July 14, 2014, Citibank

¹ The settlement agreement with Bank of America, and its exhibits, can be found at:

<https://www.justice.gov/iso/opa/resources/3392014829141150385241.pdf>;
<https://www.justice.gov/iso/opa/resources/4312014829141220799708.pdf>;
<https://www.justice.gov/iso/opa/resources/8492014829141239967961.pdf>;
<https://www.justice.gov/iso/opa/resources/32014829141253416665.pdf>;
<https://www.justice.gov/iso/opa/resources/5542014829141316204981.pdf>;
<https://www.justice.gov/iso/opa/resources/4922014829141329620708.pdf>;
<https://www.justice.gov/iso/opa/resources/3892014829141512143644.pdf>;
<https://www.justice.gov/iso/opa/resources/3492014829141527747058.pdf>;
<https://www.justice.gov/iso/opa/resources/4792014829141540824781.pdf>.

² The Bank of America Independent Monitor’s reports can be found at:

<http://bankofamerica.mortgagesettlementmonitor.com/reports/>. The Bank of America final crediting report can be found at <http://bankofamerica.mortgagesettlementmonitor.com/Reports/March-17-2017-Final-Report-2014-Bank-of-America-Mortgage-Settlement.pdf>.

³ The settlement agreement with Citi, and its exhibits, can be found at:

<https://www.justice.gov/iso/opa/resources/471201471413656848428.pdf>;
<https://www.justice.gov/iso/opa/resources/558201471413645397758.pdf>;
<https://www.justice.gov/iso/opa/resources/93201471413713173954.pdf>;
<https://www.justice.gov/iso/opa/resources/649201471413721380969.pdf>;
<https://www.justice.gov/iso/opa/resources/289201471413731159227.pdf>.

agreement, reports Citi has earned \$1,736,741,842 in consumer relief credit as of June 2017.⁴ Appendices 1, 2, and 3 to the Independent Monitor's Fifth Report, identify specific organizations in various categories that were provided consumer relief under the agreement, the date and size of each grant provided, and how much credit the bank earned for each grant. An appendix to the Independent Monitor's Sixth Report, and a table in the Monitor's Seventh Report, identify affordable rental housing financing Citibank provided under the agreement to Critical Need Family Housing developments and to other developments equivalent to affordable housing developed through Low Income Housing Tax Credits, and identify projects that got funding and subordinate loan amounts for each activity.

- J.P. Morgan Chase concerned a November 19, 2013, agreement among the United States, various states, and J.P. Morgan.⁵ Under that agreement, J.P. Morgan agreed to provide approximately \$4 billion worth of Consumer Relief directly to borrowers; approximately \$1.4 billion to the National Credit Union Administration (NCUA) as Liquidating Agent of various banks, and approximately \$515 million to the Federal Deposit Insurance Corporation as receiver, which in turn may have distributed some of these funds to non-governmental third-parties. On September 22, 2016, Joseph A. Smith, the Independent Monitor for the November 19, 2013 J.P. Morgan agreement, reported that J.P. Morgan has earned \$4,063,880,724 in credited relief.⁶ The Independent Monitor's reports do not contain information about which individuals or entities got consumer relief or how much any person or entity was paid.

⁴ The Citibank Independent Monitor's reports can be found at: <http://www.citigroupmonitorship.com/reports/>. The Citibank Fifth Report can be found at: http://www.citigroupmonitorship.com/wp-content/uploads/2016/06/Citi_Monitorship_fifth_report_6-27-2016.pdf. The Citibank Sixth and Seventh reports can be found at http://www.citigroupmonitorship.com/wp-content/uploads/2017/02/Citi_Monitorship_sixth_report_2-21-2017.pdf and http://www.citigroupmonitorship.com/wp-content/uploads/2017/06/Citi_Monitorship_seventh_report_6-15-2017.pdf.

⁵ The settlement agreement with J.P. Morgan and its exhibits can be found at: <https://www.justice.gov/iso/opa/resources/69520131119191246941958.pdf>; <https://www.justice.gov/iso/opa/resources/94320131119151031990622.pdf>; <https://www.justice.gov/iso/opa/resources/64420131119164759163425.pdf>; <https://www.justice.gov/iso/opa/resources/64820131119151236320027.pdf>; <https://www.justice.gov/iso/opa/resources/583201311227511789834.pdf>; <https://www.justice.gov/iso/opa/resources/61620131119191331856335.pdf>; <https://www.justice.gov/iso/opa/resources/81420131126142617173496.pdf>; <https://www.justice.gov/iso/opa/resources/51720131119202421482972.pdf>.

⁶ The Independent Monitor's reports J.P. Morgan reports can be found at: <https://www.jasmithmonitoring.com/chase/reports/>. The J.P. Morgan final crediting report can be found at <https://www.jasmithmonitoring.com/chase/reports/consumer-relief-through-march-31-2016/>.

Other settlement agreements which may result in payments to nongovernmental third parties that we have identified to date include: National Mortgage Settlement,⁷ SunTrust,⁸ HSBC,⁹ Goldman Sachs,¹⁰ Deutsche Bank,¹¹ Credit Suisse,¹² J.P. Morgan (robo-signing),¹³ Volkswagen,¹⁴ and Harley-Davidson.¹⁵

With respect to your last question, we are not presently aware of any payments made to the federal government that the federal government then distributed to non-governmental third parties pursuant to a settlement agreement. Rather, in the settlements referenced above, the settlements were structured so that the defendants made third-party payments directly. The United States therefore does not retain post-settlement control over the disposition or management of the associated funds or projects, except for providing means to ensure the defendants comply with the settlement requirements.

As noted above, much of this information has not been easy to catalogue across the Department. However, as the Department continues to implement the Sessions Memo, we are attempting to further identify and review prior and pending settlement agreements and related information. We are also continuing to examine whether, consistent with law, certain

⁷ Copies of the five NMS Consent judgments, and their exhibits, can be found at:
<http://www.nationalmortgagesettlement.com/settlement-documents>.

⁸ The settlement agreement with SunTrust can be found at: <https://www.justice.gov/opa/file/831121/download>.

⁹ The settlement agreement with HSBC can be found at: <https://www.justice.gov/opa/file/822931/download>. Attachments to the consent judgment are available on the U.S. District Court for the District of Columbia's electronic docket system at ECF number 65.

¹⁰ The settlement agreement with the Goldman Sachs and its attachments can be found at:
<https://www.justice.gov/opa/file/839891/download>; <https://www.justice.gov/opa/file/839901/download>;
<https://www.justice.gov/opa/file/839906/download>; <https://www.justice.gov/opa/file/839911/download>; and,
<https://www.justice.gov/opa/file/839931/download>; <https://www.justice.gov/opa/file/839936/download>.

¹¹ The settlement agreement with Deutsche Bank and its attachments can be found at:
<https://www.justice.gov/opa/press-release/file/927271/download>; <https://www.justice.gov/opa/press-release/file/927276/download>; <https://www.justice.gov/opa/press-release/file/927281/download>; and,
<https://www.justice.gov/opa/press-release/file/927286/download>.

¹² The settlement agreement with Credit Suisse and its attachments can be found at: <https://www.justice.gov/usao-co/press-release/file/928676/download>; <https://www.justice.gov/usao-co/press-release/file/928721/download>;
<https://www.justice.gov/usao-co/press-release/file/928716/download>; and <https://www.justice.gov/usao-co/press-release/file/928711/download>.

¹³ Information about the robo-signing settlement agreement with J.P. Morgan can be found at:
<https://www.justice.gov/opa/pr/us-trustee-program-reaches-50-million-settlement-jpmorgan-chase-protect-homeowners-bankruptcy>.

¹⁴ The settlement agreement with Volkswagen can be found at: <https://www.justice.gov/opa/pr/volkswagen-spend-147-billion-settle-allegations-cheating-emissions-tests-and-deceiving>.

¹⁵ The settlement agreement with Harley Davidson can be found at: <https://www.justice.gov/opa/pr/harley-davidson-stop-sales-illegal-devices-increased-air-pollution-company-s-motorcycles>

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settlements could possibly be revisited, particularly where agreements call for future monies to be paid under these agreements.

We look forward to continuing to work with your office on this important issue. We also look forward to working with Congress to codify this policy. With regard to your request for documents to the previous administration, we are in the process of collecting responsive documents and will contact your staff to make arrangements to provide you with that production.

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,

A handwritten signature in dark ink, reading "Samuel R. Ramer". The signature is written in a cursive style with a large, looping initial 'S'.

Samuel R. Ramer
Acting Assistant Attorney General

cc: The Honorable Dianne Feinstein
Ranking Member