Nomination of Loretta E. Lynch to be Attorney General of the United States
Questions for the Record
Submitted February 20, 2015

<u>QUESTIONS FROM SENATOR VITTER</u>

In your response to the Senate Judiciary Committee's "Questions for the Record," you explicitly noted that you were answering questions regarding the HSBC Deferred Prosecution Agreement (DPA) which you negotiated in lieu of criminal prosecution "in the context of recent media reports regarding the release of HSBC files pertaining to its tax clients." The media reports may be recent, but the knowledge of HSBC shielding clients from their tax liabilities was known to the U.S. Department of Justice at least as early as April 2010. Reports of these serious violations of U.S. law are nearly five years old, yet no criminal charges have ever been brought against HSBC for the alleged tax evasion scheme under your leadership of the Eastern District of New York.

1) When did the U.S. Department of Justice receive the leaked information from French authorities detailing HSBC's scheme to shield its clients from their tax liabilities?

RESPONSE: During the course of the investigation of HSBC for Bank Secrecy Act and sanctions violations, I do not recall reviewing or being aware of the information reportedly provided to French authorities and have no knowledge of when such information may have been provided to the Department.

2) When did you personally become aware of the HSBC leaked information detailing the tax evasion scheme?

RESPONSE: I was not aware of the HSBC leaked information prior to the execution of the Deferred Prosecution Agreement (DPA), and only learned generally about the existence of these documents through media reports.

If the media reports are correct, the U.S. Department of Justice received this information as early as 2010, yet in 2012 you negotiated a Deferred Prosecution Agreement with HSBC to avoid criminal prosecution only for the crimes of money laundering and facilitating transactions with countries sanctioned by the U.S. It has been reported that you had full prior knowledge of HSBC's alleged earlier fraud and tax evasion violations.

3) Why did you choose not to immediately prosecute?

RESPONSE: First, it is important to note that the 2012 DPA did not charge HSBC with money laundering. Rather, as set forth in the Statement of Facts accompanying the 2012 DPA, our investigation centered on HSBC's failure to maintain an adequate anti-money laundering program, which violated the Bank Secrecy Act by creating a corporate environment that failed to stop others from laundering money through HSBC, as well as HSBC's sanctions-violating conduct. Importantly, HSBC received no protection from prosecution for tax or fraud violations, or in fact, any conduct not described in the Statement of Facts. As set forth above, I was not aware of the HSBC leaked information prior to the execution of the DPA. I am confident that the Department will thoroughly review these allegations and will take whatever enforcement action is appropriate.

4) Given that HSBC admitted in the DPA to money laundering and conducting business with five countries sanctioned by the US, and given the strong evidence it also committed tax evasion, fraud and possibly other crimes, do you believe that HSBC's "penalty" truly fits the severity of its conduct against the US?

RESPONSE: The penalties and remedial measures encompassed in the DPA were appropriate to address the compliance failures and sanctions violations enumerated in the Statement of Facts. As the United States District Judge overseeing the case observed in his opinion approving the DPA, "the DPA imposes upon HSBC significant, and in some respect extraordinary, measures" and the "decision to approve the DPA is easy, for it accomplishes a great deal."

For example, the anti-money laundering provisions of the Bank Secrecy Act apply only to domestic U.S. financial institutions. The DPA requires HSBC to engage in anti-money laundering and compliance efforts beyond the requirements of the Bank Secrecy Act, and it requires such efforts worldwide, and that HSBC follow the highest or most effective anti-money laundering standards available in any location in which it operates. That means, at a minimum, all of HSBC worldwide must adhere to U.S. anti-money laundering standards. We could not have accomplished this by obtaining a conviction at trial. This provision of the DPA represents a significant benchmark for future anti-money laundering compliance and enforcement.

In addition, the other terms of the DPA are perhaps the most stringent ever imposed on a financial institution. The DPA has a five-year term, which is among the longest that has ever been imposed on a financial institution for anti-money laundering or sanctions violations. This term reflects the seriousness of HSBC's conduct and allows for an extended period during which the government will closely monitor HSBC. HSBC is also required to retain and pay for an independent monitor to ensure that remedial measures are implemented. The DPA also ensures that HSBC will continue to cooperate with the government in any criminal investigation for the term of the agreement. Additionally, HSBC was required to forfeit $1.256 billion, which was the largest ever forfeiture in a bank prosecution to that point.

I want to reiterate that the DPA reached with HSBC addresses only the charges filed in the criminal information, which are limited to violations of the Bank Secrecy Act for failures to maintain an adequate anti-money laundering program and sanctions violations. The DPA explicitly does not provide any protection against prosecution for conduct beyond what was described in the Statement of Facts. Furthermore, I should note the DPA expressly mentions that the agreement does not bind the Department's Tax Division or the Fraud Section of the Criminal Division.

5) As has been noted, the HSBC DPA that your office negotiated while you were U.S. Attorney for the Eastern District of New York does not preclude future prosecutions for HSBC's other criminal violations for tax evasion, fraud or for failure to meet its duties and responsibilities under the DPA, but why, nearly 5 years after the Department of Justice became aware of the tax evasion scheme, have no criminal charges been brought?

RESPONSE: I am not in a position to comment on the status of any tax-related investigation, or even to confirm or deny any particular investigation, but if I am confirmed as Attorney General, I look forward to learning more about the Department's enforcement efforts in this area.

The details of HSBC Money Laundering Deferred Prosecution Agreement has hardly been made public.

6) Exactly how much did HSBC profit from the transactions, loans, accounts, etc… associated with the money-laundering accusations included in the DPA?

RESPONSE: As set forth in the Statement of Facts accompanying the DPA, HSBC's anti-money laundering control failures and sanctions violations resulted in the bank processing hundreds of millions of dollars in tainted transactions. However, it is important to note that HSBC's profit from processing these transactions was a small fraction of the value of the transactions themselves. Indeed, the forfeiture judgment paid by the bank far exceeds the revenue and dramatically exceeds the profits that HSBC realized from processing these transactions.

7) Who in your office or at the Department of Justice determined the penalty paid by HSBC and how did they come to that amount?

RESPONSE: The forfeiture judgment was determined by career prosecutors in my office and within the Criminal Division of the Department of Justice. The penalty was based on the specific facts and circumstances of the case, including the value of the transactions that HSBC illegally processed and the scope and severity of the bank's misconduct.

8) What process(es) were used to ensure that the penalty matches the crime?

RESPONSE: As noted in my previous answer, the forfeiture penalty was assessed based on a thorough evaluation of the scope of HSBC's conduct and in conjunction with the other remedial measures encompassed in the DPA.

9) If the alleged identity theft took place, during the course of HSBC's participation in a money laundering scheme, have all affected persons been notified?

RESPONSE: I do not have sufficient information about the alleged identity theft to which you refer to comment on victim notification issues.