

U.S. House of Representatives
Committee on the Judiciary

Washington, DC 20515-6216
One Hundred Fourteenth Congress

May 14, 2015

The Honorable Loretta E. Lynch
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

Dear Attorney General Lynch:

As you know, the Committees on the Judiciary and Financial Services are investigating controversial terms contained within certain mortgage lending settlements entered into by the Department of Justice (“DOJ”). We are concerned that a substantial amount of the settlement proceeds are not going directly to consumers who have been genuinely harmed. Instead, it appears that DOJ is systematically subverting Congress’s budget authority by using the settlements to funnel money to favored activist groups.

We wrote to DOJ on November 25, 2014, requesting relevant information and documents. We received the DOJ’s response on March 31, 2015. Unfortunately, the response is inadequate. Remarkably, what little material DOJ did provide appears to confirm our suspicion that activist groups that stood to gain from mandatory donation requirements were involved in or advocated for the decision to include those provisions in the settlements. This does not square well with DOJ’s testimony to the Judiciary Committee that “[t]here was no outside third-party group . . . that participated in any way in these negotiations.”¹

Our November letter requested “[a]ll communications relating to what became” the mandatory donation requirements in the Citigroup and Bank of America settlements (collectively, “Settlements”). At the February 12, 2015 hearing before the Judiciary Committee’s Subcommittee on Regulatory Reform, Commercial and Antitrust Law, Deputy Associate Attorney General Geoffrey Graber testified that he did not know who at DOJ was responsible for adding the terms.² The internal DOJ emails we requested would help answer that question, and it is precisely those emails that DOJ has failed to provide.

When Subcommittee Chairman Marino asked about third- party involvement, Mr. Graber answered that “there was no non-profit or you know charitable organization that participated in

¹ *Consumers Shortchanged? Oversight of The Justice Department’s Mortgage Lending Settlements*, Hearing before the House Judiciary Committee’s Subcommittee on Regulatory Reform, Commercial and Antitrust Law, Transcript at 34, (Feb. 12, 2015).

² *Id.* at 51.

any way in these negotiations.”³ Yet the little information that DOJ did provide suggests that at least some major organizations advocated for the inclusion of such provisions in communications with DOJ personnel. At a minimum this further demonstrates the need for DOJ to produce all previously-requested documents.

On November 8, 2013, someone from the Leadership Conference on Civil and Human Rights (“LCCHR”) emailed a senior DOJ attorney urging that the JPMorgan Chase settlement include “significant . . . grant funds to promote” community restoration.⁴ The letter stated that LCCHR was “working with” several community-based organizations, including Virginians Organized for Interfaith Community Engagement (“VOICE”) and their Metro Industrial Areas Foundation (“Metro-IAF”) affiliates.

The effort was evidently successful because on February 15, 2014, VOICE/Metro-IAF’s leadership emailed DOJ’s Office of Legislative Affairs noting that they had worked with “Federal officials, and other allies to get ‘*grants*’ . . . included as one way JP Morgan Chase can fulfill its consumer relief obligations.”⁵ But, the email continued, the groups wanted to go further in future settlements. They requested a meeting with then Deputy Attorney General Tony West to “make the case that the Department of Justice should make ‘grants to capitalize community equity restoration funds’ *mandatory* in all future settlements.”⁶ (Emphasis added.) They also suggested offering JPMorgan Chase “enhanced credit towards its settlement requirements” for making such donations.⁷ The emails show that a meeting ultimately took place on March 4, 2014 with a senior attorney from the Associate Attorney General’s office. Just a few months later, DOJ announced the Citigroup and Bank of America settlements, both of which required mandatory donations to community groups and offered double credit for donations above the required total minimum of \$150 million.

Without all of the documents we requested from DOJ, we cannot determine if LCCHR and VOICE/Metro-IAF were the only outside groups that suggested adding activist-funding terms to the settlements. Further, the activist pedigrees of the groups we know were involved are significant. LCCHR’s Board of Directors includes the National Council of La Raza, which stands to benefit from mandatory donation provisions.⁸ LCCHR’s partner in suggesting the idea

³ *Id.*

⁴ Email from LCCHR to Elizabeth Taylor, U.S. Dep’t of Justice (Nov. 8, 2013). [HJC-HFS 000001].

⁵ Email from VOICE-IAF to Peter Kadzik, Office of Legislative Affairs (Feb. 15, 2014). [HJC-HFS 000012]

⁶ Email from Peter Kadzik, Office of Legislative Affairs, to VOICE-IAF, (Feb. 27, 2014). [HJC-HFS 000012]

⁷ Email from LCCHR to Elizabeth Taylor, U.S. Dep’t of Justice (Nov. 8, 2013). [HJC-HFS 000006].

⁸ Coalition Members of The Leadership Conference on Civil and Human Rights, *available at, g.* The bank settlements require \$50 million in grants specifically to HUD-approved housing counseling entities. National Council of La Raza has historically been a top recipient of federal grants among HUD-approved housing counseling agencies and accordingly is a natural beneficiary of banks’ mandatory donations in this category. See “2014 Housing Counseling Grantees,” *available at,* <http://portal.hud.gov/hudportal/documents/huddoc?id=2014HSGCOUNSGRANTEECHART.pdf>

to DOJ was VOICE/Metro-IAF. A recent and celebrated scholarly work on community organizing explains that “[u]nderpinning the IAF is a commitment to what it calls *‘revolutionary social change’*, and this is promoted through the IAF Training Institute, which is described ‘as a *school for professional radicals.*’”⁹ The explanation continues, “[a]n objective of the training is to help leaders see the connection between their local issues and the broader national IAF objectives and *associated progressive causes.*”¹⁰ (Emphasis added.)

In 2011, Congress specifically cut funding to the Department of Housing and Urban Development for housing counseling grants that would go to entities like these. It would be deeply troubling if DOJ helped these or any other groups to circumvent Congress’s funding decisions so that money Congress denied would be restored at the unilateral discretion of the Executive, on the advice and to the benefit of activist groups, through settlement agreements demanded from private parties. It is imperative that Congress determine who suggested the strategy implemented in the Citigroup and Bank of America settlements and who at DOJ was responsible for pursuing it, since the strategy appears to subvert Congress’s budget authority and the oversight and accountability mechanisms inherent in that authority.

Accordingly, we renew the November 25, 2014 document request and remind the Department of Chairman Goodlatte’s statement at the hearing that the Judiciary Committee would “escalate” its efforts to obtain production of the documents if a full and complete production is not timely made.

In addition, please provide the following additional documents and answers to questions:

1. All communications pertaining to what became Annex Three (“Tax Fund”) of the Bank of America settlement, which provides for up to an additional \$490 million to be disbursed to third party groups. This request includes any documents pertaining to similar terms as a potential element of the prior settlements with Citigroup and JPMorgan Chase.
2. All documents and communications generated or transmitted by non-profit, charitable, or similar organizations or their representatives concerning the inclusion of community relief provisions in any settlement agreement entered into between DOJ and a financial institution.
3. At any time before the Settlements entered into force, did DOJ request the preparation of a written analysis by the Office of Legal Counsel or any other DOJ office relating to

⁹ DAVE BECK & ROD PURCELL, INTERNATIONAL COMMUNITY ORGANISING, TAKING POWER, MAKING CHANGE 58 (Policy Press, University of Bristol 2013).

¹⁰ *Id.*

whether the Settlements' mandatory donation terms violated any governmental policy, guideline or statute, including, without limitation, the Miscellaneous Receipts Act? If so, please provide copies of any such analysis.

4. The mandatory donation terms may be inconsistent with DOJ guidance in effect at the time the Settlements were negotiated and entered into force, including guidance relating to third-party payments required under settlements involving environmental matters. Please provide a copy of any guidance DOJ relied upon to justify its authority to include mandatory donation terms in the Settlements.
5. Please provide the specific source of DOJ's legal authority to require the settling banks to make payments that will neither be deposited into the Treasury nor go directly to victims.
6. Please state whether, under the Settlements, independent monitors must ensure, on an ongoing basis, that third parties use funds received pursuant to the Settlements consistent with the funds' intended purpose. In connection with this request, please identify each provision, if any, that imposes such an ongoing obligation.

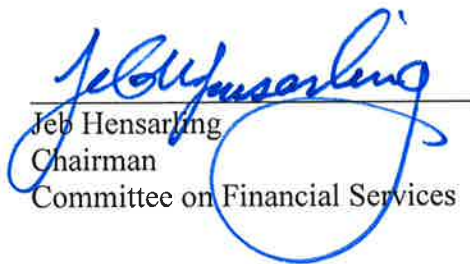
Please provide the information requested in our November 25, 2014 letter by May 18, 2015 and provide documents and answers responsive to the above questions no later than May 25, 2015.¹¹ If you have questions regarding this matter, please contact Daniel Huff of the Committee on the Judiciary's staff at (202) 225-3951 and Joe Gamello of the Committee on Financial Services' staff at (202) 225-7502.

Thank you for your prompt attention to this request.

Sincerely,



Bob Goodlatte
Chairman
Committee on the Judiciary

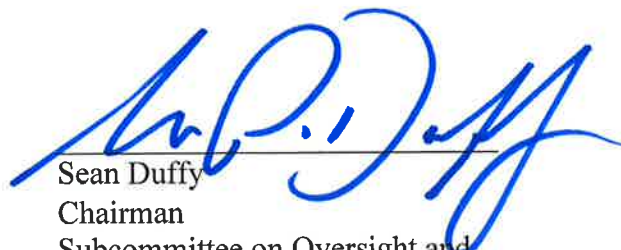


Jeb Hensarling
Chairman
Committee on Financial Services

¹¹ The Committees will not consider DOJ's production as complete until a DOJ representative certifies in writing that DOJ conducted a search reasonably calculated to locate all responsive documents and that DOJ produced to the Committees all known responsive documents in its or any agent's custody or control.



Tom Marino
Chairman
Subcommittee on Regulatory Reform,
Commercial and Antitrust Law



Sean Duffy
Chairman
Subcommittee on Oversight and
Investigations