

RON JOHNSON, WISCONSIN, CHAIRMAN

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

April 30, 2015

The Honorable Loretta Lynch
Attorney General
Department of Justice
Robert F. Kennedy Building
950 Pennsylvania Avenue NW
Washington, DC 20530

Dear Madam Attorney General:

We are writing to inquire about the oversight of billions of dollars that the Department of Justice (DOJ) secured through recent settlements with large financial institutions—JPMorgan Chase, Citigroup, and Bank of America—arising out of their practices in packaging, marketing, and selling residential mortgage backed securities (the “RMBS settlements”). In addition to billions of dollars in direct fines and payments to states, DOJ’s settlements with JPMorgan Chase, Citigroup, and Bank of America obligate the banks to provide several billion dollars in direct and indirect relief to homeowners and other third parties. JPMorgan Chase must provide approximately \$4 billion, Citigroup must provide approximately \$2.5 billion, and Bank of America must provide approximately \$7 billion in consumer relief. We are concerned that proper structures may not be in place to oversee the funds paid to third parties to provide consumer relief.

Third parties are likely to receive significant amounts—perhaps billions—under the settlements. The agreements permit the banks to satisfy much of their consumer relief obligations directly through funding to individual homeowners and consumers. But under some settlement provisions, payments made to certain third parties count twice as much against the banks’ liability as payments made to individuals. This means that the banks have strong incentives to satisfy their consumer relief obligations indirectly through payments to third parties.

Under the terms of the settlements, the banks can provide indirect consumer relief through third parties in a variety of ways. For example, they can transfer mortgages and foreclosed properties to municipalities and make payments to land banks, community development organizations and funds, legal aid organizations, and housing counseling organizations. Some of the third parties eligible to receive settlement funds have long track records of providing effective relief to individuals. Land banks, for example, have been vital in mitigating the worst effects of the housing crisis—acquiring, holding, and managing vacant and abandoned properties that would otherwise lower property values and endanger public safety. Even after years of hard work, however, there are still roughly 80,000 vacant and abandoned properties in Ohio alone that could benefit from land-banking.

Effective oversight of the RMBS settlements is necessary to ensure that genuine, critical needs such as land-banking are adequately addressed, and that protections are in place to prevent diversion of funds to uses that would not benefit communities and individuals harmed by the housing crisis. Indeed, it would be irresponsible to allow banks to satisfy their settlement obligations through payments to third parties without oversight mechanisms in place to monitor how those funds are ultimately used.

While the need for oversight is clear, it is not apparent that the framework is in place to provide it. DOJ has told Congress that monitors designated in the settlements are responsible for ensuring that funds are allocated and spent appropriately.¹ But the monitors' own public reports suggest that their role is more limited. According to those reports, the monitors are responsible for overseeing whether the banks have paid out funds or forgiven debt in accordance with the terms of their settlement agreements; they make no mention of any responsibility for overseeing how third parties actually deploy resources received through the settlement.²

The majority of the \$13.5 billion in consumer relief from the JPMorgan Chase, Citigroup, and Bank of America settlements will be paid out in the coming months and years. But it is important to examine whether proper procedures and safeguards are in place now to ensure that these substantial settlement dollars help individuals and communities injured by the housing crisis. To that end, please provide responses to the following inquiries by no later than May 22, 2015:

1. What DOJ policies and procedures are in place to ensure that the consumer relief funds secured through the RMBS settlements and distributed to third parties will be used to assist those injured by the banks' conduct in a timely and effective manner, rather than diverted to ineffective or other inappropriate activities?
2. Are the settlements' monitors responsible for ensuring that all funds disbursed to any third parties are used to effectively assist those injured by the banks' conduct? If so, please describe in detail the responsibilities of the monitors with respect to this issue. If not, please identify who is performing this function for each portion of the consumer relief going to third parties and specify their responsibilities.
3. Please list the parties, including third parties, with which DOJ met regarding the negotiation of the RMBS settlement agreements.

¹ *Consumers Shortchanged? Oversight of the Justice Department's Mortgage Lending Settlements: Hearing Before the Subcomm. on Regulatory Reform, Commercial and Antitrust Law of the H. Comm. on the Judiciary*, 114th Cong. (2015) (statement of Geoffrey Graber, Deputy Associate Attorney General, Director, Residential Mortgage-Backed Securities Working Group, Financial Fraud Enforcement Task Force), available at <http://www.cq.com/doc/congressionaltranscripts-4625220>.

² See *Initial Progress Report from the Monitor of the 2014 Bank of America Mortgage Settlement* 4 (2015) ("The Monitor is responsible for determining whether Bank of America satisfies its obligation under the Settlement Agreement to provide Consumer Relief valued at \$7 billion."); see also *id.* at 26; *Citi Monitorship First Report January 2015* 10 (2015) ("The Settlement Agreement provides that an independent monitor, Thomas J. Perrelli, shall determine whether Citi is satisfying its consumer relief obligations.").

4. For each settlement, please provide an accounting of how much has been spent and how much credit has been sought to date for each category of consumer relief set forth in the settlement agreement. For each category of consumer relief that involved the disbursement of funds or assets to third parties, please identify each third party that received funds, the amount of funds received by each third party, and the amount of credit sought by the bank for the disbursement of those funds or assets.

In order to expedite our work, we ask that you submit the material responsive to our requests as soon as possible, but in any event no later than May 22, 2015. Please send any official correspondence to Kelsey_Stroud@hsgac.senate.gov. To avoid any unnecessary delays in connection with the production, we ask that you carefully review the attached *Procedures for Transmitting Documents to the Permanent Subcommittee on Investigations*.

Please contact Mark Angehr (Senator Portman) or Margaret Daum (Senator McCaskill) at 202.224.3721 if you have any questions about this request. Thank you for your assistance with this matter.

Sincerely,



Rob Portman
Chairman
Permanent Subcommittee on Investigations



Claire McCaskill
Ranking Member
Permanent Subcommittee on Investigations

Attachment