

United States Senate

August 21, 2013

The Honorable Eric Holder
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Attorney General Holder:

I am writing today to express my concern and ask questions about an aspect of a settlement entered into by the Department of Justice (DOJ) last year relating to false claims submitted to the Federal Housing Administration (FHA). As you may know, FHA's troubled fiscal condition has generated significant attention in Congress and led to the Senate Banking Committee's recent mark-up of the FHA Solvency Act (S. 1376).

In February 2012, DOJ, 49 state attorneys general, and the Department of Housing and Urban Development (HUD) reached a settlement agreement with the nation's five largest mortgage servicers – Bank of America, JPMorgan Chase, Wells Fargo, Citigroup, and Ally Financial. Under the agreement, the servicers paid a total of \$25 billion to resolve a number of claims arising from illegal foreclosure practices, including robo-signing and other shortcuts around federal and state requirements.¹

As part of this settlement, the five servicers paid about \$225 million to obtain releases from False Claims Act liability stemming from their pervasive submission of fraudulent mortgage insurance claims to FHA and other agencies from 2008 to 2010.² According to a HUD Office of Inspector General report from March 2012, the five servicers submitted 92,735 insurance claims to FHA alone between October 2008 and September 2010, with a combined value of over \$12 billion.³ As a result of the False Claims Act's treble damages provision, and

¹ "Federal Government and State Attorneys General Reach \$25 Billion Agreement with Five Largest Mortgage Servicers to Address Mortgage Loan Servicing and Foreclosure Abuses," Department of Justice, 2/9/12, <http://www.justice.gov/opa/pr/2012/February/12-ag-186.html>.

² Consent Judgment, Ex. B ("Distribution of Funds"), at https://d9klfgibkcque.cloudfront.net/Consent_Judgment_WellsFargo-4-11-12.pdf.

³ "A Summary of the Foreclosure and Claims Process Reviews for Five Mortgage Servicers that Engaged in Improper Foreclosure Practices," Memorandum, Department of Housing and Urban Development, Office of

its maximum \$11,000 penalty for each individual false claim, the servicers appear to have faced as much as \$37 billion in potential liability. The \$225 million they agreed to pay represents just 0.6% of that figure.

I am concerned about this issue for two reasons.

First, I am troubled because I believe there needs to be a clearer and more public accounting of the damages FHA incurred from the servicers' fraudulent conduct. There are a number of contributing factors to FHA's current financial difficulties, but the potential failure of DOJ to get adequate compensation for fraud committed against FHA is a serious issue. A portion of the servicers' \$225 million settlement payment was deposited into FHA's Capital Reserve Fund, and a better deal for taxpayers would have further improved FHA's financial footing. As Congress considers legislation to address FHA's fiscal condition this fall, it would be helpful for more information to be made available about the extent of losses FHA suffered from the servicers' misconduct.

Second, and more broadly, I am concerned that this might be yet another example of the federal government's timid enforcement strategy against the nation's largest financial institutions. I believe that if DOJ and our banking regulatory agencies prove unwilling over time to take the big banks to trial or even require admission of guilt when they cheat consumers and break the law – either out of timidity or because of a lack of resources – then the agencies lose enormous leverage in settlement negotiations. Settlements are important and play a necessary role in any enforcement regime, but it is critical that the government take steps to maximize its leverage and avoid settling on the cheap. Rushed and inadequate settlements fail to fully compensate victims and taxpayers and insufficiently deter future misconduct.

Accordingly, I am writing to request:

- (1) an explanation of how DOJ and the other settling parties arrived at the \$225 million payment amount for resolving False Claims Act claims;
- (2) any internal research or analysis DOJ (or any other agency) conducted to quantify the financial cost to the government and the taxpayers of the servicers' fraudulent conduct;
- (3) any other internal documents that relate to DOJ's decision to accept the \$225 million payment as a release from False Claims Act liability; and
- (4) an accounting of how much of the \$225 million settlement payment has been deposited into the FHA Capital Reserve Fund to date, and how much will be deposited into the Fund once the servicers complete their payments.

I ask for your prompt attention to this matter and would very much appreciate a response by the end of September. Although this settlement took place more than a year ago, FHA still has not regained its financial footing, and I believe these questions are important ones for members of Congress and taxpayers. If you have any questions, please do not hesitate to contact my office.

Sincerely,



The image shows a handwritten signature in blue ink, which appears to be "Elizabeth Warren". The signature is fluid and cursive, with a long horizontal stroke extending to the right. Below the signature, the name "Elizabeth Warren" is printed in a smaller, more formal font.