

ELIZABETH WARREN
MASSACHUSETTS

COMMITTEES:
BANKING, HOUSING, AND URBAN AFFAIRS
HEALTH, EDUCATION, LABOR, AND PENSIONS
ARMED SERVICES
SPECIAL COMMITTEE ON AGING

United States Senate

UNITED STATES SENATE
WASHINGTON, DC 20510-2105
P: 202-224-4543

2400 JFK FEDERAL BUILDING
15 NEW SUDBURY STREET
BOSTON, MA 02203
P: 617-565-3170

1550 MAIN STREET
SUITE 406
SPRINGFIELD, MA 01103
P: 413-788-2690

www.warren.senate.gov

August 19, 2019

William Barr
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530-0001

Dear Attorney General Barr:

I write to request information regarding recent reports that “well-connected lawyers” representing two major banks implicated in the 2008 financial crisis used their “access to the top echelons of the Trump DOJ” to reduce the fines imposed on these banks for their roles in the crisis.

ProPublica reported earlier this month that senior Department of Justice (DOJ or Main Justice) officials appointed by President Trump forced staff prosecutors in the U.S. Attorneys’ Office for Massachusetts and the Eastern District of New York to reduce the amount Barclays Capital Inc. (Barclays) and Royal Bank of Scotland (RBS) would have to pay to settle lawsuits stemming from their role in the 2008 housing crisis.¹ As a result, the final settlements were reported to have left “billions of dollars in potential recoveries on the table” and dismissed civil charges against two former Barclays executives who did not have to “admit wrongdoing” and “might not have to pay a dime out of their own pockets.”² These weak settlements send a clear message to financial institutions and white-collar criminals that they can evade accountability as long as they are wealthy and well connected.

RBS and Barclays employed some of the most deceptive practices that contributed to the 2008 financial crisis. In the three years prior to the crisis, RBS underwrote and issued faulty residential mortgage-backed securities (RMBS), while falsifying records to mislead rating agencies, and foisted the risk and “billions of dollars in subsequent losses, onto unsuspecting

¹ ProPublica, “How Trump’s Political Appointees Overruled Tougher Settlements With Big Banks,” Jesse Eisinger and Kevin Wack, August 2, 2019, <https://www.propublica.org/article/trump-political-appointees-overruled-settlements-with-barclays-royal-bank-of-scotland>.

² ProPublica, “How Trump’s Political Appointees Overruled Tougher Settlements With Big Banks,” Jesse Eisinger and Kevin Wack, August 2, 2019, <https://www.propublica.org/article/trump-political-appointees-overruled-settlements-with-barclays-royal-bank-of-scotland>.

investors across the globe.”³ Similarly, Barclays “repeatedly deceived investors” and “engaged in a fraudulent scheme to sell tens of billions of dollars” of RMBS.⁴ Mortgages securitized by these banks lost over \$70 billion. Despite the fact that this activity inflicted such tremendous harm on the U.S. and global economy, the Barclays and RBS settlements require that they only pay a small fraction of these damages: \$2 billion and \$4.9 billion in civil penalties, respectively.⁵

The 2008 financial crisis cost the American economy over \$22 trillion, robbing millions of families of their homes and savings in the process.⁶ A decade later, not a single big bank CEO has gone to jail, white-collar enforcement actions have hit a 20-year low, and former government officials running through the revolving door to cash in are still helping the banks responsible for the crash avoid the consequences.⁷ Between RBS and Barclays, the banks’ representatives included a former assistant to the Solicitor General, a former criminal division chief in a U.S. Attorney’s Office, and two former Deputy Attorneys General – one of whom “codified the conditions prosecutors had to assess in bringing cases against corporations.”⁸

When prosecutors in the U.S. Attorney’s Office (USAO) in Massachusetts initially decided to bring criminal charges against RBS in 2016, analysts estimated that DOJ “could impose a fine of up to \$12 billion” on the bank for fraudulent practices it employed leading up to the financial crisis.⁹ However, after the reported intervention of a cadre of DOJ officials

³ U.S. Department of Justice, “Royal Bank of Scotland Agrees to Pay \$4.9 Billion for Financial Crisis-Era Misconduct,” press release, August 14, 2018, <https://www.justice.gov/opa/pr/royal-bank-scotland-agrees-pay-49-billion-financial-crisis-era-misconduct>.

⁴ U.S. Department of Justice, “Barclays Agrees to Pay \$2 Billion in Civil Penalties to Resolve Claims for Fraud in the Sale of Residential Mortgage-Backed Securities,” press release, March 29, 2018, <https://www.justice.gov/opa/pr/barclays-agrees-pay-2-billion-civil-penalties-resolve-claims-fraud-sale-residential-mortgage>.

⁵ U.S. Department of Justice, “Barclays Agrees to Pay \$2 Billion in Civil Penalties to Resolve Claims for Fraud in the Sale of Residential Mortgage-Backed Securities,” press release, March 29, 2018, <https://www.justice.gov/opa/pr/barclays-agrees-pay-2-billion-civil-penalties-resolve-claims-fraud-sale-residential-mortgage>; U.S. Department of Justice, “Royal Bank of Scotland Agrees to Pay \$4.9 Billion for Financial Crisis-Era Misconduct,” press release, August 14, 2018, <https://www.justice.gov/opa/pr/royal-bank-scotland-agrees-pay-49-billion-financial-crisis-era-misconduct>.

⁶ Government Accountability Office, “Financial Crisis Losses and Potential Impacts of the Dodd-Frank Act,” Jan. 16, 2013, <https://www.gao.gov/products/GAO-13-180>; Federal Reserve Bank of San Francisco, “The Financial Crisis at 10: Will We Ever Recover?,” Regis Barnichon, Christian Matthes, and Alexander Ziegenbein, August 13, 2018, <https://www.frbsf.org/economic-research/publications/economic-letter/2018/august/financial-crisis-at-10-years-will-we-ever-recover/>.

⁷ Office of Senator Elizabeth Warren, “Rigged Justice 2.0: Government of the Billionaires, by the Billionaires, and for the Billionaires,” <https://www.warren.senate.gov/download/rigged-justice-20-government-of-the-billionaires-by-the-billionaires-and-for-the-billionaires>.

⁸ ProPublica, “How Trump’s Political Appointees Overruled Tougher Settlements With Big Banks,” Jesse Eisinger and Kevin Wack, August 2, 2019, <https://www.propublica.org/article/trump-political-appointees-overruled-settlements-with-barclays-royal-bank-of-scotland>.

⁹ Reuters, “RBS reaches \$4.9 billion deal to settle U.S. mortgage bond investigation,” Nate Raymond, Eric Walsh, and Sinead Cruise, May 9, 2018, <https://www.reuters.com/article/us-royal-bank-scot-settlement/rbs-reaches-4-9-billion-deal-to-settle-u-s-mortgage-bond-probe-idUSKBN1IA3L0>.

appointed by President Trump – former Deputy Attorney General Rod Rosenstein, Deputy Associate Attorney General Stephen Cox, and former Principal Deputy Associate Attorney General Jesse Panuccio -- the prosecutors were reportedly instructed to forego criminal charges, and to settle for only \$4.9 billion, because as one appointee put it, “RBS won’t go that high.”¹⁰ Similarly, when prosecutors in the EDNY initially filed a lawsuit against Barclays in 2016, they “wanted a fine of about \$5 billion.”¹¹ However, according to the ProPublica report, the same Trump DOJ appointees – following direct discussions with Barclays – instructed them to “settle the case within a narrow range around \$2 billion,” and to drop civil charges against two former Barclays employees, allowing the bank to potentially cover the \$2 million fine against them.¹²

It is unconscionable that the Administration is refusing to hold corporate criminals fully accountable for their role in the financial crisis. Earlier this year, I released a report, *Rigged Justice 2.0: Government of the Billionaires, by Billionaires and for Billionaires*, which found that “our justice system’s soft touch with huge corporations and billionaires is not a new phenomenon. But under President Trump, it is far worse than it has ever been.”¹³ I have introduced legislation to end this coddling of corporate wrongdoers. The *Ending Too Big to Jail Act* would create a permanent investigative unit for financial crimes; the *Corporate Executive Accountability Act* would make it easier to send executives to jail for serious crimes by expanding criminal liability to negligent executives of big corporations; and the *Anti-Corruption and Public Integrity Act* would close and lock the revolving door between industry and government.¹⁴

I will continue working to pass these bills. In the meantime, the American public has a right to know how and why prosecutors who worked to hold banks responsible for the financial crisis were forced to agree to meager settlements that amount to pocket change for the banks. In order to get a better understanding of the circumstances surrounding the finalization of these settlement

¹⁰ ProPublica, “How Trump’s Political Appointees Overruled Tougher Settlements With Big Banks,” Jesse Eisinger and Kevin Wack, August 2, 2019, <https://www.propublica.org/article/trump-political-appointees-overruled-settlements-with-barclays-royal-bank-of-scotland>.

¹¹ Bloomberg, “Barclays Wins Its DOJ Gamble With \$2 Billion Mortgage Settlement,” Stephen Morris and Gavin Finch, March 28, 2018, <https://www.bloomberg.com/news/articles/2018-03-29/barclays-agrees-to-pay-2-billion-to-settle-u-s-rmbs-suit>.

¹² ProPublica, “How Trump’s Political Appointees Overruled Tougher Settlements With Big Banks,” Jesse Eisinger and Kevin Wack, August 2, 2019, <https://www.propublica.org/article/trump-political-appointees-overruled-settlements-with-barclays-royal-bank-of-scotland>.

¹³ Office of Senator Elizabeth Warren, “Rigged Justice 2.0: Government of the Billionaires, by the Billionaires, and for the Billionaires,” <https://www.warren.senate.gov/imo/media/doc/Rigged%20Justice%20Report.pdf>.

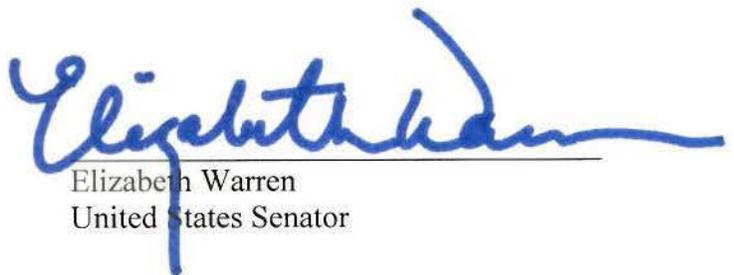
¹⁴ Ending Too Big to Jail Act, S.1005, <https://www.congress.gov/bill/116th-congress/senate-bill/1005?q=%7B%22search%22%3A%22ending+too+big+to+jail+act%22%7D>; Corporate Executive Accountability Act, S.1010, <https://www.congress.gov/bill/116th-congress/senate-bill/1010?q=%7B%22search%22%3A%5B%22Corporate+Executive+Accountability+Act%22%5D%7D&s=2&r=1>; Anti-Corruption and Public Integrity Act, <https://www.warren.senate.gov/download/master-summary-of-anti-corruption-act-final>.

agreements, I ask that you provide answers to the following questions no later than September 2, 2019.

1. How did DOJ and the other settling parties arrive at the \$2 billion and \$4.9 billion payment amount for Barclays and RBS, respectively?
 - a. Are each of these settlements consistent with initial goals established by prosecutors? If not, why not?
2. Please provide any internal review or analysis DOJ (or any other agency) conducted to quantify the financial cost to the government and taxpayers related to the banks' fraudulent conduct.
 - a. Did Main Justice perform a separate analysis from the USAOs related to the RBS and Barclays settlements? If so, please provide copies of this analysis.
 - b. Did officials from Main Justice provide suggestions, recommendations or orders regarding these settlements? If so, who provided them, and what was the nature of these suggestions, recommendations or orders?
3. Please provide copies of all email or other communications between Deputy Associate Attorney General Stephen Cox and representatives for Barclays and RBS related to their settlement discussions.
4. Please provide copies of all email or other communications between former Associate Attorney General Jesse Panuccio and representatives for Barclays and RBS related to their settlement discussions.
5. Please provide copies of all email or other communications between Main Justice and the U.S. Attorneys' Office for Massachusetts and the EDNY related to the settlement agreements for Barclays and RBS. This should include the "spreadsheet[s] that listed the dollar range"¹⁵ of the settlements that Main Justice provided to the USAOs.

Thank you for your attention to this matter.

Sincerely,



Elizabeth Warren
United States Senator

¹⁵ *Id.*

August 19, 2019

The Honorable Andrew Lelling
United States Attorney
District of Massachusetts
1 Courthouse Way, Suite 9200
Boston, MA 02210

Dear Mr. Lelling:

I write to request information regarding recent reports that “well-connected lawyers” representing two major banks implicated in the 2008 financial crisis used their “access to the top echelons of the Trump DOJ” to reduce the fines imposed on their clients for their roles in the crisis.

ProPublica reported earlier this month that senior Department of Justice (DOJ or Main Justice) officials appointed by President Trump forced staff prosecutors in your office to reduce the amount Royal Bank of Scotland (RBS) would have to pay to settle a lawsuit stemming from its role in the 2008 financial crisis.¹ As a result, the final settlement reportedly left “billions of dollars in potential recoveries on the table.”²

Investigations conducted by your office found that in the three years leading up to the crisis, RBS underwrote and issued faulty residential mortgage-backed securities (RMBS) while falsifying records to mislead rating agencies and foisted the risk and “billions of dollars in subsequent losses onto unsuspecting investors across the world.”³ Mortgages securitized by RBS lost over \$50 billion.⁴ When prosecutors in your office initially decided to bring criminal charges

¹ ProPublica, “How Trump’s Political Appointees Overruled Tougher Settlements With Big Banks,” Jesse Eisinger and Kevin Wack, August 2, 2019, <https://www.propublica.org/article/trump-political-appointees-overruled-settlements-with-barclays-royal-bank-of-scotland>.

² ProPublica, “How Trump’s Political Appointees Overruled Tougher Settlements With Big Banks,” Jesse Eisinger and Kevin Wack, August 2, 2019, <https://www.propublica.org/article/trump-political-appointees-overruled-settlements-with-barclays-royal-bank-of-scotland>.

³ U.S. Department of Justice, “Royal Bank of Scotland Agrees to Pay \$4.9 Billion for Financial Crisis-Era Misconduct,” press release, August 14, 2018, <https://www.justice.gov/opa/pr/royal-bank-scotland-agrees-pay-49-billion-financial-crisis-era-misconduct>.

⁴ U.S. Department of Justice, “Barclays Agrees to Pay \$2 Billion in Civil Penalties to Resolve Claims for Fraud in the Sale of Residential Mortgage-Backed Securities,” press release, March 29, 2018, <https://www.justice.gov/opa/pr/barclays-agrees-pay-2-billion-civil-penalties-resolve-claims-fraud-sale-residential-mortgage>; U.S. Department of Justice, “Royal Bank of Scotland Agrees to Pay \$4.9

against RBS in 2016, analysts estimated that DOJ “could impose a fine of up to \$12 billion” on the bank for fraudulent practices it employed leading up to the housing crisis.⁵ However, after the reported intervention of a cadre of DOJ officials appointed by President Trump – former Deputy Attorney General Rod Rosenstein, Deputy Associate Attorney General Stephen Cox, and former Principal Deputy Associate Attorney General Jesse Panuccio -- the prosecutors were reportedly instructed to forego criminal charges, and to settle for only \$4.9 billion, because, as one appointee put it, “RBS won’t go that high.”⁶

The American public has a right to know how and why political appointees are influencing the settlement process to help the banks responsible for the financial crisis avoid consequences. In order to get a better understanding of the circumstances surrounding these settlement agreements, I ask that you provide answers to the following questions no later than September 2, 2019.

1. How did DOJ and the other settling parties arrive at the \$4.9 billion payment amount for RBS?
 - a. Was this settlement consistent with initial goals established by prosecutors in your office? If not, why not?
 - b. Did officials from Main Justice provide recommendations or orders regarding these settlements? If so, who provided them, and what was the nature of these suggestions, recommendations or orders?
2. Please provide any internal review or analysis DOJ (or any other agency) conducted to quantify the financial cost to the government and taxpayers related to RBS’ fraudulent conduct.
 - a. Did Main Justice perform a separate analysis from your office related to the RBS settlement? If so, please provide a copy of each analysis.
3. Please provide copies of all email or other communications between Main Justice and your office related to the settlement agreements for RBS. This should include the “spreadsheet[s] that listed the dollar range”⁷ of the settlements that Main Justice provided to your office.

Billion for Financial Crisis-Era Misconduct,” press release, August 14, 2018, <https://www.justice.gov/opa/pr/royal-bank-scotland-agrees-pay-49-billion-financial-crisis-era-misconduct>.

⁵ Reuters, “RBS reaches \$4.9 billion deal to settle U.S. mortgage bond investigation,” Nate Raymond, Eric Walsh, and Sinead Cruise, May 9, 2018, <https://www.reuters.com/article/us-royal-bank-scot-settlement/rbs-reaches-4-9-billion-deal-to-settle-u-s-mortgage-bond-probe-idUSKBN1IA3L0>.

⁶ ProPublica, “How Trump’s Political Appointees Overruled Tougher Settlements With Big Banks,” Jesse Eisinger and Kevin Wack, August 2, 2019, <https://www.propublica.org/article/trump-political-appointees-overruled-settlements-with-barclays-royal-bank-of-scotland>.

⁷ *Id.*

Thank you for your attention to this matter.

Sincerely,



Elizabeth Warren
United States Senator