ENDING TOO BIG TO JAIL ACT

The 2008 financial crisis cost millions of people their homes, their jobs, and their savings. It sparked a recession that sucked as much as $14 trillion out of the American economy. Even though the crisis grew out of big banks systematically cheating their clients, not a single senior Wall Street CEO went to jail.

That is unacceptable – no one in America should be above the law. The **Ending Too Big to Jail Act** will help fix this injustice by making three fundamental changes to help hold financial executives criminally accountable:

- **CREATING A PERMANENT INVESTIGATIVE UNIT FOR FINANCIAL CRIMES:** One reason no big bank executive was held responsible after the financial crisis was that investigating and prosecuting these cases is hard, expensive, and requires special expertise. The bill addresses this problem by reconstituting the Special Inspector General for the Troubled Asset Relief Program (SIGTARP) as the Special Inspector General for Financial Institution Crime (SIGFIC), expanding its jurisdiction, and making it permanent.

  SIGTARP has been more successful than any other law enforcement agency at holding financial industry executives accountable. Its success stems from the specialized skills and expertise of the SIGTARP team, its relationships with the financial regulators and law enforcement agencies, and its cross-jurisdictional view of the entire financial industry. The bill gives SIGFIC jurisdiction to investigate criminal activity in national financial institutions. This title of the bill stems from a proposal SIGTARP made in October 2017.

- **REQUIRING BIG BANK EXECUTIVE CERTIFICATIONS:** Another reason no big bank executive was held accountable after the financial crisis was that it was difficult to establish the requisite criminal intent. Big bank executives pled ignorance about massive frauds that occurred on their watch. This bill would require the CEO, CFO, and COO, and CCO of banks with $10 billion or more in assets to certify annually that they have conducted due diligence and found no criminal conduct or civil fraud within their financial institution. Requiring executives to do due diligence will stop them from insulating themselves from accountability and force them to keep track of the conduct at their banks. The certification will help law enforcement hold executives accountable because making a false sworn statement to the government is a crime.

  The proposal also stems from a SIGTARP report to Congress. Even SIGTARP, which has effectively prosecuted some bank executives, has not been able to prosecute individuals for frauds at the biggest financial institutions. Of the twenty-two banks that employed executives prosecuted by SIGTARP as of March 2018, all but five had assets under $1 billion and only two were bigger than $10 billion.

- **MANDATING JUDICIAL OVERSIGHT OF DEFERRED PROSECUTION AGREEMENTS (DPAs):** A third reason no financial executives were held criminally responsible after the financial crisis was that the Justice Department entered into unreviewable DPAs with the banks. This bill gives courts authority to approve and oversee compliance with DPAs. When considering approval of a DPA, courts would have to make a determination that the agreement is in the "public interest" by considering whether it will deter future similar conduct and whether it sufficiently redresses past harms. The court also has the authority to request periodic reports in order to supervise the implementation of the DPA and must approve its termination. This authority also means that the government will file DPAs and related information about compliance on public dockets. Finally, the legislation requires the Department of Justice to establish a searchable database of DPAs.

The Ending Too Big to Jail Act has been endorsed by the Public Citizen, Americans for Financial Reform, Take On Wall Street, the Communications Workers of America, and Professor Brandon Garrett of Duke Law School, author of *Too Big to Jail: How Prosecutors Compromise with Corporations*.