

United States Senate
WASHINGTON, DC 20510

November 17, 2020

The Honorable William Barr
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Ave. NW
Washington, D.C. 20530

Dear Attorney General Barr:

We write to request information relating to the Department of Justice's (DOJ's) recently-announced proposed settlement agreement with Purdue Pharma (Purdue) and the Sackler family. Purdue and its owners, the Sacklers, who have made billions off the sale of opioids, helped fuel the opioid epidemic that has devastated communities across the United States and killed tens of thousands of Americans.¹ In addition to DOJ, nearly every state and a number of victims and survivors have sued Purdue for its role in the crisis, leading the company to file for bankruptcy in September 2019.²

On October 21, 2020, DOJ announced a proposed settlement agreement to resolve its criminal and civil investigations into Purdue and the Sackler family.³ The proposed settlement includes a provision under which Purdue would emerge from bankruptcy as a "public benefit company" that would be "owned by a trust or similar entity designed for the benefit of the American public."⁴ The settlement states that "the proceeds of the trust will be directed toward State and local opioid abatement programs,"⁵ and DOJ agreed to reduce its \$2 billion fine under its criminal forfeiture claim by as much as 90% (up to \$1.775 billion) based on the expected value of this new opioid company.⁶ This unusual arrangement would result in the company shedding

¹ Letter from Attorney General Xavier Becerra et al. to Attorney General William Barr, October 14, 2020, <https://www.mass.gov/doc/october-14-2020-letter-to-attorney-general-barr/download>.

² The New York Times, "Purdue Pharma Payments to Sackler Family Soared Amid Opioid Crisis," Jan Hoffman and Danny Hakim, October 21, 2020, <https://www.nytimes.com/2019/12/16/health/sacklers-purdue-payments-opioids-.html>; CNBC, "Nearly every US state is now suing OxyContin maker Purdue Pharma," Berkeley Lovelace Jr., June 4, 2019, <https://www.cnbc.com/2019/06/04/nearly-every-us-state-is-now-suing-oxycontin-maker-purdue-pharma.html>.

³ U.S. Department of Justice, "Justice Department Announces Global Resolution of Criminal and Civil Investigations with Opioid Manufacturer Purdue Pharma and Civil Settlement with Members of the Sackler Family," press release, October 21, 2020, <https://www.justice.gov/opa/pr/justice-department-announces-global-resolution-criminal-and-civil-investigations-opioid>.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

almost its entire liability while allowing it to remain an active opioid seller, in a business partnership with the state and local governments that have sued Purdue.⁷

While the full contours of the proposal remain murky, the proposed public benefit company arrangement raises a number of urgent concerns. If approved, this arrangement could create a significant conflict of interest, giving the same states and local governments that are responsible for regulating the opioid industry a financial interest in the sale of opioids. The terms of the settlement would force state and local governments, victims and survivors, and other stakeholders to accept an arrangement that many had already rejected or played no role in developing.⁸ Twenty-five state attorneys general have publicly opposed this proposal and urged DOJ to rescind it.⁹

Despite the questions and concerns raised by this proposal, and the significant ramifications on, and opposition of, state and local governments, victims and survivors, and other stakeholders, DOJ appears to have rushed to finalize and announce the agreement without providing the opportunity for impacted parties to provide appropriate input. For instance, DOJ concluded its investigation before depositions of members of the Sackler family could be completed, which may reveal new information.¹⁰ The timing of DOJ's October 21st announcement – less than two weeks before Election Day – also raises questions about the appearance of political motivation on the part of DOJ.

Purdue and the Sackler family must be held fully accountable for their role in accelerating the nation's deadly opioid crisis. The proposed restructuring of the company, however, seems to hamstring the ability of state and local governments, victims and survivors, and other stakeholders to do so, reducing the company's liability, and allowing it to continue, under an unusual business partnership, to sell opioids.

To better inform Congress and the American people about the contours of the settlement agreement and its potential impact on impacted parties, please provide the following information no later than December 1, 2020:

1. What was DOJ's process for deciding to include Purdue's reorganization as part of the settlement agreement?
 - a. Which individuals at DOJ were responsible for including this provision in the proposed settlement agreement?
2. What alternatives to Purdue's reorganization did DOJ consider, and why did DOJ decide to ultimately reject those alternatives?

⁷ Letter from Attorney General Xavier Becerra et al. to Attorney General William Barr, October 14, 2020, <https://www.mass.gov/doc/october-14-2020-letter-to-attorney-general-barr/download>.

⁸ Letter from Attorney General Xavier Becerra et al. to Attorney General William Barr, October 14, 2020, <https://www.mass.gov/doc/october-14-2020-letter-to-attorney-general-barr/download>.

⁹ *Id.*

¹⁰ The New York Times, "Purdue Pharma Pleads Guilty to Criminal Charges for Opioid Sales," Jan Hoffman and Katie Benner, October 21, 2020, <https://www.nytimes.com/2020/10/21/health/purdue-opioids-criminal-charges.html>.

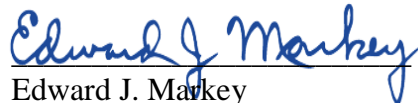
- a. Did DOJ consider the impact on state and local governments, victims and survivors, and stakeholders of the proposed arrangement? Did DOJ consult with these stakeholders?
3. Is there any precedent for DOJ reaching a settlement with a company that requires the company's reorganization as a public benefit company with state and local governments to holding equity in the company? If so, please discuss the precedent for this arrangement. If not, what were the unique circumstances that required DOJ to reach this specific arrangement?
4. Why did DOJ decide to settle federal claims in exchange for future production of drugs that have not yet been approved by the Food and Drug Administration (FDA)¹¹?
 - a. What role did FDA play in this settlement?
 - b. Does the federal settlement present any conflicts of interest in light of the FDA's regulatory role in approving future drugs? How did DOJ resolve those conflicts of interest?
5. How did DOJ assess the value of the proposed public benefit company?
 - a. Does DOJ agree with Purdue's repeated statements that the public benefit company would provide "more than 10 billion in value"¹²?
6. Why did DOJ decide to settle its claims in October, before depositions of the Sacklers and other key witnesses were completed?
 - a. Did DOJ obtain sworn testimony from any member of the Sackler family?
 - b. Did DOJ obtain sworn testimony from anyone at Purdue?

Thank you for your attention to this matter.

Sincerely,



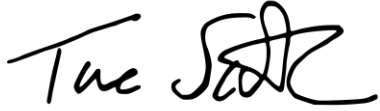
Elizabeth Warren
United States Senator



Edward J. Markey
United States Senator

¹¹ U.S. Department of Justice, "Settlement Agreement for Execution," October 21, 2020, <https://www.justice.gov/opa/press-release/file/1329571/download>.

¹² The Washington Post, "Here's what critics of the Purdue Pharma settlement get wrong," Steve Miller, Oct. 27, 2020, <https://www.washingtonpost.com/opinions/2020/10/27/heres-what-critics-purdue-pharma-settlement-get-wrong/>.



Tina Smith
United States Senator



Chris Van Hollen
United States Senator



Richard Blumenthal
United States Senator



Ron Wyden
United States Senator