

**WHO IS TOO BIG TO FAIL: ARE  
LARGE FINANCIAL INSTITUTIONS  
IMMUNE FROM FEDERAL PROSECUTION?**

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**HEARING**  
BEFORE THE  
SUBCOMMITTEE ON OVERSIGHT  
AND INVESTIGATIONS  
OF THE  
COMMITTEE ON FINANCIAL SERVICES  
U.S. HOUSE OF REPRESENTATIVES  
ONE HUNDRED THIRTEENTH CONGRESS  
FIRST SESSION

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MAY 22, 2013  
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**WHO IS TOO BIG TO FAIL: ARE  
LARGE FINANCIAL INSTITUTIONS  
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Wednesday, May 22, 2013

U.S. HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON OVERSIGHT  
AND INVESTIGATIONS,  
COMMITTEE ON FINANCIAL SERVICES,  
*Washington, D.C.*

The subcommittee met, pursuant to notice, at 2:19 p.m., in room 2128, Rayburn House Office Building, Hon. Patrick McHenry [chairman of the subcommittee] presiding.

Members present: Representatives McHenry, Fitzpatrick, Grimm, Fincher, Hultgren, Wagner, Barr, Rothfus; Green, Cleaver, Maloney, Delaney, Sinema, Beatty, and Heck.

Ex officio present: Representatives Bachus and Waters.

Also present: Representative Sherman.

Chairman MCHENRY. The subcommittee will come to order. Today's hearing of the Oversight and Investigations Subcommittee of the Financial Services Committee is entitled, "Who is Too Big To Fail: Are Large Financial Institutions Immune from Federal Prosecution?" There is a question mark at the end of that, which is not as common for most of our hearings, but we are trying to learn something here.

Without objection, the Chair is authorized to declare a recess of the subcommittee at any time.

Before we begin, I would like to recognize our newest member of the subcommittee for his first hearing, Mr. Keith Rothfus from Pennsylvania. Thank you, Mr. Rothfus, for being here.

And with prior agreement with the ranking member, we will limit opening statements to 6 minutes per side. Without objection, it is so ordered.

I will now recognize myself for the purpose of an opening statement. Almost 3 years ago, the Dodd-Frank Act was signed by President Obama. Upon enactment, the President declared an end to too-big-to-fail; this phenomenon would be ended. Among other things, Dodd-Frank authorized regulators to take certain actions to reduce both the likelihood that a large financial company would fail, and the impact of any such failure were it to occur. Thus, an elaborate new bureaucracy was formed.

Within it, the new Financial Stability Oversight Council (FSOC) is authorized to designate certain financial institutions for enhanced prudential supervision by the Federal Reserve, and to mon-

itor risks to the financial stability of the United States in conjunction with the newly created Office of Financial Research (OFR). In addition, Title II establishes the Orderly Liquidation Authority (OLA), which putatively provides the means to safely resolve firms that are so complex or important that their failure and subsequent bankruptcy would significantly disrupt the system, or so says those who proposed it and supported it.

Separate from this new regime, the Justice Department has the authority to prosecute a business organization, including financial institutions, for violations of Federal law and individuals within those institutions. Any resulting criminal liability may give rise to non-penal sanctions that, individually or collectively, impose significant cost to the organization, and potentially impact its ability to continue as a going concern. Standards adopted by the Justice Department call on prosecutors to consider the collective consequences of prosecuting a business organization.

However, in recent testimony before the Senate Judiciary Committee, Attorney General Eric Holder stated that some financial institutions are so large or complex and consequences to innocent third parties from holding them criminally liable so great, that the Justice Department is hindered from bringing prosecutions.

Rather than me say it, let's let Eric Holder say it for himself.

[no sound]

While I certainly appreciate the Attorney General in "mute," it doesn't help with the presentation we are trying to make.

All right, we will try it this way. I will actually read what he said. So much for technology, right? "I am concerned that the size of some of these institutions has become so large that it does become difficult for us to prosecute them when we are hit with indications that if you do prosecute, if you do bring a criminal charge, it will have a negative impact on the national economy, perhaps even the world economy. And I think that is a function of the fact that some of these institutions have become too large. I think it has an inhibiting influence and impact on our ability to bring resolutions that I think would be more appropriate." That is the quote from Attorney General Eric Holder. We were at least able to see a visual representation of that.

In addition, the Attorney General has previously stated that the Justice Department relies on "outside experts" when assessing the economic harm associated with prosecuting larger financial institutions. To better understand the Justice Department's decisions not to seek convictions in cases involving large financial institutions, including the Department's assessment of collateral consequences as called for under its policies, this subcommittee has sought to determine the identities of the outside experts referred to by the Attorney General in his December 2012 statement.

The subcommittee has contacted the Justice Department and the Treasury Department, as well as the Federal Reserve and the OCC, in addition to questioning representatives of the FSOC and the OFR at our March 14th hearing in this subcommittee. And so without objection, I would submit those letters and corresponding responses for the record.

To date, the subcommittee's investigation has indicated that the Justice Department has not received any material information from



outside experts when making prosecutorial decisions in cases involving large financial institutions. It should be noted that in January, Senators Grassley and Brown made a similar inquiry to the Attorney General requesting he disclose the identity of these outside experts with whom prosecutors consulted about the appropriate level of penalties for large financial institutions. After receiving the DOJ's response, the Senators described DOJ's response as "aggressively evasive." On a bipartisan basis, they said this.

And I have to agree with their summation. The DOJ is providing nothing material to explain the comments made by the Attorney General. This is disconcerting. They have been resisting this hearing since we sent the invitation request to the Deputy Attorney General to testify. That request was made 4 weeks ago. Only this past Friday afternoon did the Department of Justice inform us that the Deputy Attorney General would not be available to testify. I find this obfuscation very troubling.

Last week, in testimony before the House Judiciary Committee, the Attorney General appeared to contradict his earlier remarks to the Senate, stating, "There is no bank, there is no institution, there is no individual that cannot be prosecuted by the U.S. Department of Justice." However, the Attorney General's contradicting comments do not explain whether the Department's view of the collateral harm of convicting a financial institution has changed, or if the Department's view has not changed. The circumstances in which a party's criminal conduct is so egregious that prosecution is appropriate even in the face of significant harm to innocent parties has not been made clearer by the Attorney General's comments.

Accordingly, this hearing will examine the following: the identities of the outside experts consulted and relied upon by the Justice Department in such cases; any additional analysis used by the Department when making prosecutorial decisions in such cases; and whether the Attorney General's statement suggested that too-big-to-fail institutions persist despite the fact of enactment of the Dodd-Frank Act.

Finally, this hearing will enable the subcommittee to begin examining whether more aggressive enforcement of existing criminal laws will cause persons and entities to avoid engaging in unreasonably risky economic behavior, thus lessening the need for proscriptive policy from Congress on these agencies and whether such behavior will be remedied through basic enforcement of existing laws. And so, I thank our witness for being here today.

And with that, I will now recognize the ranking member for 6 minutes.

Mr. GREEN. Thank you, Mr. Chairman. I thank the witness for appearing today. And if I may, I would like to take just a moment to again express my concern for the persons in Oklahoma, our sister State. I am from Texas, of course, and I do want to make it very clear to them that at an appropriate time, if I am permitted to cast a vote, I assure you I will be voting to render aid and do all that I can to help them restore their lives. My sympathies and my prayers are with them.

I would like to repeat something that the chairman said. He said it correctly, but some things bear repeating. The Attorney General

has sought to clarify the statement made earlier. In fact, it was on May 15th of this year that he gave clarity. And he did indicate that there is no institution, and there is no individual that cannot be prosecuted by the U.S. Justice Department. I believe that the U.S. Justice Department and the many men and women who work there seek to make sure no person is above the law and no person is beneath the law, which is the way it ought to be in our country.

And I do want to share this thought with reference to the entirety of the Justice Department. While I think it is appropriate for us to critique and to criticize and to ask difficult questions, there are a good many persons who work in the Justice Department, hard-working public servants who have little, if anything, to do with much of what will be discussed today. And my hope is that what we say will not have an adverse impact upon what they do at the Justice Department. They are hard-working public servants, and I want to acknowledge their hard work.

I would also like to let the record reflect that there are persons in the Justice Department who have been prosecuting individuals as well as corporations. And I will submit a document for the record that we have compiled in my office. But I would like to just make sure that the record is very clear on these prosecutions.

Hence, I will read some of the list that I have of persons who have been prosecuted. I will be careful not to call their names, but I will mention their business entities: Goldman, Sachs, a member of the board was sentenced to 2 years in prison on October 14, 2012; Credit Suisse, the global head of structured credit pleaded guilty April 12, 2013; Credit Suisse, the managing director pleaded guilty February 1, 2012; Credit Suisse, the vice president pleaded guilty February 1, 2012; UBS senior trader charged December 19, 2012; UBS senior trader charged—these are separate persons—December 19, 2012; Morgan Stanley managing director sentenced to prison August 16, 2012; Galleon Management LLC managing director sentenced to prison for 11 years, October 13, 2011; Stanford International Bank chairman of the board of directors sentenced to prison for 110 years, June 14, 2012; Stanford International Bank chief financial officer sentenced to prison for 5 years, January 22, 2013; Stanford International Bank chief investment officer sentenced to prison for 3 years, September 13, 2012; Colonial Bank senior vice president sentenced to prison for 8 years, June 17, 2011. And there is more to be added and said.

The point is, while we will have our discussion today and ask our questions, I think we should not omit the fact that the Justice Department is still in the business of prosecuting those who commit crimes, offenses with malice aforethought. If it is a penal action, they are in the business of prosecuting. This does not include the list of entities that have been prosecuted. And many of them have sought to settle. Just a few: the Deutsche Bank, \$202 million settlement, May 2012; National Mortgage Settlement, \$25 billion, February 2012; Countrywide—this was a discrimination case—\$355 million, December 2011. And this list goes on and on.

I welcome the witness. I trust that the witness is prepared to answer the very difficult questions. But I do trust that the witness will also have an opportunity to answer the difficult questions as

we go through this process. And with that, Mr. Chairman, I will yield back the balance of my time.

Chairman MCHENRY. I thank the ranking member.

And we will now recognize our witness today. We have before us today Ms. Mythili Raman, who is the Acting Assistant Attorney General for the Criminal Division of the U.S. Department of Justice. Before that, she held a number of positions in the Department of Justice, including serving as Chief of Staff for the Criminal Division for many years. She has a distinguished career of service in our government. And she is a graduate of Yale University and the University of Chicago law school, both fine institutions.

So thank you so much for being here. This is your first time testifying before the House. We have a very simple lighting system which is slightly different than the Senate, in that we try to abide by it. I have to make a little Senator jab. May I? It is bipartisan.

But green means go, yellow means hurry up, and red means stop. And you will have 5 minutes to summarize your opening statement. Our microphones are a bit directionally sensitive, so if you will pull it close and direct it towards you, that would help significantly. And without objection, the witness' written statement will be made a part of the record.

Ms. Raman?

**STATEMENT OF MYTHILI RAMAN, ACTING ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, U.S. DEPARTMENT OF JUSTICE**

Ms. RAMAN. Chairman McHenry, Ranking Member Green, and distinguished members of the subcommittee, thank you for inviting the Department of Justice to appear today to discuss our efforts to combat financial crime. I am pleased to be here and I am privileged to oversee the important work of the Criminal Division.

The Justice Department is committed to vigorously investigating allegations of wrongdoing at financial institutions and, along with our many law enforcement partners, holding individuals and corporations accountable for their misconduct. Our track record in recent years shows our commitment to pursuing the most challenging and complex financial crime investigations in the country. Over the last 3 fiscal years alone, the Department has filed nearly 10,000 financial fraud cases against nearly 14,500 defendants.

These prosecutions have led to stiff prison sentences for many defendants. Last year, for example, the Criminal Division and the U.S. Attorney's Office in Houston secured a 110-year sentence for Robert Allen Stanford for orchestrating a 20-year, \$7 billion investment fraud scheme; just one of numerous investment fraud schemes the Department has prosecuted in recent years. We have been just as aggressive in bringing prosecutions involving the manipulation of the markets, as seen by the extraordinary success of the U.S. Attorney's Office in Manhattan in an unprecedented string of insider trading cases over the last several years.

Our prosecutors and agents also continue to doggedly pursue health care fraudsters. Our Medicare fraud strike force has convicted over 1,000 defendants of felony health care fraud offenses since the strike force's inception. And the average sentence for the strike force cases is approximately 45 months in prison. Our fight

against foreign bribery, too, is as robust as it has ever been. In just the past 2 months, we have announced charges against 11 individuals, including corporate executives and employees and one foreign official, in active Foreign Corrupt Practices Act investigations.

Similarly, our investigation of the manipulation at various banks of interbank lending rates, including LIBOR, has had reverberations across the globe. As detailed in my written statement, the consequences thus far for several multinational banks have been far-reaching, ranging from the replacement of senior leaders at Barclays, to criminal charges against traders at UBS, to detailed admissions of criminal wrongdoing and the payment of substantial penalties by three global banks, to felony guilty plea agreements by Japanese subsidiaries of UBS and RBS.

As is evident from this track record, we are deeply committed to holding wrongdoers, whether individuals or business entities, accountable for their crimes. In our investigations of business entities in particular, we are guided by firmly rooted Department of Justice policy, set out in the U.S. Attorneys' Manual, which requires our prosecutors to consider a number of factors in determining how, and whether, to bring charges, including: the seriousness of the entity's conduct; the pervasiveness of the criminal misconduct; the extent of the entity's cooperation with our investigations; and the remedial actions taken by the company.

There has been some discussion in recent months about one of those factors: the potential collateral consequences of charging a corporate entity. And we appreciate your interest in better understanding the extent to which the Department may consider possible collateral consequences of criminal prosecutions against large, complex financial institutions. The consideration of collateral consequences on innocent third parties, like the other factors we must consider when determining how and whether to proceed against a corporation, has been required by the U.S. Attorneys' Manual since 2008.

But the basic principles underlying that policy have a much longer history at the Department. The first Department-wide guidance on this subject was issued in 1999, and those basic principles have been reaffirmed multiple times since then—including in 2003, 2006, and 2008. As more fully explained in my written statement, although the factors set forth in the U.S. Attorneys' Manual, for good reason, inform our prosecutorial decisions, none of those factors, including potential collateral consequences, acts as a bar to prosecution or has prevented the Justice Department from pursuing investigations and seeking criminal penalties in cases involving large, complex financial institutions.

No individual and no institution is immune from prosecution. And we intend to continue our aggressive pursuit of financial fraud with the same strong commitment with which we pursue other criminal matters of national and international significance.

Thank you for the opportunity to provide the subcommittee with this overview of our financial fraud efforts, and I look forward to answering your questions.

[The prepared statement of Acting Assistant Attorney General Raman can be found on page 46 of the appendix.]

Chairman MCHENRY. Thank you for your testimony. I now recognize myself for 5 minutes for questions.

On March 6th, the Attorney General testified, as I said in my opening statement, “It does become difficult for us to prosecute when we are hit with indications that if you do prosecute, if you do bring a criminal charge, it will have a negative impact on the national economy, perhaps even the world’s economy.” Are these decisions that affect prosecution decisions?

Ms. RAMAN. I should start by saying, Mr. Chairman, the Attorney General, as he said, was clear that no institution and no individual is immune from prosecution because of its size. Of course, there are complexities that come along with the size of an institution. But the complexities do not equal immunity, as seen by our—

Chairman MCHENRY. Does size mean immunity?

Ms. RAMAN. Size does not equal immunity. Because although complexities certainly accompany investigations of large financial institutions, as you might expect they would, those complexities do not result in immunity for the corporation. In fact, our track record is clear on that. We have—

Chairman MCHENRY. Right. The track record is not as clear as on this side for viewing this. But in testifying that the DOJ is having difficulty prosecuting large financial institutions because “it will have a negative impact on the national economy, perhaps even the world economy,” isn’t the Attorney General implying that some of these institutions are so large that it is very difficult to make a decision to prosecute them?

Ms. RAMAN. I don’t think that is what the Attorney General was saying, Mr. Chairman. I think that what the Attorney General was saying—I believe it to be so—is that complexity does accompany our investigations of large financial institutions. And that, of course, does not—that is not specific as to large institutions. We see complexities in lots of our large investigations.

Chairman MCHENRY. Okay, sure. Has the size of an institution ever been a meaningful element in whether or not you prosecute?

Ms. RAMAN. As I alluded to in my written testimony and in my oral testimony, when we look at prosecution of business entities—putting individuals aside for a moment, where collateral consequences never enter into the equation—when we look at the prosecution of business entities, we are guided by long-established Department policy, which sets out a number of factors.

Chairman MCHENRY. Certainly.

Ms. RAMAN. And those factors include the seriousness of the misconduct, the pervasiveness of the misconduct, cooperation, and collateral consequences on innocent third parties.

Chairman MCHENRY. In a separate statement the Attorney General made in March, he referenced that some of these large institutions have “an impact on our ability to bring resolutions that I think would be more appropriate.” He refers to perhaps a different way, rather than prosecution, criminal prosecution. What are those other avenues, those other ways that he says are more appropriate?

Ms. RAMAN. The U.S. Attorneys’ Manual sets out a number of different types of resolutions that a prosecutor can reach with a

business entity following an investigation. Just to step back for a moment and to give you an overview of what we do, when we—

Chairman MCHENRY. Right, I understand. But the Attorney General sets policy, the U.S. Attorneys' Manual determines procedure, right? So when he lays this out, and says these large financial institutions are very difficult to prosecute, is that not true?

Ms. RAMAN. I—

Chairman MCHENRY. So they are—is that not true?

Ms. RAMAN. There are complexities and difficulties with any large investigation. But our prosecutors are well-prepared for that.

Chairman MCHENRY. Okay, so a larger institution would be more difficult, is what he is implying, than a smaller institution?

Ms. RAMAN. The larger investigations are always more challenging.

Chairman MCHENRY. Right.

Ms. RAMAN. And they are challenging for the—

Chairman MCHENRY. My time is short here. Last week, the Attorney General testified that banks are not “too-big-to-jail.” That was his quote. Does this mean that the DOJ is preparing to prosecute a case, even if it determines that a conviction would cause harm to domestic or international economy?

Ms. RAMAN. We have, in recent months, prosecuted a number of multinational banks, as I am sure the chairman is aware, including RBS and UBS subsidiaries in Japan, and achieved resolutions against large multinational banks involving significant criminal misconduct. The factor that you are referring to is one of nine factors that we consider, but it is never the dispositive factor. It can be, in certain circumstances, an important factor. But none of those nine factors set out in Department policy ultimately drives the decision on its own.

Like with any case, our prosecutors need to look at all of the facts, apply it to the policy of the Department of Justice, and apply the law that is applicable in that particular circumstance. And in each of those circumstances, after assessing those considerations, we do assess what the appropriate resolution is. Of course if there is no evidence of crime in the first place, that is an easy call; we don't prosecute at all.

Where there is evidence of criminal misconduct, we have a number of different tools that we have available to us to extract the kind of punishment and deterrence and cooperation and—

Chairman MCHENRY. Like a fine, for instance.

Ms. RAMAN. —that we need. Sometimes there is a guilty plea, sometimes there are charges resulting in trials, sometimes there are deferred prosecution agreements, sometimes there are non-prosecution agreements.

Chairman MCHENRY. And sometimes, there are huge fines. So with that, my time has expired.

Mr. Cleaver will be recognized for 5 minutes.

Mr. CLEAVER. Thank you, Mr. Chairman. Ms. Raman, not long ago, one of the larger banks was charged with mortgage fraud. Are you familiar with the case? Bank of America?

Ms. RAMAN. I may not be thinking of the specific case you are, Congressman, but you may be referring to the Lee Farkas Colonial Bank case?

Mr. CLEAVER. Well, either one. That is not the one, but it is the same arena. How was that case resolved, adjudicated?

Ms. RAMAN. In the case that I am thinking about, this was a massive prosecution of executives of Colonial Bank and Taylor, Bean & Whitaker for an almost \$3 billion fraud that eventually led—ended up resulting in the failure of Colonial Bank. In that case, we prosecuted a number of top executives there, all of whom are serving time. The chairman of Taylor, Bean & Whitaker, Lee Farkas, is serving 30 years in prison.

The senior vice president of Colonial Bank, Cathie Kissick, is serving 8 years in prison. TBW's CEO is serving more than 3 years in prison. TBW's CFO is serving 5 years in prison. TBW's president is serving 2½ years in prison. And its treasurer is serving 6 years in prison. So those are the types of resolutions we have been able to get to after aggressive and tenacious investigation.

Mr. CLEAVER. Thank you. Before the hearing is over, I will get the name of the bank that I am talking about. Would you agree that for some of the larger banks, they simply build into their budget fines for violating the law as a regular course of doing business?

Ms. RAMAN. I can't speculate about how each bank may set aside money to pay fines. But what I can tell you, Congressman, is our penalties are driven by an assessment under the sentencing guidelines or pursuant to forfeiture law about what the appropriate monetary penalty should be in any particular case. When the penalty is driven by the sentencing guidelines, we look at issues such as loss to investors and intended loss. When our penalty is driven by forfeiture laws, we look at how much criminal proceeds may have flowed through a bank and seek to forfeit that money and take it away from that bank.

And so, we have a number of different statutory and regulatory regimes under which we can assess monetary penalties, and we always approach that analysis aggressively and responsibly to ensure that the maximum deterrent effect is achieved.

Mr. CLEAVER. I think there is a general view out in the world from which I come that the banks are now larger than they were when the economic crisis began. And that they are simply fined when they are caught in violation of the law. Then, when we hear that none of the Wall Street culprits have gone to trial, it contributes to this feeling out here that if you have money, you can get off.

If you rob a convenience store, you are going to go to jail. If you rob the Nation, you just get richer, and you pay a fine. It is difficult to justify that to my constituents at town hall meetings. So what would you suggest I say at a town hall meeting, as this issue surfaces?

Ms. RAMAN. I can assure you, Congressman, that our career prosecutors and our investigative agents are absolutely tenacious about getting to the bottom of criminal wrongdoing at any entity, including large financial institutions. And I think our experience over the last several years shows that we use all of the tools that are at our disposal. First and foremost, individual prosecutions against culpable executives and employees of business entities, which can

have the biggest deterrent effect one can hope to have on criminal wrongdoing in the future.

We also, on separate tracks but sometimes as part of a comprehensive approach to our law enforcement efforts, look at wrongdoing as a general matter within a business entity and decide whether the entity itself, separate and apart from the employees or executives, should also have to pay a significant monetary penalty and, among other things, agree to cooperate with the government in ongoing investigations and engage in remedial efforts. So you can assure your constituents that our career prosecutors and agents are absolutely dedicated to ensuring that we root out criminal wrongdoing at these institutes.

Chairman MCHENRY. The gentleman's time has expired.

Mr. Fitzpatrick, the vice chairman of the subcommittee, is recognized for 5 minutes.

Mr. FITZPATRICK. I thank the chairman. And Ms. Raman, I appreciate your service to the Department of Justice and, certainly, your statement here today. I listened to the few prosecutions that you outlined in your opening statement, including the Allen Stafford Ponzi scheme prosecution. And there were a couple of others, but with all due respect, they are not really what brings us here today.

With all the misconduct that has been alleged and all of the significant losses that our constituents have suffered as a result of the 2008 mortgage and real estate meltdown, it is true, is it not, that nobody has gone to jail since then?

Ms. RAMAN. I don't think that is true. We have prosecuted a number of executives at large financial institutions since 2008. And the numbers actually speak for themselves. In terms of executives, we have had, as I said, UBS traders, a boardmember of Goldman Sachs, a—

Mr. FITZPATRICK. Ms. Raman, are they laid out in your testimony?

Ms. RAMAN. I am sorry?

Mr. FITZPATRICK. Are they laid out in your testimony? Are any of those related to the mortgage foreclosure crisis of 2008?

Ms. RAMAN. I think it is hard to describe what is or is not related specifically to the mortgage foreclosure crisis. And I can't—

Mr. FITZPATRICK. Why is it hard?

Ms. RAMAN. What I can tell you is that as with all Americans, the employees at the Justice Department understood the gravity of the 2008 mortgage foreclosure crisis. We have investigated, and continue to investigate, any conduct that may have led to that mortgage foreclosure crisis. And—

Mr. FITZPATRICK. Can you, as the acting AG in charge, identify any prosecution and subsequent incarceration related directly to the mortgage foreclosure crisis? Is there one?

Ms. RAMAN. Without speaking to any ongoing investigations, into the ongoing work of our mortgage—

Mr. FITZPATRICK. In the past.

Ms. RAMAN. —we have had several prosecutions, including most recently in Manhattan of executives of Credit Suisse and the global head of structured credit at Credit Suisse, who have all pleaded



guilty, which related to hiding of profits from residential mortgage-backed securities.

Mr. FITZPATRICK. Yes. I want to get to a separate issue, Ms. Raman. In a May 16, 2013, letter the Justice Department wrote that it has from time to time contacted relevant government agencies, including domestic and foreign regulators, to discuss the potential collateral consequences of prosecutorial actions that the Justice Department might take with respect to large, complex financial institutions. What are the identities of those domestic and foreign regulators consulted by the Justice Department, as identified in your May 16th letter?

Ms. RAMAN. As an initial matter, and to be clear, contacts with regulatory partners can occur at different times during an investigation and at certain periods of an investigation. And, frankly, in only certain types of investigations. Many of our bank prosecutions are ones that we do hand-in-glove with a regulatory partner. And so there are many times that they will take civil enforcement actions at the same time we take criminal enforcement actions. And many of our partners, such as the Treasury Department, the OCC, the Federal Reserve, and foreign regulators are ones that we work with closely in connection with many of those investigations.

There are other times where—in the few—without going into open cases or matters that are currently in litigation, it is correct that as a matter of policy, whenever we do need to assess broader collateral consequences—and, again, I have to emphasize this is in a very small series of cases, we have been able to reach out to our regulatory partners, partners such as those, to get feedback on what regulatory actions may or may not be taken as a result of a conviction. And so, those are the types of interactions that we are—

Mr. FITZPATRICK. Ms. Raman, when it is measuring how much damage a prosecution could cause to an institution, does the Department assume that regulators will impose sanctions if the company is convicted?

Ms. RAMAN. We never assume that a particular action will necessarily be taken. But it is absolutely correct that convictions trigger a number of regulatory actions. And that, in fact, regulatory actions and criminal actions, when brought together, can sometimes have the best impact that we need to have—

Mr. FITZPATRICK. But it is not assumed, as part of a prosecutorial decision?

Ms. RAMAN. It is not assumed, meaning none of these things are ever—

Mr. FITZPATRICK. Is it ever factored into the decision as to whether to prosecute that a regulator may issue or impose sanctions?

Ms. RAMAN. Yes. As in any type of fraud case, such as defense procurement fraud cases where we consult with debarment officials from time to time to understand what a conviction may trigger, we do understand fully that convictions of banks—

Mr. FITZPATRICK. So it is weighed into the prosecutorial decision whether to prosecute or not, whether sanctions would be imposed by a regulator.

Ms. RAMAN. The collateral consequences of a conviction is a factor that we can and do consider from time to time, in certain cases when we decide to pursue an investigation. But it is never the rea-

son we don't bring a case. Indeed, we recognize that sometimes civil and criminal enforcement actions, when taken together, can be the most powerful response that the government can have.

Chairman MCHENRY. The gentleman's time has expired.

We will now go to Mr. Ellison for 5 minutes.

Mr. ELLISON. Thank you, Mr. Chairman. And let me thank the ranking member, as well, for this hearing.

Ms. Raman, thank you for your testimony and your willingness to be here and answer questions. My question is, I don't know anecdotally, I don't have it here in my notes, but I do know that during the S&L crisis, DOJ had a significantly larger number of lawyers in a position to bring accountability. I don't know if they were civil or criminal, but in general a larger number of lawyers compared to today. Do you know what the difference is? Because I don't, and I know that is kind of an unfair question.

But given that they are—and do you agree that there is a difference? And if so, do you think that there is any—do you think that you could prosecute more cases if you had more lawyers?

Ms. RAMAN. I don't have the exact numbers, although I am happy to go back to the Justice Department and provide those numbers to you if we are able to get those. As a general matter, of course we can always do more with more. And, in fact, the recent sequestration has had significant effects on how we deploy our resources and where we deploy our resources. It has caused us to have to make hard choices about our enforcement priorities. But putting that aside, I don't think there is a prosecutor or agent in the Department of Justice who isn't as committed as they were before to—

Mr. ELLISON. Of course not. Yes, of course not. And I don't mean to imply—the position that you are in is, you are going to say we are going to do the best we can every time no matter what. And I know that because I know that is true. But there are budgetary realities you are dealing with. And another reality is that in the aftermath of 9/11, it was incredibly appropriate for the United States to turn its attention to protecting the American people from terrorism.

But did that decision that needed to be made have an effect on the ability to, say, prosecute white collar crime or mortgage fraud?

Ms. RAMAN. I can't speculate about whether the diversion of resources to national security impacted actual numbers of fraud prosecutions. But as I think I tried to make clear during my oral testimony and written testimony, the numbers of fraud prosecutions are still very, very high. And that is because financial fraud will always be a top priority of the Justice Department. It is the kind of case that if Federal prosecutors don't bring them, sometimes they will never be brought at all.

And so I do not expect that the Department's commitment to prosecuting financial crime will ever diminish. It is a core mission of ours.

Mr. ELLISON. Yes. Since 2010, according to our numbers, there have been about 24 significant fraud cases that were settled through agreements. And I think that is a significant number. In 2012, there were 7 major cases resulting in over \$30 billion in fines. And so, you all have been active. But, of course, given all the

pain and suffering that so many American homeowners have faced, I think many of them have just been shocked that they haven't seen more folks on television being "perp-walked," as they say.

That is just a comment. You don't need to respond to that. I also have a question that is not exactly on the issue of too-big-to-fail, but is important in my district. And that is—under the Bank Secrecy Act, there are significant penalties for noncompliance. I have had bankers in my district tell me that they have to hire highly paid professionals in order to make sure that they comply. And then, they have told me, as a result, it has made it difficult for them, from an expense standpoint, to be able to facilitate transactions, particularly ones that involve wiring money overseas, particularly to East Africa.

Have you all thought about this issue? And have you ever reflected on how the Bank Secrecy Act may be adjusted, since it has been in force for so many years, to be more tailored? Of course, we want to go after the terrorist financiers, but I can tell you from my experience in representing the largest Somali-American community in the country that there are a lot of people who have seen the number of banks that will even facilitate these transactions go down.

And a lot of folks seem to think that it is because the Bank Secrecy Act and other things that you all are—and other sort of laws in place. Can you respond to that at all?

Ms. RAMAN. I think, Congressman, that it is important for me to note that there are both civil and criminal enforcement authorities under the Bank Secrecy Act. And, of course, I am here in the capacity of the criminal prosecutor. I can tell you that we always deploy our resources and bring charges only when the evidence supports it and when the law supports it. The Bank Secrecy Act is a powerful tool. And it is one that has caused the compliance culture at financial institutions to improve in a way that is helpful to this country and protects our financial system.

And in our prosecutions, we ensure that our use of the Bank Secrecy Act is targeted and effective.

Chairman MCHENRY. The gentleman's time has expired.

Mr. ELLISON. Thank you.

Chairman MCHENRY. We will now recognize Mr. Fincher for 5 minutes.

Mr. FINCHER. Thank you, Mr. Chairman, and thank you, Ms. Raman, for coming today. Just going back to Mr. Fitzpatrick's line of questioning, you mentioned the regulators and the role that they play, working with the Department of Justice. What are the identities of the regulators that DOJ is contacting to provide an economic analysis when you do prosecute or look at prosecuting? Who are the regulators that you are talking about, specifically?

Ms. RAMAN. Just to step back for a second to make sure that I am clear in my response, our interactions with regulators often are just organic interactions with regulators in—

Mr. FINCHER. Like who?

Ms. RAMAN. In the course of criminal investigations, we often announce criminal resolutions in conjunction with FinCEN or OFAC, the OCC, the Treasury Department, the Federal Reserve, or foreign regulators. And so, we are often partners with our regulatory coun-

terparts when we look at banks for either criminal or other misconduct. I should step back by saying that is the bread and butter of our interaction with regulators. It is as partners addressing a common problem.

There is a small sliver of cases—and, again, I can't speak about open matters or about open investigations or matters in litigation—where it has been necessary for us to test any arguments that a subject bank may make about the collateral consequences that may befall them if we prosecute. And in those limited cases, it has been our practice to ensure that we reach out to those types of partners to make sure that we—

Mr. FINCHER. So my time, I am—I apologize. But before you look at prosecuting someone, so you talk to the regulators to make sure that—no, you just go on and prosecute if that is the need, and then talk to the regulators. So you are working with OCC and all these agencies before you make a decision on whether the systemic risks are too great to prosecute?

Ms. RAMAN. I just want to emphasize that systemic risk as a collateral consequence only appears in the smallest sliver of financial institution cases that we have prosecuted. The bread and butter collateral consequences that we always look at as prosecutors include things like harm to innocent employees who may lose their jobs if a business goes out of business, shareholders, or customers. That is the kind of collateral consequence that our fraud prosecutors look at, as one of many factors, when we prosecute a business entity.

When we are talking about systemic risk, which I think is the focus of your question, that comes up very, very rarely. And, again, without speaking to open cases which I can't speak about, we have, on occasion and from time to time, reached out to those same regulatory partners to understand whether or not a criminal proceeding will trigger a regulatory—

Mr. FINCHER. So to end this line, and I will start in on another line, you are working with the regulators to make sure you are not harming employees, to a certain extent, before you make the decision to prosecute or not to prosecute if there is something criminal that has been done. Correct?

Ms. RAMAN. We consider collateral consequences as one of several factors. And in some of those cases, we consult regulators.

Mr. FINCHER. Okay. In the first—the chairman was asking you earlier, and you kept going back to the complexity. And a lot of these cases are very complex. Can you give me some examples of what makes them so complex? Because it seemed like you were using that word a lot, and just—

Ms. RAMAN. When we talk about multinational banks—and we have looked at them for a number of different types of misconduct—what we need to deal with is what we need to deal with sometimes in other international investigations: evidence located abroad that might be difficult to get; subjects who are located abroad that may be hard to extradite; data privacy laws existing in some of these other countries which may preclude an entity from providing us with the information that we need in order to get to the bottom of what we are looking at, the number of employees of

an entity who may or may not be affected by our criminal proceeding. And so, that is the kind of—

Mr. FINCHER. That is what you were talking about with—

Ms. RAMAN. Those are the kinds of concerns that we need to look at in any—

Mr. FINCHER. My time is almost up. Let me just finish up with this. And since the DOJ hasn't criminally prosecuted any large financial institutions, is it fair to say there are still some financial institutions that are too-big-to-fail, and Dodd-Frank didn't end too-big-to-fail?

Ms. RAMAN. I don't know about too-big-to-fail. I do know there is no institution that is too large to prosecute.

Mr. FINCHER. Without talking to the regulators.

Ms. RAMAN. Only when we talk to—only in the small minority of cases, when that issue even arises. And I have to emphasize as much as I can, that issue rarely comes up.

Mr. FINCHER. My time has expired. Thank you, Mr. Chairman.

Chairman MCHENRY. Mrs. Maloney for 5 minutes.

Mrs. MALONEY. Thank you very much for yielding. And I thank the ranking member and the chairman.

I want to try to understand how DOJ initiates investigations. And when you face a multimillion-dollar, billion-dollar scheme or another type of large-scale circumstances, how does the Department decide to settle versus going to trial? It seems like you settle all the time. What goes into those decisions? And does the complexity of the case or the institution involved play a factor in your decision that you are making whether to prosecute or just settle?

Ms. RAMAN. First and foremost, we look at the evidence that we have been able to gather during the course of an investigation to satisfy ourselves that we could prove beyond a reasonable doubt that the entity or individual in fact violated the law. And in white collar crimes, one of the most important elements of our proof includes whether or not the entity or person acted willfully, that is, with an intent to violate the law. So, that is our baseline assessment.

We need to look first at the evidence and the law to see whether we have a prosecutable case. When we are talking about business entities as opposed to individuals, we then look at the nine factors that are set out in long-established Department policy. And we consider them one by one to determine, at the end of the day, does the balance sway in favor of charging, resolution, guilty pleas, or some other resolution altogether. And some of the factors that obviously drive our decision the most strongly are seriousness of the misconduct and pervasiveness of the misconduct, including whether we are talking about one rogue employee or whether we are talking about a criminal practice that was sanctioned by the managers of that particular institution.

And so, the pervasiveness of the wrongdoing is obviously something that we need to look at closely. We look at, in these cases, whether the corporation cooperated. Did they come in and disclose that they had a problem? And if they did, did they come in and cooperate with us, give us the documents that we needed, point us to the witnesses, suggest to us who we might need to interview? Did they give meaningful cooperation? Have they, on their own,

taken remedial action? Is this now a new company that we are talking about?

Meaning, have they replaced their managers? Have they set into place a compliance structure that now will ensure, or do better to ensure, that the same misconduct doesn't reoccur? Have they made restitution to victims? Would there be collateral consequences if there was one type of resolution versus another? There are all of these factors that we look at. And at the end of the day, it is a balanced decision about whether or not we sit across from the table from a bank counsel and say, we are ready to charge you.

And often, when we have that conversation, the response is that the bank elects to plead guilty, which is, obviously, a successful resolution for any prosecution. Oftentimes, our assessment, based on all of those factors, is that one of the middle-ground resolutions is most appropriate, a deferred prosecution or a non-prosecution agreement. And even for those, we require complete admission of wrongdoing. So there is a stipulated statement of facts in which the entity fully acknowledges publicly what the misconduct was.

Mrs. MALONEY. But may I further ask, I don't know if it is DOJ or other settlements, I often see settlements in the paper that "X, Y, Z firm" settled for \$700 million, a billion dollars, whatever. And a statement was issued that they did nothing wrong. And I am asking, why did they pay \$700 million if they did nothing wrong? But that has happened several times. I am just reading the paper and seeing this.

What is going on there, where they give a huge settlement and then a statement that they did nothing wrong? It is confusing to me. I would think, why are you paying a fine if you didn't do anything wrong?

Ms. RAMAN. I am glad you asked that question. It is not the policy of the Department of Justice to allow a company to neither admit nor deny. In fact, to the contrary, the Criminal Division's policy has been that regardless of the resolution—that is a DPA, an NPA, or a guilty plea—the company must fully acknowledge its criminal wrongdoing and may not retract that later.

Mrs. MALONEY. My time is running out. I really want to know how you decide between prosecuting an institution versus an individual? Oftentimes, it is an individual who has committed a criminal act. And in some cases, the institution doesn't even know that they did it. So how do you decide whether to prosecute the individual or prosecute the firm?

Ms. RAMAN. And there are times that it is not an either/or, but it is both or neither. And we look at, first, whether or not—who the culpable individual is. And again, I would say that it is important to us whether it is a rogue employee or whether an employee who should be prosecuted and that should be the end of it. Or whether it is someone who is of a higher position in the entity who committed the misconduct and that kind of misconduct ended up profiting the entity.

And in those cases, it may be appropriate to prosecute the entity, and sometimes—

Chairman MCHENRY. The gentlelady's time has expired.

With that, we will now go to Mr. Rothfus for 5 minutes.

Mr. ROTHFUS. Thank you, Mr. Chairman.

A recent Law Review article surveyed 54 public companies that were convicted of Federal crimes from 2001 to 2010, finding that no company was charged with a fraud or financial crimes offense, except in one instance of securities fraud. Further, the study found that no public company from the financial sector was convicted of any offense during this period. DOJ's prosecutorial standards remind prosecutors that the nature of some crimes may be such that national law enforcement policies mandate prosecutions.

My question to you is this: Does any national law enforcement policy mandate prosecution of financial crimes, despite a company's cooperation or the presence of other mitigating factors?

Ms. RAMAN. I don't believe it is fair to say it is mandated. But I think it is absolutely fair to say that those factors are never going to be the only factors that drive a decision. So there, in fact, may be instances in which, no matter how cooperative an entity has been, they should, and will be, charged or enter into a resolution. And so, again, it is one of several factors that we consider.

Mr. ROTHFUS. Looking again at the financial crisis in 2008, has DOJ prosecuted any company, any entity, for conduct related to the financial crisis?

Ms. RAMAN. I don't think that we can say that there is one company we have prosecuted which was directly related to the financial crisis. But I can say that we have looked diligently and tenaciously since 2008, and we continue to do so through our residential mortgage-backed securities working group. And we are committed to ensuring that we look at every fact and make appropriate decisions. When the evidence—

Mr. ROTHFUS. But to date, no entity has been prosecuted?

Ms. RAMAN. When the evidence suggests that a crime has been committed, and the law allows for it, a prosecution will be brought. When the evidence is not there, we will not bring a case.

Mr. ROTHFUS. In matters related to the 2008 financial crisis, has the Department of Justice found potential violations worthy of prosecution?

Ms. RAMAN. I think, again, I can say this in the most sort of general terms. When the evidence and the law suggest that a prosecution is appropriate we have, and will, bring those prosecutions. When the evidence and the law does not support such a prosecution we cannot, and will not, bring a prosecution.

Mr. ROTHFUS. If I could shift gears a little bit, with respect to the sliver of cases where you are taking into account the economic consequences of prosecuting large institutions, can you please identify the regulators by name whom you are contacting in this small sliver of cases to which you are referring?

Ms. RAMAN. I understand the committee's interest in this. And I hope that the committee understands that I am extremely limited in what I can say about open investigations and cases that are currently in litigation. We have several cases that are currently in litigation, and so—

Mr. ROTHFUS. Are there any cases where you have actually closed the investigation?

Ms. RAMAN. I know that our staff at the Department, at the committee's request, has done some good faith searches in connection with the request of this committee for that kind of information.

And my understanding is that in closed cases, we have not identified the kinds of documents—in certain—keeping in mind that the searches were limited, in which systemic risk was a factor in those decisions.

Mr. ROTHFUS. Looking at the case, the rate-rigging case against UBS, wasn't that case structured so that a foreign subsidiary with no real exposure to the United States was used to limit the potential consequences to the broader organization?

Ms. RAMAN. I don't think it is correct to say that was the reason that UBS Japan pleaded guilty. Again, we look at a number of factors, including where the bulk of the misconduct occurred. And oftentimes, it is absolutely appropriate for a subsidiary of a company to be the entity that pleads guilty, with the parent company perhaps entering into another resolution. And—

Mr. ROTHFUS. And if the parent company also profited, wouldn't it be appropriate to also prosecute the parent company?

Ms. RAMAN. In certain circumstances. And again, only after considering all of those factors. It may well be that the parent company was absolutely cooperative and has engaged in remedial action, but we nevertheless believe that it is important to bring a prosecution against a subsidiary. And, again, it is not a science, it is an art how we come to these decisions. But we look at each of those factors in good faith and through the lens of—

Mr. ROTHFUS. Isn't it true that if UBS Japan was the entity that you prosecuted, there would be no effect on UBS in the United States?

Ms. RAMAN. I can't say that.

Mr. ROTHFUS. Thank you. I yield back.

Chairman MCHENRY. Mrs. Beatty is recognized for 5 minutes.

Mrs. BEATTY. Thank you, Mr. Chairman, and Mr. Ranking Member.

Ms. Raman, getting ready for today's hearing I reviewed a report that is a couple of years old, but I think still very relevant today. And in that report, the GAO reported regarding the Department of Justice's monitoring of deferred pension agreements and non-pension agreements as a tool to respond to corporate crime. The report was based on the understanding that because the Department of Justice has recognized that it could be potentially harmful to criminally prosecute a company if you didn't look at what the investors or the employees or the pensioners or the customers who were not involved in that, and the effect it would have on them.

So they relied a lot on what we are going to call the DPAs and the NPAs to avoid harm to the innocent parties. And this made sense to me. But the GAO report concluded with a recommendation that the Department of Justice develop performance measures to evaluate the contribution of the DPAs and the NPAs towards its strategic objective of combating public and corporate corruption.

Specifically, the report suggests that the Department of Justice use two different metrics for such evaluation: one, whether the company had successfully met all the terms of the agreement; or two, if the company had re-offended. Given the significant increase in the use of DPAs over the last few years, can you tell us what efforts the Department has made with respect to measuring and



tracking the effectiveness of these deferred prosecution agreements?

Ms. RAMAN. Congresswoman, I am somewhat familiar with that GAO report. And I am aware that the Department took a number of steps in response to the recommendations of the GAO in that investigation, and that the GAO has since closed out those recommendations, understanding that the Department, in fact, followed through. The response to your question, I think, comes in several parts. One is that we have instituted a tracking procedure to ensure that we know how many DPAs the Department enters into, and whether or not those DPAs are favorably resolved.

We often, as you know, install monitors to oversee the conduct of a business during the course of a DPA. And during that period of time, if there is any derogatory information that comes forth as a result of the monitor's work, we are able to take a number of steps, including sometimes extending the period of the DPA, requiring correction, or in some circumstances, breaching the deferred prosecution agreement and requiring that the company pleads guilty.

So I think through both the tracking—ensuring that we have watchful eyes on the company during the course of the DPA, including through, at some points, monitors—I think we have done a good job of ensuring that we understand, during the period of a deferred prosecution agreement, whether or not a company is living up to the promises that it made when we entered into a DPA. And, of course, they understand—the company understands—that the Department can always withdraw that DPA if the DPA is breached, and require a guilty plea.

Mrs. BEATTY. Just to further elaborate, since you have these tracking mechanisms, can you tell us if there are any statistics to show us what percentage of those agreements are meeting the Department objectives?

Ms. RAMAN. I can get you those statistics. I know that we track the number of DPAs that we enter into every year, and we can certainly get that information for you. In terms of being satisfied that the DPAs are achieving our law enforcement objectives, I can tell you from simply supervising these cases and speaking to our prosecutors who are prosecuting these matters that the matters in which we enter into DPAs have real beneficial impacts for law enforcement. First and foremost, because companies are required to cooperate with the government during the period of the DPA, it is often the case that the information they provide us during the course of a deferred prosecution agreement can lead to individual prosecutions.

And we had a recent example of that in the foreign bribery arena where we entered into a DPA with BizJet, and they were cooperative. And just about a month ago, we announced the unsealing of charges against four of its executives. And so, that is a real benefit that the government and law enforcement get out of these deferred prosecution agreements when we enter into them, and where appropriate. Of course, our insistence during the period of the DPA that the company engage in remedial action is also a real benefit to law enforcement and, frankly, sometimes can have cascading benefits to other companies in the same industry who are able to

see that if company A has instituted a certain remedial program that if they institute the same compliance program that it can help them, and—

Chairman MCHENRY. The gentlelady's time has expired.

With that, Mr. Hultgren is recognized. And I would just counsel the witness that she does not have to take up the full 5 minutes. You don't have the obligation to do such. With that, we will recognize Mr. Hultgren for 5 minutes.

Mr. HULTGREN. Thank you, Mr. Chairman. Thank you for being here today.

Standards adopted by the Justice Department call on prosecutors, I know, to consider collateral consequences of prosecuting a business organization "including whether there is a disproportionate harm to shareholders, pension holders, employees and others not proven personally culpable, as well as the impact on the public arising from the prosecution." The Justice Department, I know, consults with outside experts when seeking to determine the economic impact of prosecuting financial institutions.

We know this because in announcing the statement with UBS, the settlement with UBS for manipulation of the LIBOR in December of 2012, the Attorney General said, "The impact on the stability of the financial markets around the world is something we take into consideration. We reach out to experts outside the Justice Department to talk about what are the consequences of actions that we might take. What would be the impact of those actions if we would want to make particular prosecutive decisions or determinations with regard to a particular institution."

In those small slivers of cases where there is economic impact or potential economic impact—and I recognize that is probably a relatively small number of cases—I wondered if you could just let us know the identities of the domestic and foreign regulators contacted by the Justice Department to provide information about that economic impact in determining whether prosecution will move forward.

Ms. RAMAN. And, again, recognizing that I am extremely limited in what I can say about open matters and—

Mr. HULTGREN. More the closed ones, I guess.

Ms. RAMAN. And we have not been able to identify, thus far at least, any closed cases in which that kind of impact has been a factor.

Mr. HULTGREN. So you think the Attorney General was referring to open cases, or closed cases? It seems like the settlement case in the LIBOR case would be closed, so who do you think he would have been referring to as far as the experts who were reached out to, either foreign or domestic regulators?

Ms. RAMAN. The LIBOR investigation is incredibly active and ongoing. That having been said, I know that the Attorney General was referring to domestic and foreign regulators and not third parties outside of the government. He was talking about—

Mr. HULTGREN. Which specific regulators would he have been referring to? What nations, which specific entities?

Ms. RAMAN. And, again, because I am limited in what I can say based on my ethical duties on open investigations, I will have to rely on what is in the public record. I am aware that some of those

regulators have informed this committee about contacts made by the Department of Justice.

Mr. HULTGREN. So as far as you know, there is none that you could list today that have been contacted that are not part of an open, ongoing investigation. Let me move on because my time is limited. Quick question: The Treasury Department hasn't provided any information that DOJ has used to determine the economic impact of prosecuting a large financial institution. Is that correct?

Ms. RAMAN. I am sorry, the—

Mr. HULTGREN. The Treasury Department hasn't provided any information that DOJ has used to determine the impact of prosecuting a large financial firm. Is that correct?

Ms. RAMAN. And I apologize that I need to continue to say this, but I can't comment on any—

Mr. HULTGREN. Okay. Let me move on to the next one, then. Has the Treasury Department ever requested that DOJ consider the economic consequences of prosecuting a large financial institution?

Ms. RAMAN. I am not aware of that.

Mr. HULTGREN. Has the Justice Department contacted FSOC or OFR about an economic analysis of prosecuting a large financial institution? And if so, have FSOC and OFR provided such an analysis?

Ms. RAMAN. I am personally not aware of that, but I have not done a comprehensive—

Mr. HULTGREN. Okay. Has DOJ contacted the OCC about the economic impact of potential prosecution of a large financial institute? And if so, has the OCC provided such an analysis?

Ms. RAMAN. And I—again, because the OCC has publicly stated that contact has been made, I understand that the committee does have that information that the OCC has been contacted by the Department of Justice. But again, I am relying on the public record because I do not want to go outside the public record in open matters.

Mr. HULTGREN. As far as DOJ, has the DOJ contacted the Federal Reserve about the economic impact of prosecuting a large financial institution? And has the Federal Reserve provided such an analysis?

Ms. RAMAN. Again, based on the public record, I believe that the Federal Reserve has informed this committee that it was not contacted.

Mr. HULTGREN. It was not contacted? Has DOJ contacted the Council of Economic Advisors about the economic impact of prosecuting a large financial institution? And if so, have they provided such an analysis?

Ms. RAMAN. Without getting into any open matters, I am afraid I can't identify particular entities that have not already provided public information to this committee.

Mr. HULTGREN. Last, has the Justice Department ever determined the economic impact of prosecuting a large financial institution without using analyses provided by regulators?

Ms. RAMAN. I am not aware of any circumstance in which a prosecutor, on their own, made any such determination. But, again, keeping in mind that we are talking a very small sliver of cases.

Mr. HULTGREN. I see my time has expired. Thank you, Mr. Chairman.

Chairman MCHENRY. Mr. Heck is recognized for 5 minutes.

Mr. HECK. Thank you, Mr. Chairman.

Ms. Raman, most of the questions today have been associated with inquiries regarding prosecuting the big guys. I actually want to turn this on its head, and ask you about prosecuting the little guys. As you probably know, the citizens of both Washington State and Colorado voted last November to legalize marijuana. But it remains, of course, a Federal crime. One of the ways that this Federal-State conflict manifests, of course, is under the Bank Secrecy Act.

Companies that provide banking services that aid in, or result from, Federal crimes must file suspicious activity reports. And they face peril, of course, because if they accumulate too many before the regulators or DOJ, they get in trouble. Of course, the practical effect of this is that businesses related to what is, in Washington State and Colorado, the legal sale of marijuana cannot access the banking system or won't access the banking system as a matter of prudent judgment.

And I am not just talking about dispensaries or growers. I am even talking about informational Web sites which do nothing more than provide reviews. They can't take credit cards, they can't write checks, they can't direct deposit payroll. They can't do any of that. They are basically shot out of the banking system. And the net effect of that, of course, is that they will operate entirely in cash. And we are talking about an industry in Washington State that is projected to grow to hundreds of millions of dollars.

I am very hard pressed, Ms. Raman, to figure out or divine how it is society would be better served by that much cash rattling around in that sector of our economy and all of the potential damage and ill-doing that could result from that. Therefore, ma'am, what can or will the Department of Justice do to help with this problem?

Ms. RAMAN. I am not familiar, Congressman, with the specific issue you raised in Colorado or Washington. But I can tell you that the Bank Secrecy Act has been helpful to us in ensuring that our financial markets are able to operate without criminal proceeds flowing through them. And recent prosecutions that we brought in Los Angeles and Brooklyn under the BSA of check cashing businesses are a good example of why the use of the BSA in these circumstances can be very helpful for law enforcement. Those were matters in which those check cashing businesses and the individuals who ran them were alleged to have essentially been accepting, knowingly, the proceeds of massive health care fraud.

And so we use the BSA where it is appropriate and where we believe that we will get a real law enforcement impact out of those. And—

Mr. HECK. Is it your position that it is appropriate to use the Bank Secrecy Act in pursuing banks that receive deposits from businesses that are legally engaged in the business of dispensing or growing or providing information about marijuana in Washington State?

Ms. RAMAN. Again, I am not specifically aware of the circumstances presented in those two States with those particular businesses. So I am hesitant to opine on whether or not enforcement is appropriate in those circumstances, but I understand the concern that you have raised.

Mr. HECK. I am surprised that you are not familiar with the issue insofar as our governor has spoken directly and in person with your boss on more than one occasion about this. But I would make every effort here to impress upon you that we are all now well-served if the net result of DOJ or the regulators using the Bank Secrecy Act, in this instance—and I am a fan of the Bank Secrecy Act—to prosecute people in this regard for an activity that has been legalized, frankly, by a substantial majority in Washington State; thus rendering it an entirely a cash business.

Nobody is going to be better off for that. In fact, you will incite or induce or prompt or incentivize increased criminal behavior with that much cash flowing around in the economy for this. So please go back and take a look at it.

Ms. RAMAN. I will.

Mr. HECK. Thank you.

I yield back the balance of my time, Mr. Chairman.

Chairman MCHENRY. I thank the gentleman.

And I will now recognize Mrs. Wagner for 5 minutes.

Mrs. WAGNER. Thank you, Mr. Chairman. Ms. Raman, back on March 8th of this year, the committee sent a letter to Attorney General Holder requesting that he produce records regarding DOJ's assessment of the economic impact when prosecuting large financial institutions. Over the past 10 years, the Department of Justice has investigated one or more large financial institutions for violations of Federal law, correct?

Ms. RAMAN. Yes.

Mrs. WAGNER. And am I correct that the Department of Justice keeps written records of its prosecutorial decisions in these matters?

Ms. RAMAN. Every prosecutor in every U.S. Attorney's Office has very different ways of—

Mrs. WAGNER. Do you have written records on these particular prosecutorial decisions?

Ms. RAMAN. I am not certain which prosecutorial decisions in particular, but every—

Mrs. WAGNER. You keep no written records?

Ms. RAMAN. That is not what I said. The 94 U.S. Attorneys' Offices and each of the litigating components in the Department of Justice have very different ways of documenting decisions about whether, and when, they have brought cases.

Mrs. WAGNER. Generally speaking, do they keep written records on their prosecutorial decisions?

Ms. RAMAN. Many prosecutors do, but I can't speak for the entire—

Mrs. WAGNER. And when making these prosecutorial decisions involving large financial institutions, am I correct in stating that the Department of Justice applies the standards of the U.S. Attorneys' Manual for principles of Federal prosecution of business organizations?

Ms. RAMAN. Yes.

Mrs. WAGNER. I think you have spoken to that directly already in your testimony.

Ms. RAMAN. Yes.

Mrs. WAGNER. And the standards in this Manual instruct prosecutors to consider the collateral consequences, as we have talked about, of the prosecution, including harm to the public. Is that correct?

Ms. RAMAN. That is right.

Mrs. WAGNER. And considering the harm to the public, is this a form of economic analysis? Is that correct?

Ms. RAMAN. Again, I want to emphasize that the issues I think that this committee is focused on, which is systemic risk to the global markets, rarely, if ever, comes up. And so the collateral consequences that we are ordinarily looking at are things such as how many employees, innocent employees, may go out of—may have to leave their jobs if a company goes out of business; how will pensioners be affected; how will—

Mrs. WAGNER. So, harm to the public. This is a form of economic analysis, correct?

Ms. RAMAN. Not always. It is not—

Mrs. WAGNER. But sometimes?

Ms. RAMAN. I think we are probably talking about two different things. When I am talking about collateral consequences to, for example, innocent employees, that is not an economic analysis. That is a decision about how many employees may lose their jobs if a company goes out of business.

Mrs. WAGNER. Ms. Raman, can you commit today, in this hearing, to providing these records containing this analysis to the committee, without delay?

Ms. RAMAN. I know that our staff has been speaking with your staff and has described in detail the parameters of searches that have been done in good faith to try to answer the committee's questions. So I know—

Mrs. WAGNER. Thanks. I am glad to hear that. When can we expect those records to be produced, ma'am?

Ms. RAMAN. Our staffs have been talking, and I think we have described to your staff the searches that we have done and the results of those searches, which have thus far not turned up any documents that—

Mrs. WAGNER. You have no documents on any of these cases, or records—are—is that your testimony—to provide?

Ms. RAMAN. I have been informed that the searches that we did on closed cases did not—certain closed cases in certain U.S. Attorneys' Offices and litigating components did not yield information about systemic risk to the global markets. And I am not talking about other collateral effects, such as loss of jobs or loss of pensions. I am talking about systemic risks to the global markets.

Mrs. WAGNER. I think what we asked for March 8th was that you produce records regarding the Department of Justice's assessment of the economic impact when prosecuting these large financial institutions. And this would pertain to any and all records. Now, are you having conversations with the committee about bringing forth those records?

Ms. RAMAN. We have been clear that, of course, we cannot provide records on any ongoing investigations or—

Mrs. WAGNER. Absolutely. We are not looking for that. We are looking for closed cases. And certainly, I guess I would ask that since 2008, have there been closed cases for which you are able to provide some kind of record?

Ms. RAMAN. And as our staffs have been discussing, in the closed cases that our staff has looked through there is not the specific information about economic analyses relating to global systemic risk that this committee had asked about. Of course, because collateral consequences to employees and others is a factor that has long been considered, there are many, many cases in which those issues are likely to have—

Mrs. WAGNER. I think my time has expired, I think. Thank you, Mr. Chairman.

Chairman MCHENRY. Ms. Waters, the ranking member of the full committee, is recognized for 5 minutes.

Ms. WATERS. Thank you very much. I would like to continue some discussion about drugs. This testimony was started by my colleague here, Mr. Heck, but I would like to take a little different spin on it. This year marks the 40th anniversary of the war on drugs, a critical time to shine a spotlight on 40 years of failed policy. Since the declaration of a war on drugs 40 years ago, America has spent at least \$1 trillion on the drug war. It cost U.S. taxpayers at least \$51 billion in 2009 at the State and Federal levels. That is \$169 for every man, woman, and child in America, and that is not counting opportunity costs or costs at the local level.

Millions of people have been incarcerated for low-level drug law violations, resulting in drastic racial disparities in the prison system. Yet drug overdose, addiction, and misuse are more prevalent than ever. The number of people behind bars for drug law violations rose from 50,000 in 1980 to more than a half-million today, a 1,100 percent increase. Drug arrests have more than tripled in the last 25 years, totaling more than 1.63 million arrests in 2010. More than 4 out of 5 of these arrests were for mere possession, and 46 percent of these arrests were for marijuana possession alone.

Arrest and incarceration for drugs—even for the first-time, low-level violations—can result in debilitating collateral consequences for an individual and their family. I have worked on something called mandatory minimum sentencing for the last 20 years. I hold workshops every year at the CBC Legislative Weekend Conference. And we worked on trying to bring about some justice in the area of mandatory minimum sentencing, where we had all these young people who were being incarcerated. Five grams of crack cocaine triggered a 5-year mandatory minimum sentence; 50 grams of crack cocaine triggered a 10-year sentence.

And I could go on and on about this. But you can understand why, when I see that we have some of the biggest banks in the world who get a slap on the wrist for laundering drug money from the drug cartels and they are not going to jail. And this keeps happening year after year after year. I don't believe—it is hard to believe that we don't understand how they launder this money. But we know this: If there was no profit, if they were not able to laun-

der this money, perhaps we wouldn't have drugs on the street with all of these young people getting arrested.

And basically some of them not criminals, just stupid, getting involved with small amounts of cocaine or crack cocaine. And yet, we have some of the richest, most powerful banks in the world who are laundering drug money from the drug cartels. Why don't they go to jail?

Ms. RAMAN. I think I can respond to your—

Ms. WATERS. I can't hear you.

Ms. RAMAN. I can respond to your question in a couple of ways. First and foremost, the bank entity, of course, cannot go to jail. The bank entity, when we are talking about an entity, a corporate entity, the punishment that we are able to secure comes in the form of monetary penalties, a period under which they must engage in remedial action or cooperate with the United States in its investigation. So in our cases, we are focused on ensuring that we understand how much of these crime proceeds that you are referring to have flowed through a bank.

And when we determine that, we seek to forfeit that money or we seek to find—

Ms. WATERS. Excuse me. I don't want to interrupt you or take too much time. But we know what you do. It is what you do that we don't like. What you do is, they get fined. It is the cost of doing business, these fines. And I know maybe you can't incarcerate a corporate entity. But are you telling me that the CEOs and those who are responsible for the operations of the banks, the boards, the presidents, nobody can be—have criminal violations because of the laundering of drug money in the bank?

Ms. RAMAN. We, in the Criminal Division, in fact established a money laundering and bank integrity unit that is focused on prosecuting precisely these kinds of cases, including professional money launderers and the entities in which they work.

Ms. WATERS. But you have not sent anybody to jail.

Ms. RAMAN. We have prosecuted innumerable money laundering cases involving persons who assist drug and other criminal organizations in laundering their money. And so—and we are committed to doing that. And when we have resolved any such cases with bank entities, those resolutions have not, in the least, precluded the possibility of individual—

Ms. WATERS. Let me just say this, because I guess we could go on with this conversation—and I appreciate the time here. But you have not prosecuted anybody, you have not sent anybody to jail. As a matter of fact, the most shameful case, that I won't mention, where hundreds of millions of dollars were laundered through one of the biggest banks in the world and they got away with a hefty fine. And this goes on and on and on. It is unacceptable. It is not your fault. It is not a personal attack on you.

But it is about the system, it is about the Justice Department. Something needs to be done. These kids, they go to jail and do 5 years for 5 grams of crack cocaine. You tell me that they are more guilty than the presidents of banks who have the responsibility for running that bank don't know that drug money is going through those banks? I don't think so.

Thank you, Mr. Chairman. I yield back the balance of my time.



Chairman MCHENRY. I thank the ranking member.

We will now recognize Mr. Barr for 5 minutes.

Mr. BARR. Thank you, Mr. Chairman. Ms. Raman, thank you for your testimony today. Thank you for your service. As an attorney, but not a prosecutor and not a U.S. Attorney, I would like to kind of ask you a little bit about the background of the U.S. Attorneys' Manual, how that is put together, how the collateral consequences analysis entered into that Manual in 1999, and the evolution of that analysis and direction to U.S. Attorneys.

Who sets the standards? Who writes and drafts the Manual at the Department?

Ms. RAMAN. Generally—there are many, many provisions of the U.S. Attorneys' Manual, covering all manner of procedures and policies in place at the Department of Justice. And each of those provisions is likely drafted by a very different group of people. But at the end of the day, any provision of the U.S. Attorneys' Manual is drafted with the input of litigating components, U.S. Attorneys and the leadership of the Department of Justice.

Mr. BARR. I want to talk about that small sliver of cases that you talked about involving systemic risk. Since enactment of the Dodd-Frank law, has there been any discussion within the Department that you are aware of to modify the Manual in any way, to eliminate consideration of collateral consequences with respect to that small sliver of cases that could potentially involve systemic risk?

Ms. RAMAN. I am not aware of any such discussions. Because, in fact, I think that policy exists for a good reason. Any law enforcement action we take needs to be targeted and effective and proportional. And that particular provision of the U.S. Attorneys' Manual ensures that any action we take does not have disproportionate harm on non-culpable people, like the public or employees.

Mr. BARR. I am thinking in terms of Title II of the Dodd-Frank law and OLA. After the codification of this Orderly Liquidation Authority, has the Justice Department considered the fact that—or the possibility that—collateral consequences are no longer needed as a consideration in terms of the prosecutorial discretion that the Department has?

Ms. RAMAN. In our bread and butter prosecution of business entities, collateral consequences will always be—

Mr. BARR. I understand that. I am not talking about bread and butter. I am talking about that small sliver of cases involving potential systemic risk. In light of codification of OLA, Title II of Dodd-Frank, has there been any discussion about eliminating the collateral consequences analysis from the Manual?

Ms. RAMAN. I am not aware of any such discussion, and I would be surprised if there was such a discussion. Because we do want to make sure that our prosecutions don't have a disproportionate effect on the public.

Mr. BARR. If OLAs resolves the too-big-to-fail problem, why would collateral consequences analysis even be required in that small sliver of cases?

Ms. RAMAN. We are still going to want to assess any time we prosecute a business entity whether, for example, we will have a disproportionate effect on the employees or the pensioners. And so, those types of collateral consequences will always be at play. And

the U.S. Attorneys' Manual is drafted relatively broadly to encompass any such collateral consequences that may be appropriate to consider, and—

Mr. BARR. Are you aware of any cases in which the Justice Department has declined prosecution as a result of consultation with financial regulators?

Ms. RAMAN. It is never the sole factor in any of our decisions. All of the nine factors set out in the U.S. Attorneys' Manual are always considered in combination.

Mr. BARR. Are you aware of any particular cases where where a decision to prosecute has been withheld as a result of consultation with regulators, domestic or foreign?

Ms. RAMAN. Again, it will never—and to my knowledge will never be the sole factor in determining how we resolve a case.

Mr. BARR. Does the Administration, or does the Department have the resources necessary to evaluate the economic consequences that could result from a prosecution of a large financial institution?

Ms. RAMAN. Given that these issues arise rarely, I think that we are equipped to address any arguments that are made by banks when they face potential indictment. But that having been said, we can always do more. And, in fact, we have continued to redouble our efforts to ensure that we engage as robustly as we can with regulators to best understand these sorts of circumstances. And we are committed to continuing to do so.

Mr. BARR. Thank you. I yield back.

Chairman MCHENRY. We will now recognize the ranking member of the subcommittee, Mr. Green, for 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman. Attorney Raman, is that correct?

Ms. RAMAN. Yes.

Mr. GREEN. You heard me earlier go over a list of prosecutions and convictions. Do you agree with what was on the list, generally speaking? I know that you didn't have a chance to actually have me hand it to you. And, first, do you agree, generally speaking?

Ms. RAMAN. I do.

Mr. GREEN. And do you also agree that I did ask you, prior to this hearing, to provide me information on prosecutions so that I might have this available at the hearing? Is this true?

Ms. RAMAN. Yes, you did.

Mr. GREEN. And I appreciate your providing the information that I requested. Mr. Chairman, if there are no objections, I would like to have this placed in the record.

Chairman MCHENRY. Without objection, it is so ordered.

Mr. GREEN. Thank you, Mr. Chairman.

Now, I would like for you to give a little bit more information about you. Tell us about the number of years you have been in the Justice Department, please.

Ms. RAMAN. I have been a prosecutor with the Justice Department for almost 17 years. I started in the Criminal Division in 1996 as a trial attorney in the narcotic and dangerous drug section in the Criminal Division, and went to the U.S. Attorney's Office in Maryland for much of my career, and then returned to the Criminal Division more recently, in the last 5 years, in various leadership positions.

Mr. GREEN. Is it fair to say that you have prosecuted many cases as opposed to a few?

Ms. RAMAN. Yes.

Mr. GREEN. Is it fair to say that you have prosecuted a good number? And would you give just an estimate as to the number you have been associated with, please?

Ms. RAMAN. I couldn't even give an estimate. I have supervised, and myself handled, hundreds of cases over the last 17 years.

Mr. GREEN. And you have an understanding of both civil and criminal prosecution. Is this a fair statement?

Ms. RAMAN. A better understanding of criminal than civil, but yes.

Mr. GREEN. But is it true that in civil prosecutions, from time to time persons who admit or find themselves paying a fine or penalty they don't always acknowledge liability in civil cases, not criminal cases?

Ms. RAMAN. I think that is fair to say.

Mr. GREEN. And is it true that—let me just ask you. Will you prosecute any size, any complexity, any difficulty of case?

Ms. RAMAN. Where the evidence and the law supports it, we absolutely will.

Mr. GREEN. And is it true that you have—you failed to prosecute any case because of systemic risk?

Ms. RAMAN. It has never been a sole factor in our decision. It has—as I mentioned during the course of this hearing, collateral consequences can be a factor, and have been a factor, in our decision-making in the past.

Mr. GREEN. I am going to go back to the list that I talked to you about earlier and that I called to the attention of the public earlier. Is it true that the chairperson of the board of directors of Stanford International Bank received 110 years?

Ms. RAMAN. He did.

Mr. GREEN. Is he currently serving time, or is he currently on appeal?

Ms. RAMAN. My understanding is that he is currently serving his sentence.

Mr. GREEN. And I have another list, and I thank the staff for providing this information. Much of what I have came from staff. But I have a list of what appears to be monies that have been made available to the Justice Department for various reasons in terms of settlements. And I am just looking at the numbers: One case, \$8.5 billion; another case, \$25 billion; another case, \$285 billion; another case, \$10.4 billion. And I just have a long list of cases where you have settled for large sums of money.

It might be helpful to just mention the types of cases, rather quickly. You have dealt with mortgage fraud settlements, mortgage-backed securities settlements, fraudulent practices. These are the types of cases that you have settled? Is this a fair statement?

Ms. RAMAN. It is. And we have secured record penalties and forfeitures in the last several years.

Mr. GREEN. Now, I think that there is always more that the Justice Department can do, and I think that it is fair to criticize some of the things that have occurred. But I also want people to know that there are people at the Justice Department who are busily

prosecuting cases, and that the Justice Department, I don't think, is perfect but I do think that I will acknowledge that there are some prosecutions taking place that are very meaningful.

And with this, Mr. Chairman, I think I am going to yield back the balance of my time.

Chairman MCHENRY. Thank you.

Mr. Grimm is recognized for 5 minutes.

Mr. GRIMM. Thank you, Mr. Chairman, and thank you, Ms. Raman, for being here today. Thank you for all your many years of service. It is greatly appreciated and very well-respected and well-received.

I am concerned. In your earlier testimony, I think we all pretty much know that the wrongdoers that led to the crisis of 2008 really have not been brought to justice. And I just want to ask, for the committee's purposes, it is a 5-year statute of limitations on that, correct, on those crimes?

Ms. RAMAN. With some statutes. Some statutes trigger a 5-year statute of limitations. We do have some other statutes available to us that have longer statutes of limitation.

Mr. GRIMM. But most of them would probably fall in the general 5-year? So—

Ms. RAMAN. Most criminal laws do have a 5-year statute of limitations.

Mr. GRIMM. So if my math is right, in 2013, we are about at the end. So a lot of those that led to this big crisis in 2008, if they haven't been caught by now, they are not going to be. And a lot of them are going to be protected by the statute of limitations very soon.

Ms. RAMAN. I don't think it is fair to say that if they haven't been caught by now, they won't be caught. As I said, we still do have some statutes that trigger longer statutes of limitations. And there are ongoing and active efforts still to ensure that the Department of Justice and all of our partners are looking at the conduct.

Mr. GRIMM. Okay. I think those statutes with longer than 5 years are far and few between. They are very technical. And the nature of these criminals, with the lawyers they will be hiring, based on my experience with the Department of Justice who—I think my analysis is actually spot on. But you just mentioned—my friend and colleague, Mr. Green, asked you a question about prosecuting. And you said absolutely prosecute—will prosecute any size.

I believe you, and I know that, based on your experience, is in your heart. But when you look at the actual quote from the boss, the Attorney General, Eric Holder, it says, "I am concerned that the size of some of these institutions becomes so large that it does become difficult for us to prosecute them when we are hit with indications that if you do prosecute, if you do bring a criminal charge, it will have a negative impact on the national economy, perhaps even the world economy."

I just have to tell you, it does seem like you may be on a different page than the Attorney General, based on that quote—taking it not out of context, but as I read it.

Ms. RAMAN. He described difficulties with certain prosecutions. But the Attorney General and all of its prosecutors are not de-

tered by difficulty. We have brought very difficult cases, after long investigations, because we frankly have a talented corps of prosecutors and agents.

Mr. GRIMM. That I agree with 100 percent, as far as you having a very talented corps and dedicated people. Is it possible, though, that sometimes it is more than just the size? Is it possible that there are sometimes political affiliations? The reason I ask is it brings you to the very curious case of Jon Corzine. A lot of people on the street, a lot of people in my very district, in New York City, the financial capital of the country, believe that because he had a lot of political clout and had a lot of political ties he walked, he skated.

You think about it. This man was overseeing a company, and right from under his nose, \$1.6 billion vanished. It was missing, it was gone. And he came before this very committee, as well as other committees here in Congress, and he said—this is a quote from Mr. Jon Corzine—“I simply do not know where the money is. I simply don’t know where it is. It was segregated funds.”

In all the cases I worked on in over 5 years of working financial fraud, when segregated funds went missing and the captain of the ship who was in charge said, “I don’t know where it went,” they were getting handcuffed 99 percent of the time. He said, “I was stunned, when I was told on Sunday, October 30, 2011, that MF Global could not account for many hundreds of millions of dollars of client money.” Then he goes on to say that, “I did not, however, generally involve myself in the mechanics of the clearing and settlement of trades or in the movement of cash and/or collateral.”

So he has been cleared during the investigation. But I would ask the Department of Justice, how do they jibe that the trustees’ report is replete that he perjured himself. That he did—in fact, was notified that the money went to JPMorgan Chase beforehand, and that he did, in fact, know—because he got daily reports on cash and where cash was being moved—he perjured himself. Is the Department of Justice going to look into this matter of Jon Corzine any further, considering \$1.6 billion went missing and he claimed he just didn’t know what happened to it?

Ms. RAMAN. Without speaking to any particular investigation, I can tell you that politics never enters into the calculus. I know that your question started with a concern that somehow political clout leads to decision-making in the Department of Justice, and that is simply not the case. I can’t speak to any open investigations but, again, prosecutors and agents do not take that into consideration.

Mr. GRIMM. Thank you for your testimony.

I yield back.

Chairman MCHENRY. Mr. Sherman is recognized for 5 minutes.

Mr. SHERMAN. I thank the chairman for allowing me to participate, even though I am not a member of the—

Chairman MCHENRY. Oh, I am sorry, sir. I ask unanimous consent that members of the full committee be allowed to participate in—if anybody, in the interest of time, wants to object, well, I am sorry.

Mr. Sherman, you are recognized for 5 minutes.

Mr. SHERMAN. Thank you.

Thanks for being with us here today. It is an interesting division of responsibilities. You in the Justice Department, and the Judiciary Committee around the corner, deal with enforcing our laws. And if I have understood your testimony as I have watched it on television, you are going to enforce the law no matter how big the—or interconnected of systemically important the company involved might be. Does that summarize it pretty well?

Ms. RAMAN. I think I want to be clear that the size of a corporation will never be a factor in and of itself. And that no institution is too big to prosecute.

Mr. SHERMAN. And you don't have economic analysis people in your division telling you what the effect is going to be on the stock market if you announce a particular indictment, or suggesting that the unemployment rate will go up a tenth of a percent if this or that bank is put in the hot seat? You don't even have that information?

Ms. RAMAN. In very rare cases, a bank will make that argument, of course. And it is our obligation to ensure that we test those assertions.

Mr. SHERMAN. Even if the assertions were right and they said, "Hey, if you bring this indictment, if you fail to accept this plea offer, economic growth is going to decline by a tenth of a point"—and they have 99 economists who all swear that that is the case—would that cause you not to indict?

Ms. RAMAN. Again, a single collateral consequence cannot be the reason we don't charge a case or resolve it in a particular way. But collateral consequences are issues that we must, and do, consider.

Mr. SHERMAN. Okay. The thing is, in this division of responsibilities, it is really this committee that has the responsibility of minimizing those consequences. And there are indeed companies that are so big that if you were to enforce the law, it would have an effect on the entire economy. That is why we have to break them up. And this is a problem that arises because we have punted to the regulators and said they can break them up, but we haven't said, okay, if you have reached a certain size, too-big-to-fail is "too-big-to-exist."

You, then, have to deal with these very large institutions. My hope is that you are not looking at collateral consequences at all. But it is this committee that has to—that realizes that any one of these giant institutions could be prosecuted, could run into economic problems and fail. And as long as we allow those that are too-big-to-fail or "too-big-to-jail" to exist, they may fail, you may jail them, and the economy will suffer because we haven't done our job.

Do you have any further comments?

Ms. RAMAN. I want to emphasize that in our prosecutions we act aggressively and responsibly. And that is one of the reasons why collateral consequences are even in the equation. We want our enforcement efforts to be effective and targeted, but also proportional. And so, of course, we want to be cognizant if any actions we take might have a disproportionate impact on non-culpable third parties, including the public at large. So we are committed, regardless of those difficulties, to ensure that we come to the resolution that is right and will lead us to the right—

Mr. SHERMAN. You have somewhat confused me. Because in real life, there may be a circumstance where if you do bring a case, 1,000 people or 10,000 people who would otherwise be employed are not going to have jobs. You can read the sociology reports as to what 10,000 unemployments means in terms of number of divorces, adverse impact in school performance, et cetera. And you seem to be implying that if all that came together, you might not prosecute somebody who was otherwise culpable. Is that the case?

Ms. RAMAN. I have to be clear that we are talking about business entities and not individuals.

Mr. SHERMAN. Right.

Ms. RAMAN. Individuals are—when we prosecute individuals and make decisions about that, collateral consequences don't ever get into the equation. When we are talking about business entities, and specifically those business entities where we actually have evidence beyond a reasonable doubt that a law was violated, that is when we need to look at all of the factors, including collateral consequences. So there may be circumstances in which that argument is more weighty than in other circumstances, depending on how it balances with the seriousness of the misconduct.

Mr. SHERMAN. I would hope that you would enforce the law, period. I would hate to think that those who create collateral consequences are somewhat immune.

Chairman MCHENRY. The gentleman's time—

Mr. SHERMAN. And I yield back.

Chairman MCHENRY. We will now begin a second round of questions.

We will begin with Mr. Hultgren, from Illinois, for 5 minutes.

Mr. HULTGREN. Thank you, Mr. Chairman. Again, thank you for being here, Ms. Raman. I had a lot of questions first time around, but I do appreciate your service very much and appreciate you taking the time and helping us through this.

A couple more questions. I wondered, has the Justice Department ever contacted the FDIC to understand how the Orderly Liquidation Authority in the Dodd-Frank Act works?

Ms. RAMAN. I can't speak about our open litigation matters, and I am not aware that there has been anything on the public record about that. So, I am unable to answer that question.

Mr. HULTGREN. I think this wouldn't be, really, an open investigation. But it would really just be more of the processes of how Dodd-Frank works and, specifically, the Orderly Liquidation Authority. So the Justice Department certainly wouldn't be an expert on Dodd-Frank. So there would be—I think it would be understandable if there would be a reaching out to ask for an understanding of how it is expected from the FDIC to understand the Orderly Liquidation Authority. So apart from any type of open cases, would you know of any time where there has been a reaching out by Justice to FDIC to understand this Orderly Liquidation Authority?

Ms. RAMAN. We always try to educate ourselves on what collateral consequences might occur from a conviction. And certainly, the FDIC's authority to revoke deposit insurance is a collateral consequence that some may raise from time to time. I am not aware of specific conversations in matters that I can speak about.

Mr. HULTGREN. Okay.

Ms. RAMAN. But I think it is fair to say that it is a relevant regulator in these instances.

Mr. HULTGREN. Okay, but you are not aware of any communication that has gone on to understand that further. Let me ask a different question here. The Department of Justice's prosecutorial standards remind prosecutors that the government may charge even the most cooperative corporation: "Government may charge even the most cooperative corporation. Put differently, even the most sincere and thorough effort to cooperate cannot necessarily absolve a corporation that has, for example, engaged in egregious, orchestrated and widespread fraud."

Within the last 10 years, has any financial institution ever engaged in such egregious, orchestrated, and widespread criminal conduct as to merit prosecution, regardless of this cooperation?

Ms. RAMAN. The most recent examples of large financial institutions that we have insisted accept guilty pleas are RBS Japan and UBS Japan at the end of 2012. And I think it is fair to say that even though we received cooperation, we determined that the appropriate prosecutorial response was guilty pleas from those to entities and various other resolutions as to the parent companies.

Mr. HULTGREN. So, those two. Any others in the last 10 years that you would be aware of that are closed cases?

Ms. RAMAN. I can certainly get you that information.

Mr. HULTGREN. That would be great. If you could get to me, it would be great. The Attorney General implied in his testimony before the Senate Judiciary Committee, again on March 6th that absent the size of some financial institutions, some resolutions "are more appropriate to particular criminal matters." Does that mean that the Department of Justice was prepared to prosecute some past matters if the institution was not so big?

Ms. RAMAN. I don't think that is what the Attorney General meant. I do think that what he was trying to convey and what the Department has said unequivocally is that there are difficulties, complexities with these kinds—that sometimes a company—investigations of large, multinational corporations. But I should also emphasize that the specific collateral consequence issue is one that is specifically contemplated by the U.S. Attorneys' Manual as an appropriate factor to ensure that our resolutions and our law enforcement actions are aggressive but responsible at the same time.

And I think that is what he was trying to convey is that there are a number of different enforcement tools that we have available, and it just may be the case that in certain circumstances, one tool is more appropriate than the other. And I think our record has shown that we have used all of those tools over the last several years.

Mr. HULTGREN. I see my time ticking away. One last question, kind of follow up of—you had mentioned that if there is other information, you can get that to the committee. I wonder if I can ask, as well, if you could provide to the committee—if you could check with your staff, other members of DOJ—a log of each consultation with domestic and foreign regulators regarding possible prosecutions of large financial institutions. Again, these would be closed



cases. We have already talked about how we don't want to go into open cases.

But if there are closed cases where there has been a consultation, getting back, again, that this is technical. The Department of Justice has many areas that it has to prosecute and, certainly, it would be understandable if there was outreach to regulators, foreign or domestic. If those contacts have been made with—in that small sliver of cases where it would potentially have a significant financial impact on our financial systems. If the DOJ could provide that log to us of those entities, domestic or foreign, that were contacted, it would be great.

Ms. RAMAN. I think we have been talking with the committee staff about the searches that we have been able to do and what we haven't been able to do. And we will be happy to continue to engage with staff.

Mr. HULTGREN. And then if you can get that to us in writing, if there is anything that is found. Thank you.

With that, I yield back.

Mrs. WAGNER [presiding]. Thank you. The Chair recognizes the gentleman from Missouri, Mr. Cleaver, for 5 minutes.

Mr. CLEAVER. Thank you, Madam Chairwoman. And thank you, too, Ms. Raman. You have been, I think, as candid as you could be, considering the fact that you can't speak about ongoing cases, which I understand. And there have been prosecutions. I have a list of them here, and I think most of the Members have that same list. What I hope to convey is that there is a lot of concern.

The case I couldn't bring out of my computer when I spoke first is getting older. It is a case from 2012. It was categorized by the U.S. Attorney who filed it in Manhattan as "spectacularly brazen." And yet, there were no criminal charges. It was mortgage fraud, I guess primarily Countrywide-connected. As you know, they were purchased by Bank of America.

And so, when those huge cases are brought to the public, and you find that there are no charges, it just doesn't feel good as a citizen, who realizes that if you do something, you are going to go to prison. And somebody—even the attorney says violates the law in a spectacularly brazen way, and nothing was done, it creates a problem.

Ms. RAMAN. It sounds like the case that you are referring to was a civil suit that was brought. And that may explain some of what you are asking. I am not, myself, familiar with that particular case. But I do think that it is important for me to convey that we have different burdens of proof in civil cases and criminal cases. And that we can only bring criminal cases when we can prove beyond a reasonable doubt willful intent to violate the law and an actual violation of the law. And, when we are able to make that proof, we do bring it.

You mentioned that this particular announcement was by the U.S. Attorney's Office in Manhattan, which has been, frankly, one of the most aggressive—

Mr. CLEAVER. They have, yes.

Ms. RAMAN. —offices on bringing financial fraud cases.

Mr. CLEAVER. And that is why it is so concerning. He goes on to call it "the hustle," and no criminal charges were filed. I am just

a Methodist preacher. I don't know a lot about the law. That is why I am sitting next to the judge. I try to sit next to him all through the hearings every time we have one just so osmosis might help me learn something about the law.

But it just creates a problem—no criminal charges. That is what people see. And then hundreds of million dollars are involved, and somebody takes a carton of milk out of one of the convenience stores and they are going to go to jail.

Ms. RAMAN. On behalf of the entire—

Mr. CLEAVER. I understand.

Ms. RAMAN. —Justice Department, we have many fraudsters in jail for decades now, as we speak, because we have been able to make that proof, because we have been able to root out the evidence of the crime and file those charges. There are countless such people who have defrauded the public, and we are committed to continuing to bring those kinds of cases. I think Allen Stanford, who is serving a 100-year sentence, feels like he is been appropriately punished.

Mrs. WAGNER. I thank the gentleman from Missouri for yielding back. And a marvelous preacher he is, might I just say.

[laughter]

I would like to yield myself 5 minutes for our second round of questioning. Thank you for hanging in there with us, Ms. Raman. I am interested in what foreign regulators the Department of Justice has contacted about an economic analysis of prosecuting large financial institutions, and what information have any such regulators provided to DOJ.

Ms. RAMAN. When we are talking about multinational banks, sometimes the multinational bank's primary prudential regulator is a foreign regulator. And, again, I can't talk about open cases or cases that are currently in litigation, but many of the banks that we have looked at and this committee is aware of has tentacles in countries all over the globe. And—

Mrs. WAGNER. Can you talk about any closed cases, and some of the foreign regulators that you have been dealing with over the period of time here the last 5 years?

Ms. RAMAN. Again, I am not aware that our search has yielded any evidence that in closed cases there has been that sort of contact with foreign regulators on economic impact issues in particular.

Mrs. WAGNER. Would you agree, then—let me try and come at this from a different angle. Would you agree that foreign regulators have a vested interest in shielding companies headquartered in, say, their jurisdictions from prosecution in other countries?

Ms. RAMAN. Our experience has not shown us that. In fact, sometimes the biggest impact we can have is when we literally bring a global resolution; when regulators across the globe or American regulators and the Justice Department act in concert or investigate in concert. So I don't think, at least in my experience, I can say that the regulators have tried to shield the banks. In fact, they can be of great assistance if they bring civil enforcement actions. And that can assist us in our prosecution.

Mrs. WAGNER. Then perhaps, Ms. Raman, you can explain how it is exactly the Department of Justice weighs statements made by

foreign regulators about prosecutions in the United States of firms headquartered abroad.

Ms. RAMAN. Because they do have an interest in assisting in any investigation, and that has been our experience. To the extent that we consult them, we consult them as we would with any other partner. That is, engage in a discussion with them, and make sure we understand what they are saying and that they understand what we are saying.

Mrs. WAGNER. As a matter of course, does the Department of Justice regularly solicit input from foreign regulators about whether to pursue prosecutions of foreign firms?

Ms. RAMAN. I don't think it is fair to say we regularly do that. In fact, I think it has been rare that we have had to address specific types of issues that are of concern to this committee. That is, impacts—systemic impacts on global markets.

Mrs. WAGNER. And you are not able to share with the committee any of the foreign regulators that you all have contacted vis-a-vis economic analysis on these prosecutions?

Ms. RAMAN. Because I can't get into matters that are currently in litigation or—

Mrs. WAGNER. But how about those that are closed?

Ms. RAMAN. And I have been—I think I have been trying to explain, but I should be as clear as I can be, that in the closed cases that we have searched in the parameters that—under the parameters that we have discussed with committee staff we have not identified any cases in which those kinds of conversation—in which economic impact was a factor in those closed cases. And I haven't—I can't tell you for certain what other document searches may be possible or may not be possible, but I am not aware, I am not personally aware, that we have searched and that search has resulted in any documents that—

Mrs. WAGNER. I guess the confusion here, and the persistence is, one, that the Department of Justice has indicated that they have received analysis from those foreign and domestic regulators. Yet you are—there seems to be no record, no knowledge of records by any of the U.S. Attorneys' Offices by your own. Nothing that you can share with this committee to shed some light on these prosecutions.

Ms. RAMAN. It is not—setting aside the open cases, because in some ways I think that is what this committee may be interested in and, unfortunately, I just can't speak about those, setting those aside, it is not surprising to me that in our closed cases in past years there has not—our current searches thus far have not yielded the kinds of economic analyses that the committee is interested in. And it doesn't surprise me because these types of arguments come up only rarely.

And, again, I know that our staffs have been talking about the parameters—

Mrs. WAGNER. And I just have a few more minutes left. And, the economic analysis was referred to by the Attorney General. So this is—we would really implore you to continue to work with the staff to come up with records, with information, with regulators, with entities that you all have been working with as, frankly, indicated

already by the Department of Justice and the Attorney General. I think I am out of time.

And I am pleased to recognize the gentleman from California, Mr. Sherman.

Mr. SHERMAN. I thank the ranking member for letting me ask questions at this point. With regard to the closed files, can you identify and describe any case involving a financial institution where, due to collateral damage, you didn't assert the strongest possible charges or impose the maximum possible penalty?

Ms. RAMAN. I am not aware, in any closed case, that we didn't pursue the appropriate response because of any such argument.

Mr. SHERMAN. Okay. So we have all this conversation from the Department of Justice saying that they may look at collateral consequences. Could you, for the record, ask your staff to review the closed files and identify any time that they can find in which a collateral consequence has affected the prosecutorial actions?

Ms. RAMAN. We will absolutely continue to work with the committee to ensure that the committee has the information that it needs.

Mr. SHERMAN. This is a question I would like you to respond to for the record, independent of what the committee staff has to say to you. Please respond appropriately for the record whether you have been able to conduct a review and whether there has ever been a case where economic consequences have affected prosecutorial action. Since we don't have any practical cases, I am going to get a little theoretical here.

You may have a small bank, where ordinarily you would impose a million-dollar penalty. And you are convinced that will cost dozens of jobs. It could be in a small town, or it could be dozens of jobs in a big town. Big town people count, too. Or there could be a big entity you are thinking of imposing a billion-dollar penalty on, and you know that is going to cost tens of thousands of jobs with international implications.

Is the small entity or the large entity more likely to get reduced prosecution due to collateral consequences? Are you focused on the national and international collateral consequences, or is it all kind of proportional?

Ms. RAMAN. I think it is fair to say that there are different collateral consequences that are apparent in different types of prosecutions. And so the—

Mr. SHERMAN. But I am just posing—in one case you get a great economic analysis. If we don't cut the penalty by a million bucks, we are going to lose dozens of jobs. In another case, you get in an economic analysis if we don't cut the penalty by a billion dollars, we are going to lose tens of thousands of jobs. As a matter of fact, assume that the penalty reduction-job loss ratio is identical. It is \$8,000 of penalty per job, or \$18,000 or whatever it is.

Are you more likely to make an adjustment to save 12 jobs for—by reducing the penalty by a million bucks, or to save tens of thousands of jobs by reducing the penalty by a billion?

Ms. RAMAN. Congressman, I am—

Mr. SHERMAN. Does size matter?

Ms. RAMAN. Congressman, I am actually not aware that the size of a penalty has ever been changed because of such arguments.

What we do consider is whether or not a collateral consequence might suggest that one type of resolution is superior to another, a deferred prosecution—

Mr. SHERMAN. These resolutions tend to take the form of a company writing a check. So you can say it is not—you can't put a corporation in jail.

Ms. RAMAN. Whether guilty plea, deferred prosecution, or non-prosecution agreement, our punitive tool for any corporate entity is a fine. And, of course, any additional—

Mr. SHERMAN. Yes. And the lower the—both how much you charge and what fine you settle for is a matter of money. And I have given you an example of a dozen jobs for a million-dollar reduction here, tens of thousands of jobs. And I will ask again, does size matter? Does being systemically important lead to a reduction in the penalty?

Ms. RAMAN. Being systemically important can cause us to evaluate certain collateral consequences. But again, I am not aware that the amount of the fine has changed because of that. We do consider, whenever we consider collateral consequences, whether a deferred prosecution agreement may be more appropriate than a guilty plea.

Mr. SHERMAN. Not only do the big banks save 80 basis points, as we have heard testified in this room, on their cost of funds, but they are more likely—apparently, by your testimony—to get deferred prosecution and other understandings of the collateral consequences. In any case, you can't assure me that small bank is—I am trying to understand what the implications of your answer are, and I think I would rather be a big bank than a small bank.

Ms. RAMAN. I can tell you that in our big bank prosecutions, including our LIBOR investigation involving UBS, RBS, and Barclays, more than \$2.5 billion has been the monetary assessment. In our prosecution of BP, it was a \$4 billion—

Mr. SHERMAN. And yet, there could be a small community bank where \$100,000 would be just as big.

Chairman MCHENRY. The gentleman's time has expired. I have been very generous with allowing Members to get full answers. We will end with that. Mr. Green has 5 more minutes and I have 5 minutes. And so, I will recognize myself for 5 minutes, and then give the ranking member the opportunity to close.

You have referenced that you have certain ongoing matters that prevent you from testifying about the Department of Justice going after financial firms and those people in it who were breaking the law. When those matters close, would you be willing to come back before this committee to give us the rundown, and share?

Ms. RAMAN. Absolutely. Within the parameters of what I will be able, by court rules and other ethical obligations, to share with you we—

Chairman MCHENRY. On a closed case.

Ms. RAMAN. We will be ready to share with you whatever we can.

Chairman MCHENRY. There is a deferred prosecution that has been before a judge for a number of months, and we wanted to ask some questions about that, and I understand your unwillingness to talk about that. I did want to talk about, though, this economic analysis. You went through the nine rules—and again, we are get-

ting close to the end here—the nine sets of weighing through these things.

So you have U.S. Attorneys who look at this, and you weigh those things out. And they are not all equally weighted, are they?

Ms. RAMAN. Depending on the facts of the cases, each can have different—

Chairman MCHENRY. Okay.

Ms. RAMAN. —proportionate weights, yes.

Chairman MCHENRY. Okay, okay. But you talk about the impact on the economy. Senator Merkley sent a letter to the Attorney General in December of 2012, and he said that the Dodd-Frank Act, “explicitly created new authority to permit a failed institution to be wound down safely without impacting financial stability.” Do you agree with that analysis?

Ms. RAMAN. I am not an expert on Dodd-Frank. I will have to defer to—

Chairman MCHENRY. Okay. So when the Justice Department estimates economic costs of prosecuting a firm, we are not talking about a specific example, we are talking about your policy, your procedure. That is why we have you here. But when you are estimating the economic cost of prosecuting a large financial institution, that analysis takes into account the cost associated to the economy, right?

Ms. RAMAN. Again, only when it is raised and only in a very small sliver of cases in which that argument may be raised by a bank or a subject entity.

Chairman MCHENRY. So yes, it is, on occasion, raised.

Ms. RAMAN. Banks have raised, and I expect will continue to raise these sorts of arguments.

Chairman MCHENRY. Okay. So internally, within your Department, when you are estimating the costs associated with perhaps a failure of a large financial firm, do you take into account the Dodd-Frank process of the Orderly Liquidation Authority?

Ms. RAMAN. As prosecutors, we do not take into account Dodd-Frank, per se. As prosecutors, we want—

Chairman MCHENRY. But you are taking the fact that a firm could fail as a result of your prosecution.

Ms. RAMAN. Yes, because of the potential collateral consequences to—

Chairman MCHENRY. Yes. So now we have a procedure that is within the government to wind down an institution, and it is called the Orderly Liquidation Authority. Senator Merkley, some of my colleagues contend that it ended—it actually ends too-big-to-fail, right? Going back to the Attorney General’s quote that I referenced at the beginning of this hearing—where he says that some of these firms are too large, too complex—that goes counter to the arguments that proponents of the Orderly Liquidation Authority make, that this authority means that firms that are too big actually can fail, and there is a process for that. What I am asking is, that is very important when you are talking about a firm failing if you have a government procedure that some contend means that the firm is wound down. So you don’t take that into account whatsoever?

Ms. RAMAN. We take into account whether or not a particular type of law enforcement action will trigger disproportionate collateral consequences on the public or innocent third parties. And so in whatever form or format that might present itself in any particular case, we have to, and do, consider those. And so, the Orderly Liquidation Authority issue—

Chairman MCHENRY. But how can you not take in the Dodd-Frank Orderly Liquidation Authority when you are going through what you just said?

Ms. RAMAN. Our concern is to ensure that when we bring a charge, when we don't bring a charge, when we resolve a case that we have a full understanding that it is an—

Chairman MCHENRY. But if you have a full understanding, you would know that Orderly Liquidation Authority exists in that procedure.

Ms. RAMAN. And I understand that the purpose of Dodd-Frank legislation is to ensure such orderly liquidation.

Chairman MCHENRY. It has been on the books for 3 years.

Ms. RAMAN. We consider collateral consequences of all types, and they don't always—

Chairman MCHENRY. But do you consider that consequence of the Orderly Liquidation Authority?

Ms. RAMAN. We consider all of the—and I am trying to answer the question, but I want to answer it—

Chairman MCHENRY. But you are not. Do you consider the Dodd-Frank Orderly Liquidation Authority, yes or no?

Ms. RAMAN. The bottom line is that the liquidation of a company or not is only one factor that is of relevance when we are talking about collateral consequences.

Chairman MCHENRY. I understand you don't want to answer the question. It is kind of clear because I am trying to restate it in a way that you could answer it. And I am not trying to badger you about this, but it is important to note. It is either yes, you take it into account, or no, you do not. And it is an existing law that deals with a whole class of companies that have been designated as systemically important or systemically significant.

Ms. RAMAN. We take into consideration every single regulatory action and option available that may be triggered by a criminal conviction. Sometimes—

Chairman MCHENRY. So on this matter of the Orderly Liquidation Authority, has your Department had conversations with the FDIC, which is charged with that procedure? Not about an individual case, about that procedure?

Ms. RAMAN. We have had many conversations with regulators across-the-board about—

Chairman MCHENRY. I understand. You have said that repeatedly. I am talking about the Orderly Liquidation Authority.

Ms. RAMAN. I have not had that conversation, but I know that we—

Chairman MCHENRY. But you are in charge of the division.

Ms. RAMAN. —have had conversations with regulators about all of the regulatory actions that can be triggered by a criminal conviction, including the FDIC's authority to revoke a bank's deposit insurance if a charter is revoked, for example. And so we have had

robust, and will continue to have robust, conversations with these types of regulators. And—but we—

Chairman MCHENRY. It sounds like you have not yet had those robust conversations on a law that has existed for 3 years.

The ranking member has been very generous, and I would now recognize the ranking member for 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman. If you need more time, I will gladly yield some of my time to you.

I want to ask a couple of questions about persons who have asked you to submit additional evidence for the record. You have had more than one request today. I assume that you will comply and you will submit the additional evidence for the record?

Ms. RAMAN. We will.

Mr. GREEN. I asked you for evidence, and you complied and you provided this evidence to me. Was my request any different than any of the other requests that you have had today for evidence to go into the record?

Ms. RAMAN. No. I haven't kept track of every single request, although I am certain some behind me have.

Mr. GREEN. No, I am talking about—

Ms. RAMAN. But we are happy to be as helpful as we possibly can.

Mr. GREEN. Yes. I am talking about, now, more specifically in terms of my having just made a request to you to give me something to go into the record. Was that request made any differently? Other than it was made before we got here today because I wanted to make sure I had something that I could look at and peruse beforehand.

Ms. RAMAN. That is right.

Mr. GREEN. Let's go on to something else now. The Code of Judicial Conduct, the canons of ethics, all of these codes that deal with professional responsibility, most of them focus on protecting not the Justice Department itself, but they have to do with rights of individuals who may be prosecuted, rights of entities that may be prosecuted. But you don't promulgate some of these codes. I know the canons of ethics don't allow lawyers to do certain things and the Code of Judicial Conduct will prohibit a judge from discussing a case pending before the court.

These are not professional codes of responsibility that you are trying to hide behind. But you do have to adhere to them. Is that a fair statement?

Ms. RAMAN. I do.

Mr. GREEN. And in so doing, it is not to preclude our knowing about evidence. It is just that if you do this and you violate one of the codes, then there may be consequences for you if you should do this. Is that a fair statement?

Ms. RAMAN. Yes. And there are obviously good reasons why those ethics rules and local rules in courts exist. It is to avoid interfering with ongoing matters.

Mr. GREEN. Yes. I know that, as a judge, if the judge happens to make a comment about a pending matter, it could prejudice the case one way or the other, depending on how the comment is made. And I just wanted to get that in the record because it is important



for people to know that you don't produce the codes but you do have to adhere to them.

Now, let's talk for just a moment about FSOC and the Orderly Liquidation Authority. You personally have not had any conversations with persons concerning cases that are associated with the Orderly Liquidation Authority. Is this correct?

Ms. RAMAN. Setting aside ongoing matters.

Mr. GREEN. Yes.

Ms. RAMAN. The Department of Justice is constantly engaged, as a general matter, with our regulatory partners and with experts within the government about these sorts of matters to ensure that we are best educated. And, in fact, we have redoubled efforts to do so just to ensure that we are doing everything we possibly can. I have not personally had a discussion with FSOC.

Mr. GREEN. And I will close with this. Do you believe Mr. Holder when he says there is no institution, there is no individual that cannot be prosecuted by the U.S. Justice Department? Do you believe that?

Ms. RAMAN. I believe him, and I believe that the career prosecutors in the Department understand that principle.

Mr. GREEN. Thank you.

I yield back the balance of my time, Mr. Chairman.

Chairman MCHENRY. I thank the ranking member. And again, the hearing title today is, "Who is Too Big to Fail: Are Large Financial Institutions Immune from Federal Prosecution?" And the questions we raised today were about whether or not Dodd-Frank did, in fact, end too-big-to-fail, the Justice Department's refusal to prosecute some large firms with contradicting statements from the Attorney General, and whether or not too-big-to-fail, in fact, results in "too-big-to-jail."

And then finally, in deciding not to prosecute large financial institutions, the Justice Department either did not consider the Dodd-Frank's Orderly Liquidation Authority, or found that the Orderly Liquidation Authority did not solve the problems of too-big-to-fail. Those are among the questions.

I thank the ranking member for his indulgence in this long hearing. Ms. Raman, thank you so much for being here today and making it through what was a large and long hearing.

The Chair notes that some Members may have additional questions for this witness, which they may wish to submit in writing. Without objection, the hearing record will remain open for 5 legislative days for Members to submit written questions to this witness and to place her responses in the record. Also, without objection, Members will have 5 legislative days to submit extraneous materials to the Chair for inclusion in the record.

And with that, this hearing is now adjourned.

[Whereupon, at 4:42 p.m., the hearing was adjourned.]



# **A P P E N D I X**

May 22, 2013



# Department of Justice

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STATEMENT OF

MYTHILI RAMAN  
ACTING ASSISTANT ATTORNEY GENERAL  
CRIMINAL DIVISION  
U. S. DEPARTMENT OF JUSTICE

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS  
COMMITTEE ON FINANCIAL SERVICES  
U. S. HOUSE OF REPRESENTATIVES

ENTITLED

“WHO IS TOO BIG TO FAIL: ARE LARGE FINANCIAL  
INSTITUTIONS IMMUNE FROM FEDERAL PROSECUTION?”

PRESENTED

MAY 22, 2013

**Statement of Mythili Raman**  
**Acting Assistant Attorney General, Criminal Division**  
**U.S. Department of Justice**  
**Before the Subcommittee on Oversight and Investigations**  
**Committee on Financial Services**  
**U. S. House of Representatives**  
**May 22, 2013**

Chairman McHenry, Ranking Member Green, and distinguished Members of the Subcommittee: Thank you for inviting the Department to appear before you today about the Department of Justice's enforcement efforts to combat financial crime. I am pleased to be here and to oversee the important work of the Criminal Division.

The Justice Department is committed to aggressively investigating allegations of wrongdoing at financial institutions and, along with our many law enforcement partners, holding individuals and corporations to account for their conduct. Over the past four years, we have stood firm in our approach that no person or corporation is above the law.

Our track record in recent years shows our commitment to pursuing the most challenging and complex financial crime investigations in the country. Over the last three fiscal years alone, the Department has filed nearly 10,000 financial fraud cases against nearly 14,500 defendants. These prosecutions have led to stiff prison sentences for many defendants. Last year, for example, the Criminal Division and the U.S. Attorney's Office in Houston secured a 110-year sentence for Robert Allen Stanford for orchestrating a 20-year, \$7 billion investment fraud scheme – just one of numerous investment fraud schemes the Department has prosecuted in recent years. Indeed, over the past several years, well over 100 defendants have been sentenced to 10 years or more in prison in cases involving bank fraud, investment fraud, procurement fraud or healthcare fraud, with more than 50 being sentenced to 20 years or more.

We have been just as aggressive with cases involving the manipulation of the markets, as seen by the extraordinary success of the U.S. Attorney's Office in Manhattan in an unprecedented string of insider trading cases over the last several years. Since August 2009, the Manhattan U.S. Attorney's Office has convicted more than 70 insider trading defendants. Among others, the office successfully prosecuted Raj Rajaratnam, General Partner of Galleon Management L.P., and Rajat Gupta, a former Goldman Sachs board member, for their involvement in the largest hedge fund insider trading scheme in history.

Our prosecutors and agents also continue to doggedly pursue health care fraudsters. Our Medicare Fraud Strike Force has convicted over 1,000 defendants of felony health care fraud offenses since the Strike Force's inception, and the average sentence in Strike Force cases is approximately 45 months in prison. In this past fiscal year alone, Strike Force prosecutors brought charges against 278 defendants who collectively billed Medicare more than \$1.5 billion.

Our fight against foreign bribery, too, is as robust as it has ever been. Just since last month, we have announced charges against several key defendants in ongoing, active Foreign Corrupt Practices Act investigations, one case involving an alleged bribery scheme to secure mining rights in the Republic of Guinea, another involving an alleged bribery scheme to secure power contracts in Indonesia, and, just two weeks ago, an alleged bribery scheme to obtain financial trading business from Venezuela's state economic development bank.

Similarly, our investigation of the manipulation at various banks of interbank lending rates, including LIBOR, has had reverberations across the globe. Thus far, the consequences for several multinational banking institutions have been far reaching, ranging from replacement of senior leaders at Barclays, to criminal charges against individuals, to detailed admissions of criminal wrongdoing and the payment of substantial penalties by three global banks, to felony guilty plea agreements by subsidiaries of banks at which much of the misconduct took place. In December 2012, Swiss-based UBS AG and its Japanese investment banking subsidiary agreed to pay \$1.5 billion in criminal and regulatory penalties and disgorgement for their role in the manipulation of the bank's LIBOR submissions. As part of that resolution, UBS Securities Japan, which played a direct role in the criminal conduct, agreed to plead guilty to felony wire fraud. In addition, the Department charged two former UBS traders with felony counts for allegedly manipulating LIBOR submissions. In February 2013, the Japanese investment banking subsidiary of the Royal Bank of Scotland agreed to plead guilty to felony wire fraud for its direct role in manipulating LIBOR submissions and, together with its parent company, RBS plc, agreed to pay approximately \$612 million in criminal and regulatory penalties and disgorgement.

As is evident from this track record, we are deeply committed to holding wrongdoers – whether individuals or business entities – to account for their crimes. In doing so, we follow long-standing Justice Department policy.

In our investigations of business entities, in particular, we are guided by firmly rooted Department policy, set out in the U.S. Attorneys' Manual, which requires our prosecutors to consider a number of factors in determining how and whether to proceed. Those factors include, among other considerations, the nature and seriousness of the offense; the pervasiveness of wrongdoing within the corporation; the existence and effectiveness of the corporation's pre-existing compliance program; the corporation's timely and voluntary disclosure of wrongdoing, and cooperation with the Department's investigation; the corporation's history of similar misconduct; the potential collateral consequences of prosecution, including on innocent third parties; and the adequacy of alternative remedies such as civil or regulatory enforcement actions.

There has been some discussion in recent months about one of those factors – the potential collateral consequences of charging a corporate entity – and we appreciate your interest in better understanding the extent to which the Department may consider possible

collateral consequences, including potentially to the economy, of criminal prosecutions against large, complex financial institutions.

As I noted, the U.S. Attorneys' Manual requires federal prosecutors to consider the potentially adverse impact a prosecution may have on investors, pension holders, customers, employees, and the public, including on innocent people who had nothing to do with the criminal conduct. Of course, as a threshold matter, federal prosecutors must determine that a business entity's conduct actually constitutes a federal crime. If prosecutors determine that the conduct does not constitute a federal crime, they need not even reach the question of assessing potential collateral consequences (including those affecting the public or the economy). And, of course, we do not consider such factors in deciding whether or not to charge individual executives and employees.

The consideration of collateral consequences and other factors when determining whether to charge a corporation has been required by the U.S. Attorneys' Manual since 2008. But the basic principles underlying those USAM provisions have a much longer history at the Department. The first Department-wide memo on this subject was issued in 1999, and those basic principles have been reaffirmed multiple times since then, including in 2003, 2006, and 2008.

When we do consider potential collateral consequences, we may, as the Attorney General has previously said, consult with experts outside the Justice Department – that is, with relevant domestic and foreign regulators. When the Department consults with relevant regulators, or hears from the companies that are the subjects of the Department's investigations and their counsel regarding potential collateral consequences, neither those agencies nor the companies receive any compensation from the Department.

None of the factors set forth in the U.S. Attorneys' Manual that I've mentioned, including potential collateral consequences, acts as a bar to prosecution, or has prevented the Justice Department from aggressively pursuing investigations and seeking criminal penalties in cases involving large, complex financial institutions. No individual or institution is immune from prosecution, and we intend to continue our aggressive pursuit of financial fraud with the same strong commitment with which we pursue other criminal matters of national and international significance.

Thank you for the opportunity to provide the Subcommittee with this overview of our financial fraud enforcement efforts. I look forward to answering any questions you may have.

JEFF MERKLEY  
OREGON

United States Senate  
WASHINGTON, DC 20510

December 13, 2012

COMMITTEES:  
ENVIRONMENT AND  
PUBLIC WORKS  
HEALTH, EDUCATION,  
LABOR, AND PENSIONS  
BANKING, HOUSING,  
AND URBAN AFFAIRS  
BUDGET

Hon. Eric Holder  
Attorney General  
Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

Dear Attorney General Holder:

On Tuesday, the Justice Department entered into a deferred prosecution agreement with HSBC related to more than \$800 million in illicit narcotics proceeds that drug traffickers laundered through the bank's Mexican and American affiliates, as well as over \$600 million in transactions that violated U.S. sanctions against Cuba, Iran, Libya, Sudan, and Burma.<sup>1</sup> Assistant Attorney General Lanny Breuer highlighted just how brazen the violations were, with traffickers depositing "hundreds of thousands of dollars in cash, in a single day, into a single account, using boxes designed to fit the precise dimensions of the teller window."<sup>2</sup> Sanctions violations were equally deliberate, with the bank intentionally stripping information from transactions to avoid detection. Yet despite these clear and blatant violations, the Department of Justice refused to bring criminal charges against the bank, relevant employees, or senior management.

Indeed, Mr. Breuer stated yesterday that in deciding not to prosecute, the Department considered the "collateral consequences" of its decision on the financial system. Mr. Breuer stated "If you prosecute one of the largest banks in the world, do you risk that people will lose jobs, other financial institutions and other parties will leave the bank, and there will be some kind of event in the world economy?"<sup>3</sup> The HSBC decision comes on the back of deferred prosecution agreements with Standard Charter Bank and ING Group related to similar charges.

<sup>1</sup> Department of Justice, Office of Public Affairs, *HSBC Holdings Plc. and HSBC Bank USA N.A. Admit to Anti-Money Laundering and Sanctions Violations, Forfeit \$1.256 Billion in Deferred Prosecution Agreement*, Dec. 11, 2012, <http://www.justice.gov/opa/pr/2012/December/12-crm-1478.html>.

<sup>2</sup> Peter Finn, Sari Horwitz, *Justice Department outlines HSBC transactions with drug traffickers*, THE WASHINGTON POST, Dec. 11, 2012, [http://www.washingtonpost.com/world/national-security/justice-department-outlines-hsbc-transactions-with-drug-traffickers/2012/12/11/1b8130c4-43bf-11e2-8061-253bccfe7532\\_story.html](http://www.washingtonpost.com/world/national-security/justice-department-outlines-hsbc-transactions-with-drug-traffickers/2012/12/11/1b8130c4-43bf-11e2-8061-253bccfe7532_story.html) (quoting Mr. Breuer).

<sup>3</sup> *Id.*

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Hon. Eric Holder  
December 13, 2012  
Page 2

I do not take a position on the merits of this or any other individual case, but I am deeply concerned that four years after the financial crisis, the Department appears to have firmly set the precedent that no bank, bank employee, or bank executive can be prosecuted even for serious criminal actions if that bank is a large, systemically important financial institution. This “too big to jail” approach to law enforcement, which deeply offends the public’s sense of justice, effectively vitiates the law as written by Congress. Had Congress wished to declare that violations of money laundering, terrorist financing, fraud, and a number of other illicit financial actions would *only* constitute civil violations, it could have done so. It did not.

Instead, Congress placed these financial crimes squarely in the federal criminal code precisely because the consequences are so severe. Drug trafficking between the U.S. and Mexico continues to wreak extraordinary violence across North America, leading to 15,000 deaths in Mexico in 2010 alone and continued gang violence and deaths in the U.S.<sup>4</sup> Drug cartels are also increasingly connected to terrorism. According to the Drug Enforcement Administration, 39 percent of State Department-designated foreign terrorist organizations (FTOs) have “confirmed links” to the drug trade, as of November 2011.<sup>5</sup> The consequences to U.S. national security for violations involving terrorism financing and Iran sanctions violations are obvious and severe. Congress deemed criminal law the appropriate tool for punishing and deterring actions that have such serious and damaging public consequences.

Refusing to prosecute on the grounds of financial stability is also troubling from the perspective of ending “too big to fail.” The Dodd-Frank Wall Street Reform and Consumer Protection Act, which declared some institutions to be systemically important financial institutions subject to tougher regulation, did *not* declare that those institutions would be exempt from criminal prosecution. Indeed, the Dodd-Frank Act explicitly created new authority to permit a failed institution to be wound down safely, without impacting financial stability. If a financial institution, because of its criminal actions, ultimately fails, that may indeed be precisely the consequence that justice and accountability demand, and which is so necessary to deterring future illegal behavior. I am deeply concerned that the Department’s continuing application of deferred prosecution agreements on the grounds of financial stability runs contrary to the intent of Congress and undermines the accountability to the rule of law that is so fundamental to a healthy, functioning free market economy.

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<sup>4</sup> Sara Miller Llanza, *Mexico drug war death toll up 60 percent in 2010. Why?*, CHRISTIAN SCIENCE MONITOR, Jan. 13, 2011, <http://www.csmonitor.com/World/Americas/2011/0113/Mexico-drug-war-death-toll-up-60-percent-in-2010.-Why>.

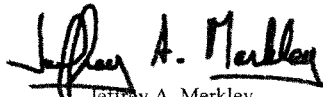
<sup>5</sup> Prepared testimony of U.S. Drug Enforcement Administration Special Operations Division Special Agent in Charge Derek S. Maltz, in U.S. Congress, House Comm. on Foreign Affairs, Subc. on Terrorism, Nonproliferation, and Trade, *Narcoterrorism and the Long Reach of U.S. Law Enforcement, Part II*, 112<sup>th</sup> Cong., Nov. 17, 2011.

Hon. Eric Holder  
December 13, 2012  
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According to the U.S. Sentencing Commission, jail time is served by over 96 percent of persons that plead or are found guilty of drug trafficking, 80 percent of those that plead or are found guilty of money laundering, and 63 percent of those caught in possession of drugs.<sup>6</sup> As the deferred prosecution agreement appears now to be the corporate equivalent of acknowledging guilt, the best way for a guilty party to avoid jail time may be to ensure that the party is or is employed by a globally significant bank. The Department's deferred prosecution agreements may offer something in the way of promises of future compliance, but they look sorely lacking in justice and accountability.

I ask for your immediate response and explanation.

Sincerely,



Jeffrey A. Merkley  
United States Senator

cc: Hon. Timothy Geithner, Secretary of the Treasury  
Hon. Ben Bernanke, Chairman, Federal Reserve Board  
Hon. Tom Curry, Comptroller of the Currency  
Hon. Martin Gruenberg, Chairman, Federal Deposit Insurance Commission

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<sup>6</sup> U.S. Sentencing Commission, *2011 Sourcebook of Federal Sentencing Statistics*, Table 12, (2011)  
[http://www.ussc.gov/Data\\_and\\_Statistics/Annual\\_Reports\\_and\\_Sourcebooks/2011/Table12.pdf](http://www.ussc.gov/Data_and_Statistics/Annual_Reports_and_Sourcebooks/2011/Table12.pdf).

United States Senate  
WASHINGTON, DC 20510

January 29, 2013

The Honorable Eric H. Holder, Jr.  
United States Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530

Dear Attorney General Holder:

The large number of private and government lawsuits since the global financial crisis continues to undermine public confidence in our financial markets. This confidence can only be restored by demonstrating that there are consistent rules in place that provide accountability for wrongdoing and deter financial predators.

Unfortunately, many of the settlements between large financial institutions and the federal government involve penalties that are disproportionately low, both in relation to the profits which resulted from those wrongful actions as well as in relation to the costs imposed upon consumers, investors, and the market.

The nature of these settlements has fostered concerns that “too big to fail” Wall Street banks enjoy a favored status, in statute and in enforcement policy. This perception undermines the public’s confidence in our institutions and in the principal that the law is applied equally in all cases.

On settling with Swiss Bank UBS for Libor manipulation, for example, you said, “[t]he impact on the stability of the financial markets around the world is something we take into consideration. We reach out to experts outside of the Justice Department to talk about what are the consequences of actions that we might take, what would be the impact of those actions if we want to make particular prosecutive decisions or determinations with regard to a particular institution.”

In an interview with Frontline, outgoing Assistant Attorney General Lanny Breuer defended the Department of Justice’s inability to prosecute large financial institutions by saying, “but in any given case, I think I and prosecutors around the country, being responsible, should speak to regulators, should speak to experts, because if I bring a case against institution, and as a result of bringing that case, there’s some huge economic effect — if it creates a ripple effect so that suddenly, counterparties and other financial institutions or other companies that had nothing to do with this are affected badly — it’s a factor we need to know and understand.”

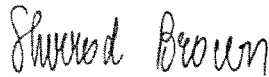
These statements raise important questions about the Justice Department’s prosecutorial philosophy. In order to explore the Justice Department’s treatment of potential criminal activity by large financial institutions, please answer the following questions and provide the following information:

1. Has the Justice Department designated certain institutions whose failure could jeopardize the stability of the financial markets and are thus, "too big to jail"? If so, please name them.
2. Has the Justice Department ever failed to bring a prosecution against an institution due to concern that their failure could jeopardize financial markets?
3. Are there any entities the Justice Department has entered into settlements with, in which the amount of the settlement reflected a concern that markets could be impacted by such a settlement? If so, for which entities?
4. Please provide the names of all outside experts consulted by the Justice Department in making prosecutorial decisions regarding financial institutions with over \$1 billion in assets.
5. Please provide any compensation contracts for these individuals.
6. How did DOJ ensure that these experts provided unconflicted and unbiased advice to DOJ?

Our markets will only function efficiently if participants believe that all laws will be enforced consistently, and that violators will be punished to the fullest extent of the law. There should not be one set of rules that apply to Wall Street and another set for the rest of us.

Thank you for your cooperation and attention in this matter. We would appreciate a response by February 8, 2013. If you have any questions, please do not hesitate to contact Graham Steele for Senator Brown at (202) 224-2315 or Chris Lucas for Ranking Member Grassley at (202) 224-5225.

Sincerely,



Sherrod Brown  
Chairman  
Banking Committee,  
Subcommittee on Financial Institutions  
and Consumer Protection



Charles E. Grassley  
Ranking Member  
Judiciary Committee



U.S. Department of Justice

Office of Legislative Affairs

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*Office of the Assistant Attorney General**Washington, D.C. 20530*

FEB 27 2013

The Honorable Sherrod Brown  
Chairman  
Subcommittee on Financial Institutions and Consumer Protection  
Committee on Banking, Housing, and Urban Affairs  
United States Senate  
Washington, D.C. 20510

Dear Mr. Chairman:

This responds to your letter to the Attorney General dated January 29, 2013, regarding criminal prosecutions of large financial institutions. An identical response is being sent to Senator Grassley, who joined in your letter.

The Department of Justice is committed to aggressively investigating allegations of wrongdoing at financial institutions and, along with our law enforcement partners, holding individuals and corporations responsible for their conduct. We appreciate your interest in better understanding the Department's "prosecutorial philosophy" concerning wrongdoing by large financial institutions. Our decision-making in this regard is guided by long-standing policies set forth in the United States Attorneys' Manual ("USAM"), particularly USAM 9-27.000 *et seq.*, Principles of Federal Prosecution, and 9-28.000 *et seq.*, Principles of Federal Prosecution of Business Organizations. Federal prosecutors have relied on these Principles in making charging determinations against corporations since they were first articulated, in their initial form, over a decade ago.

As a general matter, the USAM instructs prosecutors to apply the same factors in determining whether to charge a corporation as they do with respect to an individual: that the defendant's conduct constituted a federal crime and that the admissible evidence is more likely than not sufficient to obtain and secure a conviction by a jury. *See* USAM 9-27.220, 9-28.300. The USAM Principles dictate that corporations should be treated neither more leniently nor more harshly due to their artificial nature. *See* USAM 9-28.200. No corporate entity, no matter how large, is immune from prosecution.

The USAM details the benefits of vigorous enforcement against corporate wrongdoing but also explicitly notes that in certain instances it may be appropriate, upon consideration of factors set forth in the Principles, to resolve corporate criminal matters by means other than indictment. *See* USAM 9-28.200. Non-prosecution and deferred prosecution agreements occupy

The Honorable Sherrod Brown  
Page 2

an important middle ground between declining criminal prosecution altogether and pursuing prosecution of an entity where harm to innocent parties is likely to result. It should be recognized that some of the terms typically agreed to by companies in negotiated corporate dispositions may not be available if a court were imposing a criminal sentence in a litigated case. For example, the requirement that a company cooperate with the Department's ongoing criminal investigation (which is a common term in most negotiated corporate dispositions) may not be an available sanction in a litigated sentencing.

The USAM instructs that, in determining whether to bring charges or negotiate a plea or other agreement with a corporate target, prosecutors should consider, among other factors, the nature and seriousness of the offense; the pervasiveness of wrongdoing within the corporation; the corporation's timely and voluntary disclosure of wrongdoing; the existence and effectiveness of the corporation's pre-existing compliance program; the adequacy of remedies such as civil or regulatory enforcement actions; and the collateral consequences of prosecution. *See* USAM 9-28.300, 9-28.900.

In considering collateral consequences, prosecutors must determine whether there would be disproportionate harm to investors, pension holders, customers, employees, and others who were not personally culpable, as well as impact on the public arising from the prosecution. *See* USAM 9-28.300, 9-28.1000. In analyzing the collateral consequences of any particular corporate prosecution, it is entirely appropriate for prosecutors to hear from subject matter experts at relevant regulatory authorities. When the Department consults with relevant regulatory authorities, or hears from the companies who are the targets of the Department's investigations and their counsel regarding potential collateral consequences for enforcement actions, neither those agencies nor the target companies receive any compensation from the Department. The USAM also clarifies that while neither a corporation nor an individual may avoid prosecution merely by paying a sum of money, a prosecutor may consider, again, among other factors, the corporation's willingness to make restitution, or take other remedial actions, such as improving existing compliance programs or disciplining employees. The USAM explicitly encourages prosecutors to consult with relevant federal or state agencies in evaluating the appropriateness or adequacy of remedial compliance programs. *See* USAM 9-28.800.

The Department shares your concern that there must be accountability for corporate wrongdoing. Whether it is securing felony manslaughter convictions for BP or fraud convictions for a board member of Goldman Sachs, the Department has not hesitated to criminally prosecute major corporations and top executives when we have the evidence, no matter what the crime. And, as our ongoing criminal investigation into the manipulation of the London Interbank Offered Rate (LIBOR) demonstrates, we will vigorously investigate financial institutions, regardless of size, for suspected misconduct, and make charging decisions in accordance with the USAM. In December 2012, Swiss-based UBS AG and its Japanese subsidiary agreed to pay \$1.5 billion in criminal and regulatory penalties and disgorgement for their roles in manipulating LIBOR submissions, and UBS Securities Japan agreed to plead guilty to felony wire fraud. UBS Securities Japan's guilty plea was the first criminal conviction of a

The Honorable Sherrod Brown  
Page 3

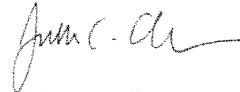
significant financial institution in several years. The Department also charged two former UBS traders with felony counts for allegedly manipulating the bank's LIBOR submissions. Following the announcement of the UBS agreement, another major financial institution – the Japanese subsidiary of the Royal Bank of Scotland – agreed to plead guilty to felony wire fraud for its role in manipulating LIBOR submissions, and together with its parent company, RBS plc, agreed to pay approximately \$612 million in criminal and regulatory penalties and disgorgement.

In addition, over the past several years, the Department has secured significant financial fraud convictions of high-level executives. For example, we obtained convictions against Robert Allen Stanford, the former chairman of the board of directors of Stanford International Bank, and several of his executive-level co-conspirators for their roles in orchestrating a 20-year, multibillion dollar investment scheme. Stanford was sentenced to 110 years of imprisonment and required to forfeit \$330 million to the United States. The Department also successfully prosecuted Raj Rajaratnam, General Partner of Galleon Management L.P., and Rajat Gupta, a former Goldman Sachs board member, for their involvement in the largest hedge fund insider trading scheme in history. Rajaratnam is serving 11 years and Gupta is serving two years in prison. These prosecutions, as well as others we have brought over the past four years, are the result of the Department's aggressive approach to financial fraud enforcement.

In combating financial fraud, the Department and its partners are committed to using all of the remedies available – criminal, civil, regulatory and administrative. The cases outlined above demonstrate the Department's commitment to using the full range of tools provided by Congress to seek justice for financial misconduct.

We hope this information is helpful. Please do not hesitate to contact this office if we may be of assistance with this or any other matter.

Sincerely,



Judith C. Appelbaum  
Principal Deputy Assistant Attorney General

cc: The Honorable Patrick J. Toomey  
Ranking Minority Member

February 6, 2013

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

Dear Attorney General Holder:

I commend the Department of Justice, the Commodity Futures Trading Commission, and the banking regulators for your collective efforts in recent months to investigate and prosecute offenses related to LIBOR manipulation, money laundering, and violations of the Bank Secrecy Act. However, I remain generally concerned about whether deferred prosecution agreements, civil actions and monetary settlements alone are enough to deter the abuses we've witnessed in the financial sector.

As the Justice Department continues its ongoing efforts to investigate financial crimes in the United States, the Department should consider the scope of misconduct and identify individual actors, when appropriate, who can be criminally prosecuted and tried in a court of law. In the absence of any indictments in cases involving "egregious" misconduct, the negative incentives that encourage and reward rule breaking will remain unchecked.

A number of money laundering investigations have made headlines in the last several months reflecting a dramatic increase in enforcement activity. Despite these enhanced efforts, however, the Justice Department has been publicly criticized for entering into deferred prosecution agreements rather than proceeding with criminal prosecutions of individual actors. While some contend, as I do, that the government should pursue criminal prosecutions of individuals to deter future misconduct, we are told by DOJ officials that they sometimes lack sufficient evidence to prove in court that an individual or group of employees acted with criminal intent.

Therefore, I respectfully request your participation – or designated members of your Financial Fraud Enforcement Taskforce – in a roundtable discussion with Members of the House Financial Services Committee to discuss the Department's enforcement activities. Many of our Members are anxious to understand your collaborative efforts with foreign and U.S. banking regulators; the nature and number of suspicious activity reports (SARs) you have received from federal financial regulatory agencies; and, whether deferred prosecution agreements and monetary settlements have empirically resulted in a decrease in fraudulent or criminal conduct. We would also welcome your comments on the extent to which the Justice Department takes into account the "systemic risk" a financial institution may pose in choosing whether to enter into a settlement agreement with the institution rather than pursue prosecution, and whether those considerations occur in consultation with the institution's regulatory agencies.



The Honorable Eric H. Holder, Jr.  
Page 2  
February 6, 2013

Once again, I want to commend you for your aggressive efforts to investigate and prosecute financial crimes. I strongly believe that the federal government must remain committed to accountability. We can achieve this through effective law enforcement in which we demonstrate that no one individual or institution is above the law.

Sincerely,

A handwritten signature in black ink that reads "Maxine Waters". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

MAXINE WATERS  
Ranking Member

cc: The Honorable Gary Gensler, Chairman, Commodity Futures Trading Commission  
The Honorable Thomas J. Curry, Chairman, Office of the Comptroller of the Currency

JEB HENSARUNG, TX, CHAIRMAN

United States House of Representatives  
 Committee on Financial Services  
 2129 Rayburn House Office Building  
 Washington, D.C. 20515

MAXINE WATERS, CA, RANKING MEMBER

March 8, 2013

The Honorable Jacob Lew  
 Secretary  
 U.S. Department of the Treasury  
 1500 Pennsylvania Avenue, N.W.  
 Washington, DC 20500

The Honorable Eric H. Holder, Jr.  
 Attorney General  
 U.S. Department of Justice  
 950 Pennsylvania Avenue, N.W.  
 Washington, DC 20530

Dear Secretary Lew and Attorney General Holder:

We write today to express our deep concern regarding recent comments by the Attorney General and the Undersecretary for Terrorism and Financial Intelligence at the Treasury Department, David Cohen, relating to criminal prosecutions of large financial institutions. Yesterday, according to press reports, in testimony before the Senate Banking Committee, Undersecretary Cohen stated that the Treasury Department declined to provide the Justice Department with an opinion on the “impact to the financial system” of filing charges against HSBC. The Justice Department solicited this information in connection with its investigation of violations of federal anti-money laundering laws and related statutes that ultimately resulted in a deferred prosecution agreement and HSBC’s payment of \$1.9 billion in fines. Undersecretary Cohen explained that in regard to the HSBC matter, “we [Treasury] weren’t in a position to offer any meaningful assessment of what the impact might be.”

In testimony on March 6, 2013, before the Senate Judiciary Committee, in response to a question from Senator Grassley regarding the Justice Department’s prosecution of high-profile financial companies or individuals, Attorney General Holder testified that the size of certain financial institutions was hindering the Justice Department’s ability to prosecute:

I am concerned that the size of some of these institutions becomes so large that it does become difficult for us to prosecute them when we are hit with indications that if you do prosecute, if you do bring a criminal charge, it will have a negative impact on the national economy, perhaps even the world economy. And I think that is a function of the fact that some of these institutions have become too large. . . . I think it has an inhibiting influence – [an] impact on our ability to bring resolutions that I think would be more appropriate.

And on December 19, 2012, in announcing the Justice Department’s settlement with UBS for manipulation of the London Inter-Bank Offered Rate (LIBOR), Attorney General Holder noted that the Justice Department was relying on outside experts in making prosecutorial decisions:

The impact on the stability of the financial markets around the world is something we take into consideration. We reach out to experts outside of the Justice Department to talk about what are the consequences of actions that we might take, what would be the impact of those actions if we want to make particular prosecutive decisions or determinations with regard to a particular institution.

These statements by the Attorney General and Undersecretary Cohen raise important questions regarding our financial system and the economic analyses the Justice Department is relying upon to make its prosecutorial decisions in cases involving large, complex financial institutions. Accordingly, in order to assist the Committee in evaluating these issues and to prepare for possible hearings on this matter, please provide the following:

- (1) All records<sup>1</sup> related to the economic impact on the financial system of the United States of any actual or potential criminal prosecution, civil lawsuit, or administrative enforcement action, in which a financial institution<sup>2</sup> has been or may be a party, including without limitation records in the nature of analysis, forecasts, legal or other memoranda, and correspondence, whether or not actually prepared by you or any other individual employed by, or working on behalf of, your agency.
- (2) All records related to a request by any division, department, agency, instrumentality, or other authority of the federal or a state government, or by any individual, that the Department of Justice consider the economic impact on the financial system of the United States when determining whether to commence a criminal prosecution, civil lawsuit, or administrative enforcement action, in a matter in which a financial institution has been or may be a party.
- (3) All records in your possession generated by the Office of the Comptroller of the Currency ("OCC") related to the economic impact on the financial system of the United States of any actual or potential prosecution, civil lawsuit, or administrative enforcement action, in which a financial institution has been or may be a party, within the jurisdiction of the OCC.
- (4) For purposes of this request only, the term "You" means the Secretary of the Treasury in his capacity as Chairperson of the Financial Stability Oversight Council ("FSOC"). All records in the possession of FSOC related to the economic impact on the financial system of the United States of any actual or potential criminal prosecution, civil lawsuit, or administrative enforcement action, in which a financial institution has been or may be a party, including without limitation records in the nature of analysis, forecasts, legal or other memoranda, and correspondence,

<sup>1</sup> The term "records" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded or preserved, and whether original or copy.

<sup>2</sup> For purposes of this letter, "financial institution" means any legal entity that is predominantly engaged in financial activities.

JEB HENSARLING, TX, CHAIRMAN

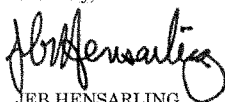
United States House of Representatives  
Committee on Financial Services  
2129 Rayburn House Office Building  
Washington, D.C. 20515

MAXINE WATERS, CA, RANKING MEMBER

whether or not actually prepared by you or any other individual employed by, or working on behalf of, FSOC.

Please work with the Financial Services Committee staff to provide the requested documents and communications as soon as practicable but not later than March 22, 2013. We appreciate your prompt attention to this matter. If you have questions regarding this request, please contact Joseph Clark of Committee staff at (202) 225-7502.

Sincerely,



JEB HENSARLING  
Chairman  
Committee on Financial Services



PATRICK McHENRY  
Chairman  
Subcommittee on Oversight  
and Investigations

cc: The Honorable Maxine Waters  
The Honorable Al Green



DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

ASSISTANT SECRETARY

March 28, 2013

The Honorable Jeb Hensarling  
Chairman  
Committee on Financial Services  
U.S. House of Representatives  
Washington, DC 20515

Dear Chairman Hensarling:

I am writing in response to your recent letter to Secretary Lew regarding criminal prosecutions of large financial institutions. We appreciate your interest in these important issues. As Under Secretary Cohen testified before the Senate Banking Committee, the Department of the Treasury strongly supports vigorous enforcement of the law.

Treasury believes that no individual or institution is above the law. Although Treasury does not have statutory authority to prosecute criminal misconduct—that authority rests exclusively with the Department of Justice (DOJ)—we do have authority to enforce U.S. economic sanctions, as well as certain anti-money laundering laws and regulations, through civil actions. Treasury has a clear record of aggressively pursuing investigations and enforcement actions against both U.S. and foreign financial institutions that violate those laws and regulations. For example, over the past year, Treasury's Office of Foreign Assets Control and its Financial Crimes Enforcement Network entered into record-setting civil settlements with various financial institutions for violations of U.S. sanctions programs and the Bank Secrecy Act, respectively.

Treasury also has key responsibilities under the Dodd-Frank Wall Street Reform and Consumer Protection Act. The Act is designed to make sure American taxpayers never again have to rescue large financial firms. It provides regulators with critical tools and authorities—which did not exist before the financial crisis—including authorities to resolve large firms whose failures would have serious adverse effects on financial stability. The Act expressly prohibits taxpayer bailouts, while protecting American taxpayers and the U.S. economy. Treasury is committed to this purpose, and we will continue to work with the independent regulators to finish implementing the Act.

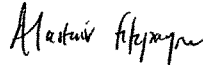
Your letter specifically inquires about economic analyses that the DOJ may have relied upon to make prosecutorial decisions in cases involving large, complex financial institutions. We have conducted a search of Treasury records and have not identified any such analyses. We have identified, however, an analysis that was prepared in a context unrelated to the HSBC matter—an informal presentation prepared by staff of a Financial Stability Oversight Council (FSOC)

member agency for the Deputies Committee of the FSOC that describes the potential impact on the financial system of certain recent regulatory investigations. The presentation was not provided to the DOJ nor to the FSOC, and it was prepared more than two months after the first civil settlement of those investigations was announced. The document contains market-sensitive information, but we are prepared to make it available for review by you or your staff. Please contact me to arrange a convenient time for such a review.

In addition, your letter seeks similar records generated by the Office of the Comptroller of the Currency (OCC). We have not identified any such records in our possession. As you know, the OCC is a bureau of Treasury, but it operates independently in its role as a financial regulator.

Thank you for your letter. We look forward to working with you and the Committee on these important issues.

Sincerely,



Alastair M. Fitzpayne  
Assistant Secretary for Legislative Affairs

Identical letter sent to:

The Honorable Patrick McHenry

cc: The Honorable Maxine Waters  
The Honorable Al Green  
The Honorable Eric Holder

JEB HENSARLING, TX, CHAIRMAN

United States House of Representatives  
 Committee on Financial Services  
 2129 Rayburn House Office Building  
 Washington, D.C. 20515

MAXINE WATERS, CA, RANKING MEMBER

March 20, 2013

The Honorable Jacob Lew  
 Secretary  
 U.S. Department of the Treasury  
 1500 Pennsylvania Avenue, NW  
 Washington, D.C. 20500

Dear Secretary Lew:

I write today to obtain additional information about the economic analyses relied upon by the Department of Justice in making prosecutorial decisions in cases involving large, complex financial institutions.

On December 19, 2012, in announcing the Justice Department's settlement of a criminal case with a large financial institution, the Attorney General noted that the Justice Department was relying on outside experts in making prosecutorial decisions. Then, when appearing before the Senate Judiciary Committee on March 6, 2013, the Attorney General testified that the size of certain financial institutions made them difficult to prosecute because such prosecutions could have "a negative impact on the national economy, perhaps even the world economy." A day later, on March 7, 2013, Under Secretary for Terrorism and Financial Intelligence David Cohen testified before the Senate Banking Committee that the Treasury Department had declined to provide the Justice Department with an opinion on the "impact to the financial system" of filing charges against HSBC by explaining that "we [Treasury] weren't in a position to offer any meaningful assessment of what the impact might be . . . given the fact that we're not the prudential regulator . . . [and] we're not privy to the responses that the regulators may have to the variety of different ways that the Justice Department may resolve the case."

As you know, the Dodd-Frank Wall Street Reform and Consumer Protection Act (PUB. L. 111-203) ("the Dodd-Frank Act") created the Financial Stability Oversight Council ("FSOC"), which you chair, and subsection (a)(1) of Section 112 of the Dodd-Frank Act requires FSOC:

(A) to identify risks to the financial stability of the United States that could arise from the material financial distress or failure, or ongoing activities, of large, interconnected bank holding companies or nonbank financial companies, or that could arise outside the financial services marketplace; [and]

\* \* \*

(C) to respond to emerging threats to the financial stability of the United States financial system.

Furthermore, under subsection (a)(2) of Section 112 of the Dodd-Frank Act, FSOC is specifically required, among other duties:

- (A) [to] collect information from member agencies . . . and, if necessary to assess risks to the United States financial system, to direct the Office of Financial Research to collect information from bank holding companies and nonbank financial companies;

\* \* \*

- (C) [to] monitor the financial services marketplace in order to identify potential threats to the financial stability of the United States; [and]

\* \* \*

- (E) [to] facilitate information sharing and coordination among [FSOC's] member agencies and other Federal and State agencies regarding domestic financial services . . . enforcement actions[.]

Accordingly, based on its statutory authority, and because FSOC is composed in part of prudential regulators that supervise large financial institutions, it appears that FSOC would be the appropriate entity to conduct the analysis the Attorney General was seeking. However, on March 14, 2013, before the House Financial Services Committee's Subcommittee on Oversight and Investigations, representatives of FSOC and the Office of Financial Research ("OFR") testified that neither agency was queried regarding any potential Justice Department prosecutions. Amias Gerety, the Deputy Assistant Secretary for FSOC at the Treasury Department, testified that "[m]y understanding is that the Justice Department reached out to Treasury but not to the Council [FSOC] as a whole." Mr. Gerety further testified that "I was not personally contacted [by the Justice Department]," and that "I'm not personally aware of the officials within the Treasury that . . . engaged with the Department of Justice on this question. I can say that my understanding is that the Treasury is not able to offer a meaningful assessment of the impact." The OFR Director, Richard Berner, also testified that neither FSOC nor the Justice Department contacted OFR on this issue, and that as a result OFR has not performed any analysis of the impact of such prosecutions.

This testimony raises troubling questions about the process the Treasury Department followed in assessing the Justice Department's request and the Treasury Department's failure to consult with FSOC and OFR — entities purportedly equipped to provide the Justice Department with exactly the kind of financial analysis it appeared to be seeking. Accordingly, to assist the Subcommittee in its investigation of this matter and to prepare for potential hearings, please provide the names of the agencies, bureaus, components, groups and/or departments within the Treasury Department that were involved in conducting the requested analysis for the Justice Department.



JEB HENSARLING, TX, CHAIRMAN

United States House of Representatives  
Committee on Financial Services  
2129 Rayburn House Office Building  
Washington, D.C. 20515

MAXINE WATERS, CA, RANKING MEMBER

Please provide the requested information as soon as practicable but not later than April 3, 2013. I appreciate your prompt attention to this matter. Any questions regarding this request should be directed to Joseph Clark of Committee staff at (202) 225-7502.

Sincerely,



PATRICK MCHENRY

Chairman

Subcommittee on Oversight and Investigations

cc: The Hon. Al Green, Ranking Member



DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

ASSISTANT SECRETARY

May 10, 2013

The Honorable Patrick McHenry  
Chairman  
Subcommittee on Oversight and Investigations  
Committee on Financial Services  
U.S. House of Representatives  
Washington, DC 20515

Dear Chairman McHenry:

I am writing in response to your recent letter to Secretary Lew regarding economic analyses relied upon by the Department of Justice (DOJ) in criminal cases involving large, complex financial institutions. We appreciate your continued interest in these important matters. As we noted in previous correspondence, however, we have not identified any analyses prepared by the Department of the Treasury for the DOJ regarding the potential prosecution of large, complex financial institutions.

The DOJ has exclusive statutory authority to prosecute criminal misconduct. Nonetheless, Treasury believes that no individual or institution is above the law. Treasury has authority to enforce U.S. economic sanctions, as well as certain anti-money laundering laws and regulations, through civil actions. And we have a clear record of aggressively pursuing investigations and enforcement actions in those areas.

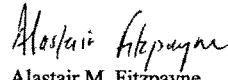
Your letter references recent testimony by Treasury Under Secretary David Cohen before the Senate Judiciary Committee. In response to questions about DOJ's investigation of HSBC, Under Secretary Cohen stated:

[T]he Justice Department contacted us, asked whether we could provide guidance on what the impact to the financial system may be of a criminal disposition in the HSBC case. We informed the Justice Department that given the complexity of the potential dispositions, given the fact that we're not the prudential regulator, given the fact that we're not privy to the different charges that the Justice Department may bring and we're not privy to the responses that the regulators may have to the variety of different ways that the Justice Department may resolve the case, that we were not in a position to offer any meaningful guidance to the Justice Department in that matter.

Your letter asks us to identify the offices within Treasury that “were involved in conducting the requested analysis” for the DOJ. As Under Secretary Cohen noted above, Treasury considered DOJ’s request and concluded that we could not offer any meaningful guidance. Treasury did not conduct any economic analysis regarding a potential criminal prosecution of HSBC, nor did we provide any such analysis to the DOJ.

Thank you for your letter. Treasury strongly supports vigorous enforcement of the law, and we look forward to working with you in the future.

Sincerely,



Alastair M. Fitzpayne  
Assistant Secretary for Legislative Affairs

cc: The Honorable Al Green

JEB HENSARLING, TX . CHAIRMAN

United States House of Representatives  
Committee on Financial Services  
2129 Rayburn House Office Building  
Washington, D.C. 20515

MAXINE WATERS, CA, RANKING MEMBER

March 20, 2013

The Hon. Ben S. Bernanke  
Chairman  
Federal Reserve Board of Governors  
20th Street and Constitution Ave, NW  
Washington, D.C. 20551

Dear Chairman Bernanke:

I write today to obtain additional information about the economic analyses relied upon by the Department of Justice in making prosecutorial decisions in cases involving large, complex financial institutions supervised by the Federal Reserve Board ("Federal Reserve").

On December 19, 2012, in announcing the Justice Department's settlement of a criminal case with a large financial institution, the Attorney General noted that the Justice Department was relying on outside experts in making prosecutorial decisions. Then, when appearing before the Senate Judiciary Committee on March 6, 2013, the Attorney General testified that the size of certain financial institutions made them difficult to prosecute because such prosecutions could have "a negative impact on the national economy, perhaps even the world economy." A day later, on March 7, 2013, before the Senate Banking Committee, Federal Reserve Governor Jerome Powell testified that the Justice Department asked representatives of the Federal Reserve to provide information about, among other things, whether certain statutes would inhibit investment activity in a company that has been convicted of a felony offense.<sup>1</sup> Governor Powell further testified that he could not recall whether the Justice Department asked the Federal Reserve to provide information detailing the impact on the economy of prosecuting large financial institutions.

To assist the Subcommittee in its investigation of this matter and to prepare for potential hearings, please provide the names of the persons who contacted the Federal Reserve on behalf of the Justice Department and the names of the persons who responded to the Justice Department on behalf of the Federal Reserve. If these requests and replies are in writing, please provide copies of all such requests and replies. If there are no written communications on this matter, please so state in your response.

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<sup>1</sup> For purposes of this letter, "Federal Reserve" means the Federal Reserve Board of Governors and any Federal Reserve Bank as well as any persons employed by, or working on behalf of, those entities.

JEB HENSARLING, TX, CHAIRMAN

United States House of Representatives  
Committee on Financial Services  
2129 Rayburn House Office Building  
Washington, D.C. 20515

MAXINE WATERS, CA, RANKING MEMBER

Please provide the requested information as soon as practicable but not later than April 3, 2013. I appreciate your prompt attention to this matter. Any questions regarding this request should be directed to Joseph Clark of Committee staff at (202) 225-7502.

Sincerely,



PATRICK MCHENRY

Chairman

Subcommittee on Oversight and Investigations

cc: The Hon. Al Green, Ranking Member



BOARD OF GOVERNORS  
OF THE  
FEDERAL RESERVE SYSTEM  
WASHINGTON, D. C. 20551

BEN S. BERNANKE  
CHAIRMAN

April 22, 2013

The Honorable Patrick McHenry  
Chairman  
Subcommittee on Oversight and Investigations  
Committee on Financial Services  
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your letter, dated March 20, 2013, concerning cooperation between the Federal Reserve and the Justice Department in enforcement cases involving large complex financial institutions supervised by the Federal Reserve. The Federal Reserve works very closely on its enforcement matters with a number of Federal and State agencies with mutual supervisory and prosecutorial interest, including the Department of Justice, the Department of Treasury, the Office of Foreign Asset Control, the Financial Crimes Enforcement Network, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and various state supervisory and law enforcement authorities (the "Agencies").<sup>1</sup> In addition, the Federal Reserve often coordinates its activities with foreign regulatory authorities such as the U.K. Financial Services Authority.

As Governor Powell emphasized during his testimony on March 7, 2013, before the Senate Banking Committee, the Federal Reserve believes that no financial institution is above the law. Indeed, the Federal Reserve, which has authority to impose only civil penalties and orders, has on its own and in coordination with the other Agencies imposed a number of substantial fines against the largest financial firms using the enforcement authorities granted the Federal Reserve by Congress. The Department of Justice has exclusive authority to impose criminal penalties, and the Federal Reserve works closely with the Department to share information and coordinate our respective activities.

Your letter noted Governor Powell's testimony in March responding to a question relating to the recent criminal settlement with HSBC Holdings, PLC. He indicated that he did not recall whether there were specific discussions with the Justice Department about HSBC, but believed there had been conversations between the Federal Reserve and the Department in which questions were asked about how a statute might apply, for

<sup>1</sup> See, e.g., Board of Governors of the Federal Reserve System (2012), "[Federal Reserve Board issues consent cease and desist order, and assesses civil money penalty against HSBC Holdings PLC and HSBC North America Holdings, Inc.](#)," press release, December 11.

The Honorable Patrick McHenry  
Page Two

example, whether a statute might prevent persons from investing in a company that had been convicted of, or pled guilty to, a felony.

We have confirmed that Justice Department personnel did not seek the views of the Federal Reserve on the collateral consequences of a decision to prosecute HSBC. As Governor Powell indicated, Federal Reserve staff did participate in a meeting with senior staff of the Justice Department's Criminal Division, at the request of the Department, to discuss in general terms ways in which criminal prosecutors and banking regulators could better coordinate information sharing in order to assist the Justice Department in assessing the collateral consequences of the criminal conviction of banking organizations. This meeting did not include discussion of the views of the Federal Reserve on collateral consequences of prosecuting any institution, either specifically or as a general matter. Moreover, no written materials were provided by the Federal Reserve to the Justice Department in connection with this meeting.

I hope you find this information helpful.

Sincerely,

A handwritten signature in black ink, appearing to be "P. McHenry", written in a cursive style.

JEB HENSARLING, TX, CHAIRMAN

United States House of Representatives  
Committee on Financial Services  
2129 Rayburn House Office Building  
Washington, D.C. 20515

MAXINE WATERS, CA, RANKING MEMBER

March 20, 2013

The Hon. Thomas J. Curry  
Comptroller of the Currency  
Office of the Comptroller of the Currency  
250 E Street SW  
Washington, D.C. 20219

Dear Mr. Curry:

I write today to obtain additional information about the economic analyses relied upon by the Department of Justice in making prosecutorial decisions in cases involving large, complex financial institutions.

On December 19, 2012, in announcing the Justice Department's settlement of a criminal case with a large financial institution, the Attorney General noted that the Justice Department was relying on outside experts in making prosecutorial decisions. Then, when appearing before the Senate Judiciary Committee on March 6, 2013, the Attorney General testified that the size of certain financial institutions made them difficult to prosecute because such prosecutions could have "a negative impact on the national economy, perhaps even the world economy." A day later, on March 7, 2013, before the Senate Banking Committee, you testified that the Justice Department contacted the Office of the Comptroller of the Currency ("OCC") to determine the circumstances in which the OCC was authorized to revoke a financial institution's bank charter, thus preventing the regulated entity from carrying out business activities permitted by virtue of the charter and potentially impacting the financial system of the United States. You further testified that the process to revoke such a charter "would be initiated by the Comptroller's office, but only upon a conviction for any money laundering charges" and that the institution would receive notice that it was subject to a charter revocation proceeding and a hearing before the OCC.

To assist the Subcommittee in its investigation of this matter and to prepare for potential hearings, please provide the names of the persons who contacted the OCC on behalf of the Justice Department and the names of the persons who responded to the Justice Department on behalf of the OCC. If these requests and replies are in writing, please provide copies of all such requests and replies. If there are no written communications on this matter, please so state in your response.




JEB HENSARLING, TX, CHAIRMAN

United States House of Representatives  
Committee on Financial Services  
2129 Rayburn House Office Building  
Washington, D.C. 20515

MAXINE WATERS, CA, RANKING MEMBER

Please provide the requested information as soon as practicable but not later than April 3, 2013. I appreciate your prompt attention to this matter. Any questions regarding this request should be directed to Joseph Clark of Committee staff at (202) 225-7502.

Sincerely,



PATRICK MCHENRY

Chairman

Subcommittee on Oversight and Investigations

cc: The Hon. Al Green, Ranking Member



April 8, 2013

The Honorable Patrick McHenry  
Chairman  
Subcommittee on Oversight and Investigations  
United States House of Representatives  
Committee on Financial Services  
Washington, D.C. 20515

Dear Chairman McHenry:

Thank you for your letter dated March 20, 2013, in which you request information pertaining to the Justice Department's prosecutorial decision concerning a criminal case with HSBC Holdings plc and HSBC Bank USA, N.A. With regard to this decision you request: (1) the names of persons who contacted the OCC on behalf of the Justice Department; (2) the names of persons who responded to the Justice Department on behalf of the OCC; and (3) any written communications on this matter.

The following is responsive to each of these items:

- (1) Prior to the December 11, 2012 settlement date, former Assistant Attorney General Lanny Breuer contacted me via telephone to discuss the OCC's statutory authority concerning this particular matter. Mr. Breuer is the only Department of Justice official to contact the OCC on this matter.
- (2) I am the only OCC person to respond to the Department of Justice on this matter. During our discussion, I explained the charter revocation process to Mr. Breuer.
- (3) There are no written communications concerning this matter.

If you have questions, please contact me or Carric Moore, Director for Congressional Liaison, at 202-649-6737.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tom Curry', written over a large, stylized flourish that extends downwards and to the right.

Thomas J. Curry  
Comptroller of the Currency

cc: The Honorable Al Green Ranking Member

JEB HENSARLING, TX, CHAIRMAN

United States House of Representatives  
 Committee on Financial Services  
 2129 Rayburn House Office Building  
 Washington, D.C. 20515

MAXINE WATERS, CA, RANKING MEMBER

April 3, 2013

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

Dear Attorney General Holder:

This is to obtain additional information about the economic analyses relied upon by the Department of Justice in making prosecutorial decisions in cases involving large, complex financial institutions.

On December 19, 2012, in announcing the Justice Department's settlement with a large financial institution for manipulation of the London Inter-Bank Offered Rate and the guilty plea of one of its subsidiaries, you stated that the Justice Department was relying on outside experts in making prosecutorial decisions:

The impact on the stability of the financial markets around the world is something we take into consideration. We reach out to *experts outside of the Justice Department* to talk about what are the consequences of actions that we might take, what would be the impact of those actions if we want to make particular prosecutive decisions or determinations with regard to a particular institution.

Emphasis added.

In a letter dated March 28, 2013, the Treasury Department informed the House Financial Services Committee that it is not one of the outside experts actually relied upon by the Justice Department. Accordingly, to assist the Subcommittee in its investigation of this matter and to prepare for potential hearings, please provide the identities of the "experts outside of the Justice Department" referenced by you on December 19, 2012. Please provide this information no later than April 17, 2013. I appreciate your prompt attention to this matter. Any questions regarding this request should be directed to Joseph Clark of Committee staff at (202) 225-7502.

Sincerely,



PATRICK MCHENRY

Chairman

Subcommittee on Oversight and Investigations

cc: The Hon. Al Green, Ranking Member

JEB HENSARLING, TX, CHAIRMAN

United States House of Representatives  
Committee on Financial Services  
2129 Rayburn House Office Building  
Washington, D.C. 20515

MAXINE WATERS, CA, RANKING MEMBER

April 26, 2013

The Honorable Eric H. Holder, Jr.  
Attorney General of the United States  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

Dear Attorney General Holder:

The Subcommittee on Oversight and Investigations (the "Subcommittee") of the Committee on Financial Services will hold a hearing on Wednesday, May 22, 2013, at 2:00 p.m. in Room 2128 of the Rayburn House Office Building. I am writing to request that you make Deputy Attorney General ("DAG") James M. Cole available to appear at this hearing as a witness.

This hearing will examine how and under what authority the Department of Justice (the "Department") consults "experts" to evaluate whether to prosecute persons or entities involved in the financial services industry. In testimony on March 6, 2013, before the Senate Judiciary Committee, in response to a question from Senator Grassley regarding the Department's prosecution of high-profile financial companies or individuals, you testified that the size of certain financial institutions was hindering the Justice Department's ability to prosecute:

I am concerned that the size of some of these institutions becomes so large that it does become difficult for us to prosecute them when we are hit with indications that if you do prosecute, if you do bring a criminal charge, it will have a negative impact on the national economy, perhaps even the world economy. And I think that is a function of the fact that some of these institutions have become too large. . . . I think it has an inhibiting influence – [an] impact on our ability to bring resolutions that I think would be more appropriate.

And on December 19, 2012, in announcing the Department's settlement with a large financial institution for manipulation of the London Inter-Bank Offered Rate (LIBOR), you noted that the Department was relying on outside experts in making prosecutorial decisions:

The impact on the stability of the financial markets around the world is something we take into consideration. We reach out to experts outside of the Justice Department to talk about what are the consequences of actions that we might take, what would be the impact of those actions if we want to make particular prosecutive decisions or determinations with regard to a particular institution.

Hon. Eric H. Holder, Jr.  
April 26, 2013  
Page 2

Your statements raise important questions about how government agencies interact with experts to make significant decisions within our judicial and financial systems. I request that you confirm the DAG's ability to testify not later than Friday, May 3. Then, in the DAG's written testimony for this hearing, please provide the identities of the "experts outside of the Justice Department" to which you referred on December 19, 2012, and address: (i) under what authority the Department requests such expertise; (ii) how and to what extent the Department uses analysis provided by such experts; (iii) the matters in which the Department has sought or otherwise received such expert analysis; (iv) the cost to the Department of obtaining such expert analysis; and (v) the guidelines the Department has developed with respect to the criminal prosecution of financial institutions, their directors, officers, and/or employees.

Please read the following material carefully. It is intended as a guide to your rights and obligations as a witness under the rules of the Committee on Financial Services.

***The Form of your Testimony.*** Under the Rules of the Committee on Financial Services, each witness who is to testify before the Committee or its subcommittees must file with the Clerk of the Committee a written statement of proposed testimony of any reasonable length. Please also include with the testimony a current resume summarizing education, experience and affiliations pertinent to the subject matter of the hearing. This must be filed at least two business days before your appearance. Please note that changes to the written statement will not be permitted after the hearing begins. Failure to comply with this requirement may result in the exclusion of your written testimony from the record. Your oral testimony should not exceed five minutes and should summarize your written remarks. The Chair reserves the right to exclude from the printed record any supplemental materials submitted with a written statement due to space limitations or printing expense.

***Submission of your Testimony.*** Please submit at least 75 copies of your proposed written statement to the Clerk of the Committee not less than two business days in advance of your appearance. These copies should be delivered to: The Committee on Financial Services, Attn: Committee Clerk, 2129 Rayburn House Office Building, Washington, DC 20515.

Due to heightened security restrictions, many common forms of delivery experience significant delays in delivery to the Committee. This includes packages sent via the U.S. Postal Service, Federal Express, UPS, and other similar carries, which typically arrive 3 to 5 days later than normal. The United States Capitol Police have specifically requested that the Committee refuse deliveries by courier. The best method of delivery of your testimony is to have an employee from your organization deliver your testimony in an unsealed package to the address above. If you are unable to comply with this procedure, please contact the Committee to discuss alternative methods for delivery of your testimony.

The rules of the Committee require, to the extent practicable, that you also submit your written testimony in electronic form. The preferred method of submission of testimony in electronic form is to send it via electronic mail to [fsctestimony@mail.house.gov](mailto:fsctestimony@mail.house.gov). The electronic copy of your testimony may be in any major

Hon. Eric H. Holder, Jr.  
April 26, 2013  
Page 3

file format, including WordPerfect, Microsoft Word, or ASCII text for either Windows or Macintosh. Your electronic mail message should specify in the subject line the date and the Committee or subcommittee before which you are scheduled to testify. You may also submit testimony in electronic form on a disk or CD-ROM at the time of delivery of the copies of your written testimony. Submission of testimony in electronic form facilitates the production of the printed hearing record and posting of your testimony on the Committee's Internet site.

***Your Rights as a Witness.*** Under the Rules of the House, witnesses may be accompanied by their own counsel to advise them concerning their constitutional rights. I reserve the right to place any witness under oath. Finally, a witness may obtain a transcript copy of his/her testimony given in open, public session, or in a closed session only when authorized by the Committee or subcommittee. However, by appearing before the Committee or its subcommittees, you authorize the Committee to make technical, grammatical, and typographical corrections to the transcript in accordance with the rules of the Committee and the House.

The Rules of the Committee on Financial Services, and the applicable rules of the House, are available on the Committee's website at <http://financialservices.house.gov>. Copies can also be sent to you upon request.

The Committee on Financial Services endeavors to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, or have any questions regarding special accommodations generally, please contact the Committee in advance of the scheduled event (4 business days notice is requested) at (202) 225-7502; TTY: 202-226-1591; or write to the Committee at the address above.

Please note that space in the Committee's hearing room is extremely limited. Therefore, the Committee will only reserve one seat for staff accompanying you during your appearance (a total of two seats). In order to maintain our obligation under the Rules of the House to ensure that Committee hearings are open to the public, we cannot deviate from this policy.

Should you or your staff have any questions or need additional information, please contact Joseph Clark of Committee Staff at (202) 225-7502.

Sincerely,



PATRICK MCHENRY

Chairman  
Subcommittee on Oversight and Investigations

cc: The Honorable Al Green, Ranking Member

**U.S. Department of Justice**

Office of Legislative Affairs

Office of the Assistant Attorney General

*Washington, D.C. 20530*

May 16, 2013

The Honorable Patrick McHenry  
Chairman  
Subcommittee on Oversight and Investigations  
Committee on Financial Services  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

This responds to your letter to the Attorney General, dated April 3, 2013, regarding the Department of Justice's enforcement efforts to combat corporate and financial crime. In particular, we understand that you are seeking information about consultations with experts outside of the Department regarding the potential consequences of law enforcement actions involving large, complex financial institutions, as referenced in the Attorney General's statement on December 19, 2012. We appreciated the opportunity to brief Committee staff on May 13, 2013, about this and other matters.

As we indicated in the briefing, we are not currently aware, based on the inquiries we have conducted, of any consultations with private, non-governmental third party entities on the potential collateral consequences of prosecutorial actions the Department might take with respect to any large, complex financial institution. At times, the Department has, however, contacted relevant governmental agencies to discuss such issues. Those governmental agencies include domestic regulators, as well as foreign regulators where the financial institution is multi-national or is otherwise based abroad. Domestic and foreign regulators are the subject matter experts outside of the Department that the Attorney General was referring to in the statement quoted in your April 3rd letter.

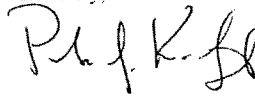
Also, as we described to Committee staff, the Department, in limited circumstances, has contacted such regulators, for example, to seek an understanding of potential regulatory responses to possible law enforcement actions, and to try to draw on the knowledge of subject matter experts at the regulatory agencies to assess the nature and extent of potential collateral consequences from actions we may take, including evaluating arguments that a subject bank may have made. In some instances, regulators are able to provide the Department only with limited information, such as the regulatory process that would or could occur in response to a potential enforcement action. Other regulators may indicate that they are unable to provide any view on collateral consequences as part of our consultation. Some regulators, by contrast, have provided us with their views on issues such as potential collateral consequences that may affect innocent

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individuals, other institutions, and/or markets. Our discussions with regulators do not by themselves determine the outcome, but rather are among the mix of factors that we may consider in determining the appropriate resolution of a matter.

We hope this information is helpful. We appreciated the opportunity to brief your staff, and we remain available to confer further about these matters.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter J. Kadzik". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Peter J. Kadzik  
Principal Deputy Assistant Attorney General

cc: The Honorable Al Green  
Ranking Minority Member



| Institution                   | Name                  | Title                            | Status                          | Date Announced |
|-------------------------------|-----------------------|----------------------------------|---------------------------------|----------------|
| UBS Securities Japan Co. Ltd. |                       |                                  | Guilty plea agreement           | Dec. 19, 2012  |
| RBS Securities Japan Limited  |                       |                                  | Guilty plea agreement           | Feb. 6, 2013   |
| Goldman Sachs                 | Rajat Gupta           | Board Member                     | Sentenced to prison (2 years)   | Oct. 14, 2012  |
| Credit Suisse                 | Kareem Serageldin     | Global Head of Structured Credit | Pleaded guilty                  | April 12, 2013 |
| Credit Suisse                 | David Higgs           | Managing Director                | Pleaded guilty                  | Feb. 1, 2012   |
| Credit Suisse                 | Salmaan Siddiqui      | Vice President                   | Pleaded guilty                  | Feb. 1, 2012   |
| UBS                           | Tom Hayes             | Senior Trader                    | Charged                         | Dec. 19, 2012  |
| UBS                           | Roger Darin           | Senior Trader                    | Charged                         | Dec. 19, 2012  |
| Morgan Stanley                | Garth Peterson        | Managing Director                | Sentenced to prison (9 months)  | Aug. 16, 2012  |
| Galleon Management, LLC       | Raj Rajaratnam        | Managing Member                  | Sentenced to prison (11 years)  | Oct. 13, 2011  |
| Stanford International Bank   | Robert Allen Stanford | Chairman of Board of Directors   | Sentenced to prison (110 years) | June 14, 2012  |
| Stanford International Bank   | James Davis           | Chief Financial Officer          | Sentenced to prison (5 years)   | Jan. 22, 2013  |
| Stanford International Bank   | Laura Pendergest-Holt | Chief Investment Officer         | Sentenced to prison (3 years)   | Sept. 13, 2012 |
| Colonial Bank                 | Catherine Kissick     | Senior Vice President            | Sentenced to prison (8 years)   | June 17, 2011  |
| Taylor, Bean & Whitaker       | Lee Bentley Farkas    | Chairman                         | Sentenced to prison (30 years)  | June 30, 2011  |