

# 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?

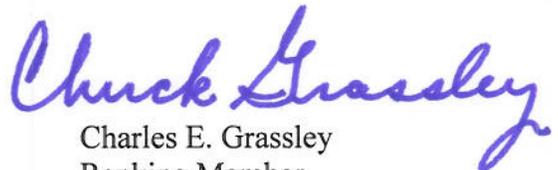
Our markets will only function efficiently if participants believe that all laws will be enforced consistently, and that violators will be punished to the fullest extent of the law. There should not be one set of rules that apply to Wall Street and another set for the rest of us.

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