

United States Senate
WASHINGTON, DC 20510

December 13, 2023

VIA ELECTRONIC TRANSMISSION

The Honorable Merrick Garland
Attorney General
Department of Justice

Dear Attorney General Garland:

On February 27, 2023, I sent you a letter with respect to the historically low-balance of the Crime Victims Fund (CVF) and requested certain data concerning DOJ's collection and deposits of criminal fines and penalties from deferred prosecution agreements (DPA) and non-prosecution agreements (NPA) as provided by the VOCA Fix to Sustain the Crime Victims Fund Act of 2021.¹ DOJ's April 17, 2023, answer failed to adequately respond to my letter.

The response, in part, provided that "in December 2022, ABB Ltd, a Swiss multinational company entered into a DPA with the Department and agreed to pay over \$315 million" to settle their case involving violations of the Foreign Corrupt Practices Act (FCPA) which "resulted in a significant deposit into the Fund."² However, the terms of the DPA state less than 25% of this criminal penalty will be deposited into the fund.³

The VOCA Fix provides that any funds collected that would be transferred to the general fund of the Treasury pursuant to an NPA or DPA are required to be deposited into the CVF.⁴ According to the terms of the ABB Ltd. DPA, only \$72.5 million of the \$315 million was to be paid to the U.S. Treasury, and thus deposited into the CVF.⁵ According to the DPA, the Department reduced the criminal penalty by up to \$242.5 million so ABB Ltd. could settle other claims, including up to \$157.5 million to the South African government.⁶ In response to a question about the ABB Ltd. DPA at the Senate Judiciary Committee's December 12, 2023, hearing, Criminal Division Acting Assistant Attorney General (AAG) Nicole M. Argentieri testified that "when we do these resolutions where it's important to have cooperation from

¹ Public Law No: 117-27 <https://www.congress.gov/bill/117th-congress/house-bill/1652/text>.

² Letter from the Department of Justice to Charles E. Grassley (Apr. 17, 2023) (on file with Committee).

³ Deferred Prosecution Agreement ABB Ltd. (Dec. 2, 2022) at 11 https://www.justice.gov/d9/press-releases/attachments/2022/12/06/16_2022.12.02_abb_ltd._dpa_508_compliant_1_0.pdf.

⁴ 34 U.S.C § 20101(b)(6).

⁵ Harry Cassin, *Double recidivist ABB pays \$462.5 million to settle FCPA offenses*, FCPA Blog (Dec. 2, 2022) <https://fcpablog.com/2022/12/02/double-recidivist-abb-pays-327-million-to-settle-fcpa-offenses/>.

⁶ Deferred Prosecution Agreement ABB Ltd at 11-12.

foreign countries because that's how we get evidence internationally, we do credit foreign governments.”⁷ However, the DPA states that ABB Ltd. provided the Department with its internal investigative report, made its foreign based employees available for interviews in the U.S., produced relevant documents located outside of the U.S., and provided a host of other assistance to aid the U.S. investigation.⁸ It's unclear what investigative assistance the South African government provided the Department that warranted such a credit, given ABB Ltd.'s reported willingness to provide evidence and witnesses to U.S. authorities. The Department must explain the justification for why \$242.5 million, to include \$157.5 million paid to the South African government, wasn't deposited into the CVF to support crime victims.

The Department's response letter also stated, “[w]e are not aware of any circumstances since enactment of the VOCA Fix in which the Department resolved a case with a monetary penalty by DPA or NPA without collecting a monetary penalty for the Fund.”⁹ Yet in a 2022 NPA with Jardine Lloyd Thompson Group Holdings Ltd. (JLT), the company agreed to disgorge approximately \$29 million in ill-gotten gains to the U.S. Treasury.¹⁰ However, the agreement provided the Department would credit up to 100 percent of the disgorgement amount in what the company pays to foreign authorities.¹¹ Additionally, a 2022 NPA between the Department and Safran S.A. states the company would disgorge about \$17 million in ill-gotten profits.¹² But it doesn't specify if the company was to pay this money to the U.S. Treasury, and thus to the CVF or elsewhere.¹³ The Department must clarify whether these criminal penalties were deposited into the CVF and how much.

According to the 2022 year-end report of the Department's Criminal Division fraud unit, it imposed more than \$1.15 billion in total U.S. criminal monetary penalties.¹⁴ And yet, collection of these penalties doesn't appear to be reflected by the CVF. During the Senate Judiciary Committee's December 12, 2023, hearing, I asked Acting AAG Argentieri for the financials showing how much of the criminal penalties imposed have been collected and deposited into the CVF. In response, she committed to get back to me with those exact answers. She also agreed to provide answers with respect to how much of the \$315 million from the ABB Ltd. DPA was collected and deposited into the CVF. I expect the Department to follow through on that commitment. Accordingly, what are those answers?

⁷ Senate Judiciary Committee, *Cleaning Up the C-Suite: Ensuring Accountability for Corporate Criminals*, Hearing (Dec. 12, 2023) <https://www.judiciary.senate.gov/committee-activity/hearings/cleaning-up-the-c-suite-ensuring-accountability-for-corporate-criminals>.

⁸ Deferred Prosecution Agreement ABB Ltd at 4-5.

⁹ Letter from Department of Justice *supra* note 2.

¹⁰ Letter from DOJ Criminal Division to Gibson, Dunn, Crutcher, (Mar. 18, 2022) <https://www.justice.gov/media/1214421/dl?inline>.

¹¹ *Id.*

¹² Letter from DOJ Criminal Division to Hogan Lovells, (Dec. 21, 2022) <https://www.justice.gov/media/1266081/dl?inline>.

¹³ *Id.*

¹⁴ DOJ Criminal Division-Fraud, *Fraud Section Year in Review 2022*, (Feb. 2023) <https://www.justice.gov/criminal-fraud/file/1568606/download>.

The CVF balance remains historically low.¹⁵ Every dollar in criminal penalties the Department fails to collect is less funding for crime victims. The math is simple: collect the fines imposed, increase the balance of the CVF. Thus, there will be increased resources for victims of crime. As the new year approaches, CVF recipients across America are eager to understand how the Department collects the criminal fines it imposes that are deposited into the CVF. So that Congress may conduct objective and independent oversight concerning the Department's collection of criminal penalties and deposits into the CVF, please expeditiously provide answers to the following no later than December 20, 2023.

1. For each of the last five years, for each case involving corporate offenders who were found or pled guilty provide:
 - a. How much was imposed in U.S. criminal monetary penalties.
 - b. List each recipient of the monetary penalty and how much was collected.
 - c. Of what was collected, how much was deposited into the CVF.
2. For each of the last five years, for each DPA provide:
 - a. How much was imposed in U.S. criminal monetary penalties.
 - b. List each recipient of the monetary penalty and how much was collected.
 - c. Of what was collected, how much was deposited into the CVF.
3. For each of the last five years, for each NPA provide:
 - a. How much was imposed in U.S. criminal monetary penalties.
 - b. List each recipient of the monetary penalty and how much was collected.
 - c. Of what was collected, how much was deposited into the CVF.
4. For each of the last five years, for criminal cases involving non-corporate offenders provide:
 - a. How much was imposed in U.S. criminal monetary penalties.
 - b. List each recipient of the monetary penalty and how much was collected.
 - c. Of what was collected, how much was deposited into the CVF.
5. In corporate criminal cases prosecuted by foreign governments, have foreign authorities credited monetary penalties to U.S. authorities conducting parallel investigations? If so, when, who and how much?

Thank you for your prompt review and responses. If you have any questions, please contact Brian Randolph of my Committee staff at (202) 224-0642.

Sincerely,



Charles E. Grassley
Ranking Member
Committee on the Budget

¹⁵ FY 2007 – FY 2023 Crime Victims Fund End of Year Balance (as of 10/31/2023), Office for Victims of Crime, <https://ovc.ojp.gov/about/crime-victims-fund/fy-2007-2023-cvf-balance.pdf>.