



## Rigged for Wall Street

### Trump DOJ Imposes Penalties 70% Lower Than Obama DOJ, Lets Banks Refuse to Admit to Alleged Financial Crisis-Era Wrongdoing

*By Rick Claypool, research director, Public Citizen's president's office*

Feb. 4, 2019 – President Trump's Justice Department in 2018 settled four cases against big banks for financial crisis-era allegations of toxic securities abuses. On average, Trump's DOJ imposed penalties that were 70 percent lower than those imposed by Obama's DOJ.

These four 2018 settlements, which the DOJ entered into with Royal Bank of Scotland,<sup>1</sup> Wells Fargo<sup>2</sup> and Barclays Capital,<sup>3</sup> and HSBC,<sup>4</sup> reveal the reduced enforcement that big banks that triggered the Great Recession now face.

**Table 1: List of 11 major toxic securities settlements, highlighting penalty amounts, administration and consumer relief.**

Corporation	Penalty	Date	Admin	Consumer Relief Portion of Settlement	% Consumer Relief
HSBC	\$765,000,000	10/9/2018	Trump	\$0	0%
Royal Bank of Scotland	\$4,900,000,000	8/14/2018	Trump	\$0	0%
Wells Fargo	\$2,090,000,000	8/1/2018	Trump	\$0	0%
Barclays	\$2,000,000,000	3/29/2018	Trump	\$0	0%
Credit Suisse	\$5,280,000,000	1/18/2017	Obama	\$2,800,000,000	53%
Deutsche Bank	\$7,200,000,000	1/17/2017	Obama	\$4,100,000,000	57%
Goldman Sachs	\$5,060,000,000	4/11/2016	Obama	\$1,800,000,000	36%
Morgan Stanley	\$2,600,000,000	2/11/2016	Obama	\$0	0%
Bank of America	\$16,650,000,000	8/21/2014	Obama	\$7,000,000,000	42%
Citigroup	\$7,000,000,000	7/14/2014	Obama	\$2,500,000,000	36%
JPMorgan Chase	\$13,000,000,000	11/19/2013	Obama	\$4,000,000,000	31%

Source: Public Citizen analysis of [Violation Tracker](#) database and DOJ press releases.

<sup>1</sup> <https://www.justice.gov/opa/pr/royal-bank-scotland-agrees-pay-49-billion-financial-crisis-era-misconduct>

<sup>2</sup> <https://www.justice.gov/opa/pr/wells-fargo-agrees-pay-209-billion-penalty-allegedly-misrepresenting-quality-loans-used>

<sup>3</sup> <https://www.justice.gov/usao-edny/pr/barclays-agrees-pay-2-billion-civil-penalties-resolve-claims-fraud-sale-residential>

<sup>4</sup> <https://www.justice.gov/usao-co/pr/hsbc-agrees-pay-765-million-connection-its-sale-residential-mortgage-backed-securities>

All four are among the lowest of 11 similar settlements that were made under Obama. Unlike the Obama settlements, all four banks were allowed to settle while disputing the DOJ's allegations. What's more, none of the settlements provide consumer relief.

Such lenience inevitably reduces the deterrent effect of enforcement against corporate wrongdoers, inviting further risk from banks whose recklessness triggered the worst financial crisis since the Great Depression just a decade ago.

The Obama DOJ required each of the seven banks — JPMorgan Chase,<sup>5</sup> Citigroup,<sup>6</sup> Bank of America,<sup>7</sup> Morgan Stanley,<sup>8</sup> Goldman Sachs,<sup>9</sup> Deutsche Bank<sup>10</sup> and Credit Suisse<sup>11</sup> — to acknowledge it had misled the public and investors about its residential mortgage-backed securities.<sup>12</sup>

**Table 2: Eleven major toxic securities settlements, highlighting DOJ requirements to acknowledge the facts as alleged.**

Corporation	Penalty Date	Admin	Acknowledged Facts as Alleged
JPMorgan Chase	11/19/2013	Obama	Yes
Citigroup	7/14/2014	Obama	Yes
Bank of America	8/21/2014	Obama	Yes
Morgan Stanley	2/11/2016	Obama	Yes
Goldman Sachs	4/11/2016	Obama	Yes
Deutsche Bank	1/17/2017	Obama	Yes
Credit Suisse	1/18/2017	Obama	Yes
Barclays	3/29/2018	Trump	No - disputes DOJ allegations
Wells Fargo	8/1/2018	Trump	No - disputes DOJ allegations
Royal Bank of Scotland	8/14/2018	Trump	No - disputes DOJ allegations
HSBC	10/9/2018	Trump	No - disputes DOJ allegations

Source: Public Citizen analysis of [Violation Tracker](#) database and DOJ press releases.

<sup>5</sup> <https://www.justice.gov/opa/pr/justice-department-federal-and-state-partners-secure-record-13-billion-global-settlement>

<sup>6</sup> <https://www.justice.gov/opa/pr/justice-department-federal-and-state-partners-secure-record-7-billion-global-settlement>

<sup>7</sup> <https://www.justice.gov/opa/pr/bank-america-pay-1665-billion-historic-justice-department-settlement-financial-fraud-leading>

<sup>8</sup> <https://www.justice.gov/opa/pr/morgan-stanley-agrees-pay-26-billion-penalty-connection-its-sale-residential-mortgage-backed>

<sup>9</sup> <https://www.justice.gov/opa/pr/goldman-sachs-agrees-pay-more-5-billion-connection-its-sale-residential-mortgage-backed>

<sup>10</sup> <https://www.justice.gov/usao-edny/pr/deutsche-bank-agrees-pay-72-billion-misleading-investors-its-sale-residential-mortgage>

<sup>11</sup> <https://www.justice.gov/opa/pr/credit-suisse-agrees-pay-528-billion-connection-its-sale-residential-mortgage-backed>

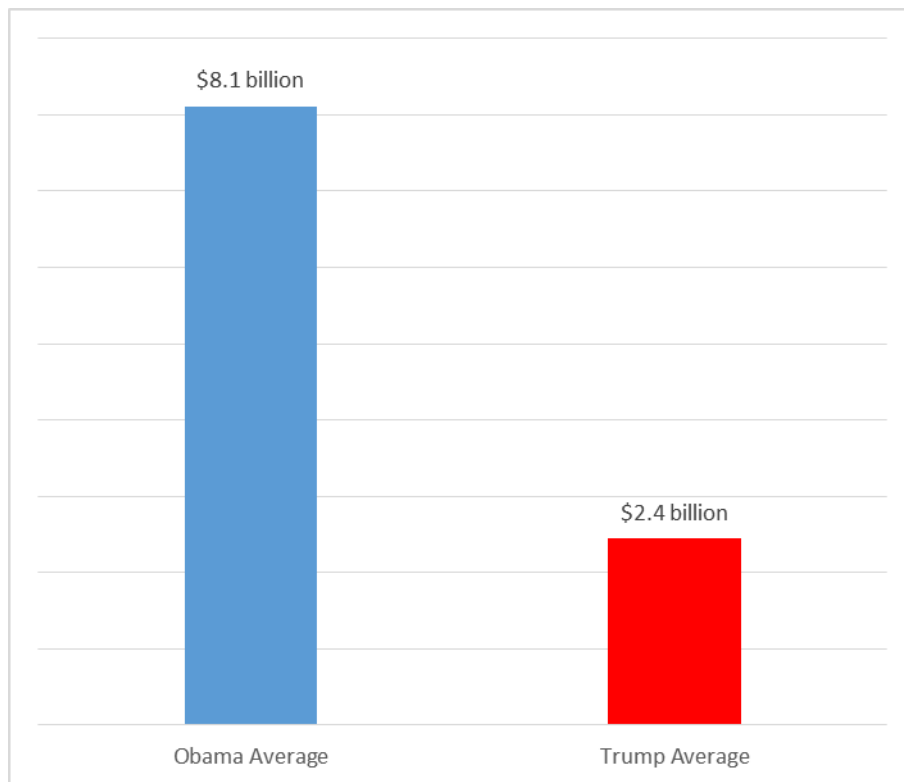
<sup>12</sup> Though JPMorgan CEO Jamie Dimon continued to dispute that the bank had violated any laws, leading Reuters to report regarding the settlement that “the bank and the government did not agree about what they had agreed to in the settlement.” See <https://www.reuters.com/article/us-jpmorgan-settlement/jpmorgan-agrees-13-billion-settlement-with-u-s-over-bad-mortgages-idUSBRE9AI00A20131120>

In the years leading up to the crisis, banks created and sold these toxic securities, in which they bundled subprime home loans, which they knew were likely to default, into mortgage-backed securities. They then misleadingly marketed them as safe investments to buyers. The buyers included Fannie Mae and Freddie Mac, which have required government rescue and taxpayer bailouts of more than \$190 billion to date.<sup>13</sup> The banks also retained some of these mortgage securities, resulting in the banks requiring bailouts as well.

None of the Trump administration's settlements with these banks provide any kind of relief to consumers who were harmed. Except for the Morgan Stanley settlement, the seven Obama DOJ settlements provided consumer relief. This consumer relief ranged from about a third of the total penalty amount (JPMorgan Chase, Citigroup, Goldman Sachs) to more than half of the total (Deutsche Bank, Credit Suisse).

Taken together, the Obama administration imposed an average \$8.1 billion per penalty while Trump imposed an average of \$2.4 billion per penalty.

**Chart: Average DOJ penalties against big banks for toxic securities abuses, Obama administration vs. Trump administration.**



Analysts have noted the Trump DOJ's lenience. Using previous big bank penalties for comparable allegations as a benchmark, financial analysts in 2016 predicted the RBS

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<sup>13</sup> [https://www.washingtonpost.com/business/economy/a-guide-to-the-financial-crisis--10-years-later/2018/09/10/114b76ba-af10-11e8-a20b-5f4f84429666\\_story.html?utm\\_term=.fcb5ebdd2ada](https://www.washingtonpost.com/business/economy/a-guide-to-the-financial-crisis--10-years-later/2018/09/10/114b76ba-af10-11e8-a20b-5f4f84429666_story.html?utm_term=.fcb5ebdd2ada)

penalty could exceed \$12 billion.<sup>14</sup> Reuters described the \$4.9 billion RBS penalty as “smaller-than-expected.”<sup>15</sup> Wells Fargo’s \$2.09 billion penalty, Bloomberg News noted, was “smaller than sanctions borne by some of the bank’s competitors.”<sup>16</sup> Barclays’ \$2 billion penalty was reported by Bloomberg News as a “win.”<sup>17</sup> According to the *New York Times*, the Obama administration had sought penalties closer to \$7 billion against the bank.<sup>18</sup> And American Banker noted HSBC’s \$765 million penalty was “substantially lower” than penalties paid by other banks that faced similar allegations.<sup>19</sup>

In November 2018, the Justice Department sued UBS to recover penalties against that bank for alleged toxic securities fraud.<sup>20</sup> DOJ had reportedly sought a \$2 billion penalty against the bank.<sup>21</sup> The Financial Times reports that, in refusing to settle, UBS was “inspired by Barclays’ approach,” expecting resistance to result in a reduced penalty.<sup>22</sup>

Trump’s lenience to Wall Street, which is clear to Wall Street analysts, becomes an invitation to misconduct.

Of course, the sizes of the penalties imposed against each bank can vary for a variety of reasons. One would expect penalties to vary based on the banks’ level of misconduct.

In particular, JPMorgan Chase’s liabilities increased significantly with that firm’s acquisition of Bear Stearns, a major issuer of mortgage bonds, and Washington Mutual, a notoriously loose mortgage lender infamous for pressuring employees to pursue loans while disregarding borrowers’ ability to repay.<sup>23</sup> According to data cited in a report by the Financial Crisis Inquiry Commission (FCIC), Washington Mutual, Bear Stearns and JPMorgan Chase were, respectively, the fourth, fifth and sixth-largest issues of private mortgage-backed securities in 2007.<sup>24</sup>

Bank of America’s liabilities increased with the acquisition of Countrywide Financial, the largest home mortgage lender of the bubble-era period as well as investment bank Merrill Lynch. According to the FCIC, Countrywide was the top issuer of private mortgage-backed

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<sup>14</sup> <https://www.theguardian.com/business/2016/nov/16/rbs-may-fined-more-than-12bn-settle-us-mis-selling-scandal>

<sup>15</sup> <https://www.reuters.com/article/us-royal-bank-scot-settlement/rbs-reaches-4-9-billion-deal-to-settle-u-s-mortgage-bond-probe-idUSKBN1IA3L0>

<sup>16</sup> <https://www.bloomberg.com/news/articles/2018-08-01/wells-fargo-to-pay-2-09-billion-to-settle-u-s-mortgage-probe>

<sup>17</sup> <https://www.bloomberg.com/news/articles/2018-08-01/wells-fargo-to-pay-2-09-billion-to-settle-u-s-mortgage-probe>

<sup>18</sup> <https://www.nytimes.com/2018/11/03/us/trump-sec-doj-corporate-penalties.html>

<sup>19</sup> <https://www.americanbanker.com/articles/hsbc-to-pay-765-million-to-settle-crisis-era-mortgage-probe>

<sup>20</sup> <https://www.justice.gov/opa/pr/united-states-sues-ubs-recover-civil-penalties-fraud-sale-residential-mortgage-backed>

<sup>21</sup> <https://www.reuters.com/article/us-ubs-group-lawsuit/u-s-sues-ubs-alleges-crisis-era-mortgage-securities-fraud-idUSKCN1ND37E>

<sup>22</sup> <https://www.ft.com/content/f3d888ed-362d-3ceb-9582-e20d70cf84ad>

<sup>23</sup> <https://www.nytimes.com/2008/12/28/business/28wamu.html>

<sup>24</sup> [https://fcic-static.law.stanford.edu/cdn\\_media/fcic-reports/2010-0407-Preliminary\\_Staff\\_Report\\_-\\_Securitization\\_and\\_the\\_Mortgage\\_Crisis.pdf](https://fcic-static.law.stanford.edu/cdn_media/fcic-reports/2010-0407-Preliminary_Staff_Report_-_Securitization_and_the_Mortgage_Crisis.pdf)

securities in 2007, while Merrill Lynch was the ninth and Bank of America was the 14th-largest.

The Obama settlements frustrated many observers because they lacked a clear discussion of details, such as the level of harm. That makes the more lenient Trump settlements even more egregious.

Wells Fargo, which was the third-largest issuer of private mortgage-backed securities behind Countrywide and the collapsed firm Lehman Brothers, received from the Trump administration the third-lowest penalty among major toxic securities settlements.<sup>25</sup>

The lower penalties, combined with the refusal to require penalized banks to accept the facts contained in the Justice Department's allegations against them and the elimination of consumer relief from these settlements mean the Trump administration is rewarding Wall Street wrongdoers for resisting settlements and stringing out negotiations. Instead of holding the industry that ransacked our economy accountable, our system of justice is being further rigged in its favor.

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<sup>25</sup> [https://fcic-static.law.stanford.edu/cdn\\_media/fcic-reports/2010-0407-Preliminary\\_Staff\\_Report\\_-\\_Securitization\\_and\\_the\\_Mortgage\\_Crisis.pdf](https://fcic-static.law.stanford.edu/cdn_media/fcic-reports/2010-0407-Preliminary_Staff_Report_-_Securitization_and_the_Mortgage_Crisis.pdf)