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September 15, 2016

The Honorable James Comey
Director
Federal Bureau of Investigation
935 Pennsylvania Ave. NW
Washington, DC 20535

Dear Director Comey:

Earlier today, I asked the Department of Justice (DOJ) Office of the Inspector General to examine the inability of the DOJ to successfully prosecute any of the individuals referred to the DOJ by the Financial Crisis Inquiry Commission (FCIC) in 2010. I write to bring this matter to your attention – and to request that you promptly facilitate the release of any and all materials related to the FBI’s investigations and prosecutorial decisions regarding these referrals.

Established by Congress in the wake of the 2008 financial meltdown, the FCIC’s statutory mandate included “refer[ring] to the Attorney General of the United States and any appropriate State attorney general any person that the Commission finds may have violated the laws of the United States in relation to such crisis.”¹ The full archives of the FCIC proceedings have only recently been released.² My staff has reviewed these records and identified 11 separate FCIC referrals of individuals or corporations to DOJ in cases where the FCIC found “serious indications of violation[s]” of federal securities or other laws consistent with this statutory mandate.³ Nine specific individuals were implicated in these referrals - yet not one of these nine has gone to prison or been prosecuted for a criminal offense. Similarly, my staff identified 14 corporations that were referred to DOJ by the FCIC for potential violations of securities or other laws. Not one of the 14 was not criminally prosecuted, nor was any of the individuals responsible for the actions described in the FCIC referrals. Only five of these 14 corporations paid any fine or suffered any additional consequences for their actions.⁴

The DOJ’s inability to obtain meaningful convictions or settlements in the vast majority of these FCIC referrals – let alone in any other cases involving senior Wall Street executives – suggests that the Department failed to hold the individuals and companies most responsible for the financial crisis and the Great Recession accountable. Releasing additional information may help in the examination of this failure.

¹ PL 111-21, §5(c)(4)

² National Archives, National Archives Opens Financial Crisis Inquiry Commission Records (March 11, 2016) (<https://www.archives.gov/press/press-releases/2016/nr16-45.html>).

³ Letter from Senator Elizabeth Warren to The Honorable Michael E. Horowitz, Department of Justice Inspector General (September 15, 2016).

⁴ Letter from Senator Elizabeth Warren to The Honorable Michael E. Horowitz, Department of Justice Inspector General (September 15, 2016).

Your recent actions with regard to the investigation of former Secretary of State Hillary Clinton provide a clear precedent for releasing additional information about the investigation of the parties responsible for the financial crisis. On July 5, 2016, you announced that the FBI would not be recommending prosecution of Secretary Clinton for actions related to the email system used during her service.⁵ As a matter of course, when the FBI makes such decisions, no information is made public.⁶ In this case, however, you declined to follow that practice. Instead, you delivered a 2,300 word statement that included previously undisclosed information about the case and your decision. In addition, you provided extensive testimony to Congress.⁷ You explained these actions by noting your view that that “the American people deserve those details in a case of intense public interest.”⁸ Earlier this month, you went further, releasing a slate of additional documents: a summary of the FBI interview of Secretary Clinton, and a factual summary of the FBI investigation.⁹ The FBI does not typically release internal documents from its investigations,¹⁰ but you did so anyway, “making these materials available to the public in the interest of transparency.”¹¹

These new standards present a compelling case for public transparency around the fate of the FCIC referrals. If Secretary Clinton’s email server was of sufficient “interest” to establish a new FBI standard of transparency, then surely the criminal prosecution of those responsible for the 2008 financial crisis should be subject to the same level of transparency. As a consequence of the 2008 crash, trillions of dollars in American housing wealth was destroyed. Millions of Americans were touched personally as they lost their homes, their jobs, or both. Hundreds of pension funds were eviscerated, and millions of retirees saw their financial futures wiped out. Congress created the FCIC to examine what went wrong and to determine whether any individuals or entities deserved law enforcement scrutiny as a result of their actions in this crisis. The FCIC followed the law and sent such referrals to the DOJ, yet not a single senior Wall Street executive has ever been criminally prosecuted. For the uncounted millions of Americans whose lives were changed forever and for those who are still dealing with the consequences of the crash, I can think of no matter of “intense public interest” about which “the American people deserve the details” than the issue of what precisely happened to the criminal referrals that followed the 2008 crash.

⁵ FBI, Statement by FBI Director James B. Comey on the Investigation of Secretary Hillary Clinton’s Use of a Personal E-Mail System (July 5, 2016) (<https://www.fbi.gov/news/pressrel/press-releases/statement-by-fbi-director-james-b-comey-on-the-investigation-of-secretary-hillary-clinton2019s-use-of-a-personal-e-mail-system>).

⁶ See, e.g., Matthew Miller, James Comey’s abuse of power, *Washington Post* (July 6, 2016) (https://www.washingtonpost.com/opinions/james-comeys-abuse-of-power/2016/07/06/7799d39e-4392-11e6-8856-f26de2537a9d_story.html?utm_term=.bd9a528e04f7).

⁷ Statement by FBI Director James B. Comey; U.S. House of Representatives Committee on Oversight and Government Reform, *Oversight of the State Department* (hearing) (July 7, 2016) (<https://oversight.house.gov/hearing/oversight-state-department/>).

⁸ FBI, Statement by FBI Director James B. Comey on the Investigation of Secretary Hillary Clinton’s Use of a Personal E-Mail System (July 5, 2016) (<https://www.fbi.gov/news/pressrel/press-releases/statement-by-fbi-director-james-b-comey-on-the-investigation-of-secretary-hillary-clinton2019s-use-of-a-personal-e-mail-system>).

⁹ FBI, FBI Releases Documents in Hillary Clinton E-Mail Investigation (September 2, 2016) (<https://www.fbi.gov/news/pressrel/press-releases/fbi-releases-documents-in-hillary-clinton-e-mail-investigation>).

¹⁰ Washington Post, FBI releases Hillary Clinton email investigation documents, *Washington Post* (September 2, 2016) (https://www.washingtonpost.com/world/national-security/fbi-releases-hillary-clinton-email-investigation-documents/2016/09/02/21bd3682-704c-11e6-8365-b19e428a975e_story.html).

¹¹ FBI, FBI Releases Documents in Hillary Clinton E-Mail Investigation (Sep. 2, 2016) (<https://www.fbi.gov/news/pressrel/press-releases/fbi-releases-documents-in-hillary-clinton-e-mail-investigation>).

For this reason, I am writing to you today to ask that you release all investigative materials related to the FBI investigations and prosecution recommendations of individuals and corporations referred to the DOJ by the FCIC. I further ask that you follow the standard you have set for such cases of "intense public interest" and include as a part of such public disclosures, at minimum, factual summaries of the investigations and summaries of all interviews conducted as part of the investigations, along with detailed explanations of why the FBI did or did not recommend prosecution. I also ask that you agree to a public hearing so that Congress has the chance to ask questions about the non-prosecution decisions.

The American people deserve to understand why no individuals were held appropriately accountable in these cases. Your release of these documents and your willingness to testify will enhance transparency and serve the public interest. I therefore ask that you make these documents relating to the financial crisis public as expeditiously as possible so that Congress and the public may begin to understand the FBI's decision not to prosecute the people who, in the eyes of FCIC, may have been criminally responsible in the crash of 2008.

Sincerely,



Elizabeth Warren
United States Senator