

NATIONAL REVIEW

Good Riddance to the Obama DOJ's Scandalous Settlement 'Slush Fund' Policy

By Ian Tuttle — June 7, 2017

Some good news out of the embattled DOJ:

The Justice Department announced Wednesday it will no longer allow prosecutors to strike settlement agreements with big companies directing them to make payouts to outside groups, ending an Obama-era practice that Republicans decried as a “slush fund” that padded the accounts of liberal interest groups.

In a memo sent to 94 U.S. attorneys' offices early Wednesday, Attorney General Jeff Sessions said he would end the practice that allowed companies to meet settlement burdens by giving money to groups that were neither victims nor parties to the case. [[Fox News](#)]

That such a policy was ever in place is extraordinary. To recap: Under Eric Holder and Loretta Lynch, the Justice Department regularly designed legal settlements in which well-heeled defendants were encouraged (read: forced) to donate money to third parties with no legal connection to the case being adjudicated. So, for example, the DOJ used mortgage-lending settlements with JP Morgan, Citi, and Bank of America to funnel millions of dollars to community redevelopment organizations, housing groups, and non-profit legal-aid organizations. Naturally, the beneficiaries were selected by the DOJ.

There are several problems here.

First, this process constituted an end run around Article I appropriations procedures. By law, the House has “the power of the purse”; the body most responsive to the voters is tasked with allocating their money. However, the DOJ's practice made it possible for unelected bureaucrats to funnel money to pet causes outside of the normal appropriations process. So, for fiscal year 2016, Congress appropriated \$47 million to the Department of Housing and Urban Development's Housing Counseling program, but the program ended up having an extra \$30

million to work with because of a windfall from mortgage-lending settlements. (The Government Accountability Office rationalized that this practice was not illegal because the money was provided “voluntarily.”)

Second, and to no one’s surprise, this lack of congressional oversight has resulted in some questionable payouts. The National Council of La Raza received a seven-figure grant from mortgage-lending settlements on the grounds that it is urgently engaged in “housing” issues. Other groups with decided left-wing leanings — the National Community Reinvestment Coalition and the National Urban League, for example — also benefited handsomely.

Finally, so zealous was the Holder DOJ to channel cash to partisan allies that it disincentivized compensating *actual victims*. When it came to paying down settlement obligations, dollar-for-dollar credit was given for donations to legal plaintiffs in the cases, but dollars “donated” to third parties were worth double. So, third-party organizations — that, again, had *no legal connection* to the case being adjudicated — would compete against victims for settlement money, and companies had a strong financial incentive to pay them, instead of the actual victims.

In January, Virginia congressman Bob Goodlatte (R) introduced the Stop Settlement Slush Funds Act of 2017. A similar bill, sponsored by Oklahoma senator James Lankford (R), is awaiting action in the Senate. The Justice Department’s decision to end this dubious Obama-era practice is a good one, but Congress should pass this legislation nonetheless — to protect its Article I prerogatives, and to preempt an effort by a future administration to reinstate this scandalous policy.