

115TH CONGRESS
2D SESSION

S. 2544

To stop financial institution crime, require certain officers of companies to certify that they have conducted due diligence relating to criminal conduct or civil fraud, create accountability in deferred prosecution agreements, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 14, 2018

Ms. WARREN introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To stop financial institution crime, require certain officers of companies to certify that they have conducted due diligence relating to criminal conduct or civil fraud, create accountability in deferred prosecution agreements, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Ending Too Big to
5 Jail Act”.

6 **SEC. 2. STOP FINANCIAL INSTITUTION CRIME.**

7 (a) FINDINGS.—Congress finds the following:

1 (1) History has shown that the Office of the
2 Special Inspector General for the Troubled Asset
3 Relief Program (referred to in this subsection as
4 “SIGTARP”) has—

5 (A) served as an effective model for—

6 (i) recovering taxpayer dollars; and

7 (ii) bringing accountability by rooting
8 out waste, fraud, and abuse; and

9 (B) proven to be a leader in targeting
10 crimes committed by insiders at financial insti-
11 tutions in order to protect the interests of the
12 people of the United States.

13 (2) The financial crisis in 2008 laid bare one of
14 the biggest vulnerabilities of the United States,
15 which is fraud committed by financial institutions.
16 Fraud committed by financial institutions continues
17 as of the date of enactment of this Act, which dem-
18 onstrates that such fraud does not disappear, but
19 evolves and grows over time, which weakens finan-
20 cial institutions from the inside.

21 (3) There is a need for a permanent law en-
22 forcement agency dedicated solely to investigating
23 fraud committed by financial institutions and insid-
24 ers at financial institutions because that type of
25 fraud—

1 (A) wreaks havoc on the economy of the
2 United States;

3 (B) puts the finances of the United States
4 at risk; and

5 (C) ruins the lives of individuals in the
6 United States.

7 (4) Investigations led by SIGTARP have re-
8 sulted in criminal charges against more than 400 de-
9 fendants, including criminal charges against nearly
10 100 bankers. These criminal charges were related to
11 more than 20 failed banks, with a combined esti-
12 mated loss to the deposit insurance fund of
13 \$7,000,000,000.

14 (5) SIGTARP's investigations led to the De-
15 partment of Justice enforcement actions against 10
16 financial institutions, with 8 having total assets ex-
17 ceeding \$100,000,000,000.

18 (6) SIGTARP has developed unique methods to
19 search for crime by using industry, financial, and
20 human intelligence, including fraudulent conduct
21 that contributed to the failure of financial institu-
22 tions, or that was either in, or impacted, financial
23 institutions.

24 (7) Rather than establishing an entirely new
25 entity, it makes the most sense for taxpayers to rely

1 on SIGTARP’s understanding of complex bank
 2 records and bank operations and use of intelligence
 3 to—

4 (A) identify anomalies; and

5 (B) investigate, and root out fraud at, fi-
 6 nancial institutions.

7 (8) The vast expertise of SIGTARP, and the
 8 proven results of SIGTARP with respect to the in-
 9 vestigation of crime at financial institutions, should
 10 be used on a permanent basis to bring accountability
 11 and to deter fraud that jeopardizes financial institu-
 12 tions in the United States, especially considering the
 13 extent to which the people of the United States rely
 14 on those institutions.

15 (b) REDESIGNATION OF THE OFFICE OF THE SPE-
 16 CIAL INSPECTOR GENERAL FOR THE TROUBLED ASSET
 17 RELIEF PROGRAM AND THE SPECIAL INSPECTOR GEN-
 18 ERAL FOR THE TROUBLED ASSET RELIEF PROGRAM.—

19 (1) IN GENERAL.—The Emergency Economic
 20 Stabilization Act of 2008 (12 U.S.C. 5211 et seq.)
 21 is amended—

22 (A) by striking “Special Inspector General
 23 for the Troubled Asset Relief Program” each
 24 place the term appears and inserting “Special
 25 Inspector General for Financial Institution

Crime”, except where the term is used to refer to the Special Inspector General for the Troubled Asset Relief Program Act of 2009;

(B) in section 121 (12 U.S.C. 5231), in the section heading, by striking “**SPECIAL INSPECTOR GENERAL FOR THE TROUBLED ASSET RELIEF PROGRAM**” and inserting “**SPECIAL INSPECTOR GENERAL FOR FINANCIAL INSTITUTION CRIME**”; and

(C) in the table of contents, by striking the item relating to section 121 and inserting the following:

“Sec. 121. Special Inspector General for Financial Institution Crime.”.

(2) **TECHNICAL AND CONFORMING AMENDMENTS.—**

(A) **ADDITIONAL APPROPRIATIONS PROVISION.—**The Helping Families Save Their Homes Act of 2009 (Public Law 111–22; 123 Stat. 1632) is amended—

(i) in section 402 (12 U.S.C. 5231a)—

(I) in the section heading, by striking “**SPECIAL INSPECTOR GENERAL FOR THE TROUBLED ASSET RELIEF PROGRAM**” and inserting “**SPECIAL INSPECTOR GEN-**

**ERAL FOR FINANCIAL INSTITU-
TION CRIME”**; and

(II) in subsection (b)(1)(A), by striking “Special Inspector General of the Trouble Asset Relief Program” and inserting “Special Inspector General for Financial Institution Crime”; and

(ii) in the table of contents, by striking the item relating to section 402 and inserting the following:

“Sec. 402. Special Inspector General for Financial Institution Crime.”.

(B) EXEMPTION FROM BUDGET REDUCTION.—Section 255(i) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 905(i)) is amended by striking “Special Inspector General for the Troubled Asset Relief Program” and inserting “Special Inspector General for Financial Institution Crime”.

(3) REFERENCES.—

(A) OFFICE REFERENCES.—Any reference to the Office of the Special Inspector General for the Troubled Asset Relief Program in any law, rule, regulation, certificate, directive, instruction, or other official paper in force on the date of enactment of this Act shall be consid-

ered to refer and apply to the Office of the Special Inspector General for Financial Institution Crime.

(B) SPECIAL INSPECTOR GENERAL REFERENCES.—Any reference to the Special Inspector General for the Troubled Asset Relief Program in any law, rule, regulation, certificate, directive, instruction, or other official paper in force on the date of enactment of this Act shall be considered to refer and apply to the Special Inspector General for Financial Institution Crime.

(c) DUTIES OF SPECIAL INSPECTOR GENERAL FOR FINANCIAL INSTITUTION CRIME.—

(1) IN GENERAL.—Section 121 of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5231) is amended—

(A) in subsection (b)—

(i) by striking paragraph (3); and

(ii) by redesignating paragraphs (4), (5), and (6) as paragraphs (3), (4), and (5), respectively;

(B) by striking subsection (c) and inserting the following:

“(c) DUTIES.—

1 “(1) IN GENERAL.—It shall be the duty of the
2 Special Inspector General to conduct, supervise and
3 coordinate—

4 “(A) investigations of fraudulent conduct
5 in, or impacting—

6 “(i) an entity described in any of sub-
7 paragraphs (A) through (F) of section
8 5312(a)(2) of title 31, United States Code;

9 “(ii) a bank holding company, as de-
10 fined in section 2 of the Bank Holding
11 Company Act of 1956 (12 U.S.C. 1841);
12 or

13 “(iii) a savings and loan holding com-
14 pany, as defined in section 10(a) of the
15 Home Owners’ Loan Act (12 U.S.C.
16 1467a(a)); and

17 “(B) audits and investigations of—

18 “(i) the purchase, management, and
19 sale of assets by the Secretary under any
20 program established by the Secretary
21 under section 101; and

22 “(ii) the management by the Sec-
23 retary of any program established under
24 section 102, including by collecting and

1 summarizing the information described in
2 paragraph (2).

3 “(2) INFORMATION REQUIRED.—The informa-
4 tion described in this paragraph is the following:

5 “(A) A description of the categories of
6 troubled assets purchased or otherwise procured
7 by the Secretary.

8 “(B) A listing of the troubled assets pur-
9 chased in each such category described in sub-
10 paragraph (A).

11 “(C) An explanation of the reasons the
12 Secretary deemed it necessary to purchase each
13 such troubled asset.

14 “(D) A listing of each financial institution
15 from which those troubled assets were pur-
16 chased.

17 “(E) A listing of and detailed biographical
18 information on each person or entity hired to
19 manage such troubled assets.

20 “(F) A current estimate of the total
21 amount of troubled assets purchased pursuant
22 to any program established under section 101,
23 the amount of troubled assets on the books of
24 the Treasury, the amount of troubled assets

1 sold, and the profit and loss incurred on each
2 sale or disposition of each such troubled asset.

3 “(G) A listing of the insurance contracts
4 issued under section 102.

5 “(3) ADDITIONAL DUTIES.—The Special In-
6 spector General shall—

7 “(A) establish, maintain, and oversee such
8 systems, procedures, and controls as the Special
9 Inspector General considers appropriate to dis-
10 charge the duty under paragraph (1);

11 “(B) have the duties and responsibilities of
12 inspectors general under the Inspector General
13 Act of 1978 (5 U.S.C. App.); and

14 “(C) have the duties necessary to carry out
15 material loss reviews under section 2(d) of the
16 Ending Too Big to Jail Act.

17 “(4) ADDITIONAL AUTHORITY.—

18 “(A) IN GENERAL.—Except as provided
19 under subparagraph (B), and in addition to the
20 duties specified in paragraphs (1) and (2), the
21 Special Inspector General shall have the author-
22 ity to conduct, supervise, and coordinate an
23 audit or investigation of any action take under
24 this title as the Special Inspector General deter-
25 mines appropriate.

1 “(B) EXCEPTION.—Subparagraph (A)
 2 shall not apply with respect to any action taken
 3 under section 115, 116, 117, or 125.”;

4 (C) in subsection (e)—

5 (i) in paragraph (1), by striking sub-
 6 paragraph (B) and inserting the following:

7 “(B)(i) Subject to clause (ii), notwithstanding the
 8 fact that the Office of the Special Inspector General for
 9 Financial Institutions Crime Enforcement is not a tem-
 10 porary organization, as defined in subsection (a) of section
 11 3161 of title 5, United States Code, the Special Inspector
 12 General may exercise the authorities of subsections (b)
 13 through (i) of that section.

14 “(ii) If the Special Inspector General exercises the
 15 authorities described in clause (i)—

16 “(I) section 3161(b)(2) of title 5, United States
 17 Code (relating to periods of appointments) shall not
 18 apply; and

19 “(II) with respect to an individual who is hired
 20 after the date of enactment of the Ending Too Big
 21 to Jail Act, section 3161(b)(3) of title 5, United
 22 States Code, shall not apply unless that individual is
 23 a reemployed annuitant described in paragraph
 24 (5).”; and

25 (ii) in paragraph (5)—

1 (I) in subparagraph (A)—
 2 (aa) by striking “(A)”; and
 3 (bb) in the first sentence, by
 4 striking “Except as provided
 5 under subparagraph (B), if” and
 6 inserting “If”; and
 7 (II) by striking subparagraph
 8 (B);

9 (D) by striking subsection (g) and insert-
 10 ing the following:

11 “(g) COOPERATION AND COORDINATION WITH
 12 OTHER ENTITIES.—

13 “(1) DEFINITIONS.—In this subsection—

14 “(A) the term ‘bank holding company’ has
 15 the meaning given the term in section 2 of the
 16 Bank Holding Company Act of 1956 (12
 17 U.S.C. 1841);

18 “(B) the term ‘financial institutions’
 19 means an entity described in any of subpara-
 20 graphs (A) through (F) of section 5312(a)(2) of
 21 title 31, United States Code; and

22 “(C) the term ‘savings and loan holding
 23 company’ has the meaning given the term in
 24 section 10(a) of the Home Owners’ Loan Act
 25 (12 U.S.C. 1467a(a)).

1 “(2) REQUIRED COORDINATION.—In carrying
2 out the duties, responsibilities, and authorities of the
3 Special Inspector General under this section, the
4 Special Inspector General shall work with the enti-
5 ties described in paragraph (3), with a view toward
6 avoiding duplication of effort and ensuring com-
7 prehensive oversight of—

8 “(A) financial institutions, bank holding
9 companies, and savings and loan holding com-
10 panies;

11 “(B) any fraudulent conduct in, or impact-
12 ing, an entity described in subparagraph (A);
13 and

14 “(C) the Troubled Asset Relief Program.

15 “(3) ENTITIES.—The entities described in this
16 paragraph are the following:

17 “(A) The Inspector General of the Depart-
18 ment of the Treasury.

19 “(B) The Inspector General of the Federal
20 Deposit Insurance Corporation.

21 “(C) The Inspector General of the Securi-
22 ties and Exchange Commission.

23 “(D) The Inspector General of the Board
24 of Governors of the Federal Reserve System

1 and the Bureau of Consumer Financial Protec-
2 tion.

3 “(E) The Inspector General of the Federal
4 Housing Finance Agency.

5 “(F) The Inspector General of any other
6 entity as appropriate.”;

7 (E) in subsection (h), by striking “until
8 the date of termination of the Office of the Spe-
9 cial Inspector General for the Troubled Asset
10 Relief Program”;

11 (F) by striking subsection (i) and inserting
12 the following:

13 “(i) REPORTS.—

14 “(1) IN GENERAL.—

15 “(A) REQUIREMENT.—Subject to subpara-
16 graph (B), not later than April 30 and October
17 31 of each year, the Special Inspector General
18 shall submit to the appropriate committees of
19 Congress a semiannual report with respect to
20 the 6-month period that ends on March 31 and
21 September 30 of that year, respectively.

22 “(B) INITIAL REPORT.—The first report
23 submitted by the Special Inspector General
24 under subparagraph (A) after the date of enact-
25 ment of the Ending Too Big to Jail Act shall

1 be with respect to the first full 6-month period
2 that ends on March 31 or September 30 after
3 that date of enactment, whichever is earlier.

4 “(2) CONTENTS.—Each report submitted under
5 paragraph (1) shall include a summary of, for the
6 period covered by the report, the relevant actions
7 taken by the Special Inspector General.

8 “(3) RULE OF CONSTRUCTION.—Nothing in
9 this subsection may be construed to authorize the
10 public disclosure of information that is—

11 “(A) specifically prohibited from disclosure
12 by any other provision of law;

13 “(B) specifically required by Executive
14 order to be protected from disclosure in the in-
15 terest of national defense or national security or
16 in the conduct of foreign affairs; or

17 “(C) a part of an ongoing criminal inves-
18 tigation.

19 “(4) PUBLIC AVAILABILITY.—Except as pro-
20 vided under paragraph (3), all reports submitted
21 under this subsection shall be available to the pub-
22 lic.”;

23 (G) in subsection (j), by adding at the end
24 the following:

1 “(3) the amounts made available under section
 2 402(c) of the Public-Private Investment Program Im-
 3 provement and Oversight Act of 2009 (12 U.S.C.
 4 5231a(c)) shall remain available until expended for any
 5 purpose in furtherance of the mission of the Office of the
 6 Special Inspector General for Financial Institution Crime;
 7 and

8 “(4) the Office of the Special Inspector General for
 9 Financial Institution Crime shall receive annual appro-
 10 priations from Congress separate and apart from appro-
 11 priations made to the U.S. Department of Treasury. (8)
 12 by striking subsection (k).”; and

13 (H) by striking subsection (k).

14 (2) CONTINUING SERVICE.—If the individual
 15 serving as the Special Inspector General for the
 16 Troubled Asset Relief Program on the day before
 17 the date of enactment of this Act was appointed to
 18 that position by the President, by and with the ad-
 19 vice and consent of the Senate, that individual shall
 20 continue to serve as the Special Inspector General
 21 for Financial Institution Crime.

22 (d) MATERIAL LOSS REVIEWS.—Notwithstanding
 23 any other provision of law, beginning on the date of enact-
 24 ment of this Act, the Special Inspector General for Finan-
 25 cial Institution Crime shall have the exclusive authority

1 to perform material loss reviews and has authority to pro-
 2 mulgate regulations related to those reviews. For each re-
 3 view, the Special Inspector General shall make a written
 4 report to the agency reviewing the agency's supervision of
 5 an entity defined in section 121(c)(1)(A) of the Emer-
 6 gency Economic Stabilization Act (12 U.S.C.
 7 5231(c)(1)(A)), as amended by subsection (c)(1)(B) of
 8 this section, which shall ascertain why the entity's prob-
 9 lems resulted in a material loss, and make recommenda-
 10 tions for preventing any such loss in the future.

11 (e) AUTHORITY OF SPECIAL INSPECTOR GENERAL.—
 12 Section 121 of the Emergency Economic Stabilization Act
 13 of 2008 (12 U.S.C. 5231) is amended by adding at the
 14 end the following:

15 “(l) DISCLOSURE.—

16 “(1) IN GENERAL.—Without approval of the
 17 Special Inspector General, no person, financial insti-
 18 tution (as defined in section 5312(a) of title 31,
 19 United States Code), bank holding company (as de-
 20 fined in section 2 of the Bank Holding Company Act
 21 of 1956 (12 U.S.C. 1841)), savings and loan holding
 22 company (as defined in section 10(a) of the Home
 23 Owners' Loan Act (12 U.S.C. 1467a(a))), or any
 24 other entity, including an entity that lawfully pos-
 25 sesses non-public information and records of the

1 Special Inspector General, may disclose information
2 and records with respect to the duties of the Special
3 Inspector General under this section unless—

4 “(A) the Special Inspector General has ap-
5 proved a request for that information or those
6 records, as applicable, under procedures estab-
7 lished by the Special Inspector General; or

8 “(B)(i) an appropriate court of the United
9 States has ordered that information or those
10 records, as applicable, be released; and

11 “(ii) the Special Inspector General had the
12 opportunity to oppose the release of the mate-
13 rial described in clause (i) in a proceeding be-
14 fore the court described in that clause.

15 “(2) APPLICATION OF PRIVILEGE.—No Federal
16 or State financial institutions regulatory agency, in-
17 cluding the Office of the Comptroller of the Cur-
18 rency, the Board of Governors of the Federal Re-
19 serve System, the Federal reserve banks, the Federal
20 Deposit Insurance Corporation, the Bureau of Con-
21 sumer Financial Protection, the Federal Housing Fi-
22 nance Agency, and any State banking agency, may,
23 on the basis of any common law privilege, including
24 the bank examiner privilege, deny the Special In-
25 spector General access to information or records

1 after the Special Inspector General has requested
 2 that information or those records, as applicable.”.

3 **SEC. 3. CERTIFICATION.**

4 (a) DEFINITIONS.—In this section—

5 (1) the term “appropriate entity” means—

6 (A) the Special Inspector General for the
 7 Troubled Asset Relief Program or any successor
 8 entity; or

9 (B) if the Program or entity described in
 10 subparagraph (A) does not exist, the Attorney
 11 General;

12 (2) the terms “bank holding company” and
 13 “savings and loan holding company” has the mean-
 14 ings given those terms in section 10(a) of the Home
 15 Owners’ Loan Act (12 U.S.C. 1467a(a)); and

16 (3) the term “financial institution” has the
 17 meaning given the term in section 5312(a) of title
 18 31, United States Code.

19 (b) CERTIFICATION.—The chief executive officer,
 20 chief financial officer, chief operating officer, and chief
 21 compliance officer of a financial institution, a bank hold-
 22 ing company, or a savings and loan holding company with
 23 assets greater than \$10,000,000,000 shall submit to the
 24 appropriate entity, subject to section 1001 of title 18,
 25 United States Code, an annual certification that the offi-

1 cers have conducted due diligence and found that there
2 is no criminal conduct or civil fraud in the financial insti-
3 tution, bank holding company, or savings and loan holding
4 company, as applicable, that has not been disclosed in full
5 to the Department of Justice or the applicable regulator.
6 If a disclosure to the Department of Justice or the appli-
7 cable regulator has been made, the certification shall ex-
8 plicitly describe all of the details of the conduct that has
9 been disclosed, including but not limited to, the date of
10 disclosure, and the person to whom the disclosure was
11 made.

12 (c) REGULATIONS.—Not later than 1 year after the
13 date of enactment of this Act, the appropriate entity shall
14 promulgate regulations on the process under which certifi-
15 cations made under subsection (b) shall be submitted.

16 (d) WEBSITE.—The appropriate entity shall, on the
17 website of the appropriate entity—

18 (1) within 90 calendar days following the pro-
19 mulgation of regulations under subsection (c), and
20 on an annual basis thereafter, publish a list of all
21 financial institutions, bank holding companies, and
22 savings and loan holding companies subject to the
23 upcoming year’s annual certification requirement
24 under subsection (b); and

1 (2) maintain on the homepage a direct link for
 2 the public to report alleged misconduct pertaining to
 3 any entity listed under paragraph (1).

4 (e) EFFECTIVE DATE.—Subsection (b) shall take ef-
 5 fect on the effective date of the regulations promulgated
 6 under subsection (c).

7 (f) ENFORCEMENT.—

8 (1) INJUNCTIONS.—When the Secretary of the
 9 Treasury believes a person has violated, is violating,
 10 or will violate this section or a regulation prescribed
 11 under this section, the Secretary may bring a civil
 12 action in the appropriate district court of the United
 13 States or appropriate United States court of a terri-
 14 tory or possession of the United States to enjoin the
 15 violation or to enforce compliance with the section or
 16 regulation. An injunction or temporary restraining
 17 order shall be issued without bond.

18 (2) CIVIL PENALTIES.—

19 (A) IN GENERAL.—A chief executive offi-
 20 cer, chief financial officer, chief operating offi-
 21 cer, and chief compliance officer of a financial
 22 institution, a bank holding company, or a sav-
 23 ings and loan holding company, willfully vio-
 24 lating this section or a regulation prescribed
 25 under this section is liable to the United States

1 Government for a civil penalty of not more than
2 \$25,000.

3 (B) NEGLIGENCE.—

4 (i) IN GENERAL.—The Secretary of
5 the Treasury may impose a civil money
6 penalty of not more than \$500 on any
7 chief executive officer, chief financial offi-
8 cer, chief operating officer, and chief com-
9 pliance officer of a financial institution, a
10 bank holding company, or a savings and
11 loan holding company who negligently vio-
12 lates any provision of this section or any
13 regulation prescribed under this section.

14 (ii) PATTERN OF NEGLIGENT ACTIV-
15 ITY.—If any chief executive officer, chief
16 financial officer, chief operating officer,
17 and chief compliance officer of a financial
18 institution, a bank holding company, or a
19 savings and loan holding company engages
20 in a pattern of negligent violations of any
21 provision of this section or any regulation
22 prescribed under this section, the Secretary
23 of the Treasury may, in addition to any
24 penalty imposed under clause (i) with re-
25 spect to any such violation, impose a civil

1 money penalty of not more than \$50,000
2 on the chief executive officer, chief finan-
3 cial officer, chief operating officer, and
4 chief compliance officer of a financial insti-
5 tution, a bank holding company, or a sav-
6 ings and loan holding company.

7 (3) CRIMINAL PENALTIES.—

8 (A) IN GENERAL.—A chief executive offi-
9 cer, chief financial officer, chief operating offi-
10 cer, and chief compliance officer of a financial
11 institution, a bank holding company, or a sav-
12 ings and loan holding company willfully vio-
13 lating this section or a regulation prescribed
14 under this section shall be fined not more than
15 \$250,000, or imprisoned for not more than 5
16 years, or both.

17 (B) OTHER LAWS.—A chief executive offi-
18 cer, chief financial officer, chief operating offi-
19 cer, and chief compliance officer of a financial
20 institution, a bank holding company, or a sav-
21 ings and loan holding company willfully vio-
22 lating this section or a regulation prescribed
23 under this section while violating another law of
24 the United States or as part of a pattern of any
25 illegal activity involving more than \$100,000 in

1 a 12-month period, shall be fined not more than
2 \$500,000, imprisoned for not more than 10
3 years, or both.

4 **SEC. 4. ACCOUNTABILITY IN DEFERRED PROSECUTION**
5 **AGREEMENTS.**

6 Section 3161(h)(2) of title 18, United States Code,
7 is amended—

8 (1) by striking “Any” and inserting “(A) Any”;
9 and

10 (2) by adding at the end the following:

11 “(B)(i) If the defendant described in subpara-
12 graph (A) is a person other than an individual, the
13 court may not approve an agreement described in
14 that subparagraph unless the court determines that
15 the agreement is in the public interest, including ex-
16 tending the term of such an agreement.

17 “(ii) In making the determination under clause
18 (i), the court shall consider—

19 “(I) whether any reforms required under
20 the agreement are likely to prevent similar un-
21 lawful behavior in the future;

22 “(II) whether any penalties under the
23 agreement are sufficient to compensate victims
24 and deter future unlawful actions; and

1 “(III) if the defendant has previously been
2 convicted or entered into a deferred prosecution
3 agreement with the Government in connection
4 with related activity, the court may not, without
5 good cause, approve such an agreement.

6 “(iii) Any period of delay during which the
7 court is making the determination under this sub-
8 paragraph shall be included in the period of delay
9 described in subparagraph (A).

10 “(C)(i) The court may, on its own or on motion
11 of any party or of an independent monitor, if one is
12 appointed pursuant to an agreement described in
13 subparagraph (A), review the implementation or ter-
14 mination of the agreement, and take any appropriate
15 action, to assure that the implementation or termi-
16 nation is in the public interest.

17 “(ii) The court may order a party or an inde-
18 pendent monitor to file evidence with the court to
19 aid the court in making the determination under
20 clause (i).

21 “(D)(i) Except as provided in clause (ii), the
22 Attorney General shall make available on the public
23 website of the Department of Justice—

24 “(I) the text of any agreement described in
25 subparagraph (A) between an attorney for the

1 Government and a defendant that is a person
2 other than an individual; and

3 “(II) all the terms and conditions of any
4 agreement or understanding between an inde-
5 pendent monitor appointed pursuant to the
6 agreement described in subclause (I) and the
7 defendant.

8 “(ii) The information described in clause (i)
9 and subparagraph (C)(ii) shall not be made publicly
10 available if, upon petition by any interested party,
11 the court finds that there is good cause to not make
12 such information public, including that the informa-
13 tion is proprietary, confidential, a trade secret, or
14 meets the requirements of rule 49.1 of the Federal
15 Rules of Criminal Procedure.”.

○