

## Department of Justice

*The Committee has subpoenaed information being withheld by the Justice Department that would help it assess whether the Dodd-Frank Act ended the phenomenon of “too big to fail” or whether new legislation is needed.*

### *TOO BIG TO FAIL*

March 8, 2013: Former Oversight and Investigations Subcommittee Chairman Patrick McHenry (R-NC) and Chairman Hensarling first requested that DOJ provide the Committee with records pertaining to DOJ’s decisions not to prosecute large financial institutions based on the potential impact that such a prosecution may have on the national economy.

- This request came two days after then-Attorney General Eric Holder testified before the Senate Judiciary Committee that the size of certain financial institutions was hindering DOJ’s ability to prosecute big banks. The Attorney General’s testimony suggests the DOJ believes Dodd-Frank does not sufficiently protect the financial system from disruption if one or more banks cease operating as a result of being prosecuted.

- The Committee has yet to receive from DOJ any records responsive to the Committee’s request beyond a small sampling of documents pertaining to the HSBC investigation. This single record production by DOJ pertaining to a single institution contains little to no deliberative agency information even with respect to HSBC and in no way constitutes a good-faith effort on the part of DOJ to comply with the Committee’s request.

August 21, 2013: Former Subcommittee Chairman McHenry requested from DOJ all records from December 29, 2010 to the present in which the Deputy Attorney General directed or otherwise instructed DOJ, or any other governmental entity, not to issue a subpoena directed to a financial institution.

- Like the Committee’s March 8, 2013 request, this request pertains to important records that would aid the Committee in understanding the processes and procedures behind DOJ’s decision either to prosecute or not prosecute a financial institution, including whether DOJ is declining to prosecute large banks based merely on their size.

- To date, more than a year and a half later, DOJ has failed to produce the requested information.

### *DOJ RETALIATION?*

May 27, 2014: Former Subcommittee Chairman McHenry requested from DOJ records pertaining to the civil lawsuit brought by the United States against McGraw-Hill Companies, Inc. and Standard & Poor’s Financial Services LLC (S&P).

- These records are relevant to the Committee's investigation of whether DOJ brought its case in an effort to retaliate against S&P for its 2011 decision to downgrade the government's credit rating -- an investigation that has been obstructed for nearly a year by DOJ's refusal to produce the requested records.

### **The New York Federal Reserve Bank**

*The New York Fed has failed to produce requested records related to the debt ceiling.*

November 6, 2013: Chairman Hensarling requested information pertaining to the debt ceiling, an inquiry that directly relates to the Committee's efforts to understand what effect, if any, a default on sovereign debt would have on capital markets.

- Notwithstanding the importance of this information, the New York Fed has yet to produce responsive records directly to the Committee in the more than 18 months that the Committee's request has been pending.
- The Committee received a letter dated December 5, 2013 from the New York Fed's general counsel, which answered questions and advised the Committee that the New York Fed was seeking permission from the Treasury Department to provide requested records. Following this letter, the Treasury Department permitted Committee staff to review the New York Fed documents in private.
- The Committee wrote to Treasury Secretary Jacob Lew on June 20, 2014 indicating that information in the New York Fed documents contradicted the Secretary's October 10, 2013 testimony before the Senate Committee on Finance, and questioning whether the Treasury Department had cooperated fully with the Committee's legitimate oversight.
- The letter observed that Treasury had only permitted the Committee to review the documents in private, despite the fact that the documents are marked "sensitive but not classified" and are not subject to a legal privilege that would qualify the Committee's right to obtain custody and control of them.
- The letter also stated that Treasury had failed to provide assurances that it had produced all known responsive documents during the Committee's review. Therefore, the Committee requested production of all documents that it had reviewed in private, and any other known responsive documents and records.
- On March 10, 2015, the Committee issued letters to President William Dudley of the New York Fed and Secretary Lew requesting that they comply with previous requests regarding the debt ceiling records or the Committee would issue a subpoena.

## Treasury Department

*Treasury has not fully cooperated with the Committee's legitimate oversight efforts to assess the Obama administration's debt ceiling contingency planning, nor has it complied with the Committee's request for records related to a money laundering investigation of HSBC.*

June 7, 2013: Former Subcommittee Chairman McHenry requested that Treasury provide the Committee with unredacted records relating to an outstanding Freedom of Information Act (FOIA) request made by the advocacy group Public Citizen. That request sought records related to DOJ's investigation of HSBC for violations of federal anti-money laundering laws and related offenses.

- Treasury partially responded to the FOIA request by producing heavily redacted documents. Former Subcommittee Chairman McHenry then requested all records responsive to the FOIA request in unredacted form by June 21, 2013.
- On July 26, 2013, over a month later than the requested response date for the documents, Treasury refused to produce unredacted documents and offered to produce only redacted documents.

December 6, 2013: Chairman Hensarling and former Subcommittee Chairman McHenry asked Treasury to provide the Committee with records and responses to particular questions relating to Treasury's and/or the New York Federal Reserve Bank's contingency plan for averting a default on U.S. sovereign debt.

- In the intervening 17 months, the Committee has sent multiple letters reiterating its demands for these records.
- On or about May 2014, Treasury offered and the Committee accepted to review the records in private. However, the Committee has been unable to obtain custody and control of the records in question and Treasury has failed to provide assurances that it produced all known responsive records.