



## Report of Investigation

U.S. Department of Housing  
and Urban Development  
Office of Inspector General  
*Office of Investigation*

File Number:

2013HQ001744I

District/Office:

Special Investigations Division, Washington, DC

Title:

**MAURICE A. JONES**  
Deputy Secretary  
U.S. Department of Housing and Urban Development (HUD)  
et al.

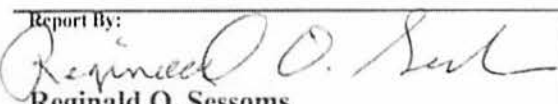
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### BASIS FOR INVESTIGATION:

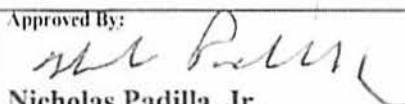
The Office of Inspector General, U.S. Department of Housing and Urban Development (HUD-OIG), initiated an investigation of potential anti-lobbying violations committed by Maurice A. JONES, Deputy Secretary (DS), HUD. Specifically, on July 31, 2013, an e-mail communication was sent on behalf of DS JONES to more than 1,000 recipients, including 46 HUD employees. This e-mail was asking the recipients to contact specific U.S. senators and encourage the senators to vote in favor of procedural motions to advance Senate consideration of S. 1243, Transportation, HUD, and Related Agencies Appropriations (THUD) (**Exhibit A**). On August 5, 2013, a follow-up e-mail, "Thank You For Your Support," was also disseminated to more than 1,000 recipients, including 46 HUD employees, on behalf of DS JONES (**Exhibit B**).

This investigation began pursuant to a request from Representative Patrick McHenry, Chairman, Subcommittee on Oversight and Investigations, U.S. House of Representatives Committee on Financial Services (Committee), dated August 28, 2013 (**Exhibit C**). The request questioned the dissemination of the e-mail sent on July 31, 2013, on behalf of DS JONES. The Committee suggested that the directness and specificity of the e-mail communication appeared to violate well-established Federal restrictions on lobbying by Federal agencies and, based on the apparent violations of Federal law, requested that HUD-OIG thoroughly investigate the matter and advise the Committee on whether HUD's actions violated any Federal law.

Report By:

  
Reginald O. Sessoms  
Special Agent in Charge  
Special Investigations Division

Approved By:

  
Nicholas Padilla, Jr.  
Deputy Inspector General  
for Investigations  
Office of Investigations

Date:

February 18, 2014

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OIGM 3000 Appendix 14a

HUD-1408(12-95)

On August 28 2013, the Committee also referred the matter to the U.S. Government Accountability Office (GAO) (**Exhibit D**) and specifically requested that GAO determine whether the e-mail communication violated Federal appropriations law. Therefore, our conclusions with respect to HUD's compliance with Federal appropriations laws are preliminary, pending GAO's review and determination.

**SUBJECTS:**

MAURICE A. JONES  
Deputy Secretary (DS), EX-0301-02 - Presidential Appointment with Senate confirmation (PAS)  
HUD  
Office of the Deputy Secretary  
Washington, DC

-0301-13  
HUD  
Office of the Chief Human Capital Office (OCHCO)  
Executive Scheduling and Operations Division  
Washington, DC

ELLIOT M. MINCBERG  
Acting General Deputy Assistant Secretary (GDAS), GS-0301-15  
HUD  
Congressional and Intergovernmental Relations (CIR)  
Washington, DC

PETER J. CONSTANTINE  
Associate General Counsel, ES-0905-00  
HUD  
Office of the Deputy General Counsel (ODGC)  
Ethics, Appeals, and Personnel Law Division (EAPLD)  
Washington, DC

JENNIFER L. SZUBROWSKI  
Deputy Assistant Secretary (DAS) for Intergovernmental Relations, GS-0301-15  
HUD  
Office of the Assistant Secretary for CIR  
Washington, DC

FRANCEY L. YOUNGBERG  
Deputy Assistant Secretary (DAS) for Public Engagement, GS-0301-15  
HUD  
Office of the Assistant Secretary for Public Affairs  
Washington, DC

JONATHAN M. HARWITZ  
HUD  
Deputy Chief of Staff for Budget and Policy, GS-0301-15  
Office of the Secretary  
Washington, DC

**POTENTIAL VIOLATIONS:**

**Criminal-Civil Violations:**

- 18 U.S.C. (United States Code) § 1913 – Anti-Lobbying Act
- 31 U.S.C. § 1341 - Anti-Deficiency Act (specifically, Section 716 of Public Law 112-74 - Consolidated and Further Continuing Appropriations Act of 2012)
- 18 U.S.C. § 1505 – Obstruction of Proceedings Before Departments, Agencies, and Committees
- 18 U.S.C. §1001 – False Statements

**Administrative Violations:**

- Internal HUD policy - Restrictions on Lobbying by Federal Employees
- HUD Handbook 0752.02, REV-3, Appendix 1, HUD Offenses and Penalties - Deliberate misrepresentation, falsification, exaggeration, concealment or withholding of material fact
- HUD Handbook 0752.02, REV-3, Appendix 1, HUD Offenses and Penalties – Standards of conduct violations not listed elsewhere in the Table of Penalties
- HUD Handbook 0752.02, REV-3, Appendix 1, HUD Offenses and Penalties – Committing a personnel practice prohibited by 5 U.S.C. 2302 by administrative, managerial, or personnel officials

**SYNOPSIS:**

The investigation disclosed that [REDACTED] ([REDACTED]) and DS JONES, as well as SZUBROWSKI, YOUNGBERG, HARWITZ and MINCBERG, all appear to have violated anti-lobbying riders contained in the Consolidated Appropriations Act, 2012, and in the Consolidated and Further Continuing Appropriations Act, 2013. The riders included language that restricted the use of appropriated funds for publicity or propaganda purposes directed at legislation pending before Congress. As an appropriations measure, these provisions are subject to interpretation and enforcement by the Comptroller General of GAO. The Comptroller General has interpreted these restrictions to apply to appeals to members of the public, urging them to contact their representatives to vote in a particular manner. This matter has been referred to GAO for further review.

██████████ and DS JONES violated HUD's internal policy, Restrictions on Lobbying by Federal Employees (**Exhibit E**), by sending an e-mail, asking recipients to contact senators on pending legislation. SZUBROWSKI, YOUNGBERG, HARWITZ and MINCBERG violated HUD's internal policy, Restrictions on Lobbying by Federal Employees, by preparing for distribution an e-mail asking recipients to contact senators on pending legislation.

██████████'s and DS JONES' actions did not appear to violate the Anti-Lobbying Act provisions relating to grass roots lobbying activities, nor did the actions of SZUBROWSKI, YOUNGBERG, HARWITZ or MINCBERG. While the e-mail was a grass roots lobbying communication, the Anti-Lobbying Act's prohibition relates to "substantive" grass roots lobbying activity. The U.S. Department of Justice (DOJ) has opined that to be "substantive" the activity must cost in excess of \$50,000. Although HUD-OIG did not calculate the cost, it appears to fall short of the \$50,000 threshold.

DS JONES also appears to have committed a Prohibited Personnel Practice (PPP) by directing and authorizing ██████████ to dispatch the July 31, 2013, and August 5, 2013, e-mail communications on his behalf that also went to 46 HUD employees. This appears to violate 5 U.S.C. §2302(b)(3), which prohibits an official from coercing any person's political activities. This matter has been referred to the Office of Special Counsel (OSC).

The investigation also determined that MINCBERG committed violations of HUD's administrative policy<sup>1</sup> when he advised HUD personnel (coworkers and subordinates), who were involved in compiling the e-mail recipient list, preparing the e-mail, and disseminating the e-mail to ██████████ and DS JONES, that he had coordinated with HUD's Office of General Counsel (OGC) and that HUD-OGC did not raise objections or have a problem with the dissemination of the e-mail as long as the e-mail "came from" the DS, a PAS official, and not pursuant to "instructions from" the DS.

MINCBERG also took steps to interfere with the HUD-OIG investigation by interrupting and inserting himself into an ongoing witness interview, threatening to terminate the interview and not allow the witness to provide documentation as requested by investigators. MINCBERG also attempted to obstruct HUD-OIG's investigation when he contacted HUD-OGC employees, before their interviews by investigators, to discuss anti-lobbying and their recollection of events.

MINCBERG also threatened the investigating agents that he (MINCBERG) would ensure that the agents were charged as a result of their inappropriate actions. MINCBERG did not identify those actions to investigators.

MINCBERG was less than forthcoming in regard to his involvement in the preparation and dissemination of the July 31 e-mail communication, his knowledge of the Anti-Lobbying Act and his

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<sup>1</sup> HUD Handbook 0752.02 REV-3, Appendix 1, HUD Table of Offenses and Penalties, section 13 (Deliberate misrepresentation, falsification, exaggeration, concealment or withholding of material fact) and section 34 (Standards of conduct violations not listed elsewhere in the Table of Offenses and Penalties)

knowledge of HUD's internal policy governing the restrictions on lobbying by Federal employees.

Finally, the investigation disclosed that CONSTANTINE violated HUD's administrative policy<sup>2</sup> by failing to clarify the specifics of the action discussed between him and MINCBERG before the dispatch of the e-mail communication and withheld information pertinent to the investigation when questioned during multiple interviews with HUD-OIG investigators.

During the course of our investigation, we conducted 20 interviews and reviewed both current and historical HUD policies on anti-lobbying. We also obtained and reviewed relevant documents maintained by HUD, including e-mail communications.

The facts of this investigation were reviewed with DOJ's Public Integrity Section, Criminal Division. On November 25, 2013, DOJ declined to open a criminal investigation into this matter. DOJ deferred to HUD-OIG to refer the matter to HUD for any administrative action it deemed appropriate.

Additionally, we have forwarded our report of investigation to GAO for its determination with respect to potential appropriations law violations. We also forwarded the report of investigation to the Office of Special Counsel for its determination with respect to potential violations of Prohibited Personnel Practices.

### **DETAILS OF INVESTIGATION:**

*(Note: For the convenience of the reader, at the end of the report, we have provided a list identifying the names and titles of all individuals referenced in the report, an index of all exhibits (Exhibit), a list of all memoranda of interview (MOI) and activity (MOA), and a list of acronyms.)*

### **HUD's Policy on Restrictions on Lobbying by Federal Employees**

At the time the July 31 and August 5, 2013, e-mails were drafted and sent, HUD's policy with regard to Restrictions on Lobbying by Federal Employees, dated July 6, 2011, prohibited any HUD employee (including PAS officials) from encouraging anyone to contact Congress in support of or in opposition to pending legislation.

This policy, approved by HUD's General Counsel and published on HUD-OGC's internal Web page, stated:

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<sup>2</sup> HUD Handbook 0752.02, REV-3, Appendix 1, HUD Table of Offenses and Penalties, section 13 (Deliberate misrepresentation, falsification, exaggeration, concealment or withholding of material fact) and section 34 (Standards of conduct violations not listed elsewhere in the Table of Offenses and Penalties)

PAS employees may not organize or encourage “grass roots” lobbying campaigns designed to urge others to pressure Members of Congress to support or oppose any pending legislation or appropriation (**Exhibit E**).

The prohibition is raised again in the policy when addressing permissible on-duty activities:

The anti-lobbying statute does not prohibit Department communications designed to inform the public about Administration or HUD positions, or to promote those positions, *as long as the communication does not solicit pressure on Congress* (Emphasis added).

The Department may send unsolicited materials, such as press releases, fact sheets, copies of speeches, and similar materials, to persons and organizations that may be reasonably expected to have an interest in the subject matter. *Such materials may not, however, urge the recipients to contact Members of Congress to express support or opposition to any proposed or pending legislation* (**Exhibit E**) (Emphasis added).

According to [REDACTED] Management Information Specialist, HUD-OGC, the July 6, 2011, policy was removed from HUD’s internal Web page on September 4, 2014, approximately 7 days from the date of the Committee’s letter of August 28, 2013 (**MOI 1**).

In addition to the “Restrictions on Lobbying by Federal Employees” policy, PAS officials were specifically advised of HUD’s policy with regard to restrictions on lobbying via a HUD-OGC letter, dated June 21, 2011, titled “Restrictions on Lobbying by Presidential Appointed, Senate Confirmed Individuals” (**Exhibit F**). Although this letter deals specifically with the HOME Investment Partnerships Program (HOME), it clearly states:

PAS officials are prohibited from making any appeals, whether oral or written, to the public that suggest that the public contact Congress to indicate support of or opposition to pending legislation. PAS officials lobbying restrictions are only restricted after legislation has been introduced in either the Senate or the House of Representatives.

MINCBERG was aware of these prohibitions as he had previously asked for and received clarification relative to HUD’s anti-lobbying policy in February of 2013 via e-mail (**Exhibit G**). At that time, MINCBERG was advised, “The 2012 appropriations act prohibits PAS and other HUD employees from lobbying once a bill is pending before Congress.”

MINCBERG did not deny knowledge of the June 21, 2011, PAS memorandum or the February 27, 2013, e-mail answer he received from OGC ethics officials concerning the question he posed relative to lobbying. However, he stated in the context of the July 31 e-mail that he did not recall the PAS memorandum or the answer from the OGC ethics officials, which clearly stated that PAS officials were prohibited from lobbying once legislation was pending before Congress (**MOI 2**).

DS JONES stated that he was not aware of HUD’s policy that PAS employees could not lobby on pending legislation. According to DS JONES, he had not seen the PAS official memorandum, dated June 21, 2011 (**MOI 3**).

A new anti-lobbying policy, Anti-Lobbying Act Do's and Don'ts (**Exhibit H**), was posted on HUD-OGC's internal ethics Web page on September 24, 2013. The new policy does not specifically restrict PAS officials from lobbying on pending legislation but, rather, states:

PAS officials should not undertake any grass-roots lobbying activities without consulting with the Office of General Counsel. Written materials proposed to be distributed as part of grass-roots lobbying activities (e.g. letters, e-mails) must be cleared by the Office of General Counsel in advance.

### **Request From the U.S. House of Representatives Committee on Financial Services**

HUD-OIG received a request, dated August 28, 2013, from the Committee regarding an e-mail communication sent by DS Jones on July 31, 2013. The e-mail communication was addressed to "friends and colleagues" and called on the recipients to contact specific U.S. senators and encourage them to vote in favor of procedural motions to advance Senate consideration of S. 1243, legislation making appropriations for fiscal year 2014 for the U.S. Department of Transportation, HUD, and related agencies (THUD). The e-mail communication urged recipients to oppose certain amendments and suggested that recipients encourage named senators to support final passage of the bill.

In its letter, the Committee asserted that "...the directness and specificity of the e-mail communication appears to violate well established federal restrictions on lobbying by federal agencies." The Committee asked HUD-OIG to thoroughly investigate this matter and advise the Committee regarding whether HUD's actions violated any Federal law.

Also, on August 28, 2013, the Committee sent a letter to GAO, requesting that GAO OGC investigate the sending of the above referenced e-mail communication and determine whether any appropriations laws were violated. The Committee requested that GAO issue a formal opinion on this matter.

The Committee also sent a letter to the Secretary of HUD, Shaun Donovan, on August 28, 2013, (**Exhibit I**) regarding the e-mail communication. The Committee's letter to HUD included the same assertion included in its letter to HUD-OIG and added that "...the statutory prohibitions on agency lobbying include a federal criminal statute and appropriation restrictions contained within the Consolidated Appropriations Act, 2012, retained in the Consolidated and Further Continuing Appropriations Act, 2013. *See* 18 U.S.C. § 1913; P.L. 112-74 §§ 716, 719; P.L. 113-6 § 1102." The Committee requested that HUD provide the following:

1. The names and organizational affiliations of all recipients of the e-mail communication.
2. A description of the process that HUD follows to ensure that external communications are consistent with applicable criminal and civil statutes.
3. All records within the possession, custody, or control of the DS for the period July 22 to August 5, 2013, inclusive, relating to Senate bill S. 1243.

### **Genesis of the July 31, 2013, THUD E-mail**

According to BROWN, the decision to send the July 31, 2013, e-mail was a continuation of a series of “stakeholder calls” that DS JONES’ office had been conducting because the upcoming congressional vote was a “big matter being worked on in the Department” (MOI 4).

SZUBROWSKI stated that she did not remember who brought up the idea of preparing the e-mail, who said that it needed to be sent out, or who asked her to work on it. SZUBROWSKI believed the e-mail was the follow-up to stakeholder calls and that the e-mails sent and calls made were for the purpose of updating stakeholders in regard to the status of THUD. SZUBROWSKI stated that many e-mails pertaining to the bill were sent to stakeholders before the e-mail in question was sent (MOI 5).

SZUBROWSKI stated that she believed that MINCBERG brought the concept of the e-mail to her attention in late June 2013. According to MINCBERG, sometime toward the end of June or early July 2013, various internal discussions within CIR took place concerning the upcoming THUD vote. MINCBERG noted that the discussions took place primarily between him, DS JONES, HARWITZ, YOUNGBERG, and SZUBROWSKI. YOUNGBERG initially could not recall who came up with the idea to send the e-mail but later related that the idea was hers (MOI 5 and 6).

MINCBERG noted that a collective decision was made between him, DS JONES, HARWITZ, YOUNGBERG and SZUBROWSKI to send the e-mail to HUD stakeholders to ask them to encourage Senate support of the THUD bill. MINCBERG stated that the e-mail was a “grassroots lobbying effort to garner support for the THUD bill” (MOI 7).

MINCBERG stated that based on his prior legal experience, he believed it was appropriate for an individual who occupied a PAS position to engage in grassroots lobbying and make an “ask.” MINCBERG also noted that there was no dissent at any point along the way from anyone involved in the process regarding sending the e-mail.

According to DS JONES, he was familiar with the July 31, 2013, e-mail, and stated, “We were reaching out to HUD stakeholders.” DS JONES described the e-mail as part of the process of informing stakeholders where things were with respect to HUD’s appropriations and an effort to inform stakeholders about what was going on. DS JONES stated that he could not recall when he first heard about the concept of sending the e-mail or who came up with the idea. He recalls that the idea came to his attention close to the date on which the e-mail was sent. DS JONES stated that the e-mail was a follow-up to telephone conversations he had been having with HUD stakeholders. DS JONES stated that he did not recall having any extended conversations with anyone on his staff regarding sending the e-mail and that the process was never described to him as a grassroots lobbying effort (MOI 3).

According to CONSTANTINE, during the summer of 2013, he had two short exchanges with MINCBERG. During one of the exchanges, MINCBERG stated that there was thought being given to having the HUD Secretary or DS JONES engage in a more “aggressive lobbying effort” relative to pending legislation or an appropriation. CONSTANTINE related that it was not clear at the time that MINCBERG was referring to a specific pending legislative matter or appropriation (MOI 8).

CONSTANTINE stated that one of the conversations took place in the hallway at HUD, and one was



over the telephone, and neither was more than 1 or 2 minutes in duration. CONSTANTINE further related that MINCBERG said, "We are interested in preparing correspondence in the area of lobbying that would be more aggressive" and wanted to know "can we do it?" CONSTANTINE stated that there was a sense that MINCBERG was familiar with HUD's policy on anti-lobbying and was just running the question by HUD-OGC. CONSTANTINE stated that MINCBERG was informed that there was a "basis to do it," but it was also pointed out that while the Anti-Lobbying Act provides exceptions relative to permissible activities that may be undertaken by individuals who occupy PAS positions, it also contains prohibitions relative to activities those in PAS positions can undertake relative to lobbying.

CONSTANTINE stated that in short, he told MINCBERG that there was a basis for making the argument that it could be done; however, at the same time, the Anti-Lobbying Act contains prohibitions against certain activities by individuals in PAS positions when an appropriation is involved. CONSTANTINE stated that MINCBERG did not mention the correspondence that was being contemplated was an e-mail communication.

### **HUD's Drafting of the July 31, 2013 THUD E-mail**

According to SZUBROWSKI, the drafting of the July 31 email was a joint effort of the CIR team, as well as members from HUD's Office of Legislative Relations and HUD's Office of Intergovernmental Relations. The individuals specifically involved were HARWITZ; MINCBERG; SZUBROWSKI; [REDACTED], Office of Public Engagement, Office of the Assistant Secretary for Public Affairs; and YOUNGBERG (MOI 5).

YOUNGBERG confirmed participating in drafting the July 31 email and relied on HARWITZ and MINCBERG to provide relevant content, such as the names of the pertinent senators and congressmen. According to SZUBROWSKI, CIR identified via public records which senators voted for cloture and which senators were supportive of the THUD bill. This was how the senators named in the email came to be noted (MOI 9).

According to HARWITZ, he did not have a firm recollection of what edits he may have provided relative to the July 31 email draft(s). To the best of his recollection, he and MINCBERG made "some substantive and rhetorical edits" to the draft, which were then forwarded to YOUNGBERG (MOI 10).

MINCBERG stated that he did not draft the July 31 email, and he believed that YOUNGBERG and SZUBROWSKI were primarily responsible for drafting the email language. MINCBERG stated that because he was new to his position at the time and because HARWITZ was responsible for matters related to appropriations, HARWITZ was certainly very involved in the process. MINCBERG noted that a number of emails were floated around relative to the draft language and he reviewed whatever was provided to him. MINCBERG stated, upon reviewing what was provided, that he probably made suggestions such as "switching this around, or switching that around" (MOI 7).

MINCBERG characterized his comments relative to any draft or drafts as "general suggestions." MINCBERG stated that he could not "say for sure" who provided the specific language in the email

that encouraged the “grassroots” activity. MINCBERG added that there was a general consensus and collective agreement among the team working on the matter regarding the language.

According to SZUBROWSKI, the email recipient list was a compilation of email lists maintained by various CIR team members and included individuals that DS JONES might have called during group conference calls to stakeholders that took place before the dissemination of the email. SZUBROWSKI stated that YOUNGBERG probably provided the majority of the names on the recipient list (MOI 5).

MINCBERG stated that he did not vet the email recipient list and relied on various people from the team to come up with the list. MINCBERG noted that it was his understanding, through conversation with YOUNGBERG, and possibly HARWITZ, that the email recipients were HUD stakeholders and individuals with an interest in the THUD bill (MOI 7).

According to HARWITZ, he did not have a clear recollection regarding whether he contributed any names to the July 31 email recipient list but stated that he may have (MOI 10).

According to SZUBROWSKI, concerns were raised during the drafting process about the appropriateness of the email with regard to ethics regulations and laws, although MINCBERG assured the staff that HUD-OGC was aware of the concept of the e-mail and that HUD-OGC had advised that it was alright to send the email (MOI 5).

YOUNGBERG stated that it was her understanding, based on ethics and guidance from HUD-OGC in the past, that if a HUD employee did not occupy a PAS position, the employee was strictly prohibited from forwarding any request soliciting a vote on a congressional bill. YOUNGBERG stated that because of the prohibition, she did not disseminate the e-mail but, instead, forwarded it to [REDACTED] to be sent by [REDACTED] on DS JONES’ behalf. YOUNGBERG provided a copy of a July 31, 2013, email string among YOUNGBERG, MINCBERG, and others (Exhibit J), which reflects that MINCBERG authorized YOUNGBERG to forward the July 31 email to [REDACTED] for [REDACTED] to disseminate on behalf of DS JONES (MOI 9).

### **HUD’s Review of the July 31, 2013, THUD E-mail**

According to Helen K. KANOVSKY, General Counsel, HUD-OGC, there was no formal legal review of the July 31, 2013, e-mail (MOI 11).

There was some discussion about the appropriateness of the e-mail by SZUBROWSKI and YOUNGBERG (MOI 5, 9 and 12).

According to MINCBERG, after the decision was made to draft an e-mail in support of THUD, MINCBERG discussed the matter with CONSTANTINE and described sending an e-mail to HUD stakeholders. MINCBERG stated that CONSTANTINE did not raise objections but did emphasize that it was important that the e-mail come “from the Deputy” as an individual who occupied a PAS position (MOI 7). *(Note: This account is not consistent with CONSTANTINE’s recollection of the conversations.)*

CONSTANTINE related that during the summer of 2013, he had two very short exchanges with MINCBERG regarding lobbying efforts within the Department. CONSTANTINE noted that during the two conversations, MINCBERG mentioned that there was thought being given to having the HUD Secretary or DS engage in a “more aggressive lobbying effort” relative to pending legislation or appropriation, although no specific pending legislative matter or appropriation was identified (MOI 8).

CONSTANTINE stated that MINCBERG said, “We are interested in preparing correspondence in the area of lobbying that would be more aggressive.” MINCBERG further stated that the correspondence would come from the HUD Secretary or DS. MINCBERG wanted to know whether it was permissible.

CONSTANTINE’s sense was that MINCBERG was familiar with HUD’s policy on anti-lobbying and he was just running the question by CONSTANTINE. CONSTANTINE advised MINCBERG that there was a basis for making the argument that it could be done; however, at the same time, the Anti-Lobby Act contains prohibitions against certain activities by individuals in PAS positions when an appropriation is involved.

MINCBERG stated that he had a “fleeting” conversation in the hallway with DS JONES about the e-mail. According to MINCBERG, during that conversation, he mentioned the e-mail to DS JONES, and advised him that according to HUD-OGC, the e-mail had to come “from” the DS. MINCBERG stated that he mentioned this particular point to DS JONES, so that regarding any conversation [REDACTED] might have with DS JONES, once she received the e-mail for dissemination, DS JONES would be aware of what HUD-OGC had advised (MOI 7).

DS JONES stated that he remembered someone saying that there was a DOJ OLC opinion that he (JONES) could send the e-mail. JONES stated that MINCBERG might have said it (MOI 3).

According to MINCBERG, he advised HARWITZ, YOUNGBERG and SZUBROWSKI that he had spoken to HUD-OGC regarding the plans to send the e-mail, and he clearly communicated to them that it was okay to send the e-mail as long as the “ask” was coming from an individual who was in a PAS position (MOI 7).

MINCBERG stated that based on his prior legal experience, he believed it was appropriate for an individual who occupied a PAS position to engage in grassroots lobbying and make an “ask.” MINCBERG also noted that there was no dissent at any point along the way from anyone involved in the process regarding sending the e-mail.

MINCBERG did not deny knowledge of the June 21, 2011, PAS memorandum or the February 27, 2013, answer he received from OGC ethics officials regarding the question he posed concerning lobbying, but he stated that he did not recall that the PAS memorandum or the answer from the OGC ethics officials clearly stated that PAS officials were prohibited from lobbying once legislation was pending before Congress. Asked whether CONSTANTINE cautioned him during either of their two conversations that PAS officials were prohibited from certain lobbying activities once legislation was pending, MINCBERG stated that he did not recall CONSTANTINE advising him of such but he was not going to say with 100 percent certainty that CONSTANTINE had not done so (MOI 2).

DS JONES noted that he did not believe sending the e-mail constituted lobbying and that no one raised that as a point of concern. According to DS JONES, if the concern had been raised, he would have stopped the process and consulted HUD-OGC. DS JONES stated that he did not know whether the July 31 e-mail was reviewed by HUD-OGC before it was sent, although coordination with OGC was a good prudent practice. According to DS JONES, after the congressional letter of inquiry was received, he asked MINCBERG whether anyone had run the e-mail by OGC. According to DS JONES, MINCBERG responded that he did not know and gave no indication that he had spoken with OGC (MOI 13).

DS JONES stated that he was not aware of HUD's policy stating that a PAS official could not lobby on pending legislation. DS JONES stated that he did not see the PAS official memorandum, dated June 21, 2011.

According to CONSTANTINE, when he reviewed the July 31 e-mail, he was "taken aback," and he was struck by two things: (1) the e-mail certainly was lobbying pending an appropriation, and (2) the e-mail had been sent by [REDACTED] on behalf of the DS and not by DS JONES himself. CONSTANTINE reiterated that the e-mail clearly constituted lobbying by a HUD official on a pending appropriation and it should not have been sent out by [REDACTED] (MOI 8, 14 and 18).

CONSTANTINE also stated that without fully reviewing HUD's July 6, 2011, Anti-Lobbying Act policy, he did not feel comfortable commenting; however, he believed that the July 31 e-mail may have been inconsistent with HUD's policy at the time regarding lobbying. CONSTANTINE noted that there are arguments to be made relative to the anti-lobbying laws and there is a certain "tension" in the law regarding what can and cannot be done. CONSTANTINE stated that the "appropriations rider" lacks clarity regarding anti-lobbying activities.

CONSTANTINE stated that he could not recall the date but very shortly after Secretary Donovan received the August 28, 2013, congressional request, KANOVSKY called a meeting in her office to discuss it. CONSTANTINE noted that he attended the meeting, along with MINCBERG and Damon SMITH, Principal Deputy General Counsel, HUD-OGC.

CONSTANTINE stated that he was the last to arrive for the meeting and as he entered KANOVSKY's office, he heard MINCBERG say something to the effect that "CONSTANTINE told me I could do it." After joining the meeting, CONSTANTINE learned what MINCBERG had been asserting to KANOVSKY and SMITH, that he (MINCBERG) had relied upon CONSTANTINE's guidance regarding whether there was an anti-lobbying prohibition against sending the July 31, 2013, e-mail.

CONSTANTINE stated that he was upset by MINCBERG's assertion and felt that MINCBERG was "throwing him under the bus"; however, he thought the meeting was not the place or time to point fingers, so he told KANOVSKY and SMITH that MINCBERG had relied upon his guidance with respect to sending the July 31 e-mail. CONSTANTINE stated that he was not responsible for the July 31 e-mail or the decision to send it, nor could he be, given he was not aware of the e-mail until he learned of the congressional request. CONSTANTINE stated that he felt it was his obligation, however, to take responsibility for the e-mail since he provided MINCBERG with guidance that there was a basis for making an argument that supported MINCBERG's desire to engage in a "more

aggressive lobbying effort” relative to pending legislation or an appropriation.

CONSTANTINE stated that MINCBERG “played” him. CONSTANTINE stated that he thought MINCBERG worked the system really well and got enough from HUD-OGC to go in the direction he wanted to go relative to sending the July 31 e-mail.

CONSTANTINE believed that during their short discussions on the matter, MINCBERG knew the policy. According to CONSTANTINE, it was his belief that whatever communication MINCBERG was referring to, CONSTANTINE would see it in the future in a more formal form when it came across his desk for review. CONSTANTINE stated that in retrospect, his perception was that MINCBERG got what he wanted from their brief discussions and “ran with it.”

CONSTANTINE stated that later the same day after the meeting in KANOVSKY’s office, MINCBERG called and apologized to CONSTANTINE for his actions during the meeting. CONSTANTINE related that MINCBERG apologized for, in MINCBERG’s words, “throwing him under the bus.” CONSTANTINE noted that he accepted the apology.

CONSTANTINE remarked that he took the high road by taking responsibility during the meeting in KANOVSKY’s office, and he accepted MINCBERG’s apology afterward because he knew that after MINCBERG completed his assignment as the Acting General Deputy Assistant Secretary for CIR, he would return to HUD-OGC and CONSTANTINE would have to work with him again, although he did not elaborate further regarding what he meant by this statement.

CONSTANTINE noted that the new lobbying policy instructs HUD employees that when in doubt, they are to send correspondence to HUD-OGC for review before sending it out. However, he related that MINCBERG apprised him that there might be occasions when the Deputy Secretary’s office might not want to send correspondence through HUD-OGC, which is in direct contradiction to the response provided to the Committee by MINCBERG on September 24, 2013. CONSTANTINE also stated that before the dissemination of the July 31, 2013, e-mail, HUD-OGC did not require correspondence related to lobbying be reviewed and approved by HUD-OGC.

### **HUD’s Release of the E-mail - DS JONES’s Approval and the Dissemination of the July 31, 2013, Email**

HUD-OIG interviews determined that MINCBERG did not receive a formal legal review from HUD-OGC before preparing and disseminating the specific e-mail communication in question, urging recipients to oppose certain amendments and suggesting that recipients encourage named senators to support final passage of a pending bill, as MINCBERG purported to his coworkers and subordinates.

According to [REDACTED], it was common practice and procedure for her to transmit e-mails on behalf of DS JONES, but she never disseminated an e-mail without first receiving authorization from DS JONES to do so. Relative to the July 31 e-mail, [REDACTED] stated she thought the e-mail and recipient list were forwarded to her by SZUBROWSKI, with direction from SZUBROWSKI that the email should be disseminated to the individuals on the recipient list. [REDACTED] stated that she disseminated the e-mail

following her standard practice. ██████ noted that she was aware that an e-mail concerning the THUD bill would be forwarded to her for dissemination, and she did not receive specific instructions from DS JONES before SZUBROWSKI forwarded the e-mail and recipient list to her for dissemination. ██████ stated that upon receipt of the e-mail and the recipient list, she followed the standard practice of speaking with DS JONES to ensure that he did not have any last minute changes to the e-mail and to receive authorization to forward the e-mail on his behalf. ██████ stated that she sent the e-mail after DS JONES verbally instructed her to do so on July 31, 2013 (MOI 4).

*(Note: A review of documentation reflects that it was YOUNGBERG, not SZUBROWSKI, who forwarded the July 31, 2013, e-mail and recipient list to ██████, with direction regarding the dissemination of the e-mail. SZUBROWSKI also provided ██████ with a list of recipient addresses to be "BCC" (blind copied) on the July 31, 2013, e-mail.) (Exhibit K).*

██████ noted that she also disseminated the August 5, 2013, "Thank You for your Support" e-mail, following the same practice and procedure as she had in the dissemination of the July 31, 2013, e-mail.

According to DS JONES, he did not have a specific recollection of reading or reviewing the e-mail the day it was sent; however, he was pretty sure he did and he did not have any issues with the e-mail. DS JONES stated that he authorized ██████ to send the e-mail out on his behalf because he was advised by his staff that, since he occupied a PAS position, he had the authority to take such actions. DS JONES stated that while he did not recall specifically who provided the guidance to him regarding his authority as a PAS official to take part in the conference calls and send the e-mail, he would have received the guidance from "folks" within CIR and "certainly MINCBERG was involved." DS JONES stated that members of CIR were "schooling" him and informed him that he was allowed to reach out to folks on behalf of legislation in a way that others on his staff could not (MOI 13).

DS JONES stated that at no time did he think there was any prohibition to sending the July 31 e-mail and the first time that he had any inclination that there was an issue with the dissemination of the e-mail was when the Department received the Committee's request. DS JONES noted that he did not believe sending the e-mail constituted lobbying; no one raised that as a point of concern; and if the concern had been raised, he would have stopped the process and consulted HUD-OGC.

DS JONES stated that after the Committee's request, he asked members of CIR and HUD-OGC whether the e-mail should have been sent, but he received no clear answer. DS JONES stated that he was told, "...only you can do this due to your position. You have the ability to 'make asks' that others do not."

DS JONES stated that at the time, he had not been aware of HUD's policy prohibiting PAS officials from lobbying on pending legislation. DS JONES stated that it was articulated to him that "I could do things that others could not do." DS JONES stated that no one ever suggested that MINCBERG, or anyone else involved in the process thought they were operating in a "grey area." DS JONES stated that he remembered someone saying that there was an OLC opinion that allowed him to undertake the activities he was involved with relative to the THUD bill and it may have been MINCBERG who provided that counsel.

DS JONES stated that he did not see the PAS official memorandum, dated June 21, 2011, or the July 6, 2011, policy document and noted that he should have been shown the documents when he arrived at HUD. DS JONES stated that if he had seen the documents before authorizing the release of the e-mail, he would have asked, "Wait, can we do this?" DS JONES stated that he expects his staff to give him all of the information that he needs so that he is fully aware of risks before he makes a decision.

SZUBROWSKI stated that the e-mail recipient list was a compilation of e-mail lists maintained by various CIR team members and included individuals that DS JONES might have called during the group conference calls to stakeholders that took place before the dissemination of the e-mail. SZUBROWSKI stated that she and YOUNGBERG probably provided the majority of the names on the recipient list.

SZUBROWSKI stated that she specifically spoke to MINCBERG in regard to the process for the dissemination of the July 31, 2013, e-mail. SZUBROWSKI stated that she had concerns about the e-mail because the DS was asking the recipients to vote a certain way, so she went to MINCBERG to determine the appropriate way to send the e-mail. SZUBROWSKI noted that she consulted with MINCBERG, because she wanted to make sure she would be in compliance with ethics regulations and the law. According to SZUBROWSKI, MINCBERG told her that OGC had been notified of the concept and it was alright to send the e-mail (MOI 5).

YOUNGBERG stated that it was her understanding, based on ethics and guidance from HUD-OGC in the past, that if a HUD employee did not occupy a PAS position, the employee was strictly prohibited from forwarding any request soliciting a vote on a congressional bill. YOUNGBERG stated that because of the prohibition, she did not disseminate the e-mail but, instead, forwarded it to [REDACTED] to be sent by [REDACTED] on behalf of the DS. YOUNGBERG stated that the July 31 e-mail recipient list was a compilation of stakeholder contacts she and SZUBROWSKI had. YOUNGBERG provided a copy of an e-mail (Exhibit J) she sent to MINCBERG, which reflects that MINCBERG authorized YOUNGBERG to forward the July 31 e-mail to [REDACTED] for [REDACTED] to disseminate on behalf of JONES (MOI 9).

YOUNGBERG stated that as a result of prior experience and training, she was aware that only those who occupied a PAS position were authorized to lobby and as a result of this knowledge, she made a point to coordinate with HARWITZ and MINCBERG in order to confirm that the e-mail could be disseminated, as well as determining the manner in which the e-mail could be disseminated. YOUNGBERG stated that both HARWITZ and MINCBERG gave her the "okay." YOUNGBERG stated that HARWITZ and MINCBERG had to approve the e-mail and its content and if either disapproved its dissemination, it would not have been sent.

According to HARWITZ, he had a vague recollection that during a meeting, DS JONES asked MINCBERG whether sending the e-mail or making the stakeholder conference calls was consistent with what DS JONES could do as an individual occupying a PAS position. HARWITZ stated that MINCBERG told DS JONES that it was. HARWITZ stated that he could not specifically recall whether at the time DS JONES asked MINCBERG the question, DS JONES was referring to the stakeholder conference calls or sending the e-mail (MOI 10).

HARWITZ stated that he understood that DS JONES was lobbying by making the stakeholder conference calls and sending the e-mail; however, he recalled that the efforts were generally referred to as “mobilizing.” HARWITZ stated that he believed that DS JONES was allowed to make the stakeholder conference calls and send the e-mail as an individual who occupied a PAS position and his actions were within the limitations of the Anti-Lobbying Act and possibly the appropriations legislation.

### **HUD’s Response to the Committee’s August 28, 2013, Request**

As noted, HUD received a request, dated August 28, 2013, from the Committee for information relating to the July 31, 2013, e-mail communication from DS JONES. HUD responded to the Committee in a letter, dated September 24, 2013, from MINCBERG, signing as Acting Assistant Secretary for Congressional and Intergovernmental Relations. During the course of preparing its response to the Committee, HUD revised its internal policy document regarding restrictions on lobbying. As noted previously, HUD’s policy in effect at the time the July 31, 2013, e-mail communication was drafted and dispatched clearly did not allow HUD PAS officials to urge others to pressure members of Congress regarding any pending legislation or appropriation.

A separate policy memorandum to PAS employees addressed restrictions from using appropriated funds to encourage anyone to contact Congress in support of or in opposition to pending legislation. These restrictions for PAS employees were removed from the revised policy and replaced with a word of caution regarding grass roots lobbying activity and a requirement that written materials proposed to be distributed as part of grass roots lobbying activities be cleared by OGC in advance.

During the course of rewriting HUD’s guidance on anti-lobbying, MINCBERG insisted that the provision prohibiting lobbying on pending legislation by PAS be removed. It was this specific HUD policy provision that was violated by the July 31, 2013, e-mail.

MINCBERG characterized his involvement in the removal and rewrite of HUD internal policy pertaining to the Anti-Lobbying Act as “not a lot,” and he stated that he was “not the author of the new policy.” MINCBERG stated that the rewrite of the policy was HUD-OGC’s responsibility and the drafting of the new policy was done by HUD-OGC (MOI 2). While the policy revision was a HUD-OGC responsibility, other witnesses indicated significant involvement on the part of MINCBERG in softening the previous policy, which is in sharp contrast to MINCBERG’s recollection.

For example, during his September 26, 2013, interview, CONSTANTINE stated that MINCBERG suggested that the June 6, 2011, documentation be removed from the HUD Web page until the policy could be reviewed further (MOI 8). In his November 4, 2013, interview, CONSTANTINE acknowledged that MINCBERG was present during many of the meetings that took place relative to the drafting of HUD’s new 2013 “Do’s and Don’ts” document. CONSTANTINE also stated that he did not know why MINCBERG was present, other than that MINCBERG was a “stakeholder.” CONSTANTINE stated that he did not think it was odd for MINCBERG to be involved and he did not view MINCBERG’s presence or involvement during the meetings as a conflict. CONSTANTINE stated that MINCBERG brought value to the discussions and provided a different perspective as a “client” (MOI 14).



*(Note: CONSTANTINE stated that he viewed MINCBERG and CIR as a "stakeholder" and "client" of OGC and OGC as the legal advisor to all of HUD's offices and program officials.)*

CONSTANTINE acknowledged that MINCBERG was the only individual who argued to make substantive changes to the "new" Anti-Lobbying Act policy proposed by CONSTANTINE's staff. The new policy CONSTANTINE's staff proposed was intended to replace the "old" policy documents removed from HUD-OGC's Web page on September 4, 2013. CONSTANTINE described the final "Do's and Don'ts" document posted to HUD-OGC's Web page on September 24, 2013, as a "good compromise" between what was proposed and the final document posted. Asked why there was a need for a compromise, CONSTANTINE stated that there were "tensions" between anti-lobbying laws and the tensions necessitated the compromise. CONSTANTINE stated that MINCBERG's primary pushback relative to the "Do's and Don'ts" document was that he did not want any substantive information in the document relative to PAS employees being prohibited from lobbying on pending legislation or appropriations (MOI 14).

According to [REDACTED], [REDACTED] Assistant General Counsel, HUD-OGC, EAPLD, she; [REDACTED], HUD-OGC, EAPLD; and [REDACTED], Assistant General Counsel for EAPLD, HUD-OGC, worked on drafting the new policy and guidance, and they provided their final collective work product to CONSTANTINE for review and approval (MOI 15).

In an e-mail, dated September 12, 2013, from CONSTANTINE to SMITH and [REDACTED], HUD-OGC (Exhibit L), CONSTANTINE proposed that information and a link be posted to the HUD-OGC Web pages relative to the legal authority governing the Anti-Lobbying Act. Specifically, CONSTANTINE proposed that the following be posted:

#### **Anti-Lobbying Act**

##### **Legal Authority**

- Information and a link to 18 United States Code 1913 (Anti-Lobbying Act).
- The citation for Section 716 of Public Law 112-74 (Consolidated and Further Continuing Appropriations Act of 2012) with the statement, "No part of any funds appropriated in this or any other Act shall be used by an agency of the executive branch, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, and for the preparation, distribution or use of any kit, pamphlet, booklet, publication, radio, television, or film presentation designed to support or defeat legislation pending before the Congress, except in presentation to the Congress itself."

##### **Guidance**

- "Anti-lobbying do's and don'ts."
- "Restrictions on Lobbying by Federal Employees"

[REDACTED] stated that shortly after CONSTANTINE forwarded the September 12, 2013, e-mail to [REDACTED] and SHI, EAPLD was tasked with re-working what it had previously forwarded as the two new proposed policy documents so that the policy was contained within a single document. [REDACTED] noted that someone suggested that there should be a single document, as opposed to multiple documents, for

convenience and clarity purposes. ██████ stated that she either did not know or did not recall who made the suggestion but the tasking came from CONSTANTINE. ██████ stated that she, ██████ and ██████ worked to draft a single document.

██████ stated that while she was not absolutely clear on the sequence of events relative to the drafting of the single policy document, she described it as a “back and forth” process and noted that ██████ and MINCBERG were involved. ██████ stated that the back and forth process included a number of meetings, which included ██████ and ██████, and during which the document changed and evolved based on discussion. ██████ noted in particular that MINCBERG made a lot of comments on the document during the draft process. ██████ stated that to her knowledge, ██████ and MINCBERG made the final edits to the document before its posting to HUD-OGC’s internal Web page.

Relative to drafting the new HUD policy and guidance on lobbying that HUD-OGC posted to its Web page on September 24, 2013, ██████ stated that she “felt like there were a lot of people helping [EAPLD staff members] with [it].” ██████ stated that in her opinion, the substantive language in the new “Do’s and Don’ts” policy posted in September 2013 was most closely reflective of what MINCBERG voiced as his opinions and desires regarding what the policy should say. ██████ stated that in deciding on the substantive language relative to lobbying activities by PAS officials, it was decided that it was better to say that PAS officials should not undertake any grass roots lobbying activities without first consulting with OGC. ██████ noted that the policy documentation CONSTANTINE forwarded via e-mail to ██████ and ██████ on September 12, 2013, was what EAPLD thought should replace the policy documentation removed from the HUD-OGC Web page on September 4, 2013 (**Exhibit L**).

██████ noted that MINCBERG made it clear during meetings that he believed there was a “murkiness” in the law relative to whether PAS officials are prohibited from using appropriated funds for grassroots lobbying activities once legislation is pending and that an argument could be made that PAS officials are not prohibited from using appropriated funds for grassroots lobbying activities once legislation is pending.

According to ██████, during one of the final meetings regarding the rewrite of the policy, he and MINCBERG had a “robust” discussion about what should be in the policy and what should be left out. ██████ stated that he felt that in light of DOJ and GAO opinions, it would not be prudent to ignore either; therefore, both the verbiage pertaining to the Anti-Lobbying Act and the verbiage pertaining to the appropriations riders should be left in the policy. ██████ related that MINCBERG disagreed and made it clear that he believed that HUD’s policy should more closely resemble or reflect opinions issued in the past by other Federal agencies, which have suggested that the appropriation riders do not apply to PAS officials. ██████ stated that he pointed out to MINCBERG that HUD had not taken that position in the past and that was not the policy guidance issued by HUD in 2011. ██████ related that MINCBERG wanted to leave the verbiage out and proposed that no mention be made as to the “state” of the law in the new HUD policy and guidance they were in the process of rewriting (**MOI 16**).

██████ referred to the new policy and guidance that was drafted and posted in September 2013 to HUD’s Web site as a “compromise” between CIR and EAPLD. ██████ stated that he believed

CONSTANTINE and [REDACTED] were in agreement with him as to the debate between him ([REDACTED]) and MINCBERG regarding what the new policy should say.

CONSTANTINE noted that the new policy instructs HUD employees that when in doubt, they are to send correspondence to HUD-OGC for review before sending it out. However, he related that MINCBERG had apprised him that there might be occasions when the DS's office might not want to send correspondence through HUD-OGC, which is in direct contradiction to the response provided to the Committee by MINCBERG on September 24, 2013.

## **IMPEDIMENTS TO HUD-OIG INVESTIGATION**

During the interview of [REDACTED], investigators requested that she provide a copy of the July 31, 2013, e-mail. [REDACTED] initially could not locate the e-mail but when pressed, located the e-mail, dated July 31, 2013 (MOI 4).

When asked for a copy of the recipient list, [REDACTED] related that she was not sure whether she was allowed to provide a copy of the requested documentation to the investigators. [REDACTED] was informed that the investigators were allowed to request and receive documentation by virtue of their positions in HUD-OIG and the official nature of the interview. [REDACTED] excused herself and returned with a copy of the recipient list and accompanied by MINCBERG.

The [REDACTED] interview was interrupted while investigators spoke with MINCBERG. MINCBERG took steps to interfere with the investigation by interrupting and inserting himself into [REDACTED]'s ongoing witness interview. Specifically, he threatened to terminate the interview and not allow [REDACTED] to provide documentation requested by the investigators.

MINCBERG told investigators that there was a "slight sensitivity" to HUD-OIG's request due to the fact that the DS's office had recently received an oversight request from Capitol Hill. MINCBERG stated that he had no problem explaining what was done in regard to the e-mail; however, he wanted to protect HUD's interests and, thus, had a problem surrendering the e-mail's recipient list.

MINCBERG told investigators that before he would allow the release of the e-mail recipient list, he wanted assurance that HUD-OIG would not voluntarily turn over the list to Congress unless or until it was subpoenaed. He told the investigators that he had an institutional concern that Congress was trying to use its relationship with HUD-OIG in an attempt to make an "end run" around HUD's administration and MINCBERG did not want the names of the e-mail recipients disclosed to Congress.

MINCBERG stated that if Congress had the information, it could potentially give it the power to thwart or hinder HUD's efforts in carrying out the Executive Branch's policies and programs. MINCBERG stated that HUD-OIG has a "different relationship with Congress than other branches, as it should be," but he had a problem with the Legislative Branch attempting to intervene in the interests of the Executive Branch. He continued that "HUD had to protect the list" and that his office had coordinated with "White House Counsel" and would need assurance that HUD-OIG would not turn the recipients list over to the "Republicans" on the congressional committee.

MINCBERG stated that if the assurance was not provided by the investigators, he would have to terminate ██████'s interview and instruct her not to release any documentation. MINCBERG was informed that his concerns would be noted by the investigators; however, he could not terminate ██████'s interview. The investigators also advised MINCBERG that it would be inappropriate for him to tell ██████ not to speak with the investigators or direct her not to provide documentation or information as requested. Further, MINCBERG was informed that such action on his part could potentially constitute obstruction of justice or interference in an official HUD-OIG investigation. MINCBERG stated that if he was charged with obstruction of justice, he would ensure that the investigators were charged as well based on their "inappropriate actions." (Note: MINCBERG did not identify what he meant by "inappropriate actions.")

MINCBERG's attempts to obstruct HUD-OIG's investigation continued when he contacted one HUD-OGC employee before his (the OGC employee's) HUD-OIG interview in an effort to influence his recollection of events. MINCBERG also contacted a second HUD-OGC employee before the employee's HUD-OIG interview, allegedly to determine what advice he had on the Anti-Lobbying Act and appropriation riders.

During those contacts, MINCBERG made statements to the witnesses regarding his recollection of their previous conversations and interactions, what he recalled he said to them, and what they said to him. These deliberate contacts by MINCBERG appear to have occurred with the intent of influencing these witnesses' recollections or statements before they were interviewed by HUD-OIG investigators.

Additionally, after receipt of a separate Committee request to HUD, MINCBERG appears to have taken steps to conceal or cloud the fact that the July 31 e-mail communication violated HUD Restrictions on Lobbying by Federal Employees, which was in place at the time, when he spearheaded the removal of HUD's internal policy from the HUD-OGC, EAPLD, Web page. This occurred one week after receiving the Committee's letter, with the stated explanation that the various policies were confusing.

During one of the final meetings regarding the rewrite of the policy, MINCBERG argued his position regarding what should be in the new policy and what should be left out. When interviewed, ██████ stated that during the meeting, ██████ noted that he felt that in light of the OLC and GAO opinions, it would not be prudent to ignore the verbiage in either; therefore, both the verbiage pertaining to the Anti-Lobbying Act and the verbiage pertaining to the appropriation riders should be left in the new policy. ██████ noted that MINCBERG disagreed and made it clear that he believed that HUD's policy should more closely resemble opinions issued in the past by other Federal agencies, which have suggested that the appropriation riders do not apply to PAS officials. ██████ stated that he pointed out to MINCBERG that HUD had not taken that position in the past and that was not the policy guidance issued by HUD in 2011.

When interviewed, ██████ and ██████ noted that they did not feel that the anti-lobbying information that was posted on the OGC Web page before the dissemination of the July 31, 2013, e-mail was confusing.

Further, during interviews with HUD-OIG investigators, MINCBERG was less than truthful in regard to his involvement in the preparation and dissemination of the July 31 e-mail communication, his

knowledge of the Anti-Lobbying Act, and his knowledge of HUD's internal policy governing the restrictions on lobbying by Federal employees. MINCBERG:

- Characterized his comments relative to any draft or drafts of the e-mail communication as “general suggestions” and stated that he could not “say for sure” who provided the specific language in the e-mail that encouraged the “grassroots” activity. (Other witness testimony indicates that MINCBERG was the catalyst behind the shift to be “more aggressive” when developing the language contained in the July 31 e-mail communication.)
- Stated that he was not familiar with HUD's internal employee policy concerning lobbying and lobby activities before dissemination of the e-mail. (Investigation disclosed that MINCBERG was involved in the drafting of a memorandum for PAS officials governing restrictions on lobbying, dated June 21, 2011, titled, “Restrictions on Lobbying by Presidential Appointed, Senate Confirmed Officials.” Additionally, the investigation disclosed that on February 27, 2013, 5 months before the dissemination of the July 31 e-mail, MINCBERG received an answer from HUD-OGC ethics officials to a “lobbying question” he posed. In response to his question, HUD-OGC ethics officials advised MINCBERG, in February 2013 of HUD's internal anti-lobbying policy—specifically, that PAS officials could not engage in grass roots lobbying efforts on pending legislation.)
- Stated that HUD-OGC updated HUD's internal policy governing the restrictions on lobbying by Federal employees after receipt of the congressional inquiry. (The investigation revealed that MINCBERG, not OGC, initiated and spearheaded the rewrite of HUD's anti-lobbying policy.)

On September 12, 2013, when investigators arrived for a scheduled interview of YOUNGBERG, she informed them that an attorney from HUD-OGC would be sitting in on the interview with her. She specified that the OGC attorney was not representing her as personal counsel but would be representing HUD. The investigators advised YOUNGBERG that HUD-OIG protocol is not to allow anyone to sit in on interviews unless they are counsel representing the interviewee personally or providing union representation. YOUNGBERG stated that the investigators could “work it out” with the HUD-OGC attorney when he arrived (MOI 9).

Shortly thereafter, [REDACTED] arrived at YOUNGBERG's office and informed the investigators that he had been instructed by KANOVSKY to sit in and observe the interview of YOUNGBERG and that he “was not going to go against his boss's instructions.” [REDACTED] refused to leave Youngberg's interview; therefore, the interview had to be rescheduled.

HUD-OIG's Office of Legal Counsel (OLC) confirmed that [REDACTED] would not be allowed to observe the YOUNGBERG interview and related that HUD-OGC would be notified of HUD-OIG's decision.

During YOUNGBERG's second interview, she stated that when she was contacted by HUD-OIG in regard to scheduling an interview, she contacted [REDACTED] in an effort to keep HUD-OGC informed and because being interviewed by HUD-OIG was not the norm. YOUNGBERG stated that [REDACTED] informed her that [REDACTED] would contact her. Youngberg stated that when contacted by [REDACTED], either via telephone or in person, he asked whether she wanted him in the interview or stated he could be there if

she wanted, to which she agreed (MOI 12).

On September 13, 2013, while HUD-OIG investigators waited to begin a scheduled interview of SZUBROWSKI, they were approached by ██████ in SZUBROWSKI's office area. ██████ stated, "I know this issue has been resolved, however, I just wanted to check to find out if you were going to stand by your decision that I cannot sit in on the interview." The investigators again told ██████ that he could not sit in on the interview. ██████ also asked whether the investigators would be taking the same position relative to future interviews that might take place. The investigators told ██████ that he would not be allowed to sit in on any interview conducted by HUD-OIG relative to the investigation (MOI 5).

According to ██████, he was instructed by KANOVSKY to sit in on the YOUNGBERG and SZUBROWSKI interviews to get an understanding of what was happening and to take notes. ██████ stated that HUD-OGC was concerned, given that the Department had received a congressional letter regarding the July 31, 2013, e-mail that ██████ disseminated on behalf of DS JONES. ██████ also noted that KANOVSKY instructed him to speak with ██████ to find out what documents were provided and what the interview was about. ██████ stated that after he spoke with ██████, he reported back to KANOVSKY. ██████ stated that in his opinion, HUD-OGC's reaction would have been different had the Department not received the congressional request concerning the July 31 e-mail. ██████ stated that given the congressional letter, HUD-OGC felt the need to have a role in the matter (MOI 19).

██████ stated that he received a call from ██████ informing him that YOUNGBERG and SZUBROWSKI were going to be interviewed by HUD-OIG and they wanted to let OGC know what was happening. ██████ stated that he met with YOUNGBERG and SZUBROWSKI separately within the next couple of days. ██████ stated that he did not instruct them that he had to be in their interviews but did not know whether anyone else gave them that instruction. ██████ stated that to the best of his knowledge, both YOUNGBERG and SZUBROWSKI made first contact with HUD-OGC.

██████ stated that he contacted DOJ' Office of Legal Counsel, Washington, DC, and inquired about the policy regarding OGC sitting in on OIG interviews and was informed that it has been allowed but that it was not common and that generally privilege is not asserted.

On December 6, 2013, KANOVSKY noted that she recalled that someone, possibly ██████, contacted the White House shortly after the investigators attempted to interview a witness relative to HUD-OIG's investigation concerning the congressional request. KANOVSKY noted that her recollection was that ██████ or ██████ made the contact to inquire whether it was permissible for a representative from HUD-OGC to be present during interviews the investigators were conducting. KANOVSKY noted that it was her understanding that the guidance provided to HUD-OGC regarding the question was that HUD-OGC could not have a representative present during interviews (MOI 11).

During the course of the HUD-OIG investigation, CONSTANTINE was interviewed three times, and his recollection of the events surrounding the July 31 e-mail and of his discussions with MINCBERG differed from interview to interview (MOI 8, 14 and 18).

*(Note: CONSTANTINE attempted to retract statements he made in earlier interviews. Further, CONSTANTINE failed to voluntarily provide relevant information or documentation, such as relevant*

*e-mail communications, stating that the interviewing agents did not "specifically identify" the exact information or e-mail communications they sought.)*

Specifically, CONSTANTINE failed to disclose that on February 27, 2013, 5 months before the dissemination of the July 31 e-mail, MINCBERG received an answer from CONSTANTINE to a "lobbying question" he posed. In response to MINCBERG's question, HUD-OGC ethics officials advised MINCBERG, in February 2013 of HUD's internal anti-lobbying policy---specifically, that PAS officials could not engage in grass roots lobbying efforts on pending legislation.

During two previous interviews, the investigators had requested that CONSTANTINE review his e-mail account and identify any e-mail communications that might be material to the investigation and provide them to the investigators once identified, and CONSTANTINE had agreed to do so.

When interviewed, both MINCBERG and CONSTANTINE stated that MINCBERG contacted CONSTANTINE to discuss his (CONSTANTINE's) recollection of their earlier conversations regarding the July 31 e-mail.

MINCBERG's recollection of his involvement in the removal and rewrite of HUD internal policy pertaining to the Anti-Lobbying Act was less than forthcoming when he described it as "not a lot" and stated that he was "not the author of the new policy." MINCBERG stated that the rewrite of the policy was HUD-OGC's responsibility and the drafting of the new policy was done by HUD-OGC. Others' involved in the rewrite described MINCBERG's role as significant. MINCBERG was the only individual who argued to make substantive changes to the Anti-Lobbying Act policy document CONSTANTINE's staff drafted and proposed to replace the multiple anti-lobbying documents removed from the HUD Web site on September 4, 2013.

MINCBERG was intricately involved in the revision and reposting of the new HUD Restrictions on Lobbying by Federal Employees policy to HUD's Web site and appears to have pressured HUD-OGC personnel to change the contents of the new policy so that it differed from the policy in place on July 31, 2013, an apparent conflict, given MINCBERG's involvement in the preparation and dissemination of the July 31 e-mail communication and his role in drafting the July 6, 2011, policy.

### **Disposition of HUD-OIG Report of Investigation**

HUD-OIG coordinated with DOJ's Public Integrity Section, Criminal Division, to determine whether DS JONES, [REDACTED] or both violated Federal criminal law by sending the July 31, 2013, e-mail communication calling upon recipients to contact specific U.S. senators and encourage the senators to vote in favor of procedural motions to advance Senate consideration of THUD. Based upon its review of the information and documentation provided by HUD-OIG and the circumstances surrounding the e-mail communication, DOJ determined that there was nothing in the material warranting the opening of a criminal investigation by the Public Integrity Section.

Further, HUD-OIG coordinated with DOJ to determine whether MINCBERG, CONSTANTINE, or both violated Federal criminal law as a result of their actions before the dispatch of the July 31, 2013, e-mail communication. Additionally, DOJ reviewed the information and documentation regarding the

actions of SZUBROWSKI, YOUNGBERG and HARWITZ, and determined that there was nothing in the material warranting the opening of a criminal investigation. On November 25, 2013, DOJ declined further review of this matter (MOA 20).

The Committee requested that GAO determine whether the July 31, 2013, e-mail communication violated Federal appropriations law. GAO deferred action on that request, pending completion of the HUD-OIG investigation. Accordingly, we have forwarded our report of investigation to GAO for its use in responding to the Committee's request.

By authorizing [REDACTED] to dispatch the July 31, 2013, and August 5, 2013, e-mail communications on his behalf to a list of recipients that included 46 HUD employees, DS JONES appears to have committed a Prohibited Personnel Practice violation. Specifically, 5 U.S.C. § 2302(b)(3) prohibits an official from coercing a Federal employee's political activities. Accordingly, we have provided our report of investigation to the Office of Special Counsel for its use in determining whether DS JONES' actions constituted a violation.

Because the actions of DS JONES, [REDACTED], MINCBERG, CONSTANTINE, SZUBROWSKI, YOUNGBERG and HARWITZ violated various HUD administrative policies as set forth in this report, concurrent with its issuance, this report was forwarded to the HUD Secretary for any administrative action deemed appropriate.

**LIST OF WITNESSES AND INTERVIEWEES**



[REDACTED] Assistant General Counsel, OGC, Ethics Law Division

**BROWN, Michael A.** Deputy Director Intergovernmental Relations, Office of the Assistant Secretary for CIR

[REDACTED], Office Chief Human Capital, Executive Scheduling-Operations Division

**CONSTANTINE, Peter J.** Associate General Counsel; Office of the Deputy General Counsel for Ethics, Appeals, and Personnel Law; OGC

[REDACTED], Office of the Secretary

[REDACTED] Assistant General Counsel, Office of the Deputy General Counsel, Ethics Law Division

**HARWITZ, Jonathan** Former Deputy Secretary-Chief of Staff, now Deputy Chief of Staff, Budget and Policy

**JONES, Maurice A.** Deputy Secretary<sup>3</sup>

**KANOVSKY, Helen R.** General Counsel<sup>4</sup>

[REDACTED] Administrative Assistant, Office of the Deputy Secretary [REDACTED]

**MINCBERG, Elliott M.** Acting General Deputy Assistant Secretary for CIR<sup>5</sup>

[REDACTED] Program Analyst, Office of Public Engagement, Office of the Assistant Secretary for Public Affairs

[REDACTED], OGC

**SMITH, Damon** Principal Deputy General Counsel, OGC<sup>6</sup>

**SZUBROWSKI, Jennifer L.** Deputy Assistant Secretary for Intergovernmental Relations, Office of the Assistant Secretary for CIR

**YOUNGBERG, Francey L.** Deputy Assistant Secretary for Public Engagement, Office of the Assistant Secretary for Public Affairs

<sup>3</sup> In January 2014, JONES left HUD as DS and accepted the position of Secretary of Commerce and Trade with the Commonwealth of Virginia.

<sup>4</sup> In January 2014, KANOVSKY was named as HUD's Acting Deputy Secretary.

<sup>5</sup> In approximately November 2013, MINCBERG was reassigned from Acting General Deputy Assistant Secretary for CIR to Senior Counsel, HUD-OGC.

<sup>6</sup> In January 2014, SMITH was named as HUD's Acting General Counsel.

**LIST OF EXHIBITS**

- A July 31, 2013, e-mail communication sent by [REDACTED] on behalf of DS JONES.
- B August 5, 2013, e-mail communication sent by [REDACTED] on behalf of DS JONES.
- C August 28, 2013, letter from Representative Patrick McHenry, Chairman, Subcommittee on Oversight and Investigations, U.S. House of Representatives, Committee on Financial Services to HUD-OIG
- D August 28, 2013, letter from Representative Patrick McHenry, Chairman, Subcommittee on Oversight and Investigations, U.S. House of Representatives, Committee on Financial Services to GAO
- E HUD internal policy on Restrictions on Lobbying by Federal Employees before the dissemination of the July 31, 2013, e-mail communication sent by BROWN on behalf of DS JONES.
- F HUD-OGC letter, dated June 21, 2011, titled "Restrictions on Lobbying by Presidential Appointed, Senate Confirmed Individuals"
- G February 27, 2013, e-mail from CONSTANTINE to MINCBERG in which MINCBERG was provided clarification relative to HUD's anti-lobbying policy
- H HUD internal policy on Restrictions on Lobbying by Federal Employees posted to HUD-OGC's internal ethics Web page on September 24, 2013
- I August 28, 2013, letter from Representative Patrick McHenry, Chairman, Subcommittee on Oversight and Investigations, U.S. House of Representatives, Committee on Financial Services, to Secretary of HUD, Shaun Donovan
- J July 31, 2013, e-mail string among YOUNGBERG, SZUBROWSKI, MINCBERG and others, concerning the dissemination of the July 31, 2013, e-mail by BROWN on behalf of DS JONES.
- K September 12, 2013, e-mail from CONSTANTINE to [REDACTED] and [REDACTED] in which CONSTANTINE provided what EAPLD proposed to replace the policy documentation governing the Anti-Lobbying Act that was removed from the HUD-OGC Web page on September 4, 2013
- L Memorandum of Activity, relative to HUD-OIG's contact with DOJ on November 21 and 25, 2013, and DOJ's declination of further review

**LIST OF MEMORANDA OF INTERVIEW AND ACTIVITY**

- 1 Memorandum of Interview of [REDACTED] on October 21, 2013
- 2 Memorandum of Interview of MINCBERG on December 6, 2013
- 3 Memorandum of Interview of [REDACTED] on November 6, 2013
- 4 Memorandum of Interview of [REDACTED] on September 4, 2013
- 5 Memorandum of Interview of SZUBROWSKI on September 13, 2013
- 6 Memorandum of Interview of SZUBROWSKI on September 30, 2013
- 7 Memorandum of Interview of MINCBERG on September 25, 2013
- 8 Memorandum of Interview of CONSTANTINE on September 26, 2013
- 9 Memorandum of Interview of YOUNGBERG on September 17, 2013
- 10 Memorandum of Interview of HARWITZ on October 22, 2013
- 11 Memorandum of Interview of KANOVSKY on December 6, 2013
- 12 Memorandum of Interview of YOUNGBERG on October 24, 2013
- 13 Memorandum of Interview of [REDACTED] on September 25, 2013
- 14 Memorandum of Interview of CONSTANTINE on November 4, 2013
- 15 Memorandum of Interview of [REDACTED] on October 23 and November 6, 2013
- 16 Memorandum of Interview of [REDACTED] on October 23, 2013
- 17 Memorandum of Interview of YOUNGBERG on September 12, 2013
- 18 Memorandum of Interview of CONSTANTINE on October 21, 2013
- 19 Memorandum of Interview of [REDACTED] on October 22, 2013
- 20 Memorandum of Activity relative to HUD-OIG's coordination with DOJ

**LIST OF ACRONYMS AND DEFINITIONS**

CIR	Congressional and Intergovernmental Relations
Committee	U.S. House of Representatives Committee on Financial Services
DAS	Deputy Assistant Secretary
DOJ	U.S. Department of Justice
DS	Deputy Secretary
EAPLD	Ethics, Appeals, and Personnel Law Division
GAO	U.S. Government Accountability Office
GDAS	General Deputy Assistant Secretary
Grass roots lobbying	Grass roots lobbying is an approach that separates itself from direct lobbying through the act of asking the <i>general public</i> to contact legislators and government officials concerning the issue at hand, as opposed to conveying the message to the legislators directly.
HOME	HOME Investment Partnerships Program is HUD's block grant to State and local governments designed exclusively to create affordable housing for low-income households.
HUD	U.S. Department of Housing and Urban Development
OCHCO	Office of the Chief Human Capital Officer
ODGC	Office of the Deputy General Counsel
OGC	Office of the General Counsel
OIG	Office of the Inspector General
OLC	Office of Legal Counsel
OSC	Office of Special Counsel
PAS	Presidential appointment with Senate confirmation
PIH	Office of Public and Indian Housing
PPP	Prohibited Personnel Practice
THUD	U.S. Department of Transportation, HUD, and Related Agencies Appropriations

U.S.C.

United States Code

# Exhibit A

**From:** [REDACTED] on behalf of Jones, Maurice A  
**Sent:** Wednesday, July 31, 2013 4:07 PM  
**Subject:** Important Vote on HUD FY13 Budget Tomorrow



Dear friends and colleagues:

Thank you for your past support for the HUD budget. As you may know on July 1, the Senate Committee on Appropriations passed its FY14 Transportation, Housing and Urban Development, and Related Agencies (THUD) spending bill, S. 1243. The difference between the House and Senate 'marks' could not be more stark. The Senate bill provides over six billion dollars more in budget authority to HUD and its programs than the House bill H.R. 2610, which was also voted out of Committee on June 27. Put simply, the Senate bill supports HUD's core rental assistance, homeless, and block grant programs and makes key investments in critical, newer initiatives, including Choice Neighborhoods and the Sustainable Communities Initiative. In contrast, the House bill puts the vulnerable HUD assistance recipients at risk and eliminates ladders of opportunity for middle class Americans. The Administration strongly opposes the House bill, see [http://www.whitehouse.gov/sites/default/files/omb/legislative/sap/113/saphr2610r\\_20130722.pdf](http://www.whitehouse.gov/sites/default/files/omb/legislative/sap/113/saphr2610r_20130722.pdf)

On July 23, by a vote of 73 to 26, the Senate passed a cloture motion that allowed the Senate THUD bill (S.1243) to go to the floor for debate. Since then, there has been vigorous debate and a number of amendments and motions proposed and voted on by the Senators on the floor. **TODAY AND TOMORROW** are critical because it is the last chance for the Senate THUD bill to be voted on before Congress goes on August recess. We are once again facing a critical cloture motion vote tomorrow to end the debate. I am humbly asking you to let your Senators especially the ones listed below know how important it is that the cloture motion passes so that the Senate THUD bill MOVES FORWARD to a vote and TO VOTE for the Senate THUD bill.

It is critical that your Senator hears from you NOW. Specifically, we need to maintain the current level of Republican support for the Senate THUD FY14 appropriations bill, acquire other Republican supporters and ensure vocal and active support from Democratic Senators. Please ask them:

- to vote YES tomorrow on the cloture motion to end the debate and to vote YES on the merits of the bill when it comes up for a vote
- to defend against efforts by some Republicans to prevent the underlying bill from coming up for a vote or to enact harmful amendments such as those that would cut some of the important funding in the bill.
- for example, Senators should vote "No" against Senator Coburn's Amendment 1754 which would have a devastating effect on our homeless population.

HUD is focusing specifically on the following Republican Senators who in some fashion have helped moved the Senate THUD bill forward.

- Blunt (MO)
- Boozman (AR)

- Chambliss (GA)
- Chiesa (NJ)
- Flake (AZ)
- Hatch (UT)
- Heller (NV)
- Imhofe (OK)
- Isakson (GA)
- Johnson (WI)
- McCain (AZ)
- Portman (OH)
- Thune (SD)
- Wicker (MS)
- Moran (KS)
- Hoeven (ND)
- Kirk (IL)

We also would like to thank the following Republican Senators who have consistently been supportive of the Senate THUD bill:

- Susan Collins (R-ME)
- Thad Cochran (R-MS)
- Lisa Murkowski (R-AK)

Thank you again for your continued support. If you have any questions, please email [publicengagement@hud.gov](mailto:publicengagement@hud.gov) and someone from my team will get back to you.

Sincerely,  
Maurice A. Jones  
Deputy Secretary  
U.S. Dept. of Housing and Urban Development



# Exhibit B

From:  
Sent:  
Subject:

██████████ on behalf of Jones, Maurice A  
Monday, August 05, 2013 5:24 PM  
Thank You For Your Support



Dear friends and colleagues:

On behalf of the U.S. Department of Housing and Urban Development, I would like to express our appreciation for your efforts over the last several weeks concerning the FY14 HUD budget during this challenging budget process on Capitol Hill. To recap, on July 1, the Senate Committee on Appropriations passed its FY14 Transportation, Housing and Urban Development, and Related Agencies (THUD) spending bill, S. 1243. The difference between the House and Senate 'marks' could not be more stark. The Senate bill provided over six billion dollars more in budget authority to HUD and its programs than the House bill H.R. 2610, which was also voted out of Committee on June 27. Put simply, the Senate bill supports HUD's core rental assistance, homeless, and block grant programs and makes key investments in critical, newer initiatives, including Choice Neighborhoods and the Sustainable Communities Initiative. In contrast, the House bill puts the vulnerable HUD assistance recipients at risk and eliminates ladders of opportunity for middle class Americans.

On July 23, by a vote of 73 to 26, the Senate approved a cloture motion that allowed the Senate THUD bill to go to the floor for debate. At that time, there were six Republican Senators who voted for the bill in Committee and for cloture—Senators Collins (ME), Cochran (MS), Hoeven (ND), Kirk (IL), Moran (KS) and Murkowski (AK). An additional 12 Republicans voted for cloture on the motion to proceed. Since then, Chairman Murray (D-WA) and Ranking Senator Collins (R-ME) kept the process open by encouraging vigorous debate and considering numerous amendments.

In an attempt to bring the Senate THUD bill to a vote before recess, Senator Reid filed a cloture motion to end the debate last Tuesday. On Thursday, August 1, the cloture motion failed to gain the necessary 60 votes by a vote of 54-43. Senator Collins was the lone Republican Senator who voted for cloture. This ends the consideration of the Senate THUD bill until after the August recess. The Senate will reconvene on September 9. On the House side, as many of you know, the House leadership pulled the House THUD bill on July 31, 2013 from consideration and stated that they plan to return to it after the August recess. House Appropriations Chair Harold Rogers (R-KY) acknowledged that a number of House Republicans could not support the bill because of the draconian cuts that were made.

When Congress returns, Members are expected to focus on brokering a budget agreement for FY14. This will include negotiations around replacing sequestration, increasing the debt ceiling, and a continuing resolution. Without early agreement on a FY14 budget, it is assumed that Congress would end up passing a continuing resolution (CR) to provide funding at FY13 post-sequestration levels in lieu of negotiating all of its FY14 appropriations bills.

During the August recess when many Members of Congress will be home, it is critically important that you continue to make your voices heard. Putting a "face" to the HUD programs helps to illustrate what is at stake with the budget fight so Members can see concretely what it means not to have a HUD budget enacted at the Senate level. We have

estimated HUD state level funding under the House and Senate versions of the budget so please email us below if you want the info for your state.

In addition, engaging your local newspapers and other media by pitching stories, writing Op-eds, etc. also helps to bring others into the discussion.

We will continue to keep you apprised of further developments. In the meantime, please feel free to reach out to us if you have questions or comments by emailing [publicengagement@hud.gov](mailto:publicengagement@hud.gov).

Sincerely,

Maurice A. Jones  
Deputy Secretary

# Exhibit C

JEB HENSARLING, TX, CHAIRMAN

United States House of Representatives  
Committee on Financial Services  
2129 Rayburn House Office Building  
Washington, D.C. 20515

MAXINE WATERS, CA, RANKING MEMBER

August 28, 2013

The Honorable David Montoya  
Inspector General  
Office of Inspector General  
U.S. Department of Housing and  
Urban Development  
451 Seventh Street SW  
Washington, D.C. 20410

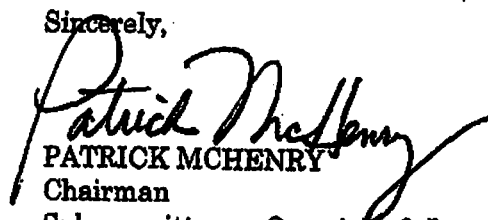
Dear Mr. Montoya:

On July 31, 2013, the Deputy Secretary of the Department of Housing and Urban Development ("HUD") sent an e-mail communication to "friends and colleagues" calling on the recipients to contact specific U.S. Senators and encourage them to vote in favor of procedural motions to advance Senate consideration of S. 1243, legislation making appropriations for fiscal year 2014 for the Department of Transportation, HUD, and Related Agencies. The e-mail communication urged recipients to oppose certain amendments and suggested that recipients encourage named Senators to support final passage of the bill.

The directness and specificity of the e-mail communication appears to violate well-established federal restrictions on lobbying by federal agencies. Based on the apparent violations of federal law, I request that your office thoroughly investigate this matter and advise the Committee whether HUD's actions violated any federal law by no later than September 30, 2013.

If you have any questions, please contact Gisele Roget of the Committee staff at (202) 226-2183. Thank you for your attention to this important matter.

Sincerely,

  
PATRICK MCHENRY  
Chairman  
Subcommittee on Oversight & Investigations

Cc: The Honorable Al Green, Ranking Member

# Exhibit D

JEB HENSARLING, TX, CHAIRMAN

United States House of Representatives  
Committee on Financial Services  
2129 Rayburn House Office Building  
Washington, D.C. 20515

MAXINE WATERS, CA, RANKING MEMBER

August 28, 2013

The Honorable Gene Dodaro  
Comptroller General  
U.S. Government Accountability Office  
441 G Street, NW  
Washington, D.C. 20548

Dear Mr. Dodaro:

On July 31, 2013, the Deputy Secretary of the Department of Housing and Urban Development ("HUD") sent an e-mail communication to "friends and colleagues" calling on the recipients to contact specific U.S. Senators and encourage them to vote in favor of procedural motions to advance Senate consideration of S. 1248, legislation making appropriations for fiscal year 2014 for the Department of Transportation, HUD, and Related Agencies. The e-mail communication urged recipients to oppose certain amendments and suggested that recipients encourage named Senators to support final passage of the bill.

In an effort to ensure that HUD is in full compliance with appropriations statutes, I request that the Office of the General Counsel of the Government Accountability Office ("GAO") investigate this matter and determine if any appropriations laws were violated. The GAO should issue a formal opinion on this matter as soon as practicable. GAO's review should address the following queries:

1. Did the e-mail communication violate federal appropriations law?
2. Which individuals and organizations received the e-mail communication?
3. What is the process at HUD to ensure that external communications are consistent with applicable appropriations law which prohibits agency lobbying activity?

If you have any questions, please contact Gisele Roget of the Committee staff at (202) 226-2183. Thank you for your attention to this important matter.

Sincerely,



PATRICK MCHENRY  
Chairman

Subcommittee on Oversight & Investigations

Cc: The Honorable Al Green, Ranking Member

# Exhibit E





U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, D.C. 20410-0500

July 06, 2011

### Restrictions on Lobbying by Federal Employees

A Federal criminal statute, 18 U.S.C. § 1913, prohibits Federal employees from using appropriated funds for activities designed to influence members of Congress concerning any legislation or appropriation. Section 717 of P.L. 111-117 (Consolidated Appropriations Act, 2010) prohibits Federal employees from using appropriated funds to encourage anyone to contact Congress in support of or in opposition to pending legislation.<sup>1</sup> The following discussion provides general guidelines that should help explain these lobbying restrictions and supersedes all other previous guidance on this topic.

**Prohibited Activities.** All Federal employees, except Presidentially Appointed, Senate-Confirmed (PAS) officials, must adhere to the prohibitions of the Anti-lobbying Act.<sup>2</sup> All Federal employees, including PAS officials, must adhere to the prohibitions of Section 717.<sup>3</sup>

Prohibited activities include the following:

1. HUD employees may not organize or encourage substantial "grass roots" lobbying campaigns<sup>4</sup> designed to urge others to pressure Members of Congress to support or oppose any legislation or appropriation.
2. PAS employees may not organize or encourage "grass roots" lobbying campaigns designed to urge others to pressure Members of Congress to support or oppose any pending legislation or appropriation.

<sup>1</sup> This provision is in a single appropriations act; however, Congress has enacted similar provisions since 1974. In addition, Section 720 of the 2010 Appropriations Act prohibits the use of funds for publicity or propaganda purposes. This Section is intended to prohibit "publicity of a nature tending to emphasize the importance of the agency or activity in question" and is "directed typically toward activities whose obvious purpose is 'self-aggrandizement' and 'puffery.'" See B-284226.2

<sup>2</sup> The Department of Justice has determined that the Anti-lobbying Act does not apply to Presidentially Appointed, Senate-Confirmed (PAS) employees. See 12 U.S. Op. Off. Legal Counsel 30, 32-33 "Legal Constraints on Lobbying Efforts in Support of Contra Aid and Ratification of the INF Treaty" (1988).

<sup>3</sup> The Department of Justice has stated that appropriations riders such as Section 717 apply to PAS employees. See 12 U.S. Op. Off. Legal Counsel 30, 39-40 "Legal Constraints on Lobbying Efforts in Support of Contra Aid and Ratification of the INF Treaty" (1988).

<sup>4</sup> The Justice Department has suggested that a "substantial" grass-roots lobbying campaign under 18 U.S.C. § 1913 is one costing about \$50,000 or more. See Memorandum for the Attorney General and Deputy Attorney General from Walter Dellinger, Assistant Attorney General, Office of Legal Counsel, April 14, 1995. See also Application of Anti-Lobbying Restrictions to HUD Report Losing Ground, B-284226.2, August 17, 2000. Further, under 18 U.S.C. § 1913 grass-roots lobbying campaigns consist of private forms of communications expressly asking recipients to contact Members of Congress. *Id.* Grass-roots lobbying campaigns under 18 U.S.C. § 1913 do not include communication with the public through public speeches, appearances, or writings. *Id.*

3. While Department officials may have contact with non-governmental lobbying organizations or individual lobbyists,<sup>5</sup> they should avoid actions that may create the appearance they are trying to circumvent the anti-lobbying restrictions outlined above. For example, a HUD official may not solicit a lobbyist or lobbying organization to develop a grassroots campaign in support of legislation favored by the Administration or the Department. Similarly, HUD officials should not suggest to client organizations that they urge their own supporters to pressure Members of Congress regarding any legislation or appropriation.

Permitted Activities. Listed below are guidelines regarding permissible on-duty activities:

1. Direct communications between appropriate Department officials and Members of Congress (or their staffs) in connection with Administration or Department positions are not restricted. Consequently, authorized HUD officials may directly lobby Members of Congress and their staffs in support of Administration or Department positions. These communications should be limited to HUD principal staff, employees within HUD's Office of Congressional and Intergovernmental Relations, and other HUD senior management officials, including those within the Office of the Chief Financial Officer.
2. Department officials may publicly advocate Administration or Department positions or policies during speeches, news conferences, media interviews, or similar appearances.
3. The anti-lobbying statute does not prohibit Departmental communications designed to inform the public about Administration or HUD positions, or to promote those positions, as long as the communications do not solicit pressure on Congress.
4. The Department may send unsolicited materials, such as press releases, fact sheets, copies of speeches, and similar materials, to persons and organizations that may be reasonably expected to have an interest in the subject matter. Such materials may not, however, urge the recipients to contact Members of Congress to express support or opposition to any proposed or pending legislation.

Penalties. Federal employees who violate 18 U.S.C. § 1913 may be subject to a \$10,000 fine, imprisonment for up to one year, and removal from Federal employment.<sup>6</sup>

<sup>5</sup> If an employee's contact with a lobbyist would touch on a specific project or initiative under the American Recovery and Reinvestment Act, the employee should contact the Ethics Law Division as additional rules may apply.

<sup>6</sup> This statute does not prohibit Federal union officials from lobbying Congress in their capacity as union representatives with respect to matters concerning working conditions. See U.S. Department of the Army Corps of Engineers Memphis District, Memphis, Tennessee, and National Federation of Federal Employees, Local 259, 52 F.L.R.A. 920 (1997).

HUD employees should note that the anti-lobbying statute is not intended to prevent them from supporting political causes or legislation in their private capacity and on their own time. In order to engage in permissible personal advocacy, however, HUD employees must take care that such conduct does not occur during duty time or use Government resources. They also should not use their official title, position, or authority in connection with any such effort.

If you have any questions concerning the applicability of the anti-lobbying restrictions to any particular situation, please contact the Ethics Law Division at (202) 708-3815 or your Regional Counsel.

Official Record Copy

U.S. Department of Housing and Urban Development  
Previous edition is obsolete.

Form HUD-713.1 (02/03)

# Anti-Lobbying Act Restrictions

Office of General Counsel, Ethics Law Division  
U.S. Department of Housing and Urban Development

The Anti-Lobbying Act (18 U.S.C. § 1913) is a criminal statute applicable to all executive branch agencies. It prohibits the use of appropriated funds for activities that directly or indirectly are "intended or designed to influence in any manner a Member of Congress, to favor or oppose... any legislation or appropriation by Congress." The following examples illustrate the kinds of activities HUD Non-PAS Employees may legally participate in:

<b>May</b> discuss legislative issues with outside organizations and make public remarks explaining proposed legislation and Administration's position on proposed legislation	<b>May</b> tell the public how they may obtain additional information regarding proposed legislation
<b>May</b> send out information about proposed legislation to individuals or groups that have asked for this information, have an interest in particular information or that regularly receive information from the Department—material may not directly or indirectly encourage the public to contact Members of Congress	<b>May</b> coordinate speeches and activities with other Federal officials.
<b>May</b> write letters to the editor, "op-ed" articles, press releases, or other materials addressing proposed legislation and the Administration's position on proposed legislation so long as the materials identify the official's Federal Government title and position.	<b>May</b> through proper channels, initiate meetings or communicate directly with members of Congress and Congressional staffs regarding pending legislation or transmit unsolicited constituent views to Congress if employee is within HUD's Office of Congressional and Intergovernmental Relations or senior management official

In addition to the Anti-Lobbying Act, Appropriations Law (sections 637 and 642 of Public Law 105-277) also limit employee's lobbying activities. The following examples are used to help HUD Non-PAS Employees comply with these laws and avoid creating *even the appearance* of a violation:

<b>May not</b> participate in events or programs specifically designed to promote public support for or opposition to pending legislation. For example, GAO has held that participation by a non-PAS official in a press conference organized by non-governmental advocacy groups in a congressional sponsor's district called to criticize a legislative proposal under active consideration by Congress violated the Appropriations Act.	<b>May not</b> initiate or coordinate meetings between members of the public and members of Congress or Congressional staff to discuss proposed legislation
<b>May not</b> engage in a grass roots lobbying campaign involving expenditures for letters, brochures or other forms of communication that directly or indirectly encourage the public to contact Congress in support of or opposition to pending legislation.	<b>May not</b> provide members of public with target lists of Members of Congress for the purpose of seeking to influence their position on pending legislation
<b>May not</b> use Departmental resources, including e-mail, directly or indirectly, to encourage other employees to contact Members of Congress about proposed legislation	<b>May not</b> "ghost-write" letters, speeches, or other materials dealing with proposed legislation for anyone in a non-Federal position
<b>May not</b> request or recommend that a recipient further distribute materials regarding proposed legislation or provide a large number of copies of such materials for redistribution	<b>May not</b> provide members of the public with lists of, or correspondence from, persons who favor or oppose certain legislation to groups that lobby Congress ( <u>officials should avoid the appearance of impartiality in endorsements</u> )

HUD officials should avoid actions that may create the appearance that they are trying to circumvent the anti-lobbying restrictions outlined above. For example, a HUD official may not solicit a lobbying organization to develop a grassroots campaign in support of legislation favored by the Administration or Department.

# Exhibit F



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, D.C. 20410-0500

June 21, 2011

MEMORANDUM FOR: PAS Officials

FROM: Helen R. Kanovsky, General Counsel, 

SUBJECT: Restrictions on Lobbying by Presidential Appointed, Senate Confirmed Officials

This memorandum discusses the restrictions that Presidentially Appointed; Senate Confirmed (PAS) officials are subject to when advocating on behalf of the HOME Investment Partnerships Program (HOME). Section 717 of P.L. 111-117 (Consolidated Appropriations Act, 2010) prohibits Federal employees, including PAS officials, from using appropriated funds to encourage anyone to contact Congress in support of or in opposition to pending legislation.<sup>1</sup>

PAS officials are prohibited from making any appeals, whether oral or written, to the public that suggest that the public contact Congress to indicate support of or opposition to pending legislation. PAS officials lobbying activities are only restricted after legislation has been introduced to either side of Congress. Therefore, prior to the introduction of HOME legislation, there are no restrictions on PAS officials appealing to the public to contact Congress and express their support or opposition to changes to the HOME program. [Similarly, prior to the introduction of appropriations legislation relating to the HOME program, there are no restrictions on PAS officials appealing to the public to contact Congress and express their support or opposition to changes to the amount of funding for the HOME program in such appropriations legislation.]

PAS officials are also not prohibited from advocating to the public on behalf of the Administration's position, as long as they do not request that members of the public contact Congress. Department officials may therefore, through oral or written communication, convey support for or opposition to HOME legislation or to specific dollar amounts in appropriations legislation concerning the HOME program at any time, as long as they do not request the public to contact Congress. For example, PAS officials may make a speech saying that Congress should pass HOME legislation, or pass appropriations legislation containing particular dollar amounts concerning the HOME program, as long as they do not instruct the audience to contact Congress.

<sup>1</sup> This provision is in a single appropriations act; however, Congress has enacted similar provisions since 1974.

Additionally, PAS officials are not prohibited from contacting Congress directly. Department officials may contact members of Congress concerning HOME legislation and related appropriations legislation at any time.

If you have any questions concerning the applicability of the anti-lobbying restrictions to any particular situation, please contact Peter Constantine, Associate General Counsel for Ethics and Personnel Law at (202) 402-2377.

# Exhibit G



**Baxter, Daniel P**

---

**From:** Constantine, Peter J  
**Sent:** Wednesday, February 27, 2013 2:30 PM  
**To:** Minchero, Elliot M  
**Cc:** [REDACTED]  
**Subject:** Lobbying Question

Elliot,

You have asked whether HUD employees may contact members of the public in order to encourage the members of the public to contact their Congressman and urge him to introduce a particular legislation. After review, we believe that a PAS official may contact members of the public for this purpose, but no other employee may.

Under the anti-lobbying act (18 USC 1913), federal employees are prohibited from encouraging outside parties to contact federal, state, or local government officials to advance any policy goal. However, the anti-lobbying act doesn't apply to PAS officials. The 2012 appropriations act prohibits PAS and other HUD employees from lobbying once a bill is pending before Congress. Therefore, PAS officials may encourage members of the public to contact Congress before a bill is pending. All other employees are prohibited at any time.

Peter J. Constantine  
Associate General Counsel for  
Ethics, Appeals and Personnel Law  
Office of General Counsel  
U.S. Dept. of HUD  
202-402-2377  
[Peter.J.Constantine@hud.gov](mailto:Peter.J.Constantine@hud.gov)

*This message is intended for the designated recipients only, and may contain information that is privileged, attorney work product or otherwise exempt from disclosure under applicable law. If you have received this message in error, please delete the original and all copies and notify the sender immediately.*

# Exhibit H



OFFICE OF GENERAL COUNSEL

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, DC 20410-0500

### Anti-Lobbying Act Do's and Don'ts

The Anti-Lobbying Act (18 U.S.C. § 1913) prohibits the use of appropriated funds for certain activities that are "intended or designed to influence in any manner a Member of Congress, to favor or oppose . . . any legislation or appropriation by Congress." In addition to the Anti-Lobbying Act, Appropriations Law, Section 716 of the Consolidated and Further Continuing Appropriations Act, 2012 (Pub. L. 112-74, 125 Stat. 933) also prohibits the use of appropriated funds for certain lobbying activities once legislation is pending. These laws have been interpreted to prohibit specifically the use of appropriated funds for grass-roots lobbying, *i.e.*, communications asking private recipients to contact Members of Congress to support Administration positions on particular legislative matters. In the context of the Anti-Lobbying Act, the Department of Justice (DOJ) has expressed particular concern about using appropriated funds for large-scale, high-expenditure grass-roots lobbying campaigns. The following is guidance on what are and are not permissible employee activities under these anti-lobbying laws. *If you have any doubt whether you may take an action, please contact the Office of Ethics and Appeals or your Regional Counsel.*

The following examples illustrate the kinds of activities all HUD employees may DO:

- Through proper channels, initiate meetings or communicate directly with members of Congress and Congressional staffs regarding pending legislation or transmit unsolicited constituent views to Congress if the employee is within, or works in consultation with, HUD's Office of Congressional and Intergovernmental Relations.
- Discuss legislative issues with outside organizations and make public remarks explaining legislation and Administration's position on legislation.
- Tell the public how they may obtain additional information regarding legislation.
- Send out information about legislation to individuals or groups that have asked for this information, have an interest in particular information, or that regularly receive information from the Department, where the material does not directly or indirectly encourage the public to contact Members of Congress.
- Coordinate speeches and events with other Federal officials relating to legislation or the Administration's position on legislation, where the employee does not directly or indirectly encourage the public to contact Members of Congress.
- Write letters to the editor, "op-ed" articles, press releases, or other materials addressing legislation and the Administration's position on legislation so long as the materials identify the official's Federal Government title and position, and do not encourage the public to contact Members of Congress.

The following examples illustrate the kinds of activities HUD employees (see below for specific guidance for PAS officials) may NOT DO:

- May not participate in events or programs specifically designed to promote or encourage the public to contact Members of Congress to urge support for or opposition to specific legislation. For example, GAO has held that participation by an official in a press conference organized by non-governmental advocacy groups in a congressional sponsor's district called to criticize pending legislation under active consideration by Congress violated the Appropriations Act.
- May not initiate or coordinate meetings between members of the public and Members of Congress or Congressional staff in order to influence Congress to support or oppose specific legislation.
- May not engage in grass-roots lobbying campaign involving expenditures for letters, brochures or other forms of communication with the purpose of directly or indirectly encouraging the public to contact Congress in support of or opposition to legislation.
- May not provide stakeholders or other members of public with target lists of Members of Congress for the purpose of seeking to influence their position on legislation.
- May not use Departmental resources, including e-mail, to encourage directly or indirectly other employees to contact Members of Congress in order to influence them to support or oppose legislation.
- May not "ghost-write" letters, speeches, or other materials promoting or opposing specific legislation for anyone in a non-Federal position.
- May not request or recommend that a recipient further distribute materials supporting or opposing specific legislation, or provide a large number of copies of such materials for redistribution, as part of a grass-roots lobbying campaign.

#### **Presidentially Appointed, Senate-Confirmed Officials**

The application of the anti-lobbying laws to Presidentialy Appointed, Senate-Confirmed ("PAS") officials in particular has been extensively analyzed and interpreted by the Department of Justice ("DOJ") and the Government Accountability Office ("GAO"). DOJ has advised caution with respect to grass-roots lobbying activities. Therefore, PAS officials should not undertake any grass-roots lobbying activities without consulting with the Office of General Counsel. Written materials proposed to be distributed as part of grass-roots lobbying activities (e.g. letters, e-mails) must be cleared by the Office of General Counsel in advance.

# Exhibit I

United States House of Representatives  
Committee on Financial Services  
2129 Rayburn House Office Building  
Washington, D.C. 20515

August 28, 2013

The Honorable Shaun Donovan  
Secretary  
Department of Housing and Urban Development  
451 7<sup>th</sup> Street SW  
Washington, D.C. 20410

Dear Secretary Donovan:

On July 31, 2013, the Deputy Secretary of the Department of Housing and Urban Development ("HUD") sent an e-mail communication to "friends and colleagues" calling on the recipients to contact specific U.S. Senators and encourage the Senators to vote in favor of procedural motions to advance Senate consideration of S. 1243, Transportation, Housing and Urban Development, and Related Agencies Appropriations ("THUD"). The e-mail communication urged recipients to oppose certain amendments and suggested that recipients encourage the named Senators to support final passage of the bill.

The e-mail communication, states, in pertinent part, as follows:

I am humbly asking you to let your Senators especially the ones listed below know how important it is that the cloture motion passes so that the Senate THUD bill MOVES FORWARD to a vote and TO VOTE for the Senate THUD bill.

It is critical that your Senator hears from you NOW. Specifically, we need to maintain the current level of Republican support for the Senate THUD FY14 appropriations bill, acquire other Republican supporters and ensure vocal and active support from Democratic Senators. Please ask them:

- to vote YES tomorrow on the cloture motion to end the debate and to vote YES on the merits of the bill when it comes up for a vote
- to defend against efforts by some Republicans to prevent the underlying bill from coming up for a vote or to enact harmful amendments such as those that would cut some of the important funding in the bill.
- for example, Senators should vote "No" against Senator Coburn's Amendment 1754 which would have a devastating effect on our homeless population.

HUD is focusing specifically on the following Republican Senators who in some fashion have helped moved the Senate THUD bill forward.

- Blunt (MO)
- Boozman (AR)
- Chambliss (GA)
- Chiesa (NJ)

JEB HENSARLING, TX, CHAIRMAN

United States House of Representatives  
**Committee on Financial Services**  
2129 Rayburn House Office Building  
Washington, D.C. 20515

MAXINE WATERS, CA, RANKING MEMBER

- Flake (AZ)
- Hatch (UT)
- Heller (NV)
- Imhofe (OK) [sic]
- Isakson (GA)
- Johnson (WI)
- McCain (AZ)
- Portman (OH)
- Thune (SD)
- Wicker (MS)
- Moran (KS)
- Hoeven (ND)
- Kirk (IL)

We also would like to thank the following Republican Senators who have consistently been supportive of the Senate THUD bill:

- o Susan Collins (R-ME)
- o Thad Cochran (R-MS)
- o Lisa Murkowski (R-AK) . . .

(E-mail from Yvonne A. Brown on behalf of Maurice A. Jones to undisclosed recipients, Subject: Important Vote on HUD FY13 Budget Tomorrow, July 31, 2013; underlining, emphasis, capitalization and formatting in original.)

The directness and specificity of the e-mail communication appears to violate well-established federal restrictions on lobbying by federal agencies. The statutory prohibitions on agency lobbying include a federal criminal statute and appropriation restrictions contained within the Consolidated Appropriations Act, 2012, retained in the Consolidated and Further Continuing Appropriations Act, 2013. See 18 U.S.C. § 1913; P.L. 112-74 §§ 716, 719; P.L. 113-6 § 1102.

In an effort to fully assess the propriety of HUD's apparent lobbying efforts, please respond to the following by no later than September 11, 2013:

1. Provide the names and organizational affiliations of all recipients of the e-mail communication.
2. Describe the process that HUD follows to ensure that external communications are consistent with applicable criminal and civil statutes.
3. Provide all records<sup>1</sup> within the possession, custody or control of the Deputy Secretary for the period of July 22, 2013 to August 5, 2013, inclusive, relating to THUD.

<sup>1</sup> The term "records" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded or preserved, and whether original or copy.

JEB HENSARLING, TX, CHAIRMAN

United States House of Representatives  
Committee on Financial Services  
2129 Rayburn House Office Building  
Washington, D.C. 20515

MAXINE WATERS, CA, RANKING MEMBER

If you have any questions, please contact Gisele Roget of the Committee staff at (202) 228-2189. Thank you for your attention to this important matter.

Sincerely,



PATRICK MCHENRY

Chairman

Subcommittee on Oversight & Investigations

Cc: The Honorable Al Green, Ranking Member



# Exhibit J

**Bahr, DeChantel**

---

**From:** Youngberg, Francey L <Francey.L.Youngberg@hud.gov>  
**Sent:** Thursday, September 19, 2013 9:27 AM  
**To:** Sessoms, Reginald; Bahr, DeChantel  
**Subject:** FW: just making doubly sure we are okay sending this out --- please reply

Per our meeting, in response to your question, I said that Jonathan or Elliot reviewed the July 31 email but I couldn't remember which. You asked me to look through my emails to see which of them reviewed it. Here is the one from Elliot in response to my question to review the content and method of the email. As you can see, he advised me to send from the Deputy's mailbox instead of our public engagement mailbox since we did not have the ability to have the sender be the Deputy as required since he is the PAS who can make the "ask" of stakeholders.

So, that is what I did, I sent the email to [REDACTED] to send from the Deputy's public email box as reflected in the July 31 email, 3:17 pm which you showed me.

Francey

**From:** Mincberg, Elliot M  
**Sent:** Wednesday, July 31, 2013 2:50 PM  
**To:** Youngberg, Francey L; Szubrowski, Leigh; Harwitz, Jonathan M  
**Cc:** [REDACTED]  
**Subject:** RE: just making doubly sure we are okay sending this out --- please reply

ANY way to prioritize?

**From:** Youngberg, Francey L  
**Sent:** Wednesday, July 31, 2013 2:49 PM  
**To:** Szubrowski, Leigh; Mincberg, Elliot M; Harwitz, Jonathan M  
**Cc:** [REDACTED]  
**Subject:** RE: just making doubly sure we are okay sending this out --- please reply

It is to 2000 + from our list alone and from my experience, it will take a while because anytime there is a bad email, it will not send.....sad to say....

I will send to them now and see what happens.

**From:** Szubrowski, Leigh  
**Sent:** Wednesday, July 31, 2013 2:48 PM  
**To:** Youngberg, Francey L; Mincberg, Elliot M; Harwitz, Jonathan M  
**Cc:** Morrison, Iyabo  
**Subject:** RE: just making doubly sure we are okay sending this out --- please reply

We can definitely get his email out today. We've done that a bunch of times.  
Just need to get them info before 4:45/5 PM.

**From:** Youngberg, Francey L  
**Sent:** Wednesday, July 31, 2013 2:47 PM  
**To:** Mincberg, Elliot M; Harwitz, Jonathan M  
**Cc:** [REDACTED] Szubrowski, Leigh  
**Subject:** RE: just making doubly sure we are okay sending this out --- please reply

No unfortunately not possible for the PE box. The FROM will be [publicengagement@hud.gov](mailto:publicengagement@hud.gov)

If it can't come from our PE box, think our only option now is to ask Deputy's office to send out the email from his public mailbox directly and ask the program offices and RAs to send the emails to Yvonne. Think part may get out today but I suspect most will not get done till tomorrow which is kind of too late.

Should I proceed?

**From:** Mincberg, Elliot M  
**Sent:** Wednesday, July 31, 2013 2:11 PM  
**To:** Youngberg, Francey L; Harwitz, Jonathan M  
**Cc:** [REDACTED] Szubrowski, Leigh  
**Subject:** RE: just making doubly sure we are okay sending this out --- please reply

If my last sentence was confusing I'm sorry but program offices and RAs should not forward from the Deputy. The email should "come" from him. I don't understand re the OPE mailbox. Can he be placed on the send line as the sender of the message?

**From:** Youngberg, Francey L  
**Sent:** Wednesday, July 31, 2013 1:49 PM  
**To:** Mincberg, Elliot M; Harwitz, Jonathan M  
**Cc:** Morrison, Iyabo; Szubrowski, Leigh  
**Subject:** RE: just making doubly sure we are okay sending this out --- please reply

Elliott, can it come from our public engagement mailbox? It is a generic mailbox. It will take a while if we have it come from his mailbox.

So we can't ask program offices and RAs to blast out because it would involve a forward?

Sorry but I don't understand your last sentence...how can we do this correctly and still have program offices be able to send it out?

**From:** Mincberg, Elliot M  
**Sent:** Wednesday, July 31, 2013 1:40 PM  
**To:** Youngberg, Francey L; Harwitz, Jonathan M  
**Cc:** [REDACTED] Szubrowski, Leigh  
**Subject:** RE: just making doubly sure we are okay sending this out --- please reply

If its an explicit ask from the Deputy, it needs to be from the deputy. OGC has explained that others cant do it just because the Deputy asked them to. So for program offices and RAs, they cant forward a message from the deputy using their own time and resources. That's why we changed things so that "asks" from deputy/sohud were sent thru their offices

**From:** Youngberg, Francey L  
**Sent:** Wednesday, July 31, 2013 1:33 PM  
**To:** Harwitz, Jonathan M; Mincberg, Elliot M  
**Cc:** [REDACTED] Szubrowski, Leigh  
**Subject:** just making doubly sure we are okay sending this out --- please reply  
**Importance:** High

Hi, I know there is a flurry of emails so just want to be sure that before this goes out to hundreds and possibly a few thousand people, we are all OK with the content and the method. This is coming from Maurice and will be sent from the public engagement generic box and the program offices and RAs will also be asked to send out to their networks.

It is an explicit ask from the Deputy for stakeholders to take action.

Ok?



Dear friends and colleagues:

Thank you for your past support for the HUD budget. As you may know on July 1, the Senate Committee on Appropriations passed its FY14 Transportation, Housing and Urban Development, and Related Agencies (THUD) spending bill, S. 1243. The difference between the House and Senate 'marks' could not be more stark. The Senate bill provides over six billion dollars more in budget authority to HUD and its programs than the House bill H.R. 2610, which was also voted out of Committee on June 27. Put simply, the Senate bill supports HUD's core rental assistance, homeless, and block grant programs and makes key investments in critical, newer initiatives, including Choice Neighborhoods and the Sustainable Communities Initiative. In contrast, the House bill puts the vulnerable HUD assistance recipients at risk and eliminates ladders of opportunity for middle class Americans. The Administration strongly opposes the House bill, see [http://www.whitehouse.gov/sites/default/files/omb/legislative/sap/113/saphr2610r\\_20130722.pdf](http://www.whitehouse.gov/sites/default/files/omb/legislative/sap/113/saphr2610r_20130722.pdf)

On July 23, by a vote of 73 to 26, the Senate passed a cloture motion that allowed the Senate THUD bill (S.1243) to go to the floor for debate. Since then, there has been vigorous debate and a number of amendments and motions proposed and voted on by the Senators on the floor. **TODAY AND TOMORROW** are critical because it is the last chance for the Senate THUD bill to be voted on before Congress goes on August recess. We are once again facing a critical cloture motion vote tomorrow to end the debate. I am humbly asking you to let your Senators especially the ones listed below know how important it is that the cloture motion passes so that the Senate THUD bill MOVES FORWARD to a vote and TO VOTE for the Senate THUD bill.

It is critical that your Senator hears from you NOW. Specifically, we need to maintain the current level of Republican support for the Senate THUD FY14 appropriations bill, acquire other Republican supporters and ensure vocal and active support from Democratic Senators. Please ask them:

- to vote YES tomorrow on the cloture motion to end the debate and to vote YES on the merits of the bill when it comes up for a vote
- to defend against efforts by some Republicans to prevent the underlying bill from coming up for a vote or to enact harmful amendments such as those that would cut some of the important funding in the bill.
- for example, Senators should vote "No" against Senator Coburn's Amendment 1754 which would have a devastating effect on our homeless population.

HUD is focusing specially on the following Republican Senators who in some fashion have helped moved the Senate THUD bill forward.

- Blunt (MO)
- Boozman (AR)
- Chambliss (GA)
- Chiesa (NJ)
- Flake (AZ)
- Hatch (UT)
- Heller (NV)
- Imhofe (OK)
- Isakson (GA)
- Johnson (WI)
- McCain (AZ)
- Portman (OH)
- Thune (SD)
- Wicker (MS)
- Moran (KS)
- Hoeven (ND)
- Kirk (IL)

We also would like to thank the following Republican Senators who have consistently been supportive of the Senate THUD bill:

- Susan Collins (R-ME)
- Thad Cochran (R-MS)
- Lisa Murkowski (R-AK)

Thank you again for your continued support. If you have any questions, please email [publicengagement@hud.gov](mailto:publicengagement@hud.gov) and someone from my team will get back to you.

Sincerely,  
Maurice Jones  
Deputy Secretary  
U.S. Dept. of Housing and Urban Development

# Exhibit K

**Macomson (Ctr), Tina L**

---

**From:** Szubrowski, Leigh  
**Sent:** Wednesday, July 31, 2013 3:39 PM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** FW: please send the email below from DSOHUD email from his public email address  
**Attachments:** Priority list for DSOHUD blast email #1.docx  
**Importance:** High

[REDACTED] - here are our email addresses to BCC please.

[REDACTED]

**From:** Youngberg, Francey L  
**Sent:** Wednesday, July 31, 2013 3:17 PM  
**To:** [REDACTED]  
**Cc:** Jones, Maurice A; Harwitz, Jonathan M; Minberg, Elliot M; Szubrowski, Leigh; [REDACTED]  
**Subject:** please send the email below from DSOHUD email from his public email address  
**Importance:** High

Dear [REDACTED]: I am so sorry to ask you this but as it turns out, the Deputy's email which ask stakeholders to contact their Senators can only be sent from the Deputy's public email address. We are not allowed to send from the public engagement mailbox so we are asking if you can this email out to the attached list of email strings at your earliest convenience. I know it's a lot.

We are hoping they can still take action today. This is the priority list. Please call if you have questions.

Thanks a lot, Francey

PS Leigh will also send her IGA list.



Dear friends and colleagues:

Thank you for your past support for the HUD budget. As you may know on July 1, the Senate Committee on Appropriations passed its FY14 Transportation, Housing and Urban Development, and Related Agencies (THUD) spending bill, S. 1243. The difference between the House and Senate 'marks' could not be more stark. The Senate bill provides over six billion dollars more in budget authority to HUD and its programs than the House bill H.R. 2610, which was also voted out of Committee on June 27. Put simply, the Senate bill supports HUD's core rental assistance, homeless, and block grant programs and makes key investments in critical, newer initiatives, including Choice Neighborhoods and the Sustainable Communities Initiative. In contrast, the House bill puts the vulnerable HUD assistance recipients at risk and eliminates ladders of opportunity for middle class Americans. The Administration strongly opposes the House bill, see [http://www.whitehouse.gov/sites/default/files/omb/legislative/sap/113/saphr2610r\\_20130722.pdf](http://www.whitehouse.gov/sites/default/files/omb/legislative/sap/113/saphr2610r_20130722.pdf)

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It is critical that your Senator hears from you NOW. Specifically, we need to maintain the current level of Republican support for the Senate THUD FY14 appropriations bill, acquire other Republican supporters and ensure vocal and active support from Democratic Senators. Please ask them:

- to vote YES tomorrow on the cloture motion to end the debate and to vote YES on the merits of the bill when it comes up for a vote
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- for example, Senators should vote "No" against Senator Coburn's Amendment 1754 which would have a devastating effect on our homeless population.

HUD is focusing specifically on the following Republican Senators who in some fashion have helped moved the Senate THUD bill forward.

- Blunt (MO)
- Boozman (AR)
- Chambliss (GA)
- Chiesa (NJ)
- Flake (AZ)
- Hatch (UT)



- Heller (NV)
- Imhofe (OK)
- Isakson (GA)
- Johnson (WI)
- McCain (AZ)
- Portman (OH)
- Thune (SD)
- Wicker (MS)
- Moran (KS)
- Hoeven (ND)
- Kirk (IL)

We also would like to thank the following Republican Senators who have consistently been supportive of the Senate THUD bill:

- Susan Collins (R-ME)
- Thad Cochran (R-MS)
- Lisa Murkowski (R-AK)

Thank you again for your continued support. If you have any questions, please email [publicengagement@hud.gov](mailto:publicengagement@hud.gov) and someone from my team will get back to you.

Sincerely,  
Maurice Jones  
Deputy Secretary  
U.S. Dept. of Housing and Urban Development

# Exhibit L

**Allen, Lindsey A**

---

**From:** Constantine, Peter J  
**Sent:** Thursday, September 12, 2013 9:29 AM  
**To:** Smith, Damon Y  
**Cc:** [REDACTED]  
**Subject:** FW: Anti-Lobbying Webpage information  
**Attachments:** antilobbying dos and donts for website.docx; Restrictions on Lobbying by Federal Employees for webpage.docx

Here is the anti-lobbying information that we would post on our internal and external ethics webpage. Please note that we would include both the information below and the two attached documents. Please review and let me know if you have any comments and concerns. I am happy to set up meeting to go through the information if that would be helpful. Once we get the green light, we will get the information posted. -Peter

### **Anti-Lobbying Act**

#### **Legal Authority**

- **18 USC 1913** (link to: <http://www.law.cornell.edu/uscode/text/18/1913>)
- **Section 716 of PL 112-74** (Consolidated and Further Continuing Appropriations Act, 2012)  
"No part of any funds appropriated in this or any other Act shall be used by an agency of the executive branch, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, and for the preparation, distribution or use of any kit, pamphlet, booklet, publication, radio, television, or film presentation designed to support or defeat legislation pending before the Congress, except in presentation to the Congress itself."

#### **Guidance**

- **Anti-Lobbying Act Do's and Don'ts** (link to a pdf of the word document attached entitled "antilobbying dos and donts for website")
- **Restrictions on Lobbying by Federal Employees** (link to a pdf of the word document attached entitled "Restrictions on Lobbying by Federal Employees")

Peter J. Constantine  
Associate General Counsel for  
Ethics, Appeals and Personnel Law  
Office of General Counsel  
U.S. Dept. of HUD  
202-402-2377  
[Peter.J.Constantine@hud.gov](mailto:Peter.J.Constantine@hud.gov)

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U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, D.C. 20410-0500

### **Anti-Lobbying Act Do's and Don'ts**

The Anti-Lobbying Act (18 U.S.C. § 1913) is a criminal statute applicable to all executive branch agencies. It prohibits the use of appropriated funds for activities that are directly or indirectly "intended or designed to influence in any manner a Member of Congress, to favor or oppose... any legislation or appropriation by Congress." In addition to the Anti-Lobbying Act, Appropriations Law (sections 637 and 642 of Public Law 105-277) also limit employees' lobbying activities once legislation is pending.

The following examples illustrate the kinds of activities all HUD employees may **DO**:

- Discuss legislative issues with outside organizations and make public remarks explaining proposed legislation and Administration's position on proposed legislation.
- Tell the public how they may obtain additional information regarding proposed legislation.
- Send out information about proposed legislation to individuals or groups that have asked for this information, have an interest in particular information or that regularly receive information from the Department—material may not directly or indirectly encourage the public to contact Members of Congress.
- Coordinate speeches and activities with other Federal officials.
- Write letters to the editor, "op-ed" articles, press releases, or other materials addressing proposed legislation and the Administration's position on proposed legislation so long as the materials identify the official's Federal Government title and position.
- Through proper channels, initiate meetings or communicate directly with members of Congress and Congressional staffs regarding pending legislation or transmit unsolicited constituent views to Congress if the employee is within HUD's Office of Congressional and Intergovernmental Relations or senior management official.

The Department of Justice has advised that the Anti-Lobbying Act does not apply to PAS officials, but that the Appropriations laws do apply to PAS officials. The following examples illustrate the kinds of activities HUD employees may **NOT DO**. This list applies to PAS officials once legislation is pending and to non-PAS officials at all times.

- **May not participate in events or programs specifically designed to promote public support for or opposition to pending legislation. For example, GAO has held that participation by a non-PAS official in a press conference organized by non-governmental advocacy groups in a congressional sponsor's district called to criticize a legislative proposal under active consideration by Congress violated the Appropriations Act.**
- **May not initiate or coordinate meetings between members of the public and members of Congress or Congressional staff to discuss proposed legislation.**
- **May not engage in grass roots lobbying campaign involving expenditures for letters, brochures or other forms of communication that directly or indirectly encourage the public to contact Congress in support of or opposition to pending legislation.**
- **May not provide members of public with target lists of Members of Congress for the purpose of seeking to influence their position on pending legislation.**
- **May not use Departmental resources, including e-mail, directly or indirectly, to encourage other employees to contact Members of Congress about proposed legislation.**
- **May not "ghost-write" letters, speeches, or other materials dealing with proposed legislation for anyone in a non-Federal position.**
- **May not request or recommend that a recipient further distribute materials regarding proposed legislation or provide a large number of copies of such materials for redistribution.**
- **May not provide members of the public with lists of, or correspondence from, persons who favor or oppose certain legislation to groups that lobby Congress (officials should avoid the appearance of impartiality in endorsements).**



## Restrictions on Lobbying by Federal Employees

A Federal criminal statute, 18 U.S.C. § 1913, prohibits Federal employees from using appropriated funds for activities designed to influence members of Congress concerning any legislation or appropriation. Section 717 of P.L. 111-117 (Consolidated Appropriations Act, 2010) prohibits Federal employees from using appropriated funds to encourage anyone to contact Congress in support of or in opposition to pending legislation.<sup>1</sup> The following discussion provides general guidelines that should help explain these lobbying restrictions and supersedes all other previous guidance on this topic.

**Prohibited Activities.** All Federal employees, except Presidentially Appointed, Senate-Confirmed (PAS) officials, must adhere to the prohibitions of the Anti-lobbying Act.<sup>2</sup> All Federal employees, including PAS officials, must adhere to the prohibitions of Section 717.<sup>3</sup>

Prohibited activities include the following:

1. HUD employees may not organize or encourage substantial "grass roots" lobbying campaigns<sup>4</sup> designed to urge others to pressure Members of Congress to support or oppose any legislation or appropriation.
2. PAS employees may not organize or encourage "grass roots" lobbying campaigns designed to urge others to pressure Members of Congress to support or oppose any pending legislation or appropriation.

<sup>1</sup> This provision is in a single appropriations act; however, Congress has enacted similar provisions since 1974. In addition, Section 720 of the 2010 Appropriations Act prohibits the use of funds for publicity or propaganda purposes. This Section is intended to prohibit "publicity of a nature tending to emphasize the importance of the agency or activity in question" and is "directed typically toward activities whose obvious purpose is 'self-aggrandizement' and 'puffery.'" See B-284226.2

<sup>2</sup> The Department of Justice has determined that the Anti-lobbying Act does not apply to Presidentially Appointed, Senate-Confirmed (PAS) employees. See 12 U.S. Op. Off. Legal Counsel 30, 32-33 "Legal Constraints on Lobbying Efforts in Support of Contra Aid and Ratification of the INF Treaty" (1988).

<sup>3</sup> The Department of Justice has stated that appropriations riders such as Section 717 apply to PAS employees. See 12 U.S. Op. Off. Legal Counsel 30, 39-40 "Legal Constraints on Lobbying Efforts in Support of Contra Aid and Ratification of the INF Treaty" (1988).

<sup>4</sup> The Justice Department has suggested that a "substantial" grass-roots lobbying campaign under 18 U.S.C. § 1913 is one costing about \$50,000 or more. See Memorandum for the Attorney General and Deputy Attorney General from Walter Dellinger, Assistant Attorney General, Office of Legal Counsel, April 14, 1995. See also Application of Anti-Lobbying Restrictions to HUD Report Losing Ground, B-284226.2, August 17, 2000. Further, under 18 U.S.C. § 1913 grass-roots lobbying campaigns consist of private forms of communications expressly asking recipients to contact Members of Congress. *Id.* Grass-roots lobbying campaigns under 18 U.S.C. § 1913 do not include communication with the public through public speeches, appearances, or writings. *Id.*

3. While Department officials may have contact with non-governmental lobbying organizations or individual lobbyists,<sup>5</sup> they should avoid actions that may create the appearance they are trying to circumvent the anti-lobbying restrictions outlined above. For example, a HUD official may not solicit a lobbyist or lobbying organization to develop a grassroots campaign in support of legislation favored by the Administration or the Department. Similarly, HUD officials should not suggest to client organizations that they urge their own supporters to pressure Members of Congress regarding any legislation or appropriation.

Permitted Activities. Listed below are guidelines regarding permissible on-duty activities:

1. Direct communications between appropriate Department officials and Members of Congress (or their staffs) in connection with Administration or Department positions are not restricted. Consequently, authorized HUD officials may directly lobby Members of Congress and their staffs in support of Administration or Department positions. These communications should be limited to HUD principal staff, employees within HUD's Office of Congressional and Intergovernmental Relations, and other HUD senior management officials, including those within the Office of the Chief Financial Officer.
2. Department officials may publicly advocate Administration or Department positions or policies during speeches, news conferences, media interviews, or similar appearances.
3. The anti-lobbying statute does not prohibit Departmental communications designed to inform the public about Administration or HUD positions, or to promote those positions, as long as the communications do not solicit pressure on Congress.
4. The Department may send unsolicited materials, such as press releases, fact sheets, copies of speeches, and similar materials, to persons and organizations that may be reasonably expected to have an interest in the subject matter. Such materials may not, however, urge the recipients to contact Members of Congress to express support or opposition to any proposed or pending legislation.

Penalties. Federal employees who violate 18 U.S.C. § 1913 may be subject to a \$10,000 fine, imprisonment for up to one year, and removal from Federal employment.<sup>6</sup>

HUD employees should note that the anti-lobbying statute is not intended to prevent them from supporting political causes or legislation in their private capacity and on their own time. In

<sup>5</sup> If an employee's contact with a lobbyist would touch on a specific project or initiative under the American Recovery and Reinvestment Act, the employee should contact the Ethics Law Division as additional rules may apply.

<sup>6</sup> This statute does not prohibit Federal union officials from lobbying Congress in their capacity as union representatives with respect to matters concerning working conditions. See U.S. Department of the Army Corps of Engineers Memphis District, Memphis, Tennessee, and National Federation of Federal Employees, Local 259, 52 F.L.R.A. 920 (1997).

order to engage in permissible personal advocacy, however, HUD employees must take care that such conduct does not occur during duty time or use Government resources. They also should not use their official title, position, or authority in connection with any such effort.

If you have any questions concerning the applicability of the anti-lobbying restrictions to any particular situation, please contact the Ethics and Appeals Division at (202) 708-3815 or your Regional Counsel.

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