

United States House of Representatives
Committee on Financial Services
Washington, DC 20515-6050

June 20, 2011

The Honorable Timothy Geithner
Secretary of the Treasury
U.S. Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, DC 20220

Dear Secretary Geithner:

As we have expressed in previous correspondence with you and in hearings before our respective committees, we remain concerned that transparency and accountability be given the highest priority throughout the government, especially in an agency as powerful and important as the Consumer Financial Protection Bureau (CFPB). Elizabeth Warren has testified twice before House subcommittees this year about the new CFPB's responsibilities and operations. In each hearing, she downplayed the CFPB's involvement in negotiations between mortgage servicers and state and Federal authorities to settle allegations of irregularities in the foreclosure process. Her testimony that the CFPB's role was limited to responding to requests for "advice" seems inconsistent with documentation reflecting CFPB's active participation in – and orchestration of – the ongoing settlement discussions. The American people have a right to know the CFPB's true role in these negotiations.

Because previous requests for documents and records were rebuffed, we are writing to request documents and records related to the CFPB's role in the mortgage servicing settlement negotiations.¹ Last week, Judicial Watch, a nonpartisan public interest group that investigates government corruption,² uncovered e-mails, meeting minutes, and other records that show, among other things, that Ms. Warren initiated and led "emergency meetings" with state attorneys general that her office insisted remain a secret.³ The release of these documents makes the case for Congressional oversight even more pressing.

On March 16, 2011, Ms. Warren testified before the House Financial Services Subcommittee on Financial Institutions and Consumer Credit on the CFPB's activities and operations. At that hearing, Chairman Bachus specifically asked whether the CFPB had "participated in the foreclosure settlement discussions with the banks."⁴ Ms. Warren repeatedly declined to acknowledge that the CFPB, "a division of the Treasury," participated in foreclosure settlement negotiations, responding only that the CFPB had provided "advice" to Federal officials when asked to provide "expertise."⁵ At a subsequent

¹ Letter from Kim N. Wallace, Assistant Secretary, Legislative Affairs, Department of the Treasury, to Representative Shelley Moore Capito (June 11, 2011).

² See Judicial Watch, About Us, available at <http://www.judicialwatch.org/>.

³ Judicial Watch, "Documents Uncovered by Judicial Watch Show Intervention by New, Controversial Federal Agency in Foreclosure Crisis Negotiation," June 16, 2011, available at <http://www.judicialwatch.org/news/2011/jun/documents-uncovered-judicial-watch-show-intervention-new-controversial-federal-agency-> ("Judicial Watch Release").

⁴ Hearing of the Committee on Financial Services Subcommittee on Financial Institutions and Consumer Credit Subcommittee, "Oversight of the Consumer Financial Protection Bureau," March 16, 2011, video available at

<http://financialservices.house.gov/Calendar/EventSingle.aspx?EventID=231781>

⁵ *Id.*

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hearing on May 24, 2011, before the House Oversight and Government Reform Subcommittee on TARP, Financial Services and Bailouts of Public and Private Programs she reiterated: “the Secretary of the Treasury asked for advice, and we gave advice ... [A]t his instruction, we gave advice to other Federal agencies, and we gave advice where asked.”⁶

When Chairman Bachus and Financial Institutions Subcommittee Chairman Capito asked Ms. Warren on March 30, 2011, if there were any aspects of her testimony that she wished to clarify or correct, Ms. Warren declined to do so. Instead, her senior spokesperson sent a press release that offered the media, “on background, for informational purposes” the Merriam-Webster’s definition of “advice.”⁷ And in a letter dated April 4, 2011, Ms. Warren again said: “Secretary Geithner, the Justice Department, and other officials have asked the consumer agency to provide advice on this matter.”⁸

It appears that the CFPB has been deeply involved in the mortgage servicing settlement negotiations and that its role goes far beyond the mere offering of “advice,” under the Merriam-Webster’s definition or any other reasonable interpretation of that term. First, the evidence came from a document (*attached*) bearing the CFPB’s name and titled, “Perspectives on Settlement Alternatives in Mortgage Servicing” (“CFPB Settlement Presentation”). That CFPB Settlement Presentation recommended goals; provided a detailed framework for the structure of a settlement; advanced the idea that a “global” settlement is a vehicle for “broad reform” of mortgage servicing practices; and offered suggestions for monetary penalties. The release of the documents found by Judicial Watch raises additional questions about what role the CFPB played in these settlement discussions.

Accordingly, so that our Committees can fulfill our oversight responsibilities, we request that the CFPB produce the following information in unredacted form:

All documents and communications between Elizabeth Warren or the CFPB and any State Attorney General, representative of any State Attorney General, and any federal agency or mortgage servicer, or any other potentially interested party, including plaintiffs’ attorneys preparing class action lawsuits, referring or reacting to mortgage servicing, foreclosures, or a possible settlement involving State Attorneys General from September 2010- present, relating in whole or in part to mortgage servicing or foreclosures or a possible settlement involving State Attorneys General from September 2010- present.

⁶ Hearing of the Committee on Oversight and Government Reform Subcommittee on TARP, Financial Services, and Bailouts of Public and Private programs, “Who’s Watching the Watchmen? Oversight of the Consumer Financial Protection Bureau,” May 24, 2011, *video available at* http://oversight.house.gov/index.php?option=com_content&view=article&id=1297%3A5-24-2011-qwhos-watching-the-watchmen-oversight-of-the-consumer-financial-protection-bureau&catid=34&Itemid=39.

⁷ Email from Jennifer Howard, Consumer Financial Protection Bureau, to mailing list (Mar. 30, 2011). Email on file with author.

⁸ Letter from Elizabeth Warren, Special Adviser to the Secretary of the Treasury to Representatives Spencer Bachus and Shelley Moore Capito (April 4, 2011).

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An attachment to this letter provides additional information about responding to this request. We request that you provide these materials as soon as possible, but no later than 5:00 pm on Tuesday, July 5, 2011. When producing documents to the Oversight Committee, please deliver production sets to the Majority Staff in Room 2157 of the Rayburn House Office Building and to the Minority Staff in Room 2471 of the Rayburn House Office Building. When producing documents to the Financial Services Committee, please deliver production sets to the Majority Staff in Room 2129 of the Rayburn House Office Building and to the Minority Staff in Room B-301C of the Rayburn House Office Building. We prefer, if possible, to receive all documents in electronic format.

If you have any questions about this request, please contact Ryan Hambleton of the Oversight Committee Staff at (202) 225- 5074 and Michael Borden of the Financial Services Committee Staff at (202) 225-7502. Thank you for your attention to this matter.

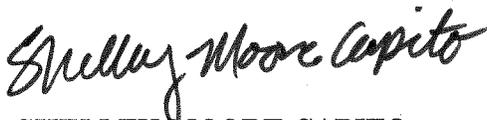
Sincerely,



SPENCER BACHUS
Chairman
Committee on Financial Services



DARRELL E. ISSA
Chairman
Committee on Oversight and
Government Reform



SHELLEY MOORE CAPITO
Chairman
Subcommittee on Financial Institutions
and Consumer Credit



SCOTT GARRETT
Chairman
Subcommittee on Capital Markets and
Government Sponsored Enterprises



PATRICK McHENRY
Chairman
Subcommittee on TARP, Financial Services
and Bailouts of Public and Private
Programs



RANDY NEUGEBAUER
Chairman
Subcommittee on Oversight and
Investigations

cc: Elizabeth Warren, Assistant to the President and Special Advisor to the Secretary of the Treasury
The Honorable Barney Frank

Enclosure

CONSUMER FINANCIAL PROTECTION BUREAU



Perspectives on Settlement Alternatives in Mortgage Servicing

Discussion document

February 14, 2011

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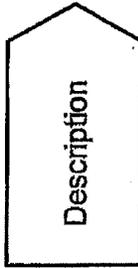
The prospect of a "global" settlement provides the potential for broad reform.

MORTGAGE SERVICING SETTLEMENT IN CONTEXT

—Enabled by a Settlement—



- Mandate modifications

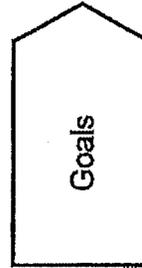


- Require that largest servicers modify a specific number of mortgages

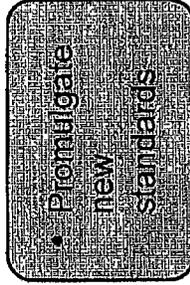


- Align servicer incentives

- Create a new trust structure outside existing RMBS deals, which "traps cash" to align servicer and investor incentives



- Deter wrongful servicer conduct
- Help clear shadow inventory
- Provide some borrower relief



- Promulgate new standards

- Use CFPB's eventual rule-making authority to "harmonize" various agencies' conduct standards

- Provide consistent rules for all market participants

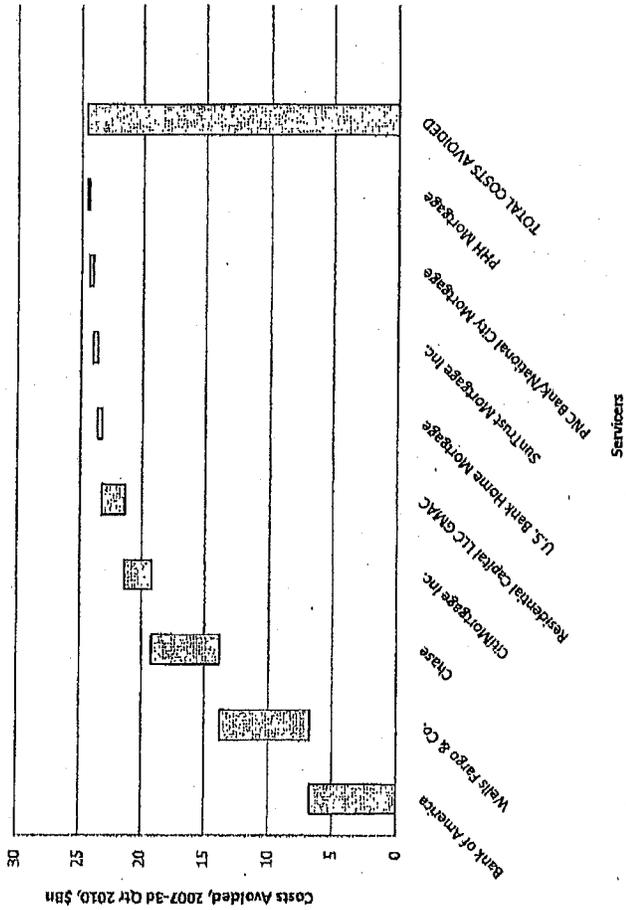
Rough estimates suggest that the largest servicers may have saved more than \$20 billion through under-investment in proper servicing during the crisis. As a result, a notional penalty of roughly \$5 billion would seem too low.

CALIBRATING THE SIZE OF POTENTIAL PENALTIES

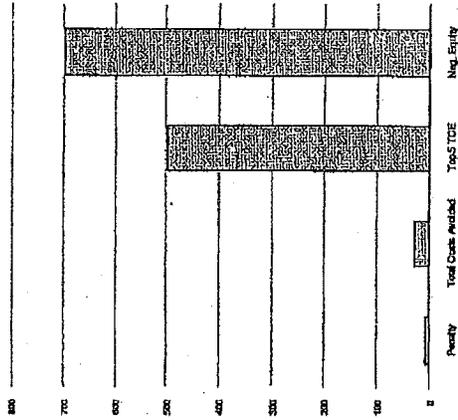
Estimated Servicing Costs Avoided, 2007-3Q10
\$ Billions (Source: CFPB)

Assumption:

- Effective special servicing of delinquent loans would have cost 75 bps/yr more than the actual costs incurred



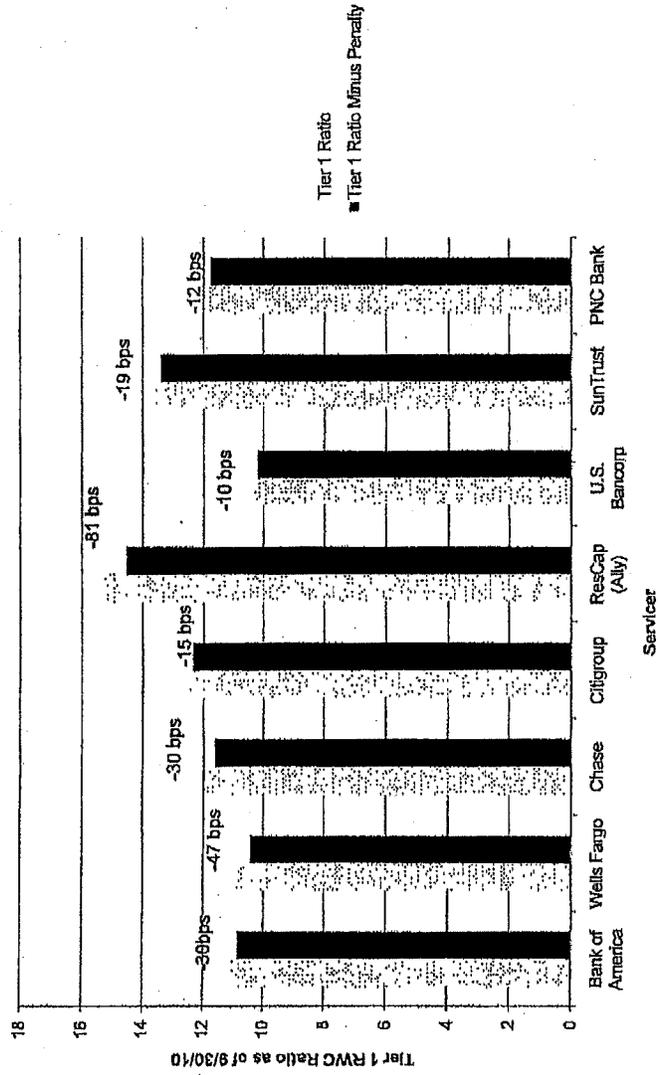
Notional \$5 Billion in Context
\$ Billions



Source: CFPB

A penalty based on servicing costs avoided would have little effect on Tier 1 capital ratios.

EFFECT OF PENALTY ON TIER 1 CAPITAL



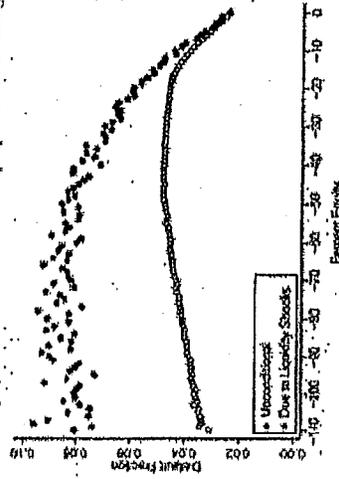
Source: CFPB

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Given the magnitude of the "shadow inventory" problem, we have gravitated towards settlement solutions that enable asset liquidity and cast a wide net. In particular, we have focused on principal reduction-modifications and the short sales enabled by them. As borrowers become increasingly underwater, they are more likely to default. To date, though, principal reductions have been relatively under-utilized.

NEGATIVE EQUITY, DELINQUENCY, AND PRINCIPAL REDUCTION

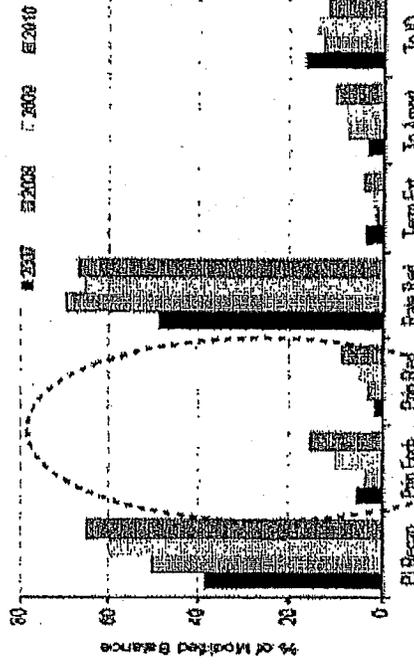
Figure 3: Decomposition of Default Probability by Percent Housing Equity



Note: Figure based on 13 million loan-month observations. Percent Equity is measured as a percent of current home value and rescaled to the nearest percentage point. Solid circles represent the unseasoned probability of default at a given equity level. Hollow circles represent the probability of default due to experiencing a liquidity shock at a given equity level.

Brunta, Dokko & Shan (2009).

Figure 8: Distribution by Modification Type (All Sectors)



Source: CMI Loan Performance

The scope of a settlement-driven loan modification requirement can be roughly calibrated to the likely cost to servicers from principal forgiveness. Principal reductions would (1) make payments somewhat more affordable; (2) free underwater borrowers to sell or refinance their homes; and (3) thereby help the housing market clear. Notably, some fraction of the cost of modifications (for NPV-positive modifications) might legitimately be pushed from servicers onto MBS investors.

CALIBRATING BREADTH AND DEPTH

Example

- Require [3.0] million principal-reduction mods over six months (principal forgiven)
 - Apportion by market share
 - With or without short sale
- Simple eligibility standards
 - Residential owner-occupied
 - Current CLTV > [100%]
 - Not FHA or VA loans
- Principal must be written down to [95%] CLTV
 - Reduction in second lien mortgages held by any party to settlement
- Monitor compliance
- Make penalty for failure to execute big enough to encourage loan mods
- Servicers fund write-down (makes investors whole)
 - But investors absorb write-down when NPV positive.

Cost of Aggregate Principal Reduction
(Assuming servicers modify least underwater borrowers)
\$ Billions

Depth: Reduce each Loan CLTV	Breadth: Millions of Loans Modified					
	0.5	1.0	1.5	2.0	2.5	3.0
>100% to 95%	\$7.0	\$13.9	\$20.9	\$27.9	\$34.8	\$41.8
>100% to 90%	\$10.6	\$21.1	\$31.7	\$42.3	\$52.9	\$63.4
>105% to 95%	\$7.1	\$14.3	\$21.4	\$33.3	\$51.9	\$70.5
>115% to 100%	\$13.4	\$28.1	\$51.5	\$74.9	\$103.9	\$135.2

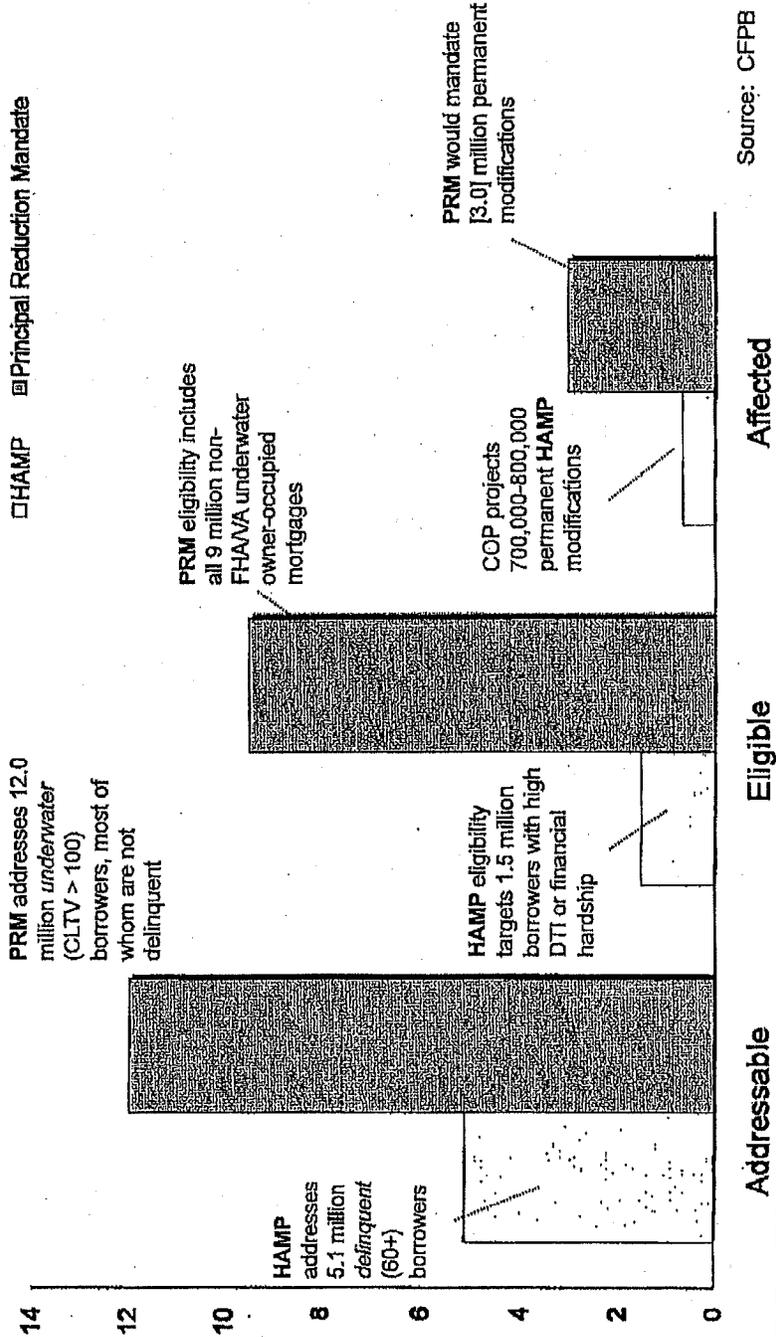
Note: Assuming servicers modify least underwater borrowers; excludes FHA and VA loans

Source: CFPB analysis based on FRB staff research

A principal reduction mandate could be meaningfully additive to HAMP.

PRINCIPAL REDUCTION MANDATE (PRM) VS. HAMP

Comparison of Borrower Universe, Eligibility, and Impact
Millions



Source: CFPB

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ONE HUNDRED TWELFTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
2157 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6143

Majority (202) 225-6074
Minority (202) 225-5051

Responding to Committee Document Requests

1. In complying with this request, you should produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
 - (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - (b) Document numbers in the load file should match document Bates numbers and TIF file names.
 - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.

6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.
7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when they were requested.
8. When you produce documents, you should identify the paragraph in the Committee's request to which the documents respond.
9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.
10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the request cannot be made in full, compliance shall be made to the extent possible and shall include an explanation of why full compliance is not possible.
12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. The time period covered by this request is included in the attached request. To the extent a time period is not specified, produce relevant documents from January 1, 2009 to the present.
16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.

17. All documents shall be Bates-stamped sequentially and produced sequentially.
18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building.
19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email, regular mail, telexes, releases, or otherwise.
3. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might

otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.

4. The terms "person" or "persons" mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
5. The term "identify," when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
6. The term "referring or relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.