

# United States Senate

COMMITTEE ON  
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS  
WASHINGTON, DC 20510-6250

CHRISTOPHER R. HIXON, STAFF DIRECTOR  
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July 28, 2016

The Honorable Sylvia M. Burwell  
Secretary  
U.S. Department of Health and Human Services  
200 Independence Avenue, S.W.  
Washington, D.C. 20201

Dear Secretary Burwell:

The Committee on Homeland Security and Governmental Affairs is examining the Department of Health and Human Services' (HHS) implementation of the transitional reinsurance program created under section 1341 of the Patient Protection and Affordable Care Act (ACA). In particular, we write to request your assistance in better understanding HHS's decision to prioritize payments to insurers over payments to taxpayers under the transitional reinsurance program. HHS's decision could potentially cost taxpayers \$4.5 billion.

The ACA created three risk mitigation programs to alleviate the financial risks and burdensome costs imposed by the ACA.<sup>1</sup> One of the programs, the transitional reinsurance program, was designed, in part, to "stabilize premiums in the individual [health insurance] market" in the wake of anticipated market disruptions that would necessarily follow the implementation of the ACA.<sup>2</sup> The transitional reinsurance program was also designed to provide an offset for the ACA's significant new spending. Under the transitional reinsurance program, HHS collects monetary contributions from health insurance issuers and group health plans; in turn, HHS redistributes those contributions among insurers that provide individual plans and deposits a portion of the contributions into the general fund of the U.S. Treasury.<sup>3</sup>

The ACA established mandatory collection amounts for benefit years 2014, 2015, and 2016, and specified the parameters for HHS's distribution of the collected funds.<sup>4</sup> The ACA required HHS to collect a total of \$20 billion for reinsurance purposes and to deposit an additional \$5 billion into the general fund of the U.S. Treasury, while also allowing HHS to collect contributions to cover the administrative costs of operating the reinsurance program.<sup>5</sup> Under the law, HHS must collect \$10 billion in 2014, \$6 billion in 2015, and \$4 billion in 2016

<sup>1</sup> Patient Protection and Affordable Care Act §§ 1341-43, 42 U.S.C. §§ 18061-63.

<sup>2</sup> *The Transitional Reinsurance Program – Reinsurance Contributions*, CMS.gov, <https://www.cms.gov/CCIIO/Programs-and-Initiatives/Premium-Stabilization-Programs/The-Transitional-Reinsurance-Program/Reinsurance-Contributions.html>; Patient Protection and Affordable Care Act § 1341.

<sup>3</sup> Patient Protection and Affordable Care Act § 1341(b).

<sup>4</sup> *Id.* § 1341(b)(3).

<sup>5</sup> *Id.* § 1341(b)(3)(B).

for reinsurance purposes.<sup>6</sup> Similarly, the law specifies that collections for the general fund of the U.S. Treasury must total \$2 billion in 2014, \$2 billion in 2015, and \$1 billion in 2016.<sup>7</sup> The ACA permitted the contribution amounts to “be allocated and used in any of the three calendar years,”<sup>8</sup> except for the funds designated for the U.S. Treasury.<sup>9</sup> The statute expressly prohibited any use of the \$5 billion Treasury funds for reinsurance purposes.<sup>10</sup> Nothing in the statute expressly provided HHS with discretionary authority to prioritize payments to insurance providers rather than to the U.S. Treasury.

HHS issued regulations in 2013, 2014, and 2015 that established annual assessment amounts for insurers to pay per-enrollee so that HHS could collect the contribution amounts mandated by the ACA.<sup>11</sup> HHS determined that for the 2014 benefit year, to meet its statutory requirements, it would collect \$63 per enrollee, which HHS projected would result in total collections of \$12.02 billion—\$10 billion for reinsurance, \$2 billion for the U.S. Treasury, and \$20.3 million for administrative costs.<sup>12</sup> HHS determined for the 2015 benefit year it would collect \$44 per enrollee, which HHS projected would result in total collections of \$8.025 billion—\$6 billion for reinsurance, \$2 billion for the U.S. Treasury, and \$25.4 million for administrative costs.<sup>13</sup> HHS determined for the 2016 benefit year, it would collect \$27 per enrollee, which HHS projected would result in total collections of \$5.032 billion—\$4 billion for reinsurance, \$1 billion for the U.S. Treasury, and \$32 million for administrative costs.<sup>14</sup>

In reality, HHS collected far less in reinsurance contributions than the ACA requires. For benefit year 2014, HHS collected only a total of \$9.7 billion under the transitional reinsurance program, falling approximately 20 percent short of the projected \$12.02 billion that HHS intended to collect to meet its statutory obligations.<sup>15</sup> HHS paid \$8 billion in reinsurance claims to insurers at a 100 percent coinsurance rate for benefit year 2014.<sup>16</sup> Yet, despite fully reimbursing insurers, HHS declined to deposit any money into the general fund of the U.S.

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<sup>6</sup> *Id.* § 1341(b)(3)(B)(iii).

<sup>7</sup> *Id.* § 1341(b)(3)(B)(iv).

<sup>8</sup> *Id.* § 1341(b)(4)(A).

<sup>9</sup> *See id.* § 1341(b)(4).

<sup>10</sup> *Id.* (“Notwithstanding the preceding sentence, any contribution amounts described in paragraph (3)(B)(iv) shall be deposited into the general fund of the Treasury of the United States and may not be used for the program established under this section.”).

<sup>11</sup> 78 Fed. Reg. 15,410 (Mar. 11, 2013); 79 Fed. Reg. 13,744 (Mar. 11, 2014); 80 Fed. Reg. 10,750 (Feb. 2, 2015).

<sup>12</sup> 78 Fed. Reg. 15,410, 15,460 (Mar. 11, 2013).

<sup>13</sup> 79 Fed. Reg. 13,744, 13,775 (Mar. 11, 2014).

<sup>14</sup> 80 Fed. Reg. 10,750, 10,775 (Feb. 2, 2015).

<sup>15</sup> Dep’t of Health & Human Servs., *The Transitional Reinsurance Program’s Contribution Collections for the 2014 Benefit Year* (Apr. 14, 2015), available at <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Reinsurance-Contributions-Total-Amount-Collected-final-.pdf>.

<sup>16</sup> Dep’t of Health & Human Servs., *Summary Report on Transitional Reinsurance Payments and Permanent Risk Adjustment Transfers for the 2014 Benefit Year 1* (June 30, 2015), available at <https://www.cms.gov/CCIIO/Programs-and-Initiatives/Premium-Stabilization-Programs/Downloads/RI-RA-Report-Draft-6-30-15.pdf>.

Treasury in benefit year 2014. Instead, HHS carried over the remaining \$1.7 billion for use for reinsurance-eligible issuers in benefit year 2015.<sup>17</sup>

Despite collecting 20 percent less than it projected in benefit year 2014, HHS did not modify its collection methodology for the 2015 benefit year. Unsurprisingly, then, HHS miscalculated the per capita contribution rate needed in order to meet its statutory obligations. For the 2015 benefit year, HHS announced that it anticipated it would collect only \$6.5 billion for 2015, 19 percent short of the projected \$8.025 billion.<sup>18</sup> HHS has announced that for benefit year 2015, it intends to pay to pay the U.S. Treasury only \$500 million of the \$2 billion owed while sending \$7.7 billion to insurers (\$6 billion for 2015 plus \$1.7 billion in funds carried over from the 2014 benefit year).<sup>19</sup> All told, the American taxpayers will receive only \$500 million in payments under the transitional reinsurance program for benefit years 2014 and 2015 instead of the combined \$4 billion required by Congress in the ACA.

During the rulemaking process, HHS received public comments about its proposed contribution rate for benefit year 2014.<sup>20</sup> Several commenters “asked HHS to defer the collection of the \$2 billion payable to the U.S. Treasury in 2014 until 2016.”<sup>21</sup> In response to those comments, HHS explained in 2013 that it “considered the commenters’ statutory interpretations for how such a deferral may be permissible under section 1341 of the Affordable Care Act and would support such a deferral, *but concluded that we have no statutory authority to defer the collection.*”<sup>22</sup> HHS’s statement suggests that it initially interpreted section 1341 to require that it strictly meet its statutory obligations for each year.

It appears, however, that HHS reversed course when it became clear that it had miscalculated the per capita contribution and would be unable to meet its statutory obligation both to insurers and taxpayers. In subsequent reinsurance regulations, HHS proposed:

[I]f collections fall short of our estimates for a particular benefit year, we propose to alter the allocation so that the reinsurance contributions that are collected are allocated first to the reinsurance pool and administrative expenses, and are allocated to the U.S. Treasury once the targets for reinsurance payments and administrative expenses are met.<sup>23</sup>

In its final regulation, HHS claimed it had the legal authority under section 1341 to “determine the priority, method, and timing for the allocation of reinsurance contributions collected” because the statute was silent on “how HHS should approach the distribution of reinsurance

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<sup>17</sup> Dep’t of Health & Human Servs., *The Transitional Reinsurance Program’s Contribution Collections for the 2015 Benefit Year* (Feb. 12, 2016), available at [https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/RIC\\_2015ContributionsGuidance.pdf](https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/RIC_2015ContributionsGuidance.pdf).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> 78 Fed. Reg. 15,410, 15,459–62 (Mar. 11, 2013).

<sup>21</sup> *Id.* at 15,460.

<sup>22</sup> *Id.* (emphasis added).

<sup>23</sup> 79 Fed. Reg. 15,808, 15,820 (Mar. 21, 2014).

contributions if insufficient amounts are collected to fully fund all three components of the program (that is, reinsurance payments, administrative expenses, and payments to the U.S. Treasury).”<sup>24</sup>

HHS’s position that it may prioritize payments to insurance companies over taxpayers—and, subsequently, the payment scheme it operated under the transitional reinsurance program for the benefit years 2014 and 2015—is not consistent with the law. First, nothing in the ACA’s text or structure contemplated that HHS would be unable to fully finance the transitional reinsurance program because section 1341 *requires* HHS to develop a methodology that collects a clearly-defined amount of money for benefit years 2014, 2015, and 2016.<sup>25</sup> HHS’s failure to collect this amount of money is itself a violation of the law. The statute’s silence with respect to the allocation of insufficient collections under the transitional reinsurance program simply does not give HHS the authority to prioritize payments in the event it fails to collect sufficient funds.<sup>26</sup>

Second, HHS argued that section 1341 permits prioritization of payments to reinsurance-eligible insurers over payments to the U.S. Treasury because the statute uses “mandatory language with respect to the collection” of funds for reinsurance payments and uses “more permissive language . . . with respect to the collection of amounts for administrative expenses and payments for the U.S. Treasury.”<sup>27</sup> No such distinction exists in the text of section 1341. section 1341(b)(3)(B)(iv), which governs the contribution to the U.S. Treasury from the transitional reinsurance program, states that the program “shall be designed so that . . . each issuer’s contribution amount for any calendar year . . . reflects its proportionate share of” the U.S. Treasury contribution.<sup>28</sup>

HHS argued that the use of the word “reflects” in this provision is “permissive language.”<sup>29</sup> As a result of this peculiar interpretation HHS essentially interpreted the text of the ACA to say that each issuer’s “proportionate share” of contributions allocable to the U.S. Treasury is zero until and unless the total amount collected from all issuers meets the statutory mandate for reinsurance payments.<sup>30</sup> Under this interpretation, HHS ensures that the entire contribution from some group plans under the transitional reinsurance program will be paid solely to reinsurance-eligible issuers and will not reflect any amount that will be contributed to the U.S. Treasury.<sup>31</sup>

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<sup>24</sup> 79 Fed. Reg. 30,240, 30,258 (May 27, 2014).

<sup>25</sup> See Memorandum from C. Boyden Gray to Grace-Marie Turner, President, Galen Institute 10 (May 23, 2016), available at <http://3cib4727c7fd4916434fmlkb.wpengine.netdna-cdn.com/wp-content/uploads/2016/05/160523-Reinsurance-Opinion-Letter-final.pdf>.

<sup>26</sup> *Id.*

<sup>27</sup> 79 Fed. Reg. 30,240, 30,258 (May 27, 2014).

<sup>28</sup> Patient Protection and Affordable Care Act § 1341(b)(3)(B), (b)(3)(B)(iv), 42 U.S.C. § 18061.

<sup>29</sup> 79 Fed. Reg. 30,240, 30,258 (May 27, 2014).

<sup>30</sup> Memorandum from Cong. Research Serv. to H. Comm. on Ways & Means, H. Comm. on Energy & Commerce, at 2 (Feb. 23, 2016) [hereinafter CRS Memo].

<sup>31</sup> Memorandum from C. Boyden Gray to Grace-Marie Turner, President, Galen Institute 14 (May 23, 2016).

This interpretation directly conflicts with the plain language of section 1341, which requires that a proportionate share of aggregate U.S. Treasury contribution be reflected in “each issuer’s contribution.”<sup>32</sup> Simply put, at least some portion of each issuer’s contribution under the transitional reinsurance program must be deposited into the U.S. Treasury. In addition, section 1341(b)(4) requires that the annual collections to the U.S. Treasury described in section 1341(b)(3)(B)(iv) be only deposited into the U.S. Treasury and “may not be used for” reinsurance program payments.<sup>33</sup> According to the independent and non-partisan Congressional Research Service, HHS’s interpretation that the entire contribution of an issuer be applied to only reinsurance-eligible issuers and that no part of it is used for the U.S. Treasury “would appear to be in conflict with a plain reading of § 1341(b)(4).”<sup>34</sup>

Because HHS has not followed plain language of the ACA, the U.S. Treasury and the American taxpayer will now be short at least \$3.5 billion. To assist the Committee in further understanding HHS’s implementation of the transitional reinsurance program, we respectfully request the following information and material:

1. HHS used the same flawed methodology to calculate the uniform reinsurance contribution rate for 2014, 2015, and 2016 collections despite its clear failure to yield adequate collections for the 2014 benefit year.
  - a. For benefit years 2015 and 2016, why did HHS not adjust the calculation to improve its accuracy in meeting the statutory requirements of the ACA?
  - b. What, if any, analysis did HHS conduct concerning the calculation methodology and adjustments to the methodology?
  - c. Please provide all communications referring or relating to HHS’s calculation methodology and its consideration of adjustments to the methodology after HHS became aware of the shortfall.
2. When did HHS realize that the collection rate of \$63 per enrollee would be insufficient to collect the projected \$12.02 billion for the 2014 benefit year?
3. When did HHS realize that the collection rate of \$44 per enrollee would be insufficient to collect the projected \$8.025 billion for the 2015 benefit year?
4. Has HHS determined whether collections will be sufficient to fully pay the U.S. Treasury the statutorily-mandated \$1 billion for the 2016 benefit year? Please explain.

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<sup>32</sup> *Id.*

<sup>33</sup> Patient Protection and Affordable Care Act § 1341(b)(4), 42 U.S.C. § 18061.

<sup>34</sup> CRS Memo at 8.



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5. Does HHS plan to contribute to the U.S. Treasury the full \$5 billion that the plain text of the ACA mandates? Please explain.
6. Please provide all documents and communications referring or relating to HHS's decision-making process that resulted in HHS's prioritization of payments to insurance companies over payments to the U.S. Treasury.
7. Please provide a record of all meetings with all persons associated with the comments HHS received in favor of the agency's ability to prioritize reinsurance payments.

Please provide this material as soon as possible but no later than 5:00 p.m. on August 11, 2016.

The Committee on Homeland Security and Governmental Affairs is authorized by Rule XXV of the Standing Rules of the Senate to investigate "the efficiency, economy, and effectiveness of all agencies and departments of the Government."<sup>35</sup> Additionally, S. Res. 73 (114th Congress) authorizes the Committee to examine "the efficiency and economy of all branches and functions of Government with particular references to the operations and management of Federal regulatory policies and programs."<sup>36</sup>

For purposes of this request, please refer to the instructions and definitions contained in the enclosure. When delivering production sets, please produce to Majority staff in room 340 of the Dirksen Senate Office Building and to Minority staff in room 613 of the Hart Senate Office Building. If you have any questions about this request, please contact Samantha Brennan or Kyle Brosnan of Chairman Johnson's staff at (202) 224-4751 or Alyene Senger of Senator Sasse's staff at (202) 224-4224. Thank you again for your assistance in this matter.

Sincerely,



Ron Johnson  
Chairman



Ben Sasse  
U.S. Senator

cc: The Honorable Thomas R. Carper  
Ranking Member

Enclosure

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<sup>35</sup> S. Rule XXV(k); *see also* S. Res. 445, 108th Cong. (2004).

<sup>36</sup> S. Res. 73 § 12, 114th Cong. (2015).

**Instructions for Responding to a Committee Request**  
Committee on Homeland Security and Governmental Affairs  
United States Senate  
114th Congress

**A. Responding to a Request for Documents**

1. In complying with the Committee's request, 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 person denoted in the request has been or is also known by any other name or alias than herein denoted, the request should be read also to include the 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 form 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 Files (".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.
  - d. All electronic documents produced should include the following fields of metadata specific to each document:

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH, PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE, SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM, CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD, INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION, BEGATTACH.

## **Instructions for Responding to a Committee Request**

- e. Alternatively, if the production cannot be made in .tif format, all documents derived from word processing programs, email applications, instant message logs, spreadsheets, and wherever else practicable should be produced in text searchable Portable Document Format (“.pdf”) format. Spreadsheets should also be provided in their native form. Audio and video files should be produced in their native format, although picture files associated with email or word processing programs should be produced in .pdf format along with the document it is contained in or to which it is attached.
  - f. 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), consult with the Committee staff to determine the appropriate format in which to produce the information.
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 the request should be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.
8. When producing documents, identify the paragraph in the Committee’s schedule to which the documents respond.
9. Do not refuse to produce documents on the basis that any other person or entity also possesses non-identical or identical copies of the same documents.
10. 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, should be produced immediately upon subsequent location or discovery.
11. All documents should be Bates-stamped sequentially and produced sequentially. Each page should bear a unique Bates number.
12. Two sets of documents should be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets should be delivered to the Majority Staff in Room 340 of the Dirksen Senate Office Building and the Minority Staff in Room 346 of the Dirksen Senate Office Building.
13. If compliance with the request cannot be made in full by the date specified in the request, compliance should be made to the extent possible by that date. Notify Committee staff as soon as possible if full compliance cannot be made by the date specified in the request, and provide an explanation for why full compliance is not possible by that date.



## **Instructions for Responding to a Committee Request**

14. 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.
15. 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.
16. 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, produce all documents which would be responsive as if the date or other descriptive detail were correct.
17. In the event a complete response requires the production of classified information, provide as much information in unclassified form as possible in your response and send all classified information under separate cover via the Office of Senate Security.
18. Unless otherwise specified, the period covered by this request is from January 1, 2009 to the present.
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.

### **B. Responding to Interrogatories or a Request for Information**

1. In complying with the Committee's request, answer truthfully and completely. Persons that knowingly provide false testimony could be subject to criminal prosecution for perjury (when under oath) or for making false statements. Persons that knowingly withhold subpoenaed information could be subject to proceedings for contempt of Congress. If you are unable to answer an interrogatory or information request fully, provide as much information as possible and explain why your answer is incomplete.
2. In the event that any entity, organization, or person denoted in the request has been or is also known by any other name or alias than herein denoted, the request should be read also to include the alternative identification.
3. Your response to the Committee's interrogatories or information requests should be made in writing and should be signed by you, your counsel, or a duly authorized designee.

## **Instructions for Responding to a Committee Request**

4. When responding to interrogatories or information requests, respond to each paragraph in the Committee's schedule separately. Clearly identify the paragraph in the Committee's schedule to which the information responds.
5. Where knowledge, information, or facts are requested, the request encompasses knowledge, information or facts in your possession, custody, or control, or in the possession, custody, or control of your staff, agents, employees, representatives, and any other person who has possession, custody, or control of your proprietary knowledge, information, or facts.
6. Do not refuse to provide knowledge, information, or facts on the basis that any other person or entity also possesses the same knowledge, information, or facts.
7. The request is continuing in nature and applies to any newly discovered knowledge, information, or facts. Any knowledge, information, or facts not provided because it was not known by the return date, should be provided immediately upon subsequent discovery.
8. Two sets of responses should be delivered, one set to the Majority Staff and one set to the Minority Staff. When responses are provided to the Committee, copies should be delivered to the Majority Staff in Room 340 of the Dirksen Senate Office Building and the Minority Staff in Room 346 of the Dirksen Senate Office Building.
9. If compliance with the request cannot be made in full by the date specified in the request, compliance should be made to the extent possible by that date. Notify Committee staff as soon as possible if full compliance cannot be made by the date specified in the request, and provide an explanation for why full compliance is not possible by that date.
10. In the event that knowledge, information, or facts are withheld on the basis of privilege, provide a privilege log containing the following information: (a) the privilege asserted; (b) the general subject matter of the knowledge, information, or facts withheld; (c) the source of the knowledge, information, or facts withheld; (d) the paragraph in the Committee's request to which the knowledge, information, or facts are responsive; and (e) each individual to whom the knowledge, information, or facts have been disclosed.
11. If a date or other descriptive detail set forth in this request is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, provide the information that would be responsive as if the date or other descriptive detail was correct.
12. In the event a complete response requires the transmission of classified information, provide as much information in unclassified form as possible in your response and send all classified information under separate cover via the Office of Senate Security.
13. Unless otherwise specified, the period covered by this request is from January 1, 2009 to the present.

## **Instructions for Responding to a Committee Request**

### **C. Definitions**

1. The term “document” in the request or the instructions 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” in the request or the instructions means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face to face, in meetings, by telephone, mail, telex, facsimile, email (desktop or mobile device), computer, text message, instant message, MMS or SMS message, regular mail, telexes, discussions, releases, delivery, or otherwise.
3. The terms “and” and “or” in the request or the instructions should 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” in the request or the instructions mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, businesses or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
5. The term “identify” in the request or the instructions, 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.

## **Instructions for Responding to a Committee Request**

6. The terms “referring” or “relating” in the request or the instructions, when used separately or collectively, with respect to any given subject, mean anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.
7. The term “employee” in the request or the instructions means agent, borrowed employee, casual employee, consultant, contractor, de fact employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee or subcontractor.
8. The terms “you” and “your” in the request or the instructions refer to yourself; your firm, corporation, partnership, association, department, or other legal or government entity, including all subsidiaries, divisions, branches, or other units thereof; and all members, officers, employees, agents, contractors, and all other individuals acting or purporting to act on your behalf, including all present and former members, officers, employees, agents, contractors, and all other individuals exercising or purporting to exercise discretion, make policy, and/or decisions.

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