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# Congress of the United States

## House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

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LAWRENCE J. BRADY  
STAFF DIRECTOR

November 9, 2011

Ms. Mary Nichols  
Chairman  
California Air Resources Board  
1001 I Street  
P.O. Box 2815  
Sacramento, CA 95812

Dear Ms. Nichols:

As you are aware, the Committee on Oversight and Government Reform is conducting an investigation into the negotiations that led to the establishment of fuel economy standards for light-duty vehicles for model years (MY) 2017-2025. This investigation also encompasses fuel economy regulations for light-duty vehicles for MY 2012-2016 and fuel economy regulations for heavy-duty trucks. By all accounts, the State of California is a driving force in the negotiations due to the Environmental Protection Agency's (EPA) waiver to allow California to regulate greenhouse gas emissions (California Waiver).<sup>1</sup>

The Oversight and Government Reform Subcommittee on Regulatory Affairs, Stimulus Oversight and Government Spending held a hearing on October 12, 2011, to examine the impact these standards will have on consumers and small businesses.<sup>2</sup> Although EPA and the National Highway Traffic Safety Administration (NHTSA) voluntarily participated at the hearing, you declined to testify on behalf of the California Air Resources Board (CARB) and you did not proffer an alternate to testify in your place.<sup>3</sup> Your refusal to subject yourself and your office to congressional scrutiny is emblematic of the core concern that many in Congress share regarding CARB's participation in the establishment of fuel economy standards. Namely, many are concerned that CARB, as a state actor, is unresponsive to congressional concerns and unappreciative of congressional priorities.

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<sup>1</sup> John M. Broder, *Carmakers and White House Hagglng Over Mileage Rules*, N.Y. TIMES, July 3, 2011 ("The proposal is being developed by the Environmental Protection Agency, the National Highway Traffic Safety Administration and the California Air Resources Board, which has led the nation in setting tough standards.").

<sup>2</sup> "Running on Empty: How the Obama Administration's Green Energy Gamble Will Impact Small Businesses & Consumers": *Hearing before the Subcomm. on Regulatory Affairs, Stimulus Oversight and Gov't Spending of the H. Comm. on Oversight and Gov't Reform*, 112th Cong. (2011).

<sup>3</sup> Email from Virgil Welch, Cal. Air Resources Bd., to Comm. on Oversight and Gov't Reform Staff (Oct. 5, 2011).

In light of these concerns, I am expanding the Committee's investigation into the activities of CARB leading up to the agreement for fuel economy standards MY 2017- 2025. I respectfully request your cooperation with this investigation.

### **CARB's Role in Regulating Fuel Economy**

On May 19, 2009, the White House announced the "Historic Agreement" between the auto industry, labor unions, the State of California, the Department of Transportation (DOT), and EPA to set fuel economy standards for MY 2012–2016.<sup>4</sup> The joint rulemaking by EPA and NHTSA established higher corporate average fuel economy (CAFE) standards for light-duty automobiles, requiring manufacturers to achieve fuel economy standards of 250 grams per mile of carbon dioxide (CO<sub>2</sub>), or the equivalent of 35.5 miles per gallon, by 2016.<sup>5</sup> Even the government's conservative estimates predict that these standards will cost automobile manufacturers \$51.7 billion between 2012 and 2016.<sup>6</sup>

At the center of these negotiations was the threat of the California Waiver, which was described by both EPA and NHTSA as having the potential to create an unworkable "patchwork" of regulations that would wreak havoc on the industry.<sup>7</sup> In particular, NHTSA's Chief Counsel remarked that "given EPA's grant of the Waiver request in 2009, California and the States that adopted the California standards could move forward to enforce standards that are inconsistent with the Federal standard."<sup>8</sup> He further stated that California standards would create "confusion," and would encourage "renewed litigation" and drive "up the cost of compliance to automobile manufacturers and consumers alike."<sup>9</sup>

Moreover, according to Jeremy Anwyl, Chief Executive Officer of Edmunds.com, the regulatory patchwork that would be created by the California Waiver acted as a "gun to the head" of automobile manufacturers. As he explained during the October 12th Subcommittee hearing at which you declined to testify:

I meet with the car companies on a regular basis. The expression that I hear repeatedly is they felt they had a "gun to their head," and by that I think they are referring to the threat of a California opt-out, California waiver. We've talked about the balkanization of the marketplace, but the cost associated with needing

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<sup>4</sup> Press Release, Remarks by the President on National Fuel Efficiency Standards (May 19, 2009).

<sup>5</sup> Light-Duty Greenhouse Gas Standards and Corporate Average Fuel Economy Standards; Final Rule, 75 Fed. Reg. 25324 (May 7, 2010).

<sup>6</sup> *Id.* at 25642

<sup>7</sup> See Letter from Stephen L. Johnson, Administrator, EPA, to Arnold Schwarzenegger, Governor of California (Dec. 19, 2007); Letter from O. Kevin Vincent, Chief Counsel, NHTSA, to Matthew B. Nelson (Feb. 19, 2010).

<sup>8</sup> Letter from O. Kevin Vincent, Chief Counsel, NHTSA, to Matthew B. Nelson (Feb. 19, 2010) (stating the CAFE standards set by NHTSA, and detailed in the Light Car Duty Rule, were made "independent of EPA's justification and would not be affected by EPA's inability to act").

<sup>9</sup> *Id.*

individual standards across the 50 states would be overwhelming. So the threat of the California waiver is very real and very scary.<sup>10</sup>

As a result of the negotiations that led to the “Historic Agreement,” California agreed to revise its regulation on fuel efficiency for light duty vehicles, and deem compliance with federal standards, (and thus avoid a “patchwork of state standards”<sup>11</sup>) if:

1. EPA granted the California Waiver;
2. The auto manufacturers agreed to not contest the waiver;
3. Auto manufacturers dropped all litigation relating to the California Waiver; and
4. EPA proposed and adopted “national [greenhouse gas] standards substantially the same as those proposed in the May 2009 Joint Notice,” and that auto manufacturers agree to not contest those rules.<sup>12</sup>

Congress may never know how California extracted these concessions from EPA and the auto manufacturers because, according to interviews you gave to the *New York Times*, the “Historic Agreement” was the product of closed-door negotiations between select stakeholders.<sup>13</sup> You even indicated that there was a deliberate vow of silence taken by participants of the private discussions and great care was taken to “put nothing in writing, ever.”<sup>14</sup> This media report has since been corroborated by at least one participant to the negotiations.<sup>15</sup>

### **Congressional Preemption of State Regulation of Fuel Economy**

California’s participation in setting fuel economy standards appears to be contrary to federal law. In the Energy Policy and Conservation Act (EPCA), Congress delegated authority to NHTSA to set CAFE standards.<sup>16</sup> Congress also included unmistakably clear language prohibiting a State from regulating anything “related to” fuel economy. The relevant provision states:

When an average fuel economy standard prescribed under this chapter [49 U.S.C. § 32901 *et seq.*] is in effect, a State or a political subdivision of a State may not adopt or enforce a law or regulation related to fuel economy standards or average

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<sup>10</sup> “*Running on Empty: How the Obama Administration’s Green Energy Gamble Will Impact Small Business and Consumers*”: Hearing before the Subcomm. on Regulatory Affairs, Stimulus Oversight and Gov’t Spending of the H. Comm. on Oversight and Gov’t Reform, 112th Cong. (2011) (question and answer with Jeremy Anwyl, Chief Executive Officer of Edmunds.com).

<sup>11</sup> Administrator Lisa P. Jackson, Remarks at the National Press Club, as prepared (Mar. 8, 2010), available at <http://yosemite.epa.gov/opa/admpress.nsf/a883dc3da7094f97852572a00065d7d8/70ba33a218b8f22f852576e0006b2a53!OpenDocument>

<sup>12</sup> Letter from Edmund G. Brown Jr., Attorney General, California, to the Honorable Lisa Jackson, Administrator, U.S. EPA (May 18, 2009).

<sup>13</sup> See, e.g., Collin Sullivan, *Vow of Silence Key to White House- California Fuel Economy Talks*, N.Y. TIMES, May 20, 2009.

<sup>14</sup> *Id.*

<sup>15</sup> See Letter from Peter Spivack, Partner, Hogan and Lovells, to the Honorable Darrell E. Issa, Ranking Member, H. Comm. on Oversight & Gov’t Reform (May 10, 2010).

<sup>16</sup> Energy Policy and Conservation Act, Pub. L. 94-163, 89 Stat. 871 (1975).

fuel economy standards for automobiles covered by an average fuel economy standard under this chapter.<sup>17</sup>

Congressional preemption language does not get much clearer. According to the plain language of the statute, Congress explicitly preempted all States – including California – from not only directly regulating fuel economy, but from also setting any vehicle standard “related to” fuel economy. Yet, since the Administration’s “Historic Agreement” was reached in 2009, CARB has been a central player in efforts to toughen fuel economy regulations for both light-duty and heavy-duty trucks.<sup>18</sup>

### **CARB’s Apparent Violation of Federal Law**

During the October 12th hearing at which you declined to testify, NHTSA Administrator David Strickland, EPA Assistant Administrator Gina McCarthy, and EPA official Margo Oge all firmly denied that EPA and CARB are regulating fuel economy. Had you been present, you could have provided the Subcommittee with insight into the following exchange:

**Vice Chair Buerkle:** I just have a quick question for the three of you. It’s a yes or no question, if you wouldn’t mind. Are the greenhouse gas rules – either the EPA’s or the California rules – are they related to fuel economy? Mr. Strickland, yes or no?

**Administrator Strickland:** No, they regulate greenhouse gas emissions.

**Administrator McCarthy:** They regulate greenhouse gas emissions.

**Ms. Oge:** They regulate greenhouse gas emissions.

**Vice Chair Buerkle:** So they’re not related to fuel economy, under oath.

**Administrator Strickland:** No. They’re greenhouse gas emission regulations.

**Administrator McCarthy:** We do not regulate fuel economy standards.

**Vice Chair Buerkle:** And all three of you agree with that?

**Administrator McCarthy:** Yes.

**Ms. Oge:** Yes.

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<sup>17</sup> 49 U.S.C. § 32919(a) (1975).

<sup>18</sup> See Greenhouse Gas Emissions Standards and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles, 76 Fed. Reg. 57, 106 (Sept. 15, 2011); 2017-2025 Model Year Light-Duty Vehicle GHG Emissions and CAFE Standards: Supplemental Notice of Intent, 76 Fed. Reg. 48,758 (Aug. 9, 2011); Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule, 75 Fed. Reg. 25,324 (May 7, 2010).

**Administrator Strickland:** Yes.<sup>19</sup>

However, as you know, the relationship between fuel economy and tailpipe CO2 emissions is so close that compliance tests for fuel economy standards are done by measuring vehicular CO2 emissions.<sup>20</sup> In addition, as scholar Marlo Lewis testified at the October 12th hearing, California's efforts to regulate greenhouse gas emissions necessarily involve the regulation of fuel economy:

The text of AB 1493 [California's greenhouse gas vehicle emissions law] clearly implies that CARB is to regulate fuel economy. AB 1493 requires CARB to achieve "maximum feasible" greenhouse gas reductions that are also "cost-effective," defined as "Economical to an owner or operator of a vehicle, taking into account the full lifecycle costs of the vehicle." CARB rightly interprets this to mean that the reduction in "operating expenses" over the average life of the vehicle (assumed to be 16 years) must exceed the "expected increases in vehicle cost [purchase price] resulting from the technology improvements needed to meet the standards in the proposed regulation." Virtually all of the "operating expenses" to be reduced are expenditures for fuel. The CARB program cannot be "cost-effective" unless CARB regulates fuel economy.<sup>21</sup>

In summary, it appears that CARB and the state of California are in the business of regulating fuel economy standards, in direct contravention of the law.

The Committee seeks to better understand CARB's role in the negotiations leading up to the "Historic Agreement" on MY 2012-2016 fuel economy standards and the Administration's agreement on MY 2017-2025 standards, as well as CARB's current actions in regulating emissions related to fuel economy. To assist the Committee, I ask that you answer the following questions and provide the requested documents for the period January 1, 2009, to present:

1. Provide a list of all CARB employees who participated in negotiations and the development of the Administration's light-duty vehicle emissions standards for both MY 2012-2016 and MY 2017-2025. Include each employee's title and a brief description of his or her role in the negotiations.

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<sup>19</sup> "Running on Empty: How the Obama Administration's Green Energy Gamble Will Impact Small Business and Consumers": Hearing before the Subcomm. on Regulatory Affairs, Stimulus Oversight and Gov't Spending of the H. Comm. on Oversight and Gov't Reform, 112th Cong. (2011).

<sup>20</sup> NAT'L AUTO. DEALERS ASS'N, PATCHWORK PROVEN: WHY A SINGLE NATIONAL FUEL ECONOMY STANDARD IS BETTER FOR AMERICA THAN A PATCHWORK OF STATE REGULATIONS 11-12 (2009), available at <http://www.nada.org/NR/rdonlyres/DBCC625E-2E8E-4291-8B23-B94C92AFF7C4/0/patchworkproven.pdf> [hereinafter "PATCHWORK PROVEN"].

<sup>21</sup> "Running on Empty: How the Obama Administration's Green Energy Gamble Will Impact Small Business and Consumers": Hearing before the Subcomm. on Regulatory Affairs, Stimulus Oversight and Gov't Spending of the H. Comm. on Oversight and Gov't Reform, 112th Cong. (2011) (written testimony of Marlo Lewis, Competitive Enterprise Institute).

2. Provide a list of all CARB employees who participated in negotiations and the development of the Administration's heavy-duty truck emissions standards. Include each employee's title and a brief description of his or her role in the negotiations.
3. Provide a full and complete explanation of the exact role of the State of California and CARB in each of the negotiations for MY 2012-2016 and MY 2017-2025 light-duty vehicle emissions, as well as heavy-duty truck emissions. Your response should focus on how California and CARB were engaged and how California and CARB participated in the development of the light-duty MY 2012-2016 standards, the light-duty MY 2017-2025 standards, and the heavy-duty truck standards. In particular, your response should include a detailed description of CARB's involvement in each meeting, discussion, or negotiation on these three standards, and a detailed explanation of CARB's influence in shaping the final versions of each standard. Please also include a thorough chronology of CARB's engagement on each of these three federal fuel economy/greenhouse gas emission standards.
4. The *New York Times* quoted you as stating that the negotiations on MY 2012-2016 standards featured a deliberate vow of silence, and great care was taken to "put nothing in writing, ever."<sup>22</sup> Please explain what you meant by these statements. Do you have personal knowledge of the following facts referenced in the *Times* article:
  - a. An Administration official "quietly orchestrating private discussions" on MY 2012-2016 standards? Please provide details sufficient to support your answer.
  - b. An Administration official telling participants in the discussions to refrain from putting anything in writing? Please provide details sufficient to support your answer.
  - c. An Administration official deciding not to hold group meetings and "taking care to not leak updates to the press"? Please provide details sufficient to support your answer.
5. Do you believe that a closed and secretive process is the best approach for regulating an industry that affects nearly every American? If no, explain in detail why CARB agreed to participate in such a process.
6. California is said to be leading the nation in implementing fuel economy standards.<sup>23</sup> Under what express statutory authority is California setting fuel economy standards, a task delegated exclusively to NHTSA?
7. Do you believe that when Congress enacted Section 209 of the Clean Air Act, Congress intended California regulators to establish fuel economy standards for the

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<sup>22</sup> Sullivan, *supra* note 13.

<sup>23</sup> See Broder, *supra* note 1.

national fleet, despite the express language contained in EPCA, which declares that states “may not adopt or enforce a law or regulation related to fuel economy standards”?<sup>24</sup> If yes, please clearly articulate the basis for such a reading of the statute.

8. The relationship between fuel economy and greenhouse gas emissions is so close that compliance tests for fuel economy standards are done by measuring CO2 emissions.<sup>25</sup> “Related” is defined as “[b]eing connected; associated.”<sup>26</sup> Do you believe that greenhouse gas regulation is “related to” fuel economy standards? Please provide a factual basis for your answer.
9. CARB now regulates heavy-duty truck emissions.<sup>27</sup> Under what statutory authority is CARB regulating heavy-duty truck emissions? Does the California Waiver extend to heavy-duty truck emissions?
10. Because fuel economy standards are measured on a weighted fleet-wide basis, an automaker complying with the California standard may still be out of compliance in another state if consumers there do not buy vehicles in the same proportion as Californians.<sup>28</sup> Is CARB concerned about the “patchwork” of regulations that could result its regulation of emissions, even if other states adhere to the California standard?
11. As you know, NHTSA examines the safety consequences of fuel economy standards before determining what standards are appropriate for the industry.<sup>29</sup> Please describe in detail CARB’s expertise in regulating automobile safety standards.
12. In setting “greenhouse gas emission regulations”/fuel economy standards under the waiver, does CARB take into account environmental, safety, or consumer factors on a nationwide basis?
13. Provide all technical assessments used or relied upon by CARB in agreeing to the Administration’s fuel economy proposals.
14. Provide all consumer cost-benefit analyses used or relied upon by CARB in agreeing to the Administration’s fuel economy proposals.
15. Provide all documents and communications relating or referring to CARB’s involvement in negotiating the “Historic Agreement” for MY 2012-2016 fuel economy standards, including but not limited to:

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<sup>24</sup> 49 U.S.C. § 32919(a) (1975).

<sup>25</sup> See PATCHWORK PROVEN, *supra* note 20, at 11-12.

<sup>26</sup> AMERICAN HERITAGE DICTIONARY 1473 (4th ed. 2000).

<sup>27</sup> See, e.g., Cal. Code Regs. tit. 13, § 2025 (2008).

<sup>28</sup> See PATCHWORK PROVEN, *supra* note 20, at 12-16.

<sup>29</sup> See *Competitive Enterprise Inst. v. Nat’l Highway Traffic Safety Admin.*, 901 F.2d 107, 120 n.11 (D.C. Cir. 1990).

- a. All documents and communications between CARB and any automobile manufacturer; and
  - b. All documents and communications between CARB and EPA, NHTSA, or any other federal entity.
16. Provide all documents and communications relating or referring to CARB's involvement in negotiating the agreement for MY 2017-2025 fuel economy standards, including but not limited to:
- a. All documents and communications between CARB and any automobile manufacturer; and
  - b. All documents and communications between CARB and EPA, NHTSA, or any other federal entity.
17. Provide all documents and communications relating or referring to CARB's involvement in negotiating the agreement for heavy-duty truck fuel economy standards, including but not limited to:
- a. All documents and communications between CARB and any automobile manufacturer; and
  - b. All documents and communications between CARB and EPA, NHTSA, or any other federal entity.
18. Provide all documents and communications relating or referring to CARB's involvement in negotiating the California Waiver, including but not limited to:
- a. All documents and communications between CARB and any automobile manufacturer; and
  - b. All documents and communications between CARB and EPA, NHTSA, or any other federal entity.

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at "any time" investigate "any matter" as set forth in House Rule X. An attachment to this letter provides additional information about responding to the Committee's request.

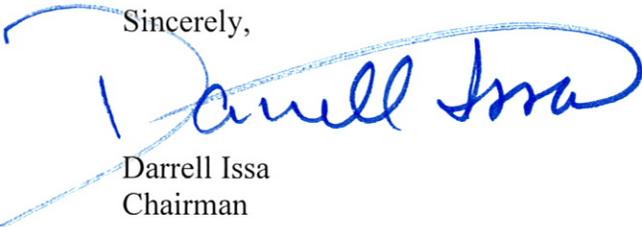
We request that you provide the requested documents and information as soon as possible, but no later than 5:00 p.m. on Wednesday, November 23, 2011. Please directly respond to each question and request as numbered herein. When producing documents to the Committee, please deliver production sets to the Majority Staff in Room 2157 of the Rayburn

Ms. Mary Nichols  
November 9, 2011  
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House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building. The Committee prefers, if possible, to receive all documents in electronic format.

If you have any questions about this request, please contact Kristina Moore or David Brewer of the Committee Staff at (202) 225-5074. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink that reads "Darrell Issa". The signature is written in a cursive style and is positioned over the printed name and title.

Darrell Issa  
Chairman

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Minority Member  
Committee on Oversight and Government Reform

ONE HUNDRED TWELFTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM  
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Majority (202) 225-5074  
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.