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Oversight Status Report: Midway through the 111th Congress, Creating Accountability and Transparency under One-Party Rule

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U.S. House of Representatives
Committee on Oversight and Government Reform
Darrell Issa (CA-49), Ranking Member



Oversight Status Report

**Midway through the 111th Congress,
Creating Accountability and Transparency under One-Party
Rule**

STAFF REPORT
U.S. HOUSE OF REPRESENTATIVES
111TH CONGRESS
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
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Introduction

As the Minority Members of U.S. House of Representatives chief watchdog committee, with jurisdiction to investigate all federal programs and any matter with federal policy implications, Republicans on the Oversight and Government Reform Committee have worked at the core of many of the nation's most pressing debates in the first year of the Obama Administration and the 111th Congress. Recognizing the importance and unique challenges of their role in the Minority at a time when both Congress and the Administration are ruled by one party, Committee Republicans have been at the forefront of investigations into waste, mismanagement, and wrongdoing at the federal level, undertaking numerous inquiries and asking the tough questions when the Majority will not.

Committee Republicans have been successful in partnering with its Majority counterparts on some important investigations and reform efforts, such as securing House passage of legislation that would make financial information disclosure significantly more transparent and accessible to regulators, investors, and the general public. More often however, Committee Republicans have had to move alone to undertake the oversight activities and investigations that the American public expects. During the past year, Committee Republicans have aggressively fulfilled the role of government watchdog. Some results include:

- Since the beginning of the stimulus program, Committee Republicans have repeatedly questioned the Administration and raised public awareness about the inconsistencies and half-truths related to the Administration's claims of stimulus-related job creation, leading to the Chairman of the Recovery Act Transparency and Accountability Board agreeing during a public hearing that the Administration does not have the "ability to calculate the full time jobs equivalent" created or saved by the stimulus¹ and the Administration changing its definition of "jobs created or saved";
- Following the unprecedented expansion of federal government involvement in the private sector with the bailout of AIG, Committee Republicans have tirelessly and successfully pushed the Treasury Department, the Federal Reserve, and others to provide greater transparency about the decisions made by the federal government to save AIG and become its dominant shareholder. The Committee's efforts were applauded in a public hearing by the Special Inspector General for TARP, Neil Barofsky, who referred to the Committee's "tenacity and leadership ... in continuing the drive for transparency and accountability on the AIG bailout"²;

¹ See "Chief Stimulus Watchdog Disowns Administration's Jobs "Saved or Created" Numbers," November 19, 2009. Available at

http://republicans.oversight.house.gov/index.php?option=com_content&view=article&id=387%3Achief-stimulus-watchdog-disowns-administrations-jobs-saved-or-created-numbers&catid=22&Itemid=29

² See Neil Barofsky, SIGTARP, testimony before the Oversight and Government Reform Committee, (January 27, 2010).

- As part of its ongoing investigations into the causes of the financial crisis, Committee Republicans exposed large quantities of previously unknown details about Countrywide Financial Corporation’s “Friends of Angelo” program, which provided sweetheart mortgages to so-called “VIPs” as part of its larger investigation of influence peddling by Fannie Mae, Freddie Mac and other companies involved in affordable mortgage lending;
- Following an investigation into allegations of systemic fraud by the Association of Community Organizations for Reform Now (ACORN), Committee Republicans successfully led the effort to pass legislation denying all federal funding for the organization;
- Questions raised by Committee Republicans about the politicization of the 2010 Census led to the Obama Administration abandoning plans to have the new Census Director report directly to the White House instead of the Secretary of Commerce.

The following report summarizes many of the major issues addressed by the Committee’s Minority in the first half of the 111th Congress. Each issue area includes a brief informational background section followed by specific related actions taken by Committee Republicans to ensure the kind of open and accountable government that the American taxpayers demand and deserve.

Issue 1: Committee Republican Oversight of the Troubled Asset Relief Program and Inappropriate Tactics Related to Private Industry

Background: In response to severely contracted liquidity in global credit markets and insolvency threats to investment banks and other institutions, as well as catastrophic predictions and warnings by the Bush Administration, Congress passed the Emergency Economic Stabilization Act (EESA) on October 3, 2008. Pursuant to EESA, the Treasury Department created the Troubled Asset Relief Program (TARP), originally promoted to Congress by then-Treasury Secretary Henry Paulson as a method of buying up to \$700 billion of “troubled” assets, defined generally as illiquid mortgage-backed securities.

However, within days of EESA’s passage Mr. Paulson abruptly changed course, marginalizing the purchase of toxic assets in favor of capital injections into banks and other financial institutions using TARP funds. In return, Treasury received equity stakes in the bailed-out institutions, thus beginning the partial nationalization of the U.S. financial system. On October 13, 2008, ten days after Congress passed EESA, Mr. Paulson convened a meeting in Washington with nine major bank CEOs in which he gave the “banks no choice but to allow the government to take equity stakes in them.”³ At that meeting, Mr. Paulson as well as current Treasury Secretary Timothy Geithner, Federal Deposit Insurance Corporation (FDIC) Chairwoman Sheila Bair and Federal Reserve

³ See JoAnne Allen, “Paulson gave banks no choice on government stakes: memos.” *Reuters*, May 14, 2009), available at <http://www.reuters.com/article/newsOne/idUSTRE54D0NH20090514>.

Chairman Ben Bernanke, forced these banks to sign “Major Financial Institution Participation Commitments,” in which the CEOs sold the U.S. Government preferred shares and warrants in exchange for \$125 billion in TARP funds,⁴ thus beginning the partial nationalization of hundreds of U.S. financial institutions.

While it proceeded with spending unparalleled amounts of taxpayer money, the Treasury Department developed a pattern of providing little or no transparency with regard to that spending, and continues to be unwilling to address transparency concerns raised by SIGTARP and COGR Members. According to the SIGTARP:

Although Treasury has taken some steps towards improving transparency in TARP programs, it has repeatedly failed to adopt recommendations that SIGTARP believes are essential to providing basic transparency and fulfill Treasury’s stated commitment to implement TARP “with the highest degree of accountability and transparency possible.”⁵

SIGTARP pointedly summarizes the implications of Treasury’s lack of transparency:

Unfortunately, in rejecting SIGTARP’s basic transparency recommendations, TARP has become a program in which taxpayers (i) are not being told what most of the TARP recipients are doing with their money, (ii) have still not been told how much their substantial investments are worth, and (iii) will not be told the full details of how their money is being invested. In SIGTARP’s view, the very credibility of TARP (and thus in large measure its chance of success) depends on whether Treasury will commit, indeed [sic] as in word, to operate TARP with the highest degree of transparency possible.⁶

SIGTARP’s most damning critique of TARP came in its January 30, 2010 quarterly report, in which the following was written:

The substantial costs of TARP — in money, moral hazard effects on the market, and Government credibility — will have been for naught if we do nothing to correct the fundamental problems in our financial system and end up in a similar or even greater crisis in two, or five, or ten years’ time. It is hard to see how any of the fundamental problems in the system have been addressed to date.

- To the extent that huge, interconnected, “too big to fail” institutions contributed to the crisis, those institutions are now even larger, in part because of the substantial subsidies provided by TARP and other bailout programs.
- To the extent that institutions were previously incentivized to take reckless risks through a “heads, I win; tails, the Government will bail me out” mentality, the market is more convinced than ever that the Government will step in as necessary

⁴ See <http://www.judicialwatch.org/news/2009/may/judicial-watch-forces-release-bank-bailout-documents>

⁵ *Id.*

⁶ *Id.*

to save systemically significant institutions. This perception was reinforced when TARP was extended until October 3, 2010, thus permitting Treasury to maintain a war chest of potential rescue funding at the same time that banks that have shown questionable ability to return to profitability (and in some cases are posting multi-billion-dollar losses) are exiting TARP programs.

- To the extent that large institutions' risky behavior resulted from the desire to justify ever-greater bonuses — and indeed, the race appears to be on for TARP recipients to exit the program in order to avoid its pay restrictions — the current bonus season demonstrates that although there have been some improvements in the form that bonus compensation takes for some executives, there has been little fundamental change in the excessive compensation culture on Wall Street.
- To the extent that the crisis was fueled by a “bubble” in the housing market, the Federal Government's concerted efforts to support home prices — as discussed more fully in Section 3 of this report — risk re-inflating that bubble in light of the Government's effective takeover of the housing market through purchases and guarantees, either direct or implicit, of nearly all of the residential mortgage market.⁷

Committee Republican Actions: Committee Republicans have continually stressed in hearings, statements, and letters during the first year of the 111th Congress that, given the unprecedented amount of taxpayer funding involved, the American public deserves nothing less than the greatest level of transparency. Treasury's continued unwillingness to provide basic transparency is unacceptable. Committee Republicans also worked to ensure that TARP funds, authorized by Congress as a temporary measure designed exclusively to stabilize financial markets, are not redirected by the Administration to pay for new and unrelated programs.

To make financial information disclosure more transparent and more accessible to regulators, investors, and the general public, Committee Democrats and Republicans joined together to report out of Committee H.R. 2392, the Government Information Transparency Act, which standardizes the collection, analysis, and dissemination of business information by federal agencies. It mandates the use of 21st century information technology under a single data standard known as eXtensible Business Reporting Language (XBRL) and requires that collected information be made readily available for public access. Committee Democrats and Republicans later worked together to report out of Committee and secure House passage of S. 303, the Federal Financial Assistance Management Improvement Act of 2009, which incorporates all of the provisions of H.R. 2392.

American International Group

⁷ See Quarterly Report to Congress, Office of the Special Inspector General for the Troubled Asset Relief Program, January 30, 2010.

Beginning in 2007, AIG began to suffer financial difficulties due primarily, to payments of collateral to counterparty institutions that had purchased insurance from AIG on complex financial assets, including bundles of sub prime mortgages, through insurance-like derivatives contracts called credit default swaps (CDSs).⁸ These derivatives contracts were sold by AIG Financial Products, a subsidiary of AIG.⁹

On September 15, 2008, the three major credit ratings agencies downgraded AIG's credit rating due to rising calls for AIG to post billions of dollars in cash collateral.¹⁰ These collateral calls, combined with the ratings downgrade (which triggered calls for more collateral under the terms of the contracts), put AIG on the verge of a bankruptcy filing.¹¹ The following day, September 16, 2008, the Federal Reserve Board, with the support of the Treasury Department, authorized the Federal Reserve Bank of New York (FRBNY) to lend up to \$85 billion to AIG so AIG could avoid filing for bankruptcy.¹² Federal officials claimed that an AIG bankruptcy would lead to systemic consequences across the U.S. and international economies.¹³ AIG subsequently received billions of dollars in additional taxpayer assistance, from both the Federal Reserve and Treasury.

The FRBNY ultimately decided to solve AIG's liquidity crisis by purchasing the underlying assets insured by the CDS contracts from AIG's counterparties, through funding provided by the FRBNY into a special purpose vehicle called Maiden Lane III (ML3).¹⁴ FRBNY officials argued that by purchasing the underlying assets from the counterparties, canceling the CDS contracts, and compensating the counterparties at par, or 100 cents on the dollar, the counterparties would agree to the transactions and AIG would no longer have to post collateral, easing its liquidity problems and avoiding another credit rating downgrade.¹⁵

Committee Republican Actions: The Committee's investigation into the AIG counterparty payments began in October 2009, when Committee Republicans requested information about the payments and their disclosure from the FRBNY and AIG.¹⁶ Chairman Towns was invited to join the investigation at that time, but his staff declined on his behalf. AIG submitted over 3,000 documents in response to the Committee

⁸ See SIGTARP, "Factors Affecting Efforts to Limit Payments to AIG Counterparties," November 17, 2009. Available at http://www.sig tarp.gov/reports/audit/2009/Factors_Affecting_Efforts_to_Limit_Payments_to_AIG_Count erparties.pdf

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ See letter from Darrell Issa to William Dudley, President, Federal Reserve Bank of New York, October 30, 2009; letter from Darrell Issa to Robert Benmosche, President and Chief Executive Officer, AIG, October 30, 2009.

Republicans' request.¹⁷ Unfortunately, the FRBNY refused to turn over any documents that were not already publicly available.¹⁸ Multiple follow-up attempts to obtain documents from the FRBNY by Committee Republicans were unsuccessful.¹⁹ Committee Republicans also requested documents that had been submitted by the FRBNY to SIGTARP, and which SIGTARP used to prepare its audit of these issues.²⁰ The Federal Reserve directed SIGTARP not to provide the Committee with the documents in SIGTARP's possession.²¹

On January 8, 2010, Committee Republicans wrote Chairman Towns, calling on him to hold a hearing and bring Secretary Geithner before the Committee to testify.²² In response, Chairman Towns announced the Committee would hold a hearing to examine these issues, and sent a hearing invitation to Secretary Geithner later that day.²³ On January 12, 2010, Committee Republicans wrote Chairman Towns, citing the FRBNY's efforts to conceal information from the Committee and requesting that the Committee issue a subpoena for the information to the FRBNY.²⁴ In response to the Minority's request, Chairman Towns issued a subpoena on January 13, 2010.²⁵

While the investigation was ongoing, Committee Republicans discovered convincing evidence that the FRBNY, under the leadership of now-Secretary Geithner, was responsible for the following actions:

- Rejecting viable alternatives to paying AIG's counterparties at par despite evidence and advice that counterparties should settle for less than par, costing the American taxpayer billions of dollars;
- Attempting to conceal details about paying the counterparties par from the SEC, the public, and Congress;
- Attempting to stonewall the Committee's investigation of the AIG counterparties issue; and
- Propagating a misleading story that taxpayers will profit from the creation of Maiden Lane III and the decision to pay counterparties at par.

¹⁷ See letters and document productions from AIG to Darrell Issa, December 1, 2009, December 16, 2009, January 19, 2010, and January 21, 2010.

¹⁸ See letter from William Dudley, President, Federal Reserve Bank of New York, to Darrell Issa, November 17, 2009.

¹⁹ See Committee staff e-mail requests to staff of Federal Reserve Bank of New York, January 8, 2010, and January 10, 2010; letter from Darrell Issa to Thomas Baxter, General Counsel, Federal Reserve Bank of New York, January 11, 2010.

²⁰ See letter from Darrell Issa to Neil Barofsky, SIGTARP, January 7, 2010.

²¹ See letter from Neil Barofsky, SIGTARP, to Darrell Issa, January 12, 2010.

²² See letter from Darrell Issa and Patrick McHenry to Edolphus Towns, January 8, 2010.

²³ See "Chairman Towns Announces Hearing to Examine New York Fed's Role in Advising Public Disclosure of A.I.G. Counterparty Payments," January 8, 2010. Available at http://oversight.house.gov/index.php?option=com_content&task=view&id=4731&Itemid=49.

²⁴ See letter from Darrell Issa to Edolphus Towns, January 12, 2010.

²⁵ See "Subpoena to the New York Fed for AIG Counterparty Documents," Committee on Oversight and Government Reform, January 13, 2010. Available at http://oversight.house.gov/images/stories/NYFedSubpoena_attested_1.13.09.pdf.

Through all available means, Committee Republicans continue to seek to provide for the American public a full accounting of the actions taken by government officials leading up to the decision to pay AIG counterparties at par and the subsequent attempts to conceal those actions. Special Inspector General for TARP Neil Barofsky has praised the Committee for its “tenacity and leadership” in its efforts to provide oversight of the AIG bailout.²⁶

Bank of America/Merrill Lynch Chrysler/General Motors

In September 2008, Bank of America announced its intention to purchase Merrill Lynch. Merrill’s condition deteriorated rapidly as the financial crisis deepened, prompting Bank of America CEO Ken Lewis, in late 2008, to consider exercising a Material Adverse Change clause (MAC) in the contract to get out of the deal.²⁷ Then-Secretary Paulson admitted to the Oversight Committee that he threatened to remove the management of Bank of America if Mr. Lewis tried to back out of the merger with Merrill Lynch and did so based on what he believed “was the strong opinion of the Federal Reserve.”²⁸

Chrysler/General Motors

The Obama Administration also accelerated a government take-over of Chrysler and General Motors (GM) by injecting an additional \$47 billion of taxpayer money into the companies (on top of the \$20 billion spent by the Bush Administration), by establishing a largely unaccountable Auto Task Force and by engineering the sale of Chrysler to Fiat outside normal bankruptcy procedures. It appears politics has also begun to influence these companies’ business decisions. For example, GM’s decision to locate production of its new small car in Michigan rather than Tennessee was made on the basis of “carbon footprint” and “community impact.”²⁹ Even a member of Michigan’s own Economic Development Corporation, who is also a top automotive analyst, acknowledged that the Michigan location was not the best business choice for GM.³⁰

Committee Republican Actions: Committee Republicans have expressed repeatedly at hearings and through letters and statements that the federal government is overstepping its bounds in relation to private industry. The Minority has brought to light the activities of officials at the Federal Reserve and the Department of the Treasury who are dictating government directives through threats and intimidation of private companies even when

²⁶ See Note 2, *supra*.

²⁷ See document, *Analysis of Bank of America & Merrill Lynch Merger*, (December 21, 2008), Bates BOG-BAC-ML-COGR-00036 to BOG-BAC-ML-COGR-00076.

²⁸ See Henry M. Paulson, testimony before the Oversight and Government Reform Committee, (July 16, 2009).

²⁹ See Neil King, Jr. and John D. Stoll, “Economics Wasn’t GM’s Only Criteria for New Plant,” *The Wall Street Journal* (July 6, 2009).

³⁰ See Rick Haglund, “GM’s decision about new small car plant more than financial,” *The Muskegon Chronicle*, (June 25, 2009), available at http://www.mlive.com/news/muskegon/index.ssf/2009/06/gms_decision_about_new_small_c.html.

such directives may pose significant risks or harm to private investors, taxpayers, and the nation's economy.

Issue 2: Committee Republican Oversight of Financial Recovery Efforts – American Recovery and Reinvestment Act

Background: The President's Council on Economic Advisors promised the American people that the Administration's first legislative priority – the nearly \$800 billion economic stimulus package known as the American Recovery and Reinvestment Act (ARRA) – would “save or create” 3.5 million jobs and hold U.S. unemployment below 8 percent.³¹ Time has proven those predictions incorrect; the unemployment rate reported by the U.S. Bureau of Labor Statistics reached 10.2 percent by October 2009.³²

The Administration established a system of reporting on the effects of the massive stimulus spending that was doomed to failure, essentially “rigging the game” of reporting the tangible effects of its stimulus program by creating an immeasurable metric – “jobs created or saved” – that cannot be disproved. As Senate Finance Committee Chairman Max Baucus (D-MT) said to Treasury Secretary Tim Geithner:

[The Administration has] created a situation where you cannot be wrong. If the economy loses two million jobs over the next few years, you can say yes, but it would've lost 5.5 million jobs. If we create a million jobs, you can say, well, it would have lost 2.5 million jobs. You've given yourself complete leverage where you cannot be wrong, because you can take any scenario and make yourself look correct.³³

On October 30, 2009, the Recovery Accountability and Transparency Board (“RATB”) posted on www.recovery.gov the first wave of stimulus funding recipient reporting on the use of ARRA funds. These reports were compiled from stimulus recipient data submitted to www.federalreporting.gov, though the process by which the data was taken from the submission Web site and finally presented to the public on www.recovery.gov is unclear. Along with the data, www.recovery.gov included on its opening page a box proclaiming, “JOBS CREATED/SAVED AS REPORTED BY RECIPIENTS – 640,329.” For the next several days, officials from across the Administration heralded the 640,329 jobs as fact. For example:

- “When the data is posted later today, it will show that we have created or saved 640,239 jobs directly as a consequence of contracting authority with the federal government.” -Vice President Biden, 10/30/09, White House jobs announcement.

³¹ See Christina Romer and Jared Bernstein, “The Job Impact of the American Recovery and Reinvestment Plan,” (January 9, 2009), available at http://otrans.3cdn.net/ee40602f9a7d8172b8_ozm6bt5oi.pdf.

³² See Peter S. Goodman, “U.S. Unemployment Rate Hits 10.2%, Highest in 26 Years,” *The New York Times*, (November 6, 2009). Available at <http://www.nytimes.com/2009/11/07/business/economy/07jobs.html>

³³ See William McGurn, “The Media Fall for Phony ‘Jobs’ Claims,” *The Wall Street Journal*, (June 10, 2009).

- “Those jobs accumulate to 650,000 jobs saved or created thus far.” -Jared Bernstein, Vice President Biden’s Chief Economist, 10/30/09 CBS Early Show.
- “The direct jobs in that is, again, 640,329.” -Robert Gibbs, White House Press Secretary, referring to www.recovery.gov, 10/30/09 White House Press Briefing.
- “We know for a fact that Recovery Act investments have created or saved more than 640,000 direct jobs so far. These are real, identifiable jobs directly funded by the Act.” -Department of Transportation Secretary Ray LaHood, 11/6/09 remarks.

However, the hollowness of the Administration’s stimulus-related job creation pronouncements quickly became evident. The posting of recipient data on www.recovery.gov led to one news story after another highlighting inaccuracies or misleading information in the reports, most often with regard to the number of jobs created or saved. In addition, little was made clear about the process used to decide which recipient reporting was reliable enough to be posted online and which needed to be omitted due to obvious errors.

On December 18, 2009, in preparation for another round of ARRA recipient reporting in January, the Administration issued new guidance regarding stimulus jobs, hoping to avoid the controversy raised with the initial reporting period’s figures. The new guidance defined “jobs created or retained as those funded in the quarter by the Recovery Act” and directed stimulus recipients to count every job funded using stimulus money – regardless of whether or not it existed before the Recovery Act or was ever in any danger of being eliminated – as “created or saved.”³⁴

Committee Republican Actions: Committee Republicans have led Congressional efforts to ensure that the unprecedented level of taxpayer money the Administration is expending through ARRA is subject to the highest possible degree of transparency and the lowest possible levels of waste, fraud, and abuse. The Committee has held five hearings on stimulus oversight; at each hearing, Republican Members demanded accountability from government officials and invited expert witnesses to propose solutions to the myriad issues surrounding ARRA implementation.

Committee Republicans have also worked to shine light on the Administration’s dubious claims of creating and saving jobs. In June 2009, Committee Republicans held a press conference pointing out the contradiction between the Administration’s jobs claims and the ever-rising national unemployment rate as well as the flaws involved with the stimulus jobs creation metrics. Additionally, Committee Republicans have written two letters to Earl Devaney, Chairman of the RATB, asking that he address the misleading

³⁴ See Peter Orszag, “Memorandum for the Heads of Departments and Agencies – Updated Guidance on the American Recovery and Reinvestment Act – Data Quality, Non-Reporting Recipients, and Reporting of Job Estimates,” Dec. 18, 2009. Available at http://www.whitehouse.gov/omb/assets/memoranda_2010/m10-08.pdf.

“Jobs Created/Saved” descriptions on www.recovery.gov. These actions led to the Administration’s issuance of new, though still flawed, guidance regarding stimulus jobs in December 2009. Finally, at a November 2009 Committee hearing, Chairman Devaney agreed with Ranking Member Darrell Issa’s statement that the Administration does not have the “ability to calculate the full time jobs equivalent” in the following exchange:

Issa: Mr. Devaney, you’re the most honest man I know. Without a whole lot of in between, shouldn’t we be more conservative and say, ‘Look, this is what the reports are. We’re scrubbing it. This is a new system. It has its problems. We hope at least they’re reporting the dollars right and we have no idea whether those people have the ability to calculate the full time jobs equivalent but we’re going to get to the bottom of it. Wouldn’t that be a fairer way to put it?’

Devaney: “I like that statement.”³⁵

In response to the Democrat Majority’s stated intention to hold additional stimulus oversight hearings, Committee Republicans have provided Chairman Edolphus Towns with evidence of government agencies wasting stimulus funds on projects of dubious merit that are ripe for oversight. For example, the Committee Minority requested in a letter to Chairman Towns that the Committee hold a hearing to scrutinize wasteful projects funded by the National Endowment for the Arts through ARRA. The Minority has not yet received a reply from the Chairman.

Issue 3: Committee Republican Investigations into Underlying Causes of the Financial Crisis

Affordable Housing Policy, Fannie Mae and Freddie Mac

Background: The financial crisis of 2008 was rooted largely in ill-conceived government policies. Primary among these were the federal government’s “affordable housing” policies which provided incentives for the government-sponsored enterprises (GSE), Fannie Mae and Freddie Mac, to support a boom in risky and unsustainable mortgage lending. These government policies encouraged lower down payments, looser underwriting standards and higher leverage, and created a nexus of vested interests – politicians, lenders and lobbyists – that profited either financially or politically from this arrangement and subsequently worked to kill any proposed reforms. In the short run, this government intervention was successful in its stated goal – raising the national homeownership rate. However, the ultimate effect was to create an environment that devastated the American economy.

The government experiment in affordable mortgage lending based on low down payments and “flexible” credit criteria has sucked the equity out of the U.S. housing

³⁵ See Note 1, *supra*.

market, trapped millions of Americans under crushing debt, and seriously damaged global financial markets. In 2006, the value of U.S. housing was estimated at \$22 trillion. By October 31, 2008 this had fallen to \$18.5 trillion. As of the end of 2008, there was about \$12 trillion in mortgage debt, of which 42 percent consisted of default-prone loans, with 70 percent of all mortgage debt guaranteed by the federal government. The consequences of these policies brought the entire global financial system to the brink of collapse, destroying trillions in equity and untold numbers of lives.

Committee Republican Actions: Committee Republicans repeatedly drew attention to the central role of government housing policies during Committee hearings on the financial crisis, bringing economic experts and new information into the discussion. Committee Republicans also published an investigative report on the role of affordable housing policy in causing the financial crisis.

Countrywide VIP Loan Program

Background: Committee Republicans began an investigation into Countrywide Financial Corporation's "Friends of Angelo" program, which provided sweetheart mortgages to so-called "VIPs" as part of the larger investigation of influence peddling by Fannie Mae, Freddie Mac and other companies involved in affordable mortgage lending. Accounts and documents have shown that Countrywide Financial attempted to purchase influence, through preferential treatment on mortgage loans, among officials who should have been concerned about irresponsible lending practices and the risks they posed to the economy. Countrywide was a key business partner with Fannie Mae and part of the vested interest that profited from deeply flawed mortgage laws and regulations.

Committee Republican Actions: Committee Republican staff released a report in March 2009 showing how Countrywide disregarded its own policies to accommodate loans for people deemed influential. Some of these influential people – Democrats and Republicans – including high-level Members of Congress and current and former Cabinet officials who were recruited into the program personally by high-ranking company officials including former CEO Angelo Mozilo.

The relaxed underwriting standards of Government-Sponsored Enterprises (GSEs) such as Fannie Mae and Freddie Mac allowed subprime mortgage giants such as Countrywide to grow dramatically in a short period of time. The alliance of the subprime giants such as Countrywide with the GSEs created distortions in the market for mortgage-backed securities as well as a powerful special interest group in Washington.

After several requests by Committee Republicans for the Chairman to issue a subpoena to Bank of America for relevant Countrywide documents, the Chairman agreed on October 23, 2009. Committee Republicans continue to work to fully expose the extent of Countrywide's attempts to buy influence.

Issue 4: Committee Republican Investigation of Administration Politicization of Science

Background: On March 9, 2009, President Obama declared that “the public must be able to trust the science and scientific process informing public policy decisions.”³⁶ The Administrator of the Environmental Protection Agency (EPA), Lisa Jackson, echoed this view when she said that “public trust in the Agency demands that we . . . fully disclose the information that forms the bases for our decisions.”³⁷ However, actions by the Administration, have not supported this philosophy.

In November 2009, in a scandal popularly referred to as “Climategate,” a large volume of email messages and documents from the Climatic Research Unit of the University of East Anglia were disclosed, raising serious questions about the research that led to the findings released by the United Nation’s Intergovernmental Panel on Climate Change (IPCC). As one news source reported, in the emails, “Scientists appear to urge each to present a ‘unified view’ on the theory of man-made climate change while discussing the importance of the ‘common cause,’ to advise each other on how to smooth over data so as to not compromise the favored hypothesis; to discuss ways to keep opposing views out of leading journals; and to give tips on how to ‘hide the decline’ of temperature in certain inconvenient data.”³⁸ The *New York Times* carried a story stating that the emails provoke three fundamental questions – whether “the correspondence reveals efforts by scientists to shield raw data, preventing it from being examined by independent researchers”; whether the documents “prove that the data underlying climate scientists’ conclusions about warming are murkier than the scientists have said”; and whether “the email messages indicate that climate scientists tried to prevent publication of papers written by climate skeptics.”³⁹ EPA relied heavily on the IPCC’s findings and conclusions in its development and justification for its recently finalized Endangerment Finding on greenhouse gases.

Other news reports have suggested that in an effort to force a determination that carbon dioxide (CO₂) endangers human health and welfare, EPA inappropriately limited staff contributions, suppressed dissent, and may have punished those who challenged the Obama Administration’s environmental agenda.⁴⁰ For example, it appears that EPA may have suppressed a report by Dr. Alan Carlin, an experienced climate change researcher with more than 37 years of civil service tenure at the EPA, that raised important questions

³⁶ Memorandum from President Barack Obama to the Heads of Executive Departments and Agencies (March 9, 2009) available at http://www.whitehouse.gov/the_press_office/Memorandum-for-the-Heads-of-Executive-Departments-and-Agencies-3-9-09/.

³⁷ Memorandum from Administrator Jackson to EPA Employees (Jan 23, 2009) available at <http://www.epa.gov/administrator/memotoemployees.html>.

³⁸ Editorial, “Global Warming With the Lid Off,” *Wall Street Journal*, Nov. 24, 2009.

³⁹ Andrew Revkin, “Hacked Email Data Prompts Calls for Changes in Climate Research,” *The New York Times*, Nov. 28, 2009).

⁴⁰ Kimberly Strassel, The EPA Silences a Climate Skeptic, *Wall Street Journal*, July, 2009, available at <http://online.wsj.com/article/SB124657655235589119.html>; see also Declan McCullagh, EPA May Have Suppressed Report Skeptical of Global Warming, *CBS News*, June 26, 2009, available at <http://www.cbsnews.com/blogs/2009/06/26/politics/politicalhotsheet/entry5117890.shtml>.

about the document providing the scientific basis for the Administration's proposed Endangerment Finding. Director Al McGartland of the EPA's National Center for Environmental Economics (NCEE) refused to include Dr. Carlin's work in the official record due to questions his studies raised about the science of climate change. In a series of emails, dated March 12-17, 2009, McGartland makes it clear that the Administration "decided to move forward on endangerment, and [Carlin's] comments do not help the legal or policy case for the decision."⁴¹ In an attempt to dismiss these serious allegations, EPA claimed that "certain opinions were expressed by an individual who is not a scientist and was not part of the working group dealing with the issue."⁴²

Committee Republican Actions: Committee Republicans have conducted a year-long investigation into EPA's politicization of science during the first half of the 111th Congress, and the Minority released a staff report in October 2009 entitled "The Politics of EPA's Endangerment Finding." The Minority has asked the EPA for documents and records related to EPA interactions with the Climatic Research Unit, and also asked that EPA withdraw its Endangerment Finding until an investigation of the conduct outlined in the disclosed emails can be conducted and the agency can demonstrate the science underlying its regulatory decisions has not been compromised. The Minority has also written letters to the Administration regarding Dr. Michael Mann, a Pennsylvania State University researcher whose findings are a key foundation of the Administration's efforts on climate change and who is a central figure in the Climategate scandal. It was discovered in January 2010 that Dr. Mann received nearly \$2.5 million in stimulus grant funding from the National Science Foundation in 2009; Committee Republicans have urged the agency to freeze or withdraw Dr. Mann's funding until investigations involving allegations of research misconduct against him have been concluded.

Committee Republicans continue to investigate the suppression of Dr. Carlin and his report, as well as bring attention to other attempts to suppress dissenting viewpoints on climate related issues, including officials at the Small Business Administration who are concerned that Administration-backed climate change efforts will be particularly damaging to small businesses as well as two EPA attorneys who were effectively censored from publically expressing their opposition to climate change legislation in a YouTube video produced on their own time.⁴³ To date, EPA has been unresponsive to attempts to gather information regarding these issues and has pushed forward with the Endangerment Finding.

The Minority also has requested that Chairman Towns launch a full Committee investigation into the disclosed emails and EPA's lack of transparency, but has not

⁴¹ See Email from Office Director of EPA's NCEE to Senior Operations Research Analyst at NCEE (March 17, 2009).

⁴² See Ian Talley, *US Lawmakers Demand Probe Into Claims EPA Suppressed CO2 Study*, DOW JONES NEWSWIRE, (July 2, 2009).

⁴³ See YouTube.com, "The Huge Mistake - Climate Change Solutions 2009." Available at <http://www.youtube.com/watch?v=uSNQzSjb38g> (last visited Nov. 10, 2009) (hereinafter, *The Huge Mistake*).

received a response from the Majority. The Minority will continue to press for further investigation of this matter.

Issue 5: Committee Republican Oversight of Inspectors General Independence

In the first half of the 111th Congress, a number of incidents involving federal Inspectors General (IGs) have raised significant concerns among Committee Republicans about the ability of IGs to effectively carry out their oversight functions.

No IG at New Agency Monitoring Fannie Mae and Freddie Mac

Background: On July 30, 2008, the Housing and Economic Recovery Act of 2008 (HERA) was signed into law to address the subprime mortgage crisis. HERA combined existing entities with IG oversight to form the Federal Housing Finance Agency (FHFA), a new agency created to manage the conservatorship of Fannie Mae and Freddie Mac.⁴⁴ In November 2009, documents indicated FHFA leadership actively litigated so the new agency, charged with managing \$238 billion of Fannie and Freddie liabilities, could operate without IG oversight. Documents reviewed by Committee investigators clearly show FHFA sought guidance from the Department of Justice in order to effectively undermine Congress's clear intent to have an IG in place at FHFA.⁴⁵

Committee Republican Actions: The Minority staff requested information from FHFA leadership, former IG Kelley, and the Justice Department. Republican investigators interviewed FHFA General Counsel Alfred Pollard. In a November 16, 2009 letter to the Office of the White House Counsel, Ranking Member Issa urged President Obama to immediately appoint a permanent IG at FHFA. On January 14, 2010, Ranking Member Issa joined with Reps. Dennis Moore (D-KS), Judy Biggert (R-IL) and Chairman Edolphus Towns to introduce H.R. 4450, the Federal Housing Finance Agency Inspector General Technical Corrections Act of 2009, which would establish an interim Inspector General for FHFA.⁴⁶

Dismissal of Corporation for National and Community Services IG

Background: On May 6, 2009, Gerald Walpin, the Inspector General (IG) for the Corporation for National and Community Service (CNCS), issued a Special Report criticizing a settlement of claims against Sacramento Mayor Kevin Johnson arising from

⁴⁴ See <http://www.govtrack.us/congress/bill.xpd?bill=h110-3221>; also see Sahadi, Jeanne, "Bush signs housing rescue law," CNNMoney.com, July 30, 2008. Available at http://money.cnn.com/2008/07/30/news/economy/housing_bill_Bush/index.htm?postversion=2008073007

⁴⁵ See Letter from Congressman Darrell Issa to White House Counsel Gregory Craig, November 16, 2009. Available at <http://republicans.oversight.house.gov/images/stories/Letters/20091116dei%20to%20craigfhfa%20ig%20letter%20to%20wh.pdf>

⁴⁶ See Press Release, "Issa Sponsors Bi-Partisan Legislation to Immediately Appoint Inspector General for FHFA," January 14, 2010. Available at http://republicans.oversight.house.gov/index.php?option=com_content&view=article&id=500%3Aissa-sponsors-bi-partisan-legislation-to-immediately-appoint-inspector-general-for-fhfa&catid=22&Itemid=29

his misuse of Americorps funds. On June 10, the White House terminated Walpin. One day later, President Obama wrote to Speaker Pelosi advising that he was firing the IG because he had lost confidence in him. Five days later, Special Counsel to the President Norman Eisen wrote to Chairman Towns and Ranking Member Issa that Walpin was removed for being confused and disoriented at a CNCS Board meeting. On June 29, 2009, CNCS told staff from the Senate Committee on Homeland Security and Government Affairs that Walpin was fired because he had a difficult working relationship with CNCS senior staff and because he lacked sufficient appreciation for equal employment opportunity norms.

Committee Republican Actions: The Minority staff partnered with Republican staff from the Senate Finance Committee to investigate Walpin's ouster. Investigators interviewed each member of the Corporation's Board, former and current senior staff from the Corporation, and White House officials. Investigators also sought information from the Justice Department. Ranking Member Issa and Senate Finance Committee Ranking Member Charles Grassley released the findings of the investigation in a joint report on November 20, 2009. The report concluded that Walpin's efforts to hold senior officials at CNCS accountable for treating lightly a friend and political crony of the President – Sacramento Mayor Kevin Johnson – for mismanaging charter school funds and exhibiting inappropriate sexual conduct toward students led to his removal by White House lawyer Norm Eisen in contravention of the Inspector General Act.

Initially, the Majority expressed concern that the White House may have violated the IG Act, and agreed to send a joint letter with the Minority requesting witness interviews and documents. Majority and Minority staff interviewed CNCS General Counsel Frank Trinity on July 6, 2009. During the course of this interview, Trinity refused to answer any questions relating to communications with the White House citing a vague "White House prerogative." Majority staff instructed Trinity to respond to the questions posed, and advised that if he did not answer, the Committee would be required to use compulsory process to obtain all information. Subsequent to that meeting, however, the Majority ceased all investigative work on this matter. Committee Republican staff continue to investigate the matter without the Majority.

Replacement of Amtrak IG with Member of Amtrak Management Team

Background: On June 18, 2009, it was announced that longtime Amtrak IG Fred E. Weiderhold, Jr., had unexpectedly retired. Weiderhold aggressively investigated and questioned the Amtrak General Counsel's office regarding the expenditure of tens of millions of dollars on outside law firms. Amtrak chose as an interim replacement for Weiderhold a longtime Amtrak manager. After Weiderhold's abrupt retirement and subsequent replacement, Amtrak's management made several policy changes which limited the independence of the IG, including restrictions on IG use of funds and IG personnel decision-making authority.

Committee Republican Actions: Working jointly with the Committee Majority, Committee Republicans called for the immediate permanent replacement of Amtrak's

interim IG. On November 5, 2009, roughly five months since the departure of its previous watchdog, Amtrak hired Theodore Alves to serve as IG. Alves served in the U.S. Department of Transportation Office of Inspector General for eight years in several executive positions until he retired in January 2009. Committee investigators continue to monitor the situation to ensure Amtrak policies that compromised the independence of the office have been abandoned.

Treasury Department Seeks to Curtail SIGTARP Independence

Background: SIGTARP Barofsky notified Committee Republicans that the Treasury Department was seeking to curtail his independence and authority by asserting its jurisdiction over SIGTARP's operations. SIGTARP vigorously disputed this interpretation of EESA. Treasury then formally requested that the Office of Legal Counsel (OLC) at the Department of Justice make a ruling on SIGTARP's independence.

Committee Republican Actions: In response to Treasury's attempt to undermine SIGTARP's independence by seeking an OLC ruling that placed SIGTARP within Treasury's jurisdiction, Committee Republicans questioned Treasury's actions during Committee hearings, making it clear that SIGTARP's continued independence was crucial in bringing needed transparency to the TARP. As a result, Treasury withdrew its request for an OLC opinion.

Issue 6: Committee Republican Investigation of ACORN

Background: The Association of Community Organizations for Reform Now (ACORN) has been the subject of controversy in recent years due to questions about its structure, non-profit status, and political activities. ACORN's voter registration activities during the 2008 Presidential election and its involvement in a wide range of federally-funded activities continue to merit Committee scrutiny.

Committee Republican Actions: The Minority staff released a report in July presenting evidence of widespread wrongdoing by ACORN.⁴⁷ The report stated that ACORN has repeatedly and deliberately engaged in systemic fraud, hiding behind a paper wall of nonprofit corporate protections to conceal a criminal conspiracy on the part of its directors, to launder federal money in order to pursue a partisan political agenda, and to manipulate the American electorate. Specifically, the report showed the following⁴⁸:

- ACORN has evaded taxes, obstructed justice, and aided and abetted a cover-up of embezzlement;

⁴⁷ See Staff Report, "Is ACORN Intentionally Structured As a Criminal Enterprise?" July 23, 2009. Available at

http://republicans.oversight.house.gov/images/stories/Reports/20091118_ACORNREPORT.pdf

⁴⁸ *Id.*

- ACORN has committed investment fraud, deprived the public of its right to honest services, and engaged in a racketeering enterprise affecting interstate commerce;
- ACORN has committed a conspiracy to defraud the United States by using taxpayer funds for partisan political activities;
- ACORN has submitted false filings to the Internal Revenue Service (IRS) and the Department of Labor, in addition to violating the Fair Labor Standards Act (FLSA);
- ACORN falsified and concealed facts concerning an illegal transaction between related parties in violation of the Employee Retirement Income Security Act of 1974 (ERISA).

As of January 2010, Committee Republicans have sent over 100 letters to various federal agencies, state Secretary of State offices, and other law enforcement entities regarding ACORN activities. Committee Republicans have entered document-sharing relationships with the Inspector General offices at the Departments of Labor, Housing, Treasury, and Homeland Security. The Louisiana Department of Justice, the U.S. Attorneys Office in the E.D.N.Y., the HUD IG, and the Brooklyn DA office have described Committee Republicans' original ACORN Report as "invaluable" to their investigations. In November 2009, Committee Republicans joined with Judiciary Committee Republicans in holding a forum on ACORN misconduct featuring state government officials and a former ACORN employee.⁴⁹ On February 18, 2010, Committee Republican staff released a report on ACORN entitled, "Follow the Money: ACORN, SEIU and their Political Allies."⁵⁰

Issue 7: Committee Republican Actions on Health Care Issues

Stimulus Medicaid Funding

Background: The American Recovery and Reinvestment Act included \$89.4 billion in increased federal Medicaid expenditures, with \$87 billion of that funding flowing directly to the states. However, early reports indicated that instead of using the stimulus funds to supplement state Medicaid spending to protect medical services and healthcare service jobs, some states were effectively diverting Medicaid stimulus funds for non-healthcare

⁴⁹ See Committee on Oversight and Government Reform Republicans, "Media Advisory: Oversight and Judiciary Committee Republicans to Hold Joint ACORN Forum," November 30, 2009. Available at http://republicans.oversight.house.gov/index.php?option=com_content&view=article&id=396%3Amedia-advisory-oversight-and-judiciary-committee-republicans-to-hold-joint-acorn-forum&catid=22&Itemid=29

⁵⁰ See Staff Report, "Follow the Money: ACORN, SEIU and their Political Allies" February 18, 2010. Available at <http://republicans.oversight.house.gov/images/stories/Reports/20100218followthemoneyacornseiuandtheirpoliticalallies.pdf>

related purposes, without an obligation to adhere to federal transparency and accountability rules.

Committee Republican Actions: In April 2009, the Minority staff issued a report on this issue entitled “De-Targeting the Stimulus: States Diverting Medicaid Funds Away from Helping Poor, Protecting Health Care Jobs.”⁵¹ The report concluded that since the Democratic-controlled Congress and President Obama failed to place stringent restrictions on the use of stimulus dollars, states are diverting the money from Medicaid to fill gaps in their budgets. In addition, despite the fact that Medicaid spending accounts for approximately 63% of the stimulus funds flowing to states in 2009, the Majority has declined to hold any hearings specifically on the oversight of stimulus-related Medicaid funding.

Democratic Health Care Proposal

Background: Driven by President Obama’s campaign promise to “fix a broken health care system,” House Democrats have introduced a health care reform bill, the America’s Affordable Health Choices Act (H.R. 3200), to implement universal health care. The legislation creates, extends, or expands 33 entitlement programs, and creates 53 additional government offices, bureaus, commissions and programs. To achieve universal coverage, a government-run public health insurance plan would be created to compete with private insurance plans. The government-run “public option” plan mirrors in many ways another government-run health care program: Medicare.

Committee Republican Actions: The Minority released two staff reports highlighting the federal government’s continuing struggle to rein in rampant health care costs, notably fraud in Medicare and the costs of defensive medicine, concluding that there cannot be true reform of the system without tort reform, and warning that government-run healthcare will lead to even more egregious abuses. The first report, ““Medicare Experience Suggests Americans Should Expect Massive Fraud with Nationalized Health Care,”⁵² concluded that a Medicare-for-all model would open the public option to the same pitfalls as Medicare, including the rampant amounts of fraud and improper payments in Medicare. According to the Government Accountability Office (GAO), improper payments in the Medicare Fee-for-Service (FSS) and Medicare Advantage programs were estimated to be \$17.2 billion for fiscal year 2008.⁵³ GAO also estimates that as much as 10% of overall health care spending is lost to fraud.⁵⁴ This report also

⁵¹ See Staff Report, “De-Targeting the Stimulus: States Diverting Medicaid Funds Away from Helping Poor, Protecting Health Care Jobs,” April 15, 2009. Available at <http://republicans.oversight.house.gov/images/stories/Reports/20090415MedicaidReport.pdf>

⁵² See Staff Report, ““Medicare Experience Suggests Americans Should Expect Massive Fraud with Nationalized Health Care,”” August 13, 2009. Available at http://republicans.oversight.house.gov/images/stories/Reports/2009-08-13_Medicare_Fraud_Report.pdf

⁵³ Government Accountability Office, GAO-09-628T Improper Payments: Payments Made but Challenges Remain in Estimating and Reducing Improper Payments (Apr. 22, 2009).

⁵⁴ Criminal Prosecution as a Deterrent to Health Care Fraud: Hearing Before the Subcomm. on Crime and Drugs of the S. Comm. on the Judiciary, 111th Cong. (2009) (statement of Lanny Breuer, Asst. Att’y Gen., Criminal Div., U.S. Dept. of Justice).

showed that the proposed legislation would apply the same ineffective anti-fraud and abuse protections to the public option that the Medicare program uses, leaving the door open to the same types of waste and fraud.

The second report, “The Failure to Address the Costs of Defensive Medicine in Health Care Legislation,”⁵⁵ examined the costs to the federal government of defensive medicine, which is driven by out-of-control medical malpractice litigation. It is estimated that defensive medicine is the top area of wasteful spending in health care, accounting for \$210 billion annually.⁵⁶ In 2003, the Department of Health and Human Services (HHS) found that the federal government spends between \$33.7 billion and \$56.2 billion per year for malpractice coverage and the costs of defensive medicine.⁵⁷ Yet, when Committee staff inquired of HHS whether they had an updated figure, personnel in the Office of the Assistant Secretary for Planning and Evaluation said that the report in question involved medical malpractice litigation which “is not a priority with this Administration [the Obama Administration].”

Additionally, the Minority has asked Chairman Towns to join several letters to the Administration requesting further information on various aspects of the health care reform debate, including health IT and tort reform. Chairman Towns has yet to join the Minority’s requests for information.

Secure National Food Supply Chain

Background: Throughout the first half of the 111th Congress, there were repeated incidents of food recalls due to actual or suspected contamination, including various peanut products, pistachio products and raw cookie dough. The Government Accountability Office (GAO) cited the need to retool federal oversight of food safety in its 2009 High Risk Series.

Committee Republican Actions: In February 2009, the Minority wrote Chairman Towns asking that the Committee hold a hearing on food safety in general. The Ranking Member noted that the Committee is uniquely positioned to bring all 15 agencies with regulatory responsibilities for food safety together to address systemic weaknesses. To date, the Majority has declined to hold such a hearing.

Federal Employee Health Care

Background: The Federal Employees Health Benefits Program (FEHBP) covers 8 million employees, their dependents, and retirees. The impact of the Democratic health

⁵⁵ See Staff Report, “The Failure to Address the Costs of Defensive Medicine in Health Care Legislation,” February 2, 2010. Available at <http://republicans.oversight.house.gov/images/stories/Reports/20100202staffreport.pdf>

⁵⁶ See PriceWaterHouseCoopers’ Health Research Institute, *The Price of Excess: Identifying waste in healthcare spending* (2008).

⁵⁷ U.S. Dep’t of Health & Human Serv., Assistant Sec’y for Planning & Evaluation, Office of Disability, Aging, & Long-Term Care Policy, *Addressing the New Health Care Crisis: Reforming the Medical Litigation System to Improve the Quality of Health Care* (Mar. 2003).

care plan on the FEHBP has been largely missing from discussion of the legislation thus far, despite the fact that any changes to the program or its operation by the Office of Personnel Management (OPM) could have far-reaching implications.

Committee Republican Actions: Committee Republicans wrote Chairman Towns requesting two actions: 1) that he not waive Oversight and Government Reform Committee jurisdiction over H.R. 3200, the Democrat’s “America’s Affordable Health Choices Act,” and 2) that he hold a hearing to examine the impact this bill would have on the Federal Employees Health Benefits Program (FEHBP). The Committee’s Majority did not agree to these requests.

Issue 8: Committee Republican Oversight of the 2010 Census

Background: During the first half of the 111th Congress, the Committee dealt with multiple challenges to the independence of the Census Bureau, and thus its ability to conduct a successful 2010 Decennial, free from partisan manipulation.

Attempt to Consolidate Control over the Census within the White House

Early in the Obama Administration, Congressional Quarterly and others reported that the Administration had determined that the director of the Census Bureau would report directly to the White House instead of the Secretary of Commerce.⁵⁸

Committee Republican Actions: Committee Republicans quickly condemned this move by the Administration. In a letter to President Obama, the Minority cited the federal law establishing the administration of the Census within the Commerce Department and also highlighting the risks of politicizing the Census, the results of which are used in the allocation of federal funding and the apportionment of seats in the U.S. House of Representatives. The Administration did not reply directly to the Minority’s concerns, but then publicly reversed course and stated that the Census Director would report to the Commerce Secretary and not directly to the White House.⁵⁹

Statistical Adjustment of the 2010 Census

President Obama’s nominee for Census Director, Dr. Robert Groves raised concern that “Democrats were again flirting with statistical sampling.”⁶⁰

Committee Republican Actions: The Committee published a Staff Report on May 11, 2009, entitled “Census History: Counting Every Person Once, Only Once and in the

⁵⁸ Jonathan Allen, “Administration Plans to Bypass Commerce — and Gregg — on 2010 Census,” *Congressional Quarterly*, Feb. 5, 2009. Available at <http://www.cgpolitics.com/wmspage.cfm?docid=news-000003024858>

⁵⁹ Keith Koffler, “Census Control Clarified,” *Roll Call*, March 11, 2009. Available at http://www.rollcall.com/issues/54_100/news/33051-1.html?type=printer_friendly

⁶⁰ Eliza Krigman, “Census Games,” *The National Journal*, April 11, 2009.

Right Place.”⁶¹ The report addressed the illegality, impropriety and inaccuracy of statistically adjusted Census results. The report chronicled a history of partisan attempts at politicizing the Census Bureau and Decennials, and how those attempts have inevitably failed. The report further made clear that the Census is a Constitutional responsibility of the Legislative, not the Executive Branch of government.

The Committee also worked to solicit on the record guarantees against the possibility of adjustment from Census Bureau officials at Committee hearings. As confirmed by the Bureau, statistical adjustment is “not in our plans.”⁶² “Our goal for the 2010 census is to count everyone, no matter how difficult or challenging the task may be,” said Thomas Mesenbourg, acting census director.”⁶³

ACORN Involvement in the 2010 Census

As the Census Bureau began rolling out its partnership program early in 2009, it became clear that ACORN was going to be involved in the program that is charged with outreach for the 2010 Decennial. There had been numerous indictments against ACORN employees, but in early May, for the first time, the Nevada Attorney General filed criminal charges against the organization itself. Given the controversial and partisan history of ACORN, the organization’s involvement in the 2010 Census became a real threat to the success of an apolitical Decennial.

Committee Republican Actions: On May 11, 2009, Committee Republicans on the Information Policy, Census and National Archives Subcommittee sent a letter to the Acting Director of the Census Bureau, Thomas Mesenbourg requesting that “[i]n light of this serious charge ... the Census Bureau reconsider its inclusion of ACORN in the Planning Partnership Program for the 2010 Census. ACORN’s involvement may compromise our shared commitment to an apolitical and accurate census count.”⁶⁴

Throughout the course of multiple hearings and formal and informal meetings with Bureau personnel, including the newly confirmed Director, Republican Members of the Committee consistently requested that the Bureau reevaluate its relationship with ACORN. On Friday, September 11, 2009, Director Groves confirmed that the Bureau had severed all ties with ACORN in a letter he wrote to Maude Hurd, the organization’s President. “It is clear that ACORN’s affiliation with the 2010 Census promotion has caused sufficient concern in the general public, has indeed become a distraction from our

⁶¹ See Staff Report, “Census History: Counting Every Person Once, Only Once and in the Right Place,” May 11, 2009. Available at <http://republicans.oversight.house.gov/images/stories/Reports/2009-05-11census.pdf>

⁶² *Census 2010: Assessing the Bureau’s Strategy for Reducing the Undercount of Hard-to-Count Populations: Hearing Before the H. Comm. On Oversight and Government Reform*, 111th Cong. (2009) (statement of Thomas Mesenbourg, Acting Director, U.S. Census Bureau).

⁶³ “Worries about Missing Millions in Census,” *Newsday*, March 24, 2009.

⁶⁴ Letter from Ranking Member Patrick T. McHenry, Lynn A. Westmoreland, John L. Mica and Jason Chaffetz to Acting Director Thomas L. Mesenbourg (May 11, 2009).

mission, and may even become a discouragement to public cooperation, negatively impacting 2010 Census efforts.”⁶⁵

Issue 9: Committee Republican Oversight of National Security Issues

Background: While the Administration’s domestic agenda has controlled much of the political conversation on Capitol Hill and elsewhere in America during the past year, there remain innumerable threats to national security. A global network of violent terrorists continues to target to the nation and its allies, as evidenced by two Al-Qaeda network attacks on American soil in late 2009.

On November 5, 2009, Army Major Nidal Hasan shot and killed thirteen soldiers and civilians at the Fort Hood, TX, Army installation. On December 25, 2009, Umar Farouk Abdulmutallab concealed explosives in his undergarments and attempted to bomb Northwest Airlines Flight 253. Both terrorists are tied to al-Qaeda in the Arabian Peninsula, located in Yemen. While Major Hasan will likely face trial before a military commission, Abdulmutallab has received *Miranda* warnings and will be prosecuted in a federal civilian court.

Committee Republican Actions: In the immediate aftermath of the Christmas Day attack, Committee Republicans sought to hold hearings on both the attack and the broader issue of the nation’s homeland security and intelligence sharing programs. Initially, the Committee’s Majority declined to open an investigation into the attack, suggesting that other House bodies were better suited lead an investigation.⁶⁶ Committee Republicans joined together to highlight the Committee’s longstanding involvement with and unique ability to fully investigate the issues related to the recent terrorist attacks without the same jurisdictional concerns faced by other Committees and continued to press for action. Recently, the the Committee’s Majority and Minority jointly wrote Secretary of State Hillary Clinton asking for all information about the policies and procedures that failed to prevent Mr. Abdulmutallab from entering the United States, and Majority staff has indicated they will partner with the Minority in a full investigation of the incident.

The Committee’s Minority also has sent a number of letters to Administration officials requesting documents and briefings on a variety of topics for which hearings have not yet been held. For example, Committee Republicans have asked for the President's National Security Strategy Plan, which the President is obligated to present to Congress within the first 180 days of taking office.⁶⁷ The Administration failed to meet Congress' deadline and has not complied with the Committee's request. Committee Republicans have also asked the Administration to justify its decision to close the

⁶⁵ Letter from Director Robert M. Groves to Ms. Maude Hurd (Sep. 11, 2009).

⁶⁶ See Letter, Chairman Edolphus Towns to Ranking Member Darrell Issa, January 6, 2009. Available at <http://republicans.oversight.house.gov/images/stories/Letters/20100106towstoissaonhomelandhearings.pdf>

⁶⁷ See Press Release, “120 Days Overdue – Mr. President where is your National Security Plan?” November 6, 2009. Available at

http://republicans.oversight.house.gov/index.php?option=com_content&view=article&id=357%3A120-days-overdue--mr-president-where-is-your-national-security-plan&catid=27&Itemid=29

Guantanamo Bay detainee facilities, relocate and prosecute terrorists on American soil, and afford them Constitutional protections.

Issue 10: Committee Republican Oversight of Administration Email and Archiving Issues

Loss of Sensitive Data from the National Archives' College Park Facility

Background: At some time between October 2008 and March 2009, a hard drive containing national security information went missing from the National Archives and Records Administration (NARA) College Park facility. The drive contains one terabyte of data derived from records from the Clinton presidency. Data on the drive includes more than 100,000 social security numbers (including that of former Vice President Al Gore's daughter), contact information, including addresses, for various Clinton administration officials, Secret Service and White House operating procedures, event logs, social gathering logs, political records and other highly-sensitive information. The full extent of the contents of the drive is still being investigated.

The hard drive was moved from a "secure" storage area to a workspace while it was in use as part of a process to convert the Clinton Administration records to digital files. The drive was left unsecured on a shelf above a workstation. At least 100 "badge-holders" had access to the area where the server was left unsecured. NARA's IG told Committee staff that in addition to those with official access to sensitive material, janitors, visitors, interns and others passed through the area where the drive was being kept. The IG described the workspace as an area that Archives employees pass through on their way to the bathroom. The door is often left open for ventilation.

Committee Republican Actions: Committee Republicans toured NARA's College Park facility and observed the area from which the drive was removed. NARA staff explained that the drive was being stored in its original packaging, which made the value of the hardware obvious. NARA staff confirmed the workspace where the drive was being stored is insecure – accessible to personnel without clearance and typically left with the doors open. Committee staff were left with the impression that a motivated criminal would be able to remove sensitive materials from the Archives with little to no resistance from the security measures in place.

On May 21, Acting Archivist Adrienne Thomas was scheduled to appear at a subcommittee hearing to discuss the data loss. She failed to appear at the hearing, instead opting to attend President Obama's televised address about Guantanamo Bay delivered from the Archives. Because of Ms. Thomas's inattention to this urgent matter, Committee Republicans urged the President to name a permanent Archivist as soon as possible. Days before the subcommittee's July 30 hearing on the matter, the President nominated David Ferreiro as Archivist of the United States.

White House Electronic Health Reform Tip Box and Unsolicited Emailing

Background: On August 4, 2009, the White House asked Americans to forward to a White House email address “fishy” emails or other information about health insurance reform, posting on its blog the following request:

There is a lot of disinformation about health insurance reform out there, spanning from control of personal finances to end of life care. These rumors often travel just below the surface via chain emails or through casual conversation. Since we can’t keep track of all of them here at the White House, we’re asking for your help. If you get an email or see something on the web about health insurance reform that seems fishy, send it to flag@whitehouse.gov.⁶⁸

Later in August, reports emerged that many Americans who had not signed up to receive electronic communications from the Administration were receiving White House emails regarding the Administration’s health reform efforts, including statements urging support of those efforts. The Administration at first denied that any person who had not sought information from the White House was receiving Administration emails.

Committee Republican Actions: On August 17, 2009, the Minority sent a letter to the White House expressing concern, stating that “fear has been expressed that the White House was asking neighbors to inform on neighbors in a government led data collection effort,” and that there was concern “about the possibility that political email address lists are being used for official purposes.” Later that same day, the Administration announced that they had disabled the “fishy” reporting electronic tip box.⁶⁹ The Administration claimed that Americans may have been subscribed to White House email lists without their knowledge by outside political groups.⁷⁰ Finally, on August 22, 2009, the White House released the name of a private company that had been hired to distribute mass emails.⁷¹

Issue 11: Committee Republican Oversight of District of Columbia Issues

DC AIDS Program Abuses

Background: The District of Columbia has the highest rate of AIDS cases in the nation. With more than 15,000 cases of HIV or AIDS in the District, it is estimated that 3% of D.C. residents over the age of 12 are living with HIV or AIDS. The District of Columbia receives over \$100 million per year to cope with the disease, the lion's share of those dollars coming from the federal government.

⁶⁸ Mike Allen, “White House Disable E-tip Box,” *Politico*, Aug. 17, 2009. Available at <http://www.politico.com/news/stories/0809/26188.html>.

⁶⁹ *Id.*

⁷⁰ Philip Elliott, “White House Says It Did Send Unwanted E-mails,” *Associated Press*, Aug. 17, 2009. Available at http://www.breitbart.com/article.php?id=D9A4VBL80&show_article=1

⁷¹ Major Garrett and Eric Shawn, “White House Reveals Identity of Firm That Sent Unsolicited E-Mails on Health Reform,” *Fox News*, Aug. 22, 2009. Available at <http://www.foxnews.com/politics/2009/08/22/white-house-reveals-identity-firm-sent-unsolicited-e-mails-health-reform/>

The *Washington Post* reported in October 2009 that millions of dollars appropriated to the District to prevent the disease and treat AIDS patients have been lost, wasted, and stolen by unscrupulous charities and fraudulent nonprofits.⁷² According to the article, more than \$25 million from the DC Department of Health's HIV/AIDS, Hepatitis, STD, and TB Administration have gone to nonprofits "marked by questionable spending, a lack of clients, or lapses in record-keeping and care."⁷³ In one case, according to the article, half a million dollars went to a housing program run by a purported AIDS nonprofit group whose director had been convicted on theft, drug, and forgery charges. Although the group's grant was terminated after investigation by the D.C. Inspector General's Office, repayment was never sought.

Committee Republican Actions: In response to the article, Committee Republicans wrote the Committee's Majority urging a bipartisan investigation in the DC AIDS program abuses, citing the Committee's jurisdiction over the District of Columbia. Thus far, the Committee's Majority has shown only a limited interest in launching a bipartisan investigation. This reluctance seems to be based at least in part on one Democratic Committee Member's arguments in favor of Washington, DC "home rule" principles. While initiating an investigation of its own, Committee Republicans will continue to seek a partnership with the Majority to provide appropriate, rigorous oversight of the District of Columbia and its programs to ensure that the sickest and poorest in the nation's capital are receiving the care they need instead of funds being wasted or abused.

DC Voting Rights Act

Background: The District of Columbia House Voting Rights Act (H.R. 157) would expand the size of the House of Representatives from 435 to 437 members, adding a member from the District of Columbia and a member from the next state in line to gain a Representative based on U.S. Census numbers, which is currently the state of Utah. The Department of Justice's Office of Legal Counsel reached a legal determination that the legislation is unconstitutional. However, disregarding that determination, Attorney General Eric Holder sought a second opinion from the Office of the Solicitor General.

Committee Republican Actions: Committee Republicans wrote to Attorney General Holder asking him to produce all documents relevant to the Attorney General's decision to politicize the professional legal judgment of Justice Department lawyers. The Justice Department refused to produce the documents requested by Ranking Member Issa. Following requests from Committee Republicans, the Majority refused to use the Committee's subpoena authority to demand the information necessary to conduct further oversight.

⁷² See Debbie Cenziper, "Staggering Need, Striking Neglect," *The Washington Post*, (October 18, 2009). Available at <http://www.washingtonpost.com/wp-dyn/content/article/2009/10/17/AR2009101701984.html>.

⁷³ *Id.*

Elimination of D.C. School Vouchers

Background: The D.C. Opportunity Scholarship Program (OSP) was launched by Congress in 2004, with bipartisan support, to give economically disadvantaged District of Columbia children the chance for a quality education outside of public school classrooms plagued by problems. The program has been proven highly successful by every known measurement, including academic improvement, personal safety, and parental satisfaction. A strong coalition of academics,⁷⁴ journalists⁷⁵ and civic leaders⁷⁶ are supporting reauthorization of OSP in the House and Senate. However, the Obama Administration has proposed ending the scholarship program for new applicants.

Committee Republican Actions: Committee Ranking Member Issa, along with Education and Labor Committee Ranking Member John Kline (R-MN) and House Republican Leader John Boehner, has introduced legislation reauthorizing the program. In addition, the Minority sent a letter to Chairman Towns asking for a full Committee hearing on OSP's reauthorization.

⁷⁴ See the testimony of Bruce Stewart, Head of Sidwell Friends School, before the Senate Committee on Homeland Security and Government Affairs, May 13, 2009.

⁷⁵ See Wall Street Journal editorial board, "D.C. Council Wants Vouchers" from July 13, 2009; Washington Post editorial board, "Vouching On Vouchers" from May 14, 2009; and Washington Times editorial board, "No choice in DC: Congress supports vouchers for cars but not schools," from May 9, 2009.

⁷⁶ See D.C. Council letter to Education Secretary Arne Duncan and DC Mayor Adrian Fenty, dated June 22, 2009.

Appendix

Reports Issued by the Committee on Oversight and Government Reform Minority

All reports available at <http://republicans.oversight.house.gov/>

- Doubling the National Park Service's Annual Appropriation – the Unique Influence of the National Parks Conservation Association (February 2009)
- Friends of Angelo: Countrywide's Systematic and Successful Effort to Buy Influence and Block Reform (March 2009)
- De-Targeting the Stimulus: States Diverting Medicaid Funds Away from Helping Poor, Protecting Health Care Jobs (April 2009)
- Comprehensive Staff Analysis of the Economic Impact of the Waxman/Markey Cap-and-Trade Legislation (April 2009)
- Census History: Counting Every Person Once, Only Once and in the Right Place (May 2009)
- The Role of Government Affordable Housing Policy in Creating the Global Financial Crisis of 2008 (July 2009)
- Justice or Avarice: The Misuse of Litigation to Harm Consumers (July 2009)
- Is Acorn Intentionally Structured as a Criminal Enterprise? (July 2009)
- Medicare Experience Suggests Americans Should Expect Massive Fraud with Nationalized Health Care (August 2009)
- House Oversight Committee Minority Holding Administration Accountable for Promises on Transparency (September 2009)
- Teapot Dome Revisited – Dereliction of Fiduciary Duty at the Interior Department (October 2009)
- The Politics of EPA's Endangerment Finding (October 2009)
- The Firing of the Inspector General for The Corporation for National and Community Service (November 2009)
- Public Disclosure as a Last Resort: How the Federal Reserve Fought to Cover Up the Details of the AIG Counterparties Bailout from the American People (January 2010)
- The Failure to Address the Costs of Defensive Medicine in Health Care Legislation (February 2010)
- Follow the Money: ACORN, SEIU and their Political Allies (February 2010)

About the Committee

The Committee on Oversight and Government Reform is the main investigative committee in the U.S. House of Representatives. It has authority to investigate the subjects within the Committee's legislative jurisdiction as well as "any matter" within the jurisdiction of the other standing House Committees. The Committee's mandate is to investigate and expose waste, fraud and abuse.

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