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Congress of the United States

House of Representatives

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October 7, 2009

The Honorable Henry Paulson
The Paul H. Nitze School of Advanced International Studies
Johns Hopkins University
1740 Massachusetts Ave., N.W.
Washington, D.C. 20036

Dear Secretary Paulson:

The Committee on Oversight and Government Reform is continuing its investigation into the federal government's role in the acquisition of Merrill Lynch by Bank of America in the fall of 2008. As you know, one of the issues the Committee has examined is the payment of \$3.6 billion of bonus payments to Merrill Lynch employees. Recent developments in this investigation raise serious questions about your knowledge of these bonus payments and the completeness of your statements to Congress on this issue.

When you testified before this Committee, you had the following exchange with Rep. Cummings:

CUMMINGS: ...And I was just wondering, did you -- were you aware of the Merrill Lynch three-plus billion dollars' worth of bonuses they were about to give out when this deal came down?

PAULSON: No, I wasn't.

CUMMINGS: And when did you find out about those, that three-plus billion dollars in bonuses that the American people basically ended up paying?

PAULSON: I have -- my best memory of this was *sometime around the middle of January*, a day or so before we were putting this deal together and when we were talking about the compensation restrictions for BofA. And I'm not entirely certain, but I have a memory that someone on my staff said, and in terms of Merrill Lynch, their bonuses have already been paid. [emphasis added]

CUMMINGS: Do you think that was fair to the American people, to stockholders and -- I mean, basically, what ended up is that the American people pretty much ended up paying Merrill Lynch's three- billion-dollar-plus bonuses that were apparently given out just before this deal went through. You understand that, right?

PAULSON: Well, I do understand the bonuses were paid before the deal went through.

CUMMINGS: Do you think that's fair? And do you think that's ethical?

PAULSON: In terms of -- those are two different words.

CUMMINGS: Well, why don't we start with ethical first.

PAULSON: OK. In terms of ethical, I'm not sure I would call that unethical that Merrill Lynch paid out bonuses before the deal went through. Now, whether that is something that should have been done is another question.

CUMMINGS: Do you think it should have been done?

PAULSON: I wasn't there. I didn't make the decision. I don't think I should be judging that today.¹

However, recent evidence suggests that with regard to the bonus issue, you *were* there, you *were* given information about the projected bonus payments, and you *had an opportunity* to at least influence the decision. The Securities and Exchange Commission ("SEC") revealed in a brief in ongoing litigation with Bank of America in U.S. District Court for the Southern District of New York that the Federal Reserve and the Department of Treasury were in fact informed about the bonuses as early as December 17, 2008:

The Department of Treasury invested an additional \$20 billion in Bank of America in January 2009 pursuant to the Targeted Investment Program ("TIP"), which is designed to provide funds to institutions critical to the functioning of the financial system. The TIP investment was made following discussions [Ken] Lewis and Joe Price, Bank of America's Chief Financial Officer, held in mid-December 2008 with senior officials from the Federal Reserve and Department of Treasury concerning Merrill's losses in the fourth quarter of 2008. According to Bank of America, during those discussions Bank of America provided the Federal Reserve and Treasury officials with a Merrill financial document that included the

¹ See transcript, "Bank of America and Merrill Lynch: How Did a Private Deal Turn into a Federal Bailout? Part III" hearing of the House Committee on Oversight and Government Reform and Subcommittee on Domestic Policy, July 16, 2009.

expected VICP [bonus] expense of \$3.373 billion for 2008 as a separate line item.²

This statement was confirmed by Mr. Price in an interview with the Committee's staff.³ According to Mr. Price, although the discussions of mid-December centered on Merrill Lynch's rapidly deteriorating financial condition and Bank of America's intention to try to back out of the deal, you and other senior government officials were presented with a document on December 17th which included information about projected bonus payments to Merrill Lynch employees.⁴ Although Mr. Price could not remember if every page of the document was presented on December 17th, he was sure that he emailed the complete document (which clearly showed, in multiple locations, bonus compensation information broken down by quarter, including total expected 2008 bonuses of \$3.373 billion) to senior Federal Reserve officials on the morning of December 18th.⁵ Since we know from your testimony that the Federal Reserve and Treasury were working extremely closely and that you and Chairman Bernanke had several interactions each day during this time period, it is fair to assume that the complete document was shared with you or other senior Treasury officials.⁶ I have enclosed the document for your reference.

It is now apparent that you knew, or at least should have known, about the bonus payments to Merrill Lynch employees no later than December 18, 2008 – before the bonuses were paid, before the merger was finalized, and before you and Chairman Bernanke gave the combined company an additional \$20 billion of taxpayer money.⁷

While the appropriate regulatory agencies and courts still need to determine if Bank of America inappropriately withheld information about bonus payments from its shareholders, we now know that the company certainly wasn't hiding the information from the federal government. If you felt that the bonuses were unfair or problematic, you could have at the very least raised additional questions or formally objected before you and Chairman Bernanke gave the company an additional \$20 billion of taxpayer money. As the *Wall Street Journal* put it, "If the Fed and Treasury were fine with these payouts, and didn't demand their disclosure, perhaps Messrs. Paulson and Bernanke should be the parties in the SEC dock."⁸

² See *SEC v. Bank of America*, Memorandum of Plaintiff in Support of Entry of the Proposed Consent Judgment, US District Court, Southern District of New York, No. 09-Civ.-6829, at 17-18. Available at <http://graphics8.nytimes.com/packages/pdf/secbrief.pdf>.

³ Committee Republican staff interview of Joe Price, Bank of America's Chief Financial Officer, September 25, 2009.

⁴ *Id.* The document is labeled "Merrill Lynch & Co. 4Q08F Walkdown As of close of business December 10th, 2008." According to Mr. Price, other Federal Reserve officials joining the December 17th meeting by phone included Kevin Warsh, Jeffrey Lacker, and Randall Krosner.

⁵ *Id.*

⁶ See note 1, *supra*.

⁷ See SEC brief referenced in note 2, *supra*, at 16 ("Merrill's employees were notified about their 2008 VICP bonus on December 19, 2008 and received the cash payment on December 31, 2008, a day before the merger with Bank of America closed. VICP stock awards were made to Merrill employees in early 2009.")

⁸ See "The BofA Bonus Show," *Wall Street Journal*, September 5, 2009. Available at <http://online.wsj.com/article/SB10001424052970204731804574387044194076168.html>.

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Several months after this Committee began its investigation into the federal government's role in the purchase of Merrill Lynch by Bank of America, after multiple congressional hearings and the review of thousands of documents, we still do not know the full truth. The American people have the right to know when you became aware of the bonus payments to Merrill Lynch employees and whether you approved or objected to these payments.

In order to assist the Committee with its investigation of this issue, please provide answers to the following questions by close of business on Tuesday, October 21, 2009:

1. Were you presented with any documents on December 17, 2009, that included information about projected bonus payments to be paid to Merrill Lynch employees?
2. To your knowledge, were you or other Treasury Department staff given any documents on or after December 18, 2009, that included information about projected bonus payments to be paid to Merrill Lynch employees?
3. When did you initially become aware of projected bonus payments to be paid to Merrill Lynch employees?
4. Did you at any point raise concerns with Bank of America officials about projected bonus payments to be paid to Merrill Lynch employees?
5. Did you at any point direct anyone at the Treasury Department to raise concerns with Bank of America officials about projected bonus payments to be paid to Merrill Lynch employees?
6. Did you at any point discuss with anyone from Bank of America or Merrill Lynch the issue of disclosure of the projected bonus payments to be paid to Merrill Lynch employees?

If you have any questions regarding this request, please contact Christopher Hixon or Brien Beattie of the Committee staff at (202) 225-5074.

Sincerely,



Darrell Issa
Ranking Member

cc: The Honorable Edolphus Towns, Chairman

Enclosure