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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

April 7, 2015

VIA ELECTRONIC TRANSMISSION

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Attorney General Holder:

According to the *New York Times*, the Department of Justice (DOJ) has invoked executive privilege over certain documents relating to the details of an agreement (the “Third Amendment”) between Fannie Mae, Freddie Mac and the Treasury Department.¹ However, it is unclear whether the President has actually asserted the privilege.

The Third Amendment, which occurred in August 2012, altered the government’s conservatorship over Fannie and Freddie and resulted in all profits being captured by Treasury. News reports note that as of last December, Treasury received \$225.4 billion with a potential addition of \$153.3 billion through fiscal year 2025 as a result of the deal.²

Fannie and Freddie shareholders sued in July 2013. According to the *New York Times*, in the course of litigation, the DOJ has imposed broad assertions of privilege on 669 documents it may otherwise be required to produce.³ Of these documents, executive privilege is listed as the reason for withholding 45 of them.⁴

¹ Gretchen Morgenson, *After the Housing Crisis, a Cash Flood and Silence*, NEW YORK TIMES (February 14, 2015).

² *Id.*

³ *Id.*

⁴ *Id.*

The Federal Housing and Finance Agency (FHFA), created in 2008, has regulatory authority over both Freddie and Fannie⁵ and the statutory duties include the requirement that the FHFA ensure that each regulated entity operates in a safe and sound manner, including maintenance of adequate capital and internal controls.⁶

The taxpayer has a right to know what has transpired. But, instead of transparency, there appears to be an invocation of executive privilege. If true, this is cause for concern.

Accordingly, please provide the following:

1. Has the President personally invoked executive privilege over documents related to the Fannie Mae, Freddie Mac and Treasury Third Amendment agreement? If so, when? If not, why are DOJ attorneys citing that privilege as a reason to withhold those documents?
2. Does the Third Amendment cause a breach of any of FHFA's statutory duties to ensure that each regulated entity operates in a safe and sound manner? Please explain.
3. During the negotiation of the Third Amendment between Treasury and FHFA, did DOJ communicate with any of the entities involved regarding its legality? If so, please describe those communications in detail.
4. Under what legal authority was the Third Amendment authorized?
5. Prior to litigation, did DOJ discuss with Treasury and/or FHFA the need to assert privileges, including executive privilege, over certain documents?

Please number your responses according to their corresponding questions no later than April 20, 2015. If you have any questions, please contact Josh Flynn-Brown of my Committee staff at (202) 224-5225. Thank you for your cooperation in this important matter.

Sincerely,



Charles E. Grassley
Chairman
Committee on the Judiciary

⁵ 12 U.S.C. §4511.

⁶ 12 U.S.C. §4513.