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E Holder ltr to G Cohen re Hearing One Follow-Up

Ronald Weich

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U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

April 16, 2010

The Honorable Phil Angelides
Chairman
Financial Crisis Inquiry Commission
1717 Pennsylvania Avenue, NW, Suite 800
Washington, D.C. 20006

Dear Mr. Chairman:

Enclosed please find responses to questions for the record stemming from the appearance of Attorney General Eric Holder and Lanny Breuer, Assistant Attorney General for the Criminal Division, before the Commission at a hearing on January 14, 2010. We hope that this information is of assistance to the Commission.

Please do not hesitate to call upon us if we may be of additional assistance. The Office of Management and Budget has advised us that there is no objection to submission of this letter from the perspective of the Administration's program.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald Weich".

Ronald Weich
Assistant Attorney General

Enclosure

**Department of Justice Responses to Questions for the Record
Financial Crisis Inquiry Commission Hearing
January 14, 2010**

1. Did the DOJ perform an internal review, audit or investigation regarding any failures by the DOJ in light of the financial crisis? If so, please provide the internal review, audit or investigation.

The Department of Justice has not conducted a formal internal review, audit or investigation along the lines you describe; however, we are continually evaluating whether we have the tools, resources, and strategies necessary to be effective in combating financial crimes. The Department provided extensive technical assistance to Members of Congress on the legislation that became the Fraud Enforcement and Recovery Act of 2009 ("FERA"). FERA provided useful tools for criminal and civil enforcement against financial fraud. It also provided much needed resources for investigators, agents, analysts, and prosecutors to address financial crimes. In addition, we continue to develop strategies to address financial crimes related to the current financial crisis and to prevent fraud during the government recovery effort. Specifically, we recommended the creation of the Financial Fraud Enforcement Task Force ("Task Force") to better coordinate our enforcement efforts throughout the executive branch and with state and local law enforcement.

2. Does the Department of Justice contemplate extending membership in the new federal Financial Fraud Enforcement Task Force to state securities regulators and state attorneys general? Why or why not?

The Department of Justice is committed to fostering active participation by state and local law enforcement in the newly formed Task Force. We recognize that the mission of the Task Force requires close coordination with state attorneys general and regulatory authorities and we are taking steps to make sure they are integrated into the work of the Task Force.

Indeed, the National Association of Attorneys General is a participant in the Task Force. State attorneys general serve as co-chairs of the Mortgage Fraud and Recovery Act Fraud Working Groups of the Task Force. In addition, representatives of the National District Attorneys Association have been invited to participate in the Task Force. We look forward to working closely with them. The Task Force also includes a Securities and Commodities Fraud Working Group that is co-chaired by the Department of Justice, the Securities and Exchange Commission, and the Commodities Futures Trading Commission. We recently invited the North American Securities Administrators Association to participate in the Task Force and anticipate that it will be an active member of this working group.

3. What steps were taken by the DOJ in the wake of the September 2004 FBI report warning of an ". . . epidemic of mortgage fraud coursing across this country?"

At an October 2004 hearing before the House Financial Services Subcommittee on Housing and Community Opportunity, then-FBI Criminal Investigative Division Assistant Director Chris Swecker warned of the potential impact mortgage fraud and other significant financial crimes could have on our nation's economy. Even as Committee Members first heard of the impending crisis, though, the Department of Justice and the Federal Bureau of Investigation were working hard to cultivate partnerships, develop information on fraud schemes, and establish threat-based intelligence-driven task force programs which are ably combating this problem still today.

In June 2004, AD Swecker authorized the consolidation of the mortgage fraud program into the Financial Crimes Section of the FBI's Criminal Investigative Division. At that time, the FBI began working towards an overall strategy to address mortgage fraud on a proactive basis utilizing partnerships with federal agencies, state and local law enforcement, regulatory bodies, and private industry.

In 2004, the FBI also launched its first Financial Institution Fraud national takedown, which was known as Operation Continued Action. During this takedown, over 150 individuals were charged through informations and indictments. The losses suffered in the cases were in excess of \$3 billion. Although this takedown included all financial institution fraud cases, numerous mortgage fraud investigations were also included, which at the time did not have a separate investigative classification.

In 2005, the FBI, along with the Housing and Urban Development-Office of Inspector General (HUD-OIG), Internal Revenue Service (IRS), U.S. Postal Inspection Service (USPIS), and DOJ announced the results of an initiative to combat the growing epidemic of mortgage fraud. This operation, commonly referred to as Operation Quick Flip, demonstrated to the public law enforcement's recognition of the mortgage fraud threat and the federal government's effort to combat mortgage fraud. This operation ran from July 5, 2005, through December, 14, 2005, and recorded 156 indictments, 81 arrests, and 89 convictions. The losses resulting from these mortgage fraud cases exceeded \$600 million.

In 2007, the FBI created new investigative classifications specifically for mortgage fraud cases in order to track, analyze, and report on mortgage fraud related matters in a more effective and efficient manner. These new mortgage fraud classifications differentiate not only that a case is mortgage fraud related, but also the type of victim (e.g. federally insured institution, government agencies, other entities) and the total estimated dollar losses associated with the investigation. With separate and distinct mortgage fraud classifications, the FBI is able to monitor the resources dedicated to combat mortgage fraud. Since 2007, the FBI has also tripled both the number of Special Agents and analysts dedicated to investigating mortgage fraud.

In addition, the FBI has implemented a number of innovative and proactive methods to detect and combat mortgage and other significant financial frauds. An example of this proactive approach was the development of an analytical computer application to identify property flipping transactions. The original concept, which AD Swecker referenced in his testimony, has since evolved into a national FBI initiative. Through the employment of statistical correlations and other advanced computer technology, this particular tool allows the FBI to search for companies and persons demonstrating patterns of alleged illegal property flipping activity. This database was rolled out to all FBI field offices in January 2008, with live property data. This analytical tool assists field offices with the identification of mortgage fraud criminal enterprises.

In 2008, the FBI established Mortgage Fraud Task Forces and Working Groups to enhance federal, state, and local law enforcement resource capabilities. These efforts acted as a force multiplier; an expertise enhancement; a venue for intelligence and information sharing; and expanded the jurisdictional boundaries for law enforcement. Working together, the law enforcement agencies could share not only intelligence but the ability to prosecute cases across state and federal prosecutive jurisdictions.

From March 1 to June 18, 2008, Operation Malicious Mortgage resulted in 144 mortgage fraud cases in which 406 defendants were charged. Charges in Operation Malicious Mortgage cases were brought in every region of the United States and in more than 50 judicial districts by U.S. Attorneys Offices based upon the law enforcement and investigative efforts of participating law enforcement agencies. The FBI estimates that approximately \$1 billion in losses were inflicted by the mortgage fraud schemes employed in these cases.

In 2009, Operation Bad Deeds, a joint federal, state, and local law enforcement operation targeting mortgage fraud crimes, resulted in charges against 41 industry insiders. These bankers, lawyers, brokers and accountants allegedly engaged in various mortgage fraud scams that collectively defrauded lenders out of more than \$64 million in home mortgage loans on more than 100 properties across New York State.

In September of 2009, the FBI also initiated the Financial Intelligence Center (FIC). The FIC's mission is to provide tactical intelligence analysis of intelligence collected in data, data sets, and databases, generated from merging technology and data exploitation techniques, to create investigative targeting packages for dissemination to the FBI field offices. One of the best forms of data is the Suspicious Activity Reports obtained from the Financial Crimes Enforcement Network (FinCEN) database. The goal is to create investigative targeting packages of the most egregious criminal enterprises. The FIC is operational but is in its initial stage of development. The FIC has been working to create targeting packages to identify criminal enterprises involved in mortgage fraud.

In November of 2009, as a result of a nine-month operation, the FBI in coordination with the U.S. Attorney's Office in the Middle District of Florida, announced the Mortgage Fraud Surge. The operation, which revealed approximately \$400 million in losses, resulted in 100 indictments and informations.

For its part, the FBI continues to participate on both the national Mortgage Fraud Working Group (MFWG) and the national Bank Fraud Working Group (BFWG). The BFWG has been in existence for over 25 years. The MFWG was initiated as a subgroup of BFWG in early 2007. Prior to the creation of the MFWG, a mortgage fraud was a subject addressed in the BFWG meetings. These working groups represent the collaborative effort of multiple agencies and facilitate the information-sharing process across the member agencies, as well as with private organizations. These monthly sessions provide intelligence sharing, best practices and a forum for members to voice concerns and discuss emerging trends in mortgage fraud. The FBI is also a member of the newly formed Financial Fraud Enforcement Task Force.

4. In the wake of the September 2004 FBI report warning of an epidemic in mortgage fraud, what additional information was made available by the FBI and/or other sources to the DOJ regarding mortgage fraud? What information was made available to law enforcement personnel across the United States about mortgage fraud?

Some of the best tools in the FBI's arsenal for combating financial frauds are its long-standing partnerships with federal, state and local law enforcement and regulatory agencies. These partnerships and joint investigations provide an avenue for intelligence sharing, best practices, and de-confliction of overlapping investigations. In many joint investigations, the FBI works with law enforcement officers from other federal, state, and local agencies. In joint cases, information, including evidence, is shared completely between agencies as permitted by law (e.g. grand jury secrecy laws, IRS laws). FBI agents work side-by-side with other agencies and participate jointly in operational events, including interviews, arrests, searches, and evidence analysis.

In addition to joint cases, the field office supervisors have built liaisons with local, state, and federal agencies in their territories. Cases that do not meet U.S. Attorneys' Offices' prosecutive guidelines, do not constitute a federal crime, or require the expertise of another law enforcement agency, are referred to other agencies in order to ensure all mortgage fraud complaints are appropriately addressed.

Since 2004, the Financial Crimes Intelligence Unit has published an annual mortgage fraud report. The report provides, among other things, an overview of the mortgage fraud problem, high mortgage fraud threat areas, and explanations of emerging fraud schemes. This report is available on the FBI's internal intranet website. Additionally, an unclassified version is available for the public on the FBI's external internet website. An FBI representative presents the key components of the mortgage fraud report in the national MFWG meeting each year. Copies of the report are disseminated to all members of the MFWG.

In addition to its partners in law enforcement and regulatory areas, the FBI continues to foster relationships with representatives of the mortgage industry to promote mortgage

fraud awareness. The FBI has provided training and participated in various mortgage industry conferences and seminars, including those sponsored by the Mortgage Bankers Association (MBA), the American Bankers Association, and the BITS Financial Services Roundtable.

As a training model, the FBI seeks industry experts to assist in internal training programs. For example, members of the private sector have assisted with training FBI personnel on mortgage industry practices and documentation, as well as with industry views of relevant laws and regulations. The private sector experts also assist in identifying public and private datasets available to enhance existing criminal investigations.

5. Did the diversion of 500 FBI white-collar crime investigators to the investigation of terrorist activities after September 11, 2001 inhibit DOJ's ability to investigate and prosecute mortgage fraud? If so, how did the DOJ respond?

While fewer agents are working White Collar Crime today than in 2001, the combined number of Financial Institution Fraud and Securities/Commodities Fraud personnel has actually increased since 2001, as the FBI continued to investigate financial crimes, including mortgage fraud. As Director Mueller stated before the Senate Judiciary Committee in September 2009, the FBI has undergone a significant evolution in recent years. In order to continue to address the mortgage fraud crime threat, the FBI developed strategies to address these violations with fewer resources and adapted to the country's ever changing needs. To accomplish this mission, the FBI focused its efforts on higher priority financial institution fraud matters including mortgage fraud investigations with losses of over one million dollars. This strategy allowed the FBI to re-direct resources from lower priority matters including fraud against the government with losses less than one million dollars and mass marketing matters to address this emerging threat.

The FBI has also used intelligence collection as a means to better understand the threats of financial frauds. The analysis of this intelligence has led to the identification of emerging financial trends and threats. This intelligence has afforded the FBI the ability to strategically place resources into the areas identified as having the greatest threat, allowing the resources to focus on neutralizing the threat in those field offices.

In fighting crime, the FBI continues to focus on areas where its involvement will have a substantial and lasting impact and where the FBI has a specific skill or expertise that will contribute to the success of the operation or investigation. Often the FBI brings its expertise to joint investigations with partners in federal, state, and local law enforcement. The FBI stands shoulder-to-shoulder to combat these threats, both operationally and through the sharing of vital intelligence, in a way that was not done in the pre-9/11 world. These intelligence-based, threat-driven joint investigations allow the FBI to leverage all available resources and expertise to meet financial and other crimes head on.

The National Mortgage Fraud Team (NMFT) at FBI Headquarters has assisted with establishing Mortgage Fraud Task Forces and Working Groups across the country since

2008. Appropriations from the Asset Forfeiture Fund are utilized for the creation and enhancement of the Mortgage Fraud Task Forces.

Currently, there are 23 Mortgage Fraud Task Forces nationwide. With representatives of federal, state, and local law enforcement, the task forces are strategically placed in locations identified as high threat areas for mortgage fraud. This multi-agency model serves as a force-multiplier, providing an array of resources to address mortgage fraud schemes.

Additionally, there are 67 Mortgage Fraud Working Groups nationwide. These working groups are designed to more efficiently share and transmit industry data and intelligence information. The working groups provide a venue for participants to learn emerging trends and threats, and they provide successful techniques for combating criminal matters. Regulatory agencies and industry partners from the private sector also participate in these working groups.

As noted above, most recently, the FBI developed the Financial Intelligence Center (FIC) to investigate Mortgage Fraud, Predatory Lending, Market Manipulation, and other financial frauds. The FIC was created using the resources appropriated by Congress, through H.R. 2346, the Supplemental Appropriations Act. Its mission is to provide tactical analysis of intelligence data, data sets, and databases, by using evolving technology and data exploitation techniques, to create targeting packages to identify the most egregious criminal offenders, and to enhance current criminal investigations. In addition, the FIC responds to requests by FBI field offices to complement the field's resources to identify emerging economic threats.

6. Did the DOJ issue any warnings regarding the possible impact upon the investigation of mortgage fraud caused by the diversion of 500 FBI white-collar crime investigators to the investigation of terrorist activities?

In an effort to assist the Commission's inquiry, we have searched communications from the Executive Office of U.S. Attorneys to the 94 U.S. Attorneys' Offices regarding mortgage fraud and financial fraud. Additionally, we are currently considering other searches that may yield responsive documents or information. To the extent that we discover responsive documents or information, we will discuss with Commission staff whether the documents or information may assist the Commission's inquiry.

7. Does the DOJ have nationwide estimates of the amount of mortgages that were tainted by fraud, either by number or dollar amount?

The Department does not have estimates of the amount of mortgages that were tainted by fraud. It does have certain information about the number of reports and complaints of suspected fraud, though it is important to note that (1) a report or complaint does not necessarily mean that there was in fact fraud, and (2) mortgages may be tainted by fraud that never result in a report, complaint, or detection. The FBI compiles data on Mortgage Fraud through Suspicious Activity Reports (SARs) filed by financial institutions through

the Financial Crimes Enforcement Network (FinCEN), and through reports generated by the Department of Housing and Urban Development (HUD) Office of Inspector General (OIG). The FBI also receives and shares information pertaining to Mortgage Fraud through its national and regional working groups, as well as complaints from the industry at large.

While a significant portion of the mortgage industry is devoid of any mandatory fraud reporting, and there is presently no central repository to collect all mortgage fraud complaints, SARs from financial institutions have indicated a significant increase in mortgage fraud reporting. For example, during Fiscal Year (FY) 2008, mortgage fraud SARs increased more than 36 percent to 63,173. The total dollar loss attributable to mortgage fraud is unknown. Only 7 percent of SARs in FY 2008 report dollar loss amounts due to the time lag between identifying a suspicious loan and liquidating the property through foreclosure and then calculating the loss amount. Those 7 percent report losses total more than \$1.5 billion. In FY 2009, 67,190 mortgage fraud SARs were filed and through January 31, 2010, 24,121 mortgage fraud SARs have been filed.

8. Please provide the number of Suspicious Activity Reports ("SAR") that involved mortgage fraud from 2001 to the present, a breakdown by region for the SARs, the number of mortgage loans those SARs included, and how many of the SARs resulted in prosecutions.

Suspicious Activity Reports ("SARs") are filed with FinCEN, not with the Department. Although FinCEN provides the Department with access to SARs, we do not "receive" those reports or maintain statistics regarding those SARs to which we have been granted access. The Department uses SAR data in various ways to generate investigative leads, identify trends, assess risks, and focus resources. Because the reports themselves are filed with FinCEN, not with the Department, FinCEN systematically tracks and analyzes SAR filings. In an effort to assist the Commission, however, we previously produced several FinCEN reports that analyze SARs, including the nature of the SARs. *See* Bates Nos. FCIC_REQ_A000000057-241.