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ONE HUNDRED FOURTEENTH CONGRESS

Congress of the United States

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COMMITTEE ON THE JUDICIARY

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January 10, 2017

The Honorable Loretta Lynch
Attorney General
Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Lynch,

Federal law requires each agency to preserve official records documenting that agency's "policies, decisions, procedures and essential transactions."¹ I ask that you give special attention to preserving records pertaining to the Justice Department's settlement practices. Of particular interest are DOJ's pursuit, since 2013, of civil settlements that provide for or direct payments to non-victim third-parties, DOJ's policies and practices relating to the settlement and administrative processing of class actions, and, more generally, cases in which payment was sought from the Judgment Fund, including DOJ's efforts to settle with insurers claiming "risk corridor" payments under the Patient Protection and Affordable Care Act.

As you know, a Judiciary Committee investigation has revealed that, in just the last two years, DOJ has directed nearly \$1 billion to activist groups, entirely outside of Congress's spending and oversight authority. While the Committee has inspected certain communications in connection with that investigation, the set of relevant documents has since expanded, because DOJ has refused to respect Congress's bipartisan concerns and has instead persisted in the practice of providing for or directing third-party payments.

For example, in June 2016, the Environment and Natural Resources Division announced a settlement requiring Volkswagen to pay \$2 billion to increase the use of electric vehicles. This spending has not been justified by the Department as a mitigation payment, because the settlement states explicitly that a separate \$2.7 billion "mitigation trust" payment would "fully mitigate" the pollution that Volkswagen caused. Rather, DOJ has used the settlement to fund the current Administration's electric vehicle initiative after Congress has twice refused to pay for it.

¹ 44 U.S.C. § 3301.

The Committee is also concerned about the handling of claims against the United States. For example, a *New York Times* exposé revealed that, in 2010, senior administration officials orchestrated a billion-dollar class action settlement over “vehement objections” of career attorneys, who insisted there was no federal liability.² Nevertheless, this Committee still knows very little about the circumstances surrounding this settlement and others like it.

While the Judgment Fund has been used to pay for many of these class action settlements, its consideration or use in other contexts also has received increased media attention.³ The Judgment Fund, for example, is being considered as a source of funds to pay insurers for amounts allegedly owed to them for their participation in the Affordable Care Act’s “risk corridor” program, despite Congress’ action to preclude the use of taxpayer funds for that purpose and at least one federal court ruling that no money is owed.⁴ The Judgment Fund’s use to pay the interest in a recent settlement with Iran has also raised concerns.

As bills to address these abuses are pending, it is important that the public have a full picture of the troubling practices that have caused Members to offer and support legislation addressing them. Accordingly, it is imperative that the Department preserve all records pertaining to its settlement practices regarding third-party payments, class action settlements negotiated by DOJ since 2008, and DOJ’s use of the Judgment Fund, including, but not limited to, efforts to settle with insurers claiming they are owed risk corridor payments.

Thank you for your cooperation. If there are any questions regarding this letter, please have your staff contact Daniel Huff or John Coleman of the House Judiciary Committee staff at (202) 225-3951.

Sincerely,



Bob Goodlatte
Chairman
House Judiciary Committee

² Sharon LaFraniere, *U.S. Opens Spigot After Farmers Claim Discrimination*, N.Y. TIMES (Apr. 25, 2013), <http://www.nytimes.com/2013/04/26/us/farm-loan-bias-claims-often-unsupported-cost-us-millions.html>.

³ See e.g., Amy Goldstein, *Obama administration may use obscure fund to pay billions to ACA insurers*, Wash. Post (Sept. 29, 2016), https://www.washingtonpost.com/national/health-science/obama-administration-may-use-obscure-fund-to-pay-billions-to-aca-insurers/2016/09/29/64a22ea4-81bc-11e6-b002-307601806392_story.html?utm_term=.ca33780bf063; Claudia Rosett, *Riddle of \$1.3 Billion for Iran*

Might Relate to 13 Outlays of Exactly \$99,999,999.99, N.Y. Sun (Aug. 22, 2016), <http://www.nysun.com/foreign/riddle-of-13-billion-for-iran-might-be-solved-by/89692/>.

⁴ Sally Pipes, *ObamaCare's risk corridor corruption never ends*, The Hill (Dec. 12, 2016), <http://thehill.com/blogs/congress-blog/healthcare/309902-obamacares-risk-corridor-corruption-never-ends>.