

**Congress of the United States**  
**Washington, DC 20515**

November 16, 2009

The Honorable Timothy F. Geithner  
Secretary of the Treasury  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, D.C. 20220

Dear Secretary Geithner:

The Department of the Treasury recently released internal documents pursuant to a Freedom of Information Act (FOIA) request, which asked for “records ... which might originate out of or be managed in whole or in part by Treasury” involving “‘cap-and-trade’ schemes that deal with ‘carbon,’ carbon ‘dioxide,’ or ‘greenhouse gases.’”<sup>1</sup> The request asked for all relevant records since August 1, 2008. In response to this request, Treasury initially released five heavily redacted memoranda, although unredacted copies were subsequently released. Given the scope of the request and the prominent role played by the Treasury Department on climate change policy, we are skeptical that these five memoranda represent the universe of Treasury documents responsive to the FOIA request. Accordingly, we call on the agency to release all documents from August 1, 2008, until present, that relate to climate change policy.

Based on the documents Treasury did release, it is apparent the agency was pushing for greater involvement in the climate change policy debate. For example, the first paragraph of the first memo concludes: “[By] encouraging investments in clean energy sources, climate policy could increase the fiscal cost of existing energy tax provisions, such as renewable electricity and biofuel tax credits. All of this argues for strong Treasury involvement.”<sup>2</sup>

The same memo also describes the establishment of an interagency domestic policy working group by the White House Office of Energy and Climate Change, which will “turn next to developing more detailed positions on policy design.”<sup>3</sup> The memo continues, “Treasury has worked directly with the National Economic Council (NEC), the Council of Economic Advisors (CEA), and other agencies on analyses relevant to

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<sup>1</sup> Letter from Jennifer Beasley, Senior Director International Affairs, Department of the Treasury, to Christopher C. Horner, Esq., Competitive Enterprise Institute (Sept. 11, 2009) available at <http://www.openmarket.org/wp-content/uploads/2009/11/FOIA-Cap-andTrade-2009-09-11.PDF>.

<sup>2</sup> Department of the Treasury memo, *Domestic Climate Policy*, undated, Prepared by Judson Jaffe, Deputate: IL/ILE (Environment & Energy).

<sup>3</sup> *Id.*

policy deliberations. For example, together with NEC and CEA, Treasury produced a memo informing deliberations over a national renewable electricity standard.”<sup>4</sup>

In a memo titled, *Domestic Climate Change Policy transition memo*, the author observes, “Economic costs will likely be on the order of 1% of GDP, making them equal in scale to all existing environmental regulation. Treasury plans to engage in the policy discussion to ensure these resources are spent wisely through good design.”<sup>5</sup>

In another memo prepared by Jim Kapsis, the author argues in support of the Treasury Department’s role in the climate change debate. Mr. Kapsis delves into the economic and international nature of climate change discussions by describing several financial mechanisms that are needed to coordinate with domestic and foreign governments, concluding, “As the lead U.S. agency supporting economic prosperity and financial security, Treasury is uniquely positioned to provide the executive branch with informed and credible policy options to address these issues, to implement chosen options in its areas of operational responsibility, and to communicate those choices to Congress, foreign governments, international institutions, as well as stakeholders in the business community and civil society.”<sup>6</sup>

These examples leave little doubt that additional documents exist in the Treasury Department’s possession that relate to a cap and trade policy or other carbon pricing mechanisms. In light of Treasury’s important role in developing climate change policy, and in the interest of promoting transparency, please provide our respective offices with the following:

- 1) All documents and records relating to studies and calculations conducted by or involving Treasury department officials to determine how the fiscal costs of existing energy tax provisions would be affected by the federal government’s encouragement of investments in clean energy sources.<sup>7</sup>
- 2) All documents and records in the Treasury Department’s possession relating to the interagency domestic policy working group that was established by the White House Office of Energy and Climate Change to focus on domestic energy and climate policy.<sup>8</sup>

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<sup>4</sup> *Id.*

<sup>5</sup> Department of the Treasury memo, *Domestic Climate Change Policy transition memo (Draft 2)*, November 6, 2008, author unknown.

<sup>6</sup> Department of the Treasury memo, *Treasury’s New Office of Environment and Energy*, undated, Prepared by Jim Kapsis, Deputate: IA/Environment and Energy.

<sup>7</sup> Treasury Department memo, *supra*, note 2.

<sup>8</sup> Treasury Department memo, *supra*, note 3.

- 3) All documents and records relating to the memo on the national renewable electricity standard produced by Treasury Department officials together with NEC and CEA employees.<sup>9</sup>
- 4) All documents and records relating to the Treasury Department's involvement in the design and discussion of a cap and trade program, including, "the use of auction revenue, measures to contain the program's potential costs, the design of environmentally sound offset provisions, the design and oversight of markets for allowance trading, and measures to address international competitiveness concerns arising from impacts on energy prices,"<sup>10</sup> and policies concerning renewable electricity and fuel standards.
- 5) All documents and records related to the development of domestic climate policy, and how the Treasury Department handled the challenge of "balancing the desire to minimize climate policy's nationwide cost with concerns about mitigating disproportionate impacts on particular populations and industries."<sup>11</sup>
- 6) All documents and records relating to the economic costs of climate change regulations promulgated by EPA pursuant to its authority under the Clean Air Act.
- 7) All documents and records relating to or discussing revenue from an auction of climate allowances.
- 8) All documents and records developed on potential elements of domestic climate policy as identified in the 'workplan' of the 2008 memo.<sup>12</sup>
- 9) All documents and records from the Treasury Department's Office of Environment and Energy relating to the costs surrounding a domestic climate policy.
- 10) All documents and records relating to the establishment of a 'carbon market' in the U.S., including any reference to the creation of a 'Carbon Fed' or a 'carbon market oversight committee.'<sup>13</sup>

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<sup>9</sup> Treasury Department memo, *supra*, note 4.

<sup>10</sup> Treasury Department memo, *supra*, note 2.

<sup>11</sup> Treasury Department memo, *supra*, note 2.

<sup>12</sup> *Id.*

The Honorable Timothy Geithner

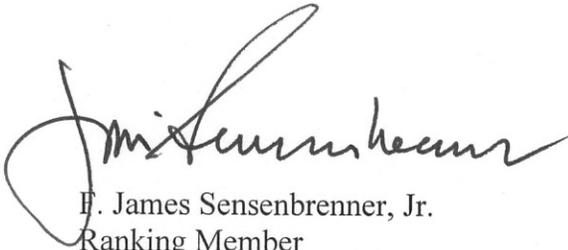
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- 11) All documents and records containing any reference to a cap and trade scheme or a carbon pricing mechanism by any definition or description.

Please reply by December 11, 2009. If you have any questions or need additional information, contact Raj Bharwani with the House Select Committee on Energy Independence and Global Warming at (202) 225-5101, or Kristina Moore with the Oversight and Government Reform Committee at (202) 225-5074.

Sincerely,



F. James Sensenbrenner, Jr.  
Ranking Member  
Select Committee on Energy Independence  
and Global Warming



Darrell Issa  
Ranking Member  
Committee on Oversight  
and Government Reform

cc: The Honorable Ed Markey, Chairman  
The Honorable Edolphus Towns, Chairman

Enclosure: Definitions of Terms

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<sup>13</sup> Department of the Treasury memo, *Transition Memo: Carbon Market Oversight Issues*, undated, author unknown.

## DEFINITIONS OF TERMS

1. The term "record" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A record bearing any notation not a part of the original text is to be considered a separate record. A draft or non-identical copy is a separate record within the meaning of this term.
  
2. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face-to-face, in a meeting, by telephone, mail, telexes, discussions, releases, personal delivery, or otherwise.
  
3. The terms "referring or relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is in any manner whatsoever pertinent to that subject.