

May 27, 2010

FOIA Request
Department of the Treasury
Disclosure Services
Washington, D.C. 20220
Fax: (202) 622-3895

Re: Freedom of Information Act Request; Expedited Processing Requested

Dear Sir/Madam:

Pursuant to the Freedom of Information Act (5 U.S.C. § 552, *et seq.*), and the regulations thereunder, I am writing on behalf of the Competitive Enterprise Institute (CEI), a non-profit 501(c)(3) public-interest group, to request access to and copies of the following documents:

1. Any and all communications with General Motors regarding the attached press release, entitled “GM Repays Treasury Loan in Full, TARP Repayments Reach \$186 billion,”¹ which was apparently released on April 21, 2010. (When this FOIA request refers to “General Motors,” that includes not only the General Motors Company, but also its agents and employees, and any law firms or public relations firms working on its behalf or hired or retained by it. By “communications,” this FOIA request refers not only to messages from General Motors but also messages sent to it. TARP refers to the Troubled Asset Relief Program).
2. Any and all communications with General Motors regarding (a) an advertisement entitled “GM Repaid Government Loan Ahead of Schedule,” or (b) any advertisement or television commercial about repayments of government loans or TARP funds by GM. (Such advertisements include, but are not limited to, any television advertisement containing the words set forth in footnote 2,² or found at YouTube at the link listed in footnote 3.³)

¹ The press release, which is attached beneath this letter, was downloaded from <http://www.ustreas.gov/press/releases/tg650.htm>.

The release bears the date of “April 21, 2010.”

² “I’m Ed Whitacre from General Motors. A lot of Americans didn’t agree with giving GM a second chance. Quite frankly, I can respect that. We want to make this a company all Americans can be proud of

3. Any and all communications with General Motors regarding the content or issuance of any press releases, or other public statements or testimony by General Motors or the Treasury Department, that announced or dealt with the repayment of government loans or TARP.
4. Any and all communications or other documents within the Treasury Department or between the Treasury Department and other agencies or entities about the attached press release.
5. Any and all communications or other documents within the Treasury Department or between the Treasury Department and other agencies or entities about the advertisement “GM Repaid Government Loan Ahead of Schedule,” or about any other advertisement discussing repayment of government loans or TARP funds.

Please provide the documents in electronic form (except for documents that do not exist in electronic form), unless it would be cheaper to obtain paper copies.

If the charge for this document will exceed \$50.00, then we request that your office waive charges other than duplication costs (and also waive duplication costs for the first 100 pages of copies) pursuant to 31 C.F.R. 1.7(a)(3)&(4). We request this on the basis that CEI is a nonprofit, tax-exempt, public-interest organization, with formal research, educational, and publication functions as part of its mission, and because release of these records will serve the public interest by contributing significantly to the public’s understanding of government operations, how taxpayer money is spent, and how those conducting important research likely to influence public policy and regulatory decisions and public health were vetted or selected. This FOIA request is not for commercial use.⁴

If our fee waiver is denied, we are willing to pay up to \$100.00 plus duplication costs, and in the event of any appeal as appropriate and regardless of that outcome or your response to this fee waiver request, we request the search and document production proceed in the interim. (If there are any such charges, please provide an invoice for the time incurred and cost for each document for which more than \$15.00 is sought).

again. That’s why I’m here to announce we have repaid our government loan, in full, with interest, five years ahead of the original schedule. But there’s still more to do. Our goal is to exceed every expectation you’ve set for us. We’re putting people back to work: designing, building and selling the best cars and trucks in the world, with our 100,000 mile, 5-year Powertrain Warranty to guarantee the quality and the unmatched live-saving technology of OnStar, to help keep you safe. From new energy solutions to the designs of tomorrow, we invite you to take a look at the new GM.”

³ <http://www.youtube.com/watch?v=SSNPFVLIWjI>

⁴ Nor would it primarily further or advance any commercial interest. Also, CEI is not a trade association.

CEI's interest in the documents springs from its efforts to educate the public, scholars, and state and federal regulators on matters of government operations, and especially regarding the government's financial rescue and bailout programs.⁵ The general and policy-oriented public will benefit from the dissemination of the information requested, since CEI's professionals are widely-published about these subjects.⁶

CEI publishes that upon which it works via print and electronic media, as well as newsletters to legislators, education professionals, and other interested parties,⁷ and thus qualifies as a press entity for purposes of FOIA.⁸ Those activities are in fulfillment of CEI's mission. The information received will be disseminated through one or more of the following: a) newsletters, (b) opinion pieces in newspapers or magazines, (c) CEI's web sites which receive approximately 80,000 monthly visitors (approximately 40,000 unique),⁹ (d) in-house publications for public dissemination, (e) other electronic journals including "blogs" to which our professionals contribute, (f) local and syndicated radio programs dedicated to discussing public policy, (g) to the extent that Congress or states engaged in relevant oversight or related legislative or judicial activities find that which is received noteworthy, it will become part of the public record on deliberations of the legislative branches of the Federal and State Governments on the relevant

⁵ CEI is widely quoted in the press. *See, e.g.*, Al Neuharth, "Why Bail Out Bosses Who Messed It Up," USA Today, Nov. 21, 2008, at 23A (quoting Competitive Enterprise Institute) (available at 2008 WLNR 22235170); Bill Shea, "Agency Looks Beyond Criticism of Ads of GM Boasting About Repaid Loan," Crain's Detroit Business, May 17, 2010, at 3 (available at 2010 WLNR 10415253) (citing Competitive Enterprise Institute); William P. Hoar, "Bailing Out Scam Artists," New American, October 13, 2008, at pg. 42 (quoting Hans Bader of Competitive Enterprise Institute regarding bailouts); Mark Tapscott, "GM Named in Deceptive Advertising Complaint Filed With FTC," Washington Examiner, May 4, 2010 (www.washingtonexaminer.com/opinion/blogs/beltway-confidential/GM-named-in-deceptive-advertising-complaint-filed-with-FTC-92788939.html) (same).

⁶ *See, e.g.*, Hans Bader, "General Motors Still Losing Billions," Washington Times, April 29, 2010, at B2 (www.washingtontimes.com/news/2010/apr/29/general-motors-still-losing-billions); Hans Bader, "Where Were Liberal Dems During Bush Bailouts?," Washington Examiner, April 26, 2009, at pg. 22; Hans Bader, "GM Deliberately Tried to Deceive Americans," Washington Examiner, May 9, 2010, at pg. 29.

⁷ *See EPIC v. DOD*, 241 F.Supp.2d 5 (D.D.C. 2003) (court ruled that the publisher of a bi-weekly electronic newsletter qualified as the media, entitling it to a waiver of fees on its FOIA request); *Forest Guardians v. U.S. Dept. of Interior*, 416 F.3d 1173, 1181-82 (10th Cir. 2005) (fee waiver granted for group that "aims to place the information on the Internet"; "Congress intended the courts to liberally construe the fee waiver requests of noncommercial entities").

⁸ See the second attachment to this letter, a letter from EPA granting CEI a waiver of fees under FOIA.

⁹ *See, e.g.*, www.openmarket.org (one of several blogs operated by CEI providing daily coverage of legal and regulatory issues); www.globalwarming.org (another CEI blog).

issues. CEI is regularly cited in newspapers,¹⁰ law reviews,¹¹ and legal and scholarly publications.¹²

As provided by FOIA, I look forward to hearing from you within twenty (20) days.¹³ If you deny this request, please provide a written explanation for the denial including a reference to the specific statutory exemption on which you are relying, and provide the name and address of the person or body to whom an appeal should be directed. Also, please provide all segregable or non-exempt portions of otherwise exempt material.

Pursuant to 5 U.S.C. 552(a)(6)(E)(1) and 31 C.F.R. 1.5(e)(2)(ii), CEI also requests that Treasury expedite the processing of this request in light of the compelling need for the requested information. CEI is a non-profit engaged primarily in disseminating information it gathers from a variety of sources, including the FOIA, and seeks the information requested in this FOIA request for the express purpose of disseminating it to the public. As with other organizations that courts have found to satisfy the criteria necessary for expedition, CEI “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience.”¹⁴ Moreover, there is an urgent need for the records sought, since the value of the records will be greatly reduced if the information is not

¹⁰ See, e.g., Mona Charen, Creators Syndicate, “You Might Suppose That President Obama Has His Hands . . .,” Bismarck Tribune, June 10, 2009, at A8 (syndicated columnist quoted CEI’s OpenMarket blog); Hal Davis, “Earth’s Temperature Is Rising and So Is Debate About It,” Dayton Daily News, April 22, 2006, at A6 (citing CEI’s GlobalWarming.Org); Washington Examiner, August 14, 2008, pg. 24, “Think-Tanking” (reprinting relevant commentary from OpenMarket); Mark Landsbaum, “Blogwatch: Biofuel Follies,” Orange County Register, Nov. 13, 2007 (citing OpenMarket) (available in Westlaw news database at 2007 WLNR 23059349); Pittsburgh Tribune-Review, “Best of the Blogs,” Oct. 7, 2007 (citing OpenMarket) (available in Westlaw news database at 2007 WLNR 19666326).

¹¹ See, e.g., Robert Hardaway, “The Great American Housing Bubble,” 35 University of Dayton Law Review 33, 34 (2009) (quoting Hans Bader of Competitive Enterprise Institute regarding origins of the financial crisis that precipitated the TARP bailout program).

¹² See, e.g., Bruce Yandle, “Bootleggers, Baptists, and the Global Warming Battle,” 26 Harvard Environmental Law Review 177, 221 & fn. 272 (citing CEI’s GlobalWarming.Org); Deepa Badrinarayana, “The Emerging Constitutional Challenge of Climate Change: India in Perspective,” 19 Forham Environmental Law Review 1, 22 & fn. 119 (2009) (same); Kim Diana Connolly, “Bridging the Divide: Examining the Role of the Public Trust in Protecting Coastal and Wetland Resources,” 15 Southeastern Environmental Law Journal 1, 15 & fn. 127 (2006) (same); David Vanderzwaag, *et al.*, “The Arctic Environmental Protection Strategy, Arctic Council, and Multilateral Environmental Initiatives,” 30 Denver Journal of International Law and Policy 131, 141 & fn. 79 (2002) (same); Bradley K. Krehely, “Government-Sponsored Enterprise: A Discussion of the Federal Subsidy of Fannie Mae and Freddie Mac,” 6 North Carolina Banking Institute 519, 527 (2002) (quoting Competitive Enterprise Institute about potential bailouts in the future).

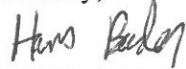
¹³ See 5 U.S.C. § 552(a)(6)(A)(i).

¹⁴ See *ACLU v. U.S. Dept. of Justice*, 321 F.Supp.2d 24, 30 (D.D.C. 2004); *EPIC v. Dept. of Defense*, 241 F.Supp.2d 5, 11 (D.D.C. 2003).

disseminated quickly, and there is growing public concern about the expenditure of billions of dollars to bail out troubled financial institutions.

The undersigned declares under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed on May 27, 2010.

Sincerely,



Hans Bader
Senior Attorney
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Washington, D.C. 20036
(202) 331-2278
hbader@cei.org



April 21, 2010
TG-650

GM Repays Treasury Loan in Full, TARP Repayments Reach \$186 Billion

GM Repayment of Remaining \$4.7 Billion in Debt Comes Five Years Ahead of Maturity Date

WASHINGTON – The U.S. Department of the Treasury today announced that General Motors (GM) has fully repaid its debt under the Troubled Asset Relief Program (TARP). GM paid the remaining \$4.7 billion of the total \$6.7 billion in debt owed to Treasury. The repayment comes five years ahead of the loan maturity date and ahead of the accelerated repayment schedule the company announced last year.

Total TARP repayments now stand at \$186 billion – well ahead of last fall's repayment projections for 2010. With this repayment, less than \$200 billion in TARP disbursements remain outstanding.

"We are encouraged that GM has repaid its debt well ahead of schedule and confident that the company is on a strong path to viability," said Treasury Secretary Tim Geithner. "This continued progress is a positive sign for our auto investment – not only more funds recovered for the taxpayer but also countless jobs saved and the successful stabilization of a vital industry for our country."

After this repayment, the remaining Treasury stake in GM consists of \$2.1 billion in preferred stock and 60.8 percent of the common equity.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

May 10, 2010

OFFICE OF
ENVIRONMENTAL INFORMATION

Mr. Hans Bader
Competitive Enterprise Institute
1899 L Street, NW, 12th Floor
Washington, DC 20036

RE: Request Number HQ-FOI-01223-10

Dear Mr. Bader:

This is in response to your request for a waiver of fees in connection with your Freedom of Information Act (FOIA), 5 U.S.C. 552 request. Your FOIA request is seeking a copy of records referred to as the Kerry-Graham-Lieberman climate bill and any attachments or exhibits.

We have reviewed your submission and based on the information you provided, we are granting your fee waiver request. The US Environmental Protection Agency (EPA) Office of Congressional and Intergovernmental Relations, within the Office of the Administrator, will be responding to your information request for the Agency.

If you have any questions concerning this determination, please contact me at (202) 566-1667.

Sincerely,

A handwritten signature in black ink, appearing to read "Larry F. Gottesman".

Larry F. Gottesman
National FOIA Officer