Congress of the United States
Washington, DC 20515

August 21, 2012

Mr. B. Todd Jones
Acting Director
Bureau of Alcohol, Tobacco, Firearms, and Explosives
99 New York Avenue, NE
Washington, DC 20226

Dear Acting Director Jones:

It has come to our attention that ATF's former Deputy Assistant Director for Field Operations, William McMahon, has recently obtained full-time employment in the private sector while remaining a full-time employee in ATF's Office of Professional Responsibility. In addition to retaining his position at ATF, McMahon is also serving as Executive Director of the Global Security and Investigations Group at J.P. Morgan in the Philippines. A senior ATF official confirmed McMahon's status during a phone call last week. This unusual arrangement is apparently designed to allow Mr. McMahon to reach retirement eligibility while on extended leave for four or five months and simultaneously begin a second career before separating from government employment.

Our most recent joint staff report on Operation Fast and Furious, released on July 31, 2012, scrutinized the role McMahon played in the operation.[1] We detailed his failure to supervise the activities of the Phoenix Field Division during Fast and Furious, his admitted failure to read important documents he was responsible for authorizing, and his false testimony regarding his role in authorizing applications for wiretaps in the case.[2] Despite these failings, ATF not only continues to keep him on its payroll, but also has authorized him to take several months of annual leave while earning a six-figure salary from ATF and an even larger salary at the same time working in the private sector.

While the legality of McMahon's outside employment and leave arrangement may arguably be unclear, the fact that ATF management chose to authorize it is not. Under any reading of the relevant personnel regulations, it appears that ATF management was under no obligation to approve this sort of arrangement. Given McMahon's outsized role in the Fast and Furious scandal, the decision to approve an extended annual leave arrangement in order to attain pension eligibility and facilitate full-time, outside employment while still collecting a full-time salary at ATF raises a host of questions about both the propriety of the arrangement and the judgment of ATF management.

On July 18, 2012, we wrote to you regarding your message in "ChangeCast #8: Choices and Consequences" and the chilling effect it might have on future whistleblowers. While we

---

[1] H. Comm. on Oversight & Gov't Reform and S. Comm. on the Judiciary Joint Staff Report, *Part I of III, Fast and Furious: The Anatomy of a Failed Operation,* 112th Congress (Jul. 31, 2012), at 161-182.
[2] H. Comm. on Oversight & Gov't Reform Hearing, *Operation Fast and Furious: The Other Side of the Border*, 112th Congress (Jul. 26, 2011), at 41.

PRINTED ON RECYCLED PAPER

appreciated the clarification you provided after we raised concerns, this decision regarding McMahon appears to send the opposite message of the one you said you intended in that ChangeCast. Rather than imposing consequences for his admitted failures, the ATF appears to be rewarding McMahon. Through this unusual arrangement, ATF has essentially facilitated McMahon's early retirement and ability to double dip for nearly half a year by receiving two full-time paychecks—one from the taxpayer and one from the private sector. Moreover, ATF did not wait for the Office of Inspector General to complete its report on Fast and Furious before approving the arrangement. This is in sharp contrast to the posture the agency has taken with whistleblowers like Special Agent John Dodson, who is told he must wait until the Inspector General's report is complete before the agency will even consider his simple request for a statement retracting the false statements made about him by agency leadership.

This is not the culture of change that you promised to bring to ATF.

In light of McMahon's outside employment at J.P. Morgan, please answer the following questions to help us better understand how this could have occurred:

1) 5 C.F.R. § 3801.106(b)(1) prohibits "outside employment that involves ... litigation, investigations, grants, or other matters in which the Department of Justice is or represents a party, witness, litigant, investigator or grant-maker." Accordingly, what steps, if any, did ATF take prior to approving the arrangement to ascertain whether McMahon's position at J.P. Morgan would involve any "litigation, investigations, grants, or other matters in which the Department of Justice is or represents a party, witness, litigant, investigator or grant-maker?"

2) If no such steps were taken, why not?

3) If such steps were taken, please describe the determination ATF made regarding the prohibition in 5 C.F.R. § 3801.106(b)(1)(iii) and the basis for ATF's determination in detail.

4) If ATF determined that McMahon's work at J.P. Morgan would be prohibited by 5 C.F.R. § 3801.106(b)(1)(iii), was the prohibition waived in accordance with section 3801.106(b)(2)?

5) If the prohibition was waived, what were the grounds for the waiver?

6) What is the current employment status of William McMahon at ATF?

7) When is William McMahon eligible for full retirement benefits from ATF?

8) When will William McMahon officially leave ATF?

9) Who at ATF gave final approval of McMahon's employment with J.P. Morgan? On what date was this approval given?

10) On what date did McMahon's outside employment commence?

11) How much ATF sick leave has McMahon used while being employed at J.P. Morgan?

12) How much ATF sick leave does McMahon have remaining?

13) How much ATF annual leave has McMahon used while being employed at J.P. Morgan?

14) How much ATF annual leave does McMahon have remaining?

15) On how many other occasions in the last three years has ATF authorized a similar arrangement involving (a) approving annual leave extending over several months, (b) an employee not yet eligible to retire prior to commencing annual leave, (c) approval of full-time employment while on annual leave, and (d) a career field where the employee's experience at ATF is directly related to the outside employment and can be reasonably seen as a motivating factor in the hiring decision? For each prior similar instance, please provide a detailed explanation of the circumstances and the reason for authorizing the arrangement.

16) When did you first become personally aware of McMahon's employment at J.P. Morgan?

17) Do you approve of this particular outside employment arrangement?

In addition, please provide the following documents:

18) All internal documents and communications relating to McMahon's scheduled separation from ATF, including memos, e-mails, and hand written notes, including, but not limited to, communications with ATF's designated agency ethics official.

19) All internal documents relating to McMahon's outside employment at J.P. Morgan, including memos, e-mails, and hand written notes, including, but not limited to, communications with ATF's designated agency ethics official.

20) A detailed timeline of the involvement of the ATF Office of Chief Counsel regarding McMahon's employment at J.P. Morgan.

21) A full copy of ATF's personnel manual, including, but not limited to, policies regarding sick leave, annual leave, and outside employment.

22) Detailed information regarding McMahon's time and attendance at ATF, including records from the WebTA program, from August 1, 2011 until the present.

Please provide the requested documents and your detailed responses to these questions as soon as possible, but no later than 5:00 p.m. on September 4, 2012. When producing documents to the Committee on Oversight and Government Reform, please deliver separate production sets to both the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building. The Committees prefer, to the extent possible, to receive documents in electronic format.

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at "any time" investigate "any matter" as set forth in House Rule X. The Senate Judiciary Committee's jurisdiction includes, *inter alia*, oversight of the Department of Justice and the agencies under the Department's jurisdiction. An attachment to this letter provides additional information about responding to the Committees' request.

If you have any questions concerning this matter, please contact Tristan Leavitt of Senator Grassley's staff at (202) 224-5225, or Henry Kerner of Chairman Issa's staff at (202) 225-5074. We look forward to receiving your response. Thank you for your prompt attention to this matter.

Sincerely,

Darrell Issa, Chairman
Committee on Oversight and
Government Reform
U.S. House of Representatives

Charles E. Grassley, Ranking Member
Committee on the Judiciary
U.S. Senate

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Member
U.S. House of Representatives, Committee on Oversight and Government Reform

The Honorable Patrick Leahy, Chairman
U.S. Senate, Committee on the Judiciary

The Honorable Michael E. Horowitz, Inspector General
U.S. Department of Justice

DARRELL E. ISSA, CALIFORNIA
CHAIRMAN

DAN BURTON, INDIANA
JOHN L. MICA, FLORIDA
TODD RUSSELL PLATTS, PENNSYLVANIA
MICHAEL R. TURNER, OHIO
PATRICK McHENRY, NORTH CAROLINA
JIM JORDAN, OHIO
JASON CHAFFETZ, UTAH
CONNIE MACK, FLORIDA
TIM WALBERG, MICHIGAN
JAMES LANKFORD, OKLAHOMA
JUSTIN AMASH, MICHIGAN
ANN MARIE BUERKLE, NEW YORK
PAUL A. GOSAR, D.D.S., ARIZONA
RAUL R. LABRADOR, IDAHO
PATRICK MEEHAN, PENNSYLVANIA
SCOTT DesJARLAIS, M.D., TENNESSEE
JOE WALSH, ILLINOIS
TREY GOWDY, SOUTH CAROLINA
DENNIS A. ROSS, FLORIDA
FRANK C. GUINTA, NEW HAMPSHIRE
BLAKE FARENTHOLD, TEXAS
MIKE KELLY, PENNSYLVANIA

LAWRENCE J. BRADY
STAFF DIRECTOR

ONE HUNDRED TWELFTH CONGRESS

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515–6143

MAJORITY (202) 225–5074
FACSIMILE (202) 225–3974
MINORITY (202) 225–5051

http://oversight.house.gov

ELIJAH E. CUMMINGS, MARYLAND
RANKING MINORITY MEMBER

EDOLPHUS TOWNS, NEW YORK
CAROLYN B. MALONEY, NEW YORK
ELEANOR HOLMES NORTON,
DISTRICT OF COLUMBIA
DENNIS J. KUCINICH, OHIO
JOHN F. TIERNEY, MASSACHUSETTS
WM. LACY CLAY, MISSOURI
STEPHEN F. LYNCH, MASSACHUSETTS
JIM COOPER, TENNESSEE
GERALD E. CONNOLLY, VIRGINIA
MIKE QUIGLEY, ILLINOIS
DANNY K. DAVIS, ILLINOIS
BRUCE L. BRALEY, IOWA
PETER WELCH, VERMONT
JOHN A. YARMUTH, KENTUCKY
CHRISTOPHER S. MURPHY, CONNECTICUT
JACKIE SPEIER, CALIFORNIA

Responding to Committee Document Requests

1. In complying with this request, you are required to produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.

2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.

3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.

4. Documents produced in electronic format should also be organized, identified, and indexed electronically.

5. Electronic document productions should be prepared according to the following standards:

   (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.

   (b) Document numbers in the load file should match document Bates numbers and TIF file names.

   (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.

   (d) All electronic documents produced to the Committee should include the following fields of metadata specific to each document;

   BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH, PAGECOUNT,CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE, SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM,

CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD, INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION, BEGATTACH.

6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.

7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.

8. When you produce documents, you should identify the paragraph in the Committee's schedule to which the documents respond.

9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.

10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.

11. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.

12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.

13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.

14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you are required to produce all documents which would be responsive as if the date or other descriptive detail were correct.

15. Unless otherwise specified, the time period covered by this request is from January 1, 2009 to the present.

16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been

located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.

17. All documents shall be Bates-stamped sequentially and produced sequentially.

18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building.

19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Schedule Definitions

1. The term "document" 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, inter-office 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 document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document 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 in a meeting, by telephone, facsimile, email (desktop or mobile device), text message, instant message, MMS or SMS message, regular mail, telexes, releases, or otherwise.

3. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.

4. The terms "person" or "persons" mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.

5. The term "identify," when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.

6. The term "referring or relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.

7. The term "employee" means agent, borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, subcontractor, or any other type of service provider.