

United States Senate
COMMITTEE ON FINANCE
WASHINGTON, DC 20510-6200

November 18, 2008

Via Electronic Transmission

The Honorable Henry M. Paulson, Jr.
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Secretary Paulson:

I am writing in connection with an investigation into the facts and circumstances leading to the Treasury Department's issuance of Notice 2008-83 ("Notice") on September 30, 2008.

The Notice changes the rules governing the deductibility of losses under section 382(h) of the Internal Revenue Code as it applies to banks. While section 382 provides Treasury the authority to issue regulations to implement section 382, Treasury's action raises significant questions about whether it exceeded implementing authority by attempting to change the law. Prior to the Notice, the amount of income that an acquiring bank could shelter in order to be able to absorb the losses of a bank it acquired was limited. Now, the Notice allows an acquiring bank to use an acquired bank's losses to shelter its income without limitation.

There has been public speculation regarding the appearance of preferential treatment created by the Treasury Department's decision to issue Notice 2008-83. The Notice, issued just days before Congress voted on the Emergency Economic Stabilization Act of 2008, appears to have had the effect of benefiting Wachovia Corporation executives and Wells Fargo. Treasury's issuance of the Notice apparently enabled Wells Fargo to take over Wachovia despite a pending bid from Citibank. Without the issuance of the Notice, Wells Fargo would have only been able to shelter a limited amount of income. Under the Notice, however, Wells Fargo could reportedly shelter up to \$74 billion in profits. It also potentially enabled Wachovia's senior executives to qualify for parachute payments that may not have been available under the Citibank deal.

The facts and circumstances surrounding the issuance of the Notice, particularly as it relates to Wells Fargo's purchase of Wachovia Corporation, raise concerns about the independence and merits of the decision. Accordingly, I request that you provide the Finance Committee with all records relating to communications pertaining to the issuance of Notice 2008-83 between Treasury officials, individuals at Wells Fargo, and/or Wachovia Corporation or their representatives.

In cooperating with the Committee's review, no documents, records, data, or other information related to these matters, either directly or indirectly, shall be destroyed, modified, removed, or otherwise made inaccessible to the Committee.

Thank you in advance for your assistance in this matter and should you wish to discuss this request in further detail please contact Ellen McCarthy and Jason Foster of my staff at (202) 224-4515. I would request that you provide this information to me by no later than December 2, 2008. Any formal correspondence should be sent electronically in PDF searchable format to Brian_Downey@finance-rep.senate.gov.

Sincerely,



Charles E. Grassley
Ranking Member