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115TH CONGRESS }
2d Session

HOUSE OF REPRESENTATIVES

{ REPORT
115-898

IN THE MATTER OF ALLEGATIONS
RELATING TO
REPRESENTATIVE MARKWAYNE MULLIN

R E P O R T
OF THE
COMMITTEE ON ETHICS



AUGUST 10, 2018.—Referred to the House Calendar and ordered to be
printed

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LETTER OF TRANSMITTAL

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ETHICS,
Washington, DC, August 10, 2018.

Hon. KAREN L. HAAS,
Clerk, House of Representatives,
Washington, DC.

DEAR MS. HAAS: Pursuant to clauses 3(a)(2) and 3(b) of rule XI of the Rules of the House of Representatives, we herewith transmit the attached report, "In the Matter of Allegations Relating to Representative Markwayne Mullin."

Sincerely,

SUSAN W. BROOKS,
Chairwoman.
THEODORE E. DEUTCH,
Ranking Member.

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115TH CONGRESS } 2d Session }	HOUSE OF REPRESENTATIVES {	REPORT 115-898
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IN THE MATTER OF ALLEGATIONS RELATING TO REPRESENTATIVE MARKWAYNE MULLIN

AUGUST 10, 2018.—Referred to the House Calendar and ordered to be printed

Ms. BROOKS, from the Committee on Ethics,
submitted the following

R E P O R T

In accordance with House Rule XI, clauses 3(a)(2) and 3(b), the Committee on Ethics (Committee) hereby submits the following Report to the House of Representatives.

I. INTRODUCTION

On December 23, 2013, the Office of Congressional Ethics (OCE) sent a referral (OCE's Referral) to the Committee in which it recommended further review of allegations that Representative Markwayne Mullin, in 2013: (1) personally endorsed goods or services provided by companies he or his family owned; (2) received outside earned income, in excess of the applicable limits, from those companies; and, (3) served as a director and/or officer of the companies for compensation.

The Committee did further review the allegations OCE referred. After an extensive review, the Committee found the allegations raised several novel questions regarding the application of House rules and other standards of conduct to a Member's efforts to maintain and promote a family business. These questions were further complicated by the procedural posture of the matter, which began when Representative Mullin consulted Committee staff after his election to the House, on November 6, 2012, in order to ensure he and his family businesses would operate consistent with the applicable rules. As Representative Mullin was working with Committee staff to bring his family businesses into compliance, OCE began its separate review, and eventually referred allegations to the Committee that related to issues which were part of the Committee's advisory process. While these issues would typically be treated as advisory matters, and the Member would be given time to bring his

businesses into compliance, OCE's Referral compelled the Committee to treat the issues as an investigative matter.

Ultimately, the Committee determined that Representative Mullin made a good faith effort to seek the Committee's informal guidance on numerous issues with respect to his family business. Although the Committee acknowledges that its informal, staff-level advice is not a categorical shield from future adverse actions, such advice is nevertheless necessary to enable the House community to successfully navigate standards of conduct. Members and their staff are encouraged to diligently request the Committee's advice and, upon doing so, may rely on the advice to engage in the vetted actions. In this case, Representative Mullin sought advice from the Committee staff about his family business, and appears to have substantially complied with most of that advice. To the extent that Representative Mullin substantially complied with the Committee's advice, it would be inequitable to subject his conduct to additional review.

The Committee did determine that an accounting error led Representative Mullin to inadvertently fail to fully follow part of the Committee's advice. Committee staff advised Representative Mullin to transfer ownership of a company to his spouse. Representative Mullin transferred the ownership, but the company failed to terminate an automatic disbursement process. That mistake led Representative Mullin to personally receive \$40,000 from the company in 2013, despite his lack of ownership. The money was paid into a joint account held by both Representative Mullin and his spouse, the rightful payee. However, the Committee found that, to bring Representative Mullin into full compliance with the Committee's guidance, he must return \$40,000 to that company.

One of the issues on which Representative Mullin sought staff-level guidance was his participation in advertisements for his family business. Representative Mullin complied with the advice he received on this issue. However, the Committee believes that, going forward, the House would be better served by different guidance with regard to Member participation in advertisements. Therefore, the Committee takes this opportunity to clarify its guidance with respect to Member participation in advertisements or other commercial endorsements of goods or services. Under no circumstances should a Member be actively involved in personally selling or endorsing goods or services in which the Member has a financial interest.¹

Accordingly, the Committee unanimously voted to adopt this Report, and take no further action. Upon publication of this Report and repayment of \$40,000 to Mullin Plumbing West Division, the Committee considers the matter closed.

II. PROCEDURAL HISTORY

The Committee received OCE's Referral on December 23, 2013. Representative Mullin then submitted a response to the Com-

¹The House has long recognized that Members may receive income from the royalties of book sales. This restriction does not change the Committee's longstanding guidance permitting Members' participation in the promotion of their own books, so long as the Member does so in their personal capacity and without using any official resources.

mittee, through counsel.² On March 24, 2014, the Committee published OCE's Referral and Representative Mullin's response, and publicly announced that it would investigate the matter pursuant to Committee Rule 18(a).

In the course of its investigation, the Committee issued multiple requests for information to Representative Mullin and to the accountants for the plumbing and home maintenance companies owned by Representative Mullin at the time of his election to Congress (collectively, the "Mullin Companies"). In response to those requests, the Committee received and reviewed thousands of pages of materials. The Committee also interviewed the Chief Financial Officer (CFO) of the Mullin Companies, the companies' accountants, and Representative Mullin, who appeared voluntarily before the Committee.

III. HOUSE RULES, LAWS, REGULATIONS, AND OTHER STANDARDS OF CONDUCT

A. PERSONAL ENDORSEMENT OF COMMERCIAL GOODS AND SERVICES

House Rule XXIII, clause 3, provides that a House Member "may not receive compensation and may not permit compensation to accrue to his beneficial interest from any source, the receipt of which would occur by virtue of influence improperly exerted from his position in Congress." In addition, the Code of Ethics for Government Service (Code of Ethics), which applies to House Members, states that a federal official should never accept "benefits under circumstances which might be construed by reasonable persons as influencing the performance of official duties."³ Other House rules and standards regarding outside employment and outside earned income may also implicate these standards of conduct.⁴ In discussing these standards of conduct, the *Ethics Manual* broadly states: "[A] Member should not undertake any outside employment that would involve the Member personally in the selling or endorsement of any goods or services."⁵

B. OUTSIDE EARNED INCOME

House Rule XXV, clause 4(d)(1), defines "outside earned income" to include "wages, salaries, fees, and other amounts received . . . as compensation for personal services." Any such earned income is subject to limits established by the Ethics in Government Act (EIGA) and House Rule XXV, clause 1(a)(1), which provide that a Member may not have outside earned income attributable to a calendar year that exceeds 15 percent of the annual rate of basic pay for level II of the Executive Schedule under section 5313 of title 5, United States Code, as of January 1 of that calendar year. For calendar year 2013, the outside earned income limit for a Member was \$26,955.⁶

²Letter from J. Baran to Representative Conaway and Representative Sánchez, Jan. 22, 2014 (*hereinafter* January 22, 2014 Submission).

³Code of Ethics for Government Service ¶5.

⁴*See, e.g.*, Code of Ethics for Government Service ¶8; House Rule XXV, cl. 2; 5 U.S.C. app. § 501(a).

⁵*House Ethics Manual* (2008) (*hereinafter Ethics Manual*) at 188.

⁶The outside earned income limit for other relevant years has been: \$26,955 (2014); \$27,225 (2015); \$27,495 (2016); \$27,765 (2017); \$28,050 (2018).

The House Rules include a provision for the treatment of payments a Member receives from a family-owned business. House Rule XXV, clause 4(d)(1)(D) states:

[I]n the case of a Member . . . engaged in a trade or business in which such individual or the family of such individual holds a controlling interest and in which both personal services and capital are income-producing factors, any amount received by the Member [is not included in the definition of outside earned income] . . . so long as the personal services actually rendered by such individual in the trade or business do not generate a significant amount of income.”⁷

The Committee has stated that if a Member receives payments from a corporation that are “essentially a return on equity [invested in the company], then it would generally not be considered to be earned income.”⁸ The *Ethics Manual* further states that “[i]n business corporations, only payment for services the Member performs is considered earned income. An increase in the value of the firm’s stock or distribution of profits is *not* considered earned income.”⁹ However, in determining whether a payment from a corporation to a Member is a “distribution” (return on equity) or compensation for personal services, “the ‘real facts’ of a particular case would control as to whether moneys received would be deemed earned income.”¹⁰ Thus, the “label or characterization placed on a . . . payment by the parties may be disregarded for purposes of the Rule,” and the payment will be considered earned income if it is “in fact attributable to any significant extent to services rendered by the Member.”¹¹

In addition to this general guidance, the Committee has provided specific guidance with respect to S-Corporations, such as the Mullin Companies. If a Member owns an S-Corporation, the “determining factor” for whether payments from the corporation to the Member are deemed earned income “is whether the Member’s . . . personal services generate significant income for the business.”¹² If the Member performs services for the business that “actually generate any significant income for the business,” then some part of the payments the Member receives from the business may be deemed earned income. “However, if the Member . . . is engaged primarily in the general oversight and management or protection of his or her investment [in a business], such services would not be deemed to generate significant income.”¹³

⁷In 2013, Representative Mullin or his spouse owned each of the Mullin Companies, which thus qualify as family-owned businesses. Based on information from Representative Mullin, it also appears that two of those companies, Mullin Plumbing, Inc. and Mullin Plumbing West Division, generated significant revenue from the sales of plumbing parts, and thus they satisfied the requirement of House Rule XXV, clause 4(d)(1)(D) that “both personal services and capital are income-producing factors [of the business].”

⁸See House Select Comm. On Ethics, Advisory Opinion No. 13 (October 1978) (herein after *Advisory Opinion No. 13*), reprinted in *Ethics Manual* at 364; *Ethics Manual* at 231.

⁹*Ethics Manual* at 231 (emphasis in original).

¹⁰*Id.*

¹¹See *Advisory Op. No. 13*.

¹²*Id.* (see *Ethics Manual* at 368).

¹³*Id.*

C. COMPENSATION FOR SERVICE AS A CORPORATE DIRECTOR OR
OFFICER

House Rule XXV, clause 2(d) states that a Member “may not . . . serve for compensation as an officer or member of the board of an association, corporation, or other entity.” The Ethics Manual notes that “[a]s a general matter, Members and senior staff may serve in such capacities, but they may not be paid any directors’ fees or other compensation for that service.”¹⁴

IV. BACKGROUND

A. REPRESENTATIVE MULLIN’S BUSINESS INTERESTS AND ELECTION TO
THE HOUSE

Representative Mullin was elected to the House of Representatives on November 6, 2012. At that time, he owned the Mullin Companies, five S-Corporations (“S-Corps”) that were engaged in the plumbing and home maintenance industries. Representative Mullin long served as the primary spokesperson for the Mullin Companies and, as such, appeared in numerous advertisements promoting the business. These advertisements include video clips that appear on the companies’ website and in other places on the Internet. Additionally, Representative Mullin’s companies pay to air a weekly radio show in which someone from the companies, usually Representative Mullin, discusses topics related to home repair and suggests to listeners his companies can be a resource to them.

Representative Mullin was sworn into office on January 3, 2013. During the period between his election and his assumption of office, then-Representative-elect Mullin sought guidance from Committee counsel regarding various issues related to his ownership of, and work for, the Mullin Companies. Among other things, Representative Mullin discussed with Committee counsel whether the Mullin Companies could continue to use advertisements featuring Representative Mullin that had been recorded before his election, and whether he could retain his ownership of one of the S-Corps, Mullin Plumbing West Division (“Mullin West”), that had a contract with the federal government.

Committee counsel advised then-Representative-elect Mullin that the Mullin Companies could continue to use advertisements, featuring him, that were recorded before his election.¹⁵ Committee counsel was not asked, and did not discuss, whether Representative Mullin could record new advertisements, featuring him, after his election. However, Representative Mullin asserts that, when Committee staff met with him after his election to the House, Committee staff understood that he regularly participated in the weekly radio program, and that he would continue to participate in that program as a Member, provided that he was not compensated for such participation. Representative Mullin cites that understanding

¹⁴ *Ethics Manual* at 222.

¹⁵ Committee counsel made clear to Representative Mullin that any previously recorded advertisements that featured him could not make any reference to his status as a House Member. As far as the Committee is aware, Representative Mullin has complied with this requirement in all of his advertisements for the Mullin Companies.

as proof Committee staff did not intend to restrict his ability to appear in other forms of advertising for the companies.¹⁶

Committee counsel also advised Representative Mullin to transfer ownership of Mullin West to his wife, to avoid any issue with a federal statute that prohibits a Member from entering into contracts with the federal government.¹⁷ Representative Mullin effected this transfer on December 31, 2012. Committee counsel also recommended several minor modifications to the business operations of the Mullin Companies to ensure compliance with House rules and federal law. Representative Mullin accepted these recommendations and the Mullin Companies made the appropriate changes.

After joining Congress, Representative Mullin continued to host the weekly radio show. Representative Mullin also continued to appear in radio, television, and web advertisements for the Mullin Companies. Those advertisements generally recommend contacting the Mullin Companies for the audience's plumbing and heating needs.

B. PAYMENTS FROM THE MULLIN COMPANIES TO REPRESENTATIVE MULLIN IN 2013

In 2013, Representative Mullin's first year in the House of Representatives, the Mullin Companies made payments to him totaling \$640,110.44. Of that amount, the Committee determined \$545,110.44 was "passed through" Representative Mullin to other recipients, including his father (as payment for purchase of the businesses from him)¹⁸ and state and federal governments (for payment of the Mullin Companies' tax obligations). Representative Mullin, through counsel, described the "pass through" payments as: "\$387,425: tax payments to the IRS and to the Oklahoma Tax Commission; \$69,983.44: payment to Rep. Mullin's father for purchase of the business; \$87,702: for purchase of rental properties."¹⁹ The Committee found these descriptions to be accurate. Such pass-through payments are standard for S-Corps, and do not necessarily represent payments "to" an S-Corp's owner. In addition to these pass-through payments, in 2013, Representative Mullin did receive, and retain, \$95,000 in payments from two of the Mullin Companies: \$40,000 from Mullin West, and \$55,000 from Mullin Plumbing, Inc. ("Mullin Plumbing").

Representative Mullin has characterized these payments as "distributions," which he asserts were returns on capital he invested in the companies. Representative Mullin had capital invested in Mullin Plumbing in 2013. However, because he transferred ownership of Mullin West to his wife in 2012, Representative Mullin did not have capital invested in Mullin West in 2013. Some, but not

¹⁶Neither the Committee nor Representative Mullin have any contemporaneous records reflecting a discussion of the radio show. However, the Committee has no reason to believe that Representative Mullin's recollection of the discussion of the radio show is incorrect.

¹⁷Mullin West held a contract with a federal agency, which could have implicated the statutory prohibition on a Member contracting with the federal government. See 18 U.S.C. § 431. Consistent with precedent, Committee staff advised Representative Mullin to transfer ownership of Mullin West to his spouse.

¹⁸Representative Mullin's father started the Mullin Companies, and eventually sold them to Representative Mullin pursuant to an agreement whereby the Mullin Companies make monthly payments to Representative Mullin's father. The Committee understands that the amount of each payment is deducted from Representative Mullin's ownership interest in the Mullin Companies.

¹⁹See January 22, 2014 Submission at 4.

all, of the checks from Mullin West to Representative Mullin in 2013 include “DIST” on the Memo line.

Although the payments to Representative Mullin from Mullin West and Mullin Plumbing raise similar legal issues, the Committee’s investigation revealed one significant difference between them. Mullin Plumbing intended to and did pay \$55,000 to Representative Mullin in 2013, while Mullin West paid him \$40,000 due to an apparent error in the company’s payment processes. Those payments were the result of an automatic disbursement process of \$5,000 monthly payments to Representative Mullin. Those payments were not terminated when Representative Mullin transferred ownership of Mullin West to his spouse. This seems to have occurred, in part, because Representative Mullin did not inform the CFO of the Mullin Companies of the change in ownership when it took effect. The payments were ultimately stopped in September 2013, shortly after OCE initiated its preliminary review of Representative Mullin’s involvement with the Mullin Companies. Representative Mullin did not notice the continued payments because they were automatically deposited into a joint account held by Representative Mullin and his spouse, and Representative Mullin did not view the accounts because his spouse managed the family’s finances. Nonetheless, Representative Mullin did receive the payments, and has never returned them.

C. REPRESENTATIVE MULLIN’S ALLEGED SERVICE AS THE PRESIDENT AND DIRECTOR OF THE MULLIN COMPANIES

OCE found substantial reason to believe Representative Mullin, after he became a House Member, served as a member of the Boards of Directors of each of the Mullin Companies and also as the President of at least some of the companies. OCE suggested that some portion of the payments Representative Mullin received from the companies in 2013 “may have” been compensation for serving as a director and/or officer of the companies.²⁰ However, OCE did not provide any basis for connecting the payments Representative Mullin received to any role he had as a Director or officer. Indeed, it is not clear that Representative Mullin even served in these roles after 2012.

According to OCE’s summary of its interview with Representative Mullin, which was not recorded or transcribed, Representative Mullin stated that in 2013 he served on the Board of Directors of each of the five S-Corps that made up the Mullin Companies.²¹ However, in testimony to the Committee, Representative Mullin stated that none of the Mullin Companies had a Board of Directors in 2013, and that he was thus not a Director of any company.²² The CFO of the Mullin Companies confirmed that none of the companies has a Board of Directors.²³

The record is less clear with respect to whether Representative Mullin served as an officer of the Mullin Companies after he became a House Member. Representative Mullin told OCE that he

²⁰ See OCE Referral at 15.

²¹ See OCE’s Memorandum of Interview with Representative Mullin at ¶¶4, 17, 24, 29, 33 (Ex. 2 to OCE’s Referral).

²² See 18(a) Interview of Representative Mullin. Representative Mullin told the Committee the Mullin Companies had a “Leadership Team,” rather than a formal Board of Directors. See *id.* It is possible Representative Mullin confused these concepts when speaking with OCE.

²³ See 18(a) Interview of Mullin Companies CFO.

gave up his position as President of the Mullin Companies when he was elected to the House.²⁴ However, a 2014 written submission to the Committee stated that he continued to serve as President.²⁵ When asked in his Committee interview whether he was still the President, Representative Mullin initially said “I don’t think so. I don’t know exactly how that’s laid out.”²⁶ When shown his 2014 written submission, Representative Mullin changed his answer and stated he was still the President of the various Mullin Companies.²⁷ The Mullin Companies’ CFO also told OCE in 2013 that Representative Mullin was still serving as President.²⁸

V. FINDINGS

A. REPRESENTATIVE MULLIN’S CONSULTATIONS WITH THE COMMITTEE

Representative Mullin initially approached the Committee voluntarily, after his election to the House, to discuss a range of issues related to his ownership of, and involvement with, the Mullin Companies. During those discussions, Committee staff advised Representative Mullin to transfer ownership of Mullin West to his wife, and recommended several minor modifications to the business operations of the Mullin Companies. Representative Mullin followed that guidance. Committee staff also informally advised Representative Mullin that the Mullin Companies could re-use advertisements, which featured him and were recorded before his House election, under certain conditions.²⁹ Staff did not discuss whether Representative Mullin could film new advertisements for the Mullin Companies. However, the record indicates that Representative Mullin asked whether he could continue to participate in a weekly radio program the Mullin Companies paid for, in which he discussed common home maintenance issues, and that Committee staff said Representative Mullin could continue to participate in that program as a Member, provided that he was not compensated for such participation.

The Committee has long encouraged House Members and staff to avail themselves of the guidance of the Committee’s nonpartisan, professional staff. The rules governing outside employment often require a fact-specific analysis, and Members are encouraged to conduct that analysis with the guidance of the Committee’s nonpartisan, professional staff. Although staff-level advice is not a categorical shield from future adverse actions by this Committee, such advice is nevertheless necessary to enable the House community to successfully navigate standards of conduct. Members and their staff are encouraged to diligently request the Committee’s advice

²⁴ See OCE’s Memorandum of Interview with Representative Mullin at ¶4 (Ex. 2 to OCE’s Referral).

²⁵ See Letter from J. Baran to Representative Conaway and Representative Sánchez, Mar. 24, 2014, at 5–6.

²⁶ See 18(a) Interview of Representative Mullin.

²⁷ See *id.*

²⁸ See OCE’s Memorandum of Interview with Mullin Plumbing CFO at ¶¶7, 10 (Ex. 4 to OCE’s Referral).

²⁹ In an email to Representative Mullin’s Chief of Staff, Tom Rust stated that the Committee’s guidance during staff’s meeting with Representative Mullin was not memorialized in writing, but that staff told Representative Mullin the Mullin Companies could re-use advertisements filmed before his House election if the companies were not fiduciary businesses and the advertisements made no reference to Representative Mullin’s position in Congress. See OCE’s Referral, Ex. 11.

and, upon doing so, Members and their staff may rely on the advice to engage in the vetted actions.³⁰

OCE, when confronted with Representative Mullin's evidence of consultation with the Committee staff, examined that consultation to determine whether it completely and accurately disclosed the facts of his proposed actions. As the Committee has stated in the past, this is a proper avenue of inquiry.³¹ Neither formal advice from the Committee nor informal staff-level guidance will suffice to protect a Member when that advice is based on inaccurate facts, or when that advice endorses a course of action fundamentally different from the course actually taken. However, where Representative Mullin substantially complied with those consultations, the Committee believes that it would be inequitable to determine whether Representative Mullin's actions would constitute a violation.

B. PERSONAL ENDORSEMENT OF GOODS AND SERVICES

The Committee has long advised that "a Member should not undertake any outside employment that would involve the Member personally in the selling or endorsement of any goods or services."³² While there is no specific law, rule, or other standard of conduct that expressly forbids such employment, the Committee has stated that this prohibition arises from the House Rules and the Code of Ethics for Government Service, which prohibit a Member from any use of their office or official position to obtain compensation or other benefits.³³

There is no question that Representative Mullin personally endorsed the Mullin Companies' goods and services, both before and after he became a Member of Congress, through a weekly radio program and advertisements for radio, television, and the web. However, Representative Mullin specifically asked the Committee's staff whether the Mullin Companies could continue to use advertisements featuring Representative Mullin, which he had recorded before his election. Committee counsel advised Representative Mullin that this would be permissible, as long as they made no reference to his status as a Member. Representative Mullin also believes that he asked Committee staff whether he could continue to participate in a weekly radio program the Mullin Companies paid for, in which he discussed common home maintenance issues. Representative Mullin recalls that Committee staff told him that he could continue to participate in the radio show, as long as he was not compensated for that participation.

Representative Mullin's conduct conformed with this advice. However, going forward, the Committee believes that the House would be better served by different guidance with regard to Member participation in advertisements. Because this was informal, staff-level guidance, it is not subject to the same rule-based safe harbor for formal written guidance but Members and their staff are encouraged to diligently request the Committee's advice and, upon doing so, may rely on the advice to engage in the vetted actions.

³⁰ See House Comm. on Ethics, *In the Matter of Allegations Relating to Representative Tom Petri*, H. Rep. 113-666, 113th Cong., 2d Sess. at 6-7 (2014).

³¹ See *id.* at 7.

³² *Ethics Manual* at 188.

³³ *Id.*

Thus, the Committee believes it would be inequitable to punish him when he relied on that advice.³⁴

Further, Representative Mullin was not an employee of the Mullin Companies. He was the owner of Mullin Plumbing and his wife was the owner of Mullin West. The Committee has not previously addressed whether the prohibition on the selling or endorsing of goods or services extends beyond employment to other situations in which the Member has a financial interest. Some of the laws, rules, and other standards of conduct pertaining to outside employment make distinctions between employment and other financial interests. However, the relevant rules and other standards of conduct pertaining to commercial endorsements are not so limited. Instead, House Rule XXIII, clause 3 applies to the receipt or accrual of compensation to the Member's "beneficial interest from any source." And the Code of Ethics for Government Service applies to the acceptance by the Member or the Member's family of "favors or benefits."³⁵ Thus, there is no reason to believe that the prohibition on the selling or endorsing of goods or services is limited only to employment situations.

Members of the House of Representatives are widely recognizable public servants. Even when they make no explicit mention of their official position, when Members actively engage in commercial sales or endorsements, they may create the perception that they are making use of their official position for commercial gain. Members must at all times avoid even the appearance that they are monetizing their public role for personal gain.

Therefore, the Committee takes this opportunity to clarify for the whole House community that a Member should not be actively involved in personally selling or endorsing goods or services in which the Member has a financial interest.³⁶ As such, Representative Mullin should now understand that, going forward, he cannot participate in the weekly radio program or the advertisements for radio, television, and the web. This restriction only applies to the active participation in selling or endorsing goods or services. Thus, it does not require Representative Mullin to remove his name from the Mullin Companies,³⁷ nor does it require the Mullin Companies to scour the Internet to take down old videos of advertisements featuring Representative Mullin. Instead, the Mullin Companies can no longer take active steps to promote Representative Mullin's endorsement of the companies. Thus, the Mullin Companies cannot film any new advertisements featuring Representative Mullin, and old advertisements featuring Representative Mullin should be removed from the Mullin Companies' website.

³⁴The Committee notes that the more comprehensive and consistent one's consultation with the Committee or its staff, the more protection the Committee can offer in response to actions related to that consultation.

³⁵Code of Ethics for Government Service ¶5.

³⁶The House has long recognized that Members may receive income from the royalties of book sales. This restriction does not change the Committee's longstanding guidance permitting Members' participate in the promotion of their own books, so long as the Member does so in their personal capacity and without using any official resources.

³⁷There are some restrictions on the use of a Member's name for certain businesses (*e.g.*, businesses that engage in fiduciary professions). And a Member of Congress choosing to add his or her name to a commercial enterprise after election to the House might be the kind of active endorsement of a commercial enterprise that would be improper. However, where no other restriction applies, the simple retention of a Member's name on a business does not violate these rules.

C. OUTSIDE EARNED INCOME LIMIT

The Ethics in Government Act (EIGA) states, “a Member . . . may not in any calendar year have outside earned income attributable to such calendar year which exceeds 15 percent of the annual rate of basic pay for level II of the Executive Schedule under section 5313 of title 5, United States Code, as of January 1 of such calendar year.”³⁸ House Rule XXVI, clause 2, provides that Title I of EIGA “shall be considered Rules of the House as they pertain to Members . . . of the House.” Accordingly, House Rule XXV, clause 1(a)(1), incorporates EIGA’s prohibition against Members earning outside earned income in excess of the annual outside earned income limit. For the 2013 calendar year, the limit was \$26,955.³⁹

Prior to 2013, Representative Mullin received payments from the various Mullin Companies which were explicitly designated as “salary.”⁴⁰ Once Representative Mullin joined the House, he stopped receiving “salary” payments, a change he, and the Mullin Companies’ CFO, attributed to spending significantly less time managing the companies, due to his full-time work as a congressman.⁴¹ However, Representative Mullin did receive payments totaling \$95,000 from two of the Mullin Companies in 2013: \$55,000 from Mullin Plumbing and \$40,000 from Mullin West. Representative Mullin has consistently characterized these payments as “distributions”—meaning a return on equity for capital he invested in the companies—not salary or other compensation for services rendered to the companies.⁴² The CFO of the Mullin Companies has also characterized the payments as distributions, not salary or other compensation.⁴³

OCE’s Referral suggested that, despite the “distribution” label applied to the payments, they were in fact compensation for Representative Mullin’s services to the Mullin Companies, namely the advertisements he continued to record for the companies after joining the House. OCE supported this finding in two ways. First, OCE

³⁸ 5 U.S.C. app. § 501(a)(1).

³⁹ See Memorandum from the Committee on Ethics to All Members, Officers and Employees re: Change to Financial Disclosure Reporting Obligations and Reminder Regarding Periodic Transaction Reporting Requirement (Jan. 24, 2013).

⁴⁰ See OCE’s Memorandum of Interview with Mullin Plumbing CFO at ¶ 13; see also 18(a) Interview of Mullin Companies CFO.

⁴¹ See 18(a) Interview of Representative Mullin; see also 18(a) Interview of Mullin Companies CFO. The CFO of the Mullin Companies confirmed Representative Mullin did significantly less work for the companies once he became a Member of Congress. See *id.* (“He used to come to work every day at 7 o’clock, and that obviously changed. He would hire and fire before, and now he doesn’t. He would be involved in insurance renewals, banking decisions, policy decisions, and now he does not, he’s not involved in those things. He used to run service calls; doesn’t do that anymore. He used to oversee our shop; he doesn’t do that anymore. . . . Now we will involve him on more of a general basis, just as an informative. I mean, obviously they are still his companies, so we as a consideration just let him know what’s going on with them. If we change our uniforms, we might let him know that. If we—I mean, most of the time it’s just reactionary. It’s just an informative, this is what we’ve done. He might give his opinion, we might make changes based on that and then we might not.”).

⁴² See OCE Memorandum of Interview with Representative Mullin at ¶¶ 11–13, 18–21, 26, 34 (Ex. 2 to OCE’s Referral); see also January 22, 2014 Submission at 1, 4–7.

⁴³ See Letter from Mullin Plumbing CFO to OCE, Sept. 23, 2013 (Ex. 8 to OCE’s Referral); see also 18(a) Interview of Mullin Companies CFO (Q. [T]he first sentence [of your letter to OCE] says, for the period of January 1, 2013, to current date, Markwayne Mullin has not received any income in the form of salary from any of the sources listed or any entities affiliated with these sources, and then there’s a listing of each of the Mullin companies. Is that accurate? A. Yes, it is. Q. The next paragraph is, sources of income not considered salary for Markwayne Mullin from January 1, 2013, to September 13, 2013, and it includes distributions. When you say, ‘sources of income not considered salary,’ what does that mean? A. It was not run through our payroll system. It was not considered a salary, it was considered a distribution.”).

cited an interview with an accountant for the Mullin Companies. OCE's summary of the interview, which was not recorded or transcribed, states that the accountant explained the 2013 "distributions" to Representative Mullin were made "in lieu of salary," which OCE interpreted as suggesting that the "distributions" were paid to make up for salary that Representative Mullin did not receive. Second, OCE found that the advertisements generated revenue for the Mullin Companies, and therefore should be characterized as outside earned income.

With respect to OCE's first point, Committee staff asked the Mullin Companies' accountant about the statement OCE relied on. The accountant stated: "The comment here, in lieu of salary, I can't imagine me saying that because it's really not true."⁴⁴ The accountant also told Committee staff: "I know in 2013 he drew no salary from the Mullin companies because he was at that time a Representative of the House, and he wasn't working near as much in Tulsa for the company. He elected not to take a salary."⁴⁵ When asked how he came to this understanding, the accountant said Representative Mullin told him he was not taking a salary in 2013.⁴⁶ Based on all the available evidence, the Committee found that neither Representative Mullin nor the Mullin Companies or their accountant characterized the 2013 payments as salary or other compensation, or considered them as such.

But this does not settle the matter. The Committee has previously stated that "the label or characterization placed on a transaction, arrangement or payment by the parties may be disregarded for the purpose of [House Rule XXV]" and "the characterization of such amounts as partnership distributive share, dividends, rent, interest, payment for a capital asset, or the like, will not serve to prevent the application of [House] Rule 25"⁴⁷ The Committee is, therefore, not bound to accept the characterization of money received by Representative Mullin from his business, but must look at the facts surrounding the receipts of that money to determine whether it qualifies as earned or unearned income.

Further, the Mullin Companies are all S-Corps. The Committee's longstanding guidance with respect to S-Corps is that the "determining factor" for whether payments from the business to the Member are deemed earned income "is whether the Member's . . . personal services generate significant income for the business."⁴⁸ If the Member performs services for the business that "actually generate any significant income for the business," then some part of the payments the Member receives from the business may be deemed earned income. "However, if the Member . . . is engaged primarily in the general oversight and management or protection of his or her investment [in a business], such services would not be deemed to generate significant income."⁴⁹

Because Representative Mullin was the owner of Mullin Plumbing but not of Mullin West, the Committee considered the payments from the two companies separately.

⁴⁴ See 18(a) Interview of CPA.

⁴⁵ See *id.*

⁴⁶ See *id.*

⁴⁷ See *Advisory Op. No. 13*.

⁴⁸ *Id.* (see *Ethics Manual* at 368).

⁴⁹ *Id.*

With respect to the payments from Mullin Plumbing, the Committee determined that participation in the radio show and filming new advertisements did generate significant income for Mullin Plumbing.⁵⁰ In his interview, Representative Mullin stated numerous times, in various ways, that the advertisements he appeared in were an important driver of revenues for the Mullin Companies. For example, when asked the purpose of the advertisements, Representative Mullin stated, “It keeps customers coming in. It keeps us busy. Any company that has to advertise, they do it for a particular purpose. They don’t do it just for the sake of spending money.”⁵¹

Because the radio show and advertisements were a driver of revenue, and not simply general oversight and management of the firm, some portion of the payments that Mullin Plumbing characterized as distributions should be deemed compensation, and would be subject to the outside earned income limit. For several reasons, the Committee did not assess what portion of the payments were compensation subject to the outside earned income limit.

First, for calendar year 2013, the outside earned income limit for a Member was \$26,955. If Representative Mullin’s actual return on equity was \$28,045, or more, his earned income from Mullin Plumbing would be within the outside earned income limit. Based on the equity that Representative Mullin did have in Mullin Plumbing, \$28,045 represents a reasonable return on his equity.

Of course, the reasonableness is not dispositive. In general, the Committee will require an actual apportionment of the payments to earned income versus return on equity. However, it bears emphasis that Representative Mullin initially approached the Committee voluntarily, after his election to the House, to discuss a range of issues related to his ownership of, and involvement with, the Mullin Companies. During those discussions, Committee staff did not discuss whether Representative Mullin could film new advertisements for the Mullin Companies, or whether doing so would raise an issue with the outside earned income limit. However, staff does appear to have said that Representative Mullin could continue to participate in the radio show, provided that he was not compensated. Unfortunately, the unique treatment of income from S-Corps does not appear to have been flagged during staff’s discussions with Representative Mullin. If it had been, Representative Mullin might have adjusted his actions accordingly.

Moreover, because this matter began as an advisory matter, and Representative Mullin has consistently cooperated with that process, the Committee believes it would be appropriate to treat any conclusions regarding the payments Representative Mullin received as they would be treated in the advice and education context, and to advise Representative Mullin concerning his options in the future. The Committee regularly advises Members on how to wind

⁵⁰ Notably, Representative Mullin has never denied that his advertising role benefited the businesses. Instead, Representative Mullin maintains that the “family business” provision of the outside earned income rule applies to that role. More specifically, Representative Mullin contends that, in the context of a family business, a Member must be allowed to sustain the business’s brand by appearing in advertisements for the business, without being subjected to the earned income limit. This is incorrect. Participation in advertising is not “general oversight and management,” and it is not “protection of his or her investment.” Advertising, by definition, is a driver of revenue for a company. And Representative Mullin’s own statements repeatedly made this point.

⁵¹ See 18(a) Interview of Representative Mullin.

down certain family-owned businesses when they are elected to Congress. That process can take an extended period of time, and the Committee does not punish Members who are not compliant with the applicable House Rules during a transition period, as long as they are making a good-faith effort to follow the Committee's advice. In response to the Committee's guidance on other issues concerning the Mullin Companies, Representative Mullin has made several changes to the ownership and practices of the companies, which reflect his good-faith efforts to follow the Committee's advice.⁵²

Accordingly, based on all of the particular circumstances of this matter, the Committee determined to resolve the issue of the payments from Mullin Plumbing without any additional action.

With respect to the payments from Mullin West, it is unnecessary to assess whether the advertisements generated significant income for the company because Representative Mullin was not an owner of the company. Prior to his election to Congress, the Committee recommended that Representative Mullin transfer ownership of Mullin West to his wife. Representative Mullin did transfer the company. However, due to an accounting error, Mullin West continued to make regular payments to Representative Mullin. Given his lack of ownership in Mullin West, such payments cannot be considered distributions. Moreover, Representative Mullin does not benefit from the protection of seeking the Committee's guidance, as the mistaken payments were inconsistent with the guidance. The money was paid into a joint account held by both Representative Mullin and his spouse. However, the Committee determined, to be in full compliance with the Committee's guidance, Representative Mullin should return those payments to Mullin West.

D. RECEIPT OF COMPENSATION FOR SERVICE AS A DIRECTOR OR OFFICER

The Ethics in Government Act (EIGA) states, "a Member . . . shall not . . . serve for compensation as an officer or member of the board of any association, corporation, or other entity."⁵³ House Rule XXVI, clause 2, provides that Title I of EIGA "shall be considered Rules of the House as they pertain to Members . . . of the House." Accordingly, House Rule XXV, clause 2(d), incorporates EIGA's prohibition against Members serving for compensation as an officer or member of a board of a corporation, association, or other entity. Based on Representative Mullin's apparent statement to OCE that he served on the Board of Directors for each of the Mullin Companies, and his receipt of payments from two of the companies in 2013, OCE found "Representative Mullin may have

⁵²In a submission to OCE, Representative Mullin stated: "[F]ollowing my November 2012 meeting with House Ethics staff, I and others involved in the Mullin businesses structured those businesses, and my participation in them, to accord with our understanding of Ethics staff guidance. In fact, we spent numerous business hours and thousands of dollars to implement this ethics guidance, including the hiring of a new chief executive officer to replace me." See Letter from Representative Mullin to Representative Goss and Representative Skaggs, Nov. 8, 2013, at 2 (Attached as Exhibit 1). In addition, Representative Mullin transferred ownership of Mullin West to his spouse on December 31, 2012, on the advice of Committee staff. It is true that Representative Mullin continued to receive payments from Mullin West for several months in 2013. However, it appears these payments were the result of an automated disbursement process, which was not changed when the corporate transfer occurred.

⁵³5 U.S.C. app. § 501(a)(1).

received earned income for his service as an officer and as a board member.”⁵⁴ However, if Representative Mullin told OCE that he was a Director, it appears he was mistaken. The record is clear that the Mullin Companies do not have Directors, and thus Representative Mullin could not have received compensation for service as such.

The record is less clear with respect to Representative Mullin’s role as an officer of the Mullin Companies. There is evidence that Representative Mullin continued to serve as President of some or all of the Mullin Companies after he became a House Member. However, it appears that if Representative Mullin did so, it was largely on a nominal basis, and his actual responsibilities in the day-to-day operation of the companies were significantly reduced after 2012.⁵⁵ Further, the Committee found no evidence that any of the payments Representative Mullin received from the Mullin Companies were intended to be, or could fairly be characterized as, payments for his service as an officer of the Mullin Companies. Thus, the Committee did not find that Representative Mullin violated House Rule 25, clause 2(d).

VI. CONCLUSION

After an extensive review, the Committee found that this matter raised several novel questions regarding the application of House rules and other standards of conduct to a Member’s efforts to maintain and promote a family business. These questions were further complicated by the procedural posture of the matter, which began when Representative Mullin consulted Committee staff after his election to the House in order to ensure he and his family businesses would operate consistent with the applicable rules. As Representative Mullin was working with Committee staff to bring his family businesses into compliance, OCE began its separate review, and eventually referred allegations to the Committee that related to issues which were part of the Committee’s advisory process. While these issues would typically be treated as advisory matters, and the Member would be given time to bring his businesses into compliance, OCE’s Referral compelled the Committee to treat the issues as an investigative matter.

Ultimately, the Committee determined that Representative Mullin made a good faith effort to seek the Committee’s informal guidance on numerous issues with respect to his family business. Although the Committee acknowledges that its informal, staff-level advice is not a categorical shield from future adverse actions, such advice is nevertheless necessary to enable the House community to successfully navigate standards of conduct. Members and their staff are encouraged to diligently request the Committee’s advice and, upon doing so, may rely on the advice to engage in the vetted actions. In this case, Representative Mullin sought advice from the Committee staff about his family business, and appears to have substantially complied with most of that advice.

To the extent that Representative Mullin substantially complied with the Committee’s advice, it would be inequitable to subject his conduct to sanction. However, the Committee determined that, to

⁵⁴ See OCE’s Referral at 15.

⁵⁵ See n.41, *supra*.

bring Representative Mullin into full compliance with the Committee's guidance, he must return \$40,000 mistakenly paid to him in 2013 by a company that he transferred to his wife in 2012.

Representative Mullin complied with the advice he received regarding his participation in advertisements for his family business. However, the Committee believes that, going forward, the House would be better served by different guidance with regard to Member participation in advertisements. Therefore, the Committee takes this opportunity to clarify its guidance with respect to Member participation in advertisements or other commercial endorsements of goods or services. Under no circumstances should a Member be actively involved in personally selling or endorsing good services in which the Member has a financial interest.⁵⁶

Accordingly, the Committee unanimously voted to adopt this Report, and take no further action. Upon publication of this Report and repayment of \$40,000 to Mullin West, the Committee considers the matter closed.

VI. STATEMENT UNDER RULE XIII, CLAUSE 3(c) OF THE RULES OF THE HOUSE OF REPRESENTATIVES

The Committee made no special oversight findings in this Report. No budget statement is submitted. No funding is authorized by any measure in this Report.

⁵⁶The House has long recognized that Members may receive income from the royalties of book sales. This restriction does not change the Committee's longstanding guidance permitting Members' participate in the promotion of their own books, so long as the Member does so in their personal capacity and without using any official resources.

APPENDIX 1

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OFFICE OF CONGRESSIONAL ETHICS
UNITED STATES HOUSE OF REPRESENTATIVES**REPORT**

Review No. 13-2392

The Board of the Office of Congressional Ethics (the "Board"), by a vote of no less than four members, on December 12, 2013, adopted the following report and ordered it to be transmitted to the Committee on Ethics of the United States House of Representatives.

SUBJECT: Representative Markwayne Mullin

NATURE OF THE ALLEGED VIOLATIONS: In 2013, Representative Markwayne Mullin regularly hosted a weekly radio talk show and appeared in numerous radio, television, and internet commercials for Mullin Plumbing, Inc. and affiliated companies. He also served as an officer or board member for the companies. He received income from the companies totaling more than \$600,000 in 2013.

If Representative Mullin received more than \$26,955 of outside earned income in 2013, he may have violated House rules and federal law.

If Representative Mullin was personally involved in endorsing any services pursuant to outside employment, he may have violated House rules and standards of conduct.

If Representative Mullin served for compensation as an officer or as a member of the board of directors, or both, of one or more of the companies, he may have violated House rules.

RECOMMENDATION: The Board recommends that the Committee on Ethics further review the allegations concerning outside earned income because there is substantial reason to believe that the income Representative Mullin received exceeded the outside earned income limit.

The Board recommends that the Committee on Ethics further review the allegation concerning Representative Mullin endorsing services because there is substantial reason to believe that Representative Mullin appeared in commercials for an outside employer while serving as a Member of Congress.

The Board recommends that the Committee on Ethics further review the allegation concerning Representative Mullin serving as a compensated officer or board member because there is substantial reason to believe that Representative Mullin received compensation for the services he provided as an officer or board member of the companies.

VOTES IN THE AFFIRMATIVE: 6

VOTES IN THE NEGATIVE: 0

ABSTENTIONS: 0

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MEMBER OF THE BOARD OR STAFF DESIGNATED TO PRESENT THIS REPORT TO
THE COMMITTEE ON ETHICS: Omar S. Ashmawy, Staff Director and Chief Counsel.

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FINDINGS OF FACT AND CITATIONS TO LAW

Review No. 13-2392

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OFFICE OF CONGRESSIONAL ETHICS
UNITED STATES HOUSE OF REPRESENTATIVES

FINDINGS OF FACT AND CITATIONS TO LAW

Review No. 13-2392

On December 12, 2013, the Board of the Office of Congressional Ethics (the “Board”) adopted the following findings of fact and accompanying citations to law, regulations, rules, and standards of conduct (*in italics*).

The Board notes that these findings do not constitute a determination that a violation actually occurred.

I. INTRODUCTION

1. Representative Mullin maintains a personal services business comprised of five companies: Mullin Plumbing, Inc.; Mullin Plumbing West Division, Inc.; Mullin Plumbing New Construction, Inc.; Mullin Services, Inc.; and Mullin Environmental, Inc. (collectively, the “plumbing companies”).
2. He personally advertises for the plumbing companies and serves as an officer or board member.
3. He received income totaling more than \$600,000 from the plumbing companies in 2013. A portion of the income he received includes payments characterized as “distributions” from a company that he does not own, but rather is owned by his wife.
4. Based on the facts before the OCE, there is substantial reason to believe that the income he received is earned income because: (1) his share of the profits from the plumbing companies are, at least in significant part, for attracting or retaining clients; and (2) his “distributions” from the company his wife wholly owns are not a return on any equity that he holds.

A. Summary of Allegations

5. Representative Mullin may have violated House rules and federal law by receiving more than \$26,955 of outside earned income in 2013.
6. Representative Mullin may have violated House rules and standards of conduct by being personally involved in endorsing services pursuant to outside employment.
7. Representative Mullin may have violated House rules by receiving compensation for his service as an officer or as a board member of the plumbing companies.

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8. The Board recommends that the Committee on Ethics further review the allegations concerning the outside earned income because there is substantial reason to believe that the income Representative Mullin received exceeded the outside earned income limit.
9. The Board recommends that the Committee on Ethics further review the allegation concerning Representative Mullin endorsing services because there is substantial reason to believe that Representative Mullin appeared in commercials for an outside employer while serving as a Member of Congress.
10. The Board recommends that the Committee on Ethics further review the allegation concerning Representative Mullin serving as a compensated officer or board member because there is substantial reason to believe that Representative Mullin received compensation for the services he provided as an officer or board member of the plumbing companies.

B. Jurisdictional Statement

11. The allegations that are the subject of this review concern Representative Markwayne Mullin, a Member of the United States House of Representatives for the 2nd District of Oklahoma. The Resolution the United States House of Representatives adopted creating the Office of Congressional Ethics (“OCE”) directs that, “[n]o review shall be undertaken . . . by the board of any alleged violation that occurred before the date of adoption of this resolution.”¹ The House adopted this Resolution on March 11, 2008. Because the conduct under review occurred after March 11, 2008, the OCE has jurisdiction in this matter.

C. Procedural History

12. The OCE received a written request for a preliminary review in this matter signed by at least two members of the Board on August 27, 2013. The preliminary review commenced on August 28, 2013.² The preliminary review was scheduled to end on September 26, 2013.
13. At least three members of the Board voted to initiate a second-phase review in this matter on September 26, 2013. The second-phase review commenced on September 27, 2013.³ The second-phase review ended on November 10, 2013.
14. The Board voted to refer this matter to the Committee on Ethics and adopted these findings on December 12, 2013.

¹ H. Res. 895, 110th Cong. §1(e), as amended (the “Resolution”).

² A preliminary review is “requested” in writing by members of the Board of the OCE. The request for a preliminary review is “received” by the OCE on a date certain. According to the Resolution, the time frame for conducting a preliminary review is thirty days from the date of receipt of the Board’s request.

³ According to the Resolution, the Board must vote on whether to conduct a second-phase review in a matter before the expiration of the thirty-day preliminary review. If the Board votes for a second-phase, the second-phase begins when the preliminary review ends. The second-phase review does not begin on the date of the Board vote.

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15. This report and findings were transmitted to the Committee on Ethics on December 23, 2013.

D. Summary of Investigative Activity

16. The OCE requested and received testimonial and, in some cases, documentary information from the following sources:
- (1) Representative Markwayne Mullin;
 - (2) Mullin Plumbing Accountant; and
 - (3) Mullin Plumbing Chief Financial Officer ("Mullin Plumbing CFO").

II. REPRESENTATIVE MULLIN APPEARED IN COMMERCIALS FOR PLUMBING COMPANIES AND RECEIVED INCOME FROM THOSE COMPANIES

A. Laws, Regulations, Rules, and Standards of Conduct

Outside Earned Income Limit

17. *The Ethics in Government Act provides that "a Member . . . may not in any calendar year have outside earned income attributable to such calendar year which exceeds 15 percent of the annual rate of basic pay for level II of the Executive Schedule under section 5313 of title 5, United States Code, as of January 1 of such calendar year."*⁴
18. *Pursuant to House Rule 25, clause 1(a)(1), "a Member, Delegate, Resident Commissioner, officer, or employee of the House may not . . . (1) have outside earned income attributable to a calendar year that exceeds 15 percent of the annual rate of basic pay for level II of the Executive Schedule under section 5313 of title 5, United States Code, as of January 1 of that calendar year."*
19. *"[T]he outside earned income limit for House Members, officers, and employees paid at or above the senior staff rate for CY 2013 remains \$26,955."*⁵
20. *The House Ethics Manual states that "[t]he annual limitation applies to compensation for personal services (termed 'earned income'), but not to moneys received from ownership or other investments of equity (so-called 'unearned income'). In this regard, Advisory Opinion No. 13 emphasizes that the 'real facts' of a particular case would control as to whether moneys received would be deemed earned income:*

⁴ 5 U.S.C. app. 4 § 501(a)(1).

⁵ Memorandum from Committee on Ethics for All Members, Officers, and Employees Regarding the 2013 Outside Earned Income Limit and Salaries Triggering the Financial Disclosure Requirement and Post-Employment Restrictions Applicable to House Officers and Employees, dated January 24, 2013 ("2013 Outside Earned Income Memo") (Exhibit 1 at 13-2392_0002-0006).

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[T]he label or characterization placed on a transaction, arrangement or payment by the parties may be disregarded for purposes of the Rule. Thus, if amounts received or to be received by a Member, officer, or employee are in fact attributable to any significant extent to services rendered by the Member, officer, or employee the characterization of such amounts as partnership distributive share, dividends, rent, interest, payment for a capital asset, or the like, will not serve to prevent the application of Rule 25 to such amounts . . .

*For purposes of this Opinion, there are two types of income – earned and unearned. If the compensation received is essentially a return on equity, then it would generally not be considered to be earned income. If the income is not a return on equity, then such income would generally be considered to be earned income and subject to the limitation.*⁶

21. *“[T]he definition of earned income in Rule 25, which excludes amounts received by a Member from a family controlled business ‘so long as the personal services actually rendered by the individual . . . do not generate a significant amount of income,’ was simply intended to assure Members, officers, and employees that they could **continue to make decisions and take actions necessary to manage or protect their equity in a family trade or business**, and would not be forced to divest themselves of their family business interests. As with any business, a Member, officer, or employee would not be required to allocate a share of the profits of the business as outside earned income when the facts and circumstances show that the income is **in reality a return on investment**.”*⁷
22. *“**Personal Service Businesses.** In businesses for which capital is not a material income-producing factor, the Advisory Opinion states that the entire share of profits is generally considered earned income, unless it can be shown that some income actually derives from a return on investment. **Even when the Member performs no personal services, it is presumed, lacking a strong showing to the contrary, that the Member’s share of profits from a service business is for attracting or retaining clients and thus is considered earned income.**”*⁸
23. *“**Close Corporations, Partnerships, and Unincorporated Businesses.** When a Member has an ownership interest and also performs some services, as in a close corporation, partnership, or unincorporated business, some of the profits might result from the personal services of the Member and therefore would be considered earned income. Advisory Opinion No. 13 (included in the appendices) states, ‘the determining factor is whether the Member’s personal services generate significant income for the business.’ The Member may protect his or her interest and investments in the business through general oversight and management of investments without generating earned income. However, fees, compensation, or salaries from such a business are earned income. **When the Member’s principal***

⁶ House Ethics Manual (2008) at 231 (emphasis added).

⁷ *Id.* at 369 (emphasis added).

⁸ *Id.* at 231 (second emphasis added).

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*function is to refer or to help retain clients, then 'the Member would be deemed to be rendering income-producing services, even though the actual time involved might be minimal.'"*⁹

Compensated Officer and Board Member

24. House Rule 25, clause 2(d) states that "[a] Member, Delegate, Resident Commissioner, officer, or employee of the House may not . . . serve for compensation as an officer or member of the board of an association, corporation, or other entity"

Personal Endorsement of Services for Outside Employment

25. Pursuant to House Rule 23, clause 3, a Member "may not receive compensation and may not permit compensation to accrue to the beneficial interest of such individual from any source, the receipt of which would occur by virtue of influence improperly exerted from the position of such individual in Congress."
26. According to the House Ethics Manual, "[a]t times a Member or staff person wishes to engage in outside employment that involves the selling of goods or services. On the basis of the rules and standards of conduct . . . a Member should not undertake any outside employment that would involve the Member personally in the selling or endorsement of any goods or services."¹⁰

B. Representative Mullin is Affiliated with Five Plumbing Companies

27. Representative Mullin is affiliated with five companies that provide plumbing services in Oklahoma.
28. Based on the statements of Representative Mullin and Mullin Plumbing Accountant, the plumbing companies are organized as subchapter S corporations and appear to provide personal services.¹¹
29. Specifically, the companies and services provided are as follows:
- a. **Mullin Plumbing, Inc.** - provides residential and commercial plumbing services.¹²
 - b. **Mullin Plumbing West Division, Inc.** - provides residential and commercial plumbing services similar to Mullin Plumbing, Inc., but operates in the Oklahoma City region of the state.¹³

⁹ *Id.* at 232 (emphasis added).

¹⁰ *Id.* at 188.

¹¹ Memorandum of Interview of Representative Markwayne Mullin, October 10, 2013 ("Mullin MOI") (Exhibit 2 at 13-2392_0008); Memorandum of Interview of Mullin Plumbing Accountant, October 4, 2013 ("Accountant MOI") (Exhibit 3 at 13-2392_0016).

¹² Mullin MOI (Exhibit 2 at 13-2392_0008).

¹³ Accountant MOI (Exhibit 3 at 13-2392_0017).

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- c. **Mullin Plumbing New Construction, Inc.** - provides construction services for residential and commercial plumbing purposes.¹⁴
 - d. **Mullin Services, Inc.** - provides residential and commercial heating and air conditioning repair services.¹⁵
 - e. **Mullin Environmental, Inc.** - provides water and waste treatment services.¹⁶
30. Representative Mullin wholly owns four of the five companies listed above.¹⁷
31. Mullin Plumbing West Division, Inc. is wholly owned by Representative Mullin's wife.¹⁸
32. According to Representative Mullin, the plumbing companies are a family business founded by his father, but when his father became ill years ago, Representative Mullin became responsible for operations.¹⁹ Currently, the companies operate statewide and have more than 120 employees.²⁰
33. Representative Mullin has less involvement in the day-to-day operations of the plumbing companies since his election to Congress in 2012, according to Representative Mullin, Mullin Plumbing CFO, and Mullin Plumbing Accountant.²¹
34. However, as explained below, since becoming a Member of Congress, Representative Mullin continues to (1) advertise for the companies; and (2) serve as an officer or board member for the companies.
- C. Representative Mullin Personally Advertises for the Plumbing Companies**
35. Representative Mullin has been the self-described "face and voice" of the plumbing companies for more than ten years.²² Since the time that he became a Member of Congress in 2013, Representative Mullin has continued to personally advertise for the

¹⁴ Mullin MOI (Exhibit 2 at 13-2392_0011).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*; Accountant MOI (Exhibit 3 at 13-2392_0016-0019); Memorandum of Interview of Mullin Plumbing Chief Financial Officer ("CFO MOI") (Exhibit 4 at 13-2392_0022). Representative Mullin also owns the following companies that do not provide plumbing services: Mullin Properties LLC; Mullin Properties West Division, LLC; and Mullin Farms. See Mullin MOI (Exhibit 2 at 13-2392_0011-0012).

¹⁸ Mullin MOI (Exhibit 2 at 13-2392_0008, 13-2392_0010); CFO MOI (Exhibit 4 at 13-2392_0022); Accountant MOI (Exhibit 3 at 13-2392_0017); Assignment of Mullin Plumbing West Division, Inc. to Christie Renee Mullin, December 31, 2012 (Exhibit 5 at 13-2392_0025).

¹⁹ Letter from Representative Mullin to Chairman Goss and Co-Chair Skaggs, dated November 8, 2013 (Exhibit 6 at 13-2392_0027-0028).

²⁰ *Id.*

²¹ CFO MOI (Exhibit 4 at 13-2392_0021-0022); Accountant MOI (Exhibit 3 at 13-2392_0016); Mullin MOI (Exhibit 2 at 13-2392_0008).

²² Mullin MOI (Exhibit 2 at 13-2392_0009).

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companies via: (1) a weekly radio talk show; (2) radio commercials; (3) television commercials; and (4) internet video advertisements.

Weekly Radio Talk Show

36. Representative Mullin hosts a weekly hour-long radio show in Oklahoma promoting the plumbing companies called "House Talk with Markwayne Mullin."²³

House Talk with Markwayne Mullin

House Talk with Markwayne Mullin

Saturday 8am-9am

Save big bucks by doing home improvement projects yourself or by finding the right contractor for your job. Join Markwayne Mullin of Mullin Plumbing and other contracting experts as they answer your home repair and remodeling questions.

About Markwayne Mullin

Markwayne Mullin is the president and owner of Mullin Plumbing, Mullin Pumping, Morris Plumbing, The Red Rooters, Mullin Properties, and Oklahoma Fight Club. These enterprises provide plumbing services to the better part of northeast Oklahoma, from Tulsa to Oklahoma City and the surrounding areas.

Markwayne is also involved in many organizations and leadership programs including both the Chamber of Commerce and Better Business Bureau for Broken Arrow as well as Oklahoma City.

37. The show is advertised as a way to "[s]ave big bucks by doing home improvement projects yourself or by finding the right contractor for your job."²⁴ Listeners are asked to "[j]oin Markwayne Mullin of Mullin Plumbing and other contracting experts as they answer your home repair and remodeling questions."²⁵

Radio Commercials

38. Representative Mullin told the OCE that he has recorded radio commercials for the plumbing companies since becoming a Member of Congress and he plans to record additional commercials.²⁶
39. The OCE requested that Representative Mullin provide all radio commercials in which he appeared for the companies that were broadcast in 2013.
40. According to the information that Representative Mullin provided to the OCE, he appeared in sixteen separate radio commercials broadcast between January and

²³ *Id.*; KRMG Radio Website, <http://www.krmg.com/news/entertainment/house-talk-markwayne-mullin/n8Ys/>; Mullin Plumbing Website, <http://mullinplumbing.com/icalrepeat.detail/2013/12/07/1051/house-talk-radio>.

²⁴ KRMG Radio Website, <http://www.krmg.com/news/entertainment/house-talk-markwayne-mullin/n8Ys/>; Mullin Plumbing Website, <http://mullinplumbing.com/icalrepeat.detail/2013/12/07/1051/house-talk-radio>.

²⁵ KRMG Radio Website, <http://www.krmg.com/news/entertainment/house-talk-markwayne-mullin/n8Ys/>; Mullin Plumbing Website, <http://mullinplumbing.com/icalrepeat.detail/2013/12/07/1051/house-talk-radio>.

²⁶ Mullin MOI (Exhibit 2 at 13-2392_0009).

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September of 2013.²⁷ Twelve of the commercials were recorded in 2013 based on the dates provided.²⁸

Television Commercials

41. Representative Mullin told the OCE that he is not certain whether he has filmed any television commercials for the plumbing companies in 2013, but he recalled filming a commercial in November 2012.²⁹
42. The OCE requested that Representative Mullin provide all television commercials in which he appeared for the plumbing companies that were broadcast in 2013.
43. Representative Mullin provided the OCE with more than thirty commercials in which he appeared for the plumbing companies, but the filming date of most of the commercials is unclear.³⁰ Three of the television commercials may have been filmed in April 2013, based on the 2013 dates included in the titles of the recordings.³¹

²⁷ Email from Karl Ahlgren to Kedric Payne, dated September 24, 2013 (Exhibit 7 at 13-2392_0030).

²⁸ *Id.*

²⁹ Mullin MOI (Exhibit 2 at 13-2392_0009).

³⁰ Collection of Mullin Plumbing Television Commercials Broadcast in 2013 (on file with OCE).

³¹ *Id.* The following videos appear to have been filmed in 2013: Video MP-AC-Cleaning-4_13.mp4 (stating "spring is here"); MP-RHEEM-4_2013.mp4; and MP-WATER-4_2013.mp4.

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Internet Video Advertisements

44. The plumbing companies share one website that, as of November 2013, featured thirteen videos of Representative Mullin advertising the companies' services.³²



45. Based on the information before the OCE, it is unclear whether the internet videos were created since Representative Mullin became a Member of Congress. However, as stated above, Representative Mullin told the OCE that he continues to be “the face” of the plumbing companies, indicating that it is possible that the videos were filmed after he began his term in Congress.
46. Representative Mullin’s commercials on radio, television, and the internet include his personal endorsement of the services of the plumbing companies. The endorsements appear to be an effort to attract or retain clients for the plumbing companies.

D. Representative Mullin Received Income from the Plumbing Companies

47. In 2013, Representative Mullin received income from three of the plumbing companies, which he characterizes as “dividends” or “distributions.”³³ He does not own one of the companies that provided a “distribution.”

³² See Mullin Plumbing Website, <http://mullinplumbing.com/>.

³³ Letter from Mullin Plumbing CFO, dated September 23, 2013 (“CFO Letter”) (Exhibit 8 at 13-2392_0032); Mullin MOI (Exhibit 2 at 13-2392_0032).

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Income from Companies Representative Mullin Owns

48. From January 1, 2013 to September 2013, Representative Mullin received the following payments from companies of which he is the sole owner:³⁴
 - a. Mullin Plumbing, Inc. \$302,212.71
 - b. Mullin Environmental, Inc. \$3,542.91
49. Specifically, Representative Mullin receives monthly and quarterly payments from Mullin Plumbing, Inc. Mullin Plumbing Accountant stated that the purpose of the “distributions” is for Representative Mullin to have money for living expenses, tax payments, and for payments to his father to purchase the business.³⁵
50. Mullin Plumbing Accountant described the monthly disbursements of \$6,500 from Mullin Plumbing, Inc. to Representative Mullin as being “in lieu of a salary.”³⁶ He told the OCE that he did not recall whether the monthly payments also occurred prior to 2013.³⁷ He said that prior to 2013, Representative Mullin received a paycheck from Mullin Plumbing for his role as owner, manager, and Chief Executive Officer.³⁸
51. Representative Mullin reported receiving a salary of \$91,731 from “Mullin Plumbing Inc.” in calendar year 2012.³⁹
52. When asked why the salary arrangement changed, Mullin Plumbing Accountant said that Representative Mullin did not believe that a salary was proper because he was not working the same as he had in the past.⁴⁰
53. Representative Mullin told the OCE that Mullin Plumbing CFO determines the amount that he receives from Mullin Plumbing, Inc. and that he is paid based on a percentage of the company’s funds and the quarterly taxes of the company.⁴¹
54. Regarding the income from Mullin Environmental, Inc., Representative Mullin, Mullin Plumbing CFO, and Mullin Plumbing Accountant did not know how the amount of the distribution was determined or why it was given to Representative Mullin.⁴²

³⁴ CFO Letter (Exhibit 8 at 13-2392_0032).

³⁵ Accountant MOI (Exhibit 3 at 13-2392_0016).

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ Calendar Year 2012 Financial Disclosure Statement of Representative Markwayne Mullin, dated May 14, 2013 (Exhibit 9 at 13-2392_0034-0040).

⁴⁰ *Id.*

⁴¹ Mullin MOI (Exhibit 2 at 13-2392_0009).

⁴² *Id.* at 13-2392_0011; CFO MOI (Exhibit 4 at 13-2392_0022-0023); Accountant MOI (Exhibit 3 at 13-2392_0018).

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Income from Company that Representative Mullin Does Not Own

55. From January 1, 2013 to September 2013, Representative Mullin received income totaling \$300,167.84 from Mullin Plumbing West Division, Inc.⁴³
56. Although Mullin Plumbing West is wholly owned by Representative Mullin's wife, he characterized the payments to him as "distributions" from the company.⁴⁴ He received the payments in checks payable to him.⁴⁵
57. When the OCE asked Representative Mullin why he received a distribution from a company that he does not own, he stated that he is married and "everything is joint."⁴⁶
58. He told the OCE that ownership of the company was transferred to his wife based on advice that he received from the Committee on Ethics in November 2012 after he became a member-elect.⁴⁷ He stated that the Committee on Ethics told him that there was a potential conflict of interest associated with his ownership of Mullin Plumbing West Division, Inc. because the company provides plumbing services to Tinker Air Force Base. He said that the company is occasionally a subcontractor on the base.⁴⁸
59. Based on the information before the OCE, Representative Mullin received over \$600,000 of income from the plumbing companies in 2013.⁴⁹

E. Representative Mullin Serves as an Officer or Board Member for the Plumbing Companies

60. In addition to advertising for the plumbing companies, Representative Mullin provides various services in his capacity as an officer or board member.
61. Representative Mullin told the OCE that he is a board member of the companies and that he has not been President and Chief Executive Officer of the companies since December 2012.⁵⁰ However, Mullin Plumbing CFO and Mullin Plumbing Accountant told the OCE that Representative Mullin is currently the President.⁵¹ Mullin Plumbing Accountant produced Oklahoma Annual Business Activity Tax Returns for calendar year 2012 that list Representative Mullin as President.⁵² The OCE was unable to confirm whether Representative Mullin changed his title in 2013.

⁴³ CFO Letter (Exhibit 8 at 13-2392_0032).

⁴⁴ Mullin MOI (Exhibit 2 at 13-2392_0010).

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ CFO Letter (Exhibit 8 at 13-2392_0032).

⁵⁰ Mullin MOI (Exhibit 2 at 13-2392_0008).

⁵¹ CFO MOI (Exhibit 4 at 13-2392_0022).

⁵² 2012 Oklahoma Annual Business Activity Tax Return for Mullin Plumbing West Division, Inc.; 2012 Oklahoma Annual Business Activity Tax Return for Mullin Services, Inc.; 2012 Oklahoma Annual Business Activity Tax

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62. Representative Mullin described his duties as a board member as communicating with his management team whenever they need him.⁵³ He said that as a small business owner, he is involved in every aspect of the business.⁵⁴
63. Specifically, Representative Mullin estimated that he communicates with Mullin Plumbing CFO at least once per week.⁵⁵ Mullin Plumbing CFO also estimated that she communicates with Representative Mullin approximately once per week by text message or telephone call.⁵⁶ Mullin Plumbing CFO estimated that she communicates with Representative Mullin in person once per month in the office in Tulsa, Oklahoma.
64. The communications between Representative Mullin and Mullin Plumbing CFO generally concern the finances of the company, including monthly finances, bank account status, and insurance renewals.⁵⁷
65. Representative Mullin's Accountant described Representative Mullin's role with the Mullin Plumbing companies as being overseer and manager.⁵⁸
66. Based on the information before the OCE, Representative Mullin may have received earned income for his service as an officer and as a board member. Specifically, the income that Representative Mullin receives from the plumbing companies may be earned income because of services he provides to attract and retain clients. Also, the income from Mullin Plumbing West Division, Inc. may be earned income because the "distribution" is from a company that he does not own.⁵⁹

F. Representative Mullin Received Advice from the Committee on Ethics

67. Soon after Representative Mullin was elected in November 2012, he requested advice from the Committee on Ethics concerning his advertisements for the plumbing companies, but he may not have provided the Committee on Ethics a complete and accurate statement of all material facts related to: (1) advertisements produced after he became a Member of Congress; and (2) income he received from his wife's company.

Return for Mullin Environmental, Inc.; 2012 Oklahoma Annual Business Activity Tax Return for Mullin Plumbing, Inc. (Exhibit 10 at 13-2392_0042-0046).

⁵³ Mullin MOI (Exhibit 2 at 13-2392_0010); CFO MOI (Exhibit 4 at 13-2392_0022).

⁵⁴ Mullin MOI (Exhibit 2 at 13-2392_0009).

⁵⁵ *Id.*

⁵⁶ CFO MOI (Exhibit 4 at 13-2392_0022).

⁵⁷ *Id.*

⁵⁸ Accountant MOI (Exhibit 3 at 13-2392_0017-0018).

⁵⁹ We note that given the substantial services rendered by Representative Mullin for the plumbing companies, federal tax law may require that a portion of the payments received by Representative Mullin be treated as wages as opposed to distributions for federal tax law purposes. See 26 U.S.C. §§ 3111, 3121, 3301, and 3306; 26 C.F.R. §§ 31.3101-1 *et seq.*, and 31.3301-1 *et seq.* We also note that wages are considered *per se* outside earned income pursuant to House Rule 25, cl. 4(d)(1).

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68. On November 26, 2012, then-Representative-elect Mullin met with staff of the Committee on Ethics to discuss his business interests and advertisements for the plumbing companies.⁶⁰
69. The Committee's "informal, staff-level guidance regarding the advertisements was that the advertisements did not need to be removed from circulation provided that: (1) the business was not one that offered fiduciary services, (2) **the advertisements in question were filmed prior to then-Representative-elect Mullin winning election to the U.S. House of Representatives**, and (3) the advertisements made no reference to then-Representative-elect Mullin's position as a Member of Congress."⁶¹
70. Although the advice states that advertisements filmed prior to Representative Mullin's election could continue to be circulated, the Committee on Ethics noted that "our guidance did not address the question of whether then-Representative-elect Mullin could make new advertisements for the company."⁶²
71. When the OCE asked Representative Mullin whether he had any discussions with the Committee on Ethics concerning whether he could film new commercials, he said that he did not recall any such discussions.⁶³ He then stated that if the Committee on Ethics would have told him that he could not film new commercials for the companies he would have told them that was impossible.⁶⁴
72. Representative Mullin told the OCE that he transferred the ownership of Mullin Plumbing West Division, Inc. to his wife based on advice from the Committee on Ethics that a conflict of interest may arise if he maintained ownership.⁶⁵ Specifically, he was told that a conflict of interest could arise because Mullin Plumbing West Division, Inc. is a subcontractor for a military base and he is a Member of Congress.⁶⁶ Assuming that he accurately described to the OCE the advice he was given, it is unlikely that the Committee on Ethics knew that he would transfer ownership of the company to his wife yet continue to receive payments from the company, because any potential conflict of interest would presumably still exist due to his direct receipt of company profits.
73. The Board notes that "[a]nyone who acts in good faith in accordance with a written advisory opinion from the Committee may not then be investigated by the Committee

⁶⁰ Email from Tom Rust to Karl Ahlgren, dated September 19, 2013 (Exhibit 11 at 13-2392_0048-0049).

⁶¹ *Id.* (emphasis added).

⁶² *Id.*

⁶³ Mullin MOI (Exhibit 2 at 13-2392_0012).

⁶⁴ *Id.*

⁶⁵ *Id.* at 13-2392_0010.

⁶⁶ *Id.*

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based on the conduct addressed in the opinion⁶⁷ However, in this matter, Representative Mullin received informal, oral guidance, and that guidance may have been based on his incomplete statement of material facts.

74. As a result, there is substantial reason to believe that Representative Mullin's income from the plumbing companies and his advertisements for the companies were not conducted in compliance with formal advice from the Committee on Ethics.

III. CONCLUSION

75. Representative Mullin owns and continues to be significantly involved in various plumbing companies, serving as a board member, and possibly an officer, while personally advertising on the radio, television, and the internet for those companies.
76. He received income totaling more than \$600,000 from these plumbing companies in 2013. A portion of the income he received was characterized as a "distribution" from a company that he does not own, but for which he serves as possibly an officer and as a board member.
77. Based on the facts before the OCE, there is substantial reason to believe that the income he received is earned income because: (1) his share of the profits from the plumbing companies are, at least in significant part, for attracting or retaining clients; and (2) his "distributions" from the company his wife owns are not a return on any equity that he holds.
78. The Board recommends that the Committee on Ethics further review the allegations concerning the outside earned income because there is substantial reason to believe that the income Representative Mullin received exceeded the outside earned income limit in 2013.
79. The Board recommends that the Committee on Ethics further review the allegation concerning Representative Mullin endorsing services because there is substantial reason to believe that Representative Mullin appeared in commercials for an outside employer while serving as a Member of Congress.
80. The Board recommends that the Committee on Ethics further review the allegation concerning Representative Mullin serving as a compensated officer and board member because there is substantial reason to believe that Representative Mullin received compensation for the services he provided as an officer or board member of the plumbing companies.

⁶⁷ House Ethics Manual at 21.

EXHIBIT 1

U.S. House of Representatives

COMMITTEE ON ETHICS

Washington, DC 20515

January 24, 2013

MEMORANDUM FOR ALL MEMBERS, OFFICERS, AND EMPLOYEES

FROM: Committee on Ethics

YAC K. Michael Conaway, Chairman

AS Linda T. Sánchez, Ranking Member

SUBJECT: The 2013 Outside Earned Income Limit and Salaries Triggering the Financial Disclosure Requirement and Post-Employment Restrictions Applicable to House Officers and Employees

A House employee's salary level may trigger certain public disclosure requirements and employment restrictions, including the:

1. Requirement to file financial disclosure (FD) statements, including Periodic Transaction Reports (PTRs);¹
2. Restrictions on outside employment;
3. Disclosure of negotiations for private employment and recusal requirements; and
4. Post-employment restrictions.

Due to the federal pay freeze enacted in 2011,² most of the triggering salaries and limits initially will not change from those in effect during calendar year (CY) 2012. However, new pay rates may go into effect after the first quarter of CY 2013, and some of the triggering salaries may change at that time. The Committee will issue updated guidance should any of the numbers change during the year. This memorandum provides details on the current triggering salary figures for CY 2013 for each of the categories noted above, and summarizes them in a table on page 5 of this Memorandum.

¹ For detail on the PTR requirement, see the Committee's August 17, 2012, advisory memorandum "Periodic Reporting of Personal Financial Transactions Pursuant to the STOCK Act, as amended," which is available on the Committee Web site (ethics.house.gov), under the links for Reports/General Advisories. Note that the STOCK Act may require the filing of PTRs as often as once per month.

² See Continuing Appropriations Act, 2011, Pub. L. 111-242, § 147, as amended by Continuing Appropriations and Surface Transportation Extensions Act, 2011, Pub. L. 111-322, § 1(b)(1).

FINANCIAL DISCLOSURE

House officers and employees whose “rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS-15 of the General Schedule” for at least 60 days at any time during a calendar year are required to file FD statements, provided that the officer or employee “performs the duties of his [or her] position or office for a period in excess of sixty days in that calendar year.”³ The GS-15, step 1, basic pay rate for CY 2013 remains \$99,628. The applicable 120% calculation for that rate for therefore remains **\$119,553.60**, or a monthly salary at or above \$9,962.80. This rate is referred to as the “senior staff rate.”

As a result, House officers and employees whose basic rate of pay is equal to or greater than the senior staff rate (\$119,553.60) for at least **60 days**⁴ during **2013** must file an FD statement on or before May 15, 2014.⁵ In addition, any new employee paid at the senior staff rate must file a “new employee” FD statement within 30 days of assuming employment with the House.⁶ Finally, any staff who are paid at the senior staff rate on January 3, 2013 (or their first day of employment, if later in the year) must file reports (PTRs) on an ongoing basis throughout the year regarding certain financial transactions. See footnote 1 of this Memorandum for more information on the PTR requirement.

Please note that the requirement to file an FD statement covering calendar year 2012 applies to officers and employees whose basic rate of pay for at least 60 days in **2012** was also **\$119,553.60** or more. Annual FD statements covering CY 2012 are due on Wednesday, May 15, 2013, for those individuals who continue to be Members, officers, or employees of the House on that date.

In addition, House Members, officers, and employees paid at or above the senior staff rate for 60 days or more in a calendar year who terminate their House employment during that calendar year are required to file an FD statement within 30 days of their termination.⁷

³ Ethics in Government Act (EIGA) §§ 109(13) and 101(d), 5 U.S.C. app. 4 §§ 109(13) and 101(d) (hereinafter all citations to the EIGA will be to the appropriate federal code citation). In addition, all House Members are required to file FD statements. 5 U.S.C. app. 4 §§ 101(e) and (f).

⁴ The House payroll department operates on a 30-day payroll cycle, meaning that each monthly pay period, regardless of its actual length, is counted as 30 days. Thus, a change to an employee’s base rate of pay in any two months during the calendar year (even non-consecutive months) may trigger the requirement to file a Financial Disclosure Statement. This is true even if the pay change affects only part of a month.

⁵ 5 U.S.C. app. 4 §§ 101(c) and 109(f).

⁶ See 5 U.S.C. app. 4 § 101(a). The only exception to this filing requirement is for new employees who assume employment with the House within 30 days of leaving a position with the federal government in which they filed a publicly-available financial disclosure statement. Individuals who are exempt from filing under these circumstances must notify the Clerk of the House in writing of that fact.

⁷ See 5 U.S.C. app. 4 § 101(e). The only exception is for filers who, within 30 days of their termination from the House, accept a position with the federal government that requires the filing of a publicly-available financial disclosure statement. Departing employees who are exempt from filing under these circumstances must notify the Clerk of the House in writing of that fact.

**THE OUTSIDE EARNED INCOME LIMIT
AND OUTSIDE EMPLOYMENT RESTRICTIONS**

House officers and employees whose rate of basic pay is equal to or greater than the senior staff rate for **more than 90 days** are subject to limits on the amount of outside earned income⁸ attributable to each calendar year.⁹ As noted above, the senior staff rate for CY 2013 is **\$119,553.60**, or a monthly salary of \$9,962.80 or more.

The limit on outside earned income attributable to a calendar year is 15% of the rate of basic pay for Executive Schedule Level II in effect on January 1 of the year. Because any new pay rates will not go into effect later in 2013, the rate of basic pay for Executive Level II on January 1, 2013, remains \$179,700. Accordingly, the outside earned income limit for House Members, officers, and employees paid at or above the senior staff rate for CY 2013 remains **\$26,955**.¹⁰ This limit will not change, even if federal pay rates change later in the year.

Members, officers, and House employees paid at or above the senior staff rate for more than 90 days are also subject to a number of specific limitations on the types of outside employment.¹¹ Detailed information regarding these limitations may be found on pages 213 to 238 of the *2008 House Ethics Manual*, which is available on the Committee's Web site (ethics.house.gov). The Committee's Office of Advice and Education (extension 5-7103) is available to explain these limitations further.

DISCLOSURE OF EMPLOYMENT NEGOTIATIONS AND RECUSALS

House Members, officers, and employees paid at the senior staff rate must notify the Committee within three (3) business days after they commence any negotiation or agreement for future employment with a private entity.¹² In addition, House Members, officers, and senior staff must recuse themselves from "any matter in which there is a conflict of interest or an appearance of a conflict" with the private entity with which they are negotiating or have an agreement for future employment or compensation, and they must notify the Ethics Committee in writing of such recusal. As noted above, the senior staff rate for CY 2013 is **\$119,553.60**, or a monthly salary of \$9,962.80 or more.

Information on the disclosure and recusal requirements related to seeking private employment applicable to Members, officers, and senior staff is available in two Committee advisory memoranda, one for Members and officers and one for staff. Copies of both

⁸ The term "outside earned income" means any "wages, salaries, fees, and other amounts received or to be received as compensation for personal services actually rendered" by a House Member, officer, or employee. House Rule 25, cl. 4(d)(1). It does not include the individual's salary from the House, nor does it include income for services rendered before the individual was employed by the House. *Id.* at cls. 4(d)(1)(A), (B).

⁹ 5 U.S.C. app. 4 § 501(a)(1); House Rule 25, cls. 1(a)(1) and 4(a)(1).

¹⁰ This amount is proportionally reduced when an individual becomes a Member, officer, or senior employee during the calendar year. For example, an individual who is hired into a senior staff position on July 1 has an outside earned limit that is one-half of the full amount, or \$13,478. *See* 5 U.S.C. app. 4 § 501(a)(2); House Rule 25, cl. 1(b).

¹¹ *See* 5 U.S.C. app. 4 § 502(a); House Rule 25, cls. 1-4.

¹² House Rule 27, cl. 2; Stop Trading on Congressional Knowledge Act, Pub. L. No. 112-105 (Apr. 4, 2012) § 17.

memoranda, which are dated November 26, 2012, are available on the Committee's Web site (ethics.house.gov) under "Reports/General Advisories."

POST-EMPLOYMENT RESTRICTIONS

House Members and officers, as well as certain other House employees, are subject to post-employment restrictions on lobbying.¹³ A former employee of a Member, committee, or leadership office is subject to the restrictions if, for at least **60 days** during the one-year period preceding termination of House employment, the employee was paid at a rate equal to or greater than 75% of the basic rate of pay for Members at the time of termination. This amount is referred to as the "very senior staff rate."

The basic rate of pay for Members in 2013 will remain \$174,000.¹⁴ Therefore, the post-employment threshold for employees who depart from a job in a Member, committee, or leadership office in CY 2013 remains **\$130,500**, or a monthly salary of \$10,875 or more. However, the triggering salary for employees of other House or legislative branch offices (such as the CBO, GAO, GPO, Capitol Police, Library of Congress, Clerk, Parliamentarian, Office of Legal Counsel, and Chief Administrative Officer) is Executive Schedule Level IV. At present, that salary remains \$155,500, or a monthly salary of \$12,958.33 or more. However, it is possible that rate will rise later in the year.

Information on the post-employment restrictions applicable to Members, officers, and very senior staff is available in the two Committee advisory memoranda referenced in the previous section.

* * * * *

See page 5 for a table summarizing the information contained in this memorandum.

¹³ 18 U.S.C. § 207.

¹⁴ The President issued an Executive Order on December 27, 2012, that increased pay for certain federal employees, including a cost-of-living raise for Members of Congress to \$174,900, to take effect on April 7, 2013. However, subsequent passage of the American Taxpayer Relief Act of 2012, Pub. L. No. 112-240, § 802 (Jan. 2, 2013), continued the pay freeze for Members of Congress. As a result, Member pay will remain at \$174,000 for 2013.

CALENDAR YEAR 2013

Item	2013 Amount
Outside earned income & outside employment threshold - Outside employment fiduciary restrictions if paid at rate for more than 90 days	\$119,553.60 (\$9,962.80/mo)
Outside earned income limit	\$26,955
Financial Disclosure/PTR threshold - Annual FD required in May 2014 if paid at rate for 60 days or more in CY 2013 - PTRs required during CY 2013 if paid at rate on first day of House employment <u>or</u> after 60 days of employment at the rate in CY 2013	\$119,553.60 (\$9,962.80/mo)
Written disclosure of job negotiations and recusals required	\$119,553.60 (\$9,962.80/mo)
Post-Employment threshold for employees of Member, committee, or leadership offices	\$130,500 (\$10,875/mo)
Post-Employment threshold for employees of "other legislative offices" (see p. 4)	\$155,500 (\$12,958.33/mo)

EXHIBIT 2

CONFIDENTIAL

Subject to the Nondisclosure Provisions of H. Res. 895 of the 110th Congress as Amended

OFFICE OF CONGRESSIONAL ETHICS
UNITED STATES HOUSE OF REPRESENTATIVES

MEMORANDUM OF INTERVIEW

IN RE: Representative Markwayne Mullin
REVIEW NO.: 13-2392
DATE: October 10, 2013
LOCATION: 1113 LHOB
Washington, DC 20515
TIME: 11:00 a.m. to 11:50 a.m. (approximately)
PARTICIPANTS: Kedric L. Payne
Paul J. Solis
Karl Algren

SUMMARY: The OCE requested an interview with the witness and he consented to an interview. The witness made the following statements in response to our questioning:

1. The witness was given an 18 U.S.C. § 1001 warning and consented to an interview. He signed a written acknowledgement of the warning, which will be placed in the case file in this review.
2. The witness stated that he is the owner of Mullin Plumbing, Inc. He said that he is not certain whether he wholly owns the company because his wife owns one or two of the Mullin companies and he is not certain which she owns. He is certain that she owns Mullin Plumbing West Division, Inc.
3. Mullin Plumbing, Inc. is organized as a subchapter S corporation and he described the nature of the business as residential and commercial plumbing services.
4. The witness told the OCE that he is on the Board of Mullin Plumbing, Inc., but he is not the President or Chief Executive Officer of the company. He stated that in December 2012 or January 2013, he no longer served as CEO and President of the company because of advice that he received from the Committee on Ethics.
5. He did not recall how long he served as President and CEO of Mullin Plumbing, Inc. During the time that he served in those positions, he was actively involved in the decision making of the company. He stated that he wore many hats and was responsible for any task that needed to be performed, including plumbing services, dispatching and secretarial duties, and janitorial duties.

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6. The witness told the OCE that he has been the voice and face of the family company since “day one” and he has made television and radio commercials for well over a decade. He stated that he still is the face and voice of the company, that he still volunteers his time, that the companies are still family owned, and that it is the livelihood of his wife and children.
7. When asked when he filmed his most recent television commercial for the company, the witness stated that he was not certain. He recalled filming a commercial in November of 2012 that was a Christmas greeting. He stated that it is possible that he filmed another commercial in 2013, but he is not certain. He said that he plans to film another commercial this year as a Christmas greeting and plans on continuing to film commercials and making radio commercials.
8. When asked when he recorded his most recent radio commercial for the company, the witness stated that he appears on the radio show for the company almost every Saturday morning. He appears on a program called House Talk.
9. Since he has become a board member of the company, he regularly interacts with members of his company. He stated that he regularly communicates with the Chief Financial Officer and Chief Executive Officer of the company. When initially asked how often “regularly” is, the witness stated that he did not know. He then explained that he communicates with them at least once per week. The communications concern the finances of the company. He stated that he communicates with management “when they need” him. The witness stated that “a small business owner is involved in every aspect” of the business.
10. When asked about payments that he has received from Mullin Plumbing, Inc. in 2013, the witness stated that does not think that he has received a salary in 2013. He said that his accountant and Chief Financial officer know whether he has received a salary.
11. He told the OCE that he receives a dividend from the company. When asked whether he was referring to a distribution, the witness stated that it is a distribution or a dividend. He receives the distribution monthly.
12. The witness said that he does not know the amount of the monthly distribution from the company. He said that his CFO determines the amount that he is paid based on a percentage and is substantially based on quarterly taxes for the company. When asked whether he receives \$6,500 per month from the company, the witness said that he did not know.
13. The amount he received in distributions from the company decreased in 2013 compared to 2012 because of an effort to reinvest money into the company.

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14. When asked why he received a salary from the company in 2012, the witness told the OCE that the money was for his services as CEO and President.
15. The witness stated that his wife has wholly-owned Mullin Plumbing West Division, Inc. since December 2012 or January 2013. He acknowledged that the ownership of the company was transferred to his wife from a living trust that he has with his wife. When asked whether the trust owns any of the other Mullin companies, the witness stated that he does not know.
16. He told the OCE that ownership of Mullin Plumbing West Division, Inc. was transferred to his wife based on advice that he received from the Committee on Ethics in November 2012 after he became a member-elect. He stated that the Committee on Ethics told him that there was a potential conflict of interest associated with his ownership of Mullin Plumbing West Division, Inc. because the company provides plumbing services to Tinker Air Force Base. He said that the company is occasionally a subcontractor on the base.
17. The company is organized as a subchapter S corporation and provides the same services as Mullin Plumbing, Inc. He stated that he is a board member. When asked about his duties for Mullin Plumbing West Division, Inc., the witness initially stated that he has the duties as "owner". He was then asked whether he is the owner and he responded that he is not. He then stated that his duties and responsibilities for Mullin Plumbing West Division, Inc. are the same as those he has for Mullin Plumbing, Inc., which include communicating with the management team and serving as a board member.
18. The witness stated that he receives a distribution from Mullin Plumbing West Division, Inc. He believes that the distribution is monthly. He told the OCE that he does not know the amount of the distribution and that the amount is determined by his CFO and the board. He does not know whether he receives \$5,000 per month. The distribution decreased in 2013 for the same reason as his distributions from Mullin Plumbing, Inc.
19. He initially told the OCE that he believes the distributions are paid into a joint bank account with his wife. Moments later he used a mobile phone and told the OCE that he was calling his CFO. He told the OCE that the CFO told him that the distributions from Mullin Plumbing West Division, Inc. are paid with checks written individually to the witness and sometimes individually to his wife.
20. When asked why he receives a distribution from a company he does not own, the witness replied that it is because "we're married. Everything is joint."
21. The witness stated that the decisions on the amount of distributions come from the board, the CFO, and the CEO. His wife also has a role in the decision making of the distributions from Mullin Plumbing West Division, Inc.

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22. He stated that he has never received a salary from Mullin Plumbing West Division, Inc.
23. The witness told the OCE that he thinks he wholly owns Mullin Plumbing Environmental, Inc., but he is not certain. He stated that his CFO knows whether he wholly owns the company.
24. The company provides services for water and waste treatment and is a subchapter S corporation. He is a board member for the company, but is no longer the President or CEO since January 2013, similar to the Mullin Plumbing, Inc. and Mullin Plumbing West Division, Inc.
25. He told the OCE that his duties and responsibilities for Mullin Plumbing Environmental, Inc. are the same as for Mullin Plumbing, Inc. and Mullin Plumbing West Division, Inc.
26. He receives a distribution from the company and it decreased in 2013 for the same reason his distribution decreased with Mullin Plumbing, Inc. and Mullin Plumbing West Division, Inc. The amount of the distribution is determined by the CEO, CFO and leadership team. He confirmed that the leadership team he referenced is the same leadership team listed on the website of mullininc.com.
27. The witness told the OCE that he thinks he wholly owns Mullin Services, Inc., but he is not certain. He stated that his CFO knows whether he wholly owns the company.
28. The company is organized as a subchapter S corporation and it provides heating, ventilation, and air conditioning services.
29. His title and duties with Mullin Services, Inc. are the same as with Mullin Plumbing, Inc. and Mullin Plumbing West Division, Inc.
30. The witness was shown his draft financial disclosure statement for calendar year 2013 that he produced in response to the OCE Request for Information (MM_0002-09). He stated that the "unearned income" noted for Mullin Services, Inc. was not a distribution. He stated that it was an increase in the value of the company.
31. The witness told the OCE that he thinks he wholly owns Mullin Plumbing New Construction, Inc., but he is not certain. He stated that his CFO knows whether he wholly owns the company.
32. He assumes that it is organized as a subchapter S corporation. The company provides construction services for residential and commercial plumbing purposes.
33. His title and duties with Mullin Plumbing New Construction, Inc. are the same as with Mullin Plumbing, Inc. and Mullin Plumbing West Division, Inc.

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34. He does not receive a distribution from this company.
35. The witness told the OCE that he owns Mullin Properties, LLC. He described the company as owning residential and commercial rental properties. The company does not have any real estate brokers or agents.
36. His role with the company is more "hands-off" than his responsibilities with his other companies.
37. Mullin Properties West Division, LLC is a company that he owns with Daniel Ice. The witness stated that the company's business is the same as Mullin Properties, LLC.
38. When asked why he did not report Mullin Properties West Division, LLC on his financial disclosure statements, the witness stated that it is because the company "doesn't do anything" and has no income. He said that his accountant knows why it was not included.
39. The witness told the OCE that he believes he wholly owns Mullin Farms but he is not certain. He stated that his CFO knows whether he wholly owns the company. He also said that his wife is the only other potential co-owner for any of his companies where he is not sure of his percentage of ownership.
40. The farm is organized as an LLC. The farm sells cattle, horses, and hay. The witness told the OCE that he lives on the farm. He stated that he has not received any payments from the farm in 2013.
41. The witness stated that during new Member orientation, the Committee on Ethics offered to meet with Members who had questions about businesses. He asked to meet with the Committee on Ethics. His wife and the Mullin Plumbing CFO also attended the meeting. The committee staff went through everything line by line, making recommendations on how his businesses should be set up. He does not know who attended the meeting from the Committee on Ethics.
42. The Committee on Ethics advised him that his outside earned income could not exceed approximately \$29,000. They also advised him that as an owner he could draw dividends and distributions from his companies. They advised that he could do advertisements if he did not get paid to do the advertisement or mention politics.
43. When asked whether there were discussions about whether he could film new commercials, the witness said that he did not recall such discussions. He then stated that if he would have been told that he could not film new commercials for the company he would have told the Committee on Ethics that that was not possible.

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This memorandum was prepared on October 12, 2013, based on the notes that the OCE staff prepared during the interview with the witness on October 10, 2013. I certify that this memorandum contains all pertinent matters discussed with the witness on October 10, 2013.

Kedric L. Payne
Deputy Chief Counsel

EXHIBIT 3

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OFFICE OF CONGRESSIONAL ETHICS
UNITED STATES HOUSE OF REPRESENTATIVES

MEMORANDUM OF INTERVIEW

IN RE: Mullin Plumbing Accountant
REVIEW NO.: 13-2392
DATE: October 4, 2013
LOCATION: 1560 East 21st Street
Tulsa, OK 74114
TIME: 9:41 a.m. to 10:41 a.m. (approximately)
PARTICIPANTS: Kedric L. Payne
Paul J. Solis
Lee R. Swarthout

SUMMARY: The OCE requested an interview with the witness and he consented to an interview. The witness made the following statements in response to our questioning:

1. The witness was given an 18 U.S.C. § 1001 warning and consented to an interview. He signed a written acknowledgement of the warning, which will be placed in the case file in this review.
2. The witness is a certified public accountant and one of three partners of Hartog, Kallenberger & Swarthout, P.L.L.C. ("HKS"). He has been employed with HKS for approximately four years. Prior to his employment with HKS, he was employed by Kallenberger & Associates for approximately eight years.
3. The witness told the OCE that he first met Representative Markwayne Mullin approximately eight to ten years ago. Representative Mullin was referred to the witness for assistance with tax services for his companies. The witness recalled that Representative Mullin had approximately two companies at the time.
4. Representative Mullin remains a client of the witness and he assists Representative Mullin and his companies with the following: corporate tax returns; Oklahoma franchise tax returns; Oklahoma income tax returns; financial statements; personal tax returns for Representative Mullin and his wife; financial disclosure statements for the House of Representatives.
5. The witness stated that he provides services for the following companies affiliated with Representative Mullin: Mullin Plumbing, Inc.; Mullin Plumbing West Division, Inc.; Mullin Plumbing Environmental, Inc.; Mullin Plumbing New Construction, Inc.; Mullin

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Services, Inc.; Mullin Properties, LLC; and Mullin Farms. The witness said that he is not familiar with Mark Mullin Co., LLC.

6. His primary contact for these companies is Staci Crabtree, who he described as the office manager that essentially runs the companies. He stated that he speaks to Representative Mullin approximately twice a year. However, he spoke to Representative Mullin approximately four to five times per year prior to 2012. During those conversations prior to 2012, the witness discussed tax planning and the books of the companies.
7. He speaks to Ms. Crabtree and Representative Mullin's Chief of Staff when he prepares the House financial disclosure statements for Representative Mullin.
8. The witness described Mullin Plumbing, Inc. as a services business that provides plumbing, irrigation, and appliance repair services. The company does not have any long-term contracts and he is not aware of any bulk sales of parts. The company has approximately forty employees, two-thirds of which are the service providers. The remaining employees are accountants, dispatchers, and similar non-service providers.
9. He told the OCE that Representative Mullin owns 100% of the company, which is organized as an S corporation.
10. He stated that he was not sure whether Representative Mullin had day-to-day contact with the company.
11. When asked about the payments that Representative Mullin receives from Mullin Plumbing, Inc., the witness told the OCE that he receives distributions on an "as call basis" whenever he decides to have such distributions. The purpose of the distributions is for Representative Mullin to have money for living expenses, tax payments, and for payments to his father to purchase the business. No one else receives a distribution from the company.
12. The witness stated that Representative Mullin receives a monthly distribution of \$6,500 that the witness thinks is "in lieu of a salary." The witness did not recall the \$6,500 figure being distributed to Representative Mullin prior to 2013. Representative Mullin received a paycheck from Mullin Plumbing prior to 2013 for his role as owner, manager, and Chief Executive Officer. When asked why the salary arrangement changed, the witness stated that Representative Mullin did not believe that a salary was proper because he was not working the same as he had in the past.
13. The witness has the understanding that in 2013 Representative Mullin only receives a salary from the House of Representatives and not from any other sources.

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14. Mullin Plumbing West Division, Inc. is the same type of service company as Mullin Plumbing, Inc., but Mullin Plumbing West Division, Inc., is located in the Oklahoma City region. The company is a separate entity from Mullin Plumbing, Inc. primarily for concerns of legal liability if the company was involved in a lawsuit.
15. Mullin Plumbing West Division, Inc. is a subchapter S corporation and has approximately thirty employees, who are mostly service providers.
16. When asked who owned Mullin Plumbing West Division, Inc., the witness initially stated that Representative Mullin wholly owns the company. However, he then stated that he learned from Ms. Crabtree this week, in preparation for his interview with OCE, that the company had been transferred to Mrs. Mullin effective January 1, 2013. Ms. Crabtree told him that the transfer was made based on guidance received from the House Committee on Ethics.
17. When asked about a draft of Representative Mullin's calendar year 2013 financial disclosure statement that the witness prepared for the OCE (MM_0001 – MM_0009), he stated that he based the disclosure on in-house financial statements that Ms. Crabtree prepared.
18. The witness does not know for certain whether the distributions in 2013 from the company are paid to Representative Mullin and he does not know whether the distributions are monthly or quarterly. He will not know the details of the distributions until he receives more detailed information from Ms. Crabtree. He said that in prior years, all distributions from the company were paid to Representative Mullin.
19. The witness stated that Representative Mullin and his wife file a joint income tax return and the flow through for Mullin Plumbing West Division, Inc. is included in this joint tax return.
20. He described Representative Mullin's role with Mullin Plumbing West Division, Inc. as overseer and manager.
21. When asked whether Representative Mullin ever received a salary from Mullin Plumbing West Division, Inc., the witness initially stated that he did not know. He was then shown Representative Mullin's calendar year 2012 financial disclosure statement. The witness confirmed that he prepared the financial disclosure statement and it refreshed his recollection that no salary had been reported from Mullin Plumbing West Division, Inc. for 2012. The witness then stated that Representative Mullin did not receive a salary in 2012 from Mullin Plumbing West Division, Inc.

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22. The witness told the OCE that Mrs. Mullin received a salary in 2012 from Mullin Plumbing, Inc. for her work in television advertisements and her participation in Board meetings.
23. The witness stated that Mrs. Mullin does very little work for Mullin Plumbing West Division, Inc.
24. Mullin Plumbing Environmental, Inc. is a service company that cleans large projects, such as tar pits. The witness stated that it is a subchapter S corporation that is wholly owned by Representative Mullin. He does not know the number of employees of the company.
25. He described the duties and role of Representative Mullin for Mullin Plumbing Environmental, Inc. as being the same as Representative Mullin's role with Mullin Plumbing, Inc. and Mullin Plumbing West Division, Inc.
26. The witness was shown a letter from Ms. Crabtree dated September 23, 2013 (MM_0012), listing distributions from Mullin Environmental, Inc. to Representative Mullin in 2013. He told the OCE that he was not aware of the distribution from the company to Representative Mullin. He also is not aware of Representative Mullin ever receiving a salary from Mullin Environmental, Inc.
27. When asked about Mullin Services, Inc., the witness stated that he did not know the nature of the business or the number of employees. The company is two or three years old and is a subchapter S corporation wholly owned by Representative Mullin.
28. The witness was shown the draft of Representative Mullin's calendar year 2013 financial disclosure statement that the witness prepared for the OCE (MM_0001 – MM_0009) and asked about the unearned income attributed to Mullin Services, Inc. The witness stated that the amount of unearned income was not a distribution. He described the unearned income as an amount that Representative Mullin accumulated from a capital investment into the company. The witness is not aware of Representative Mullin receiving a salary from the company.
29. Mullin Plumbing New Construction, Inc. is a company that does above-ground construction work. The witness stated that the construction work includes small commercial buildings. The company is a subchapter S corporation wholly owned by Representative Mullin.
30. Representative Mullin's role and duties with the company are the same as those with Mullin Plumbing, Inc. and Mullin Plumbing West Division, Inc.

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31. The witness is not aware of Representative Mullin receiving any distributions or salary from Mullin Plumbing New Construction, Inc.
32. According to the witness, Mullin Properties LLC owns various commercial and residential rental properties. He does not believe there are any employees of the company, but Ms. Crabtree is involved in the company.
33. Representative Mullin wholly owns the company. The witness described Representative Mullin as being less involved with this company because the real estate basically takes care of itself.
34. The company does not broker any real estate transactions.
35. The witness is not aware of Representative Mullin receiving any salary or distributions from the company.
36. Mullin Farms is located in Westville, Oklahoma and sells cattle. The witness is not certain whether there are other farming operations.
37. The farm is organized as an LLC that Representative Mullin wholly owns. According to the witness, Representative Mullin occasionally visits the farm, but he is not aware of him having any management responsibilities.
38. The witness is not aware of any salary, distributions, or other payments from the farm to Representative Mullin.
39. The witness told the OCE that he has not had any communications with the Committee on Ethics.
40. With respect to the amount of any distributions that Representative Mullin receives, the witness stated that he is not involved in any decisions on the amount of the distributions. He also told the OCE that he does not provide any amounts concerning distributions to Ms. Crabtree.

This memorandum was prepared on October 5, 2013, based on the notes that the OCE staff prepared during the interview with the witness on October 4, 2013. I certify that this memorandum contains all pertinent matters discussed with the witness on October 4, 2013.

Kedric L. Payne
Deputy Chief Counsel

EXHIBIT 4

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OFFICE OF CONGRESSIONAL ETHICS
UNITED STATES HOUSE OF REPRESENTATIVES

MEMORANDUM OF INTERVIEW

IN RE: Mullin Plumbing Chief Financial Officer
REVIEW NO.: 13-2392
DATE: September 25, 2013
LOCATION: Via Telephone
TIME: 1:00 p.m. to 1:46 p.m. (approximately)
PARTICIPANTS: Kedric L. Payne
Paul J. Solis
Bryson B. Morgan

SUMMARY: The OCE requested an interview with the witness and she consented to an interview. The witness made the following statements in response to our questioning:

1. The witness was given an 18 U.S.C. § 1001 warning and consented to an interview. She signed a written acknowledgement of the warning, which will be placed in the case file in this review.
2. The witness is the Chief Financial Officer for Mullin Plumbing, Inc. ("CFO"). She has served in this capacity since July 2012. Before serving as CFO, the witness was the office manager.
3. She has been employed with Mullin Plumbing, Inc. since August 2001. Prior to her employment with Mullin Plumbing, Inc., the witness worked for B&E Escort, a freight company.
4. The witness told the OCE that her duties as CFO include tracking the company's bank deposits, reconciling bank accounts, preparing financial statements for the accountant, managing office employees, and other general duties.
5. She also performs the same duties for the following companies that are affiliated with Mullin Plumbing, Inc.: Mullin Services, Inc.; Mullin Plumbing New Construction, Inc.; Mullin Properties LLC; Mullin Environmental, Inc.; and Mullin Plumbing West Division, Inc.
6. The witness reports to Robert Morris, who has been the Chief Executive Officer ("CEO") of Mullin Plumbing, Inc. since July 2012. She stated that it is her understanding that Mr. Morris replaced Representative Mullin as CEO in 2012 because of Representative Mullin's campaign for Congress.

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7. She told the OCE that Representative Mullin is the President of Mullin Plumbing, Inc. and is the sole owner. Ray Trimble is the Chief Operating Officer of Mullin Plumbing, Inc. Representative Mullin's wife is the Secretary and Treasurer.
8. The witness described Representative Mullin's activities as President to include advising the CEO, acting as a signor on the bank account, and advising the company's leadership team. She stated that Representative Mullin performed similar duties prior to 2013, but his involvement has decreased greatly since 2011. The witness stated that she sees Representative Mullin "occasionally" but "nothing like when he was CEO."
9. She estimates that she contacts him approximately once per week by text messages or telephone calls. She sees him in person in the office approximately once per month. Her communications with Representative Mullin typically concern monthly financials, the status of bank accounts, insurance renewals, and any questions that he may have regarding these matters. Representative Mullin has an office in the same building as her office in Broken Arrow, Oklahoma.
10. The witness told the OCE that Representative Mullin is the President and sole owner and shareholder of Mullin Plumbing, Inc.; Mullin Services, Inc.; Mullin Plumbing New Construction, Inc.; Mullin Properties LLC; Mullin Environmental, Inc. She also believes that the other officers of Mullin Plumbing, Inc. are also the same officers for these entities.
11. She stated that Mullin Plumbing West Division, Inc. is 100% owned by Representative Mullin's wife and Daniel Ice is the CEO. Mullin Plumbing West Division, Inc. is located in Moore, Oklahoma.
12. The witness assists Representative Mullin in completing financial disclosure statements for the House of Representatives and forwards them on to the accountant.
13. When asked about payments that Representative Mullin receives from the companies, the witness stated that he has not received a salary in 2013. She stated that in prior years Representative Mullin received a weekly salary from Mullin Plumbing, Inc. because he was more involved in the day-to-day business.
14. When asked if Representative Mullin has the same roles with the companies now that he had in 2012, the witness stated that he does, with less involvement now.
15. In 2013, Representative Mullin received distributions from Mullin Plumbing, Inc., Mullin Plumbing West Division, Inc., and Mullin Environmental, Inc. The distributions are made from the general operating account of each company, which are the accounts that contain company profits. The payments are coded as "distributions" in the accounting

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records. The witness stated that "distribution" is the term used to describe any payment from that account.

16. Representative Mullin received an automatic monthly distribution from Mullin Plumbing, Inc. of \$6,500 and from Mullin Plumbing West Division, Inc. of \$5,000. The witness stated that Representative Mullin has been receiving these distributions for more than two years. Mullin Environmental, Inc. does not have an automatic monthly distribution. He also receives quarterly distributions from Mullin Plumbing, Inc. and Mullin Plumbing West Division, Inc. The witness does not know how the amounts of the distributions are calculated, and was not involved in those determinations, but she receives the amounts from the accountant, Paul Kallenberger.
17. The witness stated that no one else receives such a distribution from the companies.
18. The witness stated that she had spoken with Paul Kallenberger about the OCE's review in this matter but not Representative Mullin or Representative Mullin's wife.
19. The witness was asked about a letter that she prepared for the OCE dated September 23, 2013 (MM_0012). She told the OCE that the letter's reference to "Dividends received from Citizens Bank Shares, Inc." is related to stock that Representative Mullin purchased in the bank. She said that he does not serve on the board of the bank.
20. The witness attended a meeting with the Committee on Ethics ("COE") in November 2012. Representative Mullin, Representative Mullin's wife, and at least one of Representative Mullin's congressional staffers also attended the meeting. The witness told the OCE that the discussions with the COE concerned the structure of the companies, the need to discontinue Representative Mullin's salary from the company, his duties, and the company advertisements. The witness said that the distributions were discussed, but "were not an issue." She does not remember specifically what else was discussed, but she took notes during the meeting that related to her responsibilities. She stated that the only thing she specifically remembers being discussed was that there was no issue with Representative Mullin's advertising role.

This memorandum was prepared on September 28, 2013, based on the notes that the OCE staff prepared during the interview with the witness on September 25, 2013. I certify that this memorandum contains all pertinent matters discussed with the witness on September 25, 2013.

Kedric L. Payne
Deputy Chief Counsel

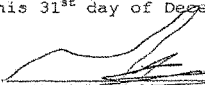
EXHIBIT 5

ASSIGNMENT

For value received and effective January 1, 2013, The Markwayne Mullin and Christie Renee Mullin Living Trust ("Assignor"), hereby assigns, transfers and delivers 100 shares of the common stock of Mullin Plumbing West Division, Inc., to Christie Renee Mullin, TOD The Markwayne Mullin and Christie Renee Mullin Living Trust. Said 100 shares of the common stock of Mullin Plumbing West Division, Inc. are assigned to her by The Markwayne Mullin and Christie Renee Mullin Living Trust on December 31, 2012.

Assignor hereby further agrees to execute and deliver to the Assignee such additional assignments and instruments of transfer as may be reasonable necessary in order to effectuate the transfer of the shares from the Assignor to the Assignee.

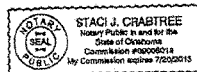
Executed and delivered this 31st day of December, 2012.


 Markwayne Mullin, Trustee of The
 Markwayne Mullin and Christie
 Renee Mullin Living Trust

Christie Renee Mullin, Trustee of
 The Markwayne Mullin and Christie
 Renee Mullin Living Trust

STATE OF OKLAHOMA)
) ss.
 COUNTY OF TULSA)

Before me, the undersigned, a Notary Public in and for this state, on this 31 day of December, 2012, personally appeared Markwayne Mullin and Christie Renee Mullin, Trustees of The Markwayne Mullin and Christie Renee Mullin Living Trust, to me known to be the identical persons who executed the within and foregoing instrument, and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.





 Notary Public

My commission expires:

7/20/13

EXHIBIT 6

MARKWAYNE MULLIN
2ND DISTRICT, OKLAHOMA

1113 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-

Congress of the United States
House of Representatives
Washington, DC 20515-3602

November 8, 2013

The Honorable Porter Goss, Chair
The Honorable David Skaggs, Co-Chair
Office of Congressional Ethics
U.S. House of Representatives
425 3rd Street, SW
Suite 1110
Washington, DC 20024

Re: *Office of Congressional Ethics Review No. 13-2392*

Dear Chairman Goss and Co-Chairman Skaggs:

Thank you for the opportunity to make my voice and concerns heard to you, and to the other members of the Board of the Office of Congressional Ethics ("OCE"), on this matter of the utmost personal, professional, and official importance to me, to my family, and, as I address below, to the people who elected me to represent their interests in Congress without undue distraction.

As you know, before my election to Congress from Oklahoma's Second Congressional District in 2012 I owned and operated Mullin Plumbing and a number of other businesses. Mullin Plumbing is a family business, founded by my father. When I was 20 years old I took over the operation of Mullin Plumbing from my father when he became too ill to continue running the business. Today, Mullin Plumbing has grown to a statewide business, providing ongoing and important employment to over 120 people.

After I was elected to Congress in November 2012, one of my priorities was to meet with the staff of the House Committee on Ethics to get their guidance on my business arrangements, and on activities I was undertaking on behalf of those businesses, to assure that, after I took office in January 2013, those business arrangements and activities would be structured in accord with House ethics standards. As a result of that meeting I gave up day-to-day operation of the Mullin businesses. Consistent with the guidance I received from Ethics Committee staff, I retain a substantial ownership interest in those businesses and receive distributions based on those interests.

The OCE has a copy of a September 19, 2013 email from House Ethics Acting Director of Investigations Tom Rust to my Chief of Staff Karl Ahlgren (an additional copy is attached to this letter). Mr. Rust and his Ethics Committee Counsel colleague Heather Jones were the ethics staff counsel who met with me on November 26, 2012 to discuss my business interests. Although, unfortunately, Mr. Rust and Ms. Jones apparently did not memorialize their guidance to me at the time of the meeting, in his September 19 email Mr. Rust confirms the specific guidance – and clear permission – he and Ms. Jones provided to me in November 2012 regarding advertisements for Mullin Plumbing.

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CLARKSBURG, OK 74017
(818) 241-8336

112 NORTH 17TH AVENUE
OKMAY, OK 74701
(882) 771-9322

101 AIRPORT ROAD
MCKALESTYR, OK 74601
(918) 428-8561

421 WEST BROADWAY
TULSA, OK 74201
(918) 687-2813

PRINTED ON RECYCLED PAPER

COMMITTEES
NATURAL RESOURCES COMMITTEE
SUBCOMMITTEES
INDIAN AND ALASKA NATIVE AFFAIRS
WATER AND POWER
TRANSPORTATION AND
INFRASTRUCTURE COMMITTEE
SUBCOMMITTEES
WATER RESOURCES AND FISH/POULTRY
HIGHWAYS AND TARIFFS
ECONOMIC DEVELOPMENT, PUBLIC BUILDINGS,
AND EMERGENCY MANAGEMENT

MM_0014
13-2392_0027

In its statement of the nature of its review in this matter in its August 27, 2013 letter to me, the OCE states that I may have violated House rules and standards of conduct if I was personally involved in selling or endorsing any goods or services pursuant to outside employment. As you can see from Mr. Rust's September 19, 2013 email, House Ethics permitted my personal involvement in advertisements for Mullin Plumbing. Given the permission from House Ethics –and particularly given that this permission came from the Acting Director of Investigations at the Committee – the investigative interest expressed by the OCE with respect to my participation in advertisements for Mullin Plumbing appears to be entirely unjustified and entirely unsupported.

In addition to advertisements, following my November 2012 meeting with House Ethics staff, I and others involved in the Mullin businesses structured those businesses, and my participation in them, to accord with our understanding of Ethics staff guidance. In fact, we spent numerous business hours and thousands of dollars to implement this ethics guidance, including the hiring of a new chief executive officer to replace me.

The House Ethics Committee, as expressed in its Ethics Manual, recognizes that Members should be able to manage and protect their equity in a family trade or business. It appears, however, that in trying to manage and protect my family business, and despite my seeking Ethics Committee guidance on how to do so, I have been caught in the middle between the Ethics Committee acting in an advisory capacity and the OCE acting in an investigative capacity. It seems to me that, if the procedural rules of the Committee and of the OCE allowed them to communicate with each other – even informally – about this matter, it would simply and quickly be resolved and go away. Instead, because of this inability to communicate, the OCE's investigation is imposing multiple, unnecessary costs – financial costs, potential costs to my reputation if this unwarranted inquiry is referred to the Ethics Committee, and costs to my constituents in the real time this matter has required me to take away from the representative duties for which I was elected.

Again, thank you and the Board for your serious attention to and consideration of my concerns. It is my very strong hope that you and the members of the OCE Board will dismiss this matter or, if you must refer it to the House Ethics Committee under your rules, that you will do so with a unanimous recommendation for dismissal. There was no sufficient basis for initial inquiry by the OCE in this matter. There certainly is no basis for continued inquiry by the OCE or by the Ethics Committee.

Sincerely



Markwayne Mullin
Member of Congress
Second Congressional District of Oklahoma

EXHIBIT 7

From: Ahlgren, Karl </O=U.S. HOUSE OF REPRESENTATIVES/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=KAHLGREN>
Sent: Tuesday, September 24, 2013 1:05 PM
To: Payne, Kedric <Kedric.Payne@mail.house.gov>
Subject: Mullin Plumbing Radio spot overview
Attach: Mullin Plumbing Markwayne TUL (5).mp3; ATT00001.htm; Mullin Plumbing Markwayne OKC (1).mp3; ATT00002.htm; Mullin Plumbing RHEEM 30 Copy Template.doc; ATT00003.htm; Mullin Plumbing 2013 HVAC 60.mp3; ATT00004.htm; Mullin Plumbing Summer 2013 Water Treatment 30.mp3; ATT00005.htm

Attached are the Radio spots.

Karl Ahlgren
 Chief of Staff
 Congressman Markwayne Mullin
 Second District of Oklahoma
 1113 Longworth House Office Bldg.
 Washington, D.C. 20515
 202-225-████

So far, these are the spots we've ran this year:

January - Mullin Plumbing Markwayne TUL :30 (from 2012)
 February - Mullin_Winter_Tulsa :60 (from 2012)
 March - Mullin Plumbing Markwayne TUL :30 (from 2012)
 April - Mullin Plumbing Markwayne TUL :30 (from 2012)
 May - Summer 2013 Rheem :30
 Summer 2013 Water Treatment :30
 Mullin Plumbing HVAC :60
 June - Summer 2013 Rheem :30
 Summer 2013 Water Treatment :30
 July - Summer 2013 Rheem :30
 Summer 2013 Water Treatment :30
 August - Summer 2013 Rheem :30
 Summer 2013 Water Treatment :30
 Sept (1-17) - Summer 2013 Rheem :30
 Summer 2013 Water Treatment :30
 Sept 17 on - Mullin Plumbing Markwayne :30

EXHIBIT 8

MULLIN PLUMBING, INC.

118 S. Elm Place
Broken Arrow, Ok. 74012
918-258-
918-806-8852 Fax

September 23, 2013

To Whom It May Concern:

For the period of January 1, 2013 to current date, Markwayne Mullin has not received any income in the form of salary from any of the sources listed, or any entities affiliated with these sources, Mullin Plumbing, Inc., Mullin Properties LLC., Mullin Environmental, Inc., Mullin Services, Inc., Mullin Plumbing West Division, Inc., Mullin Plumbing New Construction, Inc., Mullin Farms, LLC.

Sources of income not considered salary for Markwayne Mullin from January 1, 2013 – September 13, 2013

Distributions received from Mullin Plumbing, Inc.	\$302,212.71
Distributions received from Mullin Plumbing West Division Inc.	\$300,167.84
Distributions received from Mullin Environmental, Inc.	\$ 3,542.91

Dividends received from Citizens Bank Shares, Inc.	\$ 89,476.17
--	--------------

If you have questions about this information, please contact me at 918-258-.

Sincerely,



Staci J. Crabtree
CFO
Mullin Plumbing Inc

MM_0012

13-2392 0032

EXHIBIT 9

UNITED STATES HOUSE OF REPRESENTATIVES
CALENDAR YEAR 2012 FINANCIAL DISCLOSURE STATEMENT

FORM A Page 1 of 7
 For use by Members, officers, and employees

Markwayne Mullin
 (Full Name)

(Daytime Telephone)

Filer Status: ☒ Member of the U.S. House of Representatives State: OK District: 2

☐ Officer Or Employee Employing Office:

Report Type: ☒ Annual (May 15) ☐ Amendment ☐ Termination Termination Date:

A \$200 penalty shall be assessed against anyone who files more than 30 days late.

PRELIMINARY INFORMATION -- ANSWER EACH OF THESE QUESTIONS

I. Did you or your spouse have "earned" income (e.g., salaries or fees) of \$200 or more from any source in the reporting period?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	VI. Did you, your spouse, or a dependent child receive any reportable gift in the reporting period (i.e., aggregating more than \$150 and not otherwise exempt)?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
II. If yes, complete and attach Schedule I. Did any individual or organization make a donation to charity in lieu of paying you for a speech, appearance, or article in the reporting period?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	VII. If yes, complete and attach Schedule VI. Did you, your spouse, or a dependent child receive any reportable travel or per diem payments for travel in the reporting period (worth more than \$150 from one source)?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
III. If yes, complete and attach Schedule II. Did you, your spouse, or a dependent child receive "unearned" income of more than \$200 in the reporting period or hold any reportable asset worth more than \$1,000 at the end of the period?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	VIII. If yes, complete and attach Schedule VII. Did you hold any reportable positions on or before the date of filing in the current calendar year?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
IV. If yes, complete and attach Schedule III. Did you, your spouse, or dependent child purchase, sell, or exchange any reportable asset in a transaction exceeding \$1,000 during the reporting period?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	IX. If yes, complete and attach Schedule VIII. Did you have any reportable agreement or arrangement with an outside entity?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
V. If yes, complete and attach Schedule IV. Did you, your spouse, or a dependent child have any reportable liability (more than \$10,000) during the reporting period?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Each question in this part must be answered and the appropriate schedule attached for each "Yes" response.	

IPO and EXCLUSION OF SPOUSE, DEPENDENT, OR TRUST INFORMATION -- ANSWER EACH OF THESE QUESTIONS

IPO-- Did you purchase any shares that were allocated as a part of an Initial Public Offering?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Trusts-- Details regarding "Qualified Blind Trusts" approved by the Committee on Ethics and certain other "excepted trusts" need not be disclosed. Have you excluded from this report details of such a trust benefiting you, your spouse, or dependent child?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Exemptions-- Have you excluded from this report any other assets, "unearned" income, transactions, or liabilities of a spouse or dependent child because they meet all three tests for exemption? Do not answer "yes" unless you have first consulted with the Committee on Ethics.	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

SCHEDULE I - EARNED INCOME

Name Markwayne Mullin

Page 2 of 7

List the source, type, and amount of earned income from any source (other than the filer's current employment by the U.S. Government) totaling \$200 or more during the preceding calendar year. For a spouse, list the source and amount of any honoraria; list only the source for other spouse earned income exceeding \$1,000.

Source	Type	Amount
Mullin Plumbing Inc. Broken Arrow, OK 74012	Salary	\$91,731
Mullin Plumbing Inc. Broken Arrow, OK 74012	Spouse Salary	\$35,775

SCHEDULE III - ASSETS AND "UNEARNED" INCOME

Name Markwayne Mullin

Page 3 of 7

BLOCK A		BLOCK B	BLOCK C	BLOCK D	BLOCK E
Asset and/or Income Source		Year-End Value of Asset	Type of Income	Amount of Income	Transaction
<p>Identify (a) each asset held for investment or production of income with a fair market value exceeding \$1,000 at the end of the reporting period, and (b) any other "unearned" income during the year.</p> <p>Provide complete names of stocks and mutual funds (do not use ticker symbols).</p> <p>For all IRAs and other retirement plans (such as 401(k) plans) provide the value for each asset held in the account that exceeds the reporting threshold.</p> <p>For rental or other real property held for investment, provide a complete address or a description, e.g., "rental property," and a city and state.</p> <p>For an ownership interest in a privately-held business that is not publicly traded, state the name of the business, the nature of its activities, and its geographic location in Block A.</p> <p>Exclude: Your personal residence, including second homes and vacation homes (unless there was rental income during the reporting period); any deposits totaling \$5,000 or less in a personal checking or saving account; and any financial interest in a pension or profit-sharing plan, a federal retirement program, including the Thrift Savings Plan.</p> <p>If you so choose, you may indicate that an asset or income source is that of your spouse (SP) or dependent child (DC), or is jointly held with your spouse (JT), in the optional column on the left.</p> <p>For a detailed discussion of Schedule III requirements, please refer to the instruction booklet.</p>		<p>* This column is for assets held solely by you, your spouse or dependent child.</p>	<p>Check all columns that apply: For retirement accounts that are not IRAs, check the appropriate box: (a) if the account generates tax-deferred income (such as 401(k) plans or IRAs), check "Deferred Income"; (b) if the account generates taxable income (such as 529 plans, 527 funds, and capital gains, even if reinvested), check "None." If an asset was sold during the reporting period, check "Sold." If an asset was gifted to you, check "Gift." If an asset was received as income, check "Income." If an asset was generated by your spouse or dependent child, check "Spouse/Child."</p>	<p>For assets for which you checked "Tax-Deferred" in Block C, you must check the appropriate box: (a) if the asset is in a tax-deferred account, check "Tax-Deferred"; (b) if the asset is in a taxable account, check "Taxable." For all other assets, indicate the appropriate box below.</p> <p>* This column is for income generated by assets held solely by your spouse or dependent child.</p>	<p>Indicate if asset had purchases (P), sales (S), or exchanges (E) exceeding \$1,000 in reporting year.</p>
JT	AVB Bank Broken Arrow, OK	\$100,001 - \$250,000	INTEREST	\$201 - \$1,000	
JT	Blackrock Global	None	CAPITAL GAINS	\$1,001 - \$2,500	S
JT	Blackrock Global	\$15,001 - \$50,000	401K deferred income	NONE	
JT	Blackrock Global	\$1,001 - \$15,000	INTEREST	\$1 - \$200	
JT	CitiGroup New	\$1,001 - \$15,000	INTEREST	\$1 - \$200	
	Citizens BankShares, Inc 118 S. Elm Broken Arrow, OK	\$500,001 - \$1,000,000	Sub S Corporation	\$15,001 - \$50,000	

SCHEDULE III - ASSETS AND "UNEARNED" INCOME

		Name Markwayne Mullin		Page 4 of 7	
SP	Cohen & Steers Global Fund	\$1,001 - \$15,000	IRA Investments - tax deferred	NONE	
	Cohen & Steers Global Fund	\$1,001 - \$15,000	IRA investments- tax deferred	NONE	
JT	Geoglobal Resources	\$1 - \$1,000	None	NONE	
	Goldman Sachs Cash	\$1 - \$1,000	IRA Investment - tax deferred	NONE	
SP	Goldman Sachs Cash	\$1 - \$1,000	IRA investment - tax deferred	NONE	
JT	Goldman Sachs Cash	\$15,001 - \$50,000	INTEREST	\$1 - \$200	
JT	High Bridge Neutral	\$1,001 - \$15,000	401K deferred income	NONE	
JT	Invesco Energy	\$1,001 - \$15,000	401K deferred income	NONE	
JT	Invesco Real Estate	\$1,001 - \$15,000	401K deferred income	NONE	
JT	Invesco US Government	\$1,001 - \$15,000	401K deferred income	NONE	
JT	Ivy Asset Strategy	\$15,001 - \$50,000	401K deferred income	NONE	
JT	Ivy Funds, Inc.	None	CAPITAL GAINS	NONE	S
JT	Ivy Limited Bonds	\$1,001 - \$15,000	401K deferred income	NONE	
JT	JP Morgan US Large Cap Core	\$1,001 - \$15,000	401K deferred income	NONE	

SCHEDULE III - ASSETS AND "UNEARNED" INCOME

		Name Markwayne Mullin		Page 5 of 7	
JT	Morgan Stanley Cash	\$1,001 - \$15,000	INTEREST	\$1 - \$200	
JT	Morgan Stanley Cash	\$1,001 - \$15,000	INTEREST	\$1 - \$200	
	Morris Note Receivable	\$100,001 - \$250,000	INTEREST	\$2,501 - \$5,000	
	Verdigris, OK				
	Mullin Environmental, Inc.	None	Sub S Corporation	NONE	
	118 S. Elm				
	Broken Arrow, OK 74012				
	Mullin Farms	\$15,001 - \$50,000	Farm	\$5,001 - \$15,000	
	118 S. Elm				
	Broken Arrow, OK 74012				
	Mullin Plumbing New Construction, Inc.	\$15,001 - \$50,000	Sub S Corporation	NONE	
	118 S. Elm				
	Broken Arrow, OK 74012				
	Mullin Plumbing West	\$500,001 - \$1,000,000	Sub S Corporation	\$100,001 - \$1,000,000	
	118 S. Elm				
	Broken Arrow, OK 74012				
	Mullin Plumbing, Inc.	\$500,001 - \$1,000,000	Sub S Corporation	\$100,001 - \$1,000,000	
	118 S. Elm				
	Broken Arrow, OK 74012				
	Mullin Properties	\$1,000,001 - \$5,000,000	RENT	NONE	
	118 S. Elm				
	Broken Arrow, OK 74012				
	Mullin Services, Inc.	\$15,001 - \$50,000	Sub S Corporation	NONE	
	118 S. Elm				
	Broken Arrow, OK 74012				
JT	Mutual Compass	\$15,001 - \$50,000	None	NONE	
JT	Sun America Focused	None	CAPITAL GAINS	\$201 - \$1,000	S

SCHEDULE III - ASSETS AND "UNEARNED" INCOME

		Name Markwayne Mullin		Page 6 of 7	
	Sun America Focused	\$1,001 - \$15,000	IRA investment - tax deferred	NONE	
SP	Sun America Strategic	\$1,001 - \$15,000	IRA investments - tax deferred	NONE	

13-2392_0039

SCHEDULE VIII - POSITIONS

Name Markwayne Mullin

Page 7 of 7

Report all positions, compensated or uncompensated, held during the current calendar year as an officer, director, trustee of an organization, partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or any business enterprise, any nonprofit organization, any labor organization, or any educational or other institution other than the United States. Exclude: Positions held in any religious, social, fraternal, or political entities; positions solely of an honorary nature; and positions listed on Schedule I.

Position	Name of Organization
Owner	Mullin Properties
Owner	Mullin Plumbing, Inc
Owner	Mullin Services, Inc
Owner	Mullin Environmental, Inc.
Owner	Mullin Plumbing West, Inc.
Owner	Mullin Plumbing New Construction, Inc.
Owner	Mullin Farms

EXHIBIT 10



#1019#



Form BT-190 - Page 3

OKLAHOMA ANNUAL BUSINESS ACTIVITY TAX RETURN

Title 68 O.S. Sections 1215 - 1228

Taxpayer Name: MULLIN PLUMBING WEST DIVISION, INC.	Taxpayer FEIN: 71-0925287
--	-------------------------------------

PART 5 - RESPONSIBLE PARTY LISTINGS

If filing consolidated/combined (Part 6), complete Part 5 for each entity, as applicable.

RESPONSIBLE PARTY INFORMATION

Enter the Responsible Party. Responsible parties are officers, members, partners or registered agents as may be applicable as of the last day of the calendar year.

Name (first name, middle initial, last name) or Entity Name	Social Security Number/FEIN
MARKWAYNE MULLIN	
Home Address (street and number)	Daytime Phone (area code and number)
	918-258-
City, State, ZIP	Title
BROKEN ARROW, OK 74012	PRESIDENT

Name (first name, middle initial, last name) or Entity Name	Social Security Number/FEIN
Home Address (street and number)	Daytime Phone (area code and number)
City, State, ZIP	Title

Name (first name, middle initial, last name) or Entity Name	Social Security Number/FEIN
Home Address (street and number)	Daytime Phone (area code and number)
City, State, ZIP	Title

Name (first name, middle initial, last name) or Entity Name	Social Security Number/FEIN
Home Address (street and number)	Daytime Phone (area code and number)
City, State, ZIP	Title

272771
12-17-12 CCH

PK_002

13-2392 0042



#1019#



Form BT-190 - Page 3

OKLAHOMA ANNUAL BUSINESS ACTIVITY TAX RETURN

Title 66 O.S. Sections 1215 - 1228

Taxpayer Name: MULLIN PROPERTIES, LLC	Taxpayer FEIN: 44-2849324
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PART 5 - RESPONSIBLE PARTY LISTINGS

If filing consolidated/combined (Part 6), complete Part 5 for each entity, as applicable.

RESPONSIBLE PARTY INFORMATION

Enter the Responsible Party. Responsible parties are officers, members, partners or registered agents as may be applicable as of the last day of the calendar year.

Name (first name, middle initial, last name) or Entity Name	Social Security Number/FEIN
MARKWAYNE MULLIN	
Home Address (street and number)	Daytime Phone (area code and number)
ROUTE 1, BOX 8255	
City, State, ZIP	Title
WESTVILLE, OK 74965	PARTNER

Name (first name, middle initial, last name) or Entity Name	Social Security Number/FEIN
Home Address (street and number)	Daytime Phone (area code and number)
City, State, ZIP	Title

Name (first name, middle initial, last name) or Entity Name	Social Security Number/FEIN
Home Address (street and number)	Daytime Phone (area code and number)
City, State, ZIP	Title

Name (first name, middle initial, last name) or Entity Name	Social Security Number/FEIN
Home Address (street and number)	Daytime Phone (area code and number)
City, State, ZIP	Title

222271
12-17-12 CCH

PK_003

13-2392 0043



#1019#



Form BT-190 - Page 3

OKLAHOMA ANNUAL BUSINESS ACTIVITY TAX RETURN

Title 66 O.S. Sections 1215 - 1228

Taxpayer Name: MULLIN SERVICES, INC.	Taxpayer FEIN: 27-2268692
--	-------------------------------------

PART 5 - RESPONSIBLE PARTY LISTINGS

If filing consolidated/combined (Part 6), complete Part 5 for each entity, as applicable.

RESPONSIBLE PARTY INFORMATION

Enter the Responsible Party. Responsible parties are officers, members, partners or registered agents as may be applicable as of the last day of the calendar year.

Name (first name, middle initial, last name) or Entity Name	Social Security Number/FEIN
MARKWAYNE MULLIN	
Home Address (street and number)	Daytime Phone (area code and number)
	918-258-
City, State, ZIP	Title
BROKEN ARROW, OK 74012	PRESIDENT

Name (first name, middle initial, last name) or Entity Name	Social Security Number/FEIN
Home Address (street and number)	Daytime Phone (area code and number)
City, State, ZIP	Title

Name (first name, middle initial, last name) or Entity Name	Social Security Number/FEIN
Home Address (street and number)	Daytime Phone (area code and number)
City, State, ZIP	Title

Name (first name, middle initial, last name) or Entity Name	Social Security Number/FEIN
Home Address (street and number)	Daytime Phone (area code and number)
City, State, ZIP	Title

272771
12-17-12 CCH

PK_004

13-2392_0044



#1019#



Form BT-190 - Page 3

OKLAHOMA ANNUAL BUSINESS ACTIVITY TAX RETURN

Title 68 O.S. Sections 1215 - 1228

Taxpayer Name: MULLIN ENVIRONMENTAL, INC.	Taxpayer FEIN: 45-0484098
---	-------------------------------------

PART 5 - RESPONSIBLE PARTY LISTINGS

If filing consolidated/combined (Part 6), complete Part 5 for each entity, as applicable.

RESPONSIBLE PARTY INFORMATION

Enter the Responsible Party. Responsible parties are officers, members, partners or registered agents as may be applicable as of the last day of the calendar year.

Name (first name, middle initial, last name) or Entity Name MARKWAYNE MULLIN	Social Security Number/FEIN [REDACTED]
Home Address (street and number) [REDACTED]	Daytime Phone (area code and number) 918-258-[REDACTED]
City, State, ZIP BROKEN ARROW, OK 74012	Title PRESIDENT

Name (first name, middle initial, last name) or Entity Name	Social Security Number/FEIN
Home Address (street and number)	Daytime Phone (area code and number)
City, State, ZIP	Title

Name (first name, middle initial, last name) or Entity Name	Social Security Number/FEIN
Home Address (street and number)	Daytime Phone (area code and number)
City, State, ZIP	Title

Name (first name, middle initial, last name) or Entity Name	Social Security Number/FEIN
Home Address (street and number)	Daytime Phone (area code and number)
City, State, ZIP	Title



#1019#



Form BT-190 - Page 3

OKLAHOMA ANNUAL BUSINESS ACTIVITY TAX RETURN

Title 68 O.S. Sections 1215 - 1226

Taxpayer Name: MULLIN PLUMBING, INC.	Taxpayer FEIN: 73-1166941
---	------------------------------

PART 5 - RESPONSIBLE PARTY LISTINGS

If filing consolidated/combined (Part 6), complete Part 5 for each entity, as applicable.

RESPONSIBLE PARTY INFORMATION

Enter the Responsible Party. Responsible parties are officers, members, partners or registered agents as may be applicable as of the last day of the calendar year.

Name (first name, middle initial, last name) or Entity Name MARKWAYNE MULLIN	Social Security Number/FEIN [REDACTED]
Home Address (street and number) [REDACTED]	Daytime Phone (area code and number) [REDACTED]
City, State, ZIP BROKEN ARROW, OK 74012	Title PRESIDENT
Name (first name, middle initial, last name) or Entity Name	Social Security Number/FEIN
Home Address (street and number)	Daytime Phone (area code and number)
City, State, ZIP	Title
Name (first name, middle initial, last name) or Entity Name	Social Security Number/FEIN
Home Address (street and number)	Daytime Phone (area code and number)
City, State, ZIP	Title
Name (first name, middle initial, last name) or Entity Name	Social Security Number/FEIN
Home Address (street and number)	Daytime Phone (area code and number)
City, State, ZIP	Title

EXHIBIT 11

From: Ahlgren, Karl </O=U.S. HOUSE OF REPRESENTATIVES/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=KAHLGREN>
Sent: Monday, September 23, 2013 11:02 AM
To: Payne, Kedric <Kedric.Payne@mail.house.gov>
Subject: Fwd: 11/26/12 Confirmation and guidance meeting

Kedric,
 Enclosed is the information you requested concerning Rep. Mullin's meeting with the House Ethics Committee.
 Please call me at 918-688-██████ to answer any questions.

Karl
 Begin forwarded message:

From: "Rust, Tom" <Tom.Rust@mail.house.gov>
Date: September 19, 2013 at 10:10:49 AM CDT
To: "Ahlgren, Karl" <Karl.Ahlgren@mail.house.gov>
Cc: "Schwager, Dan" <Dan.Schwager@mail.house.gov>, "Dixon, Carol" <Carol.Dixon@mail.house.gov>, "Jones, Heather" <Heather.Jones@mail.house.gov>
Subject: RE: 11/26/12 Confirmation and guidance meeting

Karl,

Based on my review of the Committee's internal records and discussions with other Committee staff, I can confirm that Committee counsels Heather Jones and I did meet with then-Representative-elect Mullin on November 26, 2012, to discuss his business interests, including advertisements for his plumbing business.

Unfortunately, our guidance during that meeting regarding the advertisements does not appear to have been memorialized in writing. However, our recollection is that during the meeting, our informal, staff-level guidance regarding the advertisements was that the advertisements did not need to be removed from circulation provided that: (1) the business was not one that offered fiduciary services, (2) the advertisements in question were filmed prior to then-Representative-elect Mullin winning election to the U.S. House of Representatives, and (3) the advertisements made no reference to then-Representative-elect Mullin's position as a Member of Congress. Please note that our guidance did not address the question of whether then-Representative-elect Mullin could make new advertisements for the company.

Please let me know if you have any additional questions.

Tom Rust
 Acting Director of Investigations
 Committee on Ethics
 U.S. House of Representatives
 1015 Longworth House Office Building
 Washington, DC 20515
 (202) 225-7103

-----Original Message-----

From: Ahlgren, Karl
Sent: Wednesday, September 18, 2013 10:22 AM
To: Rust, Tom
Cc: Ahlgren, Karl
Subject: 11/26/12 Confirmation and guidance meeting

Tom,
 According to our records, on November 26, 2012 Representative-elect Markwayne Mullin, his wife Christie Mullin and their businesses CFO Staci Crabtree met with you at your office. During that meeting

guidance was sought on his personal involvement in the businesses advertisement.

We would appreciate a letter of confirmation that this meeting did take place and what guidance was given to Representative-elect concerning the advertisement of his businesses. Thank you in advance for your prompt reply.

Best,

Karl Ahlgren
Chief of Staff
Congressman Markwayne Mullin
Second District of Oklahoma
1113 Longworth House Office Bldg.
Washington, D.C. 20515
202-225-████

MM_0011

13-2392_0049

APPENDIX 2



1776 C STREET NW
WASHINGTON, DC 20006
PHONE 202.719.7000
FAX 202.719.7049

7925 JONES BRANCH DRIVE
MCLEAN, VA 22102
PHONE 703.905.2800
FAX 703.905.2820

www.wileyrein.com

January 22, 2014

Jan Witold Baran
202.719.7330
jbaran@wileyrein.com

The Honorable K. Michael Conaway, Chairman
The Honorable Linda T. Sánchez, Ranking Member
Committee on Ethics
United States House of Representatives
1015 Longworth House Office Building
Washington, DC 20515

Re: Response to OCE Report and Findings

Dear Chairman Conaway and Ranking Member Sánchez:

On behalf of our client, The Honorable Markwayne Mullin, we thank you for the opportunity to respond to the Report and Findings of the Office of Congressional Ethics ("OCE") regarding entirely meritless allegations that Representative Mullin may have violated House standards of conduct in connection with income received from and activity engaged in for his family businesses. Through this response submitted on his behalf, Rep. Mullin emphasizes the following:

- This is an advisory matter. The OCE should never have processed it as an investigative matter. The OCE referral, therefore, should be dismissed promptly
- With respect to his family business interests and activities, Rep. Mullin has at all times endeavored to act consistently with the guidance he sought and received from the Committee.
- All income received by Rep. Mullin from his family businesses in 2013 was through distributions from those businesses. None of this income was earned income or income in connection with services to those businesses, but the OCE grossly exaggerates the amount which could even arguably be viewed as earned or as personally received in connection with services.
- If the Committee were to view any of the income to Rep. Mullin as in connection with services to his family businesses, the services were to manage and protect a Member's equity in a family trade or business that both House Rule 25, clause 4(d)(1)(D), and related Committee guidance specifically exclude from the definition of earned income.



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- This exclusion applies equally to any amount which could even arguably be viewed as compensation to Rep. Mullin for his participation in radio and television advertisements for his family businesses.
- If some portion of the distributions received by Rep. Mullin from his family businesses were viewed as compensation for – and as earned income from – his participation in advertisements for these businesses in 2013, there is no reasonable basis to conclude that the amount to be allocated for such compensation either exceeded or reached the outside earned income cap of \$26,955 for 2013.

This is an advisory matter, not an investigative matter; the OCE referral should be dismissed promptly.

This matter should never have come before the Committee in an investigative posture. Consistent with the effective manner and framework through which Rep. Mullin and the Committee have addressed such questions since his election to the House in November 2012, any remaining questions regarding Rep. Mullin's income from his family businesses¹ should continue to be addressed by the Committee through its advisory process.

As the Committee is aware – and as Rep. Mullin explained in his November 8, 2013, letter to the OCE – on November 26, 2012, Rep. Mullin met with Committee Counsel Tom Rust (now Interim Chief Counsel and Staff Director) and Committee Counsel Heather Jones regarding his family business interests. The meeting apparently included discussion of such matters as ownership structure, forms of income, and participation in advertising. Since this November 2012 meeting Rep. Mullin has at all times endeavored to act consistently with the guidance from the Ethics Committee. As just one example, the ownership and management of Mullin

¹ The Mullin family businesses are: Mullin Plumbing, Inc.; Mullin Plumbing West Division, Inc.; Mullin Plumbing New Construction, Inc.; Mullin Services, Inc.; and Mullin Environmental, Inc. These Mullin family businesses have all grown from a plumbing business founded by Rep. Mullin's father. The Mullin family businesses operate primarily in Oklahoma and, together, employ over 120 people. Each Mullin family business is organized and operates as a Subchapter S corporation. With the current exception of Mullin Plumbing West Division, Inc., each Mullin family business is solely owned by Rep. Mullin and his wife, Christie Renee Mullin; as of January 1, 2013, Mullin Plumbing West Divisions has been owned solely by Christie Renee Mullin.



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Plumbing West was restructured based on potential concerns raised by Ethics Committee staff regarding this entity's participation as a subcontractor on a federal contract (see footnote 5 below regarding issues in connection with this guidance). Overall, the Mullin family business entities spent thousands of dollars and substantial business hours to implement and conform to guidance from the Committee. Clearly, Rep. Mullin was willing to comply fully with Ethics Committee guidance and to pay the costs – in time and money – to do so. Significantly, however, Rep. Mullin does not recall Ethics Committee staff raising any concerns to him, or to others on his behalf, with respect to any outside earned income issues that would or could arise from proposed continuing activities by him – including advertising – in connection with his family businesses.

As Rep. Mullin wrote to the OCE, in trying to manage and protect his family he has “been caught in the middle between the Ethics Committee acting in an advisory capacity and the OCE acting in an investigative capacity.” As Rep. Mullin further wrote to the OCE, “if the procedural rules of the Committee and of the OCE allowed them to communicate with each other – even informally – about this matter,” it would have been resolved and would have gone away simply and quickly. Now that this matter is before the Committee, Rep. Mullin urges the Committee to handle it through the appropriate advisory process and dismiss the OCE referral promptly and decisively.

As further reason to dismiss the OCE referral regarding Rep. Mullin promptly, the OCE – in its investigation, in its Report, and in its so-called Findings of “Fact” – got so much wrong, factually, legally, and analytically.

The OCE analysis grossly exaggerates the amount of income personally received by Rep. Mullin from the family businesses; the bulk of the amount found by OCE were payments by the businesses to meet their tax obligations and other business expenses.

Factually, the OCE's findings are grossly incorrect respecting the amount of income received personally by Rep. Mullin from the Mullin family businesses in 2013. The OCE states at page 14 of its Findings that “Representative Mullin received over \$600,000 of income from the plumbing companies in 2013.” This inaccurate account of income personally received by Rep. Mullin from the family businesses in 2013 appears to be the principal basis for OCE's misplaced concerns and



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erroneous conclusions regarding whether Rep. Mullin received earned income in 2013 in excess of permissible limits.

What the OCE fails to explain in its Findings – and what the OCE apparently failed to explore with the appropriate witnesses during its investigation – is that, except for \$95,000, none of the “over \$600,000” discussed by the OCE in its Report and Findings was income personally received by Rep. Mullin. The OCE’s mistaken accounting regarding income may have arisen from a failure to understand or appreciate how Subchapter S corporations are owned and operated. To simplify a great deal, in Subchapter S corporations – such as each of the Mullin family businesses under consideration here – payment of the corporation’s tax obligations and other business expenses “flow through” the individual owners/shareholders of the corporation. Thus, with respect to the Mullin family business corporations, of the “over \$600,000” attributed as income to Rep. Mullin in 2013 by the OCE, the following amounts actually satisfied tax and other obligations of the business corporations:

\$387,425.00 – tax payments to the IRS and to the Oklahoma Tax Commission

\$69,983.44 – payments to Rep. Mullin’s father for purchase of the business

\$87,702.00 – for purchase of rental properties

For tax and accounting purposes, these payments were treated as distributions to Rep. Mullin. Nonetheless, they were business payments and expenditures of the corporations. In fact, all checks for payments and expenditures included in the above-cited totals went directly from the paying corporations to the payees and not to Rep. Mullin. Certainly, therefore, none of these payments or expenditures constituted “earned income” to Rep. Mullin as that term is used by the Committee.²

Likewise, neither the total of \$40,000 in monthly distributions from Mullin Plumbing West through August 2013 nor the total of \$55,000 in monthly distributions from Mullin Plumbing through August 2013 constituted “earned

² “‘Earned’ income is income that constitutes compensation for services.” *House Ethics Manual*, page 212. For 2013, Members were subject to a cap on outside “earned income” of \$26,955.



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income" to Rep. Mullin subject to the \$26,955 cap.³ First, these amounts were distributions, not compensation, salary, or earned income; these amounts were

³ Although none of the distributions or payments under discussion in this response (and focused on by the OCE in its Report or Findings) constituted "earned income" to Rep. Mullin, it is worth noting that, in this matter -- which involves family owned businesses only -- the rationales historically articulated by the Committee as giving purpose to the earned income limitations simply do not apply. The Committee has stated: "The fundamental purpose of the restrictions and limit [on earned income] is to ensure that Members and staff do not use the influence or prestige of their position with the House for personal gain, and to preclude conflicts of interest." (*House Ethics Manual*, page 212.) In further explanation of the purposes intended to be served by the restrictions on outside earned income, the Committee quotes the following passages from the legislative history behind the imposition in 1977 of an annual limitation on outside earned income:

Earned income creates a variety of more serious potential conflicts of interest than does investment income, ranging from overt attempts to curry favor by private groups to subtle distortions in the judgment of Members on particular issues. . . . The Member who has stock holdings can transfer his holdings at any time to another company, and, thus, is not as subject to the same degree of potential conflict as a Member who's . . . salary [from a private company] could be cut off arbitrarily.

Outside earned income also presents a "time conflict" between the Member's private interest and the public interest. Supplementing salary with outside earned income can detract from a Member's full time and attention to his official duties and creates subtle distortions in judgment as to how Members should use their time. . . .

Moreover, many citizens perceive outside earned income as providing Members with an opportunity to "cash in" on their positions of influence. Even if there is no actual impropriety, such sources of income give the appearance of impropriety and, in so doing, further undermine public confidence and trust in government officials.

(*House Ethics Manual*, pages 212-213, citing Commission on Administrative Review, *Financial Ethics*, H. Doc. 95-73, 95th Cong., 1st Sess. 10 (1977).

With respect to the activities of Rep. Mullin in connection with his family businesses, and with respect to any income received by him from those business, there has been no allegation or suggestion -- from the OCE, or from any other source -- either (1) that such activities or income create a danger of a conflict of interest (i.e., there is no concern here about an outside group currying favor with the Member or subtly distorting his judgement), (2) that such activities create any degree of "time conflict" with the Member's public and official duties, or (3) that the Member has been, or has been perceived to be, "cashing in" on his official position. Therefore, even if there had been outside income earned by Rep. Mullin in excess of the \$26,955 limit in 2013, it would not have been in violation of any of the purposes or policies underlying those income limits. This is yet another reason why the OCE's treatment of this as an investigative matter is a purely formal and abstract exercise and why, therefore, the OCE referral should be dismissed promptly.



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profits on Markwayne Mullin's and Christie Mullin's ownership of these two successful businesses. Second, even if any portion of these amounts were treated as compensation or salary for "services" by Rep. Mullin to Mullin Plumbing or Mullin Plumbing West, House Rule 25, clause 4(d)(1)(D) excludes from the definition of "outside earned income" amounts received from a family-controlled trade or business. Third, any and all activities or services rendered by Rep. Mullin in connection with these family businesses in 2013 – including any activities in connection with advertising – were the kind of "services to manage or protect [his] equity in a family trade or business" that the Committee, in explaining the exclusion for amounts received from a family trade or business, has clearly and specifically stated may be performed by a Member "without having to allocate these personal services toward the 15-percent limitation" on outside earned income (i.e., \$26,955 in 2013).⁴

The total of \$95,000 in monthly payments from Mullin Plumbing and Mullin Plumbing West were distributions reflecting reasonable returns on equity.

⁴ See generally *House Ethics Manual*, at pages 229-230 for the Committee's discussion of the exclusion from the definition of outside earned of amounts received from a family trade or business. In its Report and Findings the OCE confuses the analysis of this matter by citing not only to this relevant Committee guidance on the specific and distinct situation where income is received from a family trade or business, but by citing also to the Committee's discussions of "Personal Services Businesses" and "Close Corporations, Partnerships, and Unincorporated Businesses." (See, e.g., OCE Findings at page 7.) However, whatever the Committee's published guidance may say about income in these more general contexts of "Personal Service Businesses" and "Close Corporations" is irrelevant to Rep. Mullin's matter because this matter is covered *only* by the specific and distinct rule, guidance, and discussion applicable to income from a family trade or business. In matters of statutory interpretation, application, and enforcement – including interpretation, application, and enforcement of the House ethics rules – the specific trumps the general. This principle of application and interpretation is illustrated here by the fact that the Committee's guidance on "Personal Services Businesses" generally states: "Even when the Member performs no personal services, it is presumed, lacking a strong showing to the contrary, that the Member's share of profits from a service business is for attracting or retaining clients and thus is considered earned income." The OCE's misguided analysis of this matter relies heavily on this presumption. Yet this presumption is clearly inapplicable in the family trade or business context given that, in its more specific guidance relating to family trades and businesses – including, as in this matter, a "trade or business in which both personal services and capital are income producing factors" (*House Ethics Manual*, page 229) – the Committee states that a Member may "render personal services . . . without having to allocate those services toward the [earned income] limitation."



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The total of \$40,000 received from Mullin Plumbing West and of \$55,000 from Mullin Plumbing through August 2013 were distributions reflecting return on equity; these amounts were not earned income. As a general matter, owners of Subchapter S corporations have great latitude in determining when to take a distribution from the corporation and in what amount. Given the overall value of Mullin Plumbing and Mullin Plumbing West – the disclosed value for each of these entities on Rep. Mullin’s most recent annual public financial disclosure form was in the \$500,001 to \$1,000,000 range – distributions from these companies to the Mullins personally totaling \$95,000 through August 2013 were entirely reasonable as returns on equity. With respect specifically to the distributions from Mullin Plumbing West, the OCE, in the Conclusion to its Findings, at page 17, offers as one “reason to believe that the income [Rep. Mullin] received is earned income” that “his ‘distributions’ from the company his wife owns [Mullin Plumbing West] are not a return on any equity that he holds” in that company. But the monthly amounts of \$5,000 (totaling \$40,000 through August 2013) from Mullin Plumbing West were deposited directly from Mullin Plumbing West into a joint bank account of Markwayne Mullin and Christie Mullin. Therefore, these amounts from Mullin Plumbing West were appropriate distributions to, and returns on the equity in Mullin Plumbing West of, Christie Mullin, in which Rep. Mullin appropriately shared as a joint holder of the account receiving the distributions.⁵

Rep. Mullin did not engage in any services which “in and of themselves” generated any significant amount of income for the Mullin family

⁵ It should be noted that Rep. Mullin transferred his ownership interest in Mullin Plumbing West to his wife after his election to Congress based on guidance he received from Ethics Committee staff. It appears that Ethics Committee staff provided this guidance because Mullin Plumbing West participates as a subcontractor on a federal government contract and because, pursuant to the federal criminal law at 18 U.S. Code Sections 431 and 432, a Member of Congress may not enter into a contract or agreement with the U.S. Government. It appears that Committee staff may have believed that transfer of Rep. Mullin’s ownership of the Mullin Plumbing West corporation to his wife was needed for him to avoid liability under this criminal provision. However, authoritative interpretation and application of the statute makes clear that a Member of Congress may be a stockholder, even a principal stockholder, of a corporation holding a federal government contract without incurring liability. Although these authoritative sources state that participation in a federal contract through a *partnership* would not mitigate potential criminal liability, there is no basis to believe that participation in such a contract through a Subchapter S Corporation would fall outside the clear “safe harbor” for corporate ownership. See, e.g., 22 U.S. Opp. Off. Legal Counsel 33 (1998). Thus, it appears that Rep. Mullin may have foregone his direct ownership interest in Mullin Plumbing West based on erroneous advice from Ethics.



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businesses. His services were subject to the family trade or business exclusion from the definition of “outside earned income.”

House Rule 25, clause 4(d)(1)(D) excludes from the definition of “outside earned income” amounts received from a family-controlled trade or business. With respect to this exclusion from outside earned income, Committee guidance states that “Members should be able to render personal services to manage or protect their equity in a family trade or business without having to allocate these personal services toward the 15-percent limitation.” (*House Ethics Manual*, at page 230.) The Committee has explained that the exclusion was “intended to assure Members . . . that they could continue to make decisions and take actions necessary to manage or protect their equity in a family trade or business.” (House Committee on Ethics, *Advisory Opinion No. 13* (Oct. 1978), reprinted in updated form in the *House Ethics Manual*, at pages 364-371.) The Committee has also noted, however, that if the personal services rendered by a Member in connection with a family trade or business, “*in and of themselves*, generate any significant amount of income, the resulting income should be subject to the . . . limitation.” (*House Ethics Manual*, at page 230; emphasis added.)

In the family trade or business context, what does the Committee mean by services which “in and of themselves” generate a significant amount of income? It can only mean services which directly generate fees through external transactions with clients or customers, as opposed to internal services to the family trade or business itself which may indirectly result in income to the trade or business. No other meaning is consistent with the Committee’s overall permission to Members to remain actively involved (i.e., “to make decisions and take actions”) in the oversight of a family trade or business and in maintaining and growing their equity in that business.

In 2013, Rep. Mullin did not engage in any personal services which, “in and of themselves,” generated a significant amount of income for the Mullin family businesses. He rendered no plumbing services to customers. He did not do hiring or firing for the companies. He did not manage the purchasing or deployment of personnel or equipment for the companies. He did not manage Mullin Plumbing or Mullin Plumbing West on a day-to-day basis in 2013. Robert Morris was Chief Executive Officer and Ray Trimble was Chief Operating Officer of Mullin Plumbing throughout 2013; Daniel Ice was Chief Executive Officer of Mullin Plumbing West. In 2013, Rep. Mullin did engage in the kind of regular but general



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management and oversight activities for his family companies that are clearly permitted by the House rule, and related guidance, on outside income and that are excluded from the earned income calculation.

Rep. Mullin's advertisement-related activities for the Mullin family businesses were equally subject to the family trade or business exclusion from the definition and determination of earned income. If the Committee were to determine that some portion of the distributions received by Rep. Mullin should be viewed as compensation for participation in advertisements, there is no reasonable basis to conclude that the amount to be allocated for such compensation exceeded the earned income cap of \$26,955 for 2013.

With respect to any participation in television or radio advertisements (or in the home-related radio program) by Rep. Mullin on behalf of his family businesses in 2013, such participation is also excluded from the kind of services which "in and of themselves" generate income.⁶ Although these ads (and programs) are public, and although these ads presumably do sustain and generate awareness of the Mullin plumbing businesses, they are not the kind of transactions with clients or customers which directly, in and of themselves, generate fees. To the contrary, because these ads maintain public awareness of the Mullin name in connection with the family businesses – a name which is the bedrock of the family's equity in those businesses – these ads are clearly the sort of "actions necessary to manage or protect . . . equity in a family trade or business" that the House rule and Committee guidance on income permit. Rep. Mullin's participation in these ads (and programs), therefore, does not constitute the kind of service which – in the family trade or business context – counts towards the earned income limit.

Even if Rep. Mullin's participation in the ads and programs were treated as services subject to the earned income limit, the time spent by Rep. Mullin in 2013 was minimal. Likewise, any compensation that could be viewed as coming from his participation in these ads and programs would be minimal. Without providing a specific and detailed accounting, the total production time spent by Markwayne Mullin in connection with radio and TV ads in 2013 appears to have been approximately 10 hours. As to the hour long House Talk home-related radio

⁶ Counsel understands that the "internet videos" referred to by the OCE in its Findings were re-purposed television advertisements and that creation of these videos did not involve additional time or services by Rep. Mullin.



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programs, although these programs aired weekly, Rep. Mullin did not appear in every one. Assuming for the purposes of analysis, however, that he appeared in almost every one of these programs, his total time of participation would be no more than 50 hours for the year.

For a total of approximately 60 hours of participation by Rep. Mullin over the course of 2013 in ads and programs, the Committee would have to determine what portion of the monthly distributions received by Rep. Mullin, directly or indirectly, from the family businesses in 2013⁷ should be attributed as compensation for this participation. For this total participation of approximately 60 hours, there would be no reasonable basis for the Committee to attribute anything approaching \$26,955 as compensation. Therefore, even if Rep. Mullin's services in connection with ads and programs for the Mullin family business were outside the exclusion for services by a Member in connection with managing and protecting equity in a family trade or business, any arguable amount of compensation for these services would certainly fall within the permissible outside earned income limit. Further, going forward a similar level of continued participation by Rep. Mullin in advertisements and programs for the Mullin family businesses would be consistent with and fall within the earned income limit.

Rep. Mullin greatly appreciates the Committee's prompt consideration of this matter and urges the Committee to dismiss the OCE referral with equal promptness. If the Committee or its staff have any follow up questions or wish to discuss any aspect of this response, counsel is available at the Committee's or staff's convenience.

⁷ These distributions totaled \$95,000 through August 2013 from Mullin Plumbing (\$55,000) and Mullin Plumbing West (\$40,000), as noted above.



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We thank you again for your careful consideration of this response.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jan Baran".

Jan Witold Baran
Counsel for Rep. Mullin

A handwritten signature in cursive script, appearing to read "Robert Walker", followed by the initials "JWB" in a bold, stylized font.

Robert L. Walker
Counsel for Rep. Mullin



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March 24, 2014

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BY ELECTRONIC DELIVERY

The Honorable K. Michael Conaway, Chairman
The Honorable Linda T. Sánchez, Ranking Member
Committee on Ethics
United States House of Representatives
1015 Longworth House Office Building
Washington, DC 20515

Re: Response to Committee's February 28, 2014 Request for Information

Dear Chairman Conaway and Ranking Member Sánchez:

On behalf of our client, The Honorable Markwayne Mullin, we are submitting this letter and accompanying documents to the Committee on Ethics in partial response to the Committee's February 28, 2014 letter to Representative Mullin requesting information and documents in connection with the Committee's review of allegations forwarded by the Office of Congressional Ethics that Rep. Mullin "exceeded the maximum amount of outside earned income permissible under the House rules" in 2013.

The Committee's requests for information and documents focus in significant part on calendar year 2013. A number of these requests either require production of tax returns, or related tax documents, for 2013 or, for complete response, require reference to information contained in those tax-related documents. As we explained in a phone call to Committee Chief Counsel and Staff Director Tom Rust, the Certified Public Accountant for the Mullin companies,¹ Mr. Paul Kallenberger, has informed us that these tax related-documents for 2013 will not be available for review by counsel for Rep. Mullin until the relevant tax returns for that year are filed; as of the date of this letter, Mr. Kallenberger intends that these tax returns will be filed on April 15, 2014. We have therefore requested on behalf of our client an extension until one week after the relevant tax returns for 2013 are filed for submission of responses relating to or relying on tax-related information for 2013.

¹ As used in this letter, "Mullin companies" includes: Mullin Plumbing, Inc.; Mullin Environmental Inc.; Mullin Plumbing New Construction, Inc.; Mullin Services, Inc.; and Mullin Plumbing West Division, Inc.



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With respect to the Committee's use and handling of the information and documents provided in or with this letter, we ask the Committee to be especially cognizant that much of this information -- in particular the information in the tax-related documents for 2012 -- constitutes highly personal, nonpublic financial information, not only of a number of small businesses (and employers) operating in a highly competitive business environment, but also of Rep. Mullin, his wife, and his parents. Rep. Mullin recognizes that the Committee has its job to do and that its requests for information may be unavoidably intrusive. But there is no need for this information to become public. We urge the Committee to handle the business and personal financial information it receives in this matter with the utmost care, confidentiality, and discretion. For these reasons, the documents provided with this letter have been marked: "PERSONAL/BUSINESS CONFIDENTIAL-MAINTAIN AS STRICTLY CONFIDENTIAL."

Partial responses to the Committee's February 28, 2014 request for information follow.

1. **Provide the Committee with a detailed explanation of payments you received from the Mullin companies during 2012 and 2013. Also explain any differences in quantity or description between the payments you received from the Mullin companies in 2012 and 2013.**

Because, as noted above, the tax returns and related documentation for 2013 are not yet available, neither the detailed explanation requested by the Committee for 2013 nor the requested comparative analysis between 2012 and 2013 is possible at this time. In addition, any narrative explanation relating to 2012 is most efficiently and effectively made in conjunction with the explanation of the 2013 timeframe. Rep. Mullin will respond to all of these requests in a timely manner after the relevant and necessary information and documents become available.

Notwithstanding this limitation, with respect to the Committee's requests regarding 2012, the following materials are included with this letter: (A) tax-related documents for 2012, at Bates Numbers MM-ETHICS001 through MM-ETHICS070, including (i) the joint tax return (Form 1040) for Markwayne Mullin and Christie Mullin, (ii) W-2 forms for Markwayne Mullin and Christie Mullin issued by Mullin Plumbing, Inc., and (iii) K-1 schedules for Markwayne Mullin



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issued by the Mullin companies; and (B) general ledgers showing distributions made by the companies, at Bates Numbers MM-ETHICS071 through MM-ETHICS076.

Although a more detailed description and explanation will be provided after further relevant information for 2013 becomes available for review and production, the only "payments made to" Rep. Mullin in 2012 from the Mullin companies were: 1) the "wages" reflected on Rep. Mullin's enclosed W-2; and 2) the non-dividend distributions made directly to Rep. Mullin as reflected by the entries bearing the description "MARKWAYNE MUL" on the enclosed ledgers, and by the three year-end adjustments referenced as "AJE #4" and "AJE #5" on the ledger for Mullin Plumbing New Construction, Inc.

The Committee should also note the entries in the enclosed 2012 ledger for Mullin Plumbing marked "Internal Revenue Service" and "Oklahoma Tax Commis." These entries reflect payments for Rep. Mullin's tax obligations with respect to the income attributed to him as a shareholder of the Mullin companies; these payments were made directly to the IRS and the Oklahoma Tax Commission. Similarly, the payments of \$8,747.93 made to "GAYLE MULLIN" as reflected on the enclosed 2012 ledgers for Mullin Plumbing were regular payments made directly to Rep. Mullin's parents for purchase of the business.² Lastly, there are two entries on the Mullin Plumbing West Division ledger for 2012 relating to the purchase of property: a "7/16/12" entry in the amount of \$115,000; and a "12/31/12" entry, referenced as "AJE #7," in the amount of \$55,000. The tax payments, the business purchase payments, and the property purchase payments were not "made to" Rep. Mullin, and they did not constitute earned income. As is required by tax and accounting principles for "S" Corporations like the Mullin companies, these payments (along with the distributions made directly to Rep. Mullin) were treated as non-dividend distributions to Rep. Mullin and reduced Rep. Mullin's basis in Mullin company stock on a dollar-for-dollar basis. These payments (i.e., the amount of the reduction of stock basis) are reflected in Box

² Rep. Mullin's January 22, 2014, response to the Committee stated that the payments for purchase of the business are to Rep. Mullin's father. These payments do go to a joint bank account of Jim and Gayle Mullin, Rep. Mullin's father and mother. The monthly checks are made out to Gayle Mullin, however.



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16(D) of each of the Schedules K-1 that were issued to Rep. Mullin by the Mullin companies in 2012; these schedules are included with this response.

2. Provide the Committee with any documents showing the following:

- a) The payments received by you from the Mullin companies in 2013 that were tax payments to the Internal Revenue Service and the Oklahoma Tax Commission;**
- b) The payments received by you from the Mullin companies in 2013 that were payments for the purchase of the business;**
- c) The payments received by you from the Mullin companies that were payments for the purchase of a rental property.**

Because responses to this question requires review and discussion of the tax-related documents for 2013, Rep. Mullin is unable to respond sufficiently to this question at this time but will do so after these tax-related documents become available. The Committee should note, however, that Rep. Mullin did not receive any payments for any of the above-described purposes in 2013. Payments for these purposes were made directly by the paying corporations to the ultimate payees, not to Rep. Mullin. Please see the response to Question 1 above for further explanation as to how such payments, consistent with the structure and operation of S Corporations, were appropriately accounted for as non-dividend distributions to Rep. Mullin as a shareholder in the companies, which payments reduced Rep. Mullin's basis in stock of the Mullin companies on a dollar-for-dollar basis. The tax-related documents for 2013 to be provided to the Committee after they become available to Rep. Mullin will corroborate and confirm that Rep. Mullin did not receive payments for these purposes and that these payments were not income to Rep. Mullin..

3. Provide the Committee with any tax documents (such as W-2, K-1, or 1099-DIV forms, or tax returns) in which the income you received in 2013 from the Mullin companies is referred to as a dividend or disbursement or is characterized in any other way.



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Because response to this question requires review and discussion of the tax-related documents for 2013, Rep. Mullin is unable to respond to this question at this time but will do so after these tax-related documents become available.

4. Provide the Committee with a detailed description of the positions and titles you have held with each of the Mullin companies and the dates during which you held each of those positions and titles.

Mullin Plumbing, Inc.

CEO: 9/1/97 – 12/16/99

CEO/Secretary/Treasurer: 12/16/99 – 12/31/06

CEO/President: 1/1/07 – 9/5/12

President: 9/6/12 – Present

Mullin Environmental, Inc.

CEO/Vice President/Secretary/Treasurer: 6/25/02 – 12/31/06

CEO/President: 1/1/07 – 9/5/12

President: 9/6/12 – Present

Mullin Plumbing West Division, Inc.

CEO/President: 7/00 – 9/5/12

President: 9/6/12 – Present

Mullin Plumbing New Construction, Inc.

CEO/President: 5/05 – 9/5/12

President: 9/6/12 – Present



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Mullin Services, Inc.

EO/President: 3/25/10 – 9/5/12

President: 9/6/12 – Present

- 5. Provide the Committee with a detailed explanation of the agreement whereby you received payments as a result of the purchase of the Mullin companies. Include information regarding the identity of the parties to this arrangement and why payments for this purchase were made to you.**

As emphasized throughout this response, payments for the purchase of the Mullin companies were not made to or received by Rep. Mullin. Through a monthly check in the amount of \$8,747.93, made out to Gayle Mullin, these payments go, and have gone, directly from Mullin Plumbing, Inc., to a joint bank account held by Jim and Gayle Mullin, Rep. Mullin's parents. See the response to Question 1 above for further explanation as to how such payments, consistent with the structure and operation of S Corporations, were appropriately accounted for as non-dividend distributions (and not as income) to Rep. Mullin as a shareholder in the companies.

The purchase of the Mullin businesses involved a promissory note from Markwayne Mullin to Jim M. Mullin, Trustee of the Jim M. Mullin Revocable Trust, and Gayle M. Mullin, Trustee of the Gayle M. Mullin Revocable Trust.

- 6. Provide the Committee with a detailed explanation of the arrangement whereby you received payments as a result of the purchase of rental properties. Include information regarding the identities of the parties to this arrangement, the identity of the property being purchased, and why the payments were made to you.**

As emphasized throughout this response, payments for the purchase of rental properties were not made to or received by Rep. Mullin. See the response to Question 1 above for further explanation as to how such payments, consistent with the structure and operation of S Corporations, were appropriately accounted for as non-dividend distributions (and not as income) to Rep. Mullin as a shareholder in the companies.



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 The Honorable Linda T. Sánchez, Ranking Member
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Documents reflecting parties to, and the identity of property, purchased in Noble, Oklahoma, and in Westville, Oklahoma, in connection with the real estate transactions that were accounted for as non-dividend distributions in 2013 are included with this response at Bates Numbers MM-ETHICS077 through MM-ETHICS080.

7. Inform the Committee whether any persons who co-hosted your radio call-in show “House Talk with Markwayne Mullin” in 2013 were employees of the Mullin companies and, if so, whether they were compensated for their work on the show. If said employees were compensated for their work on the show, inform the Committee how much they were compensated.

The name of the radio program hosted by Markwayne Mullin is simply “House Talk.” There were no co-hosts for “House Talk” in 2013. On the few occasions in 2013 when Markwayne Mullin was not able to host that program, Ray Trimble, Chief Operating Officer of Mullin Plumbing, acted as a fill-in host. In addition, in 2013 Mr. Trimble hosted weekly radio programs paid for by Mullin companies on two other radio stations. As COO of Mullin Plumbing, Mr. Trimble undertook in 2013 a wide range of activities for the business, only a very small part of which – as measured by both time and effort – related to his participation in any radio program. Further, Mr. Trimble’s compensation was not tied to his participation in these radio programs.

8. Inform the Committee how much the Mullin companies paid to air “House Talk with Markwayne Mullin” in 2013 and whether the Mullin companies employed any analysis in determining the expected benefits of airing said show.

The Mullin companies paid \$21,150.00 to Cox Radio, Inc., in 2013 to air “House Talk.” No formal analysis was done to determine the expected benefits of airing this program.

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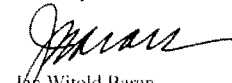
The Honorable K. Michael Conaway, Chairman
 The Honorable Linda T. Sánchez, Ranking Member
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 Page 8

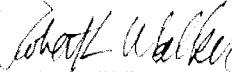
Rep. Mullin has reviewed, approved as accurate, and authorized these partial responses to the Committee's requests for information, which counsel submits to the Committee on his behalf.

In addition to the further responses to be provided by Rep. Mullin after tax-related documents for 2013 become available, Rep. Mullin believes that the Committee's inquiry would be facilitated by meeting with his counsel to discuss and clarify how payments of the Mullin companies in 2013 to meet federal and state tax obligations, in connection with the purchase of the Mullin companies, and in connection with the purchase of real property were not payments made to or received by Rep. Mullin and were not income to Rep. Mullin. Counsel will be available for such a meeting, as convenient for Committee staff.

Please do not hesitate to contact counsel with any questions.

Sincerely,


 Jan Witold Baran
 Counsel for Rep. Mullin


 Robert L. Walker
 Counsel for Rep. Mullin



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April 29, 2014

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BY ELECTRONIC DELIVERY

The Honorable K. Michael Conaway, Chairman
The Honorable Linda T. Sánchez, Ranking Member
Committee on Ethics
United States House of Representatives
1015 Longworth House Office Building
Washington, DC 20515

Re: Response to Committee's February 28 2014 Request for Information

Dear Chairman Conaway and Ranking Member Sánchez:

On behalf of our client, The Honorable Markwayne Mullin, we submit this letter and accompanying documents to the Committee on Ethics in further response to the Committee's February 28, 2014 letter to Representative Mullin requesting information and documents in connection with the Committee's review of allegations forwarded by the Office of Congressional Ethics. OCE asserted that Rep. Mullin "exceeded the maximum amount of outside earned income permissible under House rules" in 2013. Rep. Mullin disagrees. On March 24, 2014, Rep. Mullin submitted partial responses to the Committee's information and document requests; however, because a number of those requests required production of, or reference to, tax-related documents for 2013 or information contained in those documents, Rep. Mullin sought, and the Committee granted, an extension until April 29, 2014 for him to submit these further responses and additional materials.

As stated in our March 24, 2014 letter to the Committee, we ask the Committee to be especially cognizant that much of this information – in particular the information in the tax-related documents – constitutes highly personal, nonpublic financial information, not only of a number of small businesses (and employers) operating in a highly competitive business environment, but also of Rep. Mullin, his wife, and his parents. We urge the Committee to handle the business and personal financial information it receives in this matter with the utmost care, confidentiality, and discretion. For these reasons, the documents provided with this letter have been marked: "PERSONAL/BUSINESS CONFIDENTIAL-MAINTAIN AS STRICTLY CONFIDENTIAL."



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 Page 2

Before reviewing the additional responses to the Committee's February 28 letter, it is important for the Committee to recall the principal points made by Rep. Mullin to the Committee in his January 22, 2014 response to the OCE's Report and Findings:

- This is, and should be treated as, an advisory matter, not as an investigative or disciplinary matter.
- With respect to his family business interests and activities, Rep. Mullin has at all times endeavored to act consistently with the guidance he sought and received from the Committee.
- All income received by Rep. Mullin from his family businesses in 2013 was through distributions from those businesses, either made to Rep. Mullin directly or (consistent with the operation of S-Corporations) attributed to him for accounting and tax purposes. None of this income was earned income or income in connection with services by Rep. Mullin to those businesses. The Committee should note two important related points here:
 - As shown by the tax-related and other documents provided with this response and the March 24 response, there is no sound basis for the Committee to re-characterize any of the distribution income to Rep. Mullin in 2013 as wages or earned income.
 - Re-characterizing any portion of the 2013 distribution income to Rep. Mullin as wages or earned income would require the Committee to substitute its collective, theoretical judgement - from a committee room in Washington, DC - for the hands-on judgment of the professionals who operate and account for those businesses on the ground in Oklahoma.
- Re-characterizing income to Rep. Mullin from the Mullin businesses in 2013 as in connection with services to those family businesses must recognize that such services were to manage and protect a Member's equity in a family trade or business that both House Rule 25, clause 4(d)(1)(D), and related Committee guidance specifically exclude from the definition of "earned income."



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- This exclusion from the definition of “earned income” would apply to any amount which could even theoretically be viewed as compensation to Rep. Mullin for his participation in radio and television advertisements or programs in connection with his family businesses.
- If the Committee were to assert that some portion of the distributions to Rep. Mullin from his family businesses in 2013 was compensation for – and income earned from – his participation in advertisements or programs for those businesses in 2013, there is no reasonable basis to conclude that the amount to be allocated for such theoretical compensation either exceeded or even reached the outside earned income cap of \$26,955 for 2013.

This letter incorporates by reference the additional points made in support of these positions in Rep. Mullin’s January 22, 2014 letter to the Committee and also incorporates the responses and information provided to the Committee in, and with, the March 24, 2014 letter. Rep. Mullin’s further responses to the Committee’s February 28, 2014 request for information follow.

1. Provide the Committee with a detailed explanation of payments you received from the Mullin companies¹ during 2012 and 2013. Also explain any differences in quantity or description between the payments you received from the Mullin companies in 2012 and 2013.

Information responsive to this question respecting 2012 was provided to the Committee in, and with, Rep. Mullin’s March 24, 2014 letter. As stated on the W-2 form for Rep. Mullin from Mullin Plumbing, Inc., provided with that letter, he received \$78,888.38 in gross “wages, tips, other comp.” from Mullin Plumbing, Inc., in 2012. He did not receive “wages,” or earned income, from any of the other Mullin companies in 2012.

In addition to the wages reflected on his W-2 from Mullin Plumbing, Inc., based on information provided by the Mullin companies’ accountants it appears that the only other “payments made to” Rep. Mullin directly from the Mullin companies (or “received” by him from the Mullin companies directly) in 2012 were non-dividend distributions totaling \$265,000 through checks directly to him from the following

¹ As used in this letter, “Mullin companies” includes: Mullin Plumbing, Inc.; Mullin Environmental, Inc.; Mullin Plumbing New Construction, Inc.; Mullin Services, Inc.; and Mullin Plumbing West Division, Inc.



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Mullin companies in the following total amounts: \$130,000, through checks from Mullin Plumbing, Inc.; \$75,000 through checks from Mullin Plumbing West Division, Inc.; \$60,000 through checks from Mullin Environmental, Inc. These amounts are reflected as entries for "Distributions directly to Markwayne Mullin" on the first line of the schedule entitled "Markwayne Mullin/S-Corporation Distributions/2012" prepared by the accountants for the Mullin companies and included with this letter at Bates Number MM-ETHICS081.

This "Markwayne Mullin/S-Corporation Distributions/2012" schedule lists in detail the amounts disbursed directly to Markwayne Mullin in 2012 and the amounts treated for accounting and tax purposes as distributions to Rep. Mullin in 2012, in four general categories: "Disbursements to or for Markwayne Mullin";² disbursements "For federal and state income taxes"; disbursements "For purchase of businesses (payments to parents)"; and disbursements "For purchase of real estate." Consistent with the discussion of disbursements in Rep. Mullin's March 24 letter, the tax payments, the business purchase payments (payments to parents), and the real-estate related payments listed on this schedule were not payments "made to" (or "received by") Rep. Mullin. Similarly, per information from the accountants for the Mullin companies, other than the amounts (totaling \$265,000) entered on this 2012 schedule on the line for "Distributions directly to Markwayne Mullin," none of the other amounts appearing on this schedule in the first-listed category of "Disbursements to or for Markwayne Mullin" were actually "received by" Rep. Mullin but, consistent with the manner in which the operation of S-Corporations are appropriately accounted for, were attributed to him for accounting and tax purposes.³ For each of the four entities about which information is provided on this

² This "Disbursements to or for Markwayne Mullin" category includes amounts for "disbursements directly to Markwayne Mullin" as well as all other amounts treated for accounting and tax purposes as disbursements to him, other than the amounts listed elsewhere on the schedule in connection with tax payments, the purchase of businesses (payments to parents), or the purchase of real estate. This "Disbursements to or for Markwayne Mullin" category might better be thought of as two categories: "disbursements directly to Markwayne Mullin" and "disbursements for various purposes."

³ Rep. Mullin's March 24 letter to the Committee stated, at page 3, that the "payments made to" Rep Mullin in 2012 from the Mullin companies also included "the three year-end adjustments referenced as 'AJE #4' and 'AJE #5' on the ledger for Mullin Plumbing New Construction, Inc." The total amount for these three year-end 2012 adjustments - \$48,059 - appears as an entry for Mullin Plumbing New Construction, Inc., on the line for "Reclassify prior year amounts misposted as receivables from MWM" on the 2012 S-Corporation Distributions schedule provided with this letter at Bates Number MM-ETHICS081. On further consultation with the accountants for the Mullin companies, it appears that the amounts for these three year-end adjustments were not payments made



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schedule - Mullin Plumbing, Inc.; Mullin Plumbing West Division, Inc.; Mullin Environmental, Inc.; and Mullin Plumbing New Construction, Inc. - the amounts provided for "Total distributions" correspond with the amounts set forth on the forms K-1 (Line 16D) for these entities previously provided to the Committee with Rep. Mullin's March 24 letter.

As to the information requested in connection with the Committee's Question 1 with respect to 2013, the following materials are included with this letter: (A) tax-related documents for 2013, at Bates Numbers MM-ETHICS083 through MM-ETHICS155, including (i) the joint tax return (Form 1040) for Markwayne Mullin and Christie Mullin, (ii) W-2 forms for Markwayne Mullin (from the U.S. House of Representatives) and Christie Mullin⁴, (iii) 1099-R forms for Markwayne and Christie Mullin, and (iv) K-1 schedules for Markwayne and Christie Mullin; (B) general ledgers for Mullin Plumbing, Inc., Mullin Plumbing West Division, Inc., and Mullin Environmental, Inc., reflecting certain distributions and payments made by these companies, at Bates Numbers MM-ETHICS156 through MM-ETHICS159; and (C) a schedule entitled "Markwayne Mullin/S-Corporation Distributions/2013" listing in detail the limited amounts disbursed directly to Rep. Mullin by the Mullin companies in 2013 and the amounts treated for accounting and tax purposes as disbursements attributed to Rep. Mullin in 2013, at Bates Number MM-ETHICS082.

The Committee should note that Rep. Mullin did not receive a W-2 form from any of the Mullin companies for 2013 because he did not receive any wages, salary, other compensation, or earned income from any of these companies in 2013.⁵ With

(Continued . . .)

to Rep. Mullin directly from the company but were, instead, appropriately treated as disbursements attributed to or for Rep. Mullin for accounting and tax purposes.

⁴ The only W-2 issued for Markwayne Mullin for 2013 was from the U.S. House of Representatives for his congressional salary.

⁵ As shown by the W-2s for Christie Mullin provided to the Committee with this letter and with Rep. Mullin's March 24 letter, Christie Mullin's wages, salary, and other compensation received from the Mullin companies increased significantly from 2012 to 2013. This increase in compensation reflects a significant increase in responsibilities (including a significant increase in time commitment) on the part of Christie Mullin in 2013 in connection with the Mullin family businesses, given that Rep. Mullin's role with the companies was curtailed consistent with guidance from the Committee. This increase in compensation for Christie Mullin in 2013 is also consistent with guidance that Rep. Mullin recalls receiving, after his election to the House in November 2012, from now Committee Chief Counsel Tom Rust.



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respect to "payments made to" Rep. Mullin directly from the Mullin companies, or payments "received by" him from the Mullin companies directly, in 2013, Rep. Mullin received \$55,000 in such payments from Mullin Plumbing, Inc., and \$40,000 in such payments from Mullin Plumbing West Divisions, Inc., as reflected on the line item entries under "Disbursements directly to Markwayne Mullin" on the 2013 schedule provided at Bates Number MM-ETHICS082. (These total amounts correspond to the totals of the amounts listed as entries for "MARKWAYNE MUL" on the enclosed ledgers for Mullin Plumbing, Inc., and Mullin Plumbing West Division, Inc.)

The last distributions directly to Rep. Mullin from the Mullin companies (Mullin Plumbing, Inc., and Mullin Plumbing West Divisions, Inc.) in 2013 occurred in September; Christie Mullin received distributions from these companies in October and November 2013 (there were no distributions directly to Markwayne or Christie Mullin from the Mullin companies in December 2013). This change in recipients of direct distributions from the Mullin companies in late 2013 was undertaken by Rep. Mullin out of an over-abundance of caution after he received notice of the inquiry by the OCE in this matter. Because these distributions did not constitute earned income, Rep. Mullin understood that he could have continued receiving distributions from the Mullin companies throughout 2013 in entire conformity with relevant House ethics standards, but he chose not to do so in reaction to the OCE's unmerited scrutiny and intrusion into the finances of the Mullin family businesses.

From January through September 2013, the total amount received directly by Rep. Mullin as distributions from the Mullin companies (\$95,000) was substantially lower than the total amount received directly by Rep. Mullin as distributions from the Mullin companies from January through September in 2012 (\$195,000). Clearly – given this substantial decrease in distribution amounts to Rep. Mullin – in 2013 distributions from the Mullin companies to Rep. Mullin were not being used as a substitute for, or to compensate for, the "loss" of earned income from the Mullin companies necessitated by his compliance with House ethics standards.

Similarly, the other categories of S-Corporation disbursements for the Mullin companies in 2013 were not being used to substitute or compensate for the loss of earned income to Rep. Mullin from the Mullin companies, as a comparison of the

(Continued . . .)



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S-Corporation Distributions schedules for 2012 and 2013 shows. To compare here just the bottom line of total disbursements for the Mullin companies in 2012 and 2013, the total of disbursements in 2012 was over \$328,000 more than the total of disbursements in 2013.

With respect to the payments relating to tax obligations for 2013, these payments are noted on the enclosed ledger for 2013 for Mullin Plumbing, Inc., under the entries "Internal Revenue Service" and "Oklahoma Tax Commis." These payments are also listed on the enclosed S-Corporation Distributions schedule for 2013, prepared by the Mullin companies' accounting firm, on the line for "Distributions directly to US Treasury or Oklahoma Tax Commission." These entries reflect payments for Rep. Mullin's tax obligations with respect to the income attributed to him as a shareholder of the Mullin companies; as already noted, these payments were made directly to the IRS and the Oklahoma Tax Commission. (See also the documents discussed and provided below in response to Committee Question 2(a).)

Similarly, the regular payments, on an essentially monthly basis, of \$8,747.93 made to "GAYLE MULLIN-AC" as reflected on the 2013 ledgers for Mullin Plumbing, Inc., and as listed on the 2013 S-Corporation Distribution schedule as "Disbursements to Gayle Mullin," were payments made directly to Rep. Mullin's parents for purchase of the business. Also, the monthly debit amounts for \$2,186.98 from February through December listed on the 2013 ledger for Mullin Plumbing West Division, Inc., under the transaction description "MULLIN PLUMBING" relate to reimbursements to Mullin Plumbing, Inc., in 2013 for the payments to Rep. Mullin's parents in connection with purchase of the business, as does a debit entry for this same \$2,186.98 amount on 12/31/12 on the 2012 ledger for Mullin Plumbing West Division, Inc., provided with the March 24 letter to the Committee. These amounts for reimbursements to Mullin Plumbing, Inc. from Mullin Plumbing West Division, Inc., as well as reimbursement amounts to Mullin Plumbing, Inc., from Mullin Environmental, Inc., in the amounts of \$4,724 and \$1,181 appear on the 2013 S-Corporation Distribution schedule in the "For purchase of businesses" category. (See also the documents discussed and provided below in response to Committee Question 2(b).)

The following entries on the Mullin Plumbing West Divisions, Inc., ledger for 2013 relate to the purchase of properties: a "3/25/13" entry for "RENTAL PR" in the amount of \$65,000, relating to property in Noble, Oklahoma; and four entries on "5/9/13" for "CASHIER CK" totaling \$22,702, relating to property in Westville.



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Oklahoma. The entry on the Mullin Plumbing, Inc., ledger on "12/30/13" for "MULLIN PROPERTIE" for \$16,000 reflects an advance to Mullin Properties LLC to pay real estate taxes for properties. These amounts for the purchase of purchase of real estate, or for related expenses, are also reflected on the enclosed 2013 S-Corporation Distributions schedule in the "For purchase of real estate or real estate related expenses" category (as is an amount of \$1,000 from Mullin Plumbing West Division, Inc., for an escrow payment to purchase property in Noble, Oklahoma).

As noted in footnote 2 above in connection with the S-Corporations Distributions schedule for 2012, the "Disbursements to or for Markwayne Mullin" category in the schedule for 2013 includes the total amount of \$95,000 (discussed above) for "disbursements directly to Markwayne Mullin," as well as all other miscellaneous items treated for accounting and tax purposes as distributions to him but which do not fit into the disbursement categories for tax payments, the purchase of businesses (payments to parents), or the purchase of real estate.

These 2013 disbursements for tax payments, for business purchase payments, for real estate related payments, and for the listed various purposes were not "made to" or "received by" Rep. Mullin, and – as emphasized repeatedly – they did not constitute earned income to him. As already noted to the Committee with respect to information provided for 2012, tax and accounting principles for S-Corporations like the Mullin companies required that these payments (together with the distributions made directly to Rep. Mullin and the other disbursements reflected on the 2013 S-Corporation Distributions schedule) be treated as non-dividend distributions to him, reducing Rep. Mullin's basis in Mullin company stock on a dollar-for-dollar basis. The amounts of reduction in Rep. Mullin's stock basis in the Mullin companies commensurate with these distributions are reflected on the K-1 schedules (Lines 16D) for 2013 included with this letter.

2. Provide the Committee with any documents showing the following:

- a) The payments received by you from the Mullin companies in 2013 that were tax payments to the Internal Revenue Service and the Oklahoma Tax Commission;
- b) The payments received by you from the Mullin companies in 2013 that were payments for the purchase of the business;



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c) The payments received by you from the Mullin companies that were payments for the purchase of a rental property.

Rep. Mullin did not personally receive any payments for any of the above-described purposes in 2013. Payments for these purposes were made directly by the paying corporations to the ultimate payees, not to Rep. Mullin. Please see the response to Question 1 above for further explanation as to how such payments, consistent with the structure and operation of S Corporations, were appropriately accounted for as non-dividend distributions attributed to Rep. Mullin as a shareholder in the companies and as to how such payments reduced Rep. Mullin's basis in stock of the Mullin companies on a dollar-for-dollar basis. Documents provided and described in connection with the responses to Question 1 (both in this letter and in the March 24 letter to the Committee) are also responsive to Rep. Mullin's responses to Committee Questions 2(a), (b), and (c).

In further response to Committee Question 2(a), also included with this letter, at Bates Numbers MM-ETHICS160 through MM-ETHICS167, are copies of checks from Mullin Plumbing, Inc., to the IRS and the Oklahoma Tax Commission in 2013. In further response to Committee Question 2(b), also included with this letter, at Bates Numbers MM-ETHICS168 through MM-ETHICS179, are copies of 12 checks, each in the amount of \$8,747.93, from Mullin Plumbing, Inc., to Gayle Mullin in 2013. Also in response to Question 2(b), at Bates Numbers MM-ETHICS180 through MM-ETHICS187, are copies of checks from Mullin Plumbing West Division, Inc., from December 2012 through December 2013 evidencing reimbursement payments of \$2,186.98 each to Mullin Plumbing in connection with the purchase of the business.⁶ Also included with this letter, at Bates Numbers MM-ETHICS188 through MM-ETHICS190, are copies of checks relating to the amounts of \$4,724 and \$1,181 which appear on the 2013 S-Corporation Distributions schedule as amounts from Mullin Environmental, Inc., to Mullin

⁶ The check for November 25, 2013, at Bates Number MM-ETHICS186 reflects a total amount of \$32,663.92, only \$2,186.98 of which was expensed to reimbursement to Mullin Plumbing, Inc., for purchase of the business. The check for 12/10/13, at Bates Number MM-ETHICS187, reflects a total amount of \$10,870.25, only \$2,186.98 of which was expensed to reimbursement to Mullin Plumbing, Inc., for purchase of the business. The check for 12/31/13, also at Bates Number MM-ETHICS187, reflects a total amount of \$52,842.26, only \$2,186.98 of which was expensed to reimbursement to Mullin Plumbing, Inc., for purchase of the business.



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Plumbing, Inc., in connection with reimbursing Mullin Plumbing, Inc., for the business purchase.⁷

In response to Committee Question 2(c), see the response to Committee Question 1, above, regarding ledger entries relating to the purchase of properties. Also, see the response to Committee Question 6 in Rep. Mullin's March 24 letter to the Committee with respect to additional documents relating to property transactions in 2013. With respect to the purchase of property in Noble, Oklahoma, the following additional documents are provided with this letter at Bates Numbers MM-ETHICS191 through MM-ETHICS193: a copy of a record of a money market withdrawal for \$65,000 from an account for Mullin Plumbing (West Division, Inc.) (this corresponds to the Mullin Plumbing West Division, Inc., ledger entry on "3/25/13" for \$65,000 for "RENTAL PURCHASE"); a deposit ticket for \$65,000 for Mullin Properties West Division dated March 22, 2013; a cashier's check dated March 22, 2013, for \$66,560.42, drawn on the funds of Mullin Properties West and used for the purchase of the Noble, Oklahoma, property. A copy of a check for \$1,000 from Mullin Plumbing West Division, Inc., provided at Bates Number MM-ETHICS194, reflects the escrow payment of in connection with the Noble, Oklahoma, property. With respect to the purchase of property in Westville, Oklahoma, copies of four cashier's checks dated May 9, 2013, and totaling \$22,202 are provided at Bates Numbers MM-ETHICS195 through MM-ETHICS196; these cashier's checks correspond to the four ledger entries for Mullin Plumbing West Division, Inc., for May 9, 2013, totaling \$22,702. Finally, a copy of a December 20, 2013 check from Mullin Plumbing, Inc., for \$16,000 to Mullin Properties LLC, included at Bates Number MM-ETHICS197, reflects an advance to pay real estate taxes for properties.

3. Provide the Committee with any tax documents (such as W-2, K-1, or 1099-DIV forms, or tax returns) in which the income you received in 2013 from the Mullin companies is referred to as a dividend or disbursement or is characterized in any other way.

See the documents provided and discussed in connection with the response to Committee Question 1 above.

⁷ The amounts of these checks from Mullin Environmental, Inc., exceed the amounts reflected on the 2013 S-Corporation Distributions schedule because these checks also relate to other reimbursements from Mullin Environmental, Inc., to Mullin Plumbing, Inc.



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Page 11

4. Provide the Committee with a detailed description of the positions and titles you have held with each of the Mullin companies and the dates during which you held each of those positions and titles.

See the response to this question provided in Rep. Mullin's March 24 letter to the Committee.

5. Provide the Committee with a detailed explanation of the agreement whereby you received payments as a result of the purchase of the Mullin companies. Include information regarding the identity of the parties to this arrangement and why payments for this purchase were made to you.

See the response to this question provided in Rep. Mullin's March 24 letter to the Committee.

6. Provide the Committee with a detailed explanation of the arrangement whereby you received payments as a result of the purchase of rental properties. Include information regarding the identities of the parties to this arrangement, the identity of the property being purchased, and why the payments were made to you.

See the response to this question provided in Rep. Mullin's March 24 letter to the Committee.

7. Inform the Committee whether any persons who co-hosted your radio call-in show "House Talk with Markwayne Mullin" in 2013 were employees of the Mullin companies and, if so, whether they were compensated for their work on the show. If said employees were compensated for their work on the show, inform the Committee how much they were compensated.

See the response to this question provided in Rep. Mullin's March 24 letter to the Committee.

8. Inform the Committee how much the Mullin companies paid to air "House Talk with Markwayne Mullin" in 2013 and whether the Mullin companies employed any analysis in determining the expected benefits of airing said show.



The Honorable K. Michael Conaway
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Page 12

See the response to this question provided in Rep. Mullin's March 24 letter to the Committee.

* * *

Rep. Mullin has reviewed, approved as accurate, and authorized these responses to the Committee's requests for information, which counsel submits to the Committee on his behalf.

As stated in his March 24, 2014 letter to the Committee, Rep. Mullin believes that the Committee's inquiry would be facilitated by meeting with his counsel to discuss and clarify how payments of the Mullin companies in 2013 to meet federal and state tax obligations, in connection with the purchase of the Mullin companies, and in connection with the purchase of real estate were not payments made to or received by Rep. Mullin and were not income to Rep. Mullin. Counsel will be available for such a meeting, as convenient for Committee staff.

Please do not hesitate to contact counsel with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Jan Baran", written over a horizontal line.

Jan Witold Baran
Counsel for Rep. Mullin

A handwritten signature in black ink, appearing to read "Robert L. Walker", written over a horizontal line.

Robert L. Walker
Counsel for Rep. Mullin

Enclosure



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June 15, 2015

Jan Witold Baran
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BY HAND DELIVERY

The Honorable Charles W. Dent, Chairman
The Honorable Linda T. Sánchez, Ranking Member
Committee on Ethics
United States House of Representatives
1015 Longworth House Office Building
Washington, DC 20515

Re: Response to Committee's March 25, 2015 Request for Information

Dear Chairman Dent and Ranking Member Sánchez:

On behalf of our client, The Honorable Markwayne Mullin, we submit this letter and accompanying documents to the Committee on Ethics in response to the Committee's March 25, 2015 letter requesting information and documents in connection with its review of allegations forwarded by the Office of Congressional Ethics ("OCE") in December 2013.¹ OCE asserted that Rep. Mullin "exceeded the maximum amount of outside earned income permissible under House rules" in 2013. Any such assertions or allegations that Rep. Mullin may have violated House standards concerning outside earned income, outside activity, or conflicts of interest are entirely without merit, as Rep. Mullin has explained in detail in his three previous letters to the Committee in this matter on January 22, March 24, and April 29, 2014.² Rep. Mullin's explanations as to the propriety of his conduct and as to

¹ The Committee's March 25, 2015 letter included a response date of April 8, 2015. The Committee agreed to extend this response date to June 15, 2015.

² This letter incorporates by reference all points made and all information provided to the Committee in, and with, Rep. Mullin's previous letters and responses in this matter. As stated in the following quoted portion of Rep. Mullin's April 29, 2014 letter to the Committee, the principal points made by Rep. Mullin to the Committee are:

- This is, and should be treated as, an advisory matter, not as an investigative or disciplinary matter.
- With respect to his family business interests and activities, Rep. Mullin has at all times endeavored to act consistently with the guidance he sought and received from the Committee.
- All income received by Rep. Mullin from his family businesses in 2013 was through distributions from those businesses, either made to Rep. Mullin directly or (consistent with the operation of S-Corporations) attributed to him for accounting and tax purposes. None of



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his compliance with House standards have been amply supported by the extensive documentation and information already provided by Rep. Mullin in response to the Committee's previous requests for information.

With the expectation that this matter will be resolved favorably by the Committee as soon as possible, Rep. Mullin is pleased to provide through this letter and the accompanying document production additional information requested by the Committee in its most recent letter to him. This matter has been pending without resolution since the OCE commenced its preliminary review in August 2013. On February 6, 2014, the Committee announced that it had received a referral from the

(Continued . . .)

- this income was earned income or income in connection with services by Rep. Mullin to those businesses. The Committee should note two important related points here:
- As shown by the tax-related and other documents provided with this response and the March 24 response, there is no sound basis for the Committee to re-characterize any of the distribution income to Rep. Mullin in 2013 as wages or earned income.
 - Re-characterizing any portion of the 2013 distribution income to Rep. Mullin as wages or earned income would require the Committee to substitute its collective, theoretical judgement – from a committee room in Washington, DC – for the hands-on judgment of the professionals who operate and account for those businesses on the ground in Oklahoma.
 - Re-characterizing income to Rep. Mullin from the Mullin businesses in 2013 as in connection with services to those family businesses must recognize that such services were to manage and protect a Member's equity in a family trade or business that both House Rule 25, clause 4(d)(1)(D), and related Committee guidance specifically exclude from the definition of "earned income."
 - This exclusion from the definition of "earned income" would apply to any amount which could even theoretically be viewed as compensation to Rep. Mullin for his participation in radio and television advertisements or programs in connection with his family businesses.
 - If the Committee were to assert that some portion of the distributions to Rep. Mullin from his family businesses in 2013 was compensation for – and income earned from – his participation in advertisements or programs for those businesses in 2013, there is no reasonable basis to conclude that the amount to be allocated for such theoretical compensation either exceeded or even reached the outside earned income cap of \$26,955 for 2013.



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OCE, and the public has believed since that time that Rep. Mullin has an “ethics matter” pending against him. On April 29, 2014, Rep. Mullin sent to the Committee his last previous responses to its requests for documents and information. Rep. Mullin did not hear any further word from the Committee on this matter for eleven months after that submission.

Rep. Mullin understands and appreciates that, at any one time, the Committee may have many matters under review involving many different Members, but each such review impacts each subject Member directly, personally, and with equal force. As the Committee surely understands and appreciates, the prolonged and uncertain status of this matter has already adversely affected Rep. Mullin directly, personally, and financially. This is particularly troubling because, from the start, this matter should have been considered as an advisory matter (not as an investigative matter) and because with respect to the subject matter under review here – his family business interests and activities – Rep. Mullin at all times endeavored to act consistently with the guidance he sought and received from the Committee prior to taking office in January 2013. Rep. Mullin urges the Committee to close this matter as promptly as possible without any adverse findings.

As in our previous letters on behalf of Rep. Mullin to the Committee, we ask the Committee to be highly cognizant that information being provided with this letter constitutes sensitive and nonpublic financial information, not only of Rep. Mullin personally but also of a number of small businesses (and employers) operating in a highly competitive business environment. We urge the Committee, therefore, to handle the business and personal financial information it receives in this matter with the utmost care, confidentiality, and discretion. For these reasons, the documents provided with this letter have been marked: “PERSONAL/BUSINESS CONFIDENTIAL-MAINTAIN AS STRICTLY CONFIDENTIAL.”

Rep. Mullin’s responses to the Committee’s March 25, 2015 request for information follow.

1. **Provide the Committee with a list of all advertisements for the Mullin Companies that you appeared in or attached your name or likeness to between January 3, 2013 and the present, including the “House Talk with Markwayne Mullin” radio programs and any endorsements of, or solicitation for, the**



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Mullin Companies distributed through television, radio, the internet, or print (the "Mullin Advertisements"). Also provide copies or transcripts of the Mullin Advertisements.

With respect to the "House Talk" radio program³, Rep. Mullin and the Mullin Companies do not maintain a list of the specific occasions on which Rep. Mullin has hosted that program. As explained to the Committee in Rep. Mullin's March 24, 2015 letter, there are three different "House Talk" programs on three different radio stations in Oklahoma. Ray Trimble, Chief Operating Officer ("COO") of Mullin Plumbing, hosts – and since 2013 has hosted – two of these programs. Since January 2013, as his schedule has permitted, Markwayne Mullin has hosted the third of these radio programs; Mr. Trimble has hosted this third program when Markwayne Mullin has not been able to do so. As a general matter, Markwayne Mullin appears as host for this third "House Talk" program for approximately half of its episodes, with Mr. Trimble acting as host for the other episodes.

Neither Rep. Mullin nor any Mullin company has copies or transcripts of the House Talk radio programs. Included with the document production accompanying this letter are very brief outlines or lists relating to a few of these programs; these are included in the accompanying Disc 1 at MM-ETHICS2511–12 and 2515–16.

Also accompanying this letter is a second disc containing media files of radio, television, and internet spots promoting the Mullin Companies. (Attachment A to this letter is a list of these materials.) Included on this disc are a few brief spots by the radio or television stations themselves referencing Mullin Plumbing but which do not include Rep. Mullin's voice or likeness or reference him by name. Also included are a few television spots by Christie Mullin, Rep. Mullin's wife, which briefly reference "my husband." The bulk of the files on Disc 2 are radio spots, television spots, and internet "Household Tips" spots for Mullin Plumbing by Markwayne Mullin (note that some "Household Tips" ran as commercials on television and some were created or used just for the Mullin Companies' website). These files can be found at MM-ETHICS2542–2696 on Disc 2.

³ As previously noted to the Committee, the name of the program is simply "House Talk," not "House Talk with Markwayne Mullin."



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Please note that some of the radio, television, or internet spots included on the accompanying disc may have been produced before January 2013, indeed some may have been produced as early as 2010. For many of the spots included on Disc 2, there does not appear to be a way to accurately date when they were produced. However, it appears that many if not most of the spots produced before 2013 were also aired or used into 2013 and later. The Committee should also note that many of the spots are exact duplicates in substantive content; for example, audio spots 1 through 23 (on Disc 2 at MM-ETHICS2542–2564) appear to be exactly identical to audio spots 24 through 46 (at MM-ETHICS2565–2587 on Disc 2), except for technical differences in the electronic signatures for these files. The Committee will also hear and see that many of the radio spots and many of the television spots constitute pairs, in which the only difference between the two paired spots is that one of the two ends with a Tulsa phone number in the voice over and the other ends with an Oklahoma City number in the voice over. Thus, the number of actually unique advertising spots in which Markwayne Mullin appears or is heard is significantly smaller than appears from the total number of spots being produced to the Committee.

With respect to print advertising, documents relating to invoices and payments for listing ads for Mullin Plumbing in the “Yellow Book” or similar publications are included on Disc 1. Further, images of appearances of the Mullin Plumbing “Red Rooter” truck in on-screen graphics for several television stations are included on Disc 1 at MM-ETHICS2513, 2514, and 2517.

2. Provide the Committee with all documents related to any payments made or expenses incurred in the drafting, preparation, production, broadcasting, publication, or distribution of any Mullin Advertisements broadcast, published, or otherwise distributed between January 3, 2013 and the present, including, but not limited to, bills, invoices, work statements, billing estimates, checks, and payment orders.

Documents responsive to this request are included on Disc 1 at MM-ETHICS0198–2497, 2526–2541. The documents are provided in searchable PDF format.

3. Identify any employee of the Mullin Companies who were involved in the drafting, preparation, production, broadcasting, publication, or



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distribution of any Mullin Advertisements broadcast, published, or otherwise distributed between January 3, 2013 and the present, and detail each employee's involvement with the Mullin Advertisements. For any such employees, provide (1) the amount of time each employee devoted to the Mullin Advertisements; (2) each employee's total compensation, in the form of salary, wages, and bonuses, for 2013; and (3) each employee's compensation for overtime, if any, in connection with their work on the Mullin Advertisements.

Apart from Markwayne Mullin's activity in connection with Mullin Advertisements (and apart from the few times that Christie Mullin appeared in such advertisements, as documented in the accompanying materials), the Mullin Company employees involved in the Mullin Advertisements are Mullin Plumbing COO Ray Trimble, Mullin Plumbing Chief Executive Officer Robert Morris, and Mullin Plumbing Chief Financial Officer Staci Crabtree. Mr. Trimble's regular activity in connection with the "House Talk" radio programs has been discussed above in this letter; each radio program is about an hour long. Apart from that activity, Mr. Trimble and Mr. Morris essentially are the in-house promotional and advertising team for the Mullin Companies (in this regard, Mullin Plumbing is of primary, if not sole, relevance). They set the theme for the ads, decide on the topics for the ads, and determine the types of services to be targeted in the ads. Mr. Trimble and Mr. Morris each spend, as a general matter, an average of approximately two hours a week on these kinds of advertising-related activities (again, apart from Mr. Trimble's activity in connection with the radio programs).

The actual production of advertisements is done by an outside consultant/vendor. For the period January 3, 2013 through about April 2015, Jana Holder was the advertising and marketing consultant. From April 2015 through the present, Pineapple Productions has filled this role. Records of payments to Ms. Holder and to Pineapple Productions for the relevant period are included in the documents on Disc 1. Three email chains relating to activities of Ms. Holder are also included on the disc at MM-ETHICS2502-2510.

Payments and other financial matters relating to the Mullin Companies' advertising activity is handled by Staci Crabtree (with clerical assistance by Sonja Campbell). Ms. Crabtree estimates that she spends approximately 10 percent of her time on these activities.



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Mr. Trimble, Mr. Morris, and Ms. Crabtree are all salaried employees of the Mullin Companies, so they are not compensated on an hourly or overtime basis.

Respectfully, Rep. Mullin does not wish to provide information on the salaries paid to Mr. Trimble, Mr. Morris, and Ms. Crabtree. Rep. Mullin believes this information to be highly personal to these three employees. In past responses to the Committee Rep. Mullin has provided very specific, very detailed, and very revealing information about his own personal finances and income; indeed, he is providing additional sensitive information with this letter about his own income (see the documents submitted in response to Question 4, below). However, it is Rep. Mullin's very strong belief that providing personal financial information about employees of the Mullin Companies, where the confidentiality of that information is not or cannot be guaranteed by the Committee, could result in undue and adverse personal consequences and exposure for these employees. It is not the Mullin Companies' employees' conduct that is under review, and Rep. Mullin does not wish to have the Committee's review of his conduct result in personal harm or embarrassment to the Mullin Companies' employees.

Also, as already stated, the Mullin Companies operate in a very competitive environment. Publication of the salaries of the top employees of the Mullin Companies could prove a boon to any competitor of the Companies intent on making future hiring by the Companies more difficult.

If there are alternative approaches to providing the Committee with the information it needs to promptly resolve this matter – alternatives that would not intrude on the personal lives of the Mullin Companies' employees – Rep. Mullin would welcome the opportunity to discuss these alternatives with the Committee.

4. Provide copies of all checks paid from Mullin Plumbing West Division, Inc., to you between January 3, 2013 and the present, along with any bank deposit records, including, but not limited to, deposit slips.

See the Mullin Plumbing West Division General Ledger pages, checks, and deposit records included on Disc 1 at MM-ETHICS2498–2501 and 2518–2525.



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5. For each of the Mullin Companies, detail the total revenue accrued through sales of plumbing supplies and parts, as well as any profits on sales of such supplies and parts, in 2013.

The sale of capital goods – supplies and parts – in connection with the provision of services to customers is a significant, material income-producing factor for the Mullin companies. However, the Mullin Companies do not separately track revenue accrued through, or profits resulting from, sales of supplies and parts.

The Mullin Companies do have information on the amounts spent in 2013 on materials, supplies and parts by each of the Mullin Companies. These amounts are as follows:

Mullin Plumbing, Inc.	\$1,528,886.20
Mullin Plumbing West	\$1,022,828.80
Mullin Services, Inc.	\$ 780,704.49
Mullin Environmental, Inc.	\$ 347,887.78
Mullin New Construction	\$ 835,233.06

The Committee should also note that the Mullin Companies do not maintain a standing inventory of parts and supplies, other than what may be found at any one time in the Companies' service trucks. The Committee may reasonably infer, therefore, that most (although, likely, not all) of the materials, supplies, and parts purchased in 2013 were sold by the Mullin Companies at a mark-up (varying from company to company) to customers in 2013.

6. Inform the Committee of the efforts you and anyone acting on your behalf, including, but not limited to, your House staff and employees of the Mullin Companies, have made to identify documents and other information responsive to these requests.

In connection with the requests in the Committee's March 25, 2015 letter and in the Committee's earlier correspondence in this matter, Rep. Mullin has provided responsive information personally and has sought and obtained responsive information and documents from sources relevant to the Committee's requests. The bulk of this information and of these documents has been of a financial nature,



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including tax documents and information (in earlier productions to the Committee), information as to payments made by and income received from the Mullin Companies, and extensive business records. Identification and collection of this financial information has fallen on the shoulders of CFO Staci Crabtree. Her diligent efforts to identify and collect responsive information and documents have taken up a considerable amount of her time.

* * *

Thank you for your consideration of the above responses to the Committee's requests and of the documents and materials submitted as part of these responses. Rep. Mullin has reviewed, approved as accurate, and authorized these responses, which counsel submits to the Committee on his behalf. If the Committee or its staff has any questions, counsel is available to discuss at the Committee's or staff's convenience.

In closing, we repeat and emphasize Rep. Mullin's request that the Committee close this long pending matter promptly without any finding adverse to him.

Sincerely,

A handwritten signature in black ink, appearing to read "Jan Baran".

Jan Witold Baran
Counsel for Rep. Mullin

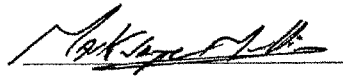
A handwritten signature in black ink, appearing to read "Robert L. Walker".

Robert L. Walker
Counsel for Rep. Mullin

Declaration

I, Representative Markwayne Mullin, declare (certify, verify, or state) under penalty of perjury that the response and factual assertions contained in the attached letter dated 6-15-15, 2015, relating to my response to the March 25, 2015, Committee on Ethics request for information, are true and correct.

Signature:



Name:

Representative Markwayne Mullin

Date:

6-15, 2015

Attachment A: List of Media Files

1. Track 01 "Dust off the furnace..." (918)
2. Track 02 "For all your gas, water, sewer, septic, heat, and air needs..."
3. Track 03 "Merry Christmas"
4. Track 04 "Summer's coming soon..."
5. Track 05 "When you think about a plumbing company..." (405)
6. Track 06 "When you think about a plumbing company..." (918)
7. Track 07 "When you think about a plumber..." (405)
8. Track 08 "When you think about a plumber..." (918)
9. Track 09 "Summer is here..." (405)
10. Track 10 "Summer is here..." (918)
11. Track 11 "Heat and air service..." (918)
12. Track 12 "Free Water Analysis"
13. Track 13 "Spring is here...check your outside faucets" (405)
14. Track 14 "Spring is here...check your outside faucets" (918)
15. Track 15 "Winter is here...make sure outside faucets are sealed..." (918)
16. Track 16 "Winter is here...make sure outside faucets are sealed..." (405)
17. Track 17 "If you have a plumbing need..." (918)
18. Track 18 "Would you like a great career with a growing company?" (405)
19. Track 19 "Would you like a great career with a growing company?" (918)
20. Track 20 "Spring is here...if you encounter any problems..." (405)
21. Track 21 "Spring is here...if you encounter any problems..." (918)
22. Track 22 "Winter is here...open your cabinet doors..." (918)
23. Track 23 "Travel in the winter months..." (918)
24. Track 24 "Dust off the furnace..." (918)

25. Track 25 "For all your gas, water, sewer, septic, heat, and air needs..."
26. Track 26 "Merry Christmas"
27. Track 27 "Summer's coming soon..."
28. Track 28 "When you think about a plumbing company..." (405)
29. Track 29 "When you think about a plumbing company..."
30. Track 30 "When you think about a plumber..." (405)
31. Track 31 "When you think about a plumber..." (918)
32. Track 32 "Summer is here..." (405)
33. Track 33 "Summer is here..." (918)
34. Track 34 "Heat and air service..." (918)
35. Track 35 "Free Water Analysis"
36. Track 36 "Spring is here...check your outside faucets" (405)
37. Track 37 "Spring is here...check your outside faucets" (918)
38. Track 38 "Winter is here...make sure outside faucets are sealed..." (918)
39. Track 39 "Winter is here...make sure outside faucets are sealed..." (405)
40. Track 40 "If you have a plumbing need..." (918)
41. Track 41 "Would you like a great career with a growing company?" (405)
42. Track 42 "Would you like a great career with a growing company?" (918)
43. Track 43 "Spring is here...if you encounter any problems..." (405)
44. Track 44 "Spring is here...if you encounter any problems..." (918)
45. Track 45 "Winter is here...open your cabinet doors..." (918)
46. Track 46 "Travel in the winter months..." (918)
47. "Mullin Plumbing now offers heat and air service..."
48. KRMG StormCenter Sponsorship
49. Fox & Friends Sponsorship

50. KRMG Weather Forecast Sponsorship
51. Mullin Plumbing Closed Captioning Sponsorship
52. Mullin Plumbing KWTB Ad
53. Mullin Plumbing KTUL TV Ad
54. TV Spot 01 How to Check for a Leak (TUL)
55. TV Spot 02 How to Check for a Leak (OKC)
56. TV Spot 03 How to Replace Your Cleanout Caps (TUL)
57. TV Spot 04 How to Replace Your Cleanout Caps (OKC)
58. TV Spot 05 How to Treat Your Aerobic System (TUL)
59. TV Spot 07 How to Fix a Slow Bathroom Drain (TUL)
60. TV Spot 08 How to Fix a Slow Bathroom Drain (OKC)
61. TV Spot 09 Replace Your Supply Lines Every 5 Years (TUL)
62. TV Spot 10 Replace Your Supply Lines Every 5 Years (OKC)
63. TV Spot 11 How to Maintain Your Sprinkler System (TUL)
64. TV Spot 12 How to Maintain Your Sprinkler System (OKC)
65. TV Spot 13 How to Shut Off Your Water (TUL)
66. TV Spot 14 How to Shut Off Your Water (OKC)
67. MP-10-12-OKC-10
68. MP-10-12-OKC-15
69. MP-10-12-TUL-10
70. MP-10-12-TUL-15
71. MP-AC-CLEANING-4_2013
72. MP-Christie-WPV-May2014-OKC
73. MP-Christie-WPV-May2014-TUL
74. MP-CHRISTMAS-30-2013-OKC

- 75. MP-CHRISTMAS-30-2013-TUL
- 76. MP-CHRISTMAS-30-2014-OKC
- 77. MP-CHRISTMAS-30-2014-TUL
- 78. MP-GEN 10 OKC
- 79. MP-GEN 10 TUL
- 80. MP-GEN 15 OKC
- 81. MP-GEN 15 TUL
- 82. MP-RHEEM-4_2013
- 83. MP-WASH-30-OKC
- 84. MP-WATER-4_2013
- 85. MP-WHEAT-30-OKC
- 86. MP-WSHUT-30-OKC
- 87. MP_AEROBIC SYSTEMS_30_2015
- 88. MP_Christmas_TUL
- 89. MP_RECRUIT_30_OKC
- 90. MP_RECRUIT_30_TUL
- 91. MP_REDLINK_30_OKC
- 92. MP_REDLINK_30_TUL
- 93. MP_WASH_30_OKC
- 94. MP_WASH_30_TUL
- 95. MP_WHEAT_30_OKC
- 96. MP_WHEAT_30_TUL
- 97. MP_WSHUT_30_OKC
- 98. MUL SINKTIP 11L NS
- 99. Mul-ChristieOKC 0812 30 REV2

- 100. Mul-ChristieOKC 30 REV
- 101. Mul-ChristieTul 0812 30 REV2
- 102. Mul-ChristieTul 30 REV
- 103. MUL-CHRISTMAS11
- 104. MUL-DISPOSAL11L
- 105. MUL-FILTER11L
- 106. MUL-FURNACE11L
- 107. MUL-ICELINE11L
- 108. MUL-OKC-CHRISTMAS11-43S
- 109. MUL-OKC-CHRISTMAS11
- 110. MUL-OKC-DISPOSAL11-43S
- 111. MUL-OKC-DISPOSAL11L-43S
- 112. MUL-OKC-DISPOSAL11L
- 113. MUL-OKC-FILTER11-43S
- 114. MUL-OKC-FILTER11L-43S
- 115. MUL-OKC-FILTER11L
- 116. MUL-OKC-FURNACE11-43S
- 117. MUL-OKC-FURNACE11L-43S
- 118. MUL-OKC-FURNACE11L
- 119. MUL-OKC-ICELINE11-43S
- 120. MUL-OKC-ICELINE11
- 121. MUL-OKC-ICELINE11L-43S
- 122. MUL-OKC-ICELINE11L
- 123. MUL-OKC-SEPTIC11-43S
- 124. MUL-OKC-SEPTIC11

- 125. MUL-OKC-SEPTIC11L-43S
- 126. MUL-OKC-SEPTIC11L
- 127. MUL-OKC-SINKTIP11-43S
- 128. MUL-OKC-SINKTIP11
- 129. MUL-OKC-SINKTIP11L-43S
- 130. MUL-OKC-SINKTIP11L
- 131. MUL-OKC-TOILET11-43S
- 132. MUL-OKC-TOILET11
- 133. MUL-OKC-TOILET11L-43S
- 134. MUL-OKC-TOILET11L
- 135. MUL-SEPTIC11L
- 136. MUL-SINKTIP11L
- 137. MUL-TOILET11L
- 138. ATTIC OKC
- 139. ATTIC TUL
- 140. DRYER VENT OKC
- 141. DRYER VENT TUL
- 142. FLOOD STOP OKC
- 143. FLOOD STOP TUL
- 144. GARBAGE DISPOSAL OKC
- 145. GARBAGE DISPOSAL TUL
- 146. SHOWER CURTAIN OKC
- 147. SHOWER CURTAIN TUL
- 148. Stopped Drain OKC
- 149. Stopped Drain TUL

- 150. TOILET OKC
- 151. TOILET TUL
- 152. VACATION MODE OKC
- 153. VACATION MODE TUL
- 154. WATER TEMP OKC
- 155. WATER TEMP TUL

APPENDIX 3

EXHIBIT 1

MARKWAYNE MULLIN
2ND DISTRICT, OKLAHOMA

1113 LUNGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-2701

Congress of the United States
House of Representatives
Washington, DC 20515-3602

November 8, 2013

The Honorable Porter Goss, Chair
The Honorable David Skaggs, Co-Chair
Office of Congressional Ethics
U.S. House of Representatives
425 3rd Street, SW
Suite 1110
Washington, DC 20024

Re: *Office of Congressional Ethics Review No. 13-2392*

Dear Chairman Goss and Co-Chairman Skaggs:

Thank you for the opportunity to make my voice and concerns heard to you, and to the other members of the Board of the Office of Congressional Ethics ("OCE"), on this matter of the utmost personal, professional, and official importance to me, to my family, and, as I address below, to the people who elected me to represent their interests in Congress without undue distraction.

As you know, before my election to Congress from Oklahoma's Second Congressional District in 2012 I owned and operated Mullin Plumbing and a number of other businesses. Mullin Plumbing is a family business, founded by my father. When I was 20 years old I took over the operation of Mullin Plumbing from my father when he became too ill to continue running the business. Today, Mullin Plumbing has grown to a statewide business, providing ongoing and important employment to over 120 people.

After I was elected to Congress in November 2012, one of my priorities was to meet with the staff of the House Committee on Ethics to get their guidance on my business arrangements, and on activities I was undertaking on behalf of those businesses, to assure that, after I took office in January 2013, those business arrangements and activities would be structured in accord with House ethics standards. As a result of that meeting I gave up day-to-day operation of the Mullin businesses. Consistent with the guidance I received from Ethics Committee staff, I retain a substantial ownership interest in those businesses and receive distributions based on those interests.

The OCE has a copy of a September 19, 2013 email from House Ethics Acting Director of Investigations Tom Rust to my Chief of Staff Karl Ahlgren (an additional copy is attached to this letter). Mr. Rust and his Ethics Committee Counsel colleague Heather Jones were the ethics staff counsel who met with me on November 26, 2012 to discuss my business interests. Although, unfortunately, Mr. Rust and Ms. Jones apparently did not memorialize their guidance to me at the time of the meeting, in his September 19 email Mr. Rust confirms the specific guidance – and clear permission – he and Ms. Jones provided to me in November 2012 regarding advertisements for Mullin Plumbing.

104 SOUTH MEMPHIS AVENUE
GARRARD, OK 74017
(918) 247-8330

112 NORTH 12TH AVENUE
DURANT, OK 74701
(580) 931-0222

101 AIRPORT ROAD
MCALLESTER, OK 74501
(918) 425-5351

431 WEST BROADWAY
MUSKOGEE, OK 74401
(918) 687-2357

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In its statement of the nature of its review in this matter in its August 27, 2013 letter to me, the OCE states that I may have violated House rules and standards of conduct if I was personally involved in selling or endorsing any goods or services pursuant to outside employment. As you can see from Mr. Rust's September 19, 2013 email, House Ethics permitted my personal involvement in advertisements for Mullin Plumbing. Given the permission from House Ethics –and particularly given that this permission came from the Acting Director of Investigations at the Committee – the investigative interest expressed by the OCE with respect to my participation in advertisements for Mullin Plumbing appears to be entirely unjustified and entirely unsupported.

In addition to advertisements, following my November 2012 meeting with House Ethics staff, I and others involved in the Mullin businesses structured those businesses, and my participation in them, to accord with our understanding of Ethics staff guidance. In fact, we spent numerous business hours and thousands of dollars to implement this ethics guidance, including the hiring of a new chief executive officer to replace me.

The House Ethics Committee, as expressed in its Ethics Manual, recognizes that Members should be able to manage and protect their equity in a family trade or business. It appears, however, that in trying to manage and protect my family business, and despite my seeking Ethics Committee guidance on how to do so, I have been caught in the middle between the Ethics Committee acting in an advisory capacity and the OCE acting in an investigative capacity. It seems to me that, if the procedural rules of the Committee and of the OCE allowed them to communicate with each other – even informally – about this matter, it would simply and quickly be resolved and go away. Instead, because of this inability to communicate, the OCE's investigation is imposing multiple, unnecessary costs – financial costs, potential costs to my reputation if this unwarranted inquiry is referred to the Ethics Committee, and costs to my constituents in the real time this matter has required me to take away from the representative duties for which I was elected.

Again, thank you and the Board for your serious attention to and consideration of my concerns. It is my very strong hope that you and the members of the OCE Board will dismiss this matter or, if you must refer it to the House Ethics Committee under your rules, that you will do so with a unanimous recommendation for dismissal. There was no sufficient basis for initial inquiry by the OCE in this matter. There certainly is no basis for continued inquiry by the OCE or by the Ethics Committee.

Sincerely



Markwayne Mullin
Member of Congress
Second Congressional District of Oklahoma