

## **Agreement Regarding Confidentiality of Non-Public Information**

This agreement (the "Agreement") between the Financial Crisis Inquiry Commission (the "Commission") and the Office of the Comptroller of the Currency (the "OCC") regarding nondisclosure of confidential information is made with reference to the following facts:

- A. Section 5 of the Fraud Enforcement and Recovery Act of 2009 ("FERA") created the Financial Crisis Inquiry Commission to examine the causes, domestic and global, of the current financial and economic crisis in the United States. It expressly contemplates information sharing:
- B. Subpart (d) of Section 5 of FERA provides:
  - (A) In General- The Commission may secure directly from any department, agency, bureau, board, commission, office, independent establishment, or instrumentality of the United States any information related to any inquiry of the Commission conducted under this section, **including information of a confidential nature** (which the Commission shall maintain in a secure manner). Each such department, agency, bureau, board, commission, office, independent establishment, or instrumentality shall furnish such information directly to the Commission upon request. (emphasis added)
- C. And Subpart (c)(5) requires the Commission:

to build upon the work of other entities, and avoid unnecessary duplication, by reviewing the record of the Committee on Banking, Housing, and Urban Affairs of the Senate, the Committee on Financial Services of the House of Representatives, other congressional committees, the Government Accountability Office, other legislative panels, and any other department, agency, bureau, board, commission, office, independent establishment, or instrumentality of the United States (to the fullest extent permitted by law) with respect to the current financial and economic crisis.
- D. The Commission has adopted a strict Confidentiality and Nondisclosure Policy which includes the agreement by its staff not to disclose confidential information (which includes information submitted to the Commission in confidence by other persons) outside of the Commission except as may be reasonably required in connection with the work of the Commission and then only to persons who are informed of, and agree to respect, the confidential nature of the material provided. In implementing this Agreement the staff will adhere to this Policy.
- E. It is the policy of the Commission to respect the confidentiality of information submitted to it in confidence by any other department, agency, bureau, board, commission, office, independent establishment, or instrumentality of the United States to the extent consistent with its statutory mandate and its duty to the American public, and the OCC can be assured that the Commission intends to abide by its policy.



Therefore, the parties agree as follows::

1. For purposes of this Agreement "non-public information" means information that the OCC has not made, and is not required by law to make, public and which the OCC treats as non-public, and in particular includes information the disclosure of which is restricted by 18 U.S.C. § 1905, and information that is protected as "non-public OCC information" under the OCC's regulations (12 C.F.R. Part 4). Non-public information includes both the information itself, in any form (including oral), and any document, written transcript, audiotape, videotape, or other type of transcription, replication, reproduction, or recreation which contains or is derived from such information.
2. It is the intent of the Parties that when the OCC provides information to the Commission (hereafter designated "Providing Party" and "Receiving Party", respectively), the Receiving Party will treat information as non-public if it is informed by the Providing Party that the information is non-public.
3. The Providing Party may cure an inadvertent failure to designate information as non-public information by informing the Receiving Party of the error within a reasonable time after the error is confirmed. This Agreement does not apply to non-public information which becomes publicly available in a manner other than by a breach of this Agreement by the Receiving Party.
4. All non-public information transferred from the Providing Party to the Receiving Party remains the property of the Providing Party.
5. Unless otherwise authorized in writing by the Providing Party, or as contemplated in this Agreement, non-public information may be shared only with employees and agents of the Receiving Party who have a need to know the information in the performance of their official work duties consistent with applicable law. All employees and agents of the Receiving Party with whom non-public information is shared must be advised of and, as condition of receiving non-public information, be bound by the terms of this Agreement and instructed to comply with all of its terms.
6. Except as contemplated in this Agreement, non-public information may not be shared by the Receiving Party with any third party without the prior written permission of the Providing Party.
7. The Receiving Party will take all steps reasonably necessary to preserve, protect and maintain all privileges and claims of confidentiality related to the non-public information and will accord at least as much protection to the non-public information as the Providing Party provides to that information.
8. If the Receiving Party receives a request from a third party for non-public information of the Providing Party, such as a Freedom of Information Act request or a subpoena, the Receiving Party will:



a) unless prohibited by law, immediately notify the Providing Party of such request, subpoena, order, or other process and furnish to the Providing Party copies of any such request or order as well as any documents related thereto;

b) afford the Providing Party the opportunity to take whatever action it deems appropriate to preserve, protect, or maintain the confidentiality of the non-public information or any privileges associated therewith;

c) cooperate fully with the Providing Party to preserve, protect, and maintain the confidentiality of the non-public information and any privileges associated therewith;

d) notify the requestor seeking the non-public information that the information was obtained from the Providing Party and, where applicable, notify the requester that requests for such information must be made directly to the Providing Party in accordance with applicable federal or state law;

e) resist and agree to not initiate production of the non-public information, and testimony related thereto, pending written consent of the Providing Party, except as provided in paragraph 9, and:

f) consent to application by the Providing Party to intervene in any action in order to preserve, protect, or maintain the confidentiality of the non-public information or any privileges associated therewith.

9. Nothing in this Agreement will prevent the Receiving Party from complying with a request or demand from a duly authorized Committee of the United States Congress with authority to require and receive the non-public information, or a legally valid and enforceable subpoena or order by a court of competent jurisdiction for the non-public information or testimony related thereto if, in the case of a subpoena or court order, the Receiving Party:

a) reasonably determines that efforts to quash, appeal, or resist compliance with the order would be unsuccessful or against its interest;

b) attempts, to the extent practicable, to secure a protective order to preserve, protect, and maintain the confidentiality of the non-public information and any privileges associated therewith;

c) immediately notifies the Providing Party of its intent to comply with the order and of any actions taken in compliance with the order; and

d) if the request or demand is from any duly authorized Committee of the United States Congress, to advise such committee of the confidential nature of the non-public information and request that the non-public information be treated as provided by the terms of this agreement.

10. In accordance with its statutory mandate and its duty to the American public, notwithstanding any other provision of this Agreement, the Commission, if it determines it is in the public interest, may release to the public non-public information obtained from the OCC in


any interim or final report to the President and Congress, or in any public hearings, if the Commission determines to do so by a majority vote or by the decision of the Chairman and Vice Chairman acting together on behalf of the Commission. Prior to any release of non-public information under this paragraph, the Commission will give prior written notice to the OCC, and allow a reasonable period of time for the OCC to consult with the Commission before the Commission uses any of the OCC's non-public information in any interim or final report to the President and Congress, or in any public hearings (with a target of up to 14 days prior notice whenever feasible, but with the reasonableness of the consultation period being determined based upon the amount and sensitivity of the non-public information under consideration).

11. Should a question arise as to whether information is public or non-public, the Receiving Party will immediately contact the Providing Party and seek a determination as to the status of the information. If the Providing Party determines that the information is non-public information, the Receiving Party will treat it in accordance with this Agreement.

12. The Parties intend that sharing of non-public information with each other pursuant to the terms of this Agreement will not constitute public disclosure, nor will it constitute a waiver of confidentiality or any privilege applicable to such information. The Parties expressly reserve all evidentiary privileges and immunities applicable to the information shared under this Agreement.

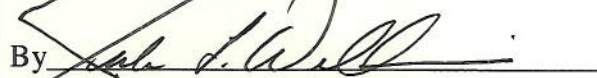
13. This Agreement and all of its terms and conditions is continuing and applies to the Receiving Party until terminated by the Party that provided the non-public information. In the event of termination of this Agreement, the Receiving Party agrees that non-public information will remain confidential and continue to be protected by the terms of this Agreement.

Financial Crisis Inquiry Commission

By 

Thomas Greene  
Executive Director,  
Dated: January 8, 2010

Office of the Comptroller of the Currency

By 

Julie L. Williams  
First Senior Deputy Comptroller and Chief Counsel  
Dated: January 11, 2010