

CHUCK GRASSLEY, IOWA, CHAIRMAN  
MIKE CRAPO, IDAHO  
PAT ROBERTS, KANSAS  
MICHAEL B. ENZI, WYOMING  
JOHN CORNYN, TEXAS  
JOHN THUNE, SOUTH DAKOTA  
RICHARD BLURR, NORTH CAROLINA  
JOHNNY ISAKSON, GEORGIA  
ROB PORTMAN, OHIO  
PATRICK J. TOOMEY, PENNSYLVANIA  
TIM SCOTT, SOUTH CAROLINA  
BILL CASSIDY, LOUISIANA  
JAMES LANKFORD, OKLAHOMA  
STEVE DAINES, MONTANA  
TODD YOUNG, INDIANA  
RON WYDEN, OREGON  
DEBBIE STABENOW, MICHIGAN  
MARIA CANTWELL, WASHINGTON  
ROBERT MENENDEZ, NEW JERSEY  
THOMAS R. CARPER, DELAWARE  
BENJAMIN L. CARDIN, MARYLAND  
SHERROD BROWN, OHIO  
MICHAEL F. BENNET, COLORADO  
ROBERT F. CASBY, JR., PENNSYLVANIA  
MARK R. WARNER, VIRGINIA  
SHELDON WHITEHOUSE, RHODE ISLAND  
MAGGIE HASSAN, NEW HAMPSHIRE  
CATHERINE CORTEZ MASTO, NEVADA

## United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

KOLAN DAVIS, STAFF DIRECTOR AND CHIEF COUNSEL  
JOSHUA SHEINKMAN, DEMOCRATIC STAFF DIRECTOR

Sean M. Akins, Esq.



November 4, 2019

Dear Mr. Akins:

We write to address your October 15, 2019 letter responding to the subpoena issued by the United States Senate Committee on Finance to your client, Mr. Robert McCullough, and served on September 12, 2019.<sup>1</sup> We issued that subpoena as part of the Committee's investigation into certain conservation-easement transactions. The Committee originally requested information from your client in a March 27, 2019 letter. After your client failed to provide voluntarily the information requested, the Committee issued this subpoena requiring production of the requested documents by October 15, 2019.

While your client has produced some responsive documents to the Committee, he has failed to comply fully with the subpoena and has offered no satisfactory legal basis for that failure. The Committee intends to proceed with addressing that failure and requiring full compliance. Prior to taking action ruling on the incomplete compliance, the Committee will permit additional time, until November 11, 2019, for your client to comply fully with the subpoena. This letter sets forth the deficiencies of your response.

First, the subpoena required you to identify any documents being withheld and to provide the legal basis for withholding those documents, along with sufficient information to allow the Committee to evaluate the merit of any withholding. However, your response includes no such information with regard to withheld documents. As our staffs have communicated to you, both the Committee's initial request and the terms of the subsequent subpoena apply to email correspondence, yet we have seen very few emails in the documents produced despite your having previously informed our staffs that your client possesses approximately 400 gigabytes worth of potentially responsive email correspondence. By the November 11 deadline, responsive emails, along with any other responsive documents found during the search of your clients'

<sup>1</sup> In the first sentence of your letter, you reference the subpoena as being "dated September 27, 2019," but we assume this to be a typographical error. Please let us know if you understand this date of September 27, 2019 to refer to something else.

records, must either be produced or be clearly identified as being withheld with an explanation of the legal basis for that withholding, including citation to any authority supporting that basis.

Second, you raise an objection to the subpoena that it seeks investor-specific tax return information already in the possession of the government, and suggest the Committee seek that information from the Internal Revenue Service. You also assert that your client is unable to provide such information because it is contractually obligated to maintain the confidentiality of investors' personal information. However, you have offered no legal authority for withholding based on this objection. Your client has been subpoenaed for these materials, and the fact that they may exist elsewhere does not obviate your client's legal duty to provide them. Nor does your client's contractual undertaking provide a ground for withholding documents sought by a Congressional subpoena. You may submit no later than November 11 any legal support for withholding responsive documents on these grounds.

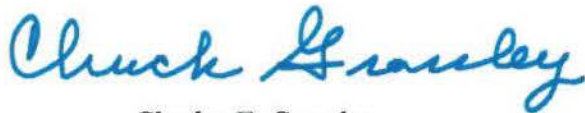
Third, your response to request #1 indicates that your client continues to search for documents and will produce them if located. As an initial matter, we note that you were legally obligated to produce all responsive documents by October 15 and never requested any extension of time to complete your search and production. You have now had an additional 20 days to search for responsive documents. The Committee will provide until November 11 for you to locate and produce any remaining responsive documents to the subpoena.

In addition, your letter asserts that the Committee's subpoena seeks "for the first time ever" documents related to additional entities that were not specified in the Committee's original request letter. However, committee staff clarified, soon after your client received that letter, that the Committee's request encompassed all entities, not merely those identified in the letter's first request. Regardless, it is our understanding that you have not asserted this as a basis for withholding any documents responsive to the subpoena.

Finally, we note that you also object to the subpoena on the asserted grounds that it is vague and ambiguous, overly broad and unduly burdensome, and requests documents protected by the attorney-client privilege, accountant-client privilege, or work product doctrine. However, you state that no documents have been withheld on the bases of any of these objections. Please indicate in your response to this letter whether you are relying, or intend to rely, on any of these objections, in whole or in part, as a ground for withholding any responsive documents, and, if so, identify which documents are so withheld and provide information and authority sufficient to justify any such objection.

Again, the Committee provides you until **November 11, 2019** to address these deficiencies in your response to the subpoena and to provide the Committee with any analysis, along with appropriate legal authorities, addressing the merits of any objections you cite to withhold responsive documents. By that date, you should also provide the certification required by the subpoena's Instruction #17. Thank you for your attention to this matter.

Sincerely,



Charles E. Grassley  
Chairman  
Senate Committee on Finance



Ron Wyden  
Ranking Member  
Senate Committee on Finance