

ADOPTED BY THE COMMITTEE ON ETHICS ON SEPTEMBER 21, 2012

112TH CONGRESS, 2nd SESSION  
U.S. HOUSE OF REPRESENTATIVES  
COMMITTEE ON ETHICS

IN THE MATTER OF REPRESENTATIVE MAXINE WATERS

September 25, 2012

Mr. Goodlatte from the Committee on Ethics submitted the following

A handwritten signature in black ink that reads "Bob Goodlatte". The signature is written in a cursive style with a large initial "B" and "G".

REPORT

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# U.S. House of Representatives

COMMITTEE ON ETHICS

Washington, DC 20515

September 25, 2012

The Honorable Karen L. Haas,  
Clerk, U. S. House of Representatives,  
Washington, D.C. 20515

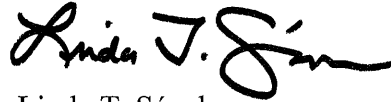
Dear Ms. Haas:

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 Representative Maxine Waters."

Sincerely,



Jo Bonner  
*Chairman*



Linda T. Sánchez  
*Ranking Member*



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Aug. 6, 2009

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**112th CONGRESS, 2nd SESSION  
U.S. HOUSE OF REPRESENTATIVES  
COMMITTEE ON ETHICS**

**IN THE MATTER OF  
REPRESENTATIVE MAXINE WATERS**

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**SEPTEMBER 25, 2012**

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Mr. Goodlatte from the Committee on Ethics submitted the following

**R E P O R T**

**I. INTRODUCTION**

In July 2009, the Office of Congressional Ethics (OCE) forwarded to the Committee on Ethics (Committee) a Report and Findings, concluding that Representative Waters may have violated House conflict-of-interest rules when she called the then-Secretary of the Treasury to set-up a meeting between the Secretary<sup>1</sup> and representatives of the National Bankers Association (NBA).<sup>2</sup> As it turned out, all of the NBA representatives who attended the meeting were also associated with OneUnited Bank (OneUnited), and OneUnited was the only minority bank represented at the meeting. In light of the fact that OneUnited requested \$50 million in financial assistance from the Treasury Department at the meeting, and that Representative Waters' husband was a former member of the Board of Directors of OneUnited and a then-stockholder in the bank, OCE recommended that the Committee further investigate the allegations.

As discussed in greater detail in Section II, the Committee has conducted an extended, and at times contentious, investigation of the allegations OCE referred to it. That investigation spurred allegations that the Committee and its staff had violated Representative Waters' due process rights, which ultimately led to the Committee's decision to hire Outside Counsel William R. "Billy" Martin, the voluntary recusal of six Members of the Committee, and the appointment of six new Members to establish a Committee of Members who had no role in reviewing Representative Waters' matter in the 111<sup>th</sup> Congress and were given the sole task of resolving this matter (the Waters Committee). Further, all current Committee staff who were involved in Representative Waters' matter in the 111<sup>th</sup> Congress were recused from the matter in the 112<sup>th</sup> Congress.

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<sup>1</sup> The Secretary agreed to the meeting but ultimately did not attend. Other Treasury officials attended the meeting in his place.

<sup>2</sup> Office of Congressional Ethics, Report and Findings, Review 09-2121, Aug. 6, 2009.

Outside Counsel has made recommendations based on a “clear and convincing” standard of proof. This is the standard required by Committee Rule 23(c) to determine if allegations in a Statement of Alleged Violation (SAV) have been proven, and is the appropriate standard applied to Outside Counsel’s *de novo* review of the allegations. Thus, if Outside Counsel does not believe that such a standard would be met, then his *de novo* review would appropriately recommend that no Investigative Subcommittee would be warranted, and the matter should be resolved. That standard, however, only applies to proving the allegations in an SAV in a formal adjudicatory proceeding which is necessary only before recommending a sanction to the House of Representatives. To be clear, such a burden of proof does not apply to the level of evidence necessary for the Committee to express its concerns in a letter of reproof.

In addition, Outside Counsel has recommended that there is evidence supporting certain conclusions (particularly regarding the timing and nature of Representative Waters’ Chief of Staff’s (COS) knowledge of her conflict), and that the Members have the responsibility to make credibility determinations about that evidence, but that prior to the Members’ credibility determinations, the evidence that does exist does not meet the clear and convincing standard. The Members have now made those credibility determinations, and applied their judgment and experience to the factual findings and analysis of the Outside Counsel.

The Waters Committee has thoroughly reviewed Outside Counsel’s final report in this matter. Additionally, the Committee provided Representative Waters and her COS the opportunity to appear before the Committee. Representative Waters’ COS took that opportunity. The Committee heard his testimony on September 21, 2012, had a full discussion with him, and considered his testimony carefully before reaching the Committee’s conclusion. The Committee agrees with Outside Counsel’s conclusions and recommendations. Accordingly, the Waters Committee has unanimously determined that there is not clear and convincing evidence that Representative Waters violated any House rule, law, regulation, or other applicable standard of conduct by her efforts to assist the NBA and other minority and community banks in the 2008 timeframe. However, after making its credibility determinations, the Waters Committee has concluded that sufficient evidence suggests that contrary to Representative Waters’ instructions and without her knowledge, Representative Waters’ COS acted to assist OneUnited on two occasions after the COS knew or should have known that Representative Waters had a conflict of interest regarding OneUnited. Accordingly, the Waters Committee has issued a letter of reproof to Representative Waters’ COS.

## **II. PROCEDURAL HISTORY**

On April 2, 2009, the OCE began a review of allegations that Representative Waters may have violated House Rule XXIII, clause 3 and House precedent regarding conflict of interest when she called the then-Treasury Secretary and requested that Treasury Department officials meet with representatives from the NBA. OCE’s review centered on this meeting, which OCE alleged to have focused on a single bank – OneUnited – in which Representative Waters’ husband held stock and for which he had previously served on the Board of Directors.



On July 24, 2009, OCE voted to refer the matter to the Committee for further investigation and transmitted its Report and Findings on this matter to the Committee later that month. Following an investigation by Committee staff pursuant to authority granted by Committee Rule 18(a), the Committee established an Investigative Subcommittee (ISC or Waters ISC) on October 29, 2009. The staff assigned to the ISC were the former Director of Investigations and two staff attorneys. That team was supervised by the former Chief Counsel and Staff Director. During the course of the investigation, the ISC issued 11 subpoenas, interviewed 13 witnesses and reviewed over 1,300 pages of documents.

In the Spring of 2010, the ISC came to an agreement to release a report critical of some conduct in the matter, but recommending no further action or sanction. However, the former Chief Counsel and Staff Director advised the Committee that the rules did not permit an ISC to issue a report that was critical of a Member without adopting a Statement of Alleged Violation (SAV) and providing the Respondent with the opportunity for an adjudicatory hearing under the rules for an adjudicatory subcommittee.<sup>3</sup> The former Chief Counsel, however, also assured the ISC that Representative Waters would accept an SAV and waive her right to a hearing.<sup>4</sup>

Ultimately, on June 15, 2010, the ISC adopted an SAV alleging three counts of misconduct: violations of clauses 1 and 3 of House Rule XXIII, the House Code of Official Conduct, and paragraph 5 of the Code of Ethics for Government Service. On June 30, 2010, Representative Waters filed a Motion for Bill of Particulars. The following day, on July 1, 2010, the ISC issued an Order denying the Motion for Bill of Particulars. On July 12, 2010, Representative Waters filed a Motion to Dismiss the SAV. The ISC denied this motion on July 15, 2010.

On July 28, 2010, the ISC transmitted the SAV to the full Committee. Shortly thereafter, the Committee established an Adjudicatory Subcommittee (ASC or Waters ASC) to conduct a hearing on the SAV. The same staff members who had been assigned to and worked on the Waters ISC continued to work on the Waters ASC, with the addition of another staff attorney. Throughout August 2010, the staff interviewed numerous witnesses, and sought the voluntary production of documents from various sources. During this time period, staff also attempted to schedule a settlement conference with Representative Waters.

On August 25, 2010, counsel for Representative Waters submitted a letter objecting to the ongoing investigation by the ASC. Specifically, counsel stated that “[s]uch inquiry violates both this Committee’s rules and comparable federal criminal procedures and raises significant questions about the sufficiency of the evidence that the Investigative Subcommittee relied upon when it issued the charges contained in its SAV.” The then-Chair and the then-Ranking Member jointly responded to this letter on

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<sup>3</sup> As discussed below, the Waters Committee disagrees with this interpretation.

<sup>4</sup> The former Chief Counsel’s assurances proved to be incorrect.

August 31, 2010, highlighting the fact that Committee Rule 23 contemplates that both the Committee counsel and the Respondent will prepare their case for a hearing, and also reminding counsel that criminal law precedent is not binding on the Committee, as the disciplinary proceedings in the House are not a criminal trial.

After a series of disagreements between the Committee Members and staff regarding scheduling, on October 7, 2010, the ASC scheduled a hearing in Representative Waters' matter for November 21, 2010. On or about October 12, 2010, the Committee postponed the date of the hearing by one week, until November 29, 2010.

On November 15, 2010, staff submitted a formal motion to the ASC to recommit the matter to the ISC, on the grounds that it had obtained new evidence. The following day, Representative Waters filed a response to the Motion to Recommit. On November 18, 2010, the ASC voted to recommit the matter to the ISC.

As explained more fully in the Report of Outside Counsel, the decision to recommit the matter preceded a significant upheaval in the makeup of Committee staff and the conduct of Committee business for the duration of the 111<sup>th</sup> Congress. The personnel issues that began in November 2010 were ongoing at the beginning of the 112<sup>th</sup> Congress, and only began to be resolved once the Committee hired a new Staff Director and Chief Counsel on May 2, 2011. The Committee was without a full complement of staff until July, 2011. By the end of the 111<sup>th</sup> Congress, the Committee recognized the need to hire Outside Counsel to complete this matter. However, the Committee had to first reconstitute its full time staff, which postponed the process for selecting and formalizing a relationship with Outside Counsel until the hiring of Mr. Martin on July 20, 2011.

The Committee's first charge to Outside Counsel was a thorough review of the serious allegations regarding the Committee's own conduct in this matter. Mr. Martin thus conducted an extensive review of due process allegations raised by both Representative Waters and the Committee itself, which included a document review comprising over 100,000 pages, interviews of 26 witnesses, including all Members of the Committee from the 111<sup>th</sup> Congress as well as all current and former staff who may have had knowledge of the relevant issues, and a significant and thorough analysis of the legal issues as embodied in Part II of Outside Counsel's Report. The vast majority of this review took place between July, 2011 and the end of 2011. However, one witness refused to testify without the issuance of a subpoena. This same witness indicated an intention to refuse to answer questions upon the issuance of a subpoena on the basis of the witness' Fifth Amendment privilege. The witness did ultimately testify before the Waters Committee, but the witness's recalcitrance delayed the completion of the first phase of Outside Counsel's review by at least four months.

On February 17, 2012, based on the advice received from Outside Counsel, six Members of the Committee for the 112<sup>th</sup> Congress—the Chairman, the Ranking Member, and all current Committee Members who also served on the Committee during the 111<sup>th</sup> Congress – voluntarily requested recusal from this matter. Outside Counsel did not find

any evidence of wrongdoing by any Member of the Committee, and no Member requested recusal because of any such wrongdoing. Instead, the Members requested recusal because:

- 1) They believed that, out of an abundance of caution and to avoid even an appearance of unfairness, their voluntary recusal would eliminate the possibility of questions being raised as to the partiality or bias of Committee Members considering this matter;
- 2) They wanted to assure the public, the House, and Representative Waters that this investigation was continuing in a fair and unbiased manner; and
- 3) They wanted to move this matter forward in a manner that supports the greatest public confidence in the ultimate conclusions of this Committee.<sup>5</sup>

The recusals necessitated bringing six new, substitute Members of the Committee, who were appointed on February 17, 2012 as well, up to speed on the work of Outside Counsel. Upon completion of this process and Outside Counsel's due process review, Outside Counsel submitted his conclusions from that phase of the review to the newly constituted Waters Committee in May, 2012. On June 6, 2012, the Acting Chairman and Acting Ranking Member of the Waters Committee wrote to Representative Waters, notifying her that upon the advice of Outside Counsel, the Waters Committee had unanimously found that none of the individual allegations raised regarding the conduct of Committee Members or staff, nor the totality of the circumstances of those claims, amounted to a deprivation of her due process rights.

Only upon conclusion of the first phase of the review was Outside Counsel authorized to conduct a *de novo* review of the actual substance of the allegations against Representative Waters. This review was similarly thorough; Outside Counsel reviewed all prior ISC and staff interview transcripts and all documents produced to the Committee, and also re-interviewed several key witnesses. Members of the Waters Committee also reviewed many of these ISC and staff interview transcripts and key documents. Finally, after providing Representative Waters and her COS the opportunity to appear before the Committee, the Waters Committee held a public hearing on September 21, 2012. The Committee heard Representative Waters' COS' testimony and fully considered it. The Outside Counsel's findings and conclusions for both phases of its work are set forth in the attached Outside Counsel's Report.

The Waters Committee, which has been involved in this matter for less time than any other participant, notes that many factors contributed to the length of this matter, which, given all those factors, while unfortunate, was not, in fact, unreasonable. Such factors include: (1) the significant number of motions and complaints raised by Representative Waters and the unprecedented level of consideration given to those concerns, even though all were eventually dismissed; (2) the very complicated task of tracking legislative actions by various staff, offices, lobbyists and departments at the

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<sup>5</sup> See Letter from the Chairman, Committee on Ethics to the Speaker of the House of Representatives at 2 (February 17, 2012), available at <http://ethics.house.gov/sites/ethics.house.gov/files/Letter%20to%20the%20Speaker.pdf>.

center of the financial crisis in September and October of 2008; (3) the breakdown of communications in the last Congress, discussed more fully below; and (4) the normal demands of conducting thorough and responsible investigations. The time Outside Counsel spent on this matter is entirely appropriate. In total, Outside Counsel reviewed over 150,000 pages of documents, in addition to conducting numerous interviews. In fact, of the numerous occasions in which the Committee has engaged an outside counsel for such matters, 14 months is an average length of engagement.

### III. ANALYSIS

As Section II details, Outside Counsel's work proceeded in two phases. First, Outside Counsel reviewed allegations raised by both Representative Waters and the Committee that the Committee and its staff had violated Representative Waters' due process rights. After an extensive investigation, Outside Counsel concluded, and recommended that the Waters Committee find, that none of the conduct alleged, either considered separately or in its totality, amounted to a violation of Representative Waters' due process rights. In reaching this conclusion, Outside Counsel assumed, for purposes of its due process analysis only, that certain conduct actually occurred as alleged. Thus, Outside Counsel assumed that a member of Committee staff disclosed confidential Committee information, in violation of the Committee's confidentiality rules. Outside Counsel found that Representative Waters also violated the Committee's rules by disclosing confidential Committee information during a televised press conference and on her House Web site. Outside Counsel also found that certain Committee staff communicated with Committee Members from one party regarding active matters, including Representative Waters' matter, without copying the Committee as a whole. Finally, Outside Counsel assumed that a former member of the Committee staff made comments that were racially insensitive and completely inappropriate.

Outside Counsel took these allegations extremely seriously, as did the Waters Committee. Outside Counsel concluded, for the reasons detailed in his thorough legal and factual analysis, that none of the alleged conduct rose to the level of a violation of Representative Waters' constitutional rights. The Waters Committee, whose Members had no role with respect to the investigation of Representative Waters' matter during the 111<sup>th</sup> Congress, unanimously agreed with this conclusion and independently made the same determination.<sup>6</sup>

Having completed the due process review, Outside Counsel commenced the second phase of his work, reviewing the substantive allegations raised by the OCE Report and Findings. After reviewing the entire evidentiary record, including information from OCE and all of the information gathered during the Committee's prior investigation, and conducting additional interviews, Outside Counsel concluded and recommended that the Committee find that Representative Waters did not violate any House rule, law,

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<sup>6</sup> The Waters Committee's conclusions with respect to the due process review were previously detailed in two public statements, dated June 6, 2012 and June 8, 2012.

regulation, or other applicable standard of conduct. The Waters Committee unanimously concurred with this recommendation.

With respect to Representative Waters' actions to set up a meeting between the then-Treasury Secretary and representatives from the NBA—who were also associated with OneUnited—Outside Counsel concluded that Representative Waters reasonably believed, at the time she requested the meeting, that the attendees would be speaking on behalf of minority banks generally. While it appears that all of the minority bankers who attended the meeting were associated with OneUnited, and that OneUnited was alone in requesting substantial financial assistance from the Treasury Department at the meeting, the record indicates that Representative Waters did not have reason to know of either of these facts when she arranged the meeting. Accordingly, Outside Counsel recommended that the Waters Committee find that Representative Waters reasonably believed she was arranging the Treasury meeting on behalf of a broad class of minority banks, and that in doing so she did not violate any House rule, law, regulation, or other applicable standard of conduct. The Waters Committee agreed with Outside Counsel's recommendation.

Outside Counsel also reviewed allegations that Representative Waters' COS took steps to assist OneUnited after Representative Waters realized that the bank made a request for federal financial assistance from the Treasury Department and that she had a conflict of interest regarding the bank's request—and any other efforts to provide specific financial assistance to OneUnited—due to her significant financial interest in the bank. Outside Counsel concurred in Representative Waters' determination that she had a conflict of interest with respect to OneUnited's request for specific financial assistance. Outside Counsel also recognized that the House Rules prohibit Members from doing anything through staff that the Rules prohibit them from doing directly.<sup>7</sup> Further, longstanding Committee precedent holds Members responsible for the actions of their staff, when those actions are within the scope of the staff's official duties.<sup>8</sup> Thus, Outside

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<sup>7</sup> See, e.g., Comm. on Ethics, *In the Matter of Allegations Relating to Representative Laura Richardson*, H. Rep. 112-642, 112<sup>th</sup> Cong. 2d Sess. Appendix B at 58 (2012) (“Members are responsible for violations that occur in their office, and cannot shield themselves from liability by using staff as a proxy for wrongdoing”); House Comm. on Standards of Official Conduct, *In the Matter of the Investigation into Officially Connected Travel of House Members to Attend the Carib News Foundation Multinational Business Conferences in 2007 and 2008* (hereinafter *Carib News*), H. Rep. 111-422, 111<sup>th</sup> Cong., 2d Sess. 126 (2010) (“it would not well serve the House as an institution to allow its Members to escape responsibility by delegating authority to their staff to take actions and hide behind their lack of knowledge of the facts surrounding these actions.”)

<sup>8</sup> See, e.g., *Carib News* at 122 (“Many times Members act through the actions of their staff and, therefore, should be held liable for those actions in certain circumstances”); Comm. On Standards of Official Conduct, *In the Matter of Representative E.G. “Bud” Shuster*, H. Rep. 106-979, 106<sup>th</sup> Cong. 2d Sess. 31 (2000) (Member held liable for violations of prohibition on campaign work by official staff arising from lack of uniform leave policy, despite finding of no evidence that the Member was aware that staff were performing campaign-related work in the congressional office); *Statement Regarding Complaints Against Representative Newt Gingrich*, 101<sup>st</sup> Cong. 2s Sess. 60, 165-66 (1990) (Member held responsible for violations arising out of presence of political consultant in his office); *In the Matter of Representative Austin J. Murphy*, H. Rep. 100-485, 100<sup>th</sup> Cong. 1<sup>st</sup> Sess. 4 (1987) (“a Member must be held responsible to the House for assuring that resources provided in support of his official duties are applied to the proper purposes”)

Counsel believed that if Representative Waters' COS knowingly ignored Representative Waters' conflict of interest—after the conflict became clear—and facilitated OneUnited's request for federal financial assistance, Representative Waters could be responsible for violating House rules.

However, Outside Counsel recommended that the Committee find that the evidence here does not establish that Representative Waters violated House rules. As Outside Counsel's Report details, it appears that Representative Waters recognized and made efforts to avoid a conflict of interest with respect to OneUnited. She informed the then-Chairman of the House Financial Services Committee that she was "not going to be involved in" OneUnited's request for assistance from the Treasury Department, and then relayed this decision to her COS. Accordingly, Outside Counsel concluded and recommended that the Waters Committee find that Representative Waters did not violate House rules by failing to exercise adequate oversight of her COS with respect to his work on behalf of OneUnited.

The significant difference between the Waters Committee's conclusions in this matter and the report that the ISC in the 111<sup>th</sup> Congress was prepared to adopt is that the ISC was prepared to find that Representative Waters failed to adequately supervise her COS and thus allowed him to take actions to assist OneUnited that Representative Waters herself could not have taken. As previously noted, the Committee has previously held Members responsible for the actions of their staff in some circumstances, where the staff act within the scope of their official responsibilities.<sup>9</sup> However, the Waters Committee finds that Representative Waters took at least three steps to inform her COS of her conflict of interest with respect to OneUnited and to prevent the COS from acting on that conflict: (1) she publicly disclosed her financial interest in OneUnited at a Financial Services subcommittee hearing and on her annual Financial Disclosure Statements; (2) she informed the Chairman of the Financial Services Committee of the conflict and indicated that she would not be involved with OneUnited's request for financial assistance; and (3) she informed her COS of her conversation with the Chairman and directed her COS not to involve himself with OneUnited's request. These actions distinguish Representative Waters' conduct from other matters in which the Committee has found a Member to have violated House rules by failing to supervise their staff.

Outside Counsel also analyzed the conduct of Representative Waters' COS, who is also her grandson. Outside Counsel considered evidence that Representative Waters told her COS of her conflict of interest with respect to OneUnited prior to September 19, 2008, which is the first date on which the COS sent an email that was unambiguously intended to assist OneUnited specifically. Outside Counsel determined that the record clearly established that Representative Waters and the former Chairman of the Financial Services Committee both recalled a conversation in which Representative Waters recognized that she had a conflict of interest with respect to any specific request for financial assistance by OneUnited, and agreed not to be involved with such requests. Indeed, the Chairman of the Financial Services Committee testified that he told

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<sup>9</sup> See n.8 *supra*.

Representative Waters, “I recommend that you stay out of it.” However, Outside Counsel recommended that the record did not establish, to a clear and convincing standard, that Representative Waters had this conversation with the Chairman of the Financial Services Committee, or relayed it to her COS, by September 19, 2008. The weight of the evidence suggests that Representative Waters’ conversation with the Chairman of the Financial Services Committee occurred no later than September 20, 2008, and that Representative Waters likely directed her COS not to work on OneUnited matters soon after that conversation. For this and other reasons, the Waters Committee thus concluded that the COS knew or should have known he was not to work on OneUnited matters before he emailed information regarding OneUnited’s holdings of Fannie Mae and Freddie Mac stock to a Financial Services Committee staffer on September 23, 2008.

The Waters Committee notes that Outside Counsel did not conclude that the conversations between Representative Waters and the Chairman of the Financial Services Committee, or between her and her COS, definitely occurred on or before September 19, 2008. Rather, Outside Counsel recommended that the evidence could not establish, to a clear and convincing standard, that those conversations occurred before that date.

The Waters Committee, in weighing the credibility of the witnesses and relative strength of the evidence in the record, concluded that Representative Waters likely instructed her COS not to work on OneUnited matters before September 19, 2008. The Waters Committee credited the testimony of the former Chairman of the Financial Services Committee in late 2009 that his conversation with Representative Waters about OneUnited probably occurred around the time of the NBA’s meeting with the Treasury Department, which was held on September 9, 2008. In fact, the closest reading of the then-Chairman’s testimony provides an indication that his conversation with Representative Waters occurred early in the week of September 8, 2008, because that was the first time in which both parties were together in Washington, DC after the Chairman received a call from a Massachusetts State Senator alerting him to OneUnited’s problems. The Waters Committee acknowledges that when Outside Counsel interviewed the former Chairman nearly two years later, his recollection of the date of the conversation was less firm. In that interview, the Chairman indicated that he believed the conversation occurred “[b]efore September 19 or 20,” but was only certain that it occurred by September 20<sup>th</sup>. In light of the passage of time between these interviews, the Waters Committee gave greater weight to the Chairman’s initial recollection, which, in any event, was not inconsistent with his more recent testimony.<sup>10</sup> Accordingly, the Waters Committee did not credit the COS’s testimony that Representative Waters conveyed that conversation to him, and her direction with respect to refraining from work on OneUnited matters, in late September or early October 2008.

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<sup>10</sup> In the former Chairman of the Financial Services Committee’s recent interview, he agreed that his conversation with Representative Waters concerning OneUnited was within the ten day period following the Treasury Department meeting. This recollection is obviously not inconsistent with his statement in the same interview that the conversation was before September 19, 2008.

The Waters Committee also concluded that it strained credibility to assert, as the COS did, that when Representative Waters informed the COS of her conversation with the Chairman of the Financial Services Committee, she directed him only “not to, quote/unquote, work on issues *that day*.” (Emphasis added.) The Waters Committee questioned why, if Representative Waters felt that she had a conflict of interest with respect to OneUnited matters, she would instruct her COS to refrain from working on such matters for only one day. The Waters Committee’s conclusion was bolstered by Representative Waters’ own description of her direction to her COS during an August 2010 press conference:

There has also been a question about whether or not I instructed my staff not to get involved with OneUnited Bank, and their interest in assessing (sic) TARP funds.

....

I told my chief of staff that I had informed Chairman Frank about OneUnited Bank’s interest, that we were only concerned about small and minority banks broadly, that Chairman Frank would evaluate OneUnited’s issue and make a decision about how to proceed.

And given the e-mails that the committee has offered as their evidence, we communicated with each other clearly.

Representative Waters did not state that she qualified or limited her direction to her COS in any way, and she stated that she “clearly” communicated that direction to her COS. This conclusion is further bolstered by the testimony of the Chief Counsel for the Financial Services Committee, who stated that “[the COS] and I had a conversation. I don’t remember if I -- I don’t remember how we came to have it, whether I called him in or he stopped by. But we had a very brief conversation in which he mentioned the concern about a conflict and indicated that [Representative] Waters therefore would not be playing an active role in regard to [OneUnited] because of the concern about the conflict.” This testimony confirms that the COS understood the import of the instruction from Representative Waters and chose to act in contravention of that instruction.

Outside Counsel also considered evidence suggesting that Representative Waters’ COS knew or should have known—regardless of how and when Representative Waters conveyed her conflict of interest to him—that Representative Waters had a significant financial interest in, and thus a potential conflict of interest with respect to, OneUnited. That evidence included Representative Waters’ disclosure of the stock ownership during a public meeting of a Financial Services subcommittee in October 2007. The COS testified that he was aware of the hearing before it occurred, and discussed Representative Waters’ testimony regarding OneUnited with her beforehand. The COS further testified that he sometimes attended hearings with Representative Waters, but he could not recall whether he attended the October 2007 hearing or heard Representative Waters disclose



her husband's ownership of OneUnited stock.<sup>11</sup> The Waters Committee's conclusion that the COS knew or should have known of his employing Member's financial interest in OneUnited is further supported by Representative Waters' own testimony to the Committee that her COS "would have known that my husband was invested in OneUnited."<sup>12</sup> Further, Representative Waters disclosed her financial interest on her Financial Disclosure Statements. Finally, the COS suggested to the ISC that he understood at the time that the conversation between Representative Waters and the former Chairman of the Financial Services Committee centered on Representative Waters' conflict of interest. Despite the evidence to the contrary, including Representative Waters' own statement, the COS denied any knowledge of Representative Waters' financial interest in OneUnited to Outside Counsel.

Outside Counsel recognized the evidence suggesting that the COS knew or should have known of Representative Waters' financial interest in OneUnited, but recommended that the record, standing alone, did not establish that conclusion to a clear and convincing standard. Outside Counsel thus deferred to the Waters Committee to weigh the credibility of the COS's claimed ignorance of Representative Waters' financial interest in OneUnited, in light of the evidence to the contrary. The Waters Committee credits Representative Waters' own statement regarding her COS's knowledge and the totality of the evidence in concluding that the COS knew or should have known of Representative Waters' financial interest in OneUnited. Thus, the COS knew or should have known that Representative Waters had a conflict of interest with respect to specific actions to assist OneUnited, regardless of how and when Representative Waters informed him that she believed such a conflict existed.

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<sup>11</sup> Representative Waters' COS represented to the Committee "that the disclosure that [Representative Waters] made publicly [at the October 2007 hearing] referenced only her husband's director position, not a financial interest." He also indicated that a video recording of the hearing showed that he was not present when Representative Waters made the disclosure he referenced. The COS is incorrect on both counts. Representative Waters made two disclosures, at different times in the hearing. Her first statement on the topic disclosed only that her husband "is a director of a minority bank." However, later in the hearing, Representative Waters added that her husband "is also a shareholder in OneUnited Bank." *See* Hearing Before the Subcommittee on Oversight and Investigations of the Committee on Financial Services, U.S. House of Representatives, 110th Cong., 1st Sess., October 30, 2007, at 6, 21-22. Further, the video recording of the hearing only shows half of the audience in the hearing room and limited views of certain seats behind the Members, and thus does not establish whether the COS was in the hearing room when Representative Waters disclosed her husband's financial interest in OneUnited.

<sup>12</sup> Representative Waters testified as follows:

The Witness. I remember when we had a FIRREA hearing and I said my husband was invested.

ISC Chairwoman. Because there was a witness from OneUnited at the hearing?

The Witness. Yeah. They had people there from NBA and some other places, and FDIC was there, everybody was there, and I disclosed publicly. I disclosed in all my required disclosure. I mean, I've never tried to hide anything.

ISC Chairwoman. So [the COS] understood there was a financial interest there because of the public disclosures, because of your disclosure --

The Witness. He would have known that my husband was invested in OneUnited. The public knows, everybody knows. The newspapers knew. My financial disclosure papers were available to everybody.

The Waters Committee agrees with Representative Waters' determination that she could not take specific actions to assist OneUnited due to her significant financial interest in the bank. First, it is clear to the Waters Committee, as it was to Representative Waters, that Representative Waters did have a conflict which prevented her from taking particular action to uniquely assist OneUnited. The Waters Committee notes that Representative Waters had an investment in OneUnited which, at that time, was worth approximately \$350,000. Furthermore, the assistance OneUnited was seeking was nothing less than avoiding the failure of the bank itself. Such failure could have cost Representative Waters her entire investment.

It is the Waters Committee's belief, and hope, that most Members understand that they cannot take official actions that would assist a single entity in which the Member has a significant interest, particularly when that interest would clearly be affected by the assistance sought. Certainly Representative Waters seemed to understand that principle.

In assessing the credibility of Representative Waters' COS' statements on this point, the Waters Committee considered other statements by the COS that the Waters Committee found inconsistent with the record. For example, when the COS was asked whether a person who communicated with the COS about the impact of the conservatorship was associated with OneUnited, the COS answered "I'm not sure." But the COS received an email from that person on July 16, 2008, in which the sender referenced "OneUnited Bank . . . on whose board I serve." The sender stated that he made this statement for "[f]ull disclosure," but that he believed the COS already knew at the time that he was on the Board of Directors of OneUnited. After being confronted with these inconsistencies at the hearing on September 21, 2012, the COS changed his testimony yet again. At the public hearing, the COS told the Committee that he did not deny knowing that the individual was on the OneUnited Board, but explained that in matters on Capitol Hill, individuals often "wear many hats." While he is correct to assert that, in life, people may serve in more than one role, the COS' September 21, 2012, testimony regarding his knowledge of the individual's position with OneUnited directly contradicts his testimony before the Outside Counsel just two months earlier on July 5, 2012.<sup>13</sup> Outside Counsel expressed the same concerns about the COS' credibility at the September 21, 2012 hearing when he stated,

Indeed, the Committee could reasonably find that [the COS'] credibility is even less now than before this hearing started. On two key points, [the COS] appears to have changed his testimony today when confronted with evidence and arguments that contradict his earlier statements. Those points include [the COS'] knowledge of whether [the individual] was a OneUnited Board member—which [the COS] previously denied knowing but

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<sup>13</sup> This is only one example of the serious concerns the Waters Committee had about the COS' testimony. As Outside Counsel noted in their Report and at the September 21, 2012 hearing, there were other examples where the COS' testimony changed after being confronted with contradictory evidence.

is now admitting—and his admission that Representative Waters told him to stop working on OneUnited matters and did not limit that instruction to just one day. That is a difference in his testimony.

Representative Waters' COS has suggested that the Committee has, in its Report in *In the Matter of Representative Graves*, previously excused certain actions in matters where there may be a conflict of interest.<sup>14</sup> The COS' reliance on *Graves* is misplaced for two reasons.<sup>15</sup>

First, *Graves* is factually distinct from this case in almost every relevant respect. Representative Graves invited a friend to testify before the Committee on Small Business, on behalf of the Missouri Soybean Association. Representative Graves' friend had an investment in two renewable fuel cooperatives in which Representative Graves' wife had also invested. But Representative Graves' friend did not appear on behalf of either of those cooperatives, and the Small Business Committee did not intend to take any action to benefit those cooperatives; in fact, the hearing in question did not involve any legislation that would ultimately come to the House floor.<sup>16</sup> By contrast, the financial connection between Representative Waters and OneUnited was more direct (given that she actually owned stock in the entity in question) and the actions contemplated (attempts to prevent significant financial losses to OneUnited, either legislatively or through collaboration with the Treasury Department) more impactful than those in *Graves*.

Second, while Representative Waters' COS appears to rely on a single sentence in *Graves* that might be construed to support the proposition that a Member may advocate on behalf of singular entities in which the Member has a financial interest, so long as that interest is a small enough fraction of the entity's ownership that the Member might be situated as a member of a "class" of investors in that entity, the Committee's actual statement is considerably more limited than the COS suggests. In *Graves*, the Committee stated that Representative Graves' wife held a "minimal" interest in two biofuels companies and thus, "even if Mr. Hurst's testimony benefited only the two companies in which Mrs. Graves was invested, Representative Graves' or Mrs. Graves' personal financial interest in either investment would have been affected as members of a class of investors and not as individuals."<sup>17</sup> This single sentence of *dicta* the COS cites was

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<sup>14</sup> Representative Waters' COS submitted his views of the Committee's precedents in an interview with Outside Counsel.

<sup>15</sup> The Waters Committee notes that the Committee's decision in *Graves* postdated the facts of this case, and so the COS could not have relied on it at the time. See Committee on Standards of Official Conduct, *In the Matter of Representative Sam Graves*, H. Rept. 111-320, 111<sup>th</sup> Cong. 1<sup>st</sup> Sess. (2009) (*Graves*). In fact, the Committee's position at the time of the events of this case can be found in the *House Ethics Manual*, released in Spring 2008. See *House Ethics Manual (Ethics Manual)* at 237 (2008).

<sup>16</sup> See *Graves* at 1-3.

<sup>17</sup> See *id.* at 18.

entirely unnecessary to the Committee's decision in *Graves*,<sup>18</sup> which rested instead on the facts that: (1) the witness was testifying about matters of interest to an entire association of similar entities; (2) the witness did not make any specific requests on behalf of any one entity; (3) neither Representative Graves nor Mrs. Graves could derive a financial benefit from the friend's testimony; (4) Representative Graves did not, in fact, derive a financial benefit from the testimony; and (5) in any event, the witness met all reasonable and objective requirements established for a witness before the Small Business Committee. But even if it were not *dicta*, the COS' interpretation of *Graves* cannot be correct.

Certainly, the language in the Report concerning Representative Graves should not suggest that all actions on behalf of a single entity are permissible as long as there are numerous shareholders, and the interest itself is disclosed. For instance, a Member could hold two million dollars worth of stock in a major public corporation, and still hold a fraction of a percent of the overall stock. But to suggest that that Member, or their office, should be able to take official action that would uniquely affect that corporation, and directly impact the Member's two million dollar investment would be shocking to the public and to the principles and guidance that have long been a part of the standards of conduct in the House of Representatives.

It is also often said that the preferred method of addressing conflicts is full and complete disclosure of the facts that pose a conflict. That is largely true because Members are expected to be integral parts of their districts, and will not always be able to distinguish their interests from those of broader groups of their constituents. However, it has never been suggested that disclosure is the only method for addressing conflicts, and that the House has no rules prohibiting acting in conflict. One problem with assuming that disclosure of interests cures all conflicts is that the actions taken with regard to those conflicts are not always disclosed. For instance, in this case, while Representative Waters' interest in OneUnited was disclosed, Representative Waters' COS's actions to obtain direct assistance for OneUnited from other offices in the House would not have been publicly disclosed but for an investigation into allegations of impermissible conflicts by the Office of Congressional Ethics or this Committee.

Instead, Committee precedent and guidance is clear, as presented by the Outside Counsel and reiterated here by the Waters Committee, that such directed actions are impermissible. For instance, the *Ethics Manual* makes clear that legislative or official action—other than voting—on behalf of an entity in which a Member has an interest requires added circumspection and may implicate the rules and standards that prohibit the use of one's official position for personal gain.<sup>19</sup> More directly, when the House began to require that Members certify their lack of financial interest in certain official actions, the Committee provided clear guidance as to what such impermissible financial interests

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<sup>18</sup> See *id.* at 17 (“assuming *arguendo* that Representative Graves or his wife benefited financially from [the] testimony”); *id.* at 18 (“even if Representative Graves or his wife had derived a financial benefit from [the] testimony, such benefit would only have been as a member of a class of investors in renewable fuel companies.”).

<sup>19</sup> See *Ethics Manual* at 237.

would include. That guidance states that “a Member’s direct ownership of stock, even a small number of shares in a widely held company, likely would constitute a financial interest under Rule 23.”<sup>20</sup> Therefore, any suggestion that there is no indication in the precedent or guidance of the Committee giving notice to Members and their staff to avoid providing official assistance to entities in which the Member has a significant financial interest, is simply incorrect. In addition, to the extent it contradicts this clear guidance, *Graves* should not be read to permit Members free rein to act on behalf of a single entity in which they have a publicly disclosed financial interest, merely because there are numerous shareholders.

Accordingly, the Waters Committee finds that the COS could not, consistent with House rules, take actions specifically directed at assisting OneUnited. However, as Outside Counsel’s Report establishes, Representative Waters’ COS did take such actions on at least two occasions. While Outside Counsel did not determine that the COS’s efforts ultimately benefitted OneUnited, the House rules do not permit a Member or their staff to take specific actions that would, if effective, accrue to the financial benefit of the Member. The Waters Committee finds that Representative Waters’ COS violated House rules by acting to specifically benefit OneUnited after he knew or should have known that Representative Waters had a significant financial interest in OneUnited - which interest would have been dramatically affected if OneUnited did not receive the assistance - and most likely after he had been instructed not to take such actions.

In deciding to resolve this matter at this stage, the Waters Committee has not followed the course taken by the Committee in the 111<sup>th</sup> Congress, which impaneled an ISC, adopted an SAV, and impaneled an ASC before recommitting the matter to the ISC. It is important to note that the ISC in the 111<sup>th</sup> Congress had agreed to issue a report, much like Outside Counsel’s Report here, which expressed concerns regarding the actions of Representative Waters’ COS and the liability that Representative Waters had for those actions. However, the former Staff Director and Chief Counsel advised the ISC that it could not issue such a report without first adopting an SAV. The former Staff Director and Chief Counsel viewed the SAV/ASC process as the sole mechanism for the Committee to adopt a report criticizing a Member’s conduct, in part based on the concern that issuing such a report, without adopting an SAV and conducting an ASC hearing, would deprive the Member of procedural rights that flow from those steps, including the right to review the SAV and the supporting evidence. The Waters Committee disagrees with that interpretation.

Instead, the Waters Committee’s decision to resolve this matter without impaneling an ISC or adopting an SAV is based on two considerations. First, this Committee believes that, contrary to the advice of the former Chief Counsel, it is inappropriate to adopt an SAV where the Committee concludes that disciplinary findings and sanctions are not warranted. Second, the Waters Committee believes that, while the Rules may require some form of notice and hearing prior to the publication of a report critical of the conduct of a Member or staff, that notice and hearing is not limited to the SAV/ASC procedure. Rather, this Committee believes that notice and hearing, when

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<sup>20</sup> *Id.* at 239.

there is no finding that discipline is warranted and no recommendation for a sanction by the House, requires only advance opportunity to review the report and to address the Committee in a Committee hearing. Such a hearing may be conducted as any other congressional hearing; the rules governing the adoption of an SAV or conduct of an ASC hearing would not apply.<sup>21</sup> The Waters Committee notes that, as with claims of a prohibition on *ex parte* communications between Committee Members and staff—which does not exist—the requirement for formal notice and hearing prior to the publication of some Committee reports, regardless of whether disciplinary findings or sanctions are recommended, is overly burdensome and may lead to greater backlogs and delays, and fewer public reports of Committee activity, particularly when the Committee does not believe disciplinary action is required.

Although it does not believe that disciplinary action or sanctions are warranted by the allegations against Representative Waters, the Waters Committee takes this opportunity to again caution all Members that they may be held responsible for the actions of their staff, and to emphasize each Member's obligation to properly supervise all staff. The Waters Committee believes that these rules and standards of conduct are unambiguous and clearly established. It is equally clear that a Member or their staff may not take actions which are intended to assist a specific entity in which the Member has a financial interest, and in a manner that could affect that interest. Thus, a Member is responsible for ensuring that her or his staff does not take actions that the Member could not take due to the Member's own financial interests. Generally speaking, Members are expected to be aware of actions that staff take on the Member's behalf. However, where a Member has financial interests that could be affected by such actions by staff, the Member's responsibility for oversight of their staff may require additional measures by the Member.

Specifically, where a Member is aware that they may have a conflict of interest with respect to advocacy on behalf of certain persons, entities, or issues, the Member should inform all members of their staff of the potential conflict. A best practice to avoid mistakes, misunderstandings, and matters such as this, may be to notify all staff of each of the particular entities in which the Member has a financial interest, and document that notification. Staff should also be instructed to inform any entities in which the Member has a financial interest, to direct their specific requests for assistance to another Member or committee.

The Waters Committee recognizes that Representative Waters has long had an important role with respect to protecting minority and community banks, and that, as a senior Member of the Financial Services Committee, she can serve as a key advocate for those entities. However, the need to inform staff of potential conflicts of interest is most acute when a Member is intimately involved in representing a particular industry, policy interest, or other defined constituency and the Member has an interest in one particular entity in that constituency. Put another way, the more likely it is that an entity in which a Member holds a financial stake will come to that Member's office for assistance, perhaps

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<sup>21</sup> Committee staff has consulted with the Parliamentarian, who agrees with this interpretation.

because of their leadership positions and relative influence, the more that Member must make sure to prevent such conflicts.

One of the issues that complicated the resolution of this matter was the nature of the relationship between Representative Waters and her COS, who is also her grandson. Federal law prohibits a Member from employing the Member's "relative," as defined by 5 U.S.C. § 3110. While the statutory definition does not include a grandchild, the Waters Committee recommends that the House consider amending relevant statutes or House Rules to recognize that employer/employee relationships with grandchildren can be just as fraught with risk as other familial relationships. It is clear to the Waters Committee that the appearance issues that those situations raise can be just as troubling as those with children.

The Waters Committee also notes another issue that arose in the consideration of this matter during the 111<sup>th</sup> Congress, namely the breakdown in communications within the Committee and the perception that Committee Members and staff were acting on a partisan basis. The Committee works best when, and demands that, Members exercise their own independent and non-partisan judgment when considering matters before the Committee. Therefore, the Committee must operate on the principles of open, frank, and non-partisan communications. If concerns about partisan conduct among Committee Members or staff arise, the Committee must return to these basic principles. During the Committee's investigation of this matter in the 111<sup>th</sup> Congress, suspicions arose between all Members on one side of the Committee and the Committee leader from the other side, along with both partisan designees and certain nonpartisan staff who became seen as aligned with one party or the other. The mutual suspicions were the same: that Members and staff were acting in partisan political ways. Some of those suspicions were based on the belief that, for partisan reasons, certain staff were communicating with Members of only one party. There were also suspicions that Committee members, while caucusing with members of their own party, were making decisions regarding the matter along party lines. Finally, there was a belief that the designees of the Chair and Ranking Member were themselves acting in improper partisan ways and coordinating with party leadership.

As Outside Counsel concluded, and the Waters Committee found, much of this suspicion was unfounded or overblown. However, the Waters Committee believes that if such suspicions infect the Committee's work again, Committee Members must take their concerns to the full Committee so they do not fester and multiply. The Waters Committee also recommends that the Standing Committee on Ethics consider adopting additional policies with respect to caucusing by Members, staff communications with Members of a single party, and the roles of the designees to the Chairman and Ranking Member. These policies should further the basic principles of open and frank communication and encourage Members and staff to act on a bi-partisan and non-partisan basis.

With respect to the designees, the Waters Committee notes the recommendation of an ISC in a prior matter: "[T]he Investigative Subcommittee recommends that the Standards Committee establish written policies and procedures as to the duties and

responsibilities of the designated counsels to the Chair and Ranking Member to ensure that such counsels are performing their duties to the Committee consistent with the provisions of Committee Rule 6.”<sup>22</sup> This recommendation was adopted by the full Committee, but has not yet been implemented.

The Waters Committee also believes that the principle of open, frank communication should apply to allegations of inappropriate remarks by Committee staff, whether the remarks are racially insensitive or otherwise improper. A former Committee staff member made comments that were racially insensitive and completely inappropriate during the 111<sup>th</sup> Congress.<sup>23</sup> It appears that the Committee Chair at the time and its former Staff Director and Chief Counsel waited to take action with respect to these allegations until well after they learned of them. Further, when they did take action, they terminated the employees without discussing the allegations with either the then-Ranking Member of the Committee or the employees themselves. This unilateral action appears to have been a result of the mutual partisan suspicion and breakdown of communication discussed above. The Waters Committee believes, and recommends that the Standing Committee consider reiterating that, at the point the Committee’s leadership or staff become aware of insensitive or inappropriate comments related to bias, it is incumbent on them to deal with such allegations in an open, frank, and bi-partisan or non-partisan manner.

#### **IV. CONCLUSION**

The allegations against Representative Waters and her COS were serious, and they required a thorough investigation. The Waters Committee is confident that, with the assistance of Outside Counsel, its investigation of these allegations has been thorough and fair. In fact, the Committee, both before and after the appointment of the Waters Committee, has taken unprecedented steps towards fairness, including voluntary recusals of a majority of the Committee, a thorough consideration of the demands of constitutional due process, and providing notice and the opportunity for a hearing on a report that does not recommend any findings of misconduct or sanctions for the Member.

Ultimately, for the foregoing reasons, Outside Counsel recommended and the Waters Committee concluded that Representative Waters did not violate any House Rule, law, regulation, or other applicable standard of conduct. However, the Waters Committee finds that Representative Waters’ COS violated House rules by taking specific actions that would accrue to the benefit of OneUnited, a bank Representative Waters had a significant financial interest in and which interest could have been significantly impacted by the actions. Specifically, the Waters Committee finds that Representative Waters’ COS knew or should have known of Representative Waters’ financial interest in OneUnited and her conflict of interest in taking official action on

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<sup>22</sup> *Carib News* at 137.

<sup>23</sup> As the Outside Counsel concluded, those comments were unrelated to this matter. *See* Outside Counsel’s Report at 65.



their behalf alone. Based on its findings, the Waters Committee issues the attached Letter of Repeal to Representative Waters' COS for his misconduct in this matter.

**V. STATEMENT UNDER RULE 13, 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.