

## **Correspondence with the Senate Committee on Ethics**

Senator Dodd was first contacted by the Senate Committee on Ethics on July 9, 2008, with questions in regard to home mortgage loans obtained from Countrywide financial. Senator Dodd responded to the questions through counsel in a letter dated August 11, 2008. Senator Dodd sent a second letter dated August 4, 2009, in response to verbal questions asked to counsel the previous week by Ethics Committee staff. In these letters, Senator Dodd fully and completely answered the Ethics Committee questions on his Countrywide home mortgage loans.

Attached are the following letters:

*Ethics Committee letter to Senator Dodd, July 9, 2008.*

*Dodd response to Ethics Committee letter, August, 11, 2008.*

*Dodd response to Ethics Committee call, August 4, 2009.*

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## United States Senate

SELECT COMMITTEE ON ETHICS  
HART SENATE OFFICE BUILDING, ROOM 220  
SECOND AND CONSTITUTION AVENUE, NE  
WASHINGTON, DC 20510-6425

July 9, 2008

The Honorable Christopher J. Dodd  
United States Senate  
Washington, DC 20510

Dear Senator Dodd:

On June 13, 2008, the Select Committee on Ethics received the attached complaint from Citizens for Responsibility and Ethics in Washington ("CREW"). Citing a June 12, 2008 article published in *Portfolio.com*, CREW requested that the Committee investigate whether mortgage loans that you acknowledge having obtained from Countrywide Financial ("Countrywide") in 2003 violated the Senate Gifts Rule. A copy of the letter from CREW and the article from *Portfolio.com* are attached.

Based on the *Portfolio.com* article, it appears that you obtained two loans in 2003 from Countrywide Financial: \$506,000 to refinance your Washington, DC home, and \$275,042 to refinance your home in Connecticut. According to the article, Countrywide had a V.I.P. program that waived points, lender fees, and company borrowing rules for prominent people, including public officials. The article stated that Countrywide waived three-eighths of a point on your first loan and one-fourth of a point on your second loan. The article stated that both loans were for 30 years, with the first five years at a fixed rate. The article stated further that the interest rate on the loans, originally set at 4.875%, was reduced to 4.25% on the Washington home and 4.5% on the Connecticut property by the time the loans were funded. At the time you obtained the loans from Countrywide, you served as the Ranking Member of the Securities and Investments Subcommittee of the Senate Banking, Housing, and Urban Affairs Committee.

CREW cites as relevant to this matter paragraph 1(c)(19)(E) of Rule 35, the Senate Gifts Rule, which provides an exception to the prohibitions of the Gifts Rule for opportunities and benefits which are "in the form of loans from banks and other financial institutions on terms generally available to the public." Allegations and factual assertions in the CREW complaint and in the *Portfolio.com* article, if true, could raise concerns under the Senate Gifts Rule. Therefore, the Committee requests your response to the complaint and the article with respect to the mortgage loans that you obtained from Countrywide Financial in 2003.

In addressing the complaint and the article, the Committee requests that you specifically address the following:

1. At the time you obtained the mortgage loans from Countrywide in 2003, were you acquainted with Angelo Mozilo, then an Executive with Countrywide? Did you, any member of your Senate staff, any member of your family, or anyone else acting on your behalf, communicate at any time with Mr. Mozilo about your mortgage loans from Countrywide? If so, please describe the facts and circumstances surrounding the communication(s) with Mr. Mozilo.

2. Were you aware at the time you obtained the mortgage loans from Countrywide that Countrywide had a V.I.P. program, a Friends of Angelo ("F.O.A.") program, or any other program relating to certain Countrywide's borrowers? If so, how did you become aware of the V.I.P. program, the F.O.A. program, or other program and what did you understand the program to be? When did you become aware that you were part of such a program at Countrywide? Did you understand that you were receiving favorable treatment of any kind, financial or otherwise, from Countrywide that was not available to the public? If so, what kind of favorable treatment did you understand you were receiving?

3. What were the terms of the mortgage loans you obtained from Countrywide in 2003? Please describe and discuss all terms of the loan, including, but not limited to, interest rate(s), fees, points and required period of repayment. How did the specific terms of the mortgage loans you obtained from Countrywide compare with loan terms that were available at the time to other borrowers from Countrywide or available to the public from other mortgage refinance lenders? Did you receive offers in 2003 for mortgage loans from other financial institutions? If so, please identify the institutions and describe the terms and conditions of the mortgage loans offered by those institutions, and provide any documents or records you have relating to offers from other financial institutions. How did you become aware of the reduction in the rates of interest in your mortgage loans at Countrywide and when did you become aware of the reduction?

4. Please provide all the facts and circumstances surrounding your applications for the mortgage loans you obtained from Countrywide in 2003, including your applications and any documents, records, e-mail messages or other records of communication you, any member of your Senate staff, any member of your family, or anyone else acting on your behalf, may have had with any executive or employee of Countrywide, relating to the mortgage loans you obtained in 2003, or to any aspect of this matter. With whom did you speak at Countrywide about your mortgage loans and what were you told? Had you obtained a mortgage loan previously from Countrywide? Please describe the history of your business relationship with Countrywide. What prompted your decision to seek the mortgage loans from Countrywide in 2003? Did anyone from Countrywide contact you, any member of your Senate staff, any member of your family, or anyone else acting on your behalf, regarding your decision to seek the mortgage loans? Please describe all the facts and circumstances leading to your decisions to seek refinancing of mortgage loans with Countrywide, or any other lender.

Please provide any additional information that you believe would be helpful to the Committee in addressing this matter. A copy of the Rules of Procedure of the Select Committee on Ethics is enclosed.

Thank you for your cooperation. We request that you provide your response to this request within 30 days. If you have any questions, please do not hesitate to contact John C. Sassaman, Acting Chief Counsel of the Committee, at (202) 224-2981.

Sincerely,



Barbara Boxer  
Chairman



John Cornyn  
Vice Chairman

U.S. SENATE  
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August 11, 2008

Senator Barbara Boxer  
Senator John Cornyn  
Select Committee on Ethics  
United States Senate  
220 Hart Senate Office Building  
Washington, DC 20510

**Re: Senator Christopher J. Dodd**

Dear Senator Boxer and Senator Cornyn:

I am writing on behalf of Senator Christopher J. Dodd, in response to your letter dated July 9, 2008, regarding the terms Senator Dodd and his wife receive on their 2003 mortgages from Countrywide Home Loans. In short, the terms and conditions of those loans were consistent with terms generally available to the public at that time. As a result, the Senator did not receive a gift in violation of Senate Rule XXXV. Senator Dodd respectfully requests that the Committee take no further action on these matters, and that it dismiss the complaint filed against him.

### FACTUAL DISCUSSION

Senator Dodd and his wife, Jackie Clegg Dodd, have been borrowers from Countrywide Home Loans since 1999, when they were married and bought a townhouse in Washington, D.C. Together, they own a home in East Haddam, Connecticut, which the Senator purchased in 1981. In 2003, to take advantage of increasingly favorable conditions in the overall home lending market, they chose to refinance their mortgages on both residences. After checking rates and terms with other lenders, the Dodds decided to refinance with Countrywide – partly because they found Countrywide's rates to be comparable to those otherwise available in the market, partly because of the relative ease

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of refinancing with their current lender, and partly because Countrywide participated in a college savings plan called Upromise.<sup>1</sup>

Like any other customers, the Dodds were required to complete loan applications, provide appropriate income verification, submit to credit checks, and execute a wide array of closing documents. The loans were processed by individuals within Countrywide who were described as part of its "V.I.P. Loan Unit." The Dodds never asked to be placed in the "V.I.P." program. They asked Countrywide what the "V.I.P." program was, and were told that it offered heightened attention to service quality. They did not believe that their loans would be made on terms more advantageous than those available to the public at large or that they would receive special benefits or opportunities unavailable to others.<sup>2</sup> The Dodds closed on the refinance of their Washington town house on June 10, 2003; they closed on the refinance of the East Haddam home on July 3, 2003.

On June 12, 2008, Conde Nast Portfolio.com published an article asserting that several public figures, including Senator Dodd, "refinanced properties through Countrywide's 'V.I.P.' program in 2003 and 2004 ..." See Daniel Golden, *Countrywide's Many 'Friends,'* Conde Nast Portfolio.com (June 12, 2008). The article revealed that many of the borrowers were referred to within company documents as "'F.O.A's - Friends of Angelo', a reference to Countrywide chief executive Angelo Mozillo." *Id.* It asserted that these borrowers "received better deals than those available to ordinary borrowers." It acknowledged that, "[u]nless they asked, V.I.P. borrowers weren't told exactly how many points were waived on their loans ... However, they were typically assured that they were receiving the 'Friends of Angelo' discount, and that Mozillo had personally priced their loans." *Id.*

The June 12 article was news to the Dodds in several ways. First, they had had no reason to think that their 2003 loans involved rates or other terms not available to the general public, and for which they did not bargain. They were existing customers of Countrywide and extremely creditworthy borrowers whose business would have been valued regardless of their public positions, and who would have been able to secure the most competitive terms available for these reasons alone. Second, they are not "Friends

<sup>1</sup> Upromise provides rewards, in the form of donations to college savings plans established under section 529 of the Internal Revenue Code, to those who finance homes through participating lenders. See <http://www.upromise.com>.

<sup>2</sup> The Dodds were not aware of the potential existence of any "Friends of Angelo" program until June 2008, when they learned about it from reading the Conde Nast Portfolio article referenced in the Committee's letter.

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of Angelo.” They have never met Mr. Mozillo and remain unaware of any basis for an assertion of “friendship.” Third, they had no reason to think that Mr. Mozillo had been involved in pricing their loans, as they were not acquainted with him and did not communicate with him about the loans.

The June 12 article prompted Senator Dodd to initiate a review of the 2003 loans. Through counsel, he asked Countrywide for copies of the files for the loans in question, and posed questions relevant to evaluating the article’s claims. Countrywide provided the loan files, which included internal company documents that the Dodds had not seen before.<sup>3</sup> Countrywide provided assurances that the V.I.P. program did not involve preferential rates or fees. It disclosed that there were thousands of customers in the V.I.P. program, and that the program’s purpose was to ensure that loans were handled by experienced personnel who were especially sensitive to issues like privacy and security. At this writing, Countrywide has not provided any information about the treatment of its other borrowers.

To determine independently whether the loans were made on terms generally available to the public at the time, Senator Dodd, through counsel, directed an outside professional firm to review and analyze the loan files. The review was performed by CrossCheck Compliance LLC, a Chicago-based firm that provides due diligence and compliance services to the mortgage industry. CrossCheck’s executive team has more than 75 years of combined experience in financial services, mortgage lending and risk management. The firm conducts mortgage-related forensic investigations, using methods and standards that surpass the “due diligence” typically used by mortgage lenders. CrossCheck’s report, which accompanies this response, found that the Dodds were extremely creditworthy borrowers, that the 2003 loans were made at rates available to the public at large at the time, and that the proportion of fees and charges paid by the Dodds actually exceeded national averages.

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<sup>3</sup> Along with this letter are copies of the files on the 2003 loans that were made available by Countrywide in response to this request. While the files confirm that the term “F.O.A.” was used internally within Countrywide, they present no evidence that Senator Dodd was made aware of this designation. Moreover, while some documents seem to show that Countrywide waived the 1% origination fee and discount points on both loans, there is no evidence in the files to suggest that Countrywide did not also waive such costs for similarly qualified loan applicants, regardless of “F.O.A.” or “V.I.P.” designation. As the independent report accompanying this response says, lenders commonly waived loan costs during the highly competitive 2003 time period to attract qualified applicants like the Dodds – a fact fully borne out by the market data included in the report.

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## DISCUSSION

Senate Rule XXXV(1)(c)(19)(E) provides that a Member does not receive a gift, if he borrows "from banks and other financial institutions on terms generally available to the public ..." To determine whether the 2003 loans met these criteria, Senator Dodd – as noted above – asked CrossCheck Compliance LLC to review them, and to determine whether the rates and fees charged were consistent with normal lending practices and with the terms available in the market at large when the loans were originated.

A complete copy of the CrossCheck report is provided with this letter. The report provides ample basis to confirm the Dodds' understanding at the time – that they borrowed "on terms generally available to the public." *Id.*

- First, the report underscores the Dodds' creditworthiness and shows that they were the sort of borrowers whom a lender would have wanted to entice with favorable terms, even if Senator Dodd had not been a Senator. It observes that they borrowed during a borrowers' market, in which lenders vied to attract and retain good customers with discounts and favorable terms. It also notes the Dodds' high credit scores, their perfect payment history, and the favorable loan-to-value ratio on the properties.
- Second, it shows that the rates provided to the Dodds were available to the general public. Market data obtained by CrossCheck show that mortgage rates were near 45-year lows, and that the Dodds' rates were even *higher* than others published at the same time – even when no discount points were paid.
- Third, the report notes that the Dodds paid fees and charges on the loans that exceeded the national average. It cites data showing that the average amount of initial fees and charges paid by borrowers ranged from 0.33% to 0.37% of the loan amount between May and July of 2003. Yet the Dodds paid fees and charges of 0.73% on the Connecticut home, and 0.45% on the Washington home.

Senator Dodd does not know, and indeed has no way of knowing how many other Countrywide customers paid the same rates and fees. But the CrossCheck report makes



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clear that he borrowed well within the market – which precludes any “gift” under Rule XXXV.

Equally important, the CrossCheck report shows, the terms of the loan would not have alerted the Senator to any possibility that he was receiving a gift. This is significant under Senate Rule XXXV(1)(a)(1), which prohibits Members only from “knowingly” accepting gifts. When the Senate wrote the rule’s predecessor, it wished to “avoid placing Members ... at their peril” for conduct to which they were not privy. Cong. Rec. S8036 (daily ed. Mar. 17, 1977) (remarks of Sen. Nelson). The rule does not tolerate willful blindness. But it imposes a rule of “reasonableness” with which Senator Dodd complied, having borrowed on market terms. *Id.*

Finally, it is the market’s objective conditions – not the lender’s subjective practices – that determine whether a loan is a “gift” or not. While not controlling, other authorities look to “market value” to determine whether or not a gift has occurred. *See, e.g.*, OGE Advisory Opinion 92 x 27 (Dec. 10, 1992) (interpreting “a rate generally available to the public” to mean “market value”). *See also* 11 C.F.R. § 100.52(d)(2) (Federal Election Commission rule that links the “usual and normal charge for goods,” and thus the definition of a “gift,” to the goods’ price “in the market from which they ordinarily would have been purchased at the time”).

In 1989, the House Ethics Committee dismissed a proposed finding that Speaker Jim Wright received a gift through a loan made to his wife. *See* H. Rep. No. 101-995, 101st Cong., 2d Sess., at 81-83. The Committee relied on “the fact that there is no evidence or testimony in the record that the Wrights were not sufficiently creditworthy to obtain independently a loan similar to the one which they received from [the company] ...” *Id.* at 82.

Thus, even if Countrywide did not provide similar terms to the general public, the data in the CrossCheck report show that such terms were readily available from a number of lenders. Under the plain reading of the rule and related precedent, no gift would have resulted.

#### RESPONSE TO THE COMMITTEE’S SPECIFIC QUESTIONS

1. *At the time you obtained the mortgage loans from Countrywide in 2003, were you acquainted with Angelo Mozillo, then an Executive with Countrywide? Did you,*

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*any member of your Senate staff, any member of your family, or anyone else acting on your behalf, communicate at any time with Mr. Mozillo about your mortgage loans from Countrywide? If so, please describe the facts and circumstances surrounding the communication(s) with Mr. Mozillo.*

Senator Dodd was not acquainted with Mr. Mozillo. Far from being a "Friend of Angelo," he had no personal relationship with Mr. Mozillo whatsoever. Neither he, nor his family or staff communicated with Mr. Mozillo or anyone else in a senior management position in Countrywide about his loans. The Dodds dealt only with company loan officers when arranging these loans.

- 2. Were you aware at the time you obtained the mortgage loans from Countrywide that Countrywide had a V.I.P. program, a Friends of Angelo ("F.O.A.") program, or any other program relating to certain Countrywide's [sic] borrowers? If so, how did you become aware of the V.I.P. program, the F.O.A. program, or other program and what did you understand the program to be? When did you become aware that you were part of such a program at Countrywide? Did you understand that you were receiving favorable treatment of any kind, financial or otherwise, from Countrywide that was not available to the public? If so, what kind of favorable treatment did you understand you were receiving?*

The Dodds were aware that their loans were being processed by individuals within Countrywide who were described as being part of its "V.I.P. Loan Unit." They became aware of this through conversations and correspondence with the employees who were handling their account. They asked and were told that the "V.I.P." unit signified heightened attention to service quality. They did not understand it to mean that they would receive any substantive, favorable treatment not available to the public at large. Indeed, in June 2008 Countrywide explained to counsel that there were thousands of customers in this program.

Until June 2008, when the Portfolio.com article was published, the Dodds were unaware that a "Friends of Angelo" program existed, and certainly did not believe that they were members of any such program.

- 3. What were the terms of the mortgage loans you obtained from Countrywide in 2003? Please describe and discuss all terms of the loan, including, but not limited to, interest rate(s), fees, points and required period of repayment. How did the*

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*specific terms of the mortgage loans you obtained from Countrywide compare with loan terms that were available at the time to other borrowers from Countrywide or available to the public from other mortgage refinance lenders? Did you receive offers in 2003 for mortgage loans from other financial institutions? If so, please identify the institutions and describe the terms and conditions of the mortgage loans offered by those institutions, and provide any documents or records you have relating to offers from other financial institutions. How did you become aware of the reduction in the rates of interest in your mortgage loans at Countrywide and when did you become aware of the reduction?*

The terms of the 2003 loans, and the market conditions at the time, are discussed fully in the CrossCheck report and the loan file documents, which accompany this response. Senator Dodd was not and is not aware of any rate reduction he received that was not available to him in the broader market. In 2003, the Dodds shopped around for the best publicly available loan rates. Like other borrowers, they were receiving regular offers from lenders in the mail. Among the lenders they talked to were Washington Mutual, Wachovia and Lending Tree. The Dodds recall (and the CrossCheck report confirms) that these other institutions offered substantially similar terms to the ones Countrywide provided. The Dodds had no reason to think that they were paying rates or fees not available to the public at large – and, indeed, the CrossCheck report shows that these rates and fees were available to the public.

- 4. Please provide all the facts and circumstances surrounding your applications for the mortgage loans you obtained from Countrywide in 2003, including your applications and any documents, records, e-mail messages or other records of communication you, any member of your Senate staff, any member of your family, or anyone else acting on your behalf, may have had with any executive or employee of Countrywide, relating to the mortgage loans you obtained in 2003, or to any aspect of this matter. With whom did you speak at Countrywide about your mortgage loans and what were you told? Had you obtained a mortgage loan previously from Countrywide? Please describe the history of your business relationship with Countrywide. What prompted your decision to seek the mortgage loans from Countrywide in 2003? Did anyone from Countrywide contact you, any member of your Senate staff, any member of your family, or anyone else acting on your behalf, regarding your decision to seek the mortgage*

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*loans? Please describe all the facts and circumstances leading to your decisions to seek refinancing of mortgage loans with Countrywide, or any other lender.*

Detailed information about the facts and circumstances surrounding the loans, and the Dodds' interactions with Countrywide at the time, are reflected in the loan file documents produced with this response. As reflected in the loan files, during their time as customers of Countrywide the Dodds dealt with a number of loan officers. They never discussed their loans with any member of senior bank management. The Dodds became Countrywide customers in 1999, when they purchased their townhouse in the District of Columbia. Between 1999 and 2003, they refinanced loans on their Connecticut home and District of Columbia townhouse with Countrywide. As indicated above, Senator Dodd refinanced with Countrywide in 2003 partly because their terms were comparable to the market at large, partly because of the convenience of refinancing with an existing lender, and partly because Countrywide participated in the Upromise savings program.

#### CONCLUSION

The facts show that Senator Dodd received no gift under Senate Rule XXXV in connection with the 2003 loans. The Senator wishes to assist the Committee with the speediest possible conclusion to this matter. Toward that end, he is willing to assist the Committee with whatever other questions it might have. He respectfully requests the Committee to dismiss this matter quickly and take no further action.

Very truly yours,

PERKINS COIE LLP



Marc E. Elias  
Counsel to Senator Dodd

Enclosures



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August 4, 2009

Mr. John C. Sassaman, Jr.  
Chief Counsel/Staff Director  
Select Committee on Ethics  
United States Senate  
Hart Senate Office Building, SH-220  
Washington, DC 20510

Dear Mr. Sassaman:

I am writing to follow up on our call from last week in which you asked for additional information regarding my client, Senator Chris Dodd and his loans with Countrywide. You asked several questions regarding his earlier loans. Here are our answers.

First, in 1999 Senator Dodd's wife approached Countrywide and several other national lenders for mortgage rates. She did so in the ordinary course by calling their public 800 numbers.

Second, no one referred her or the Senator to Countrywide. Instead, she chose to call Countrywide, along with other national lenders, in an effort to shop rates like any other member of the public. Indeed, she called national lenders, rather than a more friendly local bank based in the Senator's home state, specifically to avoid any appearance of special treatment.

Third, the Senator and Mrs. Dodd do not specifically recall when they learned that they were in the VIP unit. They never requested to be in the VIP unit. They asked what the VIP unit did and they were told by the Bank that it involved no more than enhanced customer service. It was never suggested that it involved any better terms or conditions than the general public received.

Fourth, the Dodds became aware that they had been placed in the VIP program by seeing letterhead and/or business cards from Countrywide and through follow-up inquiries about the program to the employees who were handling the account. They asked and were told that the "VIP" unit signified attention to service quality. Furthermore, at no time during the course of their interactions was there any action taken by Countrywide to lead them to believe they were receiving anything but what they had been told. All the mortgage rates and terms the Dodds

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OLYMPIA · PHOENIX · PORTLAND · SAN FRANCISCO · SEATTLE · SHANGHAI · WASHINGTON, D.C.

Perkins Coie LLP and Affiliates

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received were market rates available to the general public. At no point did they receive any substantive favorable treatment not available to the general public.

Finally, Senator Dodd sought to answer the Committee's letter last August as categorically and completely as possible. At that time, we told the Committee that he and his wife have had loans with Countrywide since 1999. The answers in that letter were provided in that context -- applying to all of their dealings with Countrywide on all of their loans. He stands by those answers today. At no point did the Dodds discuss their loans with any member of the senior management. Instead they dealt with loan officers. Senator Dodd was not acquainted with Mr. Mozillo. Far from being a "Friend of Angelo," he had no personal relationship with Mr. Mozillo whatsoever. Until June 2008, when the magazine article was published, the Dodds were unaware that a "Friends of Angelo" program existed, and certainly did not believe that they were members of any such program. He and his wife, like millions of Americans, shopped for mortgages and sought the best deals available to the public. He never sought and did not obtain any special deals.

I hope this answers your questions. If there is any additional information that we can provide to assist you, please let me know.

Very truly yours,



Marc Erik Elias

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